

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 255 be amended to read as follows:

- 1 Page 3, after line 6, begin a new paragraph and insert:  
2 "SECTION 4. IC 7.1-5-12 IS ADDED TO THE INDIANA CODE  
3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2011]:  
5 **Chapter 12. Prohibition on Smoking**  
6 **Sec. 1. As used in this chapter, "public place" means an enclosed**  
7 **area of a structure in which the public is invited or permitted.**  
8 **Sec. 2. As used in this chapter, "smoking" means the:**  
9 (1) **carrying or holding of a lighted cigarette, cigar, or pipe or**  
10 **any other lighted smoking equipment; or**  
11 (2) **inhalation or exhalation of smoke from lighted smoking**  
12 **equipment.**  
13 **Sec. 3. (a) Except as provided in section 4 of this chapter,**  
14 **smoking is prohibited in the following:**  
15 (1) **A public place.**  
16 (2) **An enclosed area of a place of employment.**  
17 (3) **A vehicle owned, leased, or operated by the state if the**  
18 **vehicle is being used for a governmental function.**  
19 (4) **Within twelve (12) feet of a public entrance to a public**  
20 **place or an enclosed area of a place of employment.**  
21 (b) **An employer shall inform each of the employer's employees**  
22 **and prospective employees of the smoking prohibition in the place**  
23 **of employment.**  
24 (c) **An owner, an operator, a manager, or another individual**

1 with authority shall remove ashtrays or other smoking  
 2 paraphernalia from areas where smoking is prohibited under this  
 3 chapter. However, this subsection does not prohibit the display of  
 4 ashtrays or other smoking paraphernalia that are intended only for  
 5 retail sale.

6 **Sec. 4. (a) Except as provided in subsection (c) and section 10 of**  
 7 **this chapter, the following may allow smoking:**

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

10 (2) A riverboat (as defined in IC 4-33-2-17) and any other  
 11 permanent structure that is:

12 (A) owned or leased by the owner of the riverboat; and

13 (B) located on land that is adjacent to:

14 (i) the dock to which the riverboat is moored; or

15 (ii) the land on which the riverboat is situated in the case  
 16 of a riverboat described in IC 4-33-2-17(2).

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

19 (4) A satellite facility licensed under IC 4-31-5.5.

20 (5) A retail tobacco store used primarily for the sale of  
 21 tobacco products and accessories that, before July 1, 2011,  
 22 meets the following requirements:

23 (A) The establishment prohibits entry by an individual who  
 24 is less than eighteen (18) years of age.

25 (B) The sale of products other than tobacco is merely  
 26 incidental.

27 (C) The sale of tobacco products accounts for at least  
 28 eighty percent (80%) of the store's income.

29 (D) Food or beverages are not sold for consumption on the  
 30 premises, and there is not an area set aside for customers  
 31 to consume food or beverages on the premises.

32 (6) A business:

33 (A) that is exempt from federal income taxation under 26  
 34 U.S.C. 501(c);

35 (B) that:

36 (i) meets the requirements to be considered a club under  
 37 IC 7.1-3-20-1; or

38 (ii) is a fraternal club (as defined in IC 7.1-3-20-7); and

39 (C) that provides food or alcoholic beverages only to its  
 40 bona fide members and their guests;

41 may choose to provide a separate, designated smoking area.

42 A business that provides a separate, designated smoking area  
 43 under this subdivision may not allow a person who is less than  
 44 eighteen (18) years of age to enter the designated smoking  
 45 area.

46 (7) A health facility licensed under IC 16-28, including the  
 47 Indiana Veterans' Home, if the health facility chooses to

1 provide a separate, designated smoking area. A health facility  
2 that provides a separate, designated smoking area under this  
3 subdivision may not allow a person who is less than eighteen  
4 (18) years of age to enter the designated smoking area.

5 (b) Notwithstanding section 6(a)(1) of this chapter, the owner or  
6 operator of the facility that allows smoking under this section shall  
7 post conspicuous signs that read "Smoking Is Allowed In This  
8 Establishment" or other similar language.

9 (c) This section does not allow smoking in the following enclosed  
10 areas:

11 (1) Any hallway, elevator, or other common area where an  
12 individual who is less than eighteen (18) years of age is  
13 permitted.

14 (2) Any room that is intended for use by an individual who is  
15 less than eighteen (18) years of age.

16 Sec. 5. (a) The commission shall enforce this chapter.

17 (b) In cooperation with the commission, the department of  
18 health, local health department, and division of fire and building  
19 safety may enforce this chapter.

20 (c) The commission, department of health, local health  
21 department, and division of fire and building safety may inspect  
22 premises that are subject to this chapter to ensure that the person  
23 responsible for the premises is in compliance with this chapter.

24 Sec. 6. (a) The owner, operator, or manager in charge of a  
25 public place that does not allow smoking or where smoking is  
26 prohibited under this chapter shall do the following:

27 (1) Post conspicuous signs that read "Smoking Is Prohibited  
28 By State Law" or other similar language.

29 (2) Request an individual who is smoking in violation of this  
30 chapter to refrain from smoking.

31 (3) Remove from the public place an individual who is  
32 smoking in violation of this chapter and fails to refrain from  
33 smoking after being requested to refrain from smoking.

34 (b) The owner or operator of a restaurant where smoking is  
35 prohibited shall post conspicuous signs at each entrance to the  
36 restaurant informing the public that smoking is prohibited in the  
37 restaurant.

38 Sec. 7. A person who smokes in an area where smoking is  
39 prohibited by this chapter commits prohibited smoking, a Class B  
40 infraction. However, the violation is a Class A infraction if the  
41 person has at least three (3) prior unrelated judgments for a  
42 violation of this chapter.

43 Sec. 8. An owner, a manager, or an operator of a public place or  
44 place of employment that fails to comply with this chapter commits  
45 a Class B infraction. However, the violation is a Class A infraction  
46 if the person has at least three (3) prior unrelated judgments for a  
47 violation under this chapter.

1           **Sec. 9. A person, an owner, a manager, or an employer may not**  
 2 **discharge, refuse to hire, or in any manner retaliate against an**  
 3 **individual for reporting a violation of this chapter or exercising**  
 4 **any right or satisfying any obligation under this chapter.**

5           **Sec. 10. This chapter does not prohibit a county, city, town, or**  
 6 **other governmental unit from adopting an ordinance more**  
 7 **restrictive than this chapter.**

8           SECTION 5. IC 12-24-2-8 IS AMENDED TO READ AS  
 9 FOLLOWS [EFFECTIVE JULY 1, 2011]: 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~~) within the  
 12 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 6. 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, 2011]: 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 7. IC 16-41-37-4 IS AMENDED TO READ AS  
 24 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. A person who  
 25 smokes:

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)~~ **engages in smoking (as defined in IC 7.1-5-12-2)** in a school  
 34 bus during a school week or while the school bus is being used for  
 35 a purpose described in section 2.3(3) of this chapter commits a  
 36 Class B infraction. However, the violation is a Class A infraction  
 37 if the person has at least three (3) previous unrelated judgments  
 38 for violating this section that are accrued within the twelve (12)  
 39 months immediately preceding the violation.

40           SECTION 8. THE FOLLOWING ARE REPEALED [EFFECTIVE  
 41 JULY 1, 2011]: IC 12-7-2-178.8; IC 16-18-2-298; IC 16-18-2-318.1;  
 42 IC 16-18-2-332; IC 16-41-37-1; IC 16-41-37-2; IC 16-41-37-3;  
 43 IC 16-41-37-3.1; IC 16-41-37-5; IC 16-41-37-6; IC 16-41-37-7;  
 44 IC 16-41-37-8."

45           Renumber all SECTIONS consecutively.

(Reference is to ESB 255 as printed April 8, 2011.)

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Representative Brown C