



To: The North Carolina General Assembly Senators & Representatives

From: Don Liebes,
Owner Gate City Billiards Club, LLC and President NC Bar, Pub & Tavern Association

My name is Don Liebes, owner of Gate City Billiards Club, a private club in Greensboro, and president of the newly-founded North Carolina Bar, Pub & Tavern Association. There are over 1100 private clubs in North Carolina, mostly family-owned small businesses. A great many of us, already struggling in these economic times, are being devastated by the smoking ban. It is more difficult to hear the voices of small businesses, and so I am writing this to make clear how this additional regulation inhibits doing business in this state. I am urging you to consider amending this law.

Prior to January 2010, private clubs and restaurants could make their own decisions whether it was profitable to ban smoking or not. With the enactment of the smoking ban as of January 2010, that freedom was taken and we were all required to enforce a non-smoking policy. During the debate, legislators made claims that smoking bans do not hurt businesses. I have heard them go so far as to claim such bans help business. While that might be true for bars that choose to ban smoking as a competitive strategy, it is definitely not true when all bars are forced to be non-smoking.

This law does not stop people from smoking. It stops smokers from going to bars. While currently, only 20% of Americans smoke, that number is much higher among the population of bar patrons. I estimate that about 75% of my regular customers smoke. Based on the experience of pool room owners in other states who were forced to institute smoking bans, I concluded early on that if we disallowed smoking, we would lose approximately 30% of our gross sales. Unfortunately, my estimates have proven almost dead on, which is more loss of revenue than I can withstand. In the six months prior, our business was up 2.6%. Like a light switch was flipped, once we banned smoking completely our business immediately dropped by 28.9%. Most of that loss is liquor and beer sales from which the state has also lost excise taxes. This is not just about me or my club, there are over 1100 private clubs doing business in North Carolina today.

I do not believe our elected officials conducted adequate research on this bill's economic impact before they passed a law that affects so many businesses. The consequences of a sweeping statute should not be taken lightly, especially in the midst of the worst recession in decades. My club brings in a little over \$500,000 in revenue per year and pays out about the same in expenses, including ABC liquor purchases, beer and wine, salaries, rent, taxes, insurance, billiards equipment, general supplies, and donations to charities. Including myself and my wife, we employ eight people. Many bar owners I have talked to who are attempting to abide by this smoking ban are experiencing a similar loss of business and are faced with the possibility of having to close their businesses and lay-off their employees. For every private club that goes under, that revenue to in-state ABC stores, beer and wine distributors, supply companies, etc. goes too. Also gone are all the taxes to the counties and the state. The result will be more vacant commercial buildings and more workers on unemployment. How many businesses is it ok to lose right now? How many more people added to the unemployment rolls are considered acceptable? Stifling small businesses runs contrary to this legislature's stated mission of creating jobs and improving state revenue.

We fought this law from its inception. For over two years, we went through a very public and lengthy appeals process that began with the Guilford County Health Board, then the District Courts, the NC Court of Appeals, and finally the NC Supreme Court who declined to hear the case. In total we have spent more than \$15,000, (plus an additional \$12,800 from two other bar owners) in legal fees so far. Immediately following the Supreme Court's decision, the Guilford County Department of Health began fining us almost every day. At \$200 per fine, allowing my patrons to continue smoking became an economic impossibility, and so we were forced to stop all smoking.

There are vast disparities in the level of enforcement, between the counties' Departments of Health, who are charged with enforcement. Some counties have virtually no enforcement. According to the numbers taken directly from the State Department of Health's website, bars in Guilford County have received 42.5% of the fines issued to-date for the entire state. If someone wants to smoke in a club, often all one needs to do drive across a county line. And smokers know where to go.

Worse still are the exclusions that were written into this law. In North Carolina all bars that do not serve food, such as Gate City Billiards Club, must operate as private clubs with all of the restrictions and requirements required by Alcohol Beverage Commission. The smoking ban was written with a clause that exempts "Private Clubs" and Country Clubs. This law defines a private club much the same as the ABC laws. However, it adds that a private club must also operate as a non-profit organization to meet *this* law's definition of a private club. For example an Elks Lodge or a non-profit country club would meet this definition. Based on this distinction alone, non-profit clubs are exempt from this law. What was the motivation behind making this distinction?

A non-profit Private Club, such as an Elks Lodge, is established to give people of similar interests a place to spend time together at their leisure. They require patrons to be members, and they pay salaries to the people that run their clubs. Because they are non-profit they are exempt from paying income taxes when revenue exceeds costs. Our club was also established to give people of similar interests a place to spend their leisure time. We too require membership and pay salaries. However if our revenues exceed costs, we pay our fair share of taxes. Due only to this difference, the law allows that their members may continue to smoke, but my members may not. Because we are very similar in the member base we attract, we are direct competitors. But because they are still permitted to allow smoking, they have gained a huge unfair competitive advantage, and I am losing my patrons' business to clubs like the Elks.

If the stated intent of this law is to protect the employees and customers from smoke, what is the justification supporting smoking is harmful for employees and members at a for-profit private club, but not harmful for employees and members at a non-profit private club?

I support banning smoking in public buildings and where minors are present. But I strongly oppose paternalistic laws. Such laws do not trust adult citizens to make choices about which personal risks they willing to accept. By ABC law, bars in North Carolina are private member-only adult environments where adults can choose to go or not if they are troubled by the risks of smoke. When I opened this business smoking was still permitted in bars in North Carolina. Of utmost importance to our business plan, however, was consideration of the comfort of non-smokers. We installed a state of the art ventilation system, and added six top-end smoke-eaters. Also, we built a separate non-smoking billiards room and lounge with a separate ventilation system. We spent over \$70,000 to accommodate smokers and non-smokers alike. The law would have been acceptable if instead of banning adults from smoking in private clubs, it just barred those under age 18 from entering, and mandated that warning signs be posted explaining the dangers of cigarette smoke, just in case some citizens are not adequately informed.

I value my business second only to my family. Most of my life I worked for a major corporation, but I dreamed of running my own business. When the right opportunity presented itself, I invested my savings to open my club. Despite the recession of the last few years, I have kept my club healthy and growing. Banning smoking is not a smart business decision as evidenced by an immediate 30% loss in revenue. As a small business owner, I am faced with a multitude of hurdles which can result in success or failure. Especially in the current economy, I would expect our legislators to promote small businesses, not obstruct them. As a direct result of this poorly crafted and inequitable law, all I have worked for I will most likely lose.

When our government is at it's best, it works in conjunction with business (both small and large) to improve the economic environment for all. This law is not such an example. I would like you to consider making an amendment to this law. There is already a bill that has been written. Senate Bill 469, sponsored by Don East, amends GS 130A-498 by adding "smoking may be permitted in the following places: (4) An age-restricted venue that is structurally separated and ventilated in a manner that prevents smoke from migrating into an enclosed area where smoking is prohibited pursuant to this Article."

Thank you for your consideration. If you wish, I may be reached at (336) 856-8800 or at don@gatecitybilliards.com.