

# QUESTION NO. 5

## Amendment to Title 15 of the Nevada Revised Statutes

### CONDENSATION (Ballot Question)

Shall Chapter 202 of the Nevada Revised Statutes be amended in order to prohibit smoking tobacco in certain public places, in all bars with a food-handling license, but excluding gaming areas of casinos and certain other locations?

Yes.....

No.....

### EXPLANATION (Ballot Question)

The proposed amendment, if passed, would prohibit smoking tobacco within indoor places of employment including the following locations: child care facilities; movie theaters; video arcades; government buildings; public places; malls; retail establishments; all parts of grocery stores; all bars with a food-handling license; and all indoor restaurants. Smoking tobacco would also be prohibited within school buildings and on school property.

Smoking tobacco would continue to be allowed at the following locations: areas within casinos where loitering by minors is prohibited; stand-alone bars, taverns and saloons; strip clubs or brothels; retail tobacco stores; and private residences, including a private residence that serves as an office workplace. A stand-alone bar, tavern or saloon means an establishment devoted primarily to the sale of alcohol, in which food service is limited to the sale of prepackaged food items that are exempt from Nevada food-handling license requirements.

The proposed amendment would also allow a county, city or town to adopt tobacco control measures stricter than those provided in the text of the Question itself.

The proposed amendment would also require “no smoking” signs to be conspicuously posted at locations where smoking tobacco is prohibited.

### ARGUMENT ADVOCATING PASSAGE

Secondhand smoke is a known carcinogen. It is dangerous to non-smokers, particularly children. It causes lung cancer, heart disease and chronic lung ailments. In children, for example, it causes and exacerbates asthma, pneumonia, bronchitis, ear infections, and increases the risk of Sudden Infant Death Syndrome.

Even cigarette-maker Philip Morris Company acknowledges this, stating “the public should be guided by the conclusions of public health officials regarding the health effects of secondhand smoke,” and particular care “should be exercised where children are concerned, and adults should avoid smoking around them.”

Voting “YES” for this measure provides the most significant change to state laws on smoking in public places. Voting “YES” protects Nevadans by prohibiting smoking in many indoor public places, primarily those where children are allowed. This includes most indoor workplaces. Smoking is still allowed in gaming areas of casinos, stand-alone bars, retail tobacco shops, brothels and strip clubs.

We strongly believe that this measure does not affect hotel and motel rooms in any way because, as with other private residences, occupants of hotel and motel rooms have a reasonable expectation of privacy and the right to engage in legal behavior if not otherwise prohibited, as the proponents of Question 5 never intended for hotel and motel rooms to become non-smoking areas.

This measure also lets local authorities make tougher regulations on tobacco use. Existing law provides for some local control, from public safety to liquor to gaming.

Nevadans want change. In 2002, about 68% of voters in both Clark and Washoe counties supported an advisory question whether smoking should be prohibited in public places where children are allowed. About 58% of voters in each county supported a second advisory question whether local boards of health should be able to adopt regulations tougher than state law. Nationally, 23 states plus Washington, D.C. have smoke-free laws.

Filtration systems are not the answer to eliminating health risks from secondhand smoke exposure – don’t let special interests tell you otherwise. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) states filtration systems should not be relied on to control health risks from secondhand smoke. Further, ASHRAE “encourages the elimination of smoking in the indoor environment” as the only way to effectively eliminate health risks.

Smoke-free laws do not harm businesses such as restaurants and bars. At worst, they’ve had no effect at all; at best, they produce positive trends. These types of businesses recognize these laws can mean a healthier bottom line. Restaurants in states that have enacted smoke-free laws, for example, have seen increases in sales, profits, tax receipts, patronage, employment and liquor license applications. Various chambers of commerce in other states support smoke-free laws. It has been found that smoke-free legislation has been easy to implement.

Nevadans deserve the right to breathe clean indoor air. Voting “YES” provides meaningful public benefit and best protects families and children from the health risks of secondhand smoke.

*The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252*

### **REBUTTAL TO ARGUMENT ADVOCATING PASSAGE**

Question 5 bans smoking – in specific places. Unfortunately, it also requires all Nevada residents – smokers and non-smokers - to give up important freedoms.

The supporters of Question 5 want you to believe that there is only one way to protect Nevadans from second-hand smoke – by enacting one of the most extreme smoking bans in the country – without regard for our economy or our ability to make common-sense choices for ourselves and our families. Question 5’s language bans smoking in indoor places of employment, therefore, it appears that smoking is banned in hotel and motel rooms, which further shows how Question 5 goes too far.

Supporters of this initiative will tell you other states have not been negatively affected by smoking bans – but none of those examples rely as heavily on tourism as Nevada.

Chambers of Commerce in both Northern and Southern Nevada support Question 4 - a common-sense smoking ban, but have declined to endorse Question 5 because they understand that Nevada residents and small businesses will suffer if this is passed.

Protect our rights. Protect our Children. Vote Responsibly. Vote “No” on Question 5.”

*The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252*

### **ARGUMENT OPPOSING PASSAGE**

We believe Question 5 is a masked attempt to saddle Nevada residents and businesses with one of the strictest smoking bans in the nation.

Question 5 allows the government to take away your decision-making rights and a spokesman for the Las Vegas Metropolitan Police Department stated that Question 5 will lead to more Drunk Drivers.

Question 5 is deceptive in its intent and seeks to eliminate smoking altogether within most businesses frequented by adults. Quite simply, under the onerous provisions of Question 5, if a bar, tavern or saloon serves hot or cooked food, thus requiring a food-handling license, smoking is not allowed anywhere in that bar, tavern or saloon. If passed, Question 5 forces bar owners to choose between serving food other than pre-packaged popcorn, peanuts or chips to their patrons or allowing them to smoke and forces every Nevada restaurant to become entirely smoke-free – even in areas where children are already banned.

According to a spokesman from the Las Vegas Metropolitan Police Department, if Question 5 is passed, it will lead to an increased number of drunk driving incidents as the consumption of food is widely considered an important offset when consuming alcohol.

Question 5 is an extreme measure that may ban all Nevada hotels, resorts and casinos from offering smoking and non-smoking room options and will take away the right of certain business owners to set-aside designated smoking areas for people over 21 years of age.

A “NO” vote on Question 5 is a vote for the economic future of Nevada.

Supporters of Question 5 – have stated that passage of Question 5 will not have a negative impact on businesses, however, many of Nevada small business owners have stated that they will stop food service in their facility, which we believe may lead to a loss of Nevada jobs and significant tax revenue.

Question 5 makes smoking in most places a crime and creates a drain on local law enforcement resources. Police officers will be faced with the choice of enforcing this smoking law, like writing a citation to someone smoking in a food-serving neighborhood bar, or protecting people from violent crime.

A “NO” vote on Question 5 is a vote against extreme actions and additional government intrusion in our lives.

A “NO” vote on Question 5 is a vote to protect your rights and personal liberties.

Nevada children need to be protected from second-hand smoke, but we must do it in a responsible and thoughtful manner.

Nevadans should reject this extreme measure by voting no on Question 5 and improve our quality of life.

Vote “NO” on Question 5.

*The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252*

### **REBUTTAL TO ARGUMENT OPPOSING PASSAGE**

Question 5 is not extreme. It is consistent with smoke-free laws enacted in other states.

Disease caused by secondhand smoke is a serious public health issue. Compliance is typically self-enforcing and carried out in a manner consistent with other public health matters. Only if complaints are filed is law enforcement involved.

Freedom of choice is not compromised. People can choose to smoke or not smoke – that does not change. Laws exist to protect people from harm by the behavior of others. Even brief exposure to secondhand smoke harms non-smokers.

We strongly believe that this measure does not affect hotel and motel rooms in any way because, as with other private residences, occupants of hotel and motel rooms have a reasonable expectation of privacy and the right to engage in legal behavior if not otherwise prohibited, as the proponents of Question 5 never intended for hotel and motel rooms to become non-smoking areas.

Most, if not all, bars, taverns and saloons that serve meals prepared on site, thereby requiring a food-handling license, such as Nevada's many sports bars, allow children and families in their establishments, so prohibiting smoking in these places is consistent with the measure's intent to protect children and all non-smokers from the dangers of secondhand smoke. It is pure speculation that Question 5 will lead to more drunk drivers. Having a liquor license is a privilege. If bar owners choose to stop food service in order to allow smoking and turn drunk drivers out on our streets, their licenses should be revoked.

Providing non-smoking areas is not effective. Separating smoking and non-smoking areas does not protect non-smokers. That's not the responsible way to protect children or adults.

Smoke-free laws in other states have no adverse economic impact on the hospitality industry – restaurants and bars. Tourist destinations such as New York, California and Florida are smoke-free (Hawaii's laws take effect this November). Restaurants and bars there have increased sales, profits, tax receipts, employment and patronage.

*The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252*

## **FISCAL NOTE**

### **FINANCIAL IMPACT – CANNOT BE DETERMINED**

Question 5 proposes to amend Chapter 202 of the *Nevada Revised Statutes* to prohibit smoking in government buildings, schools, and other indoor places of employment, including, but not limited to, child care facilities, video arcades, indoor portions of restaurants, movie theaters, grocery stores, malls, and other retail establishments. The proposed prohibition on smoking would not apply to areas of casinos where loitering by minors is prohibited; stand-alone bars, taverns, and saloons; retail tobacco stores; strip clubs and brothels; and private residences, unless that private residence houses a child care, adult day care, or health care facility.

### **FINANCIAL IMPACT OF THE INITIATIVE**

Establishments where smoking is prohibited by Question 5 would be required to conspicuously post “No Smoking” signs at all entrances and throughout the establishment. State law currently prohibits smoking in public buildings, except in specific designated areas, and requires the posting of “No Smoking” signage in areas not designated as smoking areas. It is difficult to determine the amount of new or additional signage needed in state and local buildings, beyond those required by current statute, to comply with the provisions of Question 5. Thus, the specific financial impact to state and local governments, including school districts, with regard to the implementation of the provisions of Question 5 requiring “No Smoking” signage at all entrances and throughout public buildings cannot be determined with any degree of certainty.

State and local governments would also be required to remove all ashtrays and other smoking paraphernalia from public buildings where smoking is prohibited. State law currently prohibits smoking in public buildings, except in specific designated areas. It is difficult to determine the

amount of ashtrays or other smoking paraphernalia that may need to be removed from these designated areas in order to comply with the provisions of Question 5. Therefore, the specific financial impact to state and local governments, including school districts, with regard to the implementation of the provisions of Question 5 requiring the removal of ashtrays and other smoking paraphernalia from public buildings cannot be reliably estimated.

Current statute requires health authorities and law enforcement agencies to enforce smoking laws within the state, but it is difficult to identify any potential increase in duties or responsibilities requiring additional resources to enforce Question 5 compared to those required by current statute. Since the need or demand for additional resources cannot be easily predicted, a reasonable estimate of the financial impact upon state and local governments with regard to enforcement of Question 5 cannot be made.

*The fiscal note was prepared by the Legislative Counsel Bureau pursuant to NRS 295.01*