

BILL ANALYSIS

Senate Research Center
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S.B. 355
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Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 355 seeks to eliminate smoking in indoor public places, including municipal worksites, and private worksites including restaurants, restaurant bars, and stand-alone bars.

Secondhand smoke is a known cause of lung cancer, heart disease, low birth weight, chronic lung ailments (such as bronchitis and asthma), and other health problems. Studies have found that secondhand smoke leads to the death of 53,000 Americans each year.

Twenty-nine states have already adopted smoke-free laws and an additional seven are considering becoming smoke-free.

The proposed bill applies to enclosed public areas. The bill also addresses hotel and motel rooms, tobacco shops, and cigar bar exceptions and guidelines. Further, the proposed bill outlines the notice requirements for employers, enforcement procedures by local governments, and penalties assessed.

This legislation seeks to protect all Texans from the effects of toxic secondhand smoke in all public places and places of employment.

There is no comprehensive statewide act that bans smoking in public places or places of employment, although 34 cities across the state have enacted local comprehensive laws that eliminate exposure to secondhand smoke in public places including restaurants and bars. Without a statewide smoke-free workplace law, 23 percent of Texans will remain unprotected from secondhand smoke exposure. These Texans live in unincorporated cities or rural areas where no entity exists to enact or enforce this type of legislation.

As proposed, S.B. 355 amends current law relating to the elimination of smoking in certain workplaces and public places and provides penalties.

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," "sports arena," "tobacco bar," "tobacco product manufacturing facility," and "tobacco shop."

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, and municipal agencies and all 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 authorize 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 PLACES.** 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 A SEATING AREA AT AN OUTDOOR EVENT.** Prohibits a person from smoking in the seating area of an outdoor arena, stadium, or amphitheater, or in bleachers or grandstands for use by spectators at a sporting or other public event.

Sec. 169.054. **EXCEPTIONS.** (a) Provides that this subchapter does not apply to:

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

(2) 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;

- (3) a nursing home or long-term care facility;
- (4) a tobacco shop;
- (5) a tobacco bar that was in operation on May 15, 2011;
- (6) 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 that the private club is not established for the sole purpose of avoiding compliance with this chapter;
- (7) the outdoor area of a restaurant or bar, other than the areas described by Section 169.053;
- (8) an outdoor porch or patio that is not accessible to the public, other than the areas described by Section 169.053; or
- (9) except as provided by Subsection (b), a tobacco product manufacturing facility that complies with certain requirements.

(b) Provides that the exemption provided under Subsection (a)(9) does not apply to a tobacco product manufacturing facility that is established for the purpose of avoiding compliance with this chapter.

Sec. 169.055. 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 169.056 is posted.

Sec. 169.056. DUTIES OF OWNER, MANAGER, OR OPERATOR OF PUBLIC PLACE OR EMPLOYER IN PLACE OF EMPLOYMENT. 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 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.

[Reserves Sections 169.057-169.100 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 with DSHS a complaint concerning a violation of this chapter.

(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 Section 169.051, 169.052, 169.053, or 169.055(b) commits an offense. Provides that an offense 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 169.056 commits an offense. Provides that an offense under this subsection is a Class C misdemeanor punishable by a fine not to exceed \$100.

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

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

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

SECTION 2. (1) Repealer: Section 48.01 (Smoking Tobacco), Penal Code; and

(2) Repealer: Section 2 (prohibiting the provisions of this Act from preempting any ordinance adopted by a governmental entity now or in the future), Chapter 290 (S.B. 59), 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, 2011.