

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.

HOUSE ENROLLED ACT No. 1149

AN ACT to amend the Indiana Code concerning alcohol and tobacco.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 7.1-1-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. Except as provided in IC 7.1-5-1-3 and IC 7.1-5-1-6, this title applies to the following:

(1) The commercial manufacturing, bottling, selling, bartering, importing, transporting, delivering, furnishing, or possessing of alcohol, alcoholic beverages, industrial alcohol, malt, malt syrup, malt extract, liquid malt or wort.

(2) The sale, possession, use, and distribution of tobacco products.

SECTION 2. IC 7.1-5-12 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Chapter 12. Prohibition on Smoking

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.

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

Sec. 3. As used in this chapter, "smoking" means the:

(1) carrying or holding of a lighted cigarette, cigar, or pipe or any other lighted tobacco smoking equipment; or

(2) inhalation or exhalation of smoke from lighted tobacco smoking equipment.

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

(1) A public place.

(2) A place of employment.

(3) A vehicle owned, leased, or operated by the state if the vehicle is being used for a governmental function.

(4) The area within eight (8) feet of a public entrance to:

(A) a public place; or

(B) a place of employment.

(b) An employer shall inform each of the employer's employees and prospective employees of the smoking

prohibition applying to the place of employment.

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

(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 8 Feet of this Entrance" or other similar language.

Sec. 5. (a) Except as provided in subsection (c) and subject to section 13 of this chapter, smoking may be allowed in the following:

(1) A horse racing facility operated under a permit under IC 4-31-5 and any other permanent structure on land owned or leased by the owner of the facility that is adjacent to the facility.

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

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

(B) located on land that is adjacent to:

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

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

(3) A facility that operates under a gambling game license under IC 4-35-5 and any other permanent structure on land owned or leased by the owner of the facility that is adjacent to the facility.

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

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

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

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

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

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

(i) cigar smoking; or

(ii) smoking with a waterpipe or hookah device.

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

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

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

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

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

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

(B) 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).

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

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

(E) The business:

(i) provides a separate, enclosed, designated smoking room or area that is adequately ventilated to prevent

migration of smoke to nonsmoking areas of the premises;

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

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

(7) A retail tobacco store used primarily for the sale of tobacco products and tobacco accessories that meets the following requirements:

(A) The owner or operator of the store held a valid tobacco sales certificate issued under IC 7.1-3-18.5 on

June 30 2012.

(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 products and tobacco accessories is merely incidental.

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

(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.

(8) A bar or tavern:

(A) for which a permittee holds:

(i) a beer retailer's permit under IC 7.1-3-4;

(ii) a liquor retailer's permit under IC 7.1-3-9; or

(iii) a wine retailer's permit under IC 7.1-3-14;

(B) that does not employ an individual who is less than eighteen (18) years of age;

(C) that does not allow an individual who:

(i) is less than twenty-one (21) years of age; and

(ii) is not an employee of the bar or tavern;

to enter any area of the bar or tavern; and

(D) that is not located in a business that would otherwise be subject to this chapter.

(9) A cigar manufacturing facility that does not offer retail sales.

(10) A premises of a cigar specialty store to which all of the following apply:

(A) The owner or operator of the store held a valid tobacco sales certificate issued under IC 7.1-3-18.5 on June 30, 2012.

(B) The sale of tobacco products and tobacco accessories

account for at least fifty percent (50%) of the store's annual gross sales.

(C) The store has a separate, enclosed, designated smoking room that is adequately ventilated to prevent migration of smoke to nonsmoking areas.

(D) Smoking is allowed only in the room described in clause (C).

(E) Individuals who are less than eighteen (18) years of age are prohibited from entering into the room described in clause (C).

(F) Cigarette smoking is not allowed on the premises of the store.

(G) The owner or operator of the store posts a conspicuous sign on the premises of the store that displays the message that cigarette smoking is prohibited.

(H) 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.

(11) The premises of a business that is located in the business owner's private residence (as defined in IC 3-5-2-42.5) if the only employees of the business who work in the residence are the owner and other individuals who reside in the residence.

(b) The owner, operator, manager, or official in charge of an establishment or premises 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 or premises described in subsection (a)(1) through (a)(10):

(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.

(d) The owner, operator, or manager of an establishment or premises that is listed under subsection (a) and that allows smoking shall provide a verified statement to the commission that states that the establishment or premises qualifies for the exemption. The commission may require the owner, operator, or manager of an establishment or premises to provide documentation or additional information concerning the exemption of the establishment or

premises.

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;**
 - (4) the division of fire and building safety established within the department of homeland security by IC 10-19-7-1; and**
 - (5) a law enforcement officer;**
- in cooperation with the commission.**

(c) The commission, the state department of health, a local health department, a health and hospital corporation, the division of fire and building safety, or a law enforcement officer 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 or premises 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) In addition to the requirements under subsection (b), the owner or operator of a restaurant shall post a conspicuous sign at each entrance to the restaurant informing the public that smoking is prohibited in the restaurant.

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

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

- (1) this section; or**
- (2) IC 16-41-37-4 (before its repeal).**

Sec. 9. (a) A local health department may enforce this chapter by filing a civil action under IC 16-20-1-26.

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

(c) The division of fire and building safety may enforce this chapter by filing a civil action under IC 22-12-7-13.

Sec. 10. (a) An owner, manager, operator, or official in charge of a public place or place of employment who fails to comply with a requirement imposed by this chapter commits a Class B infraction, except as provided in subsection (b).

(b) A failure to comply described in subsection (a) 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 this chapter.

Sec. 11. An owner, a manager, or an employer shall not discharge, refuse to hire, or in any manner retaliate against an individual for:

- (1) reporting a violation of this chapter; or**
- (2) exercising any right or satisfying any obligation under this chapter.**

Sec. 12. (a) As used in this section, "school bus" means a motor vehicle that is:

- (1) designed and constructed for the accommodation of at least ten (10) passengers;**
- (2) owned or operated by a public or governmental agency, or privately owned and operated for compensation; and**
- (3) used for the transportation of school children to and from the following:**
 - (A) School.**
 - (B) School athletic games or contests.**
 - (C) Other school functions.**

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

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

instruction are provided.

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

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

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

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

Sec. 13. (a) This chapter does not prohibit a county, city, town, or other governmental unit from adopting an ordinance more restrictive than this chapter.

(b) This chapter does not supersede a smoking ordinance that is adopted by a county, city, town, or other governmental unit before the effective date of this chapter and that is more restrictive than this chapter.

Sec. 14. Beginning in 2013, the commission shall present an annual report to the health finance commission concerning the implementation and enforcement activities taken under this chapter. The report must include the number of smoking related inspections conducted and violations for the previous calendar year. The commission shall submit the report in electronic format under IC 5-14-6 to the legislative services agency not later than September 1 of each year.

SECTION 3. IC 12-7-2-178.8 IS REPEALED [EFFECTIVE JULY 1, 2012]. Sec. 178.8. "Smoking", for purposes of IC 12-24-2-8, has the meaning set forth in IC 16-41-37-3.

SECTION 4. IC 12-24-2-8, AS AMENDED BY SEA 24-2012, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8. (a) Notwithstanding IC 12-27-3-3, the director has complete authority to regulate smoking (as defined in IC 16-41-37-3) within a state institution:

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

SECTION 5. IC 16-18-2-10, AS AMENDED BY P.L.42-2011, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 10. (a) "Agency", for purposes of IC 16-23.5, has the meaning set forth in IC 16-23.5-1-2.

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

SECTION 6. IC 16-18-2-295, AS AMENDED BY HEA 1186-2012, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 295. (a) "Provider", for purposes of IC 16-21-8,

has the meaning set forth in IC 16-21-8-0.5.

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

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

- (A) A physician.
- (B) A psychotherapist.
- (C) A dentist.
- (D) A registered nurse.
- (E) A licensed practical nurse.
- (F) An optometrist.
- (G) A podiatrist.
- (H) A chiropractor.
- (I) A physical therapist.
- (J) A psychologist.
- (K) An audiologist.
- (L) A speech-language pathologist.
- (M) A dietitian.

(N) An occupational therapist.

(O) A respiratory therapist.

(P) A pharmacist.

(Q) A sexual assault nurse examiner.

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

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

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

(5) An employer of a certified emergency medical technician, a certified advanced emergency medical technician, or a licensed paramedic.

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

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

(d) "Provider", for purposes of IC 16-48-1, has the meaning set forth in IC 16-48-1-3.

SECTION 7. IC 16-18-2-323.1 IS REPEALED [EFFECTIVE JULY 1, 2012]. Sec. 323.1. "School bus", for purposes of IC 16-41-37, has the meaning set forth in IC 16-41-37-2.3.

SECTION 8. IC 16-18-2-323.4 IS REPEALED [EFFECTIVE JULY 1, 2012]. Sec. 323.4. "School week", for purposes of IC 16-41-37, has the meaning set forth in IC 16-41-37-2.7.

SECTION 9. IC 16-41-37 IS REPEALED [EFFECTIVE JULY 1, 2012]. (Clean Indoor Air Law).

HEA 1149

Figure

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