

CHAPTER 23-12
PUBLIC HEALTH, MISCELLANEOUS PROVISIONS

23-12-01. Disinfection of secondhand goods. Repealed by S.L. 1975, ch. 225, § 1.

23-12-02. Penalty for not disinfecting secondhand goods. Repealed by S.L. 1975, ch. 106, § 673; S.L. 1975, ch. 225, § 1.

23-12-03. Use of public drinking cup prohibited - Penalty. Any person in charge of any:

1. Public conveyance;
2. Passenger terminal building;
3. Public, parochial, or private school, or other educational institution; or
4. Public building

who furnishes or permits the common use of public drinking cups in such place is guilty of an infraction.

23-12-04. Permission to establish hospital in residence block of city required. No hospital which treats patients for pay may be established in any residence block of any city in this state unless the person, firm, corporation, or limited liability company proposing to establish the same files with the city auditor the written consent of the resident freeholders of such block.

23-12-05. Advertising certain cures and drugs and specialization prohibited - Penalty. Repealed by S.L. 1975, ch. 106, § 673.

23-12-06. Injury to public health - Penalty. Repealed by S.L. 1975, ch. 106, § 673.

23-12-07. Violation of health laws - General penalty. Any person who willfully violates any provision of this title, if another penalty is not specifically provided for such violation, is guilty of an infraction.

23-12-08. Emergency medical service authorized. Any county or municipality of the state of North Dakota, by itself, or in combination with any other county or municipality of the state of North Dakota, may, acting through its governing body, establish, maintain, contract for, or otherwise provide emergency medical service for such county or municipality; and for this purpose, out of any funds of such county or municipality not otherwise committed, may buy, rent, lease, or otherwise contract for all such vehicles, equipment, or other facilities or services which may be necessary to effectuate such purpose.

23-12-09. Smoking in public places and places of employment - Definitions. In sections 23-12-09 through 23-12-11, unless the context or subject matter otherwise requires:

1. "Bar" means a retail alcoholic beverage establishment licensed under chapter 5-02 that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages. The term includes a bar located within a hotel, bowling center, or restaurant that is not licensed primarily or exclusively to sell alcoholic beverages if the bar is in a separately enclosed area.
2. "Business" means a sole proprietorship, partnership, association, joint venture, corporation, or other business entity, either for profit or not for profit, including retail establishments where goods or services are sold and professional corporations and other entities where professional services are delivered.

3. "Employee" means an individual who is employed by an employer in consideration for direct or indirect monetary wages or profit, or an individual who volunteers services for an employer.
4. "Employer" means an individual, business, or the state and its agencies and political subdivisions that employs the services of one or more individuals.
5. "Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to the ceiling.
6. "Health care facility" means any office or institution providing health care services, including a hospital; clinic; ambulatory surgery center; outpatient care facility; nursing, basic, or assisted living facility; and laboratory.
7. "Health care services" include medical, surgical, dental, vision, chiropractic, and pharmaceutical services.
8. "Place of employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including work areas, auditoriums, classrooms, conference rooms, elevators, employee cafeterias, employee lounges, hallways, meeting rooms, private offices, restrooms, and stairs.
9. "Public place" means an enclosed area to which the public has access or in which the public is permitted, including a publicly owned building or office, and enclosed areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including bars; bingo facilities; child care facilities subject to licensure by the department of human services, including those operated in private homes when any child cared for under that license is present; convention facilities; educational facilities, both public and private; facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; financial institutions; health care facilities; hotels and motels; laundromats; any common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, nursing homes, and other multiple-unit residential facilities; museums, libraries, galleries, and aquariums; polling places; professional offices; public transportation facilities, including buses and taxicabs, and ticket, boarding, and waiting areas of public transit depots; reception areas; restaurants; retail food production and marketing establishments; retail service establishments; retail stores; rooms, chambers, places of meeting or public assembly, including school buildings; service lines; shopping malls; sports arenas, including enclosed places in outdoor arenas; theaters; and waiting rooms.
10. "Publicly owned building or office" means a place owned, leased, or rented by any state or political subdivision, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of taxes.
11. "Restaurant" includes every building or other structure, or any part thereof, and all buildings in connection therewith that are kept, used, maintained, advertised, or held out to the public as a place where food is served, including coffee shops, cafeterias, private and public school cafeterias, kitchens, and catering facilities in which food is prepared on the premises for serving elsewhere, and a bar area within a restaurant.
12. "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
13. "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional businesses.

14. "Smoking" means possessing a lighted cigar, cigarette, pipe, weed, plant, or any other lighted tobacco product in any manner or in any form.
15. "Sports arena" means any facility or area, whether enclosed or outdoor, where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling centers.
16. "Truckstop" means a roadside service station and restaurant that caters to truckdrivers.

23-12-10. Smoking restrictions - Exceptions - Retaliation - Application.

1. In order to protect the public health and welfare and to recognize the need for individuals to breathe smoke-free air, smoking is prohibited in all enclosed areas of:
 - a. Public places; and
 - b. Places of employment.
2. The following areas are exempt from subsection 1:
 - a. Private residences, except when operating as a child care facility subject to licensure by the department of human services and when any child cared for under that license is present in that facility.
 - b. Hotel and motel rooms, and other places of lodging, that are rented to guests and are designated as smoking rooms.
 - c. Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under this section.
 - d. Outdoor areas of places of employment, except a sports arena.
 - e. Any area that is not commonly accessible to the public and which is part of an owner-operated business having no employee other than the owner-operator.
 - f. Bars.
 - g. Any place of public access rented or leased for private functions from which the general public and children are excluded and arrangements for the function are under the control of the function sponsor.
 - h. Separately enclosed areas in truckstops which are accessible only to adults.
3. Smoking as part of a traditional American Indian spiritual or cultural ceremony is not prohibited.
4. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or other person because that person asserts or exercises any rights afforded by this section or reports or attempts to prosecute a violation of this section.
5. This section may not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

23-12-10.1. Responsibility of proprietors. Repealed by S.L. 2005, ch. 239, § 7.

23-12-10.2. Complaints and enforcement - City and county ordinances and home rule charters.

1. State agencies with statutory jurisdiction over a state-owned building or office shall enforce section 23-12-10. These agencies include the fire marshal department, state department of health, department of human services, legislative council, and office of management and budget. The agencies may mutually agree as to the manner in which enforcement is to be accomplished and may adopt administrative rules to ensure compliance with section 23-12-10, including referral of violations to an appropriate law enforcement agency for enforcement pursuant to section 23-12-11.
2. A city or county ordinance, a city or county home rule charter, or an ordinance adopted under a home rule charter may not provide for less stringent provisions than those provided under sections 23-12-09 through 23-12-11. Nothing in this Act shall preempt or otherwise affect any other state or local tobacco control law that provides more stringent protection from the hazards of environmental tobacco smoke. This subsection does not preclude any city or county from enacting any ordinance containing penal language when otherwise authorized to do so by law.

23-12-10.3. Exceptions - Medical necessity.

1. Notwithstanding the provisions of any other state or local law, a patient may smoke in a hospital licensed by the state or on the grounds of a hospital licensed by the state if the patient's attending physician authorizes the activity based on medical policies adopted by the hospital organized medical staff.
2. Notwithstanding the provisions of any other state or local law, a resident of a licensed basic care facility or a licensed nursing facility may smoke in the facility or on the grounds of the facility if approved by the board of the facility.

23-12-11. Penalty.

1. An individual who smokes in an area in which smoking is prohibited under section 23-12-10 is guilty of an infraction.
2. An owner or other person with general supervisory responsibility over a public place or place of employment who willfully fails to comply with section 23-12-10 is guilty of an infraction, subject to a fine not to exceed one hundred dollars for the first violation, to a fine not to exceed two hundred dollars for a second violation within one year, and a fine not to exceed five hundred dollars for each additional violation within one year of the preceding violation.

23-12-12. Federal Health Care Quality Improvement Act of 1986 applicable in North Dakota. Pursuant to the Health Care Quality Improvement Act of 1986 [Pub. L. 99-660, Title IV; 100 Stat. 3784; 42 U.S.C. 11101 et seq.], providing for a limitation on damages for professional review actions, the provisions of that Act are effective in this state.

23-12-13. Persons authorized to provide informed consent to health care for incapacitated persons - Priority.

1. Informed consent for health care for a minor patient or a patient who is determined by a physician to be an incapacitated person, as defined in subsection 2 of section 30.1-26-01, and unable to consent may be obtained from a person authorized to consent on behalf of the patient. Persons in the following classes and in the following order of priority may provide informed consent to health care on behalf of the patient:

- a. The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions, unless a court of competent jurisdiction specifically authorizes a guardian to make medical decisions for the incapacitated person;
 - b. The appointed guardian or custodian of the patient, if any;
 - c. The patient's spouse who has maintained significant contacts with the incapacitated person;
 - d. Children of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person;
 - e. Parents of the patient, including a stepparent who has maintained significant contacts with the incapacitated person;
 - f. Adult brothers and sisters of the patient who have maintained significant contacts with the incapacitated person;
 - g. Grandparents of the patient who have maintained significant contacts with the incapacitated person;
 - h. Grandchildren of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person; or
 - i. A close relative or friend of the patient who is at least eighteen years of age and who has maintained significant contacts with the incapacitated person.
2. A physician seeking informed consent for proposed health care for a minor patient or a patient who is an incapacitated person and is unable to consent must make reasonable efforts to locate and secure authorization for the health care from a competent person in the first or succeeding class identified in subsection 1. If the physician is unable to locate such person, authorization may be given by any person in the next class in the order of descending priority. A person identified in subsection 1 may not provide informed consent to health care if a person of higher priority has refused to give such authorization.
 3. Before any person authorized to provide informed consent pursuant to this section exercises that authority, the person must first determine in good faith that the patient, if not incapacitated, would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that the proposed health care is in the patient's best interests.
 4. No person authorized to provide informed consent pursuant to this section may provide consent for sterilization, abortion, or psychosurgery or for admission to a state mental health facility for a period of more than forty-five days without a mental health proceeding or other court order.
 5. If a patient who is determined by a physician to be an incapacitated person, or a person interested in the patient's welfare, objects to a determination of incapacity made pursuant to this section, a court hearing pursuant to chapter 30.1-28 must be held to determine the issue of incapacity.

23-12-14. Copies of medical records.

1. As used in this section, "health care provider" means a licensed individual or licensed facility providing health care services. Upon the request of a health care provider's patient or any person authorized by a patient, the provider shall provide a

free copy of a patient's health care records to a health care provider designated by the patient or the person authorized by the patient if the records are requested for the purpose of transferring that patient's health care to another health care provider for the continuation of treatment.

2. Except as provided in subsection 1, upon the request for medical records with the signed authorization of the patient, the health care provider shall provide medical records at a charge of no more than twenty dollars for the first twenty-five pages and seventy-five cents per page after twenty-five pages. This charge includes any administration fee, retrieval fee, and postage expense.