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Senate Industry and Business Committee for the 68th ND Legislative Assembly

Chairman Larsen, and members of the Senate Industry and Business Committee, hello, my name is Heather Austin, and I am the Executive Director for Tobacco Free North Dakota. The mission of Tobacco Free North Dakota is to improve and protect the public health of all North Dakotans by reducing the serious health and economic consequences of tobacco use, the state's number one cause of preventable disease and death. Thank you so much for your time this afternoon.

Today I am here to encourage a Do Not Pass on HB 1229, the bill allowing for the establishment of cigar bars in ND. By eroding our indoor smoke free air law, by making exceptions to allow even one type of product to be smoked or aerosolized indoors, we do a serious disservice to our citizens and to our state.

This bill will create an exemption for one type of tobacco, catering to a small percentage of the population, currently only 4.3% of adults in the North Dakota, while providing an environment that exposes the public, especially employees, to secondhand smoke in the workplace.

In November 2012, North Dakotans overwhelmingly passed Initiated Measure 4 with 66.67% approval. This law provides exemplary smoke-free protections to North Dakota residents, workers, and visitors. All counties in North Dakota voted in favor of expanding these protections to their residents.¹ The 2016 *E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General* applauds the North Dakota 2012 Smoke-Free Law as a significant policy success to protect citizens. The most important distinction of this law is that it does not make exceptions and applies to all smoke equally. This facilitates good enforcement and understanding of the law.

North Dakota's smoke-free law is a public health victory to protect all workers from the harmful effects of secondhand tobacco smoke. The products that produce smoke, such as cigarettes, cigars, and electronic cigarettes/vapes, have not become safer since the inception of this law. Cigars are not proven to be healthier or less dangerous than cigarettes. For every gram of tobacco smoked, there is more cancer-causing tar in cigars than in cigarettes. Cigar wrappers are less porous than cigarette wrappers and make the burning of cigar tobacco less complete than the burning of cigarette tobacco. Also concerning are the cancer-causing nitrosamines, which are produced during the fermentation process for cigar tobacco. As a result, cigar smoke has higher concentrations of toxins than cigarette smoke. A cigar typically burns longer than a cigarette,

which increases the amount of secondhand smoke. Smokers using cigars experience heart disease, cancer, and other types of illnesses that cause over 1,000 North Dakotan deaths per year.^{ii iii}

According to the Dept. of Health and Human Services Tobacco Surveillance Data Table in 2023 for North Dakota, tobacco use cost our state \$379 million in Smoking Attributable Medical Expenditures, and \$715 million in Smoking Attributable Productivity Loss. That is over a BILLION dollars annually in smoking related expenses to the state of North Dakota!^{iv} Rolling back indoor smoke free air law protections will only exasperate this issue, as cigars are a public health risk and are a leading cause of several cancers.

By allowing cigar bars, we begin to renormalize smoking to our youth, undoing years of work by our public health experts across North Dakota. The increased visibility of cigar smoking from advertising and promotional activities is “normalizing” cigar use. Tobacco companies promote cigar smoking as pleasurable, a symbol of status, wealth and class. Again, this should not be ingrained for the next generation as aspirational. There is already a serious disconnect in youth views concerning vaping vs. smoking, with the former seeming to be safer in the eyes of our teens, even though evidence is showing that it clearly is not. We do not want to confuse the issue even further by making cigars seem safe enough to smoke indoors without serious health consequences for those exposed. There is no safe level of tobacco exposure.^v

We also know that ventilation systems simply do not work to eliminate all secondhand smoke. While they are sometimes promoted as a way to reduce exposure to secondhand smoke, ventilation cannot remove it all, and does not purify the air at rates fast enough to protect people from the harmful toxins. The Surgeon General has concluded that even taking the steps of separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure of nonsmokers to secondhand smoke. This means who these proposed establishments share walls with could have dire consequences, especially in cases where they share walls with residences, or with businesses catering to youth. The only effective way to fully protect people from exposure to secondhand smoke is to completely eliminate smoking in indoor public spaces.^{vi}

Everyone deserves clean air. Because of this, of particular concern is the language, or lack thereof, in HB 1229. The bill defines a bar or cigar lounge, and states it “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.”

A humidor can be found on Amazon for as little as \$39.99^{vii} and a ventilation system meeting the requirements of this bill language can be found for as little as \$32.50^{viii} online as well. Though extensive expenses related to setting up and operating these businesses are implied,

and inferred to be a gatekeeper to “serious businesses only,” the fact is that there is no direct language in this bill specifying any specific equipment, or specific quality of equipment, needing to be used. It does not require any equipment to be compliance checked during business establishment, or for it to be monitored in the future for continued use or effectiveness. There is also no language addressing the consequences for using other combustible or vapor products in these spaces. Discussions about self-regulation determining that only cigars will be smoked are noble, but the honor system, and the liberal interpretation of the bill as written regarding these issues, leaves no recourse for any abuse.

This limited bill language also gives the appearance of eliminating the dangers of indoor secondhand smoke. Ventilation systems, even extremely high quality ones, do not protect the public from this danger. The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) holds the position that the only means of avoiding health effects and eliminating indoor smoke exposure is to ban all smoking activity inside and near buildings. The building and its systems only reduce odor and discomfort but cannot eliminate exposure. ASHRAE clearly states that even when all practical means of separation and isolation of smoking areas are employed, adverse health effects from exposure in non-smoking spaces in the same building cannot be eliminated. The use of dilution ventilation, air distribution (e.g., "air curtains"), or air cleaning should not be relied upon to control smoke exposure. Based on the ventilatory limitations in these standards, this bill allows health risks to not only the patrons and employees of the establishment but also the patrons and employees of adjoining businesses and external agency employees, such as cleaning, maintenance, repair, and delivery services.

Exposing employees to the dangers of secondhand smoke has not been eliminated as a health concern. Implying that employees know the risks of working in a secondhand smoke environment does not mitigate these risk factors. Employee health and safety laws are for the employees' benefit, not the business owner's profitability and convenience. Workers in the proposed cigar bars and lounges deserve the same protections as all North Dakota workers. It is essential to note the far-reaching impacts this bill would have on voter-approved public health safety standards for a niche business model.

Another issue in the bill language indicates an unverified qualification standard of two percent or more annual gross income from the sale of cigars for a "Bar" or twenty percent or more of the annual gross income from the sale of cigars for a "Lounge." It says, “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.”

Do other similar products or businesses self-certify like this with no application process, no required verification process, or no future compliance check requirements? It seems again that the honor system is relied on for regulation, instead of better utilizing our tax department, or another agency, as an authority. This language limits the commissioner's ability to restrict licensure on a harmful and addictive product. These low standards, requiring little oversight, expose patrons to risks they may not even be aware of as they visit these or adjacent businesses.

The 2012 North Dakota Smoke-Free Law is an exceptional public health policy achievement that protects the public from the dangers of secondhand smoke exposure. This bill seeks to change the current smoke-free law to create an exemption that puts patrons, employees, and anyone in the immediate area at risk of sickness and death from secondhand smoke. Clean air remains the standard to protect health.

Once one exception is made to our law, how soon will it be before another request appears in front of our Legislature? With electronic product use at FDA-labeled epidemic levels for our youth, and with new products being introduced at a lightning pace, we cannot risk opening the door for further erosion of a proven health policy that creates a healthier state and that saves lives. Allowing an exemption also takes us back to a patchwork of protections enacted across the state, as some communities have very strong local ordinances, and some do not.

Many North Dakota communities have implemented local smoke-free laws that mirror the state smoke-free law. Home-rule communities, including Grand Forks, Fargo, West Fargo, Bismarck, Minot, and others, have city ordinances prohibiting smoking in all indoor workplaces. This bill would create unequal worker protections and a regulatory mélange. An exemption of this nature will create confusion for business owners, city and county governments, and law enforcement agencies. Additionally, an exemption for one tobacco product may lead to additional exemptions for other tobacco products, such as vaping or hookah lounges. The current North Dakota Smoke-Free Law provides a consistent legal, level playing field for all businesses. We should not be creating tobacco product winners and losers through exemption language policy.

This past year, TFND published a Resolution of Support for preserving our Indoor Smoke Free Air Law. The following organizations have signed it: 502 Flair in Oakes, Bismarck Break Free Youth Board, Bismarck Tobacco Free Coalition, Borg Pioneer Memorial Home in Pembina County, Cavalier City Council, Central Valley Health District, Computer Express in Oakes, Dickey and Lamoure County Abstract & Title, Drayton Public Schools, Ellendale Pharmacy, Fargo Cass Public Health, Grand Forks Tobacco Free Coalition, Grand Forks Board of Health, Griggs County Sheriff's Office, JQ Clothing in Oakes, KW Prints in Ellendale, McKenzie County Community Coalition, ND Medical Association, ND Public Health Association, Nelson County Health System, Nelson-Griggs Wellness Coalition, Nelson-Griggs District Health Unit, Oakes Family Pharmacy, Olive Motherhood Foundation, Pembina County Commission, Prairie Floral Gifts in Ellendale, Project Yes Wahpeton Coalition, SJW Contracting in Dickey County, Southwestern District Health Unit, Steele County Board of Health, Steele County Food Pantry Board, Sweets and Stories in Oakes, Tara's Thrifty White Pharmacy in Oakes, University of Mary DPT Program,

Upper Missouri District Health Unit, Valley-Edinburg Schools, Wahpeton Public Schools, Walsh County Tobacco Free Coalition, Walsh County Public Health Board, Walsh County Substance Abuse Prevention Coalition, Williston Area Chamber of Commerce

Again, I would like to reiterate that North Dakota has one of the best indoor smoke free air laws in the nation protecting our citizens. As I mentioned earlier, it has been referenced and recognized nationally. We need to be proud of that and we need to fully preserve it. We can also be proud of and honor the fact that 66.7% of our voters approved it in 2012 with no exemptions. In the years since the law's passage, support has only grown, and our latest polling shows that 76.3% of North Dakota citizens support our Indoor Smoke Free Air Law.

Thank you for this time in front of you, Chairman Larsen, and the Committee. It is very appreciated. Please vote Do Not Pass on HB 1229.

May I take any questions?

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ⁱ ND Secretary of State Election Results: <https://results.sos.nd.gov/ResultsSW.aspx?text=BQ&type=SW&map=CTY&eid=35>

ⁱⁱ [https://www.hhs.nd.gov/sites/www/files/documents/DOH Legacy/Tobacco/Tobacco Surveillance Data.pdf](https://www.hhs.nd.gov/sites/www/files/documents/DOH%20Legacy/Tobacco/Tobacco_Surveillance_Data.pdf)

ⁱⁱⁱ https://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/cigars/index.htm

^{iv} [https://www.hhs.nd.gov/sites/www/files/documents/DOH Legacy/North Dakota Tobacco Toll.pdf](https://www.hhs.nd.gov/sites/www/files/documents/DOH%20Legacy/North_Dakota_Tobacco_Toll.pdf)

^v Surgeon General Report 2010 <https://www.surgeongeneral.gov/library/reports/secondhand-smoke-consumer.pdf> and National Cancer Institute Dec. 5, 2016 <https://www.cancer.gov/news-events/press-releases/2016/low-intensity-smoking-risk>

^{vi} U.S. Department of Health and Human Services (HHS). The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

^{vii} https://www.amazon.com/Mantello-Desktop-Humidor-Royale-Glasstop/dp/B009Y8FESM/ref=sr_1_5?crid=GFR7NUD76MY0&keywords=humidor&qid=1677445337&srefix=humidor,aps,221&sr=8-5

^{viii} https://www.amazon.com/Comfort-CZ319WT-Reversible-Auto-Locking-Expanders/dp/B0118ECP7M/ref=sr_1_2?crid=311VS18O4SFS1&keywords=twin+fan+with+reversible+airflow&qid=1677446516&srefix=twin+fan+with+reversable+airflow,aps,115&sr=8