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BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 698 (as enrolled) (Public Act 294 of 1988)
 Senate Bill 739 (as enrolled) (Public Act 295 of 1988)
 Senate Bill 740 (as enrolled) (Public Act 314 of 1988)
 Senate Bill 742 (as enrolled) (Public Act 315 of 1988)
 Sponsor: Senator Robert Geake (S.B. 698)
 Senator William Sederburg (S.B. 739, 740, and 742)
 Senate Committee: Health Policy
 House Committee: Public Health

Date Completed: 8-23-88

RATIONALE

According to a 1986 report of the U.S. Surgeon General, evidence abounds to establish cigarette smoking as the single largest preventable cause of premature death and disability in the United States. Smoking is now known to be causally related to a variety of cancers in addition to lung cancer; is a cause of cardiovascular disease, particularly coronary heart disease; and is the major cause of chronic obstructive lung disease, according to the Surgeon General's report. It is estimated that smoking is responsible for more than 300,000 deaths annually in this country, which represents approximately 15% of all mortality in the U.S. In Michigan, the estimated annual cost for health care and lost productivity due to smoking-related diseases reportedly is \$2.5 billion. Furthermore, at least 12,000 Michiganians die each year from tobacco-induced diseases.

The concern over tobacco use has been compounded in recent years by the increase in use of smokeless tobacco products. Previously, smokeless tobacco products had been used regularly by a relatively small percentage of the population, but evidence indicates that their use is rising dramatically—primarily among male adolescents. This increase may result in part from a common misconception that smokeless tobacco is a safe alternative to smoking. Health professionals have concluded that this is not the case, however, and that users of these products face the possibility of oral cancer as well as a variety of dental health problems.

Arguing that tobacco is inherently unsafe—even when used as intended, some people believe that new initiatives are needed to reduce consumption of all tobacco products.

CONTENT

The bills would prohibit smoking in child care facilities (Senate Bill 698); require that outdoor signs advertising a smokeless tobacco product display a warning statement (Senate Bill 739); require a sign to be posted where tobacco products are sold at retail, and revise penalties for selling tobacco to a minor or allowing a minor to use tobacco, which could include participation in a health promotion and risk reduction assessment program as well as performance of community service (Senate Bill 740); and, prohibit smoking in a health facility, except under certain circumstances, or in the

common treatment area of a private practice office of a licensed health professional (Senate Bill 742).

Senate Bill 698

The bill would amend the Public Health Code to:

- Prohibit, beginning October 1, 1988, smoking in a "child caring institution" or "child care center" or on the real property that houses those facilities, if they are owned and operated by the Department of Social Services.
- Prohibit, beginning January 1, 1990, smoking in a "child caring institution" or "child care center" or on the real property that houses those facilities, whether or not those facilities are owned and operated by the Department of Social Services.
- Permit within the facility of, or on the real property that houses, a child caring institution or child care center, a smoking area in a private, enclosed office physically separated from, and out of sight of, the common and general child care areas.
- Provide that a person who violated the bill's prohibition against smoking in a child caring institution or child care center 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.
- Permit a person alleging a violation to bring a civil action for appropriate injunctive relief, in addition to any other enforcement action authorized by law, if the person used the child caring institution or child care center within 60 days after the civil action was filed.

The bill would take effect October 1, 1988.

"Child caring institution" and "child care center" would mean those institutions as described in Public Act 116 of 1973, which provides for the licensing and regulation of child care organizations.

("Child caring institution" is defined in Public Act 116 as a child care facility that is organized for receiving children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained by the institution and operating throughout the year. "Child care center" is defined in the Act as a facility, other than a private residence, that receives one or more preschool or school age children for care for periods of less than 24 hours a

S.B. 698, 739, 740 & 742 (8-23-88)

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day, and where the parents or guardians are not available immediately to the child.)

MCL 333.12601 et al.

Senate Bill 739

The bill would amend the Michigan Penal Code to require that an outdoor sign used to advertise a smokeless tobacco product display one of the warning statements specified in the bill; establish size and format requirements for the statements' display; require that the statements be rotated every four months; and, establish penalties for violation of the bill's provisions.

Under the bill, a person who used an "outdoor sign" to advertise a "smokeless tobacco product" would be required to display on the sign one of the following statements:

- "Warning: This product may cause mouth cancer."
- "Warning: This product may cause gum disease and tooth loss."
- "Warning: This product is not a safe alternative to cigarettes."

The warning statements would have to be rotated every four months, and would have to meet all of the following requirements:

- Be surrounded by a black border that was at least as wide as the vertical element of a letter in the warning statement. There would have to be a 1-1/2-inch white border surrounding the black border.
- Be printed in capital letters that were black on a white background, and in the following type and size: for an outdoor sign that had a surface area of more than 150 square feet, but less than 350 square feet, the letters would have to be at least 5-1/2 inches high and printed in Univers 67 cold type; for an outdoor sign that had a surface area of 350 square feet or more, but less than 1,200 square feet, the letters would have to be at least six inches high and printed in Univers 59 cold type; and, for an outdoor sign that had a surface area of 1,200 square feet or more, the letters would have to be at least eight inches high and printed in Univers 57 cold type.

An ordinance, regulation, or other law enacted by a local unit of government could not require either of the following for an outdoor sign that advertised a smokeless tobacco product: a statement other than one of the statements required in the bill or a format and type style other than those required in the bill for these statements.

A person who violated these provisions would be guilty of a misdemeanor, punishable by imprisonment for not more than one year or a fine of not more than \$5,000, or both.

"Outdoor sign" would mean a sign, display, device, figure, painting, drawing, message, placard, poster, or billboard that was placed outdoors, was stationary, had a surface area of more than 150 square feet, and was designed, intended, or used to advertise or promote. "Person" would mean an individual, corporation, partnership, or other business entity that manufactured, packaged, or imported smokeless tobacco products. "Smokeless tobacco product" would mean any finely cut, ground, powdered, or leaf tobacco that was "intended to be placed in the oral cavity".

Proposed MCL 750.42a

Senate Bill 740

The bill would amend Public Act 31 of 1915, which the bill would name the "Youth Tobacco Act", to require a person who sells tobacco products at retail to post a sign,

as prescribed in the bill, that was produced and distributed by the Department of Public Health, and to establish penalties for violation of these provisions. The bill also would revise the penalties for a person selling tobacco to a minor or allowing a minor to use tobacco, or for a minor using tobacco. This would include requiring a minor who used tobacco to participate in a health promotion and risk reduction assessment program or perform community service. In addition, the bill would repeal Public Act 77 of 1889, which prohibits the selling, giving, or furnishing of tobacco to minors.

Sign Requirements

Beginning 90 days after the bill's effective date, a person who sold tobacco products at retail would be required to post, in a place that was close to the point of sale and conspicuous to both employees and customers, a sign produced by the Department of Public Health that included the following statement:

The purchase of tobacco products by a minor under 18 years of age and the provision of tobacco products to a minor are prohibited by law. A minor unlawfully purchasing or using tobacco products is subject to criminal penalties.

If the sign were more than six feet from the point of sale, it would have to be 5-1/2 inches by 8-1/2 inches, and the statement required in the bill would have to be printed in 36-point boldface type. If the sign were six feet or less from the point of sale, it would have to be two inches by four inches, and the statement would have to be printed in 20-point boldface type.

The Department would be required to produce the sign and have adequate copies ready for distribution to licensed wholesalers, secondary wholesalers, and unclassified acquirers of cigarettes and other tobacco products, described in the bill as any cigarette, cigar, chewing tobacco, tobacco snuff, or tobacco in any other form. The signs would have to be distributed free of charge within 60 days after the bill's effective date.

Licensed wholesalers, secondary wholesalers, and unclassified acquirers of cigarettes and other tobacco products would be required to obtain copies of the sign from the Department and distribute them free of charge, upon request, to persons who sell tobacco products at retail.

The Department would be required to provide copies of the sign free of charge, upon request, to persons who sell tobacco products at retail who do not purchase their supply of cigarettes or other tobacco products from licensed wholesalers, secondary wholesalers, and unclassified acquirers of cigarettes and other tobacco products.

The bill specifies that it would be an affirmative defense to a charge under the bill that the defendant had in force at the time of arrest and continued to have in force a written policy to prevent the sale of cigarettes, cigars, chewing tobacco, tobacco snuff, and other tobacco products to persons under 18 years of age, and the defendant enforced and continued to enforce the policy. A defendant who proposed to offer evidence of the affirmative defense would be required to file and serve notice of the defense, in writing, upon the court and the prosecuting attorney. The notice would have to be served at least 14 days before the trial date. A prosecuting attorney who proposed to offer testimony to rebut the affirmative defense would be required to file and serve a notice of rebuttal, in writing, upon the court and the defendant. The notice would have to be served at least

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seven days before the trial date and would have to contain the name and address of each rebuttal witness.

Penalty Increases

Current law prohibits a person from selling or giving cigarettes "in any form" to a person under the age of 18, and prescribes a fine of up to \$50 or up to 30 days' imprisonment for the offense. The bill provides, instead, that it would be a misdemeanor to sell, give, or furnish any cigarette, cigar, chewing tobacco, tobacco snuff, or tobacco in any other form to a person under 18 years of age. The misdemeanor would be punishable by a fine of not more than \$50 for each offense.

The law presently prohibits a person under 18 from smoking or using cigarettes in any form in certain public places, and provides that an offender may be fined up to \$10 or jailed for up to five days. Under the bill, a person under 18 years of age would be prohibited from possessing or smoking cigarettes or cigars; possessing, chewing, sucking, or inhaling chewing tobacco or tobacco snuff; or, possessing or using tobacco in any other form in various public locations, as specified in the Act. A person who violated this provision would be guilty of a misdemeanor, punishable by a maximum fine of \$50 for each offense. The court could require a person who violated this provision, pursuant to a probation order, to participate in a health promotion and risk reduction assessment program, if available. A probationer who was ordered to participate in such a program would be responsible for the costs of participation.

A minor who violated this provision also would be subject to the following:

- For the first violation, the court could order the person to perform up to 16 hours of community service in a hospice, nursing home, or long-term care facility; or, participate in a health promotion and risk reduction program, as described in the bill.
- For a second violation, in addition to participation in a health promotion and risk reduction program, the court could order the person to perform up to 32 hours of community service in a hospice, nursing home, or long-term care facility.
- For a third or subsequent violation, in addition to participation in a health promotion and risk reduction program, the court could order the person to perform up to 48 hours of community service in a hospice, nursing home, or long-term care facility.

The bill would delete a provision in the Code that prohibits a person from allowing a minor to gather or frequent property held by that person for the purpose of indulging in the use of cigarettes in any form.

The bill specifies that it would not interfere with the right of a parent or legal guardian in the rearing and management of his or her minor children or wards within the bounds of his or her own private premises.

Definitions

"Chewing tobacco" would mean loose tobacco or a flat, compressed cake of tobacco which was inserted into the mouth to be chewed or sucked. "Tobacco snuff" would mean shredded, powdered, or pulverized tobacco which could be inhaled through the nostrils, chewed, or placed against the gums.

MCL 722.641 et al.

Senate Bill 742

The bill would amend the Public Health Code to:

- Prohibit an individual from smoking in the common treatment area of a private practice office of a licensed health practitioner.
- Prohibit an individual from smoking in a "health facility" except 1) in cases where a smoking prohibition would be detrimental to the patient's treatment as defined by medical conditions identified by the collective health facility medical staff, and patients who were permitted to smoke were placed in a separate room from nonsmoking patients, and 2) if a health facility allowed smoking only in designated areas that were enclosed and ventilated or constructed so as to ensure a smoke-free environment in patient care and common areas.
- Provide that in addition to other enforcement action authorized by law, a person alleging a violation could bring a civil action for injunctive relief, if the person had used the health facility or private practice office of a licensed health practitioner within 60 days after the civil action was filed.
- Provide that a person who violated the prohibition against smoking in the common or treatment area of a private practice office of a licensed health practitioner could be fined up to \$100 for a first violation and up to \$500 for a second or subsequent violation.
- Repeal a requirement that a licensed hospital adopt a policy regulating the smoking of tobacco on hospital premises.

"Health facility" would mean a health facility or agency licensed under Article 17 of the Code, except for a home for the aged, nursing home, county medical care facility, hospice, or hospital long-term care unit as defined in the Code.

(Health practitioners are licensed under Article 15 of the Code, which covers chiropractors, dentists, physicians, optometrists, osteopathic physicians and surgeons, pharmacists, podiatrists, psychologists, and veterinarians. Facilities and agencies licensed under Article 17 include clinical laboratories, health maintenance organizations, and hospitals.)

MCL 333.1260 et al.

FISCAL IMPACT

Senate Bill 698

The bill would have an indeterminate impact on State and local government. There would be some increase in State and local costs associated with enforcement efforts, which would be partially offset by fine revenues.

Senate Bill 739

The bill would have an indeterminate impact on State and local government. Enforcement costs would be dependent on the number of violations.

Senate Bill 740

The bill would have an indeterminate impact on State and local government. The magnitude and direction of the impact would depend on the number and cost of the signs to be distributed pursuant to Section 1; the degree and cost of enforcement; and the number and size of the fines collected.

Senate Bill 742

The bill would have an indeterminate impact on State and local government. There would be some increase in State and local costs associated with enforcement efforts, which would be partially offset by fine revenues.

ARGUMENTS

Supporting Argument

Two years ago, the Legislature enacted the Michigan Clean Indoor Act, which amended the Public Health Code to prohibit smoking in certain public places, including the work areas of public employees, and at meetings of public bodies, except in designated smoking areas. Senate Bills 698, 739, 740, and 742 would continue to enhance and protect the health of the people of this State.

Supporting Argument

Cigarettes and matches at child care centers create unhealthy situations, such as potential fire hazards, for preschoolers. Seeing a teacher strike a match can trigger a child to play with matches, and a lit cigarette can tempt these children to pick it up. A pack of cigarettes can create an opportunity for a child to play adult. The close environment of a child care center forces children to breathe the cigarette smoke of the center's employees. Studies have shown that children breathing secondary smoke on a regular basis have more respiratory illnesses, such as bronchitis and pneumonia, than those who do not. Employees who smoke have a greater tendency to cough, which is more likely to spread germs and expose children to chest illnesses. Smoking should not be allowed in child care centers. Teachers and aides who need to smoke should not do so in front of children, nor should smoking materials be available for children to see and handle. Prohibiting smoking in schools and child care facilities would protect children from exposure to toxic chemicals of secondhand smoke and would promote positive role models.

Supporting Argument

The Department of Social Services operates numerous child care facilities, where treatment is provided to youths who often have chemical addictions. While smoking by residents of Department-operated child caring institutions has been prohibited for over a year, Senate Bill 698 would be an additional step toward promoting smoke-free facilities and would enhance treatment programs by providing a strong, consistent message through the staff.

Supporting Argument

Evidence indicates that direct, long-term use of smokeless tobacco significantly increases the probability of dental problems, including oral cancer. In fact, use of smokeless tobacco products increases the risk of developing oral cancer by as much as 400%. The more often tobacco products contact the tissues and the longer the contact, the more likely the person is to develop cancer. Nicotine in smokeless tobacco is dependence-producing and often results in addictive behavior. Use of smokeless tobacco usually begins at an early age before children are equipped to make responsible decisions that affect their health and well-being. National studies have shown that the average age of first use of these products is 10 years and regular daily use begins at 12 years of age. Furthermore, the advertisement of smokeless tobacco products has increased dramatically in recent years, and the sales of the product reportedly have climbed 11% per year since 1974. Many children and adolescents who admit

to using these products, particularly moist snuff, reportedly are unaware of the risks associated with their behavior. Furthermore, some people argue that advertising—particularly billboards—portrays athletic models and the relative ease of use of the product, in an effort to portray the product as being harmless. Senate Bill 739, while not prohibiting the advertising of these products, would help send a balanced message to the consumer that use of the product can be dangerous to a person's health.

Response: Commercial speech, such as advertising, seeks to inform the public of the availability, nature, and prices of products and services in an effort to inform fully the consuming public who ultimately decides whether to purchase the product or service.

Supporting Argument

Nicotine addiction reportedly begins during childhood. In survey of 15- year-old children who smoke five or more cigarettes per day, 51% had failed to stop smoking when they tried, and 27% thought they could not stop no matter how hard they tried. Nicotine addiction is resistant to treatment. Thus, many persons who became addicted to tobacco in their youth continue to smoke throughout their lifetime. Since approximately 4,000 children in this country reportedly become smokers daily, nicotine addiction is considered by some to be the most common lethal condition of childhood. Yet, studies show that only 10% of current smokers began as an adult. Thus, enforcement of laws dealing with minors' access to tobacco presents a unique opportunity. In expanding the list of prohibited substances for sale or provision to children to include all tobacco products, and by revising penalties for a person who sells tobacco to a minor and for a minor who uses tobacco, Senate Bill 740 would attempt to make penalties for the sale and use of tobacco products by minors stringent enough to deter the use or sale of these products to minors. Furthermore, it has been shown that when signs are displayed, warning that it is illegal for minors to buy tobacco products or for stores to sell these products to minors (as the bill would require), sale of tobacco products to minors reportedly decreases. The use of these signs, already required by 10 states, aids in increasing compliance with the law against selling tobacco to minors.

Response: A survey conducted recently in Massachusetts, which prohibits the sale of tobacco to minors and requires a warning sign to be posted at the point of sale, showed that an 11-year-old girl was successful in 75 of 100 attempts to purchase cigarettes either at retail or through a vending machine. Clearly, enforcement is the key to the success of this bill, but is not certain how pervasive enforcement would be if the bill were enacted.

Supporting Argument

Allowing the use of tobacco products in health facilities or in areas of health professionals' offices is inconsistent with concern for the public's health and the responsibility of these health professionals to promote of the public's health by warning of the dangers of tobacco use. Senate Bill 742 would aid health professionals in requesting their clients and employees to refrain from cigarette use within the common treatment area of their facilities, while not dictating to health professionals whether they could smoke in their private offices. In addition, the bill would prohibit smoking in a health facility, except under certain circumstances, which would allow these facilities to accommodate the needs of the patients and their visitors.

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(Senate Bill 739)

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(Senate Bills 698, 740, and 742)

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.