

Good Afternoon, Chairman Klein and members of the Senate Industry, Business, and Labor Committee. My name is Neil Charvat, and I am the Director of the Tobacco Prevention and Control Program for the North Dakota Department of Health. I am here to provide testimony in opposition to House Bill 1152, relating to cigar bars and lounges.

Tobacco prevention and control efforts in North Dakota focus on guidance provided by the Centers for Disease Control and Prevention (CDC) *Best Practices for Comprehensive Tobacco Control Programs* (Best Practices). Best Practices provide evidence-based interventions to prevent tobacco product use initiation; increase quitting tobacco use and reduce exposure to secondhand smoke. House Bill 1152 will create an exemption for North Dakota businesses to provide an environment that exposes the public, especially employees, to secondhand smoke in the workplace.

In November 2012, North Dakotans overwhelmingly approved Initiated Measure 4 with 66.67% approval. This measure removed exemptions from the 2005 State Smoke-Free Law. The remaining exemptions mainly applied to bars, truck stops, and public lodging. The intent was to protect North Dakota citizens from unnecessary exposure to secondhand smoke in indoor public venues. Cigar smoke is not different from the smoke of other commercial tobacco products. No exceptions were granted for cigars in 2005 and 2012.

According to the 2019 North Dakota Adult Tobacco Survey, the adult smoking rate for cigars is 4.3%. House Bill 1152 seeks to make changes to an effective smoke-free law to benefit 4.3% of North Dakota citizens. Commercial tobacco products, including cigars, are legal. Other than purchase restrictions related to age and the indoor smoke-free law, there are no limits on cigar usage. No laws are prohibiting the private use of cigars. There is nothing stopping citizens from using cigars indoors outside of business settings. North Dakota adults may choose to purchase and use cigars.

The North Dakota smoke-free law efforts of 2005 and 2012 are public health victories to protect North Dakota workers from the harmful effects of secondhand tobacco smoke. The products that produce smoke such as cigarettes

and cigars have not become safer since 2005 and 2012. Exposing employees to the dangers of secondhand smoke has not been eliminated as a health concern in 2021. Opponents of the 2005 and 2012 laws made the argument that employees know the risk of working in a secondhand smoke environment. Previous testimony for House Bill 1152 seeks to use this same argument. Employee acknowledgment of dangerous work environments does not exempt them from willingly working in these environments. Public health and safety cannot be suspended due to acknowledgment of the issue. The construction industry provides an example: rules requiring hard hats or the need to be tethered when working in high places are not suspended because workers know that not wearing these devices is dangerous. Employee health and safety laws are for the employees' benefit, not the business owner's profitability and convenience. Workers in the proposed cigar bars and lounges deserve the same protections as all North Dakota workers.

The North Dakota Department of Health does not differentiate between tobacco products like cigarettes and cigars. The three cigars types sold in the United States are large cigars, cigarillos, and little cigars. Cigars are not proven to be healthier or less dangerous than cigarettes. For every gram of tobacco smoked, there is more cancer-causing tar in cigars than in cigarettes. Cigar wrappers are less porous than cigarette wrappers and make burning of cigar tobacco less complete than the burning of cigarette tobacco. As a result, cigar smoke has higher concentrations of toxins than cigarette smoke. Smokers using cigars experience heart disease, cancer, and other types of illnesses that cause over 1,000 North Dakotans' death per year.<sup>1</sup>

House Bill 1152 allows for indoor smoking. The bill defines a lounge as "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." This language gives the appearance of mitigating the dangers of secondhand smoke indoors through ventilation. Ventilation systems do not work to protect the public from this danger. The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) identifies the ineffectiveness of ventilation systems in their position statement on the subject:

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<sup>1</sup> <https://cancercontrol.cancer.gov/brp/tcrb/monographs/monograph-09>

*"At present, the only means of effectively eliminating health risks associated with indoor exposure is to ban smoking activity... No other engineering approaches, including current and advanced dilution ventilation or air cleaning technologies, have demonstrated or should be relied upon to control health risks from ETS [environmental tobacco smoke] exposure in spaces where smoking occurs... :*

An exemption for one tobacco product may lead to additional exemptions for other tobacco products, such as hookah lounges, currently not allowed under the North Dakota Smoke-Free Law. Product exclusivity should not be equated with a legal exemption to smoke inside a public place of business. The North Dakota Smoke-Free Law has been providing this legal level playing field for all businesses since 2012.

Prior to 2012, many North Dakota communities implemented smoke-free laws that mirror the 2012 smoke-free law. Grand Forks, Fargo, West Fargo, Bismarck, Minot, and others have city ordinances prohibiting smoking in all indoor workplaces; these are all home-rule communities. House Bill 1152 does not preempt these ordinances; hence, passing House Bill 1152 would provide unequal exemptions for some cities to allow cigar bars and lounges. These exemptions will create confusion for business owners, city and county governments, and law enforcement agencies.

The 2012 North Dakota Smoke-Free Law is an exceptional public health policy achievement. It protects the public from the dangers of secondhand smoke exposure. It addresses the emerging issues of the risks of electronic nicotine delivery systems (ENDS), also known as e-cigarettes and vaping. The 2016 *E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General* applauds the North Dakota 2012 Smoke-Free Law as a significant policy success to protect our citizens. House Bill 1152 seeks to change the current smoke-free law to create places that put patrons, employees, and anyone in the immediate area at risk of sickness and death from secondhand smoke to provide an exemption for a niche business. Clean air remains the standard to protect health.

This concludes my testimony. I am happy to answer any questions you may have.

# Tobacco Surveillance Data

Indicator	2011	2013	2015	2017	2019
<b>Tobacco Use (Used at least once in past 30 days)</b>					
<b>Cigarette Smoking</b>					
Adult (BRFSS*) <sup>1</sup>	21.9	21.2	18.7	18.3	17.0
High School (YRBS) <sup>1</sup>	19.4	19.0	11.7	12.6	8.3
American Indian <sup>2</sup>	52.0	44.0	42.1	51.3	35.1
Pregnant (smoked cigarettes during 1st trimester) <sup>3</sup>	16.0	15.1	13.8	11.5	10.3
Low Income <sup>4</sup>	29.5	32.0	31.8	33.4	30.6
Low Education <sup>5</sup>	33.0	33.2	31.5	31.0	27.7
<b>Smokeless Tobacco<sup>6</sup></b>					
Adult (BRFSS*)	8.2	7.6	7.5	6.2	6.6
High School (YRBS)				8.0	4.5
<b>Cigars<sup>7</sup></b>					
Adult (ATS)			4.4	5.3	4.3
High School (YRBS)	13.5	11.7	9.2	8.2	5.2
<b>E-Cigarettes<sup>8</sup></b>					
Adult (ATS)			16.0	19.6	22.1
Adult (BRFSS*)				20.7	
High School (YTS)	1.6	6.0	19.1	19.1	29.4
High School (YRBS)			22.3	20.6	33.1
<b>Any Tobacco Product<sup>9</sup></b>					
Adult (BRFSS*)				23.4	
High School (YRBS)				28.8	35.5
<b>Tobacco Use Initiation</b>					
Adult - Ever tried electronic cigarettes <sup>10</sup>			21.2	21.2	23.4
High School - Ever tried electronic cigarettes <sup>10</sup>			42.1	41.0	52.8
High School cigarette use before age 13 <sup>11</sup>	29.2	21.8	33.3	34.5	
High School smokeless tobacco use before age 13 <sup>12</sup>	24.2	17.0	27.2	26.1	
<b>Tobacco Consumption</b>					
Cigarettes Sold - in millions (ND Tax Commission)	965	1,054	1,096	966	890
Annual Cigarette Tax Revenue - in millions	21.3	23.2	24.1	21.2	19.7
Annual Other Tobacco Tax Revenue - in millions	5.1	6.6	7.5	7.0	7.1
<b>Cessation</b>					
<b>Cigarette Smoking Quit Attempts</b>					
Adult (BRFSS*)	53.1	51.0	55.8	54.6	55.1
High School (YRBS)	52.8	55.5	47.4	50.3	54.0
<b>NDQuits - Total Enrolled<sup>13</sup></b>		3,380	3,319	3,266	3,029
<b>NDQuits - Quit Rate (phone program)<sup>14</sup></b>		35.6	28.5	40.5†	37.6†
<b>NDQuits - Quit Rate (web program)<sup>14</sup></b>		25.7	25.6	41.4†	34.2†
<b>Tobacco-related Policy</b>					
Support increasing cigarette tax to \$2.00 <sup>15</sup>			54.8	57.8	56.7
<b>Health and Economic Consequences</b>					
Deaths Attributed to Tobacco Use <sup>16</sup>					1,000
Deaths Attributed to Secondhand Smoke <sup>17</sup>					80 - 140
Smoking Attributable Medical Expenditures - in millions <sup>18</sup>					\$326
Smoking Attributable Productivity Loss - in millions <sup>19</sup>					\$232.6

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\*Note: In 2011, the Behavior Risk Factor Surveillance System (BRFSS) began including cell phone-only users in sampling and the method of weighting the results was changed. This makes BRFSS results from 2010 and prior no longer comparable to 2011 and beyond.

<sup>1</sup> Adult current cigarette smoking defined as, of those who have smoked 100+ cigarettes in their life, those who used every day or some days of the past 30 days. Youth current cigarette smoking defined as the proportion of 9-12 grade students who have smoked cigarettes on at least one of the past 30 days.

<sup>2</sup> American Indian current smoking prevalence obtained from the North Dakota Behavior Risk factor Surveillance System (BRFSS) Calculated Variables Report. Data currently unavailable for smokeless tobacco use.

<sup>3</sup> Pregnant women smoking rate obtained from North Dakota Vital Statistics (birth certificate data). It is the percent of women who reported smoking during the 1st trimester. Data currently unavailable for smokeless tobacco use.

<sup>4</sup> Current smoking rate among low income adults (defined as earning less than \$15,000 per year). From the North Dakota BRFSS.

<sup>5</sup> Current smoking rate among adults having low education (defined as having less than a high school diploma or GED). From the North Dakota BRFSS.

<sup>6</sup> Adult chewing tobacco use defined as using chewing tobacco, snuff, or snus every day or some days of the 30 days before the survey. High School (grades 9-12) current smokeless tobacco use defined as using chewing tobacco, snuff, dip, snus, or dissolvable tobacco products on one or more of the 30 days before the survey.

<sup>7</sup> Adult and High School current cigar use defined as smoking cigars, cigarillos, or little cigars on one or more of the 30 days before the survey. Adult current cigar use from the North Dakota Adult Tobacco Survey (ATS) and High School (grades 9-12) current cigar use from the North Dakota Youth Risk Behavior Survey (YRBS).

<sup>8</sup> Adult current use of electronic cigarettes (among those who have ever tried, also used every day or some days of past 30 days) from the North Dakota BRFSS. Youth (youth in grades 9-12 who used at least one day of past 30 days) from North Dakota Youth Tobacco Survey (YTS) and North Dakota Youth Risk Behavior Survey (YRBS).

<sup>9</sup> For adults, any current tobacco use (used at least one day of the past 30 days) includes cigarettes, smokeless tobacco, or electronic cigarettes while for youth (grades 9-12), any current tobacco use includes cigarettes, cigars, smokeless tobacco, or electronic cigarettes.

<sup>10</sup> Ever tried electronic cigarettes for total adult population from the North Dakota ATS and for the total High School (grades 9-12) population from the North Dakota YRBS.

<sup>11</sup> Of current cigarette smokers in grades 9-12, the proportion who report first cigarette use before age 13 (YRBS).

<sup>12</sup> Of current smokeless tobacco users in grades 9-12, proportion who reporting smokeless tobacco use before age 13

<sup>13</sup> Total number of people enrolled in NDQuits is for state fiscal year (July-June) and is obtained from NDQuits State Summary Reports.

<sup>14</sup> NDQuits quit rate via phone or web is obtained from annual NDQuits Evaluation Reports and calculated using North American Quitline Consortium (NAQC) guidelines. They are for state fiscal year (July-June) and participants are considered to have quit if, 7 months after program registration, they report not using cigarettes or other forms of tobacco in the past 30 days (i.e. Thirty-day Point Prevalence Abstinence).

<sup>15</sup> The source for this tobacco tax-related policy question is the North Dakota Adult Tobacco Survey (ATS).

<sup>16</sup> North Dakota estimate of smoking-attributable deaths: CDC, Best Practices for Comprehensive Tobacco Control Programs—2014. This estimate is the annual average from 2005-2009, is among adults aged 35 years and older, and does not include burn or secondhand smoke deaths.

<sup>17</sup> Estimated range of deaths due to secondhand smoke exposure reported by the Campaign for Tobacco Free Kids

<sup>18</sup> Smoking attributable medical expenditures reported by the Campaign for Tobacco-Free Kids and are among adults aged 18 years and over.

<sup>19</sup> Smoking attributable productivity costs reported by the Campaign for Tobacco-Free Kids (CTFK). They are the annual average productivity costs from 2000-2004 reported by the CDC's SAMMEC (Smoking-Attributable Morbidity, Mortality, and Economic Costs) website updated to 2009 dollars.

† Respondents to the NDQuits 7-Month Follow-Up Survey were more likely to exhibit characteristics that are associated with higher levels of quitting (i.e. be older at intake, have a higher education level, be insured, and to use their first cigarette later after waking). This means the quit rate could be biased upward since a greater proportion of these groups

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