

## BILL ANALYSIS

Senate Research Center  
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S.B. 368  
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Health & Human Services  
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### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, there is no statewide prohibition regarding smoking in public places. 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. Furthermore, studies have shown that secondhand smoke leads to the death of an estimated 53,000 Americans each year. Forty-seven cities in this state have passed ordinances that contain smoke-free provisions. Among these cities, 13 of them, including Houston, Austin, El Paso, and Laredo, have passed strong, comprehensive ordinances that protect employees and the public alike. Furthermore, this past election day, Abilene and Baytown voted to join other cities in becoming smoke-free. Sixteen states have already adopted smoke-free laws, while 15 other states are currently considering smoke-free laws.

As proposed, S.B. 368 prohibits smoking in indoor public places and municipal worksites and private worksites, including restaurants, restaurant bars, and stand-alone bars. This bill provides a fifteen foot smoking prohibition to allow for reasonable distance from enclosed areas. This bill also addresses certain exceptions, including hotel and motel rooms. Finally, this bill outlines the notice requirements of employers, enforcement procedures by local governments, and penalties assessed.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle H, Title 2, Health and Safety Code, by adding Chapter 169, as follows:

#### CHAPTER 169. SMOKING PROHIBITED IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 169.001. DEFINITIONS. Defines "bar," "business," "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," and "sports arena."

Sec. 169.002. APPLICABILITY. Provides that this chapter preempts and supersedes a local ordinance, rule, or regulation adopted by any political subdivision of this state relating to smoking, except when it prohibits or restricts smoking to a greater degree than this chapter. Provides that this chapter does not preempt or supersede Section 38.006 (Tobacco on School Property), Education Code.

Sec. 169.003. PUBLIC EDUCATION. Requires the Department of State Health Services (DSHS) to engage in a continuing program to explain and clarify the purpose and requirements and to guide employers, owners, operators, and managers in complying with this chapter. Authorizes the program to include publication of a brochure for businesses and individuals that explains the provisions of this chapter.

Sec. 169.004. GOVERNMENT AGENCY COOPERATION. Requires DSHS to annually request other government agencies to establish local operating procedures to comply with this chapter. Authorizes this request to include urging certain school districts to update existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

Sec. 169.005. OTHER APPLICABLE LAWS. Prohibits this chapter from being construed to permit smoking where it is otherwise restricted by law.

Sec. 169.006. LIBERAL CONSTRUCTION. Requires this chapter to be liberally construed to further its purpose.

[Reserves Sections 169.007-169.050 for expansion.]

#### SUBCHAPTER B. PROHIBITED ACTS

Sec.169.051. SMOKING PROHIBITED IN PUBLIC PLACES. Prohibits a person from smoking in a public place in this state.

Sec. 169.052. SMOKING PROHIBITED IN PLACE OF EMPLOYMENT. Prohibits a person from smoking in a place of employment.

Sec. 169.053. PROHIBITION OF SMOKING IN SEATING AREA AT AN OUTDOOR EVENT. Prohibits a person from smoking in certain areas at certain events.

Sec. 169.054. REASONABLE DISTANCE. Prohibits a person from smoking within a distance of 15 feet outside an entrance, operable window, or ventilation system of an enclosed area in which smoking is prohibited.

Sec. 169.055. EXCEPTIONS. Provides that this subchapter does not apply to certain places.

Sec. 169.056. DECLARATION OF ESTABLISHMENT AS NONSMOKING. Authorizes an owner, operator manager, or other person in control of an establishment, facility, or outdoor area to declare such as a nonsmoking place. Prohibits a person from smoking in a place in which a sign conforming to the requirements of Section 169.057(a) is posted.

Sec. 169.057. DUTIES OF OWNER, MANAGER, OR OPERATOR OF PUBLIC PLACE OR EMPLOYER IN PLACE OF EMPLOYMENT. Requires an owner, manager, or operator of a public place or an employer in a place of employment to post certain signs indicating that smoking is prohibited, remove all ashtrays from any area in which smoking is prohibited, and provide written notice to certain persons that smoking is prohibited.

Sec. 169.058. NONRETALIATION; NONWAIVER OF RIGHTS. Prohibits a person or employer from discharging, refusing to hire, or in any manner retaliating against an employee, applicant for employment, or customer who exercises any right afforded by this chapter or reports or attempts to prosecute a violation of this chapter. Provides that an employee working in a setting in which an employer allows smoking does not waive or surrender any legal right he or she may have against the employer or any other party.

[Reserves Sections 169.059-169.100 for expansion.]

#### SUBCHAPTER C. ENFORCEMENT AND PENALTIES

Sec. 169.101. ENFORCEMENT. Requires DSHS to enforce this chapter. Requires an agency or political subdivision of this state that issues a license, certificate, registration or other authority or permit to provide notice to each applicant for the permit or authority of the provisions of this chapter. Authorizes a person to file a complaint with DSHS

concerning a violation of this chapter. Authorizes DSHS, or another agency or political subdivision of this state designated by them, to inspect an establishment for compliance with this chapter. Requires an employer, or an owner, manager, operator, or employee of an establishment regulated under this chapter, to inform a person violating this chapter of the appropriate provisions pertaining to the violation.

Sec. 169.102. INJUNCTIVE RELIEF. Authorizes the attorney general at the request of DSHS, or a person aggrieved by a violation of this chapter, to bring an action for injunctive relief to enforce this chapter, in addition to the other remedies provided by this chapter.

Sec. 169.103. OFFENSES; PENALTIES. Establishes that a person who violates Section 169.051, 169.052, 169.053, 169.054, or 169.056(b) commits a Class C misdemeanor punishable by a fine not to exceed \$50. Establishes that certain individuals who violate Section 169.057 or 169.058(a) commit a Class C misdemeanor punishable by a fine not to exceed \$100, \$200 if the defendant committing this offense has previously been convicted of this offense within one year of the current offense, or \$500 if previously convicted of this offense twice within one year of the current offense.

Sec. 169.104. SUSPENSION OR REVOCATION OF LICENSE OR PERMIT. Authorizes an agency or political subdivision of this state, in accordance with its applicable procedures, to suspend or revoke a license, permit, or other authority for the premises on which a violation of this chapter occurs.

Sec. 169.105. PUBLIC NUISANCE. Establishes a violation of this chapter as a public nuisance and authorizes DSHS to abate the nuisance by certain means provided by law. Authorizes the state to take action to recover the costs of the nuisance abatement.

Sec. 169.106. SEPARATE VIOLATIONS. Provides that each day on which a violation of this chapter occurs is considered a separate and distinct violation.

SECTION 2. Repealer: Section 48.01 (Smoking Tobacco), Penal Code and Section 2 (regarding smoking tobacco in public places), Chapter 290, Acts of the 64th Legislature, Regular Session, 1975.

SECTION 3. Makes application of the repeal by this Act of Section 48.01, Penal Code, prospective.

SECTION 4. Effective date: September 1, 2007.