

HOUSE BILL No. 5159

November 14, 2013, Introduced by Reps. McMillin, Farrington, Zorn, Rogers, Foster, Haugh, Somerville, Lauwers, Daley, Rendon, Geiss, McBroom and Goike and referred to the Committee on Regulatory Reform.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 12603 and 12905 (MCL 333.12603 and 333.12905), as amended by 2009 PA 188.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 12603. (1) ~~An~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS**
2 **SECTION, AN** individual shall not smoke in a public place or at a
3 meeting of a public body, and a state or local governmental agency
4 or the person who owns, operates, manages, or is in control of a
5 public place shall make a reasonable effort to prohibit individuals
6 from smoking in a public place.

7 (2) ~~The~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE**
8 owner, operator, manager, or person having control of a public
9 place, a food service establishment, or a casino subject to section

1 12606b shall do all of the following:

2 (a) Clearly and conspicuously post "no smoking" signs or the
3 international "no smoking" symbol at the entrances to and in every
4 building or other area where smoking is prohibited under this act.

5 (b) Remove all ashtrays and other smoking paraphernalia from
6 anywhere smoking is prohibited under this act.

7 (c) Inform individuals smoking in violation of this act that
8 they are in violation of state law and subject to penalties.

9 (d) If applicable, refuse to serve an individual smoking in
10 violation of this act.

11 (e) Ask an individual smoking in violation of this act to
12 refrain from smoking and, if the individual continues to smoke in
13 violation of this act, ask him or her to leave the public place,
14 food service establishment, or nonsmoking area of the casino.

15 (3) ~~The~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE**
16 owner, operator, manager, or person in control of a hotel, motel,
17 or other lodging facility shall comply with subsection (2) and
18 section 12606. It is an affirmative defense to a prosecution or
19 civil or administrative action for a violation of this section that
20 the owner, operator, manager, or person in control of a hotel,
21 motel, or other lodging facility where smoking is prohibited under
22 this section made a good faith effort to prohibit smoking by
23 complying with subsection (2). To assert the affirmative defense
24 under this subsection, the owner, operator, manager, or person
25 shall file a sworn affidavit setting forth his or her efforts to
26 prohibit smoking and his or her actions of compliance with
27 subsection (2).

1 (4) This section may be referred to as the "Dr. Ron Davis
2 Law".

3 **(5) THE OWNER, OPERATOR, MANAGER, OR PERSON IN CONTROL OF A**
4 **PUBLIC PLACE THAT IS ALSO A COMMERCIAL PROPERTY MAY ALLOW SMOKING**
5 **IN AN AREA OF THE COMMERCIAL PROPERTY THAT IS LESS THAN 50%**
6 **ENCLOSED. AS USED IN THIS SUBSECTION, "COMMERCIAL PROPERTY" MEANS**
7 **THAT TERM AS DEFINED IN SECTION 2 OF THE COMMERCIAL REHABILITATION**
8 **ACT, 2005 PA 210, MCL 207.842.**

9 Sec. 12905. (1) ~~An~~**EXCEPT AS OTHERWISE PROVIDED IN THIS**
10 **SUBSECTION, AN** individual shall not smoke in a food service
11 establishment, and the person who owns, operates, manages, or is in
12 control of a food service establishment shall make reasonable
13 effort to prohibit individuals from smoking in a food service
14 establishment. **A FOOD SERVICE ESTABLISHMENT MAY ALLOW SMOKING IN AN**
15 **AREA OF THE FOOD SERVICE ESTABLISHMENT THAT IS LESS THAN 50%**
16 **ENCLOSED.**

17 (2) In addition to a food service establishment that provides
18 its own seating, subsection (1) applies to a food service
19 establishment or group of food service establishments that are
20 located in a shopping mall in which the seating for the food
21 service establishment or group of food service establishments is
22 provided or maintained, or both, by the person who owns or operates
23 the shopping mall.

24 (3) The director, an authorized representative of the
25 director, or a representative of a local health department to which
26 the director has delegated responsibility for enforcement of this
27 part shall inspect each food service establishment that is subject

1 to this section. The inspecting entity shall determine compliance
2 with this section during each inspection.

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

11 (5) A food service establishment **THAT IS SUBJECT TO THIS**
12 **SECTION** shall comply with sections 12603(2) and 12606. It is an
13 affirmative defense to a prosecution or civil or administrative
14 action for a violation of this section that the owner, operator,
15 manager, or person in control of a food service establishment where
16 smoking is prohibited under this section made a good faith effort
17 to prohibit smoking by complying with section 12603(2). To assert
18 the affirmative defense under this subsection, the owner, operator,
19 manager, or person shall file a sworn affidavit setting forth his
20 or her efforts to prohibit smoking and his or her actions of
21 compliance with section 12603(2).

22 (6) An individual who violates this part shall be directed to
23 comply with this part and is subject to a civil fine of not more
24 than \$100.00 for a first violation and not more than \$500.00 for a
25 second or subsequent violation.

26 (7) As used in this section:

27 (a) "Food service establishment" means that term as defined in

1 section 1107 of the food law of 2000, 2000 PA 92, MCL 289.1107.

2 (b) "Shopping mall" means a shopping center with stores facing
3 an enclosed mall.

4 (c) "Smoking" OR "**SMOKE**" means that term as defined in section
5 12601.