# Michigan Smoke Free Law
# Frequently Asked Questions
## General Information

Beginning May 1, 2010, smoking is prohibited in most public places in Michigan. The law will cover any workplace and any food service establishment. This law covers public places, including, but not limited to, restaurants, bars, shopping malls, bowling alleys, concert halls, arenas, museums, mechanic shops, health facilities, nursing homes, education facilities, and child care centers.

**Why was the law passed?**

The Michigan legislature passed the Dr. Ron Davis Smoke-Free Air Law on December 10, 2009 to preserve and improve the health, comfort, and environment of the people of the state by limiting exposure to secondhand smoke. Governor Granholm signed the bill into law on December 18, 2009.

**When does the law go into effect?**

May 1, 2010

**Will the local regulation/ordinance in my county/city/township still apply?**

The Dr. Ron Davis Smoke Free Air Act will not serve as the only smoke free law in the state, but it does set forth the minimum requirements for indoor workplaces and public places where smoking is regulated and these minimum standards apply state-wide. The statewide law does the following: (1) establishes where people can smoke and where they can't if your local community is not currently covered by any city or county local law; and (2) ensures that any provisions that are weaker in your local law (compared to the state law) are now made AT LEAST AS STRONG as the statewide law.

**Where are people not allowed to smoke?**

Under the new law, smoking is prohibited in public places and food service establishments. A public place means an (i) enclosed indoor area owned or operated by a state or local governmental agency and used by the general public; (ii) an enclosed indoor area used by the general public and is an educational facility, a home for the aged, nursing home, hospice, or hospital long-term care unit, auditorium, arena, theater, museum, concert hall, or any other facility during the period of its use for a performance or exhibit of the arts; (iii) unless otherwise exempted, a place of employment. Place of employment means an enclosed indoor area that contains one or more work area for one or more persons employed by a public or private employer.

## Workplaces

**How is a place of employment defined?**

A place of employment means an enclosed indoor area that contains one or more work areas for one or more persons employed by a public or private employer. Work area means a site within a place of employment at which one or more employees perform services for an employer.

**Is my home office exempt from the ban?**

Yes. You may smoke in a structure used primarily as the residence of the owner or lessee that is also used as an office for the owner/lessee and for no other employees is exempt from the ban.

**Can I smoke in my private office in a commercial work establishment?**

No.

**What do business operators need to do to comply with this law?**

Business operators shall prohibit smoking in areas where it is not permitted. Compliance is determined by the following:

- Clearly and conspicuously post “no smoking” signs or the international “no smoking” symbol at each entrance and in other areas where smoking is prohibited under this act. These other areas may include outdoor areas such as patios or rooftops where patrons are intended to receive service or consume food, beverages, or both.

- Removing ashtrays and other smoking paraphernalia from anywhere where smoking is prohibited. “Smoking paraphernalia” means any equipment, apparatus, or furnishing that is used in or necessary for the activity of smoking.

- Informing individuals smoking in violation of this act that they are in violation of state law and are subject to penalties.

- Refusing service to an individual smoking in violation of this act.

- Asking an individual smoking in violation of this act to refrain from smoking and, if the individual continues to smoke in violation of this act, ask him or her to leave.

**Where are employees or patrons permitted to smoke?**

Smoking may be allowed in outdoor areas.

**How should I respond if someone is smoking in my establishment?**

You should politely ask the individual to stop smoking and inform them that they are in violation of the Smoke Free Law and they are subject to penalties. If the individual continues to smoke, you should refuse service to that individual and ask him or her to leave. It is recommended that you communicate this incident with your staff and log it into any tracking mechanism your establishment may have to document your actions.

**How far do people have to be from a building or entrance to smoke?**

The law is silent on distance requirements. However, please be advised there may be local regulations or ordinances that dictate distance requirements.

**Where does signage need to be placed?**

“No Smoking” signs or the international “no smoking” symbol must be clearly and conspicuously posted at all entrances to public places, food service establishments, and casinos subject to the smoke free law.

**Am I required to provide my employees with a smoking break?**

No. State law is silent on the issue of mandatory smoking breaks for employees.

**Are hotel/motel guest rooms included in the smoke free law?**

Yes. Guest rooms must be smoke free as of May 1, 2010.

## Bars, Restaurants, and Other Food Service Establishments

**What is a food service establishment?**

A food service establishment is defined in section 1107(n) of the food law of 2000, 200 PA 92, MCL 289.1107 as: a fixed or mobile restaurant, a coffee shop, a cafeteria, short order café, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, nightclub, drive-in, industrial feeding establishment, private organization serving the public, rental hall, catering kitchen, delicatessen, theater, commissary, food concession, or similar place in which food or drink is prepared for direct consumption through service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public.

**Where is smoking prohibited in a restaurant?**

Smoking is not allowed in any indoor area as well as outdoor areas such as patios or rooftops where patrons are intended to receive service or consume food, beverages, or both.

**Where are restaurant guests or employees permitted to smoke?**

Smoking may be allowed in outdoor areas where food, beverages, or both are not intended to be served or consumed.

**My establishment only has a liquor license, does the smoke free law still apply to me?**

Yes, your establishment is still considered a food service establishment under the Food Law Act No. 92 of 2000 as amended.

**What do food service establishment operators need to do to comply with this law?**

Food service establishment operators shall prohibit smoking in areas where it is not permitted. Compliance is determined by the following:

- Clearly and conspicuously post “no smoking” signs or the international “no smoking” symbol at each entrance and in other areas where smoking is prohibited under this act. These other areas may include outdoor areas such as patios or rooftops where patrons are intended to receive service or consume food, beverages, or both.

- Removing ashtrays and other smoking paraphernalia from anywhere where smoking is prohibited. “Smoking paraphernalia” means any equipment, apparatus, or furnishing that is used in or necessary for the activity of smoking.

- Informing individuals smoking in violation of this act that they are in violation of state law and are subject to penalties.

- Refusing service to an individual smoking in violation of this act.

- Asking an individual smoking in violation of this act to refrain from smoking and, if the individual continues to smoke in violation of this act, ask him or her to leave.

**How should I respond if someone is smoking in my establishment?**
You should politely ask the individual to stop smoking and inform them that they are in violation of the Smoke Free Law and they are subject to penalties. If the individual continues to smoke, you should refuse service to that individual and ask him or her to leave. It is recommended that you communicate this incident with your staff and log it into any tracking mechanism your establishment may have to document your actions.

**How does the local regulation/ordinance affect smoking in my establishment?**

Currently, local smoking ordinances and regulations do not apply to food service establishments.

**How far do people have to be from my bar/restaurant to smoke?**

There is no specific distance requirement that people are required to be from a food service establishment to be able to smoke. However it is recommended that smoking not be allowed at entrances or other areas that may allow smoke to infiltrate the establishment. There may be local regulations that require a particular distance smokers can be from businesses that are not licensed as food service establishments.

**Where does signage need to be placed?**

“No Smoking” signs or the international “no smoking” symbol must be clearly and conspicuously posted at all entrances (front, side and/or rear). Additionally, signs must be posted at other areas where smoking is prohibited which may include patios, rooftops, outdoor tables and other areas where foods and/or beverages are intended to be served and/or consumed. For mobile food units and special transitory food units, this is typically at the entrance and/or food preparation areas of the unit. Due to the varied nature of temporary food establishments, the local health departments will work with the individual vendors and festival coordinators to determine non smoking areas.

**Who will provide the signage?**

It is the responsibility of the food establishment to comply with the provisions of this law.

## Exemptions

**Are there any places that are not required to comply with the smoke free law?**

Yes. Cigar bars, tobacco specialty retail stores, and the gaming floors of casinos may be granted exemptions from the smoke free law.

**How can my bar become a cigar bar?**

Cigar bars must file an affidavit for an exemption with the Michigan Department of Community Health on or before June 1, 2010 and must renew that exemption by January 31 of each subsequent year. The cigar bar must also meet the following requirements:

- **Gross Revenue:** The cigar bar must demonstrate that it generated 10% or more of its total gross annual income from the on-site sale of cigars and the rental of on-site humidors.

- **Physically Separated:** The cigar bar must be located on premises that are physically separated from any areas of the same or adjacent establishment in which smoking is prohibited. Physically separated means an area that is enclosed on all sides by any combination of solid walls, windows, or doors that extend from floor to ceiling. Smoke may not infiltrate into those nonsmoking areas.

- **Humidor:** The cigar bar must have an installed, on-site humidor. A humidor means an enclosure or fixture that is stationary and used for the humidification of cigars that is on the premises of the establishment.

- **No Minors:** The establishment must not allow individuals under the age of eighteen to enter during the time the cigar bar is open for business.

- **Retail:** The cigar bar must allow only the smoking of cigars on the premises that retail for over $1.00 per cigar.

- **Cigars Only:** The cigar bar must prohibit the smoking of all other tobacco products.

**How can I become a Tobacco Specialty Retail Store?**

Tobacco specialty retail stores must file an affidavit for an exemption with the Michigan Department of Community Health on or before June 1, 2010 and must renew that exemption by January 31 of each subsequent year. The tobacco specialty retail store must also meet the following requirements:

- **Gross Revenue:** The tobacco specialty retail store must generate 75% or more of its total gross annual income from the on-site sale of tobacco products and smoking paraphernalia.

- **Physically Separated:** The tobacco specialty retail store must be located on premises that are physically separated from any areas of the same or adjacent establishment in which smoking is prohibited. Physically separated means an area that is enclosed on all sides by any combination of solid walls, windows, or doors that extend from floor to ceiling. Smoke may not infiltrate into those nonsmoking areas.

- **No Minors:** The establishment must not allow individuals under the age of eighteen to enter during the time the tobacco specialty retail store is open for business.

**What happens if I sell my cigar bar or tobacco specialty retail store?**

Both you and the purchaser of the establishment must notify the Department of Community Health of the sale in order to update the exemption information on file. The establishment will retain its exemption for the remainder of the calendar year, but the new owner/operator must file an affidavit with the Department after January 1 but before January 31 of each subsequent year.

**What happens if I relocate my cigar bar or tobacco specialty retail store?**

You must notify the Department of Community Health of the relocation in order to update the exemption information on file.

**What are the requirements for casinos?**

The gaming areas of Detroit's three casinos are exempted from the smoke free law. Every bar, restaurant, conference room, and lobby space outside of the gaming floor will be required to be smoke free. However, state law does not govern Native American land, so smoking may be allowed at tribal casinos.

**How does the smoke free law apply to bingo halls and private clubs?**

Bingo halls are not exempt from the smoke free law. Any establishment that serves food or beverages – which requires a license from the state – cannot allow smoking, even if it only serves once a week or once a year. If clubs don't serve food or beverages, but employ at least one person, they must be smoke free.

**Is my hookah bar exempt?**

A hookah bar may qualify as a tobacco specialty retail store. A hookah bar may not have a food service license, a liquor license, or both.

**Can I serve food in a tobacco specialty retail store?**

A tobacco specialty retail store may sell packaged, non-potentially hazardous foods, bottled beverages, or both, in incidental amounts, such as less than five percent of gross sales. If the facility has more than 5% of their sales from packaged foods and beverages, then the facility might require a food establishment license from the Michigan Department of Agriculture and may no longer be eligible to allow smoking. Additionally, if food preparation, food service, or other related activities that would require a food service license are found at the establishment, then the facility would lose its exemption and would no longer be eligible to allow smoking.

**Can customers bring food into a tobacco specialty retail store?**

The owner of a tobacco specialty retail store may allow customers to bring in food for his or her personal consumption. A customer may also have food delivered to the tobacco specialty retail store for his or her personal consumption.

**Can foods be catered to a tobacco specialty retail store?**

No. Catering operations are an extension of a food service license and there is no smoking allowed at a food service establishment.

**Where can I find the affidavits to apply for an exemption from the smoke free law?**

The affidavits can be found at www.michigan.gov/smokefreelaw

**What if I don't have a Tobacco Tax License, can my tobacco specialty retail store or cigar bar apply for an exemption?**

Yes. You must provide the Michigan Department of Community Health with valid proof that demonstrates you have paid all of the necessary state excise taxes on tobacco products.

## Enforcement

**How will the law be enforced?**
If you observe or note a possible violation, please notify the owner or manager of the establishment. They are responsible for compliance and are required to direct a person who is smoking to extinguish the lighted tobacco product.

**How can I file a complaint if someone is smoking in a restaurant or bar?**
Information on how to file complaints will be available prior to the implementation date of May 1, 2010.

**How can I file a complaint if someone is smoking in a workplace?**
Information on how to file complaints will be available prior to the implementation date of May 1, 2010.

**What are the specific penalties for violating the smoke free law?**
Information regarding the specific penalties for violations of the law will be posted at a later date.