

SENATE BILL No. 581

July 10, 2001, Introduced by Senator MURPHY and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 12905 (MCL 333.12905), as amended by 1993 PA
242.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 12905. (1) Except as otherwise provided in this sec-
2 tion, all public areas of a food service establishment shall be
3 nonsmoking. As used in this subsection, "public area" includes,
4 but is not limited to, a bathroom, a coatroom, and an entrance or
5 other area used by a patron when not seated at a food service
6 table or counter. Public area does not include the lobby, wait-
7 ing room, hallways, and lounge areas of a food service establish-
8 ment, but these areas are not required to be designated as
9 smoking areas.

1 (2) Subject to subsection (3), a food service establishment
2 with a seating capacity of fewer than 50, whether or not it is
3 owned and operated by a private club, and a food service estab-
4 lishment that is owned and operated by a private club may desig-
5 nate up to 75% of its seating capacity as seating for smokers. A
6 food service establishment with a seating capacity of 50 or more
7 that is not owned or operated by a private club may designate up
8 to 50% of its seating capacity as seating for smokers. A food
9 service establishment that designates seating for smokers shall
10 clearly identify the seats for nonsmokers as nonsmoking, place
11 the seats for nonsmokers in close proximity to each other, and
12 locate the seats for nonsmokers so as not to discriminate against
13 nonsmokers. A FOOD SERVICE ESTABLISHMENT THAT DESIGNATES SEATING
14 FOR SMOKERS UNDER THIS SUBSECTION SHALL NOT ALLOW A MINOR TO
15 ENTER THE FOOD SERVICE ESTABLISHMENT.

16 (3) A food service establishment shall not use the defini-
17 tion of seating capacity and the exemption from that definition
18 set forth in subsection (9)(c) to increase the amount of seating
19 for smokers above 75%.

20 (4) In addition to a food service establishment that pro-
21 vides its own seating, subsections (1), (2), and (3) also apply
22 to a food service establishment or group of food service estab-
23 lishments that are located in a shopping mall where the seating
24 for the food service establishment or group of food service
25 establishments is provided or maintained, or both, by the person
26 who owns or operates the shopping mall. As used in this

1 subsection, "shopping mall" means a shopping center with stores
2 facing an enclosed mall.

3 (5) The director, an authorized representative of the direc-
4 tor, or a representative of a local health department to which
5 the director has delegated responsibility for enforcement of this
6 part shall, in accordance with R 325.25902 of the Michigan admin-
7 istrative code, inspect each food service establishment that is
8 subject to this section. The inspecting entity shall determine
9 compliance with this section during each inspection.

10 (6) The department or a local health department shall uti-
11 lize compliance or noncompliance with this section or with rules
12 promulgated to implement this section as criteria in the determi-
13 nation of whether to deny, suspend, limit, or revoke a license
14 pursuant to section 12907(1).

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

23 (8) This section does not apply to a private facility that
24 is serviced by a catering kitchen or to a separate room in a food
25 service establishment that is used for private banquets. This
26 section does not apply to a food service establishment that is
27 owned and operated by a fraternal organization, if service is

1 limited to members of the fraternal organization and their
2 guests.

3 (9) As used in this section:

4 (a) "Bar" means that term as defined in section 2a of the
5 Michigan liquor control act, Act No. 8 of the Public Acts of the
6 Extra Session of 1933, being section 436.2a of the Michigan
7 Compiled Laws.

8 (b) "Room" means an area that is physically distinct from
9 the main dining area of a food service establishment and from
10 which smoke cannot pass into the main dining area.

11 (c) "Seating capacity" means the actual number of seats for
12 patrons in a food service establishment. Seating capacity does
13 not include seats located at a bar or seats at tables that are
14 located adjacent to a bar, if meals are not served at those
15 tables.

16 (d) "Smoking" means the carrying by an individual of a
17 lighted cigar, cigarette, or other lighted smoking device.