

# Washington Examiner

## 2 exceptions to Nebraska smoking ban struck down

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OMAHA, Neb. (AP) — The Nebraska Supreme Court on Friday struck down exceptions to the state's public smoking ban for cigar bars and tobacco shops, but it spared the exception for some hotel guestrooms that allow smoking.

The decision came in the case of Big John's Billiards, an Omaha pool hall, whose owner sued after Nebraska enacted a statewide public smoking ban in 2009. The law bans smoking in all public buildings and private businesses, including bars and restaurants. However, the law provided exceptions for cigar bars, some hotel rooms and tobacco-only retailers.

In a split decision, the state's high court found that the exception for hotel rooms is permissible because hotel guestrooms are akin to private homes. But it found the exceptions for cigar bars and tobacco retailers amounted to unconstitutional special legislation.

Allowing patrons to smoke in cigar bars and tobacco shops simply because it is convenient doesn't conform to the purpose of the ban, "which is to protect the public and employees from the dangers of secondhand smoke," Nebraska Supreme Court Justice Kenneth Stephan wrote for the majority.

In dissent, Justice William Cassel agreed with the majority that the exception for cigar bars is unconstitutional and the exception for some hotel rooms is permissible, but he said the exception for tobacco-only retailers should also stand.

"I recognize that the exemption may not be perfect, in that some nonsmokers may be exposed to secondhand smoke," Cassel wrote. "But the Legislature is presumed to have acted within its constitutional power despite that, in practice, its laws may result in some inequality."

The ruling is certain to hit the bottom lines of cigar bars and tobacco shops, said Jason "Hutch" Hutchison, general manager of Jake's Cigars and Spirits in Lincoln. Jake's also has a location in Omaha.

"I imagine we'll see a hit between 10 to 15 percent, as far as our cigar sales go," he said. "It's an unfortunate ruling. I really think that judges sometimes don't think about the impact their decisions have on real people."

The high court also rejected a cross-appeal by Big John's in which it argued that the smoking ban was unconstitutional because it has a right to allow smoking and that not allowing it would hurt the business' revenue. Big John's billiards hall in Lincoln went out of business because the ban drove patrons away, the company's attorney argued.

The high court's ruling upheld, in part, a Lancaster County judge's ruling last year that found all three of the smoking ban's exceptions were unconstitutional.

A spokeswoman for the Nebraska Attorney General's Office said state's attorneys are in the process of reviewing the opinion.

An attorney for Big John's Billiards, Ted Boecker, said his client is pleased that the high court "recognized that it was unfair to create certain exemptions for certain types of bars."

"We're hopeful that the (Legislature) will take the opportunity to have a second look at how it implements the ban and potential exceptions that might allow certain businesses to permit smoking on the premises," Boecker said.

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