

# HOUSE BILL No. 4196

February 5, 2009, Introduced by Rep. Slavens and referred to the Committee on Regulatory Reform.

A bill to amend 1978 PA 368, entitled "Public health code," by amending the headings of parts 126 and 129 and sections 12601, 12603, 12611, 12613, 12614, 12905, and 12915 (MCL 333.12601, 333.12603, 333.12611, 333.12613, 333.12614, 333.12905, and 333.12915), sections 12601 and 12613 as amended by 1988 PA 315, sections 12603 and 12611 as amended by 1993 PA 217, section 12614 as added by 1988 PA 296, section 12905 as amended by 1993 PA 242, and section 12915 as amended by 1982 PA 526, and by adding section 12606; and to repeal acts and parts of acts.

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

**PART 126. ~~SMOKING IN PUBLIC PLACES~~ MICHIGAN CLEAN INDOOR AIR ACT**  
Sec. 12601. (1) As used in this part:  
(a) "Child caring institution" and "child care center" mean

1 those terms as defined in section 1 of Act No. 116 of the Public  
2 Acts of 1973, being section 722.111 of the Michigan Compiled Laws  
3 1973 PA 116, MCL 722.111.

4 ~~—— (b) "County medical care facility" means that term as defined~~  
5 ~~in section 20104.~~

6 ~~—— (c) "Educational facility" means a building owned, leased, or~~  
7 ~~under the control of a public or private school system, college, or~~  
8 ~~university.~~

9 ~~—— (d) "Food service establishment" means a food service~~  
10 ~~establishment as defined in section 12901.~~

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

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

17 ~~—— (g) "Hospice" means that term as defined in section 20106.~~

18 ~~—— (h) "Hospital long term care unit" means that term as defined~~  
19 ~~in section 20106.~~

20 ~~—— (i) "Licensed premises" means any portion of a building,~~  
21 ~~structure, room, or enclosure in which alcoholic liquor may be sold~~  
22 ~~for consumption on the premises pursuant to a license issued by the~~  
23 ~~Michigan liquor control commission.~~

24 ~~—— (j) "Meeting" means a meeting as defined in section 2 of the~~  
25 ~~open meetings act, Act No. 267 of the Public Acts of 1976, being~~  
26 ~~section 15.262 of the Michigan Compiled Laws.~~

27 ~~—— (k) "Nursing home" means that term as defined in section~~

1 ~~20109.~~

2 ~~—— (l) "Public body" means a public body as defined in section 2~~  
 3 ~~of the open meetings act, Act No. 267 of the Public Acts of 1976.~~

4 ~~—— (m) "Public place", except as otherwise provided in subsection~~  
 5 ~~(2), means both of the following:~~

6 ~~—— (i) An enclosed, indoor area owned or operated by a state or~~  
 7 ~~local governmental agency and used by the general public or serving~~  
 8 ~~as a place of work for public employees or a meeting place for a~~  
 9 ~~public body, including an office, educational facility, home for~~  
 10 ~~the aged, nursing home, county medical care facility, hospice,~~  
 11 ~~hospital long term care unit, auditorium, arena, meeting room, or~~  
 12 ~~public conveyance.~~

13 ~~—— (ii) An enclosed, indoor area which is not owned or operated by~~  
 14 ~~a state or local governmental agency, is used by the general~~  
 15 ~~public, and is 1 of the following:~~

16 ~~—— (A) An educational facility.~~

17 ~~—— (B) A home for the aged, nursing home, county medical care~~  
 18 ~~facility, hospice, or hospital long term care unit.~~

19 ~~—— (C) An auditorium.~~

20 ~~—— (D) An arena.~~

21 ~~—— (E) A theater.~~

22 ~~—— (F) A museum.~~

23 ~~—— (G) A concert hall.~~

24 ~~—— (H) Any other facility during the period of its use for a~~  
 25 ~~performance or exhibit of the arts.~~

26 **(B) "CIGAR BAR" MEANS AN ESTABLISHMENT OR AREA WITHIN AN**  
 27 **ESTABLISHMENT THAT IS OPEN TO THE PUBLIC AND IS DESIGNATED FOR THE**

1 SMOKING OF TOBACCO PRODUCTS, PURCHASED ON THE PREMISES OR  
2 ELSEWHERE.

3 (C) "COMMERCIAL OR PUBLIC BUILDING" MEANS THE INTERIOR SPACE  
4 OF ANY NONRESIDENTIAL BUILDING AND INCLUDES, BUT IS NOT LIMITED TO,  
5 THE FOLLOWING:

6 (i) SCHOOL BUILDINGS.

7 (ii) INDUSTRIAL AND OFFICE BUILDINGS.

8 (iii) GOVERNMENT-OWNED BUILDINGS.

9 (iv) COLLEGES AND UNIVERSITIES.

10 (v) MUSEUMS.

11 (vi) AIRPORTS.

12 (vii) HEALTH FACILITIES AND AGENCIES.

13 (viii) CHURCHES.

14 (ix) PRESCHOOLS.

15 (x) STORES.

16 (xi) WAREHOUSES.

17 (xii) FACTORIES.

18 (xiii) HOTELS AND MOTELS.

19 (D) ~~(n)~~ "Smoking" or "smoke" means the ~~carrying by a person~~  
20 BURNING of a lighted cigar, cigarette, pipe, or ANY other lighted  
21 ~~smoking device~~ MATTER OR SUBSTANCE THAT CONTAINS A TOBACCO PRODUCT.

22 (E) "SMOKING PARAPHERNALIA" MEANS ANY EQUIPMENT, APPARATUS, OR  
23 FURNISHING THAT IS USED IN OR NECESSARY FOR THE ACTIVITY OF  
24 SMOKING.

25 (F) "TOBACCO PRODUCT" MEANS A PRODUCT THAT CONTAINS TOBACCO  
26 AND IS INTENDED FOR HUMAN CONSUMPTION, INCLUDING, BUT NOT LIMITED  
27 TO, CIGARETTES, NONCIGARETTE SMOKING TOBACCO, OR SMOKELESS TOBACCO,

1 AS THOSE TERMS ARE DEFINED IN SECTION 2 OF THE TOBACCO PRODUCTS TAX  
2 ACT, 1993 PA 327, MCL 205.422, AND CIGARS.

3 (G) "TOBACCO SPECIALTY RETAIL STORE" MEANS AN ESTABLISHMENT  
4 THAT IS NOT REQUIRED TO BE LICENSED AS A FOOD SERVICE  
5 ESTABLISHMENT, IN WHICH THE PRIMARY PURPOSE IS THE RETAIL SALE OF  
6 TOBACCO PRODUCTS AND SMOKING PARAPHERNALIA, AND IN WHICH THE SALE  
7 OF OTHER PRODUCTS IS INCIDENTAL.

8 ~~—— (2) Public place does not include a private, enclosed room or  
9 office occupied exclusively by a smoker, even if the room or  
10 enclosed office may be visited by a nonsmoker.~~

11 (2) ~~(3)~~—In addition, article 1 contains general definitions  
12 and principles of construction applicable to all articles of this  
13 code.

14 Sec. 12603. (1) Except as otherwise provided ~~by law, an~~ **IN**  
15 **THIS PART, A STATE OR LOCAL GOVERNMENTAL AGENCY OR THE PERSON WHO**  
16 **OWNS OR OPERATES A COMMERCIAL OR PUBLIC BUILDING SHALL NOT ALLOW**  
17 **SMOKING IN THE COMMERCIAL OR PUBLIC BUILDING.** AN individual shall  
18 not smoke in a ~~public place or at a meeting of a public body,~~  
19 ~~except in a designated smoking area~~ **COMMERCIAL OR PUBLIC BUILDING.**

20 ~~—— (2) This section does not apply to a room, hall, or building  
21 used for a private function if the seating arrangements are under  
22 the control of the sponsor of the function and not under the  
23 control of the state or local governmental agency or the person who  
24 owns or operates the room, hall, or building.~~

25 ~~—— (3) This section does not apply to a food service  
26 establishment or to licensed premises.~~

27 ~~—— (4) This section shall not apply to a private educational~~

1 ~~facility after regularly scheduled school hours.~~

2       (2) "NO SMOKING" SIGNS OR THE INTERNATIONAL "NO SMOKING"  
3 SYMBOL SHALL BE CLEARLY AND CONSPICUOUSLY POSTED AT THE ENTRANCES  
4 TO AND IN EVERY COMMERCIAL OR PUBLIC BUILDING WHERE SMOKING IS  
5 PROHIBITED UNDER THIS SECTION. THE OWNER, OPERATOR, MANAGER, OR  
6 PERSON HAVING CONTROL OF THE COMMERCIAL OR PUBLIC BUILDING SHALL  
7 POST THE SIGNS. THE OWNER, OPERATOR, MANAGER, OR PERSON HAVING  
8 CONTROL OF THE COMMERCIAL OR PUBLIC BUILDING SHALL REMOVE ALL  
9 ASHTRAYS AND OTHER SMOKING PARAPHERNALIA FROM ANYWHERE SMOKING IS  
10 PROHIBITED UNDER THIS SECTION. THE OWNER, OPERATOR, MANAGER, OR  
11 PERSON HAVING CONTROL OF THE COMMERCIAL OR PUBLIC BUILDING SHALL  
12 INFORM PERSONS SMOKING IN VIOLATION OF THIS ACT THAT THEY ARE IN  
13 VIOLATION OF STATE LAW AND SUBJECT TO PENALTIES.

14       SEC. 12606. (1) A CIGAR BAR THAT MEETS ALL OF THE REQUIREMENTS  
15 OF THIS SECTION IS EXEMPT FROM THE SMOKING PROHIBITION OF SECTION  
16 12603 AND MAY ALLOW SMOKING ON ITS PREMISES. TO QUALIFY FOR THE  
17 EXEMPTION UNDER THIS SECTION, THE PERSON WHO OWNS OR OPERATES A  
18 CIGAR BAR SHALL FILE AN AFFIDAVIT WITH THE DEPARTMENT ON OR BEFORE  
19 THE EXPIRATION OF 30 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION  
20 IF THE CIGAR BAR IS IN EXISTENCE ON THE EFFECTIVE DATE OF THIS  
21 SECTION OR 30 DAYS OR MORE BEFORE HE OR SHE WISHES TO USE THIS  
22 EXEMPTION, AND ON JANUARY 31 OF EACH YEAR AFTER THE EFFECTIVE DATE  
23 OF THE EXEMPTION. THE AFFIDAVIT SHALL BE SIGNED BY THE OWNER OR  
24 OPERATOR OF THE CIGAR BAR AND SHALL CERTIFY THAT THE CIGAR BAR  
25 MEETS ALL OF THE FOLLOWING REQUIREMENTS:

26       (A) IN THE 30-DAY PERIOD IMMEDIATELY PRECEDING THE FILING OF  
27 THE FIRST AFFIDAVIT UNDER THIS SUBSECTION, THE CIGAR BAR GENERATED

1 10% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME FROM THE ON-SITE SALE  
2 OF TOBACCO PRODUCTS AND THE RENTAL OF ON-SITE HUMIDORS, NOT  
3 INCLUDING ANY SALES OF TOBACCO PRODUCTS FROM VENDING MACHINES.

4 (B) FOR EACH CALENDAR YEAR AFTER THE CALENDAR YEAR IN WHICH  
5 THE FIRST AFFIDAVIT IS FILED UNDER THIS SUBSECTION, THE CIGAR BAR  
6 GENERATES 10% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME FROM THE ON-  
7 SITE SALE OF TOBACCO PRODUCTS AND THE RENTAL OF ON-SITE HUMIDORS,  
8 NOT INCLUDING ANY SALES OF TOBACCO PRODUCTS FROM VENDING MACHINES.

9 (C) THE CIGAR BAR IS LOCATED ON PREMISES THAT ARE PHYSICALLY  
10 SEPARATED FROM ANY AREAS OF THE SAME OR ADJACENT ESTABLISHMENT IN  
11 WHICH SMOKING IS PROHIBITED UNDER THIS PART OR PART 129 AND WHERE  
12 SMOKE DOES NOT INFILTRATE INTO THOSE NONSMOKING AREAS. AS USED IN  
13 THIS SUBDIVISION, "PHYSICALLY SEPARATED" MEANS AN AREA THAT IS  
14 ENCLOSED ON ALL SIDES BY ANY COMBINATION OF SOLID WALLS, WINDOWS,  
15 OR DOORS THAT EXTEND FROM THE FLOOR TO CEILING.

16 (D) THE CIGAR BAR HAS INSTALLED ON ITS PREMISES AN ON-SITE  
17 HUMIDOR.

18 (E) THE CIGAR BAR PROHIBITS ENTRY TO A PERSON UNDER THE AGE OF  
19 18 DURING THE TIME THE CIGAR BAR IS OPEN FOR BUSINESS.

20 (2) A TOBACCO SPECIALTY RETAIL STORE THAT MEETS ALL OF THE  
21 REQUIREMENTS OF THIS SECTION IS EXEMPT FROM THE SMOKING PROHIBITION  
22 OF SECTION 12603 AND MAY ALLOW SMOKING ON ITS PREMISES. TO QUALIFY  
23 FOR THE EXEMPTION UNDER THIS SECTION, THE PERSON WHO OWNS OR  
24 OPERATES A TOBACCO SPECIALTY RETAIL STORE SHALL FILE AN AFFIDAVIT  
25 WITH THE DEPARTMENT ON OR BEFORE THE EXPIRATION OF 30 DAYS AFTER  
26 THE EFFECTIVE DATE OF THE EXEMPTION IF THE TOBACCO SPECIALTY RETAIL  
27 STORE IS IN EXISTENCE ON THE EFFECTIVE DATE OF THIS SECTION OR 30

1 DAYS OR MORE BEFORE HE OR SHE WISHES TO USE THIS EXEMPTION, AND ON  
2 JANUARY 31 OF EACH YEAR AFTER THE EFFECTIVE DATE OF THE EXEMPTION.  
3 THE AFFIDAVIT SHALL BE SIGNED BY THE OWNER OR OPERATOR OF THE  
4 TOBACCO SPECIALTY RETAIL STORE AND SHALL CERTIFY THAT THE TOBACCO  
5 SPECIALTY RETAIL STORE MEETS ALL OF THE FOLLOWING REQUIREMENTS:

6 (A) IN THE 30-DAY PERIOD IMMEDIATELY PRECEDING THE FILING OF  
7 THE FIRST AFFIDAVIT UNDER THIS SUBSECTION, THE TOBACCO SPECIALTY  
8 RETAIL STORE GENERATED 75% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME  
9 FROM THE ON-SITE SALE OF TOBACCO PRODUCTS AND SMOKING  
10 PARAPHERNALIA.

11 (B) FOR EACH CALENDAR YEAR AFTER THE CALENDAR YEAR IN WHICH  
12 THE FIRST AFFIDAVIT IS FILED UNDER THIS SUBSECTION, THE TOBACCO  
13 SPECIALTY RETAIL STORE GENERATED 75% OR MORE OF ITS TOTAL GROSS  
14 ANNUAL INCOME FROM THE ON-SITE SALE OF TOBACCO PRODUCTS AND SMOKING  
15 PARAPHERNALIA.

16 (C) THE TOBACCO SPECIALTY RETAIL STORE IS LOCATED ON PREMISES  
17 THAT ARE PHYSICALLY SEPARATED FROM ANY AREAS OF THE SAME OR  
18 ADJACENT ESTABLISHMENTS IN WHICH SMOKING IS PROHIBITED UNDER THIS  
19 PART OR PART 129 AND WHERE SMOKE DOES NOT INFILTRATE INTO THOSE  
20 NONSMOKING AREAS. AS USED IN THIS SUBDIVISION, "PHYSICALLY  
21 SEPARATED" MEANS AN AREA THAT IS ENCLOSED ON ALL SIDES BY ANY  
22 COMBINATION OF SOLID WALLS, WINDOWS, OR DOORS THAT EXTEND FROM THE  
23 FLOOR TO CEILING.

24 (D) THE TOBACCO SPECIALTY RETAIL STORE PROHIBITS ENTRY TO A  
25 PERSON UNDER THE AGE OF 18 DURING THE TIME THE TOBACCO SPECIALTY  
26 RETAIL STORE IS OPEN FOR BUSINESS.

27 (3) THE DEPARTMENT MAY REQUEST ADDITIONAL INFORMATION FROM A

1 CIGAR BAR OR TOBACCO SPECIALTY RETAIL STORE TO VERIFY THAT THE  
2 CIGAR BAR OR TOBACCO SPECIALTY RETAIL STORE MEETS THE REQUIREMENTS  
3 OF THIS SECTION. A CIGAR BAR OR TOBACCO SPECIALTY RETAIL STORE  
4 SHALL COMPLY WITH REQUESTS FROM THE DEPARTMENT UNDER THIS SECTION.

5 (4) THE INFORMATION SUBMITTED BY A CIGAR BAR OR A TOBACCO  
6 SPECIALTY RETAIL STORE TO THE DEPARTMENT UNDER THIS SECTION IS  
7 EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976  
8 PA 442, MCL 15.231 TO 15.246.

9 (5) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A CIGAR  
10 BAR OR TOBACCO SPECIALTY RETAIL STORE THAT DOES NOT MEET THE  
11 REQUIREMENTS OF THIS SECTION OR VIOLATES THIS SECTION IS NOT EXEMPT  
12 FROM THE SMOKING PROHIBITION OF SECTION 12603 AND SHALL IMMEDIATELY  
13 PROHIBIT SMOKING ON ITS PREMISES. A CIGAR BAR OR TOBACCO SPECIALTY  
14 RETAIL STORE THAT MEETS ALL OF THE REQUIREMENTS OF THIS SECTION  
15 OTHER THAN FILING THE AFFIDAVIT AS REQUIRED UNDER SUBSECTION (1) OR  
16 (2), RETAINS ITS EXEMPTION AND MAY CONTINUE TO ALLOW SMOKING DURING  
17 THE PERIOD BEGINNING ON THE DATE THE AFFIDAVIT IS DUE AND ENDING ON  
18 THE EXPIRATION OF 21 DAYS AFTER THAT DATE. HOWEVER, IF THE  
19 AFFIDAVIT REMAINS UNFILED AFTER THE 21-DAY GRACE PERIOD, THE CIGAR  
20 BAR OR TOBACCO SPECIALTY RETAIL STORE IS NOT EXEMPT FROM THE  
21 SMOKING PROHIBITION OF SECTION 12603 AND SHALL IMMEDIATELY PROHIBIT  
22 SMOKING ON ITS PREMISES. A CIGAR BAR OR TOBACCO SPECIALTY RETAIL  
23 STORE THAT LOSES ITS EXEMPTION UNDER THIS SUBSECTION IS NOT EXEMPT  
24 FROM THE SMOKING PROHIBITION OF SECTION 12603, SHALL IMMEDIATELY  
25 PROHIBIT SMOKING ON ITS PREMISES, AND MAY ONLY AGAIN QUALIFY FOR  
26 THE EXEMPTION UNDER THIS SECTION BY FILING AN AFFIDAVIT AND MEETING  
27 ALL OF THE REQUIREMENTS OF SUBSECTION (1) OR (2), AS APPLICABLE.

1           Sec. 12611. A person ~~who violates section 12603(1) or 12604a~~  
2 ~~or a person~~ or state or local governmental agency that ~~owns or~~  
3 ~~operates a public place and that violates section 12605 or 12607~~  
4 **THIS PART OR PART 129** shall be directed to comply with this ~~part~~  
5 **ACT** and is subject to a civil fine of not more than \$100.00 for a  
6 first violation and not more than \$500.00 for a second or  
7 subsequent violation.

8           Sec. 12613. (1) Subject to subsection (2), the department  
9 shall enforce this part **AND PART 129** and **ANY** rules promulgated  
10 under this part **OR PART 129** pursuant to sections 2262(2) and 2263.  
11 In addition to the civil fine authorized under section 12611, the  
12 department may enforce this part **AND PART 129** and ~~the~~**ANY** rules  
13 promulgated under this part **OR PART 129** through an action commenced  
14 pursuant to section 2255 or any other appropriate action authorized  
15 by law.

16           (2) Pursuant to section 2235, the department may authorize a  
17 local health department to enforce this part **AND PART 129** and ~~the~~  
18 **ANY** rules promulgated under this part **OR PART 129**. A local health  
19 department authorized to enforce this part **AND PART 129** and ~~the~~**ANY**  
20 rules promulgated under this part **OR PART 129** shall enforce this  
21 part **AND PART 129** and ~~the~~**ANY** rules promulgated under this part **OR**  
22 **PART 129** pursuant to sections 2461(2) and 2462. In addition to the  
23 civil fine authorized under section 12611, a local health  
24 department may enforce this part **AND PART 129** and ~~the~~**ANY** rules  
25 promulgated under this part **OR PART 129** through an action commenced  
26 pursuant to section 2465 or any other appropriate action authorized  
27 by law.

1           (3) In addition to any other enforcement action authorized by  
 2 law, a person alleging a violation of this part **OR PART 129** may  
 3 bring a civil action for appropriate injunctive relief, if the  
 4 person has used ~~the public place, child caring institution, child~~  
 5 ~~care center, health facility, or private practice office of an~~  
 6 ~~individual who is licensed under article 15~~ **ENTERED THE COMMERCIAL**  
 7 **OR PUBLIC BUILDING** within 60 days ~~after~~ **BEFORE** the civil action is  
 8 filed.

9           (4) The remedies under this part are independent and  
 10 cumulative. The use of 1 remedy by a person shall not bar the use  
 11 of other lawful remedies by that person or the use of a lawful  
 12 remedy by another person.

13           Sec. 12614. (1) The director shall report biennially to the  
 14 legislature on the effect and enforcement of this part **AND PART**  
 15 **129**. The report shall include, at a minimum, ~~both of the following:~~  
 16 ~~—— (a) The policy of each state agency that has developed a~~  
 17 ~~policy for the separation of smokers and nonsmokers.~~  
 18 ~~—— (b) Compliance~~ **COMPLIANCE** with section ~~12607~~ **SECTIONS 12603**  
 19 **AND 12905**.

20           (2) Upon request of the department, the director of the  
 21 department of management and budget annually shall report to the  
 22 department, at a minimum, ~~all of the following:~~

23 ~~—— (a) A~~ **A** list of each public place owned or operated by the  
 24 state -

25 ~~—— (b) Compliance~~ **AND ITS COMPLIANCE** with section ~~12607~~ **12603**.

26 ~~—— (c) The smoking policy, if any, adopted by each public place~~  
 27 ~~listed under subdivision (a).~~



1 ~~——(4) In addition to a food service establishment that provides~~  
 2 ~~its own seating, subsections (1), (2), and (3) also apply~~ **PART 126**  
 3 **APPLIES** to a food service establishment or group of food service  
 4 establishments that are located in a shopping mall ~~where~~ **IN WHICH**  
 5 the seating for the food service establishment or group of food  
 6 service establishments is provided or maintained, or both, by the  
 7 person who owns or operates the shopping mall. ~~As used in this~~  
 8 ~~subsection, "shopping mall" means a shopping center with stores~~  
 9 ~~facing an enclosed mall.~~

10 (2) ~~(5) The director, an authorized representative of the~~  
 11 ~~director, or a representative of a local health department to which~~  
 12 ~~the director has delegated responsibility for enforcement of this~~  
 13 ~~part shall, in accordance with R 325.25902 of the Michigan~~  
 14 ~~administrative code, inspect each food service establishment that~~  
 15 ~~is subject to this section. The inspecting entity shall determine~~  
 16 ~~compliance with this section during each inspection.~~

17 (3) ~~(6) The department or a local health department shall~~  
 18 ~~utilize compliance or~~ **NOTIFY THE DEPARTMENT OF AGRICULTURE OF ANY**  
 19 ~~noncompliance with this section or with rules promulgated to~~  
 20 ~~implement this section.~~ **THE DEPARTMENT OF AGRICULTURE MAY USE**  
 21 **COMPLIANCE OR NONCOMPLIANCE WITH THIS SECTION OR ANY RULES**  
 22 **PROMULGATED TO IMPLEMENT THIS SECTION** as criteria in the  
 23 determination of whether to deny, suspend, limit, or revoke a  
 24 license ~~pursuant to section 12907(1)~~ **ISSUED UNDER THE FOOD LAW OF**  
 25 **2000, 2000 PA 92, MCL 289.1101 TO 289.8111.**

26 (4) ~~(7) Within 5 days after receipt of a written complaint of~~  
 27 ~~violation of this section, a local health department shall~~

1 investigate the complaint to determine compliance. If a violation  
2 of this section is identified and not corrected as ordered by the  
3 local health department within 2 days after receipt of the order by  
4 the food service establishment, the local health officer may issue  
5 an order to cease food service operations until compliance with  
6 this section is achieved.

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

13 (5) ~~(9)~~ As used in this section:

14 ~~—— (a) "Bar" means that term as defined in section 2a of the~~  
15 ~~Michigan liquor control act, Act No. 8 of the Public Acts of the~~  
16 ~~Extra Session of 1933, being section 436.2a of the Michigan~~  
17 ~~Compiled Laws.~~

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

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

25 (A) "FOOD SERVICE ESTABLISHMENT" MEANS THAT TERM AS DEFINED IN  
26 SECTION 1107 OF THE FOOD LAW OF 2000, 2000 PA 92, MCL 289.1107.  
27 FOOD SERVICE ESTABLISHMENT DOES NOT INCLUDE A CIGAR BAR OR TOBACCO

1 SPECIALTY RETAIL STORE EXEMPT UNDER SECTION 12606.

2 (B) "SHOPPING MALL" MEANS A SHOPPING CENTER WITH STORES FACING  
3 AN ENCLOSED MALL.

4 (C) ~~(d) "Smoking", means the carrying by an individual of a~~  
5 ~~lighted cigar, cigarette, or other lighted smoking device~~ "SMOKING  
6 PARAPHERNALIA", AND "TOBACCO PRODUCT" MEAN THOSE TERMS AS DEFINED  
7 IN SECTION 12601.

8 Sec. 12915. A county, city, village, or township ~~shall not~~  
9 ~~regulate those aspects of food service establishments or vending~~  
10 ~~machines which are subject to regulation under this part except to~~  
11 ~~the extent necessary to carry out the responsibility of a local~~  
12 ~~health department pursuant to sections 12906 and 12908~~ **MAY ADOPT**  
13 **AND ENFORCE LOCAL CODES, ORDINANCES, OR REGULATIONS THAT COMPLY**  
14 **WITH AT LEAST THE MINIMUM APPLICABLE STANDARDS SET FORTH IN THIS**  
15 **PART.** This part shall not relieve the applicant for a license or a  
16 licensee from responsibility for securing a local permit or  
17 complying with applicable local codes, regulations, or ordinances  
18 ~~not~~ **THAT ARE** in conflict with **ADDITION TO** this part.

19 Enacting section 1. (1) Sections 12604a, 12605, 12607, 12615,  
20 12617, 12909, 21333, and 21733 of the public health code, 1978 PA  
21 368, MCL 333.12604a, 333.12605, 333.12607, 333.12615, 333.12617,  
22 333.12909, 333.21333, and 333.21733, are repealed.

23 (2) Section 6127 of the food law of 2000, 2000 PA 92, MCL  
24 289.6127, is repealed.