

# HOUSE BILL No. 5705

March 24, 2004, Introduced by Reps. Pastor, Vander Veen, Brandenburg and Taub and referred to the Committee on Commerce.

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. ~~As used in~~ **For purposes of** this subsection, ~~"~~  
4 public area ~~"~~ includes, but is not limited to, a bathroom, a  
5 coatroom, and an entrance or other area used by a patron when not  
6 seated at a food service table or counter. Public area does not  
7 include the lobby, waiting room, hallways, and lounge areas of a  
8 food service establishment, but these areas are not required to  
9 be designated as smoking areas.

10       (2) Subject to subsection (3), a food service establishment

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

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

1       (5) Beginning July 1, 2005 for food service establishments  
2 constructed on or after that date, the area designated for  
3 smoking in a food service establishment shall be separated from  
4 nonsmokers by a wall or partition complying with this subsection  
5 or shall be constructed with a combination of approved partitions  
6 and ventilation devices. The department and the bureau of  
7 construction codes of the department of labor and economic growth  
8 shall promulgate rules to set standards for construction of walls  
9 or partitions in new food service establishments to separate  
10 smokers from nonsmokers. The rules shall also provide for  
11 variances for certain types of food service establishments,  
12 including those located in shopping malls, and for ventilation  
13 devices to be allowed under certain construction settings. The  
14 rules may be included in the building code adopted under the  
15 Stille-DeRossett-Hale single state construction code act, 1972 PA  
16 230, MCL 125.1501 to 125.1531, for the code cycle after the  
17 effective date of the rules.

18       (6) ~~—(5)—~~ The director, an authorized representative of the  
19 director, or a representative of a local health department to  
20 which the director has delegated responsibility for enforcement  
21 of this part shall ~~—, in accordance with R 325.25902 of the~~  
22 ~~Michigan administrative code,~~ inspect each food service  
23 establishment that is subject to this section. The inspecting  
24 entity shall determine compliance with this section during each  
25 inspection.

26       (7) ~~—(6)—~~ The department or a local health department shall  
27 utilize compliance or noncompliance with this section or with

1 rules promulgated to implement this section as criteria in the  
 2 determination of whether to deny, suspend, limit, or revoke a  
 3 license. ~~pursuant to section 12907(1).~~

4       **(8)** ~~-(7)-~~ Within 5 days after receipt of a written complaint  
 5 of violation of this section, a local health department shall  
 6 investigate the complaint to determine compliance. If a  
 7 violation of this section is identified and not corrected as  
 8 ordered by the local health department within 2 days after  
 9 receipt of the order by the food service establishment, the local  
 10 health officer may issue an order to cease food service  
 11 operations until compliance with this section is achieved.

12       **(9)** ~~-(8)-~~ This section does not apply to ~~a~~ **any of the**  
 13 **following:**

14       **(a)** A private facility that is serviced by a catering  
 15 kitchen. ~~or to a~~

16       **(b)** A separate room in a food service establishment that is  
 17 used for private banquets. ~~This section does not apply to a~~

18       **(c)** A food service establishment that is owned and operated  
 19 by a fraternal organization, if service is limited to members of  
 20 the fraternal organization and their guests.

21       **(10)** ~~-(9)-~~ As used in this section:

22       (a) "Bar" means that term as defined in section ~~2a of the~~  
 23 ~~Michigan liquor control act, Act No. 8 of the Public Acts of the~~  
 24 ~~Extra Session of 1933, being section 436.2a of the Michigan~~  
 25 ~~Compiled Laws~~ **105(4) of the Michigan liquor control code of**  
 26 **1998, 1998 PA 58, MCL 436.1105.**

27       **(b)** "Food service establishment" means that term as defined

1 in section 1107 of the food law of 2000, 2000 PA 92, MCL  
2 289.1107.

3 (c) ~~—(b)—~~ "Room" means an area that is physically distinct  
4 from the main dining area of a food service establishment and  
5 from which smoke cannot pass into the main dining area.

6 (d) ~~—(e)—~~ "Seating capacity" means the actual number of seats  
7 for patrons in a food service establishment. Seating capacity  
8 does not include seats located at a bar or seats at tables that  
9 are located adjacent to a bar, if meals are not served at those  
10 tables.

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

13 (f) ~~—(d)—~~ "Smoking" means the carrying by an individual of a  
14 lighted cigar, cigarette, or other lighted smoking device.