

Act No. 242  
Public Acts of 1993  
Approved by the Governor  
November 13, 1993  
Filed with the Secretary of State  
November 15, 1993

**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1993**

Introduced by Reps. Pitoniak, Brown, Gubow, Jamian, Anthony, Leland, Freeman, Jaye and Rivers  
Reps. DeMars, Fitzgerald, Gilmer, Gire, Harrison, Hill, Horton, Keith, Kilpatrick, Scott and Voorhees  
named co-sponsors  
Reps. Alley, Bandstra, Bennane, Dalman, DeLange, Gagliardi, Goschka, Jersevic and McManus named  
co-sponsors

# **ENROLLED HOUSE BILL No. 4457**

AN ACT to amend section 12905 of Act No. 368 of the Public Acts of 1978, entitled as amended "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for penalties and remedies; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," as amended by Act No. 297 of the Public Acts of 1988, being section 333.12905 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Section 12905 of Act No. 368 of the Public Acts of 1978, as amended by Act No. 297 of the Public Acts of 1988, being section 333.12905 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 12905. (1) Except as otherwise provided in this section, all public areas of a food service establishment shall be nonsmoking. As used in this subsection, "public area" includes, but is not limited to, a bathroom, a coatroom, and an entrance or other area used by a patron when not seated at a food service table or counter. Public area does not include the lobby, waiting room, hallways, and lounge areas of a food service establishment, but these areas are not required to be designated as smoking areas.

(2) Subject to subsection (3), a food service establishment with a seating capacity of fewer than 50, whether or not it is owned and operated by a private club, and a food service establishment that is owned and operated by a private club may designate up to 75% of its seating capacity as seating for smokers. A food service establishment with a seating capacity of 50 or more that is not owned or operated by a private club may designate up to 50% of its seating capacity as seating for smokers. A food service establishment that designates seating for smokers shall clearly identify the seats

for nonsmokers as nonsmoking, place the seats for nonsmokers in close proximity to each other, and locate the seats for nonsmokers so as not to discriminate against nonsmokers.

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

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

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

(6) The department or a local health department shall utilize compliance or noncompliance with this section or with rules promulgated to implement this section as criteria in the determination of whether to deny, suspend, limit, or revoke a license pursuant to section 12907(1).

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

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

(9) As used in this section:

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

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

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

(d) "Smoking" means the carrying by an individual of a lighted cigar, cigarette, or other lighted smoking device.

-----  
Co-Clerk of the House of Representatives.

-----  
Secretary of the Senate.

Approved \_\_\_\_\_

-----  
Governor.