

# HOUSE BILL No. 4447

March 16, 2011, Introduced by Reps. Melton, Geiss and Haugh 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 2009 PA  
188.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 12905. (1) ~~An~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS**  
2 **SECTION, AN** individual shall not smoke in a food service  
3 establishment, and the person who owns, operates, manages, or is in  
4 control of a food service establishment shall make reasonable  
5 effort to prohibit individuals from smoking in a food service  
6 establishment. **THIS SECTION DOES NOT APPLY TO THE OUTDOOR PATIO**  
7 **AREA OF A FOOD SERVICE ESTABLISHMENT.**

8       (2) In addition to a food service establishment that provides  
9 its own seating, subsection (1) applies to a food service

1 establishment or group of food service establishments that are  
2 located in a shopping mall in which the seating for the food  
3 service establishment or group of food service establishments is  
4 provided or maintained, or both, by the person who owns or operates  
5 the shopping mall.

6 (3) The director, an authorized representative of the  
7 director, or a representative of a local health department to which  
8 the director has delegated responsibility for enforcement of this  
9 part shall inspect each food service establishment that is subject  
10 to this section. The inspecting entity shall determine compliance  
11 with this section during each inspection.

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

20 (5) A food service establishment **THAT IS SUBJECT TO THIS**  
21 **SECTION** shall comply with sections 12603(2) and 12606. It is an  
22 affirmative defense to a prosecution or civil or administrative  
23 action for a violation of this section that the owner, operator,  
24 manager, or person in control of a food service establishment where  
25 smoking is prohibited under this section made a good faith effort  
26 to prohibit smoking by complying with section 12603(2). To assert  
27 the affirmative defense under this subsection, the owner, operator,

1 manager, or person shall file a sworn affidavit setting forth his  
2 or her efforts to prohibit smoking and his or her actions of  
3 compliance with section 12603(2).

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

8 (7) As used in this section:

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

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

13 (c) "Smoking" OR "**SMOKE**" means that term as defined in section  
14 12601.