



# HOUSE BILL No. 5645

April 18, 2000, Introduced by Reps. Basham, Clark, Baird, Minore, Quarles, Rivet, Rocca, Sanborn, Godchaux, Jacobs, Clarke and LaForge and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending section 12905 (MCL 333.12905), as amended by 1993 PA 242.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 12905. (1) Except as otherwise provided in this sec-  
2 tion, ~~all public areas of~~ a food service establishment shall  
3 ~~be nonsmoking~~ NOT ALLOW SMOKING IN THE PUBLIC AREAS OF THE FOOD  
4 SERVICE ESTABLISHMENT. As used in this subsection: ~~,"public"~~  
5       (A) "PUBLIC area" includes, but is not limited to, ~~a bath-~~  
6 ~~room, a coatroom, and an entrance or other area used by a patron~~  
7 ~~when not seated at a food service table or counter~~ ALL AREAS OF  
8 A FOOD SERVICE ESTABLISHMENT THAT ARE OPEN TO THE PUBLIC.  
9 ~~Public area does not include the lobby, waiting room, hallways,~~

1 and lounge areas of a food service establishment, but these areas  
2 are not required to be designated as smoking areas.

3       ~~(2) Subject to subsection (3), a food service establishment~~  
4 ~~with a seating capacity of fewer than 50, whether or not it is~~  
5 ~~owned and operated by a private club, and a food service estab-~~  
6 ~~lishment that is owned and operated by a private club may desig-~~  
7 ~~nate up to 75% of its seating capacity as seating for smokers. A~~  
8 ~~food service establishment with a seating capacity of 50 or more~~  
9 ~~that is not owned or operated by a private club may designate up~~  
10 ~~to 50% of its seating capacity as seating for smokers. A food~~  
11 ~~service establishment that designates seating for smokers shall~~  
12 ~~clearly identify the seats for nonsmokers as nonsmoking, place~~  
13 ~~the seats for nonsmokers in close proximity to each other, and~~  
14 ~~locate the seats for nonsmokers so as not to discriminate against~~  
15 ~~nonsmokers.~~

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

20       ~~(2) (4)~~ In addition to a food service establishment that  
21 provides its own seating, ~~subsections (1), (2), and (3) also~~  
22 ~~apply~~ SUBSECTION (1) APPLIES to a food service establishment or  
23 group of food service establishments that are located in a shop-  
24 ping mall where the seating for the food service establishment or  
25 group of food service establishments is provided or maintained,  
26 or both, by the person who owns or operates the shopping mall.

1 As used in this subsection, "shopping mall" means a shopping  
2 center with stores facing an enclosed mall.

3       (3) ~~—(5)—~~ The director, an authorized representative of the  
4 director, or a representative of a local health department to  
5 which the director has delegated responsibility for enforcement  
6 of this part shall, in accordance with R 325.25902 of the  
7 Michigan administrative code, inspect each food service estab-  
8 lishment that is subject to this section. The inspecting entity  
9 shall determine compliance with this section during each  
10 inspection.

11       (4) ~~—(6)—~~ The department or a local health department shall  
12 utilize compliance or noncompliance with this section or with  
13 rules promulgated to implement this section as criteria in the  
14 determination of whether to deny, suspend, limit, or revoke a  
15 license pursuant to section 12907(1).

16       (5) ~~—(7)—~~ Within 5 days after receipt of a written complaint  
17 of violation of this section, a local health department shall  
18 investigate the complaint to determine compliance. If a viola-  
19 tion of this section is identified and not corrected as ordered  
20 by the local health department within 2 days after receipt of the  
21 order by the food service establishment, the local health officer  
22 may issue an order to cease food service operations until compli-  
23 ance with this section is achieved.

24       (6) ~~—(8)—~~ This section does not apply to A FOOD SERVICE  
25 ESTABLISHMENT THAT IS OWNED AND OPERATED BY A PRIVATE CLUB AND  
26 THAT SERVES ONLY CLUB MEMBERS AND THEIR GUESTS, a private  
27 facility that is serviced by a catering kitchen, or ~~to~~ a

1 separate room in a food service establishment that is used for  
2 private banquets. This section does not apply to a food service  
3 establishment that is owned and operated by a fraternal organiza-  
4 tion, if service is limited to members of the fraternal organiza-  
5 tion and their guests.

6 (7) ~~(9)~~ As used in this section:

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

11 (A) ~~(b) "Room"~~ "SEPARATE ROOM" means an area that is phys-  
12 ically distinct from the main dining area of a food service  
13 establishment and from which smoke cannot pass into the main  
14 dining area.

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

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