



INDIANA'S NEW SMOKING LAW - FREQUENTLY ASKED QUESTIONS

GENERAL INFORMATION

1. When did Indiana's statewide smoking ban go into effect?

Indiana Code 7.1-5-12, also known as the statewide smoking ban, went into effect on July 1, 2012.

2. Where can I find I.C. 7.1-5-12?

I.C. 7.1-5-12 can be found at <http://iga.in.gov/legislative/laws/2014/ic/titles/7.1/>.

3. Where is smoking prohibited?

Smoking is prohibited in most public places and places of employment. Smoking is also prohibited in state-owned vehicles and school buses under certain circumstances.

4. Where is smoking permitted?

Smoking is permitted in the following establishments: a horse-racing facility, a riverboat, a facility with a gambling game license, a satellite-gaming facility, cigar bars, hookah bars, certain fraternal clubs, a retail-tobacco store, a bar or tavern meeting certain requirements, a cigar-manufacturing facility, a cigar-specialty store, a business in a private residence, provided that each establishment meets the requirements of I.C. 7.1-5-12 (<http://iga.in.gov/legislative/laws/2014/ic/titles/7.1/>).

5. How far must someone be from the entrance of a public place or place of employment in order to smoke?

Smoking is prohibited within eight feet of a public entrance to a public place and place of employment.

6. Who enforces the law?

The Alcohol & Tobacco Commission is the primary enforcement agency. Additionally, the Indiana State Department of Health, a local health department, a health and hospital corporation (Marion County), the Division of Fire and Building Safety, and any law enforcement officer may enforce the law.

7. Where may I file a complaint for a violation of the smoking ban?

The complaint form is found at: <http://www.in.gov/atc/2640.htm>. Only complaints concerning the state smoking law will be investigated. For a violation of a local city, town, or county smoking ordinance, please contact the appropriate city, town, or county government agency directly. We cannot enforce local ordinances.

8. Is smoking prohibited in vehicles?

Smoking is only prohibited in state-government vehicles owned, leased and operated for governmental functions. Smoking is permitted in private vehicles.

9. Where should signage be located?

Signs are required to be posted at all public entrances of enclosed public places and places of employment. Signs must read “State Law Prohibits Smoking Within 8 Feet of this Entrance” or other similar language. Signs are available online at www.in.gov/atc.

10. Where can I get information on quitting tobacco use?

You can get more information from: <http://www.in.gov/quitline/>.

11. How does the state law affect local ordinances on smoking?

The new state statute does not supersede a local county, city, or town ordinance previously adopted, if that local ordinance is more restrictive than state law. Additionally, the new state statute does not prohibit a local county, city, or town from adopting an ordinance more restrictive than state law.

12. May a business exempt from the state smoking law choose to prohibit smoking?

Yes. A business owner or manager may voluntarily choose to prohibit smoking, even if the type of business is one of the exemptions to the state’s smoking law. For example, a tavern owner may chose to prohibit smoking.

13. The smoking-ban law requires businesses that are exempt from the ban to provide the Alcohol & Tobacco Commission with a statement verifying their exemption. How do we file this statement with the ATC?

Fraternal clubs and other organizations that meet all of the requirements for an exemption from the state smoking ban may file the Exemption Form found on the ATC’s website, www.in.gov/atc.

14. Does the new smoking law include chewing tobacco and snuff?

No.

FOR BUSINESSES

1. What does the state smoking ban require my business to do?

A business that is not exempt from the state law must post required signage, remove indoor ashtrays and other smoking receptacles, and direct any person who is smoking to extinguish the cigarette, cigar, or other lighted tobacco item.

2. What signage is needed at the entrance of an establishment?

Signs are required at all public entrances of enclosed public places and places of employment. Signs must read “State Law Prohibits Smoking within 8 Feet of this Entrance” or other similar language. Signs are available for printing at: www.in.gov/atc.

3. Can bars and taverns allow smoking?

Yes, bars and taverns may allow smoking, provided they meet the requirements in I.C. 7.1-5-12 (<http://iga.in.gov/legislative/laws/2014/ic/titles/7.1/>).

4. Is smoking permitted on outdoor patios?

Smoking is permitted on an outdoor patio that is eight feet from all public entrances and where smoke may not enter where smoking is prohibited.

5. Can places of employment allow smoking outside?

Yes. Places of employment may allow smoking in areas that are located outside of the structure considered as the place of employment, provided they are eight feet from all public entrances of the establishment.

6. What are the requirements for a retail tobacco shop to allow smoking?

A retail tobacco shop must have a valid tobacco sales certificate and only permit those 18 and older into the establishment. Additionally, tobacco product sales must account for 85% of store's annual gross sales. Food and beverages may not be sold in a manner that requires consumption on the premises, and there may not be an area designated for customers to consume food and beverages.

7. What are the requirements for a hookah bar exemption?

The business must have been in business and permitted smoking on December 31, 2012. A hookah bar must prohibit entry of persons less than 21 years of age and hold a beer, liquor, or wine retailer's permit. Smoking shall be limited to smoking with a water pipe or hookah device. At least 10% of the business's annual gross income must have been from the sale of loose tobacco for the use in water pipe or hookah device during the previous calendar year. Additionally, a conspicuous sign must be displayed with the message that cigarette smoking is prohibited.

8. What are the requirements for a cigar bar exemption?

A cigar bar may only allow person 21 and older to enter and must hold a beer, wine, or liquor retailer's permit. At least 10% of the businesses annual gross income must be from the sale of cigars and the rental of onsite humidors. Additionally, a conspicuous sign must be displayed with the message that cigarette smoking is prohibited.

9. If a business is located in the owner's private residence, is smoking allowed?

Yes, only if the employees of the business are the owner and other employees who reside in the private residence. Signage must be posted reading: "WARNING: Smoking Is Allowed in this Establishment" or similar language. Smoking is not allowed in any enclosed area that is used by individuals less than 18 years of age.

10. What are the requirements for a cigar specialty store to allow smoking?

A cigar specialty store must hold a valid tobacco sales certificate; the sale of tobacco products and accessories must account for a least 50% of the store's annual gross sales; and a sign must be conspicuously posted saying that cigarette smoking is prohibited. The store must have a separate, enclosed, designated smoking room that is adequately ventilated and prohibit entry of individuals less than 18 years of age. Cigarette smoking is not allowed on the premises of the store. A cigar specialty store may not prepare any food or beverage that would require a certified food handler under IC 16-42-5.2.

11. What are the requirements for a gaming facility to allow smoking?

The gaming facility must operate under a gambling game license.

12. What is a gaming facilities and surrounding properties that allow smoking?

Casinos, riverboats, horse-racing facilities, and satellite locations.

- a. A horse-racing facility must be operated under the appropriate alcoholic-beverage permit. Any other permanent structure on land owned or leased that is adjacent to the facility may also allow smoking.

- b. A riverboat must be as defined by Indiana Code. Any other permanent structure that is owned or leased by the owner of the riverboat and located on land adjacent to the dock at which the riverboat is moored or the land which the riverboat is situated may allow smoking.

13. Is smoking allowed in hotels and motels?

No.

14. Our business is located in a local town, city or county with a local ordinance requiring signs to be posted reading: “No Smoking Within 20 Feet.” Must we post both the 8-foot and 20-foot signs to be in compliance with these local and state requirements?

No. Local ordinances may be more restrictive than the state statute. You only need to post the sign required by local ordinance.

15. Do individual stores in an enclosed shopping mall need to post no-smoking signs at their entrances?

No. Signs must be posted at all public entrances to the shopping mall, but need not be posted at each individual store entrance.

16. Smoking is prohibited within 8 feet of an entrance at an enclosed public place or place of employment. Does this include garage doors and loading bays?

Yes.

17. Does my business have to purchase a new labor-law poster to put up in our break room?

No. An employer shall inform each of the employer’s employees and prospective employees of the smoking prohibition applying to the place of employment. There is no specific requirement for a labor-law poster to be displayed in a break room. Signs are required at all public entrances of enclosed public places and places of employment. Signs must read “State Law Prohibits Smoking within 8 Feet of this Entrance” or other similar language. Signs are available for printing without charge at: www.in.gov/atc.

18. What is the penalty for a business owner who violates a provision of the new smoking law?

A conviction for a violation of the state smoking law in a local court is subject to a fine, court costs, or any other penalty that court imposes. A judgment of up to one thousand dollars (\$1,000) may be entered for a violation constituting a Class B infraction. It is a Class A infraction if the owner, manager, operator, or official has been adjudged to have committed at least three (3) prior unrelated infractions under the state smoking ban. A judgment of up to ten thousand dollars (\$10,000) may be entered for a violation constituting a Class A infraction.

In an action taken against an alcoholic beverage permit holder for an administrative law violation, the permit holder is subject to the penalties provided in the Alcoholic Beverage Code, I.C. Title 7.1, which may include a fine, suspension of the permit, and/or revocation of the permit.

19. Is a liquor store exempt from the new state smoking ban, since customers must be 21 years of age to enter?

No. A liquor store is not exempt from the state smoking ban.

1. How is a private club defined in Indiana Code?

As defined by [I.C. 7.1-3-20-1](#), a club must meet the following requirements to gain the appropriate club permit:

- (a) It shall have been organized in good faith under authority of law;
- (b) It shall have been in active, continuous existence for at least three (3) years prior to the date the application for the permit is filed;
- (c) It shall have maintained, in good faith, a membership roll for the three (3) year period;
- (d) It shall have a paid-up membership of more than fifty (50) members at the time the application is filed;
- (e) It shall be the owner, lessee, or occupant of an establishment operated solely for objects of a national, social, patriotic, political, or athletic nature, or the like;
- (f) It shall not be operated for pecuniary gain;
- (g) The property and the advantages of the organization shall belong to its members; and
- (h) It shall maintain an establishment provided with special space and accommodations where, in consideration of payment, food, with or without lodging, is habitually served.

2. How is a fraternal club defined in Indiana Code?

As defined by [I.C. 7.1-3-20-7](#), a fraternal club means an association or corporation, the membership of which is comprised of or forms:

- (1) a lodge or local chapter or corresponding unit of a fraternal order or of another association of a like nature; or
- (2) a body whose membership is comprised of persons who have served in the armed forces of the United States; and which has been in continual existence on a national scale for more than five (5) years prior to the date the application is filed.

Fraternal clubs and labor organizations need not meet the requirements of section 1 of this chapter, but are considered clubs for all other purposes of this title.

3. Is it true that smoking is allowed in private or fraternal clubs?

Yes, if the private and fraternal club meets all of the requirements as described in I.C. 7.1-5-12 (<http://iga.in.gov/legislative/laws/2014/ic/titles/7.1/>).

4. Does the private or fraternal club have to be exempt from federal income taxation to also be exempt from Indiana's smoking law?

Yes. The club has to be exempt from federal income taxation under 26 U.S.C 501 (c) in order to be exempt from Indiana's smoking law, as well as meet other requirements in I.C. 7.1-5-12 (<http://iga.in.gov/legislative/laws/2014/ic/titles/7.1/>).

5. Does the private or fraternal club have to provide a smoking room?

Yes. The club must provide a separate, enclosed, designated smoking room or area that is ventilated to prevent the migration of smoke to nonsmoking areas on the premises. Smoking is only allowed in the designated area or room. Additionally, someone less than 18 years of age cannot be allowed to enter the designated area or room. Non-members are allowed in the designated area or room only when accompanied by a club member.

6. Does the membership of the private or fraternal club have to vote to allow smoking?

No. A vote of the members of a club is not required by statute.

7. What other requirements do private or fraternal clubs have to meet to allow smoking?

In addition to the requirements noted above, the club can only provide alcoholic beverages to its bona fide members and their guests.

8. We have an annual bingo license, with which we conduct three bingo nights each week. We are a 501(c) non-profit, but we are *not* a fraternal club with an alcoholic beverage permit. Does the new smoking law exempt us?

No. Smoking is not permitted at locations with an annual bingo license, except at exempt fraternal clubs meeting all of the requirements of I.C. 7.1-5-12-5.

9. May the “separate, enclosed, designated smoking room or area” be our bingo hall?

Yes. But, the bingo hall must meet all other requirements found in I.C. 7.1-5-12. Additionally, only one room may be the designated smoking room. For example, if the barroom is the designated smoking room, the bingo hall may not be. Conversely, if the bingo hall is the designated smoking room, the barroom may not be.