

By: Ellis

S.B. No. 87

A BILL TO BE ENTITLED

AN ACT

relating to the elimination of smoking in certain 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 172 to read as follows:

CHAPTER 172. SMOKING PROHIBITED IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 172.001. 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, that 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 enclosed area under  
21 the control of an employer that is used by employees of the employer  
22 but 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 area the public is invited or  
13 allowed 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 allowed to enter; or

14                   (B) a facility or vehicle of this state or of a  
15 local government, including a building or vehicle owned, leased, or  
16 operated by this state or the local government, regardless of  
17 whether the public is invited or allowed 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 (17) "Tobacco bar" means a business that:

10 (A) has in excess of 15 percent of gross sales in  
11 tobacco products, as that term is defined by Section 155.001, Tax  
12 Code, excluding sales derived from vending machines or the use of  
13 hookahs;

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

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

19 (18) "Tobacco product manufacturing facility" means a  
20 building that is owned or leased by a for-profit business that  
21 manufactures tobacco products intended to be smoked and that is  
22 used for the testing or development of tobacco products. The term  
23 does not include a retail store, membership club, tobacco  
24 distributor, or tobacco storage facility.

25 (19) "Tobacco shop" means a business primarily devoted  
26 to the sale of tobacco products, as that term is defined by Section  
27 155.001, Tax Code, that does not hold an alcoholic beverage permit

1 or license.

2 Sec. 172.002. APPLICABILITY. (a) Except as provided by  
3 Subsection (b), this chapter preempts and supersedes a local  
4 ordinance, rule, or regulation adopted by any political subdivision  
5 of this state relating to smoking.

6 (b) To the extent that a local ordinance, rule, or  
7 regulation adopted by a political subdivision of this state  
8 prohibits or restricts smoking to a greater degree than this  
9 chapter, the ordinance, rule, or regulation is not preempted or  
10 superseded by this chapter.

11 (c) This chapter does not preempt or supersede Section  
12 38.006, Education Code.

13 Sec. 172.003. PUBLIC EDUCATION. The department shall  
14 engage in a continuing program to explain and clarify the purpose  
15 and requirements of this chapter and to guide employers, owners,  
16 operators, and managers in complying with this chapter. The  
17 program may include publication of a brochure for businesses and  
18 individuals that explains the provisions of this chapter.

19 Sec. 172.004. GOVERNMENT AGENCY COOPERATION. The  
20 department shall annually request other government agencies to  
21 establish local operating procedures to comply with this chapter.  
22 This request may include urging all federal, state, county, and  
23 municipal agencies and all independent school districts to update  
24 existing smoking control regulations to be consistent with the  
25 current health findings regarding secondhand smoke.

26 Sec. 172.005. OTHER APPLICABLE LAWS. This chapter may not  
27 be construed to authorize smoking where it is restricted by other

1 applicable law.

2 Sec. 172.006. LIBERAL CONSTRUCTION. This chapter shall be  
3 liberally construed to further its purpose.

4 SUBCHAPTER B. PROHIBITED ACTS

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

7 Sec. 172.052. SMOKING PROHIBITED IN PLACE OF EMPLOYMENT. A  
8 person may not smoke in a place of employment in this state.

9 Sec. 172.053. PROHIBITION OF SMOKING IN SEATING AREA AT AN  
10 OUTDOOR EVENT. A person may not smoke in:

11 (1) the seating area of an outdoor arena, stadium, or  
12 amphitheater in this state; or

13 (2) bleachers or grandstands for use by spectators at  
14 a sporting or other public event held in this state.

15 Sec. 172.054. EXCEPTIONS. (a) This subchapter does not  
16 apply to:

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

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

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

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

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

27 (D) nonsmoking rooms are not converted to smoking

- 1 rooms;
- 2 (3) a nursing home or long-term care facility;
- 3 (4) a tobacco shop;
- 4 (5) a tobacco bar that was in operation on May 15,
- 5 2015;
- 6 (6) a private club that does not employ any employees:
- 7 (A) unless the club is being used for a function
- 8 to which the general public is invited; and
- 9 (B) provided the private club is not established
- 10 for the sole purpose of avoiding compliance with this chapter;
- 11 (7) the outdoor area of a restaurant or bar, other than
- 12 the areas described by Section 172.053;
- 13 (8) an outdoor porch or patio that is not accessible to
- 14 the public, other than the areas described by Section 172.053; or
- 15 (9) except as provided by Subsection (b), a tobacco
- 16 product manufacturing facility that complies with the following
- 17 requirements:
- 18 (A) smoke from the facility does not migrate into
- 19 an enclosed area where smoking is prohibited under this chapter;
- 20 (B) the facility is a freestanding structure that
- 21 does not share a common wall with another establishment or business
- 22 and that is occupied solely by the tobacco product manufacturer;
- 23 (C) the facility does not employ any individual
- 24 under the age of 18;
- 25 (D) the facility does not allow a guest or member
- 26 of the public to enter an area where a tobacco product is being
- 27 smoked;



1           (E) the facility does not allow a guest, member  
2 of the public, or employee to roll the individual's own tobacco  
3 products;

4           (F) smoking is allowed only in an area designated  
5 for the testing or development of tobacco products and only for the  
6 purpose of testing or developing tobacco products; and

7           (G) smoking is not allowed in any common work  
8 area of the facility, including a private or shared office, meeting  
9 area, cafeteria, break room, hallway, restroom, or elevator.

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

14           Sec. 172.055. DECLARATION OF ESTABLISHMENT AS NONSMOKING.

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

18           (b) A person may not smoke in a place in which a sign  
19 conforming to the requirements of Section 172.056 is posted.

20           Sec. 172.056. DUTIES OF OWNER, MANAGER, OR OPERATOR OF  
21 PUBLIC PLACE OR EMPLOYER IN PLACE OF EMPLOYMENT. An owner, manager,  
22 or operator of a public place or an employer in a place of  
23 employment shall:

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

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

27                   (B) a sign with the international "No Smoking"

1 symbol, consisting of a pictorial representation of a burning  
2 cigarette enclosed in a red circle with a red bar diagonally  
3 crossing the cigarette;

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

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

9 SUBCHAPTER C. ENFORCEMENT AND PENALTIES

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

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

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

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

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

27 Sec. 172.102. INJUNCTIVE RELIEF. In addition to the other

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

5 Sec. 172.103. OFFENSES; PENALTIES. (a) A person who  
6 violates Section 172.051, 172.052, 172.053, or 172.055(b) commits  
7 an offense. An offense under this subsection is a Class C  
8 misdemeanor punishable by a fine not to exceed \$50.

9 (b) An owner, manager, or operator of a public place or an  
10 employer in a place of employment, as applicable, who violates  
11 Section 172.056 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 Sec. 172.104. SEPARATE VIOLATIONS. Each day on which a  
27 violation of this chapter occurs is considered a separate

1 violation.

2 SECTION 2. The following are repealed:

3 (1) Section 48.01, Penal Code; and

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

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

12 SECTION 4. This Act takes effect September 1, 2015.