



Reprinted  
February 2, 2010

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## HOUSE BILL No. 1131

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DIGEST OF HB 1131 (Updated February 1, 2010 7:32 pm - DI 77)

**Citations Affected:** IC 7.1-5; IC 12-7; IC 12-24; IC 16-18; IC 16-41.

**Synopsis:** Smoking ban in public places. Prohibits smoking in: (1) public places; (2) enclosed areas of a place of employment; and (3) certain state vehicles. Provides exceptions for certain businesses. Requires the alcohol and tobacco commission to enforce the prohibition. Requires signs to be posted at the public entrance of public places and businesses to provide notice that the facility either allows or does not allow smoking. Makes it a Class B infraction to violate the smoking prohibition and a Class A infraction if the person has three unrelated prior offenses. Allows certain governmental units to adopt smoking ordinances. Repeals the current clean indoor air law that prohibits smoking in public buildings.

**Effective:** July 1, 2010.

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**Brown C, Turner, Welch, Sullivan**

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January 7, 2010, read first time and referred to Committee on Public Policy.  
January 20, 2010, reported — Do Pass.  
January 25, 2010, read second time, amended, call withdrawn.  
February 1, 2010, re-read second time, amended, ordered engrossed.

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HB 1131—LS 6233/DI 77+



Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

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## HOUSE BILL No. 1131

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A BILL FOR AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 7.1-5-12 IS ADDED TO THE INDIANA CODE  
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2010]:  
4 **Chapter 12. Prohibition on Smoking**  
5 **Sec. 1. As used in this chapter, "public place" means an enclosed**  
6 **area in which the public is invited or permitted.**  
7 **Sec. 2. As used in this chapter, "smoking" means the:**  
8 **(1) carrying or holding of a lighted cigarette, cigar, pipe, or**  
9 **any other lighted smoking equipment; or**  
10 **(2) inhalation or exhalation of smoke from lighted smoking**  
11 **equipment.**  
12 **Sec. 3. (a) Smoking is prohibited in the following:**  
13 **(1) A public place.**  
14 **(2) Enclosed areas of a place of employment.**  
15 **(3) A vehicle owned, leased, or operated by the state if the**  
16 **vehicle is being used for a governmental function.**  
17 **(b) An employer shall inform each of the employer's employees**



1 and prospective employees of the smoking prohibition in the place  
2 of employment.

3 (c) An owner, an operator, a manager, or other individual with  
4 authority shall remove ashtrays or other smoking paraphernalia  
5 from areas where smoking is prohibited under this chapter.

6 Sec. 4. (a) Notwithstanding section 3(a) of this chapter, the  
7 following facilities may allow smoking:

8 (1) A horse racing facility that is operated under a permit  
9 issued under IC 4-31-5.

10 (2) A riverboat (as defined in IC 4-33-2-17) that is operated  
11 under a license issued under IC 4-33-6 or a contract as an  
12 operating agent under IC 4-33-6.5.

13 (3) A facility that operates under a gambling game license  
14 under IC 4-35-5.

15 (4) A satellite facility that is licensed under IC 4-31-5.5.

16 (5) A:

17 (A) bar or tavern that:

18 (i) holds a beer, liquor, or wine retailer's permit;

19 (ii) permits no individual to enter at any time who is less  
20 than twenty-one (21) years of age;

21 (iii) employs no individual less than twenty-one (21)  
22 years of age; and

23 (iv) is not located in a business that would otherwise be  
24 subject to this chapter; or

25 (B) retail food establishment, club (as defined in  
26 IC 7.1-3-20-1), or a fraternal club (as defined in  
27 IC 7.1-3-20-7) that:

28 (i) holds a beer, liquor, or wine retailer's permit;

29 (ii) on December 31, 2009, prohibited and does not  
30 permit an individual to enter at any time who is less than  
31 eighteen (18) years of age;

32 (iii) employs no individual less than eighteen (18) years  
33 of age; and

34 (iv) is not located in a business that would otherwise be  
35 subject to this chapter.

36 (6) An establishment that:

37 (A) is a tobacco business (as defined in IC 35-46-1-1); and

38 (B) does not allow an individual who is less than eighteen  
39 (18) years of age to enter the establishment.

40 (7) A business that:

41 (A) is exempt from federal income taxation under 26  
42 U.S.C. 501(c);

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1           **(B) meets the requirements to be considered a club under**  
 2           **IC 7.1-3-20-1 or is a fraternal club (as defined in**  
 3           **IC 7.1-3-20-7); and**  
 4           **(C) provides food or alcoholic beverages only to its bona**  
 5           **fide members and their guests.**  
 6           **(8) A family owned and operated business in which all**  
 7           **employees are related to the owner, but only if the enclosed**  
 8           **areas of the business are not open to the public.**  
 9           **(b) The official in charge of a facility that allows smoking under**  
 10          **this section shall post a conspicuous sign at each public entrance of**  
 11          **the facility stating that the facility is a smoking facility.**  
 12          **Sec. 5. The commission shall enforce this chapter. The**  
 13          **commission may inspect premises that are subject to this chapter**  
 14          **to ensure that the person responsible for the premises is in**  
 15          **compliance with this chapter.**  
 16          **Sec. 6. (a) The official in charge of a public place shall do the**  
 17          **following:**  
 18               **(1) Post conspicuous signs that read "Smoking Is Prohibited**  
 19               **By State Law" or other similar language.**  
 20               **(2) Request an individual who is smoking in violation of this**  
 21               **chapter to refrain from smoking.**  
 22               **(3) Remove an individual who is smoking in violation of this**  
 23               **chapter and fails to refrain from smoking after being**  
 24               **requested to do so.**  
 25          **(b) The proprietor of a restaurant shall post conspicuous signs**  
 26          **at each entrance to the restaurant, informing the public that**  
 27          **smoking is prohibited in the establishment.**  
 28          **Sec. 7. A person who smokes in an area where smoking is**  
 29          **prohibited by this chapter commits prohibited smoking, a Class B**  
 30          **infraction. However, the violation is a Class A infraction if the**  
 31          **person has at least three (3) prior unrelated judgments for a**  
 32          **violation of this chapter.**  
 33          **Sec. 8. An owner, manager, or operator of a public place or**  
 34          **place of employment that fails to comply with this chapter commits**  
 35          **a Class B infraction. However, the violation is a Class A infraction**  
 36          **if the person has at least three (3) prior unrelated judgments for a**  
 37          **violation under this chapter.**  
 38          **Sec. 9. (a) Subject to subsection (b), this chapter does not**  
 39          **prohibit a county, city, town, or other governmental unit from**  
 40          **adopting an ordinance more restrictive than this chapter.**  
 41          **(b) A county, city, town, or other governmental unit may not**  
 42          **under subsection (a) adopt or enforce an ordinance that affects a**

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1 **facility described in section 4(a)(1) through section 4(a)(4) of this**  
2 **chapter, unless the ordinance specifically includes a facility**  
3 **described in section 4(a)(1) through section 4(a)(4) of this chapter.**

4 SECTION 2. IC 12-7-2-178.8 IS AMENDED TO READ AS  
5 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 178.8. "Smoking", for  
6 purposes of IC 12-24-2-8, has the meaning set forth in ~~IC 16-41-37-3.~~  
7 **IC 7.1-5-12-2.**

8 SECTION 3. IC 12-24-2-8 IS AMENDED TO READ AS  
9 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. (a) Notwithstanding  
10 IC 12-27-3-3, the superintendent of a state institution has complete  
11 authority to regulate smoking (as defined in ~~IC 16-41-37-3~~)  
12 **IC 7.1-5-12-2)** within the state institution.

13 (b) A physician licensed under IC 25-22.5 may prescribe nicotine  
14 as is medically necessary for a resident of a state institution.

15 SECTION 4. IC 16-18-2-10, AS AMENDED BY P.L.101-2007,  
16 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
17 JULY 1, 2010]: Sec. 10. (a) "Agency", for purposes of IC 16-23.5, has  
18 the meaning set forth in IC 16-23.5-1-2.

19 (b) "Agency", for purposes of IC 16-40-5, has the meaning set forth  
20 in IC 16-40-5-1.

21 (c) "Agency", for purposes of ~~IC 16-41-37~~, has the meaning set forth  
22 in ~~IC 16-41-37-1~~.

23 SECTION 5. IC 16-41-37-4 IS AMENDED TO READ AS  
24 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. A person who  
25 smokes **(as defined in IC 7.1-5-12-2)**

26 **(1) in a public building, except in an area designated as a smoking**  
27 **area under section 5 of this chapter;**

28 **(2) in the retail area of a grocery store or drug store that is**  
29 **designated as a nonsmoking area by the store's proprietor;**

30 **(3) in the dining area of a restaurant that is designated and posted**  
31 **as the restaurant's nonsmoking area by the restaurant's proprietor;**

32 **or**

33 **(4) in a school bus during a school week or while the school bus**  
34 **is being used for a purpose described in section 2.3(3) of this**  
35 **chapter commits a Class B infraction. However, the violation is**  
36 **a Class A infraction if the person has at least three (3) previous**  
37 **unrelated judgments for violating this section that are accrued**  
38 **within the twelve (12) months immediately preceding the**  
39 **violation.**

40 SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE  
41 JULY 1, 2010]: IC 16-18-2-298; IC 16-18-2-318.1; IC 16-18-2-332;  
42 IC 16-41-37-1; IC 16-41-37-2; IC 16-41-37-3; IC 16-41-37-3.1;

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1 IC 16-41-37-5; IC 16-41-37-6; IC 16-41-37-7; IC 16-41-37-8.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, to which was referred House Bill 1131, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

VAN HAAFTEN, Chair

Committee Vote: yeas 7, nays 5.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1131 be amended to read as follows:

Page 3, line 3, delete "This" and insert "**(a) Subject to subsection (b), this**".

Page 3, between lines 5 and 6, begin a new paragraph and insert:

**"(b) A county, city, town, or other governmental unit may not under subsection (a) adopt or enforce an ordinance that affects a facility described in section 4(a)(1) through section 4(a)(4) of this chapter, unless the ordinance specifically includes a facility described in section 4(a)(1) through section 4(a)(4) of this chapter."**

(Reference is to HB 1131 as printed January 21, 2010.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1131 be amended to read as follows:

Page 2, between lines 15 and 16, begin a new line block indented and insert:

**"(5) A:**

**(A) bar or tavern that:**

- (i) holds a beer, liquor, or wine retailer's permit;**
- (ii) permits no individual to enter at any time who is less than twenty-one (21) years of age;**
- (iii) employs no individual less than twenty-one (21) years of age; and**

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- (iv) is not located in a business that would otherwise be subject to this chapter; or
- (B) retail food establishment, club (as defined in IC 7.1-3-20-1), or a fraternal club (as defined in IC 7.1-3-20-7) that:
  - (i) holds a beer, liquor, or wine retailer's permit;
  - (ii) on December 31, 2009, prohibited and does not permit an individual to enter at any time who is less than eighteen (18) years of age;
  - (iii) employs no individual less than eighteen (18) years of age; and
  - (iv) is not located in a business that would otherwise be subject to this chapter."

(Reference is to HB 1131 as printed January 21, 2009.)

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Mr. Speaker: I move that House Bill 1131 be amended to read as follows:

Page 2, between lines 15 and 16, begin a new line block indented and insert:

- "(5) An establishment that:
- (A) is a tobacco business (as defined in IC 35-46-1-1); and
  - (B) does not allow an individual who is less than eighteen (18) years of age to enter the establishment."

(Reference is to HB 1131 as printed January 21, 2010.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1131 be amended to read as follows:

Page 2, between lines 15 and 16, begin a new line block indented and insert:

- "(5) A business that:
- (A) is exempt from federal income taxation under 26



**U.S.C. 501(c);  
(B) meets the requirements to be considered a club under  
IC 7.1-3-20-1 or is a fraternal club (as defined in  
IC 7.1-3-20-7); and  
(C) provides food or alcoholic beverages only to its bona  
fide members and their guests."**

(Reference is to HB 1131 as printed January 21, 2010.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1131 be amended to read as follows:

Page 2, between lines 15 and 16, begin a new line block indented and insert:

**"(5) A family owned and operated business in which all employees are related to the owner, but only if the enclosed areas of the business are not open to the public."**

(Reference is to HB 1131 as printed January 21, 2010.)

MESSMER

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