

By: Crownover, King of Parker, Woolley,  
Hamilton, Escobar, et al.

H.B. No. 9

A BILL TO BE ENTITLED

AN ACT

relating to the elimination of smoking in certain workplaces and  
public places; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle H, Title 2, Health and Safety Code, is  
amended by adding Chapter 169 to read as follows:

CHAPTER 169. SMOKING PROHIBITED IN PUBLIC PLACES

AND PLACES OF EMPLOYMENT

Sec. 169.001. DEFINITIONS. In this chapter:

(1) "Bar" means an enclosed indoor establishment that  
is open to the public and is devoted primarily to the sale and  
service of alcoholic beverages for on-premises consumption.

(2) "Business" means:

(A) a sole proprietorship, partnership, joint  
venture, corporation, or other business entity, either for-profit  
or not-for-profit, including a retail establishment, where goods or  
services are sold;

(B) a professional corporation or other entity  
where legal, medical, dental, engineering, architectural, or other  
professional services are delivered; or

(C) a private club.

(3) "Department" means the Department of State Health  
Services.

(4) "Employee" means an individual who:

1                   (A) is employed by an employer for direct or  
2 indirect monetary wages or profit; or

3                   (B) volunteers the individual's services for an  
4 employer.

5                   (5) "Employer" means a person who employs one or more  
6 individuals or uses the volunteer services of one or more  
7 individuals. The term includes:

8                   (A) a nonprofit entity;

9                   (B) the legislative, executive, and judicial  
10 branches of state government; and

11                   (C) any political subdivision of this state.

12                   (6) "Enclosed area" means all space between a floor  
13 and ceiling that is enclosed on all sides by solid walls or windows,  
14 exclusive of doorways, which extend from the floor to the ceiling.

15                   (7) "Health care facility" means an office or  
16 institution in which care or treatment is provided for physical,  
17 mental, or emotional diseases or other medical, physiological, or  
18 psychological conditions.

19                   (8) "Place of employment" means an area under the  
20 control of an employer that is used by employees of the employer but  
21 is not generally open to the public.

22                   (9) "Private club" means an organization that:

23                   (A) owns, leases, or occupies a building used  
24 exclusively for club purposes at all times;

25                   (B) is operated solely for a recreational,  
26 fraternal, social, patriotic, political, benevolent, or athletic  
27 purpose, but not for pecuniary gain;

1                   (C) sells alcoholic beverages only incidentally  
2 to its operation;

3                   (D) is managed by a board of directors or similar  
4 body chosen by the members at an annual meeting;

5                   (E) has established bylaws or a constitution to  
6 govern the club's activities; and

7                   (F) is exempt from federal income taxation under  
8 Section 501(a), Internal Revenue Code of 1986, as a club described  
9 by Section 501(c)(7) of that code.

10                  (10) "Public place" means:

11                   (A) an enclosed indoor area the public is invited  
12 or permitted to enter, including all or part of the following:

13                               (i) a restaurant;

14                               (ii) a bar;

15                               (iii) a retail or service establishment;

16                               (iv) a facility of a business or nonprofit  
17 entity;

18                               (v) a shopping mall;

19                               (vi) a convention facility;

20                               (vii) a theater or other facility primarily  
21 used for exhibiting a performance;

22                               (viii) a sports arena;

23                               (ix) a health care facility;

24                               (x) a licensed child-care or adult day-care  
25 facility;

26                               (xi) a polling place;

27                               (xii) a room in which a public meeting under

1 the control of this state, an agency or branch of government of this  
2 state, or a political subdivision of this state is in progress;

3 (xiii) a common area in a multiple-unit  
4 residential facility;

5 (xiv) a public transportation facility,  
6 including a bus or taxicab, and a ticket, boarding, or waiting area  
7 of a public transportation depot;

8 (xv) a waiting room, hallway, room, or ward  
9 in a health care facility; or

10 (xvi) a restroom, lobby, reception area,  
11 service line, hallway, elevator, or other common-use area the  
12 public is invited or permitted to enter; or

13 (B) a facility of the state or of a local  
14 government, including a building or vehicle owned, leased, or  
15 operated by the state or local government, regardless of whether  
16 the public is invited or permitted to enter.

17 (11) "Restaurant" means an enclosed indoor  
18 establishment that is open to the public and is devoted primarily to  
19 the sale and service of food for immediate consumption. The term  
20 includes a bar located at the establishment.

21 (12) "Retail or service establishment" means an  
22 establishment that sells goods or services to the public.

23 (13) "Service line" means an indoor line in which one  
24 or more persons wait for or receive service, whether or not the  
25 service involves the exchange of money.

26 (14) "Shopping mall" means an enclosed public walkway  
27 or hall area that connects retail, service, or professional

1 establishments.

2 (15) "Smoke" means to inhale, exhale, burn, or carry a  
3 lighted cigar, cigarette, pipe, or other smoking equipment in any  
4 manner.

5 (16) "Sports arena" means a place in which a person  
6 engages in physical exercise, participates in athletic  
7 competition, or witnesses sports or other events.

8 (17) "Tobacco shop" means a business primarily devoted  
9 to the sale of tobacco products, as that term is defined by Section  
10 155.001, Tax Code, that does not hold an alcoholic beverage permit  
11 or license.

12 Sec. 169.002. SMOKING PROHIBITED. A person may not smoke:

13 (1) in a public place or place of employment;

14 (2) within 15 feet of an entrance, operable window, or  
15 ventilation system of a public place or place of employment;

16 (3) in the seating area of an outdoor arena, stadium,  
17 or amphitheater; or

18 (4) in bleachers or grandstands for use by spectators  
19 at a sporting or other public event.

20 Sec. 169.003. EXCEPTIONS. This chapter does not apply to:

21 (1) a private residence, except when used as a  
22 child-care, adult day-care, or health care facility;

23 (2) a hotel or motel room rented to a guest and  
24 designated as a smoking room, if:

25 (A) not more than 20 percent of rooms rented are  
26 designated as smoking rooms;

27 (B) all smoking rooms in the hotel or motel on the

1 same floor are contiguous;

2 (C) smoke from smoking rooms does not enter an  
3 area in which smoking is prohibited; and

4 (D) nonsmoking rooms are not converted to smoking  
5 rooms;

6 (3) a private or semiprivate room in a nursing home or  
7 long-term care facility occupied by one or more persons, all of whom  
8 are smokers and have requested in writing to be placed in a room  
9 where smoking is permitted, provided that smoke from the room does  
10 not enter an area where smoking is prohibited;

11 (4) a fraternal or veterans organization as defined by  
12 Section 32.11, Alcoholic Beverage Code;

13 (5) a private club not open to the general public;

14 (6) a bingo hall;

15 (7) a premises on which charitable bingo is authorized  
16 to be conducted under Chapter 2001, Occupations Code;

17 (8) property owned or leased by an organization that  
18 is a church, synagogue, religious society, nonprofit veterans  
19 organization, or fraternal organization during the times the  
20 property is being used for religious services, meetings,  
21 fund-raising, or other activities of the organization;

22 (9) a tobacco shop;

23 (10) a private club that does not employ any  
24 employees:

25 (A) unless the club is being used for a function  
26 to which the general public is invited; and

27 (B) provided the club is not established for the

1 sole purpose of avoiding compliance with this chapter;

2 (11) a bar, if the operator of the bar provides health  
3 benefits coverage for each employee employed by the bar; or

4 (12) privately owned property designated exempt under  
5 Section 169.0035.

6 Sec. 169.0035. PRIVATELY OWNED PROPERTY. Notwithstanding  
7 any other provision in this chapter, a person who privately owns  
8 real property may designate the property as exempt from the  
9 provisions of this chapter by posting on the property clearly and  
10 conspicuously, in a manner reasonably necessary to give notice, a  
11 statement that smoking is permitted on the property.

12 Sec. 169.004. DUTIES OF PERSON IN CONTROL OF A PUBLIC PLACE  
13 OR PLACE OF EMPLOYMENT. A person in control of a public place or  
14 place of employment shall:

15 (1) post clearly and conspicuously in a manner  
16 reasonably necessary to give notice to persons entering the public  
17 place or place of employment:

18 (A) a sign with the words "NO SMOKING"; or

19 (B) a sign with the international no smoking  
20 symbol depicting a burning cigarette overlaid by a red circle with a  
21 diagonal line across the cigarette;

22 (2) remove all ashtrays from any area where smoking is  
23 prohibited; and

24 (3) make a reasonable effort to request that any  
25 person known to be smoking in a prohibited area extinguish the  
26 burning tobacco product.

27 Sec. 169.0045. CONTRACTOR PREFERENCES. An employer in

1 control of a place of employment subject to this chapter may not  
2 award a contract, including contracts and contracts for services  
3 related to contracts under Chapter 2166, Government Code, to a  
4 proposed contractor unless the contractor offers to the  
5 contractor's employees a smoking cessation program to assist  
6 employees who smoke.

7 Sec. 169.0046. SMOKING CESSATION PROGRAM. (a) An employer  
8 in control of a place of employment subject to this chapter may  
9 offer to employees a smoking cessation program to assist employees  
10 who smoke.

11 (b) An employer that offers a program under this section is  
12 entitled to a credit against taxes owed by the employer under  
13 Chapter 171, Tax Code, in accordance with rules adopted by the  
14 comptroller. The amount of the credit is equal to the cost of the  
15 program.

16 (c) To qualify for the credit under Subsection (b), the  
17 program must offer assistance to an employee through at least two  
18 attempts to quit smoking and may be offered directly by the employer  
19 or through contract with another provider.

20 Sec. 169.005. DECLARATION OF ESTABLISHMENT AS NONSMOKING.  
21 (a) A person in control of an establishment, facility, or outdoor  
22 area may declare that entire establishment, facility, or outdoor  
23 area as a nonsmoking place.

24 (b) A person may not smoke in a place in which a sign  
25 conforming to the requirements of Section 169.004 is posted.

26 Sec. 169.006. ENFORCEMENT. (a) The department or a public  
27 health official may enforce this chapter.



1       (b) In enforcing this chapter the department, a public  
2 health official, or a law enforcement officer may enter and inspect  
3 a public place.

4       (c) A person may file a complaint concerning a violation of  
5 this chapter with the department or a political subdivision of the  
6 state.

7       Sec. 169.007. INJUNCTIVE RELIEF. In addition to the other  
8 remedies provided by this chapter, the attorney general or a  
9 district, county, or city attorney may bring an action for  
10 injunctive relief to enforce this chapter.

11       Sec. 169.008. OFFENSES; PENALTIES. (a) A person who  
12 violates Section 169.002, 169.004, or 169.005(b) commits an  
13 offense. An offense under this subsection is a misdemeanor  
14 punishable by a fine not to exceed \$100.

15       (b) If it is shown on the trial of an offense under  
16 Subsection (a) that the defendant has previously been finally  
17 convicted of an offense under that subsection that occurred within  
18 one year before the date of the offense that is the subject of the  
19 trial, on conviction the defendant shall be punished by a fine not  
20 to exceed \$500.

21       (c) If it is shown on the trial of an offense under  
22 Subsection (a) that the defendant has previously been finally  
23 convicted of two offenses under that subsection that occurred  
24 within one year before the date of the offense that is the subject  
25 of the trial, on conviction the defendant shall be punished by a  
26 fine not to exceed \$1,000.

27       Sec. 169.009. SEPARATE VIOLATIONS. Each day on which a

1 violation of this chapter occurs is considered a separate  
2 violation.

3 Sec. 169.010. PUBLIC EDUCATION. The department may engage  
4 in a program to educate the public about the provisions of this  
5 chapter.

6 Sec. 169.011. APPLICABILITY; CONSTRUCTION. (a) Except as  
7 provided by Subsection (b) and Section 169.012, this chapter  
8 preempts and supersedes a local ordinance, rule, or regulation  
9 adopted by any political subdivision that restricts or prohibits  
10 smoking to a lesser degree than this chapter.

11 (b) This chapter does not preempt or supersede a local  
12 ordinance, rule, or regulation adopted by a political subdivision  
13 with a population of fewer than 50,000 people that prohibits or  
14 restricts smoking to a lesser degree than this chapter if the local  
15 ordinance, rule, or regulation was adopted by a political  
16 subdivision before September 1, 2007.

17 (c) Subsection (a) does not prohibit the adoption by a  
18 political subdivision, after September 1, 2007, of a local  
19 ordinance, rule, or regulation that prohibits or restricts smoking  
20 to a greater degree than this chapter.

21 (d) This chapter shall not be construed to permit smoking  
22 where it is restricted by other law.

23 (e) This chapter does not preempt or supersede Section  
24 38.006, Education Code.

25 Sec. 169.012. LOCAL OPTION ELECTION. (a) The voters in a  
26 municipality may, in the same manner and procedure as for a charter  
27 amendment, vote to allow the governing body of the municipality to

1 adopt a local ordinance that restricts or prohibits smoking to a  
2 lesser degree than this chapter. An election under this section  
3 shall be held on May 10, 2008.

4 (b) This chapter, other than this section, does not apply  
5 within the boundaries of a municipality that adopts an ordinance  
6 under Subsection (a).

7 SECTION 2. Subchapter A, Chapter 2166, Government Code, is  
8 amended by adding Section 2166.009 to read as follows:

9 Sec. 2166.009. CONTRACTOR PREFERENCES: NONSMOKING POLICY.  
10 The commission shall give preference to a proposed state contractor  
11 in awarding contracts under this chapter, including contracts for  
12 services related to contracts under this chapter, to a contractor  
13 who has a work site nonsmoking policy for the contractor's  
14 employees.

15 SECTION 3. The following are repealed:

16 (1) Section 48.01, Penal Code; and

17 (2) Section 2, Chapter 290, Acts of the 64th  
18 Legislature, Regular Session, 1975.

19 SECTION 4. The repeal by this Act of Section 48.01, Penal  
20 Code, does not apply to an offense committed under that section  
21 before the effective date of this Act. An offense committed before  
22 that date is covered by the law in effect on the date the offense was  
23 committed, and the former law is continued in effect for that  
24 purpose.

25 SECTION 5. This Act takes effect January 1, 2008.