



January 13, 2012

HOUSE BILL No. 1149

DIGEST OF HB 1149 (Updated January 11, 2012 6:51 pm - DI 77)

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

Synopsis: Smoking ban. 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; (2) cigar and hookah bars; (3) fraternal, social, and veterans clubs; and (4) tobacco stores; if certain requirements are met. Requires certain signs to be posted. Requires the alcohol and tobacco commission to enforce this prohibition. Allows certain governmental agencies to enforce the prohibitions. Makes it a Class B infraction to violate the smoking prohibition and a Class A infraction if the person has been adjudged to have committed three prior unrelated infractions 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. Removes the authority of a superintendent of a state institution to regulate smoking. Provides authority of a physician to prescribe smoking cessation devices to residents of state institutions. (Current law allows prescribing nicotine patches.) Moves the prohibition against smoking on a school bus during the school week to Title 7.1. Repeals the current clean indoor air law. Makes a technical correction.

Effective: Upon passage.

Turner, Brown C, Brown T, Welch

January 9, 2012, read first time and referred to Committee on Public Health.
January 12, 2012, amended, reported — Do Pass.

HB 1149—LS 6884/DI 77+



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January 13, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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HOUSE BILL No. 1149

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 UPON PASSAGE]:

4 **Chapter 12. Prohibition on Smoking**
5 **Sec. 0.5. As used in this chapter, "ashtray" means any**
6 **receptacle that is used for disposing of smoking materials,**
7 **including ash and filters.**

8 **Sec. 1. As used in this chapter, "place of employment" means an**
9 **enclosed area of a structure that is a place of employment. The**
10 **term does not include a private vehicle.**

11 **Sec. 2. As used in this chapter, "public place" means an enclosed**
12 **area of a structure in which the public is invited or permitted.**

13 **Sec. 3. As used in this chapter, "smoking" means the:**
14 **(1) carrying or holding of a lighted cigarette, cigar, or pipe or**
15 **any other lighted tobacco smoking equipment; or**
16 **(2) inhalation or exhalation of smoke from lighted tobacco**
17 **smoking equipment.**

HB 1149—LS 6884/DI 77+



1 **Sec. 4. (a) Except as provided in section 5 of this chapter,**
2 **smoking is prohibited in the following:**

- 3 **(1) A public place.**
- 4 **(2) A place of employment.**
- 5 **(3) A vehicle owned, leased, or operated by the state if the**
6 **vehicle is being used for a governmental function.**
- 7 **(4) The area within twelve (12) feet of a public entrance to:**
 - 8 **(A) a public place; or**
 - 9 **(B) a place of employment.**

10 **(b) An employer shall inform each of the employer's employees**
11 **and prospective employees of the smoking prohibition applying to**
12 **the place of employment.**

13 **(c) An owner, operator, manager, or official in charge of a**
14 **public place or place of employment shall remove ashtrays or other**
15 **smoking paraphernalia from areas of the public place or place of**
16 **employment where smoking is prohibited under this chapter.**
17 **However, this subsection does not prohibit the display of ashtrays**
18 **or other smoking paraphernalia that are intended only for retail**
19 **sale.**

20 **(d) An owner, operator, manager, or official in charge of a**
21 **public place or place of employment shall post conspicuous signs**
22 **at each public entrance that read "State Law Prohibits Smoking**
23 **Within 12 Feet of this Entrance" or other similar language.**

24 **Sec. 5. (a) Except as provided in subsection (c) and subject to**
25 **section 12 of this chapter, smoking is allowed in the following:**

- 26 **(1) The gaming area of a horse racing facility operated under**
27 **a permit under IC 4-31-5.**
- 28 **(2) The gaming area of a riverboat (as defined in**
29 **IC 4-33-2-17) and any other gaming area in a permanent**
30 **structure that is:**
 - 31 **(A) owned or leased by the owner of the riverboat; and**
 - 32 **(B) located on land that is adjacent to:**
 - 33 **(i) the dock to which the riverboat is moored; or**
 - 34 **(ii) the land on which the riverboat is situated in the case**
35 **of a riverboat described in IC 4-33-2-17(2).**
- 36 **(3) The gaming area of a satellite facility licensed under**
37 **IC 4-31-5.5.**
- 38 **(4) An establishment that meets the following requirements:**
 - 39 **(A) The establishment was in business and permitted**
40 **smoking on February 3, 2012.**
 - 41 **(B) The establishment prohibits entry by an individual who**
42 **is less than twenty-one (21) years of age.**

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- 1 (C) The establishment holds a beer, liquor, or wine
 2 retailer's permit.
 3 (D) The establishment limits smoking in the establishment
 4 to either:
 5 (i) cigar smoking; or
 6 (ii) smoking with a waterpipe or hookah device.
 7 (E) During the preceding calendar year, at least ten
 8 percent (10%) of the establishment's annual gross income
 9 was from the sale of either:
 10 (i) cigars and the rental of onsite humidors; or
 11 (ii) loose tobacco for use in a waterpipe or hookah
 12 device.
 13 (F) The person in charge of the establishment posts in the
 14 establishment conspicuous signs that display the message
 15 that cigarette smoking is prohibited.
 16 (5) A business that meets the following requirements:
 17 (A) The business was in existence and permitted smoking
 18 on February 3, 2012.
 19 (B) The business is exempt from federal income taxation
 20 under 26 U.S.C. 501(c).
 21 (C) The business:
 22 (i) meets the requirements to be considered a club under
 23 IC 7.1-3-20-1; or
 24 (ii) is a fraternal club (as defined in IC 7.1-3-20-7).
 25 (D) The business provides food or alcoholic beverages only
 26 to its bona fide members and their guests.
 27 (E) That during a meeting of the business's members,
 28 voted within the previous two (2) years to remain a
 29 smoking business.
 30 (F) The business prohibits entry by an individual who is
 31 less than eighteen (18) years of age.
 32 (6) A retail tobacco store used primarily for the sale of
 33 tobacco products and accessories that, before February 3,
 34 2012, meets the following requirements:
 35 (A) The store has a valid tobacco sales certificate issued
 36 under IC 7.1-3-18.5.
 37 (B) The store prohibits entry by an individual who is less
 38 than eighteen (18) years of age.
 39 (C) The sale of products other than tobacco is merely
 40 incidental.
 41 (D) The sale of tobacco products accounts for at least
 42 eighty-five percent (85%) of the store's annual gross

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income.

(E) 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) The owner, operator, manager, or official in charge of an establishment in which smoking is allowed under this section shall post conspicuous signs in the establishment that read "WARNING: Smoking Is Allowed In This Establishment" or other similar language.

(c) This section does not allow smoking in the following enclosed areas of an establishment described in subsection (a):

(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. 6. (a) The commission shall enforce this chapter.

(b) This chapter may also be enforced by:

(1) the state department of health established by IC 16-19-1-1;

(2) a local health department, as defined in IC 16-18-2-211;

(3) a health and hospital corporation established by IC 16-22-8-6; and

(4) the division of fire and building safety established within the department of homeland security by IC 10-19-7-1;

in cooperation with the commission.

(c) The commission, the state department of health, a local health department, or the 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. 7. (a) This section does not apply to an establishment in which smoking is allowed under section 5 of this chapter.

(b) The owner, operator, manager, or 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) Ask an individual who is smoking in violation of this chapter to refrain from smoking.

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

(c) The owner or operator of a restaurant shall post a

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1 conspicuous sign at each entrance to the restaurant informing the
2 public that smoking is prohibited in the restaurant.

3 **Sec. 8. (a) A person who smokes in an area where smoking is**
4 **prohibited by this chapter commits prohibited smoking, a Class B**
5 **infraction, except as provided in subsection (b).**

6 **(b) A person who smokes in an area where smoking is**
7 **prohibited by this chapter commits prohibited smoking, a Class A**
8 **infraction if the person has been adjudged to have committed at**
9 **least three (3) prior unrelated infractions under:**

10 **(1) this section; or**

11 **(2) IC 16-41-37-4 (before its repeal).**

12 **(c) A local health department may enforce this chapter by filing**
13 **a civil action under IC 16-20-1-26.**

14 **(d) A health and hospital corporation may enforce this chapter**
15 **by filing a civil action under IC 16-22-8-31.**

16 **Sec. 9. (a) An owner, manager, operator, or official in charge of**
17 **a public place or place of employment who fails to comply with a**
18 **requirement imposed by this chapter commits a Class B infraction,**
19 **except as provided in subsection (b).**

20 **(b) A failure to comply described in subsection (a) is a Class A**
21 **infraction if the owner, manager, operator, or official has been**
22 **adjudged to have committed at least three (3) prior unrelated**
23 **infractions under this chapter.**

24 **Sec. 10. A person, owner, manager, or employer shall not**
25 **discharge, refuse to hire, or in any manner retaliate against an**
26 **individual for:**

27 **(1) reporting a violation of this chapter; or**

28 **(2) exercising any right or satisfying any obligation under this**
29 **chapter.**

30 **Sec. 11. (a) As used in this section, "school bus" means a motor**
31 **vehicle that is:**

32 **(1) designed and constructed for the accommodation of at**
33 **least ten (10) passengers;**

34 **(2) owned or operated by a public or governmental agency, or**
35 **privately owned and operated for compensation; and**

36 **(3) used for the transportation of school children to and from**
37 **the following:**

38 **(A) School.**

39 **(B) School athletic games or contests.**

40 **(C) Other school functions.**

41 **(b) As used in this section, "school week" means a normal week**
42 **that:**

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1 (1) begins on Monday and ends on Friday; and
 2 (2) includes at least three (3) days during which, on each day,
 3 more than four (4) hours of classroom instruction are
 4 provided.

5 (c) A person who smokes in a school bus during a school week
 6 or while the school bus is being used for the transportation of
 7 school children to and from:

- 8 (1) a school;
- 9 (2) a school athletic game or contest; or
- 10 (3) another school function;

11 commits a Class B infraction, except as provided in subsection (d).

12 (d) A person who smokes in a school bus as described in
 13 subsection (c) commits a Class A infraction if the person, within
 14 the twelve (12) months immediately preceding the person's act of
 15 smoking in a school bus, committed at least three (3) prior
 16 unrelated acts of smoking in a school bus for which the person was
 17 adjudged to have committed infractions under this section.

18 Sec. 12. This chapter does not prohibit a county, city, town, or
 19 other governmental unit from adopting an ordinance more
 20 restrictive than this chapter.

21 Sec. 13. (a) Notwithstanding sections 4(d), 5(b), 7(b)(1), and 7(c)
 22 of this chapter, the owner, operator, manager, or official in charge
 23 of an establishment, public place, or place of employment is not
 24 required to post any sign required under this chapter until April
 25 1, 2012.

26 (b) This section expires April 2, 2012.

27 SECTION 2. IC 12-7-2-178.8 IS REPEALED [EFFECTIVE UPON
 28 PASSAGE]. Sec. 178.8: "Smoking", for purposes of IC 12-24-2-8, has
 29 the meaning set forth in IC 16-41-37-3.

30 SECTION 3. IC 12-24-2-8 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a)
 32 Notwithstanding IC 12-27-3-3, the superintendent of a state institution
 33 has complete authority to regulate smoking (as defined in
 34 IC 16-41-37-3) within the state institution.

35 (b) A physician licensed under IC 25-22.5 may prescribe ~~nicotine~~
 36 **tobacco cessation devices** as is medically necessary for a resident of
 37 a state institution.

38 SECTION 4. IC 16-18-2-10, AS AMENDED BY P.L.42-2011,
 39 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 UPON PASSAGE]: Sec. 10. (a) "Agency", for purposes of IC 16-23.5,
 41 has the meaning set forth in IC 16-23.5-1-2.

42 (b) "Agency", for purposes of IC 16-41-37, has the meaning set forth

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1 ~~in IC 16-41-37-1.~~

2 SECTION 5. IC 16-18-2-295, AS AMENDED BY P.L.41-2007,
3 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 UPON PASSAGE]: Sec. 295. (a) "Provider", for purposes of
5 IC 16-21-8, has the meaning set forth in IC 16-21-8-0.5.

6 (b) "Provider", for purposes of IC 16-38-5, IC 16-39 (except for
7 IC 16-39-7), and IC 16-41-1 through IC 16-41-9, ~~and IC 16-41-37,~~
8 means any of the following:

9 (1) An individual (other than an individual who is an employee or
10 a contractor of a hospital, a facility, or an agency described in
11 subdivision (2) or (3)) who is licensed, registered, or certified as
12 a health care professional, including the following:

- 13 (A) A physician.
- 14 (B) A psychotherapist.
- 15 (C) A dentist.
- 16 (D) A registered nurse.
- 17 (E) A licensed practical nurse.
- 18 (F) An optometrist.
- 19 (G) A podiatrist.
- 20 (H) A chiropractor.
- 21 (I) A physical therapist.
- 22 (J) A psychologist.
- 23 (K) An audiologist.
- 24 (L) A speech-language pathologist.
- 25 (M) A dietitian.
- 26 (N) An occupational therapist.
- 27 (O) A respiratory therapist.
- 28 (P) A pharmacist.
- 29 (Q) A sexual assault nurse examiner.

30 (2) A hospital or facility licensed under IC 16-21-2 or IC 12-25 or
31 described in IC 12-24-1 or IC 12-29.

32 (3) A health facility licensed under IC 16-28-2.

33 (4) A home health agency licensed under IC 16-27-1.

34 (5) An employer of a certified emergency medical technician, a
35 certified emergency medical technician-basic advanced, a
36 certified emergency medical technician-intermediate, or a
37 certified paramedic.

38 (6) The state department or a local health department or an
39 employee, agent, designee, or contractor of the state department
40 or local health department.

41 (c) "Provider", for purposes of IC 16-39-7-1, has the meaning set
42 forth in IC 16-39-7-1(a).

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1 **(d) "Provider", for purposes of IC 16-48-1, has the meaning set**
 2 **forth in IC 16-48-1-3.**
 3 SECTION 6. IC 16-18-2-323.1 IS REPEALED [EFFECTIVE
 4 UPON PASSAGE]. ~~Sec. 323.1. "School bus", for purposes of~~
 5 ~~IC 16-41-37, has the meaning set forth in IC 16-41-37-2.3.~~
 6 SECTION 7. IC 16-18-2-323.4 IS REPEALED [EFFECTIVE
 7 UPON PASSAGE]. ~~Sec. 323.4. "School week", for purposes of~~
 8 ~~IC 16-41-37, has the meaning set forth in IC 16-41-37-2.7.~~
 9 SECTION 8. IC 16-41-37 IS REPEALED [EFFECTIVE UPON
 10 PASSAGE]. (Clean Indoor Air Law).
 11 SECTION 9. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1149, 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, between lines 4 and 5, begin a new paragraph and insert:

"Sec. 0.5. As used in this chapter, "ashtray" means any receptacle that is used for disposing of smoking materials, including ash and filters.

Sec. 1. As used in this chapter, "place of employment" means an enclosed area of a structure that is a place of employment. The term does not include a private vehicle."

Page 1, line 5, delete "1." and insert "2."

Page 1, line 7, delete "2." and insert "3."

Page 1, line 9, after "lighted" insert "**tobacco**".

Page 1, line 10, after "lighted" insert "**tobacco**".

Page 1, line 12, delete "3." and insert "4."

Page 1, line 12, delete "4" and insert "5".

Page 1, line 15, delete "Enclosed areas of a" and insert "**A**".

Page 2, line 3, delete "an enclosed area of".

Page 2, between lines 13 and 14, begin a new paragraph and insert:

"(d) An owner, operator, manager, or official in charge of a public place or place of employment shall post conspicuous signs at each public entrance that read "State Law Prohibits Smoking Within 12 Feet of this Entrance" or other similar language."

Page 2, line 14, delete "4." and insert "5."

Page 2, line 15, delete "11" and insert "12".

Page 2, delete lines 26 through 27.

Page 2, line 28, delete "(4)" and insert "**(3)**".

Page 2, line 30, delete "(5)" and insert "**(4)**".

Page 3, line 3, delete "sale of".

Page 3, line 8, delete "(6)" and insert "**(5)**".

Page 3, between lines 21 and 22, begin a new line double block indented and insert:

"(F) The business prohibits entry by an individual who is less than eighteen (18) years of age.

(6) A retail tobacco store used primarily for the sale of tobacco products and accessories that, before February 3, 2012, meets the following requirements:

(A) The store has a valid tobacco sales certificate issued under IC 7.1-3-18.5.

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

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

(D) The sale of tobacco products accounts for at least eighty-five percent (85%) of the store's annual gross income.

(E) 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."

Page 3, line 34, delete "5." and insert "6."

Page 3, line 38, before "and" insert "**(3) a health and hospital corporation established by IC 16-22-8-6;**"

Page 3, line 39, delete "(3)" and insert "(4)".

Page 4, line 5, delete "6." and insert "7."

Page 4, line 6, delete "4" and insert "5".

Page 4, line 13, delete "Remove" and insert "**Cause to be removed**".

Page 4, line 19, delete "7." and insert "8."

Page 4, between lines 27 and 28, begin a new paragraph and insert:
"(c) A local health department may enforce this chapter by filing a civil action under IC 16-20-1-26.

(d) A health and hospital corporation may enforce this chapter by filing a civil action under IC 16-22-8-31."

Page 4, line 28, delete "8." and insert "9."

Page 4, line 36, delete "9." and insert "10."

Page 4, line 42, delete "10." and insert "11."

Page 5, line 30, delete "11." and insert "12."

Page 5, line 33, delete "12." and insert "13."

Page 5, line 33, delete "4(b), 6(b)(1), and 6(c)" and insert "**4(d), 5(b), 7(b)(1), and 7(c)**".

Page 5, delete line 42, begin a new paragraph and insert:

"SECTION 3. IC 12-24-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. ~~(a)~~ Notwithstanding ~~IC 12-27-3-3~~, the superintendent of a state institution has complete authority to regulate smoking (as defined in ~~IC 16-41-37-3~~) within the state institution.

~~(b)~~ A physician licensed under IC 25-22.5 may prescribe ~~nicotine~~

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tobacco cessation devices as is medically necessary for a resident of a state institution."

Page 6, delete lines 1 through 5.

and when so amended that said bill do pass.

(Reference is to HB 1149 as introduced.)

BROWN T, Chair

Committee Vote: yeas 9, nays 3.

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