



HOUSE BILL No. 5133

November 10, 1999, Introduced by Rep. Toy and referred to the Committee on Constitutional Law and Ethics.

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 MOVIES OR OTHER ENTERTAINMENT TO BE
8 VIEWED WITHIN THE ENCLOSURE, INCLUDING AN ENCLOSURE IN WHICH
9 MOVIES OR OTHER ENTERTAINMENT IS DISPENSED FOR A FEE. THE PHRASE
10 DOES NOT INCLUDE AN ENCLOSURE USED AS A PRIVATE OFFICE BY AN
11 OWNER, MANAGER, OR OTHER PERSON EMPLOYED ON THE PREMISES IN THE

1 COURSE OF HIS OR HER EMPLOYMENT IF THE ENCLOSURE IS NOT HELD OUT
2 FOR USE OR HIRE TO THE PUBLIC FOR THE PURPOSE OF VIEWING MOVIES
3 OR OTHER ENTERTAINMENT FOR A FEE AND IS NOT OPEN TO PERSONS OTHER
4 THAN EMPLOYEES.

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

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

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

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

18 (i) FELLATIO.

19 (ii) ANAL INTERCOURSE.

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

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

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

26 (ii) A DOOR OR OTHER DEVICE THAT IS MADE OF CLEAR,
27 TRANSPARENT MATERIAL SUCH AS GLASS, PLEXIGLASS, OR OTHER SIMILAR

1 MATERIAL MEETING APPLICABLE BUILDING CODE AND SAFETY STANDARDS
2 AND THAT PERMITS THE ACTIVITY INSIDE THE ENCLOSURE TO BE VIEWED
3 OR SEEN BY A PERSON OUTSIDE THE ENCLOSURE.

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

8 (3) A PERSON SHALL NOT OWN, OPERATE, MANAGE, RENT, LEASE, OR
9 EXERCISE CONTROL OVER A FACILITY THAT CONTAINS EITHER OF THE
10 FOLLOWING:

11 (A) A PARTITION BETWEEN SUBDIVISIONS OF A ROOM, PORTION, OR
12 PART OF THE FACILITY THAT HAS AN APERTURE DESIGNED OR CONSTRUCTED
13 TO FACILITATE SEXUAL ACTIVITY BETWEEN PERSONS ON EITHER SIDE OF
14 THE PARTITION.

15 (B) A BOOTH, STALL, OR PARTITIONED PORTION OF A ROOM OR AN
16 INDIVIDUAL ROOM USED FOR THE VIEWING OF MOTION PICTURES OR OTHER
17 FORMS OF ENTERTAINMENT, HAVING A DOOR, CURTAIN, OR PORTAL PARTI-
18 TION, UNLESS THE BOOTH, STALL, PARTITIONED PORTION OF A ROOM, OR
19 INDIVIDUAL ROOM HAS AT LEAST 1 SIDE OPEN TO AN ADJACENT PUBLIC
20 ROOM SO THAT THE AREA INSIDE IS VISIBLE TO A PERSON IN AN ADJA-
21 CENT PUBLIC ROOM. THE BOOTH, STALL, PARTITIONED PORTION OF A
22 ROOM, OR INDIVIDUAL ROOM SHALL BE LIGHTED IN A MANNER THAT A
23 PERSON IN THE AREA USED FOR VIEWING MOTION PICTURES OR OTHER
24 FORMS OF ENTERTAINMENT IS VISIBLE FROM THE ADJACENT PUBLIC ROOM,
25 BUT THE LIGHTING SHALL NOT BE OF SUCH INTENSITY AS TO PREVENT THE
26 VIEWING OF THE MOTION PICTURES OR OTHER OFFERED ENTERTAINMENT.

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):

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 SUBDIVI-
24 SION (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:

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 (D) 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.