

2013 HOUSE HUMAN SERVICES

HB 1292

2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1292
January 23, 2013
Job #17622

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to smoking in public places of employment and the responsibility of proprietors.

Minutes:

Testimonies #1-6 attached

Chairman Weisz: Opened the hearing on HB 1292.

Rep. Dan Ruby: From District 38 introduced and sponsored the bill. This bill is to cleanup and further define one area of the law that was passed by the initiated measure process. On page 2 the Subsection on "Entrance", an entrance is more clearly defined. It could be interpreted to be every entrance including service, roll up, and garage doors. Potentially windows and almost anything that you could enter a building on would have to have signage. This more clearly defines the door as an exterior door that actuates to the left or right which allows access to a public place. On page 4 striking from language dealing with the requirement for the posting of visible sign on exterior vehicles. Pam Sharp said that none of the measures were going to have a fiscal effect on ND. We asked about the state fleet and snowplows and all the vehicles that have to have signage there should be some minor cost to it. She said. "We already have a policy that you can't smoke in the vehicles". But, the law says we have to put signs on these. It is a little too broad and this would remove the requirement and eliminate having to post it on all the vehicles.

5:19 Rep. Oversen: Can we change something from an initiated measure that was just passed?

Rep. Ruby: The Legislature can, but it requires a two-thirds vote of both houses.

Rep. Porter: On page 4, you take a look at the posting of the vehicles. The removal of all ashtrays came up early today in a hearing. Would you be opposed to an amendment that says, if it is installed by the factory or comes with the vehicle if you are exempted from the expense of removing that?

Rep. Ruby: I would not be opposed to that. It makes sense to me.

Chairman Weisz: The language on page 2, subsection 7 that you are deleting; your purpose for that wouldn't necessarily eliminate service doors be posted, but it would eliminate a warehouse garage door. Wouldn't it be easier to eliminate those.

Rep. Ruby: I don't know if it would pass if you took out all doors that public isn't going to access. It was to eliminate the overhead type doors.

9:01 Tom Balzer, Executive Vice-President of the ND Motor Carriers Association testified in support of the bill. (See Testimony #1)

16:28 Rep. Mooney: What have you done as far as stickers are concerned?

Blazer: Some people have ordered the stickers and putting them on their vehicles and some are waiting to see what happens here.

Mike Rud: Representing the ND Petroleum Marketers Association and stand in support of 1292. We have to deal with these \$100 smoking outposts that we put in front of the doors and now we have to move those 20 feet from the building and they are just flicking the butts on the ground. We are concerned about needed any more decals in our industry.

19:25 Robin Rehborg: Director of State Fleet for D.O.T. We have ordered 5,000 stickers at a cost of 25 cents each is much, but we have to package them all up and send to all the motor pools (roughly 3600 vehicles). State Fleet has had a no smoking policy in all fleet vehicles for many years. As we go along it will cost the state more money.

Chairman Weisz: How large are the stickers and where are you putting them?

Rehborg: The sticker will go on the driver's side of the rear window and can be viewed from outside of window. It has an adhesive on the back of the sticker. No guidance from the law on size so it is going to be around 2 inches.

Chairman Weisz: Do you use multiple stickers in a van?

Rehborg: Just one sticker.

Rep. Porter: I hope you ordered one for the Governor's vehicle as I didn't see one on there. As I read this, it includes all of the aircraft so I guess you need to order for them. The National Guard vehicles are places of employment. The green helicopters now need a sticker on them?

Rehborg: Those are not part of our state fleet. The vehicles that are assigned to the Adjutant General that are state fleet vehicles will have the stickers. The National Guard units and airplanes are not part of the state fleet.

Rep. Porter: They aren't exempt from the stickers?

Rehborg: Not as far as I read.

Chairman Weisz: There are 3600 vehicles in the state fleet?

Rehborg: Yes.

Chairman Weisz: Does that include the maintenance vehicles?

Rehborg: Just state fleet vehicles.

Chairman Weisz: Are those directly under the D.O.T.?

Rehborg: Yes.

Chairman Weisz: Can you tell me how many vehicles that D.O.T. has?

Rehborg: As far as maintenance, I do not know if they have decided they fall under the law or not.

OPPOSITION:

Kimberly Schneider: Here on behalf of Chelsey Matter and read her testimony. (See Testimony #2)

28:00 Rep. Fehr: In reference to the loop hole, if I was to change a door on a building, it would cost me several hundred dollars. How would people be motivated to invest that kind of money to just avoid a sticker?

Schneider: Can't answer that as this is Chelsey Matter's testimony.

Rep. Damschen: We are looking at fairly serious matter if the Legislature is going to change the measure. Did anyone promoting the measure promote the putting of signs or eliminating smoking?

Schneider: The biggest message was the concern for health. The stickers were discussed as far as in advertising, no it was not.

Jeanne Prom, Executive Director of the Center for Tobacco Prevention and Control Policy testified in opposition of the bill. (See Testimony #3)

39:07 Chairman Weisz: The law is clear in this case where it says, "trains, airplanes and similar aircraft". With Amtrak, how are they going to comply with this? They will be stopping in the state and every passenger car plus locomotive would have to have stickers on the outside. Have you have any discussions with them and the airlines?

Prom: Those conversations probably need to happen. I'm confident they will work it out.

Vice-Chair Hofstad: What is your interpretation of the law as you see it? Is it your personal interpretation or have you consulted with attorneys or other members within your organization? What is your expertise to interpret the law to us?

Prom: When there are questions, we just provide guidance. There hasn't been an attorney general's opinion.

Vice-Chair Hofstad: Is the opinions you bring forth of this bill brought forward from the attorney general?

Prom: It comes from our agency.

Rep. Silbernagel: There needs to be a decal on the outside and inside of the vehicle?

Prom: On the inside is my understanding.

Rep. Fehr: With this bill and the change of definition of entrance the 20 foot prohibition would also be removed?

Prom: Yes. No if there is an entrance where smoking is not prohibited, the 20 foot rule wouldn't apply to that.

Rep. Fehr: If an employer has an overhead door and with this law not required for signage, but if the employer is concerned about smoke intake can they voluntarily put up a sign? Would anything prohibit him from doing that?

Prom: No.

Rep. Mooney: Who is the enforcement office?

Prom: Through State's Attorney.

Rep. Mooney: What enforcement do we have over federal vehicles?

Prom: I don't know.

Rep. Mooney: I believe in a smoke free state. I voted for this, but if I had read the whole measure, I would not have voted for this. It puts undue burden on people doing their jobs and run business. There is too much interpretation of the signage and too many inconsistencies.

Rep. Oversen: What was the reasoning behind public postings?

Prom: I do support smoke free. The need for signage is makes it uniform for everybody.

Rep. Mooney: Does not the language of the amendment bring uniformity?

Prom: I stated concerns about the definitions and there needs to be some clarification.

Rep. Porter: I want your opinion. If a person while in a vehicle is covered under workforce safety while driving that vehicle, would that constitute that vehicle is a place of employment?

Prom: Don't have an opinion on that. That needs legal clarification.

Rep. Porter: If I'm employed I have to have workers comp. While driving that vehicle I would be covered under workers comp. because that is a place of employment. If I'm in my personal car and driving to a legislative meeting, I'm covered under workers comp. and I wouldn't be able to smoke in my personal vehicle.

Prom: That has to go to legal.

Rep. Porter: If I'm reimbursed for my expenses in using my own vehicle on the job, I can't smoke in my own vehicle?

Prom: Needs legal interpretation.

Rep. Porter: The ambiguity of what is defined as an entrance to a building is cleaned up when you think of the exits to a building and what the fire code considers to be an exit to a building. In the fire code they don't consider a garage door to be an entrance or an exit to a building. In this bill we are making them an entrance and exit. Are you looking at this that way?

Prom: I'm not following and not sure.

Rep. Damschen: It seems misleading to refer to the measure as dealing with just an existing law because much of the language is new. Section 3 that outlines the postage signage and I don't think it is real accurate.

Prom: I was just trying to make the distinction of what we have today without the amendments. Sorry if that mislead.

Rep. Damschen: We can say the same about the proposal in front of us now. It is mostly existing law with a couple of changes.

Chairman Weisz closed the hearing on HB 1292.

Handout Handed In

Initiated Statutory Measure No. 4 (See Handout #4)

Handed In Testimonies

Angela MacAdams, President NDSRC (See Testimony #5)

Andrew Hetlant: ENT (See Testimony #6)

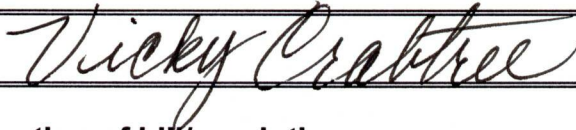
2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1292
February 13, 2013
Job #18862

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to smoking in public places of employment and the responsibility of proprietors.

Minutes:

You may make reference to "attached testimony."

Chairman Weisz: Let's look at 1292. If this passes, it needs a two-thirds vote in both chambers.

Rep. Fehr: I'd like to add an amendment to this bill. On page 4, line 26, this is referring to ashtrays. I'd like to add after "premises", "or factory installed in vehicles". Number 4 would read, "Remove all ashtrays from any area where smoking is prohibited except for ashtrays displayed for sale and not for use on premises, or factory installed in vehicles".

Rep. Porter: Second.

VOICE VOTE: MOTION CARRIED

Rep. Laning: I move a Do Pass as amended.

Rep. Looyzen: Second.

ROLL CALL VOTE: 12 y 1 n 0 absent

Bill Carrier: Rep. Laning

13.0603.01001
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Adopted by the Human Services Committee

February 13, 2013

V/R
2/13/13

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1292

Page 4, line 26, after "premises" insert "and ashtrays that are factory-installed in vehicles"

Renumber accordingly

Date: 2-13-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1292

House Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Fehr Seconded By Rep. PORTER

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ			REP. MOONEY		
VICE-CHAIRMAN HOFSTAD			REP. MUSCHA		
REP. ANDERSON			REP. OVERSEN		
REP. DAMSCHEN					
REP. FEHR					
REP. KIEFERT					
REP. LANING					
REP. LOOYSEN					
REP. PORTER					
REP. SILBERNAGEL					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*Voice Vote
Motion Carried*

Date: 2-13-13
 Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1292

House Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Laning Seconded By Rep. Looyesen

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓	✓	REP. MOONEY	✓	
VICE-CHAIRMAN HOFSTAD	✓	✓	REP. MUSCHA	✓	
REP. ANDERSON	✓	✓	REP. OVERSEN		✓
REP. DAMSCHEN	✓	✓			
REP. FEHR	✓	✓			
REP. KIEFERT	✓	✓			
REP. LANING	✓	✓			
REP. LOOYSEN	✓	✓			
REP. PORTER	✓	✓			
REP. SILBERNAGEL	✓	✓			

Total (Yes) 12 No 1

Absent 0

Floor Assignment Rep. Laning

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1292: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1292 was placed on the Sixth order on the calendar.

Page 4, line 26, after "premises" insert "and ashtrays that are factory-installed in vehicles"

Re-number accordingly

2013 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1292

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1292
March 13, 2013
Job Number 19842

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to smoking in public places and places of employment and the responsibilities of the proprietors

Minutes:

Testimony Attached

Chairman Klein: Opened the hearing.

Representative Ruby: He is the prime sponsor of the bill. Explains the bill (:17-6:08)

Chairman Klein: Said the entrance was designated but it will no longer be required to put that sticker on vehicles?

Representative Ruby: Said correct.

Tom Balzer, Executive Vice President of the North Dakota Motor Carriers Association:
Written Testimony Attached (1). (8:05-13:05)

Mike Rud, North Dakota Petroleum Marketers and North Dakota Retail Association: In support of the bill.

Erin Hill-Oban, Executive Director of Tobacco Free North Dakota: Said that though they don't think changes to the law are necessary, they can live with these and think that they are reasonable.

Jack McDonald, American Lung Association and North Dakota Respiratory Therapists:
Written Testimony Attached (2).

Chairman Klein: Closed the hearing.

Senator Andrist: Moved a do pass.

Senator Unruh: Seconded the motion.

Roll Call Vote: Yes - 7 No - 0 Absent - 0

Senate Industry, Business and Labor Committee
HB 1292
March 13, 2013
Page 2

Floor Assignment: Senator Klein

**2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1292**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Andrist Seconded By Senator Unruh

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1292, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1292 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1292

#1

**TESTIMONY
HOUSE BILL 1292
TRANSPORTATION COMMITTEE
FEBRUARY 4, 2011**

Mr. Chairman and members of the House Human Services committee my name is Tom Balzer, executive vice president of the North Dakota Motor Carriers Association. I am here this morning to testify in support of House Bill 1292.

I would like to begin by making one thing very clear. This bill does not repeal, replace, modify or change any language that makes North Dakota a smoke-free state. This bill impacts only the signing portion of the law.

This bill does two things:

- 1) It defines what an entrance is, as an exterior door that actuates to the left or right that allows access to a public place. The purpose of this is to clarify the signage requirements in subsection 2 of NDCC § 23-12-10.4 that mandates that every entrance to that place a sign stating that smoking is prohibited.

Currently the law is unclear as to what entrances need signs. Is it the exterior door to the building? The doors to conference rooms? Private offices? The elevator? The hallway? The stairs? The answer to all these is yes!

What about a loading dock door? Yes, even though you would have to scale at four foot concrete wall to actually use it as an entrance.

What about overhead doors? Yes, even though you cannot even see the sign when the door is open.

This change does not change the prohibition of smoking within twenty feet as these passages are still exits as outlined in subsection 2 of NDCC § 23-12-10.

- 2) It eliminates the requirement to at least one sign, visible from the vehicle's exterior on every vehicle that constitutes a place of employment.

Here are some examples of vehicles that would need signs:

- 1) All company owned vehicles;
- 2) Vehicles provided as part of employment;
- 3) Potentially vehicles being used as work vehicles, even though owned personally;
- 4) Out of state vehicles, just passing through the state;
- 5) Trailers;
- 6) Farm machinery used by anyone but the owner of the farm;
- 7) Machinery on construction sites;
- 8) Undercover police

Since the law requires that the signs be visible from the vehicle's exterior most folks will most likely place the stickers on the windows to protect the finish of the vehicle. This could create a view obstruction, which is why the Federal Motor Carrier Safety

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Testimony in Opposition to House Bill 1292
Human Services Committee
10 am, Wednesday, January 23, 2013
Smoke Free North Dakota

Good morning, Chairman Weisz and members of the Human Services Committee. I am Chelsey Matter, chair of Smoke Free North Dakota. Smoke Free North Dakota was formed by an active group of volunteers dedicated to clearing the air for all North Dakotans. I am here to testify in opposition to House Bill 1292. House Bill 1292 involves changing the language concerning the definition of entrance to mean an exterior door that actuates to the left or right which allows access to a public place. The Bill also seeks to remove the signage requirement for vehicles used for employment.

The residents of North Dakota have clearly spoken, and they have chosen to clear the air. Measure 4 passed overwhelmingly, in every county throughout the state, sending a strong message that the protection of the public's health is a priority. House Bill 1292 attempt to change the definition of entrance will create an apparent loophole. Why wouldn't business owners start installing garage doors that do not actuate left or right to circumvent the law and put the public at risk of secondhand smoke exposure? This is an unnecessary modification to the law that may put the public at risk.

The removal of the signage requirement for vehicles used for employment is unnecessary. It is my understanding the Center for Tobacco Prevention and Control Policy provides the signage free of charge to employers. Signage does not need to be displayed in the window, such as what you would find in a taxi, where a sign if typically placed on the interior dash. There are no size requirements.

Please remember as you consider this bill all the volunteers that worked tirelessly on this issue. Smoke-Free North Dakota collected over 21,000 signatures in 5 weeks, a true testament to our volunteers' unwavering dedication and passion for the cause.

Please oppose House Bill 1292. Thank you for your time.

Administration has a strict set of regulations that govern what items can and cannot be affixed to trucks windows.

Currently under the law the signage requirement requires North Dakotans to affix literally millions of stickers on buildings and vehicles in this state. Facility Management had no idea how many doors were in the Capitol building but thought it was well in excess of 1,000.

We know we are asking you to amend an initiated measure and the requirement of two-thirds vote is a big hurdle but bringing common sense to a section of the law that most North Dakotans didn't even realize was part of the vote is imperative.

We would ask that you give HB 1292 a DO PASS recommendation.

Mr. Chairman, this concludes my testimony, I would be happy to answer any questions the committee members may have.



North Dakota Tobacco Prevention and Control Executive Committee

Center for Tobacco Prevention and Control Policy

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Phone 701.328.5130 • Fax 701.328.5135 • Toll Free 1.877.277.5090

#3

Testimony
House Bill 1292

10:00 a.m., January 23, 2013, House Human Services Committee

Good morning, Chairman Weisz and members of the Human Services Committee. I am Jeanne Prom, executive director of the Center for Tobacco Prevention and Control Policy. My comments explain the impact of the amendments to the smoke-free law in House Bill 1292.

Definition of entrance – existing law

This amendment adds the definition of "entrance." Not all terms used in a specific law are always defined. When terms are not defined in the specific law, and the same term/s are not defined generally elsewhere in state law, then a common dictionary definition is understood to be in place. So, within the context of this smoke-free law, entrance means *a point or place of entry* from a place where smoking IS allowed to where smoking is NOT allowed in enclosed areas.

The word "entrance" is used in two areas in the existing law:

At 23-12-10(2):

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.

And at 23-12-10.4(2):

The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this Act shall:

2. Clearly and conspicuously post at every **entrance** to that place a sign stating that smoking is prohibited.

A purpose of these provisions seems to be to place reasonable restrictions on places where a person can smoke, so as to prevent smoke from easily entering an enclosed area in which smoking is prohibited.

The Bill's proposed definition of "entrance" reads as follows (Section 1; page 2; lines 12-13):

"Entrance" means an exterior door that actuates to the left or right which allows access to a public place.

This definition seems to counteract the law's intent by allowing smoking to occur in, or within inches of, many openings that would otherwise be thought of as entrances. For example, places that would no longer be entrances, and thus places where persons could smoke, would be at or within inches of:

Openings that have **doors that open to both the left and the right** (such as double automatic doors that move both to the left and to the right simultaneously—supermarket entrances).

Openings that have **no physical door**.

Openings that with **doors that move up/down** to be deemed not an entrance (garage doors).

Openings that have **rotating doors**, such as the doors at North Dakota's State Capitol.

Smoking in these locations would allow for the enclosed area where smoking is prohibited to be readily infiltrated by smoke from the doorway.

Public Places but not Places of Employment

The law now prohibits smoking in two general kinds of indoor places—public places and places of employment.

The Bill's definition of "entrance," however, would only apply to entrances to public places and would not apply to places of employment. It is unclear why the Bill would define only entrances to one of the two places, but doing so could cause confusion about why this distinction exists, what an entrance to a place of employment is, etc.

Signs in Vehicles - Impact

The law requires the placement of smoke-free signage on vehicles that constitute places of employment as follows:

23-12-10.4. Responsibility of proprietors.

The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this Act shall:

3. Clearly and conspicuously **post on every vehicle** that constitutes a place of

This language was written in a way that:

1. Provides a notice of a no-smoking areas, and
- 2. Does so in a way that places minimal burden on a proprietor.**

The removal of 23-12-10.4(3) would result in a situation where there is not notice of a smoke-free vehicle. If a person smoked in that un-signed vehicle they could be penalized for violating the law without having received notice that they were near a place in which smoking is prohibited.

The law has been in effect since December 6 – fewer than 60 days - and many businesses impacted by these changes are already complying with the new law, without hesitation. This bill would substantially weaken North Dakota's smoke free law.

I request that the existing law not be amended with HB 1292. Thank you for your time and thoughtful consideration of these points.

FULL TEXT OF THE MEASURE

IF MATERIAL IS UNDERScoreD, IT IS NEW MATERIAL WHICH IS BEING ADDED. IF MATERIAL IS OVERSTRUCK BY DASHES, THE MATERIAL IS BEING DELETED. IF MATERIAL IS NOT UNDERScoreD OR OVERSTRUCK, THE MATERIAL IS EXISTING LAW THAT IS NOT BEING CHANGED.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-12-09 of the North Dakota Century Code is amended and reenacted to read as follows:

23-12-09. Smoking in public places and places of employment – Definitions. In sections 23-12-09 and 23-12-11, unless the context or subject matter other requires:

1. “Bar” means a retail alcoholic beverage establishment licensed under chapter 5-02 that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages. The term includes a bar located within a hotel, bowling center, ~~or~~ restaurant, or other establishment that is not licensed primarily or exclusively to sell alcoholic beverages ~~if the bar is in a separately enclosed area.~~
2. “Business” means a sole proprietorship, partnership, association, joint venture, corporation, or other business entity, either for profit or not for profit, including retail establishments where goods or services are sold and professional corporations and other entities where professional services are delivered.
3. “E-cigarette” means any electronic oral device, such as one composed of a heating element, battery and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, and e-pipe or under any other product, name or descriptor.
- ~~3.~~ 4. “Employee” means an individual who is employed by an employer in consideration for direct or indirect monetary wages or profit, or an individual who volunteers services for an employer.
- ~~4.~~ 5. “Employer” means an individual, business, or private club, including a municipal corporation or trust, or the state and its agencies and political subdivisions that employ the services of one or more individuals.
- ~~5.~~ 6. “Enclosed area” means all space between a floor and a ceiling that ~~is enclosed on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to the ceiling~~ has thirty-three percent or more of the surface area of its perimeter bounded by opened or closed walls, windows or doorways. A wall includes any physical barrier regardless of whether it is open or closed, temporary or permanent, or contains openings of any kind, and includes retractable dividers and garage doors.
- ~~6.~~ 7. “Health care facility” means any office or institution providing health care services, ~~including a hospital; clinic; ambulatory surgery center; outpatient care facility; nursing, basic, or assisted living facility and laboratory. or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions. Some examples of health care facilities include hospitals; clinics; ambulatory surgery centers; outpatient care facilities; weight control clinics, nursing homes; homes for the aging or chronically ill; nursing, basic, long-term~~

or assisted living facilities; laboratories; and offices of any medical professional licensed under title 43 of the North Dakota Century Code, including all specialties and subspecialties in those fields. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, wards within health care facilities, and any mobile or temporary health care facilities.

7. ~~8.~~ “Health care service” include means services provided by any health care facility. Some examples of health care services are medical, surgical, dental, vision, chiropractic, psychological and pharmaceutical services.

8. ~~9.~~ “Place of employment” means an area under the control of a public or private employer that employees normally frequent during the course of employment, including but not limited to, work areas, auditoriums, classrooms, conference rooms, elevators, employee cafeterias, employee lounges, hallways, meeting rooms, private offices, restrooms, temporary offices, vehicles and stairs. A private residence is not a place of employment unless it is used as a licensed child care, adult day care or health care facility.

9. ~~10.~~ “Public place” means an enclosed area to which the public has access or in which the public is permitted, including a enters. Some examples of public places are publicly owned buildings, vehicles, or offices; , and enclosed areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including bars; bingo facilities; gambling and gaming facilities as defined in section 12.1-28-01; child care and adult day care facilities subject to licensure by the department of human services, including those operated in private homes when any child cared for under that license is present; convention facilities; educational facilities, both public and private; facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; financial institutions; health care facilities; hotels and motels including all rooms that are rented to guests; laundromats; any common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, nursing homes, and other multiple-unit residential facilities; private and semi-private nursing home rooms; museums, libraries, galleries, and aquariums; polling places; professional offices; public transportation facilities, including buses, trains, airplanes and similar aircraft, and taxicabs and similar vehicles such as towncars and limousines when used for public transportation, and ticket, boarding, and waiting areas of public transit depots facilities, including bus and train stations and airports; reception areas; restaurants; retail food production and marketing establishments; retail service establishments; retail stores including tobacco and hookah establishments; rooms, chambers, places of meeting or public assembly, including school buildings; services lines; shopping malls; sports arenas, including enclosed places in outdoor arenas; theaters; and waiting rooms.

~~10.~~ 11. “Publicly owned building, vehicle, or office” means a place or vehicle owned, leased, or rented by any state or political subdivision, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of taxes.

~~11.~~ 12. “Restaurant” includes every building or other structure, or any part thereof, and all buildings in connection therewith that are kept, used, maintained, advertised, or held out to the public as a place where food is served, including .Some examples of restaurants include coffee shops, cafeterias, sandwich stands, private and public school cafeterias, kitchens, and catering facilities in which food is prepared on the premises for serving elsewhere, and a bar area within a restaurant.

~~12.~~ “Retail tobacco store” means a retail store utilized primarily for the sale of tobacco product and accessories and in which the sale of other products is merely incidental.

13. “Shopping mall” means an enclosed public walkway or hall area that serves to connect retail or professional businesses.

14. “Smoking means possessing a lighted cigar, cigarette, pipe, weed, plant, or any other lighted tobacco product inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. Smoking also includes the use of an e-cigarette which creates a vapor, in

any manner or any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Act.

15. ~~“Sports arena” means any facility or area, whether enclosed or outdoor, where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including an indoor or outdoor place where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events. Some examples of sports arenas include sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling centers.~~
16. ~~“Truckstop” means a roadside service station and restaurant that caters to truckdrivers.~~

SECTION 2. 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 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 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.
- ~~2.~~ 3. The following areas are exempt from subsections 1 and 2:
 - a. Private residences, except those residences used when operating as a child care, adult day care or health care facility subject to licensure by the department of human services and when any child cared for under that license is present in that facility.
 - b. ~~Hotel and motel rooms, and other places of lodging, that are rented to guests and are designated as smoking rooms.~~
 - e. ~~Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under this section.~~
 - d. b. Outdoor areas of places of employment, ~~except a sports arena~~ those listed in subsection two.
 - e. 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.
 - f. ~~Bars.~~
 - g. ~~Any place of public access rented or leased for private functions from which the general public and children are excluded and arrangements for the function are under the control of the function sponsor.~~
 - h. ~~Separately enclosed areas in truckstops which are accessible only to adults.~~
- ~~3.~~ 4. Smoking as part of a traditional American Indian spiritual or cultural ceremony is not prohibited.
- ~~4.~~ 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.

- 5- ~~6.~~ This section may not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.
- 6- ~~7.~~ Before October 1, 2007, the office of management and budget shall develop and implement a uniform policy regarding smoking restrictions with respect to the outdoor areas near the public entrances of all buildings on the state capitol grounds. 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.

SECTION 3. Section 23-12-10.1 of the North Dakota Century Code is created and enacted as follows:

23-12-10.1. Responsibility of proprietors. The owner, operator, manager or other person in control of a public place or place of employment where smoking is prohibited by this Act shall:

1. Clearly and conspicuously post no smoking signs or the international no smoking symbol in that place.
2. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.
3. Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Act at least one sign, visible from the vehicle's exterior, stating that smoking is prohibited.
4. Remove all ashtrays from any area where smoking is prohibited, except for ashtrays displayed for sale and not for use on the premises.
5. By the effective date of this Act, communicate to all existing employees and to all prospective employees upon their application for employment that smoking is prohibited in that place.
6. For places under his or her control, direct a person who is smoking in violation of this Act to extinguish the product being smoked. If the person does not stop smoking, the owner, operator, manager or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, operator, manager, or employee shall immediately report the violation to an enforcement agency identified in this Act. The refusal of the person to stop smoking or leave the premises in response to requests made under this section by an owner, operator, manager or employee shall not constitute a violation of the Act by the owner, operator, manager, or employee.

SECTION 4. AMENDMENT. Section 23-12-10.2 of the North Dakota Century Code is amended and reenacted as follows:

23-12-10.2. Complaints and enforcement – City and county ordinances and home rule charters.

1. State agencies with statutory jurisdiction over a state-owned building or office shall enforce section 23-12-10. These agencies include the fire marshal department, state department of health, department of human services, legislative council, and office of management and budget. ~~The agencies may mutually agree as to the manner in which enforcement is to be accomplished and may adopt administrative rules to ensure compliance with section 23-12-10, including referral of violations to an appropriate law enforcement agency for enforcement pursuant to section 23-12-11.~~
2. A city or county ordinance, a city or county home rule charter, or an ordinance adopted under a home rule charter may not provide for less stringent provisions than those provided under sections 23-12-09 through 23-12-11. Nothing in this Act shall preempt or otherwise affect any other state or local tobacco control law that provides more stringent protection from the hazards of ~~environmental tobacco~~ secondhand smoke. This subsection does not preclude any city or county from enacting any ordinance containing penal language when otherwise authorized to do so by law.
3. The provisions of this Act shall be enforced by state's attorneys who may ask the North Dakota attorney general to adopt administrative rules to ensure compliance with this Act. State and local law enforcement agencies may apply for injunctive relief to enforce provisions of this Act.

SECTION 5. AMENDMENT. Section 23-12-11 of the North Dakota Century Code is amended and reenacted as follows:

23-12-11. Penalty

1. An individual who smokes in an area in which smoking is prohibited under section 23-12-10 is guilty of an infraction punishable by a fine not exceeding fifty dollars.
2. ~~An~~ Except as otherwise provided in section 23-12-10(5), an owner or other person with general supervisory responsibility over a public place or place of employment who willfully fails to comply with section 23-12-10 is guilty of an infraction, subject to a fine not to exceed one hundred dollars for the first violation, to a fine not to exceed two hundred dollars for a second violation within one year, and a fine not to exceed five hundred dollars for each additional violation within one year of the preceding violation.
3. In addition to the fines established by this section, violation of this Act by a person who owns, manages, operates or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
4. Violations of this Act are declared to be a public nuisance that may be abated by restraining order, preliminary or permanent injunction or other means provided by law.
5. Each day on which a violation of this Act occurs shall be considered a separate and distinct violation.

SECTION 6. Section 23-12-12 of the North Dakota Century Code is created and enacted as follows:

23-12-12. Construction and severability. This Act shall be construed liberally so as to further its purposes. The provisions of this Act are declared to be severable. If any provision, clause, sentence, or paragraph of this Act, or its application to any person or circumstances, shall be held invalid, that invalidity shall not affect the other provisions of this Act that can be given without the invalid provision or applications.

SECTION 7. REPEAL. Section 23-12-10.3 of the North Dakota Century Code is repealed.

[23-12-10.3. Exceptions – Medical necessity. 1. Notwithstanding the provisions of any other state or local law, a patient may smoke in a hospital licensed by the state or on the grounds of a hospital licensed by the state if the patient's attending physician authorizes the activity based on medical policies adopted by the hospital organized medical staff. 2. Notwithstanding the provisions of any other state or local law, a resident of a licensed basic care facility or licensed nursing facility may smoke in the facility or on the grounds of the facility if approved by the board of the facility.]

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*Angela MacAdams, NDSRC President
801 North Broadway Route 207
Fargo, ND 58102*

January 22, 2013

The North Dakota Society for Respiratory Care (NDSRC) represents the body of approximately 460 respiratory therapists in our state. Our professionals see, each and every day, the devastation tobacco causes in the majority of our patient population and their families who are left to cope.

Measure 4 passed with a majority by every county in the state of North Dakota. Clearly, the voters in our state support smoke-free measures. Measure 4 includes signage to be included in company vehicles since they are an extension of the work environment. HB 1292 is asking to remove this requirement which would place employees who drive company vehicles at risk for exposure to tobacco residue which, studies have shown, has no known safe level of exposure.

Please, for the safety of our workers, do not pass HB 1292.

Respectfully yours,

Angela MacAdams, RRT
President
North Dakota Society for Respiratory Care

Testimony in Opposition to House Bill 1292

Human Services Committee

10am, Wednesday, January 23, 2013

Good morning Chairman Weisz and members of the Human Services Committee.

My name is Dr. Andrew Hetland. I am an ENT – Head and Neck Surgeon here in Bismarck at Mid Dakota Clinic. I am a strong supporter for a healthy and safe North Dakota. I was also an original sponsor and of Measure 4 this past fall.

Measure 4 is a bill that addresses public safety. This is not prohibition. The entire language was not written to hurt businesses, but to protect all North Dakotans from second hand smoke. I do not plan into going into the details on why this is important, as thus has been proven on so many levels.

Measure 4 is a bill that passed this last fall with a 67% backing, a 2 to 1 margin. The good people of North Dakota have delivered a strong message that they support a safe and healthy North Dakota. This has been implemented only 6 weeks ago.

The literature was written to include all openings to keep all people safe as 20 feet has been determined to be an adequate distance for protection. Creating exceptions is not unacceptable. We have to remember this is about safety.

In regards to signage: The bill doesn't address how big or where the sign must be posted. This creates options on interpretation. It does not need to be a large billboard.

Thank you for your time and representing the people of North Dakota and keeping our great state healthy and safe.

Andrew Hetland, MD

**TESTIMONY
HOUSE BILL 1292
INDUSTRY, BUSINESS & LABOR COMMITTEE
MARCH 13, 2013**

Mr. Chairman and members of the Senate Industry, Business & Labor committee my name is Tom Balzer, executive vice president of the North Dakota Motor Carriers Association. I am here this morning to testify in support of House Bill 1292.

I would like to begin by making one thing very clear. This bill does not repeal, replace, modify or change any language that makes North Dakota a smoke-free state. This bill impacts only the signing portion of the law.

This bill does three things:

- 1) It defines what an entrance is, as an exterior door that actuates to the left or right that allows access to a public place. The purpose of this is to clarify the signage requirements in subsection 2 of NDCC § 23-12-10.4 that mandates that every entrance to that place a sign stating that smoking is prohibited.

Currently the law is unclear as to what entrances need signs. Is it the exterior door to the building? The doors to conference rooms? Private offices? The elevator? The hallway? The stairs? The answer to all these is yes!

What about a loading dock door? Yes, even though you would have to scale at four foot concrete wall to actually use it as an entrance.

What about overhead doors? Yes, even though you cannot even see the sign when the door is open.

This change does not change the prohibition of smoking within twenty feet as these passages are still exits as outlined in subsection 2 of NDCC § 23-12-10 which reads:

“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”

- 2) It eliminates the requirement to at least one sign, visible from the vehicle's exterior on every vehicle that constitutes a place of employment.

Here are some examples of vehicles that would need signs:

- 1) All company owned vehicles;
- 2) Vehicles provided as part of employment;
- 3) Potentially vehicles being used as work vehicles, even though owned personally;
- 4) Out of state vehicles, just passing through the state;
- 5) Trailers;
- 6) Farm machinery;
- 7) Machinery on construction sites;
- 8) Undercover police;
- 9) All vehicles for sale on a car lot.

Since the law requires that the signs be visible from the vehicle's exterior most folks will most likely place the stickers on the windows to protect the finish of the vehicle. This could create a view obstruction, which is why the Federal Motor Carrier Safety Administration has a strict set of regulations that govern what items can and cannot be affixed to trucks windows.

Proponents will tell you the signage requirement is easy to comply with by printing the sign out on paper and affixing it to the surface with scotch tape. Not a viable option on a vehicle.

- 3) It eliminates the requirement to remove ashtrays that are factory-installed in vehicles.

Currently under the law the signage requirement requires North Dakotans to affix literally millions of stickers on buildings and vehicles in this state. Facility Management had no idea how many doors were in the Capitol building but thought it was well in excess of 1,000.

We know we are asking you to amend an initiated measure and the requirement of two-thirds vote is a big hurdle but bringing common sense to a section of the law that most North Dakotans didn't even realize was part of the vote is imperative.

When voters entered the booth the following is what they voted on:

"This initiated statutory measure would amend chapter 23-12 of the North Dakota Century Code. This measure would prohibit smoking, including the use of electronic smoking devices, in public places and most places of employment in the state, including certain outdoor areas. It would provide notification and enforcement responsibilities, along with penalties for violations."

Nowhere in there was mention of stickers on every door, vehicle and removing ash trays from vehicles.

We would ask that you give HB 1292 a DO PASS recommendation.

Mr. Chairman, this concludes my testimony, I would be happy to answer any questions the committee members may have.

Wednesday, March 13, 2013

SENATE INDUSTRY, BUSINESS & LABOR COMMITTEE HB 1292
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CHAIRMAN KLEIN AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of two organizations, the American Lung Association of the Upper Midwest and the North Dakota Society for Respiratory Care. The latter is the organization for North Dakota's respiratory therapists.

We supported last summer's initiative that made North Dakota a no smoking state.

We do not believe that HB 1292, which defines entrances to public places, alters the basic intent of the initiated measure, and thus we do not oppose HB 1292 and urge you to give this a do pass without amendment.

If you have any questions, I will be happy to try to answer them.

THANK YOU FOR YOUR TIME AND CONSIDERATION.