

**PUBLIC HEALTH CODE (EXCERPT)**

**Act 368 of 1978**

**333.12905 Food service establishment; smoking prohibited; shopping malls; inspection; determination of compliance; investigation of complaint; order to cease food service operations; good faith effort to prohibit smoking; affirmative defense; affidavit; violation; civil fine; definitions.**

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

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

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

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

(5) A food service establishment shall comply with sections 12603(2) and 12606. It is an affirmative defense to a prosecution or civil or administrative action for a violation of this section that the owner, operator, manager, or person in control of a food service establishment where smoking is prohibited under this section made a good faith effort to prohibit smoking by complying with section 12603(2). To assert the affirmative defense under this subsection, the owner, operator, manager, or person shall file a sworn affidavit setting forth his or her efforts to prohibit smoking and his or her actions of compliance with section 12603(2).

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

(7) As used in this section:

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

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

(c) "Smoking" means that term as defined in section 12601.

**History:** 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1986, Act 96, Eff. July 1, 1986;—Am. 1988, Act 297, Eff. Mar. 30, 1989;—Am. 1993, Act 242, Eff. Apr. 1, 1994;—Am. 2009, Act 188, Eff. May 1, 2010.

**Popular name:** Act 368