

HOUSE BILL No. 4163

January 30, 2007, Introduced by Reps. Clack, Hammel, Meadows, Lemmons, Vagnozzi, Johnson, Bieda, Gonzales, Sheltroun, Condino, Bauer, Donigan, Sak, Alma Smith, Accavitti, Warren, Young, Virgil Smith, Jackson, Hopgood, Leland and Cheeks and referred to the Committee on Commerce.

A bill to amend 1978 PA 368, entitled

"Public health code,"

by amending section 12601 (MCL 333.12601), as amended by 1988 PA 315; 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 Laws
5 1973 PA 116, MCL 722.111.

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

8 (c) "Educational facility" means a building owned, leased, or

1 under the control of a public or private school system, college, or
2 university.

3 (d) "Food service establishment" means a food service
4 establishment as defined in section ~~12901-1107~~ **OF THE FOOD LAW OF**
5 **2000, 2000 PA 92, MCL 289.1107.**

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

10 (f) "Home for the aged" means that term as defined in section
11 20106.

12 (g) "Hospice" means that term as defined in section 20106.

13 (h) "Hospital long-term care unit" means that term as defined
14 in section 20106.

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

19 (I) ~~(j)~~ "Meeting" means a meeting as defined in section 2 of
20 the open meetings act, ~~Act No. 267 of the Public Acts of 1976,~~
21 ~~being section 15.262 of the Michigan Compiled Laws 1976 PA 267, MCL~~
22 ~~15.262.~~

23 (J) ~~(k)~~ "Nursing home" means that term as defined in section
24 20109.

25 (K) **"PLACE OF EMPLOYMENT" MEANS AN ENCLOSED INDOOR AREA**
26 **SERVING AS THE WORK AREA FOR 1 OR MORE PERSONS EMPLOYED BY A PUBLIC**
27 **OR PRIVATE EMPLOYER. PLACE OF EMPLOYMENT DOES NOT INCLUDE A**

1 **STRUCTURE USED PRIMARILY AS THE RESIDENCE OF THE OWNER OR LESSEE**
2 **THAT IS ALSO USED AS AN OFFICE FOR THE OWNER OR LESSEE.**

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

6 (m) "Public place", except as otherwise provided in subsection
7 (2), means ~~both~~ **ANY** 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 serving
10 as a place of work for public employees or a meeting place for a
11 public body, including an office, educational facility, home for
12 the aged, nursing home, county medical care facility, hospice,
13 hospital long-term care unit, auditorium, arena, meeting room, or
14 public conveyance.

15 (ii) An enclosed, indoor area ~~which~~ **THAT** is not owned or
16 operated by a state or local governmental agency, is used by the
17 general 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 (iii) A PLACE OF EMPLOYMENT.

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

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

7 (O) "WORK AREA" MEANS A SITE WITHIN A PLACE OF EMPLOYMENT AT
8 WHICH 1 OR MORE EMPLOYEES ARE ROUTINELY ASSIGNED TO PERFORM
9 SERVICES FOR AN EMPLOYER.

10 (2) AN INDIVIDUAL SHALL NOT SMOKE IN A PUBLIC PLACE OR AT A
11 MEETING OF A PUBLIC BODY.

12 (3) THE STATE OR LOCAL GOVERNMENTAL AGENCY OR THE PERSON WHO
13 OWNS OR OPERATES A PUBLIC PLACE SHALL POST SIGNS THAT STATE THAT
14 SMOKING IN THAT PUBLIC PLACE IS PROHIBITED.

15 (4) A PERSON WHO VIOLATES SUBSECTION (2) OR A STATE OR LOCAL
16 GOVERNMENTAL AGENCY OR THE PERSON WHO OWNS OR OPERATES A PUBLIC
17 PLACE WHO VIOLATES SUBSECTION (3) SHALL BE DIRECTED TO COMPLY WITH
18 THIS PART AND IS SUBJECT TO A CIVIL FINE OF NOT MORE THAN \$100.00
19 FOR A FIRST VIOLATION AND NOT MORE THAN \$500.00 FOR A SECOND OR
20 SUBSEQUENT VIOLATION.

21 (5) THE DEPARTMENT SHALL ENFORCE THIS PART AND RULES
22 PROMULGATED UNDER THIS PART PURSUANT TO SECTIONS 2262(2) AND 2263.
23 IN ADDITION TO THE CIVIL FINE AUTHORIZED UNDER SUBSECTION (4), THE
24 DEPARTMENT MAY ENFORCE THIS PART AND THE RULES PROMULGATED UNDER
25 THIS PART THROUGH AN ACTION COMMENCED PURSUANT TO SECTION 2255 OR
26 ANY OTHER APPROPRIATE ACTION AUTHORIZED BY LAW. PURSUANT TO SECTION
27 2235, THE DEPARTMENT MAY AUTHORIZE A LOCAL HEALTH DEPARTMENT TO

1 ENFORCE THIS PART AND THE RULES PROMULGATED UNDER THIS PART. A
2 LOCAL HEALTH DEPARTMENT AUTHORIZED TO ENFORCE THIS PART AND THE
3 RULES PROMULGATED UNDER THIS PART SHALL ENFORCE THIS PART AND THE
4 RULES PROMULGATED UNDER THIS PART PURSUANT TO SECTIONS 2461(2) AND
5 2462. IN ADDITION TO THE CIVIL FINE AUTHORIZED UNDER SUBSECTION
6 (4), A LOCAL HEALTH DEPARTMENT MAY ENFORCE THIS PART AND THE RULES
7 PROMULGATED UNDER THIS PART THROUGH AN ACTION COMMENCED PURSUANT TO
8 SECTION 2465 OR ANY OTHER APPROPRIATE ACTION AUTHORIZED BY LAW. IN
9 ADDITION TO ANY OTHER ENFORCEMENT ACTION AUTHORIZED BY LAW, A
10 PERSON ALLEGING A VIOLATION OF THIS PART MAY BRING A CIVIL ACTION
11 FOR APPROPRIATE INJUNCTIVE RELIEF, IF THE PERSON HAS USED THE
12 PUBLIC PLACE, CHILD CARING INSTITUTION, CHILD CARE CENTER, HEALTH
13 FACILITY, OR PRIVATE PRACTICE OFFICE OF AN INDIVIDUAL WHO IS
14 LICENSED UNDER ARTICLE 15 WITHIN 60 DAYS AFTER THE CIVIL ACTION IS
15 FILED. THE REMEDIES UNDER THIS PART ARE INDEPENDENT AND CUMULATIVE.
16 THE USE OF 1 REMEDY BY A PERSON SHALL NOT BAR THE USE OF OTHER
17 LAWFUL REMEDIES BY THAT PERSON OR THE USE OF A LAWFUL REMEDY BY
18 ANOTHER PERSON.

19 (6) THE DIRECTOR SHALL REPORT BIENNIALY TO THE LEGISLATURE ON
20 THE EFFECT AND ENFORCEMENT OF THIS PART. THE REPORT SHALL INCLUDE,
21 AT A MINIMUM, COMPLIANCE WITH SUBSECTION (3). UPON REQUEST OF THE
22 DEPARTMENT, THE DIRECTOR OF THE DEPARTMENT OF MANAGEMENT AND BUDGET
23 ANNUALLY SHALL REPORT TO THE DEPARTMENT, AT A MINIMUM, A LIST OF
24 EACH PUBLIC PLACE OWNED OR OPERATED BY THE STATE AND ITS COMPLIANCE
25 WITH SUBSECTION (3).

26 (7) ~~(3)~~—In addition, article 1 contains general definitions
27 and principles of construction applicable to all articles of this

1 code.

2 Enacting section 1. (1) Sections 12603, 12604a, 12605, 12607,
3 12611, 12613, 12614, 12615, 12617, 21333, and 21733 of the public
4 health code, 1978 PA 368, MCL 333.12603, 333.12604a, 333.12605,
5 333.12607, 333.12611, 333.12613, 333.12614, 333.12615, 333.12617,
6 333.21333, and 333.21733, are repealed.

7 (2) Section 6127 of the food law of 2000, 2000 PA 92, MCL
8 289.6127, is repealed.