

HOUSE BILL No. 4668

April 26, 2005, Introduced by Reps. Lemmons, Jr., Lemmons, III, Sheltrown, Leland, Alma Smith and Clack and referred to the Committee on Commerce.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 12905 and 12922 (MCL 333.12905 and 333.12922), section 12905 as amended by 1993 PA 242, and by amending the heading to part 129; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

PART 129. ~~FOOD SERVICE SANITATION~~ SMOKE-FREE FOOD SERVICE ESTABLISHMENTS

Sec. 12905. (1) ~~Except as otherwise provided in this section,~~
all public areas of a **A** food service establishment shall ~~be~~
~~nonsmoking~~ **NOT ALLOW SMOKING AND A PERSON SHALL NOT SMOKE IN A**
PUBLIC AREA OF A FOOD SERVICE ESTABLISHMENT. ~~As used in this~~
subsection, "public area" includes, but is not limited to, a
bathroom, a coatroom, and an entrance or other area used by a
patron when not seated at a food service table or counter. Public
area does not include the lobby, waiting room, hallways, and lounge

1 ~~areas of a food service establishment, but these areas are not~~
2 ~~required to be designated as smoking areas.~~

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

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

19 (2) ~~—(4)—~~ In addition to a food service establishment that
20 provides its own seating, ~~subsections (1), (2), and (3) also apply~~
21 **SUBSECTION (1) APPLIES** to a food service establishment or group of
22 food service establishments that are located in a shopping mall
23 ~~where~~ **IN WHICH** the seating for the food service establishment or
24 group of food service establishments is provided or maintained, or
25 both, by the person who owns or operates the shopping mall. ~~As~~
26 ~~used in this subsection, "shopping mall" means a shopping center~~
27 ~~with stores facing an enclosed mall.~~

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

8 (4) ~~—(6)—~~ The department or a local health department shall
9 utilize compliance or noncompliance with this section or with rules
10 promulgated to implement this section as criteria in the
11 ~~determination~~ **RECOMMENDATION TO THE DEPARTMENT OF AGRICULTURE** of
12 whether to deny, suspend, limit, or revoke a license ~~—pursuant to~~
13 ~~section 12907(1)~~ **ISSUED UNDER THE FOOD LAW OF 2000, 2000 PA 92, MCL**
14 **289.1101 TO 289.8111.**

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

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

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

2 (6) ~~-(9)-~~ As used in this section:

3 ~~----- (a) "Bar" means that term as defined in section 2a of the~~
4 ~~Michigan liquor control act, Act No. 8 of the Public Acts of the~~
5 ~~Extra Session of 1933, being section 436.2a of the Michigan~~
6 ~~Compiled Laws.~~

7 ~~----- (b) "Room" means an area that is physically distinct from the~~
8 ~~main dining area of a food service establishment and from which~~
9 ~~smoke cannot pass into the main dining area.~~

10 ~~----- (c) "Seating capacity" means the actual number of seats for~~
11 ~~patrons in a food service establishment. Seating capacity does not~~
12 ~~include seats located at a bar or seats at tables that are located~~
13 ~~adjacent to a bar, if meals are not served at those tables.~~

14 (A) "FOOD SERVICE ESTABLISHMENT" MEANS THAT TERM AS DEFINED IN
15 SECTION 1107 OF THE FOOD LAW OF 2000, 2000 PA 92, MCL 289.1107.

16 (B) "PUBLIC AREA" MEANS ANY AREA WITHIN A FOOD SERVICE
17 ESTABLISHMENT IN WHICH A PERSON LESS THAN 18 YEARS OF AGE IS
18 ALLOWED TO BE PRESENT AND INCLUDES, BUT IS NOT LIMITED TO, A
19 BATHROOM, COATROOM, ENTRANCE OR OTHER AREA USED BY PATRONS WHEN NOT
20 SEATED, AND THE DINING AND LOUNGE AREAS OF A FOOD SERVICE
21 ESTABLISHMENT.

22 (C) "SHOPPING MALL" MEANS A SHOPPING CENTER WITH STORES FACING
23 AN ENCLOSED MALL.

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

26 Sec. 12922. A person who violates this part or a rule
27 promulgated under this part is ~~guilty of a misdemeanor~~ **LIABLE FOR**

1 **A CIVIL FINE OF NOT MORE THAN \$2,000.00 FOR EACH VIOLATION.**

2 Enacting section 1. Sections 12909 and 12915 of the public
3 health code, 1978 PA 368, MCL 333.12909 and 333.12915, are
4 repealed.

5 Enacting section 2. This amendatory act does not take effect
6 unless Senate Bill No.____ or House Bill No.____ (request no.
7 02687'05) of the 93rd Legislature is enacted into law.