

# HOUSE BILL No. 5637

December 2, 2009, Introduced by Rep. Geiss and referred to the Committee on Regulatory Reform.

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

9       (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 smokers.  
5 A food service establishment with a seating capacity of 50 or more  
6 that is not owned or operated by a private club may designate up to  
7 50% of its seating capacity as seating for smokers. A food service  
8 establishment that designates seating for smokers shall clearly  
9 identify the seats for nonsmokers as nonsmoking, place the seats  
10 for nonsmokers in close proximity to each other, and locate the  
11 seats for nonsmokers so as not to discriminate against nonsmokers.  
12 **A FOOD SERVICE ESTABLISHMENT SHALL NOT ALLOW AN INDIVIDUAL UNDER 18**  
13 **YEARS OF AGE, WHETHER OR NOT ACCOMPANIED BY AN ADULT, TO SIT IN AN**  
14 **AREA DESIGNATED AS SEATING FOR SMOKERS.**

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

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

27 (5) The director, an authorized representative of the

1 director, or a representative of a local health department to which  
 2 the director has delegated responsibility for enforcement of this  
 3 part shall ~~, in accordance with R 325.25902 of the Michigan~~  
 4 ~~administrative code,~~ inspect each food service establishment that  
 5 is subject to this section. The inspecting entity shall determine  
 6 compliance with this section during each inspection.

7 (6) The department or a local health department shall ~~utilize~~  
 8 ~~compliance or~~ **NOTIFY THE DEPARTMENT OF AGRICULTURE OF ANY**  
 9 noncompliance with this section or with rules promulgated to  
 10 implement this section. **THE DEPARTMENT OF AGRICULTURE MAY USE**  
 11 **COMPLIANCE OR NONCOMPLIANCE WITH THIS SECTION AND ANY RULES**  
 12 **PROMULGATED TO IMPLEMENT THIS SECTION** as criteria in the  
 13 determination of whether to deny, suspend, limit, or revoke a  
 14 license ~~pursuant to section 12907(1)~~ **ISSUED UNDER THE FOOD LAW OF**  
 15 **2000, 2000 PA 92, MCL 289.1101 TO 289.8111.**

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

24 (8) This section does not apply to a **THE FOLLOWING:**

25 (A) A private facility that is serviced by a catering kitchen  
 26 or to a separate room in a food service establishment that is used  
 27 for private banquets. ~~This section does not apply to a~~

1           **(B) A** food service establishment that is owned and operated by  
2 a fraternal organization, if service is limited to members of the  
3 fraternal organization and their guests.

4           (9) As used in this section:

5           (a) "Bar" means that term as defined in section ~~2a-105~~ of the  
6 Michigan liquor control act, ~~Act No. 8 of the Public Acts of the~~  
7 ~~Extra Session of 1933, being section 436.2a of the Michigan~~  
8 ~~Compiled Laws~~ **CODE OF 1998, 1998 PA 58, MCL 436.1105.**

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

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

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