

HB 5133, As Passed Senate, November 29, 2000

SENATE SUBSTITUTE FOR

HOUSE BILL NO. 5133

As amended November 28 and 29, 2000

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding section 5208.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 SEC. 5208. (1) A LOCAL UNIT OF GOVERNMENT MAY ADOPT A BUILDING
CODE OR OTHER ORDINANCE THAT REGULATES THE CONSTRUCTION, USE,
DESIGN, OR OPERATION OF A FACILITY AS DESCRIBED IN THIS SECTION, AND
THAT PROVIDES PENALTIES FOR VIOLATION.
2 ~~(1)~~ (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT
CLEARLY INDICATES A DIFFERENT MEANING:
- 3 (A) "BOOTH, STALL, OR PARTITIONED PORTION OF A ROOM OR AN
4 INDIVIDUAL ROOM" MEANS AN ENCLOSURE SPECIFICALLY OFFERED TO A
5 PERSON FOR A FEE OR AS AN INCIDENT TO PERFORMING HIGH-RISK SEXUAL
6 CONDUCT OR AN ENCLOSURE THAT IS PART OF A BUSINESS OPERATED ON
7 THE PREMISES THAT OFFERS MOTION PICTURES, VIDEOCASSETTES OR OTHER
8 VIDEO REPRODUCTIONS, OR LIVE PERFORMANCES THAT ARE CHARACTERIZED
9 BY AN EMPHASIS ON THE DISPLAY OR EXPOSURE OF SPECIFIC SEXUAL
10 ACTIVITY, TO BE VIEWED WITHIN THE ENCLOSURE, INCLUDING AN
11 ENCLOSURE IN WHICH MOTION PICTURES, VIDEOCASSETTES OR OTHER VIDEO

HB 5133, As Passed Senate, November 29, 2000

House Bill No. 5133 as amended November 28 and 29, 2000

2

1 REPRODUCTIONS, OR LIVE ENTERTAINMENT IS DISPENSED FOR A FEE. THE
2 PHRASE DOES NOT INCLUDE AN ENCLOSURE USED AS A PRIVATE OFFICE BY
3 AN OWNER, MANAGER, OR OTHER PERSON EMPLOYED ON THE PREMISES IN
4 THE COURSE OF HIS OR HER EMPLOYMENT IF THE ENCLOSURE IS NOT HELD
5 OUT FOR USE OR HIRE TO THE PUBLIC FOR THE PURPOSE OF VIEWING
6 MOTION PICTURES, VIDEOCASSETTES OR OTHER VIDEO REPRODUCTIONS, OR
7 LIVE ENTERTAINMENT FOR A FEE AND IS NOT OPEN TO PERSONS OTHER
8 THAN EMPLOYEES.

9 (B) "DOOR, CURTAIN, OR PORTAL PARTITION" MEANS A FULL, COM-
10 PLETE, NONTRANSPARENT CLOSURE DEVICE CONSTRUCTED SO THAT A PERSON
11 OUTSIDE AN ENCLOSURE CANNOT SEE OR VIEW ACTIVITY TAKING PLACE
12 WITHIN THE ENCLOSURE.

13 (C) "FACILITY" MEANS ALL OR A DISTINCT PORTION OF A COMMER-
14 CIAL BUILDING, STRUCTURE, OR OTHER PREMISES. FACILITY DOES NOT
15 INCLUDE A BUILDING, STRUCTURE, OR OTHER PREMISES LAWFULLY OPERAT-
16 ING AS A HOTEL, MOTEL, APARTMENT COMPLEX, CONDOMINIUM, OR ROOMING
17 HOUSE.

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20 (D) "HIGH-RISK SEXUAL CONDUCT" MEANS 1 OR MORE OF THE
21 FOLLOWING:

22 (i) FELLATIO.

23 (ii) CUNNILINGUS.

24 (iii) ANAL INTERCOURSE.

25 (iv) VAGINAL INTERCOURSE.

(v) SEXUAL CONTACT BETWEEN EMPLOYEES OF A FACILITY AND PATRONS
OF THE FACILITY INDEPENDENT CONTRACTORS OF A FACILITY AND
PATRONS OF THE FACILITY, OR BETWEEN PATRONS OF A FACILITY, IF
THAT SEXUAL CONTACT HAS A REASONABLE LIKELIHOOD OF SPREADING A
SEXUALLY TRANSMITTED DISEASE.

HB 5133, As Passed Senate, November 29, 2000

House Bill No. 5133 as amended November 28 and 29, 2000

3

1 (E) "LOCAL UNIT OF GOVERNMENT" MEANS A CITY, VILLAGE, OR
TOWNSHIP SUBJECT TO THE HOME RULE CITY ACT, 1909 PA 279, MCL 117.1
TO 117.38; 1945 PA 246, MCL 41.181 TO 41.187; THE HOME RULE VILLAGE
ACT, 1909 PA 278, MCL 78.1 TO 78.28; OR THE GENERAL LAW VILLAGE ACT,
1895 PA 3, MCL 61.1 TO 74.25.

2 (F) "OPEN TO AN ADJACENT PUBLIC ROOM SO THAT THE AREA INSIDE
IS VISIBLE TO A PERSON IN AN ADJACENT ROOM" MEANS EITHER OF THE
3 FOLLOWING:

4 (i) THE ABSENCE OF A DOOR, CURTAIN, OR PORTAL PARTITION.

5 (ii) A DOOR OR OTHER DEVICE THAT IS MADE OF CLEAR, TRANSPAR-
6 ENT MATERIAL SUCH AS GLASS, PLEXIGLASS, OR OTHER SIMILAR MATERIAL
7 MEETING APPLICABLE BUILDING CODE AND SAFETY STANDARDS AND THAT
8 PERMITS THE ACTIVITY INSIDE THE ENCLOSURE TO BE VIEWED OR SEEN BY
9 A PERSON OUTSIDE THE ENCLOSURE.

10 (3) A LOCAL UNIT OF GOVERNMENT MAY ADOPT AN ORDINANCE STATING
11 THAT A PERSON SHALL NOT CONSTRUCT, USE, DESIGN, OR OPERATE A
FACILITY FOR THE PURPOSE OF ENGAGING IN OR PERMITTING A PERSON TO
12 ENGAGE IN SEXUAL ACTIVITY THAT INCLUDES HIGH-RISK SEXUAL
13 CONDUCT.

14 (4) A LOCAL UNIT OF GOVERNMENT MAY ADOPT AN ORDINANCE STATING
15 THAT A PERSON SHALL NOT OWN, OPERATE, MANAGE, RENT, LEASE, OR
EXERCISE CONTROL OVER A FACILITY THAT CONTAINS A BOOTH, STALL, OR
16 PARTITIONED PORTION OF A ROOM OR AN INDIVIDUAL ROOM USED FOR THE
17 VIEWING OF A MOTION PICTURE, VIDEOCASSETTE OR OTHER VIDEO REPRO-
18 Duction, OR LIVE ENTERTAINMENT, CHARACTERIZED BY AN EMPHASIS ON
19 THE DISPLAY OR EXPOSURE OF SPECIFIC SEXUAL ACTIVITY, HAVING A
20 DOOR, CURTAIN, OR PORTAL PARTITION, UNLESS ALL OF THE FOLLOWING
21 ARE MET:

22 (A) THE FACILITY CONTAINS 1 OR MORE MANAGER'S STATIONS. A
23 MANAGER'S STATION SHALL NOT EXCEED 32 SQUARE FEET OF FLOOR AREA.

24 (B) AT LEAST 1 EMPLOYEE IS ON DUTY AND SITUATED IN EACH
25 MANAGER'S STATION AT ALL TIMES THAT A PATRON IS PRESENT INSIDE
26 THE FACILITY.

HB 5133, As Passed Senate, November 29, 2000

House Bill No. 5133 as amended November 28, 2000

4

1 (C) THE INTERIOR OF THE FACILITY IS CONFIGURED IN SUCH A
2 MANNER THAT THERE IS AN UNOBSTRUCTED, DIRECT LINE OF SIGHT VIEW
3 FROM A MANAGER'S STATION OF EVERY AREA OF THE FACILITY TO WHICH
4 ANY PATRON IS PERMITTED ACCESS FOR ANY PURPOSE, EXCLUDING REST
5 ROOMS.

6 (D) NO REST ROOM IN THE FACILITY CONTAINS A TELEVISION OR
7 MOTION PICTURE OR VIDEOCASSETTE VIEWING EQUIPMENT.

8 (E) NO PATRON IS PERMITTED ACCESS TO ANY AREA OF THE FACIL-
9 ITY DESIGNATED AS AN AREA IN WHICH PATRONS ARE NOT PERMITTED.

10 (F) NO BOOTH, STALL, OR PARTITIONED PORTION OF A ROOM OR AN
11 INDIVIDUAL ROOM IS OCCUPIED BY MORE THAN 1 PERSON AT ANY TIME.

12 (G) THE FACILITY IS EQUIPPED WITH OVERHEAD LIGHTING FIXTURES
13 OF SUFFICIENT INTENSITY TO ILLUMINATE EVERY PLACE TO WHICH
14 PATRONS ARE PERMITTED ACCESS AT AN ILLUMINATION OF NOT LESS THAN
15 5 FOOT-CANDLES AS MEASURED AT FLOOR LEVEL, AND THIS AMOUNT OF
16 ILLUMINATION IS MAINTAINED AT ALL TIMES THAT A PATRON IS PRESENT
17 IN THE FACILITY.

18 (H) NO HOLES OR OPENINGS OF ANY KIND EXIST BETWEEN BOOTHS,
19 STALLS, OR PARTITIONED PORTIONS OF A ROOM OR INDIVIDUAL ROOMS,
20 AND THE FACILITY IS INSPECTED DAILY TO DETERMINE IF ANY HOLES OR
21 OPENINGS EXIST.

22 (I) THE FLOOR COVERING IN A BOOTH, STALL, OR PARTITIONED
23 PORTION OF A ROOM OR AN INDIVIDUAL ROOM IS NONPOROUS AND EASY TO
24 CLEAN, WITH NO RUGS OR CARPETING.

25 (J) ALL WALL SURFACES AND CEILING SURFACES IN A BOOTH,
26 STALL, OR PARTITIONED PORTION OF A ROOM OR AN INDIVIDUAL ROOM ARE

HB 5133, As Passed Senate, November 29, 2000

House Bill No. 5133 as amended November 28 and 29, 2000

5

1 CONSTRUCTED OF OR PERMANENTLY COVERED BY NONPOROUS AND EASY TO
2 CLEAN MATERIAL.

3 (K) NO WOOD, PLYWOOD, COMPOSITION BOARD, OR OTHER POROUS
4 BUILDING MATERIAL IS USED WITHIN 48 INCHES OF THE FLOOR OF A
5 BOOTH, STALL, OR PARTITIONED PORTION OF A ROOM OR AN INDIVIDUAL
6 ROOM.

7 (5) A LOCAL HEALTH OFFICER MAY DECLARE AN IMMINENT
8 DANGER, AS DETERMINED BY SECTION 2451, IF THE LOCAL HEALTH
9 OFFICER DETERMINES THAT HIGH RISK SEXUAL CONDUCT IS OCCURRING IN
10 A FACILITY.

11 (6) A LOCAL HEALTH OFFICER WHO MAKES A DETERMINATION
12 UNDER SUBSECTION (4), SHALL IMMEDIATELY INFORM THE INDIVIDUALS
13 AFFECTED BY THE IMMINENT DANGER AND ISSUE AN ORDER WHICH SHALL BE
14 DELIVERED TO A PERSON AUTHORIZED TO AVOID, CORRECT, OR REMOVE THE
15 IMMINENT DANGER OR BE POSTED AT OR NEAR THE IMMINENT DANGER. THE
16 ORDER SHALL INCORPORATE THE FINDINGS OF THE LOCAL HEALTH
17 DEPARTMENT AND REQUIRE IMMEDIATE ACTION NECESSARY TO AVOID,
18 CORRECT, OR REMOVE THE IMMINENT DANGER. THE ORDER MAY SPECIFY
19 ACTION TO BE TAKEN OR PROHIBIT THE PRESENCE OF INDIVIDUALS IN
20 LOCATIONS OR UNDER CONDITIONS WHERE THE IMMINENT DANGER EXISTS,
21 EXCEPT INDIVIDUALS WHOSE PRESENCE IS NECESSARY TO AVOID, CORRECT,
22 OR REMOVE THE IMMINENT DANGER.

23 (7) UPON THE FAILURE OF A PERSON TO COMPLY PROMPTLY
24 WITH AN ORDER ISSUED UNDER THIS SECTION, THE LOCAL HEALTH
25 DEPARTMENT MAY PETITION A CIRCUIT OR DISTRICT COURT HAVING

HB 5133, As Passed Senate, November 29, 2000

House Bill No. 5133 as amended November 28, 2000

6

1 JURISDICTION TO RESTRAIN A CONDITION OR PRACTICE WHICH THE LOCAL
2 HEALTH OFFICER DETERMINES CAUSES THE IMMINENT DANGER OR TO
3 REQUIRE ACTION TO AVOID, CORRECT, OR REMOVE THE IMMINENT DANGER.

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

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12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

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HB 5133, As Passed Senate, November 29, 2000

House Bill No. 5133 as amended November 28, 2000

7

1 [REDACTED]
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16 [REDACTED]
17 [REDACTED]
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19 [REDACTED]
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21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 (8) IT IS THE PURPOSE OF THIS SECTION TO REGULATE SEXUALLY
26 ORIENTED BUSINESSES TO PROMOTE THE HEALTH, SAFETY, AND GENERAL
27 WELFARE OF THE CITIZENS OF THIS STATE. THE PROVISIONS OF THIS

HB 5133, As Passed Senate, November 29, 2000

House Bill No. 5133 as amended November 29, 2000

8

1 SECTION HAVE NEITHER THE PURPOSE NOR THE EFFECT OF IMPOSING A
2 LIMITATION OR RESTRICTION ON THE CONTENT OF ANY COMMUNICATIVE
3 MATERIALS, INCLUDING SEXUALLY ORIENTED MATERIALS. SIMILARLY, IT
4 IS NOT THE INTENT OR EFFECT OF THIS SECTION TO RESTRICT OR DENY
5 ACCESS TO ADULTS TO SEXUALLY ORIENTED MATERIALS PROTECTED BY THE
6 FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OR BY
7 ARTICLE I, SECTION 5 OF THE STATE CONSTITUTION OF 1963, OR TO
8 DENY ACCESS BY THE DISTRIBUTORS AND EXHIBITORS OF SEXUALLY ORI-
9 ENTED ENTERTAINMENT TO THEIR INTENDED MARKET. NEITHER IS IT THE
10 INTENT NOR THE EFFECT OF THIS SECTION TO CONDONE OR LEGITIMIZE
11 THE DISTRIBUTION OF OBSCENE MATERIAL.

12 Enacting section 1. This amendatory act takes effect
13 June 1, 2001.

14 Enacting section 2. This amendatory act does not take
15 effect unless all of the following bills of the 90th Legislature
16 are enacted into law:

- 17 (a) Senate Bill No. 1116.
- 18 (b) Senate Bill No. 1293.
- 19 (c) Senate Bill No. 1295.
- 20 (d) Senate Bill No. 1296.
- 21 (e) Senate Bill No. 1297.
- 22 (f) House Bill No. 4327.
- 23 (g) House Bill No. 5134.