



**House  
Legislative  
Analysis  
Section**

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## CHILD CARE: SMOKING

House Bill 4688 as introduced  
Sponsor: Rep. John Jamian

House Bill 4689 as introduced  
Sponsor: Rep. Jack Horton

House Bill 4690 as introduced  
Sponsor: Rep. Michelle McManus

First Analysis (6-9-93)  
Committee: Human Services & Children

### *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:*

The bills 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.

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 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.)

(Note: a companion bill, House Bill 4687, proposes to amend the Public Health Code to make its restrictions on smoking in day care centers and institutions consistent with the bills' restrictions, and to subject violators to the penalties under the child care licensing act rather than the Public Health Code.)

#### ***FISCAL IMPLICATIONS:***

According to the Department of Public Health, the bills have no fiscal implications. (5-14-93)

#### ***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 extend smoking restrictions to 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.

#### ***POSITIONS:***

The Department of Public Health supports the bills. (5-14-93)

The Michigan Association for the Education of Young Children supports the bills. (6-8-93)

The Michigan Coalition on Smoking OR Health supports the bills. (6-3-93)

The Michigan State Medical Society supports the bills. (6-8-93)

The Smokefree Air for Everyone (SAFE) Coalition of Kent County supports the bills. (6-3-93)

The Tobacco-free Michigan Action Coalition supports the bills. (6-3-93)

A representative of the American Lung Association of Michigan testified in support of the bills. (6-3-93)

A representative of Parents of Children with Asthma testified in support of the bills. (6-3-93)