

SUBSTITUTE FOR  
HOUSE BILL NO. 5074

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending the heading of part 129 and sections 12601, 12603,  
12611, 12613, 12614, 12905, and 12915 (MCL 333.12601, 333.12603,  
333.12611, 333.12613, 333.12614, 333.12905, and 333.12915),  
sections 12601 and 12613 as amended by 1988 PA 315, sections 12603  
and 12611 as amended by 1993 PA 217, section 12614 as added by 1988  
PA 296, section 12905 as amended by 1993 PA 242, and section 12915  
as amended by 1982 PA 526, and by adding sections 12606, 12606a,  
and 12606b; and to repeal acts and parts of acts.

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

1 MICHIGAN GAMING CONTROL AND REVENUE ACT, 1996 IL 1, MCL 432.202.  
2 CASINO DOES NOT INCLUDE A CASINO OPERATED UNDER THE INDIAN GAMING  
3 REGULATORY ACT, PUBLIC LAW 100-497, 102 STAT. 2467.

4 (B) ~~(a)~~ "Child caring institution" and "child care center"  
5 mean those terms as defined in section 1 of ~~Act No. 116 of the~~  
6 ~~Public Acts of 1973, being section 722.111 of the Michigan Compiled~~  
7 ~~Laws~~ 1973 PA 116, MCL 722.111.

8 (C) "CIGAR BAR" MEANS AN ESTABLISHMENT OR AREA WITHIN AN  
9 ESTABLISHMENT THAT IS OPEN TO THE PUBLIC AND IS DESIGNATED FOR THE  
10 SMOKING OF TOBACCO PRODUCTS, PURCHASED ON THE PREMISES OR  
11 ELSEWHERE.

12 (D) ~~(b)~~ "County medical care facility" means that term as  
13 defined in section 20104.

14 (E) ~~(c)~~ "Educational facility" means a building owned, leased,  
15 or under the control of a public or private school system, college,  
16 or university.

17 (F) ~~(d)~~ "Food service establishment" means a food service  
18 establishment as defined in section ~~12901-12905~~.

19 (G) ~~(e)~~ "Health facility" means a health facility or agency  
20 licensed under article 17, except a home for the aged, nursing  
21 home, county medical care facility, hospice, or hospital long-term  
22 care unit.

23 (H) ~~(f)~~ "Home for the aged" means that term as defined in  
24 section 20106.

25 (I) ~~(g)~~ "Hospice" means that term as defined in section 20106.

26 (J) ~~(h)~~ "Hospital long-term care unit" means that term as  
27 defined in section 20106.

~~(i) "Licensed premises" means any portion of a building, structure, room, or enclosure in which alcoholic liquor may be sold for consumption on the premises pursuant to a license issued by the Michigan liquor control commission.~~

(K) "LICENSED BINGO EVENT OR MILLIONAIRE PARTY" MEANS A BINGO EVENT OR MILLIONAIRE PARTY CONDUCTED BY A LICENSEE UNDER THE TRAXLER-MCCAULEY-LAW-BOWMAN BINGO ACT, 1972 PA 382, MCL 432.101 TO 432.120.

~~(l) (j) "Meeting" means a meeting as defined in section 2 of the open meetings act, Act No. 267 of the Public Acts of 1976, being section 15.262 of the Michigan Compiled Laws 1976 PA 267, MCL 15.262.~~

(M) "MOTOR VEHICLE" MEANS THAT TERM AS DEFINED IN SECTION 33 OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.33.

~~(N) (k) "Nursing home" means that term as defined in section 20109.~~

(O) "PLACE OF EMPLOYMENT" MEANS AN ENCLOSED INDOOR AREA THAT CONTAINS 1 OR MORE WORK AREAS FOR 1 OR MORE PERSONS EMPLOYED BY A PUBLIC OR PRIVATE EMPLOYER. PLACE OF EMPLOYMENT DOES NOT INCLUDE ANY OF THE FOLLOWING:

(i) A STRUCTURE USED PRIMARILY AS THE RESIDENCE OF THE OWNER OR LESSEE THAT IS ALSO USED AS AN OFFICE FOR THE OWNER OR LESSEE.

(ii) A CIGAR BAR OR TOBACCO SPECIALTY RETAIL STORE EXEMPT UNDER SECTION 12606A.

(iii) A FOOD SERVICE ESTABLISHMENT THAT IS SUBJECT TO SECTION 12905.

(iv) A MOTOR VEHICLE.

(v) A CASINO, BUT ONLY TO THE EXTENT THAT THE CASINO IS EXEMPT UNDER SECTION 12606B.

(vi) A PLACE AT WHICH A LICENSED BINGO EVENT OR MILLIONAIRE PARTY IS BEING CONDUCTED.

(vii) THE NON-FOOD-SERVICE-ESTABLISHMENT PORTION OF THE PREMISES OF A LICENSEE UNDER THE HORSE RACING LAW OF 1995, 1995 PA 279, MCL 431.301 TO 431.336.

(P) ~~(P)~~ "Public body" means a public body as defined in section 2 of the open meetings act, ~~Act No. 267 of the Public Acts of 1976~~ 1976 PA 267, MCL 15.262.

(Q) ~~(m)~~ "Public place", except as otherwise provided in subsection (2), means ~~both~~ **ANY** of the following:

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

(ii) An enclosed, indoor area ~~which~~ **THAT** is not owned or operated by a state or local governmental agency, is used by the general public, and is ~~1~~ **ANY** of the following:

(A) An educational facility.

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

(C) An auditorium.

(D) An arena.

1 (E) A theater.

2 (F) A museum.

3 (G) A concert hall.

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

6 (iii) UNLESS EXEMPT UNDER SECTION 12606A, A CIGAR BAR OR A  
7 TOBACCO SPECIALTY RETAIL STORE.

8 (iv) A PLACE OF EMPLOYMENT.

9 (v) EXCEPT TO THE EXTENT THAT IT IS EXEMPT UNDER SECTION  
10 12606B, A CASINO.

11 (R) ~~(n)~~ "Smoking" or "smoke" means the ~~carrying by a person~~  
12 BURNING of a lighted cigar, cigarette, pipe, or ANY other lighted  
13 ~~smoking device~~ MATTER OR SUBSTANCE THAT CONTAINS A TOBACCO PRODUCT.

14 (S) "SMOKING PARAPHERNALIA" MEANS ANY EQUIPMENT, APPARATUS, OR  
15 FURNISHING THAT IS USED IN OR NECESSARY FOR THE ACTIVITY OF  
16 SMOKING.

17 (T) "TOBACCO PRODUCT" MEANS A PRODUCT THAT CONTAINS TOBACCO  
18 AND IS INTENDED FOR HUMAN CONSUMPTION, INCLUDING, BUT NOT LIMITED  
19 TO, CIGARETTES, NONCIGARETTE SMOKING TOBACCO, OR SMOKELESS TOBACCO,  
20 AS THOSE TERMS ARE DEFINED IN SECTION 2 OF THE TOBACCO PRODUCTS TAX  
21 ACT, 1993 PA 327, MCL 205.422, AND CIGARS.

22 (U) "TOBACCO SPECIALTY RETAIL STORE" MEANS AN ESTABLISHMENT  
23 THAT IS NOT REQUIRED TO BE LICENSED AS A FOOD SERVICE  
24 ESTABLISHMENT, IN WHICH THE PRIMARY PURPOSE IS THE RETAIL SALE OF  
25 TOBACCO PRODUCTS AND SMOKING PARAPHERNALIA, AND IN WHICH THE SALE  
26 OF OTHER PRODUCTS IS INCIDENTAL.

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) Public place does not include a ~~private, enclosed room or~~  
 3 ~~office occupied exclusively by a smoker, even if the room or~~  
 4 ~~enclosed office may be visited by a nonsmoker~~ MOTOR VEHICLE OR A  
 5 PLACE AT WHICH A LICENSED BINGO EVENT OR MILLIONAIRE PARTY IS  
 6 CONDUCTED.

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

9 Sec. 12603. (1) ~~Except as otherwise provided by law, A STATE~~  
 10 OR LOCAL GOVERNMENTAL AGENCY OR THE PERSON WHO OWNS OR OPERATES A  
 11 PUBLIC PLACE SHALL NOT ALLOW SMOKING IN THE PUBLIC PLACE, AND an  
 12 individual shall not smoke in a public place or at a meeting of a  
 13 public body. ~~, except in a designated smoking area.~~

14 ~~—— (2) This section does not apply to a room, hall, or building~~  
 15 ~~used for a private function if the seating arrangements are under~~  
 16 ~~the control of the sponsor of the function and not under the~~  
 17 ~~control of the state or local governmental agency or the person who~~  
 18 ~~owns or operates the room, hall, or building.~~

19 ~~—— (3) This section does not apply to a food service~~  
 20 ~~establishment or to licensed premises.~~

21 ~~—— (4) This section shall not apply to a private educational~~  
 22 ~~facility after regularly scheduled school hours.~~

23 (2) "NO SMOKING" SIGNS OR THE INTERNATIONAL "NO SMOKING"  
 24 SYMBOL SHALL BE CLEARLY AND CONSPICUOUSLY POSTED AT THE ENTRANCES  
 25 TO AND IN EVERY BUILDING OR OTHER AREA WHERE SMOKING IS PROHIBITED  
 26 UNDER THIS SECTION. THE OWNER, OPERATOR, MANAGER, OR PERSON HAVING  
 27 CONTROL OF THE BUILDING OR OTHER AREA SHALL POST THE SIGNS. THE

1 OWNER, OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE AREA  
2 SHALL REMOVE ALL ASHTRAYS AND OTHER SMOKING PARAPHERNALIA FROM  
3 ANYWHERE SMOKING IS PROHIBITED UNDER THIS SECTION. THE OWNER,  
4 OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE AREA SHALL  
5 INFORM PERSONS SMOKING IN VIOLATION OF THIS ACT THAT THEY ARE IN  
6 VIOLATION OF STATE LAW AND SUBJECT TO PENALTIES.

7 SEC. 12606. (1) AN EMPLOYER OR A FOOD SERVICE ESTABLISHMENT  
8 SHALL NOT TAKE ANY RETALIATORY OR ADVERSE PERSONNEL ACTION AGAINST  
9 AN EMPLOYEE OR APPLICANT FOR EMPLOYMENT ON THE BASIS OF THE  
10 INDIVIDUAL'S EXERCISE OF OR ATTEMPT TO EXERCISE HIS OR HER RIGHTS  
11 UNDER THIS PART WITH RESPECT TO PLACE OF EMPLOYMENT OR PART 129  
12 WITH RESPECT TO FOOD SERVICE ESTABLISHMENTS. EACH EMPLOYER SUBJECT  
13 TO THIS PART AND EACH FOOD SERVICE ESTABLISHMENT SUBJECT TO PART  
14 129 SHALL ADOPT, IMPLEMENT, PUBLISH, MAINTAIN, AND MODIFY TO  
15 REFLECT ANY CHANGES A WRITTEN NONSMOKING POLICY. THE EMPLOYER OR  
16 FOOD SERVICE ESTABLISHMENT SHALL PROMINENTLY POST THE NONSMOKING  
17 POLICY IN THE WORKPLACE AND, WITHIN 3 WEEKS OF ITS ADOPTION, SHALL  
18 DISSEMINATE THE POLICY TO ALL EMPLOYEES AND TO NEW EMPLOYEES WHEN  
19 HIRED. THE EMPLOYER OR FOOD SERVICE ESTABLISHMENT SHALL SUPPLY A  
20 WRITTEN COPY OF THE NONSMOKING POLICY UPON REQUEST TO ANY EMPLOYEE  
21 OR APPLICANT FOR EMPLOYMENT. THE EMPLOYER OR FOOD SERVICE  
22 ESTABLISHMENT SHALL PROVIDE A COPY OF THE NONSMOKING POLICY TO THE  
23 DEPARTMENT UPON REQUEST. THE EMPLOYER OR FOOD SERVICE ESTABLISHMENT  
24 SHALL INCLUDE THE FOLLOWING IN THE WRITTEN POLICY REQUIRED UNDER  
25 THIS SUBSECTION:

26 (A) THAT SMOKING IS PROHIBITED AS REQUIRED IN THIS SECTION OR  
27 SECTION 12905.

1 (B) THAT AN EMPLOYEE OR APPLICANT FOR EMPLOYMENT WHO EXERCISES  
2 OR ATTEMPTS TO EXERCISE HIS OR HER RIGHTS WITH RESPECT TO PLACE OF  
3 EMPLOYMENT OR WITH RESPECT TO FOOD SERVICE ESTABLISHMENTS IS  
4 PROTECTED AGAINST RETALIATORY OR ADVERSE PERSONNEL ACTION.

5 (2) THIS SECTION DOES NOT IMPAIR, DIMINISH, OR OTHERWISE  
6 AFFECT ANY COLLECTIVELY BARGAINED PROCEDURE OR REMEDY AVAILABLE TO  
7 AN EMPLOYEE ON THE EFFECTIVE DATE OF THIS SECTION, WITH RESPECT TO  
8 DISPUTES ARISING UNDER THE EMPLOYER'S OR FOOD SERVICE  
9 ESTABLISHMENT'S NONSMOKING POLICY. THIS SECTION APPLIES TO  
10 COLLECTIVELY BARGAINED SMOKING PROCEDURES OR REMEDIES UPON THE  
11 EXPIRATION OR MODIFICATION OF A COLLECTIVELY BARGAINED SMOKING  
12 PROCEDURE OR REMEDY THAT WAS IN EFFECT ON OR BARGAINED FOR AFTER  
13 THE EFFECTIVE DATE OF THIS SECTION.

14 SEC. 12606A. (1) A CIGAR BAR THAT MEETS ALL OF THE  
15 REQUIREMENTS OF THIS SECTION IS EXEMPT FROM THE SMOKING PROHIBITION  
16 OF SECTION 12603 AND MAY ALLOW SMOKING ON ITS PREMISES. TO QUALIFY  
17 FOR THE EXEMPTION UNDER THIS SECTION, THE PERSON WHO OWNS OR  
18 OPERATES A CIGAR BAR SHALL FILE AN AFFIDAVIT WITH THE DEPARTMENT ON  
19 OR BEFORE THE EXPIRATION OF 30 DAYS AFTER THE EFFECTIVE DATE OF  
20 THIS SECTION IF THE CIGAR BAR IS IN EXISTENCE ON THE EFFECTIVE DATE  
21 OF THIS SECTION OR 30 DAYS OR MORE BEFORE HE OR SHE WISHES TO USE  
22 THIS EXEMPTION, AND ON JANUARY 31 OF EACH YEAR AFTER THE EFFECTIVE  
23 DATE OF THE EXEMPTION. THE AFFIDAVIT SHALL BE SIGNED BY THE OWNER  
24 OR OPERATOR OF THE CIGAR BAR AND SHALL CERTIFY THAT THE CIGAR BAR  
25 MEETS ALL OF THE FOLLOWING REQUIREMENTS:

26 (A) IN THE 30-DAY PERIOD IMMEDIATELY PRECEDING THE FILING OF  
27 THE FIRST AFFIDAVIT UNDER THIS SUBSECTION, THE CIGAR BAR GENERATED



1 10% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME FROM THE ON-SITE SALE  
2 OF TOBACCO PRODUCTS AND THE RENTAL OF ON-SITE HUMIDORS, NOT  
3 INCLUDING ANY SALES OF TOBACCO PRODUCTS FROM VENDING MACHINES.

4 (B) FOR EACH CALENDAR YEAR AFTER THE CALENDAR YEAR IN WHICH  
5 THE FIRST AFFIDAVIT IS FILED UNDER THIS SUBSECTION, THE CIGAR BAR  
6 GENERATES 10% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME FROM THE ON-  
7 SITE SALE OF TOBACCO PRODUCTS AND THE RENTAL OF ON-SITE HUMIDORS,  
8 NOT INCLUDING ANY SALES OF TOBACCO PRODUCTS FROM VENDING MACHINES.

9 (C) THE CIGAR BAR IS LOCATED ON PREMISES THAT ARE PHYSICALLY  
10 SEPARATED FROM ANY AREAS OF THE SAME OR ADJACENT ESTABLISHMENT IN  
11 WHICH SMOKING IS PROHIBITED UNDER THIS PART OR PART 129 AND WHERE  
12 SMOKE DOES NOT INFILTRATE INTO THOSE NONSMOKING AREAS. AS USED IN  
13 THIS SUBDIVISION, "PHYSICALLY SEPARATED" MEANS AN AREA THAT IS  
14 ENCLOSED ON ALL SIDES BY ANY COMBINATION OF SOLID WALLS, WINDOWS,  
15 OR DOORS THAT EXTEND FROM THE FLOOR TO CEILING.

16 (D) THE CIGAR BAR HAS INSTALLED ON ITS PREMISES AN ON-SITE  
17 HUMIDOR.

18 (E) THE CIGAR BAR PROHIBITS ENTRY TO A PERSON UNDER THE AGE OF  
19 18 DURING THE TIME THE CIGAR BAR IS OPEN FOR BUSINESS.

20 (2) A TOBACCO SPECIALTY RETAIL STORE THAT MEETS ALL OF THE  
21 REQUIREMENTS OF THIS SECTION IS EXEMPT FROM THE SMOKING PROHIBITION  
22 OF SECTION 12603 AND MAY ALLOW SMOKING ON ITS PREMISES. TO QUALIFY  
23 FOR THE EXEMPTION UNDER THIS SECTION, THE PERSON WHO OWNS OR  
24 OPERATES A TOBACCO SPECIALTY RETAIL STORE SHALL FILE AN AFFIDAVIT  
25 WITH THE DEPARTMENT ON OR BEFORE THE EXPIRATION OF 30 DAYS AFTER  
26 THE EFFECTIVE DATE OF THE EXEMPTION IF THE TOBACCO SPECIALTY RETAIL  
27 STORE IS IN EXISTENCE ON THE EFFECTIVE DATE OF THIS SECTION OR 30

1 DAYS OR MORE BEFORE HE OR SHE WISHES TO USE THIS EXEMPTION, AND ON  
2 JANUARY 31 OF EACH YEAR AFTER THE EFFECTIVE DATE OF THE EXEMPTION.  
3 THE AFFIDAVIT SHALL BE SIGNED BY THE OWNER OR OPERATOR OF THE  
4 TOBACCO SPECIALTY RETAIL STORE AND SHALL CERTIFY THAT THE TOBACCO  
5 SPECIALTY RETAIL STORE MEETS ALL OF THE FOLLOWING REQUIREMENTS:

6 (A) IN THE 30-DAY PERIOD IMMEDIATELY PRECEDING THE FILING OF  
7 THE FIRST AFFIDAVIT UNDER THIS SUBSECTION, THE TOBACCO SPECIALTY  
8 RETAIL STORE GENERATED 75% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME  
9 FROM THE ON-SITE SALE OF TOBACCO PRODUCTS AND SMOKING  
10 PARAPHERNALIA.

11 (B) FOR EACH CALENDAR YEAR AFTER THE CALENDAR YEAR IN WHICH  
12 THE FIRST AFFIDAVIT IS FILED UNDER THIS SUBSECTION, THE TOBACCO  
13 SPECIALTY RETAIL STORE GENERATED 75% OR MORE OF ITS TOTAL GROSS  
14 ANNUAL INCOME FROM THE ON-SITE SALE OF TOBACCO PRODUCTS AND SMOKING  
15 PARAPHERNALIA.

16 (C) THE TOBACCO SPECIALTY RETAIL STORE IS LOCATED ON PREMISES  
17 THAT ARE PHYSICALLY SEPARATED FROM ANY AREAS OF THE SAME OR  
18 ADJACENT ESTABLISHMENTS IN WHICH SMOKING IS PROHIBITED UNDER THIS  
19 PART OR PART 129 AND WHERE SMOKE DOES NOT INFILTRATE INTO THOSE  
20 NONSMOKING AREAS. AS USED IN THIS SUBDIVISION, "PHYSICALLY  
21 SEPARATED" MEANS AN AREA THAT IS ENCLOSED ON ALL SIDES BY ANY  
22 COMBINATION OF SOLID WALLS, WINDOWS, OR DOORS THAT EXTEND FROM THE  
23 FLOOR TO CEILING.

24 (D) THE TOBACCO SPECIALTY RETAIL STORE PROHIBITS ENTRY TO A  
25 PERSON UNDER THE AGE OF 18 DURING THE TIME THE TOBACCO SPECIALTY  
26 RETAIL STORE IS OPEN FOR BUSINESS.

27 (3) THE DEPARTMENT MAY REQUEST ADDITIONAL INFORMATION FROM A

1 CIGAR BAR OR TOBACCO SPECIALTY RETAIL STORE TO VERIFY THAT THE  
2 CIGAR BAR OR TOBACCO SPECIALTY RETAIL STORE MEETS THE REQUIREMENTS  
3 OF THIS SECTION. A CIGAR BAR OR TOBACCO SPECIALTY RETAIL STORE  
4 SHALL COMPLY WITH REQUESTS FROM THE DEPARTMENT UNDER THIS SECTION.

5 (4) THE INFORMATION SUBMITTED BY A CIGAR BAR OR A TOBACCO  
6 SPECIALTY RETAIL STORE TO THE DEPARTMENT UNDER THIS SECTION IS  
7 EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976  
8 PA 442, MCL 15.231 TO 15.246.

9 (5) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A CIGAR  
10 BAR OR TOBACCO SPECIALTY RETAIL STORE THAT DOES NOT MEET THE  
11 REQUIREMENTS OF THIS SECTION OR VIOLATES THIS SECTION IS NOT EXEMPT  
12 FROM THE SMOKING PROHIBITION OF SECTION 12603 AND SHALL IMMEDIATELY  
13 PROHIBIT SMOKING ON ITS PREMISES. A CIGAR BAR OR TOBACCO SPECIALTY  
14 RETAIL STORE THAT MEETS ALL OF THE REQUIREMENTS OF THIS SECTION  
15 OTHER THAN FILING THE AFFIDAVIT AS REQUIRED UNDER SUBSECTION (1) OR  
16 (2), RETAINS ITS EXEMPTION AND MAY CONTINUE TO ALLOW SMOKING DURING  
17 THE PERIOD BEGINNING ON THE DATE THE AFFIDAVIT IS DUE AND ENDING ON  
18 THE EXPIRATION OF 21 DAYS AFTER THAT DATE. HOWEVER, IF THE  
19 AFFIDAVIT REMAINS UNFILED AFTER THE 21-DAY GRACE PERIOD, THE CIGAR  
20 BAR OR TOBACCO SPECIALTY RETAIL STORE IS NOT EXEMPT FROM THE  
21 SMOKING PROHIBITION OF SECTION 12603 AND SHALL IMMEDIATELY PROHIBIT  
22 SMOKING ON ITS PREMISES. A CIGAR BAR OR TOBACCO SPECIALTY RETAIL  
23 STORE THAT LOSES ITS EXEMPTION UNDER THIS SUBSECTION IS NOT EXEMPT  
24 FROM THE SMOKING PROHIBITION OF SECTION 12603, SHALL IMMEDIATELY  
25 PROHIBIT SMOKING ON ITS PREMISES, AND MAY ONLY AGAIN QUALIFY FOR  
26 THE EXEMPTION UNDER THIS SECTION BY FILING AN AFFIDAVIT AND MEETING  
27 ALL OF THE REQUIREMENTS OF SUBSECTION (1) OR (2), AS APPLICABLE.

1           SEC. 12606B. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,  
2 A CASINO MAY ALLOW SMOKING ON THE FLOOR SPACE OF THE CASINO WHERE  
3 GAMBLING GAMES ARE CONDUCTED OR PLAYED. DETERMINATION OF WHAT  
4 CONSTITUTES FLOOR SPACE SHALL BE MADE IN A MANNER ACCEPTABLE TO THE  
5 DEPARTMENT OR TO THE LOCAL HEALTH DEPARTMENT AUTHORIZED TO ENFORCE  
6 THIS PART, AS PROVIDED IN RULES PROMULGATED BY THE DEPARTMENT.

7           (2) SMOKING IS PROHIBITED ON THE FLOOR SPACE OF A CASINO WHERE  
8 GAMBLING GAMES ARE CONDUCTED OR PLAYED UNDER EITHER OR BOTH OF THE  
9 FOLLOWING CIRCUMSTANCES:

10           (A) THIS STATE NEGOTIATES AN AGREEMENT WITH THE FEDERALLY  
11 RECOGNIZED INDIAN TRIBES THAT CONDUCT GAMBLING GAMES IN THIS STATE  
12 TO PROHIBIT SMOKING IN AREAS WHERE GAMBLING GAMES ARE CONDUCTED  
13 PURSUANT TO AN INDIAN GAMING COMPACT OR OTHER APPROPRIATE  
14 AGREEMENT.

15           (B) A MAJORITY OF FEDERALLY RECOGNIZED INDIAN TRIBES THAT  
16 CONDUCT GAMBLING GAMES IN THIS STATE VOLUNTARILY PROHIBIT SMOKING  
17 IN AREAS OF THE TRIBAL CASINOS WHERE GAMBLING GAMES ARE CONDUCTED  
18 OR PLAYED, AS DETERMINED BY THE RECORDS OF THE MICHIGAN GAMING  
19 CONTROL BOARD.

20           Sec. 12611. A person ~~who violates section 12603(1) or 12604a~~  
21 ~~or a person or state or local governmental agency that owns or~~  
22 ~~operates a public place and that violates section 12605 or 12607~~  
23 **THIS PART** shall be directed to comply with this part and is subject  
24 to a civil fine of not more than \$100.00 for a first violation and  
25 not more than \$500.00 for a second or subsequent violation. **A**  
26 **PERSON WHO MAKES A FALSE STATEMENT IN AN AFFIDAVIT UNDER THIS PART**  
27 **IS GUILTY OF PERJURY UNDER SECTION 423 OF THE MICHIGAN PENAL CODE,**

1 1931 PA 328, MCL 750.423.

2 Sec. 12613. (1) Subject to subsection (2), the department  
3 shall enforce this part and **ANY** rules promulgated under this part  
4 pursuant to sections 2262(2) and 2263. In addition to the civil  
5 fine authorized under section 12611, the department may enforce  
6 this part and ~~the~~**ANY** rules promulgated under this part through an  
7 action commenced pursuant to section 2255 or any other appropriate  
8 action authorized by law.

9 (2) Pursuant to section 2235, the department may authorize a  
10 local health department to enforce this part and ~~the~~**ANY** rules  
11 promulgated under this part. A local health department authorized  
12 to enforce this part and ~~the~~**ANY** rules promulgated under this part  
13 shall enforce this part and ~~the~~**ANY** rules promulgated under this  
14 part pursuant to sections 2461(2) and 2462. In addition to the  
15 civil fine authorized under section 12611, a local health  
16 department may enforce this part and ~~the~~**ANY** rules promulgated  
17 under this part through an action commenced pursuant to section  
18 2465 or any other appropriate action authorized by law.

19 (3) In addition to any other enforcement action authorized by  
20 law, a person alleging a violation of this part may bring a civil  
21 action for appropriate injunctive relief, if the person has used  
22 the public place, child caring institution, **OR** child care center ~~7~~  
23 ~~health facility, or private practice office of an individual who is~~  
24 ~~licensed under article 15 within 60 days after~~**BEFORE** the civil  
25 action is filed.

26 (4) The remedies under this part are independent and  
27 cumulative. The use of 1 remedy by a person shall not bar the use

1 of other lawful remedies by that person or the use of a lawful  
2 remedy by another person.

3 Sec. 12614. (1) The director shall report biennially to the  
4 legislature on the effect and enforcement of this part. The report  
5 shall include, at a minimum, ~~both of the following:~~

6 ~~—— (a) The policy of each state agency that has developed a~~  
7 ~~policy for the separation of smokers and nonsmokers.~~

8 ~~—— (b) Compliance~~ **COMPLIANCE** with section ~~12607-12603.~~

9 (2) Upon request of the department, the director of the  
10 department of management and budget annually shall report to the  
11 department, at a minimum, ~~all of the following:~~

12 ~~—— (a) A~~ **A** list of each public place owned or operated by the  
13 state -

14 ~~—— (b) Compliance~~ **AND ITS COMPLIANCE** with section ~~12607-12603.~~

15 ~~—— (c) The smoking policy, if any, adopted by each public place~~  
16 ~~listed under subdivision (a).~~

#### 17 PART 129. ~~FOOD SERVICE SANITATION~~ **SMOKE-FREE FOOD SERVICE**

#### 18 **ESTABLISHMENTS**

19 Sec. 12905. (1) ~~Except as otherwise provided in this section,~~  
20 ~~all public areas of a~~ **A** food service establishment shall be  
21 ~~nonsmoking~~ **NOT ALLOW SMOKING, AND AN INDIVIDUAL SHALL NOT SMOKE IN**  
22 **A FOOD SERVICE ESTABLISHMENT. A FOOD SERVICE ESTABLISHMENT SHALL**  
23 **COMPLY WITH SECTION 12606.** ~~As used in this subsection, "public~~  
24 ~~area" includes, but is not limited to, a bathroom, a coatroom, and~~  
25 ~~an entrance or other area used by a patron when not seated at a~~  
26 ~~food service table or counter. Public area does not include the~~  
27 ~~lobby, waiting room, hallways, and lounge areas of a food service~~

1 ~~establishment, but these areas are not required to be designated as~~  
2 ~~smoking areas.~~

3 ~~—— (2) Subject to subsection (3), a food service establishment~~  
4 ~~with a seating capacity of fewer than 50, whether or not it is~~  
5 ~~owned and operated by a private club, and a food service~~  
6 ~~establishment that is owned and operated by a private club may~~  
7 ~~designate up to 75% of its seating capacity as seating for smokers.~~  
8 ~~A food service establishment with a seating capacity of 50 or more~~  
9 ~~that is not owned or operated by a private club may designate up to~~  
10 ~~50% of its seating capacity as seating for smokers. A food service~~  
11 ~~establishment that designates seating for smokers shall clearly~~  
12 ~~identify the seats for nonsmokers as nonsmoking, place the seats~~  
13 ~~for nonsmokers in close proximity to each other, and locate the~~  
14 ~~seats for nonsmokers so as not to 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 apply~~  
21 **SUBSECTION (1) APPLIES** to a food service establishment or group of  
22 food service establishments that are located in a shopping mall  
23 ~~where~~ **IN WHICH** the seating for the food service establishment or  
24 group of food service establishments is provided or maintained, or  
25 both, by the person who owns or operates the shopping mall. ~~As used~~  
26 ~~in this subsection, "shopping mall" means a shopping center with~~  
27 ~~stores facing an enclosed mall.~~

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

8           (4) ~~(6)~~ The department or a local health department shall  
 9 ~~utilize compliance or~~ **NOTIFY THE DEPARTMENT OF AGRICULTURE OF ANY**  
 10 noncompliance with this section or with rules promulgated to  
 11 implement this section. **THE DEPARTMENT OF AGRICULTURE MAY USE**  
 12 **COMPLIANCE OR NONCOMPLIANCE WITH THIS SECTION OR ANY RULES**  
 13 **PROMULGATED TO IMPLEMENT THIS SECTION** as criteria in the  
 14 determination of whether to deny, suspend, limit, or revoke a  
 15 license ~~pursuant to section 12907(1)~~ **ISSUED UNDER THE FOOD LAW OF**  
 16 **2000, 2000 PA 92, MCL 289.1101 TO 289.8111.**

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

25 ~~— (8) This section does not apply to a private facility that is~~  
 26 ~~serviced by a catering kitchen or to a separate room in a food~~  
 27 ~~service establishment that is used for private banquets. This~~



~~section does not apply to a food service establishment that is  
owned and operated by a fraternal organization, if service is  
limited to members of the fraternal organization and their guests.~~

(6) "NO SMOKING" SIGNS OR THE INTERNATIONAL "NO SMOKING"  
SYMBOL SHALL BE CLEARLY AND CONSPICUOUSLY POSTED AT THE ENTRANCE TO  
AND IN EVERY BUILDING OR OTHER AREA WHERE SMOKING IS PROHIBITED  
UNDER THIS SECTION. THE OWNER, OPERATOR, MANAGER, OR PERSON HAVING  
CONTROL OF THE BUILDING OR OTHER AREA SHALL POST THE SIGNS. THE  
OWNER, OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE AREA  
SHALL REMOVE ALL ASHTRAYS AND OTHER SMOKING PARAPHERNALIA FROM ANY  
AREA WHERE SMOKING IS PROHIBITED UNDER THIS SECTION. THE OWNER,  
OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE AREA SHALL  
INFORM PERSONS SMOKING IN VIOLATION OF THIS ACT THAT THEY ARE IN  
VIOLATION OF STATE LAW AND SUBJECT TO PENALTIES.

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

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

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

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

(A) "FOOD SERVICE ESTABLISHMENT" MEANS THAT TERM AS DEFINED IN

1 SECTION 1107 OF THE FOOD LAW OF 2000, 2000 PA 92, MCL 289.1107.  
2 FOOD SERVICE ESTABLISHMENT DOES NOT INCLUDE A CIGAR BAR OR TOBACCO  
3 SPECIALTY RETAIL STORE EXEMPT UNDER SECTION 12606A.

4 (B) "SHOPPING MALL" MEANS A SHOPPING CENTER WITH STORES FACING  
5 AN ENCLOSED MALL.

6 (C) ~~(d)~~-"Smoking", ~~means the carrying by an individual of a~~  
7 ~~lighted cigar, cigarette, or other lighted smoking device~~ "SMOKING  
8 PARAPHERNALIA", AND "TOBACCO PRODUCT" MEAN THOSE TERMS AS DEFINED  
9 IN SECTION 12601.

10 Sec. 12915. A county, city, village, or township ~~shall not~~  
11 ~~regulate those aspects of food service establishments or vending~~  
12 ~~machines which are subject to regulation under this part except to~~  
13 ~~the extent necessary to carry out the responsibility of a local~~  
14 ~~health department pursuant to sections 12906 and 12908~~ MAY ADOPT  
15 AND ENFORCE LOCAL CODES, ORDINANCES, OR REGULATIONS THAT COMPLY  
16 WITH AT LEAST THE MINIMUM APPLICABLE STANDARDS SET FORTH IN THIS  
17 PART. This part shall not relieve the applicant for a license or a  
18 licensee from responsibility for securing a local permit or  
19 complying with applicable local codes, regulations, or ordinances  
20 ~~not~~ THAT ARE in conflict with ADDITION TO this part.

21 Enacting section 1. (1) Sections 12604a, 12605, 12607, 12615,  
22 12617, 12909, 21333, and 21733 of the public health code, 1978 PA  
23 368, MCL 333.12604a, 333.12605, 333.12607, 333.12615, 333.12617,  
24 333.12909, 333.21333, and 333.21733, are repealed.

25 (2) Section 6127 of the food law of 2000, 2000 PA 92, MCL  
26 289.6127, is repealed.