
HOUSE BILL No. 1149

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) fraternal, social, and veterans clubs; 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. 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.

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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. 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. 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 **(1) The gaming area of a horse racing facility operated under**
 17 **a permit under IC 4-31-5.**

18 **(2) The gaming area of a riverboat (as defined in**
 19 **IC 4-33-2-17) and any other gaming area in a permanent**
 20 **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) The gaming area of a facility that operates under a**
 27 **gambling game license under IC 4-35-5.**

28 **(4) The gaming area of a satellite facility licensed under**
 29 **IC 4-31-5.5.**

30 **(5) An establishment that meets the following requirements:**

31 **(A) The establishment was in business and permitted**
 32 **smoking on February 3, 2012.**

33 **(B) The establishment prohibits entry by an individual who**
 34 **is less than twenty-one (21) years of age.**

35 **(C) The establishment holds a beer, liquor, or wine**
 36 **retailer's permit.**

37 **(D) The establishment limits smoking in the establishment**
 38 **to either:**

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

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

41 **(E) During the preceding calendar year, at least ten**
 42 **percent (10%) of the establishment's annual gross income**

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was from the sale of either:
(i) cigars and the rental of onsite humidors; or
(ii) sale of loose tobacco for use in a waterpipe or hookah device.

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

(6) A business that meets the following requirements:

(A) The business was in existence and permitted smoking on February 3, 2012.

(B) The business is exempt from federal income taxation under 26 U.S.C. 501(c).

(C) The business:

(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).

(D) The business provides food or alcoholic beverages only to its bona fide members and their guests.

(E) That during a meeting of the business's members, voted within the previous two (2) years to remain a smoking business.

(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. 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

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1 health department, or the division of fire and building safety may
 2 inspect premises that are subject to this chapter to ensure that the
 3 person responsible for the premises is in compliance with this
 4 chapter.

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

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

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

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

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

16 (c) The owner or operator of a restaurant shall post a
 17 conspicuous sign at each entrance to the restaurant informing the
 18 public that smoking is prohibited in the restaurant.

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

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

26 (1) this section; or

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

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

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

36 Sec. 9. A person, owner, manager, or employer shall not
 37 discharge, refuse to hire, or in any manner retaliate against an
 38 individual for:

39 (1) reporting a violation of this chapter; or

40 (2) exercising any right or satisfying any obligation under this
 41 chapter.

42 Sec. 10. (a) As used in this section, "school bus" means a motor

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- 1 vehicle that is:
- 2 (1) designed and constructed for the accommodation of at
- 3 least ten (10) passengers;
- 4 (2) owned or operated by a public or governmental agency, or
- 5 privately owned and operated for compensation; and
- 6 (3) used for the transportation of school children to and from
- 7 the following:
- 8 (A) School.
- 9 (B) School athletic games or contests.
- 10 (C) Other school functions.
- 11 (b) As used in this section, "school week" means a normal week
- 12 that:
- 13 (1) begins on Monday and ends on Friday; and
- 14 (2) includes at least three (3) days during which, on each day,
- 15 more than four (4) hours of classroom instruction are
- 16 provided.
- 17 (c) A person who smokes in a school bus during a school week
- 18 or while the school bus is being used for the transportation of
- 19 school children to and from:
- 20 (1) a school;
- 21 (2) a school athletic game or contest; or
- 22 (3) another school function;
- 23 commits a Class B infraction, except as provided in subsection (d).
- 24 (d) A person who smokes in a school bus as described in
- 25 subsection (c) commits a Class A infraction if the person, within
- 26 the twelve (12) months immediately preceding the person's act of
- 27 smoking in a school bus, committed at least three (3) prior
- 28 unrelated acts of smoking in a school bus for which the person was
- 29 adjudged to have committed infractions under this section.
- 30 Sec. 11. This chapter does not prohibit a county, city, town, or
- 31 other governmental unit from adopting an ordinance more
- 32 restrictive than this chapter.
- 33 Sec. 12. (a) Notwithstanding sections 4(b), 6(b)(1), and 6(c) of
- 34 this chapter, the owner, operator, manager, or official in charge of
- 35 an establishment, public place, or place of employment is not
- 36 required to post any sign required under this chapter until April
- 37 1, 2012.
- 38 (b) This section expires April 2, 2012.
- 39 SECTION 2. IC 12-7-2-178.8 IS REPEALED [EFFECTIVE UPON
- 40 PASSAGE]. Sec. 178-8. "Smoking", for purposes of IC 12-24-2-8, has
- 41 the meaning set forth in IC 16-41-37-3.
- 42 SECTION 3. IC 12-24-2-8 IS REPEALED [EFFECTIVE UPON

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1 PASSAGE]. Sec. 8. (a) Notwithstanding IC 12-27-3-3, the
 2 superintendent of a state institution has complete authority to regulate
 3 smoking (as defined in IC 16-41-37-3) within the state institution:

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

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

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

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

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

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

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

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

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

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- 1 (4) A home health agency licensed under IC 16-27-1.
- 2 (5) An employer of a certified emergency medical technician, a
- 3 certified emergency medical technician-basic advanced, a
- 4 certified emergency medical technician-intermediate, or a
- 5 certified paramedic.
- 6 (6) The state department or a local health department or an
- 7 employee, agent, designee, or contractor of the state department
- 8 or local health department.
- 9 (c) "Provider", for purposes of IC 16-39-7-1, has the meaning set
- 10 forth in IC 16-39-7-1(a).
- 11 **(d) "Provider", for purposes of IC 16-48-1, has the meaning set**
- 12 **forth in IC 16-48-1-3.**
- 13 SECTION 6. IC 16-18-2-323.1 IS REPEALED [EFFECTIVE
- 14 UPON PASSAGE]. ~~Sec. 323.1. "School bus", for purposes of~~
- 15 ~~IC 16-41-37, has the meaning set forth in IC 16-41-37-2.3.~~
- 16 SECTION 7. IC 16-18-2-323.4 IS REPEALED [EFFECTIVE
- 17 UPON PASSAGE]. ~~Sec. 323.4. "School week", for purposes of~~
- 18 ~~IC 16-41-37, has the meaning set forth in IC 16-41-37-2.7.~~
- 19 SECTION 8. IC 16-41-37 IS REPEALED [EFFECTIVE UPON
- 20 PASSAGE]. (Clean Indoor Air Law).
- 21 SECTION 9. **An emergency is declared for this act.**

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