

# Legislative Analysis

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## SMOKE-FREE WORKPLACE

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**House Bill 4163**

**House Bill 4816**

**Sponsor: Rep. Brenda Clack**

**Committee: Commerce**

**Revised Summary**

**Complete to 7-23-07**

## **A REVISED SUMMARY OF HOUSE BILL 4163 AS INTRODUCED 1-30-07 AND A SUMMARY OF HOUSE BILL 4816 AS INTRODUCED 5-23-07**

House Bill 4163 would amend Section 12601 of the Public Health Code (MCL 333.12601), generally, to prohibit smoking in a place of employment. Under the bill, an individual would be prohibited from smoking in a public place or at a meeting of a public body (as is currently the law), and the definition of "public place" would be amended to include a "place of employment." A number of sections of current law that provide exceptions to the prohibition on smoking in public places would be repealed by the bill. For example, under the bill, the smoking prohibition would apply to restaurants and bars.

House Bill 4816 would make a complementary amendment to the Food Law of 2000 (MCL 289.4107). It would specify that to qualify for a food establishment license, an applicant would have to "comply with the requirements of other state or local laws, ordinances, codes, rules, or regulations." House Bill 4816 is tie-barred to House Bill 4163.

### House Bill 4163

The term "place of employment" would be defined to mean an enclosed indoor area serving as the work area for one or more persons employed by a public or private employer. However, the term would not include a residence that is also used as an office for the owner or lessee. A "work area" would be defined as a site within a place of employment where one or more employees are routinely assigned to perform services for an employer.

Currently, the term "public place" does not include a private, enclosed room or office occupied exclusively by a smoker, even if the room or enclosed office may be visited by a nonsmoker. This exception would be struck from the act.

Currently, the prohibition on smoking in public places does not apply to food service establishments (such as restaurants) or to licensed premises (i.e., bars and restaurants licensed by the Liquor Control Commission to sell alcohol for on-premises consumption). These exceptions would be eliminated.

The bill would repeal a number of sections of current law. Some of these deal with enforcement of smoking prohibitions and they are simply moved without change into Section 12601. Other provisions, dealing with smoking prohibitions and exceptions, are eliminated entirely. These sections, generally, prohibit smoking in certain facilities but provide for exceptions or provide for specific smoking areas.

Repealed Sections. The bill would repeal the following sections of current law:

- Section 12603 prohibits smoking in public places or at meetings of public bodies, but says it does not apply to (1) rooms, halls, and buildings used for private functions if the seating arrangements are under the control of the sponsor of the function and not under the control of state or local government or the owner or operator of the facility; (2) food service establishments or licensed premises; or (3) private educational facilities after regularly scheduled school hours.
- Section 12604a prohibits smoking in the common or treatment area of a private practice office of a professional licensed under the Public Health Code and in health facilities. There are exceptions for cases where a prohibition would be detrimental to a patient's treatment, in which case the patient could smoke in a separate room from nonsmoking patients. Also in health facilities where smoking is allowed, smoking can be in certain designated areas only.
- Section 12605 allows for, and regulates, the designation of smoking areas by state and local governments and owners or operators of public places (except where prohibited by law).
- Section 12607 requires the posting of signs stating smoking is prohibited except in designated smoking areas; the arrangement of seating to provide a smoke-free area; and the separation of smokers and non-smokers. The requirement that signs be posting prohibiting smoking would be moved to Section 12601, but there would be no reference to designated smoking areas or the separation of smokers and non-smokers.
- Section 12611 provides fines for violations, and its provisions would be moved to within Section 12601.
- Section 12613 deals with fines and injunctive relief, and its provisions would be moved to within Section 12601.
- Section 12614 requires the director of the Department of Community Health to report every two years to the legislature, among other things. It would be moved with some modification to within Section 12601. (Reports on smoking policies would no longer be required.)
- Section 12617 contains the effective date of the original smoking legislation (January 1, 1987).

- Section 21333 addresses smoking policies at homes for the aged, describing where smoking is permitted.
- Section 21733 addresses smoking policies in nursing homes, describing where smoking is permitted.
- Section 6127 of the Food Law of 2000 is also repealed; that section deals with where smoking is permitted in food establishments.

## **FISCAL IMPACT:**

House Bill 4163 as introduced is likely to cause tobacco tax and gaming revenue to decline, but will also bring about short-term and long-term savings in medical costs. It is known that certain medical conditions and illnesses are directly attributable to smoking and to exposure to secondhand smoke. House Bill 4163 will reduce direct and secondhand smoke exposure, having an impact on personal health and related medical costs. Studies also indicate that under a comprehensive smoke-free workplace policy, over time, consumption of cigarettes and the rate of smoking by the population will decline by 5-20%, which will reduce tobacco tax revenue.

A significant percentage of Michigan's population is currently protected from cigarette smoke at worksites under local and private clean indoor air policies, which may moderate the impact of the bill on tobacco consumption and health care savings when compared to the results of research and studies.

### Expenditures

The fiscal impact of HB 4163 as introduced will include short- and long-term health care savings for state and local government employees and Medicaid participants. Medical cost savings will come from non-smokers and smokers due to reduced exposure to secondhand smoke, from smokers who have reduced their cigarette consumption, and from smokers who quit smoking. For 2004, smoking-attributable medical costs in Michigan are estimated at \$3.4 billion of which \$1.13 billion is estimated to be Medicaid costs (federal and state funded), about 16% of Medicaid expenditures. Applied to the current Medicaid consensus of projected expenditures for Fiscal Year 2007-08 of \$9.43 billion, every 1% of savings in smoking-attributable Medicaid costs would be approximately \$15.1 million, of which \$6.3 million is the state share.

The bill retains current statutory language for state and local health department enforcement and for civil fines; however, the pool of potential violators is expanded, so that additional revenue from fines is possible, and increased enforcement burden is possible. In Michigan, local health departments carry out most of the enforcement, and have the power to increase inspection fees to cover the actual cost of providing services if necessary. Fines are revenue to the enforcement entity.

## Revenues

The fiscal impact on State revenue would primarily occur through the tobacco tax, casino wagering tax, and the Lottery. Since the mid 1970s, cigarette consumption has trended downward. In general, the State's cigarette tax revenue declines 2.0% or approximately \$20 million per year (each 1% decline translates into a \$10 million revenue reduction on a full year basis). To the extent cigarette consumption declines due to the smoking ban, as described in the bill, cigarette tax revenue would also decline. Cigarette tax revenue is earmarked as follows: 41.6% to the School Aid Fund (SAF), 31.9% to the Medicaid Trust Fund (MTF), 19.8% to the General Fund/General Purpose (GF/GP), 3.8% to the Healthy Michigan Fund, 2.4% to the Health and Safety Fund, and 0.6% to Wayne County for indigent health care.

Gaming revenue would also likely be affected by a smoking ban. The casino wagering tax would likely decline, although for how long and to what extent is indeterminate. For FY 2007-08, the casino wagering tax is earmarked as follows: 84.8% SAF, 13.3% GF/GP, and 1.9% Agricultural Equine Industry Development Fund. In addition, any decline in adjusted gross receipts from the Detroit casinos would also reduce revenue to the City of Detroit.

The effect on the Lottery sales could be both positive and negative. Club games may experience a sales reduction due to their location in establishments that currently permit smoking; however, an increase in sales of instant tickets and on-line games could be substituted for the declines in other gaming activities. All net Lottery revenue is earmarked to the SAF.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.