



Reprinted
January 25, 2011

HOUSE BILL No. 1018

DIGEST OF HB 1018 (Updated January 24, 2011 4:46 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. Provides exceptions to the smoking prohibition. 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.
January 24, 2011, read second time, amended, ordered engrossed.

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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.**



- 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 **(6) A bar or tavern:**
- 39 **(A) that holds:**
- 40 **(i) a beer retailer's permit under IC 7.1-3-4;**
- 41 **(ii) a liquor retailer's permit under IC 7.1-3-9; or**
- 42 **(iii) a wine retailer's permit under IC 7.1-3-14;**

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1 (B) that does not employ an individual who is less than
 2 eighteen (18) years of age;
 3 (C) that does not allow an individual who:
 4 (i) is less than twenty-one (21) years of age; and
 5 (ii) is not an employee of the bar or tavern;
 6 to enter any area of the bar or tavern where smoking is
 7 allowed; and
 8 (D) that is not located in a business that would otherwise
 9 be subject to this chapter, unless:
 10 (i) the bar or tavern is separated from the rest of the
 11 business otherwise subject to this chapter by a solid,
 12 continuous wall that is connected to the floor and ceiling
 13 of bar or tavern; and
 14 (ii) smoke from the bar or tavern does not migrate into
 15 any area where smoking is prohibited under this
 16 chapter.
 17 (7) A business:
 18 (A) that is exempt from federal income taxation under 26
 19 U.S.C. 501(c);
 20 (B) that:
 21 (i) meets the requirements to be considered a club under
 22 IC 7.1-3-20-1; or
 23 (ii) is a fraternal club (as defined in IC 7.1-3-20-7); and
 24 (C) that provides food or alcoholic beverages only to its
 25 bona fide members and their guests;
 26 may choose to provide a separate, designated smoking area.
 27 A business that provides a separate, designated smoking area
 28 under this subdivision may not allow a person who is less than
 29 eighteen (18) years of age to enter the designated smoking
 30 area.
 31 (8) A health facility licensed under IC 16-28, including the
 32 Indiana Veterans Home, if the health facility chooses to
 33 provide a separate, designated smoking area. A health facility
 34 that provides a separate, designated smoking area under this
 35 subdivision may not allow a person who is less than eighteen
 36 years of age to enter the designated smoking area.
 37 (b) Notwithstanding section 5(a)(1) of this chapter, the official
 38 in charge of the establishment that allows smoking under this
 39 section shall post conspicuous signs that read "Smoking Is Allowed
 40 In This Establishment" or other similar language.
 41 (c) This section does not allow smoking in the following enclosed
 42 areas:

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1 (1) Any hallway, elevator, or other common area where an
 2 individual who is less than eighteen (18) years of age is
 3 permitted.
 4 (2) Any room that is intended for use by an individual who is
 5 less than eighteen (18) years of age.
 6 Sec. 4. (a) The commission shall enforce this chapter.
 7 (b) The department of health, local health department, and
 8 division of fire and building safety may enforce this chapter.
 9 (c) The commission, department of health, local health
 10 department, and division of fire and building safety may inspect
 11 premises that are subject to this chapter to ensure that the person
 12 responsible for the premises is in compliance with this chapter.
 13 Sec. 5. (a) The official in charge of a public place shall do the
 14 following:
 15 (1) Post conspicuous signs that read "Smoking Is Prohibited
 16 By State Law" or other similar language.
 17 (2) Request an individual who is smoking in violation of this
 18 chapter to refrain from smoking.
 19 (3) Remove from the public place an individual who is
 20 smoking in violation of this chapter and fails to refrain from
 21 smoking after being requested to refrain from smoking.
 22 (b) The proprietor of a restaurant shall post conspicuous signs
 23 at each entrance to the restaurant informing the public that
 24 smoking is prohibited in the restaurant.
 25 Sec. 6. A person who smokes in an area where smoking is
 26 prohibited by this chapter commits prohibited smoking, a Class B
 27 infraction. However, the violation is a Class A infraction if the
 28 person has at least three (3) prior unrelated judgments for a
 29 violation of this chapter.
 30 Sec. 7. An owner, a manager, or an operator of a public place or
 31 place of employment that fails to comply with this chapter commits
 32 a Class B infraction. However, the violation is a Class A infraction
 33 if the person has at least three (3) prior unrelated judgments for a
 34 violation under this chapter.
 35 Sec. 8. A person, an owner, a manager, or an employer may not
 36 discharge, refuse to hire, or in any manner retaliate against an
 37 individual for reporting a violation of this chapter or exercising
 38 any right or satisfying any obligation under this chapter.
 39 Sec. 9. This chapter does not prohibit a county, city, town, or
 40 other governmental unit from adopting an ordinance more
 41 restrictive than this chapter.
 42 SECTION 2. IC 12-7-2-178.8 IS AMENDED TO READ AS

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

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

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

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

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

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

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

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

36 SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE
37 JULY 1, 2011]: IC 16-18-2-298; IC 16-18-2-318.1; IC 16-18-2-332;
38 IC 16-41-37-1; IC 16-41-37-2; IC 16-41-37-3; IC 16-41-37-3.1;
39 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.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1018 be amended to read as follows:

Page 2, between lines 37 and 38, begin a new line block indented and insert:

"(6) A bar or tavern:

(A) that holds:

- (i) a beer retailer's permit under IC 7.1-3-4;**
- (ii) a liquor retailer's permit under IC 7.1-3-9; or**
- (iii) a wine retailer's permit under IC 7.1-3-14;**

(B) that does not employ an individual who is less than eighteen (18) years of age;

(C) that does not allow an individual who:

- (i) is less than twenty-one (21) years of age; and**
- (ii) is not an employee of the bar or tavern;**

to enter any area of the bar or tavern where smoking is allowed; and

(D) that is not located in a business that would otherwise be subject to this chapter, unless:

- (i) the bar or tavern is separated from the rest of the business otherwise subject to this chapter by a solid, continuous wall that is connected to the floor and ceiling of bar or tavern; and**
- (ii) smoke from the bar or tavern does not migrate into any area where smoking is prohibited under this chapter."**

(Reference is to HB 1018 as printed January 21, 2011.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1018 be amended to read as follows:

Page 2, between lines 37 and 38, begin a new line block indented and insert:

"(6) A business:
(A) that is exempt from federal income taxation under 26 U.S.C. 501(c);
(B) that:
(i) meets the requirements to be considered a club under IC 7.1-3-20-1; or
(ii) is a fraternal club (as defined in IC 7.1-3-20-7); and
(C) that provides food or alcoholic beverages only to its bona fide members and their guests;
may choose to provide a separate, designated smoking area. A business that provides a separate, designated smoking area under this subdivision may not allow a person who is less than eighteen (18) years of age to enter the designated smoking area."

(Reference is to HB 1018 as printed January 21, 2011.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1018 be amended to read as follows:

Page 2, between lines 37 and 38, begin a new line block indented and insert:

"(6) A health facility licensed under IC 16-28, including the Indiana Veterans Home, if the health facility chooses to provide a separate, designated smoking area. A health facility that provides a separate, designated smoking area under this subdivision may not allow a person who is less than eighteen years of age to enter the designated smoking area."

(Reference is to HB 1018 as printed January 21, 2011.)

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