

BILL ANALYSIS

C.S.H.B. 9
By: Crownover
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There is no risk-free level of exposure to secondhand smoke. Secondhand smoke contains more than 4,000 chemicals – more than 60 are known or suspected to cause cancer. Secondhand smoke kills 53,000 non-smoking Americans yearly – it's the third leading cause of preventable death. Secondhand smoke is a known cause of lung cancer, heart disease, low birth weight, chronic lung ailments (such as bronchitis and asthma) and other health problems. Secondhand smoke causes more than 1 million illnesses in children each year, including 150,000 to 300,000 lower respiratory tract infections and 26,000 new cases of asthma.

Smoke-free policies do not affect restaurant revenue or the sale of alcoholic beverages in bars, according to analysis of sales tax data in Texas and other states. Smoke-free policies are the most economic and effective protection from exposure to secondhand smoke – separate areas, air cleaning and ventilating buildings do not eliminate exposure. Ventilation systems do not work and are costly – they start at about \$8,000 for a small restaurant, not including erecting walls or other physical barriers required by most ventilation-based ordinances. If most businesses restricted smoking, \$4 million to \$8 million per year could be saved nationwide in operating and maintenance costs.

C.S.H.B. 9 prohibits smoking in all workplaces and public places, provides exemptions to the smoking prohibition, and provides penalties for a violation of the provisions of the bill.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 9 amends the Health and Safety Code by adding Chapter 169 (chapter) to Subtitle H, Title 2. The bill defines the terms "bar", "business", "cigar bar", "department", "employee", "employer", "enclosed area", "health care facility", "place of employment", "private club", "public place", "restaurant", "retail or service establishment", "service line", "shopping mall", "smoke", "sports arena", and "tobacco shop".

C.S.H.B. 9 prohibits a person from smoking in a public place or place of employment; within 15 feet of an entrance, operable window, or ventilation system of a public place or place of employment; in the seating area of an outdoor arena, stadium, or amphitheater; or in bleachers or grandstands for use by spectators at a sporting or other public event. The bill also provides exceptions to certain private residences, hotel or motel rooms, certain rooms in nursing homes or long-term care facilities, tobacco shops, cigar bars, or private clubs. The bill authorizes a person in control of an establishment, facility, or outdoor area to declare that entire establishment, facility, or outdoor area as a nonsmoking place. The bill prohibits a person from smoking in a place in which a sign conforming to the applicable requirements is posted. The bill sets forth the required duties for maintaining a non-smoking environment for a person in control of a public place or place of employment subject to the provisions of this chapter.

C.S.H.B. 9 sets forth provisions pertaining to the enforcement of the chapter, penalties for a violation of those provisions, and for injunctive relief. For example, persons who violate the smoking prohibition, the required duties for maintaining a non-smoking environment, or who smoke in an establishment, facility, or outdoor area that has been declared a nonsmoking place

commit a misdemeanor offense punishable by a fine not to exceed \$100. The bill also increases the penalties for subsequent convictions within certain time frames.

C.S.H.B. 9 authorizes the Department of State Health Services to engage in a program to educate the public about the provisions of the chapter.

C.S.H.B. 9 provides that this chapter preempts and supersedes a local ordinance, rule, or regulation adopted by any political subdivision that prohibits or restricts smoking to a lesser degree than this chapter. The bill prohibits this chapter from being construed to permit smoking where it is restricted by law. The bill provides that the chapter does not preempt or supersede Section 38.006, Education Code (Tobacco on School Property).

C.S.H.B. 9 also provides that a permit may only be issued under Chapter 155, Tax Code, to the holder of an alcoholic beverage permit or license under Chapter 25, 28, 32, or 69, Alcoholic Beverage Code, originally issued before May 15, 2007, if the comptroller determines that the applicant's sales of tobacco proceeds exceed 25 percent of the applicant's gross sales.

C.S.H.B. 9 repeals Section 48.01, Penal Code, and Section 2, Chapter 290, Acts of the 64th Legislature, Regular Session, 1975. The bill provides that the repeal of Section 48.01, Penal Code, applies prospectively.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute differs from the original by adding a bingo hall to the definition of "public place."

The substitute adds the definition of a "cigar bar" and a "tobacco shop" and exempts tobacco shops without alcoholic beverage permits and certain existing cigar bars with alcoholic beverage permits as of May 15, 2007 from the smoking prohibition. The substitute also removes certain outdoor areas of a place of employment from the exemption provision.

The substitute deletes the provisions requiring written notice of the smoking prohibition to employees and applicants and adds a provision requiring the person in charge to request that a person not smoke in an area where smoking is prohibited.

The substitute deletes the provision requiring a person in charge or an employee to give notice to a person in violation of this act of the provisions the person is violating. The substitute deletes the requirement that notice of the provisions of this act be provided by state agencies and political subdivisions to all licensees. The substitute deletes the provisions relating to non-retaliation, and liberal construction.

The substitute extends the authority to enforce the smoking prohibition to other state agencies and political subdivisions. The substitute deletes language pertaining to government agency cooperation.

The substitute provides that in addition to the Attorney General, district, county and city attorneys are authorized to bring an action for injunctive relief on their own initiative.

The substitute applies the same punishment to persons who smoke in an establishment where smoking is prohibited and persons in control of an establishment where smoking is prohibited. The substitute increases the maximum fine for a first offense to \$100 for those smoking in a prohibited place, second offense within a year for those smoking in a prohibited place and for establishment owners to a maximum of \$500, and the third within a year for those smoking in a prohibited place and for establishment owners to a maximum of \$1,000.

The substitute authorizes, rather than requires, the Department of State Health Services to engage in a public education program.

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