

SFA

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

Senate Bill 741 (as enrolled) (Public Act 296 of 1988)
 Senate Bill 793 (as enrolled) (Public Act 297 of 1988)
 Sponsor: Senator William Sederburg (Senate Bill 741)
 Senator Jack Faxon (Senate Bill 793)

Senate Committee: Health Policy
 House Committee: Public Health

Date Completed: 8-23-88

RECEIVED

OCT 03 1988

Mich. State Law Library

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 5 would ore 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**

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,

pursuant to the Code's provisions on issuing a civil citation for violation of the Code or a rule, regulation, or order (MCL 333.2461(2) and 333.2462). 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.

Under the Code, a person is restricted from smoking in a "public place", except in a designated smoking area. The Code defines "public place" as an enclosed, indoor area that is or is not owned or operated by a State or local agency and is used by the general public. Included within the scope of public place is an educational facility, meaning a building owned, leased or under control of a public school system, college or university. The bill would amend the definition of an educational facility to include a building owned, leased, or under control of a private school system, college, or university. The bill specifies that its provisions would not apply to a private educational facility after regularly scheduled hours.

MCL 333.12601 et al.

Senate Bill 793

The bill would amend the Public Health Code to:

- Apply the Code's requirements for nonsmoking seating at food service establishments to a food service establishment or group of food service establishments

S.B. 741 & 793 (8-23-88)

located in a "shopping mall" where seating for these establishments is provided and/or maintained by the person who owns or operates the mall.

- Allow a food service establishment to seat a patron in either areas for smokers or nonsmokers if seating were available and the area the patron requested were not available, provided that the table was contiguous to the area originally requested. The bill specifies that this provision could not be used to reduce the number of tables for nonsmokers below the minimum number of tables for nonsmokers required in the Code.

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

"Seating capacity" would mean the actual number of seats for patrons in a food service establishment. "Shopping mall" would mean a shopping center with stores facing an enclosed mall.

MCL 333.12905

FISCAL IMPACT

Senate Bill 741

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

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 requirement in Senate Bill 741 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 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. The number of nonsmoking tables at a food service establishment that

must be reserved for nonsmokers should be increased, as was proposed in the Senate-passed version of the bill. Furthermore, 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. In addition, application of the bill should be extended to dining counters, as well as food service establishments located in shopping malls.

Opposing Argument

Many individuals become hooked on tobacco as children and, despite repeated efforts to stop, continue to smoke throughout their lifetime. Research indicates that almost 90% of smokers started smoking before the age of 19 and 60% of all new smokers are 14 years of age or younger—relatively few people begin to smoke after the age of 21. The number of children and early teens who smoke has reached alarming levels and far too many of these juveniles who are unable to stop now can expect in time to experience tobacco-induced illness, disability, and the possibility of early death. Although most school districts now have far more restrictive smoking regulations for their students than for their faculty and administrators, according to a 1986 poll taken by the National School Boards Association, the Association notes that the trend nationally appears to be toward more rigorous anti-smoking policies. While the Association's 97,000 local school board members previously had recommended that student use of all tobacco products be prohibited on school premises but made no recommendation concerning adult smoking, the Association now has strengthened that policy to prohibit the use of tobacco in school district buildings by staff and other adults. Currently, a person is restricted under the Code from smoking in a "public place" except in a designated smoking area. Included within the definition of a public place is an educational facility, meaning a building owned, leased or under control of a public school system, college or university. Senate Bill 741 would amend this definition to include such facilities that are owned, leased or under control of a private school system, college, or university. While the bill would extend the Code's smoking restrictions to private schools, the bill still would let stand a provision in the Code that permits smoking in schools in designated areas, such as a teachers' lounge. The bill also specifies that its provisions would not apply to a private educational facility after regularly scheduled school hours. If smoking is considered harmful, then it should be prohibited—for minors and adults—at all times and locations in a school building. The bill would do little to eliminate contradictory messages that are sent to Michigan students when adult role models are permitted to smoke in a school environment.

Response: While there is no disagreement that minors should not smoke, the State should not impose a restriction on adults. Whether or not teachers, administrators, and staff should be restricted or permitted to smoke on school grounds should be addressed in collective bargaining agreements reached between the school district and bargaining representatives in each district. Furthermore, the bill's application to private schools raises the question of State control. These schools should be allowed to determine on their own, without State interference, whether smoking should be prohibited on their premises.

Opposing Argument

Senate Bill 793 is over zealous in its attempt to regulate smoking in public gathering places. The bill represents

interference by the State with the business operations of private food service establishments located in shopping malls. Rather than encouraging State regulation of the these establishments, the Legislature should free these businesses from additional State interference.

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.