

North Carolina Smoke-Free Law: Guide for Business Owners

What is the smoke-free law?

North Carolina's smoke-free law prohibits smoking in many public places. As of January 2, 2010, enclosed areas of almost all bars and restaurants must be smoke-free. Smoking is also not allowed in most enclosed areas of lodging establishments, such as hotels, motels, and inns, if the establishment prepares and serves food or drink. A lodging establishment may designate no more than 20% of its guest rooms as smoking rooms.

Why was the law passed?

When the NC General Assembly passed the law, it included formal "findings" explaining that secondhand smoke, or the smoke released from the burning end of a cigarette and the smoke exhaled by the smoker, "has been proven to cause cancer, heart disease, and asthma attacks in both smokers and nonsmokers. In 2006, a report issued by the United States Surgeon General stated that the scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke." This means that breathing in even a small amount of smoke from someone else's cigarette, cigar or pipe could be harmful to you. The new law will protect people from the harm caused by secondhand smoke.

How can a restaurant, bar or lodging establishment know if it is required to comply with the new smoke-free law?

The law prohibits smoking in "all enclosed areas of restaurants and bars." In this law, the term "restaurant" is considered to be any establishment that is inspected and permitted by a local health department. A "bar" is an establishment that holds a state permit authorizing it to sell malt beverages (e.g., beer), wine, or mixed drinks on its premises, with very few exceptions. The law also encompasses any lodging establishment that (1) serves food or drink for pay and (2) is required to comply with state public health laws related to food and drink sanitation. If a restaurant, bar or lodging establishment is unsure of its status under the smoking law, it should contact the local health department to request assistance."

What does the law require me to do?

A person in charge of a restaurant, bar or lodging establishment that is subject to the new smoke-free law must:

- Post the required no-smoking signs¹ in conspicuous locations,
- Remove indoor ashtrays and other smoking receptacles, and
- Direct any person who is smoking to extinguish the cigarette, cigar or other lighted tobacco item

Even if a restaurant, bar or lodging establishment is already smoke-free, the venue still must post the required signs and remove any remaining indoor ashtrays.

¹ The Commission for Public Health adopted rules in October 2009. Among other things, the rules give detailed guidance on signage. The rules were finalized on December 17, 2009. Copies of free, downloadable signs and materials are available at www.smokefree.nc.gov or can be downloaded and printed through an office supply or sign store.

Are there any restaurants or bars that do not have to follow the law?

Yes. The following types of restaurants and bars are not required to comply with the new smoke-free law:

Cigar bars: In order to qualify for this exception and allow smoking, the cigar bar must satisfy **all** of the following criteria:

- Gross revenue: The bar must generate 60% or more of its quarterly gross revenue from the sale of alcoholic beverages and 25% or more from the sale of cigars.
- Humidor: The bar must have a humidor – which is a box or room with constant humidity designed to store cigars or pipe tobacco on the premises.
- Underage: The bar must not allow individuals under age 21 to enter.
- Smoke: Smoke from the bar must not migrate from the bar to an enclosed area where smoking is prohibited under the state law, such as a restaurant.
- Reporting: The bar must submit quarterly revenue reports to the Department of Health and Human Services, Division of Public Health.

Private clubs and country clubs: In order to qualify for this exception, the club must satisfy **all** of the following criteria:

- Membership: The club must maintain selective members.
- Operations: The club must be operated by the members.
- Restricted service: The club must not provide food or lodging for pay to anyone who is not a member or a member's guest.
- Nonprofit status: The club must either be:
 - incorporated as a nonprofit corporation under state law (found in G.S. Chapter 55A); or
 - exempt from paying federal income tax under federal Internal Revenue Code.

Restaurants that are exempt from the state's sanitation laws: If a restaurant is not required to comply with the state's sanitation laws (found in G.S. Chapter 130A, Article 8, Part 6), it will not be required to comply with the new smoke-free law. For examples and more details, please visit <http://www.sog.unc.edu/programs/ncphl/SmokingRegulation/faqs.html>.

Are there any lodging establishments that do not have to follow the law?

Yes. Lodging establishments that are not required to comply with sanitation laws related to food and drink service, are not required to comply with the new smoke-free law. If a lodging establishment is unsure of its status under either the sanitation laws or the smoke-free law, it should contact the local health department to request assistance.

Can restaurant or bar employees smoke anywhere indoors?

No. In most situations smoking is not permitted anywhere inside the premises, including private offices and break rooms. Businesses that have had a separate room for smoking can no longer allow smoking in these rooms or anywhere else inside. The owner/manager must inform their employees who smoke that they must go

outside to smoke. It is important to communicate early and clearly with employees to ensure they understand how the new smoke-free law applies to both them and customers.

Is smoking allowed in the outdoor section of my restaurant/bar?

The new state law does not require *unenclosed* areas of restaurants, bars, and lodging establishments to be smoke-free. However, these establishments may voluntarily put into place a policy that prohibits smoking in these unenclosed areas.

What are considered enclosed areas and unenclosed areas?

An area is considered to be **enclosed** if it has (A) a roof or other overhead covering **and** (B) permanent or temporary walls or side coverings on three or more sides that make up 55 percent or more of the total combined perimeter surface area.

In other words, for an area with a roof to be considered **unenclosed**, two or more of the four permanent or temporary walls or side coverings must be open to the outdoors and the walls or side covering must make up less than 55 percent of the total combined perimeter surface area.

For more detailed information on whether an outdoor area is considered unenclosed, read “Frequently Asked Questions on “Enclosed” Areas.” There are measuring instructions with examples in the document “How to Calculate Whether an Area is Enclosed or Unenclosed.”

What should I do if a customer refuses to stop smoking?

You or your staff must remind your customers of the law and should politely explain that they must step outside to smoke. Train your staff about what to say to customers, for example: *“State law no longer allows smoking inside here, I’m sorry, but you’ll have to step outside to smoke,” “The new smoke-free law prohibits smoking indoors. Thank you for your cooperation,” or “We are under a smoke-free law now. I need to ask you to put out your cigarette.”* If customers refuse to comply, use common sense. If necessary, use your normal protocol for removing a disruptive customer from your premises. You may contact local law enforcement to report the customer.

Do I have to post signs in my establishment, and where must they be posted?

Yes. The law requires no-smoking signs¹ to be posted in conspicuous location stating that smoking is not allowed. The rules require the following for the no smoking signs: (1) be posted at each public entrance at a height and location easily seen, (2) be at least 24 square inches in size (for example, 4 by 6 inches), (3) be in legible font type, (4) Display: (a) the Division’s toll-free complaint line telephone number, (b) “G.S.130A-497” (c) “www.smokefree.nc.gov”.

The signs may include the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it. All establishments subject to the new law, regardless of their smoking policies before the law goes into effect, must post signs.

Free, downloadable signs and materials are available on the **Tools for Businesses** page.

Where can I get these signs¹?

Downloadable signs and materials will be available for free at www.smokefree.nc.gov under “Tools for Businesses” or can be downloaded and purchased through a local office supply or sign store.

How will the law be enforced?

The owner or manager of the establishment is responsible for compliance and is required to direct a person who is smoking to extinguish the lighted tobacco product.

If a restaurant or bar is out of compliance, an employee or member of the public may call the local health department or visit www.smokefree.nc.gov.

What are the specific penalties for violating the smoke-free law?

Both the individual who continues to smoke in violation of the law as well as the business that fails to comply with the law may receive the following penalties:

- Individual
 - \$50 fine for an infraction
- Business Owner
 - First Violation: Warning
 - Second Violation: Warning
 - Third and Subsequent Violations: Fine of not more than \$200; Each day on which a violation of this law or rules adopted pursuant to this law occurs may be considered a separate and distinct violation.

Where can I get information about quitting smoking?

Call QuitlineNC or visit at www.quitlineNC.com. QuitlineNC operates 24 hours a day, seven days a week. The toll-free number is **1-800-784-8669**. Quitline services are available to all North Carolinians. Expert Tobacco Quit Coaches can call you back upon request. English, Spanish and other languages are available. All calls are free and confidential.