

HOUSE BILL No. 5801

September 16, 2014, Introduced by Reps. McMillin, Franz and Dianda and referred to the Committee on Regulatory Reform.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 12601 and 12905 (MCL 333.12601 and 333.12905),
as amended by 2009 PA 188.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 12601. (1) As used in this part:

2 (a) "Casino" means that term as defined in section 2 of the
3 Michigan gaming control and revenue act, 1996 IL 1, MCL 432.202.
4 Casino does not include a casino operated under the Indian gaming
5 regulatory act, 25 USC 2701 to 2721.

6 (b) "Child caring institution" and "child care center" mean
7 those terms as defined in section 1 of 1973 PA 116, MCL 722.111.

8 (c) "Cigar" means any roll of tobacco weighing 3 or more

1 pounds per 1,000, which roll has a wrapper or cover consisting only
2 of tobacco.

3 (d) "Cigar bar" means an establishment or area within an
4 establishment that is open to the public and is designated for the
5 smoking of cigars, purchased on the premises or elsewhere.

6 (e) "County medical care facility" means that term as defined
7 in section 20104.

8 (f) "Educational facility" means a building owned, leased, or
9 under the control of a public or private school system, college, or
10 university.

11 (g) "Food service establishment" means ~~a food service~~
12 ~~establishment~~ **THAT TERM** as defined in section 12905.

13 (h) "Health facility" means a health facility or agency
14 licensed under article 17, except a home for the aged, nursing
15 home, county medical care facility, hospice, or hospital long-term
16 care unit.

17 (i) "Home for the aged" means that term as defined in section
18 20106.

19 (j) "Hospice" means that term as defined in section 20106.

20 (k) "Hospital long-term care unit" means that term as defined
21 in section 20106.

22 (l) "Meeting" means a meeting as defined in section 2 of the
23 open meetings act, 1976 PA 267, MCL 15.262.

24 (m) "Motor vehicle" means that term as defined in section 33
25 of the Michigan vehicle code, 1949 PA 300, MCL 257.33.

26 (n) "Nursing home" means that term as defined in section
27 20109.

1 (o) "Place of employment" means an enclosed indoor area that
2 contains 1 or more work areas for 1 or more persons employed by a
3 public or private employer. Place of employment does not include
4 any of the following:

5 (i) A structure used primarily as the residence of the owner or
6 lessee that is also used as an office for the owner or lessee and
7 for no other employees.

8 (ii) A food service establishment that is subject to section
9 12905.

10 (iii) A motor vehicle.

11 (iv) **AN ORGANIZATION OF THE VETERANS OF FOREIGN WARS, THE**
12 **AMERICAN LEGION, OR ANY OTHER WAR VETERANS' ORGANIZATION.**

13 (p) "Public body" means a public body as defined in section 2
14 of the open meetings act, 1976 PA 267, MCL 15.262.

15 (q) "Public place" ~~, except as otherwise provided in~~
16 ~~subsection (2),~~ means any of the following:

17 (i) An enclosed, indoor area owned or operated by a state or
18 local governmental agency and used by the general public or serving
19 as a meeting place for a public body, including an office,
20 educational facility, home for the aged, nursing home, county
21 medical care facility, hospice, hospital long-term care unit,
22 auditorium, arena, meeting room, or public conveyance.

23 (ii) An enclosed, indoor area that is not owned or operated by
24 a state or local governmental agency, is used by the general
25 public, and is any of the following:

26 (A) An educational facility.

27 (B) A home for the aged, nursing home, county medical care

1 facility, hospice, or hospital long-term care unit.

2 (C) An auditorium.

3 (D) An arena.

4 (E) A theater.

5 (F) A museum.

6 (G) A concert hall.

7 (H) Any other facility during the period of its use for a
8 performance or exhibit of the arts.

9 (iii) Unless otherwise exempt under this part, a place of
10 employment.

11 (r) "Smoking" or "smoke" means the burning of a lighted cigar,
12 cigarette, pipe, or any other matter or substance that contains a
13 tobacco product.

14 (s) "Smoking paraphernalia" means any equipment, apparatus, or
15 furnishing that is used in or necessary for the activity of
16 smoking.

17 (t) "Tobacco product" means a product that contains tobacco
18 and is intended for human consumption, including, but not limited
19 to, cigarettes, noncigarette smoking tobacco, or smokeless tobacco,
20 as those terms are defined in section 2 of the tobacco products tax
21 act, 1993 PA 327, MCL 205.422, and cigars.

22 (u) "Tobacco specialty retail store" means an establishment in
23 which the primary purpose is the retail sale of tobacco products
24 and smoking paraphernalia, and in which the sale of other products
25 is incidental. Tobacco specialty retail store does not include a
26 tobacco department or section of a larger commercial establishment
27 or any establishment with any type of liquor, food, or restaurant

1 license.

2 (v) "Work area" means a site within a place of employment at
3 which 1 or more employees perform services for an employer.

4 (2) In addition, article 1 contains general definitions and
5 principles of construction applicable to all articles of this code.

6 Sec. 12905. (1) An individual shall not smoke in a food
7 service establishment, and the person who owns, operates, manages,
8 or is in control of a food service establishment shall make
9 reasonable effort to prohibit individuals from smoking in a food
10 service establishment.

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

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

24 (4) Within 5 days after receipt of a written complaint of
25 violation of this section, a local health department shall
26 investigate the complaint to determine compliance. If a violation
27 of this section is identified and not corrected as ordered by the

1 local health department within 2 days after receipt of the order by
2 the food service establishment, the local health officer may issue
3 an order to cease food service operations until compliance with
4 this section is achieved.

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

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

20 (7) As used in this section:

21 (a) "Food service establishment" means that term as defined in
22 section 1107 of the foodlaw, ~~of 2000~~, 2000 PA 92, MCL 289.1107.

23 **FOOD SERVICE ESTABLISHMENT DOES NOT INCLUDE A CIGAR BAR THAT IS**
24 **EXEMPT FROM THE SMOKING PROHIBITION UNDER SECTION 12606A, OR AN**
25 **ORGANIZATION DESCRIBED IN SECTION 12601(1)(O) (iv).**

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

1 (c) "Smoking" OR "**SMOKE**" means that term as defined in section
2 12601.