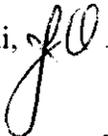


MEMORANDUM

DEPARTMENT OF COMMUNITY HEALTH

LANSING, MICHIGAN 48913

**DATE:** April 21, 2010  
**TO:** Interested Parties  
**FROM:** Janet Olszewski,   
Director  
**SUBJECT:** MDCH Enforcement of the 2009 Public Act 188

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The Michigan Department of Community Health (Department) has received questions about the cigar bar exemption to the recently enacted smoking prohibition which becomes effective May 1, 2010. The Department is issuing this document to state its interpretation of certain provisions of the Public Act and the Department's intended enforcement.

The Department has concluded that if cigar bars meet all of the requirements in § 12606a(1), then they are exempt from the smoking ban in parts 126 and 129 of the Code.

**Background**

In 2009, the Legislature amended Parts 126 and 129 of article 12 of the Public Health Code (the Code) to prohibit smoking in public places and in food service establishments. 2009 PA 188 (the Act) becomes effective May 1, 2010. The Act amended section 12603 of the Code to prohibit smoking in public places.

The Act also amended section 12905 of the Code to prohibit smoking in food service establishments:

(1) An individual shall not smoke in a food service establishment, and the person who owns, operates, manages, or is in control of a food service establishment shall make reasonable effort to prohibit individuals from smoking in a food service establishment.

The Department is responsible for enforcing the smoking prohibition in parts 126 and 129 of the Code. MCL 333.12613. The Department may also authorize local health departments to enforce the smoking prohibition in parts 126 and 129 of the Code. MCL 333.12613.

Three types of establishments are exempt from the smoking prohibition in the Act, two of which are germane to this interpretation.<sup>1</sup> Cigar bars are exempt from the smoking prohibition in part 126:

(1) A cigar bar in existence on the effective date of this section that meets all of the requirements of this section is exempt from the smoking prohibition of section 12603 and may allow smoking on its premises.

Tobacco specialty retail stores are also exempt from the smoking prohibition in part 126:

(2) A tobacco specialty retail store in existence on the effective date of this section that meets all of the requirements of this section is exempt from the smoking prohibition of section 12603 and may allow smoking on its premises.

The Department has received questions whether cigar bars may continue to serve food and drink and allow cigar smoking.

### **Interpretation**

In interpreting and enforcing the Act, the Department assumes that the legislature intended the meaning it has plainly expressed. Acts must be considered in their entirety, and no statutory provision may be treated as superfluous or without meaning. *Danto v Michigan Bd of Medicine*, 168 Mich App 438, 442 (1988). Statutes are to be read as a whole to ascertain the intent of the Legislature, and any provisions that are apparently inconsistent are interpreted to produce a harmonious whole, if reasonably possible. *Bailey v Oakwood Hospital, and Medical Center*, 472 Mich 685, 693 (2005).

The Act defines a cigar bar as:

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

The Act defines a tobacco specialty retail store as:

(u) “Tobacco specialty retail store” means an establishment in which the primary purpose is the retail sale of tobacco products and smoking paraphernalia, and in which the sale of other products is incidental. Tobacco specialty retail store does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food, or restaurant license.

In explicitly defining “tobacco specialty retail stores” as not having “any type of liquor, food, or restaurant license,” the Legislature clearly distinguished such entities from “cigar bars.” The distinction between cigar bars and tobacco specialty retail stores is all the more evident in light of the Legislature’s requirement that in order for a cigar bar to be

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<sup>1</sup> The Act also exempts certain casinos from the smoking prohibition.

exempt from the smoking ban, it must generate “10% or more of its total gross annual income from the on-site sale of cigars and the rental of on-site humidors.” Tobacco specialty retail stores, on the other hand, must generate 75% or more of their total gross annual income from the on-site sale of tobacco products and smoking paraphernalia. MCL 333.12606a(2)(b).

It would be inconsistent with the purpose and policies of the Act for the Legislature to exempt cigar bars from the smoking prohibition in part 126 but not to exempt them from the smoking prohibition in part 129. Indeed, eating and drinking in cigar bars was permitted before the Legislature enacted the Act. To fail to recognize how cigar bars will generate the other 90% of their total gross annual income would be absurd. A literal interpretation of unambiguous statutory language may not produce an absurd and unjust result that is inconsistent with the purpose and policies of the statute. *People v Bewersdorf*, 438 Mich 55, 68 (1991). An interpretation that would force cigar bars to forgo the service of serve food and liquor would essentially render the exemption for tobacco specialty stores as unnecessary or meaningless. Every word of a statute should be read to give it meaning; thus, interpretations that render words unnecessary or meaningless must be avoided. *In re MCI Communications*, 460 Mich 396, 415 (1999).

Therefore, reading the Act as a whole to ascertain the intent of the Legislature, if cigar bars meet all of the requirements in § 12606a(1), then they are exempt from the smoking ban in parts 126 and 129 of the Code.