

**SUBSTITUTE FOR  
HOUSE BILL NO. 5133**

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
(MCL 333.1101 to 333.25211) by adding section 5208.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1        SEC. 5208. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT  
2 CLEARLY INDICATES A DIFFERENT MEANING:  
3        (A) "BOOTH, STALL, OR PARTITIONED PORTION OF A ROOM OR AN  
4 INDIVIDUAL ROOM" MEANS AN ENCLOSURE SPECIFICALLY OFFERED TO A  
5 PERSON FOR A FEE OR AS AN INCIDENT TO PERFORMING HIGH-RISK SEXUAL  
6 CONDUCT OR AN ENCLOSURE THAT IS PART OF A BUSINESS OPERATED ON  
7 THE PREMISES THAT OFFERS MOTION PICTURES, VIDEOCASSETTES OR OTHER  
8 VIDEO REPRODUCTIONS, OR LIVE ENTERTAINMENT TO BE VIEWED WITHIN  
9 THE ENCLOSURE, INCLUDING AN ENCLOSURE IN WHICH MOTION PICTURES,  
10 VIDEOCASSETTES OR OTHER VIDEO REPRODUCTIONS, OR LIVE  
11 ENTERTAINMENT IS DISPENSED FOR A FEE. THE PHRASE DOES NOT

**HB5133, As Passed House, March 21, 2000**

House Bill No. 5133

2

1 INCLUDE AN ENCLOSURE USED AS A PRIVATE OFFICE BY AN OWNER,  
2 MANAGER, OR OTHER PERSON EMPLOYED ON THE PREMISES IN THE COURSE  
3 OF HIS OR HER EMPLOYMENT IF THE ENCLOSURE IS NOT HELD OUT FOR USE  
4 OR HIRE TO THE PUBLIC FOR THE PURPOSE OF VIEWING MOTION PICTURES,  
5 VIDEOCASSETTES OR OTHER VIDEO REPRODUCTIONS, OR LIVE ENTERTAIN-  
6 MENT FOR A FEE AND IS NOT OPEN TO PERSONS OTHER THAN EMPLOYEES.

7 (B) "DOOR, CURTAIN, OR PORTAL PARTITION" MEANS A FULL, COM-  
8 PLETE, NONTRANSPARENT CLOSURE DEVICE CONSTRUCTED SO THAT A PERSON  
9 OUTSIDE AN ENCLOSURE CANNOT SEE OR VIEW ACTIVITY TAKING PLACE  
10 WITHIN THE ENCLOSURE.

11 (C) "FACILITY" MEANS ALL OR A DISTINCT PORTION OF A COMMER-  
12 CIAL BUILDING, STRUCTURE, OR OTHER PREMISES. FACILITY DOES NOT  
13 INCLUDE A BUILDING, STRUCTURE, OR OTHER PREMISES LAWFULLY OPERAT-  
14 ING AS A HOTEL, MOTEL, APARTMENT COMPLEX, CONDOMINIUM, OR ROOMING  
15 HOUSE.

16 (D) "HAZARDOUS SITE" MEANS A PREMISES THAT IS A SITE OF  
17 HIGH-RISK SEXUAL CONDUCT.

18 (E) "HIGH-RISK SEXUAL CONDUCT" MEANS 1 OR MORE OF THE  
19 FOLLOWING:

20 (i) FELLATIO.

21 (ii) ANAL INTERCOURSE.

22 (iii) VAGINAL INTERCOURSE WITH A PERSON WHO ENGAGES IN  
23 SEXUAL ACTS FOR MONEY.

24 (F) "OPEN TO AN ADJACENT PUBLIC ROOM SO THAT THE AREA INSIDE  
25 IS VISIBLE TO A PERSON IN AN ADJACENT ROOM" MEANS EITHER OF THE  
26 FOLLOWING:

**HB5133, As Passed House, March 21, 2000**

House Bill No. 5133

3

1           (i) THE ABSENCE OF A DOOR, CURTAIN, OR PORTAL PARTITION.

2           (ii) A DOOR OR OTHER DEVICE THAT IS MADE OF CLEAR,  
3 TRANSPARENT MATERIAL SUCH AS GLASS, PLEXIGLASS, OR OTHER SIMILAR  
4 MATERIAL MEETING APPLICABLE BUILDING CODE AND SAFETY STANDARDS  
5 AND THAT PERMITS THE ACTIVITY INSIDE THE ENCLOSURE TO BE VIEWED  
6 OR SEEN BY A PERSON OUTSIDE THE ENCLOSURE.

7           (2) A PERSON SHALL NOT CONSTRUCT, USE, DESIGN, OR OPERATE A  
8 FACILITY FOR THE PURPOSE OF ENGAGING IN OR PERMITTING A PERSON TO  
9 ENGAGE IN SEXUAL ACTIVITY THAT INCLUDES HIGH-RISK SEXUAL  
10 CONDUCT.

11           (3) A PERSON SHALL NOT OWN, OPERATE, MANAGE, RENT, LEASE, OR  
12 EXERCISE CONTROL OVER A FACILITY THAT CONTAINS A BOOTH, STALL, OR  
13 PARTITIONED PORTION OF A ROOM OR AN INDIVIDUAL ROOM USED FOR THE  
14 VIEWING OF A MOTION PICTURE, VIDEOCASSETTE OR OTHER VIDEO REPRO-  
15 Duction, OR LIVE ENTERTAINMENT, HAVING A DOOR, CURTAIN, OR PORTAL  
16 PARTITION, UNLESS ALL OF THE FOLLOWING ARE MET:

17           (A) THE FACILITY CONTAINS 1 OR MORE MANAGER'S STATIONS. A  
18 MANAGER'S STATION SHALL NOT EXCEED 32 SQUARE FEET OF FLOOR AREA.

19           (B) AT LEAST 1 EMPLOYEE IS ON DUTY AND SITUATED IN EACH  
20 MANAGER'S STATION AT ALL TIMES THAT A PATRON IS PRESENT INSIDE  
21 THE FACILITY.

22           (C) THE INTERIOR OF THE FACILITY IS CONFIGURED IN SUCH A  
23 MANNER THAT THERE IS AN UNOBSTRUCTED, DIRECT LINE OF SIGHT VIEW  
24 FROM A MANAGER'S STATION OF EVERY AREA OF THE FACILITY TO WHICH  
25 ANY PATRON IS PERMITTED ACCESS FOR ANY PURPOSE, EXCLUDING  
26 RESTROOMS.

**HB5133, As Passed House, March 21, 2000**

House Bill No. 5133

4

1 (D) NO RESTROOM IN THE FACILITY CONTAINS A TELEVISION OR  
2 MOTION PICTURE OR VIDEOCASSETTE VIEWING EQUIPMENT.

3 (E) NO PATRON IS PERMITTED ACCESS TO ANY AREA OF THE FACIL-  
4 ITY DESIGNATED AS AN AREA IN WHICH PATRONS ARE NOT PERMITTED.

5 (F) NO BOOTH, STALL, OR PARTITIONED PORTION OF A ROOM OR AN  
6 INDIVIDUAL ROOM IS OCCUPIED BY MORE THAN 1 PERSON AT ANY TIME.

7 (G) THE FACILITY IS EQUIPPED WITH OVERHEAD LIGHTING FIXU-  
8 TURES OF SUFFICIENT INTENSITY TO ILLUMINATE EVERY PLACE TO WHICH  
9 PATRONS ARE PERMITTED ACCESS AT AN ILLUMINATION OF NOT LESS THAN  
10 5 FOOT-CANDLES AS MEASURED AT FLOOR LEVEL, AND THIS AMOUNT OF  
11 ILLUMINATION IS MAINTAINED AT ALL TIMES THAT A PATRON IS PRESENT  
12 IN THE FACILITY.

13 (H) NO HOLES OR OPENINGS OF ANY KIND EXIST BETWEEN BOOTHS,  
14 STALLS, OR PARTITIONED PORTIONS OF A ROOM OR INDIVIDUAL ROOMS,  
15 AND THE FACILITY IS INSPECTED DAILY TO DETERMINE IF ANY HOLES OR  
16 OPENINGS EXIST.

17 (I) THE FLOOR COVERING IN A BOOTH, STALL, OR PARTITIONED  
18 PORTION OF A ROOM OR AN INDIVIDUAL ROOM IS NONPOROUS AND EASY TO  
19 CLEAN, WITH NO RUGS OR CARPETING.

20 (J) ALL WALL SURFACES AND CEILING SURFACES IN A BOOTH,  
21 STALL, OR PARTITIONED PORTION OF A ROOM OR AN INDIVIDUAL ROOM ARE  
22 CONSTRUCTED OF OR PERMANENTLY COVERED BY NONPOROUS AND EASY TO  
23 CLEAN MATERIAL.

24 (K) NO WOOD, PLYWOOD, COMPOSITION BOARD, OR OTHER POROUS  
25 BUILDING MATERIAL IS USED WITHIN 48 INCHES OF THE FLOOR OF A  
26 BOOTH, STALL, OR PARTITIONED PORTION OF A ROOM OR AN INDIVIDUAL  
27 ROOM.

04171'99 b (H-1)

**HB5133, As Passed House, March 21, 2000**

House Bill No. 5133

5

1       (4) THE DEPARTMENT MAY ADOPT RULES AND REGULATIONS TO  
2 FACILITATE ITS ADMINISTRATION OF THIS SECTION. IN EXERCISING ITS  
3 POWERS UNDER THIS SECTION, THE DEPARTMENT SHALL BE GUIDED BY THE  
4 MOST RECENT INSTRUCTIONS, OPINIONS, AND GUIDELINES OF THE CENTERS  
5 FOR DISEASE CONTROL OF THE UNITED STATES DEPARTMENT OF HEALTH AND  
6 HUMAN SERVICES RELATED TO THE SPREAD OF INFECTIOUS DISEASE. ANY  
7 RULES OR REGULATIONS ADOPTED BY THE DEPARTMENT RELATED TO CON-  
8 TROLLING THE SPREAD OF SEXUALLY RELATED COMMUNICABLE DISEASE  
9 SHALL APPLY TO THIS SECTION.

10       (5) IN ORDER TO ASCERTAIN THE SOURCE OF CERTAIN INFECTIONS  
11 AND REDUCE THE SPREAD OF INFECTION, THE DEPARTMENT OR ANY PERSON  
12 AUTHORIZED BY THE DEPARTMENT MAY INSPECT OR CAUSE TO BE  
13 INSPECTED, AND ISSUE ORDERS REGARDING, A FACILITY THAT MAY BE A  
14 SITE OF HIGH-RISK SEXUAL CONDUCT. IF THE DEPARTMENT DETERMINES  
15 THAT A HAZARDOUS SITE EXISTS, THE DEPARTMENT MAY DO 1 OR MORE OF  
16 THE FOLLOWING, AS APPLICABLE:

17       (A) NOTIFY THE MANAGEMENT, OWNER, OR TENANT OF THE FACILITY  
18 THAT THE DEPARTMENT HAS REASONABLE BELIEF THAT THE FACILITY IS A  
19 HAZARDOUS SITE.

20       (B) AFTER GIVING NOTICE UNDER SUBDIVISION (A), ISSUE A WARN-  
21 ING TO THE MANAGEMENT, OWNER, OR TENANT OF THE FACILITY TO REMEDY  
22 THOSE ITEMS CITED OR LISTED IN THE NOTICE.

23       (C) AFTER GIVING NOTICE UNDER SUBDIVISION (A) AND ISSUING A  
24 WARNING UNDER SUBDIVISION (B), PROCEED IN ACCORDANCE WITH SUBSEC-  
25 TION (6).

26       (6) ALL OF THE FOLLOWING APPLY TO A NOTICE AND WARNING  
27 ISSUED BY THE DEPARTMENT UNDER SUBSECTION (5):

04171'99 b (H-1)

**HB5133, As Passed House, March 21, 2000**

House Bill No. 5133

6

1           (A) AFTER THE DEPARTMENT HAS ISSUED A NOTICE AND WARNING  
2 DESCRIBED IN SUBSECTION (5), THE MANAGEMENT, OWNER, OR TENANT OF  
3 THE FACILITY DESCRIBED IN SUBSECTION (5) HAS 10 DAYS TO REQUEST A  
4 HEARING BEFORE A HEARING OFFICER APPOINTED BY THE DEPARTMENT FOR  
5 A FINAL DETERMINATION AS TO WHETHER OR NOT THE FACILITY IS A HAZ-  
6 ARDOUS SITE. IF THE MANAGEMENT, OWNER, OR TENANT OF THE FACILITY  
7 DOES NOT REQUEST A HEARING WITHIN 10 DAYS OF THE ISSUANCE OF THE  
8 NOTICE, THE DEPARTMENT SHALL POST A WARNING ON THE PREMISES  
9 ADVISING THE PUBLIC THAT THE FACILITY HAS BEEN DECLARED A HAZARD-  
10 OUS SITE. THE DEPARTMENT SHALL THEN ISSUE AN ORDER TO THE MAN-  
11 AGEMENT, OWNER, OR TENANT OF THE FACILITY TO TAKE MEASURES TO  
12 BRING THE FACILITY INTO COMPLIANCE WITH THIS SECTION.

13           (B) IF THE MANAGEMENT, OWNER, OR TENANT OF THE FACILITY  
14 REQUESTS A HEARING, THE HEARING SHALL BE HELD BEFORE A HEARING  
15 OFFICER APPROVED BY THE DEPARTMENT AT A DATE NOT MORE THAN 30  
16 DAYS AFTER THE REQUEST FOR A HEARING. AFTER CONSIDERING ALL EVI-  
17 DENCE, THE HEARING OFFICER SHALL MAKE A DETERMINATION AS TO  
18 WHETHER OR NOT THE FACILITY CONSTITUTES A HAZARDOUS SITE. IF THE  
19 HEARING OFFICER MAKES A DETERMINATION THAT THE FACILITY CONSTI-  
20 TUTES A HAZARDOUS SITE, THE DEPARTMENT SHALL THEN ISSUE AN ORDER  
21 AND POST A WARNING ON THE FACILITY ADVISING THE PUBLIC THAT THE  
22 FACILITY HAS BEEN DECLARED A HAZARDOUS SITE.

23           (7) THIRTY DAYS AFTER ISSUANCE OF ITS ORDER UNDER SUBSECTION  
24 (6)(B), IF THE DEPARTMENT DETERMINES THAT MEASURES TO BRING THE  
25 FACILITY INTO COMPLIANCE AND TO PREVENT HIGH-RISK SEXUAL CONDUCT  
26 HAVE NOT BEEN UNDERTAKEN, THE DEPARTMENT MAY DECLARE THE FACILITY  
27 TO BE A PUBLIC NUISANCE AND MAY DO 1 OR MORE OF THE FOLLOWING:

04171'99 b (H-1)

**HB5133, As Passed House, March 21, 2000**

House Bill No. 5133

7

1       (A) ORDER THE ABATEMENT OF THE HAZARDOUS SITE AS A PUBLIC  
2 NUISANCE. THE ORDER SHALL BE ENFORCED BY MANDATORY OR PROHIBI-  
3 TORY INJUNCTION IN A COURT OF COMPETENT JURISDICTION.

4       (B) SECURE A COURT ORDER FOR THE CLOSURE OF THE FACILITY  
5 UNTIL THE FACILITY IS IN COMPLIANCE WITH THIS SECTION.

6       (C) TAKE THE STEPS SET FORTH IN SECTION 2455 TO AVOID, COR-  
7 RECT, OR REMOVE A NUISANCE.

8       (8) THE MANAGEMENT, OWNER, OR TENANT MAY, WITHIN 30 DAYS OF  
9 THE DEPARTMENT'S ORDER, APPLY TO A COURT OF COMPETENT JURISDIC-  
10 TION FOR A CIVIL TRIAL DE NOVO OF ANY FINDING OR FINDINGS MADE BY  
11 THE HEARING OFFICER AND OF ANY CHARGES BROUGHT AGAINST THE MAN-  
12 AGEMENT, OWNER, OR TENANT.