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BILL ANALYSIS

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Senate Bill 632 (Substitute S-1 as reported)
Senate Bill 754 (as reported without amendment)
Sponsor: Senator Robert Geake (S.B. 632)
Senator William Sederburg (S.B. 754)
Committee: Health Policy

Date Completed: 3-7-90

RATIONALE

In 1986, the Legislature enacted the Michigan Clean Indoor Air Act, which amended the Public Health Code to prohibit smoking in certain public places, including educational and health facilities, except in designated areas. Two years later, the Legislature took further action to protect the health of the people in the State with the enactment of Public Acts 294 and 315 of 1988. Under Public Act 294, a person is prohibited from smoking in a child caring institution or child care center or on the real property that houses such a facility, whether or not the facility is owned by the Department of Social Services (DSS). The Act also provides that, within a facility or on the real property, a smoking area may be provided in a private, enclosed office that is physically separated from and out of sight of the general child care areas. Public Act 315 prohibits a person from smoking in a health facility, unless a smoking prohibition would be detrimental to the patient's treatment, as long as smoking is allowed only in designated areas that are enclosed and ventilated so as to ensure a smoke-free environment in patient care and common areas. Despite these efforts, some people believe that additional steps must be taken to further reduce, and in some cases eliminate, smoking at these institutions.

CONTENT

The bills would amend the Public Health

Code to: prohibit smoking in a "school building" or on the real property where the school was located; specify that smoking was prohibited at child care facilities that were operated by the DSS and at similar facilities that were not owned and operated by the DSS; permit non-DSS child care facilities to provide a smoking area; and, prohibit smoking in health facilities, except by persons being treated in a substance abuse or psychiatric unit of the facility.

A more detailed description of the bills follows.

Senate Bill 632 (S-1)

The bill would amend the Public Health Code to:

- Prohibit a person from smoking in a "school building" or on the real property upon which the school building was located, including related buildings, if the real property were owned, leased, or controlled by the school. ("School building" would mean a building that was owned, leased, or under the control of a public or private school or school system in which any grade between kindergarten and 12 was taught.)
- Include "related buildings" in the prohibition against smoking in a child

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caring institution or child care center that is operated by the DSS, and specify that smoking would be prohibited on real property where these institutions are located, if the real property were owned, leased, or controlled by the DSS.

- Prohibit smoking in a child caring institution or child care center that was owned or operated, or both, by an entity other than the DSS or on the real property upon which the child caring institution or child care center was located, including related buildings, if the real property were owned, leased, or controlled by the entity.
- Specify that an entity, other than the DSS, that owned and/or operated a child caring institution or child care center could provide a smoking area, as specified in the Code.
- Delete the current provision that permits a smoking area within the facility of, or on the real property that houses a child caring institution or child care center.
- Provide that a person who violated the bill's provisions against smoking in a school 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 school within 60 days "preceding" the date the civil action was filed. Currently, the Code permits bringing a civil action if a person used certain facilities within 60 days "after" the civil action was filed.

("Child caring institution" is defined in the child care licensing Act 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 day, and where the parents or guardians are not available immediately to the child.)

MCL 333.12601 et al.

Senate Bill 754

The bill would amend the Public Health Code to provide that a person being treated in the substance abuse unit or psychiatric unit of the health facility would be exempt from the Code's prohibition on smoking in a "health facility". A health facility that allowed a patient to smoke could not place the patient in a room with a nonsmoking patient. The room in which a patient was allowed to smoke would have to be enclosed and ventilated or otherwise constructed to ensure a smoke-free environment in patient care and common areas. ("Health facility" means 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. Facilities and agencies licensed under Article 17 include clinical laboratories, health maintenance organizations, and hospitals.)

Currently, the Code prohibits smoking in a health facility except in cases in which the prohibition would be detrimental to a patient's treatment, as defined by medical conditions identified by the collective health facility medical staff. The bill would delete this provision. The bill also would delete the current provisions on the placement of patients who are permitted to smoke and on areas in a health facility where smoking is allowed.

MCL 333.12604a

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

The Public Health Code currently prohibits smoking in a child caring institution or child care center or on the real property that houses such an institution, whether or not the institution is owned and operated by the Department of Social Services. The Code also states that "within the facility of, or on the real property which houses a child caring institution or child care center", a smoking area may be

provided in a private, enclosed office that is physically separated from and out of the sight of common and general child care areas (MCL 333.12604). Some people are not certain whether this provision applies to DSS-operated facilities and to those not owned or operated by the DSS, or whether this applies only to facilities not operated by the DSS. Senate Bill 632 (S-1) would make it clear that smoking was prohibited in DSS-operated facilities, and would be allowed only in certain areas of non-DSS facilities. Children residing in these State-run facilities currently are prohibited from smoking. Under the bill, these children would receive a consistent message when they observed that the adults working at these facilities, who often serve as role models for the children, also were prohibited from smoking.

Response: The prohibition against smoking should be extended to juvenile detention centers and children's camps, according to the DSS.

Supporting Argument

According to public health experts, the cigarette industry loses 2 million U.S. smokers a year. Of that amount, approximately 400,000 smokers dies as a result of smoking, 1.5 million quit, and the remainder die of causes not directly related to smoking. The net result is that the cigarette industry must replace nearly 5,500 American customers a day. Furthermore, studies show that 60% of all smokers started smoking at 15 years of age or younger. Thus, young people are a primary age group looked upon for replacement smokers. The Michigan Model for Comprehensive Health Education, which is incorporated in curricula in many school districts across the State, promotes smoking prevention. Permitting smoking in certain areas in a school, such as teachers' lounges or areas designated for student smokers, sends a contradictory message to students. On one hand, students are taught that smoking is detrimental to their health. Then, on the other, these students may witness the very same teachers, who conveyed information on the hazards of smoking, or the students' peers being allowed to smoke on school grounds. Merely to provide instruction about the health effects of smoking is not enough. For the instruction to be effective, the persons who deliver the anti-smoking message must reflect that lesson in their actions since these adults, especially teachers, often serve as

role models for their students. Otherwise, students may consider the concerns about smoking to be overrated.

Supporting Argument

The Public Health Code prohibits smoking in a health facility except in cases in which a prohibition on smoking would be detrimental to the patient's treatment. Patients who are permitted to smoke must be placed in room separate from nonsmoking patients. In addition, the Code specifies that if a health facility allows smoking, then it can take place only in a designated area that is enclosed and ventilated or constructed to ensure a smoke-free environment in patient care and common areas (MCL 333.12604a). Senate Bill 754, in effect, would ban virtually all smoking in health facilities. The only exceptions would be for patients in psychiatric and substance abuse clinics who often are in a hospital for an extended period of time, and the treatment of these patients, in some cases, could be impaired if smoking were prohibited during a hospital stay. The bill would eliminate the need for hospitals to provide enclosed and separate ventilated rooms to accommodate smokers in hospitals. This current exception in the Code has placed hospitals in the position of having to duplicate employee lounges and patient waiting rooms. Senate Bill 754 would enhance the ability of hospitals to create a healthy, health-promoting environment that would be consistent with the purpose of hospitals serving as health care providers. In addition, placing a nearly complete smoking ban in the Public Health Code would assist hospital management in achieving full compliance with the regulation among a hospital's patients and employees.

Opposing Argument

Policies regarding schools, such as a ban on smoking in the schools, should be set by local school boards working in conjunction with school employees. The development of such a policy should be part of the collective bargaining process. While it is acknowledged that smoking is a health hazard, an outright ban on smoking in the schools, as proposed in Senate Bill 632 (S-1), would infringe on the bargaining rights of school employees. Furthermore, prohibiting smoking on school grounds as well as in school buildings, as proposed in the bill, would subject schools to regulations that were more stringent than

similar regulations applied to health facilities and public places, such as governmental offices.

Response: Years ago, people were not aware of the toxic nature of nicotine and the health hazards that are present in smoking. As a result, smoking in school buildings was considered an issue to be taken to the bargaining table during employee contract negotiations. Today, however, the health hazards of smoking are well documented. Smoking no longer should be considered a bargaining issue but should be considered a health issue.

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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.