



**House  
Legislative  
Analysis  
Section**

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## **NO SMOKING IN MALLS**

**House Bill 5212 with committee  
amendment  
First Analysis (12-9-93)**

**Sponsor: Rep. John Jamian  
Committee: Public Health**

### ***THE APPARENT PROBLEM:***

In January of this year, the U.S. Environmental Protection Agency (EPA) classified environmental ("second-hand") tobacco smoke as a Group A carcinogen, a group of cancer-causing agents which includes benzene, radon, and asbestos. There are, in fact, 43 carcinogenic compounds in tobacco smoke, as well as some substances that can cause permanent, harmful changes in the genetic material of cells. Environmental tobacco smoke has been shown to cause cancer in non-smokers, and results in an estimated 3,000 lung cancer deaths in non-smokers every year. In children, secondhand smoke is causally associated with increased risk of lower respiratory tract infections, reduction in lung function, and increased severity of asthma symptoms.

People use shopping malls for a wide variety of purposes in addition to shopping. In many ways, malls function as "town squares," places where people meet not only to shop, but also to socialize, go to movies, eat, exercise, and attend programs or special events. Five malls in the Kalamazoo area already have instituted a voluntary no-smoking policy, and legislation has been introduced that would prohibit smoking in all malls.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Public Health Code to prohibit smoking in the common areas of shopping malls, including food courts. The bill wouldn't apply to stores (or other enclosed areas) in malls that weren't part of the common areas of the mall. Mall owners would be required to post signs saying that smoking in the mall was prohibited by state law. The bill would take effect on October 1, 1994.

MCL 333.23604b

### ***BACKGROUND INFORMATION:***

The legislature enacted four laws regarding smoking and tobacco in the 1991-92 session:

- \* Public Act 178 (enrolled House Bill 5154), prohibiting smoking in child caring institutions and child care centers;
- \* Public Act 271 (enrolled House Bill 5017), restricting the placement of tobacco vending machines;
- \* Public Act 272 (enrolled House Bill 5225), prohibiting the sale of single cigarettes; and
- \* Public Act 273 (enrolled House Bill), restricting the mailing of tobacco products.

So far in the 1993-94 session, the legislature has enacted six bills regarding smoking and tobacco:

- \* Public Act 140 (enrolled Senate Bill 459), prohibiting smoking on school district property;
- \* Public Acts 211 (enrolled House Bill 4688) and 217 (enrolled House Bill 4687), prohibiting smoking in day care centers;
- \* Public Act 218 (enrolled House Bill 4689), prohibiting smoking in day care group homes;
- \* Public Act 219 (enrolled House Bill 4690), prohibiting smoking in daycare homes during operating hours and requiring notification to parents of any smoking in the home after hours; and
- \* Public Act 424 (enrolled House Bill 4457), requiring that at least half of restaurant seating be nonsmoking.

**FISCAL IMPLICATIONS:**

Fiscal information is not available. (12-8-93)

**ARGUMENTS:****For:**

Environmental tobacco smoke spreads rapidly throughout buildings and other enclosed spaces, such as shopping malls, and persists for a long time after smoking ends. Ventilation systems in malls, as in other public places, are designed to keep air moving, not to remove air-borne contamination. As a result, ventilation systems simply recirculate air that contains tobacco smoke. Five shopping malls in southwestern Michigan already have developed and implemented a joint smoke-free policy for their respective malls, the first time that competing malls in the area cooperated in developing a policy regarding a public health issue. The policy has been an unqualified success, and hasn't adversely affected either sales or customer traffic. Reportedly, mall businesses haven't complained about the policy or its effects on business and customer response has been very positive.

Given what is known about the dangers of secondhand smoke, the state has acted to ban smoking in a number of places, particularly where children are present. Malls often are filled with children and adolescents, who not only are being exposed to secondhand smoke, but also are getting the message that smoking is an acceptable social behavior.

The bill would ban smoking in mall concourses and other public areas, including food courts, but it would allow stores and restaurants with their own seating to set their own smoking or non-smoking policies (though enclosed restaurants with their own seating would be subject to the requirements of Public Act 424 of this year). Many stores in malls already ban smoking, mall restaurants (as opposed to mall food courts) already have non-smoking areas, and some restaurants are banning smoking completely. Reportedly, a number of malls have indicated that they would like to institute no smoking policies, but would prefer that the ban be statutory so as to ensure a "level playing field" on which to compete for business.

The Michigan legislature already has enacted a number of laws to protect members of the public -- especially children -- from the hazards of

secondhand smoke. The bill is a logical next step in further protecting the public from this cancer-causing agent.

**Against:**

The bill is unnecessary, since shopping malls already can decide to ban smoking in their establishments; it interferes with the free enterprise system. Some malls, concerned with the adverse effects of smoking on the public's health, already have instituted no smoking policies with great success. Mall owners and operators are -- or should be -- aware of their customers' preferences regarding smoking and nonsmoking, and any mall owner who wishes to can decide whether or not to institute a no smoking policy without having the state dictate to them how they should run their businesses. The state shouldn't meddle with the free enterprise system by dictating how private businesses ought to be run.

What is more, if shopping malls want to institute no smoking policies but are afraid to offend some of their customers, the state shouldn't step in to act as a surrogate decision maker. At least five malls in the state already have instituted a no smoking policy, after considerable thoughtful discussion with the businesses leasing space in the malls and proactive educational efforts directed toward their customers. At least one mall even went so far as to offer information to its patrons on smoking cessation classes. Obviously the business community can act cooperatively and in the best health interests of its patrons without the shield of state law. At a time when government is being widely blamed, rightly or wrongly, for interfering in people's lives, it hardly seems necessary to add to this perception by banning smoking in private businesses.

**Response:**

Whether or not shopping malls do decide on their own to institute no smoking policies, the state does have a vested interest in protecting the health and safety of the general public. And while malls are private businesses, in many ways they serve as contemporary "town squares" where many people, whether as families or as individuals, congregate for a variety of reasons.

**Against:**

The bill is a good beginning, but does not go far enough. Since it now is widely recognized that secondhand smoke causes cancer, why not simply ban smoking from all places of business? The bill would ban smoking from the "common" areas of

shopping malls, but still would allow individual stores to decide whether or not to allow smoking. Since many, if not most, mall stores are open to the common areas of the mall during the hours they are open, and since they also use the same ventilation systems as the mall as a whole, smoking inside individual stores means that smoke still will enter the common areas, either directly, by drifting out open storefronts, or more indirectly, by being recirculated through a common ventilation system.

### ***Response:***

In fact, this probably is the direction in which many businesses are moving. However, such changes take time and often are best left to the affected communities to work out, rather than suddenly legislating the change. In fact, the process used by the five malls that voluntarily instituted their no smoking policy could well serve as a model. According to the malls, the keys to successfully implementing their no smoking policy involves time, education, and understanding. The malls began by having a representative from each of the malls' managements meet and discuss the pros and cons of the issue. The representatives ultimately decided to cooperate and coordinate with each other in developing their no smoking policies. They then proceeded to ask their member merchants to participate in a task force, composed of representatives of a variety of merchants (large and small) and with both smokers and nonsmokers (and former smokers). The task force was designed to address the merchants' concerns, and was given all of the information received at the management level meetings, including the EPA report and fact sheets from health organizations addressing the risks associated with secondhand smoke. Once again, the pros and cons of the issue were discussed and a merchant survey was conducted. After discussing the survey findings, the task force agreed to proceed with implementing a joint smoke-free policy. Discussion of the no smoking policy began early in the year, the policy itself was announced to the public at the beginning of June, and the policy was implemented in September. Enough time was allowed at all planning stages to allow each shopping mall to make individual preparations. Time also was necessary to prepare announcements to the press and the merchants, and once the policy was announced in June, it was important for both the merchants and the customers to have time to adjust to the idea of the policy and the reasons for it. With regard to education, the malls believe that it was important to make information on the effects

of secondhand smoke available to both merchants and customers. The merchants were given the information after the June announcement, while throughout September the mall set up tables at each entrance where information was available on secondhand smoke and area smoking cessation classes, including classes offered at each of the malls. Finally, the malls believe that people -- both merchants and customers -- needed to realize both that the no smoking policy was implemented to better serve the community and that smoking is an addictive behavior. The malls believed it was necessary to remove a known cancer-causing agent -- tobacco smoke -- from their environments just as other Class A carcinogens (such as asbestos, benzene, and radon) are removed from any environment once they are detected. The malls also believed that it was important to understand that smoking is an addictive behavior and that some people don't want to stop smoking. For those people, the malls believed that it was important to stress that the policy was implemented in the interests of the health and safety of their customers and employees. The issue for the malls never was the tobacco product or the person using it; the issue was that cancer-causing chemicals are present in tobacco smoke and left behind in the air, for everyone to breathe, once the smoke dissipates.

Thoughtful voluntary approaches, such as those taken by the five southwestern Michigan malls, are much more likely to succeed -- to be successfully implemented and accepted -- than a more heavy-handed approach that would simply mandate no smoking policies.

### ***POSITIONS:***

The American Lung Association of Michigan supports the bill. (12-8-93)

Southland Mall (one of the five southwestern malls with a no smoking policy) supports the bill. (12-8-93)

Representatives from the following groups testified and/or submitted written testimony in support of the bill:

- \* the Department of Public Health
- \* the Tobacco-Free Michigan Action Coalition
- \* the Michigan Coalition on Smoking OR Health