



New Smoke-Free Air Law

Frequently Asked Questions

General Information

When does Indiana's new statewide smoking ban go into effect?

The new law goes into effect July 1, 2012.

Where can I find a copy of House Enrolled Act No. 1149?

You can access it at: BreatheIndiana.com.

Where is smoking prohibited?

Smoking is prohibited in most public places and places of employment. Smoking is also prohibited in state-owned vehicles and school buses under certain circumstances.

Where is smoking permitted?

Smoking is permitted in the following establishments: a horse-racing facility, a riverboat, a facility with a gambling game license, a satellite-gaming facility, cigar bars, hookah bars, certain fraternal clubs, a retail-tobacco store, a bar or tavern meeting certain requirements, a cigar-manufacturing facility, a cigar-specialty store, a business in a private residence, provided that each establishment meets the requirements of HEA 1149, I.C. 7.1-5-12-5.

How far must someone be from the entrance of a public place or place of employment in order to smoke?

Smoking is prohibited within eight feet of a public entrance to a public place and place of employment.

Who enforces the law?

The Alcohol & Tobacco Commission is the primary enforcement agency. Additionally, the Indiana State Department of Health, a local health department, a health and hospital corporation (Marion County), the Division of Fire and Building Safety, and any law enforcement officer may enforce the law.

Where may I file a complaint for a violation of the smoking ban?

You may file a complaint at www.IN.gov/atc.

Is smoking prohibited in vehicles?

Smoking is only prohibited in state-government vehicles owned, leased and operated for governmental functions. Smoking is permitted in private vehicles.

Where should signage be located?

Signs are required to be posted at all public entrances of enclosed public places and places of employment. Signs must read "State Law Prohibits Smoking Within Eight Feet of this Entrance" or other similar language. Signs are available online at BreatheIndiana.com.

Where can I get information on quitting tobacco use?

You can get more information from QuitNowIndiana.com.

How does the state law affect local ordinances on smoking?

The new state statute does not supersede a local county, city, or town ordinance previously adopted, if that local ordinance is more restrictive than state law. Additionally, the new state statute does not prohibit a local county, city, or town from adopting an ordinance more restrictive than state law.

May a business exempt from the state smoking law choose to prohibit smoking?

Yes. A business owner or manager may voluntarily choose to prohibit smoking, even if the type of business meets one of the exemptions to the state's smoking law. For example, a tavern owner may choose to prohibit smoking.

Businesses

What does the new state smoke-free air law require my business to do?

A business that is not exempt from the state law must post required signage, remove indoor ashtrays and other smoking receptacles, and direct any person who is smoking to extinguish the cigarette, cigar, or other lighted tobacco item.

Frequently Asked Questions (continued)

What signage is needed at the entrance of an establishment?

Signs are required at all public entrances of enclosed public places and places of employment. Signs must read "State Law Prohibits Smoking within Eight Feet of this Entrance" or other similar language. Signs are available for printing at BreatheIndiana.com.

Can bars and taverns allow smoking?

Yes, bars and taverns may allow smoking, provided they meet the requirements in HEA 1149 (I.C. 7.1-5-12-5).

Is smoking permitted on outdoor patios?

Smoking is permitted on an outdoor patio that is eight feet from all public entrances and where smoke may not enter where smoking is prohibited.

What are some examples of public places and places of employment that cannot allow smoking?

Some examples of public places and places of employment that cannot allow smoking are hotels, motels, nursing homes, healthcare facilities, assisted living facilities, mental health facilities, bowling alleys, theatres, and most other workplaces. Smoking is not prohibited in private residences located in these facilities.

Can places of employment allow smoking in outside structures?

Yes. Places of employment may allow designated smoking areas that are located outside of the structure considered as the place of employment if it is eight feet from all public entrances of the establishment.

What are the requirements for a retail tobacco shop to allow smoking?

A retail tobacco shop must have a valid tobacco sales certificate issued on or before June 30, 2012, and only permit those 18 and older into the establishment. Additionally, tobacco product sales must account for 85 percent of store's annual gross sales, food and beverages may not be sold for consumption on the premises, and there may not be an area designated for customers to consume food and beverages.

What are the requirements for hookah and cigar bars to allow smoking?

A hookah bar may only allow persons 21 and older to enter, must hold a beer, liquor, or wine retailer's

permit, must limit smoking to cigars or smoking with a water pipe or hookah device, and at least 10 percent of the business's annual gross income must have been from the sale of cigars, rental of onsite humidors, or sale of loose tobacco for the use in water pipe or hookah device during the previous calendar year. Additionally, a conspicuous sign must be displayed with the message that cigarette smoking is prohibited.

If a business is located in the owner's private residence, is smoking allowed?

Yes, but only if the employees of the business are the owner and other employees who reside in the private residence. Signage must be posted reading: "WARNING: Smoking Is Allowed in this Establishment" or similar language. Smoking is not allowed in any enclosed area that is used by individuals less than 18 years of age.

What are the requirements for a cigar specialty store to allow smoking?

A cigar specialty store must hold a valid tobacco sales certificate issued on or before June 30, 2012; the sale of tobacco products and accessories must account for at least 50 percent of the store's annual gross sales; and a sign must be conspicuously posted saying that cigarette smoking is prohibited. The store must have a separate, enclosed, designated smoking room that is adequately ventilated and prohibit entry of individuals less than 18 years of age. Cigarette smoking is not allowed on the premises of the store. Food and beverages may not be sold for consumption on the premises and an area may not be designated for the consumption of food and beverages.

What are the requirements for a gaming facility to allow smoking?

The gaming facility must operate under a gambling game license.

Define gaming facilities and surrounding properties that allow smoking.

Casinos, riverboats, horse-racing facilities, and satellite locations.

- a. A horse-racing facility must be operated under the appropriate alcoholic-beverage permit. Any other permanent structure on land owned or leased that is adjacent to the facility may also allow smoking.



Frequently Asked Questions (continued)

- b. A riverboat must be as defined by Indiana Code. Any other permanent structure that is owned or leased by the owner of the riverboat and located on land adjacent to the dock at which the riverboat is moored or the land on which the riverboat is situated may allow smoking.

Private and Fraternal Clubs

How is a private club defined in Indiana Code?

As defined by I.C. 7.1-3-20-1, a club must meet the following requirements to gain the appropriate club permit:

- (a) It shall have been organized in good faith under authority of law;
- (b) It shall have been in active, continuous existence for at least three (3) years prior to the date the application for the permit is filed;
- (c) It shall have maintained, in good faith, a membership roll for the three (3) year period;
- (d) It shall have a paid-up membership of more than fifty (50) members at the time the application is filed;
- (e) It shall be the owner, lessee, or occupant of an establishment operated solely for objects of a national, social, patriotic, political, or athletic nature, or the like;
- (f) It shall not be operated for pecuniary gain;
- (g) The property and the advantages of the organization shall belong to its members; and
- (h) It shall maintain an establishment provided with special space and accommodations where, in consideration of payment, food, with or without lodging, is habitually served.

How is a fraternal club defined in Indiana Code?

As defined by I.C. 7.1-3-20-7, a fraternal club means an association or corporation, the membership of which is comprised of or forms:

- (a) a lodge or local chapter or corresponding unit of a fraternal order or of another association of a like nature; or
- a body whose membership is comprised of persons who have served in the armed forces of the United States; and which has been in continual existence on a national scale for more than five (5) years prior to the date the application is filed.
- (b) Fraternal clubs and labor organizations need not meet the requirements of section 1 of this chapter, but are considered clubs for all other purposes of this title.

Is it true that smoking is allowed in private or fraternal clubs?

Yes, if the private and fraternal club meets all of the requirements as described in HEA 1149 (I.C. 7.1-5-12-5).

Does the private or fraternal club have to be exempt from federal income taxation to also be exempt from Indiana's smoking law?

Yes. The club has to be exempt from federal income taxation under 26 U.S.C 501 (c) in order to be exempt from Indiana's smoking law, as well as meet other requirements in HEA 1149 (I.C. 7.1-5-12-5).

Does the private or fraternal club have to provide a smoking room?

Yes. The club must provide a separate, enclosed, designated smoking room or area that is ventilated to prevent the migration of smoke to non-smoking areas on the premises. Smoking is only allowed in the designated area or room. Additionally, someone less than 18 years of age cannot be allowed to enter the designated area or room.

Does the membership of the private or fraternal club have to vote to allow smoking?

Yes. Members must have voted, within the two previous years, to allow smoking on the premises. The initial vote must occur on or before June 30, 2012, in order to be exempt on July 1, 2012.

What other requirements do private or fraternal clubs have to meet to allow smoking?

In addition to the requirements noted above, the club can only provide alcoholic beverages to its bona fide members and their guests.

