

HOUSE BILL No. 4377

February 19, 2009, Introduced by Reps. Gonzales, Spade and Polidori and referred to the Committee on Regulatory Reform.

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, 12905, and 12915 (MCL 333.12601, 333.12603, 333.12611, 333.12613, 333.12614, 333.12905, and 333.12915), 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, section 12905 as amended by 1993 PA 242, and section 12915 as amended by 1982 PA 526, 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:

1 (A) "CASINO" MEANS THAT TERM AS DEFINED IN SECTION 2 OF THE
2 MICHIGAN GAMING CONTROL AND REVENUE ACT, 1996 IL 1, MCL 432.202.
3 CASINO DOES NOT INCLUDE A CASINO OPERATED UNDER THE INDIAN GAMING
4 REGULATORY ACT, PUBLIC LAW 100-497.

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

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

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

15 (E) ~~(b)~~-"County medical care facility" means that term as
16 defined in section 20104.

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

20 (G) ~~(d)~~-"Food service establishment" means a food service
21 establishment as defined in section ~~12901-12905~~.

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

26 (I) ~~(f)~~-"Home for the aged" means that term as defined in
27 section 20106.

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

2 (K) ~~(h)~~ "Hospital long-term care unit" means that term as
3 defined in section 20106.

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

8 (L) ~~(j)~~ "Meeting" means a meeting as defined in section 2 of
9 the open meetings act, ~~Act No. 267 of the Public Acts of 1976,~~
10 ~~being section 15.262 of the Michigan Compiled Laws 1976 PA 267, MCL~~
11 ~~15.262.~~

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

14 (N) "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.

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

22 (iii) A FOOD SERVICE ESTABLISHMENT THAT IS SUBJECT TO SECTION
23 12905.

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

26 (O) ~~(l)~~ "Public body" means a public body as defined in section
27 2 of the open meetings act, ~~Act No. 267 of the Public Acts of 1976~~

1 1976 PA 267, MCL 15.262.

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

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

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

14 (A) An educational facility.

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

17 (C) An auditorium.

18 (D) An arena.

19 (E) A theater.

20 (F) A museum.

21 (G) A concert hall.

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

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

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

27 **(v) EXCEPT TO THE EXTENT THAT IT IS EXEMPT UNDER SECTION**

1 12606B, A CASINO.

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

5 (R) "SMOKING PARAPHERNALIA" MEANS ANY EQUIPMENT, APPARATUS, OR
6 FURNISHING THAT IS USED IN OR NECESSARY FOR THE ACTIVITY OF
7 SMOKING.

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

13 (T) "TOBACCO SPECIALTY RETAIL STORE" MEANS AN ESTABLISHMENT IN
14 WHICH THE PRIMARY PURPOSE IS THE RETAIL SALE OF TOBACCO PRODUCTS
15 AND SMOKING PARAPHERNALIA, AND IN WHICH THE SALE OF OTHER PRODUCTS
16 IS INCIDENTAL. TOBACCO SPECIALTY RETAIL STORE DOES NOT INCLUDE A
17 TOBACCO DEPARTMENT OR SECTION OF A LARGER COMMERCIAL ESTABLISHMENT
18 OR ANY ESTABLISHMENT WITH ANY TYPE OF LIQUOR, FOOD, OR RESTAURANT
19 LICENSE.

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

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

25 (2) ~~(3)~~ In addition, article 1 contains general definitions
26 and principles of construction applicable to all articles of this
27 code.

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

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

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

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

15 (2) "NO SMOKING" SIGNS OR THE INTERNATIONAL "NO SMOKING"
16 SYMBOL SHALL BE CLEARLY AND CONSPICUOUSLY POSTED AT THE ENTRANCES
17 TO 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
22 ANYWHERE 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 SEC. 12606. (1) AN EMPLOYER OR A FOOD SERVICE ESTABLISHMENT
27 SHALL NOT TAKE ANY RETALIATORY OR ADVERSE PERSONNEL ACTION AGAINST

1 AN EMPLOYEE OR APPLICANT FOR EMPLOYMENT ON THE BASIS OF THE
2 INDIVIDUAL'S EXERCISE OF OR ATTEMPT TO EXERCISE HIS OR HER RIGHTS
3 UNDER THIS PART WITH RESPECT TO PLACE OF EMPLOYMENT OR PART 129
4 WITH RESPECT TO FOOD SERVICE ESTABLISHMENTS. EACH EMPLOYER SUBJECT
5 TO THIS PART AND EACH FOOD SERVICE ESTABLISHMENT SUBJECT TO PART
6 129 SHALL ADOPT, IMPLEMENT, PUBLISH, MAINTAIN, AND MODIFY TO
7 REFLECT ANY CHANGES A WRITTEN NONSMOKING POLICY. THE EMPLOYER OR
8 FOOD SERVICE ESTABLISHMENT SHALL PROMINENTLY POST THE NONSMOKING
9 POLICY IN THE WORKPLACE AND, WITHIN 3 WEEKS OF ITS ADOPTION, SHALL
10 DISSEMINATE THE POLICY TO ALL EMPLOYEES AND TO NEW EMPLOYEES WHEN
11 HIRED. THE EMPLOYER OR FOOD SERVICE ESTABLISHMENT SHALL SUPPLY A
12 WRITTEN COPY OF THE NONSMOKING POLICY UPON REQUEST TO ANY EMPLOYEE
13 OR APPLICANT FOR EMPLOYMENT. THE EMPLOYER OR FOOD SERVICE
14 ESTABLISHMENT SHALL PROVIDE A COPY OF THE NONSMOKING POLICY TO THE
15 DEPARTMENT UPON REQUEST. THE EMPLOYER OR FOOD SERVICE ESTABLISHMENT
16 SHALL INCLUDE THE FOLLOWING IN THE WRITTEN POLICY REQUIRED UNDER
17 THIS SUBSECTION:

18 (A) THAT SMOKING IS PROHIBITED AS REQUIRED IN THIS SECTION OR
19 SECTION 12905.

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

24 (2) IF EMPLOYER OR FOOD SERVICE ESTABLISHMENT IS BOUND BY A
25 COLLECTIVE BARGAINING AGREEMENT ON THE EFFECTIVE DATE OF THIS
26 SECTION, NOTHING IN THIS SECTION IMPAIRS, DIMINISHES, OR OTHERWISE
27 AFFECTS ANY OF THE RIGHTS CURRENTLY AFFORDED TO THE EMPLOYEES UNDER

1 THE CONTROLLING COLLECTIVE BARGAINING AGREEMENT. HOWEVER, ONCE THE
2 COLLECTIVE BARGAINING AGREEMENT IN EFFECT ON THE EFFECTIVE DATE OF
3 THIS SECTION EXPIRES, THE SMOKING PROHIBITIONS OF SECTIONS 12603
4 AND 12905 CONTROL AND PARTIES SHALL NOT NEGOTIATE ANY PROVISION
5 THAT CONFLICTS WITH THESE SECTIONS.

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

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

21 (B) FOR EACH CALENDAR YEAR AFTER THE CALENDAR YEAR IN WHICH
22 THE FIRST AFFIDAVIT IS FILED UNDER THIS SUBSECTION, THE CIGAR BAR
23 GENERATES 30% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME FROM THE ON-
24 SITE SALE OF CIGARS AND THE RENTAL OF ON-SITE HUMIDORS.

25 (C) THE CIGAR BAR IS LOCATED ON PREMISES THAT ARE PHYSICALLY
26 SEPARATED FROM ANY AREAS OF THE SAME OR ADJACENT ESTABLISHMENT IN
27 WHICH SMOKING IS PROHIBITED UNDER THIS PART OR PART 129 AND WHERE

1 SMOKE DOES NOT INFILTRATE INTO THOSE NONSMOKING AREAS. AS USED IN
2 THIS SUBDIVISION, "PHYSICALLY SEPARATED" MEANS AN AREA THAT IS
3 ENCLOSED ON ALL SIDES BY ANY COMBINATION OF SOLID WALLS, WINDOWS,
4 OR DOORS THAT EXTEND FROM THE FLOOR TO CEILING.

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

7 (E) THE CIGAR BAR PROHIBITS ENTRY TO A PERSON UNDER THE AGE OF
8 18 DURING THE TIME THE CIGAR BAR IS OPEN FOR BUSINESS.

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

11 (G) THE CIGAR BAR PROHIBITS THE SMOKING OF ALL OTHER TOBACCO
12 PRODUCTS.

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

25 (A) IN THE 30-DAY PERIOD IMMEDIATELY PRECEDING THE EFFECTIVE
26 DATE OF THIS SECTION, THE TOBACCO SPECIALTY RETAIL STORE GENERATED
27 75% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME FROM THE ON-SITE SALE

1 OF TOBACCO PRODUCTS AND SMOKING PARAPHERNALIA.

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

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

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

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

23 (4) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A CIGAR
24 BAR OR TOBACCO SPECIALTY RETAIL STORE THAT DOES NOT MEET THE
25 REQUIREMENTS OF THIS SECTION OR VIOLATES THIS SECTION IS NOT EXEMPT
26 FROM THE SMOKING PROHIBITION OF SECTION 12603 AND SHALL IMMEDIATELY
27 PROHIBIT SMOKING ON ITS PREMISES. A CIGAR BAR OR TOBACCO SPECIALTY

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

15 SEC. 12606B. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
16 A CASINO MAY ALLOW SMOKING ON THE FLOOR SPACE OF THE CASINO WHERE
17 GAMBLING GAMES ARE CONDUCTED OR PLAYED. DETERMINATION OF WHAT
18 CONSTITUTES FLOOR SPACE SHALL BE MADE IN A MANNER ACCEPTABLE TO THE
19 DEPARTMENT OR TO THE LOCAL HEALTH DEPARTMENT AUTHORIZED TO ENFORCE
20 THIS PART, AS PROVIDED IN RULES PROMULGATED BY THE DEPARTMENT.

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

24 (A) THIS STATE NEGOTIATES AN AGREEMENT WITH THE FEDERALLY
25 RECOGNIZED INDIAN TRIBES THAT CONDUCT GAMBLING GAMES IN THIS STATE
26 TO PROHIBIT SMOKING IN AREAS WHERE GAMBLING GAMES ARE CONDUCTED
27 PURSUANT TO AN INDIAN GAMING COMPACT OR OTHER APPROPRIATE

1 AGREEMENT.

2 (B) A MAJORITY OF FEDERALLY RECOGNIZED INDIAN TRIBES THAT
3 CONDUCT GAMBLING GAMES IN THIS STATE VOLUNTARILY PROHIBIT SMOKING
4 IN AREAS OF THE TRIBAL CASINOS WHERE GAMBLING GAMES ARE CONDUCTED
5 OR PLAYED, AS DETERMINED BY THE RECORDS OF THE MICHIGAN GAMING
6 CONTROL BOARD.

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 **ACT** and is subject to a civil fine of not more than \$100.00 for a
12 first violation and not more than \$500.00 for a second or
13 subsequent violation. **A PERSON WHO MAKES A FALSE STATEMENT IN AN**
14 **AFFIDAVIT UNDER THIS PART IS GUILTY OF PERJURY UNDER SECTION 423 OF**
15 **THE 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 **OR PART 129** pursuant to sections 2262(2) and 2263.
19 In addition to the civil fine authorized under section 12611, the
20 department may enforce this part **AND PART 129** and ~~the~~**ANY** rules
21 promulgated under this part **OR PART 129** through an action commenced
22 pursuant to section 2255 or any other appropriate action authorized
23 by law.

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

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

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

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

20 Sec. 12614. (1) The director shall report biennially to the
21 legislature on the effect and enforcement of this part **AND PART**
22 **129**. The report shall include, at a minimum, ~~both of the following:~~

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

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

27 (2) Upon request of the department, the director of the

1 department of management and budget annually shall report to the
2 department, at a minimum, ~~all of the following:~~

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

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

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

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

9 **ESTABLISHMENTS**

10 Sec. 12905. (1) ~~Except as otherwise provided in this section,~~
11 ~~all public areas of a~~ **A** food service establishment shall be
12 ~~nonsmoking~~ **NOT ALLOW SMOKING, AND AN INDIVIDUAL SHALL NOT SMOKE IN**
13 **A FOOD SERVICE ESTABLISHMENT. A FOOD SERVICE ESTABLISHMENT SHALL**
14 **COMPLY WITH SECTION 12606.** ~~As used in this subsection, "public~~
15 ~~area" includes, but is not limited to, a bathroom, a coatroom, and~~
16 ~~an entrance or other area used by a patron when not seated at a~~
17 ~~food service table or counter. Public area does not include the~~
18 ~~lobby, waiting room, hallways, and lounge areas of a food service~~
19 ~~establishment, but these areas are not required to be designated as~~
20 ~~smoking areas.~~

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

1 ~~50% of its seating capacity as seating for smokers. A food service~~
2 ~~establishment that designates seating for smokers shall clearly~~
3 ~~identify the seats for nonsmokers as nonsmoking, place the seats~~
4 ~~for nonsmokers in close proximity to each other, and locate the~~
5 ~~seats for nonsmokers so as not to discriminate against nonsmokers.~~

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

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

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

26 (4) ~~(6)~~—The department or a local health department shall
27 ~~utilize compliance or~~ **NOTIFY THE DEPARTMENT OF AGRICULTURE OF ANY**

1 noncompliance with this section or with rules promulgated to
2 implement this section. **THE DEPARTMENT OF AGRICULTURE MAY USE**
3 **COMPLIANCE OR NONCOMPLIANCE WITH THIS SECTION OR ANY RULES**
4 **PROMULGATED TO IMPLEMENT THIS SECTION** as criteria in the
5 determination of whether to deny, suspend, limit, or revoke a
6 license pursuant to ~~section 12907(1)~~ **ISSUED UNDER THE FOOD LAW OF**
7 **2000, 2000 PA 92, MCL 289.1101 TO 289.8111.**

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

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

22 (6) **"NO SMOKING" SIGNS OR THE INTERNATIONAL "NO SMOKING"**
23 **SYMBOL SHALL BE CLEARLY AND CONSPICUOUSLY POSTED AT THE ENTRANCE TO**
24 **AND IN EVERY BUILDING OR OTHER AREA WHERE SMOKING IS PROHIBITED**
25 **UNDER THIS SECTION. THE OWNER, OPERATOR, MANAGER, OR PERSON HAVING**
26 **CONTROL OF THE BUILDING OR OTHER AREA SHALL POST THE SIGNS. THE**
27 **OWNER, OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE AREA**

1 SHALL REMOVE ALL ASHTRAYS AND OTHER SMOKING PARAPHERNALIA FROM ANY
 2 AREA WHERE SMOKING IS PROHIBITED UNDER THIS SECTION. THE OWNER,
 3 OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE AREA SHALL
 4 INFORM PERSONS SMOKING IN VIOLATION OF THIS ACT THAT THEY ARE IN
 5 VIOLATION OF STATE LAW AND SUBJECT TO PENALTIES.

6 (7) ~~(9)~~—As used in this section:

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

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

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

18 (A) "FOOD SERVICE ESTABLISHMENT" MEANS THAT TERM AS DEFINED IN
 19 SECTION 1107 OF THE FOOD LAW OF 2000, 2000 PA 92, MCL 289.1107.
 20 FOOD SERVICE ESTABLISHMENT DOES NOT INCLUDE AN ESTABLISHMENT
 21 DESCRIBED IN SECTION 12601(N) (ii) OR (iv) .

22 (B) "SHOPPING MALL" MEANS A SHOPPING CENTER WITH STORES FACING
 23 AN ENCLOSED MALL.

24 (C) ~~(d)~~—"Smoking", means the carrying by an individual of a
 25 lighted cigar, cigarette, or other lighted smoking device "SMOKING
 26 PARAPHERNALIA", AND "TOBACCO PRODUCT" MEAN THOSE TERMS AS DEFINED
 27 IN SECTION 12601.

1 Sec. 12915. A county, city, village, or township ~~shall not~~
2 ~~regulate those aspects of food service establishments or vending~~
3 ~~machines which are subject to regulation under this part except to~~
4 ~~the extent necessary to carry out the responsibility of a local~~
5 ~~health department pursuant to sections 12906 and 12908~~ **MAY ADOPT**
6 **AND ENFORCE LOCAL CODES, ORDINANCES, OR REGULATIONS THAT COMPLY**
7 **WITH AT LEAST THE MINIMUM APPLICABLE STANDARDS SET FORTH IN THIS**
8 **PART.** This part shall not relieve the applicant for a license or a
9 licensee from responsibility for securing a local permit or
10 complying with applicable local codes, regulations, or ordinances
11 ~~not~~ **THAT ARE** in ~~conflict with~~ **ADDITION TO** this part.

12 Enacting section 1. (1) Sections 12604a, 12605, 12607, 12615,
13 12617, 12909, 21333, and 21733 of the public health code, 1978 PA
14 368, MCL 333.12604a, 333.12605, 333.12607, 333.12615, 333.12617,
15 333.12909, 333.21333, and 333.21733, are repealed.
16 (2) Section 6127 of the food law of 2000, 2000 PA 92, MCL
17 289.6127, is repealed.