

SENATE BILL NO. 2137

Introduced by

Senators O. Larsen, Vedaa

Representatives Becker, D. Ruby

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

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

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

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

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

9 a. Public places; and

10 b. Places of employment.

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

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

- 1 a. Private residences, except those residences used as a child care, adult day care,
2 or health care facility subject to licensure by the department of human services.
- 3 b. Outdoor areas of places of employment, except those listed in subsection 2.
- 4 c. Any area that is not commonly accessible to the public and which is part of an
5 owner-operated business having no employee other than the owner-operator.
- 6 d. A bar that generates ten percent or more of the bar's annual gross income from
7 the sale of cigars; has a humidor on the premises; is enclosed by solid walls or
8 windows, a ceiling, and a solid door; and is equipped with a ventilation system by
9 which exhausted air is not recirculated to nonsmoking areas and smoke is not
10 backstreamed into nonsmoking areas. A bar meeting the requirements of this
11 subdivision may permit the smoking of cigars and any premium tobacco product
12 purchased on the premises, but may not permit the smoking of any other tobacco
13 product on the premises. A bar meeting the requirements of this subdivision shall
14 report to the tax department annually, on a form prescribed by the department,
15 the revenue generated from the sale of cigars as a percentage of annual gross
16 income. For purposes of this subdivision, the term "cigar" means an individual roll
17 of tobacco which has a wrapper or cover consisting only of tobacco, measures a
18 number forty ring size or larger, and is sold without a filter.
- 19 4. Smoking as part of a traditional American Indian spiritual or cultural ceremony is not
20 prohibited.
- 21 5. No person or employer shall discharge, refuse to hire, or in any manner retaliate
22 against an employee, applicant for employment, or other person because that person
23 asserts or exercises any rights afforded by this section or reports or attempts to
24 prosecute a violation of this section. An employee who works in a setting where an
25 employer allows smoking does not waive or surrender any legal rights the employee
26 may have against the employer or any other party. Violations of this subsection shall
27 be a class B misdemeanor.
- 28 6. This section may not be interpreted or construed to permit smoking where it is
29 otherwise restricted by other applicable laws.

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