

SENATE BILL No. 394

April 19, 2005, Introduced by Senators BASHAM, SCOTT, JACOBS and CLARKE and referred to the Committee on Government Operations.

A bill to amend 1978 PA 368, entitled "Public health code," by amending section 12905 (MCL 333.12905), 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

1 Sec. 12905. (1) Except as otherwise provided in this section,
 2
 3 ~~all public areas of~~ a food service establishment shall ~~be~~
 4 ~~nonsmoking~~ **NOT ALLOW SMOKING AND A PERSON SHALL NOT SMOKE IN A**
 5 **FOOD SERVICE ESTABLISHMENT.** ~~As used in this subsection, "public~~
 6 ~~area" includes, but is not limited to, a bathroom, a coatroom, and~~
 7 ~~an entrance or other area used by a patron when not seated at a~~
 8 ~~food service table or counter. Public area does not include the~~
 9

1 lobby, waiting room, hallways, and lounge areas of a food service
 2 establishment, but these areas are not required to be designated as
 3 smoking areas.

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

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

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

1 ~~with stores facing an enclosed mall.~~

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

9 (4) ~~—(6)—~~ The department or a local health department shall
10 utilize compliance or noncompliance with this section or with rules
11 promulgated to implement this section as criteria in the
12 ~~determination~~ **RECOMMENDATION TO THE DEPARTMENT OF AGRICULTURE** of
13 whether to deny, suspend, limit, or revoke a license ~~pursuant to~~
14 ~~section 12907(1)~~ **ISSUED UNDER THE FOOD LAW OF 2000, 2000 PA 92, MCL**
15 **289.1101 TO 289.8111.**

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

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

1 ~~owned and operated by a fraternal organization, if service is~~
 2 ~~limited to members of the fraternal organization and their guests.~~

3 (6) SIGNS OR THE INTERNATIONAL "NO SMOKING" SYMBOL SHALL BE
 4 CLEARLY AND CONSPICUOUSLY POSTED AT THE ENTRANCE TO AND IN EVERY
 5 BUILDING OR OTHER AREA WHERE SMOKING IS PROHIBITED UNDER THIS
 6 SECTION. THE OWNER, OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF
 7 THE BUILDING OR OTHER AREA SHALL POST THE SIGNAGE. THE OWNER,
 8 OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE AREA SHALL
 9 REMOVE ALL ASHTRAYS AND OTHER SMOKING PARAPHERNALIA FROM ANY AREA
 10 WHERE SMOKING IS PROHIBITED UNDER THIS SECTION.

11 (7) ~~(9)~~ As used in this section:

12 ~~—— (a) "Bar" means that term as defined in section 2a of the~~
 13 ~~Michigan liquor control act, Act No. 8 of the Public Acts of the~~
 14 ~~Extra Session of 1933, being section 436.2a of the Michigan~~
 15 ~~Compiled Laws.~~

16 ~~—— (b) "Room" means an area that is physically distinct from the~~
 17 ~~main dining area of a food service establishment and from which~~
 18 ~~smoke cannot pass into the main dining area.~~

19 ~~—— (c) "Seating capacity" means the actual number of seats for~~
 20 ~~patrons in a food service establishment. Seating capacity does not~~
 21 ~~include seats located at a bar or seats at tables that are located~~
 22 ~~adjacent to a bar, if meals are not served at those tables.~~

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

25 (B) "SHOPPING MALL" MEANS A SHOPPING CENTER WITH STORES FACING
 26 AN ENCLOSED MALL.

27 (C) ~~(d)~~ "Smoking" means the carrying by an individual of a

1 lighted cigar, cigarette, or other lighted smoking device.

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.