

HOUSE BILL No. 4127

January 20, 2011, Introduced by Rep. Geiss and referred to the Committee on Regulatory Reform.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 12601, 12603, 12606a, and 12905 (MCL
333.12601, 333.12603, 333.12606a, and 333.12905), sections 12601,
12603, and 12905 as amended and section 12606a as added by 2009 PA
188, and by adding section 12603a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 12601. (1) As used in this part:

2 (a) "Casino" means that term as defined in section 2 of the
3 Michigan gaming control and revenue act, 1996 IL 1, MCL 432.202.
4 Casino does not include a casino operated under the Indian gaming
5 regulatory act, 25 USC 2701 to 2721.

1 (b) "Child caring institution" and "child care center" mean
2 those terms as defined in section 1 of 1973 PA 116, MCL 722.111.

3 (c) "Cigar" means any roll of tobacco weighing 3 or more
4 pounds per 1,000, which roll has a wrapper or cover consisting only
5 of tobacco.

6 (d) "Cigar bar" means an establishment or area within an
7 establishment that is open to the public and is designated for the
8 smoking of cigars, purchased on the premises or elsewhere.

9 (e) "County medical care facility" means that term as defined
10 in section 20104.

11 (f) "Educational facility" means a building owned, leased, or
12 under the control of a public or private school system, college, or
13 university.

14 (g) "Food service establishment" means a food service
15 establishment as defined in section 12905.

16 (h) "Health facility" means a health facility or agency
17 licensed under article 17, except a home for the aged, nursing
18 home, county medical care facility, hospice, or hospital long-term
19 care unit.

20 (i) "Home for the aged" means that term as defined in section
21 20106.

22 (j) "Hospice" means that term as defined in section 20106.

23 (k) "Hospital long-term care unit" means that term as defined
24 in section 20106.

25 (l) **"LICENSED CLUB" MEANS A CLUB THAT IS LICENSED UNDER SECTION**
26 **532 OF THE MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998 PA 58, MCL**
27 **436.1532.**

1 (M) ~~(H)~~ "Meeting" means a meeting as defined in section 2 of
2 the open meetings act, 1976 PA 267, MCL 15.262.

3 (N) ~~(m)~~ "Motor vehicle" means that term as defined in section
4 33 of the Michigan vehicle code, 1949 PA 300, MCL 257.33.

5 (O) ~~(n)~~ "Nursing home" means that term as defined in section
6 20109.

7 (P) ~~(e)~~ "Place of employment" means an enclosed indoor area
8 that contains 1 or more work areas for 1 or more persons employed
9 by a public or private employer. Place of employment does not
10 include any of the following:

11 (i) A structure used primarily as the residence of the owner or
12 lessee that is also used as an office for the owner or lessee and
13 for no other employees.

14 (ii) A food service establishment that is subject to section
15 12905.

16 (iii) A motor vehicle.

17 (Q) ~~(p)~~ "Public body" means a public body as defined in
18 section 2 of the open meetings act, 1976 PA 267, MCL 15.262.

19 (R) ~~(q)~~ "Public place" ~~, except as otherwise provided in~~
20 ~~subsection (2),~~ means any of the following:

21 (i) An enclosed, indoor area owned or operated by a state or
22 local governmental agency and used by the general public or serving
23 as a meeting place for a public body, including an office,
24 educational facility, home for the aged, nursing home, county
25 medical care facility, hospice, hospital long-term care unit,
26 auditorium, arena, meeting room, or public conveyance.

27 (ii) An enclosed, indoor area that is not owned or operated by

1 a state or local governmental agency, is used by the general
2 public, and is any of the following:

3 (A) An educational facility.

4 (B) A home for the aged, nursing home, county medical care
5 facility, hospice, or hospital long-term care unit.

6 (C) An auditorium.

7 (D) An arena.

8 (E) A theater.

9 (F) A museum.

10 (G) A concert hall.

11 (H) Any other facility during the period of its use for a
12 performance or exhibit of the arts.

13 (iii) Unless otherwise exempt under this part, a place of
14 employment.

15 (S) ~~(r)~~—"Smoking" or "smoke" means the burning of a lighted
16 cigar, cigarette, pipe, or any other matter or substance that
17 contains a tobacco product.

18 (T) ~~(s)~~—"Smoking paraphernalia" means any equipment,
19 apparatus, or furnishing that is used in or necessary for the
20 activity of smoking.

21 (U) ~~(t)~~—"Tobacco product" means a product that contains
22 tobacco and is intended for human consumption, including, but not
23 limited to, cigarettes, noncigarette smoking tobacco, or smokeless
24 tobacco, as those terms are defined in section 2 of the tobacco
25 products tax act, 1993 PA 327, MCL 205.422, and cigars.

26 (V) ~~(u)~~—"Tobacco specialty retail store" means an
27 establishment in which the primary purpose is the retail sale of

1 tobacco products and smoking paraphernalia, and in which the sale
2 of other products is incidental. Tobacco specialty retail store
3 does not include a tobacco department or section of a larger
4 commercial establishment or any establishment with any type of
5 liquor, food, or restaurant license.

6 (W) ~~(v)~~—"Work area" means a site within a place of employment
7 at which 1 or more employees perform services for an employer.

8 (2) In addition, article 1 contains general definitions and
9 principles of construction applicable to all articles of this code.

10 Sec. 12603. (1) ~~An~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS PART,**
11 **AN** individual shall not smoke in a public place or at a meeting of
12 a public body, and a state or local governmental agency or the
13 person who owns, operates, manages, or is in control of a public
14 place shall make a reasonable effort to prohibit individuals from
15 smoking in a public place.

16 (2) The owner, operator, manager, or person having control of
17 a public place, a food service establishment, or a casino subject
18 to section 12606b shall do all of the following:

19 (a) Clearly and conspicuously post "no smoking" signs or the
20 international "no smoking" symbol at the entrances to and in every
21 building or other area where smoking is prohibited under this act.

22 (b) Remove all ashtrays and other smoking paraphernalia from
23 anywhere smoking is prohibited under this act.

24 (c) Inform individuals smoking in violation of this act that
25 they are in violation of state law and subject to penalties.

26 (d) If applicable, refuse to serve an individual smoking in
27 violation of this act.

1 (e) Ask an individual smoking in violation of this act to
2 refrain from smoking and, if the individual continues to smoke in
3 violation of this act, ask him or her to leave the public place,
4 food service establishment, or nonsmoking area of the casino.

5 (3) The owner, operator, manager, or person in control of a
6 hotel, motel, or other lodging facility shall comply with
7 subsection (2) and section 12606. It is an affirmative defense to a
8 prosecution or civil or administrative action for a violation of
9 this section that the owner, operator, manager, or person in
10 control of a hotel, motel, or other lodging facility where smoking
11 is prohibited under this section made a good faith effort to
12 prohibit smoking by complying with subsection (2). To assert the
13 affirmative defense under this subsection, the owner, operator,
14 manager, or person shall file a sworn affidavit setting forth his
15 or her efforts to prohibit smoking and his or her actions of
16 compliance with subsection (2).

17 (4) This section may be referred to as the "Dr. Ron Davis
18 Law".

19 **SEC. 12603A. THE OWNER OR OPERATOR OF A FOOD SERVICE**
20 **ESTABLISHMENT OR A PLACE OF EMPLOYMENT THAT IS NOT A PUBLIC PLACE**
21 **DESCRIBED IN SECTION 12601(R) (i) OR (ii) MAY ALLOW SMOKING IN A LEGAL**
22 **SMOKING ROOM IN THE ELIGIBLE PLACE OF EMPLOYMENT OR FOOD SERVICE**
23 **ESTABLISHMENT IF ALL OF THE FOLLOWING REQUIREMENTS ARE MET:**

24 (A) THE LEGAL SMOKING ROOM IS AN ENCLOSED ROOM SEPARATE FROM
25 THE NONSMOKING AREAS OF THE ELIGIBLE PLACE OF EMPLOYMENT OR FOOD
26 SERVICE ESTABLISHMENT. THE LEGAL SMOKING ROOM SHALL BE ENCLOSED ON
27 ALL SIDES BY ANY COMBINATION OF SOLID WALLS, WINDOWS, OR DOORS THAT

1 EXTEND FROM THE FLOOR TO CEILING.

2 (B) THE LEGAL SMOKING ROOM IS EQUIPPED WITH 1 OF THE
3 FOLLOWING:

4 (i) A SEPARATE VENTILATION OR AIR FILTRATION SYSTEM DESIGNED TO
5 REMOVE SMOKE FROM THE AIR IN THE ROOM AND PREVENT SMOKE FROM
6 INFILTRATING INTO THE NONSMOKING AREAS OF THE ELIGIBLE PLACE OF
7 EMPLOYMENT OR FOOD SERVICE ESTABLISHMENT.

8 (ii) A DOUBLE-DOOR SYSTEM DESIGNED TO PREVENT THE RELEASE OF
9 SMOKE FROM THE ROOM BY TRAPPING IT BETWEEN THE 2 DOORS AND
10 PREVENTING SMOKE FROM INFILTRATING INTO THE NONSMOKING AREAS OF THE
11 ELIGIBLE PLACE OF EMPLOYMENT OR FOOD SERVICE ESTABLISHMENT.

12 (C) NO INDIVIDUAL IS REQUIRED TO ENTER OR PASS THROUGH THE
13 LEGAL SMOKING ROOM OF THE ELIGIBLE PLACE OF EMPLOYMENT OR FOOD
14 SERVICE ESTABLISHMENT UNLESS HE OR SHE DOES SO ON A VOLUNTARY
15 BASIS. THIS SUBDIVISION APPLIES TO AN EMPLOYEE OF THE OWNER OR
16 OPERATOR OF AN ELIGIBLE PLACE OF EMPLOYMENT OR FOOD SERVICE
17 ESTABLISHMENT, AND SECTION 12606 APPLIES TO THE RIGHT GRANTED TO
18 EMPLOYEES UNDER THIS SUBDIVISION.

19 (D) THE LEGAL SMOKING ROOM IS CLOSED 1 HOUR OR MORE BEFORE THE
20 END OF NORMAL BUSINESS HOURS OF THE ELIGIBLE PLACE OF EMPLOYMENT OR
21 FOOD SERVICE ESTABLISHMENT TO ALLOW THOROUGH VENTILATION BEFORE ANY
22 EMPLOYEE IS REQUIRED TO ENTER THE ROOM TO PERFORM ANY CLEANING OR
23 OTHER ROOM MAINTENANCE.

24 Sec. 12606a. (1) A cigar bar in existence on ~~the effective~~
25 ~~date of this section~~ MAY 1, 2010 that meets all of the requirements
26 of this section is exempt from the smoking prohibition of section
27 12603 and may allow smoking on its premises. To qualify for the

1 exemption under this section, the person who owns or operates a
2 cigar bar shall file an affidavit with the department on or before
3 ~~the expiration of 30 days after the effective date of this section~~
4 **MAY 31, 2010** and on January 31 of each year ~~after the effective~~
5 ~~date of this section~~ **BEGINNING IN 2011**. The affidavit shall be
6 signed by the owner or operator of the cigar bar and shall certify
7 that the cigar bar was in existence on ~~the effective date of this~~
8 ~~section~~ **MAY 1, 2010** and that it meets all of the following
9 requirements:

10 (a) In the 30-day period immediately preceding ~~the effective~~
11 ~~date of this section~~ **MAY 1, 2010**, the cigar bar generated 10% or
12 more of its total gross annual income from the on-site sale of
13 cigars and the rental of on-site humidors.

14 (b) For each calendar year after the calendar year in which
15 the first affidavit is filed under this subsection, the cigar bar
16 generates 10% or more of its total gross annual income from the on-
17 site sale of cigars and the rental of on-site humidors.

18 (c) The cigar bar is located on premises that are physically
19 separated from any areas of the same or adjacent establishment in
20 which smoking is prohibited under this part or part 129 and where
21 smoke does not infiltrate into those nonsmoking areas. As used in
22 this subdivision, "physically separated" means an area that is
23 enclosed on all sides by any combination of solid walls, windows,
24 or doors that extend from the floor to ceiling.

25 (d) The cigar bar has installed on its premises an on-site
26 humidor.

27 (e) The cigar bar prohibits entry to a person under the age of

1 18 during the time the cigar bar is open for business.

2 (f) The cigar bar allows only the smoking of cigars on the
3 premises that retail for over \$1.00 per cigar.

4 (g) The cigar bar prohibits the smoking of all other tobacco
5 products.

6 (2) A tobacco specialty retail store in existence on ~~the~~
7 ~~effective date of this section~~ **MAY 1, 2010** that meets all of the
8 requirements of this section is exempt from the smoking prohibition
9 of section 12603 and may allow smoking on its premises. To qualify
10 for the exemption under this section, the person who owns or
11 operates a tobacco specialty retail store shall file an affidavit
12 with the department on or before ~~the expiration of 30 days after~~
13 ~~the effective date of this section~~ **MAY 31, 2010** and on January 31
14 of each year ~~after the effective date of this section~~ **BEGINNING IN**
15 **2011**. The affidavit shall be signed by the owner or operator of the
16 tobacco specialty retail store and shall certify that the tobacco
17 specialty retail store was in existence on ~~the effective date of~~
18 ~~this section~~ **MAY 1, 2010** and that it meets all of the following
19 requirements:

20 (a) In the 30-day period immediately preceding ~~the filing of~~
21 ~~the effective date of this section~~ **MAY 1, 2010**, the tobacco
22 specialty retail store generated 75% or more of its total gross
23 annual income from the on-site sale of tobacco products and smoking
24 paraphernalia.

25 (b) For each calendar year after the calendar year in which
26 the first affidavit is filed under this subsection, the tobacco
27 specialty retail store generated 75% or more of its total gross

1 annual income from the on-site sale of tobacco products and smoking
2 paraphernalia.

3 (c) The tobacco specialty retail store is located on premises
4 that are physically separated from any areas of the same or
5 adjacent establishments in which smoking is prohibited under this
6 part or part 129 and where smoke does not infiltrate into those
7 nonsmoking areas. As used in this subdivision, "physically
8 separated" means an area that is enclosed on all sides by any
9 combination of solid walls, windows, or doors that extend from the
10 floor to ceiling.

11 (d) The tobacco specialty retail store prohibits entry to a
12 person under the age of 18 during the time the tobacco specialty
13 retail store is open for business.

14 (3) A LICENSED CLUB IN EXISTENCE ON THE EFFECTIVE DATE OF THE
15 AMENDATORY ACT THAT ADDED THIS SENTENCE THAT MEETS ALL OF THE
16 REQUIREMENTS OF THIS SECTION IS EXEMPT FROM THE SMOKING PROHIBITION
17 OF SECTION 12603 AND MAY ALLOW SMOKING ON ITS LICENSED PREMISES. TO
18 QUALIFY FOR THE EXEMPTION UNDER THIS SECTION, THE LICENSED CLUB
19 SHALL FILE AN AFFIDAVIT WITH THE DEPARTMENT ON OR BEFORE THE
20 EXPIRATION OF 30 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY
21 ACT THAT ADDED THIS SENTENCE AND ON JANUARY 31 BEGINNING IN THE
22 IMMEDIATELY SUCCEEDING YEAR. THE AFFIDAVIT SHALL BE SIGNED BY THE
23 PRINCIPAL OFFICER OF THE LICENSED CLUB AND SHALL CERTIFY THAT THE
24 LICENSED CLUB WAS IN EXISTENCE ON THE EFFECTIVE DATE OF THE
25 AMENDATORY ACT THAT ADDED THIS SENTENCE, THAT A RECORDED VOTE OF A
26 MAJORITY OF THE MEMBERS OF THE CLUB DURING A GENERAL MEETING HELD
27 NOT MORE THAN 30 DAYS BEFORE THE DATE OF THE AFFIDAVIT APPROVED THE

1 CLUB'S FILING FOR EXEMPTION FROM THE SMOKING PROHIBITION, AND THAT
2 THE LICENSED CLUB MEETS ALL OF THE FOLLOWING REQUIREMENTS:

3 (A) THE LICENSED CLUB IS LOCATED ON PREMISES THAT ARE
4 PHYSICALLY SEPARATED FROM ANY AREAS OF THE SAME OR ADJACENT
5 ESTABLISHMENTS IN WHICH SMOKING IS PROHIBITED UNDER THIS PART OR
6 PART 129 AND WHERE SMOKE DOES NOT INFILTRATE INTO THOSE NONSMOKING
7 AREAS. AS USED IN THIS SUBDIVISION, "PHYSICALLY SEPARATED" MEANS AN
8 AREA THAT IS ENCLOSED ON ALL SIDES BY ANY COMBINATION OF SOLID
9 WALLS, WINDOWS, OR DOORS THAT EXTEND FROM THE FLOOR TO CEILING.

10 (B) THE LICENSED CLUB PROHIBITS ENTRY TO A PERSON UNDER THE
11 AGE OF 18 DURING THE TIME THE LICENSED CLUB IS OPEN FOR BUSINESS.

12 (C) THE LICENSED CLUB PROHIBITS SMOKING ON ITS LICENSED
13 PREMISES WHEN THE CLUB IS OPEN TO THE PUBLIC OR RENTED OUT OR USED
14 FOR AN EVENT THAT IS NOT CLUB-SPONSORED.

15 (4) ~~(3)~~—The department may request additional information from
16 a cigar bar, ~~or~~ tobacco specialty retail store, OR LICENSED CLUB to
17 verify that the cigar bar, ~~or~~ tobacco specialty retail store, OR
18 LICENSED CLUB meets the requirements of this section. A cigar bar,
19 ~~or~~ tobacco specialty retail store, OR LICENSED CLUB shall comply
20 with requests from the department under this section.

21 (5) ~~(4)~~—Except as otherwise provided in this subsection, a
22 cigar bar, ~~or~~ tobacco specialty retail store, OR LICENSED CLUB that
23 does not meet the requirements of this section or violates this
24 section is not exempt from the smoking prohibition of ~~section 12603~~
25 THIS ACT and shall immediately prohibit smoking on its premises. A
26 cigar bar, ~~or~~ tobacco specialty retail store, OR LICENSED CLUB that
27 meets all of the requirements of this section other than filing the

1 affidavit as required under subsection (1), ~~or~~ (2), **OR (3)**, retains
 2 its exemption and may continue to allow smoking during the period
 3 beginning on the date the affidavit is due and ending on the
 4 expiration of 21 days after that date. However, if the affidavit
 5 remains unfiled after the 21-day grace period, the cigar bar, ~~or~~
 6 tobacco specialty retail store, **OR LICENSED CLUB** is not exempt from
 7 the smoking prohibition of ~~section 12603~~ **THIS ACT** and shall
 8 immediately prohibit smoking on its premises. A cigar bar, ~~or~~
 9 tobacco specialty retail store, **OR LICENSED CLUB** that loses its
 10 exemption under this subsection is not exempt from the smoking
 11 prohibition of ~~section 12603~~ **THIS ACT**, shall immediately prohibit
 12 smoking on its premises, and may only again qualify for the
 13 exemption under this section by filing an affidavit and meeting all
 14 of the requirements of subsection (1), ~~or~~ (2), **OR (3)**, as
 15 applicable.

16 Sec. 12905. (1) ~~An~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS**
 17 **SECTION OR SECTION 12603A, AN** individual shall not smoke in a food
 18 service establishment, and the person who owns, operates, manages,
 19 or is in control of a food service establishment shall make
 20 reasonable effort to prohibit individuals from smoking in a food
 21 service establishment. **THIS SECTION DOES NOT APPLY TO THE OUTDOOR**
 22 **PATIO AREA OF A FOOD SERVICE ESTABLISHMENT IF BOTH OF THE FOLLOWING**
 23 **REQUIREMENTS ARE MET:**

24 (A) NO FOOD IS SERVED IN THE OUTDOOR PATIO AREA. AS USED IN
 25 THIS SUBDIVISION, "FOOD" DOES NOT INCLUDE ANY BEVERAGE.

26 (B) ALCOHOLIC LIQUOR IS ALLOWED IN THE OUTDOOR PATIO AREA
 27 UNDER AN ON-PREMISES LICENSE FOR THAT ESTABLISHMENT ISSUED UNDER

1 THE MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998 PA 58, MCL 436.1101
2 TO 436.2303.

3 (2) In addition to a food service establishment that provides
4 its own seating, subsection (1) applies to a food service
5 establishment or group of food service establishments that are
6 located in a shopping mall in which the seating for the food
7 service establishment or group of food service establishments is
8 provided or maintained, or both, by the person who owns or operates
9 the shopping mall.

10 (3) The director, an authorized representative of the
11 director, or a representative of a local health department to which
12 the director has delegated responsibility for enforcement of this
13 part shall inspect each food service establishment that is subject
14 to this section. The inspecting entity shall determine compliance
15 with this section during each inspection.

16 (4) Within 5 days after receipt of a written complaint of
17 violation of this section, a local health department shall
18 investigate the complaint to determine compliance. If a violation
19 of this section is identified and not corrected as ordered by the
20 local health department within 2 days after receipt of the order by
21 the food service establishment, the local health officer may issue
22 an order to cease food service operations until compliance with
23 this section is achieved.

24 (5) A-~~EXCEPT AS OTHERWISE PROVIDED IN SECTION 12603A~~, A food
25 service establishment **THAT IS SUBJECT TO THIS SECTION** shall comply
26 with sections 12603(2) and 12606. It is an affirmative defense to a
27 prosecution or civil or administrative action for a violation of

1 this section that the owner, operator, manager, or person in
2 control of a food service establishment where smoking is prohibited
3 under this section made a good faith effort to prohibit smoking by
4 complying with section 12603(2). To assert the affirmative defense
5 under this subsection, the owner, operator, manager, or person
6 shall file a sworn affidavit setting forth his or her efforts to
7 prohibit smoking and his or her actions of compliance with section
8 12603(2).

9 (6) An individual who violates this part shall be directed to
10 comply with this part and is subject to a civil fine of not more
11 than \$100.00 for a first violation and not more than \$500.00 for a
12 second or subsequent violation.

13 (7) As used in this section:

14 (a) "Food service establishment" means that term as defined in
15 section 1107 of the food law of 2000, 2000 PA 92, MCL 289.1107.

16 **FOOD SERVICE ESTABLISHMENT DOES NOT INCLUDE A CIGAR BAR OR LICENSED**
17 **CLUB THAT IS EXEMPT FROM THE SMOKING PROHIBITION UNDER SECTION**
18 **12606A.**

19 (b) "Shopping mall" means a shopping center with stores facing
20 an enclosed mall.

21 (c) "Smoking" **OR "SMOKE"** means that term as defined in section
22 12601.

23 Enacting section 1. This amendatory act takes effect July 1,
24 2011.