

# HOUSE BILL No. 5809

September 16, 2014, Introduced by Rep. McMillin and referred to the Committee on  
Regulatory Reform.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending sections 12601, 12603, 12606a, and 12905 (MCL  
333.12601, 333.12603, 333.12606a, and 333.12905), sections 12601,  
12603, and 12905 as amended and section 12606a as added by 2009 PA  
188.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

(a) "Casino" means that term as defined in section 2 of the  
Michigan gaming control and revenue act, 1996 IL 1, MCL 432.202.  
Casino does not include a casino operated under the Indian gaming  
regulatory act, 25 USC 2701 to 2721.

(b) "Child caring institution" and "child care center" mean

1 those terms as defined in section 1 of 1973 PA 116, MCL 722.111.

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

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

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

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

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

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

19 (i) "Home for the aged" means that term as defined in section  
20 20106.

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

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

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

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

(n) "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 and for no other employees.

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

(iii) A motor vehicle.

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

(q) "Public place" ~~, except as otherwise provided in subsection (2),~~ means 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 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 that is not owned or operated by a state or local governmental agency, is used by the general public, and is any of the following:

(A) An educational facility.

(B) A home for the aged, nursing home, county medical care

1 facility, hospice, or hospital long-term care unit.

2 (C) An auditorium.

3 (D) An arena.

4 (E) A theater.

5 (F) A museum.

6 (G) A concert hall.

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

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

11 (r) "Smoking" or "smoke" means the burning of a lighted cigar,  
12 cigarette, pipe, or any other matter or substance that contains a  
13 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 in  
23 which the primary purpose is the retail sale of tobacco products  
24 and smoking paraphernalia, and in which the sale of other products  
25 is incidental. Tobacco specialty retail store does not include a  
26 tobacco department or section of a larger commercial establishment.  
27 ~~or any establishment with any type of liquor, food, or restaurant~~

1 ~~license.~~

2 (v) "Work area" means a site within a place of employment at  
3 which 1 or more employees perform services for an employer.

4 (2) In addition, article 1 contains general definitions and  
5 principles of construction applicable to all articles of this code.

6 Sec. 12603. (1) ~~An~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS PART,**  
7 **AN** individual shall not smoke in a public place or at a meeting of  
8 a public body, and a state or local governmental agency or the  
9 person who owns, operates, manages, or is in control of a public  
10 place shall make a reasonable effort to prohibit individuals from  
11 smoking in a public place.

12 (2) The owner, operator, manager, or person having control of  
13 a public place, a food service establishment, or a casino subject  
14 to section 12606b shall do all of the following:

15 (a) Clearly and conspicuously post "no smoking" signs or the  
16 international "no smoking" symbol at the entrances to and in every  
17 building or other area where smoking is prohibited under this act.

18 (b) Remove all ashtrays and other smoking paraphernalia from  
19 anywhere smoking is prohibited under this act.

20 (c) Inform individuals smoking in violation of this act that  
21 they are in violation of state law and subject to penalties.

22 (d) If applicable, refuse to serve an individual smoking in  
23 violation of this act.

24 (e) Ask an individual smoking in violation of this act to  
25 refrain from smoking and, if the individual continues to smoke in  
26 violation of this act, ask him or her to leave the public place,  
27 food service establishment, or nonsmoking area of the casino.

1           (3) The owner, operator, manager, or person in control of a  
2 hotel, motel, or other lodging facility shall comply with  
3 subsection (2) and section 12606. It is an affirmative defense to a  
4 prosecution or civil or administrative action for a violation of  
5 this section that the owner, operator, manager, or person in  
6 control of a hotel, motel, or other lodging facility where smoking  
7 is prohibited under this section made a good faith effort to  
8 prohibit smoking by complying with subsection (2). To assert the  
9 affirmative defense under this subsection, the owner, operator,  
10 manager, or person shall file a sworn affidavit setting forth his  
11 or her efforts to prohibit smoking and his or her actions of  
12 compliance with subsection (2).

13           (4) This section may be referred to as the "Dr. Ron Davis  
14 Law".

15           Sec. 12606a. (1) A cigar bar in existence on ~~the effective~~  
16 ~~date of this section~~ **MAY 1, 2010** that meets all of the requirements  
17 of this section is exempt from the smoking prohibition of section  
18 12603 and may allow smoking on its premises. To qualify for the  
19 exemption under this section, the person who owns or operates a  
20 cigar bar shall file an affidavit with the department on or before  
21 ~~the expiration of 30 days after the effective date of this section~~  
22 **MAY 31, 2010** and on January 31 of each year ~~after the effective~~  
23 ~~date of this section.~~ **BEGINNING IN 2011.** The affidavit shall be  
24 signed by the owner or operator of the cigar bar and shall certify  
25 that the cigar bar was in existence on ~~the effective date of this~~  
26 ~~section~~ **MAY 1, 2010** and that it meets all of the following  
27 requirements:

1 (a) In the 30-day period immediately preceding ~~the effective~~  
2 ~~date of this section, MAY 1, 2010,~~ the cigar bar generated 10% or  
3 more of its total gross annual income from the on-site sale of  
4 cigars and the rental of on-site humidors.

5 (b) For each calendar year after the calendar year in which  
6 the first affidavit is filed under this subsection, the cigar bar  
7 generates 10% or more of its total gross annual income from the on-  
8 site sale of cigars and the rental of on-site humidors.

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 (f) The cigar bar allows only the smoking of cigars on the  
21 premises that retail for over \$1.00 per cigar.

22 (g) The cigar bar prohibits the smoking of all other tobacco  
23 products.

24 (2) A tobacco specialty retail store in existence on ~~the~~  
25 ~~effective date of this section MAY 1, 2010~~ that meets all of the  
26 requirements of this section is exempt from the smoking prohibition  
27 of section 12603 and may allow smoking on its premises. To qualify

1 for the exemption under this section, the person who owns or  
2 operates a tobacco specialty retail store shall file an affidavit  
3 with the department on or before ~~the expiration of 30 days after~~  
4 ~~the effective date of this section~~ **MAY 31, 2010** and on January 31  
5 of each year ~~after the effective date of this section~~. **BEGINNING IN**  
6 **2011. BEGINNING IN 2014, A FILING FEE OF \$500.00 SHALL ACCOMPANY**  
7 **THE AFFIDAVIT. THE DEPARTMENT SHALL USE THE FILING FEE TO COVER THE**  
8 **COST OF ENFORCING THIS SUBSECTION.** The affidavit shall be signed by  
9 the owner or operator of the tobacco specialty retail store and  
10 shall certify that the tobacco specialty retail store was in  
11 existence on ~~the effective date of this section~~ **MAY 1, 2010** and  
12 that it meets all of the following requirements:

13 (a) In the 30-day period immediately preceding ~~the filing of~~  
14 ~~the effective date of this section~~, **MAY 1, 2010**, the tobacco  
15 specialty retail store generated 75% or more of its total gross  
16 annual income from the on-site sale of tobacco products and smoking  
17 paraphernalia.

18 (b) For each calendar year after the calendar year in which  
19 the first affidavit is filed under this subsection, the tobacco  
20 specialty retail store generated 75% or more **OR, BEGINNING IN 2014,**  
21 **10% OR MORE** of its total gross annual income from the on-site sale  
22 of tobacco products and smoking paraphernalia.

23 (c) The tobacco specialty retail store is located on premises  
24 that are physically separated from any areas of the same or  
25 adjacent establishments in which smoking is prohibited under this  
26 part or part 129 and where smoke does not infiltrate into those  
27 nonsmoking areas. As used in this subdivision, "physically



1 separated" means an area that is enclosed on all sides by any  
2 combination of solid walls, windows, or doors that extend from the  
3 floor to ceiling.

4 (d) The tobacco specialty retail store prohibits entry to a  
5 person under the age of 18 during the time the tobacco specialty  
6 retail store is open for business.

7 (3) The department may request additional information from a  
8 cigar bar or tobacco specialty retail store to verify that the  
9 cigar bar or tobacco specialty retail store meets the requirements  
10 of this section. A cigar bar or tobacco specialty retail store  
11 shall comply with requests from the department under this section.

12 (4) Except as otherwise provided in this subsection, a cigar  
13 bar or tobacco specialty retail store that does not meet the  
14 requirements of this section or violates this section is not exempt  
15 from the smoking prohibition of section 12603 and shall immediately  
16 prohibit smoking on its premises. A cigar bar or tobacco specialty  
17 retail store that meets all of the requirements of this section  
18 other than filing the affidavit as required under subsection (1) or  
19 (2) ~~—~~retains its exemption and may continue to allow smoking  
20 during the period beginning on the date the affidavit is due and  
21 ending on the expiration of 21 days after that date. However, if  
22 the affidavit remains unfiled after the 21-day grace period, the  
23 cigar bar or tobacco specialty retail store is not exempt from the  
24 smoking prohibition of section 12603 and shall immediately prohibit  
25 smoking on its premises. A cigar bar or tobacco specialty retail  
26 store that loses its exemption under this subsection is not exempt  
27 from the smoking prohibition of section 12603, shall immediately

1 prohibit smoking on its premises, and may only again qualify for  
2 the exemption under this section by filing an affidavit and meeting  
3 all of the requirements of subsection (1) or (2), as applicable.

4       Sec. 12905. (1) ~~An~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS**  
5 **SECTION, AN** individual shall not smoke in a food service  
6 establishment, and the person who owns, operates, manages, or is in  
7 control of a food service establishment shall make reasonable  
8 effort to prohibit individuals from smoking in a food service  
9 establishment.

10       (2) In addition to a food service establishment that provides  
11 its own seating, subsection (1) applies to a food service  
12 establishment or group of food service establishments that are  
13 located in a shopping mall in which the seating for the food  
14 service establishment or group of food service establishments is  
15 provided or maintained, or both, by the person who owns or operates  
16 the shopping mall.

17       (3) The director, an authorized representative of the  
18 director, or a representative of a local health department to which  
19 the director has delegated responsibility for enforcement of this  
20 part shall inspect each food service establishment that is subject  
21 to this section. The inspecting entity shall determine compliance  
22 with this section during each inspection.

23       (4) Within 5 days after receipt of a written complaint of  
24 violation of this section, a local health department shall  
25 investigate the complaint to determine compliance. If a violation  
26 of this section is identified and not corrected as ordered by the  
27 local health department within 2 days after receipt of the order by

1 the food service establishment, the local health officer may issue  
2 an order to cease food service operations until compliance with  
3 this section is achieved.

4 (5) A food service establishment **THAT IS SUBJECT TO THIS**  
5 **SECTION** shall comply with sections 12603(2) and 12606. It is an  
6 affirmative defense to a prosecution or civil or administrative  
7 action for a violation of this section that the owner, operator,  
8 manager, or person in control of a food service establishment where  
9 smoking is prohibited under this section made a good faith effort  
10 to prohibit smoking by complying with section 12603(2). To assert  
11 the affirmative defense under this subsection, the owner, operator,  
12 manager, or person shall file a sworn affidavit setting forth his  
13 or her efforts to prohibit smoking and his or her actions of  
14 compliance with section 12603(2).

15 (6) An individual who violates this part shall be directed to  
16 comply with this part and is subject to a civil fine of not more  
17 than \$100.00 for a first violation and not more than \$500.00 for a  
18 second or subsequent violation.

19 (7) As used in this section:

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

22 **FOOD SERVICE ESTABLISHMENT DOES NOT INCLUDE A CIGAR BAR OR TOBACCO**  
23 **SPECIALTY RETAIL STORE THAT IS EXEMPT FROM THE SMOKING PROHIBITION**  
24 **UNDER SECTION 12606A.**

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

27 (c) "Smoking" **OR "SMOKE"** means that term as defined in section

1 12601.