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# SENATE BILL No. 95

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-12-4-10; IC 16-18-2; IC 16-41-37.

**Synopsis:** Prohibit smoking in public places. Prohibits smoking in public places and places of employment. Establishes certain civil penalties for violations. Requires that the civil penalties collected for violations be deposited into the tobacco use prevention and cessation trust fund. Repeals provision in the current clean indoor air laws that are not consistent with this act.

**Effective:** July 1, 2010.

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### Errington

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January 5, 2010, read first time and referred to Committee on Commerce, Public Policy & Interstate Cooperation.

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Second Regular Session 116th General Assembly (2010)

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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

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## SENATE BILL No. 95



A BILL FOR AN ACT to amend the Indiana Code concerning health.

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

1 SECTION 1. IC 4-12-4-10 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10. (a) The Indiana  
3 tobacco use prevention and cessation trust fund is established. The  
4 executive board may expend money from the fund and make grants  
5 from the fund to implement the long range state plan established under  
6 this chapter. General operating and administrative expenses of the  
7 executive board are also payable from the fund.

- 8 (b) The fund consists of:  
9 (1) amounts, if any, that another statute requires to be distributed  
10 to the fund from the Indiana tobacco master settlement agreement  
11 fund;  
12 (2) appropriations to the fund from other sources;  
13 (3) grants, gifts, and donations intended for deposit in the fund;  
14 and  
15 **(4) civil penalties collected under IC 16-41-37; and**  
16 ~~(4)~~ **(5) interest that accrues from money in the fund.**  
17 (c) The fund shall be administered by the executive board.



1 Notwithstanding IC 5-13, the treasurer of state shall invest the money  
 2 in the fund not currently needed to meet the obligations of the fund in  
 3 the same manner as money is invested by the public employees  
 4 retirement fund under IC 5-10.3-5. The treasurer of state may contract  
 5 with investment management professionals, investment advisors, and  
 6 legal counsel to assist in the investment of the fund and may pay the  
 7 expenses incurred under those contracts from the fund. Money in the  
 8 fund at the end of a state fiscal year does not revert to the state general  
 9 fund.

10 (d) All income and assets of the executive board deposited in the  
 11 fund are for the use of the executive board without appropriation.

12 SECTION 2. IC 16-18-2-114.8 IS ADDED TO THE INDIANA  
 13 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 14 [EFFECTIVE JULY 1, 2010]: **Sec. 114.8. "Enclosed area", for**  
 15 **purposes of IC 16-41-37, has the meaning set forth in**  
 16 **IC 16-41-37-1.5.**

17 SECTION 3. IC 16-18-2-285.5 IS ADDED TO THE INDIANA  
 18 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 19 [EFFECTIVE JULY 1, 2010]: **Sec. 285.5. "Place of employment",**  
 20 **for purposes of IC 16-41-37, has the meaning set forth in**  
 21 **IC 16-41-37-1.8.**

22 SECTION 4. IC 16-18-2-298 IS AMENDED TO READ AS  
 23 FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 298. "Public building",**  
 24 **place", for purposes of IC 16-41-37, has the meaning set forth in**  
 25 **IC 16-41-37-2.**

26 SECTION 5. IC 16-41-37-0.5 IS ADDED TO THE INDIANA  
 27 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 28 [EFFECTIVE JULY 1, 2010]: **Sec. 0.5. This chapter does not**  
 29 **prohibit smoking in the following:**

30 (1) **A private residence, except while the residence is being**  
 31 **used for any of the following purposes:**

32 (A) **A licensed child care home.**

33 (B) **A health care facility or a health care provider's office.**

34 (C) **An adult day care facility.**

35 (D) **A place of employment.**

36 (2) **A retail tobacco store used primarily for the sale of**  
 37 **tobacco products and accessories and in which:**

38 (A) **the sale of other products is merely incidental; and**

39 (B) **the sale of tobacco products accounts for at least eighty**  
 40 **percent (80%) of the store's income.**

41 **However, this chapter applies to a retail tobacco store if food**  
 42 **or beverages are sold for consumption on the premises or if an**

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area has been set aside for customers to consume food or beverages on the premises.

**(3) Hotel and motel rooms that are rented to guests and are designated as smoking rooms. However:**

- (A) not more than twenty percent (20%) of rooms in a hotel or motel may be designated as smoking rooms; and**
- (B) the status of a room as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.**

**(4) A place of employment that is located outdoors.**

SECTION 6. IC 16-41-37-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 1.5. As used in this chapter, "enclosed area" means an area with:**

- (1) a roof, ceiling, or overhead covering of any kind; and**
- (2) solid walls or side coverings of any kind that extend from the floor to the ceiling, regardless of the presence of doorways, entrances, or exits, on all sides.**

SECTION 7. IC 16-41-37-1.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 1.8. As used in this chapter, "place of employment" means an enclosed area under the direct or indirect control of an employer that the employer's employees normally use during the course of employment for work or any other purpose, including work areas, offices, employee lounges, employee cafeterias, meeting rooms, classrooms, restrooms, stairways, hallways, and other common areas.**

SECTION 8. IC 16-41-37-2, AS AMENDED BY P.L.2-2007, SECTION 194, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 2. As used in this chapter, "public building" place" means:**

- (1) an enclosed structure or the part of an enclosed structure that is ~~one~~ ~~(1)~~ of used by or accessible to the public; or**
- (2) the following areas that are used by or are accessible to the public:**
  - (A) Areas occupied or operated by an agency of state or local government, including vehicles owned, leased, or operated by an agency of state or local government.**
  - (B) Used as a classroom building or a dining area at a state educational institution.**
  - (C) A college or university (as defined in IC 21-7-13-10), including dormitories.**

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- 1           ~~(3) Used as a public school (as defined in IC 20-18-2-15).~~
- 2           ~~(4) Licensed as a health facility under IC 16-21 or IC 16-28.~~
- 3           ~~(5) Used as a station for paid firefighters.~~
- 4           ~~(6) Used as a station for paid police officers.~~
- 5           ~~(7) Licensed as a child care center or child care home or~~  
6           ~~registered as a child care ministry under IC 12-17-2.~~
- 7           ~~(8) Licensed as a hospital under IC 16-21 or a county hospital~~  
8           ~~subject to IC 16-22.~~
- 9           ~~(9) Used as a provider's office.~~
- 10          **(C) A facility that offers any of the following:**
- 11            **(i) Pari-mutuel horse racing under IC 4-31, including a**  
12            **satellite facility (as defined in IC 4-31-2-20.5), a**  
13            **grandstand, and a clubhouse where horse races are**  
14            **viewed live.**
- 15            **(ii) Charity gaming under IC 4-32.2.**
- 16            **(iii) Riverboat casino gambling under IC 4-33.**
- 17            **(iv) Gambling games under IC 4-35-5.**
- 18          **(D) Public transportation facilities, ticket, boarding, and**  
19          **waiting areas of public transit depots, and public**  
20          **transportation vehicles.**
- 21          **(E) A food service establishment (as defined in**  
22          **IC 16-31-9-1).**
- 23          **(F) Areas where the public assemble to engage in physical**  
24          **exercise, participate in athletic competition, or witness**  
25          **sports.**
- 26          **(G) A club that:**
- 27            **(i) meets the requirements under IC 7.1-3-20-1 for a club**  
28            **or under IC 7.1-3-20-7 for a fraternal club; and**
- 29            **(ii) is exempt from federal income taxation under Section**  
30            **501(c) of the Internal Revenue Code.**
- 31          **(H) The common areas:**
- 32            **(i) of apartments, condominiums, trailer parks, and**  
33            **multiunit residential facilities; and**
- 34            **(ii) in any of the facilities or structures listed in clauses**  
35            **(A) through (G).**

36           **Common areas include entrances, exits, lobbies, enclosed**  
37           **walkways and hallways, elevators, and restrooms.**

38           SECTION 9. IC 16-41-37-3 IS AMENDED TO READ AS  
39           FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. As used in this  
40           chapter, "smoking" means the carrying, **burning**, or holding of, a  
41           lighted cigarette, cigar, pipe, or any other lighted smoking equipment,  
42           or the inhalation or exhalation of smoke from any lighted smoking

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equipment.

SECTION 10. IC 16-41-37-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. (a) A person who smokes:

(1) in a public building, except in an area designated as a smoking area under section 5 of this chapter; **place;**

(2) in the retail area of a grocery store or drug store that is designated as a nonsmoking area by the store's proprietor; **place of employment;**

(3) in the dining area of a restaurant that is designated and posted as the restaurant's nonsmoking area by the restaurant's proprietor; **or**

**(3) within a reasonable distance of a public place or a place of employment as determined by rules adopted by the state department;**

(4) in a school bus during a school week or while the school bus is being used for a purpose described in section 2.3(3) of this chapter; **or**

**(5) in an area where the owner, operator, manager, or other person in charge of the area has posted a nonsmoking sign;**

commits a ~~Class B~~ **Class C** infraction. However, the violation is a **Class A** infraction if the person has at least three (3) previous unrelated judgments for violating this section that are accrued within the twelve (12) months immediately preceding the violation. **Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed with a civil penalty of fifty dollars (\$50).**

**(b) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Indiana tobacco use prevention and cessation trust fund established by IC 4-12-4-10.**

SECTION 11. IC 16-41-37-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 6. (a) The official in charge of a public ~~building~~ **place, place of employment, or other area where smoking is prohibited under this chapter** shall do the following:

(1) Post conspicuous signs that read "Smoking Is Prohibited By State Law" ~~Except In Designated Smoking Areas~~ or other similar language.

(2) Request persons who are smoking in violation of section 4 of this chapter to refrain from smoking.

(3) Remove a person who is smoking in violation of section 4 of this chapter and fails to refrain from smoking after being

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requested to do so.  
(b) The proprietor of a restaurant official in charge of a public place, place of employment, or other area where smoking is prohibited under this chapter shall under sections 4 and 5 of this chapter, post conspicuous no smoking signs at each entrance. to the restaurant, informing the public of the establishment's smoking policy.

(c) The official in charge of a public place, place of employment, or other area where smoking is prohibited under this chapter who violates this section commits a Class C infraction. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

- (1) For a violation of this section, a civil penalty of one hundred dollars (\$100).
- (2) If the official has had one (1) civil judgment for a prior violation of this section in the previous year, a civil penalty of two hundred dollars (\$200).
- (3) If the official has had two (2) or more civil judgments for prior violations of this section in the previous year, a civil penalty of five hundred dollars (\$500).

(d) Each day on which a violation of this section occurs is a separate violation of this section.

(e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Indiana tobacco use prevention and cessation trust fund established by IC 4-12-4-10.

SECTION 12. IC 16-41-37-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10. (a) The state department, the state department's designee, the alcohol and tobacco commission, the alcohol and tobacco commission's designee, and the division of fire and building safety may enforce this chapter at any time:

- (1) according to rules adopted by the state department; or
- (2) in response to a filed complaint alleging noncompliance with this chapter.

(b) A fire department may enforce this chapter as part of an inspection program under IC 36-8-17-8.

SECTION 13. IC 16-41-37-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 11. A person may not discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because the employee, applicant, or customer exercises any right or duty under this chapter.

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1 SECTION 14. IC 16-41-37-12 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2010]: **Sec. 12. The state department may**  
4 **adopt rules under IC 4-22-2 to administer this chapter.**

5 SECTION 15. THE FOLLOWING ARE REPEALED [EFFECTIVE  
6 JULY 1, 2010]: IC 16-18-2-318.1; IC 16-41-37-3.1; IC 16-41-37-5;  
7 IC 16-41-37-7; IC 16-41-37-8.

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