

1-1 By: Crownover, et al. (Senate Sponsor - Ellis) H.B. No. 9
1-2 (In the Senate - Received from the House May 9, 2007;
1-3 May 10, 2007, read first time and referred to Committee on Health
1-4 and Human Services; May 21, 2007, reported favorably by the
1-5 following vote: Yeas 6, Nays 3; May 21, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the elimination of smoking in certain workplaces and
1-9 public places; providing penalties.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subtitle H, Title 2, Health and Safety Code, is
1-12 amended by adding Chapter 169 to read as follows:

1-13 CHAPTER 169. SMOKING PROHIBITED IN PUBLIC PLACES
1-14 AND PLACES OF EMPLOYMENT

1-15 Sec. 169.001. DEFINITIONS. In this chapter:

1-16 (1) "Bar" means an enclosed indoor establishment that
1-17 is open to the public and is devoted primarily to the sale and
1-18 service of alcoholic beverages for on-premises consumption.

1-19 (2) "Business" means:

1-20 (A) a sole proprietorship, partnership, joint
1-21 venture, corporation, or other business entity, either for-profit
1-22 or not-for-profit, including a retail establishment, where goods or
1-23 services are sold;

1-24 (B) a professional corporation or other entity
1-25 where legal, medical, dental, engineering, architectural, or other
1-26 professional services are delivered; or

1-27 (C) a private club.

1-28 (3) "Department" means the Department of State Health
1-29 Services.

1-30 (4) "Employee" means an individual who:

1-31 (A) is employed by an employer for direct or
1-32 indirect monetary wages or profit; or

1-33 (B) volunteers the individual's services for an
1-34 employer.

1-35 (5) "Employer" means a person who employs one or more
1-36 individuals or uses the volunteer services of one or more
1-37 individuals. The term includes:

1-38 (A) a nonprofit entity;

1-39 (B) the legislative, executive, and judicial
1-40 branches of state government; and

1-41 (C) any political subdivision of this state.

1-42 (6) "Enclosed area" means all space between a floor
1-43 and ceiling that is enclosed on all sides by solid walls or windows,
1-44 exclusive of doorways, which extend from the floor to the ceiling.

1-45 (7) "Health care facility" means an office or
1-46 institution in which care or treatment is provided for physical,
1-47 mental, or emotional diseases or other medical, physiological, or
1-48 psychological conditions.

1-49 (8) "Place of employment" means an area under the
1-50 control of an employer that is used by employees of the employer but
1-51 is not generally open to the public.

1-52 (9) "Private club" means an organization that:

1-53 (A) owns, leases, or occupies a building used
1-54 exclusively for club purposes at all times;

1-55 (B) is operated solely for a recreational,
1-56 fraternal, social, patriotic, political, benevolent, or athletic
1-57 purpose, but not for pecuniary gain;

1-58 (C) sells alcoholic beverages only incidentally
1-59 to its operation;

1-60 (D) is managed by a board of directors or similar
1-61 body chosen by the members at an annual meeting;

1-62 (E) has established bylaws or a constitution to
1-63 govern the club's activities; and

1-64 (F) is exempt from federal income taxation under

2-1 Section 501(a), Internal Revenue Code of 1986, as a club described
 2-2 by Section 501(c)(7) of that code.
 2-3 (10) "Public place" means:
 2-4 (A) an enclosed indoor area the public is invited
 2-5 or permitted to enter, including all or part of the following:
 2-6 (i) a restaurant;
 2-7 (ii) a bar;
 2-8 (iii) a retail or service establishment;
 2-9 (iv) a facility of a business or nonprofit
 2-10 entity;
 2-11 (v) a shopping mall;
 2-12 (vi) a convention facility;
 2-13 (vii) a theater or other facility primarily
 2-14 used for exhibiting a performance;
 2-15 (viii) a sports arena;
 2-16 (ix) a health care facility;
 2-17 (x) a licensed child-care or adult day-care
 2-18 facility;
 2-19 (xi) a polling place;
 2-20 (xii) a room in which a public meeting under
 2-21 the control of this state, an agency or branch of government of this
 2-22 state, or a political subdivision of this state is in progress;
 2-23 (xiii) a common area in a multiple-unit
 2-24 residential facility;
 2-25 (xiv) a public transportation facility,
 2-26 including a bus or taxicab, and a ticket, boarding, or waiting area
 2-27 of a public transportation depot;
 2-28 (xv) a waiting room, hallway, room, or ward
 2-29 in a health care facility; or
 2-30 (xvi) a restroom, lobby, reception area,
 2-31 service line, hallway, elevator, or other common-use area the
 2-32 public is invited or permitted to enter; or
 2-33 (B) a facility of the state or of a local
 2-34 government, including a building or vehicle owned, leased, or
 2-35 operated by the state or local government, regardless of whether
 2-36 the public is invited or permitted to enter.
 2-37 (11) "Restaurant" means an enclosed indoor
 2-38 establishment that is open to the public and is devoted primarily to
 2-39 the sale and service of food for immediate consumption. The term
 2-40 includes a bar located at the establishment.
 2-41 (12) "Retail or service establishment" means an
 2-42 establishment that sells goods or services to the public.
 2-43 (13) "Service line" means an indoor line in which one
 2-44 or more persons wait for or receive service, whether or not the
 2-45 service involves the exchange of money.
 2-46 (14) "Shopping mall" means an enclosed public walkway
 2-47 or hall area that connects retail, service, or professional
 2-48 establishments.
 2-49 (15) "Smoke" means to inhale, exhale, burn, or carry a
 2-50 lighted cigar, cigarette, pipe, or other smoking equipment in any
 2-51 manner.
 2-52 (16) "Sports arena" means a place in which a person
 2-53 engages in physical exercise, participates in athletic
 2-54 competition, or witnesses sports or other events.
 2-55 (17) "Tobacco shop" means a business primarily devoted
 2-56 to the sale of tobacco products, as that term is defined by Section
 2-57 155.001, Tax Code, that does not hold an alcoholic beverage permit
 2-58 or license.
 2-59 Sec. 169.002. SMOKING PROHIBITED. A person may not smoke:
 2-60 (1) in a public place or place of employment;
 2-61 (2) within 15 feet of an entrance, operable window, or
 2-62 ventilation system of a public place or place of employment;
 2-63 (3) in the seating area of an outdoor arena, stadium,
 2-64 or amphitheater; or
 2-65 (4) in bleachers or grandstands for use by spectators
 2-66 at a sporting or other public event.
 2-67 Sec. 169.003. EXCEPTIONS. This chapter does not apply to:
 2-68 (1) a private residence, except when used as a
 2-69 child-care, adult day-care, or health care facility;

3-1 (2) a hotel or motel room rented to a guest and
 3-2 designated as a smoking room, if:

3-3 (A) not more than 20 percent of rooms rented are
 3-4 designated as smoking rooms;

3-5 (B) all smoking rooms in the hotel or motel on the
 3-6 same floor are contiguous;

3-7 (C) smoke from smoking rooms does not enter an
 3-8 area in which smoking is prohibited; and

3-9 (D) nonsmoking rooms are not converted to smoking
 3-10 rooms;

3-11 (3) a private or semiprivate room in a nursing home or
 3-12 long-term care facility occupied by one or more persons, all of whom
 3-13 are smokers and have requested in writing to be placed in a room
 3-14 where smoking is permitted, provided that smoke from the room does
 3-15 not enter an area where smoking is prohibited;

3-16 (4) a fraternal or veterans organization as defined by
 3-17 Section 32.11, Alcoholic Beverage Code;

3-18 (5) a private club not open to the general public;

3-19 (6) a bingo hall;

3-20 (7) a premises on which charitable bingo is authorized
 3-21 to be conducted under Chapter 2001, Occupations Code;

3-22 (8) property owned or leased by an organization that
 3-23 is a church, synagogue, religious society, nonprofit veterans
 3-24 organization, or fraternal organization during the times the
 3-25 property is being used for religious services, meetings,
 3-26 fund-raising, or other activities of the organization;

3-27 (9) a tobacco shop;

3-28 (10) a private club that does not employ any
 3-29 employees:

3-30 (A) unless the club is being used for a function
 3-31 to which the general public is invited; and

3-32 (B) provided the club is not established for the
 3-33 sole purpose of avoiding compliance with this chapter;

3-34 (11) a bar, if the operator of the bar provides health
 3-35 benefits coverage for each employee employed by the bar; or

3-36 (12) privately owned property designated exempt under
 3-37 Section 169.0035.

3-38 Sec. 169.0035. PRIVATELY OWNED PROPERTY. Notwithstanding
 3-39 any other provision in this chapter, a person who privately owns
 3-40 real property may designate the property as exempt from the
 3-41 provisions of this chapter by posting on the property clearly and
 3-42 conspicuously, in a manner reasonably necessary to give notice, a
 3-43 statement that smoking is permitted on the property.

3-44 Sec. 169.004. DUTIES OF PERSON IN CONTROL OF A PUBLIC PLACE
 3-45 OR PLACE OF EMPLOYMENT. A person in control of a public place or
 3-46 place of employment shall:

3-47 (1) post clearly and conspicuously in a manner
 3-48 reasonably necessary to give notice to persons entering the public
 3-49 place or place of employment:

3-50 (A) a sign with the words "NO SMOKING"; or

3-51 (B) a sign with the international no smoking
 3-52 symbol depicting a burning cigarette overlaid by a red circle with a
 3-53 diagonal line across the cigarette;

3-54 (2) remove all ashtrays from any area where smoking is
 3-55 prohibited; and

3-56 (3) make a reasonable effort to request that any
 3-57 person known to be smoking in a prohibited area extinguish the
 3-58 burning tobacco product.

3-59 Sec. 169.0045. CONTRACTOR PREFERENCES. An employer in
 3-60 control of a place of employment subject to this chapter may not
 3-61 award a contract, including contracts and contracts for services
 3-62 related to contracts under Chapter 2166, Government Code, to a
 3-63 proposed contractor unless the contractor offers to the
 3-64 contractor's employees a smoking cessation program to assist
 3-65 employees who smoke.

3-66 Sec. 169.0046. SMOKING CESSATION PROGRAM. (a) An employer
 3-67 in control of a place of employment subject to this chapter may
 3-68 offer to employees a smoking cessation program to assist employees
 3-69 who smoke.

4-1 (b) An employer that offers a program under this section is
 4-2 entitled to a credit against taxes owed by the employer under
 4-3 Chapter 171, Tax Code, in accordance with rules adopted by the
 4-4 comptroller. The amount of the credit is equal to the cost of the
 4-5 program.

4-6 (c) To qualify for the credit under Subsection (b), the
 4-7 program must offer assistance to an employee through at least two
 4-8 attempts to quit smoking and may be offered directly by the employer
 4-9 or through contract with another provider.

4-10 Sec. 169.005. DECLARATION OF ESTABLISHMENT AS NONSMOKING.
 4-11 (a) A person in control of an establishment, facility, or outdoor
 4-12 area may declare that entire establishment, facility, or outdoor
 4-13 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 169.004 is posted.

4-16 Sec. 169.006. ENFORCEMENT. (a) The department or a public
 4-17 health official may enforce this chapter.

4-18 (b) In enforcing this chapter the department, a public
 4-19 health official, or a law enforcement officer may enter and inspect
 4-20 a public place.

4-21 (c) A person may file a complaint concerning a violation of
 4-22 this chapter with the department or a political subdivision of the
 4-23 state.

4-24 Sec. 169.007. INJUNCTIVE RELIEF. In addition to the other
 4-25 remedies provided by this chapter, the attorney general or a
 4-26 district, county, or city attorney may bring an action for
 4-27 injunctive relief to enforce this chapter.

4-28 Sec. 169.008. OFFENSES; PENALTIES. (a) A person who
 4-29 violates Section 169.002, 169.004, or 169.005(b) commits an
 4-30 offense. An offense under this subsection is a misdemeanor
 4-31 punishable by a fine not to exceed \$100.

4-32 (b) If it is shown on the trial of an offense under
 4-33 Subsection (a) that the defendant has previously been finally
 4-34 convicted of an offense under that subsection that occurred within
 4-35 one year before the date of the offense that is the subject of the
 4-36 trial, on conviction the defendant shall be punished by a fine not
 4-37 to exceed \$500.

4-38 (c) If it is shown on the trial of an offense under
 4-39 Subsection (a) that the defendant has previously been finally
 4-40 convicted of two offenses under that subsection that occurred
 4-41 within one year before the date of the offense that is the subject
 4-42 of the trial, on conviction the defendant shall be punished by a
 4-43 fine not to exceed \$1,000.

4-44 Sec. 169.009. SEPARATE VIOLATIONS. Each day on which a
 4-45 violation of this chapter occurs is considered a separate
 4-46 violation.

4-47 Sec. 169.010. PUBLIC EDUCATION. The department may engage
 4-48 in a program to educate the public about the provisions of this
 4-49 chapter.

4-50 Sec. 169.011. APPLICABILITY; CONSTRUCTION. (a) Except as
 4-51 provided by Subsection (b) and Section 169.012, this chapter
 4-52 preempts and supersedes a local ordinance, rule, or regulation
 4-53 adopted by any political subdivision that restricts or prohibits
 4-54 smoking to a lesser degree than this chapter.

4-55 (b) This chapter does not preempt or supersede a local
 4-56 ordinance, rule, or regulation adopted by a political subdivision
 4-57 with a population of fewer than 50,000 people that prohibits or
 4-58 restricts smoking to a lesser degree than this chapter if the local
 4-59 ordinance, rule, or regulation was adopted by a political
 4-60 subdivision before September 1, 2007.

4-61 (c) Subsection (a) does not prohibit the adoption by a
 4-62 political subdivision, after September 1, 2007, of a local
 4-63 ordinance, rule, or regulation that prohibits or restricts smoking
 4-64 to a greater degree than this chapter.

4-65 (d) This chapter shall not be construed to permit smoking
 4-66 where it is restricted by other law.

4-67 (e) This chapter does not preempt or supersede Section
 4-68 38.006, Education Code.

4-69 Sec. 169.012. LOCAL OPTION ELECTION. (a) The voters in a

5-1 municipality may, in the same manner and procedure as for a charter
5-2 amendment, vote to allow the governing body of the municipality to
5-3 adopt a local ordinance that restricts or prohibits smoking to a
5-4 lesser degree than this chapter. An election under this section
5-5 shall be held on May 10, 2008.

5-6 (b) This chapter, other than this section, does not apply
5-7 within the boundaries of a municipality that adopts an ordinance
5-8 under Subsection (a).

5-9 SECTION 2. Subchapter A, Chapter 2166, Government Code, is
5-10 amended by adding Section 2166.009 to read as follows:

5-11 Sec. 2166.009. CONTRACTOR PREFERENCES: NONSMOKING POLICY.
5-12 The commission shall give preference to a proposed state contractor
5-13 in awarding contracts under this chapter, including contracts for
5-14 services related to contracts under this chapter, to a contractor
5-15 who has a work site nonsmoking policy for the contractor's
5-16 employees.

5-17 SECTION 3. The following are repealed:

- 5-18 (1) Section 48.01, Penal Code; and
- 5-19 (2) Section 2, Chapter 290, Acts of the 64th
5-20 Legislature, Regular Session, 1975.

5-21 SECTION 4. The repeal by this Act of Section 48.01, Penal
5-22 Code, does not apply to an offense committed under that section
5-23 before the effective date of this Act. An offense committed before
5-24 that date is covered by the law in effect on the date the offense was
5-25 committed, and the former law is continued in effect for that
5-26 purpose.

5-27 SECTION 5. This Act takes effect January 1, 2008.

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