

# HOUSE BILL No. 6269

November 5, 1998, Introduced by Rep. Varga and referred to the Committee on Regulatory Affairs.

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

1       (2) Subject to subsection (3), a food service establishment  
2 with a seating capacity of fewer than 50, whether or not it is  
3 owned and operated by a private club, and a food service estab-  
4 lishment that is owned and operated by a private club may desig-  
5 nate up to 75% of its seating capacity as seating for smokers. A  
6 food service establishment with a seating capacity of 50 or more  
7 that is not owned or operated by a private club may designate up  
8 to 50% of its seating capacity as seating for smokers. A food  
9 service establishment that designates seating for smokers shall  
10 clearly identify the seats for nonsmokers as nonsmoking, place  
11 the seats for nonsmokers in close proximity to each other, and  
12 locate the seats for nonsmokers so as not to discriminate against  
13 nonsmokers.

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

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

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

9       (6) The department or a local health department shall uti-  
10 lize compliance or noncompliance with this section or with rules  
11 promulgated to implement this section as criteria in the determi-  
12 nation of whether to deny, suspend, limit, or revoke a license  
13 pursuant to section 12907(1).

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

22       (8) This section does not apply to a private facility that  
23 is serviced by a catering kitchen or to a separate room in a food  
24 service establishment that is used for private banquets. This  
25 section does not apply to a food service establishment that is  
26 owned and operated by a fraternal organization, if service is

1 limited to members of the fraternal organization and their  
2 guests.

3 (9) As used in this section:

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

9 (b) "Room" means an area that is physically distinct from  
10 the main dining area of a food service establishment and from  
11 which 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  
14 not include seats located at a bar or seats at tables that are  
15 located adjacent to a bar, if meals are not served at those  
16 tables.

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