

By: Crownover, King of Parker, Woolley,
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H.B. No. 9

Substitute the following for H.B. No. 9:

By: Bohac

C.S.H.B. No. 9

A BILL TO BE ENTITLED

AN ACT

relating to the elimination of smoking in all workplaces and public places; providing penalties.

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

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

CHAPTER 169. SMOKING PROHIBITED IN PUBLIC PLACES

AND PLACES OF EMPLOYMENT

Sec. 169.001. DEFINITIONS. In this chapter:

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

(2) "Business" means:

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

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

(C) a private club.

(3) "Cigar bar" means a business that:

(A) has in excess of 25 percent of gross sales in tobacco products, as that term is defined by Section 155.001, Tax

1 Code;

2 (B) holds a permit under Chapter 155, Tax Code;

3 and

4 (C) holds an alcoholic beverage permit or license
5 under Chapter 25, 28, 32, or 69, Alcoholic Beverage Code,
6 originally issued before May 15, 2007.

7 (4) "Department" means the Department of State Health
8 Services.

9 (5) "Employee" means an individual who:

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

12 (B) volunteers the individual's services for an
13 employer.

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

17 (A) a nonprofit entity;

18 (B) the legislative, executive, and judicial
19 branches of state government; and

20 (C) any political subdivision of this state.

21 (7) "Enclosed area" means all space between a floor
22 and ceiling that is enclosed on all sides by solid walls or windows,
23 exclusive of doorways, which extend from the floor to the ceiling.

24 (8) "Health care facility" means an office or
25 institution in which care or treatment is provided for physical,
26 mental, or emotional diseases or other medical, physiological, or
27 psychological conditions.

1 (9) "Place of employment" means an area under the
2 control of an employer that is used by employees of the employer but
3 is not generally open to the public.

4 (10) "Private club" means an organization that:

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

7 (B) is operated solely for a recreational,
8 fraternal, social, patriotic, political, benevolent, or athletic
9 purpose, but not for pecuniary gain;

10 (C) sells alcoholic beverages only incidentally
11 to its operation;

12 (D) is managed by a board of directors or similar
13 body chosen by the members at an annual meeting;

14 (E) has established bylaws or a constitution to
15 govern the club's activities; and

16 (F) is exempt from federal income taxation under
17 Section 501(a), Internal Revenue Code of 1986, as a club described
18 by Section 501(c)(7) of that code.

19 (11) "Public place" means:

20 (A) an enclosed indoor area the public is invited
21 or permitted to enter, including all or part of the following:

22 (i) a restaurant;

23 (ii) a bar;

24 (iii) a retail or service establishment;

25 (iv) a facility of a business or nonprofit
26 entity;

27 (v) a shopping mall;

1 (vi) a convention facility;

2 (vii) a theater or other facility primarily
3 used for exhibiting a performance;

4 (viii) a sports arena;

5 (ix) a health care facility;

6 (x) a licensed child-care or adult day-care
7 facility;

8 (xi) a polling place;

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

12 (xiii) a common area in a multiple-unit
13 residential facility;

14 (xiv) a public transportation facility,
15 including a bus or taxicab, and a ticket, boarding, or waiting area
16 of a public transportation depot;

17 (xv) a waiting room, hallway, room, or ward
18 in a health care facility;

19 (xvi) a restroom, lobby, reception area,
20 service line, hallway, elevator, or other common-use area the
21 public is invited or permitted to enter; or

22 (xvii) a bingo hall; or

23 (B) a facility of the state or of a local
24 government, including a building or vehicle owned, leased, or
25 operated by the state or local government, regardless of whether
26 the public is invited or permitted to enter.

27 (12) "Restaurant" means an enclosed indoor

1 establishment that is open to the public and is devoted primarily to
2 the sale and service of food for immediate consumption. The term
3 includes a bar located at the establishment.

4 (13) "Retail or service establishment" means an
5 establishment that sells goods or services to the public.

6 (14) "Service line" means an indoor line in which one
7 or more persons wait for or receive service, whether or not the
8 service involves the exchange of money.

9 (15) "Shopping mall" means an enclosed public walkway
10 or hall area that connects retail, service, or professional
11 establishments.

12 (16) "Smoke" means to inhale, exhale, burn, or carry a
13 lighted cigar, cigarette, pipe, or other smoking equipment in any
14 manner.

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

18 (18) "Tobacco shop" means a business primarily devoted
19 to the sale of tobacco products, as that term is defined by Section
20 155.001, Tax Code, that does not hold an alcoholic beverage permit
21 or license.

22 Sec. 169.002. SMOKING PROHIBITED. A person may not smoke:

23 (1) in a public place or place of employment;

24 (2) within 15 feet of an entrance, operable window, or
25 ventilation system of a public place or place of employment;

26 (3) in the seating area of an outdoor arena, stadium,
27 or amphitheater; or

1 (4) in bleachers or grandstands for use by spectators
2 at a sporting or other public event.

3 Sec. 169.003. EXCEPTIONS. This chapter does not apply to:

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

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

8 (A) not more than 20 percent of rooms rented are
9 designated as smoking rooms;

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

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

14 (D) nonsmoking rooms are not converted to smoking
15 rooms;

16 (3) a private or semiprivate room in a nursing home or
17 long-term care facility occupied by one or more persons, all of whom
18 are smokers and have requested in writing to be placed in a room
19 where smoking is permitted, provided that smoke from the room does
20 not enter an area where smoking is prohibited;

21 (4) a tobacco shop;

22 (5) a cigar bar; or

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

24 (A) unless the club is being used for a function
25 to which the general public is invited; and

26 (B) provided the club is not established for the
27 sole purpose of avoiding compliance with this chapter.

1 Sec. 169.004. DUTIES OF PERSON IN CONTROL OF A PUBLIC PLACE
2 OR PLACE OF EMPLOYMENT. A person in control of a public place or
3 place of employment shall:

4 (1) post clearly and conspicuously in a manner
5 reasonably necessary to give notice to persons entering the public
6 place or place of employment:

7 (A) a sign with the words "NO SMOKING"; or

8 (B) a sign with the international no smoking
9 symbol depicting a burning cigarette overlaid by a red circle with a
10 diagonal line across the cigarette;

11 (2) remove all ashtrays from any area where smoking is
12 prohibited; and

13 (3) make a reasonable effort to request that any
14 person known to be smoking in a prohibited area extinguish the
15 burning tobacco product.

16 Sec. 169.005. DECLARATION OF ESTABLISHMENT AS NONSMOKING.

17 (a) A person in control of an establishment, facility, or outdoor
18 area may declare that entire establishment, facility, or outdoor
19 area as a nonsmoking place.

20 (b) A person may not smoke in a place in which a sign
21 conforming to the requirements of Section 169.004 is posted.

22 Sec. 169.006. ENFORCEMENT. (a) The department, or another
23 state agency, or a political subdivision of the state may enforce
24 this chapter.

25 (b) In enforcing this chapter the department, or another
26 state agency, or a political subdivision of the state may enter and
27 inspect a public place.

1 (c) A person may file a complaint concerning a violation of
2 this chapter with the department or a political subdivision of the
3 state.

4 Sec. 169.007. INJUNCTIVE RELIEF. In addition to the other
5 remedies provided by this chapter, the attorney general or a
6 district, county, or city attorney may bring an action for
7 injunctive relief to enforce this chapter.

8 Sec. 169.008. OFFENSES; PENALTIES. (a) A person who
9 violates Section 169.002, 169.004, or 169.005(b) commits an
10 offense. An offense under this subsection is a misdemeanor
11 punishable by a fine not to exceed \$100.

12 (b) If it is shown on the trial of an offense under
13 Subsection (a) that the defendant has previously been finally
14 convicted of an offense under that subsection that occurred within
15 one year before the date of the offense that is the subject of the
16 trial, on conviction the defendant shall be punished by a fine not
17 to exceed \$500.

18 (c) If it is shown on the trial of an offense under
19 Subsection (a) that the defendant has previously been finally
20 convicted of two offenses under that subsection that occurred
21 within one year before the date of the offense that is the subject
22 of the trial, on conviction the defendant shall be punished by a
23 fine not to exceed \$1,000.

24 Sec. 169.009. SEPARATE VIOLATIONS. Each day on which a
25 violation of this chapter occurs is considered a separate
26 violation.

27 Sec. 169.010. PUBLIC EDUCATION. The department may engage

1 in a program to educate the public about the provisions of this
2 chapter.

3 Sec. 169.011. APPLICABILITY; CONSTRUCTION. (a) This
4 chapter preempts and supersedes a local ordinance, rule, or
5 regulation adopted by any political subdivision that restricts or
6 prohibits smoking to a lesser degree than this chapter.

7 (b) This chapter shall not be construed to permit smoking
8 where it is restricted by other law.

9 (c) This chapter does not preempt or supersede Section
10 38.006, Education Code.

11 SECTION 2. Subchapter C, Chapter 155, Tax Code, is amended
12 by adding Section 155.0482 to read as follows:

13 Sec. 155.0482. DENIAL OF PERMIT TO HOLDERS OF ALCOHOLIC
14 BEVERAGE PERMITS OR LICENSES. The comptroller may not issue a
15 retailer's permit under this chapter to the holder of an alcoholic
16 beverage permit or license under Chapter 25, 28, 32, or 69,
17 Alcoholic Beverage Code. A permit may be issued under this chapter
18 to the holder of an alcoholic beverage permit or license under
19 Chapter 25, 28, 32, or 69, Alcoholic Beverage Code, originally
20 issued before May 15, 2007, if the comptroller determines that the
21 applicant's sales of tobacco products exceed 25 percent of the
22 applicant's gross sales.

23 SECTION 3. The following are repealed:

24 (1) Section 48.01, Penal Code; and

25 (2) Section 2, Chapter 290, Acts of the 64th
26 Legislature, Regular Session, 1975.

27 SECTION 4. The repeal by this Act of Section 48.01, Penal

1 Code, does not apply to an offense committed under that section
2 before the effective date of this Act. An offense committed before
3 that date is covered by the law in effect on the date the offense was
4 committed, and the former law is continued in effect for that
5 purpose.

6 SECTION 5. This Act takes effect September 1, 2007.