

SMOKE-FREE WORKPLACE

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House Bills 4377 & 4419

Sponsor: Rep. Lee Gonzales

Committee: Regulatory Reform

Complete to 4-1-09

A SUMMARY OF HOUSE BILLS 4377 & 4419 AS INTRODUCED 2-19-09

House Bill 4377 would amend the Public Health Code, generally, to prohibit smoking in public places, in places of employment, and in food service establishments (such as restaurants, cafeterias, food courts in shopping malls, and bars).

Exceptions would be made, however, for existing cigar bars and tobacco specialty retail stores, for gambling areas of casinos, and for home offices.

The bill would amend Part 126 (Smoking in Public Places) and Part 129 (Food Service Establishments) of the Public Health Code (Part 126 is found at MCL 333.12601. Part 129 is found at MCL 333.12901.)

House Bill 4419 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 Bills 4419 is tie-barred to House Bill 4377, meaning it cannot take effect unless the other bill is enacted.

Under House Bill 4377:

- A state or local governmental agency or a person who owns or operates a public place could not allow smoking, and (as is currently the law) an individual would be prohibited from smoking in a public place or at a meeting of a public body. (Section 12603)
- The definition of "public place" would be expanded to include a "place of employment," and that term would refer to an enclosed indoor area serving as the work area for one or more persons employed by a public or private employer. (A "work area" would be defined as a site within a place of employment where one or more employees perform services for an employer.) The term "a place of employment" would not include food service establishments. (Food service establishments are covered under separate provisions).
- The term "a place of employment" would also not include an exempt cigar bar or tobacco specialty retail store or gambling areas of a casino. Further, the term would not include a residence that is also used as an office for the owner or lessee.
- A food service establishment could not allow smoking, and an individual would be prohibited from smoking in a food service establishment.

- A number of sections of current law that provide exceptions to the prohibition on smoking in public places, or that provide for designated smoking areas, would be repealed or deleted by the bill. For example, under the bill, the smoking prohibition would apply throughout restaurants and bars.

No Smoking Signs/Paraphernalia. The bill would require that a *no smoking sign* or the *international no smoking symbol* be clearly and conspicuously posted at entrances to and within every building or other area where smoking is prohibited. Ashtrays and other smoking paraphernalia would have to be removed from places where smoking was prohibited. Owners, operators, managers, or others with control over a no-smoking area would be obligated to inform individuals found smoking that they were in violation of state law and subject to penalties.

Prohibition on Retaliatory or Adverse Personnel Action. Employers and food service establishments would be prohibited from taking retaliatory or adverse personnel action against an employee or applicant for employment on the basis of the individual's exercise of (or attempt to exercise) rights under Part 126 (Smoking in Public Places) or 129 (Food Service Establishments) of the Public Health Code. Employers would have to adopt a written nonsmoking policy; prominently post the policy; and within three weeks of its adoption, disseminate the policy to employees and new hires.

A written copy of the policy would have to be supplied on request to any employee or applicant for employment. The policy would have to be supplied to the Department of Community Health upon request. The written policy would have to include (1) that smoking is prohibited; and (2) that employees or applicants exercising their rights are protected from retaliation and adverse personnel action. The bill specifies that these provisions do not impair, diminish, or otherwise affect any collectively bargained procedure or remedy available to an employee on the effective date of the provisions, with respect to disputes arising under a nonsmoking policy. Once the bargaining agreement expires, the smoking prohibitions would control and the parties could not negotiate provisions in conflict with those prohibitions.

Cigar Bar/Tobacco Specialty Retail Store Exceptions. Cigar bars and tobacco specialty retail stores that meet certain criteria and follow certain procedures would be exempt from no-smoking requirements and could allow smoking on their premises. These establishments would have to file affidavits with DCH to claim an exemption. *This exemption applies to establishments in existence on the bill's effective date.*

To qualify, a cigar bar must generate during the 30 days immediately preceding the filing of the first affidavit at least 30 percent of its total gross annual income from the on-site sale of tobacco products and the rental of on-site humidors. The 30 percent requirement would have to be met each subsequent calendar year. Further, an exempt cigar bar could only allow the smoking of cigars that retail for over \$1 per cigar.

For a tobacco specialty retail store the total annual gross income requirement would be 75 percent or higher from the on-site sale of tobacco products and smoking paraphernalia.

Both kinds of establishments would have to file affidavits with the Department of Community Health; the initial affidavit would have to be filed within 30 days after the bill's effective date, with subsequent affidavits to be filed on January 31 of each year. The affidavit would have to attest that the percentage of sales threshold was met, that the

establishment was physically separated from any areas of the same or adjacent establishments where smoking was prohibited, and that entry was prohibited to anyone under 18 years of age. DCH could request additional information.

Casino Exemption. A casino could allow smoking on the floor space of the casino where gambling games are conducted or played. Smoking would be prohibited, however, if (1) the state negotiated an agreement with the federally recognized Indian tribes conducting gambling in the state to prohibit smoking in tribal casinos or (2) a majority of federally recognized Indian tribes prohibited smoking in tribal casinos.

Local Enforcement. The bill specifies that a county, city, village, or township could adopt and enforce local codes, ordinances, or regulations that complied with at least the minimum standards provided in the bill.

Penalties/ Enforcement. The no-smoking provisions of Part 126 and 129 would be enforced by the Department of Community Health, and DCH could authorize local health departments to carry out the enforcement. Violations would be subject to a civil fine of up to \$100 for a first violation and up to \$500 for a second or subsequent violation (This is current law). A person making a false statement on an affidavit would be guilty of perjury. The health code also allows individuals and entities alleging violations to bring civil actions for appropriate injunctive relief.

Also, as now, violations of no-smoking provisions could result in an order to cease food service operations, and compliance and non-compliance could be used a criteria by the Department of Agriculture in denying, suspending, limiting, or revoking a license issued under the Food Law. (DCH and local health departments would have to notify the Department of Agriculture of noncompliance with smoking laws.)

Repealed/Deleted Provisions. The bill would repeal or delete the following provisions of current law:

- Currently, in Section 12601, 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.
- Section 12603 currently prohibits smoking in public places or at meetings of public bodies, but also 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. The bill would delete the references to exceptions.
- 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. This section would be repealed.

- 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). This section would be repealed.
- 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 section would be repealed. The requirement that signs be posting prohibiting smoking would be moved to Section 12603, but without any reference to designated smoking areas or the separation of smokers and non-smokers.
- Section 12617 contains the effective date of the original smoking legislation (January 1, 1987). It would be repealed.
- Section 21333 addresses smoking policies at homes for the aged, describing where smoking is permitted. It would be repealed.
- Section 21733 addresses smoking policies in nursing homes, describing where smoking is permitted. This section would be repealed.
- 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 4377 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 4377 will reduce direct and secondhand exposure, having an impact on personal health and related medical costs. Studies also indicate that under 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 4377 for state and local governments will include short- and long-term health care savings for 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 Fiscal Year 2007-08, Medicaid expenditures were \$9.50 billion, and an estimated 16% or \$1.5 billion of costs were for smoking-related illness. Using FY 2007-08 expenditures, every 1% of savings in smoking-attributable Medicaid costs would be approximately \$15.1 million, of which \$6.4 million is the state share (using federal/state share rates for that fiscal year).

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.

There may be additional costs for the state or for any local governments that do not already meet the bill's requirement to post "No Smoking" signage on its premises.

Revenues

The fiscal impact on state revenue would primarily occur through the tobacco 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.

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.

This bill would reduce tobacco tax revenue by an estimated \$27.5 million on a full-year basis (FY 2009-10). The estimated total state revenue reduction would be allocated as follows: a decline of \$11.4 million for the SAF, \$8.8 million for the MTF, \$5.4 million for the GF/GP, \$1.0 million for the Healthy Michigan Fund, \$0.7 million for the Health and Safety Fund, and \$0.2 million for Wayne County.

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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.