



GRAND HAVEN DEPARTMENT OF PUBLIC SAFETY

TRAINING BULLETIN

Smoke-Free Air Law

Date of Issue: April 27, 2010

On December 18, 2009, Governor Granholm signed the Dr. Ron Davis Smoke-Free Air Law into effect (P.A. 188 of 2009). The law will go into effect on May 1, 2010.

The law was passed to preserve and improve the health, comfort, and environment of the people of the state by limiting exposure to secondhand smoke. The law is not the only smoke-free law in the state, but it sets the minimum requirements of indoor workplace and public places where smoking is regulated. These minimum standards apply statewide.

The statewide law does include the following:

1. Establishes where people can smoke and where they can't if your local law community is not covered by any city or county local law.
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.

AREAS WHERE SMOKING IS NOT ALLOWED

- Enclosed indoor area owned or operated by a state or local governmental agency and used by the general public.
- 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.
- Unless otherwise exempted, a place of employment (which includes private offices)
- All indoor common areas of apartment and condominium buildings must be smoke-free
- Guest rooms of hotels.
- Food service establishment (includes areas such as patios or rooftops where patrons are intended to receive service or consume food, beverages, or both).

PLACE OF EMPLOYMENT

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.

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 servicing 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.

COMPLIANCE

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/her to leave.

AREAS WHERE SMOKING IS PERMITTED

- Outdoor areas (Note: The state law does not provide required distances from buildings or building entrances that people must be in order to smoke, however, City of Grand Haven buildings are still covered by the Ottawa County Ordinance.
- Living units of apartment and condominium buildings.
- 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.

EXEMPTIONS

1) Cigar Bars

- Must file an affidavit for exemption with the Michigan Department of Community Health on or before June 1, 2010 and renew that exemption by January 31 of each subsequent year.
- Demonstrate that it generated 10% or more of its total annual income from the on-site humidors.
- Smoking section must be physically separated from nonsmoking area of establishment. Smoke may not infiltrate into those nonsmoking areas.
- Must have an installed, on-side humidor.
- No one under that age of 18 is allowed on the premises during business hours.
- Must allow only the smoking of cigars that retail for over \$1.00 per cigar.
- The smoking of all other tobacco products is prohibited on the premises.

2) Tobacco Specialty Retail Stores

- Must file an affidavit for exemption with the Michigan Department of Community Health on or before June 1, 2010 and renew that exemption by January 31 of each subsequent year.
- Generate 75% or more of its total gross annual income from the on-site sale of tobacco products and smoking paraphernalia.
- Smoking section must be physically separated from nonsmoking area of establishment. Smoke may not infiltrate into those nonsmoking areas.
- No one under that age of 18 is allowed on the premises during business hours.

3) Detroit Casinos

- Smoking is allowed only in the gaming areas.

- The law also does not apply to Native American Land.

BUSINESS OWNERS RESPONSE TO SOMEONE SMOKING IN ESTABLISHMENT

- Inform patron or employee that they are in violation of State Law and ask them to stop smoking.
- If individual continues to smoke, refuse service and ask them to leave.
- If individual refuses to leave, contact the police.
- It is recommended that business owners document the incident for their own records.

ENFORCEMENT AND PENALTY

The Smoke-Free Air Law will be enforced by the Department of Community Health (DCH). The DCH could authorize local health departments to carry out the enforcement. Violations are a civil penalty (not a criminal matter), and subject the offender(s) to a civil fine of up to \$100 for a first violation and up to a \$500 for a second or subsequent violation. Individuals and entities alleging violations may also bring civil actions for appropriate injunctive relief. Violations may also result in an order to cease food service operations. If a business owner/agent falsifies an affidavit related to the Act, that is criminal perjury.

Information on how to file a complaint regarding a business or individual who is in violation of this law may do so after May 1, 2010 at www.mmichigan.gov/mdch.

Currently the Grand Haven Department of Public Safety is unable to enforce the Smoke-Free Air Law, enforcement is limited by statute to the Michigan Department of Community Health and also local health departments if they so elect. However, appropriate action can be taken when assistance is required for a subject who fails to leave the premises of a business after being asked to do so by the property owner or their agent (this would be treated by us as any other case of criminal trespass just as we normally do).

For more information regarding the Smoke-Free Air Law go to www.michigan.gov/mdch.

GRAND HAVEN DEPARTMENT OF PUBLIC SAFETY PROTOCOL

If the Grand Haven Department of Public Safety does receive any calls of people smoking at a place that may not be allowed, the person calling should be advised:

- 1) To make their concerns known to management at the establishment. Under the statute, it is the responsibility of the management of the establishment to take appropriate action. The police are not empowered under the statute to take enforcement action at this level.
- 2) If the caller still has concerns, they may also contact the Michigan Department of Community Health directly, and register a complaint with them. They are the next level of enforcement that takes place under the law. The police are not empowered under the statute to take enforcement action at this level.
- 3) **If management calls** and requests help with a patron who is creating a disturbance, not leaving when requested to, etc., we will respond and handle it just like any other customer trouble call of a similar nature. **The extent of our involvement will not be with enforcement of the smoking ban itself**, but rather with the issue of the disorderly conduct or criminal trespassing, and we will handle that aspect just as we do now.