

2023 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1229

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HB 1229
1/18/2023

Relating to bars and cigar lounges.

8:36 AM Chairman Louser called the meeting to order.

Members Present: Chairman Louser, Vice Chairman Ostlie,
Representatives: Boschee, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer,
Thomas, Tveit, Wagner. Member Absent: Christy, Warrey.

Discussion Topics:

- Designated cigar smoking area in bars
- Cigars purchased at establishments
- Construction requirements for smoking areas
- Secondhand smoke
- Health risks

Representative Dan Ruby, spoke in favor of HB 1229.

Committee Discussion

Rudy Martinson, Director ND Hospitality Association, spoke in favor of HB 1229.

Josette Dupree, Owner of Big Stick Cigars in Mandan, testified in favor of HB 1229.
(#13930).

Brent Winklelman, ND citizen, testified in favor of HB 1229.

Bryan Wilburn, ND citizen, testified in favor of HB 1229 (#13166).

Glynn Loope, Premium Cigar Association & Cigar Rights of America, testified in favor of
HB 1229 (#13905).

Nevaeh Mock, Bismarck Break Free Youth Board testified in opposition to HB 1229
(#13962).

Heather Austin, Executive Director of Tobacco Free North Dakota testified in opposition
to HB 1229 (#14041, #14042, #14043, #14044, #14045)

Megan Schneider, President of Bismarck Tobacco Free Coalition, testified in opposition to
HB 1229, (#13878).

Mike Krumwiede, American Heart Association, testified in opposition to HB 1229, (#14121).

Chelsea Ridge, Chairman, ND Public Health Association, testified in opposition to HB 1229, (#13929).

Pat McKone, Senior Director for Public Policy, and Advocacy for the American Lung Association, testified in opposition HB 1229, (#13941).

Additional Written Testimony:

Amy Heuer, Co-Executive Director for the North Dakota Society of Health, and Physical Educators (“ND SHAPE”) #13679

Stephanie Rieniets #13855

Joelean Lowman, Legacy High School teacher of Medical Related Careers #13867

Char Day, Specialist, Americans for Nonsmoker’s’ Rights #13964

Tony Burke, American Heart Association #14025

Sharon Laxdal, Public Health Nurse #14028

Kelly Buettner-Schmidt, #14072

Sommer Frohlich, BSW, Counselor Women’s Care Center, #14087

Duane Pool, District 47, Bismarck ND, #19960

Kelly Radebaugh, Registered Nurse, #19962

Chairman Louser adjourned the meeting 11:29 AM.

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1229
1/23/2023

Relating to bars and cigar lounges.

Chairman Louser called to order 2:44 PM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

Discussion Topics:

- Sales tax audit
- Smoking in businesses

Representative Kasper moved a do pass.
Representative Thomas seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	N
Representative Josh Christy	Y
Representative Hamida Dakane	N
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	AB
Representative Paul J. Thomas	Y
Representative Bill Tveit	N
Representative Scott Wagner	Y
Representative Jonathan Warrey	Y

Motion passed 10-3-1

Representative Ruby will carry the bill.

Chairman Louser adjourned the meeting 2:55 PM

Diane Lillis, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1229: Industry, Business and Labor Committee (Rep. Louser, Chairman)
recommends **DO PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB
1229 was placed on the Eleventh order on the calendar.

2023 SENATE INDUSTRY AND BUSINESS

HB 1229

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1229
3/1/2023

A bill relating to bars and cigar lounges.

1:45 PM Chairman D. Larsen called the meeting to order.

Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein. Members absent: Senator Boehm.

Discussion Topics:

- Cigar smoking business establishments.
- Public health
- ND Smoke Free Law
- Employees secondhand smoke

1:48 PM Chairman D. Larsen left the meeting and Vice Chairman Kessel took over as Chairman.

1:49 PM Representative Dan Ruby, District 38, introduced HB 1229 and testified in favor. No written testimony.

2:11 PM Josette Dupree, owner of Big Stick Cigars of Mandan, ND, testified in favor of HB 1229. No written testimony.

2:11 PM Chairman D. Larsen re-entered the meeting and took over as Chairman.

2:21 PM Heather Austin, Executive Director, Tobacco Free North Dakota, testified opposed to HB 1229. #21459, #21460, #21461

2:39 PM Nevaeh Mock, Junior at Legacy High School and member of the Bismarck Break Free Youth Board, testified opposed to HB 1229. #21398

2:44 PM Derrick Turbide, Non-Profit affiliate of the American Cancer Society, testified opposed to HB 1229. #21534

2:49 PM Corina Larson, Oncology/Survivorship Nurse, and Tobacco Treatment Specialist Cessation Counselor at Bismarck Cancer Center, testified opposed to HB 1229. # 21508

3:00 PM Meegan Schneider, President of Bismarck Tobacco Free Coalition, and a respiratory therapist, educator, and Tobacco Treatment Specialist, testified in opposition of HB 1229. # 21518

3:04 PM Mike Kruwiede submitted testimony online. American Heart Association, testified in opposition to HB 1229. #21471

3:05 PM Susan Kahler, SAP Coordinator, Bismarck Burleigh Public Health, testified in opposition to HB 1229. #21391

Additional written testimony:

Kameron Hymer # 21248
Joelean Lowman # 21287
Peter J. Koneck-Wilwerding # 21317, # 21318
Jennifer Schaeffer # 21329
Josette Dupree # 21333
Annabel DuFault # 21388
Amy Heuer # 21392
Char Day # 21421
Char Day # 21422
Chelsea Ridge # 21443
Joan Connell # 21450
Sharon Laxdal 21451
Pat McKone # 21454
Valerie Schoepf # 21463
Eric Johnson # 21465
Sommer Frohlich # 21468
Jodi Radke # 21479
Trisha James # 21484
Madelin Erickson # 21487
Kameron Hymer # 21489
Shaun Sipma # 21500
Nancy Neary # 21568

3:07 PM Chairman D. Larsen adjourned the hearing.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1229
3/6/2023

A BILL for an Act relating to cigar lounges.

3:22 PM Senator Larsen wanted to talk about HB 1229

Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein. Members absent: Senator Boehm.

Discussion Topics:

- Committee action

3:29 PM Senator Kessel moved to adopt amendment LC 23.0331.01001.

3:29 PM Senator Barta seconded.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	N
Senator Jerry Klein	Y

Motion passed 4-1-0

3:31 PM Senator Barta moved a DO PASS as amended.

3:31 PM Senator Kessel seconded.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	N
Senator Jerry Klein	N

Motion passed 3-2-0

Chairman Larsen will carry the bill.

3:36 PM Senator Larsen adjourned the meeting.

Brenda Cook, Committee Clerk

March 6, 2023

AG
3-6-23
(1-1)

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1229

Page 1, line 2, remove "bars and"

Page 2, line 7, remove "bar or a"

Page 2, line 11, remove "bar or"

Page 2, line 15, remove the first "bar or"

Page 2, line 15, remove the second "bar or"

Page 2, line 23, remove "bar or"

Page 2, line 27, remove "Bar" means a bar that generates two percent or more of the bar's"

Page 2, remove line 28

Page 2, line 29, remove "(b)"

Page 3, line 5, replace "(c)" with "(b)"

Page 3, line 6, replace "twenty" with "fifteen"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1229: Industry and Business Committee (Sen. Larsen, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (3 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1229 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 2, remove "bars and"

Page 2, line 7, remove "bar or a"

Page 2, line 11, remove "bar or"

Page 2, line 15, remove the first "bar or"

Page 2, line 15, remove the second "bar or"

Page 2, line 23, remove "bar or"

Page 2, line 27, remove "Bar means a bar that generates two percent or more of the bar's"

Page 2, remove line 28

Page 2, line 29, remove "(b)"

Page 3, line 5, replace "(c)" with "(b)"

Page 3, line 6, replace "twenty" with "fifteen"

Renumber accordingly

TESTIMONY

HB 1229

January 12, 2023

To whom it may concern,

My name is Bryan Wilburn, and I reside in Fargo with my wife and five children. I am writing today to express my support for House Bill 1229.

Smoking cigars is not an illegal activity. Furthermore, the danger premium cigars pose for increased underage tobacco use is virtually none.

According to an FDA commissioned study from the National Academies of Sciences, Engineering and Medicine (NASEM) titled, *Premium Cigars: Patterns of Use, Marketing and Health Effects*, only .6% of those who smoke premium cigars were under the age of 18.

My testimony today is a simple one: to encourage you all to vote yes and adopt a common-sense amendment to our current North Dakota smoking restrictions. If a tax paying citizen wishes to open an establishment with the purpose of creating a space for cigar consumers to enjoy them, they should be free to do so.

This bill does nothing to bring harm to those who want to avoid smoking and second-hand smoke. Those who do not wish to be exposed have an easy solution: don't work at or patron a cigar lounge.

But those citizens who wish to start or attend a cigar lounge should be allowed this privilege. It is not job of the state to determine if a citizen, who knows the risks, has the right to partake in a legal activity.

Respectfully,

Bryan T. Wilburn

TESTIMONY IN OPPOSITION OF HB 1229

Amy Heuer
Bismarck, ND

Chairman Rep. Louser, and members of the Industry, Business, and Labor Committee. My name is Amy Heuer, Co-Executive Director for the North Dakota Society of Health and Physical Educators (ND SHAPE), and currently a Middle School Health and Physical Education Teacher in Bismarck. I am here to provide testimony and my opposition for HB 1229.

Tobacco, regardless if it is in cigarette, cigar, chew, or vape form, has been proven to be a carcinogen, as well as having multiple other preventable life threatening cardiovascular and pulmonary conditions. I have seen these health issues first-hand, watching my mother battle cardiovascular disease that led to multiple strokes and eventually cardiac arrest. She smoked for 25 years, quitting when she was diagnosed with high blood pressure, but by then the damage was done. I have spent most of my adult years combating the influence of tobacco to prevent others from suffering through what my family has.

Ten years ago North Dakota citizens made their wishes known in regards to indoor smoking and protecting workers and customers, voting for a comprehensive smoke free law. HB 1229 is not only disregarding the vote of ND citizens, but also disrespecting them. With only 4.3% of North Dakotan adults smoking cigars, it is baffling why this legislature would consider this bill when it would put employees and customers in those facilities at such a great risk. Cigars have a greater output of secondhand smoke due to burning for a longer period of time than cigarettes, and having more tobacco than a cigarette. The risks associated with secondhand smoke are worse with cigars than cigarettes.

The citizens of North Dakota voted for smoke free indoor workplaces. Everyone should have the right and protection to breathe clean indoor air. HB 1229 disregards our citizens wishes and safety in favor of less than 5% of our population and a handful of business owners that are disregarding the health of their employees and customers.

I urge you to vote NO on HB 1229. We have made great strides in our state with reducing tobacco use rates and protecting individuals from secondhand smoke. I ask the Industry, Business, and Labor Committee to vote no on HB 1229. Thank you.

Amy Heuer

To Whom It May Concern,

I strongly oppose HB 1229. Each legislative session I am in awe that this is still being discussed after the majority of ND citizens have strongly stated they support ND's Smoke-Free air law. It is 2023! We know the dangers of cigar use as well as the negative effects of secondhand cigar use as it has been proven for years. Cigar smoking is dangerous. They contain high levels of cancer-causing agents as well as higher levels of toxins compared to even cigarettes. Why would we choose to expose employees or patrons to these risks when they enter an establishment?

I work in the healthcare field, and we are already in a healthcare crisis with staffing shortages, and increased workloads as the volume of patients are continually rising as some of our "baby boomers" age. Many of them are suffering from the effects tobacco use has caused them. WE KNOW BETTER NOW! Why would we support a bill that would allow exposing people to these dangerous effects? While vaping has become a pediatric epidemic and we have a serious health crisis to address with that, why are we continuing to discuss the remote possibility of allowing cigar use indoors?

I know we can continue to do the right thing for North Dakotans. Please, continue to support Smoke-Free air and oppose HB 1229.

Thank you for your consideration.

Sincerely,

Stephanie Rieniets

TESTIMONY IN OPPOSITION OF HB 1229

Joelean Lowman
4707 Harbor Trail SE
Mandan, ND 58554
701-220-2482

Chairman Louser and members of the and members of the House Industry, Business and Labor Committee. My name is Joelean Lowman. I teach the Medical Related Careers class at Legacy High School and am an Advisor for HOSA- Future Health Professionals. I have lived in Bismarck/Mandan for 25 years. I am here today to testify in opposition to House Bill 1229.

As I think about a time when ND was not Smoke Free it takes be back to 1996 when I was pregnant with my first child. At that time, I was a waitress at a restaurant that had a smoking and a nonsmoking section. I was currently in college to become and occupational therapist and knew the dangers of secondhand smoke to the child I was carrying. As a 23-year-old it was difficult for me to ask my supervisor not to be scheduled in the smoking section. Even when I did ask, the request was not always granted.

I know some people say work somewhere else. That is not always an option. When the choice becomes to protect yourself or pay the rent, the pay the rent may come out on top when taking care of yourself should. The Smoke Free laws in our state help to protect many individuals that are not capable of standing up for themselves. I can relate because I remember being in that situation many years ago.

I think that there are many people that would not have a choice about being exposed. There are some that have less control over where they work or what businesses are next door. I also worry about the dangers of second hand or third hand smoke and how that will affect children of those that work in facilities where smoking is allowed.

Recently during a trip to Anaheim, CA with a group of students for the HOSA - Future Health Professionals International Leadership Conference we made a stop at Downtown Disney. There was a cigar bar there and right next to it was a sports memorabilia store. I had some students in the sports memorabilia store. In going in to visit with them I was shocked to realize that I could not even be in that store due to the smell of cigar smoke from the store next door. If House Bill 1229 were to be passed in North Dakota, I worry about the impact it may have on businesses that may be adjoining the cigar bar.

We have taken so many steps forward in our state ensuring that our residents can breathe clean air when in their communities and buildings, it would be so sad to see us take a huge step back. Please oppose HB 1229 so North Dakota can continue to protect the right of all our citizens to breathe clear air and provide a work environment that is safe. Thank you for your time. This concludes my testimony.

TESTIMONY IN OPPOSITION OF HB 1229

Megan Schneider
Bismarck, ND
701-220-5414
mleighsrrt@gmail.com

Chairman Rep. Louser, and members of the House Industry, Business, and Labor Committee. My name is Megan Schneider, I currently serve as the President of the Bismarck Tobacco Free Coalition. I am also a respiratory therapist and educator. I have worked in respiratory care for nearly eight years and am here to provide testimony in opposition to HB 1229.

Ten years – 10 years, ND's smoke free law has allowed for clean air. As an RT student, I remember participating in activities at the capital in our continued advocacy of a smoke-free state. And ten years ago, the people of ND spoke as we passed our smoke-free law that allowed members and visitors of our community to enjoy their time out as they sat with their families and friends in a smoke-free public restaurant! What a beautiful thing!

The fact is, HB 1229 threatens North Dakota's Comprehensive Indoor Smoke Free Air Law. Therefore, I would ask why we would change state law for such a small population? According to North Dakota's Tobacco Surveillance data report, only 4.3% of North Dakotan adults currently smoke cigars, and 85% of ND adults don't smoke.¹ And so, I may also ask, whom does this serve? Is the addition of a cigar bar to a smoke-free community worth jeopardizing the lives of employees who will again be exposed to the effects of secondhand tobacco smoke from cigars?

One study from 2014 found that cigar smoking was responsible for approximately "9,000 premature deaths among adults aged 35 and older in the U.S. These deaths represented almost 140,000 years of potential life lost and a monetary loss of \$22.9 billion."² This data allows us to see the detrimental health effects and the financial losses incurred from cigar use.

The truth is, it doesn't matter if a cigar bar resides in a stand-alone building or if an individual in favor of this entity makes a somewhat promising claim of ensuring "proper ventilation," because air ventilation systems cannot effectively eliminate second-hand smoke. The only way to eliminate the health risks associated with second-hand smoke is to prohibit smoking activity.³

As we consider HB 1229, let us remember that addiction is not freedom; and that the health of the citizens of North Dakota needs to be placed at the forefront of policymaking in order to uphold the strong ethical and moral standards of our great state. The Bismarck Tobacco Free Coalition urges you to vote "NO" on HB 1229. We have made great strides in our community by reducing tobacco use rates and protecting individuals from secondhand smoke. I ask the Industry, Business, and Labor Committee to vote no on HB 1229.

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

References:

1. <https://www.hhs.nd.gov/health/community/tobacco/surveillance-data>.
2. <https://truthinitiative.org/research-resources/traditional-tobacco-products/cigars-facts-stats-and-regulations>.
3. <https://studylib.net/doc/18040133/ashrae.org--home>



House Committee business industry and labor,

On behalf of the Premium Cigar Association and Cigar Rights of America, we submit today our full endorsement of House Bill 1229 (HB 1229) and encourage the committee and legislature to support this important bill.

HB 1229 will allow small business tobacconists to expand their operations by allowing consumers to enjoy premium cigars on site and the buildout of cigar bars and lounges. This measure, in its current form, is and will be important for the development of small businesses in the local North Dakota economy.

Further, it's important to note that in many states the premium cigar industry has proven to be a generator of new state tourism and a contributor to job growth and increased tax revenue for the state.

HB 1229 would support the expectations of cigar patrons both within and beyond the state of North Dakota, allowing such small businesses to thrive and grow. With this act, North Dakota would join numerous other states in allowing the creation of cigar bars and lounges.

Lastly, it is important to understand the differences that exist between premium cigars and other tobacco products. Studies have shown that the occasional enjoyment of premium cigars has no statistically significant impact on the public health, nor do they have the level of risk associated with inhalation, addiction, and mortality.

We urge the committee and legislature to support this bill and stand with small businesses and cigar patrons in the state.

For more information, please contact:

J. Glynn Loope
Director of State Advocacy
Premium Cigar Association
Glynn@premiumcigars.org

Cody Carden
Director of Communications
Cigar Rights of America
cody.carden@cigarrights.org

Testimony in Opposition of HB 1229

Chelsea Ridge
North Dakota Public Health Association
Alcohol, Tobacco and Other Drugs Section, Chair
11346 Fairway Dr.
Ray, ND 58849

Chairman Louser, and members of the House Industry, Business and Labor Committee,

My name is Chelsea Ridge, and I am the chairwomen of the North Dakota Public Health Association (NDPHA) Alcohol, Tobacco, and Other Drugs Section. The mission of NDPHA is to improve, promote and protect health for residents of North Dakota through leadership in policy, partnerships, and best practices. I am here to provide testimony in opposition to House Bill 1229, relating to cigar bars and lounges.

In November 2012, a majority of voters in every county passed the current North Dakota Smoke Free Law, which makes it illegal to smoke cigarettes, cigars, marijuana, and e-cigarettes in indoor public places. North Dakota has the best Smoke-Free Law in the nation and other states look to North Dakota's Smoke Free Law as model language to protect their citizens from secondhand smoke.

Cigar smoke, even though the products may advertise as "premium" in nature, still pose a health risk to the user and other bystanders. According to the Centers for Disease Control (CDC) cigars contain the same toxic and cancer-causing chemicals that are found in cigarette smoke. There is no safe level of exposure to secondhand smoke. Separate smoking sections or ventilation systems cannot adequately address the risk posed by indoor smoking of cigarettes, cigars, marijuana, or e-cigarettes. While at one time, cigars were predominantly used by older men, tobacco industry targeting through the 1990s that included the release of flavored cigars and cigarillos has increased the use of these products by youth and the African American community. Cigar bars are workplaces, and now is not the time to reintroduce smoking into any workplace exposing a new group of people, as well as those in neighboring or adjacent buildings to secondhand smoke. The percentages of gross annual income stated in this bill of 2% or more for a bar or 20% or more for a lounge are very concerning in that any bar could begin to sell cigars and allow for cigar smoking. According to 2019 data, 17% of North Dakotans smoke cigarettes and only 4.3% of North Dakotans smoked cigars. Cigarette smokers are of the majority, and we don't foresee bars only enforcing cigar smoking over cigarettes. Government shouldn't cater to the minority at the expense of the public's health. If HB 1229 is passed this may open the door for other tobacco and marijuana products to be smoked indoors for years to come.

The North Dakota Public Health Association strongly urges you to not take away one of the greatest public health prevention measures, our North Dakota Smoke-Free Law, because it protects everyone equally from the dangers of secondhand smoke. Please vote "No" to HB 1229. Thank you for your time and consideration.

Sincerely,

Chelsea Ridge
North Dakota Public Health Association
Alcohol, Tobacco and Other Drugs Section, Chair
chelsearidge113@gmail.com

HB 1229
January 18, 2023

Josette Dupree
Home: 206 13th Ave NE, Mandan, ND 58554 701-214-1786
Business: 406 W Main, Mandan, ND 58554 701-751-1029

Good morning, Chairman Louser and members of the House Industry,
Business and Labor Committee,

My name is Josette Dupree, a resident of Mandan. Thank you for the opportunity to testify today in support of House Bill 1229.

I am the owner of Big Stick Cigars, a vintage tobacconist shop in downtown Mandan. I've been enjoying and selling cigars for many years now in North Dakota. Next month Big Stick Cigars will celebrate it's one year anniversary. In our first year, cigar sales have continued steady growth and we have established an ever-growing base of returning clients.

You may be wondering if our vintage tobacconist shop also sells cigarettes, vapes or CBD products. The answer is no. The focus of our shop is on fine cigars, pipe tobacco and accessories. Accessories being cutters, lighters and tobacco pipes. Guests that frequent our shop have commented that they are thankful for a true tobacconist shop where they can purchase just these items and not from a store bombarded with products that are in an environment conducive of a "head shop".

At Big Stick Cigars we hear many times from our guests "why do we not have cigar lounges in North Dakota"? Montana, South Dakota and even Minnesota allow them. I inform our guests that attempts have been made for an amendment to the century code to allow for cigar lounges, but have failed. During the 2021 legislative session HB 1152 passed in the House and failed by one vote in the Senate. Today myself and other cigar smokers are asking for your support in passing HB 1229 so that we may have the option to enjoy our cigars in an indoor, controlled environment.

Alcohol is a legal product with age restrictions for purchasing and consumption. Cigars are a legal product with age restrictions as well. Alcohol can be purchased *and ingested at a bar*. Cigars are also a legal product, but adults are denied the opportunity to enjoy the experience with like-minded individuals in a commercial setting.

In North Dakota, and much of the United States, even with the associated health risks, social alcohol consumption by adults over 21 is widely acceptable and normalized. **Yes, both alcohol and tobacco come with health concerns.** Yet, allowing cigar lounges an opportunity to flourish has taken a back seat to the recent explosion of stores selling vapes and outright paraphernalia.

You will hear about the public safety concerns of the anti-tobacco faction; are there health risks and concerns with smoking cigars?, **yes.** However, HB 1229 is aimed at the responsible use of cigars by consenting adults of legal age. The supporters of this bill want to play by the rules, and we want to make sure the state gets its fair share.

Today I am asking you on behalf of myself and other business owners and voters to have the opportunity to operate cigar lounges with a “DO PASS” recommendation vote for HB 1229. HB 1229 details professional rules and regulations that will ensure a safe environment to enjoy a cigar with other like-minded citizens. A safe environment will include a standard HVAC system that will circulate air, along with a powerful, commercial smoke eater. Smoke eaters draw smoke through a series of filters that collect harmful particles and odors before discharging fresh, clean air. A good commercial smoke eater will be able to remove about 95 percent of smoke particles on pass through the filter.

Previous legislative testimony opposition included statements like:

“What happens when patrons decide to smoke cigarettes, e-cigarettes or hookahs? Who will enforce and regulate this?”

As a rule overall, cigar lounges do not allow cigarettes to be smoked in cigar lounges. Why? Cigar smokers are there to smoke cigars and not have cigarette smoke interfere. It is a sign of disrespect for the people who pay lounge fees and buy expensive premium cigars for someone to just walk in and blow vape clouds in their face. As a small business owner, I am regulated by city, county, state and federal officials that do enforce and regulate codes and the law. Being self-employed I do not want to put my financial livelihood in jeopardy by not following the law and risk losing my licenses or receive penalties for not doing so.

Smoking doesn't only affect those people who smoke. It affects the people around them including employees who do not have the option to leave.

A cigar lounge is a destination business. If you do not smoke cigars, why would you go in to one? With the current employment crisis in our country, employees have many options of where they want to work. If they do not like cigars or being in a cigar smoke environment, they have a multitude of employment opportunities that would suit their personal financial situations.

Who will ensure that ONLY the purchased cigars are being smoked in the establishment? The owner/management of the business is responsible per laws and municipal codes. Similar can be said of alcoholic establishments. Bars and cigar lounge business owners do not want to place themselves in a situation to lose their licensing, penalties and potential business shut down.

I also heard that I am promoting and inviting youth to smoke cigars? In the many years I have personally enjoyed cigar smoking and sold cigars I have never had a child ask to purchase or try to “sneak a try” of my cigar. I follow federal age regulations for cigar sales in my shop. I do this as it is the law. Not only as a business owner, but a law-abiding citizen - I do not want to lose my licensure. The other legal product mentioned at the beginning of my testimony, alcohol, is an entirely different animal. *Underage drinking is an ongoing issue in our state* and one that is a concern of public health and law enforcement officials at every level... however, I am not aware of a pandemic of underage smoking of fine cigars.

As stated in a testimony in favor of cigar lounges during the 2021 session, *“the pendulum of regulation has swung entirely too far”*. Cigars are a legal product that should be given the same opportunities that alcohol has for consumption in a regulated business.

I’d be honored to give a tour of my boutique cigar shop in Mandan. Thank you for the opportunity to hear my testimony. I’d be happy to answer any questions you may have.

Thank you.



National Board of Directors

Chair

Stephen R. O'Kane

Chair Elect

Cheryl A. Calhoun, CPA, MBA

Secretary/Treasurer

Michael V. Carstens

Vice Chair, Mission Programs

Sumita B. Khatri, MD, MS

Past Chair

Penny J. Schilz

Directors

Rabih I. Bechara, MD, FCCP

Larry Blumenthal, MBA

Anne E. Dixon, MD

David G. Hill, MD

Mark C. Johnson, MBA

Colleen M. McIntosh, JD, LL.M.

Sean R. Muldoon, MD

Joe Ochipinti

Jonathon K. Rosen

Kathleen M. Skambis, JD

Johnny A. Smith, Jr., MA

Victor Waters, MD, JD, FCLM

Sterling QL Yee, MBA

National President and CEO

Harold P. Wimmer

Testimony in Opposition to HB 1229

My name is Pat McKone. I'm the Senior Director for Public Policy and Advocacy for the American

Lung Association. I am here to testify in opposition to House Bill 1229 – A bill to amend North Dakota's clean air act to exempt bars and cigar lounges.

"In order to protect the public health and welfare and to recognize the need for individuals to breathe smoke-free air, smoking is prohibited in all enclosed areas of: a. Public places; and b. Places of employment."

These words set the foundation for the legislation as it was initiated and voted on by the voters in 2012 and speak to why this amendment should not be passed.

Secondhand smoke is a serious health hazard causing or making worse a wide range of diseases and conditions, including lung cancer and heart

disease. Secondhand cigar smoke from any type of cigar, including premium cigars, poses the same health risks.

Workers in locations where indoor smoking is allowed bear the greatest burden as they often are exposed for 8 or more hours a day while at work. Multiple studies have found that the air quality in hospitality establishments like bars can rate as hazardous to human health on the EPA-scale used to measure outdoor air pollution putting workers at even more risk. Everyone deserves the right to breathe clean air.

Opening up North Dakota's smokefree law to give favored treatment to certain businesses is a solution in search of a problem. The law was approved

overwhelmingly by voters - 66.67% in 2012 with every county in the state in support of the ballot measure. It is has only gotten more popular since then, and is one of the strongest types of such laws in the country. The law was a great victory for public health and one all North Dakotans can be proud of.



Good Morning Chairman Louser and members of the House Industry, Business, and Labor Committee, my name is Nevaeh Mock, I am a Junior at Legacy High School and two year member of the Bismarck Break Free Youth Board. Our youth board fights every day to bring awareness towards tobacco use in our community and what detrimental effects it holds over us as a society. I stand before you today in opposition of House Bill 1229. Many have voiced their concerns towards cigar lounges but I have come today to offer a youth's perspective on House Bill 1229 and how an adult decision can affect the lives of the youth across North Dakota.

It has been argued that a cigar lounge offers a relaxing and tranquil environment for cigar smokers in which they can release stress and feel as if they are in a non-judgmental space, surrounded by other civilians participating in the same activity. Cigars are thought to release this stress because as you draw on a cigar, your breath gradually starts to slow - also slowing your heart rate. While the external effects of cigars seem to relieve, your body is fighting a war internally - against itself. It is no secret that within months, tobacco can cause cancers of the mouth, esophagus, lungs, cervix, and more than 12 other forms of cancer. But, what has failed to be seen by the public eye are the immediate effects these cigar bars will encourage. Second number one; you draw the cigar to your mouth. Second number three: you inhale the cigar. Second ten; the body starts to feel the so-called "buzz" which is known to give the relaxing effect. By second thirteen, the nicotine has entered the brain where it will work to fight against synapses, affecting mood and permanently lowering impulse control. If the nicotine succeeds to completely attack and destroy the synapse, neurodegenerative diseases become the new normal to a smokers life. These diseases and risk factors are nothing new to you. I know that you are aware of the what-if's, but just like many of us, you think that this would never happen to you. It is just another story on the news, but surely this will not be me. I ask that you think again.

Picture a family member. Maybe you are a father to a beautiful teenage daughter, or an aunt to a wild-spirited niece. Please picture them as I tell the following story. They grew up in a household where their parents would spend every Friday night at the cigar lounge, relieving any stress the work week brought into their everyday lives. As this quickly became a new normal routine in the child's life, they believed that it was okay to partake in. At sixteen years old, she started smoking. It started off as a fun activity she would do to get away from life every once in a while. Three months in and she became a daily smoker and by the time she turned 21, she was going to cigar bars every night. It was a new environment for her. She didn't feel like she was being looked at weird by the people around her like she was judged at school because here, she was one of them. The cigar bar was her new hang-out spot as she had never felt more welcomed into an environment. But she went home every night feeling completely empty. The toxic chemicals in nicotine had affected her brain wiring. She suffered from depression and extreme mood declines. The friends around her were no longer the people she went to when she needed someone to talk to because they had been replaced by a stick of tobacco. And she now believed that the only place she could go to where she would feel safe was the cigar lounge, where she was surrounded by people encouraging her to smoke. Flash forward 30 years and she has a family. Yes, she found a way to cope with the depression and mood swings because it was all her body was used to. Except now, she had a baseball sized tumor attached to the lining of her lungs. She was not a what-if of this story. The family member you are thinking about during this story was my grandma. She died at age 64 from smoking induced lung cancer. She believed that because of the generations before her, she was making the right decision to smoke. She looked up to them at just fifteen years old. I had to find out how to live a life without my best friend. I was not a what-if of this story.

When will it end? When will we stop being so selfish and realize that what we do now is what our grandchildren see and will come to know as an acceptable decision. I will not see another generation fall to tobacco use. I understand that some of you may not be tobacco users. I also understand that even as non-tobacco users, you believe that every human deserves the right to choose for themselves. I am not standing here today to preach to you the effects cigar bars have on one person. I stand here today to remind you that *we are the next generation*. We look up to *you*. And by voting for cigar bars - by encouraging dedicated spaces to partake in smoking, you are not only voting for your generation of adults, but my generation, and your four year old grandson's generation. Think of them. Think of how you want them to live. Rather than seeing the Smoke-Free Law as preventing someone's choice, we need to start seeing it as giving people the choice to live and a pathway for generations to come.

I ask you to oppose this bill as you think of the youth in North Dakota. For you to consider the safety and well-being of you, your children, and your grandchildren to come. We want the opportunity to be the generation that ended tobacco related deaths. Thank you. I am now open for questions.

ANR AMERICANS FOR NONSMOKERS' RIGHTS

Defending your right to breathe smokefree air since 1976

January 17, 2023

Dear Honorable 68th Legislative Assembly (2023-25) for North Dakota,

Please protect worker health and vote no on HB 1229. This bill would roll back North Dakota's Clean Indoor Air Act and allow cigar smoking in nearly ANY bar in North Dakota.

HB 1229 would allow for smoking cigars indoors if cigar sales make up an unbelievable minimum of 2% percent of annual gross income, allowing practically any entity to be labeled a cigar bar.

Worker health should be a top priority.

Everyone has the right to breathe clean smokefree air and no one should have to choose between their health and a job. North Dakota's workers already are risking their health to serve the public and make a living during the pandemic. Let's not endanger them further.

Secondhand smoke from cigars is just as dangerous as smoke from cigarettes.

- Secondhand smoke contains more than 7,000 chemicals; hundreds are toxic, and about 70 can cause cancer.ⁱ
- In adults who have never smoked, secondhand smoke can cause heart disease, lung cancer and stroke.ⁱⁱ
- Secondhand smoke from cigars contains the same toxic chemicals as secondhand cigarette smoke.ⁱⁱⁱ
- There is no risk-free level of secondhand smoke, and the only way to protect people from the dangers of secondhand smoke is to eliminate the smoke exposure.^{iv}

Renormalizing smoking indoors isn't the new norm the great state of North Dakota should be promoting. Please vote no to HB 1229 for allowing cigar smoking in bars.

Respectfully,

~Char Day

ANRF

Specialist | Program and Training

ⁱ Centers for Disease Control and Prevention. Secondhand Smoke (SHS) Facts.

https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm

ⁱⁱ Centers for Disease Control and Prevention. Secondhand Smoke (SHS) Facts.

https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm

ⁱⁱⁱ Centers for Disease Control and Prevention. Secondhand Smoke (SHS) Facts.

https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm

^{iv} Mayo Clinic. Expert Answers, is cigar smoking safer than cigarette smoking? <https://www.mayoclinic.org/healthy-lifestyle/quit-smoking/expert-answers/cigar-smoking/faq-20057787>. November, 2019.





January 17, 2023

Please accept this testimony on behalf of over 500 volunteer advocates across the state of North Dakota who stand in opposition to House Bill 1229. Additionally, please be aware this bill works directly against the Department of Health & Human Services (DHHS), vision *"To make North Dakota the healthiest state in the nation"*.

As of January 2019, 30 states and more than 1000 municipalities (*just over two-thirds of the US population*) are covered by a smoke-free policy that includes bars and restaurants, saving tens of thousands of lives and millions of dollars in health care costs.

With the introduction of this bill last session, and again this session, the communications are HB 1229 will allow individuals the freedom of choice. The reality is this freedom of choice will impact individuals in proximity, friends, and family. The scientific evidence is clear: there is no safe level of exposure to secondhand smoke. Secondhand smoke causes serious diseases and premature death among nonsmokers. That's why all workplaces and public places, including restaurants, bars and casinos should be smoke-free. Everyone should have the right to breathe clean air.

Lost productivity caused by diseases that result from secondhand smoke exposure is estimated at \$5 billion every year.

Far too many people – especially children and the elderly – are exposed to secondhand smoke. This puts them at risk for chronic illnesses like heart disease and cancer

Secondhand smoke exposure is declining, but more than 20% of nonsmoking adults in the U.S. are still exposed to secondhand smoke.

For these reasons, and many more, the American Heart Association, with over 500 volunteer advocates across North Dakota, stands in opposition to Bill HB 1229, and in support of the Department of Health & Human Services (DHHS), vision *"To make North Dakota the healthiest state in the nation"*.

Respectfully,

A handwritten signature in black ink, appearing to read "Tony Burke".

Tony Burke
State Government Relations Director
American Heart Association
605-351-5939
Tony.Burke@heart.org

PS: Friday, February 3rd is National Wear Red Day! Stay tuned for more details!

I am urging you to vote no on HB 1229 – the “Cigar Bar” Bill. In a time when we have a mental health and addiction crisis, I find it hard to understand why we would promote another addiction – that to nicotine. Nicotine has been found to prime the brain for other addictions.

In my position as a public health nurse, I educate students on the dangers of nicotine/vaping/smoking, etc. Research shows that exposure to nicotine is damaging to the developing brain, leading to problems with learning, memory, and mood to name a few. Last year, I had a third-grade girl tell me that she tried a vape and liked it. Students as young as 4th grade admit that they are being offered vapes. Plus, these same students are aware of kids in their classes who have/are vaping. Any bill that promotes nicotine use sends a message to kids that nicotine use is okay.

Lastly, ten years ago, the citizens of North Dakota made their decision on a strong smoke free law. This law protects all workers from secondhand smoke. I feel most people of North Dakota would be surprised to learn that their legislators are looking to change that protection and their decision.

Thank you for your consideration of my request and your service to North Dakota.

Sharon Laxdal
8145 132nd Ave NE
Edinburg, ND 58227
(701) 331-1013s



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

January 18, 2023

9:00 am CST

House Industry, Business, and Labor Committee for the 68th ND Legislative Assembly

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

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

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

In November 2012, North Dakotans overwhelmingly approved Initiated Measure 4 to give us our Indoor Smoke Free Air Law, providing exemplary smoke-free protections to North Dakota residents, workers, and visitors. North Dakota is referenced and recognized nationally for it. We need to be proud of that and we need to fully preserve it. We can also be proud of and honor the fact that all counties in North Dakota voted in favor of expanding these protections to their residents with 66.7% of our voters approving it in 2012 with no exemptions. iv.

In the years since the law's passage, support has only grown, and our latest polling shows that 76.3% of North Dakota citizens still support our Indoor Smoke Free Air Law. The 2016 *E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General* applauds the North Dakota 2012 Smoke-Free Law as a significant policy success to protect our citizens. The most important distinction of this law is that it does not make exceptions and applies to all smoke equally, facilitating better enforcement and understanding of the law. North Dakota's smoke-free law is a public health victory protecting all workers from the harmful effects of secondhand tobacco smoke. The products that produce smoke, such as cigarettes, cigars, and electronic

cigarettes/vapes have not become safer since the inception of this law. Cigars are not proven to be healthier or less dangerous than cigarettes. Now is not the time to chip away at our protections and undo our successes.

According to the Dept. of Health Tobacco Surveillance Data Table in 2022 for North Dakota, tobacco use cost our state \$326 million in Smoking Attributable Medical Expenditures, and \$232.6 million in Smoking Attributable Productivity Loss. That is over ½ a BILLION dollars annually in smoking related expenses to the state of North Dakota! Rolling back indoor smoke free air law protections will only exasperate this issue, as cigars are a public health risk and are a leading cause of several cancers.

For every gram of tobacco smoked, there is more cancer-causing tar in cigars than in cigarettes. Cigar wrappers are less porous than cigarette wrappers and make the burning of cigar tobacco less complete than the burning of cigarette tobacco. Also concerning are the cancer-causing nitrosamines, which are produced during the fermentation process for cigar tobacco. As a result, cigar smoke has higher concentrations of toxins than cigarette smoke. A cigar typically burns longer than a cigarette, which increases the amount of secondhand smoke. Smokers using cigars experience heart disease, cancer, and other types of illnesses that cause over 1,000 North Dakotans to die each year.

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, even though evidence is showing that it clearly is not.

While cigarette consumption among youth decreased by nearly 40 percent from 2000 to 2015, youth cigar consumption increased by 92 percent. i. Cigar use among youth is now almost as common as cigarette smoking! 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 secondhand smoke. While they are sometimes promoted as a way to reduce exposure to secondhand smoke, ventilation cannot remove it all, and does not purify the air at rates fast enough to protect people from the harmful toxins. The Surgeon General has concluded that even taking the steps of separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure of nonsmokers to secondhand smoke. This means who these proposed establishments share walls with could have dire consequences, especially in cases where they share walls with residences, or with businesses catering to youth. The only effective way to

fully protect people from exposure to secondhand smoke is to completely eliminate smoking in indoor public spaces. iii. Everyone deserves clean air.

The bill defines a bar or cigar lounge as "enclosed by solid walls or windows, a ceiling, and a solid door; and is equipped with a ventilation system by which exhausted air is not recirculated to nonsmoking areas and smoke is not backstreamed into nonsmoking areas." This language gives the appearance of eliminating the dangers of indoor secondhand smoke. The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) holds the position that the only means of avoiding health effects and eliminating indoor smoke exposure is to ban all smoking activity inside and near buildings. The building and its systems only reduce odor and discomfort but cannot eliminate exposure. ASHRAE clearly states that even when all practical means of separation and isolation of smoking areas are employed, adverse health effects from exposure in non-smoking spaces in the same building cannot be eliminated. The use of dilution ventilation, air distribution (e.g., "air curtains"), or air cleaning should not be relied upon to control smoke exposure. Based on the ventilatory limitations in these standards, this bill allows health risks to not only the patrons and employees of the establishment, but also to the patrons and employees of adjoining businesses and to external agency employees, such as cleaning, maintenance, repair, and delivery services. It is essential to note the far-reaching impacts this bill would have on voter-approved public health safety standards for a niche business model. Implying that employees know the risks of working in a secondhand smoke environment does not mitigate these risk factors. Employee health and safety laws are for the employees' benefit, not the business owner's profitability and convenience. Workers in the proposed cigar bars and lounges deserve the same protections as all North Dakota workers.

The bill language also indicates an unverified qualification standard of two percent or more annual gross income from the sale of cigars for a "Bar" or twenty percent or more of the annual gross income from the sale of cigars for a "Lounge." These low standards, requiring no oversight are very concerning.

Many North Dakota communities have implemented local smoke-free laws that mirror the state smoke-free law. Home-rule communities, including Grand Forks, Fargo, West Fargo, Bismarck, Minot, and others, have city ordinances prohibiting smoking in all indoor workplaces. This bill would create unequal worker protections and community regulations. An exemption of this nature will create confusion for business owners, city and county governments, and law enforcement agencies. Additionally, an exemption for one tobacco product may lead to additional exemptions for other tobacco products, such as vaping or hookah lounges. The current North Dakota Smoke-Free Law provides a consistent legal, level playing field for all businesses. We should not be creating tobacco product winners and losers through exemption language policy. Once one exemption is made to our law, how soon will it be before another request appears in front of our Legislature? With electronic product use at FDA-labeled epidemic levels for our youth, and with new products being introduced at a lightning pace, we cannot risk opening the door for further erosion of a proven health policy that creates a healthier state and that saves lives. Allowing an

exemption also takes us back to a patchwork of protections enacted across the state, as some communities have very strong local ordinances, and some do not.

This past year, TFND published a Resolution of Support for preserving our Indoor Smoke Free Air Law. The following organizations have signed it: Bismarck Break Free Youth Board, Bismarck Tobacco Free Coalition, Cavalier County Council, ND Medical Association, ND Public Health Association, UMary DPT Program, Steele County Food Pantry Board, Williston Area Chamber of Commerce

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

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

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



ASHRAE Position Document on Environmental Tobacco Smoke

Approved by ASHRAE Board of Directors
July 1, 2020

Expires
July 1, 2023

COMMITTEE ROSTER

The ASHRAE Position Document on Environmental Tobacco Smoke was developed by ASHRAE's Environmental Tobacco Smoke Position Document Committee formed on May 16, 2018, with Larry Schoen. as its chair.

Lawrence J. Schoen
Schoen Engineering Inc.
Columbia, MD

Kevin Kennedy
Children's Mercy Kansas City
Kansas City, MO

Costas Balaras
National Observatory of Athens
Athens, Greece

Andrew Persily
NIST
Gaithersburg, MD USA

Lan Chi Nguyen Weekes
La Cite Collegiale
Ottawa, ON, Canada

Cognizant Committee

The chairperson of the ASHRAE Environmental Health Committee, also served as an ex-officio member:

Wade Conlan
Hanson Professional Services
Maitland, FL, USA

HISTORY OF REVISION/REAFFIRMATION/WITHDRAWAL DATES

The following summarizes this document's revision, reaffirmation, or withdrawal dates:

6/30/2005—BOD approves Position Document titled *Environmental Tobacco Smoke*

6/25/2008—BOD approves reaffirmation of Position Document titled *Environmental Tobacco Smoke*

10/22/2010—BOD approves revision to Position Document titled *Environmental Tobacco Smoke*

6/30/2013—Technology Council approves reaffirmation of Position Document titled *Environmental Tobacco Smoke*

6/29/2016—Technology Council approves reaffirmation of Position Document titled *Environmental Tobacco Smoke*

6/26/2019—Technology Council approves reaffirmation of Position Document titled *Environmental Tobacco Smoke*

7/1/2020 – BOD approved revision to Position Document titled *Environmental Tobacco Smoke*

Note: ASHRAE's Technology Council and the cognizant committee recommend revision, reaffirmation, or withdrawal every 30 months.

Note: ASHRAE position documents are approved by the Board of Directors and express the views of the Society on a specific issue. The purpose of these documents is to provide objective, authoritative background information to persons interested in issues within ASHRAE's expertise, particularly in areas where such information will be helpful in drafting sound public policy. A related purpose is also to serve as an educational tool clarifying ASHRAE's position for its members and professionals, in general, advancing the arts and sciences of HVAC&R.

ABSTRACT

While indoor smoking has become less common in recent years, exposure to Environmental Tobacco Smoke (ETS) continues to have significant health and cost impacts. ASHRAE's role in providing engineering technology, standards and design guidance in support of healthful and comfortable indoor environments supports the need for this position document.

ASHRAE's position is that all smoking activity inside and near buildings should be eliminated, which is supported by the conclusions of health authorities that any level of ETS exposure leads to adverse health effects. ASHRAE recommends that building design practitioners educate and inform their clients, where smoking is still permitted, of the limits of engineering controls of ETS exposure, that multifamily buildings have smoking bans inside and near them, and that further research be conducted on the health effects of involuntary exposure in the indoor environment from smoking cannabis, using hookahs and electronic nicotine delivery devices (ENDS), and engaging in other activities commonly referred to as e-cigarettes or vaping.

EXECUTIVE SUMMARY

While indoor smoking has become less common in recent years, exposure to Environmental Tobacco Smoke (ETS) continues to have significant health and cost impacts. While ASHRAE does not conduct research on the health effects of indoor contaminants, ASHRAE has been involved in this topic for many years. Through its committees, standards, handbooks, guides, and conferences, ASHRAE has long been providing information to support healthful and comfortable indoor environments, including efforts to reduce indoor ETS exposure.

- ASHRAE is committed to encouraging lawmakers, policymakers and others who exercise control over buildings to eliminate smoking inside and near buildings.
- ASHRAE's current policy is that Standards and Guidelines shall not prescribe ventilation rates or claim to provide acceptable indoor air quality in smoking spaces. This PD recommends extending such policy to other ASHRAE documents.
- ASHRAE holds the position that the only means of avoiding health effects and eliminating indoor ETS exposure is to ban all smoking activity inside and near buildings. This position is supported by the conclusions of health authorities that any level of ETS exposure leads to adverse health effects and therefore,
 - The building and its systems can reduce only odor and discomfort but cannot eliminate exposure when smoking is allowed inside or near a building.
 - Even when all practical means of separation and isolation of smoking areas are employed, adverse health effects from exposure in non-smoking spaces in the same building cannot be eliminated.
 - Neither dilution ventilation, air distribution (e.g., "air curtains") nor air cleaning should be relied upon to control ETS exposure.
- ASHRAE recommends that building design practitioners work with their clients to define their intent, where smoking is still permitted, for addressing ETS exposure in their building and educate and inform their clients of the limits of engineering controls in regard to ETS.
- ASHRAE recommends that multifamily buildings have complete smoking bans inside and near them in order to protect nonsmoking adults and children.
- ASHRAE recommends, given current and developing trends, that further research be conducted by cognizant health authorities on the health effects of involuntary exposure in the indoor environment from smoking cannabis, using hookahs, using ENDS, and engaging in other activities commonly referred to as vaping or using e-cigarettes.

1. THE ISSUE

While indoor smoking has become less common in recent years in many countries (WHO 2019), exposure to Environmental Tobacco Smoke (ETS) continues to have significant health and cost impacts (USDHSS 2014). Researchers have investigated the health and irritant effects among non-smokers exposed to tobacco smoke in indoor environments. Such exposure is also known as passive smoking and as involuntary exposure to secondhand smoke. A number of national and global health research groups and agencies (Cal EPA 2005, EPA 1992, IARC 2004, IOM 2010, NRC 1986, SCTH 1998, USDHHS 2014, USDHHS 2006, WHO 2019) have concluded, based on the preponderance of evidence, that exposure of nonsmokers to tobacco smoke causes specific diseases and other adverse effects to human health most significantly, cardiovascular disease and lung cancer. No cognizant authorities have identified an acceptable level of ETS exposure to non-smokers, nor is there any expectation that further research will identify such a level.

Despite extensive evidence of such harm, the well-documented benefits of bans, including exposure reduction and benefits to public health (CPSTF 2013) and widening adoption of smoking bans, many locations worldwide still lack laws and policies that provide sufficient protection. In many locations, laws and policies are only partially protective, permitting smoking in certain building types including casino, entertainment and multifamily housing. Even where permitted by law, many developers, building owners, and operators, including those of restaurants and other hospitality venues, do not allow smoking indoors.

There are currently trends that increase use of electronic nicotine delivery systems (ENDS), smoking of cannabis, use of hookahs and other related activities that are beyond the scope of this document, but which likely present risks from involuntary exposure in the indoor environment that are not as well understood.

2. BACKGROUND

ASHRAE, through its Environmental Health Committee, TC 4.3 Ventilation Requirements and Infiltration, SSPCs 62.1 Ventilation for Acceptable Indoor Air Quality, 62.2 Ventilation and Acceptable Indoor Air Quality in Residential Buildings, 189.1 Standard for the Design of High-Performance Green Buildings, Handbook-Applications Chapter 46 (ASHRAE 2019) and Handbook-Fundamentals Chapters 10 and 11 (ASHRAE 2017), Indoor Air Quality Design Guides (ASHRAE 2018, 2009), and IAQ conferences, has long been active in providing engineering technology, standards and design guidance in support of providing healthful and comfortable indoor environments.

Previous versions of this position document have been instrumental in informing the public, building scientists and practitioners, policymakers and lawmakers

about the inability of HVAC technologies to eliminate health risks to nonsmokers from exposure to tobacco smoke in indoor environments.

The evidence on the health consequences of exposure to ETS is extensive (hundreds of scientific papers) and has been reviewed by numerous independent expert groups in the United States and internationally, all reaching similar conclusions regarding the adverse health effects caused among nonsmokers exposed to tobacco smoke indoors. These include but are not limited to:

U.S. Surgeon General (USDHHS 2014, 2006)
U.S. Environmental Protection Agency (EPA 1992)
National Research Council (NRC 1986)
California Environmental Protection Agency Cal EPA 2005)
World Health Organization (WHO 2019)
International Agency for Research on Cancer (IARC 2004)
United Kingdom Department of Health (SCTH 1998)

The first major studies on passive smoking reported that passive smoking was a cause of lung cancer in non-smokers. Subsequent evidence has identified other health effects in adults and children. Notably, the number of coronary heart disease deaths caused by ETS greatly exceeds the number of ETS-caused lung cancer deaths. Additionally, the scientific evidence recognizes substantial subpopulations, such as children (USDHHS 2014) and adults with asthma or heart disease, whose disease may be exacerbated by ETS exposure.

There is no threshold for ETS exposure below which adverse health effects are not expected, as indicated in the referenced health authority reports. In general, risks tend to increase with the level of exposure and conversely to decrease with a reduction in exposure.

Only an indoor smoking ban, leading to near zero exposure, provides effective control, and only such bans have been recognized as effective by health authorities. Experience with such bans documents that they can be effective (CPSTF 2013, USDHHS 2014, 2006). While there are no engineering design issues related to this approach, the existence of outdoor smoking areas near the building and their potential impacts on entryway exposure and outdoor air intake need to be considered.

Nevertheless, smoking is permitted in some indoor spaces in some buildings. There are now several decades of international experience with the use of strategies, including separation of smokers and nonsmokers, ventilation, air cleaning and filtration, to limit contamination spread from smoking permitted areas to other areas inside the building.

There are three general cases of space-use and smoking activity in sequence from most to least effective in controlling ETS exposure:

- 1) allowing smoking only in isolated rooms;
- 2) allowing smoking in separate but not isolated spaces; and
- 3) totally mixing occupancy of smokers and nonsmokers.

These approaches do not necessarily account for all circumstances. Each leads to different engineering approaches as follows.

1. Smoking Only in Isolated Rooms: Allowing smoking only in separate and isolated rooms, typically dedicated to smoking, can reduce ETS exposure in non-smoking spaces in the same building. Effective isolation requires
 - a) sealing of cross contamination pathways and airtightness of the physical barriers between the smoking and nonsmoking areas,
 - b) the use of separate ventilation systems serving the smoking and non-smoking spaces,
 - c) exhausting air containing ETS so it does not enter the non-smoking area through the outdoor air intakes, windows, and other airflow paths,
 - d) airflow and pressure control including location of supply outlets and return and exhaust air inlets to preserve airflow into the smoking space at doorways and other openings, which is powerful enough so that movement of people between non-smoking and smoking areas and so that thermal and other effects do not disrupt intended air distribution patterns.

Even when all available strategies have been employed in multifamily housing, there is a lack of credible evidence that anything short of a smoking ban will provide full protection to occupants of non-smoking residential dwelling units. The risk of adverse health effects for the occupants of the smoking room itself also cannot be controlled by ventilation.

2. Smoking in Separate but Not Isolated Spaces: This approach includes spaces where smokers and non-smokers are separated but still occupy a single space or a collection of smoking and non-smoking spaces not employing all the isolation techniques described in 2. a) through f) above. Examples can be found in restaurants and bars with smoking and non-smoking areas, or buildings where smoking is restricted to specific rooms, but a common, recirculating air handler serves both the smoking and non-smoking rooms.

Engineering techniques to reduce odor and irritation include, directional airflow patterns achieved through selective location of supply and exhaust vents, and air cleaning and filtration. Limited evidence is available, and none supports the significant reduction of health effects on those exposed.

3. **Mixed Occupancy of Smokers and Nonsmokers:** If smoking is allowed throughout a space or a collection of spaces served by a single air handler, with no effort to isolate or separate the smokers and nonsmokers, there is no currently available or reasonably anticipated ventilation or air cleaning system that can adequately control or significantly reduce the health risks of ETS to an acceptable level.

This situation includes unrestricted smoking in homes, dormitories, casinos, bingo parlors, small workplaces, and open plan office spaces. Air cleaning, dilution ventilation and displacement ventilation can provide some reduction in exposure, but they cannot adequately control adverse health effects, nor odor and sensory irritation for nonsmokers in general.

Ongoing trends, studies and research:

- Electronic nicotine delivery systems (ENDS) are increasing in use and the health effects of primary and secondary exposure continue to be revealed. ENDS and other related exposures in the indoor environment, including those arising from cannabis combustion and use of hookahs, are outside the scope of this position document. ENDS are addressed in an ASHRAE Emerging Issue Brief.
- Third-hand smoke, which results from the release of contaminants from the clothing of smokers and other surfaces, is a relatively new concept. There is evidence of potential hazards (Sleiman 2010) and researchers are still studying it (Mayo Clinic 2017).

3. RECOMMENDATIONS

- ASHRAE is committed to encouraging lawmakers, policymakers and others who exercise control over buildings to eliminate smoking inside and near buildings.
- ASHRAE's current policy (ROB 1.201.008) is that Standards and Guidelines shall not prescribe ventilation rates or claim to provide acceptable indoor air quality in smoking spaces. This PD recommends extending such policy to other ASHRAE documents.
- ASHRAE holds the position that the only means of avoiding health effects and eliminating indoor ETS exposure is to ban all smoking activity inside and near buildings. This position is supported by the conclusions of health authorities that any level of ETS exposure leads to adverse health effects and therefore,
 - The building and its systems can reduce only odor and discomfort but cannot eliminate exposure when smoking is allowed inside or near a building.

- Even when all practical means of separation and isolation of smoking areas are employed, adverse health effects from exposure in non-smoking spaces in the same building cannot be eliminated.
- Neither dilution ventilation, air distribution (e.g., “air curtains”) or air cleaning should be relied upon to control ETS exposure.
- ASHRAE recommends that building design practitioners work with their clients to define their intent, where smoking is still permitted, for addressing ETS exposure in their building and educate and inform their clients of the limits of engineering controls in regard to ETS.
- ASHRAE recommends that multifamily buildings have complete and enforced smoking bans inside and near them in order to protect nonsmoking adults and children.
- ASHRAE recommends, given current and developing trends, that further research be conducted by cognizant health authorities on the health effects of involuntary exposure in the indoor environment from smoking cannabis, using hookahs, using ENDS, and engaging in other activities commonly referred to as vaping or using e-cigarettes.

4. REFERENCES

- ASHRAE 2019. Handbook—HVAC Applications. Atlanta: ASHRAE.
- ASHRAE (Ed.), 2018. Residential indoor air quality guide: best practices for acquisition, design, construction, maintenance and operation, Atlanta, GA
- ASHRAE 2017. Handbook—Fundamentals. Atlanta: ASHRAE.
- ASHRAE (Ed.), 2009. Indoor air quality guide: best practices for design, construction, and commissioning. American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Atlanta, GA.
- California Environmental Protection Agency (Cal EPA). 2005. Office of Environmental Health Hazard Assessment. Health Effects of Exposure to Environmental Tobacco Smoke. California Environmental Protection Agency. <https://oehha.ca.gov/air/report/health-effects-exposure-environmental-tobacco-smoke-final-report>
- CPSTF (Community Preventive Services Task Force) 2013. Reducing Tobacco Use and Secondhand Smoke Exposure: Smoke-Free Policies. June 3, 2013. www.thecommunityguide.org/sites/default/files/assets/Tobacco-Smokefree-Policies.pdf
- Institute of Medicine 2010. *Secondhand Smoke Exposure and Cardiovascular Effects: Making Sense of the Evidence*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/12649>.
- International Agency for Research on Cancer (IARC). 2004. Tobacco smoke and involuntary smoking. IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, No 83. International Agency for Research on Cancer. Lyon, France. <https://www.ncbi.nlm.nih.gov/books/NBK316407/>
- Mayo Clinic 2017. “What is thirdhand smoke, and why is it a concern?” Answer from J Taylor Hays, M.D. July 13, 2017. www.mayoclinic.org/healthy-

- [lifestyle/adult-health/expert-answers/third-hand-smoke/faq-20057791](#), accessed March 2, 2020.
- National Research Council (NRC), 1986. Committee on Passive Smoking. Environmental tobacco smoke: Measuring exposures and assessing health effects. National Academy Press Washington, D.C.
<https://www.ncbi.nlm.nih.gov/books/NBK219205/>
- Scientific Committee on Tobacco and Health (SCTH) and HSMO. 1998. Report of the Scientific Committee on Tobacco and Health. The Stationary Office. 1998; 011322124x <https://www.gov.uk/government/publications/report-of-the-scientific-committee-on-tobacco-and-health>
- Sleiman 2010. "Formation of carcinogens indoors by surface-mediated reactions of nicotine with nitrous acid, leading to potential *thirdhand smoke* hazards," *Proceedings of the National Academy of Sciences*, April 13, 2010 107 (15) 6576-6581. <https://doi.org/10.1073/pnas.0912820107>
- US Department of Health and Human Services (USDHHS). 2014 The health consequences of smoking – 50 years of progress: a report of the Surgeon General. – Atlanta, GA, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.
<https://www.ncbi.nlm.nih.gov/books/NBK179276/>
- U.S. Department of Health and Human Services. 2006. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. 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. Atlanta, Ga. <https://www.ncbi.nlm.nih.gov/books/NBK44324/>
- US Environmental Protection Agency (EPA). 1992. Respiratory health effects of passive smoking: Lung cancer and other disorders. EPA/600/006F. U.S. Government Printing Office, Washington, D.C.
<https://www.epa.gov/indoor-air-quality-iaq/respiratory-health-effects-passive-smoking-lung-cancer-and-other-disorders>
- World Health Organization. 2019. Report on the Global Tobacco Epidemic. Geneva, Switzerland [WHO/NMH/PND/2019.5](#).
https://www.who.int/tobacco/global_report/en/

Excluding Cigars from Tobacco Control Laws Puts Everyone at Risk



Cigars pose a real danger to the long-term health of all Americans – and to young people especially – yet government regulation of cigars lags behind that of cigarettes and e-cigarettes. In January 2020, the FDA prohibited the sale of most flavors in cartridge-based e-cigarettes.¹ Flavored cigarettes, except for menthol, have been largely illegal since 2009. However, similar regulations do not exist for flavored cigars, something that has helped the cigar industry stay attractive to younger customers. Similarly, cigars are not always taxed at the same rate as cigarettes. Excluding cigars from evidence-based tobacco control measures provides opportunity for the tobacco industry to take advantage of and aggressively market their deadly products to youth. In addition, some groups, such as Black middle and high school students, experience a disproportionate impact, exacerbating existing health disparities.²

What Defines A Cigar?

A cigar is usually defined, for tax purposes, as any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco. Cigars sold in the United States include large cigars, cigarillos, and little cigars. Large cigars usually contain at least a half an ounce of tobacco, while cigarillos tend to be shorter and contain 3 grams or less of tobacco.¹ Some cigarillos and little cigars are similar in size and shape to cigarettes. Unsurprisingly, these cigarette-like cigars are appealing to youth.

CURRENT USE

An estimated 770,000 U.S. high school students (5.0 percent) and 180,000 middle schoolers (1.5 percent) were current cigar users in 2020, making cigars the second most popular tobacco product among youth.³ In addition, 4.5 percent of U.S. adults reported current cigar use in 2019, including 7.7 percent of young adults between the ages of 18 and 25.⁴

DISPARITIES IN YOUTH USE

According to CDC data, Black high school and middle school students are more likely to use cigars than their peers. In 2020, 6.5 percent of surveyed Black middle and high school students reported using cigars in the past 30 days, compared to 3.5 percent among all students.⁵ Cigars are currently the most popular tobacco product among Black youth, outpacing both cigarettes and e-cigarettes. Male students are also more likely than female students to be current cigar users (3.7 percent vs 3.4 percent). Clearly, the issue of youth cigar use is also an issue of health equity.

FLAVORED CIGARS

Cigars, cigarillos, and little cigars are all sold in many flavors that are appealing to young people, such as banana, mango, chocolate, and grape. These flavored products are commonly sold by cigarette retailers, such as convenience stores, but, unlike cigarettes, are not required to be placed behind the countertop.^{6,7} This practice may make flavored cigars and cigarillos more appealing and accessible to young people.

Flavored cigars are very popular among children and young adults. A 2015 study found that 74 percent of youth who used cigars reported flavoring as a primary reason for using them.^{8,9} In 2019, 41.9 percent of high school and middle school current cigar users reported using flavored cigars in the past 30 days.¹⁰

Updated 12.9.20

Importantly, flavored cigars can also serve as a gateway for new tobacco users. A 2019 longitudinal study found that, among youth aged 12-17 who began using cigars during the study period, 45.2 percent reported that their first product was flavored.¹¹ This same study found that young adults aged 18-24 who start with flavored cigars are more likely to become regular users compared to those who start with unflavored cigars.

HEALTH EFFECTS

Regular cigar smoking increases the risk of cancers of the lung, oral cavity, larynx, and esophagus.¹² In fact, cigar smokers are four to ten times more likely to die from laryngeal, oral or esophageal cancers than non-smokers.¹³ Heavy cigar smoking also increases the risk of developing lung diseases, such as emphysema and chronic bronchitis.¹⁴ Cigars also produce secondhand smoke that is dangerous for non-smokers.

All tobacco products, including cigars, contain nicotine, which may induce dependence and harm health.¹⁵ And unfortunately, young people who use tobacco products are more likely to become addicted than adults.¹⁶

ACS CAN'S POSITION

Regulation of cigars is part of ACS CAN's comprehensive approach to reducing tobacco use and exposure to secondhand smoke in the United States. Excluding cigars from comprehensive tobacco control laws provides the tobacco industry with an opening to target youth, who may be especially drawn to flavored products.. ACS CAN makes the following policy recommendations with respect to cigars:

- **Prohibit flavored cigars:** Congress or the FDA should prohibit the use of characterizing flavors, including menthol, in all tobacco products. Many states and localities are moving forward to end the sale of menthol cigarettes, cigars and all other flavored tobacco products and winning legal challenges to its laws. The Family Smoking Prevention and Tobacco Control Act does not permit a state or locality from requiring a product standard, such as the removal of a flavor, but the law does preserve the ability for states and localities to regulate the sales of tobacco products. States and localities should pursue policy options including ending the sale of all flavored tobacco products, including cigars and menthol cigarettes, while taking into consideration what is permitted in a specific jurisdiction.
- **Tax cigars at the same rate as cigarettes:** Like all other tobacco products, cigars should be subject to taxation as well as manufacturing and marketing rules to reduce the deadly and costly burden of tobacco use. All cigars, regardless of size, must be taxed at rates equivalent to cigarettes with no cap on tax rates.
- **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.
- **Regulate cigars by the FDA:** All types of cigars, regardless of their weight, should be regulated by the FDA and subject to the same requirements as cigarettes, smokeless tobacco and other tobacco products. In addition, FDA should use its enforcement authority against manufacturers selling cigarettes as little cigars.

Updated 12.9.20

- ¹ FDA Finalizes enforcement policy on unauthorized flavored cartridge-based e-cigarettes that appeal to children, including fruit and mint. U.S. Food and Drug Administration. Published January 2, 2020. Accessed December 9, 2020. <https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>
- ² Odani S, Armour BS, Agaku IT. Racial/Ethnic Disparities in Tobacco Product Use Among Middle and High School Students — United States, 2014–2017. *MMWR Morb Mortal Wkly Rep.* 2018;67(34):952-957. doi:[10.15585/mmwr.mm6734a3](https://doi.org/10.15585/mmwr.mm6734a3)
- ³ Gentzke AS, Wang TW, Jamal A, et al. Tobacco Product Use Among Middle and High School Students — United States, 2020. *MMWR Morb Mortal Wkly Rep* 2020;69:1881–1888. DOI: <http://dx.doi.org/10.15585/mmwr.mm6950a1>
- ⁴ 2019 NSDUH Detailed Tables. U.S. Substance Abuse and Mental Health Services Administration. Published September 11, 2020. Accessed December 9, 2020. <https://www.samhsa.gov/data/report/2019-nsduh-detailed-tables>
- ⁵ Gentzke AS, Wang TW, Jamal A, et al. Tobacco Product Use Among Middle and High School Students — United States, 2020. *MMWR Morb Mortal Wkly Rep* 2020;69:1881–1888. DOI: <http://dx.doi.org/10.15585/mmwr.mm6950a1>
- ⁶ Kong AY, Queen TL, Golden SD, Ribisl KM. Neighborhood Disparities in the Availability, Advertising, Promotion, and Youth Appeal of Little Cigars and Cigarillos, United States, 2015. *Nicotine & Tobacco Research.* Published online January 9, 2020. doi:[10.1093/ntr/ntaa005](https://doi.org/10.1093/ntr/ntaa005)
- ⁷ *The Truth about Tobacco Industry Retail Practices.* Truth Initiative; 2017. <https://truthinitiative.org/sites/default/files/media/files/2019/03/Point-of-Sale-10-2017.pdf>
- ⁸ *Flavors.* Truth Initiative; 2018. <https://truthinitiative.org/sites/default/files/media/files/2019/03/Truth-Flavors-Fact-Sheet.pdf>
- ⁹ Ambrose BK, Day HR, Rostron B, et al. Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *JAMA.* 2015;314(17):1871. doi:[10.1001/jama.2015.13802](https://doi.org/10.1001/jama.2015.13802)
- ¹⁰ Wang TW, Gentzke AS, Creamer MR, et al. Tobacco Product Use and Associated Factors Among Middle and High School Students — United States, 2019. *MMWR Surveill Summ.* 2019;68(12):1-22. doi:[10.15585/mmwr.ss6812a1](https://doi.org/10.15585/mmwr.ss6812a1)
- ¹¹ Villanti AC, Johnson AL, Glasser AM, et al. Association of Flavored Tobacco Use With Tobacco Initiation and Subsequent Use Among US Youth and Adults, 2013-2015. *JAMA Netw Open.* 2019;2(10):e1913804. doi:[10.1001/jamanetworkopen.2019.13804](https://doi.org/10.1001/jamanetworkopen.2019.13804)
- ¹² *Cancer Facts and Figures.* American Cancer Society; 2017. <https://www.cancer.org/research/cancer-facts-statistics/all-cancer-facts-figures/cancer-facts-figures-2017.html>
- ¹³ Oral Cancer and Tobacco. Johns Hopkins Medicine. <https://www.hopkinsmedicine.org/health/conditions-and-diseases/oral-cancer-and-tobacco#:~:text=Smokers%20are%20also%20at%20a,60%20known%20cancer%2Dcausing%20agents.>
- ¹⁴ Cigars. Centers for Disease Control and Prevention. https://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/cigars/index.htm
- ¹⁵ *The Health Consequences of Smoking - 50 Years of Progress.* U.S. Department of Health and Human Services; 2014. <https://pubmed.ncbi.nlm.nih.gov/24455788/>
- ¹⁶ *A Report of the Surgeon General: Preventing Tobacco Use Among Youth and Young Adults.* Centers for Disease Control and Prevention Office on Smoking and Health; 2012. https://www.cdc.gov/tobacco/data_statistics/sgr/2012/consumer_booklet/pdfs/consumer.pdf

Clearing the Air: The Facts About Ventilation



The only effective way to fully protect nonsmokers from exposure to secondhand smoke is to eliminate smoking in indoor public spaces.

Secondhand smoke is a serious health hazard. Ventilation technologies do not sufficiently protect individuals from the harmful effects of breathing in secondhand smoke. Reports from two different Surgeon Generals have found that there is no safe level of exposure to secondhand smoke.^{i, ii} While ventilation or air purification systems are sometimes promoted as a way to reduce exposure to secondhand smoke, ventilation cannot remove all secondhand smoke and does not purify the air at rates fast enough to protect people from harmful toxins. The Surgeon General has concluded that even 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 nonsmokers from exposure to secondhand smoke is to completely eliminate smoking in indoor public spaces.ⁱⁱⁱ

The Facts on Secondhand Smoke and Air Quality

Secondhand smoke is a major source of particulate matter, a type of air pollution. Conventional air cleaning systems can remove large particles, but not the smaller particles or gases found in secondhand smoke.^{iv} Particulate matter, of the size found in cigarette smoke, is easily and deeply inhaled into the lungs and can lead to disease and death. Exposure to secondhand tobacco smoke has been causally linked to cancer, respiratory and cardiovascular diseases, and numerous other adverse health effects.^v

Numerous studies over the past two decades have repeatedly shown that secondhand smoke is a cause of pollution and smoke-free laws are the only effective way to reduce exposure to secondhand smoke. For example:

- The pollution generated from three lit cigarettes in a room of 197 cubic feet was higher than the pollution generated from a diesel engine in a closed private garage.^{vi}
- Between 90 and 95 percent of airborne pollution in Delaware hospitality venues was caused by smoking before the state's smoking ban went into effect.^{vii} Levels of cancer-causing pollutants were found to be 4 times greater than National Ambient Air Quality Standards (NAAQS) outdoor requirements in six Delaware bars, one casino, and one pool hall before implementation of a statewide smoking ban.^{viii}
- Studies have found that in restaurants and bars where smoking was previously allowed, particulate matter decreased 80-90 percent within months of a smoke-free policy taking effect.^{ix}

The American Society of Heating, Refrigeration, and Air-Conditioning Engineers:^{xii}

- Concludes that the only way to eliminate the health risks of secondhand smoke exposure is to prohibit the smoking behavior
- Furthermore, no engineering approaches, including ventilation and air cleaning technologies, can eliminate the health risk.
- Includes marijuana smoke in the definition of environmental tobacco smoke (also called secondhand smoke).

What is Ventilation?

Ventilation uses controlled airflow to curb airborne contaminants.^x Despite the fact that ventilation systems cannot remove carcinogens found in secondhand smoke from a workplace or public place, the tobacco industry and their allies have promoted ventilation as a method to accommodate both smokers and non-smokers. There are two types of ventilation that are commonly used in commercial and industrial buildings.^{xi}

- **Local exhaust ventilation** attempts to trap pollutants at or near their source. It is geared toward environments with high pollution levels and requires low levels of air circulation. The theory is that pollutants are trapped at their source and are not diffused throughout the air.^{xii} Ventilated ashtrays are one example of local exhaust technology. Once a cigarette is placed into an ashtray, a filter would isolate any pollutants emitted from the burning tip. Canopy hoods are another example and work by filtering out any smoke that is exhaled directly above restaurant and gaming tables. In practice, local exhaust ventilation is not fully effective and requires substantial maintenance, making the technology ineffective, inefficient and costly for businesses to operate.
- **Dilution ventilation**, also known as general ventilation, involves saturating a room with clean, unpolluted air in an attempt to dilute airborne contaminants—in this case tobacco smoke—to safe and comfortable levels. The process requires high levels of air circulation and works best in environments with low pollution levels spread over a large area. However, exposure to secondhand smoke, at any level, is neither safe nor acceptable; the health consequences are immediate and can be life-threatening. Because dilution ventilation allows tobacco smoke to travel throughout a room, it offers little protection from secondhand smoke exposure and can even distribute secondhand smoke throughout a building.^{xiii, xiv} In addition to being ineffective, it may be costly for businesses to install.

Ventilation is Ineffective

The U.S. Surgeon General has concluded that separating smokers from nonsmokers, air cleaning technologies, and ventilating buildings cannot eliminate secondhand smoke exposure.^{xv} Research has shown that “tornado-like levels of ventilation” would be needed in restaurants, bars, and gaming establishments to protect hospitality workers from secondhand smoke.^{xvi} For example:

- Placing hoods over gaming, restaurant and bar tables to filter secondhand smoke would require “impracticably high” minimum airflows in excess of 300 cubic feet per minute per hood (cfm/hood).^{xvii}
- Ventilation was unable to control pollution in seven hospitality venues that were surveyed in Boston, Massachusetts, prior to the city’s smoke-free ordinance. Indoor air pollution levels were four times higher than NAAQS outdoor requirements.^{xviii}

A study of 36 tribal casinos found that air pollution was more than four times as high in the non-smoking gaming areas of casinos that allowed smoking than smoke-free casinos when there was no separation from smoking gaming areas. Even when there was complete separation between smoke-free and non-smoking gaming areas, air pollution was an average of 40 percent greater in the non-smoking areas of casinos that allowed smoking than completely smoke-free casinos.^{xix}

A study comparing indoor air quality at U.S. airports with and without smoking lounges found significantly more secondhand smoke particles in airports with smoking lounges, even in non-smoking parts of the airport. In airports with smoking lounges, the amount of secondhand smoke in the areas adjacent to the smoking lounges – where smoking was not allowed – was four times higher than the average amount of secondhand smoke in the non-smoking parts of airports that allowed smoking and five times higher than the average amount of secondhand smoke in completely smoke-free airports.^{xx} Despite ventilation, secondhand smoke from the airport smoking lounges penetrated the non-smoking parts of the airports, exposed non-smoking employees and travelers to secondhand smoke.

Manufacturers and sellers of air filtration technologies admit that their products do not protect consumers from the health risks imposed by secondhand smoke.^{xxi} The American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) re-affirmed in 2016, that the only means of effectively eliminating the health risk associated with indoor exposure is to prohibit smoking activity.^{xxii} According to ASHRAE:

- No other engineering approaches, including current and advanced dilution ventilation or air cleaning technologies, have been demonstrated or should be relied upon to control health risks from secondhand smoke exposure in spaces where smoking occurs.^{xxiii}
- While some engineering measures may reduce secondhand smoke exposure and some of the corresponding odor and irritation, smoke-free air cannot be accomplished with any engineering or other approaches besides prohibiting smoking.^{xxiv}

Even the tobacco industry acknowledges that ventilation and air filtration technologies are ineffective at removing secondhand smoke.

- British American Tobacco (BAT) acknowledged that its Colt air filtration unit was only 34 percent efficient at removing particulate matter from tobacco smoke. The unit failed to eliminate carbon monoxide and other volatile organic compounds found in cigarette smoke.^{xxv} The Colt unit only reduced “haze, tobacco-smoke aroma and total perceived smoke,” thus making the air more comfortable to breath, but not less harmful.^{xxvi}
- Phillip Morris USA states that “the public should be guided by the conclusions of public health officials regarding the health effects of secondhand smoke.”^{xxvii} The company further acknowledges that “the conclusions of public health officials concerning environmental tobacco smoke are sufficient to warrant measures that regulate cigarette smoking in public places.” Even the tobacco company itself does not promote ventilation as an alternative to smoke-free laws.

ACS CAN on Ventilation

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.

ACS CAN does not support smoke-free laws that allow for separating smokers from nonsmokers or ventilating buildings 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.

ⁱ 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.

ⁱⁱ HHS. *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. 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, 2010.

ⁱⁱⁱ HHS, 2006.

^{iv} HHS, 2006.

- ^v HHS. *The Health Consequences of Smoking—50 Years of Progress. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014. Printed with corrections, January 2014.
- ^{vi} Invernizzi G, Ruprecht A, Mazza R, et al. Particulate Matter from Tobacco Versus Diesel Car Exhaust: An Educational Perspective. *Tobacco Control* 2004; 13:219-221.
- ^{vii} Repace, J. Respirable Particles and Carcinogens in the Air of Delaware Hospitality Venues Before and After a Smoking Ban. *Journal of Occupational and Environmental Medicine* 2004; 45(9): 887-905.
- ^{viii} Repace, 2004.
- ^{ix} Babb S, McNeil C, Kruger J, Tynan MA. Secondhand Smoke and Smoking Restrictions in Casinos: A Review of the Evidence. *Tobacco Control* 2014; doi:10.1136/tobaccocontrol-2013-051368.
- ^x Repace J. Can Ventilation Control Secondhand Smoke in the Hospitality Industry? June 2000. Available online at <http://www.dhs.ca.gov/ps/cdic/tcs/documents/pubs/FedOHSAAets.pdf>. Accessed November 11, 2014.
- ^{xi} Repace, 2000.
- ^{xii} Repace, 2000
- ^{xiii} Repace, 2000
- ^{xiv} American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE). ASHRAE Position Document on Environmental Tobacco Smoke. Approved by ASHRAE Board of Directors October 22, 2010. Reaffirmed by ASHRAE Technology Council June 29, 2016.
- ^{xv} HHS, 2006.
- ^{xvi} Repace, 2000.
- ^{xvii} Repace, 2004.
- ^{xviii} Repace, J. An Air Quality Survey of Respirable Particles and Particulate Carcinogens in Boston Pubs Before and After a Smoking Ban. Bowie, MD: Repace Associates, Inc, 2003.
- ^{xix} Babb, 2014.
- ^{xx} Centers for Disease Control and Prevention. Indoor air quality at nine large-hub airports with and without designated smoking areas – United States, October–November 2012. *MMWR* 2012; 61(46): 948-951.
- ^{xxi} Americans for Nonsmokers’ Rights. Ventilation and Air Filtration: What Air Filtration Companies and the Tobacco Industry Are Saying. August 2005. Available at <http://www.no-smoke.org/document.php?id=267>.
- ^{xxii} ASHRAE, 2016
- ^{xxiii} ASHRAE, 2016.
- ^{xxiv} ASHRAE, 2016.
- ^{xxv} Leavell NR, Muggli ME, Hurt RD, and Repace J. Blowing Smoke: British American Tobacco’s air filtration scheme. *British Medical Journal* 2006; 332: 227-229.
- ^{xxvi} Leavell, 2006.
- ^{xxvii} Phillip Morris USA. Smoking and Health Issues. 2014. Available at http://www.philipmorrisusa.com/en/cms/Products/Cigarettes/Health_Issues/Secondhand_Smoke/default.aspx. Accessed November 11, 2014.



Adopted by the Tobacco Free North Dakota Board of Directors May 23, 2022

Statement of Support for the North Dakota Smoke-Free Law

WHEREAS, tobacco use is the foremost preventable cause of premature death in the United States.¹ Tobacco is responsible for approximately 480,000 deaths a year and 20.8 million premature deaths in the United States over the past 50 years since the first Surgeon General's report on smoking in 1964²;

WHEREAS, tobacco smoke contains more than 7,000 chemicals, including hundreds that are toxic and approximately 70 that can cause cancer³. Both the Public Health Service's National Toxicology Program and Environmental Protection Agency have classified secondhand smoke (SHS) as a known carcinogen, concluding that SHS is a health risk to nonsmokers⁴;

WHEREAS, the Surgeon General concludes that SHS causes lung cancer, heart disease, as well as stroke in adults². In addition, the following health effects are associated with SHS exposure: sudden infant death syndrome, low birth weight; middle ear problems, respiratory symptoms, and asthma in children⁵;

WHEREAS, studies have shown that second hand aerosol from electronic nicotine delivery systems (ENDS) is not harmless. It can contain harmful and potentially harmful chemicals, including nicotine; ultrafine particles that can be inhaled deep into the lungs; flavoring such as diacetyl, a chemical linked to a serious lung disease; volatile organic compounds such as benzene, which is found in car exhaust; and heavy metals, such as nickel, tin, and lead⁶;

WHEREAS, secondhand smoke from marijuana has many of the same chemicals as smoke from tobacco, including those linked to lung cancer⁷. Exposure to fine particulate matter can exacerbate health problems, especially for people with respiratory conditions like asthma, bronchitis, or chronic obstructive pulmonary disease (COPD)⁸;

WHEREAS, cigar smoke, like cigarette smoke, contains toxic and cancer-causing chemicals that are harmful to both smokers and nonsmokers. Cigar smoke is possibly more toxic than cigarette smoke as cigars have a higher level of cancer-causing substances, more tar, and a higher level of toxins⁹. The larger size of most cigars and longer smoking time result in higher exposure to many toxic substances including carbon monoxide, hydrocarbons, ammonia, cadmium, and other substances;

WHEREAS, the American Society for Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE), affirms that mechanical solutions like ventilation cannot control for the health hazards of SHS, and the best solution is that all smoking activity inside and near buildings should be eliminated¹⁰;

WHEREAS, the Surgeon General concluded that there is no risk-free level of exposure to SHS; ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; smoke-free workplace policies are the only effective way to eliminate SHS exposure in the workplace, and evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry;

WHEREAS, SHS exposure to pregnant women can lead to congenital birth defects, low birthweight and stillbirth, as well as respiratory tract infections and asthma incidence in young children¹¹;

WHEREAS, multiple studies have linked comprehensive smoke-free workplace and public places legislation to significant declines in hospital admissions for heart attacks in the general population;

WHEREAS, studies indicate that individuals living in communities with comprehensive smoke-free policies are 22% less likely to be hospitalized for COPD compared to their peers in communities with moderate-weak smoke-free laws or no law¹²;

WHEREAS, the World Health Organization (WHO) recommends that ENDS not be used indoors, especially in smoke-free environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smoke-free laws¹³;

WHEREAS, the annual economic impact of secondhand smoke alone in the United States is nearly \$7 billion;

WHEREAS, in 2012 North Dakota voters enacted a comprehensive statewide law prohibiting smoking in enclosed public places, with every county voting in favor of the law;

WHEREAS, this law is supported by over 80% of North Dakotans¹⁴;

THEREFORE, be it resolved,

believes that the current smoke-free air law codified in North Dakota Century Code be unaltered from its current language so that the citizens of North Dakota continue to enjoy the economic and health-related benefits they have experienced since 2012.

Name of Organization Representative

Signature of Organization Representative

Date

¹ Centers for Disease Control & Prevention, Current Cigarette Smoking Among Adults, United States, 2011, 61(44) Morbidity and Mortality Wkly. Rep. 889, 891 (2012), <http://www.cdc.gov/mmwr/pdf/wk/mm6144.pdf>

² U.S. Department of Health and Human Services. (2014). The Health Consequences of Smoking-50 Years of Progress: A Report of the Surgeon General, Retrieved from: <https://www.ncbi.nlm.nih.gov/books/NBK179276/>

³ U.S. Department of Health and Human Services. [The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General.](#)

Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014

⁴ U.S. Environmental Protection Agency. "Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders." Washington, DC: U.S. Environmental Protection Agency;1992. Pub. No. EPA/600/6-90/006F

⁵ U.S. Department of Health and Human Services. (2006) The health consequences of involuntary exposure to tobacco smoke: A report of the Surgeon General, Retrieved from: <https://www.ncbi.nlm.nih.gov/books/NBK44324/>

⁶ <https://e-cigarettes.surgeongeneral.gov/knowtherisks.html>

⁷ "Evidence on the Carcinogenicity of Marijuana Smoke." Reproductive and Cancer Hazard Assessment Branch, Office of Environmental Health Hazard Assessment, California Environmental Protection Agency. August 2009
http://oehha.ca.gov/prop65/hazard_ident/pdf_zip/FinalMJsmokeHID.pdf

⁸ "Air and Health: Particulate Matter." National Environmental Public Health Tracking Network, U. S. Environmental Protection Agency.
<http://ephtracking.cdc.gov/showAirHealth.action#ParticulateMatter>

⁹ National Cancer Institute (1998). *Smoking and Tobacco Control Monograph 9: Cigars: Health Effects and Trends*. Bethesda, MD. <http://www.cancercontrol.cancer.gov/tcrb/monographs/9/index.html>.

¹⁰ https://www.ashrae.org/file%20library/about/position%20documents/pd_environmental-tobacco-smoke-2020-07-1.pdf

¹¹ <https://www.nature.com/articles/npjpcm201667>

¹² Hahn EJ, Rayens MK, Adkins S, Simpson N, Frazier S, Mannino DM. Fewer hospitalizations for chronic obstructive pulmonary disease in communities with smoke-free public policies. *Am J Public Health*. Jun 2014;104(6):1059-1065

¹³ Conference of the Parties to the WHO Framework Convention on Tobacco Control; Sixth session Moscow, Russian Federation, 13–18 October 2014 http://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_10Rev1-en.pdf?ua=1

¹⁴ North Dakota Public Opinion Survey: Priority Analyses Summary (October 2016) **Center for Public Health Systems Science & Brown School Evaluation Center**; George Warren Brown School of Social Work

15. <https://www.tobaccofreekids.org/problem/toll-us>

16. <https://results.sos.nd.gov/ResultsSW.aspx?text=BQ&type=SW&map=CTY&eid=35>

North Dakota House Bill 1229 Related to Exempting Cigar Bars from ND Smoke-Free Law

Senate Industry, Business, and Labor Committee for the 68th Legislative Assembly

January 17, 2023 Hearing

Chairman Louser and members of the Senate Industry, Business, and Labor Committee. My name is Kelly Buettner-Schmidt. I am a resident of Fargo, ND, District 41. Although I am not speaking on behalf of North Dakota State University (NDSU), I am a professor and researcher at NDSU's School of Nursing. I also am an American Cancer Society Cancer Action Network (ACS CAN) volunteer.

There is no safe level of exposure to secondhand smoke.

After multiple local North Dakota communities passed laws on the local level requiring smoke-free workplaces, North Dakotans voted overwhelmingly in support of a statewide smoke-free workplace law.

I am very concerned to learn that the ND legislature is considering House Bill 1229 to exempt cigar lounges and bars that sell cigars from our statewide smoke-free law. This would reverse important public health gains in our communities and open the door for additional exemptions.

In published longitudinal studies of the impact of ND's statewide smoke-free law (<https://doi.org/10.1097/NNR.0000000000000286>), my co-authors and I found immediate, substantial and sustained declines in secondhand smoke and elimination of disparities in secondhand smoke exposure in rural communities. This led to an equal distribution of smoke-free laws statewide and increased protection of populations, especially in rural areas, from secondhand smoke.

I urge the Industry, Business and Labor Committee of the House of Representatives to consider the health of North Dakotans and vote against weakening our smoke-free law.

Respectfully submitted,

Kelly Buettner-Schmidt, PhD, RN, FAAN
Professor of Nursing, North Dakota State University
Volunteer, American Cancer Society Cancer Action Network (ACS CAN)

TESTIMONY IN OPPOSITION OF HB 1229

Sommer Frohlich, BSW
3724 Renee Dr. Bismarck ND, 58503
701-934-0540

Chairman Louser and members of the House Industry, Business and Labor, Committee. My name is Sommer Frohlich. I am a counselor at the Women's Care Center, a pregnancy resource center in Bismarck. I have a bachelor's degree in Social Work from Minot State University and grew up in Bismarck. I am here today to testify in opposition to House Bill 1229.

My job as a counselor at the Women's Care Center entails meeting with women to provide confidential support and promote healthy pregnancies. We see many women who face difficult obstacles, but work hard making many sacrifices to provide for their growing family.

I am really concerned about allowing smoking cigars indoors. Not only do I worry about secondhand smoke exposure to myself, who would love to start a family in the near future, but I also think of our mothers who often work in environments where they could potentially be exposed to secondhand smoke from cigars.

If a pregnant woman is exposed to secondhand smoke, it is not only bad for her but also for the baby she is carrying. If a pregnancy is exposed to secondhand smoke, there are higher rates of miscarriage, premature births, and low birth weights. I am fearful that many mothers will be exposed to second hand cigar smoke due to their employment. This can be very difficult for so many mothers who work hard and rely on their job to provide for their children. In ND I am so grateful that I can be guaranteed safe air without limitations. I love that we can take care of our community and make public places safe for everyone, even a baby still in their mother's womb.

I recognize just how deadly all tobacco products are including cigars. If our smoke free law were to exempt cigars, we would be exposing people who choose not to use these products to secondhand smoke.

I am a firm believer in North Dakotans looking out for one another, and our current smoke free law does just that. By having a strong statewide smoke free law, we are watching out for one another. Please oppose HB 1229 because so many who choose to live smoke free will be exposed to secondhand smoke. We must continue to care for one another. Thank you for your time. This concludes my testimony.



Testimony in Opposition of HB 1229
House Industry, Business, and Labor Committee

Chairman Louser and Members of the House Industry, Business, and Labor Committee, my name is Mike Krumwiede appearing on behalf of the American Heart Association in opposition of House Bill 1229. In November 2012, North Dakota voters opted to become smoke-free, leading the nation with a strong comprehensive model. Voters in every county in the state favored the law, which advances public health by protecting more workers, residents, and visitors from secondhand smoke exposure in public places and places of employment.

Secondhand smoke (from cigarettes and cigars) has been proven to cause numerous health problems, including heart disease, emphysema, stroke, sudden infant death syndrome and cancer. Secondhand smoke contains toxic chemicals like formaldehyde, cyanide, carbon monoxide, ammonia and nicotine. Exposure to secondhand smoke causes preventable deaths from lung cancer and cardiac-related illnesses. The Centers for Disease Control and Prevention (CDC) makes clear that there is no safe level of exposure to secondhand smoke.

HB 1229, which would allow smoking in bars that sell cigars and so-called cigar lounges would weaken existing protections and pollute the indoor air in North Dakota. In addition, AHA is concerned, it could also create an opening for more exemptions allowing cigar lounges, smoking lounges, vaping bars, hookah bars, and pipe tobacco rooms as possible options.

The original law our voters approved over a decade ago clearly states the importance of protecting public health and the need for individuals to breathe smoke-free air. This extends to all workers including those who work in bars and cigar lounges. For these reasons we urge a DO NOT PASS recommendation on HB 1229. Thank you for your time and consideration.

Testimony – In Opposition
House Bill 1229 – Tobacco Restrictions
Industry Business and Labor Committee
Representative Louser, Chair
January 16, 2023

Chairman Louser, and members of the House Industry, Business and Labor Committee – My name is Duane Pool, a citizen from District 47, an economist and biometrician. I am writing today to provide testimony in **opposition** of House Bill No. 1229.

Several years ago, I was contracted by the Bismarck Tobacco Free Coalition to evaluate the regulatory impact of the smoking ban on area restaurants and bars. I conducted a before and after analysis of the industry based on taxable sales reporting. An anecdotal irony is that I am allergic to smoke and my co-author, who has passed away, was a chain smoker. Based on that knowledge of the local market, I am comfortable suggesting that the addition of cigar bars will have marginal (very little) if any increase in market revenue.

Based on previous study, patronage and the associated revenue will likely be absorbed in mostly a substitution effect wherein patrons will shift from one facility to another and not lead to significant recruitment of new patrons to the market. If the beneficial justification is increased market revenue, then based on these previous studies, that justification would be a relatively weak stance given the well documented cost side of the regulatory impact analysis research for smoking that is readily available at the Bismarck Tobacco Free Coalition and in the economic literature.

As it stands, the current law treats everyone equally. If as a policy maker, you start making exceptions, you open the basic statute to equal treatment lawsuits in the future. Also, the threshold for cigar sales leads one to wonder if the intent is to circumvent current law with 98% of sales coming from non-target sales.

Respectfully in opposition to House Bill No. 1152,
Duane Pool

Chairman Louser and members of the State Industry, Business and Labor Committee. My name is Kelly Radebaugh. I am a Registered Nurse and I have been a Public Health Nurse for 28 years. The World Health Organization (WHO) defines Public Health as organized measures to prevent disease, promote health and prolonged life among the population.

In 2012 North Dakotans in every county voted in favor of North Dakota's Smoke-free Law. It protects everyone's right to breath smoke-free air.

There is NO safe level of exposure secondhand smoke. The cost of the product does not change the health risks posed from the use of the product. Cigars have not been proven to be any less dangerous than cigarettes. Smoking cigars doesn't only put the smoker at risk. Secondhand smoke carries the same risk to a nonsmoker as it does to the smoker.

I urge you to keep North Dakota's Smoke-free Law intact. Thank you for your consideration in voting against HB 1229.

Chairman Larsen, and members of the Industry and Business Committee. My name is Kameron Hymer, and I reside in Williams County with my family.

I am asking that you support House Bill No. 1229, a bill for an act to amend and reenact section 23-12-10 of the North Dakota Century Code, relating to cigar bars and cigar lounges.

This bill will allow for the use of an already legal product in a lounge setting. A cigar lounge would be an enjoyable, warm and relaxing atmosphere to visit with friends who also enjoy cigars.

Governor Burgum recently said, *“North Dakota takes pride in being one of the most business-friendly states in the nation, and we continuously seek new ways to support entrepreneurs, innovators and emerging and expanding businesses”*. Working in local government myself, I recognize the value and importance of economic diversity and agree with Governor Burgum that we need to support new and existing businesses.

Blanket claims from those that oppose this bill don’t hold true or tell the complete truth. Such as:

Claim 1: *“We don’t want to be exposed to secondhand smoke in public spaces”*.

Response: This bill would only allow cigars to be smoked in a dedicated establishment for that purpose. This bill would not allow someone to smoke a cigar in bars such as, River’s Edge, Cattails, Buffalo Wild Wings, etc. Those not wanting to be exposed to secondhand smoke would not be unless they deliberately entered the establishment.

Claim 2: *“Cigar use among youth is now almost as common as cigarette smoking!”*

Response: The March 2022 FDA-Funded study, Premium Cigars: Patterns of Use, Marketing and Health Effects, from the National Academies of Sciences, Engineering and Medicine states, *“The PATH analysis focused on adults because premium cigar use is very limited in youth.”* and *“Premium cigar use is less common among youth, and only 0.6 percent of those who reported smoking a premium cigar brand in the past 30 days were under the age of 18”*. Incorrect statistics grouping cheap “gas station” cigarillos like Black & Milds, to premium 100% tobacco cigars as being the same product are misleading. HB 1229 clearly explains the definition of a cigar; it is not the same product that has seen an increase in youth usage.

Opposing parties are also protesting this bill because of the health risks to the user. If that is truly a concern, why is alcohol consumption not being protested? It comes with major health risks as well. Even social media pages from groups in opposition of HB 1229 show their members partaking in alcohol at dinners and banquets.

“Government exists to protect us from each other. Where government has gone beyond its limits is in deciding to protect us from ourselves.” – Ronald Reagan

In conclusion, I urge you cast a YES vote for HB 1229.

Sincerely,

Kameron Hymer

TESTIMONY IN OPPOSITION OF HB 1229

Joelean Lowman
4707 Harbor Trail SE
Mandan, ND 58554
701-220-2482

Chairman Larsen and members of the and members of the Senate Industry and Business Committee. My name is Joelean Lowman. I teach the Medical Related Careers class at Legacy High School and am an Advisor for HOSA- Future Health Professionals. I have lived in Bismarck/Mandan for 25 years. I am here today to testify in opposition to House Bill 1229.

As I think about a time when ND was not Smoke Free it takes be back to 1996 when I was pregnant with my first child. At that time, I was a waitress at a restaurant that had a smoking and a nonsmoking section. I was currently in college to become and occupational therapist and knew the dangers of secondhand smoke to the child I was carrying. As a 23-year-old it was difficult for me to ask my supervisor not to be scheduled in the smoking section. Even when I did ask, the request was not always granted.

I know some people say work somewhere else. That is not always an option. When the choice becomes to protect yourself or pay the rent, the pay the rent may come out on top when taking care of yourself should. The Smoke Free laws in our state help to protect many individuals that are not capable of standing up for themselves. I can relate because I remember being in that situation many years ago.

I think that there are many people that would not have a choice about being exposed. There are some that have less control over where they work or what businesses are next door. I also worry about the dangers of second hand or third hand smoke and how that will affect children of those that work in facilities where smoking is allowed.

Recently during a trip to Anaheim, CA with a group of students for the HOSA - Future Health Professionals International Leadership Conference we made a stop at Downtown Disney. There was a cigar bar there and right next to it was a sports memorabilia store. I had some students in the sports memorabilia store. In going in to visit with them I was shocked to realize that I could not even be in that store due to the smell of cigar smoke from the store next door. If House Bill 1229 were to be passed in North Dakota, I worry about the impact it may have on businesses that may be adjoining the cigar bar.

We have taken so many steps forward in our state ensuring that our residents can breathe clean air when in their communities and buildings, it would be so sad to see us take a huge step back. Please oppose HB 1229 so North Dakota can continue to protect the right of all our citizens to breathe clear air and provide a work environment that is safe. Thank you for your time. This concludes my testimony.



February 27, 2023

Industry, Business and Labor Committee
North Dakota Senate
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Sent via email to: jklein@ndlegis.gov

Re: House Bill 1229

Dear Chairman Klein and Members of the Senate Industry, Business and Labor Committee,

I am writing regarding House Bill 1229, which would create exemptions to the indoor smoking prohibition for bars and cigar lounges. ASHRAE, founded in 1894, is a global society advancing human well-being through sustainable technology for the built environment. The Society and its more than 53,000 members worldwide focus on building systems, energy efficiency, indoor air quality, refrigeration and sustainability. Through research, standards writing, publishing, certification and continuing education, ASHRAE shapes tomorrow's built environment today.

I urge you to consider the health effects of this proposed exemption for indoor smoking in bars and cigar lounges. **As a technical Society developing standards for indoor environmental quality, ASHRAE holds the position that the only means of avoiding health effects and eliminating indoor environmental tobacco smoke (ETS) exposure is to ban all smoking activity inside and near buildings.** This position is supported by the conclusions of health authorities that any level of ETS exposure leads to adverse health effects and therefore:

- The building and its systems can reduce only odor and discomfort but cannot eliminate exposure when smoking is allowed inside or near a building.
- Even when all practical means of separation and isolation of smoking areas are employed, adverse health effects from exposure in non-smoking spaces in the same building cannot be eliminated.
- Neither dilution ventilation, air distribution (e.g., "air curtains") nor air cleaning should be relied upon to control ETS exposure.
- Further research is needed from cognizant health authorities on the health effects of involuntary exposure in the indoor environment from smoking cannabis, using hookahs, using electronic nicotine delivery systems (ENDS), and engaging in other activities commonly referred to as vaping or using e-cigarettes.

I am attaching a copy of the ASHRAE Position Document on Environmental Tobacco Smoke, which more thoroughly discusses this matter. ASHRAE would be happy to address any questions you might have or to offer technical assistance through our experts from relevant technical committees within ASHRAE. Please feel free to contact me or have your staff contact GovAffairs@ashrae.org.

For more information on ASHRAE and its standards, programs and resources, please visit www.ashrae.org.

Sincerely,



Peter J. Koneck-Wilwerding
ASHRAE Government Affairs Committee
Regional Vice Chair Region IX
402-399-1321
peter.koneck-wilwerding@hdrinc.com

Enclosure



ASHRAE Position Document on Environmental Tobacco Smoke

Approved by ASHRAE Board of Directors
July 1, 2020

Expires
July 1, 2023

COMMITTEE ROSTER

The ASHRAE Position Document on Environmental Tobacco Smoke was developed by ASHRAE's Environmental Tobacco Smoke Position Document Committee formed on May 16, 2018, with Larry Schoen. as its chair.

Lawrence J. Schoen
Schoen Engineering Inc.
Columbia, MD

Kevin Kennedy
Children's Mercy Kansas City
Kansas City, MO

Costas Balaras
National Observatory of Athens
Athens, Greece

Andrew Persily
NIST
Gaithersburg, MD USA

Lan Chi Nguyen Weekes
La Cite Collegiale
Ottawa, ON, Canada

Cognizant Committee

The chairperson of the ASHRAE Environmental Health Committee, also served as an ex-officio member:

Wade Conlan
Hanson Professional Services
Maitland, FL, USA

HISTORY OF REVISION/REAFFIRMATION/WITHDRAWAL DATES

The following summarizes this document's revision, reaffirmation, or withdrawal dates:

6/30/2005—BOD approves Position Document titled *Environmental Tobacco Smoke*

6/25/2008—BOD approves reaffirmation of Position Document titled *Environmental Tobacco Smoke*

10/22/2010—BOD approves revision to Position Document titled *Environmental Tobacco Smoke*

6/30/2013—Technology Council approves reaffirmation of Position Document titled *Environmental Tobacco Smoke*

6/29/2016—Technology Council approves reaffirmation of Position Document titled *Environmental Tobacco Smoke*

6/26/2019—Technology Council approves reaffirmation of Position Document titled *Environmental Tobacco Smoke*

7/1/2020 – BOD approved revision to Position Document titled *Environmental Tobacco Smoke*

Note: ASHRAE's Technology Council and the cognizant committee recommend revision, reaffirmation, or withdrawal every 30 months.

Note: ASHRAE position documents are approved by the Board of Directors and express the views of the Society on a specific issue. The purpose of these documents is to provide objective, authoritative background information to persons interested in issues within ASHRAE's expertise, particularly in areas where such information will be helpful in drafting sound public policy. A related purpose is also to serve as an educational tool clarifying ASHRAE's position for its members and professionals, in general, advancing the arts and sciences of HVAC&R.

ABSTRACT

While indoor smoking has become less common in recent years, exposure to Environmental Tobacco Smoke (ETS) continues to have significant health and cost impacts. ASHRAE's role in providing engineering technology, standards and design guidance in support of healthful and comfortable indoor environments supports the need for this position document.

ASHRAE's position is that all smoking activity inside and near buildings should be eliminated, which is supported by the conclusions of health authorities that any level of ETS exposure leads to adverse health effects. ASHRAE recommends that building design practitioners educate and inform their clients, where smoking is still permitted, of the limits of engineering controls of ETS exposure, that multifamily buildings have smoking bans inside and near them, and that further research be conducted on the health effects of involuntary exposure in the indoor environment from smoking cannabis, using hookahs and electronic nicotine delivery devices (ENDS), and engaging in other activities commonly referred to as e-cigarettes or vaping.

EXECUTIVE SUMMARY

While indoor smoking has become less common in recent years, exposure to Environmental Tobacco Smoke (ETS) continues to have significant health and cost impacts. While ASHRAE does not conduct research on the health effects of indoor contaminants, ASHRAE has been involved in this topic for many years. Through its committees, standards, handbooks, guides, and conferences, ASHRAE has long been providing information to support healthful and comfortable indoor environments, including efforts to reduce indoor ETS exposure.

- ASHRAE is committed to encouraging lawmakers, policymakers and others who exercise control over buildings to eliminate smoking inside and near buildings.
- ASHRAE's current policy is that Standards and Guidelines shall not prescribe ventilation rates or claim to provide acceptable indoor air quality in smoking spaces. This PD recommends extending such policy to other ASHRAE documents.
- ASHRAE holds the position that the only means of avoiding health effects and eliminating indoor ETS exposure is to ban all smoking activity inside and near buildings. This position is supported by the conclusions of health authorities that any level of ETS exposure leads to adverse health effects and therefore,
 - The building and its systems can reduce only odor and discomfort but cannot eliminate exposure when smoking is allowed inside or near a building.
 - Even when all practical means of separation and isolation of smoking areas are employed, adverse health effects from exposure in non-smoking spaces in the same building cannot be eliminated.
 - Neither dilution ventilation, air distribution (e.g., "air curtains") nor air cleaning should be relied upon to control ETS exposure.
- ASHRAE recommends that building design practitioners work with their clients to define their intent, where smoking is still permitted, for addressing ETS exposure in their building and educate and inform their clients of the limits of engineering controls in regard to ETS.
- ASHRAE recommends that multifamily buildings have complete smoking bans inside and near them in order to protect nonsmoking adults and children.
- ASHRAE recommends, given current and developing trends, that further research be conducted by cognizant health authorities on the health effects of involuntary exposure in the indoor environment from smoking cannabis, using hookahs, using ENDS, and engaging in other activities commonly referred to as vaping or using e-cigarettes.

1. THE ISSUE

While indoor smoking has become less common in recent years in many countries (WHO 2019), exposure to Environmental Tobacco Smoke (ETS) continues to have significant health and cost impacts (USDHSS 2014). Researchers have investigated the health and irritant effects among non-smokers exposed to tobacco smoke in indoor environments. Such exposure is also known as passive smoking and as involuntary exposure to secondhand smoke. A number of national and global health research groups and agencies (Cal EPA 2005, EPA 1992, IARC 2004, IOM 2010, NRC 1986, SCTH 1998, USDHHS 2014, USDHHS 2006, WHO 2019) have concluded, based on the preponderance of evidence, that exposure of nonsmokers to tobacco smoke causes specific diseases and other adverse effects to human health most significantly, cardiovascular disease and lung cancer. No cognizant authorities have identified an acceptable level of ETS exposure to non-smokers, nor is there any expectation that further research will identify such a level.

Despite extensive evidence of such harm, the well-documented benefits of bans, including exposure reduction and benefits to public health (CPSTF 2013) and widening adoption of smoking bans, many locations worldwide still lack laws and policies that provide sufficient protection. In many locations, laws and policies are only partially protective, permitting smoking in certain building types including casino, entertainment and multifamily housing. Even where permitted by law, many developers, building owners, and operators, including those of restaurants and other hospitality venues, do not allow smoking indoors.

There are currently trends that increase use of electronic nicotine delivery systems (ENDS), smoking of cannabis, use of hookahs and other related activities that are beyond the scope of this document, but which likely present risks from involuntary exposure in the indoor environment that are not as well understood.

2. BACKGROUND

ASHRAE, through its Environmental Health Committee, TC 4.3 Ventilation Requirements and Infiltration, SSPCs 62.1 Ventilation for Acceptable Indoor Air Quality, 62.2 Ventilation and Acceptable Indoor Air Quality in Residential Buildings, 189.1 Standard for the Design of High-Performance Green Buildings, Handbook-Applications Chapter 46 (ASHRAE 2019) and Handbook-Fundamentals Chapters 10 and 11 (ASHRAE 2017), Indoor Air Quality Design Guides (ASHRAE 2018, 2009), and IAQ conferences, has long been active in providing engineering technology, standards and design guidance in support of providing healthful and comfortable indoor environments.

Previous versions of this position document have been instrumental in informing the public, building scientists and practitioners, policymakers and lawmakers

about the inability of HVAC technologies to eliminate health risks to nonsmokers from exposure to tobacco smoke in indoor environments.

The evidence on the health consequences of exposure to ETS is extensive (hundreds of scientific papers) and has been reviewed by numerous independent expert groups in the United States and internationally, all reaching similar conclusions regarding the adverse health effects caused among nonsmokers exposed to tobacco smoke indoors. These include but are not limited to:

U.S. Surgeon General (USDHHS 2014, 2006)
U.S. Environmental Protection Agency (EPA 1992)
National Research Council (NRC 1986)
California Environmental Protection Agency Cal EPA 2005)
World Health Organization (WHO 2019)
International Agency for Research on Cancer (IARC 2004)
United Kingdom Department of Health (SCTH 1998)

The first major studies on passive smoking reported that passive smoking was a cause of lung cancer in non-smokers. Subsequent evidence has identified other health effects in adults and children. Notably, the number of coronary heart disease deaths caused by ETS greatly exceeds the number of ETS-caused lung cancer deaths. Additionally, the scientific evidence recognizes substantial subpopulations, such as children (USDHHS 2014) and adults with asthma or heart disease, whose disease may be exacerbated by ETS exposure.

There is no threshold for ETS exposure below which adverse health effects are not expected, as indicated in the referenced health authority reports. In general, risks tend to increase with the level of exposure and conversely to decrease with a reduction in exposure.

Only an indoor smoking ban, leading to near zero exposure, provides effective control, and only such bans have been recognized as effective by health authorities. Experience with such bans documents that they can be effective (CPSTF 2013, USDHHS 2014, 2006). While there are no engineering design issues related to this approach, the existence of outdoor smoking areas near the building and their potential impacts on entryway exposure and outdoor air intake need to be considered.

Nevertheless, smoking is permitted in some indoor spaces in some buildings. There are now several decades of international experience with the use of strategies, including separation of smokers and nonsmokers, ventilation, air cleaning and filtration, to limit contamination spread from smoking permitted areas to other areas inside the building.

There are three general cases of space-use and smoking activity in sequence from most to least effective in controlling ETS exposure:

- 1) allowing smoking only in isolated rooms;
- 2) allowing smoking in separate but not isolated spaces; and
- 3) totally mixing occupancy of smokers and nonsmokers.

These approaches do not necessarily account for all circumstances. Each leads to different engineering approaches as follows.

1. Smoking Only in Isolated Rooms: Allowing smoking only in separate and isolated rooms, typically dedicated to smoking, can reduce ETS exposure in non-smoking spaces in the same building. Effective isolation requires
 - a) sealing of cross contamination pathways and airtightness of the physical barriers between the smoking and nonsmoking areas,
 - b) the use of separate ventilation systems serving the smoking and non-smoking spaces,
 - c) exhausting air containing ETS so it does not enter the non-smoking area through the outdoor air intakes, windows, and other airflow paths,
 - d) airflow and pressure control including location of supply outlets and return and exhaust air inlets to preserve airflow into the smoking space at doorways and other openings, which is powerful enough so that movement of people between non-smoking and smoking areas and so that thermal and other effects do not disrupt intended air distribution patterns.

Even when all available strategies have been employed in multifamily housing, there is a lack of credible evidence that anything short of a smoking ban will provide full protection to occupants of non-smoking residential dwelling units. The risk of adverse health effects for the occupants of the smoking room itself also cannot be controlled by ventilation.

2. Smoking in Separate but Not Isolated Spaces: This approach includes spaces where smokers and non-smokers are separated but still occupy a single space or a collection of smoking and non-smoking spaces not employing all the isolation techniques described in 2. a) through f) above. Examples can be found in restaurants and bars with smoking and non-smoking areas, or buildings where smoking is restricted to specific rooms, but a common, recirculating air handler serves both the smoking and non-smoking rooms.

Engineering techniques to reduce odor and irritation include, directional airflow patterns achieved through selective location of supply and exhaust vents, and air cleaning and filtration. Limited evidence is available, and none supports the significant reduction of health effects on those exposed.

3. **Mixed Occupancy of Smokers and Nonsmokers:** If smoking is allowed throughout a space or a collection of spaces served by a single air handler, with no effort to isolate or separate the smokers and nonsmokers, there is no currently available or reasonably anticipated ventilation or air cleaning system that can adequately control or significantly reduce the health risks of ETS to an acceptable level.

This situation includes unrestricted smoking in homes, dormitories, casinos, bingo parlors, small workplaces, and open plan office spaces. Air cleaning, dilution ventilation and displacement ventilation can provide some reduction in exposure, but they cannot adequately control adverse health effects, nor odor and sensory irritation for nonsmokers in general.

Ongoing trends, studies and research:

- Electronic nicotine delivery systems (ENDS) are increasing in use and the health effects of primary and secondary exposure continue to be revealed. ENDS and other related exposures in the indoor environment, including those arising from cannabis combustion and use of hookahs, are outside the scope of this position document. ENDS are addressed in an ASHRAE Emerging Issue Brief.
- Third-hand smoke, which results from the release of contaminants from the clothing of smokers and other surfaces, is a relatively new concept. There is evidence of potential hazards (Sleiman 2010) and researchers are still studying it (Mayo Clinic 2017).

3. RECOMMENDATIONS

- ASHRAE is committed to encouraging lawmakers, policymakers and others who exercise control over buildings to eliminate smoking inside and near buildings.
- ASHRAE's current policy (ROB 1.201.008) is that Standards and Guidelines shall not prescribe ventilation rates or claim to provide acceptable indoor air quality in smoking spaces. This PD recommends extending such policy to other ASHRAE documents.
- ASHRAE holds the position that the only means of avoiding health effects and eliminating indoor ETS exposure is to ban all smoking activity inside and near buildings. This position is supported by the conclusions of health authorities that any level of ETS exposure leads to adverse health effects and therefore,
 - The building and its systems can reduce only odor and discomfort but cannot eliminate exposure when smoking is allowed inside or near a building.

- Even when all practical means of separation and isolation of smoking areas are employed, adverse health effects from exposure in non-smoking spaces in the same building cannot be eliminated.
- Neither dilution ventilation, air distribution (e.g., “air curtains”) or air cleaning should be relied upon to control ETS exposure.
- ASHRAE recommends that building design practitioners work with their clients to define their intent, where smoking is still permitted, for addressing ETS exposure in their building and educate and inform their clients of the limits of engineering controls in regard to ETS.
- ASHRAE recommends that multifamily buildings have complete and enforced smoking bans inside and near them in order to protect nonsmoking adults and children.
- ASHRAE recommends, given current and developing trends, that further research be conducted by cognizant health authorities on the health effects of involuntary exposure in the indoor environment from smoking cannabis, using hookahs, using ENDS, and engaging in other activities commonly referred to as vaping or using e-cigarettes.

4. REFERENCES

- ASHRAE 2019. Handbook—HVAC Applications. Atlanta: ASHRAE.
- ASHRAE (Ed.), 2018. Residential indoor air quality guide: best practices for acquisition, design, construction, maintenance and operation, Atlanta, GA
- ASHRAE 2017. Handbook—Fundamentals. Atlanta: ASHRAE.
- ASHRAE (Ed.), 2009. Indoor air quality guide: best practices for design, construction, and commissioning. American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Atlanta, GA.
- California Environmental Protection Agency (Cal EPA). 2005. Office of Environmental Health Hazard Assessment. Health Effects of Exposure to Environmental Tobacco Smoke. California Environmental Protection Agency. <https://oehha.ca.gov/air/report/health-effects-exposure-environmental-tobacco-smoke-final-report>
- CPSTF (Community Preventive Services Task Force) 2013. Reducing Tobacco Use and Secondhand Smoke Exposure: Smoke-Free Policies. June 3, 2013. www.thecommunityguide.org/sites/default/files/assets/Tobacco-Smokefree-Policies.pdf
- Institute of Medicine 2010. *Secondhand Smoke Exposure and Cardiovascular Effects: Making Sense of the Evidence*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/12649>.
- International Agency for Research on Cancer (IARC). 2004. Tobacco smoke and involuntary smoking. IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, No 83. International Agency for Research on Cancer. Lyon, France. <https://www.ncbi.nlm.nih.gov/books/NBK316407/>
- Mayo Clinic 2017. “What is thirdhand smoke, and why is it a concern?” Answer from J Taylor Hays, M.D. July 13, 2017. www.mayoclinic.org/healthy-

- [lifestyle/adult-health/expert-answers/third-hand-smoke/faq-20057791](#), accessed March 2, 2020.
- National Research Council (NRC), 1986. Committee on Passive Smoking. Environmental tobacco smoke: Measuring exposures and assessing health effects. National Academy Press Washington, D.C.
<https://www.ncbi.nlm.nih.gov/books/NBK219205/>
- Scientific Committee on Tobacco and Health (SCTH) and HSMO. 1998. Report of the Scientific Committee on Tobacco and Health. The Stationary Office. 1998; 011322124x <https://www.gov.uk/government/publications/report-of-the-scientific-committee-on-tobacco-and-health>
- Sleiman 2010. "Formation of carcinogens indoors by surface-mediated reactions of nicotine with nitrous acid, leading to potential *thirdhand smoke* hazards," *Proceedings of the National Academy of Sciences*, April 13, 2010 107 (15) 6576-6581. <https://doi.org/10.1073/pnas.0912820107>
- US Department of Health and Human Services (USDHHS). 2014 The health consequences of smoking – 50 years of progress: a report of the Surgeon General. – Atlanta, GA, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.
<https://www.ncbi.nlm.nih.gov/books/NBK179276/>
- U.S. Department of Health and Human Services. 2006. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. 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. Atlanta, Ga. <https://www.ncbi.nlm.nih.gov/books/NBK44324/>
- US Environmental Protection Agency (EPA). 1992. Respiratory health effects of passive smoking: Lung cancer and other disorders. EPA/600/006F. U.S. Government Printing Office, Washington, D.C.
<https://www.epa.gov/indoor-air-quality-iaq/respiratory-health-effects-passive-smoking-lung-cancer-and-other-disorders>
- World Health Organization. 2019. Report on the Global Tobacco Epidemic. Geneva, Switzerland [WHO/NMH/PND/2019.5](#).
https://www.who.int/tobacco/global_report/en/

*Southwestern District
Health Unit*



PublicHealth
Prevent. Promote. Protect.

TESTIMONY IN OPPOSITION OF HB 1229

Jennifer Schaeffer
528 21st W
Dickinson, ND 58601
701-456-5304

Chairman Larsen and members of the Senate, Industry and Business Committee. Thank you for your time today.

My name is Jennifer Schaeffer, Tobacco Prevention Coordinator with the Southwestern District Health Unit. I am here to provide testimony and oppose for HB 1229.

This bill would severely change and undercut our North Dakota Smoke-Free Law. It would allow smoking or vaping indoors in other businesses and public places. The current ND Smoke Free law treats everyone equally and is good policy. Our office does receive the complaints of those that violate the current law, and we have to resolve those issues and complaints. This would most likely increase the number of complaints, because the majority of North Dakotans voted and expect that they would not be entering a business that allows smoking or anything combustible.

We held a Tobacco Compliance Check recently where the businesses that failed sold Cigars to our trained underage students. This shows us that youth are looking to what adults are using for tobacco products and would try cigars.

I encourage you to keep the North Dakota Smoke Free law as is.

Thank you,
Jennifer Schaeffer -NCTTP

HB 1229
March 1, 2023

Josette Dupree
Home: 206 13th Ave NE, Mandan, ND 58554 701-214-1786
Business: 406 W Main, Mandan, ND 58554 701-751-1029

Good morning, Chairman Larsen and members of the Industry and Business Committee,

My name is Josette Dupree, a resident of Mandan. Thank you for the opportunity to testify today in support of House Bill 1229.

I am the owner of Big Stick Cigars, a vintage tobacconist shop in downtown Mandan. I've been enjoying and selling cigars for many years now in North Dakota. In February of this year Big Stick Cigars celebrated it's one year anniversary. In our first year, cigar sales have continued steady growth and we have established an ever-growing base of returning clients.

You may be wondering if our vintage tobacconist shop also sells cigarettes, vapes or CBD products. The answer is no. The focus of our shop is on fine cigars, pipe tobacco and accessories. Accessories being cutters, lighters and tobacco pipes. Guests that frequent our shop have commented that they are thankful for a true tobacconist shop where they can purchase just these items and not from a store bombarded with products that are in an environment conducive of a "head shop".

At Big Stick Cigars we hear many times from our guests "why do we not have cigar lounges in North Dakota"? Montana, South Dakota and even Minnesota allow them. I inform our guests that attempts have been made for an amendment to the century code to allow for cigar lounges, but have failed. During the 2021 legislative session HB 1152 passed in the House and failed by one vote in the Senate. Today myself and other cigar smokers are asking for your support in passing HB 1229 so that we may have the option to enjoy our cigars in an indoor, controlled environment.

Alcohol is a legal product with age restrictions for purchasing and consumption. Cigars are a legal product with age restrictions as well. Alcohol can be purchased *and ingested at a bar*. Cigars are also a legal product, but adults are denied the opportunity to enjoy the experience with like-minded individuals in a commercial setting.

In North Dakota, and much of the United States, even with the associated health risks, social alcohol consumption by adults over 21 is widely acceptable and normalized. **Yes, both alcohol and tobacco come with health concerns.** Yet, allowing cigar lounges an opportunity to flourish has taken a back seat to the recent explosion of stores selling vapes and outright paraphernalia.

You will hear about the public safety concerns of the anti-tobacco faction; are there health risks and concerns with smoking cigars?, **yes.** However, HB 1229 is aimed at the responsible use of cigars by consenting adults of legal age. The supporters of this bill want to play by the rules, and we want to make sure the state gets its fair share.

Today I am asking you on behalf of myself and other business owners and voters to have the opportunity to operate cigar lounges with a “DO PASS” recommendation vote for HB 1229. HB 1229 details professional rules and regulations that will ensure a safe environment to enjoy a cigar with other like-minded citizens. A safe environment will include a standard HVAC system that will circulate air, along with a powerful, commercial smoke eater. Smoke eaters draw smoke through a series of filters that collect harmful particles and odors before discharging fresh, clean air. A good commercial smoke eater will be able to remove about 95 percent of smoke particles on pass through the filter.

Previous legislative testimony opposition included statements like:

“What happens when patrons decide to smoke cigarettes, e-cigarettes or hookahs? Who will enforce and regulate this?”

As a rule overall, cigar lounges do not allow cigarettes to be smoked in cigar lounges. Why? Cigar smokers are there to smoke cigars and not have cigarette smoke interfere. It is a sign of disrespect for the people who pay lounge fees and buy expensive premium cigars for someone to just walk in and blow vape clouds in their face. As a small business owner, I am regulated by city, county, state and federal officials that do enforce and regulate codes and the law. Being self-employed I do not want to put my financial livelihood in jeopardy by not following the law and risk losing my licenses or receive penalties for not doing so.

Smoking doesn't only affect those people who smoke. It affects the people around them including employees who do not have the option to leave.

A cigar lounge is a destination business. If you do not smoke cigars, why would you go in to one? With the current employment crisis in our country, employees have many options of where they want to work. If they do not like cigars or being in a cigar smoke environment, they have a multitude of employment opportunities that would suit their personal financial situations.

Who will ensure that ONLY the purchased cigars are being smoked in the establishment? The owner/management of the business is responsible per laws and municipal codes. Similar can be said of alcoholic establishments. Bars and cigar lounge business owners do not want to place themselves in a situation to lose their licensing, penalties and potential business shut down.

I also heard that I am promoting and inviting youth to smoke cigars? In the many years I have personally enjoyed cigar smoking and sold cigars I have never had a child ask to purchase or try to “sneak a try” of my cigar. I follow federal age regulations for cigar sales in my shop. I do this as it is the law. Not only as a business owner, but a law-abiding citizen - I do not want to lose my licensure. The other legal product mentioned at the beginning of my testimony, alcohol, is an entirely different animal. *Underage drinking is an ongoing issue in our state* and one that is a concern of public health and law enforcement officials at every level... however, I am not aware of a pandemic of underage smoking of fine cigars.

As stated in a testimony in favor of cigar lounges during the 2021 session, *“the pendulum of regulation has swung entirely too far”*. Cigars are a legal product that should be given the same opportunities that alcohol has for consumption in a regulated business.

I’d be honored to give a tour of my boutique cigar shop in Mandan. Thank you for the opportunity to hear my testimony. I’d be happy to answer any questions you may have.

Thank you.

Testimony Presented on HB 1229 to the
Senate Industry and Business Committee
Senator Doug Larsen, Chairman

Annabel DuFault, Tobacco Prevention Coordinator
Fargo Cass Public Health

February 27, 2023

Mr. Chairman and Members of the Committee,

My name is Annabel DuFault and I am the Tobacco Prevention Coordinator at Fargo Cass Public Health. I am writing to provide you education regarding House Bill 1229, relating to cigar bars and lounges.

Fargo Cass Public Health has provided tobacco prevention and control programs and resources for the residents of Fargo and Cass County since 2003. The North Dakota Smoke-Free Indoor Air Law passed by a vote of the people and went into effect December 2012, making it illegal to smoke cigarettes, cigars, marijuana, and e-cigarettes in indoor public places. The North Dakota Smoke-Free Indoor Air Law is recognized nationally for its exemplary smoke-free protections of our state's residents, workers, and visitors. The passage of this law was incredibly important to the citizens of North Dakota: they overwhelmingly voted in favor of it with 66.7% of voters across all counties approving the law with no exemptions. House Bill 1229 intends to weaken the integrity of the North Dakota Smoke-Free Indoor Air Law.

The goal of the state smoke-free law is to protect patrons and employees from exposure to the dangers of secondhand smoke. Similar to previous attempts to weaken this law, House Bill 1229 requires a ventilation system by which exhausted air is not recirculated to nonsmoking areas. This is simply not enough to eliminate the negative health effects of exposure to secondhand smoke.

Please let the following information inform your decision:

- There are no filtration or ventilation systems proven to effectively remove ALL secondhand smoke from enclosed areas. (American Society of Heating, Refrigerating and Air-Conditioning Engineers)
- Ventilation systems do not purify the air at a fast enough rate to offer protection against the harmful toxins in tobacco smoke. (American Society of Heating, Refrigerating and Air-Conditioning Engineers)
- Cigar smoke is just as dangerous as cigarette smoke; it contains more than 7,000 chemicals. (Centers for Disease Control and Prevention)
- There is no safe level of secondhand smoke exposure. Secondhand smoke can cause coronary heart disease, stroke, lung cancer, adverse reproductive health effects in women, and premature death. (Centers for Disease Control and Prevention)
- The effects of secondhand smoke exposure on the body are immediate - exposure can produce harmful inflammatory and respiratory effects within 60 minutes, which can last for at least three hours. (Centers for Disease Control and Prevention)

- In 2022, tobacco use cost ND \$326 million in Smoking Attributable Medical Expenditures, and \$232.6 million in Smoking Attributable Productivity Loss. (ND Dept. of Health Tobacco Surveillance Data Table, 2022)

Not only would this exemption to the strong language of the current smoke-free law expose citizens to secondhand smoke, it would send mixed messages to the public about the dangers of smoking. Allowing cigar smoking indoors while prohibiting cigarette smoke could lead to the false belief that cigar smoking is safer than cigarette smoking. This is especially concerning when it comes to youth.

Today's youth in North Dakota have never had to experience exposure to secondhand smoke in public places, which has positively influenced youth smoking rates. Prior to the law change in 2012, the youth smoking rate was 19.4% (Youth Risk Behavior Survey). In 2021, the youth smoking rate had decreased to 5.9% (Youth Risk Behavior Survey). North Dakota has made great strides to ensure that not only are our youth educated on the dangers of smoking, but they are also able to work, live, and play in safe, smoke-free environments. Compromising the strength of the current law undermines the progress made and tells youth and young adults that this state values freedoms for smokers over protecting the public's health and well-being.

I ask that you consider the youth and young adults in your own life. Would you be comfortable with them working in a bar or restaurant that exposes them to secondhand smoke? Would you be comfortable with them learning and playing in establishments that may share walls with establishments that allow smoking? While adults are granted the freedom to decide if they want to use tobacco products, it is critical to consider that the impact of that choice affects more than just the individual. Everyone deserves the right to breathe clean air while in public places.

The science on secondhand smoke has not changed. The opinion of the public has not changed either, with Tobacco Free North Dakota's latest poll showing that 76.3% of ND citizens still support the Indoor Smoke Free Air Law. The best path forward is to let the people know their voices are heard by maintaining the integrity of the smoke-free law as it is currently written.

North Dakota takes pride in being the No. 1 state for quality of life. This is something that attracts young people to settle here and raise families of their own. If we want to uphold this standard, we need to continue to cultivate an environment that is safe for people to grow, live, and work. This is an opportunity to send a loud and clear message that North Dakota will always value the health and safety of its citizens above all else.

The ONLY way to effectively protect citizens against the negative health effects of secondhand smoke is to maintain the state smoke-free law as it is written, keeping current smoke-free environments completely smoke-free. By allowing exemptions to the Smoke-Free Indoor Air Law, we weaken the law and knowingly endanger the health of our citizens.

Keeping this law intact ensures continued protection from the dangers of secondhand smoke in public places in our great state.

Please feel free to reach out if you have any additional questions related to tobacco or smoke-free policy. Thank you for your time and consideration.

Sincerely,

Annabel DuFault
Fargo Cass Public Health
ADuFault@FargoND.gov

TESTIMONY IN OPPOSITION OF HB 1229

Susan Kahler
SAP Coordinator
Bismarck Burleigh Public Health
500 East Front Ave
Bismarck, ND 58506
701-355-1597

Good afternoon, Chairman Larsen and members of the Senate Industry and Business Committee. My name is Susan Kahler. I am a Substance Abuse Prevention Coordinator at Bismarck-Burleigh Public Health. I am here on the behalf of the City of Bismarck to oppose HB 1229.

This bill would create a public health issue with exposure to secondhand smoke. I receive many phones and comments from citizens of Bismarck about how much they appreciate the Smoke Free Ordinance and State Law. As some you may recall the on April 11th, 2011, Bismarck voters laid the issue to rest, deciding for all that everyone, including bar workers and patrons, should be able to breathe clean indoor air and same thing in 2012 statewide.

The definition for smoking in the ND Smoke Free Law and local ordinances includes cigars. Cigars are also defined as tobacco in the ND Century Code as a tobacco product and are very similar to cigarettes; except they are wrapped in tobacco leaf. Cigar's produce secondhand smoke that contains the same toxic chemicals that secondhand cigarette smoke does. There is an abundance of scientific research on secondhand smoke and how it can cause or contribute to lung cancer and heart disease. Cigar smokers have the same risks to nicotine dependence as other tobacco product users.

Separating smokers from nonsmokers, cleaning the air, and ventilating buildings: none of these measures fully protect people from secondhand smoke. The only effective preventive measure is to eliminate smoking in indoor spaces completely. HB 1229 would allow individuals to smoke cigars and expose others to secondhand smoke plus be very difficult to enforce what tobacco products they are smoking inside this bar. Who will monitor this?

The ND Smoke Free Law was passed in 2012 to protect everyone from secondhand smoke exposure and provide equality for all. I, and on the behalf of the City of Bismarck Commission, oppose HB 1229. Thank you. This concludes my testimony. I will be happy to answer any questions you may have.

TESTIMONY IN OPPOSITION OF HB 1229

Amy Heuer
Bismarck, ND

Good afternoon, Chairman Larsen and members of the Senate Industry and Business Committee. My name is Amy Heuer, Co-Executive Director for the North Dakota Society of Health and Physical Educators (ND SHAPE), and currently a Middle School Health and Physical Education Teacher in Bismarck. I am here to provide testimony and my opposition for HB 1229.

Tobacco, regardless if it is in cigarette, cigar, chew, or vape form, has been proven to be a carcinogen, as well as having multiple other preventable life threatening cardiovascular and pulmonary conditions. I have seen these health issues first-hand, watching my mother battle cardiovascular disease that led to multiple strokes and eventually cardiac arrest. She smoked for 25 years, quitting when she was diagnosed with high blood pressure, but by then the damage was done. I have spent most of my adult years combating the influence of tobacco to prevent others from suffering through what my family has.

Ten years ago North Dakota citizens made their wishes known in regards to indoor smoking and protecting workers and customers, voting for a comprehensive smoke free law. HB 1229 is not only disregarding the vote of ND citizens, but also disrespecting them. With only 4.3% of North Dakotan adults smoking cigars, it is baffling why this legislature would consider this bill when it would put employees and customers in those facilities at such a great risk. Cigars have a greater output of secondhand smoke due to burning for a longer period of time than cigarettes, and having more tobacco than a cigarette. The risks associated with secondhand smoke are worse with cigars than cigarettes.

The citizens of North Dakota voted for smoke free indoor workplaces. Everyone should have the right and protection to breathe clean indoor air. HB 1229 disregards our citizens wishes and safety in favor of less than 5% of our population and a handful of business owners that are disregarding the health of their employees and customers.

I urge you to vote NO on HB 1229. We have made great strides in our state with reducing tobacco use rates and protecting individuals from secondhand smoke. I ask the Senate Industry and Business Committee to vote no on HB 1229. Thank you.

Amy Heuer

Good afternoon Chairman Larsen and members of the Senate Industry and Business Committee, my name is Nevaeh Mock, I am a Junior at Legacy High School and two year member of the Bismarck Break Free Youth Board. Our youth board fights every day to bring awareness towards tobacco use in our community and what detrimental effects it holds over us as a society. I stand before you today in opposition of House Bill 1229. Many have voiced their concerns towards cigar lounges but I have come today to offer a youth's perspective on House Bill 1229 and how an adult decision can affect the lives of the youth across North Dakota.

It has been argued that a cigar lounge offers a relaxing and tranquil environment for cigar smokers in which they can release stress and feel as if they are in a non-judgmental space, surrounded by other civilians participating in the same activity. Cigars are thought to release this stress because as you draw on a cigar, your breath gradually starts to slow - also slowing your heart rate. While the external effects of cigars seem to relieve, your body is fighting a war internally - against itself. It is no secret that within months, tobacco can cause cancers of the mouth, esophagus, lungs, cervix, and more than 12 other forms of cancer. But, what has failed to be seen by the public eye are the immediate effects these cigar bars will encourage. Second number one; you draw the cigar to your mouth. Second number three: you inhale the cigar. Second ten; the body starts to feel the so-called "buzz" which is known to give the relaxing effect. By second thirteen, the nicotine has entered the brain where it will work to fight against synapses, affecting mood and permanently lowering impulse control. If the nicotine succeeds to completely attack and destroy the synapse, neurodegenerative diseases become the new normal to a smokers life. These diseases and risk factors are nothing new to you. I know that you are aware of the what-if's, but just like many of us, you think that this would never happen to you. It is just another story on the news, but surely this will not be me. I ask that you think again.

Picture a family member. Maybe you are a father to a beautiful teenage daughter, or an aunt to a wild-spirited niece. Please picture them as I tell the following story. They grew up in a household where their parents would spend every Friday night at the cigar lounge, relieving any stress the work week brought into their everyday lives. As this quickly became a new normal routine in the child's life, they believed that it was okay to partake in. At sixteen years old, she started smoking. It started off as a fun activity she would do to get away from life every once in a while. Three months in and she became a daily smoker and by the time she turned 21, she was going to cigar bars every night. It was a new environment for her. She didn't feel like she was being looked at weird by the people around her like she was judged at school because here, she was one of them. The cigar bar was her new hang-out spot as she had never felt more welcomed into an environment. But she went home every night feeling completely empty. The toxic chemicals in nicotine had affected her brain wiring. She suffered from depression and extreme mood declines. The friends around her were no longer the people she went to when she needed someone to talk to because they had been replaced by a stick of tobacco. And she now believed that the only place she could go to where she would feel safe was the cigar lounge, where she was surrounded by people encouraging her to smoke. Flash forward 30 years and she has a family. Yes, she found a way to cope with the depression and mood swings because it was all her body was used to. Except now, she had a baseball sized tumor attached to the lining of her lungs. She was not a what-if of this story. The family member you are thinking about during this story was my grandma. She died at age 64 from smoking induced lung cancer. She believed that because of the generations before her, she was making the right decision to smoke. She looked up to them at just fifteen years old. I had to find out how to live a life without my best friend. I was not a what-if of this story.

When will it end? When will we stop being so selfish and realize that what we do now is what our grandchildren see and will come to know as an acceptable decision. I will not see another generation fall to tobacco use. I understand that some of you may not be tobacco users. I also understand that even as non-tobacco users, you believe that every human deserves the right to choose for themselves. I am not standing here today to preach to you the effects cigar bars have on one person. I stand here today to remind you that *we are the next generation*. We look up to *you*. And by voting for cigar bars - by encouraging dedicated spaces to partake in smoking, you are not only voting for your generation of adults, but my generation, and your four year old grandson's generation. Think of them. Think of how you want them to live. Rather than seeing the Smoke-Free Law as preventing someone's choice, we need to start seeing it as giving people the choice to live and a pathway for generations to come.

I ask you to oppose this bill as you think of the youth in North Dakota. For you to consider the safety and well-being of you, your children, and your grandchildren to come. We want the opportunity to be the generation that ended tobacco related deaths. Thank you. I am now open for questions.



February 27, 2023

Industry, Business and Labor Committee
North Dakota Senate
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Sent via email to: jklein@ndlegis.gov

Re: House Bill 1229

Dear Chairman Klein and Members of the Senate Industry, Business and Labor Committee,

I am writing regarding House Bill 1229, which would create exemptions to the indoor smoking prohibition for bars and cigar lounges. ASHRAE, founded in 1894, is a global society advancing human well-being through sustainable technology for the built environment. The Society and its more than 53,000 members worldwide focus on building systems, energy efficiency, indoor air quality, refrigeration and sustainability. Through research, standards writing, publishing, certification and continuing education, ASHRAE shapes tomorrow's built environment today.

I urge you to consider the health effects of this proposed exemption for indoor smoking in bars and cigar lounges. **As a technical Society developing standards for indoor environmental quality, ASHRAE holds the position that the only means of avoiding health effects and eliminating indoor environmental tobacco smoke (ETS) exposure is to ban all smoking activity inside and near buildings.** This position is supported by the conclusions of health authorities that any level of ETS exposure leads to adverse health effects and therefore:

- The building and its systems can reduce only odor and discomfort but cannot eliminate exposure when smoking is allowed inside or near a building.
- Even when all practical means of separation and isolation of smoking areas are employed, adverse health effects from exposure in non-smoking spaces in the same building cannot be eliminated.
- Neither dilution ventilation, air distribution (e.g., "air curtains") nor air cleaning should be relied upon to control ETS exposure.
- Further research is needed from cognizant health authorities on the health effects of involuntary exposure in the indoor environment from smoking cannabis, using hookahs, using electronic nicotine delivery systems (ENDS), and engaging in other activities commonly referred to as vaping or using e-cigarettes.

I am attaching a copy of the ASHRAE Position Document on Environmental Tobacco Smoke, which more thoroughly discusses this matter. ASHRAE would be happy to address any questions you might have or to offer technical assistance through our experts from relevant technical committees within ASHRAE. Please feel free to contact me or have your staff contact GovAffairs@ashrae.org.

For more information on ASHRAE and its standards, programs and resources, please visit www.ashrae.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter J. Koneck-Wilwerding". The signature is fluid and cursive, with the first name "Peter" being the most prominent.

Peter J. Koneck-Wilwerding
ASHRAE Government Affairs Committee
Regional Vice Chair Region IX
402-399-1321
peter.koneck-wilwerding@hdrinc.com

Enclosure



ASHRAE Position Document on Environmental Tobacco Smoke

Approved by ASHRAE Board of Directors
July 1, 2020

Expires
July 1, 2023

COMMITTEE ROSTER

The ASHRAE Position Document on Environmental Tobacco Smoke was developed by ASHRAE's Environmental Tobacco Smoke Position Document Committee formed on May 16, 2018, with Larry Schoen. as its chair.

Lawrence J. Schoen
Schoen Engineering Inc.
Columbia, MD

Kevin Kennedy
Children's Mercy Kansas City
Kansas City, MO

Costas Balaras
National Observatory of Athens
Athens, Greece

Andrew Persily
NIST
Gaithersburg, MD USA

Lan Chi Nguyen Weekes
La Cite Collegiale
Ottawa, ON, Canada

Cognizant Committee

The chairperson of the ASHRAE Environmental Health Committee, also served as an ex-officio member:

Wade Conlan
Hanson Professional Services
Maitland, FL, USA

HISTORY OF REVISION/REAFFIRMATION/WITHDRAWAL DATES

The following summarizes this document's revision, reaffirmation, or withdrawal dates:

6/30/2005—BOD approves Position Document titled *Environmental Tobacco Smoke*

6/25/2008—BOD approves reaffirmation of Position Document titled *Environmental Tobacco Smoke*

10/22/2010—BOD approves revision to Position Document titled *Environmental Tobacco Smoke*

6/30/2013—Technology Council approves reaffirmation of Position Document titled *Environmental Tobacco Smoke*

6/29/2016—Technology Council approves reaffirmation of Position Document titled *Environmental Tobacco Smoke*

6/26/2019—Technology Council approves reaffirmation of Position Document titled *Environmental Tobacco Smoke*

7/1/2020 – BOD approved revision to Position Document titled *Environmental Tobacco Smoke*

Note: ASHRAE's Technology Council and the cognizant committee recommend revision, reaffirmation, or withdrawal every 30 months.

Note: ASHRAE position documents are approved by the Board of Directors and express the views of the Society on a specific issue. The purpose of these documents is to provide objective, authoritative background information to persons interested in issues within ASHRAE's expertise, particularly in areas where such information will be helpful in drafting sound public policy. A related purpose is also to serve as an educational tool clarifying ASHRAE's position for its members and professionals, in general, advancing the arts and sciences of HVAC&R.

ABSTRACT

While indoor smoking has become less common in recent years, exposure to Environmental Tobacco Smoke (ETS) continues to have significant health and cost impacts. ASHRAE's role in providing engineering technology, standards and design guidance in support of healthful and comfortable indoor environments supports the need for this position document.

ASHRAE's position is that all smoking activity inside and near buildings should be eliminated, which is supported by the conclusions of health authorities that any level of ETS exposure leads to adverse health effects. ASHRAE recommends that building design practitioners educate and inform their clients, where smoking is still permitted, of the limits of engineering controls of ETS exposure, that multifamily buildings have smoking bans inside and near them, and that further research be conducted on the health effects of involuntary exposure in the indoor environment from smoking cannabis, using hookahs and electronic nicotine delivery devices (ENDS), and engaging in other activities commonly referred to as e-cigarettes or vaping.

EXECUTIVE SUMMARY

While indoor smoking has become less common in recent years, exposure to Environmental Tobacco Smoke (ETS) continues to have significant health and cost impacts. While ASHRAE does not conduct research on the health effects of indoor contaminants, ASHRAE has been involved in this topic for many years. Through its committees, standards, handbooks, guides, and conferences, ASHRAE has long been providing information to support healthful and comfortable indoor environments, including efforts to reduce indoor ETS exposure.

- ASHRAE is committed to encouraging lawmakers, policymakers and others who exercise control over buildings to eliminate smoking inside and near buildings.
- ASHRAE's current policy is that Standards and Guidelines shall not prescribe ventilation rates or claim to provide acceptable indoor air quality in smoking spaces. This PD recommends extending such policy to other ASHRAE documents.
- ASHRAE holds the position that the only means of avoiding health effects and eliminating indoor ETS exposure is to ban all smoking activity inside and near buildings. This position is supported by the conclusions of health authorities that any level of ETS exposure leads to adverse health effects and therefore,
 - The building and its systems can reduce only odor and discomfort but cannot eliminate exposure when smoking is allowed inside or near a building.
 - Even when all practical means of separation and isolation of smoking areas are employed, adverse health effects from exposure in non-smoking spaces in the same building cannot be eliminated.
 - Neither dilution ventilation, air distribution (e.g., "air curtains") nor air cleaning should be relied upon to control ETS exposure.
- ASHRAE recommends that building design practitioners work with their clients to define their intent, where smoking is still permitted, for addressing ETS exposure in their building and educate and inform their clients of the limits of engineering controls in regard to ETS.
- ASHRAE recommends that multifamily buildings have complete smoking bans inside and near them in order to protect nonsmoking adults and children.
- ASHRAE recommends, given current and developing trends, that further research be conducted by cognizant health authorities on the health effects of involuntary exposure in the indoor environment from smoking cannabis, using hookahs, using ENDS, and engaging in other activities commonly referred to as vaping or using e-cigarettes.

1. THE ISSUE

While indoor smoking has become less common in recent years in many countries (WHO 2019), exposure to Environmental Tobacco Smoke (ETS) continues to have significant health and cost impacts (USDHSS 2014). Researchers have investigated the health and irritant effects among non-smokers exposed to tobacco smoke in indoor environments. Such exposure is also known as passive smoking and as involuntary exposure to secondhand smoke. A number of national and global health research groups and agencies (Cal EPA 2005, EPA 1992, IARC 2004, IOM 2010, NRC 1986, SCTH 1998, USDHHS 2014, USDHHS 2006, WHO 2019) have concluded, based on the preponderance of evidence, that exposure of nonsmokers to tobacco smoke causes specific diseases and other adverse effects to human health most significantly, cardiovascular disease and lung cancer. No cognizant authorities have identified an acceptable level of ETS exposure to non-smokers, nor is there any expectation that further research will identify such a level.

Despite extensive evidence of such harm, the well-documented benefits of bans, including exposure reduction and benefits to public health (CPSTF 2013) and widening adoption of smoking bans, many locations worldwide still lack laws and policies that provide sufficient protection. In many locations, laws and policies are only partially protective, permitting smoking in certain building types including casino, entertainment and multifamily housing. Even where permitted by law, many developers, building owners, and operators, including those of restaurants and other hospitality venues, do not allow smoking indoors.

There are currently trends that increase use of electronic nicotine delivery systems (ENDS), smoking of cannabis, use of hookahs and other related activities that are beyond the scope of this document, but which likely present risks from involuntary exposure in the indoor environment that are not as well understood.

2. BACKGROUND

ASHRAE, through its Environmental Health Committee, TC 4.3 Ventilation Requirements and Infiltration, SSPCs 62.1 Ventilation for Acceptable Indoor Air Quality, 62.2 Ventilation and Acceptable Indoor Air Quality in Residential Buildings, 189.1 Standard for the Design of High-Performance Green Buildings, Handbook-Applications Chapter 46 (ASHRAE 2019) and Handbook-Fundamentals Chapters 10 and 11 (ASHRAE 2017), Indoor Air Quality Design Guides (ASHRAE 2018, 2009), and IAQ conferences, has long been active in providing engineering technology, standards and design guidance in support of providing healthful and comfortable indoor environments.

Previous versions of this position document have been instrumental in informing the public, building scientists and practitioners, policymakers and lawmakers

about the inability of HVAC technologies to eliminate health risks to nonsmokers from exposure to tobacco smoke in indoor environments.

The evidence on the health consequences of exposure to ETS is extensive (hundreds of scientific papers) and has been reviewed by numerous independent expert groups in the United States and internationally, all reaching similar conclusions regarding the adverse health effects caused among nonsmokers exposed to tobacco smoke indoors. These include but are not limited to:

U.S. Surgeon General (USDHHS 2014, 2006)
U.S. Environmental Protection Agency (EPA 1992)
National Research Council (NRC 1986)
California Environmental Protection Agency Cal EPA 2005)
World Health Organization (WHO 2019)
International Agency for Research on Cancer (IARC 2004)
United Kingdom Department of Health (SCTH 1998)

The first major studies on passive smoking reported that passive smoking was a cause of lung cancer in non-smokers. Subsequent evidence has identified other health effects in adults and children. Notably, the number of coronary heart disease deaths caused by ETS greatly exceeds the number of ETS-caused lung cancer deaths. Additionally, the scientific evidence recognizes substantial subpopulations, such as children (USDHHS 2014) and adults with asthma or heart disease, whose disease may be exacerbated by ETS exposure.

There is no threshold for ETS exposure below which adverse health effects are not expected, as indicated in the referenced health authority reports. In general, risks tend to increase with the level of exposure and conversely to decrease with a reduction in exposure.

Only an indoor smoking ban, leading to near zero exposure, provides effective control, and only such bans have been recognized as effective by health authorities. Experience with such bans documents that they can be effective (CPSTF 2013, USDHHS 2014, 2006). While there are no engineering design issues related to this approach, the existence of outdoor smoking areas near the building and their potential impacts on entryway exposure and outdoor air intake need to be considered.

Nevertheless, smoking is permitted in some indoor spaces in some buildings. There are now several decades of international experience with the use of strategies, including separation of smokers and nonsmokers, ventilation, air cleaning and filtration, to limit contamination spread from smoking permitted areas to other areas inside the building.

There are three general cases of space-use and smoking activity in sequence from most to least effective in controlling ETS exposure:

- 1) allowing smoking only in isolated rooms;
- 2) allowing smoking in separate but not isolated spaces; and
- 3) totally mixing occupancy of smokers and nonsmokers.

These approaches do not necessarily account for all circumstances. Each leads to different engineering approaches as follows.

1. Smoking Only in Isolated Rooms: Allowing smoking only in separate and isolated rooms, typically dedicated to smoking, can reduce ETS exposure in non-smoking spaces in the same building. Effective isolation requires
 - a) sealing of cross contamination pathways and airtightness of the physical barriers between the smoking and nonsmoking areas,
 - b) the use of separate ventilation systems serving the smoking and non-smoking spaces,
 - c) exhausting air containing ETS so it does not enter the non-smoking area through the outdoor air intakes, windows, and other airflow paths,
 - d) airflow and pressure control including location of supply outlets and return and exhaust air inlets to preserve airflow into the smoking space at doorways and other openings, which is powerful enough so that movement of people between non-smoking and smoking areas and so that thermal and other effects do not disrupt intended air distribution patterns.

Even when all available strategies have been employed in multifamily housing, there is a lack of credible evidence that anything short of a smoking ban will provide full protection to occupants of non-smoking residential dwelling units. The risk of adverse health effects for the occupants of the smoking room itself also cannot be controlled by ventilation.

2. Smoking in Separate but Not Isolated Spaces: This approach includes spaces where smokers and non-smokers are separated but still occupy a single space or a collection of smoking and non-smoking spaces not employing all the isolation techniques described in 2. a) through f) above. Examples can be found in restaurants and bars with smoking and non-smoking areas, or buildings where smoking is restricted to specific rooms, but a common, recirculating air handler serves both the smoking and non-smoking rooms.

Engineering techniques to reduce odor and irritation include, directional airflow patterns achieved through selective location of supply and exhaust vents, and air cleaning and filtration. Limited evidence is available, and none supports the significant reduction of health effects on those exposed.

3. **Mixed Occupancy of Smokers and Nonsmokers:** If smoking is allowed throughout a space or a collection of spaces served by a single air handler, with no effort to isolate or separate the smokers and nonsmokers, there is no currently available or reasonably anticipated ventilation or air cleaning system that can adequately control or significantly reduce the health risks of ETS to an acceptable level.

This situation includes unrestricted smoking in homes, dormitories, casinos, bingo parlors, small workplaces, and open plan office spaces. Air cleaning, dilution ventilation and displacement ventilation can provide some reduction in exposure, but they cannot adequately control adverse health effects, nor odor and sensory irritation for nonsmokers in general.

Ongoing trends, studies and research:

- Electronic nicotine delivery systems (ENDS) are increasing in use and the health effects of primary and secondary exposure continue to be revealed. ENDS and other related exposures in the indoor environment, including those arising from cannabis combustion and use of hookahs, are outside the scope of this position document. ENDS are addressed in an ASHRAE Emerging Issue Brief.
- Third-hand smoke, which results from the release of contaminants from the clothing of smokers and other surfaces, is a relatively new concept. There is evidence of potential hazards (Sleiman 2010) and researchers are still studying it (Mayo Clinic 2017).

3. RECOMMENDATIONS

- ASHRAE is committed to encouraging lawmakers, policymakers and others who exercise control over buildings to eliminate smoking inside and near buildings.
- ASHRAE's current policy (ROB 1.201.008) is that Standards and Guidelines shall not prescribe ventilation rates or claim to provide acceptable indoor air quality in smoking spaces. This PD recommends extending such policy to other ASHRAE documents.
- ASHRAE holds the position that the only means of avoiding health effects and eliminating indoor ETS exposure is to ban all smoking activity inside and near buildings. This position is supported by the conclusions of health authorities that any level of ETS exposure leads to adverse health effects and therefore,
 - The building and its systems can reduce only odor and discomfort but cannot eliminate exposure when smoking is allowed inside or near a building.

- Even when all practical means of separation and isolation of smoking areas are employed, adverse health effects from exposure in non-smoking spaces in the same building cannot be eliminated.
- Neither dilution ventilation, air distribution (e.g., “air curtains”) or air cleaning should be relied upon to control ETS exposure.
- ASHRAE recommends that building design practitioners work with their clients to define their intent, where smoking is still permitted, for addressing ETS exposure in their building and educate and inform their clients of the limits of engineering controls in regard to ETS.
- ASHRAE recommends that multifamily buildings have complete and enforced smoking bans inside and near them in order to protect nonsmoking adults and children.
- ASHRAE recommends, given current and developing trends, that further research be conducted by cognizant health authorities on the health effects of involuntary exposure in the indoor environment from smoking cannabis, using hookahs, using ENDS, and engaging in other activities commonly referred to as vaping or using e-cigarettes.

4. REFERENCES

- ASHRAE 2019. Handbook—HVAC Applications. Atlanta: ASHRAE.
- ASHRAE (Ed.), 2018. Residential indoor air quality guide: best practices for acquisition, design, construction, maintenance and operation, Atlanta, GA
- ASHRAE 2017. Handbook—Fundamentals. Atlanta: ASHRAE.
- ASHRAE (Ed.), 2009. Indoor air quality guide: best practices for design, construction, and commissioning. American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Atlanta, GA.
- California Environmental Protection Agency (Cal EPA). 2005. Office of Environmental Health Hazard Assessment. Health Effects of Exposure to Environmental Tobacco Smoke. California Environmental Protection Agency. <https://oehha.ca.gov/air/report/health-effects-exposure-environmental-tobacco-smoke-final-report>
- CPSTF (Community Preventive Services Task Force) 2013. Reducing Tobacco Use and Secondhand Smoke Exposure: Smoke-Free Policies. June 3, 2013. www.thecommunityguide.org/sites/default/files/assets/Tobacco-Smokefree-Policies.pdf
- Institute of Medicine 2010. *Secondhand Smoke Exposure and Cardiovascular Effects: Making Sense of the Evidence*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/12649>.
- International Agency for Research on Cancer (IARC). 2004. Tobacco smoke and involuntary smoking. IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, No 83. International Agency for Research on Cancer. Lyon, France. <https://www.ncbi.nlm.nih.gov/books/NBK316407/>
- Mayo Clinic 2017. “What is thirdhand smoke, and why is it a concern?” Answer from J Taylor Hays, M.D. July 13, 2017. www.mayoclinic.org/healthy-

- [lifestyle/adult-health/expert-answers/third-hand-smoke/faq-20057791](#), accessed March 2, 2020.
- National Research Council (NRC), 1986. Committee on Passive Smoking. Environmental tobacco smoke: Measuring exposures and assessing health effects. National Academy Press Washington, D.C.
<https://www.ncbi.nlm.nih.gov/books/NBK219205/>
- Scientific Committee on Tobacco and Health (SCTH) and HSMO. 1998. Report of the Scientific Committee on Tobacco and Health. The Stationary Office. 1998; 011322124x <https://www.gov.uk/government/publications/report-of-the-scientific-committee-on-tobacco-and-health>
- Sleiman 2010. "Formation of carcinogens indoors by surface-mediated reactions of nicotine with nitrous acid, leading to potential *thirdhand smoke* hazards," *Proceedings of the National Academy of Sciences*, April 13, 2010 107 (15) 6576-6581. <https://doi.org/10.1073/pnas.0912820107>
- US Department of Health and Human Services (USDHHS). 2014 The health consequences of smoking – 50 years of progress: a report of the Surgeon General. – Atlanta, GA, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.
<https://www.ncbi.nlm.nih.gov/books/NBK179276/>
- U.S. Department of Health and Human Services. 2006. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. 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. Atlanta, Ga. <https://www.ncbi.nlm.nih.gov/books/NBK44324/>
- US Environmental Protection Agency (EPA). 1992. Respiratory health effects of passive smoking: Lung cancer and other disorders. EPA/600/006F. U.S. Government Printing Office, Washington, D.C.
<https://www.epa.gov/indoor-air-quality-iaq/respiratory-health-effects-passive-smoking-lung-cancer-and-other-disorders>
- World Health Organization. 2019. Report on the Global Tobacco Epidemic. Geneva, Switzerland [WHO/NMH/PND/2019.5](#).
https://www.who.int/tobacco/global_report/en/



Testimony in Opposition of HB 1229

Chelsea Ridge
 North Dakota Public Health Association
 Alcohol, Tobacco and Other Drugs Section, Chair
 11346 Fairway Dr.
 Ray, ND 58849

Chairman Larsen, and members of the Senate Industry and Business Committee,

My name is Chelsea Ridge, and I am the chairwoman of the North Dakota Public Health Association (NDPHA) Alcohol, Tobacco, and Other Drugs Section. The mission of NDPHA is to improve, promote and protect health for residents of North Dakota through leadership in policy, partnerships, and best practices. I am here to provide testimony in opposition to House Bill 1229, relating to cigar bars and lounges.

In November 2012, a majority of voters in every county passed the current North Dakota Smoke Free Law, which makes it illegal to smoke cigarettes, cigars, marijuana, and e-cigarettes in indoor public places. North Dakota has the best Smoke-Free Law in the nation and other states look to North Dakota's Smoke Free Law as model language to protect their citizens from the harmful effects of secondhand smoke.

Cigar smoke, even though the products may advertise as "premium" in nature, still pose a health risk to the user and other bystanders. According to the Centers for Disease Control (CDC) cigars contain the same toxic and cancer-causing chemicals that are found in cigarette smoke. There is no safe level of exposure to secondhand smoke of any kind. Separate smoking sections or ventilation systems cannot adequately address the risk posed by indoor smoking of cigarettes, cigars, marijuana, or e-cigarettes. We are concerned for any adjoining businesses who will be susceptible to their neighbors' secondhand smoke exposure. According to the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) "*holds the position that the only means of avoiding health effects and eliminating indoor Environmental Tobacco Smoke (ETS) exposure is to ban all smoking activity inside and near buildings. Even when all practical means of separation and isolation of smoking areas are employed, adverse health effects from exposure in non-smoking spaces in the same building cannot be eliminated. Neither dilution ventilation, air distribution (e.g., "air curtains") or air cleaning should be relied upon to control ETS exposure.*" Cigar bars are workplaces, and now is not the time to reintroduce smoking into any workplace exposing a new group of people, as well as those in neighboring or adjacent buildings to secondhand smoke.

According to 2019 data, 17% of North Dakota Adults smoke cigarettes and only 4.3% of North Dakota Adults smoked cigars, and 5.2% of High School students also smoked cigars. Cigarette smokers are of the majority. Government shouldn't cater to the minority of cigar smokers at the expense of the public's health. If HB 1229 is passed this could open the door for other tobacco and marijuana products to be smoked indoors for years to come.

The percentages of gross annual income stated in this bill of 2% or more for a bar is also very concerning in that, any bar could begin to sell cigars at only 2% of the annual gross income and allow for cigar smoking. We don't foresee bars only enforcing cigar smoking over cigarette smokers.

The North Dakota Public Health Association strongly urges you to keep intact one of the greatest public health prevention measures, our North Dakota Smoke-Free Law, because it protects everyone equally from the dangers of secondhand smoke. Tobacco is the leading preventable cause of death in the United States and takes a tremendous toll on lives in North Dakota. When we prevent tobacco use and exposure to secondhand smoke, we prevent disease, suffering and death, and save money on healthcare expenditures and productivity losses. Please vote “No” to HB 1229.

Thank you for your time and consideration.

Sincerely,

Chelsea Ridge
North Dakota Public Health Association
Alcohol, Tobacco and Other Drugs Section, Chair
chelsearidge113@gmail.com

Sources:

1. North Dakota General Election Results, Secretary of State, Nov. 6, 2012.
<https://results.sos.nd.gov/ResultsSW.aspx?text=BQ&type=SW&map=CTY&eid=35>
2. ASHRAE Position Document on Environmental Tobacco Smoke; Approved July 1, 2020-2023
https://www.ashrae.org/File%20Library/About/Position%20Documents/pd_environmental-tobacco-smoke-2020-07-1.pdf
3. North Dakota Dept. of Health and Human Services Tobacco Surveillance Data
https://www.hhs.nd.gov/sites/www/files/documents/DOH%20Legacy/Tobacco/Tobacco_Surveillance_Data.pdf

Relating to Prohibiting Smoking in Public Places and Worksites

Vote For 1

Precincts Fully: 426 / 426

Partially: 0 / 426

Track this Contest

EXPORT



Yes ✓

209,488 66.67%

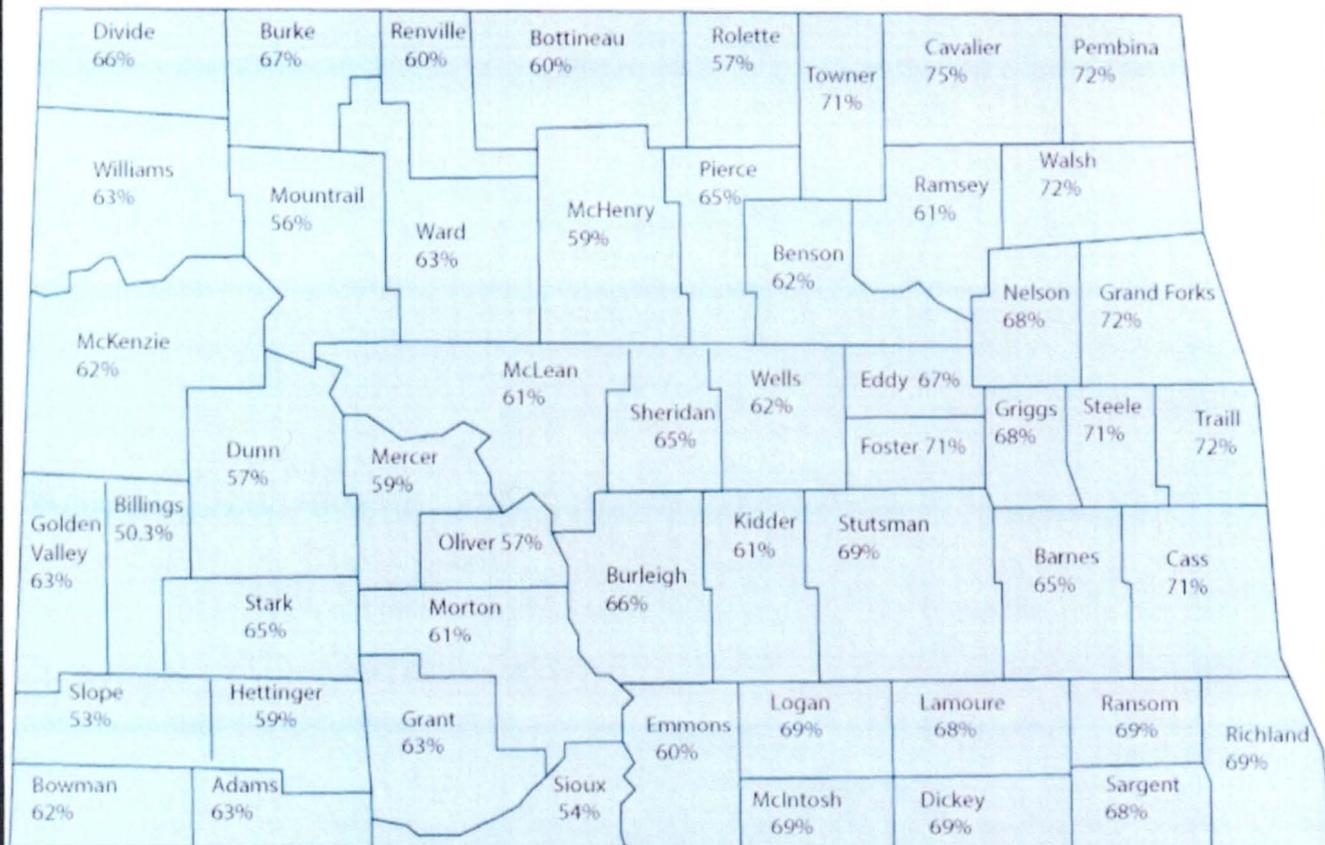
No

104,730 33.33%

TOTAL VOTES 314,218

ALL OF NORTH DAKOTA'S 53 COUNTIES VOTED IN SUPPORT TO MAKE NORTH DAKOTA 100% SMOKE-FREE BACK IN DECEMBER 2012!!

Back in 2012, every county in ND supported the Smoke Free Law by more than 50% of the vote.





Senate Industry Business & Labor
HB 1229
March 1, 2023

Chair Larsen and Committee Members, my name is Dr. Joan Connell. I am a general pediatrician and also serve as the pediatrician for North Dakota's Children's Regional Asthma Clinic. I consider my role in growing healthy children into healthy, productive North Dakotan adults as my vocation. I am a member of the North Dakota Medical Association, serving as the medical association's Sixth District president. I present this testimony on behalf of the North Dakota Medical Association, the professional membership organization for North Dakota physicians, residents, and medical students.

NDMA OPPOSES HB 1229.

More than a decade ago North Dakotans did the right thing by choosing health and voted to no longer allow smoking in enclosed public spaces. Voters chose the healthy option, not only for themselves but to also protect the next generation- our children- from becoming addicted to nicotine and exposed to harms caused by tobacco use, including secondhand smoke.

This bill seems innocent enough by itself, but tobacco companies know it is much more than a cigar bar bill. This is actually an attempt to begin unwinding healthy smoke-free policy, which will invariably reverse the financial and personnel investment by our state to prevent people from

becoming addicted to tobacco use. It's an attempt to renormalize tobacco use by saying, "It's ok...try it".

Our state has made great progress in tobacco prevention. Let's not go backwards. Let's keep our future generations free from addictions. Let the Senate walk the walk in supporting legislation that promotes North Dakotan children growing into healthy North Dakotan adults. **Please vote NO on HB 1229.** Thank you for the opportunity to submit my testimony today. Please do not hesitate to contact me with any questions you may have.

I am urging you to vote no on HB 1229 – the “Cigar Bar” Bill. In a time when we have a mental health and addiction crisis, I find it hard to understand why we would promote another addiction – that to nicotine. Nicotine has been found to prime the brain for other addictions.

In my position as a public health nurse, I educate students on the dangers of nicotine/vaping/smoking, etc. Research shows that exposure to nicotine is damaging to the developing brain, leading to problems with learning, memory, and mood to name a few. Last year I had a third-grade girl tell me that she tried a vape and liked it. Students as young as 4th grade admit that they are being offered vapes. Plus, these students are aware of kids in their classes who have/are vaping. High school students estimate use among their peers is as high as 65-75%. Any bill that promotes nicotine use sends a message to kids that nicotine use is okay. We need to be better role models than that.

Lastly, ten years ago, the citizens of North Dakota made their decision, by voting for a strong smoke free law that protects all workers from secondhand smoke. As I visit with people across the state, most are surprised to hear about the Cigar Bar Bill. And, they are very concerned to hear that there might be changes to our current smoke free law, a law which they still they strongly support. I hear many comments that changing the law would be a big step backwards for our state. It does not make sense that we would change a great law to carve out a special niche for cigar smokers, who only make up 4.3% of our population.

Please vote no on HB 1229. Thank you for your consideration of my request and your service to North Dakota.

Sharon Laxdal
8145 132nd Ave NE
Edinburg, ND 58227
(701) 331-1013s



National Board of Directors

Chair

Stephen R. O'Kane

Chair Elect

Cheryl A. Calhoun, CPA, MBA

Secretary/Treasurer

Michael V. Carstens

Vice Chair, Mission Programs

Sumita B. Khatri, MD, MS

Past Chair

Penny J. Schilz

Directors

Rabih I. Bechara, MD, FCCP

Larry Blumenthal, MBA

Anne E. Dixon, MD

David G. Hill, MD

Mark C. Johnson, MBA

Colleen M. McIntosh, JD, LL.M.

Sean R. Muldoon, MD

Joe Ochipinti

Jonathon K. Rosen

Kathleen M. Skambis, JD

Johnny A. Smith, Jr., MA

Victor Waters, MD, JD, FCLM

Sterling QL Yee, MBA

National President and CEO

Harold P. Wimmer

Testimony in Opposition to HB 1229

Chair Larsen and members of the Senate Industry and Business Committee:

My name is Pat McKone. I'm the Senior Director for Public Policy and Advocacy for the American Lung Association. I am here to testify in opposition to House Bill 1229 – A bill to amend North Dakota's clean air act to exempt bars and cigar lounges. "In order to protect the public health and welfare and to recognize the need for individuals to breathe smoke-free air, smoking is prohibited in all enclosed areas of: a. Public places; and b. Places of employment."

These words set the foundation for the legislation as it was initiated and voted on by the voters in 2012 and speak to why this amendment should not be passed. Secondhand smoke is a serious health hazard causing or making worse a wide range of diseases and conditions, including lung cancer and heart disease. Secondhand cigar smoke from any type of cigar, including premium cigars, poses the same health risks.

Workers in locations where indoor smoking is allowed bear the greatest burden as they often are exposed for 8 or more hours a day while at work. Multiple studies have found that the air quality in hospitality establishments like bars can rate as hazardous to human health on the EPA-scale used to measure outdoor air pollution putting workers at even more risk. Everyone deserves the right to breathe clean air.

Opening up North Dakota's smokefree law to give favored treatment to certain businesses is a solution in search of a problem. The law was approved

overwhelmingly by voters - 66.67% in 2012 with every county in the state in support of the ballot measure. It is has only gotten more popular since then and is one of the strongest types of such laws in the country. The law was a great victory for public health and one all North Dakotans can be proud of.

A handwritten signature in black ink, appearing to read "Pat McKone". The signature is fluid and cursive, with a long horizontal stroke at the end.

Pat McKone, Senior Director
Public Policy and Advocacy
American Lung Association in North Dakota
Email: pat.mckone@lung.org



Adopted by the Tobacco Free North Dakota Board of Directors May 23, 2022

Statement of Support for the North Dakota Smoke-Free Law

WHEREAS, tobacco use is the foremost preventable cause of premature death in the United States.¹ Tobacco is responsible for approximately 480,000 deaths a year and 20.8 million premature deaths in the United States over the past 50 years since the first Surgeon General's report on smoking in 1964²;

WHEREAS, tobacco smoke contains more than 7,000 chemicals, including hundreds that are toxic and approximately 70 that can cause cancer³. Both the Public Health Service's National Toxicology Program and Environmental Protection Agency have classified secondhand smoke (SHS) as a known carcinogen, concluding that SHS is a health risk to nonsmokers⁴;

WHEREAS, the Surgeon General concludes that SHS causes lung cancer, heart disease, as well as stroke in adults². In addition, the following health effects are associated with SHS exposure: sudden infant death syndrome, low birth weight; middle ear problems, respiratory symptoms, and asthma in children⁵;

WHEREAS, studies have shown that second hand aerosol from electronic nicotine delivery systems (ENDS) is not harmless. It can contain harmful and potentially harmful chemicals, including nicotine; ultrafine particles that can be inhaled deep into the lungs; flavoring such as diacetyl, a chemical linked to a serious lung disease; volatile organic compounds such as benzene, which is found in car exhaust; and heavy metals, such as nickel, tin, and lead⁶;

WHEREAS, secondhand smoke from marijuana has many of the same chemicals as smoke from tobacco, including those linked to lung cancer⁷. Exposure to fine particulate matter can exacerbate health problems, especially for people with respiratory conditions like asthma, bronchitis, or chronic obstructive pulmonary disease (COPD)⁸;

WHEREAS, cigar smoke, like cigarette smoke, contains toxic and cancer-causing chemicals that are harmful to both smokers and nonsmokers. Cigar smoke is possibly more toxic than cigarette smoke as cigars have a higher level of cancer-causing substances, more tar, and a higher level of toxins⁹. The larger size of most cigars and longer smoking time result in higher exposure to many toxic substances including carbon monoxide, hydrocarbons, ammonia, cadmium, and other substances;

WHEREAS, the American Society for Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE), affirms that mechanical solutions like ventilation cannot control for the health hazards of SHS, and the best solution is that all smoking activity inside and near buildings should be eliminated¹⁰;

WHEREAS, the Surgeon General concluded that there is no risk-free level of exposure to SHS; ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; smoke-free workplace policies are the only effective way to eliminate SHS exposure in the workplace, and evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry;

WHEREAS, SHS exposure to pregnant women can lead to congenital birth defects, low birthweight and stillbirth, as well as respiratory tract infections and asthma incidence in young children¹¹;

WHEREAS, multiple studies have linked comprehensive smoke-free workplace and public places legislation to significant declines in hospital admissions for heart attacks in the general population;

WHEREAS, studies indicate that individuals living in communities with comprehensive smoke-free policies are 22% less likely to be hospitalized for COPD compared to their peers in communities with moderate-weak smoke-free laws or no law¹²;

WHEREAS, the World Health Organization (WHO) recommends that ENDS not be used indoors, especially in smoke-free environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smoke-free laws¹³;

WHEREAS, the annual economic impact of secondhand smoke alone in the United States is nearly \$7 billion;

WHEREAS, in 2012 North Dakota voters enacted a comprehensive statewide law prohibiting smoking in enclosed public places, with every county voting in favor of the law;

WHEREAS, this law is supported by over 80% of North Dakotans¹⁴;

THEREFORE, be it resolved,

believes that the current smoke-free air law codified in North Dakota Century Code be unaltered from its current language so that the citizens of North Dakota continue to enjoy the economic and health-related benefits they have experienced since 2012.

Name of Organization Representative

Signature of Organization Representative

Date

¹ Centers for Disease Control & Prevention, Current Cigarette Smoking Among Adults, United States, 2011, 61(44) Morbidity and Mortality Wkly. Rep. 889, 891 (2012), <http://www.cdc.gov/mmwr/pdf/wk/mm6144.pdf>

² U.S. Department of Health and Human Services. (2014). The Health Consequences of Smoking-50 Years of Progress: A Report of the Surgeon General, Retrieved from: <https://www.ncbi.nlm.nih.gov/books/NBK179276/>

³ U.S. Department of Health and Human Services. [The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General.](#)

Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014

⁴ U.S. Environmental Protection Agency. "Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders." Washington, DC: U.S. Environmental Protection Agency;1992. Pub. No. EPA/600/6-90/006F

⁵ U.S. Department of Health and Human Services. (2006) The health consequences of involuntary exposure to tobacco smoke: A report of the Surgeon General, Retrieved from: <https://www.ncbi.nlm.nih.gov/books/NBK44324/>

⁶ <https://e-cigarettes.surgeongeneral.gov/knowtherisks.html>

⁷ "Evidence on the Carcinogenicity of Marijuana Smoke." Reproductive and Cancer Hazard Assessment Branch, Office of Environmental Health Hazard Assessment, California Environmental Protection Agency. August 2009
http://oehha.ca.gov/prop65/hazard_ident/pdf_zip/FinalMJsmokeHID.pdf

⁸ "Air and Health: Particulate Matter." National Environmental Public Health Tracking Network, U. S. Environmental Protection Agency.
<http://ephtracking.cdc.gov/showAirHealth.action#ParticulateMatter>

⁹ National Cancer Institute (1998). *Smoking and Tobacco Control Monograph 9: Cigars: Health Effects and Trends*. Bethesda, MD. <http://www.cancercontrol.cancer.gov/tcrb/monographs/9/index.html>.

¹⁰ https://www.ashrae.org/file%20library/about/position%20documents/pd_environmental-tobacco-smoke-2020-07-1.pdf

¹¹ <https://www.nature.com/articles/npjpcm201667>

¹² Hahn EJ, Rayens MK, Adkins S, Simpson N, Frazier S, Mannino DM. Fewer hospitalizations for chronic obstructive pulmonary disease in communities with smoke-free public policies. *Am J Public Health*. Jun 2014;104(6):1059-1065

¹³ Conference of the Parties to the WHO Framework Convention on Tobacco Control; Sixth session Moscow, Russian Federation, 13–18 October 2014 http://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_10Rev1-en.pdf?ua=1

¹⁴ North Dakota Public Opinion Survey: Priority Analyses Summary (October 2016) **Center for Public Health Systems Science & Brown School Evaluation Center**; George Warren Brown School of Social Work

15. <https://www.tobaccofreekids.org/problem/toll-us>

16. <https://results.sos.nd.gov/ResultsSW.aspx?text=BQ&type=SW&map=CTY&eid=35>



and Nicotine TOBACCO PRODUCTS

COMBUSTIBLE

COMBUSTIBLE TOBACCO is any tobacco that is burned. Whenever combustion takes place, smoke is created. Any inhalation of smoke from a burned substance is harmful to both the lungs and the body.

CIGARETTES

The most well-known and widely used combustible product is a cigarette. Cigarettes are made up of chopped tobacco wrapped in a white cigarette paper. They have added chemicals to increase the addictive properties, nicotine delivery, and ease of smoking. Cigarette smoking is the leading cause of preventable death and disease in the United States.



Cigarette

CIGARS

Cigars are made up of chopped tobacco wrapped in tobacco leaves. The defining characteristic of a cigar is it is wrapped in tobacco paper whereas cigarettes are wrapped in paper. The average large cigar has the same amount of nicotine as 4-5 cigarettes.



Little Cigar



Cigarillo



Cigar

BLUNT

A tobacco wrap or cigar that has been hollowed out and filled with marijuana is called a blunt.



Blunt

HOOKAH (WATERPIPE TOBACCO SMOKING)

Hookah, also known as shisha, is a form of waterpipe tobacco smoking that uses a sticky blend of tobacco, which contains additives such as spices, dried fruit, molasses, honey, and artificial flavors. Hookah is typically used in a social setting and is shared among a group of people through a single waterpipe.



Hookah

SMOKELESS

SMOKELESS TOBACCO products do not require burning to be consumed. Depending on the product, they can be sniffed, sucked, chewed, or left to sit in the mouth between the lip and gums for an extended period.

CHEWING TOBACCO

The most common type of smokeless tobacco is often called chew or dip. These products are usually sucked, chewed, or dipped. These types of smokeless tobacco products are put between a user's lower lip and cheek, which causes lots of saliva, resulting in the user's need to spit.



Chew

SNUS

Snus, pronounced "snoose", is a moist version of snuff that has been placed in pouches. Snus is meant to be left in the mouth, under the top lip, producing little saliva making the product spit-less.



Snus

NICOTINE POUCHES

Nicotine pouches, also known as tobacco-leaf free pouches, are made from nicotine extracts and contain other additives and chemicals. There is no tobacco in these products; however, the nicotine in the pouches may be derived from the tobacco plant. These pouches are similar to snus and are spit-less. Brands include Zyn, On!, and Velo. One pouch has approximately 6mg of nicotine. Pouches contain a nicotine salt derived from a tobacco leaf or synthetic nicotine made in a lab.



Nicotine Pouches

ELECTRONIC SMOKING DEVICES

ELECTRONIC SMOKING DEVICES can be challenging to identify. The original devices looked similar to cigarettes and had a battery, heating element, and a pre-filled cartridge with a freebase nicotine solution. Since then, the devices and solutions have evolved, and each generation has become more efficient in delivering nicotine to its user.

CIG-A-LIKES

Cig-a-likes first entered the market in 2007. These products mimic the size and shape of a tobacco cigarette and the nicotine solution is sold in pre-filled cartridges.

VAPE PENS

Vape pens are larger than cig-a-likes and often have the appearance of an ink pen. These devices reach higher temperatures, can have batteries or be rechargeable, and have a refillable cartridge that the user fills with a nicotine or THC solution.

MODS & TANKS

Mods and tanks are the largest devices. They have a big battery to create more aerosol which allows the user to inhale greater amounts of nicotine and chemicals at a faster rate. The devices have a refillable tank for a nicotine solution.

POD SYSTEMS

Pod-based systems are typically smaller and are fitted with a pod filled with a nicotine solution. Most pod devices come with a nicotine salt solution that delivers high levels of nicotine to users. There are also pod devices designed to vape THC solutions.

DISPOSABLES

Designed for single use, these devices come fully charged and pre-filled with nicotine or THC solutions. When e-juice is gone, the device is thrown away. Disposable devices have evolved over time. Today's devices have more nicotine and a greater puff volume.

YOUTH VAPING EPIDEMIC

In 2018 the US Surgeon General recognized youth vaping as a national epidemic. The dramatic increase in youth vaping between 2017 and 2018 is tied to the mass production and marketing of JUUL, a small vaping device that uses pre-filled pods with a nicotine-salt solution. What set JUUL apart from other, older devices was the use of a salt-based nicotine solution. Nicotine salt solutions deliver more nicotine to users with smaller vaping devices. The solutions are also easier for individuals to consume as they don't result in the same throat hit as freebase nicotine. As a result, users can discreetly vape large quantities of nicotine. These products, as well as evolving vaping devices, have resulted in greater youth initiation of tobacco products and higher rates of nicotine addiction.



Disposable Pods

For comparison purposes, a JUUL pod has approximately 200 puffs and 41 milligrams of nicotine. A standard Puff Bar has 400 puffs and 50 milligrams of nicotine. A Puff Bar Flow has 1800 puffs and 325 milligrams of nicotine.



California
Youth
Advocacy
Network

info@cyanonline.org | (916) 339-3424 | www.cyanonline.org

©2022, California Youth Advocacy Network



facebook.com/cyanfan
twitter.com/CYANonline



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

March 1, 2023

1:45 pm CST

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

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

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

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

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

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

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

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

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

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

Everyone deserves clean air. Because of this, of particular concern is the language, or lack thereof, in HB 1229. The bill defines a bar or cigar lounge, and states it “has **a humidor** on the premises; is enclosed by solid walls or windows, a ceiling and a solid door; and **is equipped with a ventilation system by which exhausted air is not recirculated to nonsmoking areas and smoke is not backstreamed into nonsmoking areas.** A bar or cigar lounge meeting the requirements of this subdivision may permit the smoking of cigars purchased on the premises, but may not permit the smoking of any other product on the premises.”

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

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

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

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

Another issue in the bill language indicates an unverified qualification standard of two percent or more annual gross income from the sale of cigars for a "Bar" or twenty percent or more of the annual gross income from the sale of cigars for a "Lounge." It says, “a bar or cigar lounge asserting the bar or lounge meets the requirements of this subdivision shall report to the tax commissioner before February first of each year, on a form prescribed by the commissioner, the revenue from the previous calendar year generated from the sale of cigars as a percentage of annual gross income. Upon receipt of a report asserting compliance with the annual gross income requirements of this subdivision, the commissioner shall issue an annual certificate. The commissioner is not required to confirm the accuracy of information reported but may not issue a certificate absent supporting documentation from the bar or lounge. Information reported to the commissioner under this subdivision is subject to the confidentiality provisions of section 57-39.2-23.”

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

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

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

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

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

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

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

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

May I take any questions?

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

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

ⁱⁱ https://www.hhs.nd.gov/sites/www/files/documents/DOH_Legacy/Tobacco/Tobacco_Surveillance_Data.pdf

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

^{iv} https://www.hhs.nd.gov/sites/www/files/documents/DOH_Legacy/North_Dakota_Tobacco_Toll.pdf

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

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

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

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



March 1, 2023

Senators:

I am Valerie Schoepf, and I'm the president of Tobacco Free North Dakota, a mom, and an educator asking you to oppose HB 1229.

I work with a generation of North Dakota youth who are, thankfully, not accustomed to being asked "smoking or non-smoking." Rather, today's kids talk about vooping, preferred ADV, boxing, cigalike, and e-cigar. These are all vaping references, whereas language we're more accustomed to also is holding strong for cigarettes, cigars and smokeless tobacco like chew or snuff.

Also holding strong is North Dakota's embarrassingly low price of tobacco. For decades we have been known as a cheap tobacco state. Sad but true, a dozen eggs can now cost more in North Dakota than a pack of cigarettes. And correlation or not, our youth rate of high school cigarette smokers is 400% higher than the national average and our rate of youth who vape is double the national average. For anyone flirting with the snares of addiction, cigars are trending as an upper echelon choice as if somehow less harmful than other forms of nicotine. If anything, cigars generally pack more nicotine, the addictive component, than cigarettes.

With difficult addiction realities running rampant, a real opportunity for political leadership exists in how you vote today. HB 1229 would water down ND's smoke-free law working to protect all patrons and employees from the harms of secondhand smoke. The current law also protects a supportive environment for the 70% of smokers who in fact want to quit. ND voters passed our smoke-free law with vast support more than 10 years ago and that strong support for the status quo prevails.

These days everyone knows someone who has died or has difficult health complications due to smoking. My story is that I was 14 when I lost my dad due to

his tobacco addiction; he died of lung and brain cancer. He started smoking as a teenager here in ND, kicking off a lifelong addiction. He has 15 grandchildren who he never got to meet, and vice versa ... a lot of kids without a grandpa.

So we all have a sad story, but we also all have hope. Who do you envision when you hope addiction isn't their path? For me it's foremost my three children - Frances, John and Mary. To best support them and in working with youth, let's give them all a hand by supporting policies and environments that make it easier for them to make healthy choices. Our existing smoke-free law does that, no exceptions. Success - my kids and the kids I teach don't remember the days of "smoking or non-smoking." It is my hope and it is in your power for that to never become a part of their reality here in North Dakota even as they embark on hospitality jobs and social outings.

Tobacco use remains the leading preventable cause of death in ND -- we go in reverse if HB 1229 passes, so please stand strong to stand up against addiction.

Thank you.

Valerie Schoepf
6959 80th St NE
Bismarck, ND 58503
701-527-2822

March 1, 2023

Senators:

My name is Dr. Eric Johnson, I am a physician in Grand Forks. I have been very involved with tobacco issues in North Dakota for about 15 years and had direct participation in getting the smoke free law on the ballot in 2012, which passed with the voters by a 2 to 1 margin. In fact, it passed in every county in North Dakota.

Several polls done since that time show that the law is still viewed as very favorable with similar or better numbers. Smoke free has become the norm and expectation for North Dakotans since that time.

Second hand smoke is known to be deadly and is also a worker's rights issue. Strong data has built up over the years, and about 50,000 people die from secondhand smoke diseases, including lung and heart disease, in the U.S. every year. To bring this closer to home, we did a study right after the law was passed by the voters that showed a 30% decrease in heart attacks in Grand Forks County after the law took effect and was published in one of the leading scientific journals dealing with tobacco health issues, Nicotine & Tobacco Research [Impact of a comprehensive smoke-free law following a partial smoke-free law on incidence of heart attacks at a rural community hospital - PubMed \(nih.gov\)](#)

This is similar to many other published studies, including Olmstead County, MN by the Mayo Clinic. [Myocardial infarction and sudden cardiac death in Olmsted County, Minnesota, before and after smoke-free workplace laws - PubMed \(nih.gov\)](#)

Another concern at this time is that it appears that virtually any bar could declare themselves to be a cigar bar, completely circumventing the popular smoke free law.

As a North Dakota physician, I'm asking at this time that you follow the established scientific data regarding secondhand smoke and vote no on HB 1229. I would be happy to answer further questions. My opinions are my own, and do not reflect my employers.

Sincerely,
Eric L. Johnson, MD
Grand Forks, ND
701 739 0877
eric.l.johnson.md@gmail.com

TESTIMONY IN OPPOSITION OF HB 1229

Sommer Frohlich, BSW

3724 Renee Dr. Bismarck ND, 58503 701-934-0540

Chairman Larson and members of the Senate Industry, and Business Committee. My name is Sommer Frohlich. I am a counselor at the Women's Care Center, a pregnancy resource center in Bismarck. I have a bachelor's degree in Social Work from Minot State University and grew up in Bismarck. I am here today to testify in opposition to House Bill 1229.

My job as a counselor at the Women's Care Center entails meeting with women to provide confidential support and promote healthy pregnancies. We see many women who face difficult obstacles, but work hard making many sacrifices to provide for their growing family.

I am really concerned about allowing smoking cigars indoors. Not only do I worry about secondhand smoke exposure to myself, who would love to start a family in the near future, but I also think of our mothers who often work in environments where they could potentially be exposed to secondhand smoke from cigars.

If a pregnant woman is exposed to secondhand smoke, it is not only bad for her but also for the baby she is carrying. If a pregnancy is exposed to secondhand smoke, there are higher rates of miscarriage, premature births, and low birth weights. I am fearful that many mothers will be exposed to second hand cigar smoke due to their employment. This can be very difficult for so many mothers who work hard and rely on their job to provide for their children. In ND I am so grateful that I can be guaranteed safe air without limitations. I love that we can take care of our community and make public places safe for everyone, even a baby still in their mother's womb.

I recognize just how deadly all tobacco products are including cigars. If our smoke free law were to exempt cigars, we would be exposing people who choose not to use these products to secondhand smoke.

I am a firm believer in North Dakotans looking out for one another, and our current smoke free law does just that. By having a strong statewide smoke free law, we are watching out for one another. Please oppose HB 1229 because so many who choose to live smoke free will be exposed to secondhand smoke. We must continue to care for one another. Thank you for your time. This concludes my testimony.



Testimony in Opposition of HB 1229

Senate Industry and Business Committee

Chairman Larsen and Members of the Senate Industry and Business Committee, my name is Mike Krumwiede appearing on behalf of the American Heart Association in opposition of House Bill 1229. In November 2012, North Dakota voters opted to become smoke-free, leading the nation with a strong comprehensive model. Voters in every county in the state favored the law, which advances public health by protecting more workers, residents, and visitors from secondhand smoke exposure in public places and places of employment.

Secondhand smoke (from cigarettes and cigars) has been proven to cause numerous health problems, including heart disease, emphysema, stroke, sudden infant death syndrome and cancer. Secondhand smoke contains toxic chemicals like formaldehyde, cyanide, carbon monoxide, ammonia and nicotine. Exposure to secondhand smoke causes preventable deaths from lung cancer and cardiac-related illnesses. The Centers for Disease Control and Prevention (CDC) makes clear that there is no safe level of exposure to secondhand smoke.

HB 1229, which would allow smoking in bars that sell cigars and so-called cigar lounges would weaken existing protections and pollute the indoor air in North Dakota. In addition, AHA is concerned, it could also create an opening for more exemptions allowing cigar lounges, smoking lounges, vaping bars, hookah bars, and pipe tobacco rooms as possible options.

The original law our voters approved over a decade ago clearly states the importance of protecting public health and the need for individuals to breathe smoke-free air. This extends to all workers including those who work in bars and cigar lounges. For these reasons we urge a DO NOT PASS recommendation on HB 1229. Thank you for your time and consideration.



1400 EYE STREET, N.W. • SUITE 1200 • WASHINGTON, DC 20005
PHONE (202) 296-5469 • FAX (202) 296-5427

February 28, 2023

North Dakota Senate Industry and Business Committee

Re: Cigar Bar Exemption to Clean Indoor Air Law – No to HB 1229

Good afternoon, Chair Larsen, Members of the Industry and Business Committee. My name is Jodi Radke. I am the Regional Director with the Campaign for Tobacco-Free Kids. My work spans 11 states, which includes North Dakota. I have had the privilege to work alongside many of the exceptional public health professionals on tobacco control policies in North Dakota and have done so for nearly 17 years. My early work in North Dakota included passing multiple local smokefree indoor air policies, beginning with Fargo and West Fargo.

On behalf of our organization, our volunteers statewide, and future generations of North Dakotans, I strongly urge you to vote no on House Bill 1229.

Being greeted by a restaurant or bar host to inquire, “smoking or non” is a question of the past, and one that future generations will not recognize thanks to strong voter approval of a statewide smokefree air law in North Dakota. In 2012, by voter approval of nearly 67%, North Dakota joined 29 states, protecting workers, and patrons from secondhand smoke exposure, following decades of work, and laws across the country that did the same. Track polling continues to reflect the strength of that voter support, increasing over time. I hope that your voice, and your vote, reflect theirs.

North Dakota voters understood then, and now, the detriments of indoor secondhand smoke exposure. That science hasn’t changed, nor has the public’s support for these laws to remain in place.

There is no safe exposure. There isn’t a ventilation system that can effectively remove the carcinogens from the air. Employment at a bar should not be a self-selection process that disqualifies employees from hazardous working environments.

I'd like to highlight three important conclusions from the Smoking and Tobacco Control Monograph No. 9, cancer control efforts, entitled, "Indoor Air Pollution from Cigar Smoke".

1. ETS (environmental tobacco smoke) from cigar smoke is a major and increasing source of exposure to indoor air pollution.
2. When smoked in confined indoor spaces at typical smoking and ventilation rates, cigars may produce concentrations of certain regulated ambient air pollutants, including CO (carbon monoxide) and RSP (respirable suspended particle), which can violate federal air quality standards and add to the level of these compounds already in the ambient air from other combustion sources.
3. Measurements of the CO concentrations at a cigar party in a hall and at a cigar banquet in a restaurant showed carbon monoxide levels comparable to those observed on a crowded California freeway.

States with cigar bar exemptions have not celebrated this inclusion, rather, have recognized the err in decision making, and have worked to correct, by eliminating the exclusion.

North Dakota kids smoke at 4x the national average and use e-cigarettes at nearly 3x the national average. Nearly 30.5% of cancer deaths in North Dakota are attributable to smoking. We have the science to know what can reverse these trendlines. Weakening smokefree indoor air protections isn't one of them.

Please vote no on HB 1229.

Sincerely,

Jodi Radke
Regional Advocacy Director
Campaign for Tobacco-Free Kids

Trisha James

74 McGinnis Way

Lincoln, ND 58504

701-226-0168

Chairman Senator Magrum and members of the Senate Industry and Business Committee, my name is Trisha James. I am a wife, mother of 3, a registered nurse at the Sanford Oncology clinic, and a concerned citizen of the State of North Dakota. I am here to provide testimony and opposition for House Bill 1229.

For almost 18 years, I have worked as an oncology nurse caring for patients with cancer. Throughout these years I have worked in the hospital, infusion room, clinic, and now am one of the first people patients meet when they have found out they have cancer. I have held the hand of a patient who can't breathe, cared for patients dependent on oxygen and a bipap machine, and heard the terrible rattling cough of a patient with lung cancer as they gasp for air. I have taken care of numerous patients with a tracheostomies, watched their eyes get really big when they try to gasp for air, then working so hard to try to suction out their trach so they can breathe again. Over the years have accessed so many ports, given so much chemotherapy to so many patients, witnessed the side effects they experience, and tried to help them get through another treatment so they can have another day with their loved ones. One of my grandpas died from colon cancer; my other grandpa died due to complications from his emphysema and COPD. They both smoked for years. My husband lost his grandpa as well to lung cancer attributed to decades of smoking. So this is personal to me and my family.

HB 1229 could allow any bar to have cigars if that bar generated two percent or more of the bar's annual gross income from the sale of cigars. It also states that a cigar lounge generating twenty percent or more of the business's annual gross income from the sale of cigars. But what happens when patrons decide to smoke cigarettes, e-cigarettes or marijuana? Who will enforce and regulate this?

At what cost are we willing to allow a loophole in the ND Smoke Free Law? The cost of continued lives, young and old, being exposed to cigar smoke? Tobacco use is the foremost preventable cause of premature death in the United States. Cigar smoke is possibly even more toxic than cigarette smoke as cigars have a higher level of cancer-causing substances, more tar, and a higher level of toxins. Due to the larger size of most cigars as well as the longer smoking time results in a higher exposure to carbon monoxide, hydrocarbons, ammonia, cadmium, and other substances. Who will be

regulating the exhaust systems? If the Surgeon General has already concluded that there is no risk-free level of exposure to second hand smoke, air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke. What if this cigar bar shares a wall with a daycare? Please protect the employees and surrounding businesses next to these proposed cigar bar and lounges by voting no to HB 1229.

We have made great strides in our community with reducing tobacco use rates and protecting individuals from secondhand smoke. Please don't let our state take a giant step backwards by allowing this law to pass.

I ask the Industry, Business, and Labor Committee to vote no on HB1229 for myself and my family, for my patients, their families and those who have lost loved ones due to the effects of smoking. Thank you. This concludes my testimony.

Good Afternoon Chairman Larsen and members of the Senate Industry, Business, and Labor Committee

My name is Madeline Erickson and I am a former member of the Break Free Tobacco Youth Board from Bismarck, North Dakota. I testified in opposition to this bill during the last legislative season and am concerned to see it once again in the legislature. The state of North Dakota has one of the strongest smoke free laws in the country. This is something that I am proud of, however, adding this exemption to the smoke free law erases this progress and opens the door to other dangerous exemptions. I urge this committee not to set a dangerous precedent.

I am concerned that the future ramifications of House Bill 1229 are not being fully considered. It is the job of this Senate to take into account those who will be in contact with the smoke from these cigar bars. These people will not just be the workers or patrons of the establishment, but also the patrons of a restaurant next door or the workers in an office situated in the same complex. These people will be unknowingly risking their health and wellbeing for the enjoyment of a few. I urge you to consider the effects that this bill will have on the general population. The effects of secondhand smoke are not something to be taken lightly or ignored. The smoke from cigar bars will reach far outside the boundaries of the physical establishment and there is nothing that can prevent this other than allowing the smoke free law to remain as it is.

In relation to second hand smoke I would like to raise my concerns for the future workers of the proposed cigar bars. Many of these employees will be young adults, simply looking for a job. As a college student, I know that when most students are offered a well paying job or any job at all, they don't necessarily consider the risks. They are focused on paying rent, tuition, and other living expenses. Just because they sign a piece of paper or verbally consent that they understand the dangers doesn't mean that they have necessarily considered those long-term risks. In addition this bill has no wording that requires future cigar bars to educate their employees or ensure that they understand the consequences of second-hand smoke. This opens the door for health consequences to my generation.

The final point I would like to address is regarding the economic consequence of this bill. Once again I feel as though the short term benefits are the only effects being taken into consideration currently. In reality the long term economic consequences of this bill cannot be ignored. The effects of secondhand

smoke are known to cause long term health complications that not only affect the person, but also decrease productivity and create financial burden on taxpayers. Ultimately, while the short term economic benefits of this bill are appealing, it is fiscally irresponsible in the long run. As my generation enters the work force we will be the taxpayers paying this burden and it is unfair that we should suffer these unnecessary consequences. Please do not forget the future economic ramifications of this bill in return for short term satisfaction.

Overall I feel as though the enjoyment of a few is outweighing the health and safety of the general public. Keep in mind that people are not prevented from enjoying this legal product, however allowing cigar bars creates a dangerous gray area and turns enjoying this product into a fiscally irresponsible burden on my generation. I urge you to vote no on HB 1229 in order to protect us from the dangers of secondhand smoke and future economic consequences.

Chairman Larsen, and members of the Industry and Business Committee. My name is Kameron Hymer, and I reside in Williams County with my family.

I am asking that you support House Bill No. 1229, a bill for an act to amend and reenact section 23-12-10 of the North Dakota Century Code, relating to cigar bars and cigar lounges.

This bill will allow for the use of an already legal product in a lounge setting. A cigar lounge would be an enjoyable, warm and relaxing atmosphere to visit with friends who also enjoy cigars.

Governor Burgum recently said, *“North Dakota takes pride in being one of the most business-friendly states in the nation, and we continuously seek new ways to support entrepreneurs, innovators and emerging and expanding businesses”*. Working in local government myself, I recognize the value and importance of economic diversity and agree with Governor Burgum that we need to support new and existing businesses.

Blanket claims from those that oppose this bill don't hold true or tell the complete truth. Such as:

Claim 1: *“We don't want to be exposed to secondhand smoke in public spaces”*.

Response: This bill would only allow cigars to be smoked in a dedicated establishment for that purpose. This bill would not allow someone to smoke a cigar in bars such as, River's Edge, Cattails, Buffalo Wild Wings, etc. Those not wanting to be exposed to secondhand smoke would not be unless they deliberately entered the establishment.

Claim 2: *“Cigar use among youth is now almost as common as cigarette smoking!”*

Response: The March 2022 FDA-Funded study, Premium Cigars: Patterns of Use, Marketing and Health Effects, from the National Academies of Sciences, Engineering and Medicine states, *“The PATH analysis focused on adults because premium cigar use is very limited in youth.”* and *“Premium cigar use is less common among youth, and only 0.6 percent of those who reported smoking a premium cigar brand in the past 30 days were under the age of 18”*. Incorrect statistics grouping cheap “gas station” cigarillos like Black & Milds, to premium 100% tobacco cigars as being the same product are misleading. HB 1229 clearly explains the definition of a cigar; it is not the same product that has seen an increase in youth usage.

Opposing parties are also protesting this bill because of the health risks to the user. If that is truly a concern, why is alcohol consumption not being protested? It comes with major health risks as well. Even social media pages from groups in opposition of HB 1229 show their members partaking in alcohol at dinners and banquets.

“Government exists to protect us from each other. Where government has gone beyond its limits is in deciding to protect us from ourselves.” – Ronald Reagan

In conclusion, I urge you cast a YES vote for HB 1229.

Sincerely,

Kameron Hymer

Senate Industry & Business**Chairman – Senator Doug Larsen – District 34****March 1, 2023****Testimony By: Shaun Sipma****Shaun Sipma – Resident of Minot, ND****shaun.sipma@outlook.com****701-721-6839****HB1229**

Thank you for the opportunity to submit testimony in favor of House Bill 1229.

The proposed legislation is regarded as a return of a freedom of choice that was stripped away from business owners and prospective business owners by an initiated measure more than a decade ago.

The issue of Cigar Lounges comes down to a simple matter of choice by both the business owner and patrons. Those who don't want to be exposed to first hand or second hand cigar smoke simply don't have to patronize that business. The concerns that have been expressed by the anti-smoking coalition for employees of a Cigar Lounge is a moot argument as the availability of employment across the state gives everyone the ability to work in an environment of their choosing. Simply, if an individual doesn't want to be in a Cigar Lounge work environment then they don't have to work at that establishment. Again, it is a matter of choice.

North Dakota has been working hard to build its reputation as a busy friendly state. The current law in place with its restrictions is counter to that effort. While this industry would be small it would also provide additional tax revenue to the state and local municipalities. It is reasonable to state that sales of on-line cigars would also be reduced as patrons visiting a cigar lounge in North Dakota would be more likely to support a local business rather than an out-of-state entity.

For members of this committee who may have an unfavorable view of cigar smoking, I would ask you to consider what else you have an unfavorable view of? Is it prudent to prohibit something because you don't like it regardless of whether

you, or anyone else who doesn't like it, would ever be exposed to it? No it is not prudent to do so.

Cigar smoking will take place regardless of the outcome of this legislation. Those arguing against this bill on merits of health are disregarding that fact. The fact that is important to this committee and to those voting on this legislation is whether North Dakota wants to be a business friendly state and capture the business dollars that currently are going out of state.

I would strongly urge you to vote yes on House Bill 1229 as it outlines substantial limits within the legislation while returning one important aspect to business owners and residents. Freedom of choice! The pendulum has swung entirely too far with the collective social health initiatives which is quickly eroding away freedoms and leading down an even more dangerous road whether it's cigars, vaccines or any other area deemed necessary for the collective good. It's now time to make a prudent correction.

I greatly appreciate your time in reading this testimony and your consideration.
Respectfully, Shaun Sipma, Resident of Minot.

Chairman Larsen, and members of the Senate of Industry and Business Committee, hello my name is Corina Larson, and I am an Oncology/ Survivorship Nurse and Tobacco Treatment Specialist (TTS)/ Cessation Counselor at Bismarck Cancer Center.

Today I am here to encourage a Do Not Pass on HB 1229.

I am here to educate you on the types of cancers linked to tobacco products. Most common are oral, mouth, head and neck, esophageal, lung, stomach, pancreas, cervical, bladder, kidney and colorectal.

State of ND estimates 4370 new cancer cases in 2023, 1600 of those are tobacco risk cancer types as listed above, 1320 deaths are estimated with 560 of those deaths' being tobacco 'at risk' type cancers. (American Cancer Society)

Usually when we associate smoking whether it is cigarettes or cigars, we think of lung, but all these other systems are affected as well.

In 2022 Bismarck Cancer Center treated 761 cancer patients of those 170 were a tobacco related cancer. Here is the breakdown of those types treated.

20-Oral/lip/head and neck/glottis 10 with a history (Hx) of tobacco use- 1 received Tobacco treatment (TTS)

10- Esophageal/stomach- Hx-6, TTS-1

22- Colorectal- Hx-5, TTS-1

92- Lung, Hx-49, TTS-33

11-Endometrial/cervical, Hx-6, TTS-1

5 -Kidney/bladder, Hx- 4, TTS-0

10-Gallbladder/pancreas, Hx-5, TTS-1

I did not include any metastatic treatments such as bone, brain, skin, or lymphomas that may have been an at-risk tobacco cancer.

As a survivorship nurse and TTS I gather health information of the patients cancer journey, educate on side effects from radiation therapy and educate on survivorship moving forward after treatment. That includes healthy living and healthy lifestyle. Exercise, weight control, limiting alcohol and avoiding tobacco. I also offer tobacco counseling, during and after treatment, to cut down to quit use of all tobacco products.

- I educate patients about the harmful effects of tobacco products from the 70 carcinogens (cancer causing chemicals) that are found in all tobacco products
- Nicotine causing the thickening of blood causing a higher risk for stroke and heart attack, peripheral vascular disease, decrease in wound healing.
- I teach behavior modifications, removing triggers to aid in cutting down and quitting. Much like smoke free laws- making it more inconvenient to smoke reduces triggers. No smoking in the house, car, restaurants, bars.

In May of 2021 I was Nationally Certified in Tobacco Treatment Practice in studying for this exam statistics show over 68% of smokers want to quit, 55% will try and only 7.5% will quit. And most will need to attempt 8-11 times to quit for good. (CDC)

In 2021 I met with 227 patients and with counseling 25 quit. In 2022 I met with 173 patients and 20 quit.

In the US 38,000 annual deaths are attributed to Secondhand Smoke (SHS) due to increased heart disease, risk of stroke, cancer, Type 2 Diabetes and pulmonary disease. I also discuss 3rd hand smoke exposure of fabric upholstery carpet, and walls. NNK (4-methylnitrosamine) was identified from surface dust in smokers' homes. Oral ingestion causing lung and stomach cancer. (Mayo) (NIH)

Cigars are not any different. Each cigar contains as much nicotine as a pack of cigarettes. And even if you do not inhale, large amounts of nicotine can be absorbed through the lining of the mouth. Unfiltered tobacco use is a higher cancer risk than filtered (France). We know that cigar smoking causes cancers of the oral cavity, larynx, esophagus, and lung. **Cigar smokers have an increased rate of pancreatic cancer.** (NCI)

Let me give you some insight of the journey of a head and neck cancer patient and their treatment. Imagine having difficulty swallowing or not being able to swallow, and you have a feeding tube, dry mouth, everything tastes awful, there may be mouth sores and pain. You make it through treatment of both chemotherapy and radiation. Now the new life of a survivor starts. Maybe permanent dry mouth, you must constantly carry water with you, difficulty swallowing afraid you may choke, permanent taste changes- a steak does not taste like a steak, going out to eat is not enjoyable anymore. Maybe you have lost your singing voice, there may be permanent facial scarring, or distortion. Many of our head and neck survivors tell us 'I do not think I would do this again!' Plus, the fear of recurrence!

- Smokers who continued smoking during/after head/neck cancer treatment had 2.7 times higher risk of dying (from any cause) and 2.1 times higher of cancer-related cause, than non-smokers. (Univ of Michigan)
- Quitting smoking for 1-4 years after head/neck cancer diagnosis reduce risk of recurrence by 25%
- Quitting smoking for 20 years returns risk level to non-smokers
- Quitting alcohol consumption for 20 years returns risk level to non-drinkers (International Head/Neck Cancer Epidemiology Consortium)

Nearly 90% of smokers begin by the age of 18 they are influenced by peers, parental influences, friends, social media, TV and movies. (CDC) Cigarette consumption has decreased but flavored tobacco in forms of vapes, chew and cigars has increased. Our youth do not remember the days when everyone smoked in the hospitals, movie theaters, restaurants, and other public places, by condoning cigar smoking in public places creates confusion to both youth and employees working in those establishments. Secondhand smoke is not safe. Do not confuse the issue that cigars seem safe enough to smoke indoors without serious health consequences for those exposed.

The Smoke Free law is an exceptional public health accomplishment that protects everyone from the dangers of secondhand smoke exposure. Clean smoke free air should remain the standard of care in public places to help reduce cancer risks.

Again, thank you for this time in front of you, chairman Larsen.

I stand ready for any questions you may have.

(NIH) National Institute of Health Thirdhand smoke: Genotoxicity and Carcinogenic Potential -B Hang-2020

France: <https://www.sciencedirect.com/science/article/abs/pii/S0964195595000410>

(NCI) National Cancer Institute (1998) Smoking and Tobacco Control Monograph 9: Cigars: Health Effects and Trends- last updated 10/21/2010 chapter 4

Univ of Michigan: [Does Quitting Smoking Make a Difference Among Newly Diagnosed Head and Neck Cancer Patients? | Nicotine & Tobacco Research | Oxford Academic \(oup.com\)](#)

International Head/Neck Cancer Epidemiology Consortium: [Cessation of alcohol drinking, tobacco smoking and the reversal of head and neck cancer risk | International Journal of Epidemiology | Oxford Academic \(oup.com\)](#)

TESTIMONY IN OPPOSITION OF HB 1229

Megan Schneider
Bismarck, ND
701-220-5414
mleighsrrt@gmail.com

Chairman Larsen and Senate Industry and Business Committee members. My name is Megan Schneider; I currently serve as the President of the Bismarck Tobacco Free Coalition. I am also a respiratory therapist, educator, and Tobacco Treatment Specialist. I have worked in respiratory care for nearly eight years and am here to provide testimony in opposition to HB 1229.

Ten years – 10 years, ND's smoke-free law has allowed for clean air. As a respiratory therapy student, I remember participating in activities at the capital in our continued advocacy of a smoke-free state. And ten years ago, the people of ND spoke as we passed our smoke-free law that allowed members and visitors of our community to enjoy their time out as they sat with their families and friends in a smoke-free public restaurant.

The fact is HB 1229 threatens North Dakota's Comprehensive Indoor Smoke Free Air Law. I would like to call your attention to the opening lines of this policy as it is currently written, "In order to protect the public health and welfare and to recognize the need for individuals to breathe smoke-free air, smoking is prohibited in all enclosed areas of: a. Public places; and b. Places of employment."¹ And so, I ask, will once again allowing secondhand smoke in a public cigar bar or lounge maintain this very important aspect of our smoke free air law?

As an important reminder – cigars are not a safe alternative to cigarettes.^{2,3} According to Mayo Clinic, Secondhand smoke from cigars contains the same toxic chemicals as secondhand cigarette smoke; this type of smoke can cause or contribute to lung cancer and heart disease.³

Additionally, one study from 2014 found that cigar smoking was responsible for approximately "9,000 premature deaths among adults aged 35 and older in the U.S. These deaths represented almost 140,000 years of potential life lost and a monetary loss of \$22.9 billion."⁴ This data allows us to see the detrimental health effects and the financial losses incurred from cigar use.

The truth is, it doesn't matter if a cigar bar resides in a stand-alone building or if an individual in favor of this entity makes a somewhat promising claim of ensuring "proper ventilation" because air ventilation systems cannot effectively eliminate secondhand smoke. The only way to eliminate the health risks associated with secondhand smoke is to prohibit smoking activity in public spaces.⁵

As we consider HB 1229, let us remember that addiction is not freedom; and that the health of the citizens of North Dakota needs to be placed at the forefront of policymaking in our great State. The Bismarck Tobacco Free Coalition urges you to vote "NO" on HB 1229. We have made great strides in our community by reducing tobacco use rates and protecting individuals from secondhand smoke. I ask the Senate Industry and Business Committee to vote no on HB 1229.

Thank you – this concludes my testimony. I will be happy to answer any questions you may have.

References:

1. <https://www.ndlegis.gov/assembly/68-2023/regular/documents/23-0331-01000.pdf>
2. <https://www.lung.org/quit-smoking/smoking-facts/health-effects/cigars>
3. <https://www.mayoclinic.org/healthy-lifestyle/quit-smoking/expert-answers/cigar-smoking/faq-20057787#:~:text=Secondhand%20smoke%20from%20cigars%20contains,lower%20respiratory%20infections%20in%20children>
4. <https://truthinitiative.org/research-resources/traditional-tobacco-products/cigars-facts-stats-and-regulations>.
5. <https://studylib.net/doc/18040133/ashrae.org--home>



North Dakota House Bill 1229
Senate Industry, Labor & Business
Oppose Testimony
3/1/2023

Good Afternoon Chairman Larsen members of the Senate Industry and Business Committee,

My name is Derek Turbide and I am a registered lobbyist for the nonprofit, non-partisan advocacy affiliate of the American Cancer Society. The American Cancer Society Cancer Action Network (ACS CAN) advocates for public policies that reduce death and suffering from cancer which include policies targeted at reducing tobacco use.

HB 1152, a bill that would create exemptions to North Dakota's Indoor Smoke Free Air Law, allowing for cigar smoking in bars and lounges, is before you. This bill is essentially the same bill that was heard last regular session and defeated.

ACS CAN opposes HB 1152 and I ask you to vote for a "Do not pass" recommendation.

Voters overwhelming voted for and have enjoyed the state smoke-free law in the land with no exceptions for the past 10 years.

If passed, workers and patrons will be exposed to secondhand smoke which goes against the intent of the law and could encourage more erosions in the future.

Ventilation systems cannot remove carcinogens found in secondhand smoke from a workplace or public place. Asking business owners to install an expensive system is burdensome and does nothing to protect the public's health. The only effective way to fully protect workers and patrons from exposure to secondhand smoke is to eliminate smoking.

A strong law covers all people, including workers. Why would we want to backstep the strong law currently in place? Everyone has the right to breathe smoke-free air and that includes those in hospitality venues, work environments, and other public places. A strong law prohibits all smoking, including cigar use in all workplaces, whether they sell cigars or not.

HB 1152 is specifically problematic for the following reasons:

- Exempts not only so-called "cigar lounges" but also bars where the sale of cigars makes up a percentage of their revenue. If this were to pass, it will impact North Dakota's smoke-free bar status and expose workers to secondhand smoke.

- Ventilation does not work. Ventilation systems cannot remove carcinogens from secondhand smoke and they fail to protect public health. Asking business owners to install an expensive system is burdensome and ineffective.
- There are no measures for active enforcement and verification.

This is an important issue for the ACS CAN, our volunteers advocates in the state, and the many North Dakotans who have already benefitted from this law. We ask that the committee vote for a “Do not pass” recommendation.

Thank you for your time.

Testimony submitted for HB 1229
Senate Industry and Business Committee
Senator Larson, Chairman

Nancy Neary

February 28, 2023

Director of Tobacco Prevention
Central Valley Health District
Jamestown

Dear Chairman Larson and Members of the Committee,

My name is Nancy Neary and I am the director of the tobacco prevention at Central Valley Health District in Jamestown. I have served in this position for the past twenty years.

Currently under the state smoke-free law, all businesses are treated equally, no business is allowed an exemption. Allowing an exemption for one group dissolves the level playing field which guarantees none are given special treatment. If an exemption is made for cigar bars, more requests for exemptions will follow.

Nothing has changed in the past twenty years regarding the reasons smoke-free laws have been passed in local communities and at the state level.

Smoke-free laws were put in place to protect the right of workers to breathe smoke-free air and to prevent the disease, disability, and death caused by secondhand smoke, a Class A Carcinogen, from which there is no safe exposure level. In as little as five minutes, secondhand smoke causes the aorta to stiffen and platelets to become sticky and potentially form clots. The rate of heart attacks decreases in places that implement smoke-free laws.

The debate over ventilation systems was settled years ago. No amount of ventilation can remove all secondhand smoke and the carcinogens it leaves behind. No manufacturer of ventilation systems will make claims that it will.

North Dakotans overwhelmingly voted in favor of the smoke-free law, passing in every county in the state. This law protects all workers and the public. The law is fair to all businesses. No one small group of niche businesses is favored over another. Keeping the law intact is fair to all.

Please feel free to reach out to me if you have any questions.

Nancy Neary
Central Valley Health District
nneary@nd.gov