

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2137

Introduced by

Senators O. Larsen, Vedaa

Representatives Becker, D. Ruby

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

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

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

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

7 1. In order to protect the public health and welfare and to recognize the need for
8 individuals to breathe smoke-free air, smoking is prohibited in all enclosed areas of:

9 a. Public places; and

10 b. Places of employment.

11 2. Smoking is prohibited within twenty feet [6.10 meters] of entrances, exits, operable
12 windows, air intakes, and ventilation systems of enclosed areas in which smoking is
13 prohibited. Owners, operators, managers, employers, or other persons who own or
14 control a public place or place of employment may seek to rebut the presumption that
15 twenty feet [6.10 meters] is a reasonable minimum distance by making application to
16 the director of the local health department or district in which the public place or place
17 of employment is located. The presumption will be rebutted if the applicant can show
18 by clear and convincing evidence that, given the unique circumstances presented by
19 the location of entrances, exits, windows that open, ventilation intakes, or other
20 factors, smoke will not infiltrate or reach the entrances, exits, open windows, or
21 ventilation intakes or enter into such public place or place of employment and,
22 therefore, the public health and safety will be adequately protected by a lesser
23 distance.

24 3. The following areas are exempt from subsections 1 and 2:

- 1 a. Private residences, except those residences used as a child care, adult day care,
2 or health care facility subject to licensure by the department of human services.
- 3 b. Outdoor areas of places of employment, except those listed in subsection 2.
- 4 c. Any area that is not commonly accessible to the public and which is part of an
5 owner-operated business having no employee other than the owner-operator.
- 6 d. A bar or a cigar lounge, which has a valid certificate issued by the tax department
7 under this subdivision; has a humidor on the premises; is enclosed by solid walls
8 or windows, a ceiling, and a solid door; and is equipped with a ventilation system
9 by which exhausted air is not recirculated to nonsmoking areas and smoke is not
10 backstreamed into nonsmoking areas. A bar or cigar lounge meeting the
11 requirements of this subdivision may permit the smoking of cigars purchased on
12 the premises, but may not permit the smoking of any other product on the
13 premises.
- 14 (1) A bar or cigar lounge asserting the bar or lounge meets the requirements of
15 this subdivision shall report to the tax department before February first of
16 each year, on a form prescribed by the department, the revenue from the
17 previous calendar year generated from the sale of cigars as a percentage of
18 annual gross income. Upon receipt of a report asserting compliance with the
19 annual gross income requirements of this subdivision, the tax department
20 shall issue an annual certificate. The tax department is not required to
21 confirm the accuracy of information reported but may not issue a certificate
22 absent supporting documentation from the bar or lounge. Information
23 reported to the tax department under this subdivision is subject to the
24 confidentiality provisions of section 57-39.2-23.
- 25 (2) For purposes of this subdivision:
- 26 (a) "Bar" means a bar that generates ten percent or more of the bar's
27 annual gross income from the sale of cigars.
- 28 (b) "Cigar" means an individual roll of tobacco which has a wrapper or
29 cover of whole leaf tobacco; does not contain filler other than tobacco
30 filler; does not contain binder other than tobacco binder; does not
31 contain additives other than water; does not contain a filter, tip, or

1 nontobacco mouthpiece; weighs at least six pounds per thousand
2 count; and is made by hand, except to allow for the use of a manually
3 operated machine to assist in bunching, rolling, and binding.

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

7 4. Smoking as part of a traditional American Indian spiritual or cultural ceremony is not
8 prohibited.

9 5. No person or employer shall discharge, refuse to hire, or in any manner retaliate
10 against an employee, applicant for employment, or other person because that person
11 asserts or exercises any rights afforded by this section or reports or attempts to
12 prosecute a violation of this section. An employee who works in a setting where an
13 employer allows smoking does not waive or surrender any legal rights the employee
14 may have against the employer or any other party. Violations of this subsection shall
15 be a class B misdemeanor.

16 6. This section may not be interpreted or construed to permit smoking where it is
17 otherwise restricted by other applicable laws.

18 7. Notwithstanding any other provision of this chapter, an owner, operator, manager or
19 other person in control of an establishment, facility, or outdoor area may declare that
20 entire establishment, facility, or outdoor area as a nonsmoking place.