Smoke-Free Workplaces:

The Impact of House Bill 4163 on the Restaurant and Bar Industry in Michigan

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EXECUTIVE SUMMARY

In January of 2008, the Campaign for Smokefree Air asked Public Sector Consultants to analyze the potential impact of House Bill 4163 on Michigan's restaurant and bar industry.

Passed by the Michigan House of Representatives in December of 2007, House Bill 4163 would require all workplaces in the state, including restaurants and bars, to become smoke free. In order to fully understand the controversy surrounding House Bill 4163, we have undertaken a review of the following issues:

- Is there compelling scientific evidence documenting the adverse health impacts of secondhand smoke?
- Will there be a negative impact on Michigan's restaurant and bar industry if the legislation is enacted?
- Does the public support comprehensive smoke-free laws and ordinances?
- Does a smoke-free workplace law that includes restaurants and bars constitute unwarranted government regulation in business decisions?

Having fully analyzed and explored these issues we arrive at the following conclusions:

- Compelling scientific evidence exists to support eliminating exposure to secondhand smoke.
- This bill will have no net economic effect on the Michigan restaurant and bar industry.
- Public support, measured by opinion polls and adoption of smoke-free laws in other states, is increasing—not decreasing.
- A smoke-free workplace law that includes restaurants and bars does not constitute unwarranted government regulation of business. The compelling governmental interest in protecting public health is based on scientific evidence, public opinion, and more than 30 years of legislative and executive action.

BACKGROUND

On December 5, 2007, the Michigan House of Representatives passed House Bill 4163, a bill to amend parts 126 and 129 of the Public Health Code (MCL 333.12601 et seq.) to provide for smoke-free workplaces, including restaurants and bars. Current Michigan law allows smoking in bars and only requires restaurants to provide separate seating arrangements for smokers and nonsmokers. This statute preempts local laws—that is, local units of government are not permitted to prohibit smoking in bars and restaurants. Local units of government are, however, allowed to prohibit smoking in other workplaces, both public and private.

One of the key arguments raised against prohibiting smoking in restaurants and bars is economic: the supposition that the restaurant and bar industry would see a decline in business. Proponents of such prohibitions point to the adverse health impacts of secondhand smoke on both workers and patrons of these establishments.

Public Sector Consultants was asked to review the pending legislation, with a focus on the economic issue and in the context of current health data, public opinion polls, and activity in other states.

Our analysis included detailed review of 43 published research articles concerning the effects of smoke-free workplace legislation on bars, restaurants, tourism, and gaming; seven studies of the public health consequences of environmental tobacco smoke (ETS, or "secondhand smoke") and numerous data related to ETS from the Centers for Disease Control and Prevention. In addition, we reviewed Michigan statute, case law, attorney general opinions, and executive orders covering workplace smoking ordinances.[1] Finally, we reviewed position documents from organizations both for and against the legislation.

Michigan Legislative History on Secondhand Smoke

Since the recodification of the Public Health Code in 1978 (MCL 333.1101 et seq.), numerous attempts have been made to clarify the law's provisions dealing with smoking in public places, including restaurants and bars. For almost 30 years, state lawmakers have attempted to define where smoking is acceptable and how much smoking should be permitted—in both public places and private businesses.

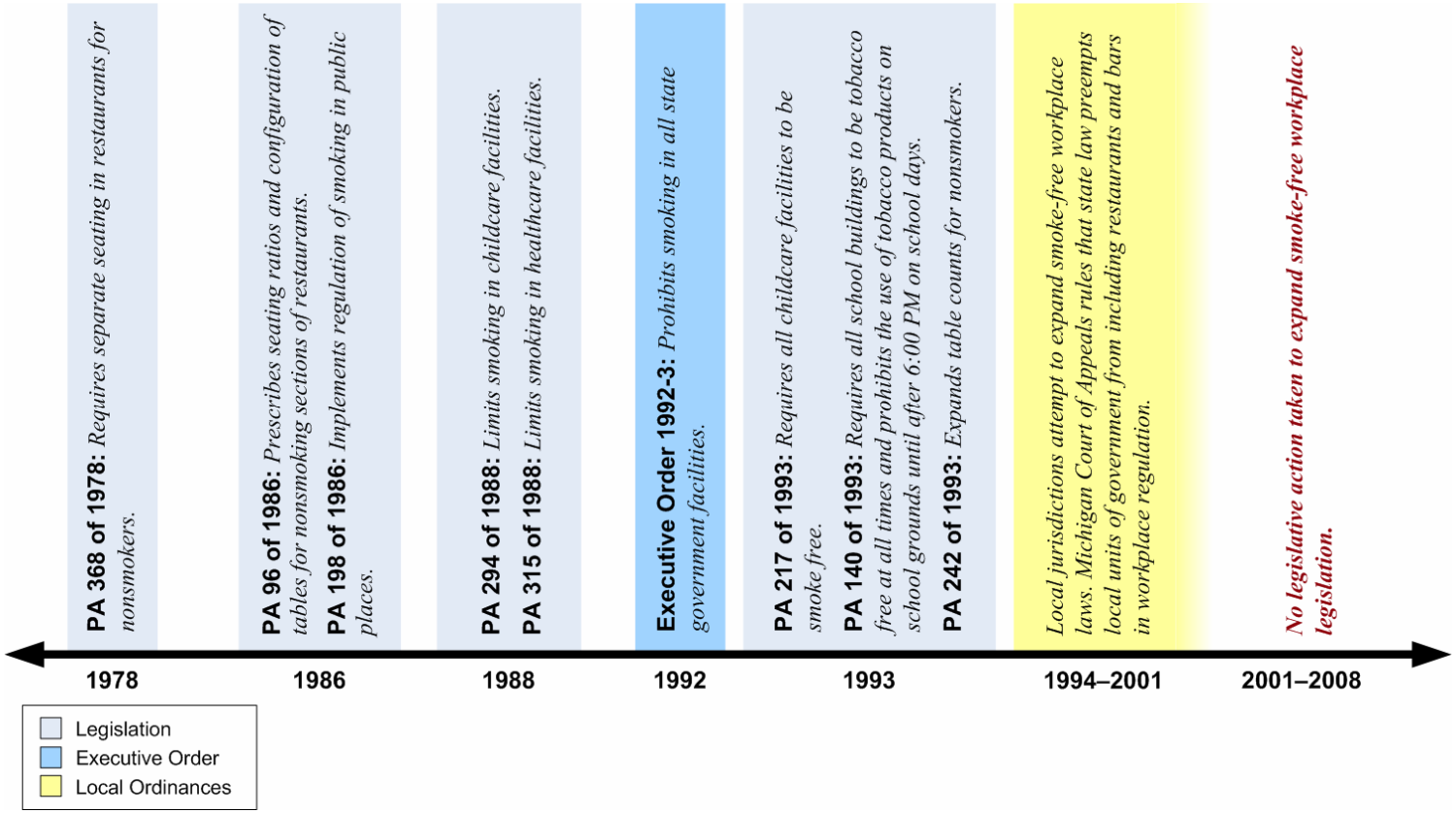
The majority of these proposals have come in the form of amendments to *The Food Service Sanitation Act* and *Clean Indoor Air Act* chapters of the Michigan Public Health Code. In addition, a 1992 executive order and a 2001 Michigan Court of Appeals decision provide guidance.

Legislative, administrative, and judicial action on the issue is summarized below and in Exhibit 1. The history of smoking regulation in Michigan can be divided into two periods:

1. The first 15 years, from 1978 to 1993, in which the Michigan Legislature gradually increased protections for nonsmokers exposed to secondhand smoke, highlighted by the enactment of the Michigan Clean Indoor Air Act in 1986.
2. The second 15-year period, from 1994 to 2008, in which the legislature has been silent on the issue of secondhand smoke. This period is notable for the increase in the scientific evidence of the adverse health impacts of secondhand smoke; the passage of local ordinances expanding protections from secondhand smoke; and the Marquette decision that affirmed state preemption of local ordinances and essentially prevents local governments from prohibiting smoking in restaurants and bars.

[1] In Michigan, cities have ordinance authority and counties have regulatory authority. For the purposes of this report, we are using the term "ordinance" to refer to all local laws/regulations.

EXHIBIT 1
Timeline of Michigan Smoking Regulation



SOURCE: Public Sector Consultants Inc.

1978–1993

Separate Seating. In 1978, the concept of protection from secondhand smoke in restaurants was first adopted in Michigan when the legislature recodified the Public Health Code. A requirement was inserted in Part 129 (Food Service Sanitation) of the Code that "food service establishments having a seating capacity of 50 or more persons post a sign at the entrance of the dining area indicating the availability of a nonsmoking area." This statement **required** seating for nonsmokers—not smokers—and established the expectation for such seating.

Prescribed Seating Ratios and Workplace Regulations. In 1986, two bills were passed: one amended the Food Service Sanitation Section of the Public Health Code to expand restaurant regulation and the other was the Michigan Clean Indoor Air Act.

Public Act (PA) 96 of 1986 prescribed not only a ratio of nonsmoking to smoking tables but a **configuration** of tables. MCL 333.12905(2) reads in part:

> A food service establishment with a seating capacity of not fewer than 50 and not more than 100 persons shall provide not less than 3 tables, each with a seating capacity of not fewer than 4 persons, or the equivalent for nonsmokers. A food service establishment with a seating of capacity of more than 100 but not more than 150 persons shall provide not less than 9 tables, each with a seating capacity of not fewer than 4 persons, or the equivalent for nonsmokers. The tables shall be clearly identified as nonsmoking, placed in close proximity to each other, and located so as not to discriminate against nonsmokers.

Soon thereafter, PA 198, the "Clean Indoor Air Act," prohibited smoking in "public places"—which included "an enclosed indoor area owned or operated by a state or local governmental agency" (i.e., offices, educational facilities, health facilities, etc.) and "an enclosed indoor area not owned or operated by a state or local government, but which is used by the general public (i.e., auditoriums, museums, theatres, etc.).

Limited Smoking in Childcare Establishments and Healthcare Facilities. In 1988, the Clean Indoor Air Act was amended to expand existing smoke-free regulations by limiting smoking in childcare institutions and healthcare facilities (PAs 294 and 315 of 1988).

Executive Order 1992-3. In 1992, then Governor John Engler issued Executive Order (EO) 1992-3 prohibiting smoking in all state government facilities. The EO specified that "The State of Michigan has a responsibility to protect the health and safety of its employees and of the general public who use state government facilities." The EO clarified language in the Clean Indoor Air Act by eliminating the provision allowing smoking in private offices occupied by smokers, and requiring that department directors define a "reasonable" distance from the entrance of state office building for smokers.

Smoke-free Childcare and Schools. Following adoption of the 1992 EO, the legislature passed several more bills dealing with smoking. Public Act 217 of 1993 instituted an outright ban on smoking in all childcare institutions and centers (including private institutions) and PA 218 of 1993 strictly limited smoking in group daycare homes during hours of childcare operations. PA 140 of 1993 banned the use of tobacco products in

school buildings at all times, and prohibited the use of tobacco products on school grounds until after 6:00 PM on school days.

Expanding the Nonsmoking Table Count. In November of 1993 the legislature again addressed the question of smoking in dining establishments through the adoption of PA 242 of 1993. The language specified that establishments with seating of 50 or more may designate up to 50 percent of their seating for nonsmokers, and that in no case should an establishment use the definition of seating capacity to increase the number of smoking tables above 75 percent. In addition, the legislature required that smoking sections be clearly identified and that nonsmoking seats be situated close together and located so as not to "discriminate" against nonsmokers. In doing so, the legislature furthered the expectation that smoke-free seating be available to restaurant patrons by mandating that at least **25 percent of all seating** in food service establishments (with seating of 50 or more) be smoke free.

1994–2008

Local Ordinances and the Preemption Issue. In addition to the state statutory provisions, 22 counties and four cities have used their local ordinance authority to enact smoke-free workplace ordinances. In 2001, Marquette restaurant owners and the Michigan Restaurant Association brought action challenging a municipal ordinance that placed a total ban on smoking in restaurants (MRA v. Marquette 2001). The Court of Appeals held that the state statute mandating a minimum number of nonsmoking seats in food service establishments preempted municipal ordinance.[2] In Michigan, therefore, local jurisdictions are permitted to enact smoke-free workplace ordinances to "protect the health of those who live in, work in and visit the city. However… provisions that restrict the portion of a restaurant designated for patrons who smoke to a lower percentage of total seating capacity than is provided for in section 12905(2) are preempted by that provision and are therefore unenforceable" (Cox 2006).

Legislative Action. Although numerous bills have been introduced to further limit, or entirely eliminate, smoking in Michigan's workplaces, none have been enacted.

House Bill 4163. This bill expands Michigan's smoke-free workplace law to all workplaces, including restaurants and bars, by changing the definition of public place to incorporate a "place of employment." The bill currently includes exemptions for cigar bars, tobacco specialty stores, bingo halls, casinos, and horse race tracks.

FINDINGS

The Health Impacts of Secondhand Smoke and the Enactment of Laws Establishing 100 Percent Smoke-free Workplaces

The adverse health impacts of smoking and secondhand smoke have been scientifically established over the course of several decades. The issue has also been the subject of a

[2] The preemption language in MCL 333.12915 of the Public Health Code as last amended by PA 527 of 1982 applies to smoking regulation in restaurants and bars. This is frequently confused with preemption language inserted in PA 327 of 1993, which prevents local units of government from imposing additional prohibitions on the sale or licensure of tobacco products.

number of United States Surgeon General's reports, beginning in 1971 (USPHS 1971, 61) and culminating with the 2006 Surgeon General's Report focusing on environmental tobacco smoke (HHS 2006, 61). These reports have systematically compiled the scientific literature, subjected it to rigorous review, and published the findings as consensus conclusions regarding the health impacts of smoking and breathing secondhand smoke.

The 1986 Surgeon General's report, *The Health Consequences of Involuntary Smoking*, issued by Dr. C. Everett Koop, was the first Surgeon General's report to focus on the issue of secondhand smoke. It concluded that the involuntary exposure of nonsmoking individuals to secondhand smoke causes disease (HHS 1986). The evidence had been building for years and findings had been published in scientific reports and journals, but this national report was among the first to make a comprehensive review of the scientific literature and come to the following major conclusions:

- Involuntary smoking is the cause of disease, including lung cancer, in healthy nonsmokers.
- The children of parents who smoke, compared with the children of nonsmoking parents, have an increased frequency of respiratory infections, increased respiratory symptoms, and slightly lower rates of increase in lung function as the lung matures.
- The simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to environmental tobacco smoke.

This national report provided much of the impetus for political jurisdictions at both the local and state levels to begin prohibiting smoking in public indoor areas (although some jurisdictions had passed ordinances prior to the 1986 report). The goal of these laws is to protect nonsmokers, who work in and frequent public places. Indeed, between 1986 and 2006, the date of the second Surgeon General's report on the health impacts of secondhand smoke on nonsmokers, 20 states passed smoke-free workplace legislation. During the same period, many other studies and reports affirmed or expanded on the evidence of the dangers of secondhand smoke.[3]

The 2006 Surgeon General's report (HHS 2006), *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, not only reaffirmed and strengthened the findings of the 1986 report, but also came to some significant new conclusions:

- Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, and more severe asthma. Smoking by parents causes respiratory symptoms and slows lung growth in their children.
- Exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer.

[3] See, for example, the list of studies in Table 1.3 of the 1986 Surgeon General's report (HHS 2006), Executive Summary, p. 5.

- Many millions of Americans, both children and adults, are still exposed to secondhand smoke in their homes and workplaces despite substantial progress in tobacco control.
- Eliminating smoking in indoor areas is the only way to fully protect nonsmokers from exposure to secondhand smoke. Scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke and separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposures of nonsmokers to secondhand smoke.

The 2006 report was significant for two main reasons. One, while earlier Surgeon General's reports had focused on lung cancer and respiratory problems, this one expanded the health problems beyond lung cancer and respiratory problems to heart and cardiovascular problems; and two, it concluded that it is impossible to protect nonsmokers by ventilation or separate seating arrangements—asserting that only a complete elimination of smoking from indoor areas fully protects nonsmokers.

The 2006 report has had a dramatic impact upon public policy in the United States, for it was quickly followed by a significant increase in the number of political jurisdictions that enacted comprehensive smoke-free laws.[4] In the 21 months since the June 27, 2006, release of the report, 11 states and 120 local units of government have enacted comprehensive smoke-free laws, and the number continues to climb as of the writing and release of this report.

The enactment of smoke-free laws on the international scene has increased as well. Since Ireland enacted the first comprehensive smoke-free law in Europe in March of 2004, 16 countries have followed suit.[5] Introducing a new policy for the World Health Organization on May 29, 2007, Director-General Margaret Chan stated, "The evidence is clear, there is no safe level of exposure to secondhand tobacco smoke" (WHO 2007). She urged all countries to enact 100 percent smoke-free legislation.

Moreover, since the 2006 Surgeon General's report, new studies have been published showing a direct relationship between eliminating ETS exposure and reducing heart attacks in nonsmokers (Barone-Adesi et al. 2006, Seo and Torabi 2007, Juster et al. 2007, Bartecci et al. 2004, Stanbury et al. 2008, MMWR 56[24]).

The harmful effects of secondhand smoke on nonsmokers are incontrovertible.

[4] The terms "smoke-free" and "100 percent smoke-free" workplace tend to be used somewhat interchangeably. The American Nonsmokers' Rights Foundation (*http://www.no-smoke.org*) defines 100 percent smoke-free by the requirement that smoking not be allowed in separately ventilated rooms, establishments of a particular size, or in attached bars. Although legislation in an individual state or jurisdiction may allow for certain exemptions, the ANRF still considers these laws to be 100 percent smoke free. In this report, we prefer to use the term "comprehensive smoke-free" to indicate that smoke-free legislation may include some specific exemptions.

[5] A full list is available at: *http://www.smokefreeworld.com/*.

The Economic Impact of Smoke-Free Laws on Restaurants and Bars

The adverse health impacts of secondhand smoke on nonsmokers are well-documented. As Surgeon General Richard Carmona stated in prepared remarks that accompanied the 2006 report on secondhand smoke, "…the debate is over. The science is clear: secondhand smoke is not a mere annoyance, but a serious health hazard that causes premature death and disease in children and nonsmoking adults" (Carmona 2006). Moreover, as the 2006 report concluded, even brief exposures to secondhand smoke cause disease in nonsmokers, not just prolonged exposure.

Despite this evidence, much of the concern about smoke-free laws has been about the potential economic impact on the hospitality industry—including restaurants, bars, hotels, and various entertainment facilities such as casinos, bingo halls, convention centers, and similar venues. Fortunately, an abundance of research has been conducted, with dozens of studies available. We reviewed 43 separate studies, as well as two summaries, one evaluating more than 150 studies and the other evaluating 97 studies.

The studies vary in a number of respects. Some focus on restaurants (both with and without liquor licenses); some on restaurants and bars; some just on bars; some on tourism and hotels; and others on various forms of gaming, such as casino gaming and video poker. Different kinds of data are analyzed, including employment information, tax revenue as a measure of sales, and even the value of affected properties (measured upon sale of the property). Some of the studies analyze statewide information, while others compare various local jurisdictions with smoke-free ordinances to local jurisdictions that do not have such ordinances.

The quality of the studies also varies. Isolating the impact of smoke-free ordinances from other potential causes of economic distress proved to be a challenge for some of the studies. Some were subjected to peer review in scientific publications and others were not.

Because the studies have been cited extensively in the public policy disputes over whether to enact smoke-free laws, the studies themselves—and, at times, the authors—have become an issue. Funding sources have come under scrutiny; methodologies questioned; attempts have been made to pressure public agencies to not use certain authors or institutions; and in at least one case (in the summer of 1997), a study sparked a lawsuit (CSI v. Regents of U. of Cal. 2000).

Results in other states

In order to determine the impact of smoke-free ordinances, research focuses on factors such as sales tax and employment data. The vast preponderance of the studies indicate that the hospitality industry generally—including restaurants and bars—is not negatively affected by comprehensive smoke-free workplace protection (Scollo and Lal 2008, Scollo et al. 2003).

Because of the numerous nonsmoking laws affecting restaurants, there are more studies examining the impact of smoking restrictions on restaurants than on any other aspect of the hospitality industry. To cite just a few examples, studies focusing on the following

areas all concluded that laws requiring restaurants to be 100 percent smoke free had no negative economic impact:

- Massachusetts statewide and local jurisdictions (Bartosch and Pope 2002)
- Florida statewide (Dai et al. 2004)
- 4 communities in Texas (Hayslett and Huang 2000)
- West Lake Hills, Texas (MMWR 44[19])
- 4 separate studies of New York City (Hyland et al. 1999, NYCDF et al. 2004)
- Flagstaff, Arizona (Sciacca and Ratliff 1998)
- 15 communities in California and Colorado prior to statewide laws (Glantz and Smith 1994, 1997)
- 5 communities in North Carolina (Goldstein and Sobel 1998)
- Fort Wayne, Indiana (Styring 2001)

In Massachusetts, for example, two separate studies done prior to the statewide smoking ban compared communities with smoke-free ordinances with those that did not have such ordinances and found no negative impact on either restaurant or bar sales (Bartosch and Pope 2002). Another Massachusetts study, conducted after the enactment of its statewide ban on July 5, 2004, examined 27 bars and restaurants and came to the same conclusion (Connolly et al. 2005).

The Florida study analyzed data relating to the broader hospitality industry in Florida, not just on restaurants. It focused on gross restaurant sales as well as recreational admissions and found no statistical decrease in sales or admissions during the year after Florida's smoke-free workplace law was enacted (Dai et al. 2004).

Two Texas studies relied on 13 years of sales data and found no negative effects of smoke-free ordinances on restaurants. Another study attempted to value the restaurant properties themselves: focusing on Utah and California communities, it found that the sale price for restaurants in localities with smoke-free ordinances is higher than for restaurants in areas that are not smoke free (Alamar and Glantz 2004).

Although fewer studies focused exclusively on bars, many of them come to the same conclusion as do the studies on restaurants. For example, after a comprehensive smoke-free workplace ordinance took effect in 2005, bars and taverns in Minneapolis, Minnesota, experienced increased gross sales (Harrison and Nayaran 2006). Most communities adjacent to Minneapolis had similar smoke-free ordinances. Bars and taverns in California reported slightly increased gross sales during the year following implementation of smoke-free workplace legislation (Cowling and Bond 2005, 1277). Subsequent years reflect greater increases. Similarly, a study done in Corvallis, Oregon, found no decline in liquor sales after a smoke-free ordinance was enacted (Dresser et al. 1999).

Lexington, Kentucky, presents a particularly interesting case because Kentucky has a relatively high prevalence of smoking, as does Michigan.[6] Smoking was prohibited in all public venues, including bars and restaurants, in Lexington in 2004. Researchers from the University of Kentucky's College of Nursing and Gatton College of Business and Economics investigated the impact on Lexington's bars and restaurants within a year after the ordinance took effect (Pyles et al. 2007). They found that the smoke-free ordinance had no statistically significant impact on bar employment and, as in other studies, noted increased restaurant employment. Shortly after that report was published, another researcher concluded that the ordinance was responsible for a reduction in bar employment during the brief period between enactment and the completion of the study. He predicted that Lexington's bars would experience a 17 percent drop in employment (Phelps 2006). Two years after the ordinance took effect, however, some of the same researchers who conducted the first University of Kentucky study revisited the ordinance's impact on Lexington (Hahn et al. 2005). They looked at ten months of data after the effective date of the ordinance. Their findings concluded that Lexington's smoke-free law had no negative effect on restaurant or bar employment.

As the Lexington example demonstrates, studies that claim a negative impact as a result of comprehensive smoke-free laws do exist. Many, like the Lexington study that predicted a 17 percent reduction in bar employment, have either been substantively challenged or refuted by subsequent studies. Research evaluating the impact of statewide smoking regulation on liquor establishments in the state of New York claimed significant losses in both gross sales and employment after less than a year (Ridgewood 2004). However, when two researchers at the University of California-San Francisco tried to replicate the study using the same data, they found that the law actually created 1,500 jobs and worker earnings increased by $29 million (ALA 2004, 5). Similarly, the Dallas Restaurant Association commissioned a study that claimed a significant decline in alcohol sales because of a Dallas ordinance effective March 1, 2004 (Clower and Weinstein 2004). When researchers from the Texas Department of State Health Services reviewed the study, they concluded that the methodology was flawed, the data used from the state was either misunderstood or misapplied, and the conclusions were simply wrong (Huang n.d.).

Based on our review of studies and experience in other states and jurisdictions, it is our conclusion that **this bill will have no net economic impact on the Michigan restaurant and bar industry**.

Public Support for Comprehensive Smoke-Free Laws

Polling data on the level of public support for comprehensive smoke-free laws is extensive. While dozens of published polls exist, we were interested in surveys that specifically measured public support for smoke-free bars and restaurants. We were also particularly interested in "post-implementation" surveys—polls that measure the level of public support for smoke-free laws *after* the laws have been enacted and the public has had time to actually experience the effect—once again, however, focusing on laws that

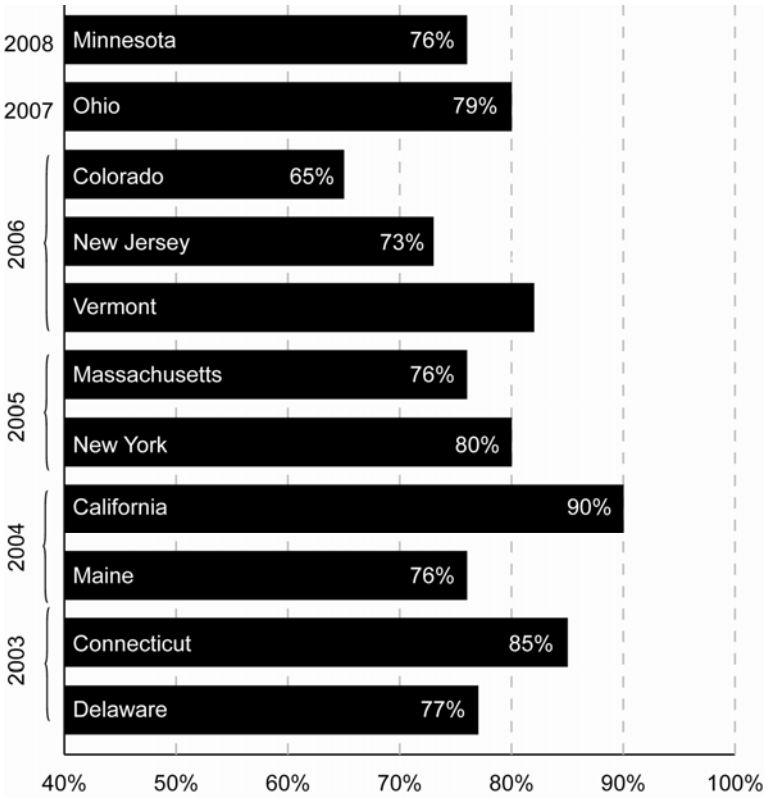
[6] See: Behavioral Risk Factor Surveillance System reported by Centers for Disease Control at: *http://www.cdc.gov/brfss/*.

prohibit smoking in bars and restaurants. Third, we were interested in finding situations in which we could measure public support both prior to the enactment of smoke-free laws and after enactment.

We reviewed 11 such post-implementation surveys (see Exhibit 2). In every case, public support was significant. Of the 11 polls reviewed, the lowest level of support was 65 percent (Colorado); in no other state was the level of general public support below 73 percent. In November 2006, Ohio voters passed by a margin of 58.3-41.7 percent a statewide ballot proposal that prohibits smoking in bars and restaurants. In a poll conducted by Midwest Communications and Media for SmokeFree Ohio on November 3–5, 2007, 79 percent of Ohio voters surveyed supported the law one year after passage. In Minnesota a law that includes bars and restaurants went into effect on October 1, 2007. A poll conducted January 10–21, 2008, showed 76 percent support for the new law.

EXHIBIT 2

Percentage of Support for Comprehensive Smoke-Free Workplace Legislation Including Restaurants and Bars



SOURCE: Campaign for Tobacco-Free Kids, 2008. Calculations by Public Sector Consultants Inc.

Polling data from states that do not currently prohibit smoking in bars and restaurants also indicate a significant level of general public support for comprehensive smoke-free laws. For example, a Wisconsin poll conducted in February 2007 (Mellman and POS 2007) indicated that 64 percent of Wisconsin voters would support a law prohibiting smoking in bars and restaurants. And in Michigan, a poll conducted by EPIC/MRA for

the Campaign for Smokefree Air found that 67 percent of self-identified Republican voters supported making restaurants and bars smoke free.[7] The poll was conducted between January 9 and January 12, 2008.

Another indicator of public support is the number of political jurisdictions that have enacted comprehensive smoke-free laws. As significant as the number is the pace of passage, which, as the charts in the Appendix indicate and has already been stated elsewhere in this report, is accelerating. Since the June 27, 2006, release of the Surgeon General's report, 11 states and 120 local units of government have enacted comprehensive smoke-free laws.

Public support, measured by recent public opinion polls and legislative action in other states, is strong and increasing.

Government Regulation in Business Decisions

The question of whether government regulation of smoking constitutes unwarranted government regulation in private business relationships is an issue that is often raised when legislation is introduced to expand the existing statutory provisions for smoke-free workplaces. Legislators who oppose smoke-free legislation frequently refer to smoke-free initiatives as unwarranted regulation of business owners' rights and often proclaim that market forces will sufficiently resolve the issue.

The issue of government regulation has already been decided. Our review of legislative history and other public documents such as legislative analyses, executive communications, and industry publications leaves no question that previous Michigan legislatures have recognized the health impacts of secondhand smoke and passed laws designed to protect the state's residents from secondhand smoke. The following statements support this conclusion:

- PA 96 of 1986 reads, "The tables shall be clearly identified as nonsmoking, placed in close proximity to each other, and located so as not to discriminate against nonsmokers" (MCL 333.12905(2) PA 368 1978).
- The Senate Analysis Section's Enrolled Analysis of PA 198 of 1986 (The Clean Indoor Air Act) says that the bill "represents a significant step forward in the fight for nonsmoker's rights. It provides protection for public sector employees in the workplace and for all Michigan residents when they frequent a wide variety of public places" (Senate Analysis 1986).
- Responding to a request to clarify whether partitioned work environments (or the cubicles commonly used in state government offices) constituted "private enclosed rooms," as described in the Clean Indoor Air Act, Attorney General Frank Kelley noted, "These provisions are intended to regulate and substantially restrict smoking in public places" and further stated, "The intent of the legislature in passing amendatory 1986 PA 198 is clear. As these provisions demonstrate, the legislature intended to restrict smoking in public buildings and to minimize, to the extent possible, the exposure of nonsmokers to the toxic effects of smoke" (Kelley 1987).

[7] This question was part of a larger survey of Republican voters; data for Democrats or nonpartisan voters is not available.

- In 1992, stating, "The State of Michigan has a responsibility to protect the health and safety of its employees and of the general public who use state government facilities," Governor John Engler issued Executive Order (EO) 1992-3 prohibiting smoking in all state government facilities (Engler 1992).
- In November of 1993 the legislature passed PA 242, increasing the requirements for nonsmoking seating by requiring that at least 25 percent of all seating in food service establishments (with seating of 50 or more) be smoke free (MCL 12905(2) PA 242 1993).

Michigan's smoke-free workplace ordinances were initiated and have prevailed not only for the benefit of the consumers who frequent a location where smoking may occur, but for the protection of the workers who are routinely exposed to known health hazards in the course of their employment. Under current law, restaurant and bar employees are quickly becoming the exception to this protection.

Does the enactment of smoke-free workplace legislation that protects restaurant and bar employees constitute unwarranted government regulation? No. Scientific evidence as to the adverse health impacts of secondhand smoke has significantly increased in the past few years, as has the consensus among health professionals that the impact of secondhand smoke is dramatic. Past legislative activity and executive actions, based on the evidence available at the time, attempted to protect workers from the dangers of secondhand smoke. **The enactment of HB 4163 is consistent with those earlier efforts, and closes a loophole in current law.**

CONCLUSIONS

- Since release of the 2006 Surgeon General's report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke,* there has been an increase in the number of states and jurisdictions that have enacted comprehensive smoke-free laws as part of a broader public health strategy. Attempting to protect the health of nonsmoking patrons in restaurants by requiring separate seating arrangements is simply ineffective.
- Public support for 100 percent smoke-free restaurants and bars is strong and increases after enactment.
- Michigan has made a number of decisions over the past 20 years to protect both workers and the general public from the health impacts of secondhand smoke, whether in public or private employment. By continuing to allow smoking in bars and restaurants, food service workers have become the exception to expanded protection.
- The Michigan restaurant and bar industry will experience no net economic impact from House Bill 4163.

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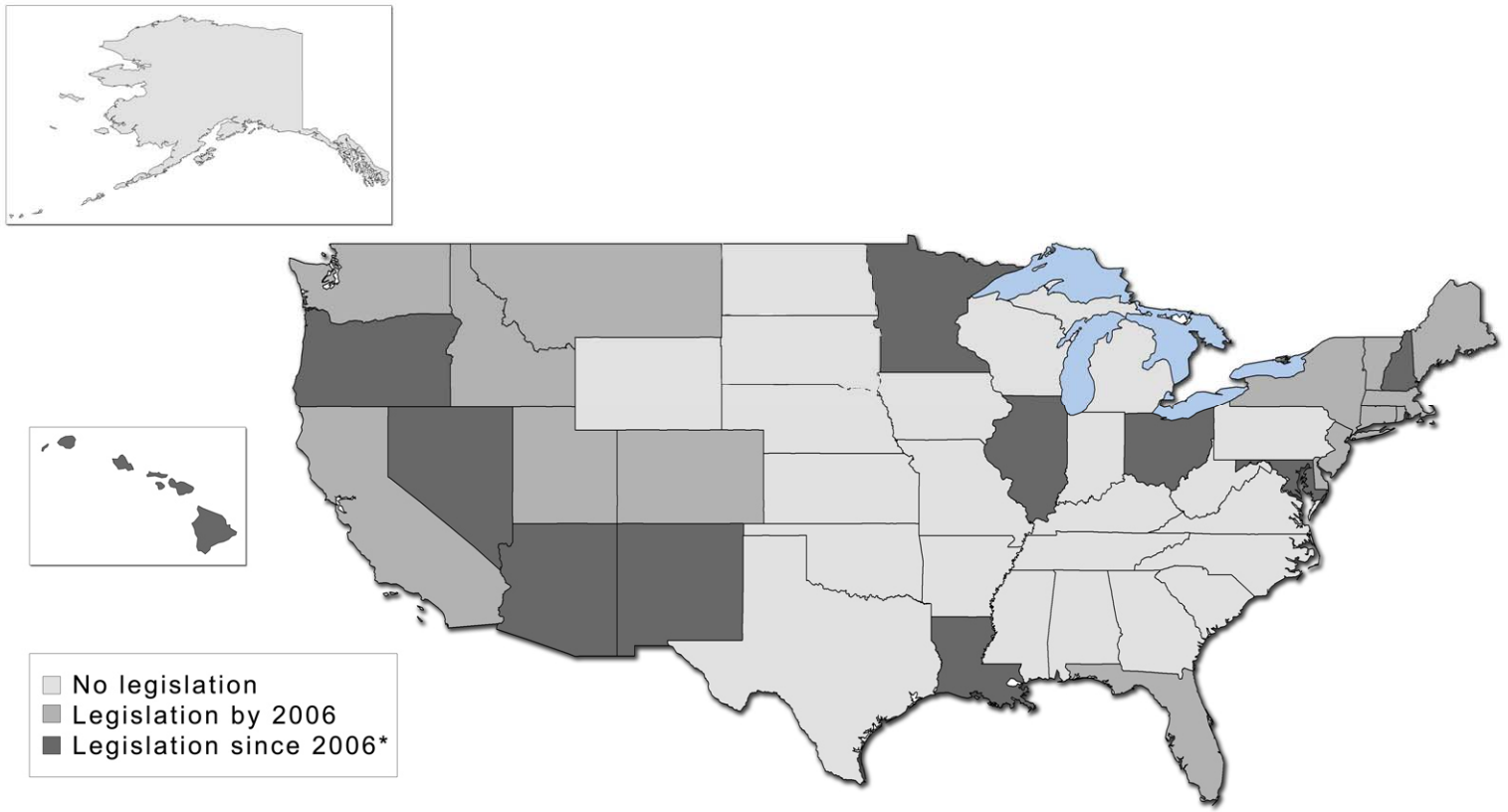
Appendix:

U.S. States with Comprehensive Smoke-Free Legislation



States with comprehensive smoke-free legislation prior to June 2006	
California	Montana
Colorado	New Jersey
Connecticut	New York
Delaware	Rhode Island
Florida	Utah
Idaho	Vermont
Maine	Washington
Massachusetts	
States with comprehensive smoke-free legislation after June 2006	
Arizona	Nevada
Hawaii	New Hampshire
Illinois	New Mexico
Louisiana	Ohio
Maryland	Oregon
Minnesota	

SOURCE: Public Sector Consultants Inc.