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CHILD CARE: SMOKING

**House Bills 4687 and 4688
as enrolled**

Sponsor: Rep. John Jamian

House Bill 4689 as enrolled

Sponsor: Rep. Jack Horton

House Bill 4690 as enrolled

Sponsor: Rep. Michelle McManus

Second Analysis (2-4-94)

**House Committees: Human Services and
Children, Public Health**

Senate Committee: Health Policy

THE APPARENT PROBLEM:

The hazards of exposure to cigarette smoke, including through "passive smoking" or exposure to another's smoking, are becoming increasingly well-documented. Of particular concern is the danger to children's health posed by exposure to tobacco smoke. In a report issued in December 1992, the U.S. Environmental Protection Agency (EPA) noted that exposure to tobacco smoke puts children at increased risk of bronchitis, pneumonia, and asthma; is linked to middle ear problems, upper respiratory tract irritation, and a small but significant reduction in lung function; and, causes additional episodes and increased severity of symptoms in children with asthma.

Even before the EPA issued its report, the legislature responded to growing concerns about smoking and children's health by prohibiting smoking in child care centers that were not located in school buildings, and by restricting smoking to separate, enclosed areas of child caring institutions and child care centers located in school buildings. However, the law has a number of shortcomings. For one thing, because the restrictions were placed in the Public Health Code, enforcement is lacking. Child care facilities are inspected and regulated by the Department of Social Services (DSS) under the child care licensing act, Public Act 116 of 1973; licensing inspectors do not have the authority to enforce the Public Health Code, and public health officials do not routinely visit child care facilities. And, as the anti-smoking unit in the state

Department of Public Health consists of 1.5 full-time-equated positions, enforcement capability is limited.

Current restrictions also have been criticized for overlooking private day care homes, which provide care to an estimated 90,000 or more Michigan children. Neither the Public Health Code nor DSS licensing rules restrict smoking in day care homes. What is needed, many say, is legislation that would enact smoking restrictions in the child care licensing act, and that would ban smoking in day care homes when the children were present.

THE CONTENT OF THE BILLS:

House Bills 4688 - 4690 would amend the child care licensing act (MCL 722.113b et al.) to prohibit or restrict smoking in facilities or homes that provided child care. Violation of the act is a misdemeanor punishable by a fine of between \$100 and \$1,000, up to 90 days in jail, or both; a conviction bars someone from being licensed for two years following the conviction. However, House Bill 4689 would amend the act to bar jailing as a punishment for violation of the smoking restrictions to be established by the bills.

House Bill 4688 would prohibit smoking in a child caring institution, a child care center, or on real property under the control of an institution or center. (A "child caring institution" is a facility

House Bill 4687 et al (2-4-94)

organized to care for and house minors, usually on a 24-hour basis, in buildings maintained for that purpose throughout the year. A "child care center" is a day care center; it is 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 immediately available to the child.)

House Bill 4689 would prohibit smoking on the premises of a group day care home during its hours of operation. After-hours smoking would be allowed if the operator informed parents that smoking would or might occur. The operator would have to post a notice stating that smoking was prohibited during the hours of operation. (A "group day care home" is a private home that provides day care for seven to twelve children.)

House Bill 4690 would similarly restrict smoking to off-hours in a family day care home. (A "family day care home" is a private home providing day care for one to six children.)

House Bill 4687 would amend the Public Health Code (MCL 333.12604 and 333.12611) to delete a provision that allows smoking in a designated smoking area of a day care center or child care institution, thus prohibiting smoking in those facilities. The bill also would subject violators to penalties under the child care licensing act rather than the Public Health Code. The bill could not take effect unless House Bill 4688 was enacted.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency has reported that the bills have no fiscal implications for the Department of Social Services, and that the bills could result in increased cost to local units of government for apprehension, prosecution, and conviction of violators. (10-1-93)

ARGUMENTS:

For:

Exposure to tobacco smoke increases the likelihood of bronchitis and pneumonia in young children, impairs lung function in children of all ages, increases the frequency and severity of childhood asthma, and irritates the upper respiratory tract. Exposure to tobacco smoke has also been linked with increased frequency and duration of childhood

ear infections, which in turn can lead to the need for surgically-inserted tubes into the ears, or, if left untreated, to hearing loss. Less certain, but still troubling, are suggestions of links to Sudden Infant Death Syndrome (SIDS), and behavioral and educational problems.

While the Public Health Code now bars smoking in certain areas of some child care facilities, more is needed. The bills would flatly prohibit smoking in day care centers and child care institutions, place smoking restrictions on day care homes, and, by amending the act under which child care facilities are regulated, would ensure that smoking restrictions could be meaningfully enforced.

Against:

The bills would restrict smoking in private homes, which some may feel would be going too far. Some may argue that notifying parents of smoking on the premises should be adequate.