

# HOUSE BILL No. 6185

September 9, 2004, Introduced by Reps. Daniels, Gielegem and Zelenko and referred to the Committee on Commerce.

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  
2 section, all public areas of a food service establishment shall  
3 be nonsmoking. As used in this subsection, "public area"  
4 includes, but is not limited to, a bathroom, a coatroom, and an  
5 entrance or other area used by a patron when not seated at a food  
6 service table or counter. Public area does not include the  
7 lobby, waiting room, hallways, and lounge areas of a food service  
8 establishment, but these areas are not required to be designated  
9 as smoking areas.

10       (2) Subject to subsection (3), a food service establishment

1 with a seating capacity of fewer than 50, whether or not it is  
2 owned and operated by a private club, and a food service  
3 establishment that is owned and operated by a private club may  
4 designate up to 75% of its seating capacity as seating for  
5 smokers. A food service establishment with a seating capacity of  
6 50 or more that is not owned or operated by a private club may  
7 designate up to 50% of its seating capacity as seating for  
8 smokers. A food service establishment that designates seating  
9 for smokers shall clearly identify the seats for nonsmokers as  
10 nonsmoking, place the seats for nonsmokers in close proximity to  
11 each other, and locate the seats for nonsmokers so as not to  
12 discriminate against nonsmokers.

13 (3) A food service establishment shall not use the definition  
14 of seating capacity and the exemption from that definition set  
15 forth in subsection ~~-(9)-(e)-~~ **(10)(d)** to increase the amount of  
16 seating for smokers above 75%.

17 (4) In addition to a food service establishment that provides  
18 its own seating, subsections (1), (2), and (3) also apply to a  
19 food service establishment or group of food service  
20 establishments that are located in a shopping mall where the  
21 seating for the food service establishment or group of food  
22 service establishments is provided or maintained, or both, by the  
23 person who owns or operates the shopping mall. As used in this  
24 subsection, "shopping mall" means a shopping center with stores  
25 facing an enclosed mall.

26 **(5) A food service establishment shall not seat a person less**  
27 **than 18 years of age in an area designated as a smoking area**

1 under subsection (2). In the case of a willful violation of this  
2 subsection, a food service establishment is liable for a civil  
3 fine of \$1,000.00 for a first violation and is liable for a civil  
4 fine of \$6,000.00 for a second or subsequent violation. After  
5 deducting the costs of bringing the action, the department shall  
6 allocate the remainder of the civil fine to programs dealing with  
7 the cessation of smoking.

8 (6) ~~—(5)—~~ The director, an authorized representative of the  
9 director, or a representative of a local health department to  
10 which the director has delegated responsibility for enforcement  
11 of this part shall ~~—, in accordance with R 325.25902 of the~~  
12 ~~Michigan administrative code,~~ inspect each food service  
13 establishment that is subject to this section. The inspecting  
14 entity shall determine compliance with this section during each  
15 inspection.

16 (7) ~~—(6)—~~ The department or a local health department shall  
17 utilize compliance or noncompliance with this section or with  
18 rules promulgated to implement this section as criteria in the  
19 determination of whether to deny, suspend, limit, or revoke a  
20 license. ~~—pursuant to section 12907(1)—.~~

21 (8) ~~—(7)—~~ Within 5 days after receipt of a written complaint  
22 of violation of this section, a local health department shall  
23 investigate the complaint to determine compliance. If a  
24 violation of this section is identified and not corrected as  
25 ordered by the local health department within 2 days after  
26 receipt of the order by the food service establishment, the local  
27 health officer may issue an order to cease food service

1 operations until compliance with this section is achieved.

2       **(9) —(8)—** This section does not apply to a private facility  
3 that is serviced by a catering kitchen or to a separate room in a  
4 food service establishment that is used for private banquets.  
5 This section does not apply to a food service establishment that  
6 is owned and operated by a fraternal organization, if service is  
7 limited to members of the fraternal organization and their  
8 guests.

9       **(10) —(9)—** As used in this section:

10       (a) "Bar" means that term as defined in section ~~2a~~ **105** of  
11 the Michigan liquor control ~~act, Act No. 8 of the Public Acts of~~  
12 ~~the Extra Session of 1933, being section 436.2a of the Michigan~~  
13 ~~Compiled Laws~~ **code of 1998, 1998 PA 58, MCL 436.1105.**

14       **(b) "Food service establishment" means that term as defined**  
15 **in section 1107 of the food law of 2000, 2000 PA 92, MCL**  
16 **289.1107.**

17       **(c) —(b)—** "Room" means an area that is physically distinct  
18 from the main dining area of a food service establishment and  
19 from which smoke cannot pass into the main dining area.

20       **(d) —(c)—** "Seating capacity" means the actual number of seats  
21 for patrons in a food service establishment. Seating capacity  
22 does not include seats located at a bar or seats at tables that  
23 are located adjacent to a bar, if meals are not served at those  
24 tables.

25       **(e) —(d)—** "Smoking" means the carrying by an individual of a  
26 lighted cigar, cigarette, or other lighted smoking device.