

HOUSE BILL No. 6451

September 11, 2008, Introduced by Rep. Farrah and referred to the Committee on Regulatory Reform.

A bill to amend 1978 PA 368, entitled "Public health code," (MCL 333.1101 to 333.25211) by adding sections 12601a, 12606a, 12606b, 12606c, and 12905b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 12601A. (1) NOTWITHSTANDING SECTION 12601, PUBLIC PLACE
2 DOES NOT INCLUDE A MOTOR VEHICLE, A PLACE AT WHICH A LICENSED BINGO
3 EVENT OR MILLIONAIRE PARTY IS CONDUCTED, OR THE NON-FOOD-SERVICE-
4 ESTABLISHMENT PORTION OF THE PREMISES OF A LICENSEE UNDER THE HORSE
5 RACING LAW OF 1995, 1995 PA 279, MCL 431.301 TO 431.336.

6 (2) AS USED IN THIS SECTION:

7 (A) "LICENSED BINGO EVENT OR MILLIONAIRE PARTY" MEANS A BINGO
8 EVENT OR MILLIONAIRE PARTY CONDUCTED BY A LICENSEE UNDER THE

1 TRAXLER-MCCAULEY-LAW-BOWMAN BINGO ACT, 1972 PA 382, MCL 432.101 TO
2 432.120.

3 (B) "MOTOR VEHICLE" MEANS THAT TERM AS DEFINED IN SECTION 33
4 OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.33.

5 SEC. 12606A. SECTION 12606 DOES NOT IMPAIR, DIMINISH, OR
6 OTHERWISE AFFECT ANY COLLECTIVELY BARGAINED PROCEDURE OR REMEDY
7 AVAILABLE TO AN EMPLOYEE ON THE EFFECTIVE DATE OF THIS SECTION,
8 WITH RESPECT TO DISPUTES ARISING UNDER THE EMPLOYER'S OR FOOD
9 SERVICE ESTABLISHMENT'S NONSMOKING POLICY. THIS SECTION AND SECTION
10 12606 APPLY TO COLLECTIVELY BARGAINED SMOKING PROCEDURES OR
11 REMEDIES UPON THE EXPIRATION OR MODIFICATION OF A COLLECTIVELY
12 BARGAINED SMOKING PROCEDURE OR REMEDY THAT WAS IN EFFECT ON OR
13 BARGAINED FOR AFTER THE EFFECTIVE DATE OF THIS SECTION.

14 SEC. 12606B. (1) A CIGAR BAR THAT MEETS ALL OF THE
15 REQUIREMENTS OF THIS SECTION IS NOT A PUBLIC PLACE UNDER THIS PART,
16 IS EXEMPT FROM THE SMOKING PROHIBITION OF SECTION 12603, AND MAY
17 ALLOW SMOKING ON ITS PREMISES. SUBJECT TO SUBSECTION (5), A CIGAR
18 BAR THAT DOES NOT MEET ALL OF THE REQUIREMENTS OF THIS SECTION IS A
19 PUBLIC PLACE UNDER THIS PART. TO QUALIFY FOR THE EXEMPTION UNDER
20 THIS SECTION, THE PERSON WHO OWNS OR OPERATES A CIGAR BAR SHALL
21 FILE AN AFFIDAVIT WITH THE DEPARTMENT ON OR BEFORE THE EXPIRATION
22 OF 30 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION IF THE CIGAR
23 BAR IS IN EXISTENCE ON THE EFFECTIVE DATE OF THIS SECTION OR 30
24 DAYS OR MORE BEFORE HE OR SHE WISHES TO USE THIS EXEMPTION, AND ON
25 JANUARY 31 OF EACH YEAR AFTER THE EFFECTIVE DATE OF THE EXEMPTION.
26 THE AFFIDAVIT SHALL BE SIGNED BY THE OWNER OR OPERATOR OF THE CIGAR
27 BAR AND SHALL CERTIFY THAT THE CIGAR BAR MEETS ALL OF THE FOLLOWING

1 REQUIREMENTS:

2 (A) IN THE 30-DAY PERIOD IMMEDIATELY PRECEDING THE FILING OF
3 THE FIRST AFFIDAVIT UNDER THIS SUBSECTION, THE CIGAR BAR GENERATED
4 10% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME FROM THE ON-SITE SALE
5 OF TOBACCO PRODUCTS AND THE RENTAL OF ON-SITE HUMIDORS, NOT
6 INCLUDING ANY SALES OF TOBACCO PRODUCTS FROM VENDING MACHINES.

7 (B) FOR EACH CALENDAR YEAR AFTER THE CALENDAR YEAR IN WHICH
8 THE FIRST AFFIDAVIT IS FILED UNDER THIS SUBSECTION, THE CIGAR BAR
9 GENERATES 10% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME FROM THE ON-
10 SITE SALE OF TOBACCO PRODUCTS AND THE RENTAL OF ON-SITE HUMIDORS,
11 NOT INCLUDING ANY SALES OF TOBACCO PRODUCTS FROM VENDING MACHINES.

12 (C) THE CIGAR BAR IS LOCATED ON PREMISES THAT ARE PHYSICALLY
13 SEPARATED FROM ANY AREAS OF THE SAME OR ADJACENT ESTABLISHMENT IN
14 WHICH SMOKING IS PROHIBITED UNDER THIS PART OR PART 129 AND WHERE
15 SMOKE DOES NOT INFILTRATE INTO THOSE NONSMOKING AREAS. AS USED IN
16 THIS SUBDIVISION, "PHYSICALLY SEPARATED" MEANS AN AREA THAT IS
17 ENCLOSED ON ALL SIDES BY ANY COMBINATION OF SOLID WALLS, WINDOWS,
18 OR DOORS THAT EXTEND FROM THE FLOOR TO CEILING.

19 (D) THE CIGAR BAR HAS INSTALLED ON ITS PREMISES AN ON-SITE
20 HUMIDOR.

21 (E) THE CIGAR BAR PROHIBITS ENTRY TO A PERSON UNDER THE AGE OF
22 18 DURING THE TIME THE CIGAR BAR IS OPEN FOR BUSINESS.

23 (2) A TOBACCO SPECIALTY RETAIL STORE THAT MEETS ALL OF THE
24 REQUIREMENTS OF THIS SECTION IS NOT A PUBLIC PLACE UNDER THIS PART,
25 IS EXEMPT FROM THE SMOKING PROHIBITION OF SECTION 12603, AND MAY
26 ALLOW SMOKING ON ITS PREMISES. SUBJECT TO SUBSECTION (5), A TOBACCO
27 SPECIALTY RETAIL STORE THAT DOES NOT MEET ALL OF THE REQUIREMENTS

1 OF THIS SECTION IS A PUBLIC PLACE UNDER THIS PART. TO QUALIFY FOR
2 THE EXEMPTION UNDER THIS SECTION, THE PERSON WHO OWNS OR OPERATES A
3 TOBACCO SPECIALTY RETAIL STORE SHALL FILE AN AFFIDAVIT WITH THE
4 DEPARTMENT ON OR BEFORE THE EXPIRATION OF 30 DAYS AFTER THE
5 EFFECTIVE DATE OF THE EXEMPTION IF THE TOBACCO SPECIALTY RETAIL
6 STORE IS IN EXISTENCE ON THE EFFECTIVE DATE OF THIS SECTION OR 30
7 DAYS OR MORE BEFORE HE OR SHE WISHES TO USE THIS EXEMPTION, AND ON
8 JANUARY 31 OF EACH YEAR AFTER THE EFFECTIVE DATE OF THE EXEMPTION.
9 THE AFFIDAVIT SHALL BE SIGNED BY THE OWNER OR OPERATOR OF THE
10 TOBACCO SPECIALTY RETAIL STORE AND SHALL CERTIFY THAT THE TOBACCO
11 SPECIALTY RETAIL STORE MEETS ALL OF THE FOLLOWING REQUIREMENTS:

12 (A) IN THE 30-DAY PERIOD IMMEDIATELY PRECEDING THE FILING OF
13 THE FIRST AFFIDAVIT UNDER THIS SUBSECTION, THE TOBACCO SPECIALTY
14 RETAIL STORE GENERATED 75% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME
15 FROM THE ON-SITE SALE OF TOBACCO PRODUCTS AND SMOKING
16 PARAPHERNALIA.

17 (B) FOR EACH CALENDAR YEAR AFTER THE CALENDAR YEAR IN WHICH
18 THE FIRST AFFIDAVIT IS FILED UNDER THIS SUBSECTION, THE TOBACCO
19 SPECIALTY RETAIL STORE GENERATED 75% OR MORE OF ITS TOTAL GROSS
20 ANNUAL INCOME FROM THE ON-SITE SALE OF TOBACCO PRODUCTS AND SMOKING
21 PARAPHERNALIA.

22 (C) THE TOBACCO SPECIALTY RETAIL STORE IS LOCATED ON PREMISES
23 THAT ARE PHYSICALLY SEPARATED FROM ANY AREAS OF THE SAME OR
24 ADJACENT ESTABLISHMENTS IN WHICH SMOKING IS PROHIBITED UNDER THIS
25 PART OR PART 129 AND WHERE SMOKE DOES NOT INFILTRATE INTO THOSE
26 NONSMOKING AREAS. AS USED IN THIS SUBDIVISION, "PHYSICALLY
27 SEPARATED" MEANS AN AREA THAT IS ENCLOSED ON ALL SIDES BY ANY

1 COMBINATION OF SOLID WALLS, WINDOWS, OR DOORS THAT EXTEND FROM THE
2 FLOOR TO CEILING.

3 (D) THE TOBACCO SPECIALTY RETAIL STORE PROHIBITS ENTRY TO A
4 PERSON UNDER THE AGE OF 18 DURING THE TIME THE TOBACCO SPECIALTY
5 RETAIL STORE IS OPEN FOR BUSINESS.

6 (3) THE DEPARTMENT MAY REQUEST ADDITIONAL INFORMATION FROM A
7 CIGAR BAR OR TOBACCO SPECIALTY RETAIL STORE TO VERIFY THAT THE
8 CIGAR BAR OR TOBACCO SPECIALTY RETAIL STORE MEETS THE REQUIREMENTS
9 OF THIS SECTION. A CIGAR BAR OR TOBACCO SPECIALTY RETAIL STORE
10 SHALL COMPLY WITH REQUESTS FROM THE DEPARTMENT UNDER THIS SECTION.

11 (4) THE INFORMATION SUBMITTED BY A CIGAR BAR OR A TOBACCO
12 SPECIALTY RETAIL STORE TO THE DEPARTMENT UNDER THIS SECTION IS
13 EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976
14 PA 442, MCL 15.231 TO 15.246.

15 (5) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A CIGAR
16 BAR OR TOBACCO SPECIALTY RETAIL STORE THAT DOES NOT MEET THE
17 REQUIREMENTS OF THIS SECTION OR VIOLATES THIS SECTION IS NOT EXEMPT
18 FROM THE SMOKING PROHIBITION OF SECTION 12603 AND SHALL IMMEDIATELY
19 PROHIBIT SMOKING ON ITS PREMISES. A CIGAR BAR OR TOBACCO SPECIALTY
20 RETAIL STORE THAT MEETS ALL OF THE REQUIREMENTS OF THIS SECTION
21 OTHER THAN FILING THE AFFIDAVIT AS REQUIRED UNDER SUBSECTION (1) OR
22 (2), RETAINS ITS EXEMPTION AND MAY CONTINUE TO ALLOW SMOKING DURING
23 THE PERIOD BEGINNING ON THE DATE THE AFFIDAVIT IS DUE AND ENDING ON
24 THE EXPIRATION OF 21 DAYS AFTER THAT DATE. HOWEVER, IF THE
25 AFFIDAVIT REMAINS UNFILED AFTER THE 21-DAY GRACE PERIOD, THE CIGAR
26 BAR OR TOBACCO SPECIALTY RETAIL STORE IS NOT EXEMPT FROM THE
27 SMOKING PROHIBITION OF SECTION 12603 AND SHALL IMMEDIATELY PROHIBIT

1 SMOKING ON ITS PREMISES. A CIGAR BAR OR TOBACCO SPECIALTY RETAIL
2 STORE THAT LOSES ITS EXEMPTION UNDER THIS SUBSECTION IS NOT EXEMPT
3 FROM THE SMOKING PROHIBITION OF SECTION 12603, SHALL IMMEDIATELY
4 PROHIBIT SMOKING ON ITS PREMISES, AND MAY ONLY AGAIN QUALIFY FOR
5 THE EXEMPTION UNDER THIS SECTION BY FILING AN AFFIDAVIT AND MEETING
6 ALL OF THE REQUIREMENTS OF SUBSECTION (1) OR (2), AS APPLICABLE.

7 (6) A PERSON WHO MAKES A FALSE STATEMENT IN AN AFFIDAVIT UNDER
8 THIS SECTION IS GUILTY OF PERJURY UNDER SECTION 423 OF THE MICHIGAN
9 PENAL CODE, 1931 PA 328, MCL 750.423.

10 (7) AS USED IN THIS SECTION:

11 (A) "CIGAR BAR" MEANS AN ESTABLISHMENT OR AREA WITHIN AN
12 ESTABLISHMENT THAT IS OPEN TO THE PUBLIC AND IS DESIGNATED FOR THE
13 SMOKING OF TOBACCO PRODUCTS, PURCHASED ON THE PREMISES OR
14 ELSEWHERE.

15 (B) "TOBACCO SPECIALTY RETAIL STORE" MEANS AN ESTABLISHMENT
16 THAT IS NOT REQUIRED TO BE LICENSED AS A FOOD SERVICE
17 ESTABLISHMENT, IN WHICH THE PRIMARY PURPOSE IS THE RETAIL SALE OF
18 TOBACCO PRODUCTS AND SMOKING PARAPHERNALIA, AND IN WHICH THE SALE
19 OF OTHER PRODUCTS IS INCIDENTAL.

20 SEC. 12606C. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
21 A CASINO IS NOT A PUBLIC PLACE UNDER THIS PART AND SMOKING MAY BE
22 ALLOWED ON THE FLOOR SPACE OF THE CASINO WHERE GAMBLING GAMES ARE
23 CONDUCTED OR PLAYED. DETERMINATION OF WHAT CONSTITUTES FLOOR SPACE
24 SHALL BE MADE IN A MANNER ACCEPTABLE TO THE DEPARTMENT OR TO THE
25 LOCAL HEALTH DEPARTMENT AUTHORIZED TO ENFORCE THIS PART, AS
26 PROVIDED IN RULES PROMULGATED BY THE DEPARTMENT.

27 (2) SMOKING IS PROHIBITED ON THE FLOOR SPACE OF A CASINO WHERE

1 GAMBLING GAMES ARE CONDUCTED OR PLAYED UNDER EITHER OR BOTH OF THE
2 FOLLOWING CIRCUMSTANCES:

3 (A) THIS STATE NEGOTIATES AN AGREEMENT WITH THE FEDERALLY
4 RECOGNIZED INDIAN TRIBES THAT CONDUCT GAMBLING GAMES IN THIS STATE
5 TO PROHIBIT SMOKING IN AREAS WHERE GAMBLING GAMES ARE CONDUCTED
6 PURSUANT TO AN INDIAN GAMING COMPACT OR OTHER APPROPRIATE
7 AGREEMENT.

8 (B) A MAJORITY OF FEDERALLY RECOGNIZED INDIAN TRIBES THAT
9 CONDUCT GAMBLING GAMES IN THIS STATE VOLUNTARILY PROHIBIT SMOKING
10 IN AREAS OF THE TRIBAL CASINOS WHERE GAMBLING GAMES ARE CONDUCTED
11 OR PLAYED, AS DETERMINED BY THE RECORDS OF THE MICHIGAN GAMING
12 CONTROL BOARD.

13 (3) AS USED IN THIS SECTION, "CASINO" MEANS THAT TERM AS
14 DEFINED IN SECTION 2 OF THE MICHIGAN GAMING CONTROL AND REVENUE
15 ACT, 1996 IL 1, MCL 432.202. CASINO DOES NOT INCLUDE A CASINO
16 OPERATED UNDER THE INDIAN GAMING REGULATORY ACT, PUBLIC LAW 100-
17 497, 102 STAT. 2467.

18 SEC. 12905B. NOTWITHSTANDING SECTION 12905, FOOD SERVICE
19 ESTABLISHMENT DOES NOT INCLUDE AN ESTABLISHMENT EXEMPT FROM THE
20 SMOKING PROHIBITION UNDER SECTION 12606B.

21 Enacting section 1. This amendatory act does not take effect
22 unless House Bill No. 4163 of the 94th Legislature is enacted into
23 law.