

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 149*
Committee Substitute Favorable 4/15/91
Senate Judiciary II Committee Substitute Adopted 7/12/91

Short Title: Regulate Smoking in Public.

(Public)

Sponsors:

Referred to:

February 21, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE SMOKING IN PUBLIC PLACES AND TO PROHIBIT
3 EMPLOYMENT DISCRIMINATION BASED ON THE USE OF TOBACCO
4 PRODUCTS.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 14 of the General Statutes is amended by adding the
7 following new Article to read:

8 **"ARTICLE 61.**
9 **"SMOKING IN PUBLIC PLACES.**

10 **"§ 14-460. Legislative intent.**

11 It is the intent of the General Assembly to address the needs and concerns of both
12 smokers and nonsmokers in buildings which are used by and open to the public by
13 providing for designated smoking areas.

14 **"§ 14-461. Definitions.**

15 As used in this Article, unless the context clearly provides otherwise:

- 16 (1) 'Government' means the State or any political subdivision of the State
17 or any authority or body created by any statute, ordinance, or rule of
18 any of these entities.
- 19 (2) 'Nonsmoking area' means any designated area where smoking is not
20 permitted.
- 21 (3) 'Public building' means the following enclosed indoor areas which are
22 generally open to the public:

- a. Government buildings.
- b. Places of employment in government buildings.
- c. Public mass transportation terminals.
- d. Restaurants.

(4) 'Public meeting' means all meetings open to the public.

(5) 'Restaurant' means any building, structure, or area, having a seating capacity of fifty or more patrons where food is available for eating on the premises in consideration of payment. In determining the extent of the seating capacity for purposes of this Article, the following shall not be included as seating capacity: (i) seats in any bar or lounge area of a restaurant and (ii) seats in any separate room or section of a restaurant which is used exclusively for private functions.

(5) 'Smoke' or 'smokes' or 'smoking' means the use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.

"§ 14-462. Smoking in certain public places a misdemeanor.

(a) A person who smokes in any form in any of the following places shall be guilty of a misdemeanor:

- (1) An enclosed elevator which is used by or open to the public and which is clearly designated by a no-smoking sign.
- (2) Any place on a public transportation vehicle which is used by the public and which is clearly designated by a no-smoking sign.
- (3) Any public library which is clearly designated by a no-smoking sign.
- (4) Any museum which is clearly designated by a no-smoking sign.

(b) A person convicted of violating subsection (a) of this section is guilty of a misdemeanor and shall be punished by a fine of not more than twenty-five dollars (\$25.00).

"§ 14-463. Prohibited acts related to nonsmoking areas.

(a) No person shall smoke in a nonsmoking area in a public building or at a public meeting. The person in charge of a public building or public meeting may establish a nonsmoking area.

(b) If a nonsmoking area is established, at least twenty-five percent (25%) of the interior space of equal quality to that of the nonsmoking area shall be designated as a smoking area, except that a restaurant may be designated in its entirety as a smoking area or a nonsmoking area.

(c) Indoor space in an auditorium, arena, or coliseum may be designated as a nonsmoking area in its entirety, except a designated area for smoking shall be established in lobby areas.

(d) Where a nonsmoking area is designated, existing physical barriers and ventilation systems shall be used where appropriate to minimize smoke from adjacent areas. This subsection shall not be construed to require fixed structural or other physical modifications in providing these areas or to require installation or operation of any heating, ventilating, or air-conditioning system in any manner which adds expense.

1 (e) The person in charge of a public building shall conspicuously post or cause to
2 be posted, in any area designated as a smoking or nonsmoking area, signs stating that
3 smoking is or is not permitted in the area.

4 (f) A person convicted of violating any provision of this section is guilty of a
5 misdemeanor and shall be punished by a fine of not more than twenty-five dollars
6 (\$25.00).

7 **"§ 14-464. Exemptions from provisions of Article.**

8 The following shall be exempt from the provisions of this Article:

9 (1) Any primary or secondary school.

10 (2) Hospitals, nursing homes, and rest homes.

11 (3) Any nonprofit organization or corporation whose primary purpose is to
12 discourage the use of tobacco products by the general public.

13 (4) Tobacco manufacturing, processing, and administrative facilities.

14 **"§ 14-465. Construction of Article.**

15 Nothing in this Article shall be construed to permit smoking in any area where
16 smoking is prohibited by other law or rule for fire safety purposes, including the State
17 minimum fire safety standards pursuant to Chapter 58, Chapter 153A, or Chapter 160A
18 of the General Statutes.

19 **"§ 14-466. Applicability of Article.**

20 This Article shall supersede and prohibit the enactment of any other local laws, rules
21 of State or local agencies, and local ordinances regulating smoking and the use of
22 unlighted tobacco products."

23 Sec. 2. (a) The existing sections of Article 49A of Chapter 143 of the General
24 Statutes are designated as "Part 1" and entitled "In General."

25 (b) Chapter 143 of the General Statutes is amended by adding to Article 49A
26 immediately following Part 1 a new Part 2 to read:

27 "Part 2. Discrimination in Employment Based On Use Of Tobacco Products.

28 **"§ 143-422.5. Declaration of public policy regarding discriminatory employment**
29 **practices based on the use of tobacco products.**

30 The General Assembly declares that discrimination in employment on the basis of
31 the use of tobacco products by a disparity of wages, hiring, promotion, termination, or
32 other terms or conditions of employment (i) adversely affects the interests of
33 employees, employers, and the public in general, (ii) leads to low worker morale, high
34 turnover, and labor unrest, (iii) discourages workers paid at the lesser rates from training
35 for higher level jobs, (iv) curtails employment opportunities, (v) decreases mobility of
36 workers and increases labor costs, and (vi) prevents optimum utilization of the labor
37 resources available to employers. It is declared to be the policy of the State to
38 eliminate, by the exercise of the police power of this State, discriminatory wage and
39 employment practices based upon the use of tobacco products.

40 **"§ 143-422.6. Definitions.**

41 As used in this Part, unless the context clearly requires otherwise:

42 (1) 'Employee' means any person employed by an employer, other than
43 domestic employees, and includes persons employed by the State or
44 any of the political subdivisions of the State.

1 (2) 'Employer' means any person employing an employee to act directly or
2 indirectly in the interest of an employer. The term 'employer' means
3 an employer who is engaged in intrastate or interstate commerce.

4 (3) 'Tobacco products' means any derivative of chiefly American plants of
5 the nightshade family and of the genus Nicotiana. Products are
6 typically prepared from the leaves of the plant and manufactured into
7 items such as smoking tobacco, cigars, cigarettes, snuff, and chewing
8 tobacco.

9 (4) 'Use' of tobacco products shall include the actual practice of smoking
10 or chewing as well as possession of lighted or unlighted tobacco
11 products.

12 **"§ 143-422.7. Prohibition of discriminatory employment practices; penalties.**

13 (a) No employer shall discriminate between employees on the basis of the use or
14 nonuse of tobacco products by an employee outside the place of employment for equal
15 work in jobs which require equal skill, effort, and responsibility and which are
16 performed under similar working conditions. Prohibited discrimination shall include
17 taking into account an employee's use or nonuse of tobacco products outside the place
18 of employment in any of the following activities:

19 (1) Paying wage rates to employees for equal work in jobs which require
20 equal skill, effort, and responsibility and which are performed under
21 similar working conditions.

22 (2) Hiring, terminating, demoting, or promoting an employee.

23 (3) Altering any other conditions, privileges, or prerequisites of
24 employment.

25 An employer who is paying a wage or benefits rate differential or otherwise
26 discriminating with respect to employment in violation of this subsection shall not, in
27 order to comply with this subsection, lower the wage or benefits rate or alter any
28 condition of employment in a manner that adversely affects any employee.

29 (b) It shall be unlawful for any person to cause or attempt to cause an employer
30 to discriminate against any employee in violation of this Part.

31 (c) It shall be unlawful for any person to discharge or in any manner discriminate
32 against any employee covered by this Part because the employee has made a complaint
33 to his employer or any other person or has instituted or caused to be instituted any
34 proceeding or suit under or related to this Part or has testified or is about to testify in
35 any proceeding.

36 (d) Any person who violates any provision of this section is guilty of a
37 misdemeanor and shall be punished by a fine of not more than twenty-five dollars
38 (\$25.00).

39 **"§ 143-422.8. Remedies of an aggrieved employee; when action may be**
40 **commenced.**

41 (a) Any employer who violates any provision of G.S. 143-422.7 shall be liable to
42 the employee affected in the amount of wages not paid because of the discriminatory
43 practice and, in the case of an employee who has been terminated, shall be required to
44 reinstate the aggrieved employee to the same or a similar position of employment.

1 (b) An action under this section may be commenced in the General Court of
2 Justice by any one or more employees. The provisions of Article 3 of Chapter 150B of
3 the General Statutes shall not apply to this Part.

4 (c) An action pursuant to this Part shall be commenced no later than two years
5 after the cause of action accrues.

6 **"§ 143-422.9. Application.**

7 This Part shall supersede and prohibit the enactment of any other local laws, rules of
8 State or local agencies, and local ordinances regulating the use of tobacco products."

9 Sec. 3. The provisions of this act are severable, and if any provision of this
10 act is held invalid by a court of competent jurisdiction, the invalidity shall not affect
11 other provisions of the act which can be given effect without the invalid provision.

12 Sec. 4. This act becomes effective September 1, 1991.