



# HOUSE BILL No. 5195

December 9, 1999, Introduced by Reps. Ruth Johnson, Vear, Law, Gilbert, Hager, Hart, Allen, Pappageorge, Jellema, Mortimer, Voorhees, Green, Scott, Jansen, Shulman and Cassis and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 12601 and 12909 (MCL 333.12601 and 333.12909), section 12601 as amended by 1988 PA 315 and section 12909 as amended by 1982 PA 324, and by adding sections 12606 and 12606a; 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) "Child caring institution" and "child care center" mean  
3 those terms as defined in section 1 of ~~Act No. 116 of the Public~~  
4 ~~Acts of 1973, being section 722.111 of the Michigan Compiled~~  
5 ~~Laws~~ 1973 PA 116, MCL 722.111.

6       (b) "County medical care facility" means that term as  
7 defined in section 20104.

1 (c) "Educational facility" means a building owned, leased,  
2 or under the control of a public or private school system,  
3 college, or university.

4 (D) "FOOD ESTABLISHMENT" MEANS THE TYPE OF FOOD ESTABLISH-  
5 MENT AS DEFINED IN THE MICHIGAN FOOD LAW OF 2000.

6 (E) ~~(d)~~ "Food service establishment" means ~~a~~ THE TYPE OF  
7 food service establishment as defined in ~~section 12901~~ THE  
8 MICHIGAN FOOD LAW OF 2000.

9 (F) ~~(e)~~ "Health facility" means a health facility or  
10 agency licensed under article 17, except a home for the aged,  
11 nursing home, county medical care facility, hospice, or hospital  
12 long-term care unit.

13 (G) ~~(f)~~ "Home for the aged" means that term as defined in  
14 section 20106.

15 (H) ~~(g)~~ "Hospice" means that term as defined in section  
16 20106.

17 (I) ~~(h)~~ "Hospital long-term care unit" means that term as  
18 defined in section 20106.

19 (J) ~~(i)~~ "Licensed premises" means any portion of a build-  
20 ing, structure, room, or enclosure in which alcoholic liquor may  
21 be sold for consumption on the premises pursuant to a license  
22 issued by the Michigan liquor control commission.

23 (K) ~~(j)~~ "Meeting" means a meeting as defined in section 2  
24 of the open meetings act, ~~Act No. 267 of the Public Acts of~~  
25 ~~1976, being section 15.262 of the Michigan Compiled Laws~~ 1976  
26 PA 267, MCL 15.262.

1       (1) ~~(k)~~ "Nursing home" means that term as defined in  
2 section 20109.

3       (M) ~~(i)~~ "Public body" means a public body as defined in  
4 section 2 of the open meetings act, ~~Act No. 267 of the Public~~  
5 ~~Acts of 1976~~ 1976 PA 267, MCL 15.262.

6       (N) ~~(m)~~ "Public place", except as otherwise provided in  
7 subsection (2), means both of the following:

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

15       (ii) An enclosed, indoor area which is not owned or operated  
16 by a state or local governmental agency, is used by the general  
17 public, and is 1 of the following:

18       (A) An educational facility.

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

21       (C) An auditorium.

22       (D) An arena.

23       (E) A theater.

24       (F) A museum.

25       (G) A concert hall.

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



1           (0) ~~(n)~~ "Smoking" or "smoke" means the carrying by a  
2 person of a lighted cigar, cigarette, pipe, or other lighted  
3 smoking device.

4           (2) Public place does not include a private, enclosed room  
5 or office occupied exclusively by a smoker, even if the room or  
6 enclosed office may be visited by a nonsmoker.

7           (3) In addition, article 1 contains general definitions and  
8 principles of construction applicable to all articles of this  
9 code.

10           SEC. 12606. (1) SUBJECT TO SUBSECTIONS (2) AND (3), THE  
11 OWNER OR OPERATOR OF A FOOD ESTABLISHMENT PRIMARILY ENGAGED IN  
12 THE RETAIL SALE OF COLD OR ROOM TEMPERATURE FOOD FOR HOME CON-  
13 SUMPTION SHALL NOT PERMIT THE SMOKING OR BURNING OF TOBACCO ON  
14 THE PREMISES.

15           (2) A SIGN INDICATING THAT SMOKING IS PROHIBITED IN THE  
16 RETAIL GROCERY FOOD ESTABLISHMENT SHALL BE POSTED AT EACH PUBLIC  
17 ENTRANCE TO THE FOOD ESTABLISHMENT.

18           (3) A FOOD ESTABLISHMENT PRIMARILY ENGAGED IN THE RETAIL  
19 SALE OF COLD OR ROOM TEMPERATURE FOOD FOR HOME CONSUMPTION MAY  
20 HAVE A DESIGNATED SMOKING AREA FOR EMPLOYEES AND THE PUBLIC. A  
21 DESIGNATED EMPLOYEE AND PUBLIC SMOKING AREA SHALL BE ISOLATED  
22 FROM THE RETAIL FOOD AREA AND SHALL BE POSTED.

23           (4) A PERSON, EXCEPT EMPLOYEES OR MEMBERS OF THE GENERAL  
24 PUBLIC WHO SMOKE IN A DESIGNATED SMOKING AREA ESTABLISHED UNDER  
25 SUBSECTION (3), SHALL NOT SMOKE OR BURN TOBACCO IN A RETAIL GRO-  
26 CERY FOOD ESTABLISHMENT.

1 (5) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A  
2 MISDEMEANOR PUNISHABLE BY A FINE NOT TO EXCEED \$100.00.

3 (6) THIS SECTION SHALL BE ENFORCED BY THE MICHIGAN DEPART-  
4 MENT OF AGRICULTURE OR OTHER GOVERNMENTAL ENTITY AS DELEGATED BY  
5 THE MICHIGAN FOOD LAW OF 2000.

6 SEC. 12606A. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SEC-  
7 TION, ALL PUBLIC AREAS OF A FOOD SERVICE ESTABLISHMENT SHALL BE  
8 NONSMOKING. AS USED IN THIS SUBSECTION, "PUBLIC AREA" INCLUDES A  
9 BATHROOM, A COATROOM, AND AN ENTRANCE OR OTHER AREA USED BY A  
10 PATRON WHEN NOT SEATED AT A FOOD SERVICE TABLE OR COUNTER.  
11 PUBLIC AREA DOES NOT INCLUDE THE LOBBY, WAITING ROOM, HALLWAYS,  
12 AND LOUNGE AREAS OF A FOOD SERVICE ESTABLISHMENT, BUT THESE AREAS  
13 ARE NOT REQUIRED TO BE DESIGNATED AS SMOKING AREAS.

14 (2) SUBJECT TO SUBSECTION (3), A FOOD SERVICE ESTABLISHMENT,  
15 WHETHER OR NOT IT IS OWNED AND OPERATED BY A PRIVATE CLUB, WITH A  
16 SEATING CAPACITY OF FEWER THAN 50 AND A FOOD SERVICE ESTABLISH-  
17 MENT THAT IS OWNED AND OPERATED BY A PRIVATE CLUB MAY DESIGNATE  
18 UP TO 75% OF ITS SEATING CAPACITY AS SEATING FOR SMOKERS. A FOOD  
19 SERVICE ESTABLISHMENT WITH A SEATING CAPACITY OF 50 OR MORE THAT  
20 IS NOT OWNED OR OPERATED BY A PRIVATE CLUB MAY DESIGNATE UP TO  
21 50% OF ITS SEATING CAPACITY AS SEATING FOR SMOKERS.

22 (3) A FOOD SERVICE ESTABLISHMENT THAT DESIGNATES SEATING FOR  
23 SMOKERS SHALL CLEARLY IDENTIFY THE SEATS FOR NONSMOKERS AS NON-  
24 SMOKING, PLACE THE SEATS FOR NONSMOKERS IN CLOSE PROXIMITY TO  
25 EACH OTHER, AND LOCATE THE SEATS FOR NONSMOKERS SO AS NOT TO DIS-  
26 CRIMINATE AGAINST NONSMOKERS. A FOOD SERVICE ESTABLISHMENT SHALL  
27 NOT USE THE DEFINITION OF SEATING CAPACITY AND THE EXEMPTION FROM

1 THAT DEFINITION TO INCREASE THE AMOUNT OF SEATING FOR SMOKERS  
2 ABOVE 75%.

3 (4) IN ADDITION TO A FOOD SERVICE ESTABLISHMENT THAT PRO-  
4 VIDES ITS OWN SEATING, SUBSECTIONS (1), (2), AND (3) ALSO APPLY  
5 TO A FOOD SERVICE ESTABLISHMENT OR GROUP OF FOOD SERVICE ESTAB-  
6 LISHMENTS THAT ARE LOCATED IN A SHOPPING MALL WHERE THE SEATING  
7 FOR THE FOOD SERVICE ESTABLISHMENT OR GROUP OF FOOD SERVICE  
8 ESTABLISHMENTS IS PROVIDED OR MAINTAINED, OR BOTH, BY THE PERSON  
9 WHO OWNS OR OPERATES THE SHOPPING MALL. AS USED IN THIS SUBSEC-  
10 TION, "SHOPPING MALL" MEANS A SHOPPING CENTER WITH STORES FACING  
11 AN ENCLOSED MALL.

12 (5) THE DIRECTOR SHALL INSPECT EACH FOOD SERVICE ESTABLISH-  
13 MENT THAT IS SUBJECT TO THIS SECTION. THE INSPECTING ENTITY  
14 SHALL DETERMINE COMPLIANCE WITH THIS SECTION DURING EACH  
15 INSPECTION.

16 (6) THE DEPARTMENT OR A LOCAL HEALTH DEPARTMENT SHALL UTI-  
17 LIZE COMPLIANCE OR NONCOMPLIANCE WITH THIS SECTION OR WITH RULES  
18 PROMULGATED TO IMPLEMENT THIS SECTION AS CRITERIA IN THE DETERMI-  
19 NATION OF WHETHER TO DENY, SUSPEND, LIMIT, OR REVOKE A LICENSE  
20 PURSUANT TO SECTION 4127 OF THE MICHIGAN FOOD LAW OF 2000.

21 (7) WITHIN 5 DAYS OF A WRITTEN COMPLAINT OF VIOLATION OF  
22 THIS SECTION, A LOCAL HEALTH DEPARTMENT SHALL INVESTIGATE THE  
23 COMPLAINT TO DETERMINE COMPLIANCE. IF A VIOLATION OF THIS SEC-  
24 TION IS IDENTIFIED AND NOT CORRECTED AS ORDERED BY THE LOCAL  
25 HEALTH DEPARTMENT OR DEPARTMENT WITHIN 2 DAYS AFTER RECEIPT OF  
26 THE ORDER BY THE FOOD SERVICE ESTABLISHMENT, THE DIRECTOR MAY

1 ISSUE AN ORDER TO CEASE FOOD SERVICE OPERATIONS UNTIL COMPLIANCE  
2 WITH THIS SECTION IS ACHIEVED.

3 (8) THIS SECTION DOES NOT APPLY TO A PRIVATE FACILITY THAT  
4 IS SERVICED BY A CATERING KITCHEN OR TO A SEPARATE ROOM IN A FOOD  
5 SERVICE ESTABLISHMENT THAT IS USED FOR PRIVATE BANQUETS. THIS  
6 SECTION DOES NOT APPLY TO A FOOD SERVICE ESTABLISHMENT THAT IS  
7 OWNED AND OPERATED BY A FRATERNAL ORGANIZATION, IF SERVICE IS  
8 LIMITED TO MEMBERS OF THE FRATERNAL ORGANIZATION AND THEIR  
9 GUESTS.

10 (9) THIS SECTION SHALL ONLY BE ENFORCED BY THE LOCAL HEALTH  
11 DEPARTMENT HAVING JURISDICTION.

12 (10) AS USED IN THIS SECTION:

13 (A) "BAR" MEANS THAT TERM AS DEFINED IN SECTION 105 OF THE  
14 MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998 PA 58, MCL 436.1105.

15 (B) "ROOM" MEANS AN AREA THAT IS PHYSICALLY DISTINCT FROM  
16 THE MAIN DINING AREA OF A FOOD SERVICE ESTABLISHMENT AND FROM  
17 WHICH SMOKE CANNOT PASS INTO THE MAIN DINING AREA.

18 (C) "SEATING CAPACITY" MEANS THE ACTUAL NUMBER OF SEATS OR  
19 PATRONS IN A FOOD SERVICE ESTABLISHMENT. SEATING CAPACITY DOES  
20 NOT INCLUDE SEATS LOCATED AT A BAR OR SEATS AT TABLES THAT ARE  
21 LOCATED ADJACENT TO A BAR, IF MEALS ARE NOT SERVED AT THOSE  
22 TABLES.

23 (D) "SMOKING" MEANS THE CARRYING BY AN INDIVIDUAL OF A  
24 LIGHTED CIGAR, CIGARETTE, OR OTHER LIGHTED SMOKING DEVICE.

25 Sec. 12909. ~~-(1) The department shall promulgate rules to~~  
26 ~~prescribe criteria for programs by local health departments and~~  
27 ~~procedures for the administration and enforcement of this part.~~



~~1 The department may promulgate rules to prescribe minimum  
2 standards of sanitation for the protection of the public health  
3 and otherwise provide for the implementation of this part. The  
4 department in promulgating these rules shall seek the advice and  
5 counsel of local health departments and the food service  
6 industry.~~

~~7 (2) The manufacturing, processing, or freezing of frozen  
8 desserts as defined in section 2 of the frozen desserts act of  
9 1968, Act No. 298 of the Public Acts of 1968, being section  
10 288.322 of the Michigan Compiled Laws, in food service establish-  
11 ments licensed pursuant to this part, which frozen desserts are  
12 intended only for use in the soft form by patrons, guests,  
13 patients, or employees, shall comply with the standards of this  
14 part and rules promulgated pursuant to this part.~~

~~15 (3) Except as otherwise specifically defined or described in  
16 this part, the provisions of the 1976 recommendations of the  
17 United States food and drug administration for a food service  
18 sanitation manual, including a model food service sanitation  
19 ordinance and the unabridged form of "the vending of food and  
20 beverages--a sanitation ordinance and code--1965 recommendations  
21 of the public health service" are adopted, except any reference  
22 in these ordinances and codes to adulteration, misbranding,  
23 advertising, and enforcement procedures. Upon written request  
24 from a local health department, the department may recognize cer-  
25 tain enforcement procedures other than those contained in this  
26 part and rules promulgated under this part, when the procedures  
27 will result in enforcement which is equivalent in effectiveness~~

~~1 and have been legally adopted by the local department of health.  
2 The words "municipality of . . ." as used in the recommenda=  
3 tions for a model food service sanitation ordinance shall mean  
4 the state and the term "regulatory authority" shall mean the  
5 local health officer in charge of a local health department or  
6 the local health officer's designated representative. This sub=  
7 section shall expire September 30, 1981 or when the rules promul=  
8 gated under subsection (1) are promulgated, whichever is sooner.~~

~~9 (4) The design, construction, and equipment of a food serv=  
10 ice establishment or vending machine which was in place before  
11 the effective date of standards developed or adopted under this  
12 part shall be considered to be in compliance with this part if  
13 they are in compliance with the standards in effect on the date  
14 they were installed and if they are in good repair and are being  
15 maintained in a sanitary condition.~~

~~16 (5) A food service sanitation program which meets the  
17 requirements of this part is a required service under part 24.~~

~~18 Enacting section 1. This amendatory act takes effect 6  
19 months after the date of its enactment.~~

~~20 Enacting section 2. Sections 12901, 12902, 12903, 12904,  
21 12905, 12905a, 12906, 12907, 12908, 12910, 12911, 12912, 12913,  
22 12915, 12916, 12921, and 12922 of the public health code, 1978  
23 PA 368, MCL 333.12901, 333.12902, 333.12903, 333.12904,  
24 333.12905, 333.12905a, 333.12906, 333.12907, 333.12908,  
25 333.12910, 333.12911, 333.12912, 333.12913, 333.12915, 333.12916,  
26 333.12921, and 333.12922, are repealed 6 months after the date of  
27 enactment of this amendatory act.~~

1 Enacting section 3. This amendatory act does not take  
2 effect unless Senate Bill No. \_\_\_\_\_ or House Bill No. 5196  
3 (request no. 02692'99) of the 90th Legislature is enacted into  
4 law.