

Amend CSSB 1811 (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE _____. REDUCING STATE MEDICAID AND OTHER HEALTH CARE COSTS
BY PROHIBITING SMOKING IN CERTAIN PUBLIC PLACES

SECTION _____.01. The legislature finds that the changes in law made by this article will reduce the state's costs for health care and for treatment of smoking-related illness under governmentally funded insurance programs for state employees and their dependents and under other taxpayer-supported programs, such as Medicaid and indigent health care.

SECTION _____.02. (a) Chapter 169, Health and Safety Code, as added by this article, takes effect on the 90th day after the date the executive commissioner of the Health and Human Services Commission:

(1) certifies in writing that prohibiting smoking in certain public places in accordance with Chapter 169, Health and Safety Code, as added by this article, will reduce this state's Medicaid expenditures in the state fiscal biennium ending August 31, 2013, by at least \$10 million paid from any revenue source or by \$4 million paid from the general revenue fund; and

(2) publishes the certification in the Texas Register.

(b) On publication of the certification as described by Subsection (a)(2) of this section, the Health and Human Services Commission shall post on the commission's Internet website a copy of that certification and notice of the requirements of Chapter 169, Health and Safety Code, as added by this article.

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

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

(2) provide notice to holders subject to Chapter 169,

Health and Safety Code, as added by this article, of the requirements of that chapter.

(d) If the executive commissioner of the Health and Human Services Commission fails to provide the certification required by Subsection (a) of this section on or before January 1, 2012, this article expires and Chapter 169, Health and Safety Code, does not take effect.

SECTION ____ .03. 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

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

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

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

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

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

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

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

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

(C) holds an alcoholic beverage permit or license issued under Chapter 25, 28, 32, or 69, Alcoholic Beverage Code, or

under Section 11.10, Alcoholic Beverage Code.

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

Sec. 169.002. APPLICABILITY. (a) Except as provided by Section 169.053, this chapter applies only to a public place that is owned, managed, operated, or controlled under a license, certificate, registration, or other authority or permit issued for the public place or to a person who owns, manages, operates, or controls the public place by the Department of State Health Services, the Alcoholic Beverage Commission, or a local health department or, with respect to a permit requirement authorized by Chapter 437, a county or public health district.

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

(c) 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.

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

Sec. 169.003. OTHER APPLICABLE LAWS. This chapter may not be construed to authorize smoking where it is restricted by other applicable law.

Sec. 169.004. LIBERAL CONSTRUCTION. This chapter shall be liberally construed to further its purpose.

[Sections 169.005-169.050 reserved for expansion]

SUBCHAPTER B. PROHIBITED ACTS

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

Sec. 169.052. EXCEPTIONS. (a) This subchapter does not apply to:

(1) a tobacco shop;

- (2) a tobacco bar;
- (3) the outdoor area of a restaurant or bar;
- (4) an outdoor porch or patio that is not accessible to the public;
- (5) the set of a motion picture, television, or theater production; or
- (6) a convention of tobacco-related businesses in a municipality where a convention of tobacco-related businesses is expressly authorized under an applicable municipal ordinance.

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

Sec. 169.053. DECLARATION OF ESTABLISHMENT AS NONSMOKING.

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

(b) A person may not smoke in a place in which a sign conforming to the requirements of Section 169.054 is posted.

Sec. 169.054. DUTIES OF OWNER, MANAGER, OR OPERATOR OF PUBLIC PLACE. An owner, manager, or operator of a public place shall:

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

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

(B) 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 a conspicuous sign clearly stating that smoking is prohibited; and

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

[Sections 169.055-169.100 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT AND PENALTIES

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

(b) A governmental entity described by Section 169.002(a)

that issues a license, certificate, registration, or other authority or permit for a public place or to a person who owns, manages, operates, or controls the public place shall provide notice to each applicant for the permit or authority of the provisions of this chapter.

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

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

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

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

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

(b) An owner, manager, or operator of a public place who violates Section 169.054 commits an offense. An offense under this subsection is a Class C misdemeanor punishable by a fine not to exceed \$100.

(c) 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, on conviction the defendant shall be punished by a fine not to exceed \$200.

(d) 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, on conviction the defendant shall be punished by a fine not to exceed \$500.

(e) If conduct that constitutes an offense under this section also constitutes an offense under another law, the offense may be prosecuted under this section, the other law, or both this section and the other law.

Sec. 169.104. SEPARATE VIOLATIONS. Each day on which a violation of this chapter occurs is considered a separate violation.