

By: Thompson

H.B. No. 3415

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of smoking in eating and drinking places
in certain areas of the state; providing penalties.

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

SECTION 1. Chapter 109, Alcoholic Beverage Code, is amended
by adding Subchapter E to read as follows:

SUBCHAPTER E. SMOKING PROHIBITED IN CERTAIN EATING AND DRINKING
PLACES

Sec. 109.71. DEFINITIONS. In this subchapter:

(1) "Cigar bar" means a business that:

(A) has less than 15 percent of gross sales in
tobacco products, as that term is defined by Section 155.001, Tax
Code;

(B) holds a permit under Chapter 155, Tax Code;
and

(C) holds an alcoholic beverage permit or license
under Chapter 25, 28, 32, or 69 originally issued before June 1,
2009.

(2) "Eating and drinking place" means an establishment
that holds a permit or license issued under Chapter 25, 28, 32, or
69.

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

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

4 Sec. 109.72. SMOKING PROHIBITED. A person may not smoke:

5 (1) in the enclosed area of an eating and drinking
6 place; or

7 (2) within 15 feet of the primary entrance to an eating
8 and drinking place.

9 Sec. 109.73. EXCEPTIONS. This subchapter does not apply to
10 a cigar bar or a fraternal or veterans organization as described by
11 Section 32.11.

12 Sec. 109.74. DUTIES OF PERSON IN CONTROL OF AN EATING AND
13 DRINKING PLACE. A person in control of an eating and drinking place
14 shall:

15 (1) post clearly and conspicuously in a manner
16 reasonably necessary to give notice to persons entering the eating
17 and drinking place:

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; and

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

24 Sec. 109.75. ENFORCEMENT. (a) The commission or another
25 state agency or a political subdivision of the state may enforce
26 this subchapter.

27 (b) In enforcing this subchapter the commission or another

1 state agency or a political subdivision of the state may enter and
2 inspect an eating and drinking place.

3 (c) A person may file a complaint concerning a violation of
4 this subchapter with the commission or a political subdivision of
5 the state.

6 Sec. 109.76. INJUNCTIVE RELIEF. In addition to the other
7 remedies provided by this subchapter, the attorney general or a
8 district, county, or city attorney may bring an action for
9 injunctive relief to enforce this subchapter.

10 Sec. 109.77. OFFENSES; PENALTIES. (a) A person who
11 violates Section 109.72 or 109.74 commits an offense. An offense
12 under this subsection is a misdemeanor punishable by a fine not to
13 exceed \$100.

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

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

26 Sec. 109.78. SEPARATE VIOLATIONS. Each day on which a
27 violation of this subchapter occurs is considered a separate

1 violation.

2 Sec. 109.79. APPLICABILITY; CONSTRUCTION. (a) This
3 subchapter applies only to an eating or drinking place located in a
4 county with a population of more than 400,000.

5 (b) This subchapter preempts and supersedes a local
6 ordinance, rule, or regulation adopted by any political subdivision
7 that restricts or prohibits smoking on the premises of an eating and
8 drinking place in a county subject to this subchapter.

9 SECTION 2. This Act takes effect only if neither Senate Bill
10 No. 544 nor House Bill No. 5 of the Regular Session of the 81st
11 Legislature, prohibiting smoking in certain public places and
12 places of employment, becomes law. If Senate Bill No. 544 or House
13 Bill No. 5, prohibiting smoking in certain public places and places
14 of employment, becomes law, this Act has no effect.

15 SECTION 3. This Act takes effect September 1, 2009.