
HOUSE BILL No. 1063

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-5-12; IC 12-7-2-178.8; IC 12-24-2-8; IC 16-18-2; IC 16-41-37.

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; and (3) retail tobacco stores; if certain requirements are met. 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 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. Relocates the prohibition against smoking on a school bus during the school week to IC 7.1. Repeals the current clean indoor air law. Makes a technical correction.

Effective: Upon passage.

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January 9, 2012, read first time and referred to Committee on Public Health.

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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. 1063



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. 1. As used in this chapter, "public place" means an enclosed**
6 **area of a structure 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 4 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) The area within twelve (12) feet of a public entrance to:**

2 **(A) a public place; or**

3 **(B) an enclosed area of a place of employment.**

4 **(b) An employer shall inform each of the employer's employees**
 5 **and prospective employees of the smoking prohibition applying to**
 6 **the place of employment.**

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

14 **Sec. 4. (a) Except as provided in subsection (c) and subject to**
 15 **section 11 of this chapter, smoking is allowed in the following**
 16 **establishments:**

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

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

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

22 **(B) located on land that is adjacent to:**

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

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

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

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

29 **(5) An establishment that, before February 4, 2012, meets the**
 30 **following requirements:**

31 **(A) The establishment prohibits entry by an individual who**
 32 **is less than twenty-one (21) years of age.**

33 **(B) The establishment holds a beer, liquor, or wine**
 34 **retailer's permit.**

35 **(C) The establishment limits smoking in the establishment**
 36 **to either:**

37 **(i) cigar smoking; or**

38 **(ii) smoking with a waterpipe or hookah device.**

39 **(D) During the preceding calendar year, at least ten**
 40 **percent (10%) of the establishment's annual gross income**
 41 **was from the sale of either:**

42 **(i) cigars and the rental of onsite humidors; or**

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(ii) sale of loose tobacco for use in a waterpipe or hookah device.

(E) The person in charge of the establishment posts in the establishment conspicuous signs that display the message that cigarette smoking is prohibited.

(6) A retail tobacco store used primarily for the sale of tobacco products and accessories that, before February 4, 2012, 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 annual gross 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 6(b)(1) of this chapter, 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. 5. (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; and

(3) 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.

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1 **Sec. 6. (a) This section does not apply to an establishment in**
 2 **which smoking is allowed under section 4 of this chapter.**

3 **(b) The owner, operator, manager, or official in charge of a**
 4 **public place shall do the following:**

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

7 **(2) Ask an individual who is smoking in violation of this**
 8 **chapter to refrain from smoking.**

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

12 **(c) The owner or operator of a restaurant shall post a**
 13 **conspicuous sign at each entrance to the restaurant informing the**
 14 **public that smoking is prohibited in the restaurant.**

15 **Sec. 7. (a) A person who smokes in an area where smoking is**
 16 **prohibited by this chapter commits prohibited smoking, a Class B**
 17 **infraction, except as provided in subsection (b).**

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

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

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

24 **Sec. 8. (a) An owner, manager, operator, or official in charge of**
 25 **a public place or place of employment who fails to comply with a**
 26 **requirement imposed by this chapter commits a Class B infraction,**
 27 **except as provided in subsection (b).**

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

32 **Sec. 9. A person, owner, manager, or employer shall not**
 33 **discharge, refuse to hire, or in any manner retaliate against an**
 34 **individual for:**

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

36 **(2) exercising any right or satisfying any obligation under this**
 37 **chapter.**

38 **Sec. 10. (a) As used in this section, "school bus" means a motor**
 39 **vehicle that is:**

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

42 **(2) owned or operated by a public or governmental agency, or**

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1 privately owned and operated for compensation; and
 2 (3) used for the transportation of school children to and from
 3 the following:
 4 (A) School.
 5 (B) School athletic games or contests.
 6 (C) Other school functions.
 7 (b) As used in this section, "school week" means a normal week
 8 that:
 9 (1) begins on Monday and ends on Friday; and
 10 (2) includes at least three (3) days during which, on each day,
 11 more than four (4) hours of classroom instruction are
 12 provided.
 13 (c) A person who smokes in a school bus during a school week
 14 or while the school bus is being used for the transportation of
 15 school children to and from:
 16 (1) a school;
 17 (2) a school athletic game or contest; or
 18 (3) another school function;
 19 commits a Class B infraction, except as provided in subsection (d).
 20 (d) A person who smokes in a school bus as described in
 21 subsection (c) commits a Class A infraction if the person, within
 22 the twelve (12) months immediately preceding the person's act of
 23 smoking in a school bus, committed at least three (3) prior
 24 unrelated acts of smoking in a school bus for which the person was
 25 adjudged to have committed infractions under this section.
 26 Sec. 11. This chapter does not prohibit a county, city, town, or
 27 other governmental unit from adopting an ordinance more
 28 restrictive than this chapter.
 29 Sec. 12. (a) Notwithstanding sections 4(b), 6(b)(1), and 6(c) of
 30 this chapter, the owner, operator, manager, or official in charge of
 31 an establishment, public place, or place of employment is not
 32 required to post any sign required under this chapter until April
 33 1, 2012.
 34 (b) This section expires April 2, 2012.
 35 SECTION 2. IC 12-7-2-178.8 IS REPEALED [EFFECTIVE UPON
 36 PASSAGE]. Sec. 178.8. "Smoking", for purposes of IC 12-24-2-8, has
 37 the meaning set forth in IC 16-41-37-3.
 38 SECTION 3. IC 12-24-2-8 IS REPEALED [EFFECTIVE UPON
 39 PASSAGE]. Sec. 8. (a) Notwithstanding IC 12-27-3-3, the
 40 superintendent of a state institution has complete authority to regulate
 41 smoking (as defined in IC 16-41-37-3) within the state institution.
 42 (b) A physician licensed under IC 25-22.5 may prescribe nicotine

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1 as is medically necessary for a resident of a state institution.

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

6 (b) "Agency", for purposes of IC 16-41-37, has the meaning set forth
7 in IC 16-41-37-1.

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

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

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

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

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

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

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

40 (5) An employer of a certified emergency medical technician, a
41 certified emergency medical technician-basic advanced, a
42 certified emergency medical technician-intermediate, or a

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1 certified paramedic.
 2 (6) The state department or a local health department or an
 3 employee, agent, designee, or contractor of the state department
 4 or local health department.
 5 (c) "Provider", for purposes of IC 16-39-7-1, has the meaning set
 6 forth in IC 16-39-7-1(a).
 7 **(d) "Provider", for purposes of IC 16-48-1, has the meaning set**
 8 **forth in IC 16-48-1-3.**
 9 SECTION 6. IC 16-18-2-323.1 IS REPEALED [EFFECTIVE
 10 UPON PASSAGE]. ~~Sec. 323.1. "School bus", for purposes of~~
 11 ~~IC 16-41-37, has the meaning set forth in IC 16-41-37-2.3.~~
 12 SECTION 7. IC 16-18-2-323.4 IS REPEALED [EFFECTIVE
 13 UPON PASSAGE]. ~~Sec. 323.4. "School week", for purposes of~~
 14 ~~IC 16-41-37, has the meaning set forth in IC 16-41-37-2.7.~~
 15 SECTION 8. IC 16-41-37 IS REPEALED [EFFECTIVE UPON
 16 PASSAGE]. (Clean Indoor Air Law).
 17 SECTION 9. **An emergency is declared for this act.**

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