



2021 End of Session Report

CAI's Indiana Legislative Action Committee (IN LAC) had an active legislative session. The 17-member committee volunteered hundreds of collective hours to review bills, draft testimony, meet with legislators and other decision-makers, and testify for or against bills. Indiana legislators introduced more than 1,200 bills and the LAC closely monitored 15 bills that would have directly affected community associations; their top priority bills are summarized below.

HB 1038, Septic system inspection before property transfer. IN LAC monitored this bill which would have provided that, beginning July 1, 2022, before a fee simple interest in a dwelling connected to a residential onsite sewage system, a non dwelling structure connected to a commercial onsite sewage system, or a lot or tract of land containing a water well in addition to a residential or commercial onsite sewage system may be transferred: (1) the residential or commercial onsite sewage system must be inspected by a qualified inspector and (if applicable) water from the water well must be tested by a qualified tester; (2) a document certifying that the inspection or testing has been conducted and the results of the inspection or testing must be provided to the local health department, the county recorder, and the person to whom the fee simple interest is being transferred; and (3) any cause of failure of the residential or commercial onsite sewage system must be eliminated before the county recorder may record a deed transferring a fee simple interest in the property. Provides exceptions.

Status: FAILED

HB 1056, Recording requirements. IN LAC monitored this bill that amended the requirements for property instruments and conveyances to be recorded, by eliminating the onerous requirement of a "disinterested witness", for documents like liens and covenants to be filed with a county recorder. This act adds instances in which a property instrument is considered validly recorded for purposes of constructive notice. This bill was effective upon passage on February 18, 2021.

Status: PASSED

HB 1077, Child operated refreshment stands. IN LAC worked with the bill's author, who agreed to amend this bill that provided that a homeowners association's governing documents 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. The LAC's amendment allowed for the association's prohibition to only apply if the lemonade stand was located on privately owned property within the neighborhood with the permission of the homeowner. The LAC's amendment also allowed for the association to continue to regulate the use of the community's common areas. This bill also provides that a homeowners association does not owe a duty of care to persons participating in a beverage sale and 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.

Status: FAILED

HB 1164, Various utility matters. IN LAC monitored this bill which pertains to the placement of 5G towers within a community association. This Act states a "permit authority" (such as a municipality or zoning board) must allow an HOA to register to receive notice of when a company like Verizon submits an application to install a new "wireless support structure" (like a 5G tower). This Act also addresses problems that arise when a company, such as Verizon, unilaterally decides where to place 5G towers with no right for anyone to object, the

placement can either be an eyesore or simply in a bad location such as too close to a homeowner's property. A homeowners association can also now request that individual homeowners be provided notice by either email or US mail. By providing notice, an association or homeowners would now have an opportunity to attend any hearing on the application and if they choose, to object to the planned placement of the 5G tower. Unfortunately, this notice is not required by a municipality or zoning board and is only optional. This bill takes effect, July 1, 2021.

Status: PASSED

HB 1314, Recorded discriminatory covenants. IN LAC monitored this bill, which permits a homeowner to file a statement or notice with the county recorder that points out that a recorded discriminatory covenant is invalid and unenforceable. The statement or notice could state "The chain of title for the real property described herein contains a restrictive covenant that, if enforced, would discriminate against individuals based upon their race, color, sex, religion, familial status, disability, or national origin. The covenant is invalid, unenforceable, and antithetical to American values of equal justice and equality under the law." This bill becomes effective July 1, 2021.

Status: PASSED

HB 1560, Homeowners associations and solar power. IN LAC monitored this bill that provided that, subject to certain specified exceptions, a homeowners association may not: (1) prohibit the owner of a dwelling unit from installing a solar energy system; (2) impose unreasonable limitations on the owner's ability to install or use a solar energy system; or (3) require the removal of a solar energy system that has been installed. This provides, however, that a homeowners association may require preapproval by the homeowners association concerning the location of a solar energy system and of the manner in which the solar energy system is installed. Applies only to rules, covenants, declarations of restrictions, and other governing documents adopted or amended by a homeowners association after June 30, 2021.

Status: FAILED

SB 1, Civil immunity related to COVID-19. IN LAC supported this bill which provides civil immunity for damages resulting from exposure of an individual to COVID-19 on the premises (1) owned or operated by a person, (2) on any premises on which the person or an employee or agent of the person provided property or services to the individual, (3) or during an activity managed, organized, or sponsored by the person. Community associations are protected under this act. This act does not grant immunity from civil tort liability to a person whose actions or omissions constitute gross negligence or willful or wanton misconduct (including fraud and intentionally tortious acts) as proven by clear and convincing evidence. This act applies to causes of action that accrue on or after March 1, 2020 and expires December 31, 2024.

Status: PASSED

SB 127, Use of property as a short term rental. This bill would have provided that if a taxpayer rents the taxpayer's residential real property to a third party or third parties for more than 29 nights per year: (1) the taxpayer's personal property such as furnishings and equipment used in the taxpayer's residential real property is classified as business personal property; (2) the taxpayer's residential real property does not qualify as a homestead; (3) the taxpayer is not entitled to the standard or supplemental homestead deductions; and (4) the taxpayer's residential real property is subject to the nonresidential real property circuit breaker tax credit rather than the homestead circuit breaker tax credit.

Status: FAILED

Indiana Contact Information

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Your Assistance is Needed

Expenses incurred by the LAC are paid for with donations and by Advocacy Fund fees. Corporate contributions are allowed and appreciated. Most community association boards can legally allocate money to support the IN LAC. Please visit www.caionline.org/lacdonate/ and donate to “Indiana” to support our continued efforts.

For more information visit www.caionline.org/INLAC.