

# HOUSE BILL No. 4163

February 5, 2003, Introduced by Rep. Minore and referred to the Committee on  
Regulatory Reform.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending section 12905 (MCL 333.12905), as amended by 1993  
PA 242.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 12905. (1) Except as otherwise provided in this  
2 section, ~~all public areas of~~ a food service establishment shall  
3 ~~be nonsmoking~~ **not allow smoking in the public areas of the food**  
4 **service establishment.** ~~As used in this subsection, "public~~  
5 ~~area"~~ **Public area** includes, but is not limited to, ~~a bathroom,~~  
6 ~~a coatroom, and an entrance or other area used by a patron when~~  
7 ~~not seated at a food service table or counter~~ **all areas of a**  
8 **food service establishment that are open to the public.** ~~Public~~  
9 ~~area does not include the lobby, waiting room, hallways, and~~  
10 ~~lounge areas of a food service establishment, but these areas are~~

1 ~~not required to be designated as smoking areas.~~

2 ~~—— (2) Subject to subsection (3), a food service establishment~~  
 3 ~~with a seating capacity of fewer than 50, whether or not it is~~  
 4 ~~owned and operated by a private club, and a food service~~  
 5 ~~establishment that is owned and operated by a private club~~  
 6 ~~may designate up to 75% of its seating capacity as seating for~~  
 7 ~~smokers. A food service establishment with a seating capacity of~~  
 8 ~~50 or more that is not owned or operated by a private club may~~  
 9 ~~designate up to 50% of its seating capacity as seating for~~  
 10 ~~smokers. A food service establishment that designates seating~~  
 11 ~~for smokers shall clearly identify the seats for nonsmokers as~~  
 12 ~~nonsmoking, place the seats for nonsmokers in close proximity to~~  
 13 ~~each other, and locate the seats for nonsmokers so as not to~~  
 14 ~~discriminate against nonsmokers.~~

15 ~~—— (3) A food service establishment shall not use the definition~~  
 16 ~~of seating capacity and the exemption from that definition set~~  
 17 ~~forth in subsection (9)(c) to increase the amount of seating for~~  
 18 ~~smokers above 75%.~~

19 **(2) —(4)—** In addition to a food service establishment that  
 20 provides its own seating, ~~subsections (1), (2), and (3) also~~  
 21 ~~apply~~ **subsection (1) applies** to a food service establishment or  
 22 group of food service establishments that are located in a  
 23 shopping mall ~~where~~ **in which** the seating for the food service  
 24 establishment or group of food service establishments is provided  
 25 or maintained, or both, by the person who owns or operates the  
 26 shopping mall. ~~As used in this subsection, "shopping mall"~~  
 27 ~~means a shopping center with stores facing an enclosed mall.~~

1       (3) ~~—(5)—~~ The director, or a representative of a local health  
 2 department to which the director, an authorized representative of  
 3 the director, has delegated responsibility for enforcement of  
 4 this part shall ~~—, in accordance with R 325.25902 of the Michigan~~  
 5 ~~administrative code,~~ inspect each food service establishment  
 6 that is subject to this section. The inspecting entity shall  
 7 determine compliance with this section during each inspection.

8       (4) ~~—(6)—~~ The department or a local health department shall  
 9 utilize compliance or noncompliance with this section or with  
 10 rules promulgated to implement this section as criteria in the  
 11 determination of whether to deny, suspend, limit, or revoke a  
 12 license. ~~pursuant to section 12907(1).~~

13       (5) ~~—(7)—~~ Within 5 days after receipt of a written complaint  
 14 of violation of this section, a local health department shall  
 15 investigate the complaint to determine compliance. If a  
 16 violation of this section is identified and not corrected as  
 17 ordered by the local health department within 2 days after  
 18 receipt of the order by the food service establishment, the local  
 19 health officer may issue an order to cease food service  
 20 operations until compliance with this section is achieved.

21       (6) ~~—(8)—~~ This section does not apply to ~~a private facility~~  
 22 ~~that is serviced by a catering kitchen or to a separate room in a~~  
 23 ~~food service establishment that is used for private banquets.~~  
 24 ~~This section does not apply to a food service establishment that~~  
 25 ~~is owned and operated by a fraternal organization, if service is~~  
 26 ~~limited to members of the fraternal organization and their~~  
 27 ~~guests.~~ **all of the following:**

1       (a) A food service establishment that is owned and operated  
2 by a private club that serves only club members and their  
3 guests.

4       (b) A food service establishment that is owned and operated  
5 by a fraternal organization if the service is limited to members  
6 of that fraternal organization and their guests.

7       (c) A private facility that is serviced by a catering  
8 kitchen.

9       (d) A separate room in a food service establishment that is  
10 used for private banquets.

11       (7) ~~-(9)-~~ As used in this section:

12       ~~(a) "Bar" means that term as defined in section 2a of the~~  
13 ~~Michigan liquor control act, Act No. 8 of the Public Acts of the~~  
14 ~~Extra Session of 1933, being section 436.2a of the Michigan~~  
15 ~~Compiled Laws.~~

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

19       (b) ~~"Room"~~ "Separate room" means an area that is physically  
20 distinct from the main dining area of a food service  
21 establishment and from which smoke cannot pass into the main  
22 dining area.

23       ~~(c) "Seating capacity" means the actual number of seats for~~  
24 ~~patrons in a food service establishment. Seating capacity does~~  
25 ~~not include seats located at a bar or seats at tables that are~~  
26 ~~located adjacent to a bar, if meals are not served at those~~  
27 ~~tables.~~

1       (c) "Shopping mall" means a shopping center with stores  
2 facing an enclosed mall.

3       (d) "Smoking" means the carrying by an individual of a  
4 lighted cigar, cigarette, or other lighted smoking device.