

HOUSE BILL No. 1128

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-5-12-5.

Synopsis: Removal of bars and taverns from smoking ban exemption. Removes the exemption for bars and taverns from the smoking prohibition law.

Effective: July 1, 2013.

Brown C, Turner

January 8, 2013, read first time and referred to Committee on Public Policy.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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HOUSE BILL No. 1128



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 7.1-5-12-5, AS ADDED BY P.L.141-2012,
- 2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2013]: Sec. 5. (a) Except as provided in subsection (c) and
- 4 subject to section 13 of this chapter, smoking may be allowed in the
- 5 following:
- 6 (1) A horse racing facility operated under a permit under
- 7 IC 4-31-5 and any other permanent structure on land owned or
- 8 leased by the owner of the facility that is adjacent to the facility.
- 9 (2) A riverboat (as defined in IC 4-33-2-17) and any other
- 10 permanent structure that is:
- 11 (A) owned or leased by the owner of the riverboat; and
- 12 (B) located on land that is adjacent to:
- 13 (i) the dock to which the riverboat is moored; or
- 14 (ii) the land on which the riverboat is situated in the case of
- 15 a riverboat described in IC 4-33-2-17(2).
- 16 (3) A facility that operates under a gambling game license under
- 17 IC 4-35-5 and any other permanent structure on land owned or



1 leased by the owner of the facility that is adjacent to the facility.

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

3 (5) An establishment owned or leased by a business that meets the
4 following requirements:

5 (A) The business was in business and permitted smoking on
6 December 31, 2012.

7 (B) The business prohibits entry by an individual who is less
8 than twenty-one (21) years of age.

9 (C) The owner or operator of the business holds a beer, liquor,
10 or wine retailer's permit.

11 (D) The business limits smoking in the establishment to either:

12 (i) cigar smoking; or

13 (ii) smoking with a waterpipe or hookah device.

14 (E) During the preceding calendar year, at least ten percent
15 (10%) of the business's annual gross income was from:

16 (i) the sale of cigars and the rental of onsite humidors; or

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

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

22 (6) A premises owned or leased by and regularly used for the
23 activities of a business that meets all of the following:

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

26 (B) The business:

27 (i) meets the requirements to be considered a club under
28 IC 7.1-3-20-1; or

29 (ii) is a fraternal club (as defined in IC 7.1-3-20-7).

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

32 (D) The business, during a meeting of the business's members,
33 voted within the previous two (2) years to allow smoking on
34 the premises.

35 (E) The business:

36 (i) provides a separate, enclosed, designated smoking room
37 or area that is adequately ventilated to prevent migration of
38 smoke to nonsmoking areas of the premises;

39 (ii) allows smoking only in the room or area described in
40 item (i); and

41 (iii) does not allow an individual who is less than eighteen
42 (18) years of age to enter into the room or area described in

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- 1 item (i).
- 2 (7) A retail tobacco store used primarily for the sale of tobacco
- 3 products and tobacco accessories that meets the following
- 4 requirements:
- 5 (A) The owner or operator of the store held a valid tobacco
- 6 sales certificate issued under IC 7.1-3-18.5 on June 30, 2012.
- 7 (B) The store prohibits entry by an individual who is less than
- 8 eighteen (18) years of age.
- 9 (C) The sale of products other than tobacco products and
- 10 tobacco accessories is merely incidental.
- 11 (D) The sale of tobacco products accounts for at least
- 12 eighty-five percent (85%) of the store's annual gross sales.
- 13 (E) Food or beverages are not sold for consumption on the
- 14 premises, and there is not an area set aside for customers to
- 15 consume food or beverages on the premises.
- 16 ~~(8)~~ **(8)** A bar or tavern:
- 17 (A) for which a permittee holds:
- 18 (i) a beer retailer's permit under IC 7.1-3-4;
- 19 (ii) a liquor retailer's permit under IC 7.1-3-9; or
- 20 (iii) a wine retailer's permit under IC 7.1-3-14;
- 21 ~~(B)~~ **(B)** that does not employ an individual who is less than
- 22 eighteen (18) years of age;
- 23 ~~(C)~~ **(C)** that does not allow an individual who:
- 24 (i) is less than twenty-one (21) years of age; and
- 25 (ii) is not an employee of the bar or tavern;
- 26 to enter any area of the bar or tavern; and
- 27 ~~(D)~~ **(D)** that is not located in a business that would otherwise be
- 28 subject to this chapter.
- 29 ~~(9)~~ **(8)** A cigar manufacturing facility that does not offer retail
- 30 sales.
- 31 ~~(10)~~ **(9)** A premises of a cigar specialty store to which all of the
- 32 following apply:
- 33 (A) The owner or operator of the store held a valid tobacco
- 34 sales certificate issued under IC 7.1-3-18.5 on June 30, 2012.
- 35 (B) The sale of tobacco products and tobacco accessories
- 36 ~~account~~ **accounts** for at least fifty percent (50%) of the store's
- 37 annual gross sales.
- 38 (C) The store has a separate, enclosed, designated smoking
- 39 room that is adequately ventilated to prevent migration of
- 40 smoke to nonsmoking areas.
- 41 (D) Smoking is allowed only in the room described in clause
- 42 (C).

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1 (E) Individuals who are less than eighteen (18) years of age are
 2 prohibited from entering into the room described in clause (C).
 3 (F) Cigarette smoking is not allowed on the premises of the
 4 store.
 5 (G) The owner or operator of the store posts a conspicuous
 6 sign on the premises of the store that displays the message that
 7 cigarette smoking is prohibited.
 8 (H) Food or beverages are not sold for consumption on the
 9 premises, and there is not an area set aside for customers to
 10 consume food or beverages on the premises.
 11 ~~(H)~~ **(10)** The premises of a business that is located in the
 12 business owner's private residence (as defined in IC 3-5-2-42.5)
 13 if the only employees of the business who work in the residence
 14 are the owner and other individuals who reside in the residence.
 15 (b) The owner, operator, manager, or official in charge of an
 16 establishment or premises in which smoking is allowed under this
 17 section shall post conspicuous signs in the establishment that read
 18 "WARNING: Smoking Is Allowed In This Establishment" or other
 19 similar language.
 20 (c) This section does not allow smoking in the following enclosed
 21 areas of an establishment or premises described in subsection (a)(1)
 22 through ~~(a)(10)~~: **(a)(9)**:
 23 (1) Any hallway, elevator, or other common area where an
 24 individual who is less than eighteen (18) years of age is permitted.
 25 (2) Any room that is intended for use by an individual who is less
 26 than eighteen (18) years of age.
 27 (d) The owner, operator, or manager of an establishment or premises
 28 that is listed under subsection (a) and that allows smoking shall provide
 29 a verified statement to the commission that states that the establishment
 30 or premises qualifies for the exemption. The commission may require
 31 the owner, operator, or manager of an establishment or premises to
 32 provide documentation or additional information concerning the
 33 exemption of the establishment or premises.

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