

# HOUSE BILL No. 4255

February 15, 2011, Introduced by Reps. McMillin, Zorn, Somerville, Huuki, Foster, Muxlow, MacGregor, Genetski, Shirkey, Goike, Damrow, Denby, McBroom, Agema, Franz and Rogers and referred to the Committee on Regulatory Reform.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending sections 12601 and 12905 (MCL 333.12601 and 333.12905),  
as amended by 2009 PA 188.

## 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.

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

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

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

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

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

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

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

15 (i) "Home for the aged" means that term as defined in section  
16 20106.

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

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

20 (l) "Meeting" means a meeting as defined in section 2 of the  
21 open meetings act, 1976 PA 267, MCL 15.262.

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

24 (n) "Nursing home" means that term as defined in section  
25 20109.

26 (o) "Place of employment" means an enclosed indoor area that  
27 contains 1 or more work areas for 1 or more persons employed by a

1 public or private employer. Place of employment does not include  
2 any of the following:

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

6 (ii) A food service establishment that is subject to section  
7 12905.

8 (iii) A motor vehicle.

9 (iv) **AN ORGANIZATION OF THE VETERANS OF FOREIGN WARS, THE**  
10 **AMERICAN LEGION, OR ANY OTHER WAR VETERANS' ORGANIZATION.**

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

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

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

21 (ii) An enclosed, indoor area that is not owned or operated by  
22 a state or local governmental agency, is used by the general  
23 public, and is any of the following:

24 (A) An educational facility.

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

27 (C) An auditorium.

1 (D) An arena.

2 (E) A theater.

3 (F) A museum.

4 (G) A concert hall.

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

7 (iii) Unless otherwise exempt under this part, a place of  
8 employment.

9 (r) "Smoking" or "smoke" means the burning of a lighted cigar,  
10 cigarette, pipe, or any other matter or substance that contains a  
11 tobacco product.

12 (s) "Smoking paraphernalia" means any equipment, apparatus, or  
13 furnishing that is used in or necessary for the activity of  
14 smoking.

15 (t) "Tobacco product" means a product that contains tobacco  
16 and is intended for human consumption, including, but not limited  
17 to, cigarettes, noncigarette smoking tobacco, or smokeless tobacco,  
18 as those terms are defined in section 2 of the tobacco products tax  
19 act, 1993 PA 327, MCL 205.422, and cigars.

20 (u) "Tobacco specialty retail store" means an establishment in  
21 which the primary purpose is the retail sale of tobacco products  
22 and smoking paraphernalia, and in which the sale of other products  
23 is incidental. Tobacco specialty retail store does not include a  
24 tobacco department or section of a larger commercial establishment  
25 or any establishment with any type of liquor, food, or restaurant  
26 license.

27 (v) "Work area" means a site within a place of employment at

1 which 1 or more employees perform services for an employer.

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

4 Sec. 12905. (1) An individual shall not smoke in a food  
5 service establishment, and the person who owns, operates, manages,  
6 or is in control of a food service establishment shall make  
7 reasonable effort to prohibit individuals from smoking in a food  
8 service establishment.

9 (2) In addition to a food service establishment that provides  
10 its own seating, subsection (1) applies to a food service  
11 establishment or group of food service establishments that are  
12 located in a shopping mall in which the seating for the food  
13 service establishment or group of food service establishments is  
14 provided or maintained, or both, by the person who owns or operates  
15 the shopping mall.

16 (3) The director, an authorized representative of the  
17 director, or a representative of a local health department to which  
18 the director has delegated responsibility for enforcement of this  
19 part shall inspect each food service establishment that is subject  
20 to this section. The inspecting entity shall determine compliance  
21 with this section during each inspection.

22 (4) Within 5 days after receipt of a written complaint of  
23 violation of this section, a local health department shall  
24 investigate the complaint to determine compliance. If a violation  
25 of this section is identified and not corrected as ordered by the  
26 local health department within 2 days after receipt of the order by  
27 the food service establishment, the local health officer may issue

1 an order to cease food service operations until compliance with  
2 this section is achieved.

3 (5) A food service establishment shall comply with sections  
4 12603(2) and 12606. It is an affirmative defense to a prosecution  
5 or civil or administrative action for a violation of this section  
6 that the owner, operator, manager, or person in control of a food  
7 service establishment where smoking is prohibited under this  
8 section made a good faith effort to prohibit smoking by complying  
9 with section 12603(2). To assert the affirmative defense under this  
10 subsection, the owner, operator, manager, or person shall file a  
11 sworn affidavit setting forth his or her efforts to prohibit  
12 smoking and his or her actions of compliance with section 12603(2).

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

17 (7) As used in this section:

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

20 **FOOD SERVICE ESTABLISHMENT DOES NOT INCLUDE A CIGAR BAR THAT IS**  
21 **EXEMPT FROM THE SMOKING PROHIBITION UNDER SECTION 12606A, OR AN**  
22 **ORGANIZATION DESCRIBED IN SECTION 12601(1) (O) (iv) .**

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

25 (c) "Smoking" **OR "SMOKE"** means that term as defined in section  
26 12601.