

HOUSE BILL NO. 1229

Introduced by

Representatives D. Ruby, Christensen, Headland, Kasper, Nathe, Porter, Rios, M. Ruby
Senators Larsen, Meyer, Vedaa

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

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

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

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

- 7 1. In order to protect the public health and welfare and to recognize the need for
8 individuals to breathe smoke-free air, smoking is prohibited in all enclosed areas of:
9 a. Public places; and
10 b. Places of employment.
- 11 2. Smoking is prohibited within twenty feet [6.10 meters] of entrances, exits, operable
12 windows, air intakes, and ventilation systems of enclosed areas in which smoking is
13 prohibited. Owners, operators, managers, employers, or other persons who own or
14 control a public place or place of employment may seek to rebut the presumption that
15 twenty feet [6.10 meters] is a reasonable minimum distance by making application to
16 the director of the local health department or district in which the public place or place
17 of employment is located. The presumption will be rebutted if the applicant can show
18 by clear and convincing evidence that, given the unique circumstances presented by
19 the location of entrances, exits, windows that open, ventilation intakes, or other
20 factors, smoke will not infiltrate or reach the entrances, exits, open windows, or
21 ventilation intakes or enter into such public place or place of employment and,
22 therefore, the public health and safety will be adequately protected by a lesser
23 distance.
- 24 3. The following areas are exempt from subsections 1 and 2:

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

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

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

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

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

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

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