

1-1 By: Ellis, et al. S.B. No. 544
1-2 (In the Senate - Filed January 26, 2009; February 17, 2009,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; May 13, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 3;
1-6 May 13, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 544 By: Shapleigh

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the elimination of smoking in certain workplaces and
1-11 public places; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle H, Title 2, Health and Safety Code, is
1-14 amended by adding Chapter 169 to read as follows:

1-15 CHAPTER 169. SMOKING PROHIBITED IN PUBLIC PLACES

1-16 AND PLACES OF EMPLOYMENT

1-17 SUBCHAPTER A. GENERAL PROVISIONS

1-18 Sec. 169.001. DEFINITIONS. In this chapter:

1-19 (1) "Bar" means an enclosed indoor establishment that
1-20 is open to the public and is devoted primarily to the sale and
1-21 service of alcoholic beverages for on-premises consumption.

1-22 (2) "Business" means:

1-23 (A) a sole proprietorship, partnership, joint
1-24 venture, corporation, or other business entity, either for profit
1-25 or not for profit, including a retail establishment, where goods or
1-26 services are sold;

1-27 (B) a professional corporation or other entity
1-28 where legal, medical, dental, engineering, architectural, or other
1-29 professional services are delivered; or

1-30 (C) a private club.

1-31 (3) "Cigar bar" means a business that:

1-32 (A) has in excess of 15 percent of gross sales in
1-33 tobacco products, as that term is defined by Section 155.001, Tax
1-34 Code;

1-35 (B) holds a permit under Chapter 155, Tax Code;
1-36 and

1-37 (C) holds an alcoholic beverage permit or license
1-38 under Chapter 25, 28, 32, or 69, Alcoholic Beverage Code.

1-39 (4) "Department" means the Department of State Health
1-40 Services.

1-41 (5) "Employee" means an individual who:

1-42 (A) is employed by an employer for direct or
1-43 indirect monetary wages or profit; or

1-44 (B) volunteers the individual's services for an
1-45 employer.

1-46 (6) "Employer" means a person who employs one or more
1-47 individuals or uses the volunteer services of one or more
1-48 individuals. The term includes:

1-49 (A) a nonprofit entity;

1-50 (B) the legislative, executive, and judicial
1-51 branches of state government; and

1-52 (C) any political subdivision of this state.

1-53 (7) "Enclosed area" means all space between a floor
1-54 and ceiling that is enclosed on all sides by solid walls or windows,
1-55 exclusive of doorways, that extend from the floor to the ceiling.

1-56 (8) "Health care facility" means an office or
1-57 institution in which care or treatment is provided for physical,
1-58 mental, or emotional diseases or other medical, physiological, or
1-59 psychological conditions.

1-60 (9) "Place of employment" means an area under the
1-61 control of an employer that is used by employees of the employer but
1-62 is not generally open to the public.

1-63 (10) "Private club" means an organization that:

2-1 (A) owns, leases, or occupies a building used
2-2 exclusively for club purposes at all times;
2-3 (B) is operated solely for a recreational,
2-4 fraternal, social, patriotic, political, benevolent, or athletic
2-5 purpose, but not for pecuniary gain;
2-6 (C) sells alcoholic beverages only incidentally
2-7 to its operation;
2-8 (D) is managed by a board of directors or similar
2-9 body chosen by the members at an annual meeting;
2-10 (E) has established bylaws or a constitution to
2-11 govern the club's activities; and
2-12 (F) is exempt from federal income taxation under
2-13 Section 501(a), Internal Revenue Code of 1986, as a club described
2-14 by Section 501(c)(7) of that code.
2-15 (11) "Public place" means:
2-16 (A) an enclosed indoor area the public is invited
2-17 or permitted to enter, including all or part of the following:
2-18 (i) a restaurant;
2-19 (ii) a bar;
2-20 (iii) a retail or service establishment;
2-21 (iv) a facility of a business or nonprofit
2-22 entity;
2-23 (v) a shopping mall;
2-24 (vi) a convention facility;
2-25 (vii) a theater or other facility primarily
2-26 used for exhibiting a performance;
2-27 (viii) a sports arena;
2-28 (ix) a health care facility;
2-29 (x) a licensed child-care or adult day-care
2-30 facility;
2-31 (xi) a polling place;
2-32 (xii) a room in which a public meeting under
2-33 the control of this state, an agency or branch of government of this
2-34 state, or a political subdivision of this state is in progress;
2-35 (xiii) a common area in a multiple-unit
2-36 residential facility;
2-37 (xiv) a public transportation facility,
2-38 including a bus or taxicab, and a ticket, boarding, or waiting area
2-39 of a public transportation depot;
2-40 (xv) a waiting room, hallway, room, or ward
2-41 in a health care facility; or
2-42 (xvi) a restroom, lobby, reception area,
2-43 service line, hallway, elevator, or other common-use area the
2-44 public is invited or permitted to enter; or
2-45 (B) a facility of the state or of a local
2-46 government, including a building or vehicle owned, leased, or
2-47 operated by the state or local government, regardless of whether
2-48 the public is invited or permitted to enter.
2-49 (12) "Restaurant" means an enclosed indoor
2-50 establishment that is open to the public and is devoted primarily to
2-51 the sale and service of food for immediate consumption. The term
2-52 includes a bar located at the establishment.
2-53 (13) "Retail or service establishment" means an
2-54 establishment that sells goods or services to the public.
2-55 (14) "Service line" means an indoor line in which one
2-56 or more persons wait for or receive service, whether or not the
2-57 service involves the exchange of money.
2-58 (15) "Shopping mall" means an enclosed public walkway
2-59 or hall area that connects retail, service, or professional
2-60 establishments.
2-61 (16) "Smoke" means to inhale, exhale, burn, or carry a
2-62 lighted cigar, cigarette, pipe, or other smoking equipment in any
2-63 manner.
2-64 (17) "Sports arena" means a place in which a person
2-65 engages in physical exercise, participates in athletic
2-66 competition, or witnesses sports or other events.
2-67 (18) "Tobacco shop" means a business primarily devoted
2-68 to the sale of tobacco products, as that term is defined by Section
2-69 155.001, Tax Code, that does not hold an alcoholic beverage permit

3-1 or license.
 3-2 Sec. 169.002. APPLICABILITY. (a) Except as provided by
 3-3 Subsection (b), this chapter preempts and supersedes a local
 3-4 ordinance, rule, or regulation adopted by any political subdivision
 3-5 of this state relating to smoking.
 3-6 (b) To the extent that a local ordinance, rule, or
 3-7 regulation adopted by a political subdivision of this state
 3-8 prohibits or restricts smoking to a greater degree than this
 3-9 chapter, the ordinance, rule, or regulation is not preempted or
 3-10 superseded by this chapter.
 3-11 (c) This chapter does not preempt or supersede Section
 3-12 38.006, Education Code.
 3-13 Sec. 169.003. PUBLIC EDUCATION. The department shall
 3-14 engage in a continuing program to explain and clarify the purpose
 3-15 and requirements of this chapter and to guide employers, owners,
 3-16 operators, and managers in complying with this chapter. The
 3-17 program may include publication of a brochure for businesses and
 3-18 individuals that explains the provisions of this chapter.
 3-19 Sec. 169.004. GOVERNMENT AGENCY COOPERATION. The
 3-20 department shall annually request other government agencies to
 3-21 establish local operating procedures to comply with this chapter.
 3-22 This request may include urging all federal, state, county,
 3-23 municipal, and independent school districts to update existing
 3-24 smoking control regulations to be consistent with the current
 3-25 health findings regarding secondhand smoke.
 3-26 Sec. 169.005. OTHER APPLICABLE LAWS. This chapter may not
 3-27 be construed to permit smoking where it is restricted by other
 3-28 applicable law.
 3-29 Sec. 169.006. LIBERAL CONSTRUCTION. This chapter shall be
 3-30 liberally construed to further its purpose.
 3-31 [Sections 169.007-169.050 reserved for expansion]
 3-32 SUBCHAPTER B. PROHIBITED ACTS
 3-33 Sec. 169.051. SMOKING PROHIBITED IN PUBLIC PLACES. A
 3-34 person may not smoke in a public place in this state.
 3-35 Sec. 169.052. SMOKING PROHIBITED IN PLACE OF EMPLOYMENT. A
 3-36 person may not smoke in a place of employment.
 3-37 Sec. 169.053. PROHIBITION OF SMOKING IN SEATING AREA AT AN
 3-38 OUTDOOR EVENT. A person may not smoke in:
 3-39 (1) the seating area of an outdoor arena, stadium, or
 3-40 amphitheater; or
 3-41 (2) bleachers or grandstands for use by spectators at
 3-42 a sporting or other public event.
 3-43 Sec. 169.054. REASONABLE DISTANCE. A person may not smoke
 3-44 within a distance of 10 feet outside a doorway of an enclosed area
 3-45 in which smoking is prohibited.
 3-46 Sec. 169.055. EXCEPTIONS. Except as provided by Section
 3-47 169.056, this subchapter does not apply to:
 3-48 (1) a private residence, except when used as a
 3-49 child-care, adult day-care, or health care facility;
 3-50 (2) a hotel or motel room rented to a guest and
 3-51 designated as a smoking room, if:
 3-52 (A) not more than 20 percent of rooms rented to
 3-53 guests in a hotel or motel are designated as smoking rooms;
 3-54 (B) all smoking rooms in the hotel or motel on the
 3-55 same floor are contiguous;
 3-56 (C) smoke from smoking rooms does not enter an
 3-57 area in which smoking is prohibited; and
 3-58 (D) nonsmoking rooms are not converted to smoking
 3-59 rooms;
 3-60 (3) a nursing home or long-term care facility;
 3-61 (4) a tobacco shop;
 3-62 (5) a cigar bar;
 3-63 (6) a private club that does not employ any employees:
 3-64 (A) unless the club is being used for a function
 3-65 to which the general public is invited; and
 3-66 (B) provided the private club is not established
 3-67 for the sole purpose of avoiding compliance with this chapter;
 3-68 (7) the outdoor area of a restaurant or bar, other than
 3-69 the areas described by Section 169.053; or

4-1 (8) an outdoor porch or patio that is not accessible to
4-2 the public, other than the areas described by Section 169.053.

4-3 Sec. 169.056. DECLARATION OF ESTABLISHMENT AS NONSMOKING.

4-4 (a) An owner, operator, manager, or other person in control of an
4-5 establishment, facility, or outdoor area may declare that entire
4-6 establishment, facility, or outdoor area as a nonsmoking place.

4-7 (b) A person may not smoke in a place in which a sign
4-8 conforming to the requirements of Section 169.057 is posted.

4-9 Sec. 169.057. DUTIES OF OWNER, MANAGER, OR OPERATOR OF
4-10 PUBLIC PLACE OR EMPLOYER IN PLACE OF EMPLOYMENT. An owner, manager,
4-11 or operator of a public place or an employer in a place of
4-12 employment shall:

4-13 (1) post clearly and conspicuously in the public place
4-14 or place of employment, as applicable:

4-15 (A) a sign with the words "No Smoking"; or

4-16 (B) a sign with the international "No Smoking"
4-17 symbol, consisting of a pictorial representation of a burning
4-18 cigarette enclosed in a red circle with a red bar across the
4-19 cigarette;

4-20 (2) post at each entrance to the public place or place
4-21 of employment, as applicable, a conspicuous sign clearly stating
4-22 that smoking is prohibited; and

4-23 (3) remove all ashtrays from any area in which smoking
4-24 is prohibited.

4-25 [Sections 169.058-169.100 reserved for expansion]

4-26 SUBCHAPTER C. ENFORCEMENT AND PENALTIES

4-27 Sec. 169.101. ENFORCEMENT. (a) The department shall
4-28 enforce this chapter.

4-29 (b) An agency of this state or a political subdivision of
4-30 this state that issues a license, certificate, registration, or
4-31 other authority or permit to a business or to an owner, operator, or
4-32 other person in control of a business shall provide notice to each
4-33 applicant for the permit or authority of the provisions of this
4-34 chapter.

4-35 (c) A person may file a complaint concerning a violation of
4-36 this chapter with the department.

4-37 (d) The department or another agency of this state or a
4-38 political subdivision of this state designated by the department
4-39 may inspect an establishment for compliance with this chapter.

4-40 (e) An employer or an owner, manager, operator, or employee
4-41 of an establishment regulated under this chapter shall inform a
4-42 person violating this chapter of the appropriate provisions
4-43 pertaining to the violation.

4-44 Sec. 169.102. INJUNCTIVE RELIEF. In addition to the other
4-45 remedies provided by this chapter, the attorney general at the
4-46 request of the department, or a person aggrieved by a violation of
4-47 this chapter, may bring an action for injunctive relief to enforce
4-48 this chapter.

4-49 Sec. 169.103. OFFENSES; PENALTIES. (a) A person who
4-50 violates Section 169.051, 169.052, 169.053, 169.054, or 169.056(b)
4-51 commits an offense. An offense under this subsection is a Class C
4-52 misdemeanor punishable by a fine not to exceed \$50.

4-53 (b) An owner, manager, or operator of a public place or an
4-54 employer in a place of employment, as applicable, who violates
4-55 Section 169.057 commits an offense. An offense under this
4-56 subsection is a Class C misdemeanor punishable by a fine not to
4-57 exceed \$100.

4-58 (c) If it is shown on the trial of an offense under
4-59 Subsection (b) that the defendant has previously been finally
4-60 convicted of an offense under that subsection that occurred within
4-61 one year before the date of the offense that is the subject of the
4-62 trial, on conviction the defendant shall be punished by a fine not
4-63 to exceed \$200.

4-64 (d) If it is shown on the trial of an offense under
4-65 Subsection (b) that the defendant has previously been finally
4-66 convicted of two offenses under that subsection that occurred
4-67 within one year before the date of the offense that is the subject
4-68 of the trial, on conviction the defendant shall be punished by a
4-69 fine not to exceed \$500.

5-1 Sec. 169.104. SEPARATE VIOLATIONS. Each day on which a
5-2 violation of this chapter occurs is considered a separate and
5-3 distinct violation.

5-4 SECTION 2. The following are repealed:

5-5 (1) Section 48.01, Penal Code; and

5-6 (2) Section 2, Chapter 290 (S.B. 59), Acts of the 64th
5-7 Legislature, Regular Session, 1975.

5-8 SECTION 3. The repeal by this Act of Section 48.01, Penal
5-9 Code, does not apply to an offense committed under that section
5-10 before the effective date of this Act. An offense committed before
5-11 that date is covered by the law in effect on the date the offense was
5-12 committed, and the former law is continued in effect for that
5-13 purpose.

5-14 SECTION 4. This Act takes effect September 1, 2009.

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