

# HOUSE BILL No. 4536

April 11, 2013, Introduced by Rep. Geiss and referred to the Committee on Regulatory Reform.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 12601, 12603, 12606a, and 12905 (MCL 333.12601, 333.12603, 333.12606a, and 333.12905), sections 12601, 12603, and 12905 as amended and section 12606a as added by 2009 PA 188, and by adding section 12603a.

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

1           Sec. 12601. (1) As used in this part:

2           (a) "Casino" means that term as defined in section 2 of the  
3 Michigan gaming control and revenue act, 1996 IL 1, MCL 432.202.  
4 Casino does not include a casino operated under the Indian gaming  
5 regulatory act, 25 USC 2701 to 2721.

6           (b) "Child caring institution" and "child care center" mean  
7 those terms as defined in section 1 of 1973 PA 116, MCL 722.111.

1 (c) "Cigar" means any roll of tobacco weighing 3 or more  
2 pounds per 1,000, which roll has a wrapper or cover consisting only  
3 of tobacco.

4 (d) "Cigar bar" means an establishment or area within an  
5 establishment that is open to the public and is designated for the  
6 smoking of cigars, purchased on the premises or elsewhere.

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

9 (f) "Educational facility" means a building owned, leased, or  
10 under the control of a public or private school system, college, or  
11 university.

12 (g) "Food service establishment" means ~~a food service~~  
13 ~~establishment~~ **THAT TERM** as defined in section 12905.

14 (h) "Health facility" means a health facility or agency  
15 licensed under article 17, except a home for the aged, nursing  
16 home, county medical care facility, hospice, or hospital long-term  
17 care unit.

18 (i) "Home for the aged" means that term as defined in section  
19 20106.

20 (j) "Hospice" means that term as defined in section 20106.

21 (k) "Hospital long-term care unit" means that term as defined  
22 in section 20106.

23 **(l) "LICENSED CLUB" MEANS A CLUB THAT IS LICENSED UNDER SECTION**  
24 **532 OF THE MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998 PA 58, MCL**  
25 **436.1532.**

26 **(M) ~~(l)~~**"Meeting" means ~~a meeting~~ **THAT TERM** as defined in  
27 section 2 of the open meetings act, 1976 PA 267, MCL 15.262.

1           (N) ~~(m)~~—"Motor vehicle" means that term as defined in section  
2 33 of the Michigan vehicle code, 1949 PA 300, MCL 257.33.

3           (O) ~~(n)~~—"Nursing home" means that term as defined in section  
4 20109.

5           (P) ~~(e)~~—"Place of employment" means an enclosed indoor area  
6 that contains 1 or more work areas for 1 or more persons employed  
7 by a public or private employer. Place of employment does not  
8 include any of the following:

9           (i) A structure used primarily as the residence of the owner or  
10 lessee that is also used as an office for the owner or lessee and  
11 for no other employees.

12           (ii) A food service establishment that is subject to section  
13 12905.

14           (iii) A motor vehicle.

15           (Q) ~~(p)~~—"Public body" means a ~~public body~~ **THAT TERM** as defined  
16 in section 2 of the open meetings act, 1976 PA 267, MCL 15.262.

17           (R) ~~(q)~~—"Public place" ~~, except as otherwise provided in~~  
18 ~~subsection (2),~~ means any of the following:

19           (i) An enclosed, indoor area owned or operated by a state or  
20 local governmental agency and used by the general public or serving  
21 as a meeting place for a public body, including an office,  
22 educational facility, home for the aged, nursing home, county  
23 medical care facility, hospice, hospital long-term care unit,  
24 auditorium, arena, meeting room, or public conveyance.

25           (ii) An enclosed, indoor area that is not owned or operated by  
26 a state or local governmental agency, is used by the general  
27 public, and is any of the following:

1 (A) An educational facility.

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

4 (C) An auditorium.

5 (D) An arena.

6 (E) A theater.

7 (F) A museum.

8 (G) A concert hall.

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

11 (iii) Unless otherwise exempt under this part, a place of  
12 employment.

13 (S) ~~(r)~~—"Smoking" or "smoke" means the burning of a lighted  
14 cigar, cigarette, pipe, or any other matter or substance that  
15 contains a tobacco product.

16 (T) ~~(s)~~—"Smoking paraphernalia" means any equipment,  
17 apparatus, or furnishing that is used in or necessary for the  
18 activity of smoking.

19 (U) ~~(t)~~—"Tobacco product" means a product that contains  
20 tobacco and is intended for human consumption, including, but not  
21 limited to, cigarettes, noncigarette smoking tobacco, or smokeless  
22 tobacco, as those terms are defined in section 2 of the tobacco  
23 products tax act, 1993 PA 327, MCL 205.422, and cigars.

24 (V) ~~(u)~~—"Tobacco specialty retail store" means an  
25 establishment in which the primary purpose is the retail sale of  
26 tobacco products and smoking paraphernalia, and in which the sale  
27 of other products is incidental. Tobacco specialty retail store

1 does not include a tobacco department or section of a larger  
2 commercial establishment or any establishment with any type of  
3 liquor, food, or restaurant license.

4 (W) ~~(v)~~—"Work area" means a site within a place of employment  
5 at which 1 or more employees perform services for an employer.

6 (2) In addition, article 1 contains general definitions and  
7 principles of construction applicable to all articles of this code.

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

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

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

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

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

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

26 (e) Ask an individual smoking in violation of this act to  
27 refrain from smoking and, if the individual continues to smoke in

1 violation of this act, ask him or her to leave the public place,  
2 food service establishment, or nonsmoking area of the casino.

3 (3) The owner, operator, manager, or person in control of a  
4 hotel, motel, or other lodging facility shall comply with  
5 subsection (2) and section 12606. It is an affirmative defense to a  
6 prosecution or civil or administrative action for a violation of  
7 this section that the owner, operator, manager, or person in  
8 control of a hotel, motel, or other lodging facility where smoking  
9 is prohibited under this section made a good faith effort to  
10 prohibit smoking by complying with subsection (2). To assert the  
11 affirmative defense under this subsection, the owner, operator,  
12 manager, or person shall file a sworn affidavit setting forth his  
13 or her efforts to prohibit smoking and his or her actions of  
14 compliance with subsection (2).

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

17 **SEC. 12603A. THE OWNER OR OPERATOR OF A FOOD SERVICE**  
18 **ESTABLISHMENT OR A PLACE OF EMPLOYMENT THAT IS NOT A PUBLIC PLACE**  
19 **DESCRIBED IN SECTION 12601(R) (i) OR (ii) MAY ALLOW SMOKING IN A LEGAL**  
20 **SMOKING ROOM IN THE ELIGIBLE PLACE OF EMPLOYMENT OR FOOD SERVICE**  
21 **ESTABLISHMENT IF ALL OF THE FOLLOWING REQUIREMENTS ARE MET:**

22 (A) THE LEGAL SMOKING ROOM IS AN ENCLOSED ROOM SEPARATE FROM  
23 THE NONSMOKING AREAS OF THE ELIGIBLE PLACE OF EMPLOYMENT OR FOOD  
24 SERVICE ESTABLISHMENT. THE LEGAL SMOKING ROOM MUST BE ENCLOSED ON  
25 ALL SIDES BY ANY COMBINATION OF SOLID WALLS, WINDOWS, OR DOORS THAT  
26 EXTEND FROM THE FLOOR TO CEILING.

27 (B) THE LEGAL SMOKING ROOM IS EQUIPPED WITH 1 OF THE

1 FOLLOWING:

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

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

10 (C) NO INDIVIDUAL IS REQUIRED TO ENTER OR PASS THROUGH THE  
11 LEGAL SMOKING ROOM OF THE ELIGIBLE PLACE OF EMPLOYMENT OR FOOD  
12 SERVICE ESTABLISHMENT UNLESS HE OR SHE DOES SO ON A VOLUNTARY  
13 BASIS. THIS SUBDIVISION APPLIES TO AN EMPLOYEE OF THE OWNER OR  
14 OPERATOR OF AN ELIGIBLE PLACE OF EMPLOYMENT OR FOOD SERVICE  
15 ESTABLISHMENT, AND SECTION 12606 APPLIES TO THE RIGHT GRANTED TO  
16 EMPLOYEES UNDER THIS SUBDIVISION.

17 (D) THE LEGAL SMOKING ROOM IS CLOSED 1 HOUR OR MORE BEFORE THE  
18 END OF NORMAL BUSINESS HOURS OF THE ELIGIBLE PLACE OF EMPLOYMENT OR  
19 FOOD SERVICE ESTABLISHMENT TO ALLOW THOROUGH VENTILATION BEFORE ANY  
20 EMPLOYEE IS REQUIRED TO ENTER THE ROOM TO PERFORM ANY CLEANING OR  
21 OTHER ROOM MAINTENANCE.

22 Sec. 12606a. (1) A cigar bar in existence on ~~the effective~~  
23 ~~date of this section~~ MAY 1, 2010 that meets all of the requirements  
24 of this section is exempt from the smoking prohibition of section  
25 12603 and may allow smoking on its premises. To qualify for the  
26 exemption under this section, the person who owns or operates a  
27 cigar bar shall file an affidavit with the department on or before

1 ~~the expiration of 30 days after the effective date of this section~~  
2 **MAY 31, 2010** and on January 31 of each year ~~after the effective~~  
3 ~~date of this section~~ **BEGINNING IN 2011**. The affidavit shall be  
4 signed by the owner or operator of the cigar bar and shall certify  
5 that the cigar bar was in existence on ~~the effective date of this~~  
6 ~~section~~ **MAY 1, 2010** and that it meets all of the following  
7 requirements:

8 (a) In the 30-day period immediately preceding ~~the effective~~  
9 ~~date of this section~~ **MAY 1, 2010**, the cigar bar generated 10% or  
10 more of its total gross annual income from the on-site sale of  
11 cigars and the rental of on-site humidors.

12 (b) For each calendar year after the calendar year in which  
13 the first affidavit is filed under this subsection, the cigar bar  
14 generates 10% or more of its total gross annual income from the on-  
15 site sale of cigars and the rental of on-site humidors.

16 (c) The cigar bar is located on premises that are physically  
17 separated from any areas of the same or adjacent establishment in  
18 which smoking is prohibited under this part or part 129 and where  
19 smoke does not infiltrate into those nonsmoking areas. As used in  
20 this subdivision, "physically separated" means an area that is  
21 enclosed on all sides by any combination of solid walls, windows,  
22 or doors that extend from the floor to ceiling.

23 (d) The cigar bar has installed on its premises an on-site  
24 humidor.

25 (e) The cigar bar prohibits entry to a person under the age of  
26 18 during the time the cigar bar is open for business.

27 (f) The cigar bar allows only the smoking of cigars on the



1 premises that retail for over \$1.00 per cigar.

2 (g) The cigar bar prohibits the smoking of all other tobacco  
3 products.

4 (2) A tobacco specialty retail store in existence on ~~the~~  
5 ~~effective date of this section~~ **MAY 1, 2010** that meets all of the  
6 requirements of this section is exempt from the smoking prohibition  
7 of section 12603 and may allow smoking on its premises. To qualify  
8 for the exemption under this section, the person who owns or  
9 operates a tobacco specialty retail store shall file an affidavit  
10 with the department on or before ~~the expiration of 30 days after~~  
11 ~~the effective date of this section~~ **MAY 31, 2010** and on January 31  
12 of each year ~~after the effective date of this section~~ **BEGINNING IN**  
13 **2011**. The affidavit shall be signed by the owner or operator of the  
14 tobacco specialty retail store and shall certify that the tobacco  
15 specialty retail store was in existence on ~~the effective date of~~  
16 ~~this section~~ **MAY 1, 2010** and that it meets all of the following  
17 requirements:

18 (a) In the 30-day period immediately preceding ~~the filing of~~  
19 ~~the effective date of this section~~ **MAY 1, 2010**, the tobacco  
20 specialty retail store generated 75% or more of its total gross  
21 annual income from the on-site sale of tobacco products and smoking  
22 paraphernalia.

23 (b) For each calendar year after the calendar year in which  
24 the first affidavit is filed under this subsection, the tobacco  
25 specialty retail store generated 75% or more of its total gross  
26 annual income from the on-site sale of tobacco products and smoking  
27 paraphernalia.

1 (c) The tobacco specialty retail store is located on premises  
2 that are physically separated from any areas of the same or  
3 adjacent establishments in which smoking is prohibited under this  
4 part or part 129 and where smoke does not infiltrate into those  
5 nonsmoking areas. As used in this subdivision, "physically  
6 separated" means an area that is enclosed on all sides by any  
7 combination of solid walls, windows, or doors that extend from the  
8 floor to ceiling.

9 (d) The tobacco specialty retail store prohibits entry to a  
10 person under the age of 18 during the time the tobacco specialty  
11 retail store is open for business.

12 (3) A LICENSED CLUB IN EXISTENCE ON THE EFFECTIVE DATE OF THE  
13 AMENDATORY ACT THAT ADDED THIS SENTENCE THAT MEETS ALL OF THE  
14 REQUIREMENTS OF THIS SECTION IS EXEMPT FROM THE SMOKING PROHIBITION  
15 OF SECTION 12603 AND MAY ALLOW SMOKING ON ITS LICENSED PREMISES. TO  
16 QUALIFY FOR THE EXEMPTION UNDER THIS SECTION, THE LICENSED CLUB  
17 SHALL FILE AN AFFIDAVIT WITH THE DEPARTMENT ON OR BEFORE THE  
18 EXPIRATION OF 30 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY  
19 ACT THAT ADDED THIS SENTENCE AND ON JANUARY 31 BEGINNING IN THE  
20 IMMEDIATELY SUCCEEDING YEAR. THE AFFIDAVIT SHALL BE SIGNED BY THE  
21 PRINCIPAL OFFICER OF THE LICENSED CLUB AND SHALL CERTIFY THAT THE  
22 LICENSED CLUB WAS IN EXISTENCE ON THE EFFECTIVE DATE OF THE  
23 AMENDATORY ACT THAT ADDED THIS SENTENCE, THAT A RECORDED VOTE OF A  
24 MAJORITY OF THE MEMBERS OF THE CLUB DURING A GENERAL MEETING HELD  
25 NOT MORE THAN 30 DAYS BEFORE THE DATE OF THE AFFIDAVIT APPROVED THE  
26 CLUB'S FILING FOR EXEMPTION FROM THE SMOKING PROHIBITION, AND THAT  
27 THE LICENSED CLUB MEETS ALL OF THE FOLLOWING REQUIREMENTS:

1 (A) THE LICENSED CLUB IS LOCATED ON PREMISES THAT ARE  
2 PHYSICALLY SEPARATED FROM ANY AREAS OF THE SAME OR ADJACENT  
3 ESTABLISHMENTS IN WHICH SMOKING IS PROHIBITED UNDER THIS PART OR  
4 PART 129 AND WHERE SMOKE DOES NOT INFILTRATE INTO THOSE NONSMOKING  
5 AREAS. AS USED IN THIS SUBDIVISION, "PHYSICALLY SEPARATED" MEANS AN  
6 AREA THAT IS ENCLOSED ON ALL SIDES BY ANY COMBINATION OF SOLID  
7 WALLS, WINDOWS, OR DOORS THAT EXTEND FROM THE FLOOR TO CEILING.

8 (B) THE LICENSED CLUB PROHIBITS ENTRY TO A PERSON UNDER THE  
9 AGE OF 18 DURING THE TIME THE LICENSED CLUB IS OPEN FOR BUSINESS.

10 (C) THE LICENSED CLUB PROHIBITS SMOKING ON ITS LICENSED  
11 PREMISES WHEN THE CLUB IS OPEN TO THE PUBLIC OR RENTED OUT OR USED  
12 FOR AN EVENT THAT IS NOT CLUB-SPONSORED.

13 (4) ~~(3)~~—The department may request additional information from  
14 a cigar bar, ~~or~~ tobacco specialty retail store, **OR LICENSED CLUB** to  
15 verify that the cigar bar, ~~or~~ tobacco specialty retail store, **OR**  
16 **LICENSED CLUB** meets the requirements of this section. A cigar bar,  
17 ~~or~~ tobacco specialty retail store, **OR LICENSED CLUB** shall comply  
18 with requests from the department under this section.

19 (5) ~~(4)~~—Except as otherwise provided in this subsection, a  
20 cigar bar, ~~or~~ tobacco specialty retail store, **OR LICENSED CLUB** that  
21 does not meet the requirements of this section or violates this  
22 section is not exempt from the smoking prohibition of ~~section 12603~~  
23 **THIS ACT** and shall immediately prohibit smoking on its premises. A  
24 cigar bar, ~~or~~ tobacco specialty retail store, **OR LICENSED CLUB** that  
25 meets all of the requirements of this section other than filing the  
26 affidavit as required under subsection (1), ~~or~~ (2), **OR (3)**, retains  
27 its exemption and may continue to allow smoking during the period

1 beginning on the date the affidavit is due and ending on the  
2 expiration of 21 days after that date. However, if the affidavit  
3 remains unfiled after the 21-day grace period, the cigar bar, ~~or~~  
4 tobacco specialty retail store, **OR LICENSED CLUB** is not exempt from  
5 the smoking prohibition of ~~section 12603~~**THIS ACT** and shall  
6 immediately prohibit smoking on its premises. A cigar bar, ~~or~~  
7 tobacco specialty retail store, **OR LICENSED CLUB** that loses its  
8 exemption under this subsection is not exempt from the smoking  
9 prohibition of ~~section 12603~~**THIS ACT**, shall immediately prohibit  
10 smoking on its premises, and may only again qualify for the  
11 exemption under this section by filing an affidavit and meeting all  
12 of the requirements of subsection (1), ~~or~~(2), **OR (3)**, as  
13 applicable.

14       Sec. 12905. (1) ~~An~~**EXCEPT AS OTHERWISE PROVIDED IN THIS**  
15 **SECTION OR SECTION 12603A, AN** individual shall not smoke in a food  
16 service establishment, and the person who owns, operates, manages,  
17 or is in control of a food service establishment shall make  
18 reasonable effort to prohibit individuals from smoking in a food  
19 service establishment. **THIS SECTION DOES NOT APPLY TO THE OUTDOOR**  
20 **PATIO AREA OF A FOOD SERVICE ESTABLISHMENT IF BOTH OF THE FOLLOWING**  
21 **REQUIREMENTS ARE MET:**

22       (A) NO FOOD IS SERVED IN THE OUTDOOR PATIO AREA. AS USED IN  
23 THIS SUBDIVISION, "FOOD" DOES NOT INCLUDE ANY BEVERAGE.

24       (B) ALCOHOLIC LIQUOR IS ALLOWED IN THE OUTDOOR PATIO AREA  
25 UNDER AN ON-PREMISES LICENSE FOR THAT ESTABLISHMENT ISSUED UNDER  
26 THE MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998 PA 58, MCL 436.1101  
27 TO 436.2303.

1           (2) In addition to a food service establishment that provides  
2 its own seating, subsection (1) applies to a food service  
3 establishment or group of food service establishments that are  
4 located in a shopping mall in which the seating for the food  
5 service establishment or group of food service establishments is  
6 provided or maintained, or both, by the person who owns or operates  
7 the shopping mall.

8           (3) The director, an authorized representative of the  
9 director, or a representative of a local health department to which  
10 the director has delegated responsibility for enforcement of this  
11 part shall inspect each food service establishment that is subject  
12 to this section. The inspecting entity shall determine compliance  
13 with this section during each inspection.

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

22           (5) ~~A~~**EXCEPT AS OTHERWISE PROVIDED IN SECTION 12603A, A** food  
23 service establishment **THAT IS SUBJECT TO THIS SECTION** shall comply  
24 with sections 12603(2) and 12606. It is an affirmative defense to a  
25 prosecution or civil or administrative action for a violation of  
26 this section that the owner, operator, manager, or person in  
27 control of a food service establishment where smoking is prohibited

1 under this section made a good faith effort to prohibit smoking by  
2 complying with section 12603(2). To assert the affirmative defense  
3 under this subsection, the owner, operator, manager, or person  
4 shall file a sworn affidavit setting forth his or her efforts to  
5 prohibit smoking and his or her actions of compliance with section  
6 12603(2).

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

11 (7) As used in this section:

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

14 **FOOD SERVICE ESTABLISHMENT DOES NOT INCLUDE A CIGAR BAR OR LICENSED**  
15 **CLUB THAT IS EXEMPT FROM THE SMOKING PROHIBITION UNDER SECTION**  
16 **12606A.**

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

19 (c) "Smoking" **OR "SMOKE"** means that term as defined in section  
20 12601.

21 Enacting section 1. This amendatory act takes effect July 1,  
22 2013.