

**SUBSTITUTE FOR
HOUSE BILL NO. 4377**

A bill to amend 1978 PA 368, entitled "Public health code," by amending the heading of part 129 and sections 12601, 12603, 12611, 12613, 12614, and 12905 (MCL 333.12601, 333.12603, 333.12611, 333.12613, 333.12614, and 333.12905), sections 12601 and 12613 as amended by 1988 PA 315, sections 12603 and 12611 as amended by 1993 PA 217, section 12614 as added by 1988 PA 296, and section 12905 as amended by 1993 PA 242, and by adding sections 12606, 12606a, and 12606b; 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) "CASINO" MEANS THAT TERM AS DEFINED IN SECTION 2 OF THE
- 3 MICHIGAN GAMING CONTROL AND REVENUE ACT, 1996 IL 1, MCL 432.202.
- 4 CASINO DOES NOT INCLUDE A CASINO OPERATED UNDER THE INDIAN GAMING
- 5 REGULATORY ACT, 25 USC 2701 TO 2721.

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

5 (C) "CIGAR BAR" MEANS AN ESTABLISHMENT OR AREA WITHIN AN
6 ESTABLISHMENT THAT IS OPEN TO THE PUBLIC AND IS DESIGNATED FOR THE
7 SMOKING OF TOBACCO PRODUCTS, PURCHASED ON THE PREMISES OR
8 ELSEWHERE.

9 (D) ~~(b)~~—"County medical care facility" means that term as
10 defined in section 20104.

11 (E) ~~(c)~~—"Educational facility" means a building owned, leased,
12 or under the control of a public or private school system, college,
13 or university.

14 (F) ~~(d)~~—"Food service establishment" means a food service
15 establishment as defined in section ~~12901-12905~~.

16 (G) ~~(e)~~—"Health facility" means a health facility or agency
17 licensed under article 17, except a home for the aged, nursing
18 home, county medical care facility, hospice, or hospital long-term
19 care unit.

20 (H) ~~(f)~~—"Home for the aged" means that term as defined in
21 section 20106.

22 (I) ~~(g)~~—"Hospice" means that term as defined in section 20106.

23 (J) ~~(h)~~—"Hospital long-term care unit" means that term as
24 defined in section 20106.

25 ~~——(i) "Licensed premises" means any portion of a building,~~
26 ~~structure, room, or enclosure in which alcoholic liquor may be sold~~
27 ~~for consumption on the premises pursuant to a license issued by the~~

1 ~~Michigan liquor control commission.~~

2 (K) ~~(j)~~ "Meeting" means a meeting as defined in section 2 of
3 the open meetings act, ~~Act No. 267 of the Public Acts of 1976,~~
4 ~~being section 15.262 of the Michigan Compiled Laws 1976 PA 267, MCL~~
5 15.262.

6 (I) ~~(k)~~ "Nursing home" means that term as defined in section
7 20109.

8 (M) "PLACE OF EMPLOYMENT" MEANS AN ENCLOSED INDOOR AREA THAT
9 CONTAINS 1 OR MORE WORK AREAS FOR 1 OR MORE PERSONS EMPLOYED BY A
10 PUBLIC OR PRIVATE EMPLOYER. PLACE OF EMPLOYMENT DOES NOT INCLUDE
11 ANY OF THE FOLLOWING:

12 (i) A STRUCTURE USED PRIMARILY AS THE RESIDENCE OF THE OWNER OR
13 LESSEE THAT IS ALSO USED AS AN OFFICE FOR THE OWNER OR LESSEE.

14 (ii) A CIGAR BAR OR TOBACCO SPECIALTY RETAIL STORE EXEMPT UNDER
15 SECTION 12606A.

16 (iii) A FOOD SERVICE ESTABLISHMENT THAT IS SUBJECT TO SECTION
17 12905.

18 (iv) A CASINO, BUT ONLY TO THE EXTENT THAT THE CASINO IS EXEMPT
19 UNDER SECTION 12606B.

20 (N) ~~(l)~~ "Public body" means a public body as defined in section
21 2 of the open meetings act, ~~Act No. 267 of the Public Acts of 1976~~
22 1976 PA 267, MCL 15.262.

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

25 (i) An enclosed, indoor area owned or operated by a state or
26 local governmental agency and used by the general public or serving
27 as a ~~place of work for public employees or a meeting place for a~~

1 public body, including an office, educational facility, home for
 2 the aged, nursing home, county medical care facility, hospice,
 3 hospital long-term care unit, auditorium, arena, meeting room, or
 4 public conveyance.

5 (ii) An enclosed, indoor area ~~which~~**THAT** is not owned or
 6 operated by a state or local governmental agency, is used by the
 7 general public, and is ~~+~~**ANY** of the following:

8 (A) An educational facility.

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

11 (C) An auditorium.

12 (D) An arena.

13 (E) A theater.

14 (F) A museum.

15 (G) A concert hall.

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

18 (iii) **UNLESS EXEMPT UNDER SECTION 12606A, A CIGAR BAR OR A**
 19 **TOBACCO SPECIALTY RETAIL STORE.**

20 (iv) **A PLACE OF EMPLOYMENT.**

21 (v) **EXCEPT TO THE EXTENT THAT IT IS EXEMPT UNDER SECTION**
 22 **12606B, A CASINO.**

23 (P) ~~(n)~~ "Smoking" or "smoke" means the ~~carrying by a person~~
 24 **BURNING** of a lighted cigar, cigarette, pipe, or **ANY** other lighted
 25 ~~smoking device~~ **MATTER OR SUBSTANCE THAT CONTAINS A TOBACCO PRODUCT.**

26 (Q) **"SMOKING PARAPHERNALIA" MEANS ANY EQUIPMENT, APPARATUS, OR**
 27 **FURNISHING THAT IS USED IN OR NECESSARY FOR THE ACTIVITY OF**

1 SMOKING.

2 (R) "TOBACCO PRODUCT" MEANS A PRODUCT THAT CONTAINS TOBACCO
3 AND IS INTENDED FOR HUMAN CONSUMPTION, INCLUDING, BUT NOT LIMITED
4 TO, CIGARETTES, NONCIGARETTE SMOKING TOBACCO, OR SMOKELESS TOBACCO,
5 AS THOSE TERMS ARE DEFINED IN SECTION 2 OF THE TOBACCO PRODUCTS TAX
6 ACT, 1993 PA 327, MCL 205.422, AND CIGARS.

7 (S) "TOBACCO SPECIALTY RETAIL STORE" MEANS AN ESTABLISHMENT IN
8 WHICH THE PRIMARY PURPOSE IS THE RETAIL SALE OF TOBACCO PRODUCTS
9 AND SMOKING PARAPHERNALIA, AND IN WHICH THE SALE OF OTHER PRODUCTS
10 IS INCIDENTAL. TOBACCO SPECIALTY RETAIL STORE DOES NOT INCLUDE A
11 TOBACCO DEPARTMENT OR SECTION OF A LARGER COMMERCIAL ESTABLISHMENT
12 OR ANY ESTABLISHMENT WITH ANY TYPE OF LIQUOR, FOOD, OR RESTAURANT
13 LICENSE.

14 (T) "WORK AREA" MEANS A SITE WITHIN A PLACE OF EMPLOYMENT AT
15 WHICH 1 OR MORE EMPLOYEES PERFORM SERVICES FOR AN EMPLOYER.

16 ~~—— (2) Public place does not include a private, enclosed room or~~
17 ~~office occupied exclusively by a smoker, even if the room or~~
18 ~~enclosed office may be visited by a nonsmoker.~~

19 (2) ~~(3)~~—In addition, article 1 contains general definitions
20 and principles of construction applicable to all articles of this
21 code.

22 Sec. 12603. (1) ~~Except as otherwise provided by law, A STATE~~
23 ~~OR LOCAL GOVERNMENTAL AGENCY OR THE PERSON WHO OWNS OR OPERATES A~~
24 ~~PUBLIC PLACE SHALL NOT ALLOW SMOKING IN THE PUBLIC PLACE, AND an~~
25 ~~individual shall not smoke in a public place or at a meeting of a~~
26 ~~public body. , except in a designated smoking area.~~

27 ~~—— (2) This section does not apply to a room, hall, or building~~

1 ~~used for a private function if the seating arrangements are under~~
2 ~~the control of the sponsor of the function and not under the~~
3 ~~control of the state or local governmental agency or the person who~~
4 ~~owns or operates the room, hall, or building.~~

5 ~~—— (3) This section does not apply to a food service~~
6 ~~establishment or to licensed premises.~~

7 ~~—— (4) This section shall not apply to a private educational~~
8 ~~facility after regularly scheduled school hours.~~

9 (2) "NO SMOKING" SIGNS OR THE INTERNATIONAL "NO SMOKING"
10 SYMBOL SHALL BE CLEARLY AND CONSPICUOUSLY POSTED AT THE ENTRANCES
11 TO AND IN EVERY BUILDING OR OTHER AREA WHERE SMOKING IS PROHIBITED
12 UNDER THIS SECTION. THE OWNER, OPERATOR, MANAGER, OR PERSON HAVING
13 CONTROL OF THE BUILDING OR OTHER AREA SHALL POST THE SIGNS. THE
14 OWNER, OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE AREA
15 SHALL REMOVE ALL ASHTRAYS AND OTHER SMOKING PARAPHERNALIA FROM
16 ANYWHERE SMOKING IS PROHIBITED UNDER THIS SECTION. THE OWNER,
17 OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE AREA SHALL
18 INFORM PERSONS SMOKING IN VIOLATION OF THIS ACT THAT THEY ARE IN
19 VIOLATION OF STATE LAW AND SUBJECT TO PENALTIES.

20 SEC. 12606. (1) AN EMPLOYER OR A FOOD SERVICE ESTABLISHMENT
21 SHALL NOT TAKE ANY RETALIATORY OR ADVERSE PERSONNEL ACTION AGAINST
22 AN EMPLOYEE OR APPLICANT FOR EMPLOYMENT ON THE BASIS OF THE
23 INDIVIDUAL'S EXERCISE OF OR ATTEMPT TO EXERCISE HIS OR HER RIGHTS
24 UNDER THIS PART WITH RESPECT TO PLACE OF EMPLOYMENT OR PART 129
25 WITH RESPECT TO FOOD SERVICE ESTABLISHMENTS. EACH EMPLOYER SUBJECT
26 TO THIS PART AND EACH FOOD SERVICE ESTABLISHMENT SUBJECT TO PART
27 129 SHALL ADOPT, IMPLEMENT, PUBLISH, MAINTAIN, AND MODIFY TO

1 REFLECT ANY CHANGES A WRITTEN NONSMOKING POLICY. THE EMPLOYER OR
2 FOOD SERVICE ESTABLISHMENT SHALL PROMINENTLY POST THE NONSMOKING
3 POLICY IN THE WORKPLACE AND, WITHIN 3 WEEKS OF ITS ADOPTION, SHALL
4 DISSEMINATE THE POLICY TO ALL EMPLOYEES AND TO NEW EMPLOYEES WHEN
5 HIRED. THE EMPLOYER OR FOOD SERVICE ESTABLISHMENT SHALL SUPPLY A
6 WRITTEN COPY OF THE NONSMOKING POLICY UPON REQUEST TO ANY EMPLOYEE
7 OR APPLICANT FOR EMPLOYMENT. THE EMPLOYER OR FOOD SERVICE
8 ESTABLISHMENT SHALL PROVIDE A COPY OF THE NONSMOKING POLICY TO THE
9 DEPARTMENT UPON REQUEST. THE EMPLOYER OR FOOD SERVICE ESTABLISHMENT
10 SHALL INCLUDE THE FOLLOWING IN THE WRITTEN POLICY REQUIRED UNDER
11 THIS SUBSECTION:

12 (A) THAT SMOKING IS PROHIBITED AS REQUIRED IN THIS SECTION OR
13 SECTION 12905.

14 (B) THAT AN EMPLOYEE OR APPLICANT FOR EMPLOYMENT WHO EXERCISES
15 OR ATTEMPTS TO EXERCISE HIS OR HER RIGHTS WITH RESPECT TO PLACE OF
16 EMPLOYMENT OR WITH RESPECT TO FOOD SERVICE ESTABLISHMENTS IS
17 PROTECTED AGAINST RETALIATORY OR ADVERSE PERSONNEL ACTION.

18 (2) IF EMPLOYER OR FOOD SERVICE ESTABLISHMENT IS BOUND BY A
19 COLLECTIVE BARGAINING AGREEMENT ON THE EFFECTIVE DATE OF THIS
20 SECTION, NOTHING IN THIS SECTION IMPAIRS, DIMINISHES, OR OTHERWISE
21 AFFECTS ANY OF THE RIGHTS CURRENTLY AFFORDED TO THE EMPLOYEES UNDER
22 THE CONTROLLING COLLECTIVE BARGAINING AGREEMENT. HOWEVER, ONCE THE
23 COLLECTIVE BARGAINING AGREEMENT IN EFFECT ON THE EFFECTIVE DATE OF
24 THIS SECTION EXPIRES, THE SMOKING PROHIBITIONS OF SECTIONS 12603
25 AND 12905 CONTROL AND PARTIES SHALL NOT NEGOTIATE ANY PROVISION
26 THAT CONFLICTS WITH THESE SECTIONS.

27 SEC. 12606A. (1) A CIGAR BAR THAT MEETS ALL OF THE

House Bill 4377 (H-3) as amended May 26, 2009

1 REQUIREMENTS OF THIS SECTION IS EXEMPT FROM THE SMOKING PROHIBITION
2 OF SECTION 12603 AND MAY ALLOW SMOKING ON ITS PREMISES. TO QUALIFY
3 FOR THE EXEMPTION UNDER THIS SECTION, THE PERSON WHO OWNS OR
4 OPERATES A CIGAR BAR SHALL FILE AN AFFIDAVIT WITH THE DEPARTMENT ON
5 OR BEFORE THE EXPIRATION OF 30 DAYS AFTER THE EFFECTIVE DATE OF
6 THIS SECTION IF THE CIGAR BAR IS IN EXISTENCE ON THE EFFECTIVE DATE
7 OF THIS SECTION OR 30 DAYS OR MORE BEFORE HE OR SHE WISHES TO USE
8 THIS EXEMPTION [IF THE CIGAR BAR IS IN EXISTENCE ON OR BEFORE DECEMBER
9 31, 2009], AND ON JANUARY 31 OF EACH YEAR AFTER THE EFFECTIVE
10 OR OPERATOR OF THE CIGAR BAR AND SHALL CERTIFY THAT THE CIGAR BAR [WAS IN
11 EXISTENCE ON OR BEFORE DECEMBER 31, 2009 AND THAT IT]
12 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 CIGAR BAR GENERATED
14 10% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME FROM THE ON-SITE SALE
15 OF TOBACCO PRODUCTS AND THE RENTAL OF ON-SITE HUMIDORS.

16 (B) FOR EACH CALENDAR YEAR AFTER THE CALENDAR YEAR IN WHICH
17 THE FIRST AFFIDAVIT IS FILED UNDER THIS SUBSECTION, THE CIGAR BAR
18 GENERATES 10% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME FROM THE ON-
19 SITE SALE OF TOBACCO PRODUCTS AND THE RENTAL OF ON-SITE HUMIDORS.

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

27 (D) THE CIGAR BAR HAS INSTALLED ON ITS PREMISES AN ON-SITE

House Bill 4377 (H-3) as amended May 26, 2009
1 HUMIDOR.

2 (E) THE CIGAR BAR PROHIBITS ENTRY TO A PERSON UNDER THE AGE OF
3 18 DURING THE TIME THE CIGAR BAR IS OPEN FOR BUSINESS.

4 (2) A TOBACCO SPECIALTY RETAIL STORE THAT MEETS ALL OF THE
5 REQUIREMENTS OF THIS SECTION IS EXEMPT FROM THE SMOKING PROHIBITION
6 OF SECTION 12603 AND MAY ALLOW SMOKING ON ITS PREMISES. TO QUALIFY
7 FOR THE EXEMPTION UNDER THIS SECTION, THE PERSON WHO OWNS OR
8 OPERATES A TOBACCO SPECIALTY RETAIL STORE SHALL FILE AN AFFIDAVIT
9 WITH THE DEPARTMENT ON OR BEFORE THE EXPIRATION OF 30 DAYS AFTER
10 THE EFFECTIVE DATE OF THE EXEMPTION IF THE TOBACCO SPECIALTY RETAIL
11 STORE IS IN EXISTENCE ON THE EFFECTIVE DATE OF THIS SECTION OR 30
12 DAYS OR MORE BEFORE HE OR SHE WISHES TO USE THIS EXEMPTION [IF THE
13 TOBACCO SPECIALTY RETAIL STORE IS IN EXISTENCE ON OR BEFORE DECEMBER 31,
14 2009], AND ON
15 JANUARY 31 OF EACH YEAR AFTER THE EFFECTIVE DATE OF THE EXEMPTION.

16 THE AFFIDAVIT SHALL BE SIGNED BY THE OWNER OR OPERATOR OF THE
17 TOBACCO SPECIALTY RETAIL STORE AND SHALL CERTIFY THAT THE TOBACCO
18 SPECIALTY RETAIL STORE [WAS IN EXISTENCE ON OR BEFORE DECEMBER 31, 2009
19 AND THAT IT] MEETS ALL OF THE FOLLOWING REQUIREMENTS:

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

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

(C) THE TOBACCO SPECIALTY RETAIL STORE IS LOCATED ON PREMISES

1 THAT ARE PHYSICALLY SEPARATED FROM ANY AREAS OF THE SAME OR
2 ADJACENT ESTABLISHMENTS IN WHICH SMOKING IS PROHIBITED UNDER THIS
3 PART OR PART 129 AND WHERE SMOKE DOES NOT INFILTRATE INTO THOSE
4 NONSMOKING AREAS. AS USED IN THIS SUBDIVISION, "PHYSICALLY
5 SEPARATED" MEANS AN AREA THAT IS ENCLOSED ON ALL SIDES BY ANY
6 COMBINATION OF SOLID WALLS, WINDOWS, OR DOORS THAT EXTEND FROM THE
7 FLOOR TO CEILING.

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

11 (3) THE DEPARTMENT MAY REQUEST ADDITIONAL INFORMATION FROM A
12 CIGAR BAR OR TOBACCO SPECIALTY RETAIL STORE TO VERIFY THAT THE
13 CIGAR BAR OR TOBACCO SPECIALTY RETAIL STORE MEETS THE REQUIREMENTS
14 OF THIS SECTION. A CIGAR BAR OR TOBACCO SPECIALTY RETAIL STORE
15 SHALL COMPLY WITH REQUESTS FROM THE DEPARTMENT UNDER THIS SECTION.

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

House Bill 4377 (H-3) as amended May 26, 2009

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

8 SEC. 12606B. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
 9 A CASINO MAY ALLOW SMOKING ON THE FLOOR SPACE OF THE CASINO THAT IS
 10 INTENDED PRIMARILY FOR PLAYING OR CONDUCTING GAMBLING GAMES.
 11 DETERMINATION OF WHAT CONSTITUTES FLOOR SPACE SHALL BE MADE IN A
 12 MANNER ACCEPTABLE TO THE [MICHIGAN GAMING CONTROL BOARD.

13]

14 (2) SMOKING IS PROHIBITED ON THE FLOOR SPACE OF A CASINO WHERE
 15 GAMBLING GAMES ARE CONDUCTED OR PLAYED UNDER EITHER OR BOTH OF THE
 16 FOLLOWING CIRCUMSTANCES:

17 (A) THIS STATE NEGOTIATES AN AGREEMENT WITH THE FEDERALLY
 18 RECOGNIZED INDIAN TRIBES THAT CONDUCT GAMBLING GAMES IN THIS STATE
 19 TO PROHIBIT SMOKING IN AREAS WHERE GAMBLING GAMES ARE CONDUCTED
 20 PURSUANT TO AN INDIAN GAMING COMPACT OR OTHER APPROPRIATE
 21 AGREEMENT.

22 (B) [ALL OF THE] FEDERALLY RECOGNIZED INDIAN TRIBES THAT
 23 CONDUCT GAMBLING GAMES IN [THE LOWER PENINSULA OF] THIS STATE VOLUNTARILY
 24 PROHIBIT SMOKING
 25 IN AREAS OF THE TRIBAL CASINOS WHERE GAMBLING GAMES ARE CONDUCTED
 26 OR PLAYED, AS DETERMINED BY THE RECORDS OF THE MICHIGAN GAMING
 CONTROL BOARD.

27 Sec. 12611. A person ~~who violates section 12603(1) or 12604a~~

1 ~~or a person or state or local governmental agency that owns or~~
2 ~~operates a public place and that violates section 12605 or 12607~~
3 **THIS PART OR PART 129** shall be directed to comply with this ~~part~~
4 **ACT** and is subject to a civil fine of not more than \$100.00 for a
5 first violation and not more than \$500.00 for a second or
6 subsequent violation. **A PERSON WHO MAKES A FALSE STATEMENT IN AN**
7 **AFFIDAVIT UNDER THIS PART IS GUILTY OF PERJURY UNDER SECTION 423 OF**
8 **THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.423.**

9 Sec. 12613. (1) Subject to subsection (2), the department
10 shall enforce this part **AND PART 129** and **ANY** rules promulgated
11 under this part **OR PART 129** pursuant to sections 2262(2) and 2263.
12 In addition to the civil fine authorized under section 12611, the
13 department may enforce this part **AND PART 129** and ~~the~~**ANY** rules
14 promulgated under this part **OR PART 129** through an action commenced
15 pursuant to section 2255 or any other appropriate action authorized
16 by law.

17 (2) Pursuant to section 2235, the department may authorize a
18 local health department to enforce this part **AND PART 129** and ~~the~~
19 **ANY** rules promulgated under this part **OR PART 129**. A local health
20 department authorized to enforce this part **AND PART 129** and ~~the~~**ANY**
21 rules promulgated under this part **OR PART 129** shall enforce this
22 part **AND PART 129** and ~~the~~**ANY** rules promulgated under this part **OR**
23 **PART 129** pursuant to sections 2461(2) and 2462. In addition to the
24 civil fine authorized under section 12611, a local health
25 department may enforce this part **AND PART 129** and ~~the~~**ANY** rules
26 promulgated under this part **OR PART 129** through an action commenced
27 pursuant to section 2465 or any other appropriate action authorized

1 by law.

2 (3) In addition to any other enforcement action authorized by
 3 law, a person alleging a violation of this part **OR PART 129** may
 4 bring a civil action for appropriate injunctive relief, if the
 5 person has used the public place, child caring institution, **OR**
 6 child care center ~~, health facility, or private practice office of~~
 7 ~~an individual who is licensed under article 15~~ within 60 days after
 8 **BEFORE** the civil action is filed.

9 (4) The remedies under this part are independent and
 10 cumulative. The use of 1 remedy by a person shall not bar the use
 11 of other lawful remedies by that person or the use of a lawful
 12 remedy by another person.

13 Sec. 12614. (1) The director shall report biennially to the
 14 legislature on the effect and enforcement of this part **AND PART**
 15 **129**. The report shall include, at a minimum, ~~both of the following:~~

16 ~~—— (a) The policy of each state agency that has developed a~~
 17 ~~policy for the separation of smokers and nonsmokers.~~

18 ~~—— (b) Compliance~~ **COMPLIANCE** with section ~~12607~~ **SECTIONS 12603**
 19 **AND 12905**.

20 (2) Upon request of the department, the director of the
 21 department of management and budget annually shall report to the
 22 department, at a minimum, ~~all of the following:~~

23 ~~—— (a) A~~ **A** list of each public place owned or operated by the
 24 state -

25 ~~—— (b) Compliance~~ **AND ITS COMPLIANCE** with section ~~12607~~ **12603**.

26 ~~—— (c) The smoking policy, if any, adopted by each public place~~
 27 ~~listed under subdivision (a).~~

1 ~~forth in subsection (9)(c) to increase the amount of seating for~~
2 ~~smokers above 75%.~~

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

12 (3) ~~(5)~~—The director, an authorized representative of the
13 director, or a representative of a local health department to which
14 the director has delegated responsibility for enforcement of this
15 part shall ~~, in accordance with R 325.25902 of the Michigan~~
16 ~~administrative code,~~ inspect each food service establishment that
17 is subject to this section. The inspecting entity shall determine
18 compliance with this section during each inspection.

19 (4) ~~(6)~~—The department or a local health department shall
20 ~~utilize compliance or~~ **NOTIFY THE DEPARTMENT OF AGRICULTURE OF ANY**
21 noncompliance with this section or with rules promulgated to
22 implement this section. **THE DEPARTMENT OF AGRICULTURE MAY USE**
23 **COMPLIANCE OR NONCOMPLIANCE WITH THIS SECTION OR ANY RULES**
24 **PROMULGATED TO IMPLEMENT THIS SECTION** as criteria in the
25 determination of whether to deny, suspend, limit, or revoke a
26 license ~~pursuant to section 12907(1)~~ **ISSUED UNDER THE FOOD LAW OF**
27 **2000, 2000 PA 92, MCL 289.1101 TO 289.8111.**

1 (5) ~~(7)~~ Within 5 days after receipt of a written complaint of
2 violation of this section, a local health department shall
3 investigate the complaint to determine compliance. If a violation
4 of this section is identified and not corrected as ordered by the
5 local health department within 2 days after receipt of the order by
6 the food service establishment, the local health officer may issue
7 an order to cease food service operations until compliance with
8 this section is achieved.

9 ~~—— (8) This section does not apply to a private facility that is~~
10 ~~serviced by a catering kitchen or to a separate room in a food~~
11 ~~service establishment that is used for private banquets. This~~
12 ~~section does not apply to a food service establishment that is~~
13 ~~owned and operated by a fraternal organization, if service is~~
14 ~~limited to members of the fraternal organization and their guests.~~

15 (6) "NO SMOKING" SIGNS OR THE INTERNATIONAL "NO SMOKING"
16 SYMBOL SHALL BE CLEARLY AND CONSPICUOUSLY POSTED AT THE ENTRANCE TO
17 AND IN EVERY BUILDING OR OTHER AREA WHERE SMOKING IS PROHIBITED
18 UNDER THIS SECTION. THE OWNER, OPERATOR, MANAGER, OR PERSON HAVING
19 CONTROL OF THE BUILDING OR OTHER AREA SHALL POST THE SIGNS. THE
20 OWNER, OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE AREA
21 SHALL REMOVE ALL ASHTRAYS AND OTHER SMOKING PARAPHERNALIA FROM ANY
22 AREA WHERE SMOKING IS PROHIBITED UNDER THIS SECTION. THE OWNER,
23 OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE AREA SHALL
24 INFORM PERSONS SMOKING IN VIOLATION OF THIS ACT THAT THEY ARE IN
25 VIOLATION OF STATE LAW AND SUBJECT TO PENALTIES.

26 (7) ~~(9)~~ As used in this section:

27 ~~—— (a) "Bar" means that term as defined in section 2a of the~~

1 Michigan liquor control act, Act No. 8 of the Public Acts of the
 2 Extra Session of 1933, being section 436.2a of the Michigan
 3 Compiled Laws.

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

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

11 **(A) "FOOD SERVICE ESTABLISHMENT" MEANS THAT TERM AS DEFINED IN**
 12 **SECTION 1107 OF THE FOOD LAW OF 2000, 2000 PA 92, MCL 289.1107.**
 13 **FOOD SERVICE ESTABLISHMENT DOES NOT INCLUDE AN ESTABLISHMENT**
 14 **DESCRIBED IN SECTION 12601(M) (ii) OR (iv) .**

15 **(B) "SHOPPING MALL" MEANS A SHOPPING CENTER WITH STORES FACING**
 16 **AN ENCLOSED MALL.**

17 ~~(C) (d) "Smoking", means the carrying by an individual of a~~
 18 ~~lighted cigar, cigarette, or other lighted smoking device~~ **"SMOKING**
 19 **PARAPHERNALIA", AND "TOBACCO PRODUCT" MEAN THOSE TERMS AS DEFINED**
 20 **IN SECTION 12601.**

21 Enacting section 1. (1) Sections 12604a, 12605, 12607, 12615,
 22 12617, 12909, 21333, and 21733 of the public health code, 1978 PA
 23 368, MCL 333.12604a, 333.12605, 333.12607, 333.12615, 333.12617,
 24 333.12909, 333.21333, and 333.21733, are repealed.

25 (2) Section 6127 of the food law of 2000, 2000 PA 92, MCL
 26 289.6127, is repealed.

27 Enacting section 2. This amendatory act takes effect 30 days

1 after the date it is enacted into law.