

SENATE BILL No. 395

April 19, 2005, Introduced by Senators GEORGE, BISHOP and BASHAM and referred to the Committee on Government Operations.

A bill to amend 1978 PA 368, entitled "Public health code," by amending section 12601 (MCL 333.12601), as amended by 1988 PA 315; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

2 (a) "Child caring institution" and "child care center" mean
3 those terms as defined in section 1 of ~~Act No. 116 of the Public~~
4 ~~Acts of 1973, being section 722.111 of the Michigan Compiled Laws~~
5 1973 PA 116, MCL 722.111.

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

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

1 university.

2 (d) "Food service establishment" means a food service
3 establishment as defined in section ~~12901~~ **1107 OF THE FOOD LAW OF**
4 **2000, 2000 PA 92, MCL 289.1107.**

5 (e) "Health facility" means a health facility or agency
6 licensed under article 17, except a home for the aged, nursing
7 home, county medical care facility, hospice, or hospital long-term
8 care unit.

9 (f) "Home for the aged" means that term as defined in section
10 20106.

11 (g) "Hospice" means that term as defined in section 20106.

12 (h) "Hospital long-term care unit" means that term as defined
13 in section 20106.

14 ~~——(i) "Licensed premises" means any portion of a building,~~
15 ~~structure, room, or enclosure in which alcoholic liquor may be sold~~
16 ~~for consumption on the premises pursuant to a license issued by the~~
17 ~~Michigan liquor control commission.~~

18 (I) ~~—(j)—~~ "Meeting" means a meeting as defined in section 2 of
19 the open meetings act, ~~Act No. 267 of the Public Acts of 1976,~~
20 ~~being section 15.262 of the Michigan Compiled Laws— 1976 PA 267,~~
21 **MCL 15.262.**

22 (J) ~~—(k)—~~ "Nursing home" means that term as defined in section
23 20109.

24 (K) **"PLACE OF EMPLOYMENT" MEANS AN ENCLOSED INDOOR AREA**
25 **SERVING AS THE WORK AREA FOR 1 OR MORE PERSONS EMPLOYED BY A PUBLIC**
26 **OR PRIVATE EMPLOYER. PLACE OF EMPLOYMENT DOES NOT INCLUDE A**
27 **STRUCTURE USED PRIMARILY AS THE RESIDENCE OF THE OWNER OR LESSEE**

1 **THAT IS ALSO USED AS AN OFFICE FOR THE OWNER OR LESSEE.**

2 (l) "Public body" means a public body as defined in section 2
3 of the open meetings act, ~~Act No. 267 of the Public Acts of 1976~~
4 **1976 PA 267, MCL 15.262.**

5 (m) "Public place", except as otherwise provided in subsection
6 (2), means ~~both~~ **ANY** of the following:

7 (i) An enclosed, indoor area owned or operated by a state or
8 local governmental agency and used by the general public or serving
9 as a place of work for public employees or a meeting place for a
10 public body, including an office, educational facility, home for
11 the aged, nursing home, county medical care facility, hospice,
12 hospital long-term care unit, auditorium, arena, meeting room, or
13 public conveyance.

14 (ii) An enclosed, indoor area which is not owned or operated
15 by a state or local governmental agency, is used by the general
16 public, and is 1 of the following:

17 (A) An educational facility.

18 (B) A home for the aged, nursing home, county medical care
19 facility, hospice, or hospital long-term care unit.

20 (C) An auditorium.

21 (D) An arena.

22 (E) A theater.

23 (F) A museum.

24 (G) A concert hall.

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

27 **(iii) A PLACE OF EMPLOYMENT.**

1 (n) "Smoking" or "smoke" means the carrying by a person of a
2 lighted cigar, cigarette, pipe, or other lighted smoking device.

3 ~~Public place does not include a private, enclosed room or~~
4 ~~office occupied exclusively by a smoker, even if the room or~~
5 ~~enclosed office may be visited by a nonsmoker.~~

6 (O) "WORK AREA" MEANS A SITE WITHIN A PLACE OF EMPLOYMENT AT
7 WHICH 1 OR MORE EMPLOYEES ARE ROUTINELY ASSIGNED TO PERFORM
8 SERVICES FOR AN EMPLOYER.

9 (2) AN INDIVIDUAL SHALL NOT SMOKE IN A PUBLIC PLACE OR AT A
10 MEETING OF A PUBLIC BODY.

11 (3) THE STATE OR LOCAL GOVERNMENTAL AGENCY OR THE PERSON WHO
12 OWNS OR OPERATES A PUBLIC PLACE SHALL POST SIGNS THAT STATE THAT
13 SMOKING IN THAT PUBLIC PLACE IS PROHIBITED.

14 (4) A PERSON WHO VIOLATES SUBSECTION (2) OR A STATE OR LOCAL
15 GOVERNMENTAL AGENCY OR THE PERSON WHO OWNS OR OPERATES A PUBLIC
16 PLACE WHO VIOLATES SUBSECTION (3) SHALL BE DIRECTED TO COMPLY WITH
17 THIS PART AND IS SUBJECT TO A CIVIL FINE OF NOT MORE THAN \$100.00
18 FOR A FIRST VIOLATION AND NOT MORE THAN \$500.00 FOR A SECOND OR
19 SUBSEQUENT VIOLATION.

20 (5) THE DEPARTMENT SHALL ENFORCE THIS PART AND RULES
21 PROMULGATED UNDER THIS PART PURSUANT TO SECTIONS 2262(2) AND 2263.
22 IN ADDITION TO THE CIVIL FINE AUTHORIZED UNDER SUBSECTION (4), THE
23 DEPARTMENT MAY ENFORCE THIS PART AND THE RULES PROMULGATED UNDER
24 THIS PART THROUGH AN ACTION COMMENCED PURSUANT TO SECTION 2255 OR
25 ANY OTHER APPROPRIATE ACTION AUTHORIZED BY LAW. PURSUANT TO SECTION
26 2235, THE DEPARTMENT MAY AUTHORIZE A LOCAL HEALTH DEPARTMENT TO
27 ENFORCE THIS PART AND THE RULES PROMULGATED UNDER THIS PART. A

1 LOCAL HEALTH DEPARTMENT AUTHORIZED TO ENFORCE THIS PART AND THE
2 RULES PROMULGATED UNDER THIS PART SHALL ENFORCE THIS PART AND THE
3 RULES PROMULGATED UNDER THIS PART PURSUANT TO SECTIONS 2461(2) AND
4 2462. IN ADDITION TO THE CIVIL FINE AUTHORIZED UNDER SUBSECTION
5 (4), A LOCAL HEALTH DEPARTMENT MAY ENFORCE THIS PART AND THE RULES
6 PROMULGATED UNDER THIS PART THROUGH AN ACTION COMMENCED PURSUANT TO
7 SECTION 2465 OR ANY OTHER APPROPRIATE ACTION AUTHORIZED BY LAW. IN
8 ADDITION TO ANY OTHER ENFORCEMENT ACTION AUTHORIZED BY LAW, A
9 PERSON ALLEGING A VIOLATION OF THIS PART MAY BRING A CIVIL ACTION
10 FOR APPROPRIATE INJUNCTIVE RELIEF, IF THE PERSON HAS USED THE
11 PUBLIC PLACE, CHILD CARING INSTITUTION, CHILD CARE CENTER, HEALTH
12 FACILITY, OR PRIVATE PRACTICE OFFICE OF AN INDIVIDUAL WHO IS
13 LICENSED UNDER ARTICLE 15 WITHIN 60 DAYS AFTER THE CIVIL ACTION IS
14 FILED. THE REMEDIES UNDER THIS PART ARE INDEPENDENT AND CUMULATIVE.
15 THE USE OF 1 REMEDY BY A PERSON SHALL NOT BAR THE USE OF OTHER
16 LAWFUL REMEDIES BY THAT PERSON OR THE USE OF A LAWFUL REMEDY BY
17 ANOTHER PERSON.

18 (6) THE DIRECTOR SHALL REPORT BIENNIALY TO THE LEGISLATURE ON
19 THE EFFECT AND ENFORCEMENT OF THIS PART. THE REPORT SHALL INCLUDE,
20 AT A MINIMUM, COMPLIANCE WITH SUBSECTION (3). UPON REQUEST OF THE
21 DEPARTMENT, THE DIRECTOR OF THE DEPARTMENT OF MANAGEMENT AND BUDGET
22 ANNUALLY SHALL REPORT TO THE DEPARTMENT, AT A MINIMUM, A LIST OF
23 EACH PUBLIC PLACE OWNED OR OPERATED BY THE STATE AND ITS COMPLIANCE
24 WITH SUBSECTION (3).

25 (7) ~~(3)~~ In addition, article 1 contains general definitions
26 and principles of construction applicable to all articles of this
27 code.

1 Enacting section 1. (1) Sections 12603, 12604a, 12605, 12607,
2 12611, 12613, 12614, 12615, 12617, 21333, and 21733 of the public
3 health code, 1978 PA 368, MCL 333.12603, 333.12604a, 333.12605,
4 333.12607, 333.12611, 333.12613, 333.12614, 333.12615, 333.12617,
5 333.21333, and 333.21733, are repealed.

6 (2) Section 6127 of the food law of 2000, 2000 PA 92, MCL
7 289.6127, is repealed.