

BILL ANALYSIS

Senate Research Center
81R172 ALB-F

S.B. 544
By: Ellis et al.
Health & Human Services
4/13/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Secondhand smoke is a known cause of lung cancer, heart disease, low birth weight, and chronic lung ailments such as bronchitis and asthma, among other health problems, and studies have found that it leads to the deaths of 53,000 Americans each year. Twenty-four states have adopted smoke-free laws and an additional eight are considering becoming smoke-free.

As proposed, S.B. 544 prohibits smoking in public places, in places of employment, in a seating area of an outdoor event, and within a distance of 15 feet from an enclosed area, and provides hotel and motel exceptions and guidelines. Further, S.B. 544 requires owners of public places to post nonsmoking signs and to provide nonsmoking notices to employees, provides enforcement procedures by local governments, and provides penalties to be assessed for noncompliance.

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. (a) Provides that except as provided by Subsection (b), this chapter preempts and supersedes a local ordinance, rule, or regulation adopted by any political subdivision of this state relating to smoking.

(b) Provides that to the extent that a local ordinance, rule, or regulation adopted by a political subdivision of this state prohibits or restricts smoking to a greater degree than this chapter, the ordinance, rule, or regulation is not preempted or superseded by this chapter.

(c) 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 of this chapter 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 all federal, state, county, municipal, and independent 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 restricted by other applicable law.

Sec. 169.006. LIBERAL CONSTRUCTION. Requires that this chapter 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 SPACES. 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 the seating area of an outdoor arena, stadium, or amphitheater, or bleachers or grandstands for use by spectators at a sporting or other public event.

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 a private residence, except when used as a child-care, adult day-care, or health care facility; a hotel or motel room rented to a guest and designated as a smoking room, if not more than 20 percent of rooms rented to guests in a hotel or motel are designated as smoking rooms, all smoking rooms in the hotel or motel on the same floor are contiguous, smoke from smoking rooms does not enter an area in which smoking is prohibited, and nonsmoking rooms are not converted to smoking rooms; a private or semiprivate room in a nursing home or long-term care facility occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted, provided that smoke from the room does not enter an area where smoking is prohibited; a private club that does not employ any employees, unless the club is being used for a function to which the general public is invited, and provided the private club is not established for the sole purpose of avoiding compliance with this chapter; or the outdoor area of a place of employment other than the areas described by Sections 169.053 and 169.054.

Sec. 169.056. DECLARATION OF ESTABLISHMENT AS NONSMOKING. (a) Authorizes an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area, to declare that entire establishment, facility, or outdoor area as a nonsmoking place.

(b) 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. (a) Requires an owner, manager, or operator of a public place or an employer in a place of employment to:

(1) post clearly and conspicuously in the public place or place of employment, as applicable, a sign with the words "No Smoking," or a sign

with the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across the cigarette;

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

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

(b) Requires an employer to provide written notice that smoking is prohibited in the place of employment to each prospective employee in any application the employer supplies and to each employee on the first day of employment.

(b-1) Requires an employer to provide written notice not later than December 1, 2009, that smoking is prohibited to each employee who is employed by that employer on September 1, 2009, and who continues to be employed by the employer on the date of the notice. Provides that this subsection expires January 1, 2011.

Sec. 169.058. NONRETALIATION; NONWAIVER OF RIGHTS. (a) Prohibits a person or employer from discharging, refusing to hire, or in any manner retaliating against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any right afforded by this chapter or reports or attempts to prosecute a violation of this chapter.

(b) Provides that an employee working in a setting in which an employer allows smoking does not waive or surrender any legal right the employee 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. (a) Requires DSHS to enforce this chapter.

(b) Requires an agency of this state or a political subdivision of this state that issues a license, certificate, registration, or other authority or permit to a business or to an owner, operator, or other person in control of a business to provide notice to each applicant for the permit or authority of the provisions of this chapter.

(c) Authorizes a person to file a complaint concerning a violation of this chapter with DSHS.

(d) Authorizes DSHS or another agency of this state or a political subdivision of this state designated by DSHS to inspect an establishment for compliance with this chapter.

(e) 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, in addition to the other remedies provided by this chapter, to bring an action for injunctive relief to enforce this chapter.

Sec. 169.103. OFFENSES; PENALTIES. (a) Provides that a person who violates Sections 169.051-169.054 or 169.056(b) commits an offense that under this subsection is a Class C misdemeanor punishable by a fine not to exceed \$50.

(b) Provides that an owner, manager, or operator of a public place or an employer in a place of employment, as applicable, who violates Section 169.057 or 169.058(a) commits an offense that under this subsection is a Class C misdemeanor punishable by a fine not to exceed \$100.

(c) Requires the defendant, on conviction, to be punished by a fine not to exceed \$200, if it is shown on the trial of an offense under Subsection (b) that the defendant has previously been finally convicted of an offense under that subsection that occurred within one year before the date of the offense that is the subject of the trial.

(d) Requires the defendant, on conviction, to be punished by a fine not to exceed \$500, if it is shown on the trial of an offense under Subsection (b) that the defendant has previously been finally convicted of two offenses under that subsection that occurred within one year before the date of the offense that is the subject of the trial.

Sec. 169.104. **SUSPENSION OR REVOCATION OF LICENSE OR PERMIT.** Authorizes an agency of this state or a political subdivision of this state, in accordance with the applicable procedures of the agency, 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.** Authorizes that a violation of this chapter is a public nuisance and be abated by DSHS by restraining order, preliminary or permanent injunction, or other 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. (1) Repealer: Section 48.01 (Smoking Tobacco), Penal Code.

(2) Repealer: Section 2 (relating to provisions not preempting any ordinance adopted now or in the future), Chapter 290, Acts of the 64th Legislature, Regular Session, 1975.

SECTION 3. Provides that the repeal by this Act of Section 48.01, Penal Code, does not apply to an offense committed under that section before the effective date of this Act. Provides that an offense committed before that date is covered by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose.

SECTION 4. Effective date: September 1, 2009.