

Michigan Research Briefs:

A Series on Key Policy Issues
Summer 2009



Smoke-Free Legislation



The Center for Local, State, and Urban Policy (CLOSUP), housed at the University of Michigan's Gerald R. Ford School of Public Policy, conducts and supports applied policy research designed to inform state, local, and urban policy issues. Through integrated research, teaching, and outreach involving academic researchers, students, policymakers and practitioners, CLOSUP seeks to foster understanding of today's state and local policy problems, and to find effective solutions to those problems.

GLOSSARY

Racino

A racetrack with video lottery terminals.

Smoke-Free Legislation

EXECUTIVE SUMMARY

Michigan is currently considering legislation to prohibit smoking in all workplaces except for tribally owned and operated workplaces, which are not covered by the legislation. Despite numerous proposals in the last two years, Michigan has been unable to pass smoke-free legislation. Currently, the debate between the House and the Senate surrounds the issue of exemptions for casinos, cigar bars, and other tobacco retail shops. Citing health concerns as the primary reason for smoke-free legislation, the Senate favors total statewide smoke-free workplace legislation. In contrast, many of the House bills include exemptions for casinos, cigar bars, and other tobacco retail shops, or an opt-out license program where a business would pay a license fee to be exempt from the ban or subject to a phasing in of the ban over the course of a year.

OVERVIEW OF SMOKE-FREE LEGISLATION

Twenty-four states, Washington, D.C., and Puerto Rico have passed smoke-free legislation applying to workplaces and to bars; and 28 states, Washington, D.C., and Puerto Rico have smoke-free restaurant legislation (see Figure 1). Further, of the 23 states that regulate casinos or racinos, about one-third (7 out of 23) have passed legislation prohibiting smoking in such establishments.

Although House bill 4163 passed on December 5, 2007, the Michigan legislature has been unable to pass and enact smoke-free legislation. House bill 4163 would have prohibited smoking in public places (including places of employment) and in food-service establishments including, but not limited to, restaurants and bars. House bill 4163, as well the current House bill 4377, contained exceptions for cigar bars, tobacco specialty retail stores, gambling areas of casinos, bingo events, and for the non-food-service areas of racetracks. The version of the bill passed by the Senate on May 8, 2008 does not contain these exceptions, although it is understood that the legislation will not apply to smoking at tribal casinos. Continued controversy between the House and Senate over whether the smoke-free legislation should allow for the exemption of casinos, cigar bars, and tobacco retail shops or be a total statewide smoke-free law has stalled the passage of smoke-free legislation in Michigan.

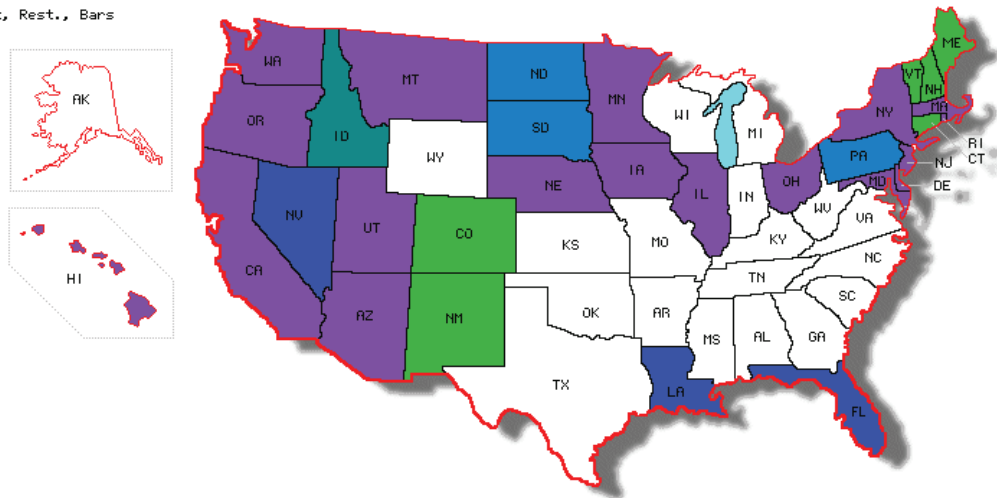
The Michigan Legislature first began to regulate smoking in public places in 1978 when it passed a bill to require separate seating in restaurants for nonsmokers. Subsequent legislation has required particular seating ratios and configuration of tables for nonsmoking sections of restaurants, limited smoking in health care facilities, prohibited smoking in child care facilities,



Figure 1.

States with Smoke-Free Legislation, January 2009

- - Restaurants
- - Restaurants, Bars
- - Workplaces
- - Workplaces, Rest.
- - Work, Rest., Bars



ties, increased the number of nonsmoking tables in restaurants, and prohibited smoking in government facilities.¹ However, the perceived negative economic consequences of a smoking ban for restaurants, bars, and casinos, as well as the potential intrusion on private business owners' abilities to create consumer-friendly environments, have inhibited Michigan from passing smoke-free legislation prohibiting smoking in public places and food service establishments.

POTENTIAL EFFECTS OF SMOKE-FREE LEGISLATION

Two of the major issues surrounding the proposed smoke-free legislation are: (1) the health hazards of secondhand smoke, and (2) the economic consequences of smoking bans for restaurants, bars, and casinos.

Health Consequences of Smoke-Free Legislation

Deleterious Effects of Secondhand Smoke

Research has documented the health effects of secondhand smoke for several decades. It was first

addressed in a U.S. Surgeon General's report in 1972, which concluded that "[a]n atmosphere contaminated with tobacco smoke can contribute to the discomfort of many individuals."² The report also stated that increased carbon monoxide levels in the air due to cigarette smoke "may on occasion, depending upon the length of exposure, be sufficient to be harmful to the health of an exposed person."³

Since the 1972 Surgeon General's report, numerous studies have documented the negative effects of exposure to secondhand smoke.⁴ In 2006, the Surgeon General published a report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, affirming that scientific evidence supports five major conclusions:

1. Secondhand smoke causes premature death and disease in children and in adults who do not smoke.
2. Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome, acute respiratory infections, ear problems, and more severe asthma. Smoking by parents causes respiratory symptoms and slows lung growth in their children.



3. Exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer.
4. The scientific evidence indicates that there is no *risk-free* level of exposure to secondhand smoke.
5. Eliminating smoking in indoor spaces fully protects nonsmokers from exposure to secondhand smoke. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposures of nonsmokers to secondhand smoke.⁵

Health Benefits to Smoke-Free Legislation

Because of the harmful effects of secondhand smoke, workplace smoking bans can benefit the health of employees in the regulated industries. In a study of the 2003 New York statewide ban on smoking in places of employment, researchers examined hospitality workers' exposure to secondhand smoke before the implementation of the law and 3, 6, and 12 months after the law went into effect.⁶ The researchers measured the levels of Cotinine, a metabolite of nicotine, in the saliva of hospitality workers before and after the smoking ban implementation. After the implementation of the smoking ban, hospitality workers' exposure to secondhand smoke declined by 98 percent, showing that smoking restrictions are an effective tool for protecting hospitality workers.

In California, researchers assessed the respiratory health of bartenders prior to and after the 1998 enactment of a smoking ban in bars and taverns. The authors interviewed and performed spirometry tests on participating bartenders in their workplaces (bar or tavern) in December of 1997.⁷ Spirometry tests measure lung function by measuring the amount and speed of air that can be inhaled and exhaled. The authors conducted follow-up interviews and performed spirometry tests in February of 1998. In the initial interviews, all 53 bartenders reported workplace environmental tobacco smoke (ETS) exposure. After the smoking ban, the bartenders reported a decline in ETS exposure at work from a median of 28 to 2 hours per week. The spirometry tests showed that of the 74 percent of bartenders

initially reporting respiratory symptoms 59 percent no longer had symptoms after the implementation of the smoking ban. Furthermore, 78 percent of the bartenders reporting sensory irritation symptoms at the beginning of the study had no symptoms after the implementation of the ban. The authors concluded that the establishment of smoke-free bars and taverns was associated with a rapid improvement in respiratory health.

In Michigan, researchers have attempted to predict the reduction in myocardial infarctions (heart attacks) that would result from the proposed smoking ban. The authors reviewed five studies that compared the rates of myocardial infarction hospital admissions before and in the year after the implementation of comprehensive smoking-free legislation, and utilized these results to predict the effects of such legislation in Michigan.⁸ The authors calculated that hospital admissions for myocardial infarction would be reduced by 1,130 cases per year as of 2009, a 4.2 percent reduction.

Economic Impact of Smoke-Free Legislation

Although the harmful health effects of secondhand smoke and beneficial health effects of smoke-free legislation for employees in the hospitality industry are well documented and generally accepted, the Michigan smoke-free legislation faces opposition from some that believe the law may have negative economic consequences, from those believing the legislation is an intrusion on the rights of private business owners, and from those concerned with equitable enforcement of the legislation.

Restaurant and Bar Revenues

One of the major arguments against smoke-free legislation in Michigan is the possible negative impact that it could have on the revenue of restaurants and bars that currently accommodate smokers. In 2008, two researchers conducted a comprehensive review of 86 studies on the effect of smoke-free legislation on restaurant and bar revenue. Over half (49) of the reviewed studies met all four of the quality standards developed by Siegel (1992) and 37 met at least some of those quality standards.⁹

Of the 49 high-quality studies, the researchers found that 47 determined that smoke-free leg-



isolation had either no effect or a positive effect on the revenues of the hospitality industry.¹⁰ Of the 37 studies meeting only some of Siegel's quality standards, the results were mixed with about half reporting either no adverse effect or a positive effect on revenue and the other half reporting a negative effect.¹¹ Notably, all of the studies finding negative effects suffered from important scientific shortcomings. For example, none of these studies controlled for external economic conditions such as changes in employment, income, or spending that may have been associated with factors unrelated to the smoking bans. Without controlling for economic conditions, it is not possible to know whether declines in revenue were caused from the smoke-free legislation in question or due to an underlying unrelated economic trend.¹² In addition, many of the studies (11) finding negative effects were either conducted by organizations with links to the tobacco industry or funded by the tobacco industry or industry groups supported by the tobacco industry.

Other researchers have conducted quality investigations of smoke-free legislation in specific states and cities. One such study analyzed the 1995 California statewide Smoke-Free Workplace Act's effect on restaurant revenue.¹³ The California law prohibits smoking indoors in public and private workplaces, including restaurants and bars. Using quarterly data from January 1, 1980, to September 30, 2004, the researchers compared trends in revenues of food and alcohol sales for all restaurants. The researchers found that the indoor smoking ban had little negative impact on restaurant revenues; three months after the law went into effect revenues for alcohol-serving restaurants, which initially saw a 4 percent decline in revenue, returned to preexisting levels.¹⁴

In 2004 Massachusetts enacted a smoke-free workplace law similar to that in California, banning smoking in all workplaces including restaurants and bars. A rigorous analysis of economic activity from January 1999 through June 2005 found that the smoke-free workplace law had no impact on either tax receipts or employment.¹⁵

Flagstaff, Arizona enacted an ordinance in June 1993 prohibiting smoking in restaurants. Researchers conducted a study using taxable restaurant sales to assess the law's impact on restaurant revenue.¹⁶

The authors collected sales data for Flagstaff and six comparison areas for a 5-year period, 3.5 years prior to the ordinance and 1.5 years after implementation. The authors compared (1) restaurant sales before and after the ordinance both within Flagstaff and between Flagstaff and comparison areas, (2) the ratio of Flagstaff restaurant sales to Flagstaff retail sales before and after the ordinance, and (3) motel/hotel sales before and after the ordinance. The comparisons showed that the sales trends after the enactment of the ordinance were similar to the trends prior to the enactment of the smoke-free ordinance.¹⁷

Gambling Revenues

Some of the strongest opponents of statewide smoke-free legislation are the three Detroit casinos. The Detroit casinos contend that statewide legislation would put them at a competitive disadvantage with the 18 tribally owned casinos in Michigan, which would not be covered by the legislation. There have been relatively few studies that examine the economic effects of smoking bans on casino revenues. And the results of the existing studies are mixed. In 2002, the state of Delaware implemented the Delaware Clean Indoor Air Act, which banned smoking in public places and workplaces, including racinos. Three studies have analyzed the effect of Delaware's law on racino revenues.

Two of the three studies found that the Delaware smoking ban negatively affected revenue at Delaware's three racinos.¹⁸ These two studies provide convincing evidence of the effect of the smoking ban on racino revenue because they control for factors such as competition from racinos in neighboring states, casinos in neighboring states, state lotteries, the number of slot machines at each racino, population and per capita income of areas surrounding the three racinos.¹⁹

On the other hand, a study analyzing the impact of smoke-free ordinances in Massachusetts on gambling sponsored by charitable organizations, such as bingo, found that such ordinances did not affect gambling revenue.²⁰ Thus, the evidence is mixed regarding the impact of smoking bans on revenue at gambling institutions. Clearly, this is an area that would benefit from additional research.



Governmental Interference

Beyond economic issues, some analysts contend that the proposed Michigan smoke-free legislation would result in an unnecessary governmental intrusion into the private market. These analysts state that private business owners should be able to respond to their consumers as they see fit, limiting smoking or designating smoke-free areas in response to consumer demand instead of governmental mandate. The Michigan Restaurant Association points to the fact that restaurants and bars have already responded to demand for smoke-free dining environments; approximately 5,668 food-serving establishments are currently smoke-free.²¹ This represents more than a 150 percent increase since 1998.²² According to some opponents of the smoke-free legislation, private businesses and the market system may be better able to address the public's concern for smoke-free establishments than can government regulation.

Equitable Enforcement of Smoke-Free Legislation

Another concern surrounding government intervention relates to enforcement. Some smoking-ban opponents question whether the government can equitably enforce the smoke-free legislation throughout the state. Unequal enforcement could create an unequal playing field among restaurants and bars, with some benefiting from lax enforcement and others suffering from strict enforcement. If the smoke-free legislation is passed, opponents argue that the government will need to devise and implement an equitable enforcement strategy.

CONCLUSION

Separate bills that ban smoking in all workplaces have been passed in the Michigan House of Representatives and Senate. While the Senate bill contains no exemptions, the bill in the House contains exemptions for cigar bars, tobacco specialty retail stores, gambling areas of casinos, bingo events, and for the non-food-service areas of racetracks. In terms of public health, the research on secondhand smoke consistently shows the serious negative effects of secondhand smoke on the coronary and respiratory systems of smokers and nonsmokers. In addition, research

has documented significant positive changes in the health of hospitality workers subsequent to the implementation of smoking bans. And, in economic terms, most high-quality research finds that smoking bans have not had negative effects on the revenues of restaurants and bars. However, there is more mixed evidence on the impact of smoking bans on revenues at gambling institutions. Finally, beyond the public health and economic questions, political questions remain to be debated regarding the role of the public sector versus the private market in determining smoke-free zones, as well as the need for a strategy of equitable enforcement of any smoke-free legislation.

Notes

1. Public Sector Consultants, Inc. (2008). *Smoke-Free Workplaces: The Impact of House Bill 4163 on the Restaurant and Bar Industry in Michigan*. Lansing, MI: Author.
2. U.S. Department of Health, Education, and Welfare. (1972). *The Health Consequences of Smoking: A Report to the Surgeon General: 1972*. Washington, D.C.: U.S. Government Printing Office, 7.
3. U.S. Department of Health, Education, and Welfare, 1972, 7.
4. Barnoya, J., & Glantz, S.A. (2005). Cardiovascular Effects of Secondhand Smoke: Nearly as Large as Smoking. *Circulation*, 111, 2684–2698; Glantz, S.A., & Parmley, W.W. (1995). Passive Smoking and Heart Disease: Mechanisms and Risk. *Journal of the American Medical Association*, 273, 1047–1053; Jaakkola, M.S., & Samet, J.M. (1999). Environmental Tobacco Smoke: Risk Assessment. *Environmental Health Perspectives*, 107(Suppl 6), 823–904; National Cancer Institute. (1999). *Health Effects of Exposure to Environmental Tobacco Smoke: The Report of the California Environmental Protection Agency, Smoking and Tobacco Control*. Bethesda, MD: Department of Health and Human Services, National Institutes of Health, National Cancer Institute, Monograph 10; National Research Council. (1986). *Environmental Tobacco Smoke: Measuring Exposures and Assessing Health Effects*. Washington, D.C.: National Academy Press; Steenland, K. (1992). Passive Smoking and the Risk of Heart Disease. *Journal of the American Medical Association*, 267, 94–99; Trichopoulos, D., Kalandidi, A., Sparros, L., & MacMahon, B. (1981). Lung Cancer and Passive Smoking. *International Journal of Cancer*, 27, 1–4; U.S. Environmental Protection Agency. (1992). *Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders*. Washington, D.C.: U.S. Environmental Protection Agency, Office of Research and Development, Office of Health and Environmental Assessment.



5. U.S. Department of Health and Human Services. (2006). *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General – Executive Summary*. Washington, D.C.: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 9.
 6. Farrelly, M.C., Nonnemaker, J.M., Chou, R., Hyland, A., Peterson, K.K., & Bauer, U.E. (2005). Changes In Hospitality Workers' Exposure to Secondhand Smoke Following the Implementation of New York's Smoke-Free Law. *Tobacco Control*, 14(4), 236–241.
 7. Eisner, M.D., Smith, A.K., & Blanc, P.D. (1998). Bartenders' Respiratory Health after Establishment of Smoke-Free Bars and Taverns. *Journal of the American Medical Association*, 280(22), 1909–1914.
 8. Al-Mallah, M., M., Alqaisi, F., Nerenz, D. Boedeker, S., & Weaver, W.D. (2008). Abstract 5133: Does Public Smoking Ban Reduce the Incidence of Myocardial Infarction in Michigan? A Systematic Review and Attributable Risk Analysis. *Circulation*, 118(5), 1148.
 9. The quality standards are (1) the conclusions based on objective measures, (2) data utilized are from several years before and after policy implementation, (3) appropriate use of statistical techniques that test for significance, controlling for underlying trends and fluctuations in data, and (4) analyses that control for changes in economic conditions (Siegel, M. (1992). *Smoking and Restaurants: A Guide for Policy-Makers*. Berkeley, CA: University of California, Berkeley Preventive Medicine Residency Program, Alameda County Tobacco Control Program, American Heart Association, California Affiliate.)
 10. Scollo, M., & Lal, A. (2008). *Summary of Studies Assessing the Economic Impact of Smoke-free Policies in the Hospitality Industries – Includes Studies Produced to 13 February 2008*. Melbourne, Australia: VicHealth Centre for Tobacco Control.
 11. Scollo & Lal, 2008, 11.
 12. This is also problematic in many reports and studies finding positive effects of smoke-free legislation on restaurant and bar revenue. Many of these studies do not account for other conditions occurring before and after the implementation of smoke-free legislation that most likely affect revenue such as prior growth trends.
 13. Stolzenberg, L. & D'Alessio, S. J. (2007). Is Non-smoking Dangerous to the Health of Restaurants? The Effect of California's Indoor Smoking Ban on Restaurant Revenues. *Evaluation Review*, 31(1), 75–92.
 14. The authors offered 3 possible explanations for the initial decline in revenues for alcohol serving restaurants:
 1. One possibility is that immediately after the implementation of the smoking ban, smokers stopped frequenting alcohol-serving restaurants, but as time passed smokers became more accustomed to the ban and resumed their patronage of alcohol serving restaurants.
 2. Police enforcement of the ban may have been quite high initially but then become more lax overtime, causing an initial drop in restaurant patronage by smokers, who later returned to restaurants simply ignoring the smoking ban.
 3. Alcohol-serving restaurants may have adapted to the indoor smoking ban by creating outside areas where customers could be allowed to smoke.
- The ban may have initially deterred smokers from patronizing restaurants, but as restaurants adapted with outside smoking areas, smokers returned to frequent restaurants at their previous levels.
15. Alpert, H.R., Carpenter, C.M., Travers, M.J., & Connolly, G.N. (2007). Environmental and Economic Evaluation of the Massachusetts Smoke-Free Workplace Law. *Journal of Community Health*, 32(4), 269–281.
 16. Sciacca, J.P., & Ratliff, M.I. (1998). Prohibiting Smoking in Restaurants: Effects on Restaurant Sales. *American Journal of Health Promotion*, 12(3), 176–184.
 17. Sciacca & Ratliff, 1998.
 18. Pakko, M.R. (2008). No Smoking at the Slot Machines: The Effect of a Smoke-Free Law on Delaware Gaming Revenues. *Applied Economics*, 40(14), 1769–1774; Thalheimer, R., & Mukhtar, M. A. (2008). The Demand for Casino Gaming with Special Reference to a Smoking Ban. *Economic Inquiry*, 46(2), 273–282.
 19. The study finding no effect on revenue only controls for annual personal income and seasonality. Mandel, L.L., Alamar, B.C., & Glantz, S.A. (2005). Smoke-Free Law Did Not Affect Revenue from Gaming in Delaware. *Tobacco Control*, 14, 10–12.
 20. Glantz, S.A., & Wilson-Loots, R. (2003). No Association of Smoke-Free Ordinances with Profits From Bingo and Charitable Games in Massachusetts. *Tobacco Control*, 12(4), 411–414.
 21. Michigan Citizens for SmokeFree Air. (2009, March). *Smoke Free Restaurants*. Retrieved March 27, 2009 from <http://www.smokefreemichigan.org/>
 22. Deloney, A. (2009, March 23). Correspondence with the author. Vice President of Public Affairs, Michigan Restaurant Association.

Acknowledgments

CLOSUP appreciates the work of the project manager, Tamara Wilder, throughout all phases of this project. CLOSUP gives special thanks to Mark Strayer for his research assistance throughout the writing of this brief. Brian Jacob and Tom Ivacko provided invaluable support during the revision of this brief. CLOSUP is grateful to the following reviewers for their time and expert advice: Andy Deloney (Michigan Restaurant Association), Mikelle Robinson, Ann Rafferty and Chris Fussman (Michigan Department of Community Health).

Regents of the University of Michigan

Julia Donovan Darlow, Ann Arbor
Laurence B. Deitch, Bingham Farms
Denise Ilitch, Bingham Farms
Olivia P. Maynard, Goodrich
Andrea Fischer Newman, Ann Arbor
Andrew C. Richner, Grosse Pointe Park
S. Martin Taylor, Grosse Pointe Farms
Katherine E. White, Ann Arbor
Mary Sue Coleman (ex officio)

MICHIGAN RESEARCH BRIEF SERIES

Business Taxes

Economic Revitalization through College Scholarships:
The Kalamazoo Promise

The Individual Health Insurance Market

The Prison Population and Corrections Expenditures

Smoke-Free Legislation

Transportation Funding: Highways, Roads, Bridges,
and Public Transit



Gerald R. Ford School of Public Policy
Joan and Sanford Weill Hall
735 South State Street
Ann Arbor, MI 48109-3091

www.closup.umich.edu

734-647-4091

closup@umich.edu