

HOUSE BILL No. 4835

May 27, 1997, Introduced by Reps. Baird, Wallace, Schroer, Vaughn, Willard, Anthony, Ciaramitaro, Brater, Gire and Hale and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 12601, 12603, 12604a, 12605, 12607, and 12615 (MCL 333.12601, 333.12603, 333.12604a, 333.12605, 333.12607, and 333.12615), sections 12601 and 12615 as amended and section 12604a as added by 1988 PA 315, section 12603 as amended by 1993 PA 217, and sections 12605 and 12607 as amended by 1988 PA 296.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 12601. (1) As used in this part:
2 (a) "Child caring institution", ~~and~~ "child care center",
3 "FAMILY DAY CARE HOME", AND "GROUP DAY CARE HOME" mean those
4 terms as defined in section 1 of ~~Act No. 116 of the Public Acts~~
5 ~~of 1973, being section 722.111 of the Michigan Compiled Laws~~
6 1973 PA 116, MCL 722.111.

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

3 (c) "Educational facility" means a building owned, leased,
4 or under the control of a public or private school OR SCHOOL
5 system, college, or university.

6 (D) "ENVIRONMENTAL TOBACCO SMOKE" MEANS VISIBLE OR INVISIBLE
7 SMOKE, GAS, OR A FUME GENERATED BY THE COMBUSTION OF TOBACCO OR
8 ANY OTHER MATERIAL THAT IS BURNED OR SMOKED BY A PERSON FOR PER-
9 SONAL PURPOSES.

10 (E) ~~(d)~~ "Food service establishment" means ~~a food service~~
11 ~~establishment~~ THAT TERM as defined in section 12901.

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

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

18 (H) ~~(g)~~ "Hospice" means that term as defined in section
19 20106.

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

22 (J) "HYPERSENSITIVE" INCLUDES INDIVIDUALS WHO DISLIKE ENVI-
23 RONMENTAL TOBACCO SMOKE AS WELL AS INDIVIDUALS WHO HAVE 1 OR MORE
24 ADVERSE PHYSICAL REACTIONS TO ENVIRONMENTAL TOBACCO SMOKE.

25 (K) ~~(i)~~ "Licensed premises" means any portion of a build-
26 ing, structure, room, or enclosure in which alcoholic liquor may

1 be sold for consumption on the premises pursuant to a license
2 issued by the Michigan liquor control commission.

3 (l) ~~(j)~~ "Meeting" means ~~a meeting~~ THAT TERM as defined
4 in section 2 of the open meetings act, ~~Act No. 267 of the Public~~
5 ~~Acts of 1976, being section 15.262 of the Michigan Compiled Laws~~
6 1976 PA 267, MCL 15.262.

7 (M) ~~(k)~~ "Nursing home" means that term as defined in sec-
8 tion 20109.

9 (N) "PLACE OF EMPLOYMENT", EXCEPT AS OTHERWISE PROVIDED IN
10 SUBSECTION (2), MEANS AN ENCLOSED, INDOOR AREA SERVING AS THE
11 WORK AREA FOR 1 OR MORE PERSONS EMPLOYED BY A PUBLIC OR PRIVATE
12 EMPLOYER.

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

16 (P) ~~(m)~~ "Public place", except as otherwise provided in
17 subsection (2), means ~~both~~ ALL of the following:

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

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

- 1 (A) An educational facility.
- 2 (B) A home for the aged, nursing home, county medical care
3 facility, hospice, or hospital long-term care unit.
- 4 (C) An auditorium.
- 5 (D) An arena.
- 6 (E) A theater.
- 7 (F) A museum.
- 8 (G) A concert hall.
- 9 (H) Any other facility during the period of its use for a
10 performance or exhibit of the arts.
- 11 (I) AN AIRLINE OR OTHER TERMINAL OR CONCOURSE.
- 12 (iii) A PLACE OF EMPLOYMENT IN WHICH ENVIRONMENTAL TOBACCO
13 SMOKE MAY ACCUMULATE.
- 14 (iv) A MOTOR VEHICLE MAINTAINED OR PRIMARILY CONTROLLED BY
15 AN EMPLOYER FOR USE BY AN EMPLOYEE.
- 16 (v) A PUBLIC CONVEYANCE.
- 17 (Q) ~~(n)~~ "Smoking" or "smoke" means the carrying by a
18 person of a lighted cigar, cigarette, pipe, or other lighted
19 smoking device.
- 20 (R) "WORK AREA" MEANS A SITE WITHIN A PLACE OF EMPLOYMENT AT
21 WHICH 1 OR MORE EMPLOYEES ARE ROUTINELY ASSIGNED TO PERFORM SERV-
22 ICES FOR AN EMPLOYER.
- 23 (2) ~~Public~~ PLACE OF EMPLOYMENT AND PUBLIC place ~~does~~ DO
24 not include ~~a private, enclosed room or office occupied exclu-~~
25 ~~sively by a smoker, even if the room or enclosed office may be~~
26 ~~visited by a nonsmoker.~~ 1 OR MORE OF THE FOLLOWING:

1 (A) LICENSED PREMISES.

2 (B) A FOOD SERVICE ESTABLISHMENT.

3 (C) A LICENSED CHILD CARE CENTER, A LICENSED CHILD CARING
4 INSTITUTION, A LICENSED FAMILY DAY CARE HOME, OR A LICENSED GROUP
5 DAY CARE HOME.

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

9 Sec. 12603. (1) Except as otherwise provided by law, an
10 individual shall not smoke in a public place or at a meeting of a
11 public body, except in a designated smoking area. AN INDIVIDUAL
12 SHALL NOT SMOKE IN A WORK AREA.

13 (2) This section does not apply to a room ~~, hall,~~ or
14 building THAT MEETS ALL OF THE FOLLOWING CONDITIONS:

15 (A) THE ROOM OR BUILDING IS NOT A PLACE OF EMPLOYMENT WHERE
16 EMPLOYEES ARE REGULARLY EMPLOYED.

17 (B) THE ROOM OR BUILDING IS used for a private function.
18 ~~if the~~

19 (C) THE seating arrangements WITHIN THAT ROOM OR BUILDING
20 are under the control of the sponsor of the function and not
21 under the control of the state or local governmental agency or
22 the person who owns or operates the room ~~, hall,~~ or building.

23 ~~(3) This section does not apply to a food service estab-~~
24 ~~lishment or to licensed premises.~~

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

1 Sec. 12604a. ~~-(1) An individual shall not smoke in the~~
2 ~~common or treatment area of a private practice office of an~~
3 ~~individual who is licensed under article 15.~~

4 (1) ~~-(2)~~ An individual shall not smoke in a health facility
5 except under 1 or more of the following circumstances:

6 (a) In cases where a prohibition on smoking would be detri-
7 mental to the patient's treatment as defined by medical condi-
8 tions identified by the collective health facility medical
9 staff. Patients who are permitted to smoke under this subdivi-
10 sion shall be placed in a separate room from nonsmoking
11 patients.

12 (b) If a health facility allows smoking, that smoking is
13 allowed only in 1 OR MORE designated areas that are enclosed BY
14 FLOOR-TO-CEILING WALLS and CONSTRUCTED AND ventilated ~~or other-~~
15 ~~wise constructed which ensures a smoke free environment~~ TO
16 ENSURE THAT AIR FROM THE DESIGNATED SMOKING AREA IS EXHAUSTED
17 DIRECTLY OUTSIDE AND DOES NOT RECIRCULATE OR DRIFT TO OTHER AREAS
18 WITHIN THE HEALTH FACILITY AND TO PREVENT ENVIRONMENTAL TOBACCO
19 SMOKE FROM REACHING NONSMOKERS in patient care areas and common
20 areas.

21 (2) A HEALTH FACILITY THAT ALLOWS SMOKING UNDER
22 SUBSECTION (1) SHALL COMPLY WITH SECTION 12605(2)(A).

23 Sec. 12605. (1) ~~A~~ SUBJECT TO THIS SUBSECTION AND SECTION
24 12607(C), A smoking area may be designated by the state or local
25 governmental agency or the person who owns or operates a public
26 place. ~~, except in a public place in which smoking is prohibited~~
27 ~~by law. If a smoking area is designated, existing physical~~

~~1 barriers and ventilation systems shall be used to minimize the
2 toxic effect of smoke in both smoking and adjacent nonsmoking
3 areas.~~ A SMOKING AREA SHALL NOT BE DESIGNATED IN 1 OR MORE OF

4 THE FOLLOWING AREAS:

5 (A) A WORK AREA.

6 (B) A HALLWAY, CORRIDOR, STAIRWELL, OR LOBBY THAT PROVIDES
7 DIRECT ACCESS TO A PUBLIC PLACE.

8 (C) A LAVATORY AVAILABLE TO THE GENERAL PUBLIC OR TO AN
9 EMPLOYER'S EMPLOYEES.

10 (D) A LUNCHROOM NOT LICENSED AS A FOOD SERVICE ESTABLISHMENT
11 UNDER PART 129.

12 (E) A LOUNGE, UNLESS THE LOUNGE IS MADE EXCLUSIVELY AVAIL-
13 ABLE FOR THE USE OF SMOKERS.

14 (F) AN AREA WITHIN WHICH SMOKING IS PROHIBITED BY LOCAL,
15 STATE, OR FEDERAL LAW.

16 (G) EXCEPT AS OTHERWISE PROVIDED IN SECTION 12604A, A HEALTH
17 FACILITY.

18 ~~(2) In the case of a public place consisting of a single
19 room, the state or local governmental agency or the person who
20 owns or operates the single room shall be in compliance with this
21 part if 1/2 of the room is reserved and posted as a no smoking
22 area.~~

23 (2) ~~(3)~~ If smoking is permitted in a public place, the
24 state or local governmental agency or the person who owns or
25 operates the public place shall ~~develop~~ DO BOTH OF THE
26 FOLLOWING:

1 (A) DEVELOP a written policy for the separation of smokers
2 and nonsmokers ~~which~~ THAT provides, at a minimum, for ~~all of~~
3 ~~the following:~~ ~~(a) Nonsmokers to be located closest to the~~
4 ~~source of fresh air.~~ ~~(b) Special consideration to be given to~~
5 ~~individuals with a hypersensitivity to tobacco smoke.~~ ~~(c) A~~ A
6 procedure to receive, investigate, and take action on
7 complaints.

8 (B) ENSURE THAT EACH INDOOR DESIGNATED SMOKING AREA MEETS
9 ALL OF THE FOLLOWING REQUIREMENTS:

10 (i) IS ENCLOSED BY FLOOR-TO-CEILING WALLS AND CONSTRUCTED
11 AND VENTILATED TO DO BOTH OF THE FOLLOWING:

12 (A) PREVENT ENVIRONMENTAL TOBACCO SMOKE FROM REACHING
13 NONSMOKERS.

14 (B) ENSURE THAT AIR FROM THE INDOOR DESIGNATED SMOKING AREA
15 IS EXHAUSTED DIRECTLY OUTSIDE AND DOES NOT RECIRCULATE OR DRIFT
16 TO OTHER AREAS WITHIN THE PUBLIC PLACE.

17 (ii) DOES NOT HAVE TO BE ENTERED BY A NONSMOKER FOR ANY
18 PURPOSE.

19 (iii) IS CLOSED TO MINORS UNDER 15 YEARS OF AGE.

20 Sec. 12607. The state or local governmental agency or the
21 person who owns or operates a public place shall, at a minimum,
22 do all of the following: ~~in order to prevent smoking:~~

23 (a) Post signs ~~which state~~ STATING that smoking in that
24 public place is prohibited, except in designated smoking areas,
25 pursuant to this part.

26 ~~(b) Arrange seating to provide, as nearly as practicable, a~~
27 ~~smoke-free area.~~

1 (B) ~~(c)~~ Implement and enforce the policy for the
2 separation of smokers and nonsmokers developed under section
3 ~~12605(3)~~ 12605(2).

4 (C) PROHIBIT SMOKING IN THE PUBLIC PLACE IF THE SAFEGUARDS
5 DESCRIBED IN THIS PART ARE NOT SUFFICIENT TO ELIMINATE EXPOSURE
6 TO ENVIRONMENTAL TOBACCO SMOKE BY A PERSON WHO IS HYPERSENSITIVE
7 TO ENVIRONMENTAL TOBACCO SMOKE.

8 Sec. 12615. (1) This part is in addition to, and does not
9 supersede the requirements for a policy regulating the smoking of
10 tobacco on the premises of a nursing home set forth in section
11 21733 ~~—~~ or the requirements for a food service establishment
12 set forth in section 12905.

13 (2) THIS PART DOES NOT PREEMPT OR OTHERWISE LIMIT THE
14 AUTHORITY OF A LOCAL UNIT OF GOVERNMENT TO ENACT AN ORDINANCE OR
15 OTHER REGULATION REGARDING SMOKING IN PUBLIC PLACES OR IN PLACES
16 OF EMPLOYMENT THAT IS MORE STRINGENT THAN THE REQUIREMENTS AND
17 RESTRICTIONS OF THIS PART.