

1-1 By: Ellis, et al. S.B. No. 355
1-2 (In the Senate - Filed January 14, 2011; February 2, 2011,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 14, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 4;
1-6 March 14, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 355 By: Nichols

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the elimination of smoking in certain workplaces and
1-11 public places; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle H, Title 2, Health and Safety Code, is
1-14 amended by adding Chapter 169 to read as follows:

1-15 CHAPTER 169. SMOKING PROHIBITED IN PUBLIC PLACES AND PLACES OF
1-16 EMPLOYMENT

1-17 SUBCHAPTER A. GENERAL PROVISIONS

1-18 Sec. 169.001. DEFINITIONS. In this chapter:

1-19 (1) "Bar" means an enclosed indoor establishment that
1-20 is open to the public and is devoted primarily to the sale and
1-21 service of alcoholic beverages for on-premises consumption.

1-22 (2) "Business" means:

1-23 (A) a sole proprietorship, partnership, joint
1-24 venture, corporation, or other business entity, either for-profit
1-25 or not-for-profit, including a retail establishment, where goods or
1-26 services are sold;

1-27 (B) a professional corporation or other entity
1-28 where legal, medical, dental, engineering, architectural, or other
1-29 professional services are delivered; or

1-30 (C) a private club.

1-31 (3) "Department" means the Department of State Health
1-32 Services.

1-33 (4) "Employee" means an individual who:

1-34 (A) is employed by an employer for direct or
1-35 indirect monetary wages or profit; or

1-36 (B) volunteers the individual's services for an
1-37 employer.

1-38 (5) "Employer" means a person who employs one or more
1-39 individuals or uses the volunteer services of one or more
1-40 individuals. The term includes:

1-41 (A) a nonprofit entity;

1-42 (B) the legislative, executive, and judicial
1-43 branches of state government; and

1-44 (C) any political subdivision of this state.

1-45 (6) "Enclosed area" means all space between a floor
1-46 and ceiling that is enclosed on all sides by solid walls or windows,
1-47 exclusive of doorways, that extend from the floor to the ceiling.

1-48 (7) "Health care facility" means an office or
1-49 institution in which care or treatment is provided for physical,
1-50 mental, or emotional diseases or other medical, physiological, or
1-51 psychological conditions.

1-52 (8) "Place of employment" means an enclosed area under
1-53 the control of an employer that is used by employees of the employer
1-54 but is not generally open to the public.

1-55 (9) "Private club" means an organization that:

1-56 (A) owns, leases, or occupies a building used
1-57 exclusively for club purposes at all times;

1-58 (B) is operated solely for a recreational,
1-59 fraternal, social, patriotic, political, benevolent, or athletic
1-60 purpose, but not for pecuniary gain;

1-61 (C) sells alcoholic beverages only incidentally
1-62 to its operation;

1-63 (D) is managed by a board of directors or similar

2-1 body chosen by the members at an annual meeting;
 2-2 (E) has established bylaws or a constitution to
 2-3 govern the club's activities; and
 2-4 (F) is exempt from federal income taxation under
 2-5 Section 501(a), Internal Revenue Code of 1986, as a club described
 2-6 by Section 501(c)(7) of that code.
 2-7 (10) "Public place" means:
 2-8 (A) an enclosed area the public is invited or
 2-9 allowed to enter, including all or part of the following:
 2-10 (i) a restaurant;
 2-11 (ii) a bar;
 2-12 (iii) a retail or service establishment;
 2-13 (iv) a facility of a business or nonprofit
 2-14 entity;
 2-15 (v) a shopping mall;
 2-16 (vi) a convention facility;
 2-17 (vii) a theater or other facility primarily
 2-18 used for exhibiting a performance;
 2-19 (viii) a sports arena;
 2-20 (ix) a health care facility;
 2-21 (x) a licensed child-care or adult day-care
 2-22 facility;
 2-23 (xi) a polling place;
 2-24 (xii) a room in which a public meeting under
 2-25 the control of this state, an agency or branch of government of this
 2-26 state, or a political subdivision of this state is in progress;
 2-27 (xiii) a common area in a multiple-unit
 2-28 residential facility;
 2-29 (xiv) a public transportation facility,
 2-30 including a bus or taxicab, and a ticket, boarding, or waiting area
 2-31 of a public transportation depot;
 2-32 (xv) a waiting room, hallway, room, or ward
 2-33 in a health care facility; or
 2-34 (xvi) a restroom, lobby, reception area,
 2-35 service line, hallway, elevator, or other common-use area the
 2-36 public is invited or allowed to enter; or
 2-37 (B) a facility or vehicle of this state or of a
 2-38 local government, including a building or vehicle owned, leased, or
 2-39 operated by this state or the local government, regardless of
 2-40 whether the public is invited or allowed to enter.
 2-41 (11) "Restaurant" means an enclosed indoor
 2-42 establishment that is open to the public and is devoted primarily to
 2-43 the sale and service of food for immediate consumption. The term
 2-44 includes a bar located at the establishment.
 2-45 (12) "Retail or service establishment" means an
 2-46 establishment that sells goods or services to the public.
 2-47 (13) "Service line" means an indoor line in which one
 2-48 or more persons wait for or receive service, whether or not the
 2-49 service involves the exchange of money.
 2-50 (14) "Shopping mall" means an enclosed public walkway
 2-51 or hall area that connects retail, service, or professional
 2-52 establishments.
 2-53 (15) "Smoke" means to inhale, exhale, burn, or carry a
 2-54 lighted cigar, cigarette, or pipe or other smoking equipment in any
 2-55 manner.
 2-56 (16) "Sports arena" means a place in which a person
 2-57 engages in physical exercise, participates in athletic
 2-58 competition, or witnesses sports or other events.
 2-59 (17) "Tobacco bar" means a business that:
 2-60 (A) has in excess of 15 percent of gross sales in
 2-61 tobacco products, as that term is defined by Section 155.001, Tax
 2-62 Code;
 2-63 (B) holds a permit under Chapter 155, Tax Code;
 2-64 and
 2-65 (C) holds an alcoholic beverage permit or license
 2-66 issued under Chapter 25, 28, 32, or 69, Alcoholic Beverage Code, or
 2-67 under Section 11.10, Alcoholic Beverage Code.
 2-68 (18) "Tobacco shop" means a business primarily devoted
 2-69 to the sale of tobacco products, as that term is defined by Section

3-1 155.001, Tax Code, that does not hold an alcoholic beverage permit
 3-2 or license.

3-3 Sec. 169.002. APPLICABILITY. (a) Except as provided by
 3-4 Subsection (b), this chapter preempts and supersedes a local
 3-5 ordinance, rule, or regulation adopted by any political subdivision
 3-6 of this state relating to smoking.

3-7 (b) To the extent that a local ordinance, rule, or
 3-8 regulation adopted by a political subdivision of this state
 3-9 prohibits or restricts smoking to a greater degree than this
 3-10 chapter, the ordinance, rule, or regulation is not preempted or
 3-11 superseded by this chapter.

3-12 (c) This chapter does not preempt or supersede Section
 3-13 38.006, Education Code.

3-14 Sec. 169.003. PUBLIC EDUCATION. The department shall
 3-15 engage in a continuing program to explain and clarify the purpose
 3-16 and requirements of this chapter and to guide employers, owners,
 3-17 operators, and managers in complying with this chapter. The
 3-18 program may include publication of a brochure for businesses and
 3-19 individuals that explains the provisions of this chapter.

3-20 Sec. 169.004. GOVERNMENT AGENCY COOPERATION. The
 3-21 department shall annually request other government agencies to
 3-22 establish local operating procedures to comply with this chapter.
 3-23 This request may include urging all federal, state, county, and
 3-24 municipal agencies and all independent school districts to update
 3-25 existing smoking control regulations to be consistent with the
 3-26 current health findings regarding secondhand smoke.

3-27 Sec. 169.005. OTHER APPLICABLE LAWS. This chapter may not
 3-28 be construed to authorize smoking where it is restricted by other
 3-29 applicable law.

3-30 Sec. 169.006. LIBERAL CONSTRUCTION. This chapter shall be
 3-31 liberally construed to further its purpose.

3-32 [Sections 169.007-169.050 reserved for expansion]

3-33 SUBCHAPTER B. PROHIBITED ACTS

3-34 Sec. 169.051. SMOKING PROHIBITED IN PUBLIC PLACES. A
 3-35 person may not smoke in a public place in this state.

3-36 Sec. 169.052. SMOKING PROHIBITED IN PLACE OF EMPLOYMENT. A
 3-37 person may not smoke in a place of employment.

3-38 Sec. 169.053. PROHIBITION OF SMOKING IN SEATING AREA AT AN
 3-39 OUTDOOR EVENT. A person may not smoke in:

3-40 (1) the seating area of an outdoor arena, stadium, or
 3-41 amphitheater; or

3-42 (2) bleachers or grandstands for use by spectators at
 3-43 a sporting or other public event.

3-44 Sec. 169.054. EXCEPTIONS. This subchapter does not apply
 3-45 to:

3-46 (1) a private residence, except when used as a
 3-47 child-care, adult day-care, or health care facility;

3-48 (2) a hotel or motel room rented to a guest and
 3-49 designated as a smoking room, if:

3-50 (A) not more than 20 percent of rooms rented to
 3-51 guests in a hotel or motel are designated as smoking rooms;

3-52 (B) all smoking rooms in the hotel or motel on the
 3-53 same floor are contiguous;

3-54 (C) smoke from smoking rooms does not enter an
 3-55 area in which smoking is prohibited; and

3-56 (D) nonsmoking rooms are not converted to smoking
 3-57 rooms;

3-58 (3) a nursing home or long-term care facility;

3-59 (4) a tobacco shop;

3-60 (5) a tobacco bar;

3-61 (6) a private club that does not employ any employees:

3-62 (A) unless the club is being used for a function
 3-63 to which the general public is invited; and

3-64 (B) provided the private club is not established
 3-65 for the sole purpose of avoiding compliance with this chapter;

3-66 (7) the outdoor area of a restaurant or bar, other than
 3-67 the areas described by Section 169.053;

3-68 (8) an outdoor porch or patio that is not accessible to
 3-69 the public, other than the areas described by Section 169.053;

4-1 (9) an enclosed workplace where tobacco or a tobacco
 4-2 product is heated, burned, smoked, or tested by a manufacturer,
 4-3 importer, or distributor of tobacco or tobacco products or by a
 4-4 tobacco leaf dealer as a necessary and integral part of the making,
 4-5 manufacturing, importing, or distributing of the tobacco or tobacco
 4-6 product for eventual retail sale; or

4-7 (10) a convention of tobacco-related businesses in a
 4-8 municipality where a convention of tobacco-related businesses is
 4-9 expressly authorized under an applicable municipal ordinance.

4-10 Sec. 169.055. DECLARATION OF ESTABLISHMENT AS NONSMOKING.

4-11 (a) An owner, operator, manager, or other person in control of an
 4-12 establishment, facility, or outdoor area may declare that entire
 4-13 establishment, facility, or outdoor area as a nonsmoking place.

4-14 (b) A person may not smoke in a place in which a sign
 4-15 conforming to the requirements of Section 169.056 is posted.

4-16 Sec. 169.056. DUTIES OF OWNER, MANAGER, OR OPERATOR OF
 4-17 PUBLIC PLACE OR EMPLOYER IN PLACE OF EMPLOYMENT. An owner, manager,
 4-18 or operator of a public place or an employer in a place of
 4-19 employment shall:

4-20 (1) post clearly and conspicuously in the public place
 4-21 or place of employment, as applicable:

4-22 (A) a sign with the words "No Smoking"; or

4-23 (B) a sign with the international "No Smoking"
 4-24 symbol, consisting of a pictorial representation of a burning
 4-25 cigarette enclosed in a red circle with a red bar across the
 4-26 cigarette;

4-27 (2) post at each entrance to the public place or place
 4-28 of employment, as applicable, a conspicuous sign clearly stating
 4-29 that smoking is prohibited; and

4-30 (3) remove all ashtrays from any area in which smoking
 4-31 is prohibited.

4-32 [Sections 169.057-169.100 reserved for expansion]

4-33 SUBCHAPTER C. ENFORCEMENT AND PENALTIES

4-34 Sec. 169.101. ENFORCEMENT. (a) The department shall
 4-35 enforce this chapter.

4-36 (b) An agency of this state or a political subdivision of
 4-37 this state that issues a license, certificate, registration, or
 4-38 other authority or permit to a business or to an owner, operator, or
 4-39 other person in control of a business shall provide notice to each
 4-40 applicant for the permit or authority of the provisions of this
 4-41 chapter.

4-42 (c) A person may file with the department a complaint
 4-43 concerning a violation of this chapter.

4-44 (d) The department or another agency of this state or a
 4-45 political subdivision of this state designated by the department
 4-46 may inspect an establishment for compliance with this chapter.

4-47 (e) An employer or an owner, manager, operator, or employee
 4-48 of an establishment regulated under this chapter shall inform a
 4-49 person violating this chapter of the appropriate provisions
 4-50 pertaining to the violation.

4-51 Sec. 169.102. INJUNCTIVE RELIEF. In addition to the other
 4-52 remedies provided by this chapter, the attorney general at the
 4-53 request of the department, or a person aggrieved by a violation of
 4-54 this chapter, may bring an action for injunctive relief to enforce
 4-55 this chapter.

4-56 Sec. 169.103. OFFENSES; PENALTIES. (a) A person who
 4-57 violates Section 169.051, 169.052, 169.053, or 169.055(b) commits
 4-58 an offense. An offense under this subsection is a Class C
 4-59 misdemeanor punishable by a fine not to exceed \$50.

4-60 (b) An owner, manager, or operator of a public place or an
 4-61 employer in a place of employment, as applicable, who violates
 4-62 Section 169.056 commits an offense. An offense under this
 4-63 subsection is a Class C misdemeanor punishable by a fine not to
 4-64 exceed \$100.

4-65 (c) If it is shown on the trial of an offense under
 4-66 Subsection (b) that the defendant has previously been finally
 4-67 convicted of an offense under that subsection that occurred within
 4-68 one year before the date of the offense that is the subject of the
 4-69 trial, on conviction the defendant shall be punished by a fine not

5-1 to exceed \$200.

5-2 (d) If it is shown on the trial of an offense under
5-3 Subsection (b) that the defendant has previously been finally
5-4 convicted of two offenses under that subsection that occurred
5-5 within one year before the date of the offense that is the subject
5-6 of the trial, on conviction the defendant shall be punished by a
5-7 fine not to exceed \$500.

5-8 Sec. 169.104. SEPARATE VIOLATIONS. Each day on which a
5-9 violation of this chapter occurs is considered a separate
5-10 violation.

5-11 SECTION 2. The following are repealed:

5-12 (1) Section 48.01, Penal Code; and

5-13 (2) Section 2, Chapter 290 (S.B. 59), Acts of the 64th
5-14 Legislature, Regular Session, 1975.

5-15 SECTION 3. The repeal by this Act of Section 48.01, Penal
5-16 Code, does not apply to an offense committed under that section
5-17 before the effective date of this Act. An offense committed before
5-18 that date is covered by the law in effect on the date the offense was
5-19 committed, and the former law is continued in effect for that
5-20 purpose.

5-21 SECTION 4. This Act takes effect September 1, 2011.

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5-22