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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. In order to protect the public health and welfare and to recognize the need for individuals to breathe smoke-free air, smoking is prohibited in all enclosed areas of:
   a. Public places; and
   b. Places of employment.

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

3. The following areas are exempt from subsections 1 and 2:
a. Private residences, except those residences used as a child care, adult day care, or health care facility subject to licensure by the department of human services.
b. Outdoor areas of places of employment, except those listed in subsection 2.
c. Any area that is not commonly accessible to the public and which is part of an owner-operated business having no employee other than the owner-operator.
d. A bar that generates ten percent or more of the bar's annual gross income from the sale of cigars; has a humidor on the premises; is enclosed by solid walls or windows, a ceiling, and a solid door; and is equipped with a ventilation system by which exhausted air is not recirculated to nonsmoking areas and smoke is not backstreamed into nonsmoking areas. A bar meeting the requirements of this subdivision may permit the smoking of cigars and any premium tobacco product purchased on the premises, but may not permit the smoking of any other tobacco product on the premises. A bar meeting the requirements of this subdivision shall report to the tax department annually, on a form prescribed by the department, the revenue generated from the sale of cigars as a percentage of annual gross income. For purposes of this subdivision, the term "cigar" means an individual roll of tobacco which has a wrapper or cover consisting only of tobacco, measures a number forty ring size or larger, and is sold without a filter.

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

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

6. This section may not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.
7. Notwithstanding any other provision of this chapter, an owner, operator, manager or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place.