

HOUSE BILL No. 4978

September 17, 2013, Introduced by Reps. Slavens and Segal 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, and by adding section 12605.

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.

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

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

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

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

12 (g) "Food service establishment" means ~~a food service~~
13 ~~establishment~~ **THAT TERM** as defined in section 12905.

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

18 (i) "Home for the aged" means that term as defined in section
19 20106.

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

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

23 (l) "Meeting" means ~~a meeting~~ **THAT TERM** as defined in section 2
24 of the open meetings act, 1976 PA 267, MCL 15.262.

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

27 (n) "Nursing home" means that term as defined in section

1 20109.

2 (o) "Place of employment" means an enclosed indoor area that
3 contains 1 or more work areas for 1 or more persons employed by a
4 public or private employer. Place of employment does not include
5 any of the following:

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

9 (ii) A food service establishment that is subject to section
10 12905.

11 (iii) A motor vehicle.

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

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

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

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

25 (A) An educational facility.

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

1 (C) An auditorium.

2 (D) An arena.

3 (E) A theater.

4 (F) A museum.

5 (G) A concert hall.

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

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

10 (iv) **UNLESS A GREATER DISTANCE IS DESIGNATED AS PROVIDED FOR IN**
11 **SECTION 12605, THE AREA THAT IS WITHIN 15 FEET OF AN ENTRANCE,**
12 **EXIT, WINDOW THAT OPENS, OR VENTILATION INTAKE SYSTEM OF A**
13 **BUILDING, FACILITY, OR VENUE AT WHICH A PUBLIC PLACE THAT IS**
14 **SUBJECT TO SECTION 12603 IS LOCATED.**

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

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

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

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

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

6 (v) "Work area" means a site within a place of employment at
7 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. 12605. A LOCAL UNIT OF GOVERNMENT MAY ENACT, ADOPT,**
11 **MAINTAIN, AMEND, OR ENFORCE AN ORDINANCE, REGULATION, OR RESOLUTION**
12 **THAT PROHIBITS SMOKING AT A DISTANCE THAT IS GREATER THAN 15 FEET**
13 **FROM THE ENTRANCE, EXIT, WINDOW THAT OPENS, OR VENTILATION INTAKE**
14 **SYSTEM OF A BUILDING, FACILITY, OR VENUE AT WHICH A PUBLIC PLACE**
15 **THAT IS SUBJECT TO SECTION 12603 OR A FOOD SERVICE ESTABLISHMENT**
16 **THAT IS SUBJECT TO SECTION 12905 IS LOCATED.**

17 Sec. 12905. (1) 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.

22 (2) In addition to a food service establishment that provides
23 its own seating, subsection (1) applies to a food service
24 establishment or group of food service establishments that are
25 located in a shopping mall in which the seating for the food
26 service establishment or group of food service establishments is
27 provided or maintained, or both, by the person who owns or operates

1 the shopping mall.

2 (3) The director, an authorized representative of the
3 director, or a representative of a local health department to which
4 the director has delegated responsibility for enforcement of this
5 part shall inspect each food service establishment that is subject
6 to this section. The inspecting entity shall determine compliance
7 with this section during each inspection.

8 (4) Within 5 days after receipt of a written complaint of
9 violation of this section, a local health department shall
10 investigate the complaint to determine compliance. If a violation
11 of this section is identified and not corrected as ordered by the
12 local health department within 2 days after receipt of the order by
13 the food service establishment, the local health officer may issue
14 an order to cease food service operations until compliance with
15 this section is achieved.

16 (5) A food service establishment shall comply with sections
17 12603(2) and 12606. It is an affirmative defense to a prosecution
18 or civil or administrative action for a violation of this section
19 that the owner, operator, manager, or person in control of a food
20 service establishment where smoking is prohibited under this
21 section made a good faith effort to prohibit smoking by complying
22 with section 12603(2). To assert the affirmative defense under this
23 subsection, the owner, operator, manager, or person shall file a
24 sworn affidavit setting forth his or her efforts to prohibit
25 smoking and his or her actions of compliance with section 12603(2).

26 (6) An individual who violates this part shall be directed to
27 comply with this part and is subject to a civil fine of not more

1 than \$100.00 for a first violation and not more than \$500.00 for a
2 second or subsequent violation.

3 (7) As used in this section:

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

6 **UNLESS A GREATER DISTANCE IS DESIGNATED AS PROVIDED FOR IN SECTION**
7 **12605, FOOD SERVICE ESTABLISHMENT INCLUDES THE AREA THAT IS WITHIN**
8 **15 FEET OF AN ENTRANCE, EXIT, WINDOW THAT OPENS, OR VENTILATION**
9 **INTAKE SYSTEM OF A BUILDING, FACILITY, OR VENUE AT WHICH A FOOD**
10 **SERVICE ESTABLISHMENT THAT IS SUBJECT TO THIS SECTION IS LOCATED.**

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

13 (c) "Smoking" **OR "SMOKE"** means that term as defined in section
14 12601.