

SFA



BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

RECEIVED

JUL 06 1988

Senate Bill 741 (Substitute S-2 as passed by the Senate)

Senate Bill 793 (Substitute S-2 as passed by the Senate)

Sponsor: Senator William Sederburg (Senate Bill 741)

Senator Jack Faxon (Senate Bill 793)

Committee: Health Policy

Mich. State Law Library

Date Completed: 5-26-88

RATIONALE

Complaints from persons who oppose smoking or object to being exposed to smoke from tobacco users have become louder and more frequent. While evidence has been produced over the years that links smoking to disease, debate has continued in the scientific community as to the effect, if any, that sidestream or secondhand smoke has on a person's health. In 1986, however, evidence was presented in a report issued by the U.S. Surgeon General that 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".

In response to growing concerns about the effect of sidestream or secondhand smoke, the Legislature enacted Public Acts 96 and 198 of 1986, which amended the Public Health Code to require food service establishments with a seating capacity of 50 or more to provide a specified number of tables for nonsmokers and prohibited smoking in certain public places, except in designated smoking areas, respectively. Since the enactment of these statutes, some people feel clarification is needed as to the enforcement and compliance with the Code's provisions that prohibit smoking in public places except for designated areas. Furthermore, it is also argued that food service establishments should be required to set aside more seating for nonsmokers and that these seating requirements should be adjustable to accommodate the flow of smoking and nonsmoking patrons to an establishment.

CONTENT

Senate Bill 741 (S-2)

The bill would amend the Public Health Code—which generally prohibits smoking in certain public gathering places and in governmental buildings, except in designated smoking areas—to make changes regarding the enforcement of the smoking provisions. Under the Code, if smoking is permitted in a public place, the State or local governmental agency or the person who owns or operates the place must develop a policy for the separation of smokers and nonsmokers. The bill would require the policy to be written and to include a procedure to receive, investigate, and take action on complaints, and the person or agency would be required to implement and enforce the separation policy.

Under the bill, the Department of Public Health could authorize a local health department to enforce the Code's smoking provisions and rules promulgated under them. In addition to the civil fine authorized in the Code, a local health department could enforce the provisions and rules

through an action commenced under statutory authority that allows a local health officer to restrain, prevent, or correct a violation or take any other appropriate action authorized by law.

The bill also would require the Director of the Department of Public Health to report biennially to the Legislature on the effect and enforcement of provisions in the Code dealing with smoking in public places (Part 126), which the bill would name the "Michigan Clean Indoor Air Act". The report would have to include, at a minimum, the policy of each State agency that had developed a policy for the separation of smokers and nonsmokers, and compliance with provisions on the duties of owners or operators of public places (MCL 333.12607).

Upon request of the Public Health Department, the Director of the Department of Management and Budget would be required annually to give the Public Health Department, at a minimum, a list of each public place owned or operated by the State, and report on compliance with provisions on the duties of owners and operators of public places, and the smoking policy, if any, adopted by each public place, as listed in the Code.

The bill also would amend the definition of an "educational facility" to include a building owned, leased, or under the control of a private, as well as a public, school system, college, or university.

MCL 333.12601 et al.

Senate Bill 793 (S-2)

The bill would amend the Public Health Code to:

- Increase the number of tables that a food service establishment must provide for nonsmokers.
- Apply the Code's requirements for nonsmoking seating at food service establishments to a food service establishment located in a "shopping mall" where seating for that establishment is provided and/or maintained by the person who owns or operates the mall.
- Allow a food service establishment to seat patrons in either areas for smokers or nonsmokers if seating were available, and the area the patron requested not available, provided that the table was contiguous to the area originally requested.

The minimum number of tables for nonsmokers would be increased from three to five for an establishment that can seat 50-100 people, from six to eight for 101-150 persons; and from nine to 11 for more than 150 persons. (Each table would still have to seat at least four.)

S.B. 741 & 793 (5-26-88)

The bill's provisions would not apply to a private facility that was serviced by a catering kitchen.

"Shopping mall" would mean a shopping center with stores facing an enclosed mall.

MCL 333.12905

FISCAL IMPACT

Senate Bill 741 (S-2)

The bill would have an indeterminate impact on State and local governments. There would be some increase in State and local costs associated with enforcement efforts, which would be partially offset by fine revenues.

Senate Bill 793 (S-2)

The bill would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

The ability to enforce the Public Health Code's provisions prohibiting smoking in certain public gathering places and governmental buildings would be greatly increased with the bill's requirement that a procedure be developed in order for complaints about smoking to be received and investigated, and that enforcement action be taken if the investigation revealed a problem. With this provision, the Department of Public Health could enforce the Code by determining whether the agency or person had demonstrated that reasonable action was being taken to enforce the Code's provisions. Otherwise, enforcement of these provisions would not be possible without official on-site documentation of the frequency of the alleged violations.

Supporting Argument

Nonsmokers have sound arguments why they should be allowed to maintain some distance from smokers: scientific evidence as presented by the U.S. Surgeon General clearly documents that nonsmokers are placed at an increased risk of developing disease as the result of exposure to environmental tobacco smoke, in addition to the unpleasantness and irritation that nonsmokers must face when exposed to secondhand tobacco smoke. Senate Bill 793 (S-2) would increase the number of tables that a food service must provide for nonsmokers, in response to a growing number of requests for this type of seating. The bill also would grant food service establishments flexibility in seating patrons when tables were not available in the area requested by the patron. This provision would permit food service establishments to accommodate patrons in cases, for example, where a section of tables reserved for smokers was empty, the seating in the nonsmoking section was occupied, and patrons were waiting for tables in the nonsmoking section.

Response: The bill does not go far enough. While the number of nonsmoking tables at a food service establishment that must be reserved for nonsmokers would be increased, the bill does not address nonsmokers' concerns about the location of these tables, especially in smaller establishments, where nonsmokers' tables often are sandwiched between the smoking section and the establishment's kitchen—not closest to the primary source of fresh air. Furthermore, application of the bill should be extended to dining counters, as well as food service establishments located in shopping malls.

Opposing Argument

Both bills are over zealous in their attempts at regulating smoking in public gathering places. Senate Bill 741 (S-2) would extend to private schools the Public Health Code's current provisions prohibiting smoking except in designated locations in government buildings, including public schools. While there is no disagreement that students should not smoke, the bill raises the question of the extent of control that the State should have over private schools. The regulation of smoking in private schools should be determined by private school officials and parents of students who attend those schools, and not by the State. In addition, Senate Bill 793 (S-2) represents further interference by the State with the business operations of a private food service establishment. Rather than increasing State regulation of these establishments, by requiring them to furnish more seating for nonsmokers, the State should grant greater flexibility to allow these businesses to respond to the needs of their patrons without confining them to strict numbers or percentages.

Legislative Analyst: L. Arasim

Fiscal Analyst: P. Graham

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.