

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 that generates ten percent or more of the bar's annual gross income from~~  
7 ~~the sale of cigars or a cigar lounge, which has a valid certificate issued by the tax~~  
8 ~~department under this subdivision; has a humidor on the premises; is enclosed~~  
9 ~~by solid walls or windows, a ceiling, and a solid door; and is equipped with a~~  
10 ~~ventilation system by which exhausted air is not recirculated to nonsmoking~~  
11 ~~areas and smoke is not backstreamed into nonsmoking areas. A bar or cigar~~  
12 ~~lounge meeting the requirements of this subdivision may permit the smoking of~~  
13 ~~cigars and any premium tobacco product purchased on the premises, but may~~  
14 ~~not permit the smoking of any other tobacco product on the premises.~~

15 (1) A bar meeting or cigar lounge asserting the bar or lounge meets the  
16 requirements of this subdivision shall report to the tax department  
17 annually before February first of each year, on a form prescribed by the  
18 department, the revenue from the previous calendar year generated from  
19 the sale of cigars as a percentage of annual gross income. Upon receipt of  
20 a report asserting compliance with the annual gross income requirements of  
21 this subdivision, the tax department shall issue an annual certificate. The tax  
22 department is not required to confirm the accuracy of information reported  
23 but may not issue a certificate absent supporting documentation from the  
24 bar or lounge. Information reported to the tax department under this  
25 subdivision is subject to the confidentiality provisions of section 57-39.2-23.

26 (2) For purposes of this subdivision, ~~the term "cigar":~~

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

29 (b) "Cigar" means an individual roll of tobacco which has a wrapper or  
30 cover ~~consisting only of tobacco, measures a number forty ring size or~~  
31 ~~larger, and is sold without a filter of whole leaf tobacco; does not~~

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

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

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