

HOUSE BILL No. 5803

February 10, 2010, 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 sections 12603 and 12905 (MCL 333.12603 and 333.12905), as amended by 2009 PA 188, and by adding section 12603a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 12603. (1) ~~An~~**EXCEPT AS OTHERWISE PROVIDED IN THIS PART,**
2 **AN** individual shall not smoke in a public place or at a meeting of
3 a public body, and a state or local governmental agency or the
4 person who owns, operates, manages, or is in control of a public
5 place shall make a reasonable effort to prohibit individuals from
6 smoking in a public place.

7 (2) The owner, operator, manager, or person having control of

1 a public place, a food service establishment, or a casino subject
2 to section 12606b shall do all of the following:

3 (a) Clearly and conspicuously post "no smoking" signs or the
4 international "no smoking" symbol at the entrances to and in every
5 building or other area where smoking is prohibited under this act.

6 (b) Remove all ashtrays and other smoking paraphernalia from
7 anywhere smoking is prohibited under this act.

8 (c) Inform individuals smoking in violation of this act that
9 they are in violation of state law and subject to penalties.

10 (d) If applicable, refuse to serve an individual smoking in
11 violation of this act.

12 (e) Ask an individual smoking in violation of this act to
13 refrain from smoking and, if the individual continues to smoke in
14 violation of this act, ask him or her to leave the public place,
15 food service establishment, or nonsmoking area of the casino.

16 (3) The owner, operator, manager, or person in control of a
17 hotel, motel, or other lodging facility shall comply with
18 subsection (2) and section 12606. It is an affirmative defense to a
19 prosecution or civil or administrative action for a violation of
20 this section that the owner, operator, manager, or person in
21 control of a hotel, motel, or other lodging facility where smoking
22 is prohibited under this section made a good faith effort to
23 prohibit smoking by complying with subsection (2). To assert the
24 affirmative defense under this subsection, the owner, operator,
25 manager, or person shall file a sworn affidavit setting forth his
26 or her efforts to prohibit smoking and his or her actions of
27 compliance with subsection (2).

1 (4) This section may be referred to as the "Dr. Ron Davis
2 Law".

3 SEC. 12603A. THE OWNER OR OPERATOR OF A FOOD SERVICE
4 ESTABLISHMENT OR A PLACE OF EMPLOYMENT THAT IS NOT A PUBLIC PLACE
5 DESCRIBED IN SECTION 12601(Q) (i) OR (ii) MAY ALLOW SMOKING IN A LEGAL
6 SMOKING ROOM IN THE ELIGIBLE PLACE OF EMPLOYMENT OR FOOD SERVICE
7 ESTABLISHMENT IF ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

8 (A) THE LEGAL SMOKING ROOM IS AN ENCLOSED ROOM SEPARATE FROM
9 THE NONSMOKING AREAS OF THE ELIGIBLE PLACE OF EMPLOYMENT OR FOOD
10 SERVICE ESTABLISHMENT. THE LEGAL SMOKING ROOM SHALL BE ENCLOSED ON
11 ALL SIDES BY ANY COMBINATION OF SOLID WALLS, WINDOWS, OR DOORS THAT
12 EXTEND FROM THE FLOOR TO CEILING.

13 (B) THE LEGAL SMOKING ROOM IS EQUIPPED WITH 1 OF THE
14 FOLLOWING:

15 (i) A SEPARATE VENTILATION OR AIR FILTRATION SYSTEM DESIGNED TO
16 REMOVE SMOKE FROM THE AIR IN THE ROOM AND PREVENT SMOKE FROM
17 INFILTRATING INTO THE NONSMOKING AREAS OF THE ELIGIBLE PLACE OF
18 EMPLOYMENT OR FOOD SERVICE ESTABLISHMENT.

19 (ii) A DOUBLE-DOOR SYSTEM DESIGNED TO PREVENT THE RELEASE OF
20 SMOKE FROM THE ROOM BY TRAPPING IT BETWEEN THE 2 DOORS AND
21 PREVENTING SMOKE FROM INFILTRATING INTO THE NONSMOKING AREAS OF THE
22 ELIGIBLE PLACE OF EMPLOYMENT OR FOOD SERVICE ESTABLISHMENT.

23 (C) NO INDIVIDUAL IS REQUIRED TO ENTER OR PASS THROUGH THE
24 LEGAL SMOKING ROOM OF THE ELIGIBLE PLACE OF EMPLOYMENT OR FOOD
25 SERVICE ESTABLISHMENT UNLESS HE OR SHE DOES SO ON A VOLUNTARY
26 BASIS. THIS SUBDIVISION APPLIES TO AN EMPLOYEE OF THE OWNER OR
27 OPERATOR OF AN ELIGIBLE PLACE OF EMPLOYMENT OR FOOD SERVICE

1 ESTABLISHMENT, AND SECTION 12606 APPLIES TO THE RIGHT GRANTED TO
2 EMPLOYEES UNDER THIS SUBDIVISION.

3 (D) THE LEGAL SMOKING ROOM IS CLOSED 1 HOUR OR MORE BEFORE THE
4 END OF NORMAL BUSINESS HOURS OF THE ELIGIBLE PLACE OF EMPLOYMENT OR
5 FOOD SERVICE ESTABLISHMENT TO ALLOW THOROUGH VENTILATION BEFORE ANY
6 EMPLOYEE IS REQUIRED TO ENTER THE ROOM TO PERFORM ANY CLEANING OR
7 OTHER ROOM MAINTENANCE.

8 Sec. 12905. (1) ~~An~~ EXCEPT AS OTHERWISE PROVIDED IN SECTION
9 12603A, AN individual shall not smoke in a food service
10 establishment, and the person who owns, operates, manages, or is in
11 control of a food service establishment shall make reasonable
12 effort to prohibit individuals from smoking in a food service
13 establishment.

14 (2) In addition to a food service establishment that provides
15 its own seating, subsection (1) applies to a food service
16 establishment or group of food service establishments that are
17 located in a shopping mall in which the seating for the food
18 service establishment or group of food service establishments is
19 provided or maintained, or both, by the person who owns or operates
20 the shopping mall.

21 (3) The director, an authorized representative of the
22 director, or a representative of a local health department to which
23 the director has delegated responsibility for enforcement of this
24 part shall inspect each food service establishment that is subject
25 to this section. The inspecting entity shall determine compliance
26 with this section during each inspection.

27 (4) Within 5 days after receipt of a written complaint of

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

8 (5) ~~A~~ **EXCEPT AS OTHERWISE PROVIDED IN SECTION 12603A, A** food
9 service establishment shall comply with sections 12603(2) and
10 12606. It is an affirmative defense to a prosecution or civil or
11 administrative action for a violation of this section that the
12 owner, operator, manager, or person in control of a food service
13 establishment where smoking is prohibited under this section made a
14 good faith effort to prohibit smoking by complying with section
15 12603(2). To assert the affirmative defense under this subsection,
16 the owner, operator, manager, or person shall file a sworn
17 affidavit setting forth his or her efforts to prohibit smoking and
18 his or her actions of compliance with section 12603(2).

19 (6) An individual who violates this part shall be directed to
20 comply with this part and is subject to a civil fine of not more
21 than \$100.00 for a first violation and not more than \$500.00 for a
22 second or subsequent violation.

23 (7) As used in this section:

24 (a) "Food service establishment" means that term as defined in
25 section 1107 of the food law of 2000, 2000 PA 92, MCL 289.1107.

26 (b) "Shopping mall" means a shopping center with stores facing
27 an enclosed mall.

1 (c) "Smoking" means that term as defined in section 12601.
2 Enacting section 1. This amendatory act takes effect May 1,
3 2010.