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2005 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1030

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1030

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 1/20/05

Tape Number	Side A	Side B	Meter #
1	x		0-end

Committee Clerk Signature

Minutes: HB 1030 Restrictions on smoking in places of public access, publicly owned buildings or offices, nonpublic workplaces, to provide a penalty.

Mary Muhlbradt-Minot-Member of the Community Education staff at Trinity

Health-Member of Minot's tobacco prevention coalition-Testimony Attached

Rep. Delmore-Represent District 43-Southwest part of Grand Forks: Try to look at current statute, based on the century code, that it addressed employment of women or minors. It should be unlawful to employ women or minors in any occupation with in the state, unreasonably long hours and it shall be unlawful to employ women or minors in any occupation within the state, under such surroundings or conditions sanitary or otherwise that may be detrimental to their health or morals and shall be unlawful to employ women in any occupation with in the state for wages which are inadequate to supply the necessary cost of living and to maintain them in health and shall be unlawful to employ minors in any occupation within the state for unreasonably low wages. It is a pretty broad section of code, it goes back to 1919. The Attorney General stated that

the Labor Commissioner could either set through Administrative rules, what we were going to do with this and relating it to tobacco smoke or he said we could come up with some legislation.

This is the bill we came up with, people have been asking us to do something about this for quite a long time, there was some difference of opinion in our committee whether we wanted to go with local control, there have been a number of elections that have been held, cities like Minot, Fargo, West Fargo set their own priority, that is something you might want to look at as a committee. It is also not easy to come up with a one size fits all bill, but this was a start that the committee came up with, I would appreciate your consideration of it. Obviously committee will do with it as you wish, changing, upgrading, also, at least one other bill that I am aware of that is in the Senate right now.

Rep. Conrad: Will this stop the smoking in the Senate, where ever it is, I don't even know where it is?

Rep. Delmore: I am not sure exactly what it will do as far as that, I am not a lawyer and I am not the Attorney General, so I can't make that ruling to you.

Vonette Richter-Attorney for Legislative Council-This was a study assigned to the committee fairly late into the interim, just last summer actually and the committee held two fairly lengthy hearings on this issue and the bill draft before you is the product of that committee. **Report Attached.-Neutral**

Rep. Amerman: I belong to a union shop and I was the president of the union shop and we opened up a contract for negotiation when you open up a contract for negotiation everything is out there for negotiations, between the employer and the bargaining unit of the union, we put this in the law where it says the smoking policy must, are we stepping on any Federal Laws that let us

openly negotiate in a fair manner with the employers, if you put in the word must, you are actually taking away from the negotiations to a point of what you can do, is there any Federal Regulation that this type of terminology would be stepping on?

Vonette: I guess I am not familiar enough with the Federal regulations regarding collective bargaining, there are three options, a, b, or c, you must do one of these options.

Rep. Amerman: Just the title of number 2 says that you must, there is never anything in negotiations that says you must, I am just wondering what kind of freedom is taken away from negotiations by putting this type of wording in this bill.

Rep. Kasper: Number of clarification questions on page 4, line 1 and 2, establishment that is primarily or exclusively to sell alcohol, What is the definition of primarily?

Vonette: I can only guess what the general definition would be. I am not familiar with the local liquor licenses.

Rep. Kasper: That would need some type of clarification. Down on the bottom of page 4, Rep. Amerman was talking about collectively bargaining situation. I have different concern, beginning on lines 23, reading an employer who operates a work place that is neither a place of public access nor a public owned building or office, shall establish or negotiation through the collective bargaining process a written smoking policy. That seems to me that this bill could be dictating that every business must have a union to negotiate with, because of the term collective bargaining, it does not define collective bargaining and it does not say to whom he has to collectively bargain. I am assuming it means employees, but I don't see where it says you must bargain with the employees, you could bargain with the wall the way this is written.

Vonette: It does give the employer discretion to establish that policy on his or her own, or to go through this process, it doesn't mandate that you use a collective bargaining.

Rep. Kasper: It says shall establish or negotiate, so the word establish allows that employer to do it without the negotiation process.

Vonette: Yes, that is how I read that.

Rep. Kasper: Page 5, where we talk about the penalty, the responsibility section beginning on line 12, where the smoking violations are the responsibility of the owner, implying the owner is the policeman and the owner must make his or her best effort to make sure this bill would be followed and getting over to the penalty section on page 6 line 13, a person who violates the section is subject to the fine. Here is the dilemma, let's say an owner is trying to police the law and someone refuses to follow the law, is the owner guilty or is the one who refused to follow the law, because it says the person who violates the law, the owner must enforce.

Vonette: I guess I can't give you a clear answer. I didn't draft this original language, I don't know what the intent was behind this when it was drafted, in the previous session. That would be an interpretation. That person could also be liable for not enforcing the smoking restrictions in her or his business.

Rep. Kasper: The way the bill is written, the owner made his or her best efforts, they still could be liable.

Vonette: Correct.

Rep. Grande: When we are talking about the penalty phase on here and we are talking about the violations, who is issuing the violations that we talked about earlier, the owner is suppose to be policing it, but are we allowing the citizens to issue violations of 100 to 500 dollars.

Vonette: As I understand it, there would have to be a report made of the violation to law enforcement and that would be where the charge would come from.

Rep. Grande: Someone lights up a cigarette and is smoking it and then he finds out the police have been notified and he leaves, no evidence, no one to contend with, he said, she said, they said, is there any other way we can follow up on how to deal with this violation.

Vonette: I guess you could have that situation in any place, there would have to be witnesses.

Rep. Galvin: Page four, line one and two, is it necessary to have word exclusively in there, because serving a dish of popcorn would rule that out.

Vonette: Your right.

Rep. Kasper: On the enforcement, page 5, line 21, 22, 23, for complaints and enforcement, on line 23 it says the State Department of Health is designated to receive reports or complaints, so therefore it appears the employer, if there is a problem would have to file a complaint with State Health Department, you could not go to any local law authority, you would have to call them up or write them a letter, by then that could be days before they respond, is that what this bill actually says?

Vonette: You maybe right on that. There was some problem with this bill last session and think that was one of the issues that was pointed out.

Kathleen Mangskau-Director of the Division of Tobacco Prevention and Control for the North Dakota Department of Health-For-Testimony Attached.

Rep. Grande: These amendments that you have proposed, did they come in front of the Justice Committee at all.

Kathleen: No, we did not put forth amendments at the interim committee.

Rep. Kasper: Page 2 of your testimony, where you talk about second hand smoke for children. I don't dispute your statistics, but where would children most likely get second hand smoke from.

Kathleen: There are many places that children are exposed to second hand smoke. Where there parents would probably take them and probably at home.

Rep. Kasper: Isn't at home the most likely place, if the parents smoke, that is where they are going to be exposed to the smoke.

Kathleen: We actually don't have any statistics that show us how much exposure is out of the home, but if the parents are smokers a good portion would come out of the home.

Rep. Kasper: You are not getting to outlawing smoking in the home by the parents are you?

Kathleen: At this point we have no such recommendation on this report.

Rep. Kasper: Are you looking for a recommendation like that in the future?

Kathleen: One thing we would have to do is to consider, obviously we would like no one to smoke, because we know that it is dangerous, we know that second hand smoke is dangerous to any of the nonsmokers, but that is certainly a decision the legislatures, as to how far these rule would have to extend.

Rep. Kasper: On page 3, at the top where you sight your survey, the survey did not include adults 55 years or older, if you did not include a big segment of the State of North Dakota in your survey, your survey is totally invalid.

Kathleen: Are survey is valid, for the population we cited the ages for.

Rep. Kasper: The effort was advertising?

Kathleen: It was public education.

Rep. Kasper: Through advertising on the radio and television?

Kathleen: Those were the mediums that were used.

Rep. Kasper: So your assumption, citizens 55 and older did not watch television or listen to the radio, they were not impacted.

Kathleen: No, the intent of the campaign was really to focus on educating the public about the dangers on second hand smoke in work areas and that is why they concentrated on the 18 - 54 year olds.

Brent Dusek-Cortney Shuley-Shane Paulson-North Valley Career and Technology Center's

Future Business Leaders of America Chapter-For-Testimony Attached

Janel Schmitz-Executive Director of the American Lung Association of North

Dakota-For-Attached Testimony

Rep. Horter: On the second page of your testimony you noted that the airline industry was smoke free, did they go smoke free because of regulations or was that a choice they made on their own?

Janel: The industry made that decision on their own, it is my understanding.

Rep. Horter: This is an example of an industry that made that decision on their own without regulations, we heard testimony this morning arguing that restaurants are needing that demand from consumers that they are going to smoke-free facilities on their own, so do you have any comments on that.

Janel: Some restaurants are doing that, but what we hear from many business owners is that we level the playing field is that we would like to go smoke-free, but I am afraid that I might lose business, unless everybody is smoke free.

Rep. Klemm: Looking at the amendments we have, these look familiar, they look like the same amendments that were put in at the time the Criminal Justice Committee was considering this issue, is that right?

Janel: I don't recall word for word what those were, we have taken a lot of the language out of the Senate Bill 2300.

Rep. Klemm: If we insert these amendments into this bill, would we be essentially the same as Senate Bill 2300?

Janel: We would be getting pretty close.

Rep. Conrad: What about the issues of enforcement?

Janel: In states that have gone comprehensive smoke-free, enforcement has been a very simple issue, when you go comprehensive it really settles the issue for us.

Rep. Boehning: Do you have any statistics on how many children currently under the age of 18 are in homes that are in smoke filled homes and cars and would you favor a ban on smoking in cars and homes in children under the age of 18?

Janel: We have 21.7% of adults who smoke in North Dakota, so you could assume that 21.7% of the children in this state. In regarding a law that we should outlaw smoking, we believe in research to help people to stop smoking. Raising a price of a pack of cigarettes, smoke-free work environment and comprehensive tobacco program.

Rep. Boehning: I have heard that in California that they are proposing banning smoking in vehicles with children under the age of 18. How is the American Lung Association going to control that?

Janel: No I haven't had time, no I don't know what the National stance is.

Rep. Boehning: If you could find out what the national trend is we would really appreciate it.

Janel: Sure I could find that information out for you.

Rep. Kasper: You at this time don't favor a total ban on tobacco products in the state of North Dakota is that correct?

Janel: At this time we don't have research to show that prohibition is effective. North Dakota tried that in 1920's and it didn't work then with the tobacco products specifically and in today's environment that is the way to go.

Rep. Kasper: At this time you don't favor a total ban on tobacco or cigarette products in North Dakota?

Janel: We would not favor that, because I don't have research to prove that it would be effective.

Rep. Kasper: Do any of your organizations here in North Dakota receive any funding from tobacco trust fund or use of tobacco in anyway, shape or form?

Janel: I cannot speak for the other organizations, we are not allowed to invest in any tobacco related companies with any of our funds.

Rep. Kasper: Do you receive any funding or any grants or any of these tobacco trust fund for your organization.

Janel: Absolutely not.

Rep. Kasper: So in an indirect way your organizations do receive tobacco funds to help further your cause.

Janel: Indirectly to help people quit smoking.

Rep. Kasper: In your opinion, is second hand smoking from high school all the way to babies, where would you think is their greatest possibility to be exposed to second hand smoke?

Janel: I can give you only anecdotal evidence that I get from parents, they are smoking outside and not in the house.

Rep. Kasper: Do you have any statistics that verify that statement.

Janel: I don't have any research.

Rep. Kasper: That is all hear say, right.

Janel: Right I haven't done any research.

Rep. Froseth: I think I heard you say that 21.7% of adults smoke in North Dakota. Has that number been trending down in recent years.

Janel: I believe it is down about a half of a percent per year in the last four years.

June Herman-Senior Director, American Heart Association-For-Attached Testimony

Valerie Fischer-Director of School Health for the Department of Public

Instruction-For-Attached Testimony

Rep. Boehning: Eliminating smoking in private schools during non-school hours, under the second amendment, what is your reasoning behind that?

Valerie: When you think of a private school or educational facility, for example, consider Bismarck State College, which is an educational facility, if you have evening classes there you would be allowed to smoke. You still have the second hand smoke, you have the drift, the smoke that continues to linger and it seems odd that you could smoke some where there, that the smoke is just going to fade and in reality we know it doesn't. We don't believe schools should have smoking both day or night.

Rep. Boehning: Do you think that the smoke fumes and the fumes that are left behind in the schools be a hindrance to the students and what if you think of a parent going outside to smoke when they have small children, there clothes will smell from the cigarette, would that be hazardous as well?

Valerie: I don't have any data on the second part of your question on whether or not having the odor or the linger of the cigarette smell on your clothes would have an affect on your children. If they are allowed to have smoking after non school hours, they are concerned about the litter, where people would put there butts, because schools right know have no ash trays or dispenser to dispose of cigarettes, they worry about the message it sends, it sends a mixed message.

Rep. Klemin: The bus that is used for a longer trip, rather then the yellow school bus, is that the leased vehicle you are referring to?

Valerie: Not necessarily, more and more school districts are leasing school buses, we are not talking about vehicle leased for sporting events. Yellow school buses that are leased, that is what we want to eliminate smoking on.

Rep. Klemin: Could you smoke on those other leased vehicle, you are renting them for a particular trip.

Valerie: I don't believe so, no.

Rep. Klemin: In your language, do you intend to include those vehicle or not?

Valerie: For the purpose of transferring children, yes.

Rep. Kasper: Are we sending a mixed message to the children all the way up to the age of 18, if we prohibit there parents from smoking in the work place, but allow the parents to smoke in there homes?

Valerie: Personally, I believe that is sending a mixed message.

Rep. Meier: Can you state a situation where smoking is occurring at schools.

Valerie: We do get calls from parents.

Rep. Conrad: Congress passed and President Bush signed legislation that told North Dakota Schools that they couldn't have any smoking in school buildings.

Valerie: Yes, as of 1994.

Rep. Froseth: School properties are all smoke free, shouldn't that include their vehicle?

Valerie: For the most part it does and should, but there are exceptions, when the school bus is leased, it is a situation.

Bill Shalhoob-ND Hospitality Association-Testimony Attached-Against

Chairman Haas: Thank you very much, any more questions? The hearing will be closed on HB 1030.

2005 HOUSE STANDING COMMITTEE MINUTES

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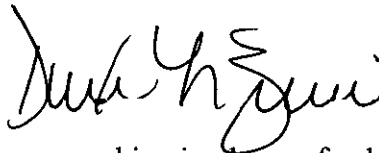
House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 2/11/05

Tape Number	Side A	Side B	Meter #
2	x		0-48.9

Committee Clerk Signature



Minutes: HB 1030 Restrictions on smoking in places of public access, publicly owned buildings or offices, nonpublic workplaces, to provide a penalty.

14 members present, 0 absent.

Discussion and voting.

Chairman Haas: We will begin the discussion on HB 1030. Two committee members have specifically asked me if they could explain what they are proposing as amendments to this bill and I am going to allow them to do that and then I am going to call for a motion. Rep. Klemin and Rep. Kasper both have amendments. Rep Klemin if you would explain what your wishes are.

Rep. Klemin: The ones that I want to talk about are the ones that were proposed by the North Dakota Hospitality Association and Mr. Shalhoob is here. Find the testimony of Mr. Shalhoob and had an attachment. These amendments are to create more of a level playing field, what these amendments do is to refine some of those exemptions, clarify some of those things and to a create more of a level playing field. Page 1, line 22, of the bill, there the recommendation is to

add the word casino after restaurant and the reason is we don't have any casinos now, but there is continually talk about some casinos being built someplace. If there was a casino constructed in Bismarck, the casino should be subject to the same provisions that these charitable gaming casinos would have or any other type of place. The next change is on page 3, where you are suppose to delete lines 19, 20 and 21. That is the exemption for private clubs and most of you know that you can walk into the VFW or the Elks Club here in Bismarck without being a member, they are private clubs, they are really open to the public. Why should those kinds of places being exempted out of this, there are really no different then any other bar or restaurant and should follow the same rules. Page 4, line 2, the suggestion is, after the word premises, add including bars located in hotels, motels or restaurants that are not licensed primarily or exclusively to sell alcoholic beverages on the premises. Page 4, line 6, after the word international, the suggestion is it should read airport, food establishments or hotel or motel. That is to match language on line 2 and 3. Page 4, delete lines 9 and 10. Last one is page 4, add a new subsection I. That is all the Hospitality Amendments.

Chairman Haas: Thank you Rep. Klemin, Rep. Kasper will you present your amendments.

Rep. Kasper: This is a hog house and it is going to change the bill entirely. We are going to the current law where the Labor Commissioner has the authority. This is repealing the Labor Commissioners authority. Section 2 of the amendment, this is all new language. Local authority, smoking restrictions and exceptions. Governing body of a political subdivision may adopt by resolution, ordinance or order regulations regarding the smoking of tobacco products in the work place. This puts it back to local control. We are exempting stores that sell tobacco products,

livestock auction markets, truck stops and hospitals. Section 3, except for any grounds operated by any state and the state board of higher education.

Chairman Haas: Isn't part of the rationale for this also, what you were thinking is that the legislature should be saying what the policy is going to be with state regard to state owned property, but you are going to leave up to those jurisdictions where the state doesn't own it, like cities, counties and so on.

Rep. Kasper: Absolutely correct Mr. Chairman, very good point.

Rep. Klemm: I would like to move the Hospitality Association amendment along with the no smoking on property of public facilities.

Chairman Haas: We have motion is there a second, seconded by Rep. Conrad. Since we have two very different and comprehensive amendments what we will do is begin to discuss this amendment, if there are further amendments, it would be an amendment to the amendment. We are discussing Rep. Klemm's amendment.

Rep. Froseth: Does this take precedence over any local ordinances, established by any city in the state?

Rep. Klemm: This would set a uniformed policy state wide and they could adopt ordinances that are not less than this.

Chairman Haas: Question has been called on Rep. Klemm's amendment. We will try a voice vote on this. All in favor of the amendment signify by saying I, oppose no, amendment is carried. Rep. Kasper are you going to move your amendment.

Rep. Kasper: Yes, I certainly do move my amendment be adopted to Rep. Klemm's or the original bill. Everything on the bill is gone and my amendments substitute for the bill.

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House Government and Veterans Affairs Committee

Bill/Resolution Number HB 1030

Hearing Date 2/11/05

Chairman Haas: Is there a second to that amendment, seconded by Rep. Boehning, is there any discussion? Rep. Klemin adopt section 3 only, seconded by Rep. Froseth. All in favor of the amendment signify by saying I, oppose no, amendment is carried. Rep. Kasper moves a DO PASS as AMENDED, seconded by Rep. Grande. I will ask the clerk to take roll on a DO PASS on HB 1030 as AMENDED.

VOTE: YES 8 NO 6 ABSENT 0 DO PASS AS AMENDED ON HB 1030

REP. KASPER WILL CARRY THE BILL.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1030

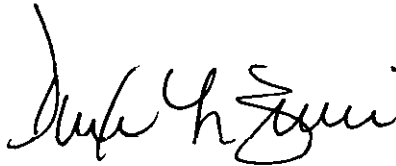
House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 2/15/05

Tape Number	Side A	Side B	Meter #
2	x		0-31.7

Committee Clerk Signature



Minutes: HB 1030 Restrictions on smoking in places of public access, publicly owned buildings or offices, nonpublic workplaces, to provide a penalty.

Discussion:

14 members present, 0 absent.

Chairman Haas: We have a quorum and thank you all for being prompt again and coming at short notice. Rep. Kasper came to me and asked me if we could reconsider HB 1030 in committee, he wanted to attach another amendment, which would be in direct response to Rep. Conrads concern. So before we can do that we need a motion to reconsider. Rep. Kasper moves to reconsider and Rep. Grande seconds it. They both voted on the prevailing side of the question at the last meeting we had. Is there any discussion on the motion to reconsider? If not we will take a voice vote on that, all in favor of the motion to reconsider say signify by saying I, oppose say no, the motion is carried. At this time we have the bill before us in the exact same condition

it was when it left here. We moved to reconsider our DO PASS on this hog house amendment.

We are back in the discussion phase of Rep. Kaspers motion to attach this amendment.

Rep. Klemm: Just a point of clarification we are at the point and time in which we approved the amendment, but we haven't voted on the bill.

Chairman Haas: We are going to reconsider our actions, that puts us in the debate phase. We moved to reconsider, now we are actually going to do the act of reconsidering this bill, it is before us in the discussion phase of this hog house. This passed by a vote of 8-6, so essentially what that does is bring this bill back in this condition. In a sense negating this vote, so we are going to reconsider this bill and vote on it again. We are in the debate phase.

Rep. Kasper: Thank you for the opportunity to reconsider, address Rep. Conrads concerns.

Chairman Haas: Are you moving the amendment.

Rep. Kasper: I would move the amendment.

Chairman Haas: Is there a second to that? Rep. Grande seconds the motion.

Rep. Kasper: Everyone should have 50166.0109 in front of them. There are minor changes and they address the concerns the various cities in the state that already had there battle on the ordinance. What this amendment does, section 2, the governing body of a political subdivision may adopt by resolution, ordinance or order regulations regarding the smoking of tobacco products in the work place, except for a resolution, ordinance or order in effect before the effective date of this act. That is the change. The governing body may not adopt regulations with respect to the smoking products in tobacco retail stores, livestock auction markets, truck stops or in and on the grounds of hospitals licensed under Chapter 23-16, the change except for a resolution, ordinance or order in effect before the effective date of this act, now would allow the

city that has taken there smoking action to keep there ordinances in effect and the HB 1030 that was amended on 1/9/05 would not be able to overturn the actions those various cities took.

Chairman Haas: So it essentially grandfathered in those cities that has taken action.

Rep. Kasper: You will note that section 4 is amended out, because we take care of it in section 2. Section 4 is not needed.

Rep. Horter: Why do we need these exemptions, couldn't this be done on the local levels.

Rep. Kasper: I think in the course of trying to protect distinct businesses from being forced out of business by a legislative action or local political subdivision action, putting in these narrow exemptions, I think makes sense.

Rep. Klemin: The point of procedural order is what I would like to discuss. What I intend to do is make two motions to amend this, should it pass. One will be to delete section 1 and the other will be to delete section 2, so both of those and the only thing would be left would be section 3. The question is do I make that.

Chairman Haas: You may make that amendment, amendment may have a maximum of two amendments, so you may make that amendment now in the discussion phase of this amendment if you care too.

Rep. Klemin: I do want to make two amendments and I want to make them separately. I would move to amend this amendment .0109 to delete section 1.

Chairman Haas: We have a motion to amend the amendment which would delete section 1, is there a second to that amendment, seconded by Rep. Conrad. Now is there any discussion on the amendment to the amendment.

Rep. Kasper: If we adopt the amendment, we throw out part two of section 1 which prohibits the labor commissioner from making smoking policy in the state of North Dakota, as the argument was previously the opinion back then, I hope still now that an appointed person should not have the power to make policy that is this far reaching, potentially oneorus, have a labor commissioner who is totally for smoking any place and then that labor commissioner could impact that type of rules. The next type of labor commissioner that is appointed by the Governor could have the exact opposite views, you could go along four years with one set of laws in your area and all of a sudden labor commissioner comes in and over turns those, so I think we need to allow the local people to make their decisions. I would totally resist that amendment.

Chairman Haas: Rep. Klemin did you want to make comments on your amendments.

Rep. Klemin: Yes I do want to make comments on it. It has often been said that the legislature is the policy making branch of government and we have a responsibility here to make good policies. I don't think I have seen anywhere else in North Dakota Century Code or where the legislature has put in a prohibitive language with respect to the ability of administrative agency to adopt rules, implementing that statute like this particular statute that is being amended is not the statute that allows the labor commissioner to adopt rules. When we had the debate on the other bill that would have clarified that the labor commissioner did in fact have that authority, I don't think we need the scare tactics, is that there might be a labor commissioner who might do this or that. I don't think that's correct at all, because there are so many safeguards built in, there has to be a hearing, notice of hearing, hearing opportunity to appear at the hearing, proposed rules, opportunity to submit written comments, once that is all done, the labor commissioner

would adopt final rules which are then subject to review by the legislature administrative rules committee and then maybe by the legislators again, if the legislature decides to over rule a rule. I think it is extremely poor policy on our part, to depart from traditional policy making to have prohibitory language like this, I think it sets a precedence, particularly a statute that relates to health and safety for something we now is health problem.

Rep. Froseth: I have to agree with that on subsection 2, I think we need an enforcing agency, not all towns are Grand Forks, Fargo and Bismarck's and smaller towns, if we take the labor commissioner out of here, and ask the local agencies to enforce the law, the small towns probably don't have that type of structure to be able to, if a grievance is filed, who is going to follow up on your county sheriffs, city police chief. I see a lot of conflicts when you take an enforcing agency out of the picture completely. Furthermore, if we want local control, why are we even doing this, let each city mold there smoking regulations according to the there city, every city isn't alike, you can't set one blanket policy for smoking regulations for Minot, Fargo, Kenmare, or Pollock. Let each city commission draft set that ordinance to conform with their city.

Rep. Conrad: This isn't a political issue, this is a health issue, the labor commissioner needs to be making the decision based on health, this is an unsafe situation.

Chairman Haas: Is there any further discussion on Rep. Klemins amendment. If not we will attempt to do this with a voice vote, the amendment would remove section 1, of Rep. Kaspers amendment, it would amend his amendment by removing section 1. All in favor signify by saying I, oppose no, the clerk will take a roll call vote on Rep. Klemins amendment.

VOTE: YES 8 NO 6 ABSENT 0

Chairman Haas: That amendment passes, so at this time section 1 is deleted.

Rep. Klemin: At this time I would like to make my second amendment, delete section 2.

Chairman Haas: Is there a second to that, seconded by Rep. Froseth. Is there any discussion on the second amendment to delete section 2.

Rep. Klemin: Right now we have local control, the cities, municipalities, political subdivisions have the authority and have been acting on this issue. This section 2 puts limitations on that local control. What section 2 does is that legislatures are saying that local entities should not regulate and certain specified areas even if they may want to do that. I think from the stand point of local control this is infringement on that local control. The ones that have held back intentionally and might have done something are not going to have the opportunity or the time to do that, so it is really unfair to all of those who might have done something, that the grandfather clause that has been put on here for that purpose, treats the political subdivisions unfairly and unequally. If we delete section 2 out of this bill, we will still have complete local control over all of these issues, smoking and nonsmoking within those communities. Including truck stops whatever, the locals can regulate them or not. Even those who are waiting for us to do something. If we take out section 2 we are actually forcing local control and not restricting it like section 2 does.

Rep. Kasper: My opinion is you can do what you want with section 2, because now that you have amended out section 1 there is no local control. Labor commissioner sets the policy, you have no local control, period. I am going to support the amendment, I am not going to support the bill, it doesn't matter to me.

Rep. Potter: I agree with what you said, I would change the name to truck stop, to single them out, doesn't seem fair to me.

Chairman Haas: Committee members I guess I have and I understand what Rep. Kasper is attempting to do here, but to me does it not set a dual standard in this regard. That those communities that have already put in some kind smoking ordinance of some kind and either regulated or not regulated, tobacco shops, livestock auctions, etc. and truck stops, so they are grandfather in and a new community who does not have the option under this statute, we have a set of communities that are grandfathered in by state statute and it is OK if you do or don't do it and the rest of you communities can't do it, to me that is somewhat of a dual standard that perhaps is not good state policy.

Rep. Conrad: We have a very successful truck stop and it is smoke free, in Minot.

Chairman Haas: Is there further discussion on Rep. Klemins amendment to delete section 2, if not we will try a voice vote on that, all in favor of the amendment signify by saying I, oppose no, motion is carried. We now have vote on the amendment as amended. The amendment as amended deletes section 1 and section 2. Is there any further discussion. We are now going to vote on the amendment as amended, which takes out everything, except section 3. All in favor say I, oppose say no. I will ask the clerk to take the roll.

VOTE: YES 11 NO 3 ABSENT 0

Rep. KLeMin: I move a DO PASS as AMENDED HB 1030.

Chairman Haas: Is there a second, seconded by Rep. Conrad. All that is left is section 3. Is there any discussion. Take a roll call vote on a DO PASS ON HB 1030 AS AMENDED.

VOTE: YES 10 NO 4 ABSENT 0

REP. KLEMIN WILL CARRY THE BILL.

FISCAL NOTE
Requested by Legislative Council
12/17/2004

Bill/Resolution No.: HB 1030

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

HB 1030 imposes additional smoking restrictions in public places. Enactment of HB 1030 may encourage persons to quit smoking which may have a negative fiscal impact on cigarette tax revenues. The magnitude of this negative impact is unknown. The baseline revenue forecast assumes a continual decline in smoking in the state regardless of HB 1030. Additionally, section 6 of the bill imposes penalties for violation of the no-smoking provisions. This section may result in a slight positive fiscal impact. The amount of potential revenue from penalties is unknown.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name: Kathryn L. Strombeck
Phone Number: 328-3402

Agency: Office of Tax Commissioner
Date Prepared: 01/03/2005

**House Amendments to HB 1030 - Government and Veterans Affairs Committee
02/22/2005**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to authorize and restrict local authority to regulate the smoking of tobacco products in the workplace; to create and enact a new section to chapter 54-06 of the North Dakota Century Code, relating to the smoking of tobacco products in state-owned or state-leased buildings; to amend and reenact section 34-06-03 of the North Dakota Century Code, relating to the authority of the labor commissioner to regulate the smoking of tobacco products in the workplace; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-06-03 of the North Dakota Century Code is amended and reenacted as follows:

34-06-03. Commissioner may adopt standards by rule.

1. The commissioner may ascertain and prescribe by rule:
 - ~~4.~~ a. Standards of hours of employment for employees and what are unreasonably long hours for employees in any occupation within this state.
 - ~~2.~~ b. Standards of conditions of labor for employees in any occupation within this state and what surroundings or conditions, sanitary or otherwise, are detrimental to the health or morals of employees in any such occupation.
 - ~~3.~~ c. Standards of minimum wages for employees in any occupation in this state.
 - ~~4.~~ d. Standards of minimum wages for minors in any occupation within this state and what wages are unreasonably low for any such minor workers.
2. Notwithstanding subsection 1, the commissioner may not adopt rules with respect to restrictions on the smoking of tobacco products in the workplace.

SECTION 2. Local authority - Smoking restrictions - Exceptions. The governing body of a political subdivision may adopt, by resolution, ordinance, or order, regulations regarding the smoking of tobacco products in the workplace. The governing body may not adopt regulations with respect to the smoking of tobacco products in tobacco retail stores, livestock auction markets, truckstops, or in or on the grounds of hospitals licensed under chapter 23-16.

SECTION 3. A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

Smoking prohibited in or near state buildings - Exceptions. Except for the buildings and grounds of any hospital operated by the state and buildings and grounds under the control of the state board of higher education, the smoking of tobacco products in buildings owned or leased by the state and on the grounds of those buildings is prohibited.

SECTION 4. APPLICATION. Section 2 of this Act applies to ordinances, resolutions, and orders in effect on the effective date of this Act or after the effective date of this Act."

Renumber accordingly

Date: 2/10/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House House Government and Veterans Affairs

Committee

Check here for Conference Committee

Legislative Council Amendment Number 50166.0108

Action Taken Do Pass As Amended

Motion Made By Rep Kasper Seconded By Rep Grande

Representatives	Yes	No	Representatives	Yes	No
Chairman C.B. Haas		✓	Rep. Bill Amerman	✓	
Bette B. Grande - Vice Chairman	✓		Rep. Kari Conrad		✓
Rep. Randy Boehning	✓		Rep. Louise Potter		✓
Rep. Glen Froseth		✓	Rep. Sally M. Sandvig		✓
Rep. Pat Galvin	✓				
Rep. Stacey Horter	✓				
Rep. Jim Kasper	✓				
Rep. Lawrence R. Klemin		✓			
Rep. Lisa Meier	✓				
Rep. Margaret Sitte	✓				

Total (Yes) 8 No 6

Absent 0

Floor Assignment Rep Kasper

If the vote is on an amendment, briefly indicate intent:

Klemin amendment adopt
Conrad 2nd

Date: 2/11/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1030

House House Government and Veterans Affairs

Committee

Check here for Conference Committee

Legislative Council Amendment Number 50166.0108

Action Taken Do Pass Amended

Motion Made By Rep Kasper Seconded By Rep. Conande

Representatives	Yes	No	Representatives	Yes	No
Chairman C.B. Haas		✓	Rep. Bill Amerman	✓	
Bette B. Grande - Vice Chairman	✓		Rep. Kari Conrad		✓
Rep. Randy Boehning	✓		Rep. Louise Potter		✓
Rep. Glen Froseth		✓	Rep. Sally M. Sandvig		✓
Rep. Pat Galvin	✓				
Rep. Stacey Horter	✓				
Rep. Jim Kasper	✓				
Rep. Lawrence R. Klemin		✓			
Rep. Lisa Meier	✓				
Rep. Margaret Sitte	✓				

Total (Yes) 8 No 6

Absent 0

Floor Assignment Rep. Kasper -

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1030: Government and Veterans Affairs Committee (Rep. Haas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1030 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to authorize and restrict local authority to regulate the smoking of tobacco products in the workplace; to create and enact a new section to chapter 54-06 of the North Dakota Century Code, relating to the smoking of tobacco products in state-owned or state-leased buildings; to amend and reenact section 34-06-03 of the North Dakota Century Code, relating to the authority of the labor commissioner to regulate the smoking of tobacco products in the workplace; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-06-03 of the North Dakota Century Code is amended and reenacted as follows:

34-06-03. Commissioner may adopt standards by rule.

1. The commissioner may ascertain and prescribe by rule:
 - ~~1.~~ a. Standards of hours of employment for employees and what are unreasonably long hours for employees in any occupation within this state.
 - ~~2.~~ b. Standards of conditions of labor for employees in any occupation within this state and what surroundings or conditions, sanitary or otherwise, are detrimental to the health or morals of employees in any such occupation.
 - ~~3.~~ c. Standards of minimum wages for employees in any occupation in this state.
 - ~~4.~~ d. Standards of minimum wages for minors in any occupation within this state and what wages are unreasonably low for any such minor workers.
2. Notwithstanding subsection 1, the commissioner may not adopt rules with respect to restrictions on the smoking of tobacco products in the workplace.

SECTION 2. Local authority - Smoking restrictions - Exceptions. The governing body of a political subdivision may adopt, by resolution, ordinance, or order, regulations regarding the smoking of tobacco products in the workplace. The governing body may not adopt regulations with respect to the smoking of tobacco products in tobacco retail stores, livestock auction markets, truckstops, or in or on the grounds of hospitals licensed under chapter 23-16.

SECTION 3. A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

Smoking prohibited in or near state buildings - Exceptions. Except for the buildings and grounds of any hospital operated by the state and buildings and grounds under the control of the state board of higher education, the smoking of tobacco

products in buildings owned or leased by the state and on the grounds of those buildings is prohibited.

SECTION 4. APPLICATION. Section 2 of this Act applies to ordinances, resolutions, and orders in effect on the effective date of this Act or after the effective date of this Act."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1030

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to authorize and restrict local authority to regulate the smoking of tobacco products in the workplace; to create and enact a new section to chapter 54-06 of the North Dakota Century Code, relating to the smoking of tobacco products in state-owned or state-leased buildings; and to amend and reenact section 34-06-03 of the North Dakota Century Code, relating to the authority of the labor commissioner to regulate the smoking of tobacco products in the workplace.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-06-03 of the North Dakota Century Code is amended and reenacted as follows:

34-06-03. Commissioner may adopt standards by rule.

1. The commissioner may ascertain and prescribe by rule:
 - ~~1.~~ a. Standards of hours of employment for employees and what are unreasonably long hours for employees in any occupation within this state.
 - ~~2.~~ b. Standards of conditions of labor for employees in any occupation within this state and what surroundings or conditions, sanitary or otherwise, are detrimental to the health or morals of employees in any such occupation.
 - ~~3.~~ c. Standards of minimum wages for employees in any occupation in this state.
 - ~~4.~~ d. Standards of minimum wages for minors in any occupation within this state and what wages are unreasonably low for any such minor workers.
2. Notwithstanding subsection 1, the commissioner may not adopt rules with respect to restrictions on the smoking of tobacco products in the workplace.

SECTION 2. Local authority - Smoking restrictions - Exceptions. The governing body of a political subdivision may adopt, by resolution, ordinance, or order, regulations regarding the smoking of tobacco products in the workplace. Except for a resolution, ordinance, or order in effect before the effective date of this Act, the governing body may not adopt regulations with respect to the smoking of tobacco products in tobacco retail stores, livestock auction markets, truckstops, or in or on the grounds of hospitals licensed under chapter 23-16.

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Renumber accordingly

Date: 2/15/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1030

House House Government and Veterans Affairs

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By *Kilmer*

Seconded By *Conrad*

Representatives	Yes	No	Representatives	Yes	No
Chairman C.B. Haas	✓		Rep. Bill Amerman		✓
Bette B. Grande - Vice Chairman		✓	Rep. Kari Conrad	✓	
Rep. Randy Boehning	✓		Rep. Louise Potter	✓	
Rep. Glen Froseth	✓		Rep. Sally M. Sandvig	✓	
Rep. Pat Galvin		✓			
Rep. Stacey Horter		✓			
Rep. Jim Kasper		✓			
Rep. Lawrence R. Klemin	✓				
Rep. Lisa Meier	✓				
Rep. Margaret Sitte		✓			

Total (Yes) 8 No 6

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

*1st Amendment
Kilmer - move the amendment
Conrad 2nd*

**House Amendments to HB 1030 - Government and Veterans Affairs Committee
02/16/2005**

In lieu of the amendments printed on pages 612 and 613 of the House Journal, House Bill No. 1030 is amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 54-06 of the North Dakota Century Code, relating to the smoking of tobacco products in state-owned or state-leased buildings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

Smoking prohibited in or near state buildings - Exceptions. Except for the buildings and grounds of any hospital operated by the state and buildings and grounds under the control of the state board of higher education, the smoking of tobacco products in buildings owned or leased by the state and on the grounds of those buildings is prohibited."

Renumber accordingly

Date: 2/15/05
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1030

House House Government and Veterans Affairs

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By *Klemm*

Seconded By *Froseth*

Representatives	Yes	No	Representatives	Yes	No
Chairman C.B. Haas	✓		Rep. Bill Amerman		✓
Bette B. Grande - Vice Chairman	✓		Rep. Kari Conrad	✓	
Rep. Randy Boehning	✓		Rep. Louise Potter	✓	
Rep. Glen Froseth	✓		Rep. Sally M. Sandvig	✓	
Rep. Pat Galvin	✓				
Rep. Stacey Horter		✓			
Rep. Jim Kasper		✓			
Rep. Lawrence R. Klemin	✓				
Rep. Lisa Meier	✓				
Rep. Margaret Sitte	✓				

Total (Yes)

11

No

3

Absent

0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

*Klemm - 2nd amendment
Froseth 2nd motion*

Date: 2/15/05
Roll Call Vote #: 3

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1030

House House Government and Veterans Affairs

Committee

Check here for Conference Committee

Legislative Council Amendment Number 50166.0110

Action Taken Do Pass As Amended

Motion Made By Rep Klemm Seconded By Rep Conrad

Representatives	Yes	No	Representatives	Yes	No
Chairman C.B. Haas	✓		Rep. Bill Amerman		✓
Bette B. Grande - Vice Chairman		✓	Rep. Kari Conrad	✓	
Rep. Randy Boehning	✓		Rep. Louise Potter	✓	
Rep. Glen Froseth	✓		Rep. Sally M. Sandvig	✓	
Rep. Pat Galvin	✓				
Rep. Stacey Horter		✓			
Rep. Jim Kasper		✓			
Rep. Lawrence R. Klemin	✓				
Rep. Lisa Meier	✓				
Rep. Margaret Sitte	✓				

Total (Yes) 10 No 4

Absent
Floor Assignment Rep. Klemm

If the vote is on an amendment, briefly indicate intent:

Date: 2/15/05
Roll Call Vote #: 4

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1030

House House Government and Veterans Affairs

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By *Klemm* Seconded By *Froseth*

Representatives	Yes	No	Representatives	Yes	No
Chairman C.B. Haas	✓		Rep. Bill Amerman		✓
Bette B. Grande - Vice Chairman	✓		Rep. Kari Conrad	✓	
Rep. Randy Boehning	✓		Rep. Louise Potter	✓	
Rep. Glen Froseth	✓		Rep. Sally M. Sandvig	✓	
Rep. Pat Galvin	✓				
Rep. Stacey Horter		✓			
Rep. Jim Kasper		✓			
Rep. Lawrence R. Klemin	✓				
Rep. Lisa Meier	✓				
Rep. Margaret Sitte	✓				

Total (Yes) 11 No 3

Absent *0*

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

*2nd Amendment
Rep. Klemm moves the amendment
Rep. Froseth seconds
voice vote -*

Date: 2/15/05
Roll Call Vote #: 5

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1030

House House Government and Veterans Affairs

Committee

Check here for Conference Committee

Legislative Council Amendment Number 50166.0110

Action Taken Do Pass As Amended

Motion Made By Rep Klemm Seconded By Rep Conrad

Representatives	Yes	No	Representatives	Yes	No
Chairman C.B. Haas	✓		Rep. Bill Amerman		✓
Bette B. Grande - Vice Chairman		✓	Rep. Kari Conrad	✓	
Rep. Randy Boehning	✓		Rep. Louise Potter	✓	
Rep. Glen Froseth	✓		Rep. Sally M. Sandvig	✓	
Rep. Pat Galvin	✓				
Rep. Stacey Horter		✓			
Rep. Jim Kasper		✓			
Rep. Lawrence R. Klemin	✓				
Rep. Lisa Meier	✓				
Rep. Margaret Sitte	✓				

Total (Yes) 10 No 4

Absent 0

Floor Assignment Rep. Klemm

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1030: Government and Veterans Affairs Committee (Rep. Haas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1030 was placed on the Sixth order on the calendar.

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Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 54-06 of the North Dakota Century Code, relating to the smoking of tobacco products in state-owned or state-leased buildings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

Smoking prohibited in or near state buildings - Exceptions. Except for the buildings and grounds of any hospital operated by the state and buildings and grounds under the control of the state board of higher education, the smoking of tobacco products in buildings owned or leased by the state and on the grounds of those buildings is prohibited."

Renumber accordingly

2005 TESTIMONY

HB 1030

Excerpt from final report of the 2003-04 interim Criminal Justice Committee regarding House Bill No. 1030.

EMPLOYMENT CONDITIONS STUDY

Background

As result of an April 14, 2004, opinion of the Attorney General, the chairman of the Legislative Council directed the interim Criminal Justice Committee to study the employment conditions issues contained in NDCC Section 34-06-05, including those surroundings or conditions which may be detrimental to an employee's health or morals. In addition to the issue raised in the opinion regarding the applicability of this section to smoking in the workplace, the Legislative Council chairman directed the committee to review the entire statute and any other issues that the language of the statute may raise.

North Dakota Century Code Chapter 34-06 contains the statutory provisions governing the wages, hours, and conditions of labor for employees in the different occupations in which they are employed within this state. This chapter was originally enacted in 1919 as House Bill No. 184. This 1919 bill provided that the purpose of the Act was "to protect the lives and health and morals of women and minor workers." Section 3 of the bill provided:

It shall be unlawful to employ women or minors in any occupation within the State for unreasonably long hours and it shall be unlawful to employ women or minors in any occupation within the State under such surroundings or conditions sanitary or otherwise, as may be detrimental to their health, or morals; and it shall be unlawful to employ women in any occupation within the State for wages which are inadequate to supply the necessary cost of living and to maintain them in health; and it shall be unlawful to employ minors in any occupation within the State for unreasonably low wages.

This section, which was most recently amended in 1965, is codified as North Dakota Century Code Section 34-06-05.

Attorney General's Opinion

In an April 14, 2004, letter opinion, the Attorney General addressed the issue of whether NDCC Section 34-06-05 applies to smoking in workplaces. The Attorney General stated that the prohibition in subsection 2 of Section 34-06-05 against subjecting an employee to surroundings or conditions that may be detrimental to the employee's health is one way the section could apply to tobacco smoke in the workplace. The opinion cited several studies that have analyzed whether environmental tobacco smoke is harmful, including one that specifically looked at smoke in the workplace. According to the opinion, the Labor Commissioner has the authority to investigate and ascertain employee labor conditions in the state and, in light of that authority, the Labor Commissioner has the authority to ascertain whether tobacco smoke in workplaces is detrimental to the employees' health and to address the matter through the rulemaking process. The opinion

added that the prohibition in subsection 2 of Section 34-06-05 may create a private cause of action against an employer who subjects employees to tobacco smoke in the workplace.

North Dakota Legislation Regulating Smoking

Workplace Smoking Legislation

The Legislative Assembly has also considered a number of bills dealing with smoking in the workplace. In 1995, House Bill No. 1367, which proposed to prohibit smoking in all facilities providing children's services, including educational institutions and private workplaces, was introduced. Following a recommendation of a conference committee that the House accede to the Senate amendments, the bill failed to pass the House. In 1997, House Bill No. 1198 would have prohibited smoking, with certain exceptions, in any indoor place of public access and any publicly owned building or office. The bill also would have placed restrictions on smoking in nonpublic workplaces. The bill failed to pass the House.

In 2003, House Bill No. 1408 would have eliminated smoking in most public places and private workplaces with the exception of bars and private clubs. The bill failed to pass the House. Also in 2003, House Bill No. 1174 would have prohibited tobacco use and sales in the state. The bill failed to pass the House.

Current North Dakota Laws Regarding Smoking

North Dakota law contains a number of provisions regulating smoking and the use of tobacco in public and other places. North Dakota Century Code Section 12-47-21 prohibits the use, possession, and delivery of tobacco products by an inmate in the state's correctional facilities. This section provides that any person who possesses or delivers tobacco products to an inmate in a state correctional facility is guilty of a Class B misdemeanor. North Dakota Century Code Section 12.1-31-03 prohibits the sale of tobacco to minors and the use of tobacco by minors.

The laws with respect to smoking in places of public assembly are contained in NDCC Chapter 23-12. Section 23-12-10 provides:

Smoking is not permitted outside of designated smoking areas in places of public assembly as provided in this section. Smoking areas may be designated only by proprietors of privately owned buildings or by public officials having general supervisory responsibility for government buildings. No smoking area may be designated in a place in which smoking is prohibited by the state fire marshal. A sign must be posted in any designated smoking area which states "Designated Smoking Area" or words to that effect.

Except as otherwise provided, designated smoking areas in a place of public assembly may not occupy more than fifty percent of the total area available to the public and must be situated to minimize smoke drift. The proprietor of a food establishment with the seating capacity for fifty or more persons may temporarily, during the course of daily business, expand the designated smoking area beyond fifty percent of the total available area if the smoking area becomes fully occupied and the additional space needed for the expansion is vacant or available.

Section 23-12-10.2 designates the State Department of Health as the agency responsible for receiving reports or complaints regarding violations of Section 23-12-09. The section also provides that state agencies, including the Fire Marshal, State Department of Health, Department of Human Services, and Office of Management and Budget, with jurisdiction over places of public assembly may enforce the smoking regulations. Section 23-12-11 provides that any person with supervisory responsibility over a place of public assembly who willfully fails to comply with the smoking regulations is subject to a maximum fine of \$100 per violation.

Another statute that prohibits smoking is contained in NDCC Section 50-11.1-02.2. This section provides that "[s]moking is not permitted in an early childhood facility at any time during which a child who receives early childhood services from that facility is present and receiving services at that facility."

Local Smoking Control Efforts

The first local tobacco control ordinance was passed by the Grand Forks City Council in 1990. The ordinance restricted the placement of vending machines to locations that were not accessible to minors. In 1992 a vending machine restriction ordinance that limited the placement of cigarette vending machines to establishments licensed to sell alcoholic beverages was passed in Bismarck. Similar ordinances were passed in Devils Lake, Fargo, Jamestown, Minot, Valley City, and Williston.

On July 15, 1997, Jamestown became the first community in North Dakota to introduce a smoke-free ordinance. The ordinance would have prohibited smoking in public places, including elevators, restrooms, lobbies, public transportation, all public areas in private businesses and nonprofit organizations, libraries, museums, theaters, sports arenas, convention halls, and restaurants. Restaurants would have been allowed to have a separately enclosed and ventilated smoking area that did not exceed 50 percent of the seating capacity of the establishment. Bars, clubs, and bowling alleys were not included as public places. Violation of the ordinance would have been punishable by a fine of up to \$500. The fine would have been applicable to the owner of the establishment and the smoker. The ordinance was defeated on August 4, 1997, with a 4-to-1 vote by the Jamestown City Council.

On February 26, 2001, a smoke-free restaurant ordinance was introduced at a meeting of the Minot City Council. The ordinance was passed by the city council with a 10-to-4 vote on April 2, 2001, with the ordinance scheduled to go into effect on January 1, 2002. The final ordinance mandated smoke-free restaurants but allowed restaurant owners to build fully enclosed, separately ventilated smoking rooms. Bars, fraternal organizations, banquet and convention center space for special occasions, bingo parlors, and bowling alleys were exempt from the ordinance. A referral attempt in July 2001 resulted in the ordinance being upheld by a vote of 55 to 45 percent.

In May 2004 restaurant owners in Carrington made the decision to ban smoking in their restaurants. The smoke-free initiative was not the result of any city ordinance but rather the operators of Carrington's six restaurants decided on their own to ban smoking.

In June 2004 Dickinson voters defeated a proposed city smoking ban by a vote of 2,200 votes against the initiated ordinance and 1,393 votes in favor. Under the proposed ordinance, smoking would have been prohibited in all Dickinson businesses except those with a liquor license at the time of the vote. The proposed ordinance also would have banned smoking within 25 feet of any nonsmoking establishment.

In July 2004 Fargo city commissioners approved an indoor public workplaces smoking ban. The ban will take effect either July 1, 2005, or at the same time as bans in surrounding communities, whichever comes first. A July 14, 2004, article in the Grand Forks Herald, reported that the Grand Forks Tobacco Free Coalition is supporting an ordinance for Grand Forks which is similar to the one passed in Fargo.

Three initiated measures regarding smoking appeared on the general election ballot in Fargo in November 2004. Ordinance No. 1, which called for a smoking ban that excluded truck stops and businesses with Class A or AB liquor licenses, received 19,582 "yes" votes and 23,897 "no" votes; Ordinance No. 2, which called for a smoking ban that excluded truck stops and enclosed bar areas that restrict people under age 21, received 24,986 "yes" votes and 18,966 "no" votes; and Ordinance No. 3, which called for a complete indoor, workplace smoking ban with an exemption for cigar bars, received 24,489 "yes" votes and 20,296 "no" votes. According to an October 4, 2004, letter opinion of the Attorney General, if conflicting municipal initiated measures are approved by the electors, the one receiving the highest number of "yes" votes prevails.

Two measures regarding smoking in public places appeared on the general election ballot in West Fargo in November 2004. Ordinance No. 1, which called for a smoking ban that exempted bars, received 5,639 "yes" votes and 3,291 "no" votes. Ordinance No. 2, which called for a complete smoking ban with an exemption for tobacco retail stores, received 5,160 "yes" votes and 3,667 "no" votes.

Testimony and Committee Considerations

The committee received extensive testimony from the Attorney General, Labor Commissioner, State Department of Health, the American Lung Association, North Dakota Medical Association, a physician, American Cancer Society, American Heart Association, North Dakota League of Cities, North Dakota Hospitality Association, local business owners, and local officials regarding the study. The committee studied the employment conditions issues contained in NDCC Section 34-06-05 and the statute's applicability to smoking in the workplace. In its study of Section 34-06-05, the committee focused on the following areas--legal concerns, health concerns, business and financial concerns, and proposed legislation.

Legal Concerns

According to the Attorney General, the clear and obvious interpretation of NDCC Section 34-06-05(2) is that the Labor Commissioner has the authority to investigate and ascertain employee labor conditions in the state and, in light of that authority, the Labor Commissioner has the authority to ascertain whether tobacco smoke in workplaces is detrimental to the employees' health and to address the matter through the rulemaking process. Section 34-06-05(2) may create

a private cause of action against an employer who subjects employees to tobacco smoke in the workplace. The testimony indicated that there have been a number of lawsuits seeking damages because of workplace smoking, but even without NDCC Section 34-06-05, it is likely that a person could sue for damages caused by workplace smoking.

North Dakota Century Code Chapter 34-06 is the chapter of state labor law that provides authority for the Labor Commissioner to investigate conditions of employment and to adopt rules prescribing standards for wages and working conditions in the state. Under this authority, labor commissioners have adopted the rules that are contained in the department's Minimum Wage and Working Conditions Order. The rules establish the state minimum wage and employment standards for the payment of overtime, breaks, paystubs, and vacation pay. However, no rules have been adopted under the chapter establishing standards for workplace health and safety. The Labor Commissioner historically has relied on standards for workplace health and safety established and enforced by the federal Occupational Safety and Health Administration as well as health and safety programs at the State Department of Health and Workforce Safety and Insurance. The Attorney General's opinion places the issue of exposure to secondhand tobacco smoke in the context of the Labor Commissioner's authority to establish and enforce standards for wages and working conditions, but the Labor Commissioner testified that this issue is most appropriately addressed by the Legislative Assembly as the policymaking body of the state and that the legislative process would provide the most appropriate forum for public discussion of the matter. It was noted that there have been no regulations adopted regarding morality. According to the testimony, morality issues may also be open to a private cause of action. If complaints are received, the Labor Commissioner has the authority to investigate employment conditions regarding the morality portion of the statute. A committee member noted the statute is vague and either needs to be changed or administrative rules must be developed before anyone could be charged with a violation of the statute.

The committee also received testimony from the North Dakota League of Cities regarding local ordinances and efforts in the state regarding smoking in the workplace. According to the testimony, a survey of the league's members indicated that of the 36 cities that responded to the survey, 19 have policies in place regarding smoking in city-owned buildings, 14 responded that they have no policies in place regarding smoking, 2 cities responded that they have passed smoking ordinances, and 1 reported a pending initiated measure regarding smoking in businesses. According to the testimony, the league supports local control of the issue.

Testimony from Workforce Safety and Insurance indicated that workers' compensation rates charged are commensurate with the risk. However, the agency was not aware of any other states that use workplace smoking as a specific risk factor. The testimony indicated that Workforce Safety and Insurance does not track claims based on smoking injury grounds. The agency was aware of one occasion in which a secondhand smoke claim was accepted. It was noted that there are substantial proof problems with secondhand smoke claims. When rates are set, the agency looks at the loss history for that group and for that employer. Allowing or not allowing smoking in the workplace is not specifically considered in setting rates. The agency offers rate discounts for employers that conduct health and safety programs and, therefore, it is possible that an employer that voluntarily adopted a smoke-free workplace policy could receive a discount, but it must be shown that the policy would actually result in a reduction in claims.

The committee received testimony regarding secondhand smoking litigation. The first secondhand smoke lawsuit was filed in 1976. Since the early 1980s, more than 420 cases involving exposure to secondhand smoke have been identified. According to the testimony, the only North Dakota lawsuit on secondhand smoke involved a pregnant woman who alleged that secondhand smoke caused her illnesses. In that case, the jury decided the county was negligent under the state law that requires public places to have designated smoking areas if smoking is allowed and the pregnant woman was entitled to 5 percent, or \$650, of the \$13,000 in awarded damages.

Health Concerns

The committee received testimony from the State Department of Health regarding the health risks and financial costs associated with smoking. The health hazards of secondhand smoke, also known as environmental tobacco smoke, are well-documented. The Centers for Disease Control and Prevention has reported that secondhand smoke is a leading cause of preventable death in this country, killing 35,000 nonsmokers in the United States each year. In North Dakota, from 80 to 140 adults and children die from secondhand smoke each year. The Environmental Protection Agency reports that smoke from the burning end of a cigarette contains over 4,000 chemicals and 42 carcinogens. The Environmental Protection Agency reports that there is no safe level of exposure to environmental tobacco smoke and that an estimated 3,000 lung cancer deaths in nonsmokers each year are the result of secondhand smoke. Numerous studies have documented the health effects associated with exposure to secondhand smoke, including lung cancer and nasal sinus cancer, health disease mortality, and eye and nasal irritation in adults. Health effects in children include acute lower respiratory tract infections; asthma induction and exacerbation; chronic respiratory symptoms; middle ear infections; and developmental effects, including low birth weight and sudden infant death syndrome. In North Dakota, 56 low birth weight babies each year can be attributed to secondhand smoke costing \$378,247, 667 cases of asthma are attributable to secondhand smoke exposure costing \$540,903, and 218 cases of ear infection attributable to secondhand smoke costing \$107,778. Two of the 10 sudden infant death syndrome deaths in the state are attributable to smoking exposure. Restaurant and bar workers, who typically have greater exposure to secondhand smoke, are at 50 to 100 percent increased risk of lung cancer.

According to the testimony, there is growing support for smoke-free environments in North Dakota. A survey commissioned by the North Dakota Public Education Task Force on Tobacco in spring 2003 found the majority of North Dakotans think smoking should not be allowed in schools, public facilities, entertainment arenas, private businesses, and restaurants. As of July 2004, 12 states had adopted state smoke-free workplace laws, 11 states include restaurants in their smoke-free workplace laws, and 7 states include bars. California and Utah were the first states to implement smoking bans in 1994. Since 2002, 10 additional states have implemented various combinations of 100 percent smoke-free provisions. Legislation is being considered in five additional states.

A representative of the North Dakota Tobacco Policy Coalition testified that the organization supports enforceable public policies that broaden the scope and strengthen the standards of current state law while preserving the right of local governments to adopt measures more

restrictive than state law. According to the testimony, in North Dakota in 2002, nearly 60,000 workers were exposed to smoke in the workplace. It was noted that it is often argued that a person who works in a smoking environment can choose to work elsewhere. However, it would be difficult for thousands of workers in rural North Dakota to find other work. According to the testimony, while 75 percent of white collar workers are covered by smoke-free policies in the United States, only 43 percent of the country's food preparation and service occupation workers benefit from this level of protection. It was also noted that bar and restaurant workers have three to six times more exposure to secondhand smoke than other workers and a 50 percent increase in lung cancer. It was pointed out that if an employee works in a business that allows smoking, such as a manufacturing plant, it is estimated the nonsmoking employee will be exposed to secondhand smoke that is equivalent to smoking six cigarettes in an eight-hour shift.

A physician testified that the physicians of the state have long supported initiatives to reduce the death and disease associated with the use of tobacco products by youth and adults. According to the testimony, NDCC Section 34-06-05 indicates a long-standing concern by state lawmakers for the health of employees in the workplace. It was noted that secondhand smoke in the workplace is detrimental to the health of employees. The Journal of the American Medical Association in 2001 reported that exposure to secondhand smoke for as few as 30 minutes can impair coronary circulation in a nonsmoker. Because of the detrimental impacts of secondhand smoke in the state's patient population, North Dakota physicians have played an active part in efforts of local communities to adopt clean indoor air ordinances, including efforts in Minot, Dickinson, West Fargo, and Fargo. The United States Surgeon General's 2000 report on reducing tobacco use found that clean indoor air laws that prohibit smoking have been shown to decrease daily tobacco consumption and to increase smoking cessation among smokers. The testimony indicated that while the North Dakota Medical Association supports stronger state laws pertaining to the restriction of smoking in public places, physicians recognize that local communities should not be preempted from adopting clean indoor air ordinances that are more restrictive than state law.

A representative of the American Heart Association testified that smoke-free air laws have a strong, documented, positive impact on helping smokers quit and on preventing children and adolescents from ever starting. It was noted that more than 32 percent of the country's population is now protected by a local or state 100 percent smoke-free indoor air law. According to the testimony, smoke-free air is becoming a public health benchmark and expectation with economic development and tourism implications. Other testimony indicated that broad support exists for smoke-free policies. It was argued that no one should have to choose between a job and good health.

Committee members expressed concerns about the availability of smoking cessation programs in the state. According to the testimony, more than 60 smoking cessation programs have been established in this state and smoking cessation programs are available to state and county employees. It was noted that it usually takes an individual five to seven attempts before the individual has long-term success with smoking cessation. It was also noted that the state does not have a residential treatment facility for smoking cessation but there is such a program at the Mayo Clinic in Minnesota. The testimony also indicated that there are local tobacco prevention coordinators on all the state's reservations.

Business and Financial Concerns

The committee received testimony from a representative of the North Dakota Hospitality Association who testified that businesses will be affected by state law and local ordinances on this issue. It was argued that in a free market and free enterprise system, the business owner should be able to decide whether or not to allow smoking in the establishment. It was noted that just like employees, no one is forced to patronize a business. The testimony emphasized that business would be adversely affected by eliminating smoking, especially in bars. According to the testimony, the association supports reasonable smoking restrictions in restaurants, but bars should be exempt from any smoking prohibition. It was emphasized that it is important to be careful about statewide bans because not all businesses in the state are the same. It was noted that in some restaurants, 40 to 50 percent of revenue comes from smokers. The testimony noted that about 75 percent of the state's hotel rooms are nonsmoking.

Testimony from a Bismarck business owner stated that the lounge in the hotel he owns recently went smoke-free and, as a result, the lounge had experienced a 25 percent increase in sales. It was noted that while it is important for the free enterprise system to work, when employees' health is at issue, some government involvement may be necessary. It was suggested that the issue may need to be put to a vote of the people. It was noted that there is a market for smoke-free restaurants and bars and people are looking for those environments. It was also noted that if all bars were smoke-free, those bars currently smoke-free would lose their advantage. It was speculated that while no one wants to take that first step, if all bars and restaurants went smoke-free, business would maintain a status quo.

A Minot city alderman provided testimony regarding smoke-free family dining ordinance passed in Minot in 2001. It was noted that the ordinance was referred to a vote of the people and the ordinance was upheld by a vote of 55 to 45 percent. According to the testimony, following the effective date of the ordinance, business was basically status quo. However, many businesses are now reporting that business has increased from the time before the smoking restrictions became effective. It was noted that only two businesses in the city have opted to maintain a separately ventilated eating area. According to the testimony, the smoking ordinance has been a positive move for Minot and after being in effect for two years, 17 percent of the people still oppose the ordinance and 80 percent support it. Seventy-eight percent of those surveyed said the rights of employees take precedence over the rights of smokers. It was stated that it is time for the Legislative Assembly to take a look at smoke-free workplaces.

Other testimony regarding the Minot ordinance indicated that it is the only ordinance in place in the state that provides for worker protection from secondhand smoke. A study conducted by Minot State University indicated that there is a 96 percent rate of compliance with the ordinance in Minot. A second Minot State University study evaluated the economic impact of the smoke-free ordinance on restaurant business in Minot. In this study, sales tax data from the five years before the implementation of the ordinance was compared to the sales tax data from the year following implementation. The study found no negative economic impact as a result of the ordinance.

During the course of the study, the committee reviewed the Minot smoking ordinance as well as smoking regulation laws of New York, California, and Delaware. The committee also reviewed the tobacco tax revenue collected in North Dakota for the years 1998 through 2003. In 2003 the total amount of cigarette and tobacco tax revenue collected totaled \$20,687,895.73; the collections in 1998 were \$23,978,505.89. It was noted that in North Dakota the tobacco tax is collected from the wholesalers, not the retailers. Because of this method of tax collection, although tobacco tax revenues have decreased, the decreases in tobacco tax revenues could not necessarily be attributed to local smoking ordinances that restrict smoking in public places.

The committee also received information regarding the tobacco tax revenue collected in California since the implementation of that state's smoke-free legislation in 1994. The information indicated that California has seen a steady decrease in tobacco sales and consumption over the past 40 years and that the implementation of the smoke-free legislation in 1994 did not appear to accelerate that steady decrease. It was noted that a 50-cent per pack tax increase in California in 1998 raised the per pack tax to 87 cents. The North Dakota tobacco tax is 44 cents per pack.

Proposed Legislation

The committee considered a bill draft regarding smoking restrictions in places of public access, publicly owned buildings or offices, and nonpublic workplaces. The bill draft prohibited smoking in places of public access and in workplaces, with some exceptions. The bill draft also provided that the smoking prohibition does not apply to places of public access operated by a social, fraternal, or religious organization when the place is being used solely by the organization's members or their guests or families; guest rooms in lodging facilities; establishments licensed primarily or exclusively to sell alcoholic beverages for consumption on the premises; private clubs; and certain separately enclosed smoking areas. The bill draft provided for a \$100 penalty for violations with a maximum of \$500 for second and subsequent offenses. The language in the bill draft is substantially the same as the language contained in House Bill No. 1408 (2003), which failed to pass the House.

The committee also considered several amendments to the bill draft. The amendments would have removed the exemption in the bill draft for establishments licensed primarily or exclusively to sell alcoholic beverages for consumption on the premises. It was argued that bar employees are 1.5 times more at risk to secondhand smoke-related illnesses than are other workers. It was pointed out that in an eight-hour shift, a bar employee is exposed to the amount of secondhand smoke that is equivalent to smoking 1.5 to 2 packs of cigarettes. It also was noted that bar employees are the employees who are the most exposed to secondhand smoke but who have the least potential for being able to find alternative employment and are also less likely to have health insurance. Other testimony in support of the amendments to the bill draft argued to be fair, the smoking ban should apply to all employees. It was emphasized that if the goal is to protect workers, all workers should be protected. The committee did not adopt the proposed amendments.

Testimony from the Labor Commissioner regarding the bill draft indicated the bill draft placed the authority and obligation to enforce the proposed restrictions with the State Department of

Health which is logical considering that the State Department of Health has authority to enforce smoking restrictions in places of public assembly. According to the testimony, regardless of which state agency is given the authority and obligation to enforce any workplace smoking restrictions, it is extremely important that this significant public policy issue be addressed by the Legislative Assembly. It was noted that the authority for any state agency to make rules must be clear with well-defined parameters.

Other testimony on the bill draft indicated that smoking regulations would be difficult to enforce and would not protect all workers. It was recommended that the portion of the bill draft that provides for exceptions for certain business establishments be deleted. It was noted that while the bill draft being considered by the committee was a step in the right direction, it would not protect all workers from secondhand smoke.

Recommendation

The committee recommends House Bill No. 1030 to prohibit smoking in places of public access, publicly owned buildings or offices, and nonpublic workplaces. The prohibition does not apply to places of public access operated by a social, fraternal, or religious organization when the place is being used solely by the organization's members or their guests or families; guest rooms in lodging facilities; establishments licensed primarily or exclusively to sell alcoholic beverages for consumption on the premises; private clubs; and certain separately enclosed smoking areas. The bill provides for a \$100 penalty for violations with a maximum of \$500 for second and subsequent offenses.

Testimony

House Bill 1030

Government and Veterans Affairs Committee

Thursday, January 20, 2005

Deborah Knuth

Government Relations Director, American Cancer Society

Good morning, Chairman Hass and members of the Committee. My name is Deborah Knuth, and I am the Director of Government Relations for the American Cancer Society in North Dakota. I am here to request a "do pass" vote for House Bill 1030, if amended to include the Department of Health and Department of Public Instruction recommendations. I understand that amendments from the Health Department exempt bars and fraternal organizations. Therefore I would suggest deleting lines 19-30 from HB 1030, on page 3 and lines 1-12 on page 4 and replace it with the exemptions from SB 2300, page 5, lines 7-26.

I think it is important to recognize the work the Interim Criminal Justice Committee did on HB 1030. However, the bill does not protect all workers and our goal is that all workers are protected.

I have also heard that ventilation is an acceptable option. The truth is that the only safe level of secondhand smoke indoors is no smoke. There is no ventilation system available that can provide this safe level if smoking is allowed. The only way to make public places and workplaces free from secondhand smoke is to not allow indoor smoking.

Ventilation options (i.e. smoking rooms) are costly and create an "unequal playing field" since they are unaffordable for many business owners. They also mean that workers are still exposed to secondhand smoke. In addition ventilation options are much more costly and difficult to monitor and enforce.

I am adding information that you may receive from others today in their testimony and will allow you to read the following at your convenience. Thank you for the opportunity to testify today.

Tobacco companies spent years trying to discredit the science regarding secondhand smoke...and failed. Now, they have turned their attention toward smoke-free initiatives. Hospitality business owners and workers are scared; they have been led to believe their livelihoods will end if their businesses go smoke-free. In an advertisement designed to educate the public about secondhand smoke, a leading tobacco company coined the slogan: "In any controversy, facts must matter."ⁱ Here are the facts:

FACT: Smoke-free Laws Do NOT Harm Restaurant Sales

- On March 30, 2003, New York City passed one of the strongest, and arguably, one of the most contentious smoke-free ordinances in the country. Fueled in part by the tobacco industry's propaganda machine, many restaurant owners believed their businesses would

fail under the new ordinance. Yet, one year after the law went into effect, New York City bars and restaurants were booming. Data from the New York City Department of Finance show that tax receipts increased by 8.7 percent, or approximately \$1.4 million. Moreover, the New York State Department of Labor found no evidence that restaurants were closing as a result of the smoke-free law, and the rate of restaurant openings remained unchanged since the law went into effect.ⁱⁱ

- Over the years, a number of studies have reached similar conclusions—that smoke-free restaurant ordinances do not harm restaurants' sales. These studies looked at smoke-free ordinances from various parts of the country during different economic cycles. They include communities in New York, Massachusetts, Texas, Arizona, Indiana, Wisconsin, and Florida.^{iii,iv,v,vi,vii,viii,ix,x,xi,xii,xiii,xiv}
- For example, researchers compared aggregate restaurant receipts of 32 Massachusetts communities that adopted smoke-free restaurant and/or bar policies between January 1992 and December 1995 with the receipts of 203 communities that did not. The study found that smoke-free laws do not cause a significant change in communities' overall meal and alcohol revenues. Only seasonal changes and changes in a community's population were shown to have an effect on restaurant and bar revenues.^{xv}
- Even in the tobacco growing state of North Carolina, where adult smoking rates are higher than the national average, researchers found that smoke-free restaurant ordinances did not impose economic hardships on restaurants or restaurant owners. Researchers compared the impact of smoke-free ordinances on restaurant sales in ten North Carolina counties—five with smoke-free ordinances and five without—and concluded that there were no differences in restaurant sales among the ten counties after the ordinances took effect.^{xvi}
- Restaurant owners should also be interested to know that more people are demanding smoke-free establishments. In a June 2003 Zogby International poll of registered voters, 63 percent of New Yorkers approved of the state Clean Indoor Air Act (CIAA) in comparison to 35 percent who opposed the law. The poll showed greater support among New York City voters, with 69 percent overall support.^{xvii} A 2004 Zagat New York City Survey showed that 23 percent of those surveyed said they would patronize smoke-free restaurants on a more regular basis, which is nearly six times higher than the four percent of survey participants who reported they would frequent restaurants less often than they did before the smoking ban.^{xviii}

FACT: Smoke-free Laws Do NOT Harm Bars

- No independent study has proven that smoke-free laws negatively affect the bar industry. Research looking at communities in California, Massachusetts, Oregon, Texas, New York, and Florida showed that smoke-free ordinances had no negative effect on bar sales.^{xix,xx,xxi,xxii,xxiii,xxiv} In fact bar businesses are not more sensitive to changes in smoking behavior than other hospitality businesses.^{xxv}
- Researchers compared California bar sales for the first five cities and two counties requiring all bars to be smoke-free with bar sales of comparable cities and counties in the state that did not. Smoke-free ordinances were found to have no effect on aggregate bar sales.^{xxvi}
- Since New York City's smoke-free law went into effect in 2003, the New York State Liquor Authority has issued more liquor licenses to the city's restaurant and bar establishments. Compared to 2002, there were a reported 9,747 active liquor licenses in the city in 2003, a net gain of 234.^{xxvii}
- One of the most recent studies to look at the relationship between smoke-free ordinances and bar revenues was conducted in El Paso, Texas by the Texas Department of Health

(TDH) and the CDC. Researchers concluded that the sales of alcoholic beverages were not affected by the El Paso smoke-free ordinance.^{xxviii} Similar results were found in the state of Florida, where retail receipts for taverns, night clubs, bars which serve food, and liquor stores, remained unaffected by the state's smoke-free law. Of particular note, the number of people employed in Florida's drinking and eating establishments increased by 4.53 percent after the smoke-free law went into place.^{xxix}

FACT: Smoke-Free Laws Do NOT Increase Unemployment

- Opponents of smoke-free laws cite unemployment as another reason why smoking bans are bad. To examine the merits of this claim, researchers assessed the number of restaurants and the number of restaurant employees. What researchers learned is that restaurants were more profitable with a smoke-free ordinance in place.
- When New York City first made its restaurants smoke-free during the mid-1990s, the city experienced a boom in employment. Between April 1993 and April 1997, New York City, as well as its neighboring smoke-free communities, experienced increases in both the numbers of restaurants and restaurant employees. New York City's restaurant employment growth was found to be more than three times that of the entire state.^{xxx} By 1999, four years after the smoking ban in restaurants was put into effect, researchers found that more than 22,000 restaurant employees were employed in New York City—an 18 percent increase from 1990.^{xxxi}
- Today, New York City's hospitality workers are doing exceptionally well despite claims that the smoke-free law would have a negative impact. Between March 2003 and December 2003, New York City reported 10,600 new jobs in its bars and restaurants.^{xxxii} In fact, despite the city's post-9/11 hardship, 164,000 workers are employed in the city's bars and restaurants—the highest number recorded in the last 10 years.

FACT: Smoke-Free Laws Do NOT Reduce Tourism

- Several, studies have shown that smoke-free policies do not affect tourism or hotel/motel revenues.^{xxxiii,xxxiv,xxxv, xxxvi}
- One study found that smoke-free laws were associated with increased hotel revenues in four localities: Los Angeles, California, New York City, New York, Mesa, Arizona, and the state of Utah.^{xxxvii}
- Another study found that the number of tourists that visited California and New York also increased after the implementation of these states' smoke-free policies. The study also looked at seven other localities and observed no significant changes in tourist rates following the implementation of smoke-free policies.^{xxxviii}
- The state of Florida, known for its world-class theme and amusement parks, implemented its smoke-free law on July 1, 2003. The law prohibits smoking in most of the state's enclosed workplaces. Approximately one year after the smoking ban went into effect, researchers found that there was no significant change in the number of recreational admissions across the state. Moreover, the number of people employed in the leisure and hospitality industry increased almost two percent during the year the ban was in place.^{xxxix}

FACT: Smoke-Free Laws Save Businesses Money

- The EPA estimates the cost savings of eliminating secondhand smoke in the workplace (from reducing premature deaths and tobacco-related illness) to be between \$35 and \$66 billion a year.^{xl}
- Allowing smoking in the workplace increased business owners' costs by \$1,300 per year per smoking employee.^{xli}

- Other costs associated with smoking in the workplace are increased housekeeping and maintenance costs. The EPA found that businesses that implemented smoking restrictions could save between four and eight billion dollars a year in operating and maintenance costs.^{xlii}
- Some business owners have been found liable in lawsuits filed by sick employees seeking damages related to smoking in the workplace.^{xliii,xliv,xlv,xlvi,xlvii}
- By allowing smoking in the workplace, business owners unwittingly take on a variety of associated costs, including higher health, life, and fire insurance premiums, higher worker absenteeism, lower work productivity, and higher workers' compensation payments.^{xlviii,xlix,l}
- A 2003 survey of air quality before and after the Delaware smoking ban was implemented concluded that the state's smoke-free law significantly reduced the risk of cancer, heart disease, stroke and respiratory disease among workers and patrons in the hospitality industry.^{li}
- New York is well on its way to improving the health of its residents, which could lead to a reduction in related health costs. Before New York City implemented its smoke-free ordinance, an air quality survey conducted by the New York State Department of Health found that air pollution levels in bars permitting smoking were as much as 50 times greater than pollution levels at the Holland Tunnel entrance during rush hour. Six months after the Smoke-Free Air Act was in force, the Health Department found a six-fold reduction in air pollution levels in the same establishments.^{lii}
- A few months into New York City's smoking ban, 150,000 fewer adult New Yorkers reported being exposed to second-hand smoke at their place of employment. The New York State Department of Health found tremendous gains among the city's hospitality workers; cotinine levels—a byproduct of secondhand smoke exposure—declined by 85 percent among a sample of the city's bar and restaurant workers.^{liii} The city's Department of Health and Mental Hygiene already estimates that 30,000 premature deaths have been prevented since the smoking ban went into effect.^{liv}

Conclusion:

After looking at the facts, it becomes clear that concerns about the business costs of smoke-free policies are unfounded. The facts are that smoke-free laws are good for businesses; they're good for the people who frequent them; and they're good for the people who work in them. Anecdotal evidence does not accurately gauge the effect of smoke-free laws on business activity. Research published in leading, scientific journals has consistently and conclusively shown that smoke-free laws have no adverse effects on the hospitality industry,^{lv} and, in fact, can actually be good for business. The only negative effects of smoke-free air laws are on the tobacco companies themselves, as evidenced by the following statement from a tobacco company executive: "If smokers can't smoke on the way to work, at work, in stores, banks, restaurants, malls and other public places, they are going to smoke less. Overall cigarette purchases will be reduced and volume decline will accelerate."^{lvi}

ⁱ Philip Morris, USA (1993). *Were You Misled? Today, Read Another Side of the Story About Secondhand Smoke*. Bates Number 947063108. Obtained online on 3 February 2004 from <http://legacy.library.ucsf.edu/tid/ivt90c00>.

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xl United States Environmental Protection Agency (EPA) (1994). *The Costs and Benefits of Smoking Restrictions: An Assessment of the Smoke-Free Environmental Act of 1993 (H.R. 3434)*. Office of Air and Radiation. Washington, D.C.: U.S. EPA.

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xlv *Shimp v. New Jersey Bell* (NJ, 1976).

xlvi *Smith v. Western Electric Co.* (MO, 1982).

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¹ U.S. Department of Health and Human Services, et al. (1996).

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in favor

Testimony

House Bill 1030

House Government and Veterans Affairs Committee

Thursday, January 20, 2005; 10 a.m.

North Dakota Department of Health

Good morning, Chairman Haas and members of the House Government and Veterans Affairs Committee. My name is Kathleen Mangskau, and I am director of the Division of Tobacco Prevention and Control for the North Dakota Department of Health. I am here today to provide testimony in support of House Bill 1030 if amended to clarify definitions and expand current protections. I will also provide information about the health effects of secondhand smoke and the economic impact of smoke-free laws.

The Department of Health believes no one should use tobacco and supports efforts to reduce nonsmokers' exposure to secondhand smoke. As written, House Bill 1030 expands some protections, but has some areas where the language is vague and may make it difficult to implement and enforce. The department will offer amendments to clarify those areas.

Health Effects of Secondhand Smoke

The health hazards of secondhand smoke are well documented. According to the U.S. Centers for Disease Control and Prevention, secondhand smoke (also known as environmental tobacco smoke) is a leading cause of preventable death in this country, killing 35,000 nonsmokers each year. (CDC, 2004) In North Dakota, between 80 and 140 adults, children and babies die from secondhand smoke each year. (CDC, 1996)

Secondhand smoke is a mixture of the smoke given off by the burning end of a cigarette, pipe or cigar and the smoke exhaled from the lungs of smokers. Secondhand smoke is also called environmental tobacco smoke, and exposure to secondhand smoke is called involuntary or passive smoking.

The U.S. Environmental Protection Agency and the U.S. Department of Health and Human Services National Toxicology Program report that smoke from the burning end of a cigarette contains more than 4,000 chemicals and more than 60 carcinogens, including formaldehyde, cyanide, arsenic, carbon monoxide, methane and benzene. The EPA has classified secondhand smoke as a "Group A" carcinogen – a substance known to cause cancer in humans. The EPA reports that there is no safe level of exposure to environmental tobacco smoke. (EPA, 1992) In 2000, the National Institutes of Health formally listed secondhand smoke as a known human carcinogen in its 9th Report on Carcinogens. The EPA estimates that secondhand smoke causes approximately 3,000 lung cancer deaths in nonsmokers each year. Besides the EPA

and the NIH, many other United States environmental health, occupational health and public health authorities have condemned secondhand smoke as a health hazard, including the National Toxicology Program (2000), the National Cancer Institute (1993, 1995), the Occupational Safety and Health Administration (1994), the National Institute for Occupational Safety and Health (1990), the Surgeon General (1986) and the National Academy of Sciences (1986). A listing of the key reports documenting the health effects of secondhand smoke and a summary of findings from major studies are attached.

Numerous studies have documented the health effects associated with exposure to secondhand smoke, including lung cancer and nasal sinus cancer, heart disease deaths, and eye and nasal irritation in adults. Health effects in children include acute lower respiratory tract infections, asthma induction and exacerbation, chronic respiratory symptoms, middle ear infections, and developmental effects such as low birth-weight and sudden infant death syndrome (SIDS). The toll of secondhand smoke on children is devastating, accounting for more than 26,000 low birth weight babies, 263 cases of SIDS, nearly 300,000 pediatric asthma cases and more than 99,000 cases of ear infection. Children who are exposed to secondhand smoke have, on average, 1.5 more lost school days per year than children who are not exposed. Each year in North Dakota, 56 low birth weight babies are attributed to secondhand smoke, costing \$378,247, as are 667 cases of asthma costing \$540,903 and 218 cases of ear infection \$107,778. Two of the 10 SIDS deaths in the state are attributable to smoking exposure. (American Legacy Foundation, 2004) Restaurant and bar workers, who typically have greater exposure to secondhand smoke, are at 50 percent to 100 percent increased risk for lung cancer.

Recent studies assessing the association of secondhand smoke with heart disease show that exposure to secondhand smoke increases the risk of fatal and nonfatal coronary heart disease in nonsmokers by about 30 percent. Exposure to secondhand smoke for as little as 30 minutes can increase the formation of blood clots and restrict flow to the heart, causing a heart attack. A recent study in Helena, Montana, where a smoke-free law had been implemented, showed that heart attack admissions to the local hospital were reduced by 40 percent. The CDC states, "We now have a considerable amount of epidemiological literature and laboratory data on the mechanisms by which relatively small exposures to toxins in tobacco smoke seem to cause unexpectedly large increases in the risk of acute cardiovascular disease." (CDC, 2004)

Current Support for Smoke-Free Environments

There is growing support for smoke-free environments in North Dakota. A survey commissioned by the North Dakota Public Education Task Force on Tobacco in 2004 found that the majority of North Dakotans age 18 through 54 feel smoking should not be allowed in schools, public facilities, entertainment arenas, private businesses and restaurants. More than 86 percent of those surveyed feel that even though smoking is legal for individuals older than 18, nonsmokers have a right to breathe clean air. The study found that 97 percent believe smoking should not be allowed in elementary and

high school buildings, 89 percent believe smoking should not be allowed in public facilities, 85 percent believe smoking should not be allowed in entertainment arenas, 61 percent believe smoking should not be allowed in private businesses and other non-government work sites and 68 percent believe smoking should not be allowed in restaurants. The research also revealed that nearly 93 percent of North Dakotans would patronize restaurants in their community just as often or more often if they all went completely smoke free. Only 32 percent believe smoking should not be allowed in bars and cocktail lounges, but that percentage is up from 22 percent in 2002. We believe the percentage of North Dakotans supporting smoke-free environments is underestimated, as the survey did not include adults age 55 and older. Many adults older than 55 and their families have already suffered from tobacco-related chronic diseases, illness and death and support smoke-free environments. A fact sheet on the study findings is attached.

Some may wonder why the Occupational Safety and Health Administration has not promulgated rules on secondhand smoke. Because of repeated Congressional admonitions that secondhand smoke is an issue best handled by states, federal regulatory agencies have been discouraged from undertaking rulemaking or research efforts to protect private-sector workers and the public. In 2001, OSHA withdrew its Indoor Air Quality Proposal and terminated the rulemaking proceeding. Since that proposal was first issued, a great many state and local governments and private employers have taken action to curtail smoking in public areas and in workplaces.

As of July 2004, 12 states have adopted state smoke-free workplace laws. Eleven states include restaurants in their smoke-free workplace laws, and seven states include bars. California and Utah were the first states to implement smoke-free laws in 1994. Ten additional states have implemented various combinations of 100 percent smoke-free provisions since 2002. Legislation is being considered in five additional states. A listing of the states with smoke-free workplace laws is attached.

California has the longest history of smoke-free workplace laws. Smoking prevalence has declined and California smokers are smoking fewer cigarettes. Accelerated reductions have been documented for heart disease deaths and lung cancer incidence rates. From 1988 through 1999, lung and bronchus cancer rates in California declined at nearly six times the rates of decline in the nation. In addition, six out of nine cancer types that have been linked to tobacco use had a lower incidence rate in California than the rest of the United States in 1999.

Economic Impact of Smoke-Free Workplace Laws

Numerous studies have documented the economic impact of smoke-free policies. Well designed studies (1) are based on objective measures; (2) use data several years before and after implementation of the policy; (3) use appropriate statistical tests that test for significance, controlling for underlying trends and fluctuations in data; and (4) control for changes in economic conditions. Key findings from *A Summary of Studies*

Assessing the Economic Impact of Smoke-free Policies in the Hospitality Industry by Scollo and Lal (VicHealth Centre for Tobacco Control, 2004) are quoted below.

- No negative economic impact from the introduction of smoke-free policies in restaurants and bars is indicated by the 21 studies where findings are based on an objective measure such as taxable sales receipts, where data points several years before and after the introduction of some-free policies were examined, where changes in economic conditions are appropriately controlled for, and where appropriate statistical tests are used to control for underlying trends and fluctuations in data. Just a few studies have found negative effects and each of these is methodologically flawed.
- Studies concluding a negative economic impact have predominately based findings on outcomes predicted before introduction of policies, or on subjective impressions of estimates of changes rather than actual, objective, verified or audited data. These studies were funded primarily by the tobacco industry or organizations allied with the tobacco industry. Almost none of the studies finding a negative impact are published in peer-reviewed journals.

A study conducted in Minot, North Dakota, after implementation of the smoke-free restaurant ordinance showed no negative impact on business.

Concerns About the Proposed Legislation

In 2004, the department received about 100 complaints regarding smoking in the workplace and in apartment dwellings. Three formal complaints were filed. The majority of complaints dealt with secondhand smoke in the capitol entrances and secondhand smoke in common areas and entrances of private businesses and in apartment dwellings – all areas currently not covered by state law. Only one complaint was covered under current law, and another is still under investigation.

Well-defined terms and provisions are critical for ensuring that the interpretation, implementation and enforcement of the law accomplish the legislature's intent in enhancing the provisions of the law. The definitions of "place of public access," "places of employment," "restaurants" and "bars" raise the most questions. The department is recommending that the definitions of "place of public access," "place of employment," "restaurant" and "bar" be amended to clearly define those areas on pages 1 and 2 of the bill.

The tobacco industry's accommodation policy is the recent effort to push for ventilation standards instead of prohibitions on smoking. The Philip Morris *Options* program, for example, seeks to convince owners, operators and patrons of establishments that ventilation can alleviate the problems caused by secondhand smoke. However, there is no ventilation system guaranteed to completely eliminate the exposure of nonsmokers to secondhand smoke in a building where smoking is allowed. Phillip Morris USA carries a disclaimer on its website that states: "While not

shown to address the health effects of secondhand smoke, ventilation can help improve the air quality of an establishment by reducing the sight and smell of smoke and by controlling the smoke drift." The American Society of Heating, Refrigeration and Air Conditioning Engineers, ASHRAE, develops indoor ventilation standards. ASHRAE Standard 62, *Ventilation for Acceptable Indoor Air Quality*, applies only to nonsmoking areas because ASHRAE has determined that ventilation and air cleaning do not adequately remove secondhand smoke toxins from the air. Even companies that manufacture ventilation and filtration systems to remove secondhand smoke from the air state that the systems are designed only to decrease odors and increase comfort. Therefore, the department is recommending the removal of the section relating to ventilation on page 4, lines 4-10 of the bill. Fact sheets on ventilation are attached.

On page 4, line 11, the bills allows smoking in designated areas in private schools or educational facilities during nonschool hours. Currently, 67 percent of North Dakota's students are protected by local school district policies that maintain no smoking in the buildings or on the grounds. The purpose of these local policies is to promote a nonsmoking norm to students and provide adult role models for this behavior. The department recommends removing this exemption.

The department also has concerns with enforcement of Section 3 of the bill beginning on page 4 line 20. The concerns stem from the short amount of time allotted for compliance as stated on line 25 of page 4, as well as having a clear understanding of the interpretation of what will be necessary to comply with these requirements and the resources necessary to enforce a requirement with such broad implications as controlling secondhand smoke in all workplaces. In addition, there is no practical way to make the determination of effectively preventing smoke in the work areas of nonsmoking employees in subsection 3 on page 5. The department recommends removing section 3.

Conclusion

In conclusion, the effects of secondhand smoke are significant and well documented, as are the benefits of smoke-free laws. There is growing support for smoke-free laws in North Dakota. Finally, smoke-free laws have been shown to have no negative impact on businesses.

The *Surgeon General's Report on Reducing Tobacco Use* strongly recommends smoking bans and restrictions as an effective means to reduce nonsmokers' exposure to secondhand smoke. While the Department of Health would like to see no exemptions in this bill, we recognize that an incremental approach may be necessary to reach our ultimate goal of protecting all nonsmokers from secondhand smoke.

This concludes my testimony on House Bill 1030. I am happy to answer any questions you may have.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1030

Page 1, line 1, remove "create and enact a new section to chapter 23-12 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to smoking restrictions in nonpublic workplaces; to"

Page 1, line 4, replace the second comma with "and"

Page 1 line 5, remove ", and nonpublic workplaces"

Page 1, line 9 replace the boldfaced underscored comma with "**and**"

Page 1, line 10, remove "**and nonpublic workplaces**"

Page 1, remove lines 11-23, replace with "1. "Place of public access" 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 non-profit 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 and

North Dakota Department of Health

their grounds; service lines; shopping malls; sports arenas, including enclosed places in outdoor arenas; theaters; and waiting rooms."

Page 2, remove lines 1-28, replace with "2. "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.

3. "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.

4. "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, stairs, and employer-owned vehicles.

Page 3, remove line 25

Page 3, line 26, remove "Any area within a" and replace with "A"

Page 3, line 26, replace "d." with "c."

Page 3, line 29, replace "e." with "d."

Page 4, remove lines 1 and 2, and replace "f." with "e. Any bar."

Page 4, remove lines 4-12

Page 4, remove lines 20-31

North Dakota Department of Health

Page 5, remove lines 1-9

Page 6, line 13, remove "or section 3 of this Act"

Page 6, line 15, remove "or section 3 of this Act"

Renumber accordingly

Key Reports Documenting the Health Effects of Secondhand Smoke

- Revised draft Report of the California Environmental Protection Agency (2003)
- Report of the International Agency for Research on Cancer (IARC) (2002)
- U.S. Department of Health and Human Services' *Ninth Report on Carcinogens* (2000)
- Report of the California Environmental Protection Agency (1997)
- Report of the U.S. Environmental Protection Agency (EPA) (1992)
- Report of the National Institute for Occupational Safety and Health (NIOSH) (1991)
- Report of the Surgeon General (1986)
- Report of the National Research Council of the National Academy of Sciences (1986)
- Report of the World Health Organization (1999)
- Report of the United Kingdom Scientific Committee on Tobacco and Health (1998)
- Report of the Australian National Health and Medical Research Council (1997)

Full References on Reports

California Environmental Protection Agency. *Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant* (draft report updating previous Cal EPA report on environmental tobacco smoke). California Environmental Protection Agency, December 2003, <http://www.arb.ca.gov/toxics/ets/dreport/dreport.htm>

International Agency for Research on Cancer (IARC) *Monographs on the Evaluation of Carcinogenic Risks to Humans*, Volume 83: *Tobacco Smoke and Involuntary Smoking*, 2002, <http://monographs.iarc.fr/htdocs/indexes/vol83index.html>

National Toxicology Program. *9th Report on Carcinogens*, 2000. Research Triangle Park, NC: U.S. Department of Health and Human Services, National Institute of Environmental Health Sciences; 2000.
<http://ehp.niehs.nih.gov/roc/tenth/profiles/s176toba.pdf>.

California Environmental Protection Agency. *Health Effects of Exposure to Environmental Tobacco Smoke*. Office of Environmental Health Hazard Assessment, September 1997, www.oehha.ca.gov/air/environmental_tobacco/finalets.html.

Also published as: National Institutes of Health. National Cancer Institute. *Health Effects of Exposure to Environmental Tobacco Smoke: The Report of the California Environmental Protection Agency*. Smoking and Tobacco Control Monograph Number 10. NIH Publication No. 99-4645, Washington, D.C., USA, August 1999, <http://cancercontrol.cancer.gov/tcrb/monographs/10/index.html>

United States Environmental Protection Agency (EPA). *Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders*. Office of Research and Development, EPA/600/6-90/006F, Washington, D.C., December 1992, www.epa.gov/nceawww1/ets/etsindex.htm

Also published as: National Institutes of Health. National Cancer Institute. *Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders: The Report of the U.S. Environmental Protection Agency*. Smoking and Tobacco Control Monograph Number 4. NIH Publication No. 93-3605, Washington, D.C., August 1993.

National Institute for Occupational Safety and Health (NIOSH). *Environmental Tobacco Smoke in the Workplace: Lung Cancer and Other Health Effects*. Current Intelligence Bulletin 54, Washington, D.C., 1991. www.cdc.gov/niosh/91108_54.html

U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Smoking. A Report of the Surgeon General*. U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control. DHHS Publication No. (CDC) 87-8398, 1986, www.cdc.gov/tobacco/sqr_1986.htm.

National Research Council of the National Academy of Sciences. *Environmental Tobacco Smoke: Measuring Exposures and Assessing Health Effects*. National Academy Press, Washington, D.C., 1986.

World Health Organization. Tobacco Free Initiative. *International Consultation on Environmental Tobacco Smoke (ETS) and Child Health: Consultation Report*. WHO Technical Document Number WHO/TFI/99.10. 1999, www5.who.int/tobacco/page.cfm?sid=50.

Department of Health. *Report of the Scientific Committee on Tobacco and Health*. The Stationery Office. London, United Kingdom, March 1998. www.archive.official-documents.co.uk/document/doh/tobacco/contents.htm.

National Health and Medical Research Council. *The Health Effects of Passive Smoking – A Scientific Information Paper*. Australia, November 1997, www.nhmrc.gov.au/advice/nhmrc/chap1/index.htm.

Note: The following report, while not an original report or an extensive review, provides a good summary of some of the reports above:

Ontario Tobacco Research Unit, University of Toronto, *Protection from Second-hand Tobacco Smoke in Ontario: A Review of the Evidence Regarding Best Practices*. Toronto, Ontario, May 2001. http://www.otru.org/pdf/special/special_ets_enq.pdf

SECONDHAND SMOKE

- Secondhand smoke contains more than 43 known carcinogens and 200 known poisons, including ammonia, formaldehyde, hydrogen cyanide, arsenic, carbon monoxide and benzene. (*National Cancer Institute 1999*)
- Secondhand smoke is classified as a Group A carcinogen. There is no safe level of exposure to Group A toxins. (*U.S. EPA 1992*)
- Every year, more than 53,000 nonsmokers die from exposure to secondhand smoke, making it the third leading cause of preventable death in the U.S. (*National Cancer Institute*)
- Lung cancer caused by exposure to secondhand smoke is responsible for an estimated 3,000 deaths per year among nonsmokers in the U.S. It is a confirmed cause of nasal sinus cancer in nonsmokers. (*National Cancer Institute, Health Effects of Environmental Tobacco Smoke, December 1999*)
- Exposure to secondhand smoke causes between 35,000 and 62,000 coronary heart disease deaths each year in the United States. (*National Cancer Institute 1999*)
- Nonsmokers exposed to secondhand smoke for just 30 minutes experience hardening of the arteries. (*Journal of the American Medical Association, 2001*)
- The risk of death from heart attack is 91 percent higher for nonsmoking women who are regularly exposed to secondhand smoke, and 58 percent higher for women occasionally exposed to secondhand smoke. (*American Heart Association Journal 1997*)
- Just as the science regarding the health risks of SHS has increased, so has public concern about SHS. According to a 2001 Gallup poll, 52 percent of American adults feel exposure to secondhand smoke is "very harmful," compared with just 36 percent in 1994. (July 2001 Gallup Poll www.gallup.com)
- Even half an hour of secondhand smoke exposure causes heart damage similar to that of habitual smokers. Nonsmokers' heart arteries showed a reduced ability to dilate, diminishing the ability of the heart to get life-giving blood. In addition, the same half hour of secondhand smoke activates blood platelets, which can initiate the process of atherosclerosis (blockage of the heart's arteries) that leads to a heart

attack. These effects explain other research showing that nonsmokers regularly exposed to SHS suffer death or illness rates 30 percent higher than that of unexposed nonsmokers. (Otsuka, R., et al. "Acute Effects of Passive Smoking on the Coronary Circulation in Healthy Young Adults," *Journal of the American Medical Association*, 286: 436-441, 2001)

Employees are at risk.

- Employees exposed to secondhand smoke on the job are 34 percent more likely to get lung cancer. (*U.S. CDC 1996*)
- People routinely exposed to a lot of secondhand smoke, such as restaurant and bar workers, can see their risk of lung cancer triple. (*International Journal of Cancer, 2001*)
- At least 4.5 million Americans experience great discomfort from secondhand smoke at work. (U.S. CDC 1996)
- Restaurant and bar workers have three to six times more exposure to secondhand smoke than do other workers. (*U.S. CDC 1996*)
- Food service workers, many of whom are under age 18, have a 50 percent higher risk of lung cancer than the general population. (*Corsun, Young, Enz. "Should NYC Restaurateurs Lighten Up?" Hotel and Restaurant Administration Quarterly: 1996*)
- Waitresses have the highest death rate of any female occupational group. They have a four times higher rate of death from lung cancer and a two and a half times higher rate of death from heart disease. (*M. Siegel, "Smoking and Restaurants: A Guide for Policy-Makers" September 1992*)
- Levels of secondhand smoke in restaurants are about 1.6 to 2.0 times higher than in office workplaces. Levels in bars are 4 to 6 times higher than in offices. (Siegel, M. "Involuntary Smoking in Restaurant Workplace: A Review of Employee Exposure and Health Effects." *Journal of the American Medical Association*, 270:490-493, 1993)
- Smoking restrictions in workplaces, restaurants, and other public areas are associated with dramatic declines in serum cotinine levels among nonsmokers, an

indication that smoke-free environments significantly reduce exposure to SHS. (Centers for Disease Control and Prevention, "Strategies for Reducing Exposure to Environmental Tobacco Smoke, Increasing Tobacco-Use Cessation, and Reducing Initiation in Communities and Health-Care Systems" *Morbidity and Mortality Weekly Report, Recommendations and Reports* 49(RR-12): 1-12, November 10, 2000)

- Smoking causes a great deal of discomfort in the workplace. For example, 59.2 percent of nonsmoking employees report suffering discomfort, and even 15 percent of smoking employees report some degree of discomfort from secondhand smoke. (CDC, *Morbidity and Mortality Weekly Report*, May 22, 1992)

Costs of Secondhand Smoke to Employers

- Smoking causes inefficiency, errors, eye irritation and lower attentiveness, which costs the employer. (*Action on Smoking and Health 1999*)
- Employers who have banned smoking reported a dramatic decrease in maintenance costs. (*Action on Smoking and Health 1999*)
- Fire risks and subsequent insurance costs decrease when a business goes smoke-free. (*Tobacco-Free Coalition 1999*)
- Workplace smoking increases an employer's potential legal liability. Nonsmoking employees have received settlements in cases based on their exposure to secondhand smoke. For example, a waiter in Sausalito, California, received an \$85,000 settlement in a workers' compensation case. Other nonsmokers have won unemployment compensation and disability benefits. (Sweda, E.L. *Summary of Legal Cases Regarding Smoking in the Workplace and Other Places*. Boston: Tobacco Control Resource Center, December 1997)
- Secondhand smoke harms the health and reduces the productivity of nonsmokers, costing employers money. Estimated costs associated with secondhand smoke's effects on nonsmokers range from \$56 to \$490 per smoker per year. (Kristein, "How Much Can Business Expect to Profit From Smoking Cessation?" *Preventive*

Medicine, 1983;12:358-381; Jackson & Holle, "Smoking: Perspectives 1985"
Primary Care, 1985; 12:197-216)

- More than 60 cities and counties with smoke-free restaurant ordinances have been studied for economic impact. All studies, based on sales tax data, show that there is no negative economic impact. (*Glantz 1999*)
- Scientific studies in North Carolina, Arizona, California, Colorado, New York, Massachusetts and Texas have all shown that ordinances banning smoking have had no negative economic effect.
- Bars and restaurants would likely see an increase in business if they implement smoke-free policies. (*Journal of Public Health Management and Practice 1999*)
- The National Restaurant Association polls show that if a restaurant goes smoke-free, 56 percent of patrons would eat at the restaurant more frequently, and only 26 percent would eat there less frequently. (*Tobacco-Free Coalition 1999*)
- Sales tax data consistently demonstrates that ordinances restricting smoking in restaurants have no effect on revenues. (*Glantz 1999*)

TOBACCO *Facts*

North Dakotans Support Smoke-Free Environments

A 2004 study conducted by Winkelman Consulting of Fargo revealed strong public support for prohibiting smoking in most public places. The study was based on a random-sample telephone survey of 1,200 North Dakotans between the ages of 18 and 54.

▶ Nearly 61 percent of those surveyed believe smoking should not be allowed in private businesses and other nongovernmental work sites, and 10.6 percent of those would extend the ban to the grounds.

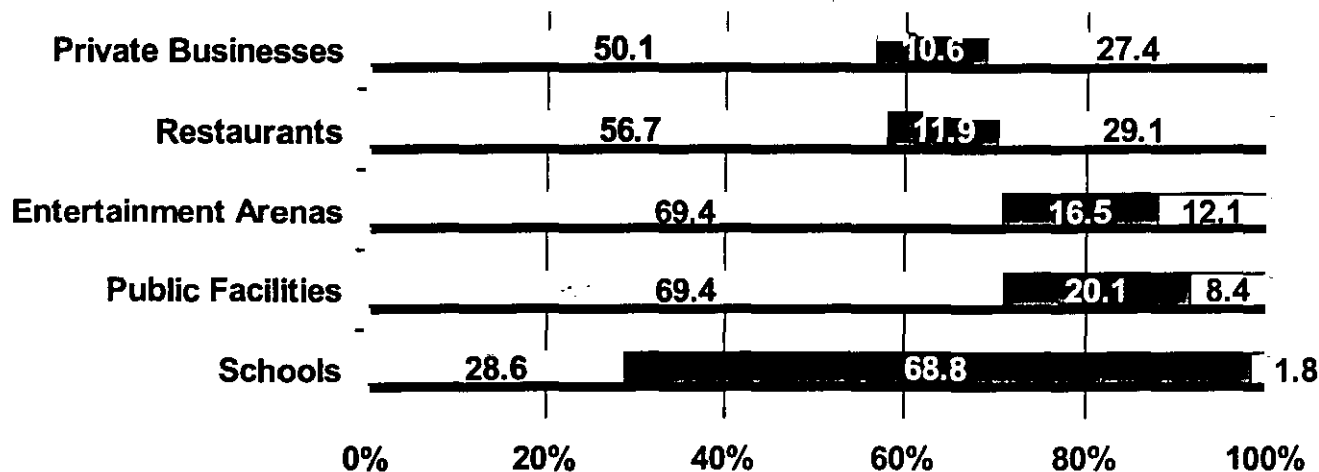
▶ More than 68 percent believe smoking should not be allowed in restaurants, and 11.9 percent of those would extend the ban to the grounds.

▶ More than 85 percent believe smoking should not be allowed in entertainment arenas, and 16.5 percent of those would extend the ban to the grounds.

▶ More than 89 percent believe smoking should not be allowed in public facilities, and 20.1 percent of those would extend the ban to the grounds.

▶ More than 97 percent of North Dakotans believe smoking should not be allowed in school buildings, and 68.8 percent of those would extend the ban to the grounds.

More than 86 percent of those surveyed feel that even though smoking is legal, nonsmokers have the right to breathe clean air.



□ Not allowed in building ■ Not allowed in building or grounds □ Allowed in some areas



NORTH DAKOTA
DEPARTMENT OF HEALTH

For more information, contact:
Division of Tobacco Prevention & Control
North Dakota Department of Health
600 E. Boulevard Ave., Dept. 301
Bismarck, ND 58505-0200

701.328.3138 or 800.280.5512 / www.ndtobaccoprevention.net



DIVISION OF TOBACCO
PREVENTION & CONTROL

From: Joe Cherner [Joe@smokefree.org]

Sent: Thursday, July 01, 2004 11:59 PM

To: Joe Cherner announce list

Subject: [JoeCherner-announce]status of state smokefree workplace laws

Dear Smokefree Advocate,

We've come a long way, baby... but we still have a long way to go!

The chart below shows the status of smokefree workplace states. In the next twelve months, we expect several more states to pass smokefree workplace laws (including bars and restaurants). The most likely candidates are Washington, Colorado, Maryland, Arizona, and Minnesota... but there are always a few surprises!

State Smokefree Workplace Laws

	Smokefree Offices	Smokefree Restaurants	Smokefree Bars
California	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Delaware	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
New York	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Connecticut	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Maine	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Massachusetts	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Rhode Island	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Florida	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vermont	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Utah	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Idaho	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Maryland	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

VENTILATION AND AIR FILTRATION: THE SCIENCE

December 2004

- A study published in the September 2004 edition of the *Journal of Occupational and Environmental Medicine* compared the indoor air quality of a casino, six bars, and a pool hall in Wilmington, Delaware, before and after the implementation of a smokefree law. The study found that the ventilation technology installed in these establishments did not protect the workers and the public, as secondhand smoke contributed 85-95% of the carcinogen PPAH, and 90-95% of the respirable particulate air pollution into the air. These contamination levels greatly exceed those encountered on major truck highways and polluted city streets.¹
- In less than two hours after New York's smokefree law went into effect and smoking stopped, the level of respirable particulate matter (PM) dropped to 15 percent of the level on a smoking night in restaurants and bars. Three months after the law became effective, the level of PM dropped by 90 percent in these venues. Prior to the smokefree law's implementation, New York hospitality employees working an eight hour shift, 250 days a year, were exposed to particulate matter levels seven times greater than the maximum level deemed as acceptable by the U.S. Environmental Protection Agency. In addition, PM dropped an average of 77 percent after the law went into effect in bowling alleys, pool halls, and bingo halls.²
- The 2002 Environmental Health Information Service's 10th *Report on Carcinogens* classifies SHS as a Group A (Human) Carcinogen--a substance known to cause cancer in humans. There is no safe level of exposure for Group A toxins.³
- The 1986 Surgeon General's report on involuntary smoking concluded that, "the simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate, the exposure of nonsmokers to ETS [environmental tobacco smoke]."⁴
- Using current indoor air quality standards, ventilation rates would have to be increased more than a thousand-fold to reduce cancer risk associated with ETS to a level considered acceptable to federal regulatory agencies. Such a ventilation rate is impractical since it would result in a virtual windstorm indoors.^{5,6}
- "Separation of smoking areas does not protect the workers and occupants within the smoking area. When separation is properly done (and this is not common), it can reduce the exposure of occupants in the nonsmoking areas, but there is no quantitative assurance that the remaining exposure meets any current health standard or goal."⁷
- "[T]o be at all effective in reducing the concentration of smoke in a space, any air cleaner must process many room air volumes per hour.... [E]ven large, expensive air cleaners with efficiencies for captured particles are capable of reducing, but not eliminating the environmental tobacco smoke tar particles in room air, and are not at all effective for gases, which contain most of the irritants.... [E]ven expensive particulate air cleaners cannot remove enough tar particles in room air to eliminate the cancer risk from environmental tobacco smoke."

In general, filtration of indoor air to remove environmental tobacco smoke contaminants is futile – like trying to filter a lake to control water pollution.”⁸

- Ventilated smoking rooms leak smoke into the rest of the building, harming everyone in the building. A recent research study conducted by and published for the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) “showed that up to 10 percent of smoking room air enters non-smoking areas just by opening and closing of a swing type entry door. ... With supply and exhaust air flow that are practical for small smoking rooms, leaving the smoking room door open results in a large flow of air to adjoining non-smoking areas. To prevent this, smoking room doors should be equipped with an automatic closure mechanism.”⁹
- “Changes in ventilation rates during smoking do not have a significant influence on the air concentrations of tobacco components. This means, in effect, that efforts to reduce indoor air pollution through higher ventilation rates in buildings and homes would hardly lead to a measurable improvement of indoor air quality.”¹⁰
- “[I]t is noted that the specific amount of additional ventilation cannot be determined until cognizant health authorities have determined an acceptable level of environmental tobacco smoke (ETS).... An appendix ... provides a method to allow designers to determine additional ventilation over what would be provided in a similar non-smoking area. However, this additional ventilation is for the purpose of odor control only.”¹¹
- “In managing workplace ETS risks, smoking policies such as separating smokers from nonsmokers in the same space or on the same ventilation system expose nonsmokers to unacceptable risk.”¹²

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- ¹⁰ Joint Research Centre, Indoor air pollution: new EU research reveals higher risks than previously thought. Brussels: European Commission. September 22, 2003.
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ANR AMERICANS FOR NONSMOKERS' RIGHTS

Defending your right to breathe smokefree air since 1976

VENTILATION AND AIR FILTRATION: WHAT AIR FILTRATION COMPANIES AND THE TOBACCO INDUSTRY ARE SAYING

December 2004

COMPANIES AGREE THAT VENTILATION SYSTEMS DO NOT ELIMINATE HEALTH RISKS CAUSED BY SECONDHAND SMOKE

- **Allergy Control Products, Inc.:** "Allergy Control Products, Inc. does not claim that air cleaners offered in this catalog will protect people from potential health risks associated with secondhand smoke."¹
- **Allergy Buyers Club, Inc.:** "Improved ventilation and use of air purifiers may reduce, but will not completely eliminate, your exposure to secondhand smoke and the associated health risks."²
- **Brookstone:** "No air purifier can protect against the health hazards associated with secondhand tobacco smoke."³
- **Espitech Air Products:** "We make no medical or health claims whatsoever and it is not our intention to do so.... [The] goal or objective of [the] air purification systems that we sell, for use in a smoking environment, is to provide relief from the annoyance of the odour produced by tobacco smoke as well as some of the discomforts that the smoke (fumes) and odour causes. Espitech Air Products disclaims all warranties, implied or otherwise, that anyone (non-smoker or smoker) who installs our air purifiers, air cleaners, or air scrubbers as an alternative to seeking a smokefree environment will be protected from the health risks caused by exposure to second hand smoke."⁴
- **Honeywell:** "Honeywell has not in the past and does not make health hazard claims."⁵
- **IQAir North America:** "[Air filtration] doesn't remove the risk of secondhand smoke. It would reduce the amount of smoke in the air over an amount of time. In my opinion, air cleaners are not going to be a solution. Air cleaners can not reduce the initial exposure [to smoke] and that's where the risk is coming from."⁶
- **Peak Pure Air:** "Nowhere [sic] do we claim that our products eliminate all hazardous contaminants... No! ... not any product on earth will eliminate health hazards cause by exposure to second hand tobacco smoke. After one has been exposed, the damage is done.... In a perfect world we would not need to worry about secondhand tobacco smoke."⁷
- **Radio Shack:** "We make no claims that this product will protect people from second-hand smoke....The Environizer electronic air purifiers do not eliminate such [health] hazards....The Environizer will not help remove gases that are found in tobacco smoke."⁸
- **The Sharper Image:** "No air cleaner can protect against the harmful effects of secondhand tobacco smoke. Clean air begins with a smoke-free environment."⁹

- **Wein Products, Inc.:** “No air filtration or air purification system has been designed that can eliminate all the harmful constituents of secondhand smoke. A reduction of the harmful constituents of secondhand smoke does not protect against the disease and death caused by exposure to secondhand smoke. The U.S. Surgeon General has determined secondhand smoke to cause heart disease, lung cancer, and respiratory illness.”¹⁰

VENTILATION DOESN'T PROTECT YOUR HEALTH – THE TOBACCO INDUSTRY KNOWS IT

- **Philip Morris USA** carries a disclaimer on its web site under a section entitled “Policies, Practices and Positions – Public Place Smoking” that admits ventilation does not address health issues: “While not shown to address the health effects of secondhand smoke, ventilation can help improve the air quality of an establishment by reducing the sight and smell of smoke and by controlling smoke drift.”¹¹
- Although the Philip Morris-sponsored *atmospherePLUS*, a heating, ventilating and air conditioning consulting program, promotes “enhanc[ing] indoor air quality through ventilation,” a promotional brochure’s fine-print reads: “*atmospherePLUS* does not purport to address health effects attributed to smoking.”¹²
- The **Options**, Philip Morris USA web site stated: “Our programs are not intended to address the health effects attributed to secondhand smoke.”

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⁸ J. Christian Angle, Trademark/Corporate Attorney for RadioShack Corporation. “[RadioShack letter re: performance of air purifiers and health hazard claims on www.radioshack.com.]” *RadioShack Corporation*. May 26, 2004.

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¹⁰ Stan Weinberg, Chairman and CEO of Wein Products, Inc., “[Disclaimer re: air purifiers do not protect against adverse health effects caused by secondhand smoke.]” *Wein Products, Inc.* Accessed on April 28, 2004. Download at <http://www.weinproducts.com/smoke.htm>.

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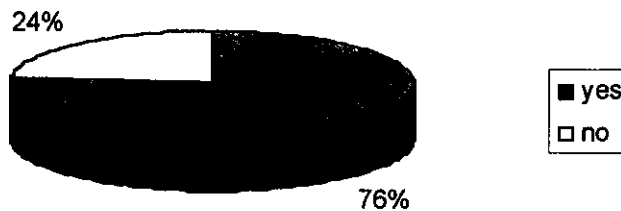
North Dakota House Bill 1030
Grafton FBLA Community Service Project
Committee: Brent Dusek, Cortney Shuley, and Shane Paulson

On behalf of the North Valley Career and Technology Center's Future Business Leaders of America Chapter, we would like to share with you our efforts and support in banning smoking in all public places and work places.

First, we had no idea where to start; fortunately for us, the 2004 general election was near. We decided to assess our community to find out their views on a smoke-free city. We designed a survey with the following questions:

- 1.) Do you smoke?
- 2.) Do you believe second-hand smoke is harmful?
- 3.) I believe Grafton should ban smoking in all public places.
- 4.) I believe Grafton bars should be included in the smoking ban.

Ban Smoking in All Public Places



Six hundred and twenty-one people completed our survey. Seventy-six percent said "yes" to I believe Grafton should ban smoking in all public places. By the results of our survey we knew Grafton had a desire for change to make their community a healthier place to live.

We received over 40 comments on our survey. Over 95% were positive. Some of the most powerful comments included:

- "My sister can't even walk by smoke without her throat closing up."
- "I have friends who died of smoke related illness."
- "No Smoking any Public Places."
- "I have asthma and find it difficult to be in places where smoking is allowed."
- "Second-hand smoke kills!!!"

➤ "I am strongly against smoking in any public setting."

➤ "Because of your choice, I don't want to get sick."

We then tallied our results and presented them to the Grafton City Council. They told us we had two options: to initiate a city-wide petition that must be preceded by a city ordinance and then once the petitions would be turned in to the city auditor, she would have ten days to review the signatures and the city council would have 30 days to either pass the ordinance themselves or have a special election within 90 days from whence the petitions were turned in.

Where do we go from here? We had no idea; no one in Grafton had ever attempted to make Grafton smoke free. Many community members have wanted to see it happen, but no one has taken action to see it through. As Future Business Leaders of America, we were ready to take on such a mission that would impact our community that we so dearly care about.

We met with Mylo Eianarson, our city administrator. His advice was very beneficial on the legal steps that need to be taken. He recommended that we meet with Nick Hall, the city attorney. Nick was responsible for drawing up the city ordinance that we needed to initiate the city-wide petition. We then contacted the city auditor, Connie Johnson, to find out how many signatures we needed in order to pass the ordinance. The number of signatures would be equal to 15% of the voting population in the last governors' election. According to her numbers, we needed 257 signatures.

We met with Nick Hall again to discuss what businesses would be most affected by the ordinance. We decided that it is in the best interest of the public that we should ban smoking in all public places and work places excluding enclosed bar areas.

After Nick Hall drew up the ordinance, we were ready to circulate our petition. After the first week of meeting our public, we had over 390 signatures; we were confident this is what our community really wanted to take effect and soon.

We then presented to the city council a follow-up presentation on our efforts and recognition since we had last met with them. At the city council meeting on Monday night, Mark Lindsay had asked us to not hand in our signatures, because of what could be passed at the state level. After presenting to the city council and hearing their comments, we ~~had~~ felt a meeting was essential. We met with our Mayor, Fred Stark; Mylo Eianarson, city administrator; Mark Lindsay, city council president, and Ruth Jelinek, Tobacco Prevention Coordinator for the Walsh County Public Health District. At this meeting we discussed the timing of which we would hand in the petitions. We

wanted to discuss that if that the state does not pass this, we will indeed hand in our petitions. Another key point to this meeting was to gain the city officials support and to let them know how serious we are in making Grafton a smoke-free community.

Once we hand in our petitions we will form a committee from community members and civic organizations to help us campaign. We have heard the needs of our community and we are ready to see our goals met to make Grafton smoke-free in all public places and work places excluding bars.

We as high school students are exposed to second-hand smoke in many ways. Many of our fellow classmates work in restaurants and other public places and are exposed to second-hand smoke on a daily basis.

Statistic show that restaurant workers have a 50% higher chance of getting lung cancer than the general population. Now ask yourself, is this right? Should an innocent teenager who is learning the responsibilities of the workforce be exposed to things such as this?

We believe it is not only wrong, but unconstitutional as well. We believe this because it is every employer's job to provide the safest working environment for their employees. An employer's number one priority is to provide a healthy environment for their customers and employees. A healthy environment is a happy environment.

Opposition to the smoking ban fears that they will lose business. They feel that many people will go to another town where smoking is allowed in restaurants. Multiple studies around the nation have proven consistently that there is no economic change in business by make the choice to have a smoke-free establishment. We can understand that people may leave to go to another city to eat at a restaurant where smoking is allowed, but what's stopping people from coming from another town to a non-smoking restaurant for an enjoyable dining experience? The question is, "Will the customers leave town?" With the never-ending increase in gasoline prices and the idea that the human-being is a creature of comfort, people will refuse to waste the money and the time to travel to another city to enjoy a meal when they can eat in town.

We are doing everything in our power as future business leaders to make a healthy community. Now we ask for the support at the state level. Everyone has the right to breathe clean air, because second-hand smoke is nothing to 'snicker' about.

Hearing on House Bill 1030
"Smoking Restrictions in Places of Public Access and Nonpublic Workplaces"
Government and Veterans Affairs Committee
Testimony presented by
Mary E. Muhlbradt
Thursday, January 20, 2005

Good morning, Chairman Haas and members of the Committee. I'm Mary Muhlbradt of Minot, a member of the Community Education staff at Trinity Health and a member of Minot's tobacco prevention coalition.

As the first North Dakota city to enact broad smoke-free legislation, Minot has a leg up when it comes to judging its impact on a community.

It was in 2001 that Minot voters upheld a smoke-free restaurant ordinance by a margin of 55% to 45%. That ordinance took effect three years ago this month.

In those three years the impact of the law has been poked and prodded. We can say four things about Minot's smoke-free restaurant law. It's been wildly popular, economically neutral, has posed few enforcement problems, and has had a positive impact on the health of the community.

Popularity. A random sample survey of Minot voters, conducted more than a year and a half after the ordinance took effect, found that 80% of voters support the smoke-free law. That's a 25-point gain from the ballot vote itself. (A frequent comment coming from Minoters is how lucky we are to have the pleasure of smoke-free dining. And when we eat out in other cities, we realize just how spoiled we are.)

Economic Impact. We know that clearing the air in our eateries did not clear them of patrons. Using objective data from the State Tax Department, Minot State University analyzed six years of sales tax receipts and concluded that there has been no economic effect or adverse change in restaurants sales due to the smoke-free ordinance. This was a detailed and thorough study, which time does not permit me to share *in toto*.

Enforcement. As expected, Minot's smoke-free dining ordinance is self-enforcing. A study of restaurant compliance reveals a high 96% compliance rate. Ironically, the few problems that have occurred have all stemmed – not from the *removal* of smoking activity but from the ordinance's attempt to *accommodate* smoking. I'm speaking of exemptions. Minot's ordinance allows an option for separately enclosed and ventilated smoking rooms. Only one restaurant chose to invest substantial dollars in structural modification. Yet this single instance plunged the city council into months of debate over unproven ventilation systems, negative air pressure, questions as

(more)

to what constitutes a door, and whether the "nose test" is sufficient to judge acceptable air standards. If there's a single lesson to come out of Minot's experience, it is that exemptions aren't worth the trouble they generate for policy makers. I'm no expert, but I know that many of the toxins in secondhand smoke are odorless and invisible. Ventilation may help reduce some of the irritable effects of smoke, but it doesn't eliminate its poisonous components.

Health. By far the greatest benefit to our community relates to public health. While I have no scientific data on this point, common sense tells us that smoke-free policies have a positive impact on employees and customers. Anecdotally we hear reports that Minot wait staff now experience fewer headaches and fewer respiratory problems, not to mention relief from the very serious chronic conditions that show up over time, such as emphysema and cancer.

I sympathize with business owners who view with disdain the prospect of more government control in their business lives. Regulation and red tape merit constant scrutiny. But regulating the devastating effects of secondhand smoke is no different from controlling water purity or the temperature at which we cook our meat.

As part of Minot's survey on attitudes, surveyors found that some 61% of voters say they believe that people's right to breathe clean air outweighs a business owner's right to choose whether to allow smoking. Freedom stops abruptly at the point where smoking exposes others to air that will damage their health. This is especially true for workers, who must linger for hours in a smoky environment.

I applaud the work of this committee. My hope is that you will move in the direction of 100% smoke-free. Thank you.

**Testimony
House Bill 1030**



**House Government and Veterans Affairs Committee
Thursday, January 20, 2005**

**June Herman
Senior Advocacy Director, American Heart Association**

Good morning, Chairman Haas and members of the House Government and Veterans Affairs Committee. My name is June Herman, and I am the senior director of advocacy for the American Heart Association. I am here today to testify in support of establishing smoke free public health protections, and I encourage the committee to extend those protections to all North Dakota workers.

Previous testimony has provided you with the cardiovascular implications of the exposure to second-hand smoke, and attached to my testimony is a document showing how even a little exposure is dangerous. So much so that heart patients, and those at risk of heart disease are now being warned to avoid all secondhand smoke.

You may find that smoke free policy development will sort into two key policy areas – public health protection and business regulation. If you approach this bill as a public health issue, given the science provided to you today, how could one group of workers be asked to work in an unsafe environment while others are protected? Worker safety protections have always been applied as extensively as possible. For this worksite health issue, the only proven protection is 100% smoke free air. Unfortunately, HB 1030 seeks to exempt a sector of the workforce that is also the least likely sector to provide any type of health coverage. So not only do we place those workers at risk, their health care becomes the responsibility of government health programs, or other employers.

If you approach this bill as a business regulation issue, the debate will quickly become one of why one worksite must comply, and others don't. The recent Fargo, W. Fargo, and Moorhead smoke free policy work is a good example of how hard it is in a competitive hospitality environment to draw a fair, clean line of exemptions. That is why the Fargo City commission was ready to move with a 100%, comprehensive policy, and why Moorhead did the same. Unfortunately, the work unraveled with one hospitality venue seeking exemptions, then another, then another.

You will find granting exemption for one sector to be a slippery slope, as bar/grill establishments seek to compete with "bar" establishments, and restaurants with bar/grill establishments, business restaurants with clubs and organizations. And they all have one thing in common – workers exposed to environment poisons that threaten their health.

In North Dakota, a greater number of hospitality sites now understand the health impact to their workforce, and realize the liability they can face in exposing their workers. What many of them seek is a common workplace health policy that levels the playing field for all. Attached to my testimony I've attached a copy of a letter on this matter from a Jamestown truck stop owner who encourages that every work place is covered with your policy.

Whether a public health policy, or a business regulation issue, the fairest approach for all is requiring smoke free protections of all worksites.

A little is dangerous...

Short-term exposure to secondhand smoke does real damage, far beyond the stench and irritation. This means hospitality patrons are at significant risk, along with restaurant and bar employees.

♥ 5 minutes exposure=smoking a cigarette...

Five minutes exposure to secondhand smoke stiffens the aorta (the main artery carrying blood from the heart to the body) as much as smoking a cigarette. More arterial stiffness makes the heart work harder to pump blood.

♥ 20 minutes exposure=smoking a pack a day...

Twenty minutes of breathing secondhand smoke at levels similar to those measured in bars activates blood platelets involved in the clotting process as much as it does in pack-a-day smokers. These activated platelets increase the chances of heart attack or stroke. In the short term, activated platelets are more likely to form a blood clot (thrombus) in the blood stream. If this clot blocks an artery in the heart, it causes a heart attack. In the brain, it causes a stroke. Long term, activated platelets can also damage the artery lining in a way that leads to cholesterol buildup; narrowing the arteries in turn causes coronary heart disease, chest pain, and heart attacks.

♥ 30 minutes exposure= stiffened, clogged arteries...

Thirty minutes of secondhand smoke compromises a non-smoker's coronary arteries to the same extent as in smokers. A non-smoker's coronary arteries can dilate and boost flow to heart muscle better than a smoker's. After half an hour of secondhand smoke exposure, a non-smoker's arteries lose the ability to dilate to the same extent as a pack-a-day smoker's.

Thirty minutes exposure also compromises the ability of your blood to manage LDL ("bad") cholesterol by depressing anti-oxidant defenses—and the effect persists for several hours after exposure ends. These changes boost the risk of building up arterial fat deposits that lead to heart attack and stroke.

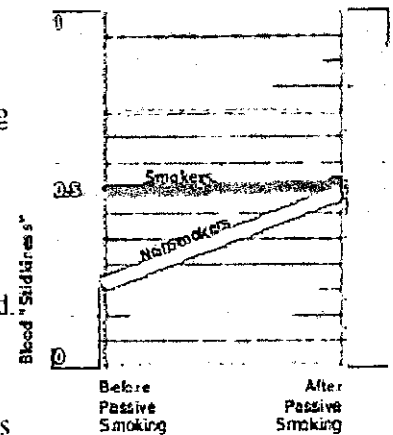
♥ 2 hours exposure=greater risk of irregular heartbeat...

Breathing secondhand smoke can also speed up your heart rate while, at the same time, reducing "heart rate variability"—small, random variations in heartbeat. While the mechanism is not yet fully understood, reductions in heart rate variability signal problems in the nervous system's control of the heart, increasing the chance of an irregular heart beat (arrhythmia) that can itself be fatal or trigger a heart attack.

All of these effects not only increase the long term risks of developing heart disease, but also increase the immediate risk of heart attack. And if someone suffers a heart attack while breathing secondhand smoke, it will likely be worse.

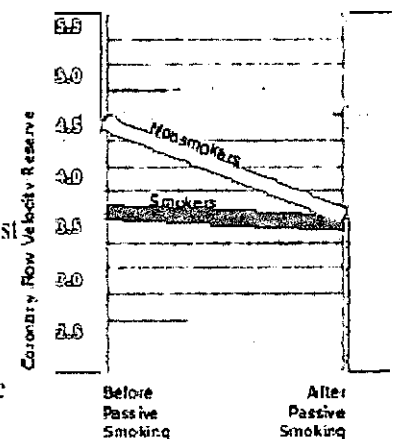
Helena Montana Emergency Room heart attacks decreased 60% when a city smoke-free policy was implemented. Contact us on how you can make your health count in your community.

Effect of Second Hand Smoke on Blood "Stickiness" of Smokers vs. Nonsmokers



Just twenty minutes of second-hand smoke exposure makes non-smokers' blood platelets as "sticky" as smokers' platelets.

Effect of Second Hand Smoke on Coronary Arteries' Ability to Increase Blood Flow of Smokers vs. Nonsmokers



Absent secondhand smoke, a non-smoker's coronary arteries can dilate and boost flow to heart muscle better than a smoker's. After 30 minutes of secondhand smoke exposure, a non-smoker's arteries lose the ability to dilate to the same extent as a pack-a-day smoker's.

Vining Oil & Gas, LLC

301 2nd Ave. NW

Jamestown, ND 58401

January 7, 2005

Rick Clayburgh
Tax Department
600 First Blvd 7th Floor
Bismarck, ND 58505-0599

I support the Smoke free work place act and am writing to ask that you do all you can to support any related measures.

Every year, secondhand smoke kills 65,000 Americans. And every worker in North Dakota deserves to be protected from the dangers of second hand smoke, but the current legislation leaves several workers exposed to deadly toxins.

The Smoke free work act gives us a historic opportunity to change that. Workers in public places would no longer have to breath second hand smoke in order to do their jobs. They would be more productive in a healthier workplace.

The new protections will save thousands of lives. If every workplace in the state is covered, there will be a level competitive playing field. Polls show that most North Dakotans support the measure and would patronize smoke free establishments.

It is time for every worker to be protected from second hand smoke. Support the smoke free workplace act.

Sincerely yours,



David Vining

Vining Oil & Gas, LLC

With locations at:

Jamestown
Carrington
Bowdon
Fessenden
Cando
Bimford
Cooperstown
Konsal
Valley City
Daisy
Rogers
Litchville

D&J Enterprises

With Locations at:

Jamestown
Carrington
Washburn
Bismarck
Linton
Ellendale
Lisbon

TESTIMONY ON HB 1030

House Government and Veteran's Affairs Committee

Thursday, January 20, 2005

by Valerie Fischer, Director of School Health

328.4138

Department of Public Instruction

Chairman Haas and members of the committee:

My name is Valerie Fischer and I am the Director of School Health for the Department of Public Instruction. I am here today in a neutral position on HB 1030, and on behalf of the 109,805 students attending school across the state, I ask your consideration of two bill amendments.

The first amendment I ask your consideration of is found on page 2, # 1e. We would prefer the statement read, "Public and private elementary or secondary school buildings, educational facilities, **school owned or leased vehicles** or the property on which those facilities are located". Adding **school owned or leased vehicles** is meant to include buses. The topic of many calls received by our office is one where parents complain that bus drivers smoke on the bus while waiting to pick up children – thus, children enter and remain in a smoke environment, many for up to 1 hour, twice a day. We've encouraged school administrators to request drivers refrain from smoking on school buses, but in the case of leased vehicles, they often have little, if any influence.

Secondly, we would ask the committee's consideration to delete # 2i on page 4. Allowing adults to smoke in designated smoking areas in private schools or educational facilities during non-school hours is a violation of the Pro Children's Act, which is federal legislation in conjunction with No Child Left Behind. President Bush clearly identified all school buildings, public or private, be smoke free – day or night. Since 1994, any public or private school receiving federal funds must provide assurances that their school building is smoke free. The prohibition ensures that children will not witness adult role models smoking. Elimination of this section would maintain continuity with federal legislation.

This concludes my testimony and I'd be happy to answer any questions.

Mr. Chairman and Committee Members-

I am Susie White-my husband, children and I-own and operate the Lone Steer in Steele N.D. We have served people in a smoking and non smoking environment for 26 years. I want to continue to do that for some time to come.

I am thankful in a free America that I am able to give my opinion on such a serious decision that will affect so many of us, in many different ways. I also worry about staying a free American when I see these kinds of rules in the process of trying to be enacted. I hope we keep in sight that every time we allow another law to force us to run, skip and jump-ALL of us are giving away a little bit of that freedom. If we continue in this fashion, eventually it will be something that seriously affects your business, beliefs or traditions lived for many years.

House Bill # 1030 will seriously affect our business. Our clientele consists of many truckers, farmers and young construction and service skilled persons. The majority of them smoke. We offer a non smoking area for all of those same people that do not smoke. We have good ventilation-high ceilings and seldom have a complaint. For 26 years this has worked..

This bill is absolutely unfair for even considering the exemptions of clubs and fraternal organizations. If we are truly trying to protect peoples health-don't our Vets count?.My husband is a Vet and I think he is fairly important.

In Steele we have a private club, which as most clubs, does not follow the rules about membership-signing quest books-etc. Everyone and all ages are allowed to enter at all times. These non- profit clubs already operate at an advantage as they are allowed to use gaming funds that we can't - they can allow volunteer service, we must pay labor and many more non-profit rules that already put them at a huge competitive advantage . We are already competing against a non-profit entity that sells food for prices we cannot compete against, and now we are going to allow them to let their customers smoke and the rest of us have to say no?

I believe this bill will seriously affect all 3 for profit rest's. in Steele. We do not have the luxury of choosing if we want to be smoking or non-smoking, like restaurants in larger cities. We need every customer we can get. A small restaurant in Robinson that chose to go non-smoking is closed 1 year later.

My friend smokes, when I confront her she reminds me by asking "what if obese people would not be allowed in a grocery store or a restaurant ? What if people would not be allowed on a beach because of the chance of skin cancer?"

I own and pay taxes on my business. I am an American and I'm free and believe it or not I am 21- I am responsible for my decisions and how it affects my business. I ask you today to allow me to continue that freedom by voting against this bill.

Thank You.

To: Russ Hanson

Add Notes

701-223-5004
Per your request,
I'm taking the
Smoking Leg Ban
passed in 2000
& HB 1075 from
this year Jerry W.

State of South Dakota
EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

319L0488 HOUSE BILL NO. **1075**

Introduced by: Representatives Frost, Cutler, Elliott, Gassman, Glenski, Hunhoff, Kraus, Lange, McCoy, Miles, Rave, Roberts, Thompson, Van Etten, and Weems and Senators Sutton (Duane), Adelstein, Hansen (Tom), Hundstad, Knudson, and Kooistra

FOR AN ACT ENTITLED, An Act to repeal certain exceptions to the prohibition on smoking in certain public places.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 22-36-2 be amended to read as follows:

22-36-2. No person may smoke tobacco or carry any lighted tobacco product in any public place or place of employment. This section does not apply to any sleeping room in a lodging establishment as defined in § 34-18-1, to any on sale licensoc pursuant to chapter 35 4, to any video lottery licensed establishment pursuant to chapter 42-7A, to any licensoc pursuant to chapter 42 7B, or to any tobacco or packaged liquor store if the store is primarily used for the sale of tobacco or alcoholic beverages, or both, and the sale of other products is merely incidental.

A violation of this section is a petty offense.

300 copies of this document were printed by the South Dakota Legislative Research Council at a cost of \$.029 per page.
Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

American Lung Association of North Dakota: Testimony
HB No. 1030
Thursday, January 20, 2005

Good morning, Chairman Haas and members of the Committee. My name is Janel Schmitz, and I am the executive director of the American Lung Association of North Dakota, and coordinator for the North Dakota Tobacco Policy Coalition. I am here to request a "do pass" vote for House Bill 1030 with the suggested amendments attached. We greatly appreciate the foresight of the Criminal Justice Interim Committee in forwarding this legislation, and are submitting amendments in order to protect all workers in North Dakota.

The North Dakota Tobacco Policy Coalition members in support of this testimony consist of the North Dakota Society of Respiratory Care, North Dakota Nurses Association, North Dakota School Nurse Organization, North Dakota Medical Association, American Cancer Society, American Heart Association, and the American Lung Association.

The specific amendments are detailed in the attachment. We recommend deleting lines 19-30 on page 3 and lines 1-12 on page 4. We suggest the language on the attachment be inserted. This language protects all workers in North Dakota, and also adds important language regarding the use of tobacco in spiritual and cultural ceremonies for American Indians.

I am here today because too many North Dakotans are dying from smoking, and smoking related illnesses. This bill is before you because you have the opportunity to impact the health and well-being of North Dakotans for generations to come.

You have heard many statistics this morning. In my work, I hear stories of our friends and neighbors. I hear from employees who are unable to visit with upper management about a smoke-free policy at their workplace for fear of retribution. I listened to the pregnant woman who was told by her physician that she would have to give up her office job and its benefits because of the second hand smoke and its impact on her unborn child. I hear families share their frustrations when one family member has asthma. It restricts the activities of an entire family, often forcing them to avoid facilities where smoke will be present.

I am here today because this is an issue that requires a law. We protect workers in our state – through a variety of labor laws that govern working conditions. We have laws so ten-year olds can't work in factories, so people have adequate light and heating in their work area, so people don't have to work lengthy hours without a break, and without adequate compensation. All of these laws are in place because somewhere along the line, some business owners didn't protect their workers.

As you have heard, secondhand smoke contains numerous chemicals that are medically proven to cause cancer, heart disease, and respiratory illness. At this time, an estimated 60,000 North Dakota adult workers, or 1 in 5, are not protected by a smoke-free policy in their work area. This number does not include the thousands of young North Dakotans aged 15-21 who work in these environments.

The choice for the non-smoker to avoid smoking environments in their work is not realistic- there aren't enough jobs to be found. The 60,000 North Dakotans who work in smoke-filled environments need you as legislators to stand for them, and protect them from secondhand smoke.

Other industries have recognized the need. I would suspect most of you remember when smoking was allowed on airplanes. At that time, the airline industry received numerous complaints from Congress members who were frequent fliers, and from the airline employees. The airline industry went smoke-free. Today, it seems ludicrous to think of someone smoking on an airplane.

The same is true for the movie industry. How strange it would be today to have someone light up next to you while you watched the latest Julia Roberts flick. People who smoke manage to sit through a two-hour movie or endure a four-hour flight without a cigarette. It makes sense that they could do the same in other environments until an appropriate break time, and outside of the workplace.

Other state legislatures have taken on this same issue – and have chosen to protect all workers in their states. Currently, smoking is prohibited in all workplaces in six states - California, Connecticut, Delaware, Maine, Massachusetts, and New York.

In North Dakota, we take pride in caring for our neighbors. There is rarely a spring planting season that goes by when we don't hear of a group of farmers helping an ailing neighbor. In this tradition, I ask you to extend our sense of community caring to include protection of all workers to breathe smoke-free air.

When I started, I said I was here because too many North Dakotans were dying from smoking. Smoke-free workplaces help create the environment that makes it easier for people to quit smoking. Philip Morris' own documents state that when workplace environments are smoke-free, "smokers consume 15% fewer cigarettes and quit at a rate that is 84% higher than average." This law, with the proposed amendments, will help create the environment needed to help smokers beat their addiction to cigarettes.

The American Lung Association of North Dakota, and our partners, would be happy to help you draft a more comprehensive bill that protects all workers.

This concludes my testimony. I will be happy to take any questions you may have.

**American Lung Association of North Dakota
House Bill 1030 Suggested Amendments**

Remove from House Bill 1030:

- Page 3: Delete lines 19-30
- Page 4: Delete lines 1-12

Add the following language:

1. The following areas are exempt from subsection :
 - 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, provide that smoke from these places does not infiltrate into areas where smoking is prohibited under this section.
 - d. Outdoor areas of employment, except a sports arena.
 - e. Any area which is not commonly accessible to the public and which is part of an owner-operated businesses having no employee other than the owner-operator.
2. Smoking as part of a traditional American Indian spiritual or cultural ceremony is not prohibited.
3. 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.
4. This section may not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

LETNES RESTAURANT GROUP

P.O. Box 577 • 131 South 2nd Avenue • Waite Park, MN 56387 • (320) 259-0589 • FAX (320) 259-6070
January 19, 2005

To Whom It May Concern:

We are writing this letter in response to the proposed legislation regarding a no smoking ban pending with the North Dakota State Legislature. As operators of fourteen Grizzly's Grill N' Saloon Restaurants, which are located in North Dakota, Minnesota, and Wisconsin, we have a history of how various no smoking laws have affected business.

First of all, we are not opposed to a smoking ban put into law, even though we believe it will hurt our business. What we are opposed to is allowing some businesses to be exempt from this law, either because of the nature of their business or the design of their facility. In all fairness, if a no smoking law is passed, we believe it should be applicable to all businesses which serve food and/or alcohol to the public. This includes all bars, bowling alleys, Legion Clubs, etc. – no exemptions. One of the primary purposes of a smoking ban is to protect all employees of these businesses from second hand smoke. By exempting certain businesses, it would fail to protect these employees. Another purpose of this law is to protect the general public from second hand smoke. We do not believe that the legislature should be able to pick and choose to make certain businesses exempt from the smoking ban law thus not protecting the entire general public.

If a no smoking law were to pass, with exemptions, it would give some businesses an unfair advantage. As an example, we have a Grizzly's in Duluth, Minnesota where a law was passed that allowed some restaurants to keep smoking sections. Because of the design of our facility, we could not allow smoking. Our business has declined approximately 25% since this law was passed.

We could go on and on, as no smoking laws have been passed in approximately half of our locations. Each law is somewhat different in each location but unfair nonetheless. Sometimes unfair to us and sometimes unfair to our competitor because we have been able to keep a smoking section and they have not. We are asking that if you pass a no smoking law, please do not make any exemptions to this law. Thank you for your consideration regarding this.

Sincerely,

Curt and Steve Letnes
Owners
Letnes Restaurant Group

ND Hospitality Assn. Testimony - Bill Shalhoob
House Government and Veteran Affairs Committee
HB 1030

Mr. Chairman and members of the committee, my name is Bill Shalhoob and I represent the ND Hospitality Assn. For the record I am also the current owner and operator of Schlotzsky's Deli and the Select Inn of Bismarck. I have been an owner and operator of various hospitality properties in North Dakota since 1974.

The North Dakota Hospitality Assn. opposes HB 1030 for several reasons and we will be offering several amendments that are detailed on the last page of my testimony. Our first point is that there is a substantial and meaningful difference between publicly owned buildings and privately owned buildings open to the public. Property ownership rights and the control of a person's property is among our most basic rights as Americans. Government has no business interfering in this basic right and it should be left up to each property owner to determine what best serves his interests as long as he follows the law.

While this bill has appeared in some form or another for the past several sessions, this time sponsors are citing the Attorney General's opinion that smoking is a reason the Labor Commissioner can regulate such activity, that is that smoking places employees in surroundings or conditions which may be detrimental to their health. This is language found in ND 34-06-05 and cites the Labor Commissioner's dealing with conditions that deal with "health and morals" of employees, a nebulous charge at best that could be simply removed from statute. Please be reminded that our employees are in our establishments by choice, not by forced indenture as seems to be implied here. Indeed many are smokers who choose to work in one of the few workplaces where they can smoke. And while we do work very hard and spend lots of money advertising for

customers to frequent our businesses, they are generally aware of individual smoking policies around their area and absolutely aware after their first visit. The best way to vote is with your patronage. Don't go to a facility if you don't like their smoking policy the same as you would if you don't like their food, service, prices, cleanliness or atmosphere. The marketplace and our operators are already responding to the demand for smoke free facilities. These changes are being based on customer demand and the business decisions that best serve the interests of the business owners. Over 70% of hotel rooms and many restaurants have been converted to non-smoking over the past five years. As noted in the Bismarck Tribune, the last two major restaurants to open in Bismarck have started as smoke free facilities and many others like the Seven Seas and East Forty now limit smoking to the bar area.

In North Dakota we must be mindful that one size does not fit all. There are many small cafes around the state barely hanging on. If this change causes them to lose even 10% of their annual volume it could mean the difference between survival and failure in area where they may be only restaurant around. We do have local options for local areas as were exercised by the voters of Fargo, West Fargo and Minot and rejected by the voters in Dickinson.

We are offering several amendments to this bill. On page 1, line 22 after "restaurants" add "casinos." While we know we this law cannot be applied to casinos on reservations, it should to keep everyone equal, and there have been proposals for casinos in Grand Forks and Bismarck and if built the smoking ban should be applied. On page 3 delete lines 19, 20, and 21. Do the employees or patrons of a social, religious or fraternal organization get a pass from the supposed harmful effect of second hand smoke

along with their membership. If so we'll all get in line for one. We feel any membership distinction has disappeared in North Dakota. Anyone in this room can walk into any club on any night and eat or drink with or without a membership and this class of business does not deserve special treatment. After changing the letters to reflect this deletion, on page 4, line 2 after "premises" add "including bars located within hotels, motels or restaurants that are not licensed primarily or exclusively to sell alcoholic beverages on the premises." We believe this is the intent of the bill and clarifies the objective of this exemption. On page 4, lines 6 & 7 after "international" to read "airport, food establishment hotel or motel" to match the language in lines 2 & 3. On page 4 delete lines 9 & 10. How can a mechanical engineer certify the prevention of smoke drift without creating a ventilation system equal to a hospital operating room? We believe even if an attempt to create a separate smoking section is tried to be created, this language will make it cost prohibitive. On page 4 add a new subsection i "any establishment in a place of public access whose business is primarily or exclusively to sell tobacco products." We have a member who operates a smoke shop and feel he should be exempted.

This bill creates uneven competitive advantages in the marketplace. You can smoke in bars where food is served, fraternal clubs and casinos but not in restaurants. If you are big enough or have the financial resources you can create an area for customers to smoke but if you do not have the money to undertake an expensive remodeling or cannot overcome layout problems you will not be able to meet the criteria necessary to have a smoking section. If I have my own small office building, employ one other person, get no visitors and both of us smoke, we would not be able to do so.

We urge a do not pass on this bill. Thank you for allowing us to appear on this bill and I would be happy to answer any questions.

ND Hospitality Association Amendments
HB 1030

- 1) Page 1, line 22, after "restaurants," add "casinos"
- 2) Page 3 delete lines 19, 20, and 21.
- 3) Page 3, line 22, change "b" to "a" and so forth throughout these exceptions.
- 4) Page 4, line 2, after "premises:" add "including bars located within hotels, motels or restaurants that are not licensed primarily or exclusively to sell alcoholic beverages on the premises."
- 5) Amend lines 6 & 7 after "international" to read "airports, food establishment or hotel or motel."
- 6) Page 4 delete lines 9 and 10.
- 7) Page 4 add a new subsection i -- "Any establishment in a place of public access whose business is primarily or exclusively to sell tobacco products."



North Dakota EMPLOYMENT

A monthly newsletter designed exclusively for North Dakota employers

Law Letter

Lisa Edison-Smith, Leslie Bakken Oliver, Editors
Vogel Law Firm

Vol. 9, No. 6
July 2004

TOBACCO USE

AG's opinion clouds workplace smoking issue

Despite overwhelming evidence linking cigarette smoking (and other tobacco use) to increased risks of various cancers and heart disease, workplace smoking is subject to relatively few limitations under state law. North Dakota employers that operate "places of public assembly" must enforce a prohibition against workplace smoking, except within designated smoking areas. Violations carry minimal penalties, however. Because smoking is a "lawful activity," North Dakota smokers are protected against discrimination by employers under the North Dakota Human Rights Act.

In the big picture of state and federal workplace regulations, workplace smoking-related issues haven't been a major liability concern for most North Dakota employers, until recently. An April 2004 letter opinion issued by North Dakota Attorney General Wayne Stenejem raised significant health and safety concerns related to workplace tobacco smoke that every employer must take seriously. This article will review the legal "rights" and restrictions related to workplace smoking and discuss the latest developments related to workplace smoking and the possible impact on North Dakota employers.

All bark and no bite

Chapter 23-12 of the North Dakota Century Code (NDCC) regulates smoking or tobacco use in places of "public assembly." Under the law, smoking outside designated smoking areas is specifically prohibited. Places of public assembly are defined as theaters, auditoriums, gymnasiums, elevators, libraries, public transportation vehicles, health care institutions, and public transportation terminals. Any building or enclosed structure owned or leased by the state and all public education buildings are also considered places of public assembly.

Originally enacted in 1977, the focus of the law has changed as public awareness of the health risks associated

with smoking has increased. Initially, the law required the designation of "nonsmoking" areas in places of public assembly based on the presumption that everything else was a designated "smoking" area. In 1987, the law was amended to require the designation of "smoking" areas in places of public assembly. Smoking outside those designated areas was prohibited.

In 1993, the law was amended again to its present form. The obligation to designate a smoking area in places of public assembly was changed from mandatory to permissive. Any designation or enforcement responsibilities under the law are imposed on the building supervisor or, in the case of a private business, the proprietor.

Notwithstanding what appear to be good intentions behind this law, its enforcement authority is limited — "all bark and no bite." The Health Department is required to investigate complaints, but sanctions for violations are limited to a monetary fine not greater than \$100.

Smokers are a protected class

North Dakota is among several states that "protect" smokers from discrimination with respect to access to employment, public accommodations, housing, government

In this issue

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- ❖ Six times the 'n' word equals 'no' discrimination 2
- ❖ Employment law training: Are you really required to do it? 4
- ❖ What's your liability for constructive discharge? Supreme Court weighs in 6
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services, and credit transactions. Under the North Dakota Human Rights Act, Chapter 14-02.4, discrimination on the basis of "participation in a lawful activity during non-working hours, off the employer's premises" is strictly prohibited. You may not base an employment decision on an individual's "off-duty" smoking habit unless smoking is "in direct conflict with the essential business-related interests of the employer."

Attorney general puts new spin on old law

In April 2004, Stenejhem issued a formal opinion interpreting a 1919 state law about unsafe working conditions. According to the attorney general, Section 34-06-05 of the NDCC can apply to any injury, disease, or physical harm to employees resulting from inhaling workplace tobacco smoke. This opinion carries significant and far-reaching liability implications for North Dakota employers that now permit workplace smoking or have allowed it in the past.

Under NDCC 34-06-05 (2), it's unlawful to employ workers under surroundings or conditions that may be detrimental to their health. The attorney general concluded that the law's prohibition against workplace "surroundings or conditions" that are "detrimental to [employees'] health" could apply to tobacco smoke in the workplace. That conclusion is more than supported by studies proving the significant disease risk to a nonsmoker who inhales workplace tobacco smoke.

The state labor commissioner is authorized to investigate employee labor conditions and, according to the attorney general, can determine whether tobacco smoke in workplaces is detrimental to employees' health. The commissioner is also authorized to adopt administrative rules establishing labor condition standards for any state occupation and monitor compliance with those standards.

According to the attorney general, this law may provide a private claim against employers by employees injured by tobacco smoke inhalation. In other words, the "exclusive remedy" provisions under North Dakota's workforce safety and insurance laws may not apply to tobacco-related injuries. North Dakota has no reported cases of this nature, but other states have upheld similar claims made by employees against employers.

Labor commissioner's response

Citing the desire to expedite action on the attorney general's opinion and recognizing workplace smoking as a "significant public policy issue," the state labor commissioner deferred the matter to the state Legislature. The Legislative Council assigned the issue to the Interim Criminal Justice Committee to consider whether additional legislation is necessary to expand, limit, or clarify the existing statutory language. It's anticipated that the committee will sponsor legislation consistent with the attorney general's opinion during the 2005 legislative session.

Bottom line

The full impact of the attorney general's opinion is unknown, but the potential liability facing state employers is significant. Legislative efforts to regulate workplace tobacco smoke levels and impose effective sanctions are a sure bet during the 2005 session. For employers with smoking prohibitions in place, this issue may result in few immediate changes to your employment practices.

Remember, North Dakota employers have the right to ban smoking and all other tobacco use on work premises. Those of you who continue to permit employees to smoke during work hours should take a hard look at moving toward a smoke-free workplace. Aside from the liability potential identified in the attorney general's recent opinion, the benefits of a smoke-free workforce are numerous — increased productivity, lower health premium costs and fewer sick days, to name only a few.

Your editors will follow the interim committee progress and track any legislation related to standards for working conditions and workplace tobacco use. Stay tuned for updates on this important issue.

In the meantime, we encourage you to review your workplace smoking policies, consider becoming a smoke-free workplace, and become familiar with the attorney general's letter opinion. The full text of the opinion, 2004-L-27, can be accessed on the attorney general's website at www.ag.state.nd.us.

You can learn more about providing a safe and healthy work environment or any other employment law topic in the subscribers' area of www.HRhero.com, the website for North Dakota Employment Law Letter. Access to this online library is included in your newsletter subscription at no additional charge. ♦

RACIAL HARASSMENT

Six times the 'n' word equals 'no' discrimination

The Eighth U.S. Circuit Court of Appeals (which covers North Dakota) appears to be engaged in an effort to quantify the amount of proof that transforms isolated or occasional wrongful acts into a pattern of illegal conduct that creates a hostile work environment based on a protected characteristic. Last year, the court issued the rather surprising Duncan decision, wherein it established an elevated threshold for proving a hostile work environment based on a sexually harassing act. Now it appears as if the court has raised the bar to similar heights in the racial harassment realm by dismissing such a claim despite a rather impressive amount of evidence supporting it.

I beg your pardon?

Herman Jackson, an African-American, worked as a paste operator for 17 months. He testified that during that



Vision
The North Dakota Healthcare Association will take an active leadership role in major healthcare issues.

Mission
The North Dakota Healthcare Association exists to advance the health status of persons served by the membership.

Prepared by the North Dakota Healthcare Association
January 19, 2005

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1030

Page 1, line 15, replace "including" with ". It does not include a hospital licensed by this state under chapter 23-16. It does include"

Page 2, line 5, remove "hospitals"

Page 3, line 3, after the underscored period, insert "It does not include a hospital licensed by this state under chapter 23-16."

Page 4, line 10, remove "and"

Page 4, line 12, after "hours" insert " and
i. Any hospital licensed by this state under chapter 23-16"

Page 5, after line 9, insert:
"4. This section does not apply to hospitals licensed by this state under chapter 23-16. "

Page 6, line 3, after line 3, insert:
"2. Except as provided in subsection 3, nothing in this section authorizes any agency or entity to enforce this Act or any other smoking policies, rules, or ordinances in any hospital licensed by this state under chapter 23-16.

3. Nothing in this section precludes a law enforcement agency from enforcing any smoking policy adopted by a hospital licensed by this state under chapter 23-16, when, when requested to do so by hospital personnel."

Page 6, line 4, replace "2." with "4."

Page 6, line 8, after the underscored period, insert "Nothing in this subsection permits a city or county to enact an ordinance that addresses smoking in or on the grounds of hospitals licensed by this state under chapter 23-16."

Renumber accordingly

Assessment of Minot's Smoke-Free Restaurant Ordinance

Tobacco Education, Research & Policy Project
North Dakota Center for Persons with Disabilities
A University Center of Excellence
Minot State University
Minot, ND

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Abstract

An Assessment of the Minot Smoke-Free Restaurant Ordinance

Minot's smoke-free restaurant ordinance went into effect in January 2001. The people of Minot support the law, restaurant compliance of the law is high, business owners have voiced their support for smoke-free establishments and the law has had a neutral impact economically. The following is a summary of the assessments of Minot's smoke-free restaurant ordinance found within this document.

A random sample telephone survey of Minot voters, conducted in October 2003 found that 80% of voters support the smoke-free law, with an impressive two-thirds strongly favoring the law. 88% of the voters agree that restaurants are healthier and 80% agree it is more enjoyable to go out to Minot restaurants now that they are smoke-free. Most voters in Minot indicated that the right of business owners to make their own decisions regarding smoking *does not* outweigh the right of people to breathe clean air in public places. When asked which is closer to their own view, 61% of voters say people have a right to breathe clean air in restaurants and at work, so we should have laws that prohibit smoking inside workplaces, including restaurants. Only 35% of voters say business owners should have a right to decide if smoking is allowed or prohibited in their establishments.

A study of restaurant compliance conducted in 2003 found overall compliance with the restaurant ordinance was high at 96% compliance and the Minot Police Department stated there have been no problems with restaurant compliance.

Examples of business owner quotes:

"Business is up dramatically. People say they come in more often because we are smoke-free. Our wait staff's comments are really favorable regarding not having to breathe in secondhand smoke." (October 20, 2003). Owner of Homesteaders Restaurant.

"We opened the smoke-free bar to give nonsmokers a place to socialize. We have wonderful clientele from a wide range of occupations and professions. What they have in common is the desire to escape the smoke and enjoy themselves." (September, 2003). Owner of Blue Rider, a smoke-free bar opened since 1994

An economic impact study conducted by Minot State University on the Minot smoke-free restaurant ordinance found no economic effect of the ordinance on Minot restaurants. This study analyzed objective data collected by the Office of the North Dakota Tax Commissioner and included six years of data -- five years pre- and one year post-implementation of the ordinance.

For further information contact: Kelly Buettner-Schmidt, Project Director, Tobacco Education, Research and Policy Project, ND Center for Persons with Disabilities, Minot State University, 500 University Avenue, Minot, ND 58707.

January 2005

An Assessment of Voter Satisfaction with Minot's Smoke-Free Restaurant Ordinance

403 Voters
October 28-30, 2003

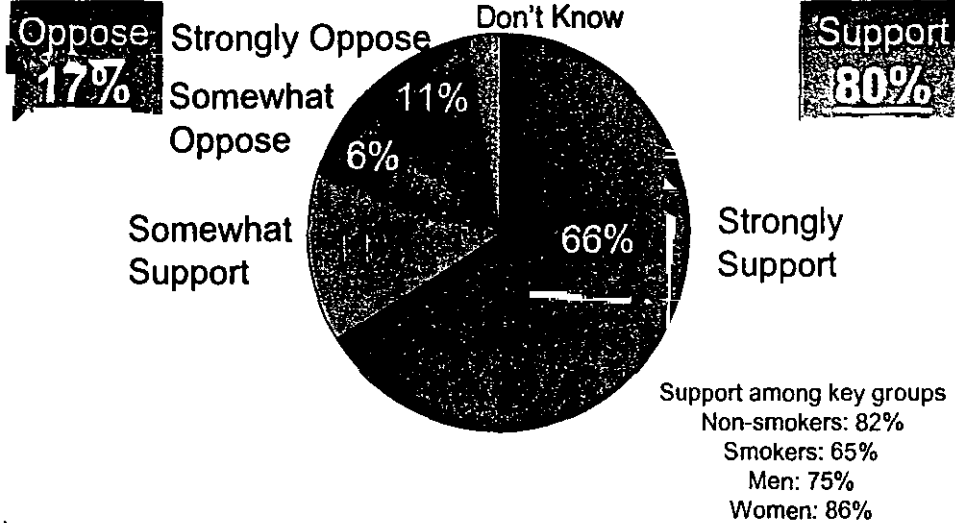
Survey Among Voters in Minot, North Dakota

Methodology

- The results of this survey are based upon 403 random telephone interviews among Minot, North Dakota voters who voted in the most recent general election, November 2002.
- The results are weighted by age to more accurately reflect the electorate in Minot, North Dakota.
- Interviews were conducted from October 28-30, 2003.
- A random sample of 403 has a worst-case 95% confidence interval of plus or minus 4.9% about any one reported percentage.
- Survey conducted on behalf of Minot State University by Harstad Strategic Research



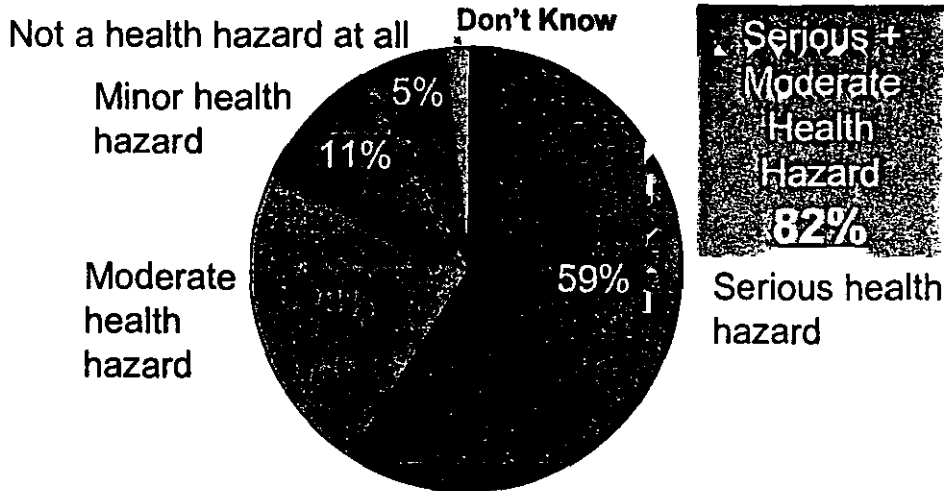
As you may know, a law went into effect in January 2002 prohibiting smoking inside restaurants in Minot. Now that this law has been in effect for nearly two years, is it something you support or oppose?



TERPP TOBACCO EDUCATION RESEARCH POLICY PROJECT

Survey Among 403 Voters in Minot, ND
 October 28-30, 2003

How much of a health hazard is exposure to second-hand cigarette smoke?



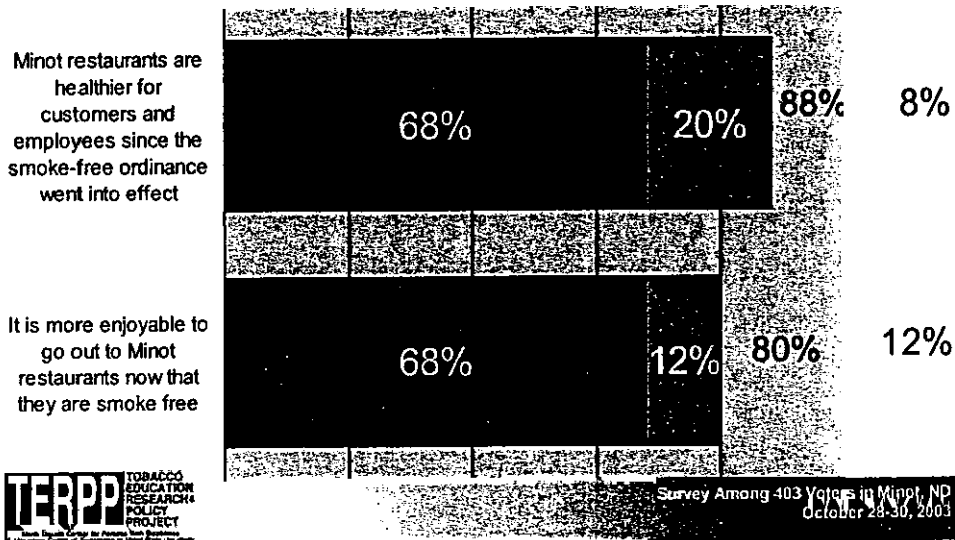
TERPP TOBACCO EDUCATION RESEARCH POLICY PROJECT

Survey Among 403 Voters in Minot, ND
 October 28-30, 2003

Minot Voters Agree That Restaurants Are Healthier & More Enjoyable Now That They Are Smoke Free

Percent who agree with each statement

■ Strongly agree ■ Somewhat agree Disagree

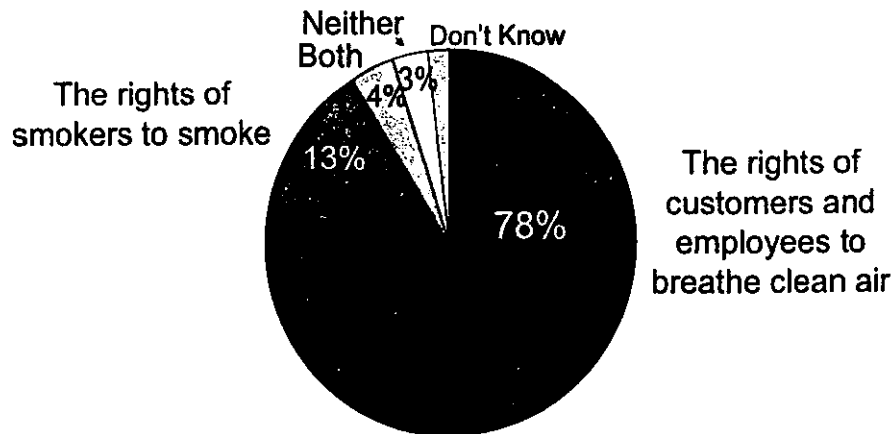


Minot Voters Believe The Rights of Customers & Employees Are More Important Than The Rights of Smokers

Please tell me which statement is more important:

The rights of customers and employees to breathe clean air inside restaurants

The rights of smokers to smoke inside restaurants



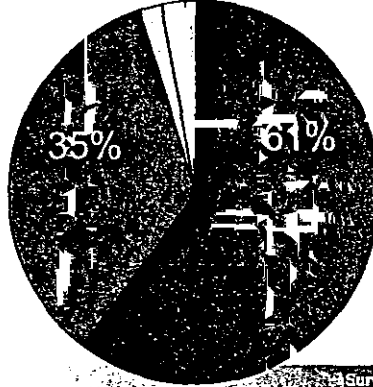
Minot Voters Believe Peoples' Right to Breathe Clean Air Outweighs Business Owners' Right to Choose

Please tell me which statement is closer to your view:

Business owners should have a right to decide if smoking is allowed or prohibited in their establishments, so we should not have laws that prohibit smoking inside workplaces, including restaurants.

People have a right to breathe clean air in restaurants and at work, so we should have laws that prohibit smoking inside workplaces, including restaurants.

Business owners
should have a
right to decide



People have a
right to breathe
clean air

TERPP
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POLICY
PROJECT
Health Effects Center for Tobacco Use and Dependence

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Summary

Compliance of Minot Restaurants with the Smoke-Free Restaurant Ordinance

Introduction

Minot State University's Tobacco Education, Research and Policy Project conducted an assessment of Minot restaurants' compliance with the smoke-free restaurant ordinance. The ordinance was effective January 2002.

Methods

First District Health Unit's Tobacco Control and Prevention Program obtained a listing of licensed "RE" restaurants within Ward County from its Environmental Health Division. This list consisted of 87 restaurants that were licensed within the city of Minot, five of which were exempt from the law and one which was unable to be inspected. This left 81 restaurants to be inspected. Inspections occurred between June and September 2003.

The inspection included a visual assessment of each restaurant. This visual inspection did not include an assessment related to the separate ventilation requirements of the ordinance. The enforcement of that provision requires considerable knowledge and expertise in the area of building ventilation systems, including knowledge of air flow volumes and negative and positive pressure. Only three restaurants without bars and six restaurants with attached bars implemented separate ventilation systems. The man-hours needed to assess compliance of this very complex issue would be exceedingly disproportionate to the number of businesses choosing to provide separate rooms.

Additionally, the Minot Police Department was contacted to assess compliance issues determined by the police department.

Summary of Findings

Other than minor signage issues, overall compliance with the restaurant ordinance was high at 96% compliance. Additionally, 100% of the restaurants did not have anyone smoking in the smoke-free areas and 100% of the restaurants had all the ashtrays removed from the smoke-free areas. The Minot Police Department stated there have been no problems with restaurant compliance.

For further information please contact: Kelly Buettner-Schmidt, Project Director, Tobacco Education, Research and Policy Project, North Dakota Center for Persons with Disabilities. A University Center of Excellence at Minot State University



THE ECONOMIC IMPACT OF
MINOT'S SMOKE-FREE RESTAURANT ORDINANCE
2003



KEY POINTS:

Study based upon

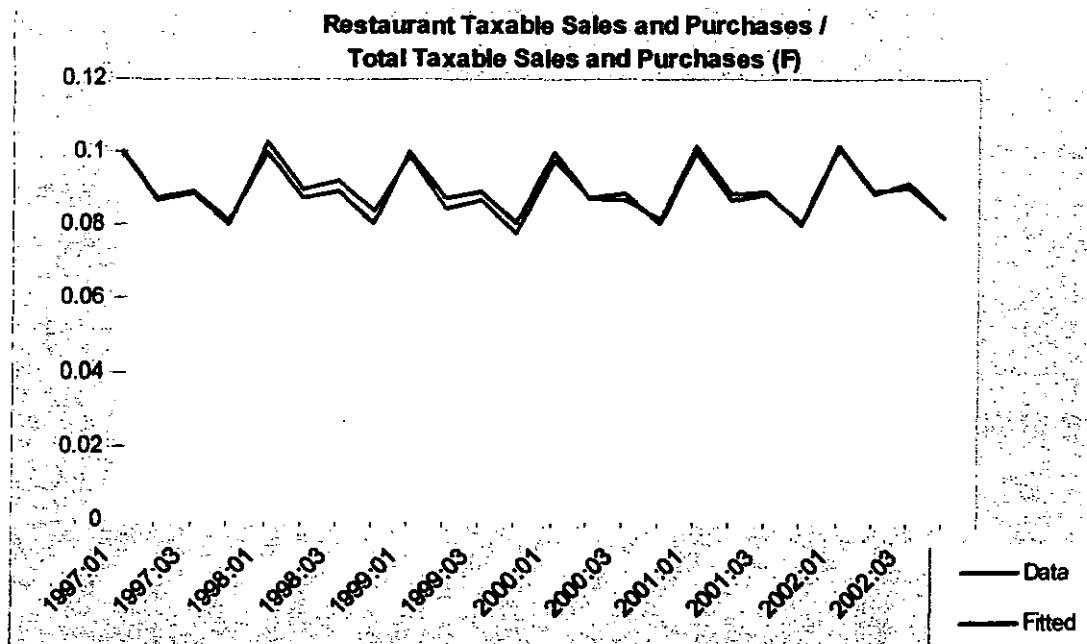
- Objective data collected by the Office of the North Dakota Tax Commissioner
 - Numbers include all restaurant sales in Minot, not just a sampling
 - Data collected consistently by an agency with no interest in the effects of local policy on restaurant sales
- Six years of data collected and analyzed; five years pre and one year post implementation of the ordinance. Data collect from the first quarter of 1997 through the fourth quarter of 2002
 - Adjusts for normal fluctuations in sales and any seasonal patterns

RESULTS:

- “The implementation of the smoke-free ordinance had no significant effect on the fraction of sales that went to restaurants in Minot.”
- The results of the study showed the smoke-free ordinance had no impact on restaurant sales for the City of Minot.

CONCLUSION:

- “Analysis of six years of sales tax data shows that there was no economic effect of the smoke-free ordinance on Minot restaurants in spite of claims that the smoke-free ordinance would hurt restaurant business.”
- “This study found no adverse change in restaurant sales because of the smoke-free restaurant ordinance.”



Authors:

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Dr. Frank Moseley, College of Business, Minot State University
Minot State University Business Administration Graduate Students

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“Business is Up Dramatically”

Quotes from Minot Restaurateurs & Bar Owners

“Kroll’s Diner owner Keith Glatt said a metrowide ban on smoking in restaurants and bars makes the most sense so some businesses don’t have advantages. Kroll’s also has a restaurant in Minot, N.D., where smoking recently was banned, and Glatt said his sales have increased 10 percent to 15 percent.” (January 10, 2004) The Fargo Forum

“Business is up dramatically. People say they come in more often because we are smoke free. Our wait staff’s comments are really favorable regarding not having to breathe in secondhand smoke.” (October 20, 2003). Dean Aberle, Owner of Homesteaders Restaurant

“Business has been better. We’ve only been smoke-free for about a month, but the increase in business is noticeable.” (July, 2001) - Dean Aberle, Owner of Homesteaders Restaurant

“Being a 24-hour restaurant it seemed to affect us a bit more. When (the ordinance) went into effect, January and February we were down a lot. It affected that graveyard shift. As it went on, things got better and better. As far as sales overall, we don’t think it has affected us at all. I think we get a lot less people sitting here a long period of time. There are advantages - being able to seat people more easily. I think it’s a great advantage to the staff. And for us it’s an advantage not having the smell, the ash trays.” (September, 2003) - Janelle Herslip, Proprietor of Denny’s Restaurant

“We opened the smoke-free bar to give nonsmokers a place to socialize. We have wonderful clientele from a wide range of occupations and professions. What they have in common is the desire to escape the smoke and enjoy themselves.” (September, 2003) - Owner of Blue Rider, a smoke-free bar opened since 1994

“Our guests are important both smokers, and non-smokers. However we believe that there is a day that we all have to (even Applebee’s) go to a non-smoking environment. Business will go on either way. Our guests might not be able to smoke in the restaurant of their choice, but we think our guests will come to their Applebee’s Neighborhood Grill & Bar for their favorite food, fun & drink.” (October, 2003) – Abe Sakak, CEO Applecore Inc.

“Going smoke-free has been a plus. In addition to eliminating the health risks of secondhand smoke, maintenance on ceiling and walls of the restaurant has been a lot less since we went smoke-free.” (November 2000) - Vern Korgel, Manager of Royal Fork Restaurant

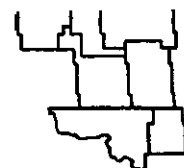
“Our business is mainly delivery, (but) we went smoke-free about 10 years ago, mainly for the people who work here. It’s a lot easier on our employees; and the people who come in here for breakfast don’t have to worry about the smoke.” (July 2001) - Gordon Troxel, Owner of Nite Train Pizza



STAMP, Minot, ND



First District Health Unit



www.fdh.u.org

**INITIATION OF A CITY ORDINANCE PROVIDING FOR THE ELIMINATION OF
SMOKING IN ALL WORK PLACES
AND PUBLIC PLACES IN THE CITY OF GRAFTON, NORTH DAKOTA,
EXCEPT ENCLOSED BAR AREAS**

The undersigned, being duly qualified electors in the City of Grafton, North Dakota, do hereby refer to the City Council of the City of Grafton an initiated ordinance to be enacted by the City Council or put to a vote of the people pursuant to Article 4 of the Home Rule Charter. The initiated ordinance is as follows:

CHAPTER 25

This Article shall be known as the Grafton Smokefree Air Act of 2005.

SECTION 25-1 DEFINITIONS

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

“Bar” means an establishment 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, including but not limited to, taverns, nightclubs and cocktail lounges.

“Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

“Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.

“Employer” means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

“Enclosed Area” means all space between a floor and ceiling that is enclosed on all sides by solid walls, windows or doors, which extend from the floor to the ceiling.

“Health Care Facility” means an office or institution providing care or treatment of diseases,

whether physical, mental, or emotional, or other medical, physiological, or psychological conditions including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

“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, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a “place of employment”.

“Public Place” means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, convenience stores, service stations, retail stores, shopping malls, sports arenas, theaters, and waiting rooms.

“Restaurant” means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere.

“Smoking” means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.

“Sports Arena” means sports pavilions, stadiums, gymnasiums, health spas, swimming pools, roller and ice rinks, curling clubs, golf course clubhouses, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

SECTION 25-2 SMOKING IN ENCLOSED BAR AREAS

Smoking shall be specifically allowed in all enclosed bar areas that restrict any and all customers under the age of 21 years from entering. A restaurant which includes a bar may allow smoking in the bar if it is separately enclosed from the restaurant premises.

SECTION 25-3 PROHIBITION OF SMOKING IN PUBLIC PLACES

Except as set out in Section 25-2, smoking shall be prohibited in all enclosed public places within the City of Grafton, including but not limited to, the following places:

- (1) Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels.
- (2) Bingo facilities.
- (3) Convention facilities.
- (4) Educational facilities.
- (5) Elevators.
- (6) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance, except by actors/actresses as part of the performance.
- (7) Health care facilities.
- (8) Libraries.
- (9) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (10) Polling places.
- (11) Restaurants.
- (12) Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- (13) Retail stores.
- (14) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City.
- (15) Service stations and convenience stores.
- (16) Sports arenas, including enclosed places in outdoor arenas.

SECTION 25-4 PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT

Except as set out in Section 25-2, smoking shall be prohibited in all enclosed public places within the City of Grafton, including but not limited to, the following places:

- (1) Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

- (2) This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

SECTION 25-5 WHERE SMOKING NOT REGULATED

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Sections 25-3 and 25-4.

- (1) Private residences.
- (2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms.
- (3) Outdoor areas of places of employment.

SECTION 25-6 DECLARATION OF ESTABLISHMENT AS NONSMOKING

Notwithstanding any other provision of this Article, 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. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 25-7 is posted.

SECTION 25-7 POSTING OF SIGNS

- (1) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.
- (2) All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other personal having control of the area.

SECTION 25-8 ENFORCEMENT

This Article shall be enforced by the City of Grafton or an authorized designee.

SECTION 25-9 VIOLATIONS AND PENALTIES

- (1) A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine of fifty dollars (\$50).
- (2) A person who owns, manages, operates, or otherwise controls a public place of employment and who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by a fine of \$100 for each violation.
- (3) Each person receiving a citation which sets forth a violation of this chapter may elect any remedy available for the disposition of a noncriminal offense pursuant to Section 1-17 through 1-18 of the Grafton Municipal Code. Failure to make a timely election or post bond as set forth is punishable as set forth in Section 1-19.

SECTION 25-10 OTHER APPLICABLE LAWS

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

SECTION 25-11 EFFECTIVE DATE

This initiated ordinance shall be in full force and effect on the 30th day following its adoption by the City Council of Grafton or by the electors in a special election.

American Lung Association of North Dakota: Testimony
HB No. 1030
Monday, January 24, 2005

Chairman Haas and members of the Committee:

I was asked to follow up with information on two issues during my testimony for House Bill 1030.

Regulation of Smoking in Cars: The American Lung Association supports a public education campaign focused on the dangers of secondhand smoke in cars, but does not think this is a good policy for legislative mandate at this time. In addition, the American Lung Association supports funding for tobacco cessation programs to assist people in beating their addiction to cigarettes, therefore providing the smokefree environment desired for family members and others riding with them. The American Lung Association of California has supported a bill in California for this, but has pursued that as part of their own initiative.

The American Lung Association remains firm in its support for smokefree workplaces that is the issue addressed by House Bill 1030. This is viewed as a public health issue, affecting workers and patrons of the businesses alike.

Airline Industry Regulation:

I've attached a chronology courtesy of Americans for Nonsmokers Rights for your review.

Smokefree Transportation Chronology
December 2004

- 1964 U.S. Surgeon General's Report identifies smoking as a cause of increased mortality and as a contributing factor in a host of diseases.

- 1971 United Airlines becomes the first carrier to offer separate smoking and nonsmoking sections.

- 1973 The Civil Aeronautics Board (CAB) -- the agency charged with the power to regulate the economic aspect of air transportation and to supervise air carriers as well as their property, property rights, equipment, facilities, and franchises - requires separate smoking and nonsmoking sections on airplanes.

1976 Regulations are passed to restrict smoking on trains to separate cars; and dining cars are made smokefree.

1986 The National Academy of Sciences (NAS) publishes "The Airliner Cabin Environment: Air Quality and Safety." In the publication, NAS recommends a "ban on smoking on all domestic commercial flights..."

1987 *February* - The U.S. Department of Transportation rejects the recommendation of the NAS to make domestic commercial flights smokefree. Secretary Elizabeth Dole states that no new regulations are necessary because the market will accommodate demand.

July - By a vote of 198 to 193, the U.S. House of Representatives passes the Durbin Amendment to make domestic flights of two hours or less smokefree.

1988 *January* - A California law making all in-state flights smokefree takes effect on January 1st.

April - A federal law making all domestic flights of two-hours or less smokefree is made effective on April 23rd. The law is designed to sunset in two years.

October - In an open letter, Representative Durbin attributes the smokefree victory to the "strong grassroots support" generated by groups and states that "hard work on the local level is what led to an unprecedented public health victory in Congress." Northwest Airlines makes all its domestic flights smokefree.

1989 *June* - The American Association for Respiratory Care (AARC) releases results of a public attitudes survey about smoking on airlines. The national survey shows that 92.8% of nonsmoking and the majority of smoking (58.1%) airline travelers polled approve of the current smokefree law on flights of two hours or less.

September - The House approves the language of H.R. 160, extending the two-hour smokefree policy beyond two years. The battle shifts to the Senate, where Senator Lautenberg will fight for S. 519 to make longer flights smokefree.

October 21 - Representative Durbin publishes an acknowledgment piece in the Congressional Record. ANR is thanked for being "particularly active."

November 8 - The Senate gives final approval to a ban on smoking on all domestic and domestic overseas flights, of six hours or less.

November 16 - The House and Senate Conference Committee adopt a "compromise" that makes flights operating within the 50 states and its territories of six hours or less smokefree.

1990 Federal law making domestic airlines of six hours or less smokefree takes effect on February 25th. The law affects all but 28 of the 16,000 domestic flights in the U.S. Interstate buses also become smokefree.

1992 The International Civil Aviation Organization passes a resolution urging its 152 member countries to go completely smokefree by July 1, 1996.

1993 Amtrak makes most of its trains smokefree.

1995 Delta Airlines goes smokefree worldwide on January 1st. Other U.S. airlines follow.

1999 The Senate passes a Federal Aviation Administration bill, which includes a clause to make all flights to and from the U.S. smokefree on October 5th.

2000 *April 5* - President Clinton signs the Wendell H. Ford Aviation Investment and Reform Act of the 21st Century into law, making all flights to and from the

U.S. smokefree.

June 4 - All flights between the U.S. and foreign destinations go 100% smokefree. In a press release issued by the U.S. Department of Transportation, Transportation Secretary Rodney E. Slater says, "Protecting the health of Americans includes ensuring their right to breathe smoke-free air when they travel."

Please feel free to contact me if you have any other questions at 223-5613, cell: 400-3463, home: 223-1163 or email lungnd@gcentral.com.

**American Lung Association of North Dakota
House Bill 1030 Suggested Amendments in Addition to Department of Health
and Department of Public Instruction Amendments**

Remove from House Bill 1030:

- Page 3: Delete lines 19-30
- Page 4: Delete lines 1-12

Add the following language:

1. The following areas are exempt from subsection :
 - 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, provide that smoke from these places does not infiltrate into areas where smoking is prohibited under this section.
 - d. Outdoor areas of employment, except a sports arena.
 - e. Any area which is not commonly accessible to the public and which is part of an owner-operated businesses having no employee other than the owner-operator.
2. Smoking as part of a traditional American Indian spiritual or cultural ceremony is not prohibited.
3. 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.
4. This section may not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

CRIMES

66 67

PUBLIC NUISANCES

22-36-4

er as felony.

539.

22-35-6. Entering or refusing to leave property after notice as misdemeanor.

See also: State v. Bowers (1993) 498 NW 2d 202.

APTER 22-34

CHAPTER 22-36

D INJURIES TO PROPERTY

PUBLIC NUISANCES

ed for certain acts of vandalism.

Section 22-36-2.	Smoking in public place or place of employment prohibited — Exceptions — Violation as petty offense.
22-36-3.	"Public place" defined.
22-36-4.	"Place of employment" defined.

e to property — Degree of offense ac-

edit 2d 801; State v. Bakint (1988) 426 NW 2d 316; 993) State v. Bailey (1991) 484 NW 2d 626. NW

22-36-2. Smoking in public place or place of employment prohibited — Exceptions — Violation as petty offense. No person may smoke tobacco or carry any lighted tobacco product in any public place or place of employment. This section does not apply to any sleeping room in a lodging establishment as defined in § 34-18-1, to any on-sale licensee pursuant to chapter 35-4, to any video lottery licensed establishment pursuant to chapter 42-7A, to any licensee pursuant to chapter 42-7B, or to any tobacco or packaged liquor store if the store is primarily used for the sale of tobacco or alcoholic beverages, or both, and the sale of other products is merely incidental. A violation of this section is a petty offense.

able damages.

v. 109; Scott v. Trebilcock (1907) 21 SD 333, 112 NW 847. FEd

suspended for certain acts of vandalism. If a person is convicted of a crime of eighteen is adjudicated to have a-1 or 22-34-27, and if the crime occurred while being a passenger in a motor vehicle, the fines of such person suspended for: is two hundred dollars or less; is over two hundred dollars but less than

Source: SL 1974, ch 243, § 2; 1976, ch 158, § 36-2; 1978, ch 163; 1987, ch 168; 1994, ch 170; 2002, ch 115, § 1. which enumerated public places in which smoking was prohibited.

Amendments. The 2002 amendment rewrote the section.

if the damage is one thousand dollars or more, all acts of vandalism that are part of a single violation for the purposes of this section, all acts of vandalism involving driving a motor vehicle or being in a motor vehicle.

22-36-3. "Public place" defined. For the purposes of §§ 22-36-2 to 22-36-4, inclusive, a public place is any enclosed indoor area to which the public is invited or to which the public is permitted, including any hospital or medical or dental clinic; any nursing facility; any public library, museum, theater, or concert hall; any elementary or secondary school building; any public conveyance; any jury room; any elevator; any reception area; any restaurant; any retail service establishment; any retail store; and any registered or unregistered day care program, day care center, day care cooperative, or family day care home governed by chapter 26-6 during the time in which children who are not family members of the day care provider are receiving care. A private residence is not a public place unless it is used for day care.

Source: SL 2002, ch 115, § 2.

APTER 22-36

UPANCY OF PREMISES

ing in building as misdemeanor.

22-36-4. "Place of employment" defined. For the purposes of §§ 22-36-2 to 22-36-4, inclusive, a place of employment is any enclosed indoor area under the control of a public or private employer, including work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias, and hallways. A private residence is not a place of employment unless it is used for day care.

Source: SL 2002, ch 115, § 3.

ed State v. Bell (1985) 369 NW 2d 140; State v. Degan (1986) 396 NW 2d 759.

