



SENATE BILL No. 538

March 25, 1993, Introduced by Senators FAXON and GEAKE and referred to the Committee on Health Policy.

A bill to amend section 12905 of Act No. 368 of the Public Acts of 1978, entitled as amended

"Public health code,"

as amended by Act No. 297 of the Public Acts of 1988, being section 333.12905 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 12905 of Act No. 368 of the Public Acts of 1978, as amended by Act No. 297 of the Public Acts of 1988, being section 333.12905 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 12905. (1) ~~Subject to subsections (2), (3), and (4),~~
~~a~~ A food service establishment ~~with a seating capacity of 50 or~~
~~more individuals~~ shall post a sign at the entrance to the dining
area indicating the availability of a nonsmoking area. Upon the
request of a patron, the food service establishment ~~—~~ shall

1 seat the patron in a nonsmoking area ~~which shall be~~ THAT IS
2 clearly marked by A sign.

3 (2) A food service establishment with ~~a seating capacity of~~
4 ~~not fewer than 50 and not more than 100 persons~~ TABLE SEATING
5 ONLY OR WITH A COMBINATION OF TABLE SEATING AND COUNTER SEATING
6 shall provide not less than ~~3 tables, each with a~~ 40% OF ITS
7 seating capacity ~~of not fewer than 4 persons, or the~~
8 equivalent, for nonsmokers. ~~A food service establishment with~~
9 ~~a seating capacity of more than 100 but not more than 150 persons~~
10 ~~shall provide not less than 6 tables, each with a seating capac-~~
11 ~~ity of not fewer than 4 persons, or the equivalent, for~~
12 ~~nonsmokers. A food service establishment with a seating capacity~~
13 ~~of more than 150 persons shall provide not less than 9 tables,~~
14 ~~each with a seating capacity of not fewer than 4 persons, or the~~
15 ~~equivalent, for nonsmokers.~~ THE FOOD SERVICE ESTABLISHMENT SHALL
16 NOT PROVIDE A MINIMUM AMOUNT OF SEATING FOR SMOKERS, BUT SHALL
17 ALLOCATE THE REMAINING 60% OF ITS SEATING BETWEEN SMOKERS AND
18 NONSMOKERS ACCORDING TO CUSTOMER PREFERENCE. A FOOD SERVICE
19 ESTABLISHMENT THAT HAS ONLY COUNTER SEATING AND NO TABLE SEATING
20 SHALL PROVIDE NOT LESS THAN 40% OF ITS SEATING CAPACITY FOR
21 NONSMOKERS. THE FOOD SERVICE ESTABLISHMENT SHALL NOT PROVIDE A
22 MINIMUM AMOUNT OF SEATING FOR SMOKERS, BUT SHALL ALLOCATE THE
23 REMAINING 60% OF ITS COUNTER SEATING BETWEEN SMOKERS AND NONSMOK-
24 ERS ACCORDING TO CUSTOMER PREFERENCE. The ~~tables~~ FOOD SERVICE
25 ESTABLISHMENT shall ~~be~~ clearly ~~identified~~ IDENTIFY THE SEATS
26 FOR NONSMOKERS as nonsmoking, ~~placed~~ PLACE THE SEATS FOR
27 NONSMOKERS in close proximity to each other, AS CLOSE AS POSSIBLE

1 TO THE SOURCE OF FRESH AIR, AND AT AS GREAT A DISTANCE AS
2 PRACTICABLE FROM SEATING USED BY SMOKERS, and ~~located~~ SHALL
3 LOCATE THE SEATS FOR NONSMOKERS so as not to discriminate against
4 nonsmokers.

5 (3) If a patron requests to be seated in either a smoking or
6 nonsmoking area, and seating in the area requested is not avail-
7 able, the food service establishment may seat the patron at a
8 ~~table~~ SEAT LOCATED in either a smoking or nonsmoking area, if
9 the ~~table~~ SEAT is contiguous to the area requested. ~~This~~ A
10 FOOD SERVICE ESTABLISHMENT SHALL NOT USE THIS subsection ~~shall~~
11 ~~not be used~~ to reduce the number of tables for nonsmokers below
12 the minimum number ~~of tables for nonsmokers~~ required under
13 subsection (2).

14 (4) In addition to a food service establishment that pro-
15 vides its own seating, subsection (2) also applies to a food
16 service establishment or group of food service establishments
17 that are located in a shopping mall, ~~if~~ WHERE the seating for
18 the food service establishment or group of food service estab-
19 lishments is provided or maintained, or both, by the person who
20 owns or operates the shopping mall. As used in this subsection,
21 "shopping mall" means a shopping center with stores facing an
22 enclosed mall.

23 (5) ~~As used in this section, "smoking" means the carrying~~
24 ~~by a person of a lighted cigar, cigarette, or other lighted smok-~~
25 ~~ing device.~~ BY JUNE 1, 1993, EACH FOOD SERVICE ESTABLISHMENT
26 SHALL DEVELOP A FLOOR PLAN CLEARLY DELINEATING THE SMOKING AND
27 NONSMOKING AREAS OF THE FOOD SERVICE ESTABLISHMENT. A FOOD

1 SERVICE ESTABLISHMENT SHALL DRAW THE FLOOR PLAN TO SCALE AND
2 SHALL DEPICT IN THE FLOOR PLAN THE FULL DIMENSIONS OF ALL FOOD
3 SERVICE AREAS. A FOOD SERVICE ESTABLISHMENT DESCRIBED IN SUBSEC-
4 TION (4) MAY DEVELOP A GENERAL DESCRIPTION OF THE SEATING
5 ARRANGEMENTS PROVIDED BY THE OWNER OR OPERATOR OF THE MALL,
6 ACCOMPANIED BY A COPY OF THAT PART OF THE FOOD SERVICE
7 ESTABLISHMENT'S LEASE AGREEMENT THAT PERTAINS TO SEATING. A FOOD
8 SERVICE ESTABLISHMENT THAT IS LICENSED AFTER JUNE 1, 1993 SHALL
9 COMPLY WITH THIS SUBSECTION WITHIN 6 MONTHS AFTER THE DATE THE
10 LICENSE IS ISSUED. A FOOD SERVICE ESTABLISHMENT THAT CHANGES ITS
11 FLOOR PLAN SHALL DEVELOP AN AMENDED FLOOR PLAN WITHIN 30 DAYS
12 AFTER THE CHANGE TAKES EFFECT. A FOOD SERVICE ESTABLISHMENT
13 SHALL POST A COPY OF THE MOST RECENT VERSION OF ITS FLOOR PLAN
14 ADJACENT TO THE SIGN REQUIRED UNDER SUBSECTION (1).

15 (6) The director, ~~or~~ an authorized representative of the
16 director, or a representative of a local health department to
17 which the director has delegated responsibility for enforcement
18 of this part shall, in accordance with R 325.25902 of the
19 Michigan administrative code, inspect each food service estab-
20 lishment that is subject to this section. ~~Compliance~~ THE
21 INSPECTING ENTITY SHALL DETERMINE COMPLIANCE with this section
22 ~~shall be determined~~ during each inspection.

23 (7) The department or a local health department shall uti-
24 lize compliance or noncompliance with this section or with rules
25 promulgated to implement this section as criteria in the determi-
26 nation of whether to deny, suspend, limit, or revoke a license
27 pursuant to section 12907(1).

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

9 (9) This section does not apply to a private facility that
10 is serviced by a catering kitchen.

11 (10) As used in this section: ~~—, "seating"~~

12 (A) "SEATING capacity" means the actual number of seats for
13 patrons in a food service establishment.

14 (B) "SMOKING" MEANS THE CARRYING BY AN INDIVIDUAL OF A
15 LIGHTED CIGAR, CIGARETTE, OR OTHER LIGHTED SMOKING DEVICE.