

2025 HOUSE FINANCE AND TAXATION

HB 1440

2025 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Room JW327E, State Capitol

HB 1440
1/20/2025

Relating to cigar lounges.

11:07 a.m. Chairman Headland opened the hearing.

Members Present: Chairman Headland, Representatives Anderson, Dockter, Dressler, Foss, Grueneich, Ista, Motschenbacher, Nehring, Olson, Steiner, Toman

Members Absent: Vice Chairman Hagert, Representative Porter

Discussion Topics:

- New cigar lounge
- Licensing
- Qualifications for renewal
- Clean up language
- Limit on licensing
- Prohibitive costs

11:07 a.m. Representative D. Ruby, District 38, ND Legislative Assembly, introduced the bill and submitted testimony #30174.

11:12 a.m. Josette Dupree, Owner, Big Stick Cigar Lounge, testified in favor.

11:18 a.m. Andrew Horn, Coalition Program Director, Tobacco Free ND, testified in opposition and submitted testimony #30047.

11:24 a.m. Ben Hanson, Government Relations Director, American Cancer Society, testified in opposition.

11:26 a.m. Mike Krumwiede, Lobbyist 184, American Heart Association, testified in opposition.

11:27 a.m. Chairman Headland closed the hearing.

11:29 a.m. Representative J. Olson moved to adopt amendment LC #25.0298.01002 .

11:31 a.m. Representative D. Anderson seconded the motion.

11:31 a.m. Voice vote - motion passed.

11:31 a.m. Representative Dockter, moved a Do Pass as Amended.

11:32 a.m. Representative J. Olson seconded the motion.

11:34 a.m. Charles Dendy, Legal Counsel, Office of State Tax Commissioner, stood for questions from committee.

Representatives	Vote
Representative Craig Headland	Y
Representative Jared C. Hagert	AB
Representative Dick Anderson	Y
Representative Jason Dockter	Y
Representative Ty Dressler	Y
Representative Austin Foss	N
Representative Jim Grueneich	Y
Representative Zachary Ista	N
Representative Mike Motschenbacher	Y
Representative Dennis Nehring	Y
Representative Jeremy L. Olson	Y
Representative Todd Porter	AB
Representative Vicky Steiner	Y
Representative Nathan Toman	Y

11:37 a.m. Motion passed 10-2-2.

11:37 a.m. Representative Motschenbacher will carry the bill.

11:42 a.m. Chairman Headland adjourned the meeting.

Janae Pinks, Committee Clerk

January 20, 2025

Amended 1/20/25
1 of 2

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1440

Introduced by

Representatives D. Ruby, Dockter, Headland, Kasper, Marschall, Porter, Rohr, M. Ruby, Wolff
Senators Paulson, Weston, Wobbema

1 A BILL for an Act to amend and reenact subdivision d of subsection 3 of section 23-12-10 of the
2 North Dakota Century Code, relating to cigar lounges.

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

4 **SECTION 1. AMENDMENT.** Subdivision d of subsection 3 of section 23-12-10 of the North
5 Dakota Century Code is amended and reenacted as follows:

6 d. ~~A cigar lounge, which has a valid certificate issued by the tax commissioner~~
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 cigar lounge meeting the requirements~~
11 ~~of this subdivision may permit that permits the smoking of cigars and pipe tobacco~~
12 ~~purchased on the premises; but may does not permit the smoking of any other~~
13 ~~product on the premises.~~

14 (1) An applicant for a certificate to operate a cigar lounge shall report to the tax
15 commissioner, on a form prescribed by the commissioner, that the premises
16 in which the cigar lounge will be operated has a humidor; is enclosed by
17 solid walls or windows, a ceiling, and a solid door; and is equipped with a
18 ventilation system by which exhausted air is not recirculated to nonsmoking
19 areas and smoke is not backstreamed into nonsmoking areas. The
20 commissioner may not require an applicant to report information regarding

income from the sale of cigars in an initial application. Upon receipt of a report asserting compliance with this paragraph, the commissioner shall issue the applicant a certificate to operate a cigar lounge.

(2) A cigar lounge asserting the lounge meets the requirements of this ~~subdivision~~paragraph 1 shall report to the tax commissioner before February first of each year following a full calendar year of operation, on a form prescribed by the commissioner, the revenue from the previous calendar year generated from the sale of cigars as a percentage of annual gross income from receipts or sales. Upon receipt of a report asserting ~~compliance with the annual gross income requirements of this subdivision~~the cigar lounge generates fifteen percent or more of the business's annual gross income from receipts or sales from the sale of cigars and pipe tobacco, the commissioner shall ~~issue~~renew the annual certificate. The commissioner is not required to confirm the accuracy of information reported but may not ~~issue~~renew a certificate absent supporting documentation from the lounge.

(3) Information reported to the commissioner under this subdivision is subject to the confidentiality provisions of section 57-39.2-23.

~~(2)~~(4) For purposes of this subdivision:

(a) "Cigar" means an individual roll of tobacco which has a wrapper or cover of whole leaf tobacco; does not contain filler other than tobacco filler; does not contain binder other than tobacco binder; does not contain additives other than water; does not contain a filter, tip, or nontobacco mouthpiece; weighs at least six pounds per thousand count; and is made by hand, except to allow for the use of a manually operated machine to assist in bunching, rolling, and binding.

(b) "Cigar lounge" means a business dedicated, in whole or in part, to the smoking of cigars ~~which generates fifteen percent or more of the business's annual gross income from the sale of cigars~~and pipe tobacco, which has a valid certificate issued by the tax commissioner.

(c) "Pipe tobacco" has the meaning provided in section 57-36-01.

**REPORT OF STANDING COMMITTEE
HB 1440**

Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS** ([25.0298.01002](#)) and when so amended, recommends **DO PASS** (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). HB 1440 was placed on the Sixth order on the calendar.

25.0298.01001
Title.

Prepared by the Legislative Council
staff for Representative D. Ruby
January 17, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1440

Introduced by

Representatives D. Ruby, Dockter, Headland, Kasper, Marschall, Porter, Rohr, M. Ruby, Wolff

Senators Paulson, Weston, Wobbema

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- 9 ~~by which exhausted air is not recirculated to nonsmoking areas and smoke is not~~
- 10 ~~backstreamed into nonsmoking areas. A cigar lounge meeting the requirements~~
- 11 ~~of this subdivision may permit~~that permits the smoking of cigars and pipe tobacco
- 12 purchased on the premises; but may~~does~~ not permit the smoking of any other
- 13 product on the premises.

- 14 (1) An applicant for a certificate to operate a cigar lounge shall report to the tax
- 15 commissioner, on a form prescribed by the commissioner, that the premises
- 16 in which the cigar lounge will be operated has a humidor; is enclosed by
- 17 solid walls or windows, a ceiling, and a solid door; and is equipped with a
- 18 ventilation system by which exhausted air is not recirculated to nonsmoking
- 19 areas and smoke is not backstreamed into nonsmoking areas. The
- 20 commissioner may not require an applicant to report information regarding

1 income from the sale of cigars in an initial application. Upon receipt of a
2 report asserting compliance with this paragraph, the commissioner shall
3 issue the applicant a certificate to operate a cigar lounge.

4 (2) A cigar lounge asserting the lounge meets the requirements of this-
5 ~~subdivision~~paragraph 1 shall report to the tax commissioner before
6 February first of each year following a full calendar year of operation, on a
7 form prescribed by the commissioner, the revenue from the previous
8 calendar year generated from the sale of cigars as a percentage of annual
9 gross income from receipts or sales. Upon receipt of a report asserting
10 ~~compliance with the annual gross income requirements of this-~~
11 ~~subdivision~~the cigar lounge generates fifteen percent or more of the
12 business's annual gross income from receipts or sales from the sale of
13 cigars, the commissioner shall ~~issue~~renew the annual certificate. The
14 commissioner is not required to confirm the accuracy of information reported
15 but may not ~~issue~~renew a certificate absent supporting documentation from
16 the lounge.

17 (3) Information reported to the commissioner under this subdivision is subject to
18 the confidentiality provisions of section 57-39.2-23.

19 (2)(4) For purposes of this subdivision:

20 (a) "Cigar" means an individual roll of tobacco which has a wrapper or
21 cover of whole leaf tobacco; does not contain filler other than tobacco
22 filler; does not contain binder other than tobacco binder; does not
23 contain additives other than water; does not contain a filter, tip, or
24 nontobacco mouthpiece; weighs at least six pounds per thousand
25 count; and is made by hand, except to allow for the use of a manually
26 operated machine to assist in bunching, rolling, and binding.

27 (b) "Cigar lounge" means a business dedicated, in whole or in part, to the
28 smoking of cigars ~~which generates fifteen percent or more of the~~
29 ~~business's annual gross income from the sale of cigars~~and pipe
30 tobacco, which has a valid certificate issued by the tax commissioner.

31 (c) "Pipe tobacco" has the meaning provided in section 57-36-01.



P.O. Box 3237
Bismarck, ND 58502
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January 20, 2025

11:00 am CST

House Finance and Taxation Committee for the 69th ND Legislative Assembly

Chairman Headland, and members of the House Finance and Taxation Committee, hello, my name is Andrew Horn, and I am the Coalition Program 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 1440, the bill allowing for the ease of requirements for cigar lounges in ND. By eroding the few guardrails put in place during the last Legislative Session, we weaken our indoor smoke free air law even further.

This bill will make it easier for one type of tobacco to be smoked indoors, 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.

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.

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.

We all know about the dangers of smoking to the person using a tobacco product, however there is also a considerable danger to others through secondhand smoke-which can cause cancer, heart disease, respiratory infections, and a myriad of other illnesses. A cigar typically burns longer than a cigarette, which increases the amount of secondhand smoke. Direct smoking and secondhand smoke exposure both contribute to North Dakota's highest cost of all: about 1,000 people who die each year in North Dakota to tobacco-related causes.

We should not be creating tobacco product winners and losers through exemption language policy.

This past year, TFND published a Resolution of Support for preserving our Indoor Smoke Free Air Law. The following organizations have signed it: Bismarck Tobacco Free Coalition, Grand Forks Tobacco Free Coalition, Blue Zones Projects Grand Forks, Legacy High School Stop the Cloud, Langdon Prairie Health, Nelson-Griggs Board of Health, Olive Motherhood Foundation, Walsh County Board of Health, Walsh County Tobacco Free Coalition, Walsh County District Health, Walsh County Substance Use Prevention Coalition, and Western Plains Board of Health.

The 2012 North Dakota Smoke-Free Law was an exceptional public health policy achievement that protected the public from the dangers of secondhand smoke exposure. This bill seeks to change the current exemption to our smoke-free law to create an easier process to open smoking establishments. 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 Headland, and the Committee. It is very appreciated. Please vote Do Not Pass on HB 1440.

May I take any questions?

Andrew Horn
Coalition Program Director,
Tobacco Free North Dakota
Cell: 443-280-0041
andrew@tfnd.org
www.tfnd.org

- 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>

2025 SENATE FINANCE AND TAXATION

HB 1440

2025 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1440
2/17/2025

Relating to cigar lounges.

3:05 p.m. Chairman Weber opened the hearing.

Members present: Chairman Weber, Vice Chairman Rummel, Senator Marcellais, Senator Patten, Senator Powers, Senator Walen

Discussion Topics:

- Denied cigar lounge applications
- Tax department verifying annual gross income of cigar lounges
- Amendments to exclude piped tobacco from HB 1440

3:05 p.m. Representative D. Ruby, District 38, introduced HB 1440 and testified in favor.

3:18 p.m. Andrew Horn, Coalition Program Director, Tobacco Free North Dakota, testified in opposition and submitted testimony #37872, #37873.

3:22 p.m. Mike Krumwiede, Lobbyist, American Heart Association, testified in opposition.

3:24 p.m. Susan Kahler, SAP Coordination, City of Bismarck, testified in opposition and submitted testimony #37851.

3:32 p.m. Ben Hanson, Government Relations Director, ACS CAN, testified in opposition and submitted testimony #37761, #37762, #37763.

3:34 p.m. Shannon Fleischer, Associate Director, Officer of ND Tax Commissioner, testified neutral.

3:37 p.m. Chairman Weber closed the hearing.

3:37 p.m. Senator Walen moved Amendment LC#25.0298.02001.

3:37 p.m. Vice Chairman Rummel seconded the motion.

Senators	Vote
Senator Mark F. Weber	Y
Senator Dean Rummel	Y
Senator Richard Marcellais	Y
Senator Dale Patten	Y
Senator Michelle Powers	N
Senator Chuck Walen	Y

Motion passed 5-1-0

3:42 p.m. Vice Chairman Rummel moved a Do Pass as Amended.

3:43 p.m. Senator Walen seconded the motion.

Senators	Vote
Senator Mark F. Weber	Y
Senator Dean Rummel	Y
Senator Richard Marcellais	N
Senator Dale Patten	N
Senator Michelle Powers	Y
Senator Chuck Walen	Y

Motion passed 4-2-0.

Vice Chairman Rummel will carry the bill.

Additional written testimony:

Megan Schneider, President, Bismarck Tobacco Free Coalition, submitted written testimony in opposition #37742.

Chelsea Ridge, ATOD Section Chair, ND Public Health Association, submitted written testimony in opposition #37797.

Josette Dupree, Big Stick Cigar Lounge, submitted written testimony in favor #37891.

3:46 p.m. Chairman Weber closed the hearing.

Chance Anderson, Committee Clerk

February 17, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

2-17-25
JB 10h2

ENGROSSED HOUSE BILL NO. 1440

Introduced by

Representatives D. Ruby, Dockter, Headland, Kasper, Marschall, Porter, Rohr, M. Ruby, Wolff
Senators Paulson, Weston, Wobbema

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26 operated machine to assist in bunching, rolling, and binding.

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29 ~~business's annual gross income from the sale of cigars~~and pipe
30 tobacco, which has a valid certificate issued by the tax commissioner.

31 ~~(c) "Pipe tobacco" has the meaning provided in section 57-36-01.~~

**REPORT OF STANDING COMMITTEE
ENGROSSED HB 1440**

Finance and Taxation Committee (Sen. Weber, Chairman) recommends **AMENDMENTS** ([25.0298.02001](#)) and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). HB 1440 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

TESTIMONY IN OPPOSITION OF HB 1440

Megan L. Schneider, EdD, RRT, TTS
President, Bismarck Tobacco Free Coalition
Bismarck, ND
701-220-5414
mleighsrrt@gmail.com

Chairman Senator Weber, and members of the Senate Finance and Taxation Committee,

My name is Megan Schneider, and I currently serve as the President of the Bismarck Tobacco-Free Coalition. Additionally, I am a respiratory therapist, educator, and Tobacco Treatment Specialist with nearly a decade of experience in the field of respiratory care.

HB 1440 represents a significant rollback of our state's commitment to maintaining smoke-free environments. One of the most concerning aspects of this bill is the amendment that would allow pipe smoking within designated cigar lounges. This amendment directly undermines North Dakota's existing smoke-free law, which was established to protect public health by reducing exposure to secondhand smoke.

Additionally, this bill removes the requirement that cigar lounges derive at least 15% of their annual gross income from cigar sales. Without this provision, the barriers to establishing a cigar lounge are drastically reduced, making it possible for almost any establishment to claim the designation of a cigar lounge with minimal effort. The proposed change in language from Section d. to Section d.1 explicitly eliminates the requirement for applicants to report income from cigar sales, further eroding accountability.

Moreover, Page 2, Line 11 states that the tax commissioner is not required to confirm the accuracy of the information provided in an application. This lack of verification opens the door for potential abuse of the system and diminishes the integrity of any supposed regulatory oversight.

The definition of a "cigar lounge" on Page 2, Line 24, allows for an establishment to be dedicated, in whole or in part, to smoking cigars. This broad definition enables these businesses to serve alcohol and effectively operate as smoking bars, further exposing patrons and workers

to secondhand smoke. Given that North Dakota currently has only one cigar lounge, it is worth questioning whether there is any legitimate public interest in expanding these establishments at the cost of public health.

The health risks associated with secondhand smoke are well-documented. According to the Centers for Disease Control and Prevention (CDC), secondhand smoke exposure increases the risk of lung cancer, heart disease, and stroke in non-smokers. Employees and patrons of cigar lounges will be disproportionately impacted by the rollback of these protections. Furthermore, the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) has determined that ventilation systems are insufficient in eliminating the dangers posed by secondhand smoke. Simply put, allowing additional smoking venues will result in greater health risks for North Dakotans.

By passing HB 1440, the legislature would be prioritizing the interests of the tobacco industry over the well-being of North Dakota residents. It is essential that we continue to uphold our state's strong smoke-free air laws rather than chipping away at them with exemptions that benefit a select few at the expense of public health.

For these reasons, I urge you to oppose HB 1440 and stand with the Bismarck Tobacco-Free Coalition in advocating for clean air and healthier communities for all North Dakotans. Thank you for your time and consideration.

References:

Centers for Disease Control and Prevention (CDC). (2023). Health Effects of Secondhand Smoke. Retrieved from https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/health_effects/index.htm

American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE). (2022). ASHRAE Position Document on Environmental Tobacco Smoke. Retrieved from <https://www.ashrae.org/about/news/2022/ashrae-releases-updated-position-document-on-environmental-tobacco-smoke>

North Dakota Smoke-Free Law. (2012). North Dakota Century Code Chapter 23-12. Retrieved from <https://www.ndhealth.gov/tobacco>



Brief report

Economic Impact of Smoke-Free Air Laws in North Dakota on Restaurants and Bars

Paul R. Shafer MA^{1,2}, Brett R. Loomis MS¹

¹Center for Health Policy Science and Tobacco Research, RTI International, Research Triangle Park, NC; ²Department of Health Policy and Management, Gillings School of Global Public Health, University of North Carolina at Chapel Hill, Chapel Hill, NC

Corresponding Author: Paul Shafer, MA, Center for Health Policy Science and Tobacco Research, RTI International, 3040 E. Cornwallis Road, Research Triangle Park, NC 27709, USA. Telephone: 919-260-2711; Fax: 919-485-5555; E-mail: pshafer@rti.org

Abstract

Introduction: In late 2012, North Dakota expanded its statewide smoke-free air law to cover all restaurants and bars in the state. Several North Dakota communities also had local ordinances that prohibited smoking in restaurants and bars prior to the statewide law. Previous work found no effect of the initial statewide law or several local laws on restaurant and bar sales.

Methods: Using quarterly county-level employment data from 1990 to 2014, we examined whether the expanded statewide law or pre-existing local laws were associated with significant changes in employment in restaurants and bars in North Dakota. Separate models were estimated for restaurant and bar employment using two methods of controlling for smoke-free air law coverage.

Results: We found no evidence of a significant association between employment in restaurants and bars in North Dakota and the expanded statewide law or pre-existing local laws. Prior employment levels in restaurants and bars and prevailing economic conditions were the main drivers of restaurant and bar employment, not smoke-free air laws.

Conclusions: This study examines the economic impact of smoke-free air laws in North Dakota on restaurant and bar employment following the expansion of the statewide law in late 2012 to cover all restaurants and bars. We find no significant adverse effect of smoke-free air laws on restaurants and bars, consistent with results from previous studies conducted in North Dakota and throughout the United States.

Implications: This study is the first to analyze the economic impact of smoke-free air laws in North Dakota on restaurant and bar employment following the 2012 expansion of the statewide law to cover all restaurants and bars. We find no evidence of a significant adverse effect of smoke-free air laws on restaurants and bars, consistent with results from previous studies conducted in North Dakota and throughout the United States. Prior employment levels and prevailing economic conditions proved to be the main drivers of restaurant and bar employment, not smoke-free air laws.

Introduction

Smoke-free air laws are an effective tool for protecting employees and the public from the dangers of secondhand smoke exposure.¹ Twenty-four states currently have smoke-free air laws that prohibit smoking in workplaces, restaurants, and bars, covering approximately 49% of the US population.² On August 5, 2005, North Dakota enacted a statewide smoke-free air law that prohibited

smoking within public and private non-hospitality workplaces, including, but not limited to, offices, factories, and retail stores, as well as state-regulated, non-tribal gambling facilities. On December 6, 2012, this law was expanded to all restaurants and bars in North Dakota. Several North Dakota communities also had stronger local ordinances that prohibited smoking in restaurants and bars prior to the statewide law.

Opponents frequently claim that the implementation of smoke-free air laws will have an adverse economic impact on the hospitality industry. A recent systematic review and meta-analysis found no evidence of widespread adverse economic effects of these laws on restaurants and bars.³ Similarly, a study examining the economic impact of smoke-free air laws in nine states across the South and Midwest found no significant adverse effects on employment or sales for restaurants and bars.⁴ Studies examining the effect of smoke-free air laws on restaurant and bar revenue in 10 Minnesota cities⁵ and 11 Missouri cities⁶ found no significant negative effects. However, a few peer-reviewed studies have found negative effects. For example, a 2007 study found that a county having a smoke-free air law was associated with reductions in bar employment, particularly in areas with high smoking prevalence.⁷

To our knowledge, no other studies, peer-reviewed or otherwise, have examined the impact of the expanded statewide law in North Dakota. Earlier work found no effect of the initial statewide law in 2005, which did not cover all restaurants or any stand-alone bars, on taxable sales for restaurants and bars or the fraction of overall taxable sales represented by restaurants and bars in the following year.⁸ A study of the 2008 smoking bans in Fargo and West Fargo found no effect of the laws on taxable sales in full-service restaurants or bars in either city.⁹ The objective of this study is to assess whether the expanded statewide law and pre-existing smoke-free air laws are associated with changes in employment for restaurants and bars in North Dakota.

Methods

Employment data for restaurants and bars were obtained from the US Bureau of Labor Statistics' Quarterly Census of Employment and Wages. These data are based on the North American Industrial Classification System (NAICS) code system. We selected codes 7221 (pre-2012) and 722511 (2012 and later) for restaurants (categorized as full-service restaurants) and code 7224 (categorized as drinking establishments) for bars. The change in restaurant industry code selected was a result of changes to the underlying NAICS code structure.¹⁰ All data are reported quarterly, by county, from the first quarter of 1990 through the third quarter of 2014. Data for some quarters and counties were suppressed by the Bureau of Labor Statistics to protect the confidentiality of employers, allowing for the inclusion of 47 out of 53 counties in the analysis. The natural log of employment values was used to provide a percentage change interpretation to model coefficients.

Using lists published by the American Nonsmokers' Rights Foundation,¹¹ we identified 10 communities with local laws that prohibited smoking in restaurants and bars prior to the 2012 statewide law: Bismarck (restaurants, October 11, 2005; bars, April 27, 2011), Fargo (restaurants and bars, July 1, 2008), West Fargo (restaurants and bars, July 1, 2008), Napoleon (restaurants and bars, August 1, 2010), Devils Lake (restaurants and bars, December 20, 2010), Pembina (restaurants and bars, February 1, 2011), Munich (restaurants and bars, June 1, 2012), Cavalier (restaurants and bars, July 1, 2012), Linton (restaurants and bars, September 1, 2012), and Lisbon (restaurants and bars, September 1, 2012). Three communities (Dickinson, Walhalla, and Williston) enacted local laws covering restaurants and bars after the expansion of the statewide law, to protect against future changes in or repeal of the statewide law. The smoke-free air law variables described below do not explicitly account for these new local laws in these three cities, as the statewide law was already in effect.

The presence of a smoke-free air law in a county is coded in two ways. The first coding is an indicator for the presence of any restaurant or bar smoke-free air law, which is equal to 0 in all time periods preceding a local and/or the statewide law and 1 in the time period in which any law took effect and all subsequent time periods. If any community within a county adopts a smoke-free air law in a given quarter, the indicator for the whole county is set to 1 for that quarter. The indicator variable for all counties that did not already have a pre-existing local law was set equal to 1 beginning with the first quarter of 2013, after the statewide smoke-free air law went into effect in December 2012. The second coding is a continuous variable measuring the percentage of each county's population covered by a restaurant or bar (separately) smoke-free air law (scaled from 0 to 100). If any communities within a county adopt a smoke-free air law, this variable measures the percentage of the population accounted for by the smoke-free communities in that county, regardless of when a law went into effect during the quarter. Thus, when the statewide smoke-free air law went into effect in December 2012, the percentage of the population covered in all counties was set equal to 100, beginning with the fourth quarter of 2012. This is a result of a legacy decision to not implement a cutoff date in generating the continuous representation of smoke-free air law coverage from 1990 to the present.

We utilized a dynamic panel data model, which uses variation in smoke-free air law coverage over time and across counties, to estimate the average effect of the statewide smoke-free air law and any pre-existing smoke-free air laws on county-level restaurant and bar employment. Employment in restaurants and bars exhibit a high degree of correlation between past and present values. To account for the dynamic nature of employment, we included the lagged value from the previous quarter as a control variable. To account for general economic activity that may affect restaurants and bars, independent of the implementation of smoke-free air laws, we included non-sector employment (either non-restaurant or non-bar employment, based on outcome) in each model. Finally, we controlled for any remaining unmeasured differences between counties and seasonality in employment by including a set of county and quarter fixed effects.

We used lagged values of non-sector employment as instruments for non-sector employment in the current quarter to better account for unobserved confounders that may simultaneously affect restaurant or bar employment and general economic activity.¹² Failure to account for this endogeneity would lead to bias when using ordinary least squares regression estimates. All models were estimated using the *ivreg2*¹³ command in Stata 13,¹⁴ which estimates a single equation instrumental variables model, with standard errors that are robust to heteroscedasticity and serial correlation (Newey-West kernel adjustment). All models satisfy the weak instrument test (Kleibergen and Paap's rank statistic¹⁵ via the first-stage *F* statistic).

Results

Statewide restaurant employment in North Dakota has trended steadily upward from approximately 7300 employees in the first quarter of 1990 to nearly 13 000 employees by the third quarter of 2014 (Figure 1). Bar employment has grown more slowly, from approximately 2500 employees in the first quarter of 1990 to just under 4000 employees by the third quarter of 2014. Seasonal variation is evident in employment patterns for restaurants but less so for bars.

We found no evidence that employment in restaurants or bars in North Dakota was associated with the expanded 2012 statewide law or the pre-existing local laws (Table 1). Prior quarter restaurant employment was a significant predictor of current quarter restaurant employment, as more than 85% of restaurant employment in a given quarter was explained by the prior level (Model 1: $b = 0.88$, $P < .01$; Model 2: $b = 0.87$, $P < .01$). Improvements in general economic conditions, controlled for by non-restaurant employment, were positively associated with restaurant employment in the smoke-free air law indicator model (Model 1: $b = 0.05$, $P < .05$). Similarly, for bars, prior quarter employment was highly predictive of current employment, at levels just below that of restaurant employment (Model 3: $b = 0.84$, $P < .01$; Model 4: $b = 0.83$, $P < .01$). Improvements in general economic conditions, controlled for by non-bar employment, were positively associated with increases in bar employment (Model 3: $b = 0.12$, $P < .01$; Model 4: $b = 0.12$, $P < .01$).

With the recent shale oil boom and the accompanying influx of oil and gas workers in North Dakota,¹⁶ we estimated an alternate set of models (not shown) controlling specifically for non-sector employment excluding oil and gas employment while including a separate control for oil and gas employment (NAICS code 211: oil and gas extraction). Our results did not qualitatively change, and oil and gas employment was not significantly associated with restaurant or bar employment.

We also conducted alternate analysis (not shown) including year fixed effects and nominal employment counts (rather than logged values), but our results did not qualitatively change. As a sensitivity analysis for the timing of the inclusion of the statewide law in the smoke-free air law indicator, we reestimated Models 1 and 3 (not shown) with the smoke-free law indicator equal to 1 for all counties beginning in the fourth quarter of 2012 instead of the first quarter of 2013, with no qualitative change in our results.

We were also able to obtain 3 years of quarterly taxable sales data for restaurants and bars in 34 of the 53 counties in North Dakota, covering 2 years pre-expansion and 1 year post-expansion (2011 to 2013). A trend analysis of these data (not shown) found no changes in sales activity following the expansion of the statewide law in December 2012.

Discussion

Our results indicate that North Dakota's expanded statewide smoke-free air law and pre-existing local laws were not associated with any adverse economic impacts on restaurant and bar employment. Our analysis used both a broad county-level indicator and a more granular percentage coverage variable to account for smoke-free air laws in

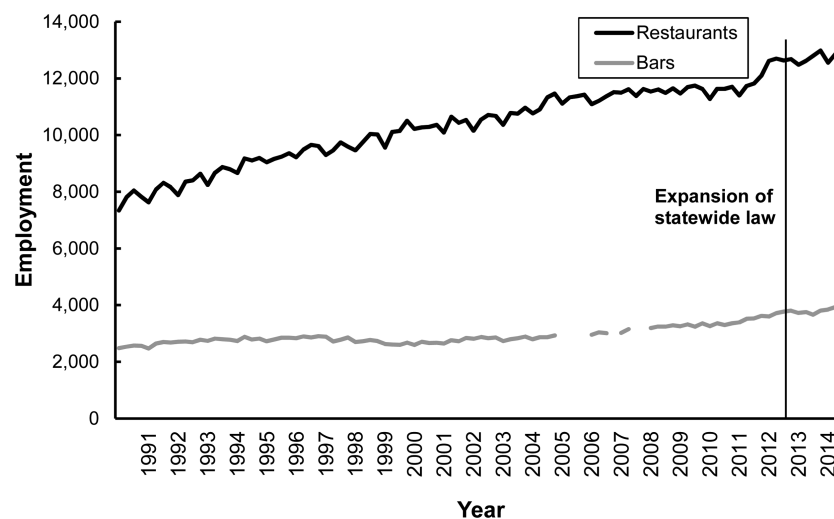


Figure 1. Restaurant and bar employment in North Dakota, Quarterly Census of Employment and Wages, 1990–2014. Note: State bar employment totals were unavailable for 2005, the fourth quarter of 2006, and the third and fourth quarters of 2007 in the Quarterly Census of Employment and Wages.

Table 1. Regression Results for North Dakota Restaurant and Bar Employment on Smoke-Free Air Laws, Quarterly Census of Employment and Wages, 1990–2014

Independent variable	Restaurant employment		Bar employment	
	Any smoke-free air law in county indicator (0/1) (Model 1)	% of county population covered by restaurant smoke-free air law (continuous) (Model 2)	Any smoke-free air law in county indicator (0/1) (Model 3)	% of county population covered by bar smoke-free air law (continuous) (Model 4)
Smoke-free air law variable	0.0003 (0.0098)	−0.0001 (0.0001)	0.02 (0.01)	0.0001 (0.0001)
Prior quarter sector employment	0.88** (0.01)	0.87** (0.01)	0.84** (0.02)	0.83** (0.02)
Non-sector employment	0.05* (0.02)	0.04 (0.03)	0.12** (0.03)	0.12** (0.02)
Number of county-quarter observations	2884	2823	1483	1424
Number of counties included	47	47	47	47

Quarterly and county fixed effects not shown. Prior quarter sector employment and non-sector employment were logged to provide a percentage change interpretation for coefficients. Bold values represent variable of interest.

* $P < .05$; ** $P < .01$.

a dynamic model that accounts for prevailing economic conditions, autocorrelation, seasonality, and time-invariant effects specific to a particular county. Our results persist when controlling for the large spike in population and resulting expansion of economic activity caused by the oil boom in North Dakota. We found that prior employment levels and prevailing economic conditions were the main drivers of restaurant and bar employment, not smoke-free air laws. Additionally, we found no evidence of a negative impact of smoke-free air laws on restaurant and bar sales, which is consistent with earlier findings statewide⁸ and in the Fargo area⁹ prior to the statewide expansion.

Limitations of our study include employment data that covered a relatively short time period after the expansion of the statewide law (seven quarters) and data for some counties and/or quarters were not available. Similarly, we were unable to conduct a more detailed sales analysis because only 3 years of data were available. However, similar studies have been conducted using as little as 1 year of post-law data for either employment or sales and used only descriptive analysis. With the extensive time period of employment data, we are confident in the validity of our approach and robustness of our findings. We also recognize the limitation in the timing difference of the inclusion of the statewide law expansion in each smoke-free air law variable; however, given that our results are qualitatively identical under both coding schemes, we do not believe that it weakens our conclusions.

This study is the first to examine the economic impact of smoke-free air laws in North Dakota on restaurant and bar employment following expansion of the statewide law in late 2012 to cover all restaurants and bars. We find no significant adverse effect of smoke-free air laws on restaurants and bars, consistent with results from previous studies conducted in North Dakota and throughout the United States. The ability to protect workers and the public from secondhand smoke exposure without causing undue harm to businesses is a notable achievement for North Dakota.

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Declaration of Interests

None declared.

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Excluding Cigars from Tobacco Control Laws Risks

Everyone's Long-Term Health

Cigars, cigarillos, and little cigars pose a real danger to the long-term health of all Americans – especially young people – yet government regulation of these products lags behind that of cigarettes and e-cigarettes.

Cigars are often excluded from evidence-based tobacco control measures including not being taxed at the same rate as cigarettes. These exclusions provide opportunity for the tobacco industry to take advantage of and aggressively market their deadly products to communities of color, limited income communities, LGBTQ+ people and youth. For instance, Black people are more than twice as likely to smoke cigars compared to White people.ⁱ Since regular cigar smoking increases the risk of cancers of the lung, oral cavity, larynx, and esophagus,^{ii,iii,iv} it is not surprising that African Americans experience a disproportionate burden of cigar use, exacerbating disparities.^v Tobacco control policies must be comprehensive to reduce tobacco use among all populations.

When it comes to flavored cigars, they are not subject to existing federal flavor prohibitions. Flavored cigarettes, except for menthol, have been largely illegal since 2009. In January 2020, the U.S. Food and Drug Administration (FDA) prohibited the sale of most flavors in cartridge-based e-cigarettes.^{vi} But similar regulations do not exist for flavored cigars, something that has helped the cigar industry stay attractive to younger customers. In April 2022, the FDA released its proposed rules to eliminate all flavors in cigars and menthol cigarettes, but the rules are still not final.

Disparities in Youth Cigar Use

An estimated 500,000 U.S. students currently used cigars in 2022, making cigars the second most popular tobacco product among youth.^{vii} In addition, 3.5 percent or 8.6 million of U.S. adults reported current cigar use in 2021, including 5.1 percent of non-Hispanic Black adults.^{viii} According to the National Youth Tobacco Survey, Black students are significantly more likely to use cigars than their peers. In 2022, 3.3 percent of surveyed Black middle and high school students reported using cigars in the past 30 days, compared to 1.9 percent among all students.^{ix} Cigars are currently the second most popular tobacco product among Black youth, behind e-cigarettes. Male high school students are also more likely than female high school students to currently use cigars (3.5 percent vs 2.1 percent). These disparities are in part due to a higher volume of exposure to tobacco promotion and advertising as well as higher tobacco retail outlet density in communities of color, which is clearly a health equity issue.

Flavored Cigars

Cigars, cigarillos, and little cigars are all sold in many flavors that are appealing to young people, such as menthol, banana, mango, grape, Tropical Twist, Purple Swish and chocolate. These flavored products are commonly sold by tobacco retailers such as convenience stores, but, unlike cigarettes, are not required to be placed behind the countertop.^{x,xi} This practice may make flavored cigars and cigarillos more accessible to young people.

Flavored cigars are very popular among youth and young adults. A 2015 study found that 74 percent of youth who used cigars reported flavoring as a primary reason for using them.^{xii,xiii} In 2021, 44.4 percent of students who currently use cigars reported using flavored cigars in the past 30 days (41.1% for high school students and 59.9% for middle school students.)^{xiv} Importantly, flavored cigars can also serve as a gateway for people who do not use tobacco products to start using tobacco. A 2019 longitudinal study found that, among youth aged 12-17 who began using cigars during the study period, 45.2 percent reported that their first product was flavored.^{xv} This same study found that young adults aged 18-24 who start with flavored cigars are more likely to regularly use cigars compared to those who start with unflavored cigars.

Health Effects

Regular cigar smoking increases the risk of cancers of the lung, oral cavity, larynx, and esophagus.^{xvi} In fact, people who smoke cigars are four to ten times more likely to die from laryngeal, oral or esophageal cancers than people who do not smoke.^{xvii} Heavy cigar smoking also increases the risk of developing lung diseases, such as emphysema and chronic bronchitis.^{xviii} Cigars also produce secondhand smoke that is dangerous for people who do not smoke. Cigars contain nicotine which can induce dependence and harm health.^{xix} And unfortunately, young people who use tobacco products are more likely to become addicted than adults.^{xx}

ACS CAN's Position

Regulation of cigars is part of ACS CAN's comprehensive approach to reducing tobacco use and exposure to secondhand smoke in the United States. ACS CAN makes the following policy recommendations with respect to cigars:

- **Prohibit flavored cigars:** Congress or the FDA should prohibit the use of characterizing flavors, including menthol, in all tobacco products. Many states and localities are moving forward to end the sale of menthol cigarettes, cigars and all other flavored tobacco products and winning legal challenges to laws. The Family Smoking Prevention and Tobacco Control Act does not permit a state or locality from requiring a product standard, such as the removal of a flavor, but the law does preserve the ability for states and localities to regulate the sales of tobacco products. States and localities should pursue policy options including ending the sale of all flavored tobacco products, including cigars and menthol cigarettes, while taking into consideration what is permitted in a specific jurisdiction.
- **Tax cigars at the same rate as cigarettes:** Like all other tobacco products, cigars should be subject to taxation as well as manufacturing and marketing rules to reduce the deadly and costly burden of tobacco use. All cigars, regardless of size, must be taxed at rates equivalent to cigarettes with no cap on tax rates.
- **Include cigars in smoke-free laws:** Secondhand smoke from cigars poses significant health risks to people who smoke and those around them and should be included as part of any smoke-free law. This includes prohibiting cigar use in cigar and tobacco shops, bars identified as "cigar bars," gaming facilities and wherever else smoking is prohibited.
- **Regulate cigars by the FDA:** All types of cigars, regardless of their weight, should be regulated by the FDA and subject to the same requirements as cigarettes, smokeless tobacco and other tobacco products. In addition, FDA should use its enforcement authority against manufacturers selling cigarettes as little cigars.

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Smoke-free Policies: Good for Business

Research has repeatedly shown that there is no risk-free level of exposure to secondhand smoke (SHS). Smoke-free laws and policies provide immediate and long-term health benefits for both people who smoke and those who do not and are good for businesses and workers.

Fact: Smoke-free Laws Do Not Negatively Impact Restaurants

Numerous studies examining the impact of state and local smoke-free restaurant laws have found that these laws do not hurt, and may even benefit, restaurant sales.

- A report by the National Cancer Institute and the World Health Organization concluded that “smoke-free policies do not have negative economic consequences for businesses, including restaurants and bars, with a small positive effect being observed in some cases.”ⁱ
- Studies examining the impact of local or statewide smoke-free laws in Alabama, Arizona, California, Florida, Indiana, Kansas, Kentucky, Massachusetts, Maryland, New York, North Carolina, North Dakota, Mississippi, Missouri, South Carolina, Texas, West Virginia, Washington, and Wisconsin found that smoke-free laws had either positive or no effects on restaurant revenues and other economic indicators, such as the number of employees.^{ii,iii,iv,v,vi,vii,viii,ix,x,xi}
 - For example, one year after a strong smoke-free ordinance went into effect in New York City, the city’s bars and restaurants had an 8.7% increase – approximately \$1.4 million - in tax receipts and the rate of restaurant openings remained unchanged.^{xii}
 - A study of restaurants and bars in 11 Missouri cities found that eight of the cities experienced increases in sales after local smoke-free ordinance implementation and the other three did not experience any decline.^{xiii}
- Smoke-free ordinances may increase restaurant resale values. Smoke-free restaurants in California and Utah had a 16% (or \$15,300) median increase in sale price compared to restaurants in communities where smoking was permitted.^{xiv}
- More people are demanding smoke-free establishments. In Michigan, a poll found that 74% of likely voters support the state’s smoke-free law. In addition, 93% of respondents indicated that they go to restaurants and bars just as or more often than they did before the law took effect.^{xv}

Fact: Smoke-free Laws Do Not Adversely Effect Bar Sales

Numerous studies have also found that smoke-free bar laws do not hurt, and may even benefit, bar sales.

- Research examining the impact of smoke-free ordinances in communities across the country, including in California, Florida, Kentucky, Massachusetts, Maryland, Minnesota, New York, Texas, North Dakota, Alabama, Indiana, Mississippi, Missouri, South Carolina, and West Virginia, shows that these laws had no negative effect on bar sales or service workers’ employment.^{xvi,xvii,xviii,xix,xx,xxi,xxii,xxiii,xxiv,xxv,xxvi,xxvii} In fact, bar businesses are no more sensitive to changes in smoking behavior than other hospitality businesses.^{xxviii}
- A study found that smoke-free ordinances had no significant effect on the resale value and profitability of bars, disputing the false tobacco industry claim of a the 30% decrease in value.^{xxix} These data were supported by studies in nine states, including Texas and Florida, all of which

reported no effect or an increase in bar revenue and employment following passage of smoke-free laws.^{xxx, xxxi, xxxii}

- Public support for smoke-free bars is strong. Surveys conducted in Montana and Nebraska found that a vast majority respondents planned to visit bars, restaurants, bowling allies and other service industries equally or more frequently than they did prior to the implementation of smoke-free laws in their communities.^{xxxiii, xxxiv} A 2010 Ohio poll also found that nearly three in four voters believed that bar employees should be protected from SHS in their workplaces.^{xxxv} By a 2-1 margin voters supported (60%) permanently prohibiting smoking indoors at New Jersey casinos in 2021 and 70% would prefer to visit a smoke-free casino to one that allows smoking.^{xxxvi}

Fact: Smoke-free Laws Do Not Reduce Tourism

Several studies have shown that smoke-free policies do not affect tourism or hotel/motel revenues.^{xxxvii, xxxviii, xxxix, xl, xli}

- One study found that smoke-free laws were associated with increased hotel revenues in four localities: Los Angeles, CA, Mesa, AZ, New York City, NY, and the State of Utah.^{xlii}
- Another study found that the number of tourists that visited California and New York increased after the implementation of these states' smoke-free policies. Additionally, the study looked at seven other localities and observed no significant changes in tourism following the implementation of smoke-free policies.^{xliii}
- Approximately one year after Florida's smoke-free law took effect, researchers found no significant change in the number of visits to recreational sites across the state. Moreover, the number of people employed in the leisure and hospitality industry increased almost 2%.^{xliv}
- One study of Hawaii that controlled for economic trends of the recession and seasonal trends found that the law was associated with positive trends in tourism and tourism employment five years after implementation of their statewide law.^{xlv}

Fact: Smoke-free Laws Save Businesses Money

The costs of secondhand smoke are significant. The 2014 Surgeon General's report estimated the economic value of lost wages, fringe benefits, and workforce associated with premature mortality due to SHS exposure to be \$5.6 billion per year nationwide.^{xlvi}

- Business owners that allow smoking in the workplace increase their costs of doing business. Employers pay increased health, life, and fire insurance premiums, make higher workers' compensation payments, incur higher worker absenteeism, and settle for lower work productivity.^{xlvii, xlviii, xlix, l, li, lii, liii, liv} Other costs associated with permitting smoking in workplaces are increased housekeeping and maintenance costs.
- Smoking employees have significantly higher absenteeism and injury, accident, and disciplinary rates than their nonsmoking colleagues.^{lv, lvi, lvii, lviii, lix, lx}
- Some business owners have been found liable in lawsuits filed by sick employees seeking damages related to smoking in the workplace.^{lxi, lxii, lxiii, lxiv, lxv}
- One year after New York City's smoke-free law took effect, smoking among the city's adults declined 11%, resulting in 140,000 fewer people who smoke, and preventing 45,000 premature deaths. These

declines in smoking and related disease saved over \$500 million annually in tobacco-related health care costs, part of which would have been incurred by local businesses.^{lxvi, lxvii}

ACS CAN's Position on Smoke-free Laws

Research published in leading scientific journals has shown consistently and conclusively that smoke-free laws have no adverse effects on the hospitality industry.^{lxviii, lxix}

The American Cancer Society Cancer Action Network (ACS CAN) advocates for everyone's right to breathe smoke-free air so that no one is forced to choose between their health and a paycheck. ACS CAN urges state and local officials to pass and protect comprehensive smoke-free laws in all workplaces, including restaurants, bars and gaming facilities, to protect the health of all employees and patrons. These laws should include all forms of smoking, including but not limited to cigarettes, electronic cigarettes, cigars, hookah, pipes and cannabis. Policymakers are encouraged to reject legislation that weakens smoke-free laws or removes authority from local governments to pass local smoke-free laws.

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Updated 5.31.24

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- ^{xvii} *McCarthy v. Department of Social and Health Services* (WA, 1988).
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**Opposition Testimony for HB 1440**

Chelsea Ridge
Chair, Alcohol, Tobacco, and Other Drugs Section
North Dakota Public Health Association
Williston, ND

Senator Chairman Weber and members of the Senate Finance and Taxation Committee,

My name is Chelsea Ridge, and I serve as the chairwoman of the North Dakota Public Health Association (NDPHA) Alcohol, Tobacco, and Other Drugs Section. Our vision is a North Dakota where every person can live their healthiest life. I am here today in strong opposition to House Bill 1440.

In November 2012, voters in every county overwhelmingly supported North Dakota's Smoke-Free Law, which prohibits smoking cigarettes, cigars, marijuana, and e-cigarettes in indoor public places. North Dakota has one of the strongest smoke-free laws in the nation, serving as a model for other states striving to protect their residents from the harmful effects of secondhand smoke.

HB 1440 threatens this public health achievement by allowing smoking in designated businesses, exposing neighboring establishments to secondhand smoke. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) states that "the only means of avoiding health effects and eliminating indoor Environmental Tobacco Smoke (ETS) exposure is to ban all smoking activity inside and near buildings." Even with ventilation and air filtration, secondhand smoke cannot be fully contained, posing risks to adjacent businesses, including daycares, healthcare facilities, and residential units.

Government policy should prioritize public health over the preferences of a small group of cigar and pipe smokers. In just two years, legislative exemptions have led to the opening of only one cigar lounge, while another city has taken steps to ban such establishments entirely. This erosion of the indoor smoke-free air law has further opened the door for exemptions allowing hookah bars, vaping lounges, and other indoor smoking venues, ultimately undermining the intent of our state's Smoke-Free Law.

The North Dakota Public Health Association strongly urges you to uphold this essential public health measure. Tobacco remains the leading preventable cause of death in the United States, placing a significant burden on our healthcare system and economy. By maintaining our comprehensive Smoke-Free Law, we can continue to prevent disease, reduce healthcare costs, and protect all North Dakotans equally from the dangers of secondhand smoke.

For these reasons, I urge you to vote **RED** on HB 1440.

Thank you for your time and consideration.

Sincerely,
Chelsea Ridge
Chair, Alcohol, Tobacco, and Other Drugs Section

**Relating to Prohibiting Smoking in
Public Places and Worksites**

Vote For 1

Precincts Fully: 426 / 426

Partially: 0 / 426

☐ Track this Contest

EXPORT



☒ Yes ✓

209,488

66.67%

☐ No

104,730

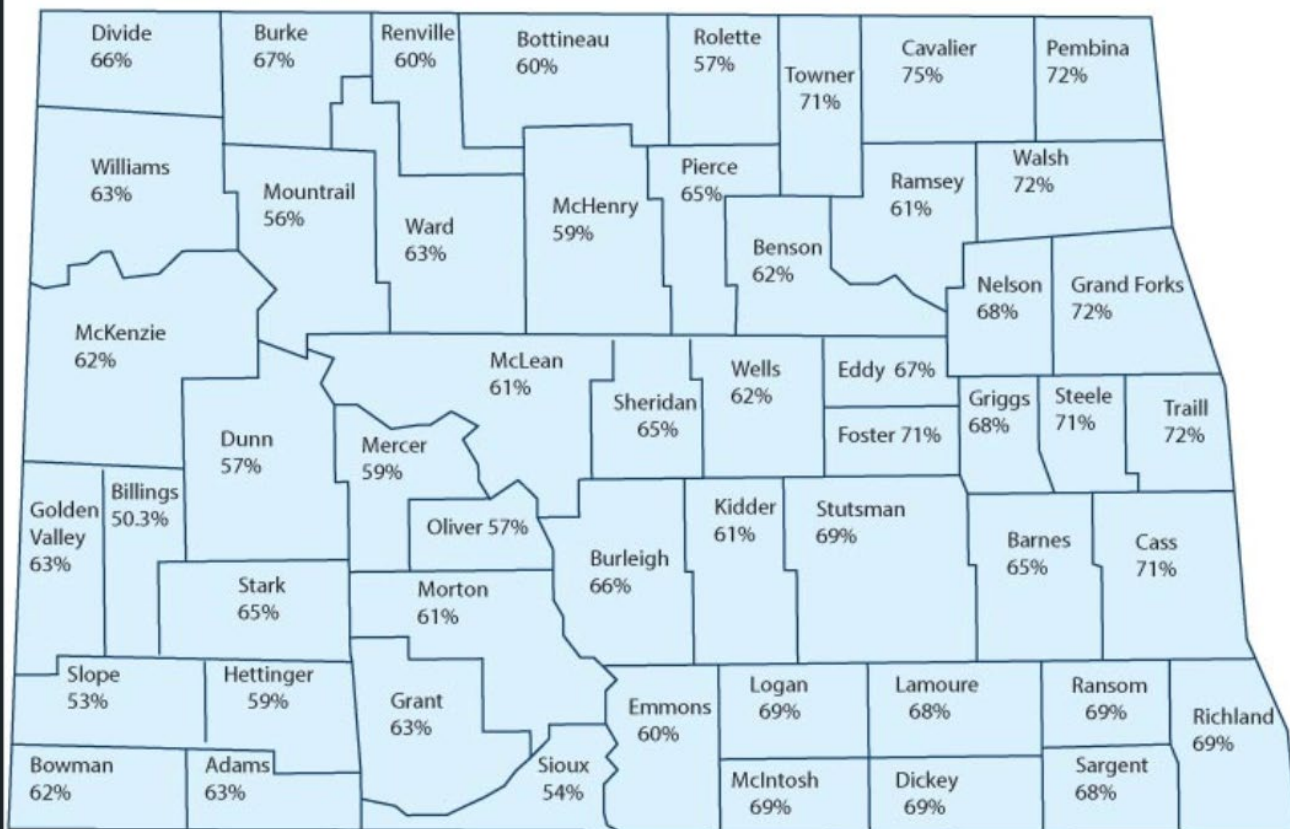
33.33%

TOTAL VOTES

314,218

**ALL OF NORTH DAKOTA'S 53 COUNTIES VOTED
IN SUPPORT TO MAKE NORTH DAKOTA 100%
SMOKE-FREE BACK IN DECEMBER 2012!!**

*Back in 2012, every county in ND supported the Smoke
Free Law by more than 50% of the vote.*





Senate Finance and Taxation Committee

HB 1440

February 17, 2025

Senator Mark Weber, Chair

Summary:

- The City of Bismarck **strongly opposes HB1440** relating to cigar lounges.

Testimony:

Chairman Weber and Members of the Senate Finance and Taxation Committee:

On behalf of the City of Bismarck, I am Susan Kahler, Substance Abuse Prevention Coordinator and today I offer testimony in **strongly oppose** to HB1440.

This bill would create a public health issue with exposure to secondhand smoke from cigars and now pipe smoke. I receive many phones and comments from citizens of Bismarck about how much they appreciate the Smoke Free Ordinance and State Law. As some you may recall the on April 11th, 2011, Bismarck voters laid the issue to rest, deciding for all that everyone, including bar workers and patrons, should be able to breathe clean indoor air and same thing in 2012 statewide.

Under current law, cigars and pipe smoke are considered tobacco products and contribute to serious health issues like lung cancer and heart disease. Research shows that secondhand smoke from all tobacco products is harmful. Measures like ventilation or separating smokers don't fully protect nonsmokers—eliminating smoking indoors is the only effective solution.

HB 1440 would allow cigar and pipe smoking indoors, exposing others to secondhand smoke and creating enforcement challenges in establishments serving alcohol. It weakens regulations by offering limited oversight and no requirement to confirm cigar or pipe income.

The ND Smoke Free Law was passed in 2012 to protect everyone from secondhand smoke exposure and provide equality for all. I, and on the behalf of the City of Bismarck Commission, oppose HB 1440. Thank you. This concludes my testimony. I will be happy to answer any questions you may have.

Respectfully,

Susan Kahler, SAP Coordinator
City of Bismarck
skahler@bismarcknd.gov
701.355.1597





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February 17, 2025

2:30 pm CST

Senate Finance and Taxation Committee for the 69th ND Legislative Assembly

Chairman Weber, and members of the Senate Finance and Taxation Committee, hello, my name is Andrew Horn, and I am the Coalition Program 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 afternoon.

Today I am here to encourage a Do Not Pass on HB 1440, as this bill ease requirements for cigar lounges in ND and allows for pipe tobacco to be smoked indoors. By eroding the few guardrails put in place during the last Legislative Session, we weaken our indoor smoke free air law even further.

Last session, legislation was put forth to allow for cigar smoking indoors and proponents of the bill said it was a limited exception. This bill is another exception trying to be carved into a law that more than 2/3 of North Dakotans voted to put in place. Aside from catering to a small percentage of the population who use cigars and pipe tobacco, about 4.3% of North Dakota adults, this legislation will expose the public, especially employees, to secondhand smoke in the workplace, as there is no way to fully ventilate the smoke out of an indoor space according to American Society for Heating, Refrigeration, and Air-Conditioning Engineers. A link to their full position statement can be found in Resolution of Support also submitted with this testimony.

According to the Dept. of Health and Human Services Tobacco Surveillance Data Table for North Dakota, tobacco use costs 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.

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.

We all know about the dangers of smoking to the person using a tobacco product, however there is also a considerable danger to others through secondhand smoke-which can cause cancer, heart disease, respiratory infections, and a myriad of other illnesses. A cigar typically burns longer than a cigarette, which increases the amount of secondhand smoke. Direct smoking and secondhand smoke exposure both contribute to North Dakota's highest cost of all: about 1,000 people who die each year in North Dakota to tobacco-related causes.

We should not be creating tobacco product winners and losers though exemption language policy.

This past year, TFND published a Resolution of Support for preserving our Indoor Smoke Free Air Law. The following organizations have signed it: *Bismarck Tobacco Free Coalition, Blue Zones Project Grand Forks, Cavalier County Board of Health, Cavalier County Commission, Grand Forks Tobacco Free Coalition, Langdon Prairie Health, Legacy High School Stop the Cloud, Nelson-Griggs Board of Health, Olive Motherhood Foundation, Walsh County Board of Health, Walsh County District Health, Walsh County Substance use Prevention Coalition, Walsh County Tobacco Free Coalition, Western Plains Board of Health*

The 2012 North Dakota Smoke-Free Law was an exceptional public health policy achievement that protected the public from the dangers of secondhand smoke exposure. HB 1440 puts patrons, employees, and anyone in the immediate area at risk of sickness and death from secondhand smoke. Clean air must remain the standard to protect health.

Again, thank you for this time in front of you, Chairman Weber, and the Committee. It is very appreciated. Please vote Do Not Pass on HB 1440.

May I take any questions?

Andrew Horn
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Tobacco Free North Dakota
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- iv. ND Secretary of State Election Results: <https://results.sos.nd.gov/ResultsSW.aspx?text=BQ&type=SW&map=CTY&eid=35>



Resolution of Support for the North Dakota Smoke-Free Law

Adopted by the Tobacco Free North Dakota Board of Directors August 26, 2024

WHEREAS, tobacco use is the foremost preventable cause of premature death in the United States.ⁱ Tobacco is responsible for approximately 480,000 deaths a year and more than 21 million premature deaths in the United States over the past 50 years since the first Surgeon General's report on smoking in 1964ⁱⁱ;

WHEREAS, tobacco smoke contains more than 7,000 chemicals, including hundreds that are toxic and approximately 70 that can cause cancerⁱⁱⁱ. Both the Public Health Service's National Toxicology Program and Environmental Protection Agency have classified secondhand smoke (SHS) as a known carcinogen, concluding that SHS is a health risk to nonsmokers^{iv};

WHEREAS, the Surgeon General concludes there is no risk-free level of exposure to SHS and SHS exposure causes the following health effects: lung cancer, heart disease, as well as stroke in adults, sudden infant death syndrome, low birth weight; middle ear problems, respiratory symptoms, and asthma in children among other medical conditions^v;

WHEREAS, studies have shown that second hand aerosol from electronic nicotine delivery systems (ENDS) contain harmful chemicals, including nicotine; ultrafine particles that can be inhaled deep into the lungs; flavoring such as diacetyl, a chemical linked to a serious lung disease; volatile organic compounds such as benzene, which is found in car exhaust; and heavy metals, such as nickel, tin, and lead^{vi};

WHEREAS, secondhand smoke from marijuana has many of the same chemicals as smoke from tobacco, including those linked to lung cancer^{vii}. Exposure to fine particulate matter can exacerbate health problems, especially for people with respiratory conditions like asthma, bronchitis, or chronic obstructive pulmonary disease (COPD)^{viii};

WHEREAS, cigar smoke, like cigarette smoke, contains toxic and cancer-causing chemicals that are harmful to both smokers and nonsmokers. Cigar smoke is possibly more toxic than cigarette smoke as cigars have a higher level of cancer-causing substances, more tar, and a higher level of toxins^{ix}. The larger size of most cigars and longer smoking time result in higher exposure to many toxic substances including carbon monoxide, hydrocarbons, ammonia, cadmium, and other substances;

WHEREAS, the American Society for Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE), affirms that mechanical solutions like ventilation cannot control for the health hazards of SHS, and the best solution is that all smoking activity inside and near buildings should be eliminated^x;

WHEREAS, ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; smoke-free workplace policies are the only effective way to eliminate SHS exposure in the workplace,

WHEREAS, evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on businesses^{xi};

WHEREAS, multiple studies have linked comprehensive smoke-free workplace and public places legislation to significant declines in hospital admissions for heart attacks in the general population, including North Dakota;

WHEREAS, studies indicate that individuals living in communities with comprehensive smoke-free policies are 22% less likely to be hospitalized for COPD compared to their peers in communities with moderate-weak smoke-free laws or no law^{xii};

WHEREAS, the World Health Organization (WHO) recommends that ENDS not be used indoors, especially in smoke-free environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smoke-free laws^{xiii};

WHEREAS, the annual economic impact of secondhand smoke alone in the United States is approximately \$6.5 billion;

WHEREAS, in 2012 North Dakota voters enacted a comprehensive statewide law prohibiting smoking in enclosed public places, with every county voting in favor of the law, passing by a two to one margin;

WHEREAS, this law is supported by over 80% of North Dakotans^{xiv};

THEREFORE, be it resolved, _____

Supports policies that create smoke-free spaces, so that the citizens of North Dakota may continue to enjoy their economic and health-related benefits.

Name of Organization Representative

Signature of Organization Representative

Date

Sources:

ⁱ Centers for Disease Control & Prevention, Current Cigarette Smoking Among Adults, United States, 2011, 61(44) Morbidity and Mortality Wkly. Rep. 889, 891 (2012), <http://www.cdcgov/mmwr/pdf/wk/mm6144.pdf>

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ⁱⁱⁱ U.S. Department of Health and Human Services. [The Health Consequences of Smoking—50 Years of Progress: A Report of](#)

[the Surgeon General.](#)

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^v U.S. Department of Health and Human Services. (2006) The health consequences of involuntary exposure to tobacco smoke: A report of the Surgeon General, Retrieved from: <https://www.ncbi.nlm.nih.gov/books/NBK44324/>

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^{vii} "Evidence on the Carcinogenicity of Marijuana Smoke." Reproductive and Cancer Hazard Assessment Branch, Office of Environmental Health Hazard Assessment, California Environmental Protection Agency. August 2009

http://oehha.ca.gov/prop65/hazard_ident/pdf_zip/FinalMJsmokeHID.pdf

^{viii} "Air and Health: Particulate Matter." National Environmental Public Health Tracking Network, U. S. Environmental Protection Agency. <http://ephtracking.cdc.gov/showAirHealth.action#ParticulateMatter>

^{ix} National Cancer Institute (1998). *Smoking and Tobacco Control Monograph 9: Cigars: Health Effects and Trends*. Bethesda, MD. <http://www.cancercontrol.cancer.gov/tcrb/monographs/9/index.html>.

^x https://www.ashrae.org/file%20library/about/position%20documents/pd_environmental-tobacco-smoke-2023-06-28.pdf

^{xi} <https://www.cdc.gov/tobacco/secondhandsmoke/policy.html#:~:text=Smokefree%20policies%20do%20not%20negatively%20impact%20businesses&text=Few%20studies%20have%20examined%20the%20economic%20impact%20of%20smokefree%20policies%20on%20casinos.&text=Some%20studies%20suggest%20a%20smokefree%20policy%20produces%20positive%20effects%20for%20local%20businesses>.

^{xii} Hahn EJ, Rayens MK, Adkins S, Simpson N, Frazier S, Mannino DM. Fewer hospitalizations for chronic obstructive pulmonary disease in communities with smoke-free public policies. *Am J Public Health*. Jun 2014;104(6):1059-1065

^{xiii} Conference of the Parties to the WHO Framework Convention on Tobacco Control; Sixth session Moscow, Russian Federation, 13–18 October 2014 http://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_10Rev1-en.pdf?ua=1

^{xiv} North Dakota Public Opinion Survey: Priority Analyses Summary (October 2016) **Center for Public Health Systems Science & Brown School Evaluation Center**; George Warren Brown School of Social Work

25.0298.01000

Sixty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1440

Introduced by

Representatives D. Ruby, Dockter, Headland, Kasper, Marschall, Porter, Rohr, M. Ruby, Wolff
Senators Paulson, Weston, Wobbema

1 A BILL for an Act to amend and reenact subdivision d of subsection 3 of section 23-12-10 of the
2 North Dakota Century Code, relating to cigar lounges.

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

4 **SECTION 1. AMENDMENT.** Subdivision d of subsection 3 of section 23-12-10 of the North
5 Dakota Century Code is amended and reenacted as follows:

6 d. ~~A cigar lounge, which has a valid certificate issued by the tax commissioner~~
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 cigar lounge meeting the requirements~~
11 ~~of this subdivision may permit~~that permits the smoking of cigars purchased on
12 the premises; but ~~may~~does not permit the smoking of any other product on the
13 premises.

14 (1) An applicant for a certificate to operate a cigar lounge shall report to the tax
15 commissioner, on a form prescribed by the commissioner, that the premises
16 in which the cigar lounge will be operated has a humidor; is enclosed by
17 solid walls or windows, a ceiling, and a solid door; and is equipped with a
18 ventilation system by which exhausted air is not recirculated to nonsmoking
19 areas and smoke is not backstreamed into nonsmoking areas. The
20 commissioner may not require an applicant to report information regarding
21 income from the sale of cigars in an initial application. Upon receipt of a
22 report asserting compliance with this paragraph, the commissioner shall
23 issue the applicant a certificate to operate a cigar lounge.

1 (2) A cigar lounge asserting the lounge meets the requirements of this-
2 ~~subdivision~~paragraph 1 shall report to the tax commissioner before
3 February first of each year following a full calendar year of operation, on a
4 form prescribed by the commissioner, the revenue from the previous
5 calendar year generated from the sale of cigars as a percentage of annual
6 gross income from receipts or sales. Upon receipt of a report asserting
7 ~~compliance with the annual gross income requirements of this~~
8 ~~subdivision~~the cigar lounge generates fifteen percent or more of the
9 business's annual gross income from receipts or sales from the sale of
10 cigars, the commissioner shall ~~issue an~~renew the annual certificate. The
11 commissioner is not required to confirm the accuracy of information reported
12 but may not ~~issue~~renew a certificate absent supporting documentation from
13 the lounge.

14 (3) Information reported to the commissioner under this subdivision is subject to
15 the confidentiality provisions of section 57-39.2-23.

16 (2)(4) For purposes of this subdivision:

17 (a) "Cigar" means an individual roll of tobacco which has a wrapper or
18 cover of whole leaf tobacco; does not contain filler other than tobacco
19 filler; does not contain binder other than tobacco binder; does not
20 contain additives other than water; does not contain a filter, tip, or
21 nontobacco mouthpiece; weighs at least six pounds per thousand
22 count; and is made by hand, except to allow for the use of a manually
23 operated machine to assist in bunching, rolling, and binding.

24 (b) "Cigar lounge" means a business dedicated, in whole or in part, to the
25 smoking of cigars ~~which generates fifteen percent or more of the~~
26 ~~business's annual gross income from the sale of cigars, which has a~~
27 valid certificate issued by the tax commissioner.

2025 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1440
3/24/2025

A BILL for an Act to amend and reenact subdivision d of subsection 3 of section 23-12-10 of the North Dakota Century Code, relating to cigar lounges.

8:20 a.m. Chairman Weber opened the hearing.

Members present: Chairman Weber, Vice Chairman Rummel, Senator Marcellais, Senator Patten, Senator Powers, Senator Walen

Discussion Topics:

- Conference committee assignment

8:20 a.m. Chairman Weber assigned Senator Marcellais, Senator Powers, and Vice Chairman Rummel to conference committee regarding piped tobacco language.

8:20 a.m. Chairman Weber closed the hearing.

Chance Anderson, Committee Clerk

2025 CONFERENCE COMMITTEE

HB 1440

2025 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Room JW327E, State Capitol

HB 1440
4/1/2025
Conference Committee

Relating to cigar lounges.

5:30 p.m. Chairman Dockter called the meeting to order.

Members Present: Chairman Dockter, Representatives Motschenbacher, Dressler; Chairman Powers, Senators Marcellais, Rummel

Discussion Topics:

- Expansion of Tabacco products used
- Revenue from cigar sales vs pipe Tabacco
- Cigar vs Pipe Tabacco

5:34 p.m. Chairman Dockter explained the original intent was to include both the sales of cigars and pipe Tabacco.

5:41 p.m. Charles Dendy, General Counsel, ND Office of State Tax Commissioner, stood for questions.

5:44 p.m. Chairman Dockter suggested the committee wait to act for an updated two-thousand version of the bill to work with for a future conference committee.

5:44 p.m. Chairman Dockter adjourned the meeting.

Janae Pinks, Committee Clerk

2025 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Room JW327E, State Capitol

HB 1440
4/14/2025
Conference Committee

Relating to cigar lounges.

3:01 p.m. Chairman Dockter called the meeting to order.

Members Present: Chairman Dockter, Representatives Motschenbacher, Dressler; Madam Chair Powers, Senators Marcellais, Rummel

Discussion Topics:

- Pipe Tobacco
- Technical Changes

3:02 p.m. Chairman Dockter discussed amendment LC #25.0298.02002, testimony #44975.

3:02 p.m. Representative Motschenbacher moved to adopt amendment LC#25.0298.02002 In Place of Senate amendment LC#25.0298.02001.

3:02 p.m. Madam Chair Powers seconded the motion.

3:03 p.m. Motion passed 6-0-0

3:04 p.m. Representative Motschenbacher will carry the bill.

3:04 p.m. Madam Chair Powers will carry the bill.

3:05 p.m. Chairman Dockter adjourned the meeting.

Janae Pinks, Committee Clerk

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

VC 5/14/25
1 of 3

ENGROSSED HOUSE BILL NO. 1440

Introduced by

Representatives D. Ruby, Dockter, Headland, Kasper, Marschall, Porter, Rohr, M. Ruby, Wolff
Senators Paulson, Weston, Wobbema

In place of the amendments (25.0298.02001) adopted by the Senate, Engrossed House Bill No. 1440 is amended by amendment (25.0298.02002) as follows:

- 1 A BILL for an Act to amend and reenact subdivision d of subsection 3 of section 23-12-10 of the
2 North Dakota Century Code, relating to cigar lounges.

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

4 **SECTION 1. AMENDMENT.** Subdivision d of subsection 3 of section 23-12-10 of the North
5 Dakota Century Code is amended and reenacted as follows:

6 d. ~~A cigar lounge, which has a valid certificate issued by the tax commissioner~~
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 cigar lounge meeting the requirements~~
11 ~~of this subdivision may permit~~that permits the smoking of cigars and pipe tobacco
12 purchased on the premises, but may~~does~~ not permit the smoking of any other
13 product on the premises.

14 (1) An applicant for a certificate to operate a cigar lounge shall report to the tax
15 commissioner, on a form prescribed by the commissioner, that the premises
16 in which the cigar lounge will be operated has a humidor; is enclosed by
17 solid walls or windows, a ceiling, and a solid door; and is equipped with a
18 ventilation system by which exhausted air is not recirculated to nonsmoking
19 areas and smoke is not backstreamed into nonsmoking areas. The
20 commissioner may not require an applicant to report information regarding

1 income from the sale of cigars and pipe tobacco in an initial application.
2 Upon receipt of a report asserting compliance with this paragraph, the
3 commissioner shall issue the applicant a certificate to operate a cigar
4 lounge.

5 (2) A cigar lounge asserting the lounge meets the requirements of this
6 ~~subdivision~~ paragraph 1 shall report to the tax commissioner before
7 February first of each year following a full calendar year of operation, on a
8 form prescribed by the commissioner, the revenue from the previous
9 calendar year generated from the sale of cigars and pipe tobacco as a
10 percentage of annual gross income from receipts or sales. Upon receipt of a
11 report asserting ~~compliance with the annual gross income requirements of~~
12 ~~this subdivision~~ the cigar lounge generates fifteen percent or more of the
13 business's annual gross income from receipts or sales from the sale of
14 cigars and pipe tobacco, the commissioner shall ~~issue~~ renew the annual
15 certificate. The commissioner is not required to confirm the accuracy of
16 information reported but may not ~~issue~~ renew a certificate absent supporting
17 documentation from the lounge.

18 (3) Information reported to the commissioner under this subdivision is subject to
19 the confidentiality provisions of section 57-39.2-23.

20 (2)(4) For purposes of this subdivision:

21 (a) "Cigar" means an individual roll of tobacco which has a wrapper or
22 cover of whole leaf tobacco; does not contain filler other than tobacco
23 filler; does not contain binder other than tobacco binder; does not
24 contain additives other than water; does not contain a filter, tip, or
25 nontobacco mouthpiece; weighs at least six pounds per thousand
26 count; and is made by hand, except to allow for the use of a manually
27 operated machine to assist in bunching, rolling, and binding.

28 (b) "Cigar lounge" means a business dedicated, in whole or in part, to the
29 smoking of cigars ~~which generates fifteen percent or more of the~~
30 ~~business's annual gross income from the sale of cigars and pipe~~
31 tobacco, which has a valid certificate issued by the tax commissioner.

- 1 (c) "Pipe tobacco" has the meaning provided in section 57-36-01.

HB 1440 041425 1503 PM Roll Call Vote

Final Recommendation

HB 1440

Date Submitted: April 14, 2025, 3:03 p.m.

Recommendation: In Place Of

Amendment LC #: 25.0298.02002

Engrossed LC #: N/A

Description:

Motioned By: Motschenbacher, Mike

Seconded By: Powers, Michelle

House Carrier: Motschenbacher, Mike

Senate Carrier: Powers, Michelle

Emergency Clause: None

Vote Results: 6 - 0 - 0

Rep. Dockter, Jason	Yea
Rep. Motschenbacher, Mike	Yea
Rep. Dressler, Ty	Yea
Sen. Powers, Michelle	Yea
Sen. Marcellais, Richard	Yea
Sen. Rummel, Dean	Yea

**REPORT OF CONFERENCE COMMITTEE
ENGROSSED HB 1440**

Your conference committee (Sens. Powers, Marcellais, Rummel and Reps. Dockter, Motschenbacher, Dressler) recommends that in place of amendment [25.0298.02001](#) adopted by the Senate, Engrossed HB 1440 is amended by amendment [25.0298.02002](#).

Engrossed HB 1440 was placed on the Seventh order of business on the calendar.

25.0298.02002
Title.

Prepared by the Legislative Council
staff for Representative Dockter
April 1, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1440

Introduced by

Representatives D. Ruby, Dockter, Headland, Kasper, Marschall, Porter, Rohr, M. Ruby, Wolff
Senators Paulson, Weston, Wobbema

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- 9 ~~by which exhausted air is not recirculated to nonsmoking areas and smoke is not~~
- 10 ~~backstreamed into nonsmoking areas. A cigar lounge meeting the requirements~~
- 11 ~~of this subdivision may permit~~that permits the smoking of cigars and pipe tobacco
- 12 purchased on the premises, but may~~does~~ not permit the smoking of any other
- 13 product on the premises.

- 14 (1) An applicant for a certificate to operate a cigar lounge shall report to the tax
- 15 commissioner, on a form prescribed by the commissioner, that the premises
- 16 in which the cigar lounge will be operated has a humidor; is enclosed by
- 17 solid walls or windows, a ceiling, and a solid door; and is equipped with a
- 18 ventilation system by which exhausted air is not recirculated to nonsmoking
- 19 areas and smoke is not backstreamed into nonsmoking areas. The
- 20 commissioner may not require an applicant to report information regarding

1 income from the sale of cigars and pipe tobacco in an initial application.

2 Upon receipt of a report asserting compliance with this paragraph, the
3 commissioner shall issue the applicant a certificate to operate a cigar
4 lounge.

5 (2) A cigar lounge asserting the lounge meets the requirements of this-
6 ~~subdivision~~paragraph 1 shall report to the tax commissioner before
7 February first of each year following a full calendar year of operation, on a
8 form prescribed by the commissioner, the revenue from the previous
9 calendar year generated from the sale of cigars and pipe tobacco as a
10 percentage of annual gross income from receipts or sales. Upon receipt of a
11 report asserting ~~compliance with the annual gross income requirements of~~
12 ~~this subdivision~~the cigar lounge generates fifteen percent or more of the
13 business's annual gross income from receipts or sales from the sale of
14 cigars and pipe tobacco, the commissioner shall ~~issue~~renew the annual
15 certificate. The commissioner is not required to confirm the accuracy of
16 information reported but may not ~~issue~~renew a certificate absent supporting
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25 nontobacco mouthpiece; weighs at least six pounds per thousand
26 count; and is made by hand, except to allow for the use of a manually
27 operated machine to assist in bunching, rolling, and binding.

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29 smoking of cigars ~~which generates fifteen percent or more of the~~
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31 tobacco, which has a valid certificate issued by the tax commissioner.

- 1 (c) "Pipe tobacco" has the meaning provided in section 57-36-01.