

SENATE BILL No. 352

May 3, 2011, Introduced by Senators JONES, MEEKHOF, GREEN, BOOHER, NOFS, HUNE, PAVLOV and ROBERTSON and referred to the Committee on Government Operations.

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, and by adding section 12603a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

7 (2) The owner, operator, manager, or person having control of
8 a public place, a food service establishment, or a casino subject
9 to section 12606b shall do all of the following:

10 (a) Clearly and conspicuously post "no smoking" signs or the

1 international "no smoking" symbol at the entrances to and in every
2 building or other area where smoking is prohibited under this act.

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

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

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

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

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

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

27 **SEC. 12603A. THE OWNER OR OPERATOR OF A FOOD SERVICE**

1 ESTABLISHMENT OR A PLACE OF EMPLOYMENT THAT IS NOT A PUBLIC PLACE
2 DESCRIBED IN SECTION 12601(Q) (i) OR (ii) MAY ALLOW SMOKING IN A LEGAL
3 SMOKING ROOM IN THE ELIGIBLE PLACE OF EMPLOYMENT OR FOOD SERVICE
4 ESTABLISHMENT IF ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

5 (A) THE LEGAL SMOKING ROOM IS AN ENCLOSED ROOM SEPARATE FROM
6 THE NONSMOKING AREAS OF THE ELIGIBLE PLACE OF EMPLOYMENT OR FOOD
7 SERVICE ESTABLISHMENT. THE LEGAL SMOKING ROOM SHALL BE ENCLOSED ON
8 ALL SIDES BY ANY COMBINATION OF SOLID WALLS, WINDOWS, OR DOORS THAT
9 EXTEND FROM THE FLOOR TO CEILING.

10 (B) THE LEGAL SMOKING ROOM IS EQUIPPED WITH 1 OF THE
11 FOLLOWING:

12 (i) A SEPARATE VENTILATION OR AIR FILTRATION SYSTEM DESIGNED TO
13 REMOVE SMOKE FROM THE AIR IN THE ROOM AND PREVENT SMOKE FROM
14 INFILTRATING INTO THE NONSMOKING AREAS OF THE ELIGIBLE PLACE OF
15 EMPLOYMENT OR FOOD SERVICE ESTABLISHMENT.

16 (ii) A DOUBLE-DOOR SYSTEM DESIGNED TO PREVENT THE RELEASE OF
17 SMOKE FROM THE ROOM BY TRAPPING IT BETWEEN THE 2 DOORS AND
18 PREVENTING SMOKE FROM INFILTRATING INTO THE NONSMOKING AREAS OF THE
19 ELIGIBLE PLACE OF EMPLOYMENT OR FOOD SERVICE ESTABLISHMENT.

20 (C) NO INDIVIDUAL IS REQUIRED TO ENTER OR PASS THROUGH THE
21 LEGAL SMOKING ROOM OF THE ELIGIBLE PLACE OF EMPLOYMENT OR FOOD
22 SERVICE ESTABLISHMENT UNLESS HE OR SHE DOES SO ON A VOLUNTARY
23 BASIS. THIS SUBDIVISION APPLIES TO AN EMPLOYEE OF THE OWNER OR
24 OPERATOR OF AN ELIGIBLE PLACE OF EMPLOYMENT OR FOOD SERVICE
25 ESTABLISHMENT, AND SECTION 12606 APPLIES TO THE RIGHT GRANTED TO
26 EMPLOYEES UNDER THIS SUBDIVISION.

27 (D) THE LEGAL SMOKING ROOM IS CLOSED 1 HOUR OR MORE BEFORE THE

1 END OF NORMAL BUSINESS HOURS OF THE ELIGIBLE PLACE OF EMPLOYMENT OR
2 FOOD SERVICE ESTABLISHMENT TO ALLOW THOROUGH VENTILATION BEFORE ANY
3 EMPLOYEE IS REQUIRED TO ENTER THE ROOM TO PERFORM ANY CLEANING OR
4 OTHER ROOM MAINTENANCE.

5 Sec. 12905. (1) ~~An~~ EXCEPT AS OTHERWISE PROVIDED IN THIS
6 SECTION OR SECTION 12603A, AN individual shall not smoke in a food
7 service establishment, and the person who owns, operates, manages,
8 or is in control of a food service establishment shall make
9 reasonable effort to prohibit individuals from smoking in a food
10 service establishment. THIS SECTION DOES NOT APPLY TO THE OUTDOOR
11 PATIO AREA OF A FOOD SERVICE ESTABLISHMENT IF ANY OF THE FOLLOWING
12 REQUIREMENTS ARE MET:

13 (A) THE OUTDOOR PATIO AREA IS OUTSIDE OF THE CONTIGUOUS WALLS
14 AND ENTRY DOORS OF THE FOOD SERVICE ESTABLISHMENT.

15 (B) ALCOHOLIC LIQUOR IS ALLOWED IN THE OUTDOOR PATIO AREA
16 UNDER AN ON PREMISES LICENSE FOR THAT ESTABLISHMENT ISSUED UNDER
17 THE MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998 PA 58, MCL 436.1101
18 TO 436.2303.

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

26 (3) The director, an authorized representative of the
27 director, or a representative of a local health department to which

1 the director has delegated responsibility for enforcement of this
2 part shall inspect each food service establishment that is subject
3 to this section. The inspecting entity shall determine compliance
4 with this section during each inspection.

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

13 (5) ~~A-EXCEPT AS OTHERWISE PROVIDED IN SECTION 12603A, A~~ food
14 service establishment **THAT IS SUBJECT TO THIS SECTION** shall comply
15 with sections 12603(2) and 12606. It is an affirmative defense to a
16 prosecution or civil or administrative action for a violation of
17 this section that the owner, operator, manager, or person in
18 control of a food service establishment where smoking is prohibited
19 under this section made a good faith effort to prohibit smoking by
20 complying with section 12603(2). To assert the affirmative defense
21 under this subsection, the owner, operator, manager, or person
22 shall file a sworn affidavit setting forth his or her efforts to
23 prohibit smoking and his or her actions of compliance with section
24 12603(2).

25 (6) An individual who violates this part shall be directed to
26 comply with this part and is subject to a civil fine of not more
27 than \$100.00 for a first violation and not more than \$500.00 for a

1 second or subsequent violation.

2 (7) As used in this section:

3 (a) "Food service establishment" means that term as defined in
4 section 1107 of the food law of 2000, 2000 PA 92, MCL 289.1107.

5 **FOOD SERVICE ESTABLISHMENT DOES NOT INCLUDE A CIGAR BAR THAT IS**
6 **EXEMPT FROM THE SMOKING PROHIBITION UNDER SECTION 12606A.**

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

9 (c) "Smoking" **OR "SMOKE"** means that term as defined in section
10 12601.

11 Enacting section 1. This amendatory act takes effect July 1,
12 2011.