

# HOUSE BILL No. 6450

September 11, 2008, Introduced by Rep. Farrah and referred to the Committee on Regulatory Reform.

A bill to amend 1978 PA 368, entitled "Public health code," (MCL 333.1101 to 333.25211) by adding sections 12601a, 12606a, 12606b, 12606c, and 12905b.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           SEC. 12601A. (1) NOTWITHSTANDING SECTION 12601, PUBLIC PLACE  
2 DOES NOT INCLUDE A MOTOR VEHICLE, A PLACE AT WHICH A LICENSED BINGO  
3 EVENT OR MILLIONAIRE PARTY IS CONDUCTED, OR THE NON-FOOD-SERVICE-  
4 ESTABLISHMENT PORTION OF THE PREMISES OF A LICENSEE UNDER THE HORSE  
5 RACING LAW OF 1995, 1995 PA 279, MCL 431.301 TO 431.336.

6           (2) AS USED IN THIS SECTION:

7           (A) "LICENSED BINGO EVENT OR MILLIONAIRE PARTY" MEANS A BINGO  
8 EVENT OR MILLIONAIRE PARTY CONDUCTED BY A LICENSEE UNDER THE

1 TRAXLER-MCCAULEY-LAW-BOWMAN BINGO ACT, 1972 PA 382, MCL 432.101 TO  
2 432.120.

3 (B) "MOTOR VEHICLE" MEANS THAT TERM AS DEFINED IN SECTION 33  
4 OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.33.

5 SEC. 12606A. SECTION 12606 DOES NOT IMPAIR, DIMINISH, OR  
6 OTHERWISE AFFECT ANY COLLECTIVELY BARGAINED PROCEDURE OR REMEDY  
7 AVAILABLE TO AN EMPLOYEE ON THE EFFECTIVE DATE OF THIS SECTION,  
8 WITH RESPECT TO DISPUTES ARISING UNDER THE EMPLOYER'S OR FOOD  
9 SERVICE ESTABLISHMENT'S NONSMOKING POLICY. THIS SECTION AND SECTION  
10 12606 APPLY TO COLLECTIVELY BARGAINED SMOKING PROCEDURES OR  
11 REMEDIES UPON THE EXPIRATION OR MODIFICATION OF A COLLECTIVELY  
12 BARGAINED SMOKING PROCEDURE OR REMEDY THAT WAS IN EFFECT ON OR  
13 BARGAINED FOR AFTER THE EFFECTIVE DATE OF THIS SECTION.

14 SEC. 12606B. (1) A CIGAR BAR THAT MEETS ALL OF THE  
15 REQUIREMENTS OF THIS SECTION IS NOT A PUBLIC PLACE UNDER THIS PART,  
16 IS EXEMPT FROM THE SMOKING PROHIBITION OF SECTION 12603, AND MAY  
17 ALLOW SMOKING ON ITS PREMISES. SUBJECT TO SUBSECTION (5), A CIGAR  
18 BAR THAT DOES NOT MEET ALL OF THE REQUIREMENTS OF THIS SECTION IS A  
19 PUBLIC PLACE UNDER THIS PART. TO QUALIFY FOR THE EXEMPTION UNDER  
20 THIS SECTION, THE PERSON WHO OWNS OR OPERATES A CIGAR BAR SHALL  
21 FILE AN AFFIDAVIT WITH THE DEPARTMENT ON OR BEFORE THE EXPIRATION  
22 OF 30 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION IF THE CIGAR  
23 BAR IS IN EXISTENCE ON THE EFFECTIVE DATE OF THIS SECTION OR 30  
24 DAYS OR MORE BEFORE HE OR SHE WISHES TO USE THIS EXEMPTION, AND ON  
25 JANUARY 31 OF EACH YEAR AFTER THE EFFECTIVE DATE OF THE EXEMPTION.  
26 THE AFFIDAVIT SHALL BE SIGNED BY THE OWNER OR OPERATOR OF THE CIGAR  
27 BAR AND SHALL CERTIFY THAT THE CIGAR BAR MEETS ALL OF THE FOLLOWING

## 1 REQUIREMENTS:

2 (A) IN THE 30-DAY PERIOD IMMEDIATELY PRECEDING THE FILING OF  
3 THE FIRST AFFIDAVIT UNDER THIS SUBSECTION, THE CIGAR BAR GENERATED  
4 10% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME FROM THE ON-SITE SALE  
5 OF TOBACCO PRODUCTS AND THE RENTAL OF ON-SITE HUMIDORS, NOT  
6 INCLUDING ANY SALES OF TOBACCO PRODUCTS FROM VENDING MACHINES.

7 (B) FOR EACH CALENDAR YEAR AFTER THE CALENDAR YEAR IN WHICH  
8 THE FIRST AFFIDAVIT IS FILED UNDER THIS SUBSECTION, THE CIGAR BAR  
9 GENERATES 10% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME FROM THE ON-  
10 SITE SALE OF TOBACCO PRODUCTS AND THE RENTAL OF ON-SITE HUMIDORS,  
11 NOT INCLUDING ANY SALES OF TOBACCO PRODUCTS FROM VENDING MACHINES.

12 (C) THE CIGAR BAR IS LOCATED ON PREMISES THAT ARE PHYSICALLY  
13 SEPARATED FROM ANY AREAS OF THE SAME OR ADJACENT ESTABLISHMENT IN  
14 WHICH SMOKING IS PROHIBITED UNDER THIS PART OR PART 129 AND WHERE  
15 SMOKE DOES NOT INFILTRATE INTO THOSE NONSMOKING AREAS. AS USED IN  
16 THIS SUBDIVISION, "PHYSICALLY SEPARATED" MEANS AN AREA THAT IS  
17 ENCLOSED ON ALL SIDES BY ANY COMBINATION OF SOLID WALLS, WINDOWS,  
18 OR DOORS THAT EXTEND FROM THE FLOOR TO CEILING.

19 (D) THE CIGAR BAR HAS INSTALLED ON ITS PREMISES AN ON-SITE  
20 HUMIDOR.

21 (E) THE CIGAR BAR PROHIBITS ENTRY TO A PERSON UNDER THE AGE OF  
22 18 DURING THE TIME THE CIGAR BAR IS OPEN FOR BUSINESS.

23 (2) A TOBACCO SPECIALTY RETAIL STORE THAT MEETS ALL OF THE  
24 REQUIREMENTS OF THIS SECTION IS NOT A PUBLIC PLACE UNDER THIS PART,  
25 IS EXEMPT FROM THE SMOKING PROHIBITION OF SECTION 12603, AND MAY  
26 ALLOW SMOKING ON ITS PREMISES. SUBJECT TO SUBSECTION (5), A TOBACCO  
27 SPECIALTY RETAIL STORE THAT DOES NOT MEET ALL OF THE REQUIREMENTS

1 OF THIS SECTION IS A PUBLIC PLACE UNDER THIS PART. TO QUALIFY FOR  
2 THE EXEMPTION UNDER THIS SECTION, THE PERSON WHO OWNS OR OPERATES A  
3 TOBACCO SPECIALTY RETAIL STORE SHALL FILE AN AFFIDAVIT WITH THE  
4 DEPARTMENT ON OR BEFORE THE EXPIRATION OF 30 DAYS AFTER THE  
5 EFFECTIVE DATE OF THE EXEMPTION IF THE TOBACCO SPECIALTY RETAIL  
6 STORE IS IN EXISTENCE ON THE EFFECTIVE DATE OF THIS SECTION OR 30  
7 DAYS OR MORE BEFORE HE OR SHE WISHES TO USE THIS EXEMPTION, AND ON  
8 JANUARY 31 OF EACH YEAR AFTER THE EFFECTIVE DATE OF THE EXEMPTION.  
9 THE AFFIDAVIT SHALL BE SIGNED BY THE OWNER OR OPERATOR OF THE  
10 TOBACCO SPECIALTY RETAIL STORE AND SHALL CERTIFY THAT THE TOBACCO  
11 SPECIALTY RETAIL STORE MEETS ALL OF THE FOLLOWING REQUIREMENTS:

12 (A) IN THE 30-DAY PERIOD IMMEDIATELY PRECEDING THE FILING OF  
13 THE FIRST AFFIDAVIT UNDER THIS SUBSECTION, THE TOBACCO SPECIALTY  
14 RETAIL STORE GENERATED 75% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME  
15 FROM THE ON-SITE SALE OF TOBACCO PRODUCTS AND SMOKING  
16 PARAPHERNALIA.

17 (B) FOR EACH CALENDAR YEAR AFTER THE CALENDAR YEAR IN WHICH  
18 THE FIRST AFFIDAVIT IS FILED UNDER THIS SUBSECTION, THE TOBACCO  
19 SPECIALTY RETAIL STORE GENERATED 75% OR MORE OF ITS TOTAL GROSS  
20 ANNUAL INCOME FROM THE ON-SITE SALE OF TOBACCO PRODUCTS AND SMOKING  
21 PARAPHERNALIA.

22 (C) THE TOBACCO SPECIALTY RETAIL STORE IS LOCATED ON PREMISES  
23 THAT ARE PHYSICALLY SEPARATED FROM ANY AREAS OF THE SAME OR  
24 ADJACENT ESTABLISHMENTS IN WHICH SMOKING IS PROHIBITED UNDER THIS  
25 PART OR PART 129 AND WHERE SMOKE DOES NOT INFILTRATE INTO THOSE  
26 NONSMOKING AREAS. AS USED IN THIS SUBDIVISION, "PHYSICALLY  
27 SEPARATED" MEANS AN AREA THAT IS ENCLOSED ON ALL SIDES BY ANY

1 COMBINATION OF SOLID WALLS, WINDOWS, OR DOORS THAT EXTEND FROM THE  
2 FLOOR TO CEILING.

3 (D) THE TOBACCO SPECIALTY RETAIL STORE PROHIBITS ENTRY TO A  
4 PERSON UNDER THE AGE OF 18 DURING THE TIME THE TOBACCO SPECIALTY  
5 RETAIL STORE IS OPEN FOR BUSINESS.

6 (3) THE DEPARTMENT MAY REQUEST ADDITIONAL INFORMATION FROM A  
7 CIGAR BAR OR TOBACCO SPECIALTY RETAIL STORE TO VERIFY THAT THE  
8 CIGAR BAR OR TOBACCO SPECIALTY RETAIL STORE MEETS THE REQUIREMENTS  
9 OF THIS SECTION. A CIGAR BAR OR TOBACCO SPECIALTY RETAIL STORE  
10 SHALL COMPLY WITH REQUESTS FROM THE DEPARTMENT UNDER THIS SECTION.

11 (4) THE INFORMATION SUBMITTED BY A CIGAR BAR OR A TOBACCO  
12 SPECIALTY RETAIL STORE TO THE DEPARTMENT UNDER THIS SECTION IS  
13 EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976  
14 PA 442, MCL 15.231 TO 15.246.

15 (5) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A CIGAR  
16 BAR OR TOBACCO SPECIALTY RETAIL STORE THAT DOES NOT MEET THE  
17 REQUIREMENTS OF THIS SECTION OR VIOLATES THIS SECTION IS NOT EXEMPT  
18 FROM THE SMOKING PROHIBITION OF SECTION 12603 AND SHALL IMMEDIATELY  
19 PROHIBIT SMOKING ON ITS PREMISES. A CIGAR BAR OR TOBACCO SPECIALTY  
20 RETAIL STORE THAT MEETS ALL OF THE REQUIREMENTS OF THIS SECTION  
21 OTHER THAN FILING THE AFFIDAVIT AS REQUIRED UNDER SUBSECTION (1) OR  
22 (2), RETAINS ITS EXEMPTION AND MAY CONTINUE TO ALLOW SMOKING DURING  
23 THE PERIOD BEGINNING ON THE DATE THE AFFIDAVIT IS DUE AND ENDING ON  
24 THE EXPIRATION OF 21 DAYS AFTER THAT DATE. HOWEVER, IF THE  
25 AFFIDAVIT REMAINS UNFILED AFTER THE 21-DAY GRACE PERIOD, THE CIGAR  
26 BAR OR TOBACCO SPECIALTY RETAIL STORE IS NOT EXEMPT FROM THE  
27 SMOKING PROHIBITION OF SECTION 12603 AND SHALL IMMEDIATELY PROHIBIT

1 SMOKING ON ITS PREMISES. A CIGAR BAR OR TOBACCO SPECIALTY RETAIL  
2 STORE THAT LOSES ITS EXEMPTION UNDER THIS SUBSECTION IS NOT EXEMPT  
3 FROM THE SMOKING PROHIBITION OF SECTION 12603, SHALL IMMEDIATELY  
4 PROHIBIT SMOKING ON ITS PREMISES, AND MAY ONLY AGAIN QUALIFY FOR  
5 THE EXEMPTION UNDER THIS SECTION BY FILING AN AFFIDAVIT AND MEETING  
6 ALL OF THE REQUIREMENTS OF SUBSECTION (1) OR (2), AS APPLICABLE.

7 (6) A PERSON WHO MAKES A FALSE STATEMENT IN AN AFFIDAVIT UNDER  
8 THIS SECTION IS GUILTY OF PERJURY UNDER SECTION 423 OF THE MICHIGAN  
9 PENAL CODE, 1931 PA 328, MCL 750.423.

10 (7) AS USED IN THIS SECTION:

11 (A) "CIGAR BAR" MEANS AN ESTABLISHMENT OR AREA WITHIN AN  
12 ESTABLISHMENT THAT IS OPEN TO THE PUBLIC AND IS DESIGNATED FOR THE  
13 SMOKING OF TOBACCO PRODUCTS, PURCHASED ON THE PREMISES OR  
14 ELSEWHERE.

15 (B) "TOBACCO SPECIALTY RETAIL STORE" MEANS AN ESTABLISHMENT  
16 THAT IS NOT REQUIRED TO BE LICENSED AS A FOOD SERVICE  
17 ESTABLISHMENT, IN WHICH THE PRIMARY PURPOSE IS THE RETAIL SALE OF  
18 TOBACCO PRODUCTS AND SMOKING PARAPHERNALIA, AND IN WHICH THE SALE  
19 OF OTHER PRODUCTS IS INCIDENTAL.

20 SEC. 12606C. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,  
21 A CASINO IS NOT A PUBLIC PLACE UNDER THIS PART AND SMOKING MAY BE  
22 ALLOWED ON THE FLOOR SPACE OF THE CASINO WHERE GAMBLING GAMES ARE  
23 CONDUCTED OR PLAYED. DETERMINATION OF WHAT CONSTITUTES FLOOR SPACE  
24 SHALL BE MADE IN A MANNER ACCEPTABLE TO THE DEPARTMENT OR TO THE  
25 LOCAL HEALTH DEPARTMENT AUTHORIZED TO ENFORCE THIS PART, AS  
26 PROVIDED IN RULES PROMULGATED BY THE DEPARTMENT.

27 (2) SMOKING IS PROHIBITED ON THE FLOOR SPACE OF A CASINO WHERE

1 GAMBLING GAMES ARE CONDUCTED OR PLAYED UNDER EITHER OR BOTH OF THE  
2 FOLLOWING CIRCUMSTANCES:

3 (A) THIS STATE NEGOTIATES AN AGREEMENT WITH THE FEDERALLY  
4 RECOGNIZED INDIAN TRIBES THAT CONDUCT GAMBLING GAMES IN THIS STATE  
5 TO PROHIBIT SMOKING IN AREAS WHERE GAMBLING GAMES ARE CONDUCTED  
6 PURSUANT TO AN INDIAN GAMING COMPACT OR OTHER APPROPRIATE  
7 AGREEMENT.

8 (B) A MAJORITY OF FEDERALLY RECOGNIZED INDIAN TRIBES THAT  
9 CONDUCT GAMBLING GAMES IN THIS STATE VOLUNTARILY PROHIBIT SMOKING  
10 IN AREAS OF THE TRIBAL CASINOS WHERE GAMBLING GAMES ARE CONDUCTED  
11 OR PLAYED, AS DETERMINED BY THE RECORDS OF THE MICHIGAN GAMING  
12 CONTROL BOARD.

13 (3) AS USED IN THIS SECTION, "CASINO" MEANS THAT TERM AS  
14 DEFINED IN SECTION 2 OF THE MICHIGAN GAMING CONTROL AND REVENUE  
15 ACT, 1996 IL 1, MCL 432.202. CASINO DOES NOT INCLUDE A CASINO  
16 OPERATED UNDER THE INDIAN GAMING REGULATORY ACT, PUBLIC LAW 100-  
17 497, 102 STAT. 2467.

18 SEC. 12905B. NOTWITHSTANDING SECTION 12905, FOOD SERVICE  
19 ESTABLISHMENT DOES NOT INCLUDE AN ESTABLISHMENT EXEMPT FROM THE  
20 SMOKING PROHIBITION UNDER SECTION 12606B.

21 Enacting section 1. This amendatory act does not take effect  
22 unless Senate Bill No. \_\_\_\_ or House Bill No. 6449(request no.  
23 07553'08) of the 94th Legislature is enacted into law.