



NC DEPARTMENT OF HEALTH AND HUMAN SERVICES
Tobacco Prevention and Control Branch

Regulation of Cigar Bars under NC Law

NC Local Health Directors' Legal Conference
UNC School of Government

Kaycee Deen, JD, MA
Agency Legal Consultant

Sally Herndon, MPH
Head, Tobacco Prevention and Control Branch

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1

Today's Agenda:

Smoke-Free Restaurants & Bars Act
Rationale, History and Success
Complaint-Driven System
Enforcement

Exceptions: Cigar Bars and Private Clubs
The Cigar Bar Trend
Defining a Private Club
How to Recognize a Private Club



2

N.C. Smoke-Free Restaurants and Bars Law

North Carolina has had this state law in place since January 2, 2010!

Keys to Success:

1. Leadership and Resources: www.smokefree.nc.gov
2. Business Education
3. Public Education
4. Complaint-based System for Compliance
5. Training
6. Evaluation

3

Leadership and Resources

- NC Division of Public Health, NC DHHS
- NC Association of Local Health Directors
- NC Restaurant and Lodging Association
- Americans for Nonsmokers' Rights
- NC Alliance for Health
- American Cancer Society
- American Heart Association
- American Lung Association
- NC Commission for Public Health (Adopted Rules)
- UNC School of Government
- NC Department of Justice

4

Complaint-Based System for Compliance

- In collaboration with local health directors, the Tobacco Prevention and Control Branch developed a complaint-based system of enforcement.
- Under this system, violations were mainly reported online at www.smokefree.nc.gov.
- Implementation rules required a toll-free number and the website to be printed on signage required by law for compliance.
- The complaint data are shared with local health departments each week for follow-up.
- The local health departments initiate the appropriate response under the state's enforcement plan.
- Compliance data and violation reports have been posted online at www.smokefree.nc.gov

5



6



Most restaurants & bars will comply.

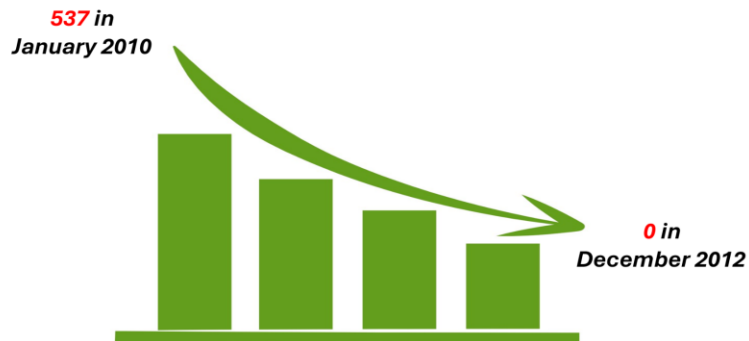
Owner, manager, and staff are responsible.

Customers should ask manager to comply.



7

**NC's Smoke-Free Restaurants and Bars Law
Monthly Number of Unique Complaints & Businesses**



8

How is the Smoke-Free Restaurant and Bars Law Enforced?



Enforcement

Ultimately, businesses that are not following the smoke-free restaurants and bars law may be issued warnings and/or fines by the local health director. [§130A-497](#)

130A-496: Smoking is prohibited in all enclosed areas of restaurants and bars.

9

Enforcement Options

Administrative penalties

Who?

Local health directors

What?

- 1st and 2nd violation: may send written notice
- 3rd and subsequent: may impose fine up to \$200 for each day out of compliance

When?

- A person who manages, operates, or controls a restaurant or bar fails to comply with requirements of state or local public health laws

10

There are Limited Exemptions to the Law...

1. Designated smoking room
in a lodging establishment

2. Cigar bar: gross revenue from alcohol and cigars; humidor required; 21 and over only; smoke must not migrate into areas where smoking is banned by state or local law; must be freestanding structure; gross income reporting requirement

3. Private clubs: must maintain selective membership; must be operated by the members; restricted service only to members or members' guests; nonprofit status

130A-496: Smoking is prohibited in all enclosed areas of restaurants and bars.

11

Cigar bars: In order to qualify for this exception and allow smoking, the cigar bar must satisfy **all** of the following criteria:

- o **Gross revenue:** The bar must generate:
 1. 60% or more of its quarterly gross revenue from the sale of alcoholic beverages: and
 2. 25% or more from the sale of cigars.
 3. **Humidor:** The bar must have a humidor – which is a box or room with constant humidity designed to store cigars or pipe tobacco on the premises.
 4. **Underage:** The bar must not allow individuals under age 21 to enter.
- o **Smoke:** Smoke from the bar must not migrate from the bar to an enclosed area where smoking is prohibited under the state law, such as a restaurant.
- o **New construction:** If the cigar bar begins operation after July 1, 2009, it must be located in a freestanding structure occupied solely by the bar.
- o **Reporting:** The bar must submit quarterly revenue reports to the Department of Health and Human Services, Division of Public Health.

12

12

We will Focus Here...

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13

Which Private Club definition do we use?

SF Law: NCGS 130A-492 (8a)

"Private club". – A country club or an organization that maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is either incorporated as a nonprofit corporation in accordance with Chapter 55A of the General Statutes or is exempt from federal income tax under the Internal Revenue Code as defined in G.S. 105-130.2(1). For the purposes of this Article, private club includes country club.

Food and Sanitation Law—NCGS 130-247 (2)

"Private club" means an organization that (i) maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is either incorporated as a nonprofit corporation in accordance with Chapter 55A of the General Statutes or is exempt from federal income tax under the Internal Revenue Code as defined in G.S. 105-130.2(1) or (ii) meets the definition of a private club set forth in G.S. 18B-1000(5).

ABC Law—NCGS 18B- 1000(5)

NCGS 18B- 1000(5) states, "A private club is an establishment that is organized and operated solely for a social, recreational, patriotic, or fraternal purpose and that is not open to the general public, but is open only to the members of the organization and their bona fide guests."

14

14

How do we determine if a club is truly private?



What do the courts say?

There is no single definition of "private club." Each factor is considered and either tips the balance in favor of or against private club status. "Genuine selectivity" is the most important factor.

130A-496: Smoking is prohibited in all enclosed areas of restaurants and bars.

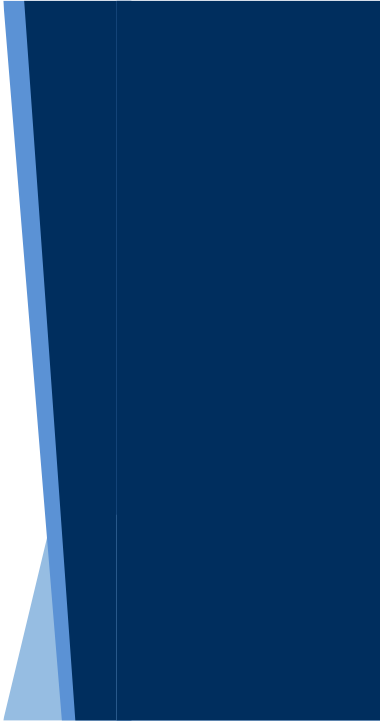
15

What factors are considered when defining a private club?

*United States of America
v. Lansdowne Swim Club*
713 F. Supp. 785 (1989)

1. the genuine selectivity in the admission of its members;
2. the membership's control over the operations of the club;
3. the history of the organization;
4. the use of the facility by nonmembers;

16

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5. the purpose of the club's existence;
 6. whether the club advertises for members;
 7. whether the club is for profit or nonprofit; and
 8. the formalities observed by the club, such as bylaws, meeting, membership cards, etc.

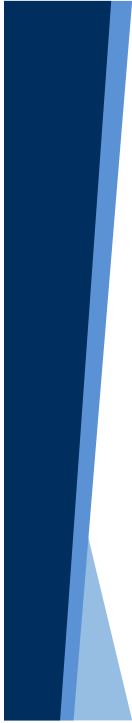
17



How do the food sanitation and smoke-free laws intersect?

Laws regarding food sanitation inspection/enforcement are separate from the smoke-free restaurants and bars law and do not impact the local health director's and his/her designee's ability to enforce the smoke-free law.

18



There is a new infographic!

Visit: https://bit.ly/privateclub_smokefree

OR

Scan below QR Code

