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Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1229

Introduced by

Representatives D. Ruby, Christensen, Headland, Kasper, Nathe, Porter, Rios, M. Ruby

Senators Larsen, Meyer, Vedaa

A BILL for an Act to amend and reenact section 23-12-10 of the North Dakota Century Code, relating to bars and cigar lounges.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-12-10 of the North Dakota Century Code is amended and reenacted as follows:

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. Smoking is prohibited within twenty feet [6.10 meters] of entrances, exits, operable windows, air intakes, and ventilation systems of enclosed areas in which smoking is prohibited. Owners, operators, managers, employers, or other persons who own or control a public place or place of employment may seek to rebut the presumption that twenty feet [6.10 meters] is a reasonable minimum distance by making application to the director of the local health department or district in which the public place or place of employment is located. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes, or other factors, smoke will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such public place or place of employment and, therefore, the public health and safety will be adequately protected by a lesser distance.
3. The following areas are exempt from subsections 1 and 2:

a. Private residences, except those residences used as a child care, adult day care, or health care facility subject to licensure by the department of health and human services.

b. Outdoor areas of places of employment, except those listed in subsection 2.

c. 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.

d. A bar or a cigar lounge, which has a valid certificate issued by the tax commissioner under this subdivision; has a humidor on the premises; is enclosed by solid walls or windows, a ceiling, and a solid door; and is equipped with a ventilation system by which exhausted air is not recirculated to nonsmoking areas and smoke is not backstreamed into nonsmoking areas. A bar or cigar lounge meeting the requirements of this subdivision may permit the smoking of cigars purchased on the premises, but may not permit the smoking of any other product on the premises.

(1) A bar or cigar lounge asserting the bar or lounge meets the requirements of this subdivision shall report to the tax commissioner before February first of each year, on a form prescribed by the commissioner, the revenue from the previous calendar year generated from the sale of cigars as a percentage of annual gross income. Upon receipt of a report asserting compliance with the annual gross income requirements of this subdivision, the commissioner shall issue an annual certificate. The commissioner is not required to confirm the accuracy of information reported but may not issue a certificate absent supporting documentation from the bar or lounge. Information reported to the commissioner under this subdivision is subject to the confidentiality provisions of section 57-39.2-23.

(2) For purposes of this subdivision:

(a) "Bar" means a bar that generates two percent or more of the bar's annual gross income from the sale of cigars.

(b) "Cigar" means an individual roll of tobacco which has a wrapper or cover of whole leaf tobacco; does not contain filler other than tobacco filler; does not contain binder other than tobacco binder; does not

contain additives other than water; does not contain a filter, tip, or nontobacco mouthpiece; weighs at least six pounds per thousand count; and is made by hand, except to allow for the use of a manually operated machine to assist in bunching, rolling, and binding.

(c) "Cigar lounge" means a business dedicated, in whole or in part, to the smoking of cigars which generates twenty percent or more of the business's annual gross income from the sale of cigars.

4. Smoking as part of a traditional American Indian spiritual or cultural ceremony is not prohibited.

5. 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. An employee who works in a setting where an employer allows smoking does not waive or surrender any legal rights the employee may have against the employer or any other party. Violations of this subsection shall be a class B misdemeanor.

6. This section may not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

7. Notwithstanding any other provision of this chapter, an owner, operator, manager or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place.