



**House
Legislative
Analysis
Section**

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SMOKING IN RESTAURANTS

House Bill 4457 as passed by the House
Second Analysis (1-5-94)

Sponsor: Rep. Gregory E. Pitoniak
Committee: Public Health

THE APPARENT PROBLEM:

In 1986, the U.S. surgeon general concluded: "It is now clear that disease risk to the inhalation of tobacco smoke is not limited to the individual who is smoking, but can extend to those who inhale tobacco smoke emitted into the air." Further, a 1992 Environmental Protection Agency report concluded that in adults, environmental tobacco smoke is a human lung carcinogen, responsible for approximately 3,000 lung cancer deaths annually in U.S. nonsmokers, and that in children, secondhand smoke exposure is causally associated with an increased risk of lower respiratory tract infections, such as bronchitis and pneumonia, as well as fluid in the middle ear, upper respiratory tract infections, reduction in lung function, and increased severity of asthma symptoms. In light of the mounting evidence of the health risks that exposure to environmental tobacco smoke presents to nonsmokers, anti-smoking advocates say that laws regulating smoking in public places, such as restaurants, need strengthening.

THE CONTENT OF THE BILL:

The bill would amend the section of the Public Health Code regulating smoking areas in restaurants ("food service establishments") in the following ways:

- * All public areas of a restaurant (bathrooms, coatrooms, entrances and other areas used by patrons when not seated at a table or counter) would be nonsmoking areas, except that a restaurant could designate all or part of its lobby, waiting room, hallways, and lounge areas as smoking areas.
- * Current requirements for designating nonsmoking tables (at least three tables for a restaurant with a seating capacity of 50 to 100 people, at least six tables for 100 to 150 people, at least nine tables for more than 150 people) would be replaced by

provisions allowing a certain percentage of seating capacity for smokers. A restaurant with a seating capacity of fewer than 50 people, or a restaurant that was owned and operated by a private club, could designate up to 75 percent of its seats for smokers. A restaurant with a seating capacity of 50 or more that was not owned or operated by a private club could designate up to 50 percent of its seats for smoking patrons.

* "Seating capacity" would not include seats located at a bar or tables adjacent to a bar, if meals were not served at those tables.

* The requirements would not apply to a separate room used for private banquets, nor to food service establishments owned and operated by a fraternal organization if service was limited to members of the organization and their guests.

* The bill would take effect September 1, 1993.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal implications for the state. (8-3-93)

ARGUMENTS:

For:

Requiring that at least half the seating in larger restaurants be designated as nonsmoking would greatly reduce patrons' exposure to environmental tobacco smoke and its related health risks. This requirement also would more closely reflect the fact that more than 85 percent of the state's residents (adults and children combined) do not smoke. The bill would be an additional step toward making all Michigan eating establishments smoke-free. The bill clearly intends to create a more healthful environment in food service establishments.

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Against:

The bill does not go far enough. Although the bill should help in reducing the exposure of nonsmokers to tobacco smoke, increasing the area of nonsmoking tables will not really improve air quality. In fact, separating smokers from nonsmokers in a single room will never totally eliminate the problem, since tobacco smoke knows no boundaries and will circulate throughout the entire room. Nonsmoking patrons seated immediately adjacent to smoking areas may experience little relief.

The following seating, ventilation, and compliance provisions in the Michigan Clean Indoor Air Act should apply to restaurants: nonsmoking seating should be contiguous; prevailing airflow should be toward the smoking area; nonsmokers should be seated nearest to the source of fresh air; smokers should be located nearest to exhaust fans or return air grilles; and restaurant owners or operators should be required to develop and implement a written policy that included procedures for receiving and handling complaints.

Against:

The bill is unnecessary and interferes with the free enterprise system. Restaurant owners are aware of their customers' preferences with regard to smoking or nonsmoking areas, and any restaurant owner who wants to run a profitable business knows that he or she must determine the proper percentage of table space to allocate for each area. The state should not meddle with the free enterprise system by imposing arbitrary, artificial boundaries on restaurant seating. It should, instead, let the market dictate smoking policies.

POSITIONS:

The Department of Public Health supports the bill. (8-3-93)

The Michigan State Medical Society supports the bill. (8-3-93)

The Michigan Coalition on Smoking OR Health supports the bill. (8-3-93)

The Tobacco-Free Michigan Action Coalition supports the bill. (8-3-93)