

By: Crownover

H.B. No. 5

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

SUBCHAPTER A. GENERAL PROVISIONS

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) "Department" means the Department of State Health Services.

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

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

4                   (B) volunteers the individual's services for an  
5 employer.

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

9                   (A) a nonprofit entity;

10                  (B) the legislative, executive, and judicial  
11 branches of state government; and

12                  (C) any political subdivision of this state.

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

16           (7) "Health care facility" means an office or  
17 institution in which care or treatment is provided for physical,  
18 mental, or emotional diseases or other medical, physiological, or  
19 psychological conditions.

20           (8) "Place of employment" means an area under the  
21 control of an employer that is used by employees of the employer but  
22 is not generally open to the public.

23           (9) "Private club" means an organization that:

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

26                   (B) is operated solely for a recreational,  
27 fraternal, social, patriotic, political, benevolent, or athletic

1 purpose, but not for pecuniary gain;

2 (C) sells alcoholic beverages only incidentally  
3 to its operation;

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

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

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

11 (10) "Public place" means:

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

14 (i) a restaurant;

15 (ii) a bar;

16 (iii) a retail or service establishment;

17 (iv) a facility of a business or nonprofit  
18 entity;

19 (v) a shopping mall;

20 (vi) a convention facility;

21 (vii) a theater or other facility primarily  
22 used for exhibiting a performance;

23 (viii) a sports arena;

24 (ix) a health care facility;

25 (x) a licensed child-care or adult day-care  
26 facility;

27 (xi) a polling place;

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

4                   (xiii) a common area in a multiple-unit  
5 residential facility;

6                   (xiv) a public transportation facility,  
7 including a bus or taxicab, and a ticket, boarding, or waiting area  
8 of a public transportation depot;

9                   (xv) a waiting room, hallway, room, or ward  
10 in a health care facility; or

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

14                   (B) a facility of the state or of a local  
15 government, including a building or vehicle owned, leased, or  
16 operated by the state or local government, regardless of whether  
17 the public is invited or permitted to enter.

18                   (11) "Restaurant" means an enclosed indoor  
19 establishment that is open to the public and is devoted primarily to  
20 the sale and service of food for immediate consumption. The term  
21 includes a bar located at the establishment.

22                   (12) "Retail or service establishment" means an  
23 establishment that sells goods or services to the public.

24                   (13) "Service line" means an indoor line in which one  
25 or more persons wait for or receive service, whether or not the  
26 service involves the exchange of money.

27                   (14) "Shopping mall" means an enclosed public walkway

1 or hall area that connects retail, service, or professional  
2 establishments.

3 (15) "Smoke" means to inhale, exhale, burn, or carry a  
4 lighted cigar, cigarette, pipe, or other smoking equipment in any  
5 manner.

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

9 Sec. 169.002. APPLICABILITY. (a) Except as provided by  
10 Subsection (b), this chapter preempts and supersedes a local  
11 ordinance, rule, or regulation adopted by any political subdivision  
12 of this state relating to smoking.

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

18 (c) This chapter does not preempt or supersede Section  
19 38.006, Education Code.

20 Sec. 169.003. PUBLIC EDUCATION. The department shall  
21 engage in a continuing program to explain and clarify the purpose  
22 and requirements of this chapter and to guide employers, owners,  
23 operators, and managers in complying with this chapter. The  
24 program may include publication of a brochure for businesses and  
25 individuals that explains the provisions of this chapter.

26 Sec. 169.004. GOVERNMENT AGENCY COOPERATION. The  
27 department shall annually request other government agencies to

1 establish local operating procedures to comply with this chapter.  
2 This request may include urging all federal, state, county,  
3 municipal, and independent school districts to update existing  
4 smoking control regulations to be consistent with the current  
5 health findings regarding secondhand smoke.

6 Sec. 169.005. OTHER APPLICABLE LAWS. This chapter may not  
7 be construed to permit smoking where it is restricted by other  
8 applicable law.

9 Sec. 169.006. LIBERAL CONSTRUCTION. This chapter shall be  
10 liberally construed to further its purpose.

11 [Sections 169.007-169.050 reserved for expansion]

12 SUBCHAPTER B. PROHIBITED ACTS

13 Sec. 169.051. SMOKING PROHIBITED IN PUBLIC PLACES. A person  
14 may not smoke in a public place in this state.

15 Sec. 169.052. SMOKING PROHIBITED IN PLACE OF EMPLOYMENT. A  
16 person may not smoke in a place of employment.

17 Sec. 169.053. PROHIBITION OF SMOKING IN SEATING AREA AT AN  
18 OUTDOOR EVENT. A person may not smoke in:

19 (1) the seating area of an outdoor arena, stadium, or  
20 amphitheater; or

21 (2) bleachers or grandstands for use by spectators at  
22 a sporting or other public event.

23 Sec. 169.054. REASONABLE DISTANCE. A person may not smoke  
24 within a distance of 15 feet outside an entrance, operable window,  
25 or ventilation system of an enclosed area in which smoking is  
26 prohibited.

27 Sec. 169.055. EXCEPTIONS. This subchapter does not apply

1 to:

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

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

6 (A) not more than 20 percent of rooms rented to  
7 guests in a hotel or motel are designated as smoking rooms;

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

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

12 (D) nonsmoking rooms are not converted to smoking  
13 rooms;

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

19 (4) a private club that does not employ any employees:

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

22 (B) provided the private club is not established  
23 for the sole purpose of avoiding compliance with this chapter; or

24 (5) the outdoor area of a place of employment other  
25 than the areas described by Sections 169.053 and 169.054.

26 Sec. 169.056. DECLARATION OF ESTABLISHMENT AS NONSMOKING.

27 (a) An owner, operator, manager, or other person in control of an

1 establishment, facility, or outdoor area may declare that entire  
2 establishment, facility, or outdoor area as a nonsmoking place.

3 (b) A person may not smoke in a place in which a sign  
4 conforming to the requirements of Section 169.057(a) is posted.

5 Sec. 169.057. DUTIES OF OWNER, MANAGER, OR OPERATOR OF  
6 PUBLIC PLACE OR EMPLOYER IN PLACE OF EMPLOYMENT. (a) An owner,  
7 manager, or operator of a public place or an employer in a place of  
8 employment shall:

9 (1) post clearly and conspicuously in the public place  
10 or place of employment, as applicable:

11 (A) a sign with the words "No Smoking"; or

12 (B) a sign with the international "No Smoking"  
13 symbol, consisting of a pictorial representation of a burning  
14 cigarette enclosed in a red circle with a red bar across the  
15 cigarette;

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

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

21 (b) An employer shall provide written notice that smoking is  
22 prohibited in the place of employment to each:

23 (1) prospective employee in any application the  
24 employer supplies; and

25 (2) employee on the first day of employment.

26 (b-1) An employer shall provide written notice not later  
27 than December 1, 2009, that smoking is prohibited to each employee



1 who is employed by that employer on September 1, 2009, and who  
2 continues to be employed by the employer on the date of the notice.  
3 This subsection expires January 1, 2011.

4 Sec. 169.058. NONRETALIATION; NONWAIVER OF RIGHTS. (a) A  
5 person or employer may not discharge, refuse to hire, or in any  
6 manner retaliate against an employee, applicant for employment, or  
7 customer because that employee, applicant, or customer exercises  
8 any right afforded by this chapter or reports or attempts to  
9 prosecute a violation of this chapter.

10 (b) An employee working in a setting in which an employer  
11 allows smoking does not waive or surrender any legal right the  
12 employee may have against the employer or any other party.

13 [Sections 169.059-169.100 reserved for expansion]

14 SUBCHAPTER C. ENFORCEMENT AND PENALTIES

15 Sec. 169.101. ENFORCEMENT. (a) The department shall  
16 enforce this chapter.

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

23 (c) A person may file a complaint concerning a violation of  
24 this chapter with the department.

25 (d) The department or another agency of this state or a  
26 political subdivision of this state designated by the department  
27 may inspect an establishment for compliance with this chapter.

1       (e) An employer or an owner, manager, operator, or employee  
2 of an establishment regulated under this chapter shall inform a  
3 person violating this chapter of the appropriate provisions  
4 pertaining to the violation.

5       Sec. 169.102. INJUNCTIVE RELIEF. In addition to the other  
6 remedies provided by this chapter, the attorney general at the  
7 request of the department, or a person aggrieved by a violation of  
8 this chapter, may bring an action for injunctive relief to enforce  
9 this chapter.

10       Sec. 169.103. OFFENSES; PENALTIES. (a) A person who  
11 violates Section 169.051, 169.052, 169.053, 169.054, or 169.056(b)  
12 commits an offense. An offense under this subsection is a Class C  
13 misdemeanor punishable by a fine not to exceed \$50.

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

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

25       (d) If it is shown on the trial of an offense under  
26 Subsection (b) that the defendant has previously been finally  
27 convicted of two offenses under that subsection that occurred

1 within one year before the date of the offense that is the subject  
2 of the trial, on conviction the defendant shall be punished by a  
3 fine not to exceed \$500.

4 Sec. 169.104. SUSPENSION OR REVOCATION OF LICENSE OR  
5 PERMIT. An agency of this state or a political subdivision of this  
6 state may, in accordance with the applicable procedures of the  
7 agency, suspend or revoke a license, permit, or other authority for  
8 the premises on which a violation of this chapter occurs.

9 Sec. 169.105. PUBLIC NUISANCE. A violation of this chapter  
10 is a public nuisance and may be abated by the department by  
11 restraining order, preliminary or permanent injunction, or other  
12 means provided by law. The state may take action to recover the  
13 costs of the nuisance abatement.

14 Sec. 169.106. SEPARATE VIOLATIONS. Each day on which a  
15 violation of this chapter occurs is considered a separate and  
16 distinct violation.

17 SECTION 2. The following are repealed:

18 (1) Section 48.01, Penal Code; and

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

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

27 SECTION 4. This Act takes effect September 1, 2009.