

By: Ellis

S.B. No. 28

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to reducing state Medicaid and other health care costs by  
3 prohibiting smoking in certain public places; providing penalties.

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

5 SECTION 1. The legislature finds that the changes in law  
6 made by this Act will reduce the state's costs for health care and  
7 for treatment of smoking-related illness under governmentally  
8 funded insurance programs for state employees and their dependents  
9 and under other taxpayer-supported programs, such as Medicaid and  
10 indigent health care.

11 SECTION 2. (a) Chapter 172, Health and Safety Code, as  
12 added by this Act, takes effect on the 90th day after the date the  
13 executive commissioner of the Health and Human Services Commission:

14 (1) certifies in writing that prohibiting smoking in  
15 certain public places in accordance with Chapter 172, Health and  
16 Safety Code, as added by this Act, will reduce this state's Medicaid  
17 expenditures in the state fiscal biennium ending August 31, 2013,  
18 by at least \$10 million paid from any revenue source or by \$4  
19 million paid from the general revenue fund; and

20 (2) publishes the certification in the Texas Register.

21 (b) On publication of the certification as described by  
22 Subsection (a)(2) of this section, the Health and Human Services  
23 Commission shall post on the commission's Internet website a copy  
24 of that certification and notice of the requirements of Chapter

1 172, Health and Safety Code, as added by this Act.

2 (c) Not later than the 30th day after the date the executive  
3 commissioner of the Health and Human Services Commission publishes  
4 the certification as described by Subsection (a)(2) of this  
5 section, the Department of State Health Services, the Alcoholic  
6 Beverage Commission, and each county, public health district, and  
7 local health department shall:

8 (1) post a copy of the certification on its Internet  
9 website; or

10 (2) provide notice to holders subject to Chapter 172,  
11 Health and Safety Code, as added by this Act, of the requirements of  
12 that chapter.

13 (d) If the executive commissioner of the Health and Human  
14 Services Commission fails to provide the certification required by  
15 Subsection (a) of this section on or before January 1, 2012, this  
16 Act expires and Chapter 172, Health and Safety Code, does not take  
17 effect.

18 SECTION 3. Subtitle H, Title 2, Health and Safety Code, is  
19 amended by adding Chapter 172 to read as follows:

20 CHAPTER 172. SMOKING PROHIBITED IN CERTAIN PUBLIC PLACES

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 172.001. DEFINITIONS. In this chapter:

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

26 (2) "Department" means the Department of State Health  
27 Services.

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

4           (4) "Public place" means an enclosed area the public  
5 is invited or allowed to enter, including a bar and a restaurant.

6           (5) "Restaurant" means an enclosed indoor  
7 establishment that is open to the public and is devoted primarily to  
8 the sale and service of food for immediate consumption. The term  
9 includes a bar located at the establishment.

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

13           (7) "Tobacco bar" means a business that:

14                   (A) has in excess of 15 percent of gross sales in  
15 tobacco products, as that term is defined by Section 155.001, Tax  
16 Code, excluding sales derived from vending machines;

17                   (B) holds a permit under Chapter 155, Tax Code;  
18 and

19                   (C) holds an alcoholic beverage permit or license  
20 issued under Chapter 25, 28, 32, or 69, Alcoholic Beverage Code, or  
21 under Section 11.10, Alcoholic Beverage Code.

22           (8) "Tobacco shop" means a business primarily devoted  
23 to the sale of tobacco products, as that term is defined by Section  
24 155.001, Tax Code, that does not hold an alcoholic beverage permit  
25 or license.

26           Sec. 172.002. APPLICABILITY. (a) Except as provided by  
27 Section 172.053, this chapter applies only to a public place that is

1 owned, managed, operated, or controlled under a license,  
2 certificate, registration, or other authority or permit issued for  
3 the public place or to a person who owns, manages, operates, or  
4 controls the public place by the Department of State Health  
5 Services, the Alcoholic Beverage Commission, or a local health  
6 department or, with respect to a permit requirement authorized by  
7 Chapter 437, a county or public health district.

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

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

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

19 Sec. 172.003. OTHER APPLICABLE LAWS. This chapter may not  
20 be construed to authorize smoking where it is restricted by other  
21 applicable law.

22 Sec. 172.004. LIBERAL CONSTRUCTION. This chapter shall be  
23 liberally construed to further its purpose.

24 [Sections 172.005-172.050 reserved for expansion]

25 SUBCHAPTER B. PROHIBITED ACTS

26 Sec. 172.051. SMOKING PROHIBITED IN PUBLIC PLACES. A  
27 person may not smoke in a public place in this state.

1       Sec. 172.052. EXCEPTIONS. (a) This subchapter does not  
2 apply to:

3           (1) a tobacco shop;

4           (2) a tobacco bar;

5           (3) the outdoor area of a restaurant or bar;

6           (4) an outdoor porch or patio that is not accessible to  
7 the public;

8           (5) the set of a motion picture, television, or  
9 theater production; or

10           (6) a convention of tobacco-related businesses in a  
11 municipality where a convention of tobacco-related businesses is  
12 expressly authorized under an applicable municipal ordinance.

13       (b) The exception under Subsection (a)(5) applies only to an  
14 actor who is portraying the use of a tobacco product during the  
15 motion picture, television, or theater production.

16       Sec. 172.053. DECLARATION OF ESTABLISHMENT AS NONSMOKING.

17       (a) An owner, operator, manager, or other person in control of any  
18 establishment, facility, or outdoor area may declare that entire  
19 establishment, facility, or outdoor 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 172.054 is posted.

22       Sec. 172.054. DUTIES OF OWNER, MANAGER, OR OPERATOR OF  
23 PUBLIC PLACE. An owner, manager, or operator of a public place  
24 shall:

25           (1) post clearly and conspicuously in the public  
26 place:

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

1           (B) a sign with the international "No Smoking"  
2 symbol, consisting of a pictorial representation of a burning  
3 cigarette enclosed in a red circle with a red bar across the  
4 cigarette;

5           (2) post at each entrance to the public place a  
6 conspicuous sign clearly stating that smoking is prohibited; and

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

9           [Sections 172.055-172.100 reserved for expansion]

10           SUBCHAPTER C. ENFORCEMENT AND PENALTIES

11           Sec. 172.101. ENFORCEMENT. (a) The department shall  
12 enforce this chapter.

13           (b) A governmental entity described by Section 172.002(a)  
14 that issues a license, certificate, registration, or other  
15 authority or permit for a public place or to a person who owns,  
16 manages, operates, or controls the public place shall provide  
17 notice to each applicant for the permit or authority of the  
18 provisions of this chapter.

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

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

24           (e) An employer or an owner, manager, operator, or employee  
25 of an establishment regulated under this chapter shall inform a  
26 person violating this chapter of the appropriate provisions  
27 pertaining to the violation.

1       Sec. 172.102. INJUNCTIVE RELIEF. In addition to the other  
2 remedies provided by this chapter, the attorney general at the  
3 request of the department, or a person aggrieved by a violation of  
4 this chapter, may bring an action for injunctive relief to enforce  
5 this chapter.

6       Sec. 172.103. OFFENSES; PENALTIES. (a) A person who  
7 violates Section 172.051 or 172.053(b) commits an offense. An  
8 offense under this subsection is a Class C misdemeanor punishable  
9 by a fine not to exceed \$50.

10       (b) An owner, manager, or operator of a public place who  
11 violates Section 172.054 commits an offense. An offense under this  
12 subsection is a Class C misdemeanor punishable by a fine not to  
13 exceed \$100.

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

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

26       (e) If conduct that constitutes an offense under this  
27 section also constitutes an offense under another law, the offense

1 may be prosecuted under this section, the other law, or both this  
2 section and the other law.

3 Sec. 172.104. SEPARATE VIOLATIONS. Each day on which a  
4 violation of this chapter occurs is considered a separate  
5 violation.

6 SECTION 4. This Act takes effect on the 91st day after the  
7 last day of the legislative session.