

The Smoking Ban is about Public Health AND Property Rights

By Representative Thom Tillis, NC House of Representatives

Proponents of the statewide smoking ban are wrong to dismiss legitimate concerns with the current version of the bill ([CLICK this link to view House Bill 2](#)). They either do not understand or they choose to ignore the important policy debate Representative Holliman's legislation presents. Exposure to tobacco smoke IS a major health issue. At the same time, the concerns over private property rights and the potential unintended consequences are important. Legislators must find reasonable ways to deal with these issues.

HB 2 bans smoking in "public places" and "places of employment." I have received formal opinions from Legislative Research on the applicability of the bill in specific scenarios.

- Private residences will be subject to the ban in certain situations. Most notably, if a property owner hires a fulltime nanny or child care worker, the entire private residence is subject to the ban.
- Outside decks are potentially subject to the ban. Many outside areas have a roof and "walls" that would fit the definition of an "enclosed area" and would be subject to the ban. For example, a back deck of a restaurant with a roof and with lattice "walls" intended as wind breaks on two sides would be an "enclosed" area.
- Businesses primarily focused on tobacco sales are at risk of closure. The current bill allows an exception for any business that derives 75% of its revenues from tobacco and tobacco accessories. While this may address "pure play" tobacco shops, many tobacco-oriented businesses, such as cigar bars will be devastated because of the prohibition on the sale of food or alcohol on the premises.
- "Public Places" and "Places of Employment" definitions allow for unreasonable application. Imagine the main deck of a charter boat with an overhead/roof, a windshield, and two other sides providing a wind break. A combine or tractor with an enclosed cabin on a commercial farm and the barn or outbuildings on that farm. A dump truck owned and operated by a smoker and an employee who smokes. A country garage with an owner/mechanic.

Like most people, I avoid going to restaurants, bars, and businesses that allow smoking. I look forward to the day the restaurant with the best chicken wings in my area is smoke free so I can eat in at times. Perhaps it is time to implement a statewide smoking ban but let's implement one that is fair, that provides reasonable protection of private property owners, and that avoids devastating businesses that depend on the sale and consumption of a product that is legal in North Carolina.

The argument that the employer has the obligation to keep an employee safe is valid. I suspect the applicant smelled the smoke when he applied for the job, but let's assume he didn't. We can require a mandatory disclosure and acknowledgement on employment applications and in advertisements that warns a facility is a smoking environment. We can also prohibit anyone

under the age of 18 from working in a facility that allows smoking. This would virtually eliminate smoking in restaurants and businesses that hire minors unless the business owner chooses to hire employees over age 18.

We can amend HB 2 to allow a building owner who has a segregated ventilation system that prevents the migration of smoke into other facilities to “opt out.” If a business opts out, we can mandate that it display a WARNING sign at every entrance and in all advertising that it is a smoking facility. We can stipulate the content of the signs and notices, and we can ensure that it includes all of the scientifically proven and suspected risks of exposure to tobacco smoke.

If we pass a statewide smoking ban that requires warning signs fully stating the health risks of smoking and exposure to secondhand smoke, prohibits smoking in places of employment that hire minors, and fully discloses the smoking policy as part of the hiring process, I expect the vast majority of businesses will embrace the smoking ban and they will not opt out. However, we will provide that option (read **FREEDOM**) for property owners, and we will avoid several absurd and unfair applications of the ban. We will also increase awareness of the potentially deadly consequences of smoking tobacco and exposure to tobacco smoke.

With just a few modifications, HB 2 will be much improved. It would be a big step forward in addressing the public health issue by reducing or eliminating smoking in most businesses and public places, and it would be an equally big step in upholding the private property rights of individuals.

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