



Michigan's New "No Smoking" Rules

By Donald P. DeNault, Jr., O'Reilly Rancilio PC

On December 18, 2009, Governor Granholm signed Michigan's new indoor smoking ban into law. The law is known as the Dr. Ron Davis Law. Michigan became the 38th state to adopt limitations on smoking in public places.

The new law took effect on May 1, 2010. By the time you read this, the new law will no doubt be affecting your life in some way or another. For instance, when you enter a restaurant you will no longer be asked -- "Smoking or Non?" In addition, you may already even have new clients (businesses or individuals) who got caught breaking the new law, or who need advice on how to comply with it.

The new rules are relatively simple to grasp. The law bans smoking in three different kinds of places. First, smoking is banned in a "public place," which is defined as an enclosed, indoor area owned or operated by government and used by the general public. In other words, smoking is banned in places like city hall, courts,

public schools, and other many municipal and state facilities. The law also lists a number of "non-governmental" places, including educational facilities, medical facilities, nursing homes, auditoriums, arenas, theaters, muse-



ums, concert halls, and other facilities used for the arts.

Second, smoking is banned in most "places of employment," which are enclosed indoor areas that contain one or more work areas for one or more employees.

The law exempts residences and motor vehicles, even though technically those would otherwise be indoor areas with work areas for employees (this would seem to mean that if your boss is a smoker and your boss needs

you to work from his/her home office or your boss drives you to a conference, your boss is free to smoke while you're around).

Third, smoking is banned in a food service establishment, which is

defined to include a fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tea-room, 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.

The term "food service establishment" does not include any of the following: (i) A motel that serves continental breakfasts only; (ii) A bed and breakfast that has 10 or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper, 1 or more of which are available for rent to transient tenants; (iii) A bed and breakfast that has at least 11 but fewer than 15 rooms for rent, if the bed and breakfast serves continental breakfasts only; or (iv) A child care organization

regulated under state law, unless the establishment is carrying out an operation considered by the state to be a food service establishment.

The new law defines "smoking" as the burning of a lighted cigar, cigarette, pipe, or any other matter or substance that contains a tobacco product. "No smoking" signs, or the international symbol, must be clearly and conspicuously posted at the entrances to, and in, every building or other area where smoking is prohibited under the law. All ash trays and smoking paraphernalia must be removed from anywhere smoking is prohibited under the law.

For hotels and other lodging facilities, the law specifically points out that such places must also comply with the requirements of posting "no smoking" signs and removing all ashtrays and smoking paraphernalia, as well as informing individuals of the law and asking them to refrain or leave if they break the law. At present, the state is interpreting the law to

mean that all guest rooms must be non-smoking rooms.

The enforcement mechanism built into the new law is somewhat novel. Violators must be "informed" they are

only will detection be difficult, but the room will thereafter smell like smoke for the next guests who use the room. Will the violator be evicted? Will the violator

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in violation and subject to penalties under the law. Owners, operators, and managers must refuse to serve anyone who smokes in violation of the law. Owners, operators, and managers must ask an individual to refrain from smoking and ask him or her to leave if the individual continues. However, it will be interesting to see how hotels and motels handle the enforcement issue. For example, without a smoking room option, some smokers might choose to disregard the law and smoke in the room. Not

receive a cleaning bill? Will the hotel contact the local police or the health department? How will you advise your hotel client(s) and/or the individual who gets caught smoking?

Despite all of the new places where smoking is now prohibited, the Legislature carved out three exemptions. First, existing cigar bars are exempt. The owner/operator must file an affidavit by the end of May 2010 and on January 31 of each year. At least 10% of the bar's total gross annual income must be from the on-site sale of cigars and the rental of on-site humidors. The bar must be physically separated from any areas in which smoking is prohibited (and smoke cannot infiltrate those areas). The bar must have an on-site humidor, must prohibit minors under 18 from being on the premises, must allow only the smoking of cigars that retail for over \$1.00 per cigar,

and must prohibit the smoking of all other tobacco products.

Second, existing tobacco specialty retail stores are also exempt. Similar affidavit requirements apply. At least 75% of the total gross annual income of the store must be from the on-site sale of tobacco products and smoking paraphernalia. The same physical separation and age requirements apply.

Third, existing casinos may allow smoking in the gaming area.

And yes, the use of the term "existing" for the above-cited exemptions suggests that the establishment should have been up and running by May 1, 2010. The law is silent about the creation of new cigar bars, tobacco specialty retail stores, or casinos after May 1st, suggesting that

such establishments would not be authorized to allow smoking.

First violations of the new law are punishable by a civil fine up to \$100. Subsequent violations are subject to a civil fine up to \$500. False statements in the affidavits are perjury and punished under the criminal code.

Finally, individuals may enforce the smoking ban by bringing a civil action for injunctive relief if the person has used the public place within 60 days before the action is filed.

As clear as all of that may seem, confusion abounds as of this writing (early April). Many are questioning how big the "no smoking" signs need to be; who will enforce the law, i.e., state, county, or local officials; how and where to place outdoor

smoking areas; whether an outdoor "tent" could be used for smokers (probably not); what will happen to hookah bars (they will most likely be closed or converted); and whether veterans groups will successfully secure an exemption for their private halls.

No doubt some communities will attempt to address these questions, and others, in the near future through the adoption of local ordinances. Savvy attorneys will be sure to research local ordinances when advising their clients regarding applicable laws governing individual behavior and/or business practices relating to smoking.

For more information, check out the FAQ posted by the Department of Community Health <http://www.michigan.gov/documents/mdch/FAQMISmokeF>

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Donald DeNault is a shareholder of O'Reilly Rancilio P.C. in Sterling Heights. He is not a smoker and therefore cannot empathize with the cravings sure to be experienced by many smokers after May 1st.

Nevertheless, he is cautiously optimistic that the new law will lead to at least a modicum of behavioral change which in turn might lead to less smoking in the world, which will ultimately mean less cigarette butts on public streets and rights-of-way, which in the big picture will mean a nicer place to live and work. The world is not an ash tray, people. Littering is a crime. In the words of Woodsy Owl: "Give a hoot – don't pollute!" Or, if you're too young to remember that one, his current catch phrase is "Lend a hand – care for the land!" For more about Woodsy Owl, check out the Woodsy Owl Act of 1974.