

2019 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2137

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

SB 2137
1/15/2019
Job # 30796
30781
30820

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to cigar bars.

Minutes:

Att #1-10

Job # 30796

Chairman Klein: Opened the hearing on SB 2137. All members were present.

Senator Laron, District 3: Testified in support of the bill. I bring this bill to you today because there are some folks who have had the idea of starting an entrepreneurial business, a cigar bar in our town. A history of the bill: it did go through South Dakota's legislature, and it was passed. Now I've been to a few of these cigar bar places throughout the country, where it's kind of an entity where you can purchase these cigars and then I you want you can go into another VIP room where if you want you can stay and smoke. Some have ventilation, some are like my welding shop back at circle sanitation so it's a little interesting there. But the legislation does speak about having a good ventilation system there. And I'm not sure if that was South Dakota language or not. I'm not a cigar connoisseur by any means so the legislation from South Dakota talked about a ring size, 40 ring size and such. So somebody contacted me to change that to a 30 ring size. There was some discussion about that and then there was another individual who said to use the federal language about tobacco being wrapped in tobacco weighing three pounds per thousand or more. So I do have that hand out so you can see what those look like. **(See Attachment #1)**. So those were the correspondence to me and here's the other two little pieces. **(See Attachment #2)**. And I do have some other people folks with me that really do know the ins and outs of the business and I think it's time ya know after all that legislation that you can't smoke inside a bar. And it is some restricted language because 10% of the income has to be from cigars so you can't, it's pretty specific on doing this.

Chairman Klein: When you spoke about ring size is that like circumference? Or should I wait for the experts to answer that.

Senator Larson: I think you probably better wait on that because I'm not sure at all.

Chairman Klein: When you spoke to the amount of money that's generated... Okay so not just anybody can open up a cigar bar. You've got to have cigars to sell.

Senator Larson: Right so what I was thinking of is that we do have a humidor and a cigar selection at one of our golf courses. So I'm thinking okay now they're going to start smoking cigars inside the bar there. But they can't do that because they have to sell 10% of their, whatever comes through that door. 10% of that has to be cigars. And that's gonna be a lot of cigars. And I don't see with the golf, and the greens fees, and their dinners, and everything that they do there, that they will ever make 10% cigar sales.

Chairman Klein: So the idea here being very site specific, because the entrepreneur, that would be his business that he has to generate at least 10% have to be from cigar sales or he cannot do what you're proposing.

Senator Larson: That's correct.

Senator Roers: What would preclude somebody from having a business within a business? So let's say the golf course you just mentioned let's say they had cocktails within it?

Senator Larson: If anything maybe people could bring their own drinks but the cigar lounge would not be able to sell liquor I do not believe.

Job # 30781

Collin Nelson, Executive Tobacco LLC: See Attachment #3 for testimony in support of the bill.

Job # 30820

Testimony from Collin Nelson continues.

(3:08)Chairman Klein: So what I'm hearing here is that you want to establish this smoking lounge where by upscale tobacco products will be sold, 10% of what you sell will have to be tobacco and then you're gonna step off into this lounge area where people will enjoy the cigar?

Collin: Correct. Or pipe or hookah. But not cigarettes.

Chairman Klein: Okay, so you can't smoke cigarettes in this lounge?

Collin: No, in the past in smoking lounges that have been around, in North Dakota or other states, they don't allow cigarette smoking in the cigar lounge. Because honestly, cigar smokers find cigarette smokers to be just as obnoxious as most people find cigar smokers.

Chairman Klein: But following the argument maybe would be that are we on a slippery slope to opening the door to the next sort of smoking lounge that wouldn't be a cigar lounge but... I don't know. I'm just kind of thinking what I may here as the morning goes on.

Collin: In the original wording that we have proposed to Senator Larson, it did have some language I there that established that the tobacco smoked on the premises must be purchased

from that premises. And most cigar shops, not all, but most, they don't specialize in selling cigarettes. It's not profitable for most cigar shops. I do understand that there's a cigar shop here in town that makes most of their profit off of selling cigarettes, but that not always the case.

Chairman Klein: And then the ring size, for the benefit of the committee do you want to tell us what that ring size is?

Collin: In my opinion, the ring size shouldn't be an issue at all, it should be the definition of what a cigar actually is. And a cigar is a natural leaf rolled inside another natural leaf with zero additives put in it. It's not ground up, it's not processed. Its hand rolled with tobacco inside, wrapped in a tobacco leaf.

Chairman Klein: As opposed to cigarettes which have some additives? Being provided, hate to go there but, cigars are natural?

Collin: Correct.

Senator Burckhard: So let's assume for this question that recreational marijuana had passed in November, would a cigar bar also accommodate the smoking of marijuana?

Collin: Um no. In my understanding that would require a special license. My intentions are to open a cigar shop in town if this passes. I have no interest in pursuing a permit for the sale or consumption of marijuana on said property.

Chairman Klein: I think the consumption of marijuana in the law is pretty specific as to where you can smoke it and I don't know if you're ever gonna be able to get it in an organized store.

Senator Kreun: Senator Larson alluded to this as an entrepreneur business being brought forward so in that respect, what is the price range of some of these products and what is the annual sales in the US and the potential sales in North Dakota to try to offset some of these prices. What would offset these costs?

Collin: I can tell you as far as the cost of cigars varies from \$2, \$3 for a cigar all the way up to \$1000 a stick. For the most part the average cigar smoker would smoke cigars roughly from the \$6-\$15 range. And ya know, going back to the verbiage of a cigar being a hobby not a habit.

Senator Kreun: In the 10% area what else would you be selling in your establishment to offset some of those sales, because if you're selling average \$6-\$15 cigars that's a lot of cigars to open up a building and make payments on it.

Collin: Typically, tobacconists sell pipes, hookahs, humidors, all the paraphilia required to keep these products fresh, which would be all sorts of humidification equipment, fluid for the humidification equipment, lighters, cutters

Chairman Klein: But there's no alcohol license associated with this?

Collin: No, not at all.

Senator Kreun: What about sandwiches, food that other thing? Nonalcoholic beverages?

Collin: Pretty much every cigar store I've ever been in has a cooler that sells sodas, which I would also more than likely sell on my premises. In the past, for certain members that purchase a membership, are allowed to have a locker and bring in their own drinks. What happens from this point would depend on how the wording of the law ends up with the wording.

Chairman Klein: Okay, because there will probably be with this bill, there would be a bull's eye on your business to keep certainly people looking in and seeing how you're operating.

Senator Roers: Senator Burckhard asked would marijuana be sold, premium tobacco, and would marijuana fall under that?

Collin: Marijuana is not tobacco. Let me back up here. The cigarette industry uses a process in which they grind up the tobacco leaves, and they usually use the least desirable parts of the tobacco leaf. They use different strains of tobacco that aren't typically used in the tobacco or pipe industry. They create a paper out of the tobacco, they grind it up and then they pack their cigarettes with it. And that's not premium tobacco. They put all sorts of additives in that so called tobacco, that allows it to burn slower or faster or to burn more evenly. Who know what else those chemicals do. I'm led to believe that their meant to make nicotine more addictive.

Senator Roers: What is a hookah?

Collin: Its Turkish in origin, or at least Middle eastern in origin. It's a water pipe, its a group thing, it uses sheesh, which is a flavored tobacco product. I don't know a lot about sheesh products.

Chairman Klein: When we talked about nicotine and addiction issues when it comes to smoking cigarettes. But there's still nicotine in a cigar, is there not?

Collin: Oh, absolutely.

Chairman Klein: I guess I don't know really know a whole lot of cigar addicts as opposed to cigarettes.

Collin: I didn't come with all kinds of facts in regards to what the FDA has to say about it. We could sit and argue numbers and figures and people are still gonna disagree on it.

Chairman Klein: And people are asking questions. I've been here twelve years and this is my first cigar bar discussion. But its certainly interesting to see what entrepreneurial folks are out there trying to create a different sort of business.

(14:58)Shaun Sipma, citizen of Minot: See attachment #4 for testimony in support of the bill.

(20:31)Jerrod McClellan: Testified in support of the bill. I am a licensed tobacco retailer in North Dakota, I sell currently as a sole proprietorship, and on behalf of this bill, every single one of my customers, and I'm not joking when I say this, has asked, where can I sit down and smoke a cigar? And I have to tell them, I don't know. In your garage or on your back porch maybe? In the incident that this bill was passed, it would allow the opportunity for the people that do choose to

smoke premium tobacco, the opportunity to sit down and enjoy premium tobacco themselves. On behalf of the question to what a hookah is, a hookah is a social gathering smoking device. It is premium tobacco mixed with flavoring. No additives aside from the flavoring. A little bit of glycerin to mix with the water so that you get the effect of the smoke but that is it. Other than that, there are no additives that you would find in gas station cigarettes.

Senator Piepkorn: Isn't there a little bit of a difference between your hookah-smoking crowd and your cigar smoking crowd? I imagine this group to be a cigar smoking crowd, for instance.

Jerrod: I'm actually more of a cigar smoking crowd myself. But I have many friends who enjoy smoking hookah shisha. It's a social gathering that they can sit down and enjoy after a long hard day at work, while they are playing games. And just sit down wherever they are, smoking and enjoying. The other benefit of the hookah is there is no waft of cigars or pipe tobacco. And that's the other benefit of that. It leaves a sweet aroma and that's it.

Chairman Klein: So there's no smoke?

Jerrod: There isn't. because the tobacco is watered down to the point where the tobacco is .005 or less.

Senator Burckhard: Tell us your last name again and how you spell it?

Jerrod: McClellan

(25:18)Neil Charvat, Director of the Tobacco Prevention and Control Program for the North Dakota Department of Health: See attachment #5 for testimony in opposition to the bill.

(30:11)Chairman Klein: You spoke somewhat broadly about secondhand smoke, and I'm just picking up on what I've heard from the other presenters, that other states, who I believe were in the no smoking business before us, have changed or narrowly defined what a cigar lounge could be. And obviously they are operating, do you have any research, we all know about the over health and death risks. And we all know, I mean my kids all knew about it by the time they were in school but, you're broad brushing this here and I'd like more specifics here if we could change the language, because you seem to concern yourself with people vaping and smoking in the cigar lounge. If that was more restrictive or but anyway I'm just looking for a narrower sort of concern rather than the broad brush approach.

Neil: Regardless of if you can put in definitions, the fact that there is hookah involved, that's not a clean chemical experience. They're burning using charcoal, they put the shisha and then they put the charcoal on top of that and then light it, it's not like its smokeless burning.

Chairman Klein: But you have to get folks together to do this so it's not like you're forcing them to be there?

Neil: Correct, but there is second hand smoke relating to cigars as well, and it might be a different secondhand smoke than cigarettes but its still secondhand smoke and it still poses a danger. There are some other states that allow it but it's not because someone like me supports it with scientific research. It was mainly someone in the industry coming in and changing it.

(32:57)Deb Knuth, North Dakota American Cancer Society Cancer Action Network: See attachment #6 for testimony in opposition to the bill.

Senator Kreun: In the fourth paragraph, cigars also produce secondhand smoke that is dangerous for nonsmokers. Within the cancer research, has there been a study to show the difference between cigar and cigarette smoke?

Deb: I do have some factsheets regarding cigar smoke and I will get that to the committee. I know that we are against any kind of combustible tobacco because we have found that it is the cause of lung cancer and that's the leading cause of cancer in the United States so that's why we're so affably against it.

Senator Kreun: The reason I ask is because we are separating the two supposedly, so I would be interested in the research that shows what the cigars are compared to the cigarettes.

Chairman Klein: There was a lot of discussion last session with the advent of medical marijuana and should that be inhaled or used in a combustible form. And of course there was a lot of struggle to craft a law that would allow some folks under the request of the doctors to use combustibles. Are they not also inhaling something that would be dangerous to their lungs, or is it because they're using something that's recommended by their physician to us this? Just wondering what your position is on that?

Deb: ACS is opposed to ANY combustible and that includes marijuana.

(39:03)Heather Austin, Tobacco Free North Dakota: see attachment #7 for testimony in opposition to the bill.

(41:00)Senator Burckhard: With electronic product use at epidemic levels, talk about that?

Heather: The FDA released a position stating that they believed that there is an epidemic with our youth using vaping, Juuling, electronic products. Use rate has skyrocketed year over year data is showing an increase of 78% with our young people using these electronic products. Without a clear definition of what exactly premium tobacco is, there could be all kind of exceptions and doors opened for not only cigars, pipes, hookahs, possibly electronics but again, it renormalized things for our youth that we really want to prevent them from doing. That nicotine is so addictive especially in young brains. Brains aren't finished developing until age 25. We really want to prevent our kids from developing that lifelong addiction to nicotine and nicotine is found in cigars. We don't want to open the door to eroding our smoke free laws in North Dakota.

Vice Chairman Vedaa: Not necessarily relating but just information about Tobacco Free North Dakota, did they take a stance on the recreational marijuana?

Heather: No, we did not take a stance. Our mission statement is around tobacco only, so we were not able to jump in the debate.

Chairman Klein: To Deb's comment, this issue with the study in England, that the 14 year olds who are doing weed are already at that age have affected their ability to learn and it carries with them until the end.

Heather: Nicotine affects the prefrontal cortex in a similar fashion that's the decision making part of our brain and in young brains its especially harmful because it effects it so much more directly than a fully developed brain and so, affecting that developing part can impact learning abilities as well and nicotine is a chemical known to do that.

Chairman Klein: We're never gonna get to the point where we don't have tobacco anymore. It's just not gonna happen. Everybody is making an effort to understand and acknowledge that there are issues that surround tobacco use, and we've seen the use of tobacco go down considerably. But you're going to reach a point where you reach the end. We can create a lot of laws and we have, but there's other people who don't support that or those ideas, so it's very difficult. But we certainly enjoy the tobacco tax as it helps our general fund but nevertheless we see the problems that may or may not be associated with it. There's never been legislation to totally ban it. In 1997, we had a bill that would ban tobacco but didn't pass obviously.

Heather: If you're asking if Tobacco Free North Dakota would introduce legislation that would do that, we wouldn't at this time. We know that there is a lot of work to still be done in tobacco prevention and control policy and we would love to see our rates go all the way down to zero. And part of that is protecting the wonderful policy you all have already put in place like our indoor smoke free air law, it's one of the best in the nation. Let's preserve it and protect it and then we can look at other policies that can help get our numbers down even lower.

(46:59)Valerie Schoepf, President, Bismarck Tobacco Free Coalition: see attachment #8 for testimony in opposition to the bill.

(50:12)Chairman Klein: There's gonna be a bill somewhere along the way for that also, we understand the concerns you have and the concerns independent business has, and the people in between. But sometimes it's not that easy.

Valerie: I agree, and I understand that and it's all spinning around for me here today. But at the end of the day second hand smoke exposure, which our voters overwhelmingly approved protecting workers. You know how people come into the jobs that they always come in to. Cleaning up establishments that are lounges or bars, I don't know those backstories but to say it's always a choice seems short-sighted as well.

Chairman Klein: Well if you recall back in the 90s when we had all these issues, Jerry Klein was usually in opposition because he never smoked but the will of individuals, and that's something, I don't want to take everyone's individual freedom away but also balance that with blowing smoke on your neighbor who doesn't want it, that was the fine line. But you override the business issues and we tried to work it out and I think we're okay but I'm just throwing that out because I think there's gonna be a little bit of discussion on this one.

(52:19)Kira Lampton, Minot citizen: See attachment #9 for testimony in opposition to the bill.

(56:53)Mary Korsmo, Executive Director of the North Dakota State Association of City and County Health Officials (SACCHO): see attachment #10 for testimony in opposition to the bill.

Chairman Klein: Once again, I'm looking at the 34% that didn't vote for it, the 34% are probably still smoking somewhere. The 34% now that would only be allowed to enter this shop/bar/room, that would have to be of age. I understand we're trying to keep a smoke free environment and good for all North Dakotans. But there are some North Dakota who would get together and hang out and support each other in a cigar setting. I know Deb said its addictive as anything but I see more of the, I was in the grocery business forever and you see the addiction that goes along with that. But as people moved away from tobacco, they always looked for something else to do but eventually got totally away from tobacco. But cigars are sometimes the crutch in the middle. I'm not speaking for that 34% that didn't vote for it but there probably, if there's any way to allow them to have some rights as North Dakotans.

Mary: I appreciate that and I respect what you're saying as well, but we need to support our mission which is the only safe way is no way, in public at least.

Chairman Klein: I'd rather they smoked in the cigar lounge than in their homes or garages with kids and grandkids. They can go hang out with guys, get them out of the house. And their wife would appreciate that to. I just know speaking from experience.

Chairman Klein: Closed the hearing on SB 2137.

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

SB 2137
1/23/2019
Job #31293

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to cigar bars.

Minutes:

Att. #1

Chairman Klein: Opened the committee work session on SB 2137. All members were present.

Chairman Klein: As you'll recall, senator Larson had these amendments prepared (**see attachment #1**). We had some discussion last week, and I'm just throwing this out for discussion. There was some question over changing the word from cigar bars to cigar lounges because there is no alcohol here and the word bar would suggest drinking. So I believe Senator Larson took that out of there. There was a question on page 2 line 11, where the word premium, and there was a question over what that word meant? And any premium product is removed. And thing cigar thing I think is removed again. And then on page 2 line 18, replace number 40 ring size or larger with contains only tobacco binder and no additives. And then lastly after line 18 insert cigar lounge means a business dedicated, in whole or in part, to the smoking of cigars which generates thirty percent or more of the business's annual gross income from the sale of cigars. I know that Senator Larson has been in conversation with the tax department because they were wondering, they don't have any problems they just want to be sure they understand what their role is. Because I believe it says somewhere that they are the ones that determine they have 30% of their annual sales, and you do have to report your sales through the tax department.

Senator Roers: Wasn't the original 10%?

Chairman Klein: I thought so. I thought 10% was in here somewhere but I don't remember seeing it.

Senator Piepkorn: Yeah I thought so.

Vice Chairman Vedaa: I thought Oley told me 10%.

Senator Burckhard: 10% or more of the sales must be cigar related.
Chairman Klein: Where did you get that?

Senator Burckhard: Some notes I took.

Senator Roers: Yeah, it's right here on this... is this an amendment?

Chairman Klein: That was an amendment that did not get added.

Senator Piepkorn: Curious, how big is a 40 ring size?

Vice Chairman Vedaa: Well I think like Swisher Sweets and stuff, don't they fit that?

Senator Roers: That's kind what I thought.

Senator Piepkorn: So it's not going to make any difference delivering this, I'm just curious.

Chairman Klein: I have conflict here cause the folks of Altea added me a definition of tobacco they feel needs to be in there to be uniform and this is not that language.

Senator Roers: From who?

Chairman Klein: The Marlboro lady. Used to be Phillip Morris. Okay committee, we are going to adjourn and I am going to further visit with Senator Larson. I hate to sort of prolong this sort of agony but we will and I will check with the sponsor of the bill and he'll have to check with those folks because they felt it was legally necessary that that definition be very clear as to what tobacco really means or measures.

Senator Piepkorn: Just one little remark, it's not that important. But just the cigar lounge versus the cigar bar, even though it's more fun to say cigar bar. It's more of a marketing change than anything. The cigar bar change to a cigar lounge is more of an image thing.

Vice Chairman Vedaa: Well there won't be alcohol there so.

Senator Piepkorn: Well I know but a lot of people refer to a bar as a lounge maybe more in the older days. Although it is a little fancier than a bar.

Vice Chairman Vedaa: You can't smoke in a bar though.

Chairman Klein: Alright well we will adjourn and we'll see you, uh, later.

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2137
2/4/2019
Job # 32103

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to cigar bars.

Minutes:

Att. #1

Chairman Klein: Opened the committee work session on SB 2137.

Chairman Klein: Explains changes to the amendments. See attachment #1 for the proposed amendment.

Committee discussed proposed amendments to the bill. The committee determined that they still needed clarification on certain points of the amendments and were going to wait to make a motion until Senator Larson could explain the changes made to the amendment.

Chairman Klein: closed the committee work session.

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

SB 2137
2/11/2019
Job #32518

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to cigar bars.

Minutes:

Att. #1-4

Chairman Klein: Opened the committee work session on SB 2137. All members were present.

Senator Larson, District 3: testified in support of the bill. Walked through the amendments. See attachment #1 for additional testimony.

Chairman Klein: passed out a Christmas tree version of the amendments that Senator Larson was going through. See attachment #2 for amendments.

(6:51)Vice Chairman Vedaa: the bar part, will that be all cigar smoke or does it have to have a second spot? Or is this gonna be considered a bar with cigar? And that's it?

Senator Larson: What I've understood, is that if you want to smoke a cigarette in there you end up paying \$15 per cigarette to smoke a cigarette in their lounge or bar. So my understanding is they will not be selling cigarettes in these places.

Vice Chairman Vedaa: So that bar that will be a cigar bar will be all smoke then? There will be no smoke free areas? The entire place will be cigar and bar?

Senator Larson: I don't know that. As far as I know, they are normally sectioned off.

(11:31)Chairman Klein: The early discussion mentioned premium?

Senator Larson: Yes, that's mentioned here. (referring to amendment)

(13:45)Chairman Klein: are there questions specific to the amendments?

Vice Chairman Vedaa: Should there be something in this bill that mandates a warning on the outside that says there's smoking inside?

Senator Larson: Of all the places that I've been, I haven't seen any warnings.

Chairman Klein: So you're approaching this facility that says Oley's Cigar Lounge, so we would know that it's a cigar lounge so that's the warning right there?

Senator Larson: Yes, I think so.

Chairman Klein: But you have to generate 30% of your sales selling cigars for you to be able to call yourself that.

Senator Larson: Yes, for a cigar bar but for a cigar lounge it's different.

Brett Mecum, IPCPR: testified in support of the bill. I have passed on to your stations two fliers about the IPCPR and also walks through what we see as premium cigars. The second is from two studies one that was from the FDA and the national institute of health and why it's not a problem for underage smoking (see attachment #3). Questions on smoking or non-smoking, most cigar bars its pure smoking. Also on cigarettes, I would recommend the committee, if there was a concern about cigarettes we have regulations in other states that prohibit cigarettes from being smoked in cigar lounges, to keep it completely cigar oriented. The other issue of things such as age, what I'd like to say is these establishments tend to be primarily mom and pop owned places that have quite a bit of knowledge about the products. These are people that love the product, love the industry. There are many people that enjoy premium aged wines and cigars are the same way, they've been aged a certain way. From an age perspective they also card vigorously and religiously. They are really small businesses when it comes down to it. We urge a do pass.

(18:59)Chairman Klein: You've been in both cigar lounges and bars? How would that experience work?

Brett: Yes, I believe we have two retailers in North Dakota that are members of our association. The difference is, basically a cigar bar has a bar and serves alcohol but usually a humidior, so they allow you to select a premium cigar and smoke a premium cigar on premise at the bar. A lounge, tends to be merely the definition of lounge, it's an area where you can go and smoke, you've got a room you have the ability to rent, lockers to keep your cigars in. It has chairs, tvs, entertainment systems, so you have a location to go in and sit down and enjoy your cigars. Certain folks who enjoy premium cigars may not be able to smoke at home, really what cigar bars do is provide an area where folks who do enjoy a cigar can get together with their friends and have discussions. They're both areas for socialization and for like-minded people to enjoy a product together.

Senator Burckhard: So are these places well ventilated?

Brett: Every state has different regulations, a lot of them have what are called reverse pressure ventilation system which take the cigar air inside and suck it out through the roof. So as Senator Larson pointed out, a lot of the places he has been while you do not smell smoke you do smell tobacco, because you have the humidior and the areas in the back that are open, but as far as smoke, unless someone is smoking right next to you, you can't really

smell the smoke. Another thing as technology gets better, we'll keep developing ways to avoid having big smoke filled rooms.

Chairman Klein: The expectation to go to these cigar bar/lounges, its not that I'm going to go meet friends and have a visit, so that clientele is fairly narrowly defined, and those same requirements as a percentage of sales required in other states?

Brett: The 10% is pretty standard for cigar bars across the way because they also have the threshold of having to sell alcohol and also have their alcohol licensing. Another point is, the lounge percentage of 30% might be a little bit low, similar states have anywhere from 50-75% of their sales need to be in cigars. In Wisconsin I had to push back on legislation that mandated the sales be 90% of their sales, we felt that was way too high. We are comfortable with 30%. But it's at the body's discretion.

Chairman Klein: Other state have similar smoking laws as North Dakota, we prohibit smoking in any buildings. Would we be able to work with that?

Brett: Each state has their own rules they operate by; I will use the example of Wisconsin. There are cigar lounges and cigar bars, that are grandfathered in. they had to have existed before the legislation was enacted. Arizona is a lot more loose, really just depends on the state. I did bring some cigars for the committee to see.

Chairman Klein: We'll do that after we adjourn. We're preparing to kick this thing loose. How do you feel about the wording?

Senator Larson: Yes, that's fine. If it's a simple change to remove the word glue, that's fine I feel comfortable with that.

Chairman Klein: I don't think changing that one word will make a difference so we will not entertain anymore amendments. We will recess for now but we'll bring this back this afternoon.

Vice Chairman Vedaa: Should I get glue put on it?

Chairman Klein: If you would like to.

Chairman Klein: Closed the hearing on SB 2137.

See attachment #3-4 for additional testimony submitted to the committee.

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2137
2/11/2019
Job #32529

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to cigar bar.

Minutes:

Chairman Klein: Opened the committee work session on SB 2137. All members were present.

Vice Chairman Vedaa: Moved to adopt amendment.

Senator Burckhard: Seconded.

Chairman Klein: I'm not seeing the word glue in here. It might be the case that it was added to the proposed amendment but was never actually in the bill, but regardless let the record show, we wish to proceed with the amendment without the word glue.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Vice Chairman Vedaa: Move a do pass as amended.

Senator Roers: Seconded.

Chairman Klein: any discussion? Of all the important things we've worked on the last few week, we have spent some time on this one.

Senator Piepkorn: I just think the idea flies in the face of our healthy living movement in North Dakota, it appears to be a step backwards. Even if you have to be an adult to step into the bar or lounge. That is a moot point as far as I'm concerned. It still is fostering that image, even for younger people who go by and see a place that looks interesting. It makes it more acceptable. As an adult who does occasionally smoke a cigar, and this is purely personal, but I don't mind that it's difficult to find a place to smoke a cigar in the winter. I do know on person in North Dakota who has designed his own place, so he has a smoking room. It's very well ventilated so I get there once a year to smoke a cigar. So you know otherwise we can

smoke them outside the rest of the year. I just think it goes against the grain. And in my district, people aren't for this. There are a lot of young people there and young families and they see this as a step backwards for all the progress we've been making over the past few years.

Chairman Klein: And I can understand that. We've made a step back on the medical marijuana issue and we allowed inhalation. That was a step back so we're trying to do the best we can do with the rules that have been given to us.

Senator Kreun: As we look at page 3, starting around line 6 or 7 or 8, through line 14 and then it goes back down to defining what a lounge is and what a bar is. In my opinion they're two completely different entities. The lounge is as you would basically have a humidor, pick what you like and then go into a lounge area for smoking and basically you could have snacks and small items for sale and I don't have too much problem with that. But I do have a problem with the bar scenario that basically is an alcohol establishment or a cigar bar with the ability to be attracted to no different to what we had in the past. In my past life I was on the city council in Grand Forks for twelve years, and we passed a city ordinance for no smoking in bars prior to it was in the state of North Dakota and I feel if I permit both of these to go forward it's not representing my district. The average age in my district is 21.9 years old. And so in promoting this activity in a bar scenario, I cannot support this bill.

A Roll Call Vote Was Taken: 3 yeas, 3 nays, 0 absent.

Motion failed.

Senator Kreun: moved a do not pass as amended.

Senator Piepkorn: Seconded.

A Roll Call Vote Was Taken: 3 yeas, 3 nays, 0 absent.

Motion failed.

Senator Kreun: moved without committee recommendation as amended.

Senator Roers: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Vice Chairman Vedaa will carry the bill.

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2137
2/13/2019
Job #32658

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to cigar bars.

Minutes:

It has come to the attention of the committee that a bill similar to this was last voted on in 2012, which means that in order for this bill to pass it would need a 2/3 vote from the full body. Upon hearing this, members of the committee who had previously voted in favor of this bill proposed that they may change their votes on the Senate floor.

February 11, 2019

SK
10/2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2137

Page 1, line 2, after "bars" insert "and lounges"

Page 2, line 6, remove "that generates ten percent or more of the bar's annual gross income from"

Page 2, line 7, replace "the sale of cigars" with "or a cigar lounge, which has a valid certificate issued by the tax department under this subdivision"

Page 2, line 10, after "bar" insert "or cigar lounge"

Page 2, line 11, remove "and any premium tobacco product"

Page 2, line 12, remove "tobacco"

Page 2, line 13, after the underscored period insert:

"(1)"

Page 2, line 13, replace "meeting" with "or cigar lounge asserting the bar or lounge meets"

Page 2, line 14, replace "annually" with "before February first of each year"

Page 2, line 15, after "revenue" insert "from the previous calendar year"

Page 2, line 16, after the underscored period insert "Upon receipt of a report asserting compliance with the annual gross income requirements of this subdivision, the tax department shall issue an annual certificate. The tax department is not required to confirm the accuracy of information reported but may not issue a certificate absent supporting documentation from the bar or lounge. Information reported to the tax department under this subdivision is subject to the confidentiality provisions of section 57-39.2-23."

(2)"

Page 2, line 16, replace ", the term 'cigar'" with ":

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

(b) "Cigar"

Page 2, line 17, remove "consisting only of tobacco, measures a"

Page 2, replace line 18 with "of whole leaf tobacco; does not contain filler other than tobacco filler; does not contain binder other than tobacco binder; does not contain additives other than water; does not contain a filter, tip, or nontobacco mouthpiece; weighs at least six pounds per thousand count; and is made by hand, except to allow for the use of a manually operated machine to assist in bunching, rolling, and binding."

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

202

Renumber accordingly

Date: 2/11
 Roll Call Vote #: 3

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2137**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Kneun Seconded By Piepkorn

Senators	Yes	No	Senators	Yes	No
Chairman Klein		X	Senator Piepkorn	X	
Vice Chairman Vedaa		X			
Senator Burckhard	X				
Senator Kreun	X				
Senator Roers		X			

Total (Yes) 3 No 3

Absent 0

Floor Assignment _____

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

Date: 2/11
Roll Call Vote #: 4

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2137**

Senate Industry, Business and Labor Committee
 Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Krum Seconded By Roers

Senators	Yes	No	Senators	Yes	No
Chairman Klein	X		Senator Piepkorn	X	
Vice Chairman Vedaa	X				
Senator Burckhard	X				
Senator Kreun	X				
Senator Roers	X				

Total (Yes) 6 No 0
Absent 0
Floor Assignment Vedaa

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

REPORT OF STANDING COMMITTEE

SB 2137: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2137 was placed on the Sixth order on the calendar.

Page 1, line 2, after "bars" insert "and lounges"

Page 2, line 6, remove "that generates ten percent or more of the bar's annual gross income from"

Page 2, line 7, replace "the sale of cigars" with "or a cigar lounge, which has a valid certificate issued by the tax department under this subdivision"

Page 2, line 10, after "bar" insert "or cigar lounge"

Page 2, line 11, remove "and any premium tobacco product"

Page 2, line 12, remove "tobacco"

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Page 2, line 13, replace "meeting" with "or cigar lounge asserting the bar or lounge meets"

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Page 2, line 16, replace ", the term "cigar"" with ";

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

(b) "Cigar"

Page 2, line 17, remove "consisting only of tobacco, measures a"

Page 2, replace line 18 with "of whole leaf tobacco; does not contain filler other than tobacco filler; does not contain binder other than tobacco binder; does not contain additives other than water; does not contain a filter, tip, or nontobacco mouthpiece; weighs at least six pounds per thousand count; and is made by hand, except to allow for the use of a manually operated machine to assist in bunching, rolling, and binding."

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

Renumber accordingly

2019 TESTIMONY

SB 2137

SB2137 1/15/19 Att #1

Sb 2137 cigar bill

This bill will allow cigar sales in north Dakota the change is that if 10% or more in total sale is cigar related they can smoke inside the facility. I would like to add these amendments to the bill to more align with the industry.

There is also a concern to change 40 ring size to 30ring size.

proposed change would replace page 2 lines 16-18 and it would read: "ANY ROLL OF TOBACCO WRAPPED IN TOBACCO WEIGHING 3 POUNDS PER THOUSAND OR MORE."

SB2137 1/15/19 Att #2

19.0675.01000

Sixty-sixth

Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO SENATE BILL NO. 2137

Page 2, line 17, replace “tobacco, measures a” with “whole leaf tobacco; contains only tobacco filler; contains only tobacco binder; contains no additives other than cigar glue and water; does not contain a filter, tip, or non-tobacco mouthpiece; weighs at least six pounds per thousand count; and is made by hand, except to allow for the use of a manually operated machine to assist in bunching, rolling, and binding.”

Page 2, remove line 18

77764199v2

SB2137 1/15/19 Att #3

Collin Nelson
Executive Tobacco
Minot, ND

First thing I would like to address about this amendment is to clarify the language proposed by Sen. Larsen. By no means are we seeking to allow cigar or any other type of smoking back into alcohol establishments, but rather are seeking to allow for the creation of smoking lounges dedicated to being a sanctuary for purveyors of premium tobacco products such as cigars, pipe and hookah tobacco. The location of these lounges would be connected to premium tobacco retail establishments.

Century code 23-12-10, the "smoking ban," has nearly eliminated brick and mortar premium tobacco retailers in North Dakota and completely eliminated niche smoking bars, resulting in consumers to purchase products via online and mail order, thus causing loss of local revenue and tax dollars. When it passed, it took the foundation of a niche social group and setting away, as those that utilize these lounges in the past are not looking for the experience that one might get from the social setting of an alcohol establishment but, instead, seek a more relaxed atmosphere and like-minded individuals in which to socialize with, without the scrutiny of those that do not appreciate the odors said products.

Many states have passed legislation banning public smoking but a greater percent of those states have created exemptions for such smoking lounges to great success. Everybody that enters a tobacco establishment already understands the health risks and accepts that risk, no different than those entering drinking establishments. Same could be said for those that work at said establishments. It is important to realize that premium tobacco smokers don't think of it as a habit as much as a hobby, one best enjoyed in a social setting. The creation of these lounges poses little to no risk to the greater public and give smokers a safe place to enjoy their products without being a nuisance to the general public.

To conclude, not all of us want to go to a bar to socialize, yet our means of doing so was taken away when the no smoking referendum was passed, leaving a niche group without any place to go. We simply want the same courtesy extended to us that is given to other adult consumables and that can be solved with the passing of this amendment.

Senate Industry, Business and Labor
Chairman Jerry Klein
January 15, 2019

By: Shaun Sipma
Minot Resident
shaun.sipma@outlook.com
701.721.6839

SB 2137

Chairman Klein and Members of the Senate Industry, Business and Labor Committee, my name is Shaun Sipma. As a resident of Minot I want to say thank you for the opportunity to speak in support of Senate Bill 2137.

This bill represents a very specific change to the North Dakota Century Code. This proposal aims to allow for Premium Tobacco Shops the choice to allow sampling of cigars at that business. This is a business model that currently exists in numerous states with strict anti-smoking laws including South Dakota, Minnesota, New York, and California to name just a few. This isn't about reintroducing smoking into bars but rather a niche market of what would better be described as a cigar lounge. Cigar lounges themselves only allow for premium tobacco products not cigarettes. If you are not familiar with the difference a cigar is a premium tobacco product that only contains tobacco. There are no additives, no substances included just rolled tobacco.

I would like to talk, for a moment, about impact. In Minot the Great Plains Smoke Shop operated from 2004 to 2017. In that time and until the smoking ban was passed by a statewide vote a cigar lounge existed. The people who patronized the lounge were there to for the very

of smoking cigars. It was more than just a business though as numerous fundraisers were held to benefit local charities including in the fall of 2011 when over \$10,000 was raised for the Red Cross following the 2011 Minot flood. Through the years North Dakota Cigarfest hosted by Great Plains Smoke Shop also raised tens of thousands of dollars for Wounded Warriors. People were employed and taxes were collected both from sales and from the property. Great Plains closed in 2017. The premium tobacco cigars are now purchased online. This was a viable business owned by a medically retired veteran who has since moved to North Carolina.

I personally have never shied away from the fact that I smoke cigars. It is a product that is legal and I am free to make that choice. It did undermine choice however when the law changed that forcibly altered the Great Plains Smoke Shops business model and put it out of business. This is a matter of choice. If someone doesn't want to smoke a cigar then they don't have to visit a cigar lounge. If someone doesn't like the smell of a cigar then they don't have to patronize a cigar shop. I would ask that you give consideration of choice to this matter as it is a very specific to premium tobacco and cigar lounges.

Lastly I fully expect the same talking points to resurface in relation to the anti-tobacco movement that lead to the smoking ban. If we continue to legislate every potential risk out of existing we can quickly expect our freedom of choice to become vastly limited. That has and continues to proven itself in other states whether it be the size of soda-pop you can purchase or whether you can drink a beverage through a plastic straw. Where does it stop?

Thank you for your time and consideration of this bill. I would stand for questions.

SB2137 1/15/19 Att #5

Good morning, Chairman Klein and members of the Committee. My name is Neil Charvat, and I am the Director of the Tobacco Prevention and Control Program for the North Dakota Department of Health. I am here to provide testimony in opposition to Senate Bill 2137.

Tobacco prevention and control efforts in North Dakota focus on guidance provided by the Centers for Disease Prevention and Control (CDC) *Best Practices for Comprehensive Tobacco Control Programs* (Best Practices). Best Practices provide evidence-based interventions to prevent tobacco product use initiation; increase quitting tobacco use; and reduce exposure to secondhand smoke. Senate Bill 2137 attempts to create an environment to expose the public, especially employees, to secondhand smoke in the workplace.

Reducing exposure to secondhand smoke helps eliminate sickness and death related to this exposure. According to the CDC, secondhand smoke exposure contributes to approximately 41,000 deaths among nonsmoking adults and 400 deaths in infants each year. Secondhand smoke causes strokes, lung cancer, and coronary heart disease in adults. Non-smokers who breathe in secondhand smoke take in nicotine and toxic chemicals the same way smokers do. The more secondhand smoke you breathe, the higher the levels of these harmful chemicals in your body. There is no known safe level of secondhand smoke. Any exposure is harmful.

In November 2012, North Dakotans overwhelmingly approved Initiated Measure 4. This measure removed exemptions from the 2005 State Smoke-Free Law. The remaining exemptions mainly applied to bars, truck stops, and public lodging. The intent was to protect ALL North Dakota citizens from unnecessary exposure to secondhand smoke in indoor public venues. Senate Bill 2137 would again endanger the lives of North Dakota citizens.

The 2012 North Dakota Smoke-Free Law is an exceptional public health policy achievement. It not only protects the public from the dangers of secondhand smoke exposure, but also addresses the emerging issues of the dangers of electronic nicotine delivery systems (ENDS), also known as e-cigarettes and

vaping. Many states that have good smoke-free laws, but do not address indoor ENDS use, are having a challenging time changing their current laws. The 2016 *E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General* applauds the North Dakota 2012 Smoke-Free Law as a major policy success to protect our citizens. Making changes to such an effective policy tool will lessen the ability of this tool to protect public health.

We have proof that policies like this reduce death and disability in our communities. A research paper from the University of North Dakota, *Impact of a Comprehensive Smoke Free Law on Incidence of Heart Attacks at Rural Community Hospitals*, that studied the effects of smoke-free workplaces in Grand Forks cited:

Approximately 46,000 deaths from cardiovascular disease are associated with secondhand smoke exposure annually in the U.S.. This corresponds to roughly 150 deaths annually in North Dakota. Secondhand smoke, even in brief exposure, can increase risk of heart attack. Heart attack admissions fell by 30.61% as a percentage of total admissions after implementation of a comprehensive smoke free law, from 0.49% (83/16,702) to 0.34% (63/18,513).

Senate Bill 2137 uses methods to give the appearance of mitigating the dangers of secondhand smoke indoors through ventilation. Ventilation systems do not work to protect the public from this danger. According to the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) in their position statement on the subject:

"At present, the only means of effectively eliminating health risks associated with indoor exposure is to ban smoking activity... No other engineering approaches, including current and advanced dilution ventilation or air cleaning technologies, have demonstrated or should be relied upon to control health risks from ETS [environmental tobacco smoke] exposure in spaces where smoking occurs... Because of ASHRAE's mission to act for the benefit of the public, it encourages elimination of smoking in the indoor environment as the optimal way to minimize ETS exposure."

A cigar bar as proposed will be exposing all employees and patrons to the dangers discussed above. Additionally, there would be secondhand smoke affecting the employees and patrons of other businesses if the cigar bar is in the same building.

Though the language of Senate Bill 2137 relates primarily to smoking cigars, the bill contains reference to "and any premium tobacco product". "Premium tobacco product" is an industry term and does not have an official definition of products in state statute. The vagueness of this language could lead to interpreting various tobacco products as "premium". This could include cigarettes and ENDS. The vague language could lead to difficult enforcement for both employees of the establishment and law enforcement. It would be very difficult to determine if bar patrons were using premium or non-premium products in the establishment.

Senate Bill 2137 seeks to change the current smoke-free law to create places that put patrons, employees, and anyone in the immediate area at risk of sickness and death. Therefore, we oppose Senate Bill 2137.

This concludes my testimony, I am happy to answer any questions you may have.

SB 2137 1/15/19 Att #6



American Cancer Society
Cancer Action Network
2401 46th Ave SE, Ste. 102, Mandan,
ND
701.471.2859
Deb.knuth@cancer.org

North Dakota SB 2137
Senate Committee on Industry, Business and Labor
Jerry Klein, Chairman

My name is Deb Knuth and I am the Government Relations Director for the North Dakota American Cancer Society Cancer Action Network.

The American Cancer Society Cancer Action Network (ACS CAN), the nonprofit, non-partisan advocacy affiliate of the American Cancer Society advocates for public policies that reduce death and suffering from cancer including policies targeted at reducing tobacco use. ACS CAN strongly opposes SB 2137, a bill that is relating to cigar bars.

North Dakota enjoys one of the most comprehensive smoke-free laws in the nation and its citizens are protected by having smoking prohibited in all enclosed areas of public places and places of employment.

Secondhand smoke is a serious health hazard. Ventilation technologies do not sufficiently protect individuals from the harmful effects of breathing in secondhand smoke. The only effective way to fully protect nonsmokers from exposure to secondhand smoke is to eliminate smoking in indoor public spaces. Cigars are a public health risk and a leading cause of laryngeal, oral and esophageal cancers.

Cigar use is a significant public health concern. Cigars—just like cigarettes and other tobacco products—are not safe. They contain many of the same cancer-causing substances as cigarettes and other tobacco products. All tobacco products, including cigars, contain nicotine, which may induce dependence and harm health. Cigars also produce secondhand smoke that is dangerous for non-smokers.

Regulation of cigars is part of ACS CAN's comprehensive approach to reducing tobacco use and exposure to secondhand smoke in the United States. We must include cigars in smoke-free laws: Secondhand smoke from cigars poses significant health risks to smokers and those around them and should be included as part of any smoke-free law. This includes prohibiting cigar use in cigar and tobacco shops, bars identified as "cigar bars," gaming facilities and wherever else smoking is prohibited. There is neither a public health nor fiscal justification for giving cigars of any size preferential treatment.

There are no safe tobacco products, and there is no safe level of exposure to secondhand smoke. ACS CAN does not support smoke-free laws that allow for separating smokers from nonsmokers or ventilating building as alternatives to requiring a 100 percent smoke-free environment, as the evidence is overwhelming that these measures cannot eliminate exposure of nonsmokers to secondhand smoke.

ACS CAN's work to create 100 percent smoke-free environments is part of a comprehensive approach to addressing tobacco use and exposure to secondhand smoke in the United States.

SB 2137 1/15/19 Att #6

ACS CAN supports local, state, and federal initiatives to eliminate public exposure to secondhand smoke, including 100 percent smoke-free laws, prohibiting smoking in all workplaces, including restaurants, bars and casinos which are key to protect nonsmokers, children and workers from the deadly effects of secondhand smoke.

The American Cancer Society Cancer Action Network urges legislators to oppose SB 2137.

Thank you for allowing me to testify. Are there any questions?

SB2137 1/15/19 Att #7 pg 1



P.O. Box 3237
Bismarck, ND 58502
701-751-0229
www.tfnd.org

January 19, 2019

10:15 am CST

Senate Industry, Business, and Labor Committee for the 66th ND Legislative Assembly

Chairman Klein, and members of the Senate Industry, Business, and Labor Committee, hello, my name is Heather Austin and I am the Executive Director for Tobacco Free North Dakota. Thank you so much for your time this morning.

Today I am here to encourage a Do Not Pass on SB 2137, or the Cigar Bar Bill. The mission of Tobacco Free North Dakota is to improve and protect the public health of all North Dakotans by reducing the serious health and economic consequences of tobacco use, the state's number one cause of preventable disease and death. By eroding our indoor smoke free air law, by making exceptions to allow even one type of product to be smoked or aerosolized, we do a serious disservice to our citizens and to our state.

Cigars are a public health risk and a leading cause of several cancers. Unfortunately, sales of cigars continue unabated. While cigarette consumption decreased by nearly 40 percent from 2000 to 2015, cigar consumption increased by 92 percent.ⁱ Cigar use among youth almost as common as cigarette smoking.

By allowing cigar bars, we begin to renormalize smoking to our youth, undoing years of work by our public health experts across North Dakota. There is already a serious disconnect in youth views concerning vaping vs. smoking, with the former seeming to be safer in the eyes of our teens. We do not want to confuse the issue even further by making cigars seem safe enough to smoke indoors without serious health consequences for those exposed. There is no safe level of tobacco exposure. ⁱⁱ

We also know that ventilation systems simply do not work to eliminate all second hand smoke. While they are sometimes promoted as a way to reduce exposure to secondhand smoke, ventilation cannot remove it all, and does not purify the air at rates fast enough to protect people from the harmful toxins. The Surgeon General has concluded that even taking the steps of separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure of nonsmokers to secondhand smoke. The only effective way to fully protect people from exposure to secondhand smoke is to completely eliminate smoking in indoor public spaces.ⁱⁱⁱ

Finally, I would like to point out that North Dakota has one of the best indoor smoke free air laws in the nation protecting our citizens. We need to be proud of that and we need to preserve it. Once one exception is made, how soon will it be before another request appears in front of our Legislature? With electronic product use at epidemic levels for our youth, and with new products being introduced at a lightning pace, we can't risk opening the door for further erosion of a proven health policy that creates a healthier state and that saves lives.

Again, thank you for this time in front of you, Chairman Klein and the Committee. It is very appreciated. Please vote Do Not Pass on SB 2137.

May I take any questions?

Heather Austin
Executive Director, Tobacco Free North Dakota
Cell: 701-527-2811
heather@tfnd.org
www.tfnd.org

- i. American Cancer Society. Cancer Facts & Figures 2017. Atlanta, GA: American Cancer Society, 2017
- ii. Surgeon General Report 2010
<https://www.surgeongeneral.gov/library/reports/secondhand-smoke-consumer.pdf> and
National Cancer Institute Dec. 5, 2016 <https://www.cancer.gov/news-events/press-releases/2016/low-intensity-smoking-risk>
- iii. U.S. Department of Health and Human Services (HHS). The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

TESTIMONY OF SB 2137

Valerie Schoepf, President
Bismarck Tobacco Free Coalition
6959 80th St NE
Bismarck ND 58503
701-204-7605

Thank you for your time today, Chairman Klein and members of the Senate Industry, Business and Labor Committee. I'm Valerie Schoepf, and I'm the President of the Bismarck Tobacco Free Coalition. Our Coalition is a pro-active organization dedicated to promoting a healthy, tobacco free environment. We strongly oppose SB 2137.

I would like to share about the history of the ND Smoke Free Law. On November 6, 2012, every county in the state voted in favor of becoming smoke-free. The law advances public health by protecting more workers, residents and visitors from secondhand smoke exposure in public places and places of employment. Voters overwhelmingly supported the right to breathe clean indoor air, and specifically, equal protection for everyone, including bar workers and patrons.

SB 2137 would reverse the will of the voters from 2012; it would allow workers and individuals to be exposed to secondhand smoke from cigars or premium tobacco. The term premium tobacco does not have a specific definition, which may allow for a variety of tobacco products to be used. Either way this bill would eliminate public health protection for our community from secondhand smoke. Protecting the health and safety of community is one of the main purposes of government. Government regulates all kinds of health functions in businesses, including food handling, food storage and sanitation. Smoke-free law is no different.

Bismarck Tobacco Free Coalition urges legislators to oppose SB 2137.

Hello, my name is Kira Lampton. I do work in the field of tobacco prevention education; however, today I am here today on my own time. There are a lot of facts and statistics I can give you. For example, in 2012 67% of ND voters passed the indoor smoke-free air law to provide healthier environments for not just organization patrons, but also the employees as well. I can tell you that the U.S. Environmental Protection Agency and the Centers for Disease Control, among others, have studies that show no amount of ventilation completely eliminates secondhand smoke. Not only does it not eliminate the particles, but there is also no amount of secondhand smoke that is considered "safe." The Food and Drug Administration (FDA) states that cigars are NOT a safe alternative to cigarettes. In fact, cigars contain **10 times** the amount of nicotine, **2 times** the tar, and have **greater than** 5 times the amount of carbon monoxide. The FDA also states that the secondhand smoke from cigars is equal to, if not more toxic than cigarette secondhand smoke.

I can go on about statistics and facts; however, I am here to let you know what I observe in my work and in my community. I am a part of multiple coalitions, and I also do a lot of outreach and volunteering in our community. When I bring up tobacco prevention topics, whether it be for work or with friends, or even with random strangers while waiting in a store, the overwhelming response I get is appreciation for our smoke-free law, and growing concern for our youth initiating into new tobacco products. Some of the people I have spoken with state that tobacco was one of the first addictions they had, and one of the last they quit; because it is one of the hardest addictions to quit. In the last couple of years, our community created a coalition dedicated to not only helping people quit addictions, but also creating community support for recovery. This Committee on Addiction continues in our community, and works to help people recover from all addictions, including tobacco. Therefore, I find this bill counterproductive to the efforts being made in our community, and across our state, to creating and sustaining healthier communities and preventing exposure to secondhand smoke.

SB 2137
Industry, Business and Labor Committee
January 15, 2019

Good morning Chairman Klein and members of the Industry, Business and Labor Committee. My name is Mary Korsmo and I am the Executive Director of the North Dakota State Association of City and County Health Officials, or SACCHO. A member association, SACCHO is comprised of all 28 ND public health units. I am here today in opposition of SB 2137.

In 2012, our current comprehensive, smoke-free law passed with the support of 66% of ND voters. The ND smoke-free law was created to protect workers, residents and visitors from exposure to secondhand smoke in public places and places of employment. Secondhand smoke has been proven to cause numerous health problems in adults including coronary heart disease, stroke, and lung cancer.

Secondhand smoke is the combination of smoke from the burning end of a tobacco product and the smoke exhaled by the user. Secondhand smoke contains more than 7,000 chemicals; hundreds are toxic, and about 70 can cause cancer. There is no risk-free level of secondhand smoke. Even brief exposure can cause immediate harm. According to the Center for Disease Control and Prevention (CDC), establishing a 100% smoke-free environment is the only effective way to fully protect nonsmokers from secondhand smoke. We have that environment now within all enclosed areas of public and work places in ND with our current smoke-free law.

Cigars are not a safer alternative to cigarettes as they contain many of the same cancer-causing substances as cigarettes and other tobacco products.

You may be aware of discussion regarding ventilation systems. The CDC, after much research, has determined that ventilation systems do not protect people from the dangers of secondhand smoke. This conclusion is also supported by the American Society of Heating Refrigeration and Air-conditioning engineers, also known as ASHRAE.

- Conventional air cleaning systems can remove large particles but not the smaller particles or the gases found in secondhand smoke.
- Current heating, ventilating, and air conditioning systems alone do not control secondhand smoke exposure. In fact, these systems may distribute secondhand smoke throughout a building.
- Even separately enclosed, separately exhausted, negative-pressure smoking rooms do not keep secondhand smoke from spilling into adjacent areas.

These are a few of the reasons, supported by many studies, the North Dakota Association of City and County Health Officials urges a DO NOT PASS on SB 2137.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2137

Page 1, line 2, after "bars" insert "and lounges"

Page 2, line 7, replace the first underscored semicolon with "or a cigar lounge, which"

Page 2, line 10, after "bar" insert "or cigar lounge"

Page 2, line 11, remove "and any premium tobacco product"

Page 2, line 13, after the underscored period insert:

"(1)"

Page 2, line 13, after "bar" insert "or cigar lounge"

Page 2, line 16, after the underscored period insert:

"(2)"

Page 2, line 16, replace "the term 'cigar'" with ":

(a) "Cigar"

Page 2, line 17, remove "measures a"

Page 2, line 18, replace "number forty ring size or larger" with "contains only tobacco binder and no additives except for water and cigar glue"

Page 2, after line 18, insert:

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

Re-number accordingly

January 25, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2137

Page 1, line 2, after "bars" insert "and lounges"

Page 2, line 6, remove "that generates ten percent or more of the bar's annual gross income from"Page 2, line 7, replace "the sale of cigars" with "or a cigar lounge, which has a valid certificate issued by the tax department under this subdivision"

Page 2, line 10, after "bar" insert "or cigar lounge"

Page 2, line 11, remove "and any premium tobacco product"Page 2, line 12, remove "tobacco"

Page 2, line 13, after the underscored period insert:

"(1)"Page 2, line 13, replace "meeting" with "or cigar lounge asserting the bar or lounge meets"Page 2, line 14, replace "annually" with "before February first of each year"Page 2, line 15, after "revenue" insert "from the previous calendar year"Page 2, line 16, after the underscored period insert "Upon receipt of a report asserting compliance with the annual gross income requirements of this subdivision, the tax department shall issue an annual certificate. The tax department is not required to confirm the accuracy of information reported but may not issue a certificate absent supporting documentation from the bar or lounge. Information reported to the tax department under this subdivision is subject to the confidentiality provisions of section 57-39.2-23."(2)"Page 2, line 16, replace "the term 'cigar'" with ":(a) "Bar" means a bar that generates ten percent or more of the bar's annual gross income from the sale of cigars.(b) "Cigar'"Page 2, line 17, remove "consisting only of tobacco, measures a"Page 2, replace line 18 with "of whole leaf tobacco; does not contain filler other than tobacco filler; does not contain binder other than tobacco binder; does not contain additives other than cigar glue and water; does not contain a filter, tip, or nontobacco mouthpiece; weighs at least six pounds per thousand count; and is made by hand, except to allow for the use of a manually operated machine to assist in bunching, rolling, and binding."(c) "Cigar lounge" means a business dedicated, in whole or in part, to the smoking of cigars which generates thirty

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percent or more of the business's annual gross income from the sale of cigars."

Renumber accordingly

Abstract

The risk of lung cancer is greater in cigarette smokers than in cigar or pipe smokers. In Great Britain, which has a very high lung-cancer death rate, cigarette tobacco (flue-cured) has a high sugar content (up to 20%) while cigar tobacco (aircured) has a low sugar content (0.5—2%). Determinations of the sugar content of the tobacco and the pH of the smoke of cigarettes from more than 30 countries, and of a number of cigar and pipe tobaccos, have been carried out. The main differences found between the characteristics of cigarette and cigar and pipe tobaccos are:

- (1)

The high sugar content of the popular brands of cigarettes now smoked in many countries, which results in the production of a smoke of acid pH, becoming progressively more acid during the course of smoking, particularly towards the butt-end of the cigarette when the tar content of the smoke is at its highest;

- (2)

The low sugar content of cigar tobacco and of the air-dried tobacco used in the cigarettes of certain countries, which gives a smoke of less acid pH becoming progressively more alkaline during the course of smoking;

- (3)

The conditions of smoking in a pipe whereby the smoke from all types of tobacco, with both high and low sugar content, is less acid than that of most cigarettes, and becomes progressively more alkaline during the course of smoking.

Since the satisfaction derived from smoking is mainly due to the pharmacological effects of nicotine, it is suggested that the lower lung cancer incidence in cigar and pipe smokers may be related to the fact that nicotine is more readily absorbed in the form of the free base, at alkaline pH, than in the form of a stable salt, at acid pH. To obtain the same degree of "nicotine satisfaction" as in smoking a pipe or cigar, the smoker of cigarettes giving an acid smoke would tend to smoke more, and to encourage more prolonged and extensive contact of the smoke with the mouth and bronchus, and to take the smoke into his lungs, which would thus suffer greater exposure to the "carcinogenic" effects of the smoke than would be the case with cigar or pipe smokers.

In preliminary attempts to devise a "safer" cigarette, the addition of substances which give rise to an alkaline vapour at the usual temperature of combustion of cigarettes has been shown to reverse the character of the smoke of high sugar (fluecured) tobacco cigarettes so that it then resembles that of cigars and pipes in becoming progressively more alkaline during the course of smoking.

19.0675.01003

Sixty-sixth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2137

Introduced by

Senators O. Larsen, Vedaas

Representatives Becker, D. Ruby

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

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

6 **23-12-10. Smoking restrictions - Exceptions - Retaliation - Application.**

- 7 1. In order to protect the public health and welfare and to recognize the need for
8 individuals to breathe smoke-free air, smoking is prohibited in all enclosed areas of:
9 a. Public places; and
10 b. Places of employment.
- 11 2. Smoking is prohibited within twenty feet [6.10 meters] of entrances, exits, operable
12 windows, air intakes, and ventilation systems of enclosed areas in which smoking is
13 prohibited. Owners, operators, managers, employers, or other persons who own or
14 control a public place or place of employment may seek to rebut the presumption that
15 twenty feet [6.10 meters] is a reasonable minimum distance by making application to
16 the director of the local health department or district in which the public place or place
17 of employment is located. The presumption will be rebutted if the applicant can show
18 by clear and convincing evidence that, given the unique circumstances presented by
19 the location of entrances, exits, windows that open, ventilation intakes, or other
20 factors, smoke will not infiltrate or reach the entrances, exits, open windows, or
21 ventilation intakes or enter into such public place or place of employment and,
22 therefore, the public health and safety will be adequately protected by a lesser
23 distance.
- 24 3. The following areas are exempt from subsections 1 and 2:

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- 1 a. Private residences, except those residences used as a child care, adult day care,
2 or health care facility subject to licensure by the department of human services.
- 3 b. Outdoor areas of places of employment, except those listed in subsection 2.
- 4 c. Any area that is not commonly accessible to the public and which is part of an
5 owner-operated business having no employee other than the owner-operator.
- 6 d. A bar that generates ten percent or more of the bar's annual gross income from
7 the sale of cigars or a cigar lounge, which has a valid certificate issued by the tax
8 department under this subdivision; has a humidor on the premises; is enclosed
9 by solid walls or windows, a ceiling, and a solid door; and is equipped with a
10 ventilation system by which exhausted air is not recirculated to nonsmoking
11 areas and smoke is not backstreamed into nonsmoking areas. A bar or cigar
12 lounge meeting the requirements of this subdivision may permit the smoking of
13 cigars and any premium tobacco product purchased on the premises, but may
14 not permit the smoking of any other tobacco product on the premises.
- 15 (1) A bar meeting or cigar lounge asserting the bar or lounge meets the
16 requirements of this subdivision shall report to the tax department
17 annually before February first of each year, on a form prescribed by the
18 department, the revenue from the previous calendar year generated from
19 the sale of cigars as a percentage of annual gross income. Upon receipt of
20 a report asserting compliance with the annual gross income requirements of
21 this subdivision, the tax department shall issue an annual certificate. The tax
22 department is not required to confirm the accuracy of information reported
23 but may not issue a certificate absent supporting documentation from the
24 bar or lounge. Information reported to the tax department under this
25 subdivision is subject to the confidentiality provisions of section 57-39.2-23.
- 26 (2) For purposes of this subdivision, the term "cigar":
- 27 (a) "Bar" means a bar that generates ten percent or more of the bar's
28 annual gross income from the sale of cigars.
- 29 (b) "Cigar" means an individual roll of tobacco which has a wrapper or
30 cover consisting only of tobacco, measures a number forty ring size or
31 larger, and is sold without a filter. of whole leaf tobacco: does not

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

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

- 10 4. Smoking as part of a traditional American Indian spiritual or cultural ceremony is not
11 prohibited.
- 12 5. No person or employer shall discharge, refuse to hire, or in any manner retaliate
13 against an employee, applicant for employment, or other person because that person
14 asserts or exercises any rights afforded by this section or reports or attempts to
15 prosecute a violation of this section. An employee who works in a setting where an
16 employer allows smoking does not waive or surrender any legal rights the employee
17 may have against the employer or any other party. Violations of this subsection shall
18 be a class B misdemeanor.
- 19 6. This section may not be interpreted or construed to permit smoking where it is
20 otherwise restricted by other applicable laws.
- 21 7. Notwithstanding any other provision of this chapter, an owner, operator, manager or
22 other person in control of an establishment, facility, or outdoor area may declare that
23 entire establishment, facility, or outdoor area as a nonsmoking place.

SETTING THE RECORD STRAIGHT: NIH & FDA DATA ON PREMIUM CIGAR USE AND PUBLIC HEALTH IMPACT



Data from recent government-funded and government-led studies definitively prove that premium cigars are a unique product category that are almost exclusively enjoyed by older adults infrequently.

WHY THIS MATTERS:

IPCPR used the FDA's comment period as an opportunity to remind the administration that even their own data does not support the regulation of premium cigars. These data points prove why regulating cigars is ineffective in accomplishing that goal.

.02%

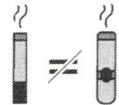
Only **.02%** reported smoking a premium cigar in the past 30 days



Over half (52%) of current premium cigar smokers (25 and older) have a **college degree**—compared to 32% across the US population



The average age of an individual's first premium cigar is **30 years old**—compared to 16.7 years old for cigarettes



There is **no meaningful correlation** between premium cigars and cigarette smoking



The average premium cigar consumer smokes **1.2 days out of every 30**—compared to 29.6 days out of 30 for cigarette smokers



97% of all premium cigar consumers do not smoke daily



No statistically significant increase in risk for smoking related diseases can be found between non-daily premium cigar smokers and non-smokers in general

THE STUDIES:

PATH Study: The Population Assessment of Tobacco and Health (PATH) study is a joint study by the FDA and the National Institutes of Health (NIH) that covers a multi-year cross section of youth and adult. PATH is one of the few government studies that effectively identified and analyzed data specific to premium cigars.

National Longitudinal Mortality (NLM) Study: An article published in the Journal of American Medicine (JAMA) analyzed the NLM study which tracked a population of 350,000 Americans for nearly 3 decades. The article, Association of Cigarette, Cigar, and Pipe Use with Mortality Risk in the US Population, examined the relationship between mortality, risk and use across a range of tobacco products over a population of over 350,00 individuals for nearly 3 decades.

IPCPR: WHO WE ARE

International Premium Cigar & Pipe Retailers
 1100 Pennsylvania Avenue, NE Washington, DC 20002
 202-721-8067 www.ipcprlegislative.org



WHAT IS THE INTERNATIONAL PREMIUM CIGAR & PIPE RETAILERS (IPCPR)?

Founded in 1933, the IPCPR is a not-for-profit trade association representing premium retail tobacconists and their suppliers. Representing over 3,000 retail stores across the United States and more than 350 manufacturers, distributors and service providers, IPCPR is the ultimate authority on the premium cigar and pipe tobacco industry. IPCPR's mission is to protect and grow the premium cigar and pipe tobacco industry through innovation, education, advocacy, market research, and the facilitation of relationships.

WHAT IS A PREMIUM CIGAR?

Premium cigars are the handcrafted, artisanal tobacco leaf product on the market. Unlike other products, a premium cigar takes 3–5 years to hit the market, and is only comprised of three ingredients; 100% natural whole tobacco leaf, water and natural vegetable gum—no flavorings or other additives that are found in other tobacco products. That is why premium cigars represent .01% of the entire tobacco product market. Data from the NIH & FDA show that unlike other tobacco products, premium cigars are a luxury item, not a nicotine delivery device.

WHO DOES IPCPR REPRESENT?

IPCPR represents small business mom & pop shops that for decades have made up the backbone of mainstreet America. Premium cigar retailers, also known as tobacconists, are located in all 50 states. Many of IPCPR members' businesses are family-owned small businesses, spanning several generations that employ an average of 6–7 members of the local community. IPCPR member retailers are specialty brick and mortar store fronts and lounges where Americans from all walks of life come together in a shared passion.

IPCPR MEMBER FAST FACTS



For more information, please contact **Rachel Hall**, IPCPR Senior Director of State Affairs, by emailing rachel@ipcpr.org or calling **434-989-6492** (mobile).

NDLA, S IBL - Crane, Amy

From: Reba Mathern-Jacobson <Reba.Mathern-Jacobson@lung.org>
Sent: Monday, February 11, 2019 07:49
To: NDLA, S IBL - Crane, Amy
Subject: SB 2137 - Do Not Pass

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Amy, thanks for sharing this with the committee and entering into the record.
Cheers, Reba

To: Chairman Klein and the Senate Industry, Business and Labor Committee
Senator Vedaa
Senator Burckhard
Senator Kreun
Senator Piepkorn
Senator Roers

From: American Lung Association
Pat McKone, Reba Mathern-Jacobson

Re: SB 2137 Do Not Pass Recommendation

The **American Lung Association recommends a Do Not Pass on SB 2137**. This bill allows for the indoor smoking of cigars and any premium tobacco product under certain conditions.

- This presents a health risk to customers in the building.
- This presents a health risk to employees.
- Numerous studies have demonstrated that all indoor air is shared air. Ventilation systems do not work. This even lead HUD to rule that all public housing be smoke-free as of August 2018.
- This weakens the strong indoor clean air laws of ND that have benefitted us since 2012. There is no good cause to weaken the law with exceptions.

The American Lung Association is the leading organization working to save lives by improving lung health and preventing lung disease, through research, education and advocacy. Our work is focused on four strategic imperatives: to defeat lung cancer; to improve the air we breathe; to reduce the burden of lung disease on individuals and their families; and to eliminate tobacco use and tobacco-related diseases.

Please contact us if you have any questions. Pat.McKone@Lung.org, Reba.MathernJacobson@Lung.org or 701-354-9719.

Please, Do Not Pass SB 2137.

Reba Mathern-Jacobson, MSW
Health Promotion
American Lung Association in ND
701-354-9719
Lung HelpLine: 1-800-LUNGUSA
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