

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1256

2001 HOUSE NATURAL RESOURCES

HB 1256

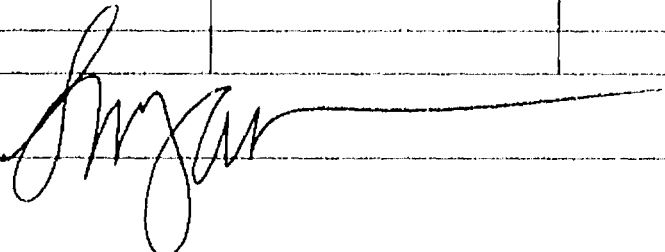
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1256

House Natural Resources Committee

☐ Conference Committee

Hearing Date January 26, 2001

Tape Number	Side A	Side B	Meter #
2	x		1 to end
Committee Clerk Signature 			

Minutes:

Chairman Earl Rennerfeldt, Vice Chair Jon O. Nelson, Rep. Brekke, Rep. DeKrey, Rep. Droydal, Rep. Galvin, Rep. Keiser, Rep. Klein, Rep. Nottestad, Rep. Porter, Rep. Weiler, Rep. Hanson, Rep. Kelsh, Rep. Solberg, Rep. Winrich,

Chairman Rennerfeldt: I will open the hearing on HB 1256. Is there anyone here to testify in favor of this bill?

Rep. Joyce Kingsbury - District 16: (See written testimony). I urge you to give a Do Pass to HB 1256.

Rep. Porter: The common areas in nursing homes, hospital and resorts, that this bill would prohibit smoking in... Are you aware that Medicaid program buys cigarettes for people who are residents in nursing homes, since it is considered their home. That room with the TV is just like

your living room. Do you think the government should be telling people what to do in their living room?

Kingsbury: No I did not know. The common areas in nursing home, I did not realize they were smoking in their rooms.

Rep. Hanson: Do you know any city in ND that has an ordinance that prohibits smoking in a public building?

Kingsbury: I don't know all of them, but it is prohibited in city buildings and they are making those regulations, we went smoke free in all our city vehicles in Grafton.

Rep. Hanson: That is what I am getting at.

Rep. Droydal: I don't smoke. What you reported is true. I agree with every thing you presented. I have one major concern to start with... If I have a building I bought and paid taxes on and I want some of my customers to come in and smoke, I want to make that decision, not big brother make it for me. Therein lies my first problem. How do you respond to someone like me?

Kingsbury: From reports of other owners of business, they would just as soon have that legislation. If you go to section three, non public workspaces. If you have a business you can negotiate a written smoking policy subjective to the State Health Department and your employers would have to agree with that.

Rep. Droydal: I have one other scenario I would like you to respond to. I was on the Board of a Nursing Home and smoking was an issue there. We had elderly people who had smoked all their lives and paying the price for it. In the case of my mother, if I went to tell her no more smoking, I would have gotten spanked at the age I am now. Also the fact that she had one more cigarette wasn't going to make a bit of difference on the rest of her life. Where do we draw the line?

Kingsbury: A good question, hard to answer. It is just slowly coming across. Non smokers are trying to get some areas where they don't have to be subjected to this second hand smoke.

Rep. Solberg: It is my understanding that restaurants and cafes that have a designated smoking area can no longer have that?

Kingsbury: Yes, there would be no smoking in restaurants, it excludes bar areas.

Rep. Solberg: I am a reformed smoker. I hate smoke. I always ask for nonsmoking room and when I go to a buffet we go into the nonsmoking area. We understand that people want to go to have their coffee and want a place to smoke. Wouldn't this impact the revenues of the cafe owners?

Kingsbury: From the written testimony of restaurant owners, they don't dare go out and do this themselves. Some of them who have feared losing customers gained others and have less expensive in cleaning and burn holes. They like it.

Rep. Galvin: This problem seems to have taken care of it self. I sit down with about 10 people, and none of them smoke. Almost anyplace I go, you rarely see anybody smoking anymore. I am of the belief we shouldn't have any more laws than necessary and I think this is a law that is no longer necessary. I think it is taking care of itself.

Kingsbury: The problem is the second hand smoke drift. Even if you have non smoking areas, there is smoke drift that stays in the area for up to two weeks, it is a health problem.

Rep. Galvin: If nobody is smoking, there is no smoke to drift. That is my point.

Vice Chair Nelson: Curious about the legislation. Is this model legislation from other states, if it is, what state does it model?

Kingsbury: This bill is the same bill brought before the 55th Legislative Assembly. We took out a few areas here and we added "the doorways" of buildings. One area where I would like to

propose an amendment. In Section 2, line 17 -- within one hundred feet of any doorway, there I would like to interject, "any primary doorway". It gives the non smokers a door way to walk through that would be smoke free.

Chairman Rennerfeldt: Any questions of the committee?

Rep. Porter: Rep. Kingsbury, have you ever smoked?

Kingsbury: Occasionally, way back.

Gil Herbel - District 16: I am here today in support of HB 1256. I have no problems with people who choose to smoke, I just don't like sharing second hand smoke. With ND receiving approximately 860 million dollars from the Tobacco settlement. We have an obligation to protect those who chose not to smoke. I don't like sitting in a non smoking section of a cafe and having the smoke drift in from the smoking area. In many instances you need to pass through a smoking area to get to a non smoking area. My father smoked and died of cancer. My mother, brother and sister died of cancer and all of them were non smokers. I wonder what the effect of second hand smoke had on my family? With 90% of all smokers beginning to smoke before the age of 19, we as legislators have a chance to set a positive example for the state by passing this legislation. I challenge you to take a bold step here. There are no positives for smoking. Please pass HB 1256.

Chairman Rennerfeldt: Any questions of the committee?

Rep. Porter: I remember the provision in the tobacco settlement that had to do with imposing any future taxes on tobacco products and imposing any stricter laws then were currently in place for tobacco use at the time the settlement was signed.

Herbel: I can't respond to that, I can't recall.

Chairman Rennerfeldt: Any further questions of the committee? Anyone else to testify in favor of this bill?

Elizabeth Hughes - ND Society for Respiratory Care; (See written testimony). In favor of HB 1256.

Susan Kahler - American Lung Association; (See written testimony). In favor of HB 1256.

Rep. Porter: In Mandan we have a bar that is smoke free, when I drive by it I don't see a waiting line outside to get in. I drive by other bars and there are people in there also. If the environment is there to have smoke free environment, I would think they would have to be adding on to the smoke free bars and the others would be going out of business.

Kahler: In regards to the statement of the smoke free bar in Mandan, this bill excludes bars. I have also been in that bar you're discussing and it has been pretty populated.

Rep. Droydal: We pass a lot of laws sometimes and unfortunately no body bothers to enforce them. In the past we have passed a few laws and they seem to be working. The business owners have made smoking areas, and so forth, it is not perfect, but neither are we. I am concerned that this one is overbearing, is it getting to the point that it is so overbearing that it is not enforceable? It will infringe on property and owners rights. Case in point, the youth, we have millions of laws saying it is illegal for them to smoke, yet 40% of them are smoking. Are we going to far?

Kahler: The law before us today is to establish an environment consistent to be smoke free for other people who suffered lung disease. They have a right to be in those environments without harm caused to them.

Rep. Droydal: Whose rights are more important? There's where we have the problem balancing it out.

Kahler: You have to decide what you want to do on this issue. It is my right as a citizen to a environment free of a class A carcinogens.

Rep. Keiser: From a legal standpoint, the state of ND entered as a partner into the Federal lawsuit that declared that smoking was dangerous and harmful to health. We won the law suit and are receiving money as a result. ND has already declared and is receiving compensation for that. So for the state of ND not to address the issue in public areas of second hand smoke and the loss of Sovereign Immunity by the State of ND. What position does that place the state in?

Kahler: I would have to rely on someone else on the law and that settlement.

Chairman Rennerfeldt: Any further questions of the committee?

Linda Kohls - American Cancer Society: We support non smoking legislation in public places. Workers huddled outside office buildings smoking is a common sight in California. That is because by 1990 ordinances banning smoking in the workplace had been adopted by 197 California localities. The idea was to protect non smokers from the second hand smoke of their coworkers. A new study in the American Journal of Public Health says that it wasn't just the non smokers that benefited, research shows it increased smoking cessation among workers. 24.4% quit smoking within 6 months of the tobacco ordinance. We encourage you to protect the non smokers in this state.

Keith Johnson - NDPHA & NDEHA: I just want to address a couple of questions the committee was asking. Rep. Drovdal, your property rights questions are pertinent. I would place them in the context of a building open to the public, they provide wheelchair access, bathrooms, a safe work place. I would submit a provision of a smoke free environment would be on that same caliber and no more and infringement than any of those other issues. Rep. Galvin, you and I sit at the same table and we are among the one group not smoking as much any more. If you take a look at the women's table and the young peoples table, they are smoking more. It is not about the right of a person to smoke, but the right of a person to be protected from that smoke. This bill does a good

job of balancing public against private rights. Rep. Keiser, your point about the state of ND accepting money is well taken, can we say yes it is dangerous and not do something about it?

Rep. Galvin: I agree you shouldn't breathe smoke, would you feel the same way about loud music?

Johnson: Yes, we do have loud music ordinances in virtually every city in ND.

Rep. Galvin: Do they enforce them anyplace?

Johnson: Yes according to my son's friends.

Vice Chair Nelson: You said the state of ND is doing nothing to prevent smoking. Do you stand by that statement?

Johnson: I do not stand by that statement, we have the present law. This amendment we are looking at now is quite a bit cleaner and more enforceable now. It makes it more likely the laws we have now will be enforced. The state of ND has passed some laws and you know the history of enforcement of those laws and you are seeing the results.

Vice Chair Nelson: That is the crux of my question, the laws to prevent teen smoking have not worked. By piling on more laws is that going to change anything? As far as cutting down smoking is this going to be any more helpful?

Johnson: I don't believe this law is intending to cut down on smoking, but to protect the non smoking public from the effects of the smoking public. In some cases we just used some inappropriate measures.

Chairman Rennerfeldt: Any further questions of the committee?

June Herman - American Heart Association: I am here to support HB 1256. (See written testimony).

Vice Chair Nelson: The Rolette County case you cite, wasn't the courthouse in violation of a 1977 law already in existence?

Herman: Yes, that is true.

Chairman Rennerfeldt: Any further questions of the committee? Anyone opposed to HB 1256?

Bill Shalhoob - ND Hospitality Assn.: We do oppose HB 1256. (See written testimony).

Rep. Nottestad: When the prime sponsor gave her presentation, she stated that a number of restaurants want to go smoke free, but can't in fear of retaliation they don't dare go that way, they would rather see a bill of this sort go through. Have any of these people had these discussions with you?

Shalhoob: Not that I am aware of, I am aware that several restaurants have elected to go nonsmoking in response to their customers demands. But no one has come to me and said please be in favor of this bill.

Rep. Kelsy: What would you say would be a solution to the availability of non smoking hotel room's. You say the market determines the percentage of smoking and non smoking. What would your solution be to this problem?

Shalhoob: I would hope would see that you get a non smoking room. If we look at the history of this, we started out 8 years ago with 20% non smoking rooms, and now 70% are non smoking. Demand is creating more. Hotel operators are trying to find the fine line between how many smoking and non smoking rooms to offer. We try to balance the demands.

Chairman Rennerfeldt: Any other questions of the committee? Anyone else opposed to this bill?

Russ Hanson - ND Retail Association and ND Petroleum Marketers: I support Bill Shalhoob's statements on this legislation particularly the 100 foot section on page 3, section 2. My other

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House Natural Resources Committee

Bill/Resolution Number HB 1256

Hearing Date January 26, 2001

concern is section 4, page 5, where the owners are charged with the additional responsibility of enforcing this law. I support a Do No Pass.

Chairman Rennerfeldt: I will close the hearing on HB 1256.

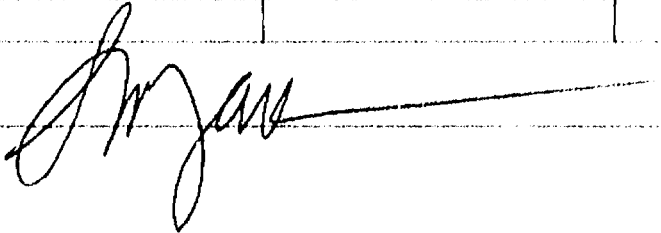
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1256

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 1, 2001

Tape Number	Side A	Side B	Meter #
3	x		4030 to 5193
Committee Clerk Signature 			

Minutes:

Chairman Earl Rennerfeldt, Vice Chair Jon O. Nelson, Rep. Brekke, Rep. DeKrey, Rep. Droydal, Rep. Galvin, Rep. Keiser, Rep. Klein, Rep. Nottestad, Rep. Porter, Rep. Weiler, Rep. Hanson, Rep. Kelsh, Rep. Solberg, Rep. Winrich.

Chairman Rennerfeldt: Let's take the smoking bill, HB 1256. Rep. Kingsbury left some amendments with me. I will pass them out. We insert them on page 3, line 17, after the word any we insert the word primary.

Rep. Porter: I would move the amendment.

Rep. DeKrey: I second.

Chairman Rennerfeldt: Any discussion on amendments. All in favor of the amendment signify by saying Aye. Opposed? Amendment carries.

Rep. Droydal: I move a Do Not Pass as amended.

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House Natural Resources Committee
Bill/Resolution Number HB 1256
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Rep. Weiler: I second.

Chairman Rennerfeldt: Any further discussion on HB 1256?

Rep. Galvin: I kind of have to back peddle a little on this. I got some good arguments from my daughter.

Rep. DeKrey: Trying to defend smoking these days is like trying to defend slavery. You can't look good no matter what you do. You have to say one thing about smokers as a group, they are paying more than their fair share of taxes. When you are paying more than your fair share and we are already limiting them to where they can sit and everything else, I think they have been punished enough. If we want to punish them completely and keep them out of every place of business, then let's repeal all the taxes. As long as they continue to pay more than their fair share I just can't vote for something that punishes them.

Rep. Droydal: I don't want it to be known that I am defending smokers at all, but I also don't like the big brother philosophy, that we have to tell everyone how to live their life. If I walk into a place and the cigarette smoke is too bad, I turn around and walk out, I have that choice. When I do, I may make the comment to the owner that I can't come in here because of the smoke, as a small business man I know how that would have an affect on that owner. I really have a problem telling a person that has invested his life savings in a business in a small town and smokes himself by his own choice and we tell him he can't even smoke in his own building. If he smokes and someone can't take it, and they walk out the door, he's paying the price for it. Somewhere a consumer has to stand up for his own right. I am not supporting a Do No Pass for the rights of the smokers but I just don't like the Big Brother Philosophy.

Rep. Nottestad: I've been committed to support this bill long before I came down here. I was very disappointed in the amendment, I talked to the sponsor this morning and asked her to make

the amendment strong enough to go beyond what she has down, she refused to do so, I am afraid that that portion of the bill is enough to kill the bill. Technically I asked her, what if someone comes walking by her store smoking and stops in front of your business, who is going to enforce it? The amendment should have gone much farther than that. I will still support the bill, but not with the enthusiasm I had before.

Rep. Porter: I am going to support the Do Not Pass. I echo Rep. Droydals' concerns. I don't think that we as a government have the right to walk into someone's place and tell them what they can or cannot do inside their home. If I wanted to sit in my office in a building I paid for, that I work in and pay taxes on and wanted to have a cigarette behind closed doors in my office, I couldn't do it the way this bill is written. I would support every part of this build that includes public owned buildings in making tougher for people to smoke around buildings that are paid for with their tax dollars and that are publicly owned, but the private resident and business restrictions of this bill just don't sit well with me. I am going to vote in favor of the Do Not Pass.

Rep. Weiler: I do feel like the last view that was spoken. I think it is too wide spread of a bill. It covers too many buildings. The way that things are going lately, over the past 20 years. There are fewer and fewer people walking into restaurants asking for smoking. I don't want to call it a problem, but to the people that smoke it is a problem. That problem is taking care of itself. Let's stay out of it.

Chairman Rennerfeldt: I think that is true of motel too. They are having more and more non smoking rooms. Like you say, restaurants, too. It is not the problem it used to be. Any further discussion on HB 1256. Call the roll for a Do Not Pass as Amended.

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House Natural Resources Committee

Bill/Resolution Number HB 1256

Hearing Date February 1, 2001

MOTION FOR A DO NOT PASS AS AMENDED

YES, 8 NO, 6

1 ABSENT AND NOT VOTING

CARRIED BY REP. DROVDAL

10423.0101
Title.0200

Prepared by the Legislative Council staff for
Representative Kingsbury
January 29, 2001

VK
2/2/01

AMENDMENTS TO HB 1256
Page 3, line 17, after "any" insert "primary"

HOUSE NATURAL RESOURCES

02/04/01

Renumber accordingly

Date: 03/01/01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1356

House Natural Resources Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS as amended

Motion Made By Rep. Drovda Seconded By Rep. Weiler

Representatives	Yes	No	Representatives	Yes	No
Earl Rennerfeldt - Chairman	✓		Lyle Hanson		✓
Jon O. Nelson - Vice Chairman	✓		Scot Kelsh		✓
Curtis E. Brekke	✓		Lonnie B. Winrich		✓
Duane DeKrey	✓		Dorvan Solberg		✓
David Drovda	✓				
Pat Galvin		✓			
George Keiser					
Frank Klein	✓				
Darrell D. Nottestad		✓			
Todd Porter	✓				
Dave Weiler	✓				

Total (Yes) 8 No 6

Absent 1

Floor Assignment Rep Drovda

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

REPORT OF STANDING COMMITTEE (410)
February 5, 2001 8:26 a.m.

Module No: HR-20-2321
Carrier: Drovda
Insert LC: 10423.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1256: Natural Resources Committee (Rep. Rennerfeldt, Chairman) recommends
AMENDMENTS AS FOLLOWS and when so amended, recommends **DO NOT PASS**
(8 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). HB 1256 was placed on the Sixth
order on the calendar.

Page 3, line 17, after "any" Insert "primary"

Renumber accordingly

2001 TESTIMONY

HB 1256

NORTH DAKOTA SOCIETY for RESPIRATORY CARE



January 26, 2001

"A BREATH OF FRESH CARE"

Chairman Rennerfeldt and members of the committee,

My name is Elizabeth Hughes and I am a respiratory therapist and educator from Bismarck. I am here on behalf of the North Dakota Society for Respiratory Care to speak in favor of House Bill 1256.

My journey to this podium actually began 21 years ago, as I took care of my first patient, a man dying of smoking related lung disease. I worked the evening shift and was with him for the last three agonizing weeks of his life, while he slowly suffocated. He told me how much he regretted his smoking and wished that he would have quit. It was then that I developed one of my passions, to speak to people about the dangers of tobacco products. Today I stand here before you as a health care professional who sees the devastating effects of tobacco all the time. I am the mother, wife and daughter of persons with asthma so I know what it is like to step into a restaurant and have my son tell me that we can't stay, because his asthma will be a problem, or have my husband start looking for his inhaler as we walk through a smoky hotel lobby.

We are an educated public when it comes to the danger of nicotine addiction and the hazards associated with inhaling the thousands of chemicals and many carcinogens in tobacco smoke. At this point in time, it is accepted knowledge that second hand smoke is harmful, and that the source of this second hand smoke is an addictive, risk taking behavior. Unlike other risk taking behaviors however, an individual who smokes in the presence of others, including unborn children, shares that risk with others. We as a society have the knowlege, you as the lawmakers have the responsibility to act on this knowlege. The fact is, your constituents are harmed as a result of breathing second hand smoke in public places or in their place of work, if it is not smoke free. There is no ventilation system known that can clean the air to federal "acceptable risk" levels for cancer causing agents in the air. To bring the air within quality standards to remove cancer causing agents would require a 1000 fold increase in ventilation and significantly impact the structural capabilities of a building.

Our lungs are highly efficient filters. In fact, the air that we exhale is 98% free of any dust or particulate matter that we have inhaled. The absorbtive surface of the lung is equivalent to a tennis court. For example, a healthy adult who ingests a chip of paint

containing one gram of lead, will absorb only 5% of the lead, while 95% of the same amount of lead inhaled as a fume will be absorbed. the Environmental Protection Agency (1992) has concluded that there is no safe level of exposure for Group A Toxins, the classification given to second hand smoke.

When a person with lung disease is exposed to tobacco smoke it is a physical assault on their lung health. They become aware of a threat to their breathing, manifested often as chest tightness and cough, due to an inflammatory response in their airways. This may progress to shortness of breath. Many of our patients are forced to leave social environments when a smoker lights up. For the person with no lung disease, recent studies have shown that adults exposed to environmental tobacco smoke at home or in the workplace have a 70% increased risk of contracting pneumococcal pneumonia and a 40-60% increased risk for developing asthma. Interestingly, approximately 6-10% of our population has been diagnosed with asthma, and the incidence of asthma is rising at an alarming rate. Compare that to the 24% (approximately) of our society members who smoke (or in the case of ND high school students, 40%) and you have one asthmatic for every two smokers. Remember also that many of today's smokers will develop lung disease that will make it difficult for them to tolerate environmental smoke in the future.

This bill provides you with an opportunity to protect the health of your constituency in public places and in the work place. No one should have to compromise their health in any public place. My colleagues and I urge you to support HB 1256. Thank you.

TESTIMONY ON HB 1256
BILL SHALHOOR
ND HOSPITALITY ASSN.

Mr. Chairman, members of the committee, the North Dakota Hospitality Association does oppose HB 1256. We do this on general principle and because of several inherent flaws in the bill. We believe that smoking and no smoking sections of restaurants and hotels should be determined by the owners and operators of these establishments responding to their local needs and individual market conditions. We believe that the market has already made many of these decisions and will continue to do so in the future. Many restaurants have already elected to become nonsmoking. Most hotels have 70% of their rooms as nonsmoking, their meeting rooms and public areas are nonsmoking, and the nonsmoking sections of restaurants make up more than 50% of the total area of the dining area. All of these changes occurred in the past four years and are due to operators responding to the demands of their customers. Our owners will continue to respond to these demands as they grow in the future.

Specifically, HB 1256 has some other problems. On page three, lines 29 through 31 would make every restaurant completely nonsmoking. If an owner determined that 90% of his business came from customers who smoked and he tried to satisfy their demands, he would be effectively unable to meet this need. This section would certainly effect the financial viability of the business, affecting revenue in a negative way and perhaps causing the restaurant to go out of business. On page four, lines 1 through 12 are not clear. Subsection E refers to establishments "licensed primarily or exclusively to sell alcoholic beverages for consumption on the premises." We assume this is intended to give an exemption for bars like Borrowed Bucks or Sidelines here in Bismarck, those

places that have a Class D or similar liquor license. But what about all of the bars located in hotels or restaurants? They are not primarily licensed to sell liquor by the drink. As a percentage liquor may account for only 10 to 30% of their sales. Yet they must be nonsmoking while their competitors have the option of allowing smoking.

Section F refers to an exemption for private clubs. With all due respect for these membership organizations, how many of us cannot walk into most of the clubs in this state and have a meal or get a drink anytime we want to. And how many people go to these clubs to attend weddings or other functions? Why, then, should they be treated any differently than other food establishments?

Section G attempts to provide a way for restaurants and hotels to put a smoking areas in their businesses. There is currently no certification process or guidelines in place for this to occur. Since these requirements are not in place or even proposed we imagine they will be extremely difficult to impossible to comply with. Certainly it will be expensive. Many of these buildings may have bar or restaurant sections closed off by walls from non smoking areas and they may be vented directly to the outdoors, but they were not designed to prevent 100% leakage of air from one area to another. The primary mechanical design consideration was probably creating sufficient negative pressure to keep heated and cooled air from escaping the building and saving on fuel bills. As I said earlier, it is unlikely most of our establishments would be able to meet these requirements even if they wanted to. We do not even know if a mechanical engineer is able to certify that a room meets this requirement.

Page 5, lines 14 through 26 refers to duties of the proprietor and penalties. As Stated the penalty would apply to the proprietor or the customer. Our

operators have no desire to be policemen for this law. We are in the business of taking care of customers and giving them what they want. It is hard enough to grow your business without being forced to go to a customer on a matter that could prove confrontational.

We would urge a do not pass on HB 1256.

TESTIMONY FOR HOUSE BILL 1256

Prepared by Representative Joyce Kingsbury

Tuesday, January 16, 2001

This is a problem of "second-hand smoke" or environmental tobacco smoke. It is an emotionally charged, personal and public health issue. Non-smokers have many negative comments about being forced to breathe toxin-filled air. Smokers, on the other hand, feel that their rights are infringed upon by non-smokers seeking regulations to inhibit their smoking habits. The fact remains that scientists estimate that every year more than 3,000 deaths from lung cancer in non-smokers are caused by second-hand smoke.

Scientists have identified more than 4,000 different chemical compounds in environmental tobacco smoke (ETS), including nicotine, carbon monoxide, ammonia, formaldehyde, arsenic, dioxins and furans. More than 50 of these substances are known carcinogens. Others are known or suspected mutagens, capable of changing the genetic structure of cells. In fact, the U.S. Environmental Protection Agency has recently declared ETS to be a class-A-carcinogen.

Exposure to ETS for brief periods can produce eye, nose and throat irritation, headaches, dizziness, nausea, coughing and wheezing. ETS can markedly aggravate symptoms in people with allergies or asthma. Long-term exposure has been linked to heart disease.

Second-hand smoke is made up of about 80 percent "side-stream smoke" (the smoke which comes from the lit end of the cigarette and does not pass through the filter) and 20 percent "mainstream smoke" (the smoke which is exhaled by the smoker). Side-stream smoke is actually the more dangerous of the two, as it contains higher concentrations of toxins and cancer causing chemicals. This smoke is not inhaled by the smoker, but inhaled by individuals around the smoker, including small children and babies.

Second-hand smoke, also called passive smoke, dramatically increases the risk of heart disease and heart attacks by increasing a person's risk of developing blood clots. Other dangers from inhaling second-hand smoke include:

- Increased risk of cancer, especially lung cancer.
- Breathing difficulties, including asthma
- Increased strain on the heart during exercise
- Aggravated conditions of chronic heart and lung disease
- Health risks to infants and unborn babies

Children and teenagers are most seriously affected by second-hand smoke since developing tissues are more likely to be damaged.

Federal, state, and local levels of government have already begun to enact laws which attempt to limit exposure to second-hand smoke. As more people become aware of the dangers, they put

pressure on their government officials to enact tougher legislation. Let's not be the last to promote health and wellness for our citizens and children.

The fact remains that most American, smokers and non-smoker alike, are wary of tighter governmental regulations on any issue. But most will agree that we do have a "right" to breathe clean air.

Respectfully submitted by:

A handwritten signature in cursive script, reading "Joyce Kingsbury". The signature is written in dark ink and is positioned above the printed name.

Representative Joyce Kingsbury

Testimony for HB 1256
Natural Resources
Susan Kahler, Executive Director
American Lung Association of North Dakota
223-5613

Good morning Chairman Rennerfeldt and Committee Members. The American Lung Association of North Dakota supports, "statewide smoke-free policies that do not preempt local policy making opportunities". The following are facts about secondhand smoke and workplaces.

- Workers have been awarded unemployment, disability and workers compensation benefits for illness and loss of work due to exposure to secondhand smoke. (i.e. Rolette County Court Case)
- Secondhand smoke causes over 3,000 lung cancer deaths annually, as well as exacerbation of lung disease in nonsmoking adults and respiratory problems in children. The EPA estimates that secondhand smoke causes 37,000 heart disease death in nonsmokers each year.
- Workplaces nationwide are going smoke-free to provide clean indoor air and protect employees from the harmful, life-threatening effects of secondhand smoke. According to a Gallup poll, 95 percent of Americans, smokers and nonsmokers, now believe companies should either ban smoking totally in the workplace or restrict it to separately ventilated areas.
- Tobacco smoke is a major source of pollution in most indoor air environments, particularly office work sites, and has been classified as a Group A carcinogen by the EPA. Tobacco smoke contains over 4,000 chemicals, both gas and particulate matter.
- A smoking employee costs the employer at least 1,000 dollars per year in total excess direct and indirect health care costs, compared with a similar nonsmoking employee.
- Secondhand smoke can make healthy children less than 18 months of age sick; it can cause pneumonia, ear infections, bronchitis, coughing, wheezing and increased mucus production. According to the EPA, secondhand smoke can lead to the buildup of fluid in the middle ear, the most common cause of hospitalization of children for an operation

The American Lung Association of North Dakota encourages the committee and Representatives to take this opportunity to provide safe environments for our citizens to enjoy that are free of Class A carcinogen and allow everyone including those individuals that have lung conditions access to these environments without harmful consequences. The right to be free from harm caused deliberately by another is one of the most fundamental rights.

The other opportunity with a smoke-free environment is that in other states that have enacted these types of laws reinforces the norm of being smoke free and supports comprehensive tobacco programs to reduce the levels of smoking rates. A 1996 review estimated that smoke-free work places reduce the number of smokers by 5% on average, and reduce the use among continuing smokers by 10%.

Thank you.

News



Smoke case settled

Rolette County agrees with woman who
sued over secondhand smoke

By Jill Schramm
Staff Writer

ROLLA -- Rolette County has settled with a St. John woman who had sued over second-hand smoke in the courthouse.

The county will pay \$3,700 in judgment and court costs to Rebecca Leonard under the settlement reached earlier this month.

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county for failing to provide her with a smoke-free work environment when she went to the courthouse to look at records. Her complaint alleged that between 1994 and 1997, the county either refused to adopt a smoking policy as required under a 1977 state law or failed to enforce a policy limiting smoking to a designated area of the courthouse. The county restricted smoking in the courthouse in November 1997.

"This was a serious incident, where a building which is supposed to be smoke-free is not," Leonard said. "We have proven that government must enforce the rules that government makes."

Although the \$3,700 that the county will pay won't cover all her legal costs, Leonard said the lawsuit was worthwhile because she believes it influenced commissioners to designate the courthouse as smoke-free. The case served as a wake-up call to government and businesses that allow smoking in the work place without being sensitive to people who can't tolerate the smoke, she said.

"The fact that the county was found liable at all -- I was pleased," she said.

A Rolette County jury that heard the case in March awarded \$13,000 but assessed Rolette County \$650 for being only 5 percent liable for Leonard's health problems. The jury found Leonard responsible for 45 percent and other factors, such as other places she might have visited that allowed smoking, responsible for 50 percent.

Leonard had claimed she suffered nausea, headaches and fatigue after exposure to the smoke, and she attributes her current asthma in part to the exposure.

She also sued auditor Judith Boppre, Mary Richard, who is employed in the clerk of district court's office, and Carol Gannarelli, employed in the register of deeds office. The judge dismissed that part of the lawsuit on the grounds that there is no legal avenue for making a claim against individuals.

Leonard had asked for damages for medical bills and at least \$50,000 in additional damages, plus attorney fees.

Minot attorney Richard McGee said the county is glad to conclude the case. Although he believes the county would have had a good chance of reversing the damages upon

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appeal, he said the county preferred to put the matter behind it.

Leonard initially had taken the case to federal court. The judge ruled that Leonard's complaint didn't constitute a physical disability under the federal Americans with Disabilities Act and indicated other aspects of the case were matters of state court.

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It is clear second hand smoke is a known public health issue

Business owners and the state of ND should consider carefully if they want to be left holding the bag on this matter as litigation activity grows on behalf of workers and members of the public.

For now, the tobacco industry reps are around, hoping to dissuade action to prevent contaminated air. Their reason is simple: it has been demonstrated that smoke free policies can reduce cigarette consumption, and their bottom line.

According to the July 1999 issue of the American Journal of Public Health, researchers predicted that if all workplaces in the US were smoke-free, cigarette consumption would be reduced by 20.9 billion cigarettes each year.

Clearly, the tobacco industry has a financial interest in preventing smoking restrictions. In 1978 a president of the US tobacco company RJ Reynolds said that if smoke free measures "caused every smoker to smoke just one less cigarette a day, our company would stand to lose \$92 million in sales annually. I assure you that we don't intend to let that happen without a fight".

From a 1992 Philip Morris document: "Total prohibition of smoking in the workplace strongly affects industry volume. Smokers facing these restrictions consume 11% - 15% less than average and quit at a rate that is 84% higher than average. Only 6.4% - 10.3% of smokers face total workplace prohibition but these restrictions are rapidly becoming more common."

From the "Corporate Affairs 1994 Budget Presentation" of Philip Morris: "Currently 47 states have some form of smoking restrictions. Smoking is restricted in private workplaces in 19 states; 28 sites restrict smoking in restaurants. This year alone 18 states and 269 localities passed smoking restrictions. Measures are still pending in 6 states and 165 localities. Smoking restrictions have been estimated, this year alone, to have decreased PM profits by \$40 million".

Will Tobacco Industries be around when litigation grows?

If you followed current smoker lawsuits, you see the industry pointing to the warnings on their packs, contending that everyone knew the health hazards, yet smoked anyway. The fine print of a Philip Morris publication promoting its "Accommodation Program" attempts to give Big Tobacco legal cover against potential liability claims for knowingly exposing nonsmokers to dangerous secondhand smoke: "Editor's Note:The Accommodation Program does not purport to address health effects attributed to smoking".

Business groups may be interested in this July 8, 1994 statement by David Laufer, Philip Morris: "The economic arguments often used by the industry to scare off smoking ban activity were no longer working, if indeed they ever did. These arguments simply had no credibility with the public which isn't surprising when you consider that our dire predictions in the past rarely came true".

We encourage your support for this bill.