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FISCAL IMPACT STATEMENT

LS 6884

BILL NUMBER: HB 1149

NOTE PREPARED: Jan 12, 2012

BILL AMENDED: Jan 12, 2012

SUBJECT: Smoking Ban.

FIRST AUTHOR: Rep. Turner

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Smoking Prohibition:* The bill prohibits smoking:

- (1) in public places;
- (2) in enclosed areas of a place of employment;
- (3) in certain state vehicles;
- (4) within 12 feet of a public entrance to a public place or an enclosed area of a place of employment; and
- (5) the gaming areas of racinos.

It allows smoking in: (1) gaming areas at the riverboat casinos and horse racetracks; (2) cigar and hookah bars; (3) fraternal, social, and veterans clubs; and (4) tobacco stores; if certain requirements are met.

Signs: The bill requires certain signs to be posted.

Enforcement: The bill requires the Alcohol and Tobacco Commission to enforce this prohibition. The bill also allows certain governmental agencies to enforce the prohibitions.

Infraction: The bill 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.

Employment: The bill prohibits firing or refusing to hire a person for reporting a violation or exercising any right or performing any obligation under the smoking prohibitions.

State Institutions: It removes the authority of a superintendent of a state institution to regulate smoking, but it provides authority of a physician to prescribe smoking cessation devices to residents of state institutions. (Current law allows prescribing nicotine patches.)

School Buses: It moves the prohibition against smoking on a school bus during the school week to Title 7.1.

Repeal: The bill repeals the current Clean Indoor Air Law, and it makes a technical correction.

Effective Date: Upon passage.

Explanation of State Expenditures: *Summary-* The bill may increase costs for the Indiana Alcohol and Tobacco Commission (ATC) to enforce the smoking ban. The increased costs will vary depending on how ATC implements its enforcement responsibility. Also, revenues for the state General Fund could increase through infraction judgements for two Class B infractions (or Class A infractions under certain circumstances) established under the bill.

(Revised) *Background Information - Enforcement:* The current Clean Indoor Air Law is under the sections of the Indiana Code concerning the State Department of Health (ISDH). Enforcement of the statute is not assigned, meaning that it is enforced by law enforcement officers. Under the bill, the ATC would have enforcement responsibility. Also, the Department of Health, a local health department, a health and hospital corporation, and the Division of Fire and Building Safety may enforce the prohibition.

The ATC currently has authority for enforcing the “sale of cigarette” provisions in the public places that would be part of the smoking ban in the bill. The bill prohibits smoking in almost all public places, and the ATC would have responsibility to enforce the smoking ban in places that the ATC does not currently monitor. As a result, the ATC will need to increase staffing to address this new responsibility. However, there are no data available to estimate the number of public places where enforcement will occur. The ATC could enforce the new smoking ban with its own enforcement agents or delegate enforcement to other specified agencies, including the Department of Health, local health departments, the Division of Fire and Building Safety, and all law enforcement officers as allowed under IC 34-28-5. Also, the ATC could actively enforce the smoking ban or choose to only investigate complaints received. These management decisions will determine the additional staffing requirements.

The appropriation for the ATC for enforcement and administration in FY 2012 is \$10.5 M. The ATC is funded with dedicated funds from tobacco and alcohol excise taxes. As of October 3, 2011, there were 97 employees, including 7 vacant positions, with total salaries of \$4.7 M assigned to the Excise Police Enforcement Section (EPES) of the ATC. The average annual salary of employees of the EPES is \$48,527, and average salaries range from \$22,886 to \$78,000.

Explanation of State Revenues: (Revised) *Gaming Tax Revenue:* Under the bill, the smoking prohibition would apply to the state’s two racinos, but would not apply to: (1) “gaming areas” at the riverboat casinos and horse racetracks; and (2) many charity gaming licensees that conduct charity gaming at fraternal organization facilities.

The estimated state revenue loss from the slot machine wagering tax imposed on the racinos as a result of the

smoking prohibition could potentially total \$10.6 M to \$21.2 M annually beginning in FY 2013. The revenue loss estimates are based on the December 14, 2011, Revenue Technical Committee forecast of FY 2013 adjusted gross receipts (AGR) from gaming at the state's racinos. The lower bound estimate assumes AGR reductions of 10% and the upper bound estimate assumes AGR reductions of 20%.

In addition, the inclusion of other areas besides the "gaming areas" at the riverboat casinos under the smoking prohibition could potentially result in some loss of gaming tax revenue from riverboat casinos. Research indicates that the bars and restaurants, hotel facilities, and other amenities that are typically attached to the actual casino facility ("gaming area") are intrinsically a part of the overall gaming product that the riverboat casinos and racinos provide. Consequently, the smoking prohibition on these facilities, even with the exclusion for the "gaming areas", still may have a material impact on attendance and gambling at the riverboat casinos and racinos. The resultant negative impact on gaming revenue is indeterminable.

(Revised) *Infractions:* There are no data available to indicate how many offenders may be found guilty of prohibited smoking, a Class B infraction, or how many owners, managers, operators, or officials in charge of public places or places of employment may fail to comply with the provisions of the act, a Class B infraction. Both of these offenses may be enhanced to a Class A infraction if the offender has three prior, unrelated convictions. If additional court cases occur and infraction judgments and court fees are collected, revenue to the state General Fund may increase. The maximum judgment for a Class B infraction is \$1,000, and the maximum judgment for a Class A infraction is \$10,000. Judgments are deposited in the state General Fund. [If the violations are enforced by a local health department, the department will proceed under current law civil action procedures in IC 16-20-1-26, and fines would be deposited in the state General Fund.]

Employment: A violation concerning firing or refusing to hire a person for reporting a violation or exercising any right or obligation under the smoking prohibition is a Class B misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class B misdemeanor is \$1,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee (for misdemeanors) or \$70 court fee (for infractions) that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$5), judicial salaries fee (\$19), public defense administration fee (\$5), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$2) are deposited into the state General Fund.

Explanation of Local Expenditures: (Revised) *Enforcement:* A local health department or a health and hospital corporation could incur additional costs to inspect premises to detect violation of the prohibition. Also, a local health department would bring a civil action under IC 16-20-1-26, which requires the county attorney to represent the board. The ATC, however, is responsible for enforcement of the ban.

Employment: A Class B misdemeanor is punishable by up to 180 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: (Revised) *Gaming Tax Revenue:* The smoking prohibition on the state's two racinos is estimated to reduce county slot machine wagering tax revenue to Madison County by \$500,000 to

\$1.1 M annually and to Shelby County by \$700,000 to \$1.4 M annually beginning in FY 2013.

In addition, the inclusion of other areas besides the “gaming areas” at the riverboat casinos under the smoking prohibition could potentially result in some loss of gaming tax revenue from riverboat casinos distributed to local units. (See *Explanation of State Revenues* for additional discussion.)

Infractions: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$70 (infraction) or \$120 (misdemeanor) court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: ATC; ISDH; Division of Fire and Building Safety.

Local Agencies Affected: Trial courts; local law enforcement agencies; local departments of health.

Information Sources: Revenue Technical Committee Forecast, December 14, 2011. Legislative Services Agency, *Smoking Ban Impacts on Gaming Revenue*, August 20, 2009 (memo presented to the Gaming Study Committee on August 14, 2009). Mandel, L, B. Alamar, and S. Glantz. "Smoke-Free Law Did Not Affect Revenue from Gaming in Delaware." *Tobacco Control*, vol. 14 (February 2005), pp. 10-12. Glantz, S. And B. Alamar. "Erratum to Mandel, L.L., Alamar, B.C., and Glantz, S.A.. 'Smoke-free Law Did Not Affect Revenue from Gaming in Delaware.'" *Tobacco Control*, vol. 14 (February 2005), pp. 10-12." *Tobacco Control On-Line (Electronic Letters)*, May 23, 2005. Pakko, M. "Smoke-free Law Did Affect Revenue from Gaming in Delaware." *Tobacco Control*, vol. 15 (February 2006), pp. 68-69. Pakko, M. "No Smoking at the Slot Machines: The Effect of a Smoke-Free Law on Delaware Gaming Revenues." *Applied Economics*, vol. 40 (July-August 2008), pp. 1769-74. Thalheimer, R. and M. Ali. "The Demand for Casino Gaming with Special Reference to a Smoking Bank." *Economic Inquiry*, vol. 46 (April 2008), pp. 273-282. Lal, A. And M. Siahpush. "The Effect of Smoke-Free Policies on Electronic Gaming Machine Expenditure in Victoria, Australia." *Journal of Epidemiology and Community Health*, vol. 62 (January 2008), pp. 11-15. Garrett, T. And M. Pakko. "Casino Revenue and the Illinois Smoking Ban." Working Paper 2009-027A & 2009-027B, Research Division, Federal Reserve Bank of St. Louis, Working Paper Series, <http://research.stlouisfed.org/wp/2009/2009-027.pdf>. Harris, J. K. et al. "Exempting Casinos from the Smoke-Free Illinois Act Will Not Bring Patrons Back: They Never Left." *Tobacco Control*, 2011. Eadington, W. R. "The Economics of Casino Gambling." *Journal of Economic Perspectives*, vol. 13, (Summer 1999), pp. 173-192. Metters, R. et al. "The 'Killer Application' of Revenue Management: Harrah's Cherokee Casino & Hotel." *Interfaces*, vol. 38, (May-June 2008), pp. 161-175. Loveman, G. "Diamonds in the Data Mine." *Harvard Business Review*, May 2003, pp. 109-113. Kale, Sudhir H., & Klugsberger, P. "Reaping Rewards." *Marketing Management*, July-August 2007, pp. 14-18.

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