

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:

7 CHAPTER 169. SMOKING PROHIBITED IN PUBLIC PLACES AND PLACES OF
8 EMPLOYMENT

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 169.001. DEFINITIONS. In this chapter:

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

14 (2) "Business" means:

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

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

22 (C) a private club.

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

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

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

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

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

9 (A) a nonprofit entity;

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

12 (C) any political subdivision of this state.

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

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

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

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

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

26 (B) is operated solely for a recreational,
27 fraternal, social, 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;

1 (xii) a room in which a public meeting under
2 the control of this state, an agency or branch of government of this
3 state, or a political subdivision of this state is in progress;

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

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

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

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

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

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

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

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

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

- 1 (D) nonsmoking rooms are not converted to smoking
2 rooms;
- 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:
8 (A) unless the club is being used for a function
9 to which the general public is invited; and
- 10 (B) provided the private club is not established
11 for the sole purpose of avoiding compliance with this chapter;
- 12 (7) the outdoor area of a restaurant or bar, other than
13 the areas described by Section 169.053;
- 14 (8) an outdoor porch or patio that is not accessible to
15 the public, other than the areas described by Section 169.053; or
- 16 (9) except as provided by Subsection (b), a tobacco
17 product manufacturing facility that complies with the following
18 requirements:
- 19 (A) smoke from the facility does not migrate into
20 an enclosed area where smoking is prohibited under this chapter;
- 21 (B) the facility is a freestanding structure that
22 does not share a common wall with another establishment or business
23 and that is occupied solely by the tobacco product manufacturer;
- 24 (C) the facility does not employ any individual
25 under the age of 18;
- 26 (D) the facility does not allow a guest or member
27 of the public to enter an area where a tobacco product is being

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

1 (B) a sign with the international "No Smoking"
2 symbol, consisting of a pictorial representation of a burning
3 cigarette enclosed in a red circle with a red bar across the
4 cigarette;

5 (2) post at each entrance to the public place or place
6 of employment, as applicable, a conspicuous sign clearly stating
7 that smoking is prohibited; and

8 (3) remove all ashtrays from any area in which smoking
9 is prohibited.

10 [Sections 169.057-169.100 reserved for expansion]

11 SUBCHAPTER C. ENFORCEMENT AND PENALTIES

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

14 (b) An agency of this state or a political subdivision of
15 this state that issues a license, certificate, registration, or
16 other authority or permit to a business or to an owner, operator, or
17 other person in control of a business shall provide notice to each
18 applicant for the permit or authority of the provisions of this
19 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.