

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1408

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Jo Costa Rickford  
Operator's Signature

10/6/83  
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1408

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Yolanda Richardson  
Operator's Signature

10/6/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1408

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date February 3, 2003

Tape Number	Side A	Side B	Meter #
2	X		4475-end
2		X	0-3903
Committee Clerk Signature <i>Elizabeth R. Fier</i>			

Minutes: **Chair Kelser:** Opened hearing on HB 1408

**Rep. Kingsbury:** Supports with written testimony. Offered amendment to strike section 3.

**Rep. Ekstrom:** Does this eliminate the smoking room in the Capitol? Rep. Kingsbury said this is not addressed in the bill.

**Rep. Ruby:** Why are bars excluded? Are the employees not important? Rep. Kingsbury said this is just the first step.

**Rep. Johnson:** In clarification of section 2, Rep. Johnson asked about wedding dances that are held at Fraternal establishments and whether or not smoking would be banned because the renters are usually not members. Rep. Kingsbury did not seem to know.

**Rep. Severson:** Asked about small communities where the restaurant may be the only establishment and whether or not she knew the financial impact on a community. Rep. Kingsbury said this does not apply to bars. Rep. Severson then asked about restaurants that do not sell alcohol and Rep. Kingsbury said it depends on the layout of the building.

Page 2  
House Industry, Business and Labor Committee  
Bill/Resolution Number 1408  
Hearing Date February 3, 2003

**Rep. Kasper:** Asked for definition of "primarily or exclusively" on page 4 (lines 1 and 2). Rep. Kingsbury said it depends on the license. Also noted that financially you can see where they get most of their money. Rep. Kasper then asked if the intent is to exempt on licenses or the percentage of either food or beverage they sell. Rep. Kingsbury said neither was defined in the bill.

**Rep. Kasper** reminded the committee that in ND there are classes of licenses and that is based on percentages of to liquor.

**Rep. Froseth** also mentioned that many licenses are controlled by city ordinances. He then asked if deleting lines 13-19 on page four would allow smoking at extracurricular events at schools. Rep. Kingsbury did note that many schools are used for community events.

**Rep. Severson:** Asked for information on communities who have gone smoke-free. Rep. Kingsbury said she will let others address that issue.

**Rep. Dosch:** Asked what the liabilities to the employer are if someone comes back with medical issues concerning second hand smoke. Rep. Kingsbury did not have any information on that.

**Patti Lewis (ND Hospitality Assoc.):** Testimony from Diane Schatz (Minot) who had to close her diner when Minot went smoke-free. Minot has lost about 4% of their business due to the smoking ordinance. Lewis feels this is a property rights issue. No one is forcing you to go out to eat. And no one is forcing these workers to work in a smoking environment. Lewis mentioned that fraternal organizations have to pay a federal excise tax and are able to have an open door policy. Grey area with the amount of food provisions.

**Rep. Ekstrom** asked if Lewis has seen studies on secondhand smoke and restaurant workers. Lewis has not seen specific numbers. Rep. Ekstrom then asked about leveling the playing field.

Page 3

House Industry, Business and Labor Committee

Bill/Resolution Number 1408

Hearing Date February 3, 2003

If other states' did this, would she support it? Lewis said the bigger issue is the private property rights issue. You have to be fair. If you close the bar off from the restaurant, you will lose that bar crowd to another bar owner.

**Rep. Severson** asked how many other states do this. Lewis answered that she does not know for sure, but does know that CA and NY definitely do.

**Rep. Thorpe** wanted to know who canceled the lease contract of the Schatz diner. Was it the Schatzes or the property owners. Lewis said she is not privy to that information.

**Bill Hixson (representing his sister who owns Peacock Alley):** Restaurant is smoke-free, but you have to walk through the bar to get to the door. The ventilation system is shared. This is a historic building and they can not change the ventilation system. Sidelines is considered a restaurant, but most think of it as a bar.

**Rep. Kasper** asked if the exclusions on page four would apply to Peacock Alley. Hixson does not think so because you have to walk through the bar to get to the restaurant. He reads it as that the Peacock would not be exempt.

**Rep. Keiser** noted that ND has a "restaurant" distinction and that Amoco in Jamestown is classified as a restaurant because they have a few seats.

**Russ Hanson (ND Retailer Assoc. & ND Petroleum Marketers Assoc.):** Noted that in many small towns, the C-stores are gathering places and restaurants.

**Rep. Ekstrom** asked for statistics on how many of the retailers outlaw smoking. He did not have a specific answer. Cannot recall walking into a retail store where by policy it was allowed.

**Rep. Klein** asked the cost of separate air systems. Hanson did not know, but it would be fairly costly. Could get that information for the committee.

Page 4

House Industry, Business and Labor Committee

Bill/Resolution Number 1408

Hearing Date February 3, 2003

**Rep. Keiser** asked if there would be any amendments that would make this bill acceptable.

Hanson said they concur with Lewis that this is a private privacy issue.

**Ken Wangler (ND Dept. of Health):** Neutral with written testimony and amendments

**Rep. Ekstrom:** Asked for stats on restaurant workers and secondhand smoke. Wangler had none.

**Rep. Ruby:** Can a ventilation system adequately move air if there is a provision that a door needs to be placed between smoking and nonsmoking areas? Wangler does not believe an enclosure without a door is better than no door. Rep. Ruby then asked if employees are well enough protected in the restaurants. Wangler noted that is a Workers' Comp issue.

**Rep. Froseth** asked about the present law and "smoking areas" in restaurants. Wangler is not familiar with the law and not sure if there are air barrier or physical barrier requirements.

**Rep. Keiser** asked if the Health Department sees a problem with putting in a door and having only one ventilation system. Wangler said the amendments they propose would take care of that. Two isolated systems would be better.

**Lori Brierley (Dir. of Tobacco Prevention-Minot):** Neutral with written testimony

**Rep. Kasper:** Asked if Minot has polled restaurants concerning increases or decreases in sales since the ban or if restaurants liked the ban. Brierley answered that a poll has not been done yet. Restaurants have called to say they are pleased. She feels the real acid test will be the tax receipts. The first year just ended and the preliminary data looks good.

**Rep. Boe:** Asked if we need to achieve a perfect solution. Brierley said that tobacco prevention as a whole is an incremental issue, so any achievement is helpful.

Page 5

House Industry, Business and Labor Committee

Bill/Resolution Number 1408

Hearing Date February 3, 2003

**Rep. Keiser** asked about the smoking room issue. Wondered why some restaurants decided to put in smoking rooms and other did not. Brierley said there was no formal follow-up on the issue, but most businesses could not afford to put in a smoking room and chose to go smoke-free. Most restaurants had to do a cost/benefit analysis.

**Rep. Klein** asked what the cost of a smoking room is and Brierley said she did not know, but could get the information.

**Chair Keiser** closed hearing on HB 1408

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Lo Costa Richardson  
Operator's Signature

10/16/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1408

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date February 11, 2003

Tape Number	Side A	Side B	Meter #
1		X	400-1930
Committee Clerk Signature <i>Elizabeth R. Fier</i>			

Minutes: **Chair Kelser:** Opened discussion on HB 1408.

**Rep. Ekstrom:** Passed out amendments and described them.

**Rep. Boe:** Asked if this still allows smoking in bars. Rep. Ekstrom said that is still permitted.

Rep. Froseth moved to adopt the amendments. Rep. Ekstrom seconded the motion.

**Rep. Froseth:** Supports the amendment because it makes a better bill, but he will oppose the bill. The state has come a long way with public smoking. This should be left up to the cities.

This is a restriction on public enterprise.

**Rep. Ekstrom:** Supports the bill. It has been proven that workplace smoking brings about liability to restaurant owners and that is coming our way.

**Rep. Ruby:** Understands the argument, but in Minot, the waiters and waitresses were disgusted with the ban. Even when you have a separate room, you still have to bring the food through the door.

Voice vote on the amendment. Amendment carries.

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*Salvatore Ricchard*  
Operator's Signature

*10/16/03*  
Date



Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number 1408

Hearing Date February 11, 2003

**Rep. Boe:** Are we trying to make this 100% acceptable? Would like to see this bill lessen smoke at a tolerable level. Let's make this bill more workable next session.

**Rep. Nottestad:** Supports the bill because he has had restaurant owners in Grand Forks ask for it.

**Rep. Ruby:** Noted that bars and restaurants can always choose to be smoke-free. If there is a demand, they will change.

Rep. Klein moved DNP as amended. 2nd by Rep. Froseth

**Vote:** 9 Yes 5 No 0 Absent and not voting      **Carrier:** Ruby

30330.0201  
Title.

Prepared by the Legislative Council staff for  
Representative Kingsbury  
February 3, 2003

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1408

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

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

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

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

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

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

Page 1, line 21, after "of" insert "public"

Page 3, remove line 25

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

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

Page 4, line 1, replace "f." with "e."

Page 4, line 3, replace "g." with "f." and after the underscored semicolon insert "and"

Page 4, line 4, replace "h." with "g."

Page 4, line 6, remove "the passenger terminal of an international airport or"

Page 4, line 10, remove "; and"

Page 4, remove line 11

Page 4, line 12, remove "facilities during nonschool hours"

Page 4, remove lines 20 through 31

Page 5, remove lines 1 through 9

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

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

Renumber accordingly

Page No. 1

30330.0201

30330.0202  
Title.0300

Prepared by the Legislative Council staff for  
Representative Kingsbury  
February 10, 2003

VR  
2/11/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1408 IBL 2-12-03

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

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

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

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

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

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

Page 1, line 21, after "of" Insert "public"

HOUSE AMENDMENTS TO HB 1408

IBL 2-12-03

Page 3, remove line 25

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

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

HOUSE AMENDMENTS TO HB 1408

IBL 2-12-03

Page 4, line 1, replace "f." with "e."

Page 4, line 2, after the underscored semicolon insert "and"

Page 4, line 3, replace "g." with "f." and remove the underscored semicolon"

Page 4, remove lines 4 through 11

Page 4, line 12, remove "facilities during nonschool hours"

Page 4, remove lines 20 through 31

HOUSE AMENDMENTS TO HB 1408

IBL 2-12-03

Page 5, remove lines 1 through 9

HOUSE AMENDMENTS TO HB 1408

IBL 2-12-03

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

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

Renumber accordingly

Date: 2/11/03  
Roll Call Vote #: |

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1408

House INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DP as amended

Motion Made By Ekstrom Seconded By Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Boe		✓
Vice-Chair Severson		✓	Ekstrom	✓	
Dosch		✓	Thorpe	✓	
Froseth		✓	Zaiser	✓	
Johnson		✓			
Kasper	✓				
Klein		✓			
Nottestad	✓				
Ruby		✓			
Tieman		✓			

Total (Yes) 5 No 9

Absent 0

Floor Assignment Ruby

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

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Yolanda Rickford  
Operator's Signature

10/16/03  
Date

Date: 2/1/03  
Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1408

House INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DNP as amended

Motion Made By Klein Seconded By Froseth

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Boe	✓	
Vice-Chair Severson	✓		Ekstrom		✓
Dosch	✓		Thorpe		✓
Froseth	✓		Zaiser		✓
Johnson	✓				
Kasper		✓			
Klein	✓				
Nottestad		✓			
Ruby	✓				
Tieman	✓				

Total (Yes) 9 No 5

Absent 0

Floor Assignment Ruby

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

REPORT OF STANDING COMMITTEE (410)  
February 12, 2003 8:42 a.m.

Module No: HR-27-2368  
Carrier: Ruby  
Insert LC: 30330.0202 Title: .0300

**REPORT OF STANDING COMMITTEE**

**HB 1408: Industry, Business and Labor Committee (Rep. Kelsner, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO NOT PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1408 was  
placed on the Sixth order on the calendar.

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

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

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

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Page 4, remove lines 4 through 11

Page 4, line 12, remove "facilities during nonschool hours"

Page 4, remove lines 20 through 31

Page 5, remove lines 1 through 9

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

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

Renumber accordingly

2003 TESTIMONY

HB 1408

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Richard Costa  
Operator's Signature

10/6/03  
Date

**Testimony**

**House Bill 1408**

**Industry, Business and Labor Committee**

**February 3, 2003**

**8:00 a.m.**

**First District Health Unit, Minot, ND**

Mister Chairman and members of the committee, my name is Lori Brierley. I am the Director of Tobacco Prevention at the First District Health Unit in Minot. I'm here to provide testimony upon request of Representative Kingsbury regarding Minot Smoke-free Restaurant ordinance.

The Smoke-free Restaurant Ordinance was adopted by the Minot City Council in April 2001, and was confirmed by a vote of the people in July 2001. The ordinance was implemented in January 2002. The Centers For Disease Control recommends reducing or eliminating non-smokers' exposure to environmental tobacco smoke as a tobacco program goal. First District Health Unit supports that goal, and the ongoing efforts to increase the number of non-smokers who are protected from tobacco smoke pollution across the state.

The primary weakness in the Minot Smoke-free Restaurant Ordinance seemed to be terms or requirements that were not clearly defined. In that respect, adding a more descriptive definition of "private clubs" to this bill may help avoid enforcement issues later on.

The most difficult provision to implement was the exception for separately ventilated smoking rooms. Literally hundreds of hours were spent by the City staff, the State Indoor Air Quality program, and First District addressing the complexities of adequate ventilation. The exception created a complicated enforcement issue; yet of the more than 100 restaurants in Minot, only a handful have installed smoking rooms under this exception.

It appears that it is not the intent of this bill to undermine or weaken an existing local ordinance, or to prevent local governments from adopting and enforcing regulations that are more stringent than those in the bill. However, to avoid confusion, that objective should be more explicitly stated. First District Health Unit is prepared to offer suggested changes to clarify this issue. Without enabling language, an ordinance as protective as Minot's may be difficult to enforce.





NORTH DAKOTA  
DEPARTMENT OF HEALTH  
600 East Boulevard Avenue, Dept. 301  
Bismarck, ND 58505-0200  
www.health.state.nd.us

COMMUNITY HEALTH SECTION

MEMO

**TO:** Representative George Kelser, Chair  
House Industry, Business, and Labor Committee

**FROM:** Kathleen Mangskau, Administrator *KM*  
Tobacco Prevention and Control Program

**DATE:** February 3, 2003

**RE:** Information on Impact of Secondhand Smoke on Employees

Attached is additional information requested at the Committee hearing on HB 1408 regarding impact of secondhand smoke on employees.

If you need additional information, please let me know. I can be reached at 328-4517.

cc: Sandra D. Adams, Director, Division of Health Promotion

Health Promotion  
701.328.2367  
701.328.2036 (fax)

Maternal and Child Health  
701.328.2493  
701.328.1412 (fax)

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*Salvatore Riccio*  
Operator's Signature

10/6/03  
Date

## SECONDHAND SMOKE

- Contains more than 43 known carcinogens and 200 known poisons, including ammonia, formaldehyde, hydrogen cyanide, arsenic, carbon monoxide and benzene (*National Cancer Institute 1999*).
- Classified as a Group A carcinogen. There is no safe level of exposure to Group A toxins (*U.S. EPA 1992*).
- Every year, more than 53,000 non-smokers die from exposure to secondhand smoke, making it the third leading cause of preventable death in the U.S. (*National Cancer Institute*.)
- Lung cancer caused by exposure to secondhand smoke is responsible for an estimated 3,000 deaths per year among nonsmokers in the U.S. It is a confirmed cause of nasal sinus cancer in nonsmokers. (*National Cancer Institute, Health Effects of Environmental Tobacco Smoke, December 1999*).
- Exposure to secondhand smoke causes between 35,000 and 62,000 coronary heart disease deaths each year in the United States (*National Cancer Institute 1999*).
- Nonsmokers exposed to secondhand smoke for just 30 minutes experience hardening of the arteries (*Journal of the American Medical Association, 2001*).
- The risk of death from heart attack is 91 percent higher for non-smoking women who are regularly exposed to secondhand smoke, and 58 percent higher for women occasionally exposed to secondhand smoke (*American Heart Association Journal 1997*).
- Just as the science regarding the health risks of SHS has increased, so has public concern about SHS. According to a 2001 Gallup poll, 52% of American adults feel exposure to secondhand smoke is "very harmful," compared with just 36% in 1994. (July 2001 Gallup Poll [www.gallup.com](http://www.gallup.com))

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Operator's Signature

10/16/03  
Date

- Even half an hour of secondhand smoke exposure causes heart damage similar to that of habitual smokers. Nonsmokers' heart arteries showed a reduced ability to dilate, diminishing the ability of the heart to get life-giving blood. In addition, the same half hour of secondhand smoke activates blood platelets, which can initiate the process of atherosclerosis (blockage of the heart's arteries) that leads to a heart attack. These effects explain other research showing that nonsmokers regularly exposed to SHS suffer death or morbidity rates 30 percent higher than that of unexposed nonsmokers. (Otsuka, R., et al. "Acute Effects of Passive Smoking on the Coronary Circulation in Healthy Young Adults," *Journal of the American Medical Association*, 286: 436-441, 2001)

***Employees are at risk.***

- Employees exposed to secondhand smoke on the job are 34 percent more likely to get lung cancer (*U.S. CDC 1996*).
- People routinely exposed to a lot of secondhand smoke, such as restaurant and bar workers, can see their risk of lung cancer triple (*International Journal of Cancer, 2001*).
- At least 4.5 million Americans experience great discomfort from secondhand smoke at work (*U.S. CDC 1996*).
- Restaurant and bar workers have three to six times more exposure to secondhand smoke than other workers (*U.S. CDC 1996*).
- Food service workers, many of whom are under age 18, have a 50 percent higher risk of lung cancer than the general population (*Corsun, Young, Enz. "Should NYC Restaurateurs Lighten Up?" Hotel and Restaurant Administration Quarterly: 1996*).
- Waitresses have the highest death rate of any female occupational group. They have a four times higher rate of death from lung cancer and a two and a half times higher rate of death from heart disease (*M. Siegel, "Smoking and Restaurants: A Guide for Policy-Makers" September 1992*).

- SHS levels of secondhand smoke in restaurants are approximately 1.6 to 2.0 times higher than in office workplaces. Levels in bars are 4 to 6 times higher than in offices. (Siegel, M. "Involuntary Smoking in Restaurant Workplace: A Review of Employee Exposure and Health Effects." *Journal of the American Medical Association*, 270:490-493, 1993)
- Smoking restrictions in workplaces, restaurants, and other public areas are associated with dramatic declines in serum cotinine levels among nonsmokers-an indication that smoke-free environments significantly reduce exposure to SHS. (Centers for Disease Control and Prevention, "Strategies for Reducing Exposure to Environmental Tobacco Smoke, Increasing Tobacco-Use Cessation, and Reducing Initiation in Communities and Health-Care Systems" *Morbidity and Mortality Weekly Report, Recommendations and Reports* 49(RR-12): 1-12, November 10, 2000)
- Smoking causes a great deal of discomfort in the workplace. 59.2% of nonsmoking employees report suffering discomfort, and even 15% of smoking employees report some degree of discomfort from secondhand smoke. (CDC, *Morbidity and Mortality Weekly Report*, May 22, 1992.)

#### **Costs of Secondhand Smoke to Employers**

- Smoking causes inefficiency, errors, eye irritation and lower attentiveness, which costs the employer (*Action on Smoking and Health* 1999).
- Employers who have banned smoking reported a dramatic decrease in maintenance costs (*Action on Smoking and Health* 1999).
- Fire risks and subsequent insurance costs decrease when a business goes smoke-free (*Tobacco-Free Coalition* 1999).
- Workplace smoking increases an employer's potential legal liability. Nonsmoking employees have received settlements in cases based on their exposure to secondhand smoke. For example, a waiter in Sausalito received an \$85,000 settlement in a workers' compensation case. Other

nonsmokers have won unemployment compensation and disability benefits (Sweda, E.L. Summary of Legal Cases Regarding Smoking in the Workplace and Other Places. Boston: Tobacco Control Resource Center, December 1997.)

- Secondhand smoke harms the health and reduces the productivity of nonsmokers, costing employers money. Estimated costs associated with secondhand smoke's effects on nonsmokers range from \$56 to \$490 per smoker per year. (Kristein, "How Much Can Business Expect to Profit From Smoking Cessation?" Preventive Medicine, 1983;12:358-381; Jackson & Holle, "Smoking: Perspectives 1985" Primary Care, 1985; 12:197-216.)
- Sales tax data, consistently demonstrates that ordinances restricting smoking in restaurants have no effect on revenues (*Glantz 1999*). Over 60 cities and counties with smoke-free restaurant ordinances have been studied for economic impact. All studies, based on sales tax data, show that there is no negative economic impact. (*Glantz 1999*).
- Scientific studies in North Carolina, Arizona, California, Colorado, New York, Massachusetts and Texas have all shown that ordinances banning smoking have had no negative economic effect.
- Bars and restaurants would likely see an increase in business if they implement smoke-free policies (*Journal of Public Health Management and Practice 1999*).
- The National Restaurant Association polls show that if a restaurant goes smoke-free, 56 percent would eat at the restaurant more frequently, and only 26 percent would eat there less frequently (*Tobacco-Free Coalition 1999*).

**TESTIMONY  
HB 1408  
REPRESENTATIVE KINGSBURY**

My name is Joyce Kingsbury. I represent District 16, which is Walsh county and part of Pembina county. **HB 1408** addresses the issue of smoking in public places. The main focus of this bill is to make restaurants smoke free. This bill does not tell citizens that they cannot buy tobacco products. It does not say one cannot smoke, but that one cannot smoke where they can harm others.

**Section 1.** Defines places of public access, and areas where the public gathers that would be designated smoke free. It includes publicly owned offices or buildings, owned, leased, or rented by state or political subdivisions or by any agency supported by funds derived from the collection of taxes.

**Section 2.** It does not apply to a place of public access used by social, fraternal or religious organizations when that place is being used by members. It excludes bars and private clubs.

**Section 3.** Addresses non-public workplaces which restrict smoking to designated areas.

**Section 4.** Indicates that violations will be handled and is the responsibility of the owners.

**Section 5.** Indicates a state agency may enforce.

**Section 6.** Deals with a penalty.

I believe people would cooperate and it would be rare that authorities would be contacted.

Most states have some form of smoking restrictions. Over half the states restrict smoking in restaurants. Many communities have enacted laws for smoke-free restaurants, and many are going smoke-free because they recognize their responsibility to their customers and employees. Restaurant employees, many of whom are youth, should not be forced to choose between their health and a job. It reduces the risk of illness that is very costly in lost productivity and legal liabilities.

ND spends \$351 million annually in direct medical expenditures attributable to smoking. Restaurant managers have expressed a desire for a statewide smoking ban which would put all on the same playing field. The public should have the freedom to enjoy a meal and patronize their local businesses without the threat of suffering serious health effects as a result of breathing second hand smoke.

Let's not be the last state to promote health and wellness for our citizens and children. Please give **HB 1408** favorable consideration.

I will try to answer any questions you may have.

**Testimony**

**House Bill 1408**

**House Industry, Business and Labor Committee**

**February 3, 2003**

**8:00 a.m.**

**North Dakota Department of Health**

Chairman Keiser and members of the Committee, my name is Ken Wangler. I am the Indoor Air Quality Program manager for the North Dakota Department of Health. The Department of Health is taking a neutral position on House Bill 1408. I am here to provide information about the health effects and control techniques for secondhand smoke.

The Department of Health is in favor of the concepts presented in House Bill 1408.

According to the Centers for Disease Control and Prevention, secondhand smoke is the third leading cause of preventable death in this country, killing 53,000 nonsmokers in the United States each year. In North Dakota, anywhere between 80 to 150 adults, children and babies die each year from other people's tobacco smoke.

The U.S. Environmental Protection Agency (EPA) and the U.S. Department of Health and Human Services National Toxicology Program report that smoke from the burning end of a cigarette contains more than 4,000 chemicals and 42 carcinogens, including formaldehyde, cyanide, arsenic, carbon monoxide, methane and benzene. The EPA has classified secondhand smoke as a "Group A" carcinogen – a substance known to cause cancer in humans.

The National Cancer Institute cites numerous studies that have documented the health effects associated with exposure to secondhand smoke, including lung cancer, nasal sinus cancer, heart disease and eye and nasal irritation. Children are even more susceptible to environmental pollutants than adults. In children, effects such as acute lower respiratory tract infections, asthma induction and exacerbation of asthma, middle ear infections, and other chronic respiratory symptoms are associated with exposure to secondhand smoke. Secondhand smoke is also linked to low birth weight and sudden infant death syndrome (SIDS).

The Community Preventive Services Guide and the Surgeon General's Report on Reducing Tobacco Use strongly recommend smoking bans and restrictions as an effective means to reduce nonsmokers' exposure to secondhand smoke. An additional benefit of bans and restrictions may be the reduction of smoking prevalence among workers and the general public. Smoking restrictions can increase tobacco cessation activity and reduce daily tobacco consumption.

Support for smoke-free environments is growing in North Dakota. A survey commissioned by the North Dakota Public Education Task Force on Tobacco in the spring of 2002 found that 95 percent of North Dakotans believe smoking should not be allowed in elementary and high school buildings, 82 percent believe smoking should not be allowed in public facilities, 76 percent believe smoking should not be allowed in entertainment arenas, 54 percent believe smoking should not be allowed in private businesses and other non-government work sites, and 53 percent believe smoking should not be allowed in restaurants. The research also revealed that 88 percent of North Dakotans would patronize a restaurant in their community just as often or more often if it went completely smoke free.

The Department of Health's Indoor Air Quality Program provides technical assistance, advice and consultation to citizens, local public health units and local governments to help control indoor pollutants and reduce the negative health effects associated with poor indoor air quality. The Department was very involved with the Minot City Council during implementation of its smoke-free restaurant ordinance last year. Our service to the Council consisted mainly of providing technical guidance to adequately control secondhand smoke in restaurants from migrating to nonsmoking areas. Even with a clear regulation, endorsed not only by the City Council but by a referral vote as well, controversy abounded regarding an acceptable configuration to control migration of secondhand smoke adequately.

With this experience in mind, the Department has concerns with the restaurant smoking area control requirements in Section 10.2.h.2. on page 4, line 8 of the bill. Merely to require venting outdoors is too vague and ambiguous to be enforceable. This requirement can be so loosely interpreted that it has no practical impact on controlling the migration of secondhand smoke to nonsmoking areas.

The Department is therefore recommending that requirements for fully enclosed spaces operated at negative pressure relative to adjoining nonsmoking areas and equipped with separate heating, ventilating and air conditioning systems be added to 10.2.h.2.

This will ensure that all restaurants wishing to allow smoking are able to do so with a clear understanding of the measures necessary to control secondhand smoke effectively.

Also, it is difficult, if not impossible, to measure drift of secondhand smoke as required by number 3 on Page 4 line 9. Rather, it is recommended that a mechanical engineer ensure or certify that the control requirements are properly installed and operating.

The Department also has concerns with enforcement of Section 3 of the bill beginning on page 4 line 20. The concerns stem from the short amount of time allotted for compliance as stated on line 25 of page 4, as well as having a clear understanding of the interpretation of what will be necessary to comply with these requirements and the resources necessary to enforce a requirement with such broad implications as controlling secondhand smoke in all workplaces.



The Department is prepared to offer suggested changes to page 4 lines 8 and 9 to ensure effective control of secondhand smoke in restaurants that allow smoking. Additional evaluation by the Department would be required before we could suggest changes to Section 3 to help ensure our ability to enforce requirements for a smoke-free workplace.

Finally, without clear, effective requirements, local ordinances such as Minot's rule may come under challenge for their level of stringency. Also, while there is language in House Bill 1408 to allow local government to enact stricter controls, the requirements may not be stringent enough to allow local boards of health to protect people in local communities from disease and death caused by exposure to secondhand smoke.

This concludes my testimony on House Bill 1408. I would be happy to answer any questions you may have at this time.

Richard Costa  
Operator's signature

10/16/03  
Date

Prepared by the North Dakota Department of Health

**PROPOSED AMENDMENTS TO HOUSE BILL NO.1408**

Page 4, line 8, before "Vented" insert "Completely enclosed by full partitions or walls from floor to ceiling, including self-closing doors, and is served by a heating ventilation and air conditioning system designed, constructed and operated to exchange air directly and exclusively with the outside atmosphere and is sufficiently"

Page 4, line 8, after "outdoors" insert "to ensure it is under negative pressure relative to any adjacent nonsmoking areas"

Page 4, line 9, remove "prevent the drift of any smoke to any nonsmoking area"

Page 4, line 9 after "to" insert "have met the requirements of item 2 above"