

**CONFERENCE COMMITTEE REPORT
DIGEST FOR EHB 1149**

Citations Affected: IC 7.1-1-2-2; IC 7.1-5-12; IC 12-7-2-178.8; IC 12-24-2-8; IC 16-18-2; IC 16-41-37.

Synopsis: Smoking ban. Conference committee report for EHB 1149. Prohibits smoking: (1) in public places; (2) in enclosed areas of a place of employment; (3) in certain state vehicles; and (4) within 8 feet of a public entrance to a public place or an enclosed area of a place of employment. Allows smoking in certain: (1) gaming facilities; (2) cigar and hookah bars; (3) fraternal, social, and veterans clubs; (4) tobacco stores; (5) bars and taverns; (6) cigar manufacturer facilities; and (7) cigar specialty stores; if certain requirements are met. Allows smoking on the premises of a business that is located in the business owner's residence if certain requirements are met. Requires certain signs to be posted. Requires the alcohol and tobacco commission (commission) to enforce this prohibition. Allows certain governmental agencies and law enforcement officers to enforce the prohibition. 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. Prohibits firing, refusing to hire, or retaliating against a person for reporting a violation or exercising any right or performing any obligation under the smoking prohibition. Requires the commission to present an annual report to the health finance commission. Removes the authority of the director of the division of mental health and addiction to regulate smoking within certain state institutions. Provides authority for a physician to prescribe smoking cessation devices to residents of state institutions. (Current law allows prescribing nicotine patches.) Moves the prohibition against smoking on a school bus during the school week to IC 7.1. Repeals the current clean indoor air law. Makes a technical correction. **(This conference committee report: (1) adds "use" of tobacco products to the scope of the alcohol and tobacco application law; (2) changes the date cigar and hookah bars must be in business to qualify for an exemption; (3) removes exemptions for charitable gaming and residential facilities; (4) adds certain requirements to the smoking room or areas in fraternal, social, and veterans clubs; (5) adds an exemption for certain tobacco stores; (6) removes limitations on local smoking ordinances; (7) requires the commission to present an annual report to the health finance commission; and (8) makes conforming and technical changes.)**

Effective: July 1, 2012.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1149 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 7.1-1-2-2 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. Except as provided
- 4 in IC 7.1-5-1-3 and IC 7.1-5-1-6, this title applies to the following:
- 5 (1) The commercial manufacturing, bottling, selling, bartering,
- 6 importing, transporting, delivering, furnishing, or possessing of
- 7 alcohol, alcoholic beverages, industrial alcohol, malt, malt syrup,
- 8 malt extract, liquid malt or wort.
- 9 (2) The sale, possession, **use**, and distribution of tobacco
- 10 products.
- 11 SECTION 2. IC 7.1-5-12 IS ADDED TO THE INDIANA CODE
- 12 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 13 JULY 1, 2012]:
- 14 **Chapter 12. Prohibition on Smoking**
- 15 **Sec. 0.5. As used in this chapter, "ashtray" means any**
- 16 **receptacle that is used for disposing of smoking materials,**
- 17 **including ash and filters.**
- 18 **Sec. 1. As used in this chapter, "place of employment" means an**
- 19 **enclosed area of a structure that is a place of employment. The**
- 20 **term does not include a private vehicle.**
- 21 **Sec. 2. As used in this chapter, "public place" means an enclosed**
- 22 **area of a structure in which the public is invited or permitted.**

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

- 2 (1) carrying or holding of a lighted cigarette, cigar, or pipe or
3 any other lighted tobacco smoking equipment; or
4 (2) inhalation or exhalation of smoke from lighted tobacco
5 smoking equipment.

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

- 8 (1) A public place.
9 (2) A place of employment.
10 (3) A vehicle owned, leased, or operated by the state if the
11 vehicle is being used for a governmental function.
12 (4) The area within eight (8) feet of a public entrance to:
13 (A) a public place; or
14 (B) a place of employment.

15 **(b) An employer shall inform each of the employer's employees**
16 **and prospective employees of the smoking prohibition applying to**
17 **the place of employment.**

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

25 **(d) An owner, operator, manager, or official in charge of a**
26 **public place or place of employment shall post conspicuous signs**
27 **at each public entrance that read "State Law Prohibits Smoking**
28 **Within 8 Feet of this Entrance" or other similar language.**

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

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

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

- 38 (A) owned or leased by the owner of the riverboat; and
39 (B) located on land that is adjacent to:

- 40 (i) the dock to which the riverboat is moored; or
41 (ii) the land on which the riverboat is situated in the case
42 of a riverboat described in IC 4-33-2-17(2).

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

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

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

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

- 1 **(B) The business prohibits entry by an individual who is**
2 **less than twenty-one (21) years of age.**
3 **(C) The owner or operator of the business holds a beer,**
4 **liquor, or wine retailer's permit.**
5 **(D) The business limits smoking in the establishment to**
6 **either:**
7 **(i) cigar smoking; or**
8 **(ii) smoking with a waterpipe or hookah device.**
9 **(E) During the preceding calendar year, at least ten**
10 **percent (10%) of the business's annual gross income was**
11 **from:**
12 **(i) the sale of cigars and the rental of onsite humidors; or**
13 **(ii) the sale of loose tobacco for use in a waterpipe or**
14 **hookah device.**
15 **(F) The person in charge of the business posts in the**
16 **establishment conspicuous signs that display the message**
17 **that cigarette smoking is prohibited.**
18 **(6) A premises owned or leased by and regularly used for the**
19 **activities of a business that meets all of the following:**
20 **(A) The business is exempt from federal income taxation**
21 **under 26 U.S.C. 501(c).**
22 **(B) The business:**
23 **(i) meets the requirements to be considered a club under**
24 **IC 7.1-3-20-1; or**
25 **(ii) is a fraternal club (as defined in IC 7.1-3-20-7).**
26 **(C) The business provides food or alcoholic beverages only**
27 **to its bona fide members and their guests.**
28 **(D) The business, during a meeting of the business's**
29 **members, voted within the previous two (2) years to allow**
30 **smoking on the premises.**
31 **(E) The business:**
32 **(i) provides a separate, enclosed, designated smoking**
33 **room or area that is adequately ventilated to prevent**
34 **migration of smoke to nonsmoking areas of the premises;**
35 **(ii) allows smoking only in the room or area described in**
36 **item (i); and**
37 **(iii) does not allow an individual who is less than eighteen**
38 **(18) years of age to enter into the room or area described**
39 **in item (i).**
40 **(7) A retail tobacco store used primarily for the sale of**
41 **tobacco products and tobacco accessories that meets the**
42 **following requirements:**
43 **(A) The owner or operator of the store held a valid tobacco**
44 **sales certificate issued under IC 7.1-3-18.5 on June 30**
45 **2012.**
46 **(B) The store prohibits entry by an individual who is less**
47 **than eighteen (18) years of age.**
48 **(C) The sale of products other than tobacco products and**
49 **tobacco accessories is merely incidental.**
50 **(D) The sale of tobacco products accounts for at least**
51 **eighty-five percent (85%) of the store's annual gross sales.**

- 1 (E) Food or beverages are not sold for consumption on the
2 premises, and there is not an area set aside for customers
3 to consume food or beverages on the premises.
- 4 (8) A bar or tavern:
- 5 (A) for which a permittee holds:
- 6 (i) a beer retailer's permit under IC 7.1-3-4;
- 7 (ii) a liquor retailer's permit under IC 7.1-3-9; or
- 8 (iii) a wine retailer's permit under IC 7.1-3-14;
- 9 (B) that does not employ an individual who is less than
10 eighteen (18) years of age;
- 11 (C) that does not allow an individual who:
- 12 (i) is less than twenty-one (21) years of age; and
- 13 (ii) is not an employee of the bar or tavern;
- 14 to enter any area of the bar or tavern; and
- 15 (D) that is not located in a business that would otherwise
16 be subject to this chapter.
- 17 (9) A cigar manufacturing facility that does not offer retail
18 sales.
- 19 (10) A premises of a cigar specialty store to which all of the
20 following apply:
- 21 (A) The owner or operator of the store held a valid tobacco
22 sales certificate issued under IC 7.1-3-18.5 on June 30,
23 2012.
- 24 (B) The sale of tobacco products and tobacco accessories
25 account for at least fifty percent (50%) of the store's
26 annual gross sales.
- 27 (C) The store has a separate, enclosed, designated smoking
28 room that is adequately ventilated to prevent migration of
29 smoke to nonsmoking areas.
- 30 (D) Smoking is allowed only in the room described in
31 clause (C).
- 32 (E) Individuals who are less than eighteen (18) years of age
33 are prohibited from entering into the room described in
34 clause (C).
- 35 (F) Cigarette smoking is not allowed on the premises of the
36 store.
- 37 (G) The owner or operator of the store posts a conspicuous
38 sign on the premises of the store that displays the message
39 that cigarette smoking is prohibited.
- 40 (H) Food or beverages are not sold for consumption on the
41 premises, and there is not an area set aside for customers
42 to consume food or beverages on the premises.
- 43 (11) The premises of a business that is located in the business
44 owner's private residence (as defined in IC 3-5-2-42.5) if the
45 only employees of the business who work in the residence are
46 the owner and other individuals who reside in the residence.
- 47 (b) The owner, operator, manager, or official in charge of an
48 establishment or premises in which smoking is allowed under this
49 section shall post conspicuous signs in the establishment that read
50 "WARNING: Smoking Is Allowed In This Establishment" or other
51 similar language.

1 (c) This section does not allow smoking in the following enclosed
 2 areas of an establishment or premises described in subsection
 3 (a)(1) through (a)(10):

4 (1) Any hallway, elevator, or other common area where an
 5 individual who is less than eighteen (18) years of age is
 6 permitted.

7 (2) Any room that is intended for use by an individual who is
 8 less than eighteen (18) years of age.

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

17 Sec. 6. (a) The commission shall enforce this chapter.

18 (b) This chapter may also be enforced by:

19 (1) the state department of health established by IC 16-19-1-1;

20 (2) a local health department, as defined in IC 16-18-2-211;

21 (3) a health and hospital corporation established by
 22 IC 16-22-8-6;

23 (4) the division of fire and building safety established within
 24 the department of homeland security by IC 10-19-7-1; and

25 (5) a law enforcement officer;

26 in cooperation with the commission.

27 (c) The commission, the state department of health, a local
 28 health department, a health and hospital corporation, the division
 29 of fire and building safety, or a law enforcement officer may
 30 inspect premises that are subject to this chapter to ensure that the
 31 person responsible for the premises is in compliance with this
 32 chapter.

33 Sec. 7. (a) This section does not apply to an establishment or
 34 premises in which smoking is allowed under section 5 of this
 35 chapter.

36 (b) The owner, operator, manager, or official in charge of a
 37 public place shall do the following:

38 (1) Post conspicuous signs that read "Smoking Is Prohibited
 39 By State Law" or other similar language.

40 (2) Ask an individual who is smoking in violation of this
 41 chapter to refrain from smoking.

42 (3) Cause to be removed from the public place an individual
 43 who is smoking in violation of this chapter and fails to refrain
 44 from smoking after being asked to refrain from smoking.

45 (c) In addition to the requirements under subsection (b), the
 46 owner or operator of a restaurant shall post a conspicuous sign at
 47 each entrance to the restaurant informing the public that smoking
 48 is prohibited in the restaurant.

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

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

5 (1) this section; or

6 (2) IC 16-41-37-4 (before its repeal).

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

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

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

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

17 (b) A failure to comply described in subsection (a) is a Class A
 18 infraction if the owner, manager, operator, or official has been
 19 adjudged to have committed at least three (3) prior unrelated
 20 infractions under this chapter.

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

24 (1) reporting a violation of this chapter; or

25 (2) exercising any right or satisfying any obligation under this
 26 chapter.

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

29 (1) designed and constructed for the accommodation of at
 30 least ten (10) passengers;

31 (2) owned or operated by a public or governmental agency, or
 32 privately owned and operated for compensation; and

33 (3) used for the transportation of school children to and from
 34 the following:

35 (A) School.

36 (B) School athletic games or contests.

37 (C) Other school functions.

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

39 (1) begins on Monday and ends on Friday; and

40 (2) includes at least three (3) days during which, on each day,
 41 more than four (4) hours of classroom instruction are
 42 provided.

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

46 (1) a school;

47 (2) a school athletic game or contest; or

48 (3) another school function;

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

50 (d) A person who smokes in a school bus as described in
 51 subsection (c) commits a Class A infraction if the person, within

1 the twelve (12) months immediately preceding the person's act of
 2 smoking in a school bus, committed at least three (3) prior
 3 unrelated acts of smoking in a school bus for which the person was
 4 adjudged to have committed infractions under this section.

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

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

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

20 SECTION 3. IC 12-7-2-178.8 IS REPEALED [EFFECTIVE JULY
 21 1, 2012]. ~~Sec. 178.8. "Smoking", for purposes of IC 12-24-2-8, has the~~
 22 ~~meaning set forth in IC 16-41-37-3.~~

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

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

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

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

37 SECTION 6. IC 16-18-2-295, AS AMENDED BY P.L.41-2007,
 38 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2012]: Sec. 295. (a) "Provider", for purposes of IC 16-21-8,
 40 has the meaning set forth in IC 16-21-8-0.5.

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

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

48 (A) A physician.

49 (B) A psychotherapist.

50 (C) A dentist.

51 (D) A registered nurse.

- 1 (E) A licensed practical nurse.
 - 2 (F) An optometrist.
 - 3 (G) A podiatrist.
 - 4 (H) A chiropractor.
 - 5 (I) A physical therapist.
 - 6 (J) A psychologist.
 - 7 (K) An audiologist.
 - 8 (L) A speech-language pathologist.
 - 9 (M) A dietitian.
 - 10 (N) An occupational therapist.
 - 11 (O) A respiratory therapist.
 - 12 (P) A pharmacist.
 - 13 (Q) A sexual assault nurse examiner.
 - 14 (2) A hospital or facility licensed under IC 16-21-2 or IC 12-25 or
 - 15 described in IC 12-24-1 or IC 12-29.
 - 16 (3) A health facility licensed under IC 16-28-2.
 - 17 (4) A home health agency licensed under IC 16-27-1.
 - 18 (5) An employer of a certified emergency medical technician, a
 - 19 certified emergency medical technician-basic advanced, a
 - 20 certified emergency medical technician-intermediate, or a
 - 21 certified paramedic.
 - 22 (6) The state department or a local health department or an
 - 23 employee, agent, designee, or contractor of the state department
 - 24 or local health department.
 - 25 (c) "Provider", for purposes of IC 16-39-7-1, has the meaning set
 - 26 forth in IC 16-39-7-1(a).
 - 27 **(d) "Provider", for purposes of IC 16-48-1, has the meaning set**
 - 28 **forth in IC 16-48-1-3.**
 - 29 SECTION 7. IC 16-18-2-323.1 IS REPEALED [EFFECTIVE JULY
 - 30 1, 2012]. ~~Sec. 323.1. "School bus", for purposes of IC 16-41-37, has the~~
 - 31 ~~meaning set forth in IC 16-41-37-2.3.~~
 - 32 SECTION 8. IC 16-18-2-323.4 IS REPEALED [EFFECTIVE JULY
 - 33 1, 2012]. ~~Sec. 323.4. "School week", for purposes of IC 16-41-37, has~~
 - 34 ~~the meaning set forth in IC 16-41-37-2.7.~~
 - 35 SECTION 9. IC 16-41-37 IS REPEALED [EFFECTIVE JULY 1,
 - 36 2012]. (Clean Indoor Air Law).
- (Reference is to EHB 1149 as printed March 1, 2012.)

Conference Committee Report
on
Engrossed House Bill 1149

Signed by:

Representative Turner
Chairperson

Senator Gard

Representative Brown C

Senator Simpson

House Conferees

Senate Conferees