

By: Ellis

S. B. No. 355

A BILL TO BE ENTITLED

# 1 AN ACT

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

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

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

CHAPTER 169. SMOKING PROHIBITED IN PUBLIC PLACES AND PLACES OF

## EMPLOYMENT

## SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 169.001. DEFINITIONS. In this chapter:

14 (2) "Business" means:

(c) a private club.

(4) "Employee" means an individual who:

(A) is employed by an employer for direct or  
wages or profit; or

(B) volunteers the individual's services for an

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

(A) a nonprofit entity;

(B) the legislative, executive, and judicial  
e government; and

(C) any political subdivision of this state.

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

(7) "Health care facility" means an office or in which care or treatment is provided for physical, emotional diseases or other medical, physiological, or al conditions.

(8) "Place of employment" means an enclosed area under of an employer that is used by employees of the employer generally open to the public.

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

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

(B) is operated solely for a recreational, educational, patriotic, political, benevolent, or athletic

1    purpose, but not for pecuniary gain;  
2                    (C)    sells alcoholic beverages only incidentally  
3    to its operation;  
4                    (D)    is managed by a board of directors or similar  
5    body chosen by the members at an annual meeting;  
6                    (E)    has established bylaws or a constitution to  
7    govern the club's activities; and  
8                    (F)    is exempt from federal income taxation under  
9    Section 501(a), Internal Revenue Code of 1986, as a club described  
10   by Section 501(c)(7) of that code.  
11                   (10)    "Public place" means:  
12                    (A)    an enclosed area the public is invited or  
13    allowed to enter, including all or part of the following:  
14                    (i)    a restaurant;  
15                    (ii)   a bar;  
16                    (iii)   a retail or service establishment;  
17                    (iv)   a facility of a business or nonprofit  
18    entity;  
19                    (v)    a shopping mall;  
20                    (vi)   a convention facility;  
21                    (vii)   a theater or other facility primarily  
22    used for exhibiting a performance;  
23                    (viii)   a sports arena;  
24                    (ix)    a health care facility;  
25                    (x)    a licensed child-care or adult day-care  
26    facility;  
27                    (xi)   a polling place;

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

27 (14) "Shopping mall" means an enclosed public walkway

1 or hall area that connects retail, service, or professional  
2 establishments.

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

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

9                   (17) "Tobacco bar" means a business that:

10                   (A) has in excess of 15 percent of gross sales in  
11 tobacco products, as that term is defined by Section 155.001, Tax  
12 Code, excluding sales derived from vending machines or the use of  
13 hookahs;

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

16                   (C) holds an alcoholic beverage permit or license  
17 issued under Chapter 25, 28, 32, or 69, Alcoholic Beverage Code, or  
18 under Section 11.10, Alcoholic Beverage Code.

19                   (18) "Tobacco product manufacturing facility" means a  
20 building that is owned or leased by a for-profit business that  
21 manufactures tobacco products intended to be smoked and that is  
22 used for the testing or development of tobacco products. The term  
23 does not include a retail store, membership club, tobacco  
24 distributor, or tobacco storage facility.

25                   (19) "Tobacco shop" means a business primarily devoted  
26 to the sale of tobacco products, as that term is defined by Section  
27 155.001, Tax Code, that does not hold an alcoholic beverage permit

1 or license.

2 Sec. 169.002. APPLICABILITY. (a) Except as provided by  
3 Subsection (b), this chapter preempts and supersedes a local  
4 ordinance, rule, or regulation adopted by any political subdivision  
5 of this state relating to smoking.

6 (b) To the extent that a local ordinance, rule, or  
7 regulation adopted by a political subdivision of this state  
8 prohibits or restricts smoking to a greater degree than this  
9 chapter, the ordinance, rule, or regulation is not preempted or  
10 superseded by this chapter.

11 (c) This chapter does not preempt or supersede Section  
12 38.006, Education Code.

13 Sec. 169.003. PUBLIC EDUCATION. The department shall  
14 engage in a continuing program to explain and clarify the purpose  
15 and requirements of this chapter and to guide employers, owners,  
16 operators, and managers in complying with this chapter. The  
17 program may include publication of a brochure for businesses and  
18 individuals that explains the provisions of this chapter.

19 Sec. 169.004. GOVERNMENT AGENCY COOPERATION. The  
20 department shall annually request other government agencies to  
21 establish local operating procedures to comply with this chapter.  
22 This request may include urging all federal, state, county, and  
23 municipal agencies and all independent school districts to update  
24 existing smoking control regulations to be consistent with the  
25 current health findings regarding secondhand smoke.

26 Sec. 169.005. OTHER APPLICABLE LAWS. This chapter may not  
27 be construed to authorize smoking where it is restricted by other

1 applicable law.

2 Sec. 169.006. LIBERAL CONSTRUCTION. This chapter shall be  
3 liberally construed to further its purpose.

4 [Sections 169.007-169.050 reserved for expansion]

5 SUBCHAPTER B. PROHIBITED ACTS

6 Sec. 169.051. SMOKING PROHIBITED IN PUBLIC PLACES. A  
7 person may not smoke in a public place in this state.

8 Sec. 169.052. SMOKING PROHIBITED IN PLACE OF EMPLOYMENT. A  
9 person may not smoke in a place of employment.

10 Sec. 169.053. PROHIBITION OF SMOKING IN SEATING AREA AT AN  
11 OUTDOOR EVENT. A person may not smoke in:

12 (1) the seating area of an outdoor arena, stadium, or  
13 amphitheater; or

14 (2) bleachers or grandstands for use by spectators at  
15 a sporting or other public event.

16 Sec. 169.054. EXCEPTIONS. (a) This subchapter does not  
17 apply to:

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

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

22 (A) not more than 20 percent of rooms rented to  
23 guests in a hotel or motel are designated as smoking rooms;

24 (B) all smoking rooms in the hotel or motel on the  
25 same floor are contiguous;

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

3 (3) a nursing home or long-term care facility;

4 (4) a tobacco shop;

5 (5) a tobacco bar that was in operation on May 15,  
6 2011;

7 (6) a private club that does not employ any employees:

(B) the facility is a freestanding structure that does not share a common wall with another establishment or business and that is occupied solely by the tobacco product manufacturer;

1    smoked;

2                    (E) the facility does not allow a guest, member  
3 of the public, or employee to roll the individual's own tobacco  
4 products;

5                    (F) smoking is allowed only in an area designated  
6 for the testing or development of tobacco products and only for the  
7 purpose of testing or developing tobacco products; and

8                    (G) smoking is not allowed in any common work  
9 area of the facility, including a private or shared office, meeting  
10 area, cafeteria, break room, hallway, restroom, or elevator.

11                  (b) The exemption provided under Subsection (a)(9) does not  
12 apply to a tobacco product manufacturing facility that is  
13 established for the purpose of avoiding compliance with this  
14 chapter.

15                  Sec. 169.055. DECLARATION OF ESTABLISHMENT AS NONSMOKING.  
16                  (a) An owner, operator, manager, or other person in control of an  
17 establishment, facility, or outdoor area may declare that entire  
18 establishment, facility, or outdoor area as a nonsmoking place.

19                  (b) A person may not smoke in a place in which a sign  
20 conforming to the requirements of Section 169.056 is posted.

21                  Sec. 169.056. DUTIES OF OWNER, MANAGER, OR OPERATOR OF  
22 PUBLIC PLACE OR EMPLOYER IN PLACE OF EMPLOYMENT. An owner, manager,  
23 or operator of a public place or an employer in a place of  
24 employment shall:

25                  (1) post clearly and conspicuously in the public place  
26 or place of employment, as applicable:

27                  (A) a sign with the words "No Smoking"; or

10 [Sections 169.057-169.100 reserved for expansion]

## SUBCHAPTER C. ENFORCEMENT AND PENALTIES

12                   Sec. 169.101. ENFORCEMENT. (a) The department shall  
13 enforce this chapter.

20                   (c) A person may file with the department a complaint  
21 concerning a violation of this chapter.

22           (d) The department or another agency of this state or a  
23 political subdivision of this state designated by the department  
24 may inspect an establishment for compliance with this chapter.

25                   (e) An employer or an owner, manager, operator, or employee  
26 of an establishment regulated under this chapter shall inform a  
27 person violating this chapter of the appropriate provisions

1 pertaining to the violation.

2       Sec. 169.102. INJUNCTIVE RELIEF. In addition to the other  
3       remedies provided by this chapter, the attorney general at the  
4       request of the department, or a person aggrieved by a violation of  
5       this chapter, may bring an action for injunctive relief to enforce  
6       this chapter.

7       Sec. 169.103. OFFENSES; PENALTIES. (a) A person who  
8       violates Section 169.051, 169.052, 169.053, or 169.055(b) commits  
9       an offense. An offense under this subsection is a Class C  
10      misdemeanor punishable by a fine not to exceed \$50.

11       (b) An owner, manager, or operator of a public place or an  
12      employer in a place of employment, as applicable, who violates  
13      Section 169.056 commits an offense. An offense under this  
14      subsection is a Class C misdemeanor punishable by a fine not to  
15      exceed \$100.

16       (c) If it is shown on the trial of an offense under  
17      Subsection (b) that the defendant has previously been finally  
18      convicted of an offense under that subsection that occurred within  
19      one year before the date of the offense that is the subject of the  
20      trial, on conviction the defendant shall be punished by a fine not  
21      to exceed \$200.

22       (d) If it is shown on the trial of an offense under  
23      Subsection (b) that the defendant has previously been finally  
24      convicted of two offenses under that subsection that occurred  
25      within one year before the date of the offense that is the subject  
26      of the trial, on conviction the defendant shall be punished by a  
27      fine not to exceed \$500.

1           Sec. 169.104. SEPARATE VIOLATIONS. Each day on which a  
2    violation of this chapter occurs is considered a separate  
3    violation.

4           SECTION 2. The following are repealed:

5           (1) Section 48.01, Penal Code; and  
6           (2) Section 2, Chapter 290 (S.B. 59), Acts of the 64th  
7 Legislature, Regular Session, 1975.

8           SECTION 3. The repeal by this Act of Section 48.01, Penal  
9 Code, does not apply to an offense committed under that section  
10 before the effective date of this Act. An offense committed before  
11 that date is covered by the law in effect on the date the offense was  
12 committed, and the former law is continued in effect for that  
13 purpose.

14          SECTION 4. This Act takes effect September 1, 2011.