

**HOUSE BILL NO. 1152**

Introduced by

Representatives D. Ruby, Becker, Christensen, Headland, Kasper, Marschall, M. Ruby,  
Vetter

Senators Krebsbach, O. 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 cigar bars and 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.

- 1           3. The following areas are exempt from subsections 1 and 2:
- 2           a. Private residences, except those residences used as a child care, adult day care,  
3           or health care facility subject to licensure by the department of human 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 ten 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 thirty 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.