

SENATE BILL No. 79

January 28, 2009, Introduced by Senators GEORGE, BASHAM, BIRKHOZ, BROWN, GLEASON, ANDERSON and SWITALSKI and referred to the Committee on Government Operations and Reform.

A bill to amend 1978 PA 368, entitled "Public health code," by amending the heading of part 129 and sections 12601 and 12905 (MCL 333.12601 and 333.12905), section 12601 as amended by 1988 PA 315 and section 12905 as amended by 1993 PA 242, and by adding section 12603a; 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.

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

4 (d) "Food service establishment" means a food service
 5 establishment as defined in section ~~12901~~12905.

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 ANY OF

1 THE FOLLOWING:

2 (i) A STRUCTURE USED PRIMARILY AS THE RESIDENCE OF THE OWNER OR
3 LESSEE THAT IS ALSO USED AS AN OFFICE FOR THE OWNER OR LESSEE.

4 (ii) A FOOD SERVICE ESTABLISHMENT THAT IS SUBJECT TO SECTION
5 12905.

6 (l) "Public body" means a public body as defined in section 2
7 of the open meetings act, ~~Act No. 267 of the Public Acts of 1976~~
8 1976 PA 267, MCL 15.262.

9 (m) "Public place" ~~, except as otherwise provided in~~
10 ~~subsection (2),~~ means both **ANY** of the following:

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

18 (ii) An enclosed, indoor area ~~which~~ **THAT** is not owned or
19 operated by a state or local governmental agency, is used by the
20 general public, and is ~~+~~ **ANY** of the following:

21 (A) An educational facility.

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

24 (C) An auditorium.

25 (D) An arena.

26 (E) A theater.

27 (F) A museum.

1 (G) A concert hall.

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

4 (iii) A PLACE OF EMPLOYMENT.

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

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

13 (2) ~~(3)~~—In addition, article 1 contains general definitions
14 and principles of construction applicable to all articles of this
15 code.

16 SEC. 12603A. (1) AN INDIVIDUAL SHALL NOT SMOKE IN A PUBLIC
17 PLACE OR AT A MEETING OF A PUBLIC BODY.

18 (2) THE STATE OR LOCAL GOVERNMENTAL AGENCY OR THE PERSON WHO
19 OWNS OR OPERATES A PUBLIC PLACE SHALL POST SIGNS THAT STATE THAT
20 SMOKING IN THAT PUBLIC PLACE IS PROHIBITED.

21 (3) A PERSON WHO VIOLATES SUBSECTION (1) OR A STATE OR LOCAL
22 GOVERNMENTAL AGENCY OR THE PERSON WHO OWNS OR OPERATES A PUBLIC
23 PLACE WHO VIOLATES SUBSECTION (2) SHALL BE DIRECTED TO COMPLY WITH
24 THIS PART AND IS SUBJECT TO A CIVIL FINE OF NOT MORE THAN \$100.00
25 FOR A FIRST VIOLATION AND NOT MORE THAN \$500.00 FOR A SECOND OR
26 SUBSEQUENT VIOLATION.

27 (4) THE DEPARTMENT SHALL ENFORCE THIS PART AND RULES

1 PROMULGATED UNDER THIS PART PURSUANT TO SECTIONS 2262(2) AND 2263.
2 IN ADDITION TO THE CIVIL FINE AUTHORIZED UNDER SUBSECTION (3), THE
3 DEPARTMENT MAY ENFORCE THIS PART AND THE RULES PROMULGATED UNDER
4 THIS PART THROUGH AN ACTION COMMENCED PURSUANT TO SECTION 2255 OR
5 ANY OTHER APPROPRIATE ACTION AUTHORIZED BY LAW. PURSUANT TO SECTION
6 2235, THE DEPARTMENT MAY AUTHORIZE A LOCAL HEALTH DEPARTMENT TO
7 ENFORCE THIS PART AND THE RULES PROMULGATED UNDER THIS PART. A
8 LOCAL HEALTH DEPARTMENT AUTHORIZED TO ENFORCE THIS PART AND THE
9 RULES PROMULGATED UNDER THIS PART SHALL ENFORCE THIS PART AND THE
10 RULES PROMULGATED UNDER THIS PART PURSUANT TO SECTIONS 2461(2) AND
11 2462. IN ADDITION TO THE CIVIL FINE AUTHORIZED UNDER SUBSECTION
12 (3), A LOCAL HEALTH DEPARTMENT MAY ENFORCE THIS PART AND THE RULES
13 PROMULGATED UNDER THIS PART THROUGH AN ACTION COMMENCED PURSUANT TO
14 SECTION 2465 OR ANY OTHER APPROPRIATE ACTION AUTHORIZED BY LAW. IN
15 ADDITION TO ANY OTHER ENFORCEMENT ACTION AUTHORIZED BY LAW, A
16 PERSON ALLEGING A VIOLATION OF THIS PART MAY BRING A CIVIL ACTION
17 FOR APPROPRIATE INJUNCTIVE RELIEF, IF THE PERSON HAS USED THE
18 PUBLIC PLACE, CHILD CARING INSTITUTION, CHILD CARE CENTER, HEALTH
19 FACILITY, OR PRIVATE PRACTICE OFFICE OF AN INDIVIDUAL WHO IS
20 LICENSED UNDER ARTICLE 15 WITHIN 60 DAYS BEFORE THE CIVIL ACTION IS
21 FILED. THE REMEDIES UNDER THIS PART ARE INDEPENDENT AND CUMULATIVE.
22 THE USE OF 1 REMEDY BY A PERSON SHALL NOT BAR THE USE OF OTHER
23 LAWFUL REMEDIES BY THAT PERSON OR THE USE OF A LAWFUL REMEDY BY
24 ANOTHER PERSON.

25 (5) THE DIRECTOR SHALL REPORT BIENNIALLY TO THE LEGISLATURE ON
26 THE EFFECT AND ENFORCEMENT OF THIS PART. THE REPORT SHALL INCLUDE,
27 AT A MINIMUM, COMPLIANCE WITH SUBSECTION (2). UPON REQUEST OF THE

1 DEPARTMENT, THE DIRECTOR OF THE DEPARTMENT OF MANAGEMENT AND BUDGET
2 ANNUALLY SHALL REPORT TO THE DEPARTMENT, AT A MINIMUM, A LIST OF
3 EACH PUBLIC PLACE OWNED OR OPERATED BY THE STATE AND ITS COMPLIANCE
4 WITH SUBSECTION (2).

5 PART 129. ~~FOOD SERVICE SANITATION~~ **SMOKE-FREE FOOD SERVICE**
6 **ESTABLISHMENTS**

7 Sec. 12905. (1) Except as otherwise provided in this section,
8 ~~all public areas of a food service establishment shall be~~
9 ~~nonsmoking~~ **NOT ALLOW SMOKING AND A PERSON SHALL NOT SMOKE IN A FOOD**
10 **SERVICE ESTABLISHMENT.** ~~As used in this subsection, "public area"~~
11 ~~includes, but is not limited to, a bathroom, a coatroom, and an~~
12 ~~entrance or other area used by a patron when not seated at a food~~
13 ~~service table or counter. Public area does not include the lobby,~~
14 ~~waiting room, hallways, and lounge areas of a food service~~
15 ~~establishment, but these areas are not required to be designated as~~
16 ~~smoking areas.~~

17 ~~—— (2) Subject to subsection (3), a food service establishment~~
18 ~~with a seating capacity of fewer than 50, whether or not it is~~
19 ~~owned and operated by a private club, and a food service~~
20 ~~establishment that is owned and operated by a private club may~~
21 ~~designate up to 75% of its seating capacity as seating for smokers.~~
22 ~~A food service establishment with a seating capacity of 50 or more~~
23 ~~that is not owned or operated by a private club may designate up to~~
24 ~~50% of its seating capacity as seating for smokers. A food service~~
25 ~~establishment that designates seating for smokers shall clearly~~
26 ~~identify the seats for nonsmokers as nonsmoking, place the seats~~
27 ~~for nonsmokers in close proximity to each other, and locate the~~

1 ~~seats for nonsmokers so as not to discriminate against nonsmokers.~~
 2 ~~—— (3) A food service establishment shall not use the definition~~
 3 ~~of seating capacity and the exemption from that definition set~~
 4 ~~forth in subsection (9)(c) to increase the amount of seating for~~
 5 ~~smokers above 75%.~~

6 (2) ~~(4)~~—In addition to a food service establishment that
 7 provides its own seating, ~~subsections (1), (2), and (3) also apply~~
 8 **SUBSECTION (1) APPLIES** to a food service establishment or group of
 9 food service establishments that are located in a shopping mall
 10 ~~where~~ **IN WHICH** the seating for the food service establishment or
 11 group of food service establishments is provided or maintained, or
 12 both, by the person who owns or operates the shopping mall. ~~As used~~
 13 ~~in this subsection, "shopping mall" means a shopping center with~~
 14 ~~stores facing an enclosed mall.~~

15 (3) ~~(5)~~—The director, an authorized representative of the
 16 director, or a representative of a local health department to which
 17 the director has delegated responsibility for enforcement of this
 18 part shall ~~, in accordance with R 325.25902 of the Michigan~~
 19 ~~administrative code,~~ inspect each food service establishment that
 20 is subject to this section. The inspecting entity shall determine
 21 compliance with this section during each inspection.

22 (4) ~~(6)~~—The department or a local health department shall
 23 ~~utilize compliance or~~ **NOTIFY THE DEPARTMENT OF AGRICULTURE OF ANY**
 24 noncompliance with this section or with rules promulgated to
 25 implement this section. **THE DEPARTMENT OF AGRICULTURE MAY USE**
 26 **COMPLIANCE OR NONCOMPLIANCE WITH THIS SECTION AND ANY RULES**
 27 **PROMULGATED TO IMPLEMENT THIS SECTION** as criteria in the

1 determination of whether to deny, suspend, limit, or revoke a
2 license pursuant to section 12907(1) **ISSUED UNDER THE FOOD LAW OF**
3 **2000, 2000 PA 92, MCL 289.1101 TO 289.8111.**

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

12 ~~—— (8) This section does not apply to a private facility that is~~
13 ~~serviced by a catering kitchen or to a separate room in a food~~
14 ~~service establishment that is used for private banquets. This~~
15 ~~section does not apply to a food service establishment that is~~
16 ~~owned and operated by a fraternal organization, if service is~~
17 ~~limited to members of the fraternal organization and their guests.~~

18 (6) **SIGNS OR THE INTERNATIONAL "NO SMOKING" SYMBOL SHALL BE**
19 **CLEARLY AND CONSPICUOUSLY POSTED AT THE ENTRANCE TO AND IN EVERY**
20 **BUILDING OR OTHER AREA WHERE SMOKING IS PROHIBITED UNDER THIS**
21 **SECTION. THE OWNER, OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF**
22 **THE BUILDING OR OTHER AREA SHALL POST THE SIGNAGE. THE OWNER,**
23 **OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE AREA SHALL**
24 **REMOVE ALL ASHTRAYS AND OTHER SMOKING PARAPHERNALIA FROM ANY AREA**
25 **WHERE SMOKING IS PROHIBITED UNDER THIS SECTION.**

26 (7) ~~(9)~~ As used in this section:

27 ~~—— (a) "Bar" means that term as defined in section 2a of the~~

1 ~~Michigan liquor control act, Act No. 8 of the Public Acts of the~~
2 ~~Extra Session of 1933, being section 436.2a of the Michigan~~
3 ~~Compiled Laws.~~

4 ~~—— (b) "Room" means an area that is physically distinct from the~~
5 ~~main dining area of a food service establishment and from which~~
6 ~~smoke cannot pass into the main dining area.~~

7 ~~—— (c) "Seating capacity" means the actual number of seats for~~
8 ~~patrons in a food service establishment. Seating capacity does not~~
9 ~~include seats located at a bar or seats at tables that are located~~
10 ~~adjacent to a bar, if meals are not served at those tables.~~

11 **(A) "FOOD SERVICE ESTABLISHMENT" MEANS THAT TERM AS DEFINED IN**
12 **SECTION 1107 OF THE FOOD LAW OF 2000, 2000 PA 92, MCL 289.1107.**

13 **(B) "SHOPPING MALL" MEANS A SHOPPING CENTER WITH STORES FACING**
14 **AN ENCLOSED MALL.**

15 **(C) ~~(d)~~"Smoking" means the carrying by an individual of a**
16 **lighted cigar, cigarette, or other lighted smoking device.**

17 Enacting section 1. (1) Sections 12603, 12604a, 12605, 12607,
18 12611, 12613, 12614, 12615, 12617, 12909, 12915, 21333, and 21733
19 of the public health code, 1978 PA 368, MCL 333.12603, 333.12604a,
20 333.12605, 333.12607, 333.12611, 333.12613, 333.12614, 333.12615,
21 333.12617, 333.12909, 333.12915, 333.21333, and 333.21733, are
22 repealed.

23 (2) Section 6127 of the food law of 2000, 2000 PA 92, MCL
24 289.6127, is repealed.