Sixty-seventh Legislative Assembly of North Dakota

## 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.**

- 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:
- 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.

Sixty-seventh Legislative Assembly

1	3.	The following areas are exempt from subsections 1 and 2:						
2		a.	Priv	ate re	sidences, except those residences used as a child care, adult day care,			
3			or h	ealth o	care facility subject to licensure by the department of human services.			
4		b.	Out	door a	reas of places of employment, except those listed in subsection 2.			
5		C.	Any	area	hat is not commonly accessible to the public and which is part of an			
6			own	er-ope	erated business having no employee other than the owner-operator.			
7		<u>d.</u>	<u>A ba</u>	ar or a	cigar lounge, which has a valid certificate issued by the tax			
8			<u>com</u>	missio	oner 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			<u>(1)</u>	<u>A ba</u>	r or cigar lounge asserting the bar or lounge meets the requirements of			
16				this s	subdivision shall report to the tax commissioner before February first of			
17				<u>each</u>	year, on a form prescribed by the commissioner, the revenue from the			
18				previ	ous calendar year generated from the sale of cigars as a percentage of			
19				annu	al gross income. Upon receipt of a report asserting compliance with the			
20				annu	al gross income requirements of this subdivision, the commissioner			
21				<u>shall</u>	issue an annual certificate. The commissioner is not required to			
22				<u>confi</u>	rm the accuracy of information reported but may not issue a certificate			
23				<u>abse</u>	nt supporting documentation from the bar or lounge. Information			
24			reported to the commissioner under this subdivision is subject to the					
25				<u>confi</u>	dentiality provisions of section 57-39.2-23.			
26			<u>(2)</u>	<u>For p</u>	purposes of this subdivision:			
27				<u>(a)</u>	"Bar" means a bar that generates ten percent or more of the bar's			
28					annual gross income from the sale of cigars.			
29				<u>(b)</u>	"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		con	tain additives other than water; does not contain a filter, tip, or				
2		non	tobacco mouthpiece; weighs at least six pounds per thousand				
3		<u>cou</u>	nt; and is made by hand, except to allow for the use of a manually				
4		ope	rated machine to assist in bunching, rolling, and binding.				
5		<u>(c)</u> <u>"Ci</u>	gar lounge" means a business dedicated, in whole or in part, to the				
6		smo	oking of cigars which generates thirty percent or more of the				
7		bus	iness'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 cont	rol of an establishment, facility, or outdoor area may declare that				
21		entire establishmen	t, facility, or outdoor area as a nonsmoking place.				