

HOUSE BILL No. 4341

February 18, 2009, Introduced by Reps. Bauer, Warren, Slavens, Paul Scott, McDowell, Donigan, Barnett, Byrnes, Liss, Valentine, Coulouris, Ebli, Segal, Miller, Hammel, Bledsoe, Bennett, Lipton, Daley, Griffin, Roy Schmidt, Ball, Lindberg, Polidori, Terry Brown, Meadows, Smith, Dean, Lori, Constan, Kennedy, Womack, Marleau and Scripps and referred to the Committee on Regulatory Reform.

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 section 12606; and to
repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 12601. (1) As used in this part:

1

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

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

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

10 (d) "Food service establishment" means a food service
11 establishment as defined in section ~~12901-12905.~~

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

16 (f) "Home for the aged" means that term as defined in section
17 20106.

18 (g) "Hospice" means that term as defined in section 20106.

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

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

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

1 15.262.

2 (J) ~~(K)~~ "Nursing home" means that term as defined in section
3 20109.

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

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

10 (ii) A FOOD SERVICE ESTABLISHMENT THAT IS SUBJECT TO SECTION
11 12905.

12 (l) "Public body" means a public body as defined in section 2
13 of the open meetings act, ~~Act No. 267 of the Public Acts of 1976~~
14 1976 PA 267, MCL 15.262.

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

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

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

27 (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.

(E) A theater.

(F) A museum.

(G) A concert hall.

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

(iii) A PLACE OF EMPLOYMENT.

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

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

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

(Q) "WORK AREA" MEANS A SITE WITHIN A PLACE OF EMPLOYMENT AT WHICH 1 OR MORE EMPLOYEES PERFORM SERVICES FOR AN EMPLOYER.

~~—— (2) Public place does not include a private, enclosed room or office occupied exclusively by a smoker, even if the room or enclosed office may be visited by a nonsmoker.~~

(2) ~~(3)~~—In addition, article 1 contains general definitions

1 and principles of construction applicable to all articles of this
2 code.

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

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

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

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

17 (2) "NO SMOKING" SIGNS OR THE INTERNATIONAL "NO SMOKING"
18 SYMBOL SHALL BE CLEARLY AND CONSPICUOUSLY POSTED AT THE ENTRANCES
19 TO AND IN EVERY BUILDING OR OTHER AREA WHERE SMOKING IS PROHIBITED
20 UNDER THIS SECTION. THE OWNER, OPERATOR, MANAGER, OR PERSON HAVING
21 CONTROL OF THE BUILDING OR OTHER AREA SHALL POST THE SIGNS. THE
22 OWNER, OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE AREA
23 SHALL REMOVE ALL ASHTRAYS AND OTHER SMOKING PARAPHERNALIA FROM
24 ANYWHERE SMOKING IS PROHIBITED UNDER THIS SECTION. THE OWNER,
25 OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE AREA SHALL
26 INFORM PERSONS SMOKING IN VIOLATION OF THIS ACT THAT THEY ARE IN
27 VIOLATION OF STATE LAW AND SUBJECT TO PENALTIES.

1 (3) THIS SECTION MAY BE REFERRED TO AS THE "DR. RON DAVIS
2 LAW".

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

22 (A) THAT SMOKING IS PROHIBITED AS REQUIRED IN SECTION 12603 OR
23 12905.

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

(2) IF AN EMPLOYER OR FOOD SERVICE ESTABLISHMENT IS BOUND BY A COLLECTIVE BARGAINING AGREEMENT ON THE EFFECTIVE DATE OF THIS SECTION, NOTHING IN THIS SECTION IMPAIRS, DIMINISHES, OR OTHERWISE AFFECTS ANY OF THE RIGHTS CURRENTLY AFFORDED TO THE EMPLOYEES UNDER THE CONTROLLING COLLECTIVE BARGAINING AGREEMENT. HOWEVER, ONCE THE COLLECTIVE BARGAINING AGREEMENT IN EFFECT ON THE EFFECTIVE DATE OF THIS SECTION EXPIRES, THE SMOKING PROHIBITIONS OF SECTIONS 12603 AND 12905 CONTROL AND PARTIES SHALL NOT NEGOTIATE ANY PROVISION THAT CONFLICTS WITH THESE SECTIONS.

Sec. 12611. A person ~~who violates section 12603(1) or 12604a~~
~~or a person or state or local governmental agency that owns or~~
~~operates a public place and that violates section 12605 or 12607~~
THIS PART OR PART 129 shall be directed to comply with this ~~part~~
ACT and is subject to a civil fine of not more than \$100.00 for a
 first violation and not more than \$500.00 for a second or
 subsequent violation.

Sec. 12613. (1) Subject to subsection (2), the department
 shall enforce this part **AND PART 129** and **ANY** rules promulgated
 under this part **OR PART 129** pursuant to sections 2262(2) and 2263.
 In addition to the civil fine authorized under section 12611, the
 department may enforce this part **AND PART 129** and ~~the~~ **ANY** rules
 promulgated under this part **OR PART 129** through an action commenced
 pursuant to section 2255 or any other appropriate action authorized
 by law.

(2) Pursuant to section 2235, the department may authorize a
 local health department to enforce this part **AND PART 129** and ~~the~~
ANY rules promulgated under this part **OR PART 129**. A local health

department authorized to enforce this part **AND PART 129** and ~~the ANY~~
 rules promulgated under this part **OR PART 129** shall enforce this
 part **AND PART 129** and ~~the ANY~~ rules promulgated under this part **OR**
PART 129 pursuant to sections 2461(2) and 2462. In addition to the
 civil fine authorized under section 12611, a local health
 department may enforce this part **AND PART 129** and ~~the ANY~~ rules
 promulgated under this part **OR PART 129** through an action commenced
 pursuant to section 2465 or any other appropriate action authorized
 by law.

(3) In addition to any other enforcement action authorized by
 law, a person alleging a violation of this part **OR PART 129** may
 bring a civil action for appropriate injunctive relief, if the
 person has used the public place, child caring institution, **OR**
 child care center, ~~health facility, or private practice office of~~
~~an individual who is licensed under article 15 within 60 days after~~
BEFORE the civil action is filed.

(4) The remedies under this part are independent and
 cumulative. The use of 1 remedy by a person shall not bar the use
 of other lawful remedies by that person or the use of a lawful
 remedy by another person.

Sec. 12614. (1) The director shall report biennially to the
 legislature on the effect and enforcement of this part **AND PART**
129. The report shall include, at a minimum, ~~both of the following:~~
~~— (a) The policy of each state agency that has developed a~~
~~policy for the separation of smokers and nonsmokers.~~
~~— (b) Compliance~~ **COMPLIANCE** with ~~section 12607~~ **SECTIONS 12603**
AND 12905.

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

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

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

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

PART 129. ~~FOOD SERVICE SANITATION~~ SMOKE-FREE FOOD SERVICE

ESTABLISHMENTS

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

~~—— (2) Subject to subsection (3), a food service establishment~~
~~with a seating capacity of fewer than 50, whether or not it is~~
~~owned and operated by a private club, and a food service~~
~~establishment that is owned and operated by a private club may~~
~~designate up to 75% of its seating capacity as seating for smokers.~~
~~A food service establishment with a seating capacity of 50 or more~~

1 ~~that is not owned or operated by a private club may designate up to~~
2 ~~50% of its seating capacity as seating for smokers. A food service~~
3 ~~establishment that designates seating for smokers shall clearly~~
4 ~~identify the seats for nonsmokers as nonsmoking, place the seats~~
5 ~~for nonsmokers in close proximity to each other, and locate the~~
6 ~~seats for nonsmokers so as not to discriminate against nonsmokers.~~

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

11 (2) ~~(4)~~ In addition to a food service establishment that
12 provides its own seating, ~~subsections (1), (2), and (3) also apply~~
13 **SUBSECTION (1) APPLIES** to a food service establishment or group of
14 food service establishments that are located in a shopping mall
15 ~~where~~ **IN WHICH** the seating for the food service establishment or
16 group of food service establishments is provided or maintained, or
17 both, by the person who owns or operates the shopping mall. ~~As used~~
18 ~~in this subsection, "shopping mall" means a shopping center with~~
19 ~~stores facing an enclosed mall.~~

20 (3) ~~(5)~~ The director, an authorized representative of the
21 director, or a representative of a local health department to which
22 the director has delegated responsibility for enforcement of this
23 part shall ~~, in accordance with R 325.25902 of the Michigan~~
24 ~~administrative code,~~ inspect each food service establishment that
25 is subject to this section. The inspecting entity shall determine
26 compliance with this section during each inspection.

27 (4) ~~(6)~~ The department or a local health department shall

1 ~~utilize compliance or~~ **NOTIFY THE DEPARTMENT OF AGRICULTURE OF ANY**
2 noncompliance with this section or with rules promulgated to
3 implement this section. **THE DEPARTMENT OF AGRICULTURE MAY USE**
4 **COMPLIANCE OR NONCOMPLIANCE WITH THIS SECTION OR ANY RULES**
5 **PROMULGATED TO IMPLEMENT THIS SECTION** as criteria in the
6 determination of whether to deny, suspend, limit, or revoke a
7 license ~~pursuant to section 12907(1)~~ **ISSUED UNDER THE FOOD LAW OF**
8 **2000, 2000 PA 92, MCL 289.1101 TO 289.8111.**

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

17 ~~—— (8) This section does not apply to a private facility that is~~
18 ~~serviced by a catering kitchen or to a separate room in a food~~
19 ~~service establishment that is used for private banquets. This~~
20 ~~section does not apply to a food service establishment that is~~
21 ~~owned and operated by a fraternal organization, if service is~~
22 ~~limited to members of the fraternal organization and their guests.~~

23 (6) **"NO SMOKING" SIGNS OR THE INTERNATIONAL "NO SMOKING"**
24 **SYMBOL SHALL BE CLEARLY AND CONSPICUOUSLY POSTED AT THE ENTRANCE TO**
25 **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 ANY
3 AREA WHERE 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 (7) ~~(9)~~ As used in this section:

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

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

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

19 (A) "FOOD SERVICE ESTABLISHMENT" MEANS THAT TERM AS DEFINED IN
20 SECTION 1107 OF THE FOOD LAW OF 2000, 2000 PA 92, MCL 289.1107.

21 (B) "SHOPPING MALL" MEANS A SHOPPING CENTER WITH STORES FACING
22 AN ENCLOSED MALL.

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

27 Sec. 12915. A county, city, village, or township ~~shall not~~

1 ~~regulate those aspects of food service establishments or vending~~
2 ~~machines which are subject to regulation under this part except to~~
3 ~~the extent necessary to carry out the responsibility of a local~~
4 ~~health department pursuant to sections 12906 and 12908~~ **MAY ADOPT**
5 **AND ENFORCE LOCAL CODES, ORDINANCES, OR REGULATIONS THAT COMPLY**
6 **WITH AT LEAST THE MINIMUM APPLICABLE STANDARDS SET FORTH IN THIS**
7 **PART.** This part shall not relieve the applicant for a license or a
8 licensee from responsibility for securing a local permit or
9 complying with applicable local codes, regulations, or ordinances
10 ~~not~~ **THAT ARE** in conflict with ~~ADDITION TO~~ this part.

11 Enacting section 1. (1) Sections 12604a, 12605, 12607, 12615,
12 12617, 12909, 21333, and 21733 of the public health code, 1978 PA
13 368, MCL 333.12604a, 333.12605, 333.12607, 333.12615, 333.12617,
14 333.12909, 333.21333, and 333.21733, are repealed.

15 (2) Section 6127 of the food law of 2000, 2000 PA 92, MCL
16 289.6127, is repealed.