

HOUSE BILL No. 1381

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-5-12.

Synopsis: Smoking prohibition exemptions. Removes the exemptions that allow smoking in certain places where smoking would otherwise be prohibited. Makes conforming changes.

Effective: July 1, 2018.

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January 16, 2018, read first time and referred to Committee on Public Health.



Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1381

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

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

1 SECTION 1. IC 7.1-5-12-4, AS AMENDED BY P.L.70-2014,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 4. (a) ~~Except as provided in section 5 of this~~
4 ~~chapter~~, Smoking is prohibited in the following:
5 (1) A public place.
6 (2) A place of employment.
7 (3) A vehicle owned, leased, or operated by the state if the vehicle
8 is being used for a governmental function.
9 (4) The area within eight (8) feet of a public entrance to:
10 (A) a public place; or
11 (B) a place of employment.
12 (b) An employer shall inform each of the employer's employees and
13 prospective employees of the smoking prohibition applying to the place
14 of employment.
15 (c) An owner, operator, manager, or official in charge of a public
16 place or place of employment shall remove ashtrays or other smoking
17 paraphernalia from areas of the public place or place of employment



1 where smoking is prohibited under this chapter. However, this
 2 subsection does not prohibit the display of ashtrays or other smoking
 3 paraphernalia that are intended only for retail sale.

4 (d) ~~This subsection does not apply to an owner, an operator, a~~
 5 ~~manager, or an official in charge of a public place or place of~~
 6 ~~employment in which smoking is allowed under section 5 of this~~
 7 ~~chapter.~~ An owner, operator, manager, or official in charge of a public
 8 place or place of employment shall post conspicuous signs at each
 9 public entrance that read "State Law Prohibits Smoking Within 8 Feet
 10 of this Entrance" or other similar language.

11 SECTION 2. IC 7.1-5-12-5 IS REPEALED [EFFECTIVE JULY 1,
 12 2018]. Sec. 5: (a) Except as provided in subsection (e) and subject to
 13 section 13 of this chapter, smoking may be allowed in the following:

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

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

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

20 (B) located on land that is adjacent to:

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

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

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

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

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

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

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

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

36 (D) The business limits smoking in the establishment to
 37 smoking with a waterpipe or hookah device.

38 (E) During the preceding calendar year, at least ten percent
 39 (10%) of the business's annual gross income was from the sale
 40 of loose tobacco for use in a waterpipe or hookah device.

41 (F) The person in charge of the business posts in the
 42 establishment conspicuous signs that display the message that



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



- 1 (B) The store prohibits entry by an individual who is less than
 2 eighteen (18) years of age.
 3 (C) The sale of products other than tobacco products and
 4 tobacco accessories is merely incidental.
 5 (D) The sale of tobacco products accounts for at least
 6 eighty-five percent (85%) of the store's annual gross sales.
 7 (E) Food or beverages are not sold in a manner that requires
 8 consumption on the premises; and there is not an area set aside
 9 for customers to consume food or beverages on the premises.
 10 (9) A bar or tavern:
 11 (A) for which a permittee holds:
 12 (i) a beer retailer's permit under IC 7.1-3-4;
 13 (ii) a liquor retailer's permit under IC 7.1-3-9; or
 14 (iii) a wine retailer's permit under IC 7.1-3-14;
 15 (B) that does not employ an individual who is less than
 16 eighteen (18) years of age;
 17 (C) that does not allow an individual who:
 18 (i) is less than twenty-one (21) years of age; and
 19 (ii) is not an employee of the bar or tavern;
 20 to enter any area of the bar or tavern; and
 21 (D) that is not located in a business that would otherwise be
 22 subject to this chapter.
 23 (10) A cigar manufacturing facility that does not offer retail sales.
 24 (11) A premises of a cigar specialty store to which all of the
 25 following apply:
 26 (A) The owner or operator of the store holds a valid tobacco
 27 sales certificate issued under IC 7.1-3-18.5.
 28 (B) The sale of tobacco products and tobacco accessories
 29 account for at least fifty percent (50%) of the store's annual
 30 gross sales.
 31 (C) The store has a separate, enclosed, designated smoking
 32 room that is adequately ventilated to prevent migration of
 33 smoke to nonsmoking areas.
 34 (D) Smoking is allowed only in the room described in clause
 35 (C).
 36 (E) Individuals who are less than eighteen (18) years of age are
 37 prohibited from entering into the room described in clause (C).
 38 (F) Cigarette smoking is not allowed on the premises of the
 39 store.
 40 (G) The owner or operator of the store posts a conspicuous
 41 sign on the premises of the store that displays the message that
 42 cigarette smoking is prohibited.



- 1 (H) The store does not prepare any food or beverage that
2 would require a certified food handler under IC 16-42-5.2.
- 3 (12) The premises of a business that is located in the business
4 owner's private residence (as defined in IC 3-5-2-42.5) if the only
5 employees of the business who work in the residence are the
6 owner and other individuals who reside in the residence:
- 7 (b) The owner, operator, manager, or official in charge of an
8 establishment or premises in which smoking is allowed under this
9 section shall post conspicuous signs in the establishment that read
10 "WARNING: Smoking Is Allowed In This Establishment" or other
11 similar language.
- 12 (c) This section does not allow smoking in the following enclosed
13 areas of an establishment or premises described in subsection (a)(1)
14 through (a)(11):
- 15 (1) Any hallway, elevator, or other common area where an
16 individual who is less than eighteen (18) years of age is permitted.
- 17 (2) Any room that is intended for use by an individual who is less
18 than eighteen (18) years of age.
- 19 (d) The owner, operator, or manager of an establishment or premises
20 that is listed under subsection (a) and that allows smoking shall provide
21 a verified statement to the commission that states that the establishment
22 or premises qualifies for the exemption. The commission may require
23 the owner, operator, or manager of an establishment or premises to
24 provide documentation or additional information concerning the
25 exemption of the establishment or premises:
- 26 SECTION 3. IC 7.1-5-12-7, AS ADDED BY P.L.141-2012,
27 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
28 JULY 1, 2018]: Sec. 7. (a) This section does not apply to an
29 establishment or premises in which smoking is allowed under section
30 5 of this chapter.
- 31 (b) (a) The owner, operator, manager, or official in charge of a
32 public place shall do the following:
- 33 (1) Post conspicuous signs that read "Smoking Is Prohibited By
34 State Law" or other similar language.
- 35 (2) Ask an individual who is smoking in violation of this chapter
36 to refrain from smoking.
- 37 (3) Cause to be removed from the public place an individual who
38 is smoking in violation of this chapter and fails to refrain from
39 smoking after being asked to refrain from smoking.
- 40 (e) (b) In addition to the requirements under subsection (b); (a), the
41 owner or operator of a restaurant shall post a conspicuous sign at each
42 entrance to the restaurant informing the public that smoking is



1 prohibited in the restaurant.

