



January 21, 2011

HOUSE BILL No. 1018

DIGEST OF HB 1018 (Updated January 19, 2011 7:14 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: (1) in public places; (2) in enclosed areas of a place of employment; (3) in certain state vehicles; and (4) within 12 feet of a public entrance to a public place or an enclosed area of a place of employment. Allows smoking in: (1) certain gaming facilities; and (2) retail tobacco stores that meet certain requirements. Requires the alcohol and tobacco commission to enforce this prohibition. Makes it a Class B infraction to violate the smoking prohibition and a Class A infraction if the person has three prior unrelated judgments for violations. Prohibits firing or refusing to hire a person for reporting a violation or exercising any right or performing any obligation under the smoking prohibitions. Repeals the current clean indoor air law that prohibits smoking in public buildings.

Effective: July 1, 2011.

**Brown C, Turner,
Candelaria Reardon, Welch**

January 5, 2011, read first time and referred to Committee on Public Health.
January 20, 2011, amended, reported — Do Pass.

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HB 1018—LS 6197/DI 77+



January 21, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1018

A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

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, 2011]:
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, or 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) Except as provided in section 3.5 of this chapter,**
13 **smoking is prohibited in the following:**
14 **(1) A public place.**
15 **(2) Enclosed areas of a place of employment.**
16 **(3) A vehicle owned, leased, or operated by the state if the**
17 **vehicle is being used for a governmental function.**

HB 1018—LS 6197/DI 77+



- 1 **(4) Within twelve (12) feet of a public entrance to a public**
- 2 **place or an enclosed area of a place of employment.**
- 3 **(b) An employer shall inform each of the employer's employees**
- 4 **and prospective employees of the smoking prohibition in the place**
- 5 **of employment.**
- 6 **(c) An owner, an operator, a manager, or another individual**
- 7 **with authority shall remove ashtrays or other smoking**
- 8 **paraphernalia from areas where smoking is prohibited under this**
- 9 **chapter. However, this subsection does not prohibit the display of**
- 10 **ashtrays or other smoking paraphernalia that are intended only for**
- 11 **retail sale.**
- 12 **Sec. 3.5. (a) Except as provided in subsection (c) and section 9 of**
- 13 **this chapter, smoking is allowed in the following establishments:**
- 14 **(1) A horse racing facility operated under a permit under**
- 15 **IC 4-31-5.**
- 16 **(2) A riverboat (as defined in IC 4-33-2-17) and any other**
- 17 **permanent structure that is:**
- 18 **(A) owned or leased by the owner of the riverboat; and**
- 19 **(B) located on land that is adjacent to:**
- 20 **(i) the dock to which the riverboat is moored; or**
- 21 **(ii) the land on which the riverboat is situated in the case**
- 22 **of a riverboat described in IC 4-33-2-17(2).**
- 23 **(3) A facility that operates under a gambling game license**
- 24 **under IC 4-35-5.**
- 25 **(4) A satellite facility licensed under IC 4-31-5.5.**
- 26 **(5) A retail tobacco store used primarily for the sale of**
- 27 **tobacco products and accessories that, before July 1, 2011,**
- 28 **meets the following requirements:**
- 29 **(A) The establishment prohibits entry by an individual who**
- 30 **is less than eighteen (18) years of age.**
- 31 **(B) The sale of products other than tobacco is merely**
- 32 **incidental.**
- 33 **(C) The sale of tobacco products accounts for at least**
- 34 **eighty percent (80%) of the store's income.**
- 35 **(D) Food or beverages are not sold for consumption on the**
- 36 **premises, and there is not an area set aside for customers**
- 37 **to consume food or beverages on the premises.**
- 38 **(b) Notwithstanding section 5(a)(1) of this chapter, the official**
- 39 **in charge of the establishment that allows smoking under this**
- 40 **section shall post conspicuous signs that read "Smoking Is Allowed**
- 41 **In This Establishment" or other similar language.**
- 42 **(c) This section does not allow smoking in the following enclosed**

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areas:

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

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

Sec. 4. (a) The commission shall enforce this chapter.

(b) The department of health, local health department, and division of fire and building safety may enforce this chapter.

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

Sec. 5. (a) The official in charge of a public place shall do the following:

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

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

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

(b) The proprietor of a restaurant shall post conspicuous signs at each entrance to the restaurant informing the public that smoking is prohibited in the restaurant.

Sec. 6. A person who smokes in an area where smoking is prohibited by this chapter commits prohibited smoking, a Class B infraction. However, the violation is a Class A infraction if the person has at least three (3) prior unrelated judgments for a violation of this chapter.

Sec. 7. An owner, a manager, or an operator of a public place or place of employment that fails to comply with this chapter commits a Class B infraction. However, the violation is a Class A infraction if the person has at least three (3) prior unrelated judgments for a violation under this chapter.

Sec. 8. A person, an owner, a manager, or an employer may not discharge, refuse to hire, or in any manner retaliate against an individual for reporting a violation of this chapter or exercising any right or satisfying any obligation under this chapter.

Sec. 9. This chapter does not prohibit a county, city, town, or other governmental unit from adopting an ordinance more restrictive than this chapter.

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1 SECTION 2. IC 12-7-2-178.8 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 178.8. "Smoking", for
3 purposes of IC 12-24-2-8, has the meaning set forth in ~~IC 16-41-37-3~~.
4 **IC 7.1-5-12-2.**

5 SECTION 3. IC 12-24-2-8 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) Notwithstanding
7 IC 12-27-3-3, the superintendent of a state institution has complete
8 authority to regulate smoking (as defined in ~~IC 16-41-37-3~~)
9 **IC 7.1-5-12-2)** within the state institution.

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

12 SECTION 4. IC 16-18-2-10, AS AMENDED BY P.L.101-2007,
13 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2011]: Sec. 10. (a) "Agency", for purposes of IC 16-23.5, has
15 the meaning set forth in IC 16-23.5-1-2.

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

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

20 SECTION 5. IC 16-41-37-4 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. A person who
22 smokes:

- 23 (1) in a public building, except in an area designated as a smoking
- 24 area under section 5 of this chapter;
- 25 (2) in the retail area of a grocery store or drug store that is
- 26 designated as a nonsmoking area by the store's proprietor;
- 27 (3) in the dining area of a restaurant that is designated and posted
- 28 as the restaurant's nonsmoking area by the restaurant's proprietor;
- 29 or
- 30 (4) engages in smoking (as defined in **IC 7.1-5-12-2**) in a school
- 31 bus during a school week or while the school bus is being used for
- 32 a purpose described in section 2.3(3) of this chapter commits a
- 33 Class B infraction. However, the violation is a Class A infraction
- 34 if the person has at least three (3) previous unrelated judgments
- 35 for violating this section that are accrued within the twelve (12)
- 36 months immediately preceding the violation.

37 SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE
38 JULY 1, 2011]: IC 16-18-2-298; IC 16-18-2-318.1; IC 16-18-2-332;
39 IC 16-41-37-1; IC 16-41-37-2; IC 16-41-37-3; IC 16-41-37-3.1;
40 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 Health, to which was referred House Bill 1018, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 12, delete "Smoking" and insert **"Except as provided in section 3.5 of this chapter, smoking"**.

Page 2, between lines 10 and 11, begin a new paragraph and insert:

"Sec. 3.5. (a) Except as provided in subsection (c) and section 9 of this chapter, smoking is allowed in the following establishments:

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

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

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

(B) located on land that is adjacent to:

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

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

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

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

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

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

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

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

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

(b) Notwithstanding section 5(a)(1) of this chapter, the official in charge of the establishment that allows smoking under this section shall post conspicuous signs that read "Smoking Is Allowed In This Establishment" or other similar language.

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

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

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permitted.

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

and when so amended that said bill do pass.

(Reference is to HB 1018 as introduced.)

BROWN T, Chair

Committee Vote: yeas 9, nays 3.

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