

Michigan's Smoke-Free Indoor Air Law

Frequently Asked Questions

Since May 1, 2010, smoking has been prohibited in most public places in Michigan. The law covers any workplace and any food service establishment. A workplace is a site employing at least one person. A food service establishment is any place with a license to serve food or beverages. 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 childcare centers.

For more information, contact the Michigan Department of Health and Human Services Tobacco Section at 517-335-8376 or visit www.michigan.gov/smokefreelaw.

General Information

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. Michigan Governor Jennifer M. Granholm signed the bill into law on December 18, 2009.

When did the law go into effect?

May 1, 2010

Where are people not allowed to smoke?

Under the law, smoking is prohibited in work areas and in all food service establishments. A work area is a place of employment at which one (1) or more employees perform services for an employer.

What is smoking paraphernalia?

“Smoking paraphernalia” means any equipment, apparatus, or furnishing that is used in, or necessary for, the activity of smoking. This includes, but is not limited to, ashtrays, rolling papers, pipes, hookah pipes, cigarettes, and cigars.

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

Public Act No. 188 of 2009, as amended, does not serve as the only smoke-free indoor air 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 statewide. 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.

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 Public Act No. 188 of 2009, as amended.

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

Both you and the purchaser of the establishment must notify the Michigan Department of Health and Human Services immediately 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 Michigan Department of Health and Human Services of the relocation in order to update the exemption information on file.

What are the requirements for casinos?

Only the gaming areas of Detroit's three casinos are exempted from Public Act No. 188 of 2009, as amended. Every bar, restaurant, conference room, and lobby space outside of the gaming floor will be required to be smoke-free. State law does not govern Native American land, so smoking may be allowed at tribal casinos.

Are bingo halls exempt from Public Act No. 188 of 2009, as amended?

No. Bingo halls are not exempt from Public Act No. 188 of 2009, as amended.

Are private clubs exempt from Public Act No. 188 of 2009, as amended?

No. Private clubs are not exempt from Public Act No. 188 of 2009, as amended. 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 do not serve food or beverages, but do employ at least one person (even if that person is a volunteer), 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 (5) percent of gross sales. If the facility has more than 5 percent of its sales from packaged foods and beverages, then the facility might require a food establishment license from the Michigan Department of Agriculture & Rural Development 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 a customer to bring in food for his or her personal consumption. A customer may also have food delivered to the entrance of 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, as delineated in 289.4105 (3) of the Michigan Food Law, Public Act No. 92 of 2000, as amended, and there is no smoking allowed at a food service establishment.

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, Public Act No. 92 of 2000, MCL 289.1107 as “a fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, 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 or in outdoor areas such as patios or rooftops during periods when food, beverages or both are prepared, served or provided to patrons. An outdoor area is an open area that is part of — or adjacent to — a fixed food service establishment, such as a restaurant or bar.

Where are restaurant guests or employees permitted to smoke?

Smoking may be allowed in outdoor areas such as patios or rooftops during periods when food, beverages or both are not prepared, served or provided to patrons. Service includes, but is not limited to, delivering or retrieving food, beverages, glassware, and/or tableware. Patrons may take food, beverages or both onto patios and rooftop dining areas during periods when there is no food or beverage preparation or service by employees.

Examples:

- A food establishment closes for food and drink service in the patio area after a certain hour. In this instance, patrons may take their own food or drink onto the patio and smoking may be allowed once service has ceased.
- A fast-food establishment has a patio area where patrons may take their own food and drink to dine outside. Smoking may be allowed if there is no preparation or service of food or drink to patrons in this area by employees.

Ashtrays and other smoking paraphernalia must be removed during no smoking periods. Signage indicating when smoking is not allowed must be accurate.

Food establishments are not required to allow smoking in these outdoor areas, but may do so at their own discretion.

My establishment only has a liquor license. Does Public Act No. 188 of 2009, as amended, still apply to me?

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

What do food service establishment operators need to do to comply with Public Act No. 188 of 2009, as amended?

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

- Clearly and conspicuously posting “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 during periods when food, beverages or both are prepared, served or provided to patrons.
- Removing ashtrays and other smoking paraphernalia from anywhere where smoking is prohibited.
- 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, asking 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 him or her that he or she is in violation of Public Act No. 188 of 2009, as amended and 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 a 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 in 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; this may include patios, rooftops, outdoor tables, and other areas during periods where food, beverages or both are prepared, served or provided to patrons. For mobile food units and special transitory food units, this is typically at the entrance and/or in 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.

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.

Is my home office exempt from the ban?

Yes. 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 posting “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 during periods when food, beverages or both are prepared, served or provided to patrons.
- Removing ashtrays and other smoking paraphernalia from anywhere where smoking is prohibited.

- 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, asking 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 him or her that he or she is in violation of Public Act No. 188 of 2009, as amended and 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 (front, side and/or rear).

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.

Enforcement

How is the law 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?

Go to www.michigan.gov/smokefreelaw for information on how to file a complaint.

How can I file a complaint if someone is smoking in a workplace?

Go to www.michigan.gov/smokefreelaw for information on how to file a complaint, or call the Complaint Hotline at **517-241-6303**.