



February 4, 2021

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## HOUSE BILL No. 1077

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DIGEST OF HB 1077 (Updated February 2, 2021 8:40 pm - DI 134)

**Citations Affected:** IC 16-20; IC 16-22; IC 16-42; IC 32-25.5; IC 36-1.

**Synopsis:** Child operated refreshment stands. Provides that a local health department, the health and hospital corporation, a county, a municipality, or a township may not adopt or enforce a law, rule, ordinance, or resolution that prohibits or regulates, including by requiring a license, permit, or fee, the sale of lemonade or other nonalcoholic beverages from a stand on private property or in a public park by an individual who is less than 18 years of age. Provides that the individual who operates the stand must comply with certain requirements. Provides that a stand is not considered a food establishment and does not require a certified food protection manager. Provides that the governing documents of a homeowners association may not prohibit or regulate, including by requiring a permit or fee, the sale of lemonade or other nonalcoholic beverages from a stand on property located in the subdivision by an individual who is less than 18 years of age. Provides that a homeowners association: (1) does not owe a duty of care to persons participating in a beverage sale; and (2) is not liable for any injury to persons participating in a beverage sale; except for willful or wanton acts or gross negligence of the homeowners association.

**Effective:** July 1, 2021.

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### Pressel, Lindauer

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January 4, 2021, read first time and referred to Committee on Commerce, Small Business and Economic Development.  
February 4, 2021, amended, reported — Do Pass.

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HB 1077—LS 6238/DI 77





February 4, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

## HOUSE BILL No. 1077

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 16-20-1-31 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2021]: **Sec. 31. Notwithstanding any other law, a local health**  
4 **department may not adopt or enforce a law, rule, ordinance, or**  
5 **resolution that prohibits or regulates, including by requiring a**  
6 **license, permit, or fee, the sale of lemonade or other nonalcoholic**  
7 **beverages from a stand on private property or in a public park by**  
8 **an individual who is less than eighteen (18) years of age.**  
9 (b) A stand that provides the sale of lemonade or other  
10 nonalcoholic beverages on private property or in a public park by  
11 an individual who is less than eighteen (18) years of age and  
12 complies with the requirements of this section is not a food  
13 establishment for purposes of IC 16-42-5.  
14 (c) An individual who sells lemonade or other nonalcoholic  
15 beverages from a stand, as allowed under subsection (a), must  
16 comply with the following:  
17 (1) If the stand is on private property, obtain the permission

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- of the owner, tenant, or lessee of the private property.
- (2) If the stand is in a public park, place the stand in a location approved by the park manager and be accompanied by a parent or legal guardian for the duration of the time that the stand is in operation.
- (3) Not operate the stand on more than two (2) consecutive days nor operate more than eight (8) days in a thirty (30) day period.

SECTION 2. IC 16-22-8-60 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 60. Notwithstanding any other law, a corporation may not adopt or enforce a law, rule, ordinance, or resolution that prohibits or regulates, including by requiring a license, permit, or fee, the sale of lemonade or other nonalcoholic beverages from a stand on private property or in a public park by an individual who is less than eighteen (18) years of age. However, the individual may not operate the stand on more than two (2) consecutive days and may not exceed eight (8) days in a thirty (30) day period.**

(b) A stand that provides the sale of lemonade or other nonalcoholic beverages on private property or in a public park by an individual who is less than eighteen (18) years of age and complies with the requirements of this section is not a food establishment for purposes of IC 16-42-5.

(c) An individual who sells lemonade or other nonalcoholic beverages from a stand, as allowed under subsection (a), must comply with the following:

- (1) If the stand is on private property, obtain the permission of the owner, tenant, or lessee of the private property.
- (2) If the stand is in a public park, place the stand in a location approved by the park manager and be accompanied by a parent or legal guardian for the duration of the time that the stand is in operation.
- (3) Not operate the stand on more than two (2) consecutive days nor operate more than eight (8) days in a thirty (30) day period.

SECTION 3. IC 16-42-5.2-3, AS AMENDED BY P.L.139-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 3. This chapter does not apply to the following:**

- (1) Hospitals licensed under IC 16-21.
- (2) Health facilities licensed under IC 16-28.
- (3) Housing with services establishments that are required to file disclosure statements under IC 12-10-15.



- 1 (4) Continuing care retirement communities required to file  
2 disclosure statements under IC 23-2-4.
- 3 (5) Community mental health centers (as defined in  
4 IC 12-7-2-38).
- 5 (6) Private mental health institutions licensed under IC 12-25.
- 6 (7) An area agency on aging designated under IC 12-10-1 that  
7 provides food under a nutrition service program. However, the  
8 premises where the food is prepared is not exempt from the  
9 requirements under this chapter.
- 10 (8) A food pantry that:
- 11 (A) is operated or affiliated with a nonprofit organization that  
12 is exempt from federal income taxation under Section  
13 501(c)(3) of the Internal Revenue Code; and
- 14 (B) distributes food, which may include food from the United  
15 States Department of Agriculture, to needy persons.
- 16 However, a food bank or other facility that distributes donated  
17 food to other organizations is not exempt from the requirements  
18 of this chapter.
- 19 **(9) A lemonade or other beverage stand as described in**  
20 **IC 16-20-1-31 or IC 16-22-8-60.**
- 21 SECTION 4. IC 32-25.5-3-12 IS ADDED TO THE INDIANA  
22 CODE AS A NEW SECTION TO READ AS FOLLOWS  
23 [EFFECTIVE JULY 1, 2021]: **Sec. 12. (a) The governing documents**  
24 **may not prohibit or regulate, including by requiring a permit or**  
25 **fee, the sale of lemonade or other nonalcoholic beverages from a**  
26 **stand on private property located in the subdivision by an**  
27 **individual who is less than eighteen (18) years of age.**
- 28 **(b) An individual who sells lemonade or other nonalcoholic**  
29 **beverages from a stand, as allowed under subsection (a), must**  
30 **comply with the following:**
- 31 **(1) If the stand is on private property, obtain the permission**  
32 **of the owner, tenant, or lessee of the private property in the**  
33 **subdivision.**
- 34 **(2) Unless allowed by the governing documents, not operate**  
35 **the stand on more than two (2) consecutive days nor operate**  
36 **more than eight (8) days in a thirty (30) day period.**
- 37 **(c) A homeowners association:**
- 38 **(1) does not owe a duty of care to persons participating in a**  
39 **beverage sale described in subsection (a); and**
- 40 **(2) is not liable for any injury to persons participating in a**  
41 **beverage sale described in subsection (a);**  
42 **except for willful or wanton acts or gross negligence of the**



- 1 **homeowners association.**  
2 SECTION 5. IC 36-1-30 IS ADDED TO THE INDIANA CODE AS  
3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
4 1, 2021]:  
5 **Chapter 30. Children's Lemonade and Beverage Stands**  
6 **Sec. 1. Notwithstanding any other law, a unit may not adopt or**  
7 **enforce a law, rule, ordinance, or resolution that prohibits or**  
8 **regulates, including by requiring a license, permit, or fee, the sale**  
9 **of lemonade or other nonalcoholic beverages from a stand on**  
10 **private property or in a public park by an individual who is less**  
11 **than eighteen (18) years of age.**  
12 **Sec. 2. An individual who sells lemonade or other nonalcoholic**  
13 **beverages from a stand, as allowed under section 1 of this chapter,**  
14 **must comply with the following:**  
15 (1) **If the stand is on private property, obtain the permission**  
16 **of the owner, tenant, or lessee of the private property.**  
17 (2) **If the stand is in a public park, place the stand in a location**  
18 **approved by the park manager and be accompanied by a**  
19 **parent or legal guardian for the duration of the time that the**  
20 **stand is in operation.**  
21 (3) **Not operate the stand on more than two (2) consecutive**  
22 **days nor operate more than eight (8) days in a thirty (30) day**  
23 **period.**



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Small Business and Economic Development, to which was referred House Bill 1077, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 3, delete "manager." and insert "**manager and be accompanied by a parent or legal guardian for the duration of the time that the stand is in operation.**".

Page 2, line 28, delete "manager." and insert "**manager and be accompanied by a parent or legal guardian for the duration of the time that the stand is in operation.**".

Page 3, line 22, after "on" insert "**private**".

Page 4, line 14, delete "manager." and insert "**manager and be accompanied by a parent or legal guardian for the duration of the time that the stand is in operation.**".

and when so amended that said bill do pass.

(Reference is to HB 1077 as introduced.)

MORRIS

Committee Vote: yeas 11, nays 0.

