

**SENATE 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, 12606b, 12610, and 12914; 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.

1 CASINO DOES NOT INCLUDE A CASINO OPERATED UNDER THE INDIAN GAMING
2 REGULATORY ACT, 25 USC 2701 TO 2721.

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

7 (C) "CIGAR" MEANS ANY ROLL OF TOBACCO WEIGHING 3 OR MORE
8 POUNDS PER 1,000, WHICH ROLL HAS A WRAPPER OR COVER CONSISTING ONLY
9 OF TOBACCO.

10 (D) "CIGAR BAR" MEANS AN ESTABLISHMENT OR AREA WITHIN AN
11 ESTABLISHMENT THAT IS OPEN TO THE PUBLIC AND IS DESIGNATED FOR THE
12 SMOKING OF CIGARS, PURCHASED ON THE PREMISES OR ELSEWHERE.

13 (E) ~~(b)~~—"County medical care facility" means that term as
14 defined in section 20104.

15 (F) ~~(c)~~—"Educational facility" means a building owned, leased,
16 or under the control of a public or private school system, college,
17 or university.

18 (G) ~~(d)~~—"Food service establishment" means a food service
19 establishment as defined in section ~~12901~~—12905.

20 (H) ~~(e)~~—"Health facility" means a health facility or agency
21 licensed under article 17, except a home for the aged, nursing
22 home, county medical care facility, hospice, or hospital long-term
23 care unit.

24 (I) ~~(f)~~—"Home for the aged" means that term as defined in
25 section 20106.

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

27 (K) ~~(h)~~—"Hospital long-term care unit" means that term as

1 defined in section 20106.

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

6 (I) ~~(j)~~ "Meeting" means a meeting as defined in section 2 of
7 the open meetings act, ~~Act No. 267 of the Public Acts of 1976,~~
8 ~~being section 15.262 of the Michigan Compiled Laws 1976 PA 267, MCL~~
9 ~~15.262.~~

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

12 (N) ~~(k)~~ "Nursing home" means that term as defined in section
13 20109.

14 (O) "PLACE OF EMPLOYMENT" MEANS AN ENCLOSED INDOOR AREA THAT
15 CONTAINS 1 OR MORE WORK AREAS FOR 1 OR MORE PERSONS EMPLOYED BY A
16 PUBLIC OR PRIVATE EMPLOYER. PLACE OF EMPLOYMENT DOES NOT INCLUDE
17 ANY OF THE FOLLOWING:

18 (i) A STRUCTURE USED PRIMARILY AS THE RESIDENCE OF THE OWNER OR
19 LESSEE THAT IS ALSO USED AS AN OFFICE FOR THE OWNER OR LESSEE AND
20 FOR NO OTHER EMPLOYEES.

21 (ii) A FOOD SERVICE ESTABLISHMENT THAT IS SUBJECT TO SECTION
22 12905.

23 (iii) A MOTOR VEHICLE.

24 (P) ~~(l)~~ "Public body" means a public body as defined in section
25 2 of the open meetings act, ~~Act No. 267 of the Public Acts of 1976~~
26 ~~1976 PA 267, MCL 15.262.~~

27 (Q) ~~(m)~~ "Public place", except as otherwise provided in

1 subsection (2), means ~~both~~ **ANY** of the following:

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

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

12 (A) An educational facility.

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

15 (C) An auditorium.

16 (D) An arena.

17 (E) A theater.

18 (F) A museum.

19 (G) A concert hall.

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

22 **(iii) UNLESS OTHERWISE EXEMPT UNDER THIS PART, A PLACE OF**
23 **EMPLOYMENT.**

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

27 **(S) "SMOKING PARAPHERNALIA" MEANS ANY EQUIPMENT, APPARATUS, OR**

1 FURNISHING THAT IS USED IN OR NECESSARY FOR THE ACTIVITY OF
2 SMOKING.

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

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

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

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

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

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

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1 **EFFORT TO PROHIBIT INDIVIDUALS FROM SMOKING IN A PUBLIC PLACE.**

2 ~~—— (2) This section does not apply to a room, hall, or building~~
 3 ~~used for a private function if the seating arrangements are under~~
 4 ~~the control of the sponsor of the function and not under the~~
 5 ~~control of the state or local governmental agency or the person who~~
 6 ~~owns or operates the room, hall, or building.~~

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

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

11 **<<(2) THE OWNER, OPERATOR, MANAGER, OR PERSON HAVING CONTROL**
 12 **OF A PUBLIC PLACE, A FOOD SERVICE ESTABLISHMENT, OR A CASINO SUBJECT**
 13 **TO SECTION 12606B SHALL DO ALL OF THE FOLLOWING:**

14 **(A) CLEARLY AND CONSPICUOUSLY POST "NO SMOKING" SIGNS OR THE**
 15 **INTERNATIONAL "NO SMOKING" SYMBOL AT THE ENTRANCES TO AND IN EVERY**
 16 **BUILDING OR OTHER AREA WHERE SMOKING IS PROHIBITED UNDER THIS ACT.**

17 **(B) REMOVE ALL ASHTRAYS AND OTHER SMOKING PARAPHERNALIA FROM**
 18 **ANYWHERE SMOKING IS PROHIBITED UNDER THIS ACT.**

19 **(C) INFORM INDIVIDUALS SMOKING IN VIOLATION OF THIS ACT THAT**
 20 **THEY ARE IN VIOLATION OF STATE LAW AND SUBJECT TO PENALTIES.**

21 **(D) IF APPLICABLE, REFUSE TO SERVE AN INDIVIDUAL SMOKING IN**
 22 **VIOLATION OF THIS ACT.**

23 **(E) ASK AN INDIVIDUAL SMOKING IN VIOLATION OF THIS ACT TO**
 24 **REFRAIN FROM SMOKING AND, IF THE INDIVIDUAL CONTINUES TO SMOKE IN**
 25 **VIOLATION OF THIS ACT, ASK HIM OR HER TO LEAVE THE PUBLIC PLACE,**
 26 **FOOD SERVICE ESTABLISHMENT, OR NONSMOKING AREA OF THE CASINO.**

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10 (3) THE OWNER, OPERATOR, MANAGER, OR PERSON IN CONTROL OF A
11 HOTEL, MOTEL, OR OTHER LODGING FACILITY SHALL COMPLY WITH
12 SUBSECTION (2) AND SECTION 12606. IT IS AN AFFIRMATIVE DEFENSE TO A
13 PROSECUTION OR CIVIL OR ADMINISTRATIVE ACTION FOR A VIOLATION OF
14 THIS SECTION THAT THE OWNER, OPERATOR, MANAGER, OR PERSON IN
15 CONTROL OF A HOTEL, MOTEL, OR OTHER LODGING FACILITY WHERE SMOKING
16 IS PROHIBITED UNDER THIS SECTION MADE A GOOD FAITH EFFORT TO
17 PROHIBIT SMOKING BY COMPLYING WITH SUBSECTION (2). TO ASSERT THE
18 AFFIRMATIVE DEFENSE UNDER THIS SUBSECTION, THE OWNER, OPERATOR,
19 MANAGER, OR PERSON SHALL FILE A SWORN AFFIDAVIT SETTING FORTH HIS
20 OR HER EFFORTS TO PROHIBIT SMOKING AND HIS OR HER ACTIONS OF
21 COMPLIANCE WITH SUBSECTION (2).

22 <<(4) THIS SECTION MAY BE REFERRED TO AS THE "DR. RON DAVIS LAW".>>
23 SEC. 12606. AN EMPLOYER OR A FOOD SERVICE ESTABLISHMENT SHALL
24 NOT TAKE ANY RETALIATORY OR ADVERSE PERSONNEL ACTION AGAINST AN
25 EMPLOYEE OR APPLICANT FOR EMPLOYMENT ON THE BASIS OF THE
26 INDIVIDUAL'S EXERCISE OF OR ATTEMPT TO EXERCISE HIS OR HER RIGHTS
27 UNDER THIS PART WITH RESPECT TO PLACE OF EMPLOYMENT OR PART 129
WITH RESPECT TO FOOD SERVICE ESTABLISHMENTS.

1 SEC. 12606A. (1) A CIGAR BAR IN EXISTENCE ON THE EFFECTIVE
2 DATE OF THIS SECTION THAT MEETS ALL OF THE REQUIREMENTS OF THIS
3 SECTION IS EXEMPT FROM THE SMOKING PROHIBITION OF SECTION 12603 AND
4 MAY ALLOW SMOKING ON ITS PREMISES. TO QUALIFY FOR THE EXEMPTION
5 UNDER THIS SECTION, THE PERSON WHO OWNS OR OPERATES A CIGAR BAR
6 SHALL FILE AN AFFIDAVIT WITH THE DEPARTMENT ON OR BEFORE THE
7 EXPIRATION OF 30 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION AND
8 ON JANUARY 31 OF EACH YEAR AFTER THE EFFECTIVE DATE OF THIS
9 SECTION. THE AFFIDAVIT SHALL BE SIGNED BY THE OWNER OR OPERATOR OF
10 THE CIGAR BAR AND SHALL CERTIFY THAT THE CIGAR BAR WAS IN EXISTENCE
11 ON THE EFFECTIVE DATE OF THIS SECTION AND THAT IT MEETS ALL OF THE
12 FOLLOWING REQUIREMENTS:

13 (A) IN THE 30-DAY PERIOD IMMEDIATELY PRECEDING THE EFFECTIVE
14 DATE OF THIS SECTION, THE CIGAR BAR GENERATED 10% OR MORE OF ITS
15 TOTAL GROSS ANNUAL INCOME FROM THE ON-SITE SALE OF CIGARS AND THE
16 RENTAL OF ON-SITE HUMIDORS.

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

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

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

3 (E) THE CIGAR BAR PROHIBITS ENTRY TO A PERSON UNDER THE AGE OF
4 18 DURING THE TIME THE CIGAR BAR IS OPEN FOR BUSINESS.

5 (F) THE CIGAR BAR ALLOWS ONLY THE SMOKING OF CIGARS ON THE
6 PREMISES THAT RETAIL FOR OVER \$1.00 PER CIGAR.

7 (G) THE CIGAR BAR PROHIBITS THE SMOKING OF ALL OTHER TOBACCO
8 PRODUCTS.

9 (2) A TOBACCO SPECIALTY RETAIL STORE IN EXISTENCE ON THE
10 EFFECTIVE DATE OF THIS SECTION THAT MEETS ALL OF THE REQUIREMENTS
11 OF THIS SECTION IS EXEMPT FROM THE SMOKING PROHIBITION OF SECTION
12 12603 AND MAY ALLOW SMOKING ON ITS PREMISES. TO QUALIFY FOR THE
13 EXEMPTION UNDER THIS SECTION, THE PERSON WHO OWNS OR OPERATES A
14 TOBACCO SPECIALTY RETAIL STORE SHALL FILE AN AFFIDAVIT WITH THE
15 DEPARTMENT ON OR BEFORE THE EXPIRATION OF 30 DAYS AFTER THE
16 EFFECTIVE DATE OF THIS SECTION AND ON JANUARY 31 OF EACH YEAR AFTER
17 THE EFFECTIVE DATE OF THIS SECTION. THE AFFIDAVIT SHALL BE SIGNED
18 BY THE OWNER OR OPERATOR OF THE TOBACCO SPECIALTY RETAIL STORE AND
19 SHALL CERTIFY THAT THE TOBACCO SPECIALTY RETAIL STORE WAS IN
20 EXISTENCE ON THE EFFECTIVE DATE OF THIS SECTION AND THAT IT MEETS
21 ALL OF THE FOLLOWING REQUIREMENTS:

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

26 (B) FOR EACH CALENDAR YEAR AFTER THE CALENDAR YEAR IN WHICH
27 THE FIRST AFFIDAVIT IS FILED UNDER THIS SUBSECTION, THE TOBACCO

1 SPECIALTY RETAIL STORE GENERATED 75% OR MORE OF ITS TOTAL GROSS
2 ANNUAL INCOME FROM THE ON-SITE SALE OF TOBACCO PRODUCTS AND SMOKING
3 PARAPHERNALIA.

4 (C) THE TOBACCO SPECIALTY RETAIL STORE IS LOCATED ON PREMISES
5 THAT ARE PHYSICALLY SEPARATED FROM ANY AREAS OF THE SAME OR
6 ADJACENT ESTABLISHMENTS IN WHICH SMOKING IS PROHIBITED UNDER THIS
7 PART OR PART 129 AND WHERE SMOKE DOES NOT INFILTRATE INTO THOSE
8 NONSMOKING AREAS. AS USED IN THIS SUBDIVISION, "PHYSICALLY
9 SEPARATED" MEANS AN AREA THAT IS ENCLOSED ON ALL SIDES BY ANY
10 COMBINATION OF SOLID WALLS, WINDOWS, OR DOORS THAT EXTEND FROM THE
11 FLOOR TO CEILING.

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

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

20 (4) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A CIGAR
21 BAR OR TOBACCO SPECIALTY RETAIL STORE THAT DOES NOT MEET THE
22 REQUIREMENTS OF THIS SECTION OR VIOLATES THIS SECTION IS NOT EXEMPT
23 FROM THE SMOKING PROHIBITION OF SECTION 12603 AND SHALL IMMEDIATELY
24 PROHIBIT SMOKING ON ITS PREMISES. A CIGAR BAR OR TOBACCO SPECIALTY
25 RETAIL STORE THAT MEETS ALL OF THE REQUIREMENTS OF THIS SECTION
26 OTHER THAN FILING THE AFFIDAVIT AS REQUIRED UNDER SUBSECTION (1) OR
27 (2), RETAINS ITS EXEMPTION AND MAY CONTINUE TO ALLOW SMOKING DURING

1 THE PERIOD BEGINNING ON THE DATE THE AFFIDAVIT IS DUE AND ENDING ON
2 THE EXPIRATION OF 21 DAYS AFTER THAT DATE. HOWEVER, IF THE
3 AFFIDAVIT REMAINS UNFILED AFTER THE 21-DAY GRACE PERIOD, THE CIGAR
4 BAR OR TOBACCO SPECIALTY RETAIL STORE IS NOT EXEMPT FROM THE
5 SMOKING PROHIBITION OF SECTION 12603 AND SHALL IMMEDIATELY PROHIBIT
6 SMOKING ON ITS PREMISES. A CIGAR BAR OR TOBACCO SPECIALTY RETAIL
7 STORE THAT LOSES ITS EXEMPTION UNDER THIS SUBSECTION IS NOT EXEMPT
8 FROM THE SMOKING PROHIBITION OF SECTION 12603, SHALL IMMEDIATELY
9 PROHIBIT SMOKING ON ITS PREMISES, AND MAY ONLY AGAIN QUALIFY FOR
10 THE EXEMPTION UNDER THIS SECTION BY FILING AN AFFIDAVIT AND MEETING
11 ALL OF THE REQUIREMENTS OF SUBSECTION (1) OR (2), AS APPLICABLE.

12 SEC. 12606B. (1) A CASINO THAT IS IN EXISTENCE ON THE
13 EFFECTIVE DATE OF THIS SECTION MAY ALLOW SMOKING IN THE GAMING AREA
14 OF THE CASINO. SECTION 12603 APPLIES TO A CASINO THAT IS NOT IN
15 EXISTENCE ON THE EFFECTIVE DATE OF THIS SECTION AND TO ALL AREAS OF
16 A CASINO NOT PART OF THE GAMING AREA. A FOOD SERVICE ESTABLISHMENT
17 IN OR PART OF A CASINO IS SUBJECT TO SECTION 12905. HOWEVER, ANY
18 PART OF THE GAMING AREA WHERE FOOD AND BEVERAGE IS TAKEN BY PATRONS
19 FOR IMMEDIATE CONSUMPTION IS NOT CONSIDERED A FOOD SERVICE
20 ESTABLISHMENT UNDER THIS PART OR PART 129.

21 (2) A CASINO THAT IS IN EXISTENCE ON THE EFFECTIVE DATE OF
22 THIS SECTION SHALL COMPLY WITH SECTION 12603(2) FOR ALL AREAS OF
23 THE CASINO NOT PART OF THE GAMING AREA. SECTION 12606 DOES NOT
24 APPLY WITH RESPECT TO EMPLOYEES WORKING IN THE GAMING AREA OF A
25 CASINO WHERE SMOKING IS ALLOWED UNDER THIS SECTION. HOWEVER,
26 SECTION 12606 DOES APPLY WITH RESPECT TO EMPLOYEES WORKING IN AREAS
27 OTHER THAN THE GAMING AREA OF A CASINO.

1 (3) AS USED IN THIS SECTION, "GAMING AREA" MEANS THAT TERM AS
2 DEFINED IN R 432.1103 OF THE MICHIGAN ADMINISTRATIVE CODE.

3 SEC. 12610. NOTWITHSTANDING SECTION 12609 OR ANY OTHER
4 PROVISION OF THIS ACT TO THE CONTRARY, THE DEPARTMENT SHALL NOT
5 PROMULGATE RULES TO IMPLEMENT OR ADMINISTER THE PROVISIONS OF THIS
6 PART THAT WERE ADDED BY THE AMENDATORY ACT THAT ADDED THIS SECTION.

7 Sec. 12611. A person ~~who violates section 12603(1) or 12604a~~
8 ~~or a person or state or local governmental agency that owns or~~
9 ~~operates a public place and that violates section 12605 or 12607~~
10 **THIS PART OR PART 129** shall be directed to comply with this part
11 and is subject to a civil fine of not more than \$100.00 for a first
12 violation and not more than \$500.00 for a second or subsequent
13 violation. **A PERSON WHO MAKES A FALSE STATEMENT IN AN AFFIDAVIT**
14 **UNDER THIS PART IS GUILTY OF PERJURY UNDER SECTION 423 OF THE**
15 **MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.423.**

16 Sec. 12613. (1) Subject to subsection (2), the department
17 shall enforce this part **AND PART 129** and **ANY** rules promulgated
18 under this part pursuant to sections 2262(2) and 2263. In addition
19 to the civil fine authorized under section 12611, the department
20 may enforce this part and ~~the~~**ANY** rules promulgated under this part
21 through an action commenced pursuant to section 2255 or any other
22 appropriate action authorized by law.

23 (2) Pursuant to section 2235, the department may authorize a
24 local health department to enforce this part **AND PART 129** and ~~the~~
25 **ANY** rules promulgated under this part. A local health department
26 authorized to enforce this part **AND PART 129** and ~~the~~**ANY** rules
27 promulgated under this part shall enforce this part **AND PART 129**

1 and ~~the~~ **ANY** rules promulgated under this part pursuant to sections
 2 2461(2) and 2462. In addition to the civil fine authorized under
 3 section 12611, a local health department may enforce this part **AND**
 4 **PART 129** and ~~the~~ **ANY** rules promulgated under this part through an
 5 action commenced pursuant to section 2465 or any other appropriate
 6 action authorized by law.

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

14 (4) The remedies under this part are independent and
 15 cumulative. The use of 1 remedy by a person shall not bar the use
 16 of other lawful remedies by that person or the use of a lawful
 17 remedy by another person.

18 Sec. 12614. (1) The director shall report biennially to the
 19 legislature on the effect and enforcement of this part **AND PART**
 20 **129**. The report shall include, at a minimum, ~~both of the following:~~

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

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

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

1 ~~—— (a) A A~~ list of each public place owned or operated by the
2 state ~~—~~

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

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

6 PART 129. ~~FOOD SERVICE SANITATION~~ **SMOKE-FREE FOOD SERVICE**

7 **ESTABLISHMENTS**

8 Sec. 12905. (1) ~~Except as otherwise provided in this section,~~
9 ~~all public areas of a~~ **AN INDIVIDUAL SHALL NOT SMOKE IN A** food
10 service establishment, ~~shall be nonsmoking~~ **AND THE PERSON WHO OWNS,**
11 **OPERATES, MANAGES, OR IS IN CONTROL OF A FOOD SERVICE ESTABLISHMENT**
12 **SHALL MAKE REASONABLE EFFORT TO PROHIBIT INDIVIDUALS FROM SMOKING**
13 **IN A FOOD SERVICE ESTABLISHMENT.** ~~As used in this subsection,~~
14 ~~"public area" includes, but is not limited to, a bathroom, a~~
15 ~~coatroom, and an entrance or other area used by a patron when not~~
16 ~~seated at a food service table or counter. Public area does not~~
17 ~~include the lobby, waiting room, hallways, and lounge areas of a~~
18 ~~food service establishment, but these areas are not required to be~~
19 ~~designated as smoking areas.~~

20 ~~—— (2) Subject to subsection (3), a food service establishment~~
21 ~~with a seating capacity of fewer than 50, whether or not it is~~
22 ~~owned and operated by a private club, and a food service~~
23 ~~establishment that is owned and operated by a private club may~~
24 ~~designate up to 75% of its seating capacity as seating for smokers.~~
25 ~~A food service establishment with a seating capacity of 50 or more~~
26 ~~that is not owned or operated by a private club may designate up to~~
27 ~~50% of its seating capacity as seating for smokers. A food service~~

1 ~~establishment that designates seating for smokers shall clearly~~
2 ~~identify the seats for nonsmokers as nonsmoking, place the seats~~
3 ~~for nonsmokers in close proximity to each other, and locate the~~
4 ~~seats for nonsmokers so as not to discriminate against nonsmokers.~~

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

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

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

25 ~~—— (6) The department or a local health department shall utilize~~
26 ~~compliance or noncompliance with this section or with rules~~
27 ~~promulgated to implement this section as criteria in the~~

1 ~~determination of whether to deny, suspend, limit, or revoke a~~
2 ~~license pursuant to section 12907(1).~~

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

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

17 (5) A FOOD SERVICE ESTABLISHMENT SHALL COMPLY WITH SECTIONS
18 12603(2) AND 12606. IT IS AN AFFIRMATIVE DEFENSE TO A PROSECUTION
19 OR CIVIL OR ADMINISTRATIVE ACTION FOR A VIOLATION OF THIS SECTION
20 THAT THE OWNER, OPERATOR, MANAGER, OR PERSON IN CONTROL OF A FOOD
21 SERVICE ESTABLISHMENT WHERE SMOKING IS PROHIBITED UNDER THIS
22 SECTION MADE A GOOD FAITH EFFORT TO PROHIBIT SMOKING BY COMPLYING
23 WITH SECTION 12603(2). TO ASSERT THE AFFIRMATIVE DEFENSE UNDER THIS
24 SUBSECTION, THE OWNER, OPERATOR, MANAGER, OR PERSON SHALL FILE A
25 SWORN AFFIDAVIT SETTING FORTH HIS OR HER EFFORTS TO PROHIBIT
26 SMOKING AND HIS OR HER ACTIONS OF COMPLIANCE WITH SECTION 12603(2).

27 (6) AN INDIVIDUAL WHO VIOLATES THIS PART SHALL BE DIRECTED TO

1 COMPLY WITH THIS PART AND IS SUBJECT TO A CIVIL FINE OF NOT MORE
2 THAN \$100.00 FOR A FIRST VIOLATION AND NOT MORE THAN \$500.00 FOR A
3 SECOND OR SUBSEQUENT VIOLATION.

4 (7) ~~(9)~~ As used in this section:

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

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

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

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

18 (B) "SHOPPING MALL" MEANS A SHOPPING CENTER WITH STORES FACING
19 AN ENCLOSED MALL.

20 (C) ~~(d)~~ "Smoking" means ~~the carrying by an individual of a~~
21 ~~lighted cigar, cigarette, or other lighted smoking device~~ THAT TERM
22 AS DEFINED IN SECTION 12601.

23 SEC. 12914. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT TO
24 THE CONTRARY, THE DEPARTMENT SHALL NOT PROMULGATE RULES TO
25 IMPLEMENT OR ADMINISTER THE PROVISIONS OF THIS PART THAT WERE ADDED
26 BY THE AMENDATORY ACT THAT ADDED THIS SECTION.

27 Enacting section 1. (1) Sections 12604a, 12605, 12607, 12615,

1 12617, 21333, and 21733 of the public health code, 1978 PA 368, MCL
2 333.12604a, 333.12605, 333.12607, 333.12615, 333.12617, 333.21333,
3 and 333.21733, are repealed.

4 (2) Section 6127 of the food law of 2000, 2000 PA 92, MCL
5 289.6127, is repealed.

6 Enacting section 2. This amendatory act takes effect May 1,
7 2010.