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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?

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- 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>