

## **BILL ANALYSIS**

Senate Research Center

H.B. 9  
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Health & Human Services  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Under current law, there is no statewide prohibition regarding smoking in public places. 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. Furthermore, studies have shown that secondhand smoke leads to the death of an estimated 53,000 Americans each year. Forty-seven cities in this state have passed ordinances that contain smoke-free provisions. Among these cities, 13 of them, including Houston, Austin, El Paso, and Laredo, have passed strong, comprehensive ordinances that protect employees and the public alike. Furthermore, this past election day, Abilene and Baytown voted to join other cities in becoming smoke-free. Sixteen states have already adopted smoke-free laws, while 15 other states are currently considering smoke-free laws.

H.B. 9 prohibits smoking in indoor public places, municipal worksites, and private worksites, including restaurants, restaurant bars, and stand-alone bars. The bill provides a fifteen foot smoking prohibition to allow a reasonable distance from certain enclosed areas. The bill also authorizes certain exceptions, including hotel and motel rooms. Finally, the bill outlines the notice requirements of employers, enforcement procedures by local governments, and penalties that may be assessed.

### **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**

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," and "tobacco shop."

Sec. 169.002. SMOKING PROHIBITED. Prohibits a person from smoking in a public place or place of employment; within 15 feet of an entrance, operable window, or ventilation system of a public place or place of employment; 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. 169.003. EXCEPTIONS. Provides that this subchapter does not apply to certain places.

Sec. 169.0035. PRIVATELY OWNED PROPERTY. Authorizes a person who privately owns real property, notwithstanding any other provision in this chapter, to designate the property as exempt from the provision of this chapter by posting on the

property clearly and conspicuously, in a manner reasonably necessary to give notice, a statement that smoking is permitted on the property.

Sec. 169.004. DUTIES OF PERSON IN CONTROL OF A PUBLIC PLACE OR PLACE OF EMPLOYMENT. Requires a person in control of a public place or place of employment to post clearly and conspicuously in a manner reasonably necessary to give notice to persons entering the public place or place of employment a sign with the words "NO SMOKING," or a sign with the international no smoking symbol depicting a burning cigarette overlaid by a red circle with a diagonal line across the cigarette; remove all ashtrays from any area where smoking is prohibited; and make a reasonable effort to request that any person known to be smoking in a prohibited area extinguish the burning tobacco product.

Sec. 169.0045. CONTRACTOR PREFERENCES. Prohibits an employer in control of a place of employment subject to this chapter from awarding a contract, including contracts and contracts for services related to contracts under Chapter 2166 (Building and Construction and Acquisition), Government Code, to a proposed contractor unless the contractor offers to the contractor's employees a smoking cessation program to assist employees who smoke.

Sec. 169.0046. SMOKING CESSATION PROGRAM . (a) Authorizes an employer in control of a place of employment subject to this chapter to offer to employees a smoking cessation program to assist employees who smoke.

(b) Provides that an employer that offers a program under this section is entitled to a credit against taxes owed by the employer under Chapter 171 (Franchise Tax), Tax Code, in accordance with rules adopted by the comptroller. Provides that the amount of the credit is equal to the cost of the program.

(c) Requires the program, to qualify for the credit under Subsection (b), to offer assistance to an employee through at least two attempts to quit smoking and authorizes the credit to be offered directly to the employer or through contract with another provider.

Sec. 169.005. DECLARATION OF ESTABLISHMENT AS NONSMOKING. (a) Authorizes a 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 to smoke in a place in which a sign conforming to the requirements of Section 169.004 is posted.

Sec. 169.006. ENFORCEMENT. (a) Authorizes the Department of State Health Services (DSHS) or a public health official to enforce this chapter.

(b) Authorizes DSHS, a public health official, a law enforcement officer to enter and inspect a public place in enforcing this chapter.

(c) Authorizes a person to file a complaint concerning a violation of this chapter with DSHS or a political subdivision of the state.

Sec. 169.007. INJUNCTIVE RELIEF. Authorizes the attorney general or a district, county, or city attorney, to bring an action for injunctive relief to enforce this chapter, in addition to the other remedies provided by this chapter.

Sec. 169.008. OFFENSE; PENALTIES. (a) Provides that a person who violates Section 169.002, 169.004, or 169.005(b) commits an offense. Provides that an offense under this subsection is a misdemeanor punishable by a fine not to exceed \$100.

(b) Requires that on conviction, if it is shown on the trial of an offense under Subsection (a) 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, the defendant be punished by a fine not to exceed \$500.

(c) Requires that on conviction, if it is shown on the trial of an offense under Subsection (a) 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, the defendant be punished by a fine not to exceed \$1,000.

Sec. 169.109. SEPARATE VIOLATIONS. Provides that each day on which a violation of this chapter occurs is considered a separate and distinct violation.

Sec. 169.010. PUBLIC EDUCATION. Authorizes DSHS to engage in a program to educate the public about the provisions of this chapter.

Sec. 169.011. APPLICABILITY; CONSTRUCTION. (a) Provides that this chapter preempts and supersedes a local ordinance, rule, or regulation adopted by any political subdivision that restricts or prohibits smoking to a lesser degree than this chapter, except as provided by Subsection (b) and Section 169.012.

(b) Provides that this chapter does not preempt and supersede a local ordinance, rule, or regulation adopted by a political subdivision with a population of fewer than 50,000 people that prohibits or restricts smoking to a lesser degree than this chapter if the local ordinance, rule, or regulation was adopted by a political subdivision before September 1, 2007.

(c) Provides that Subsection (a) does not prohibit the adoption by a political subdivision, after September 1, 2007, of a local ordinance, rule, or regulation that prohibits or restricts smoking to a greater degree than this chapter.

(d) Requires that this chapter not be construed to permit smoking where it is restricted by other law.

(e) Provides that this chapter does not preempt or supersede Section 38.006, Education Code.

Sec. 169.012. LOCAL OPTION ELECTION. (a) Authorizes the voters in a municipality to vote to allow the governing body of the municipality, in the same manner and procedure as for a charter amendment, to adopt a local ordinance that restricts or prohibits smoking to a lesser degree than this chapter. Requires an election under this section to be held on May 10, 2008.

(b) Provides that this chapter, other than this section, does not apply within the boundaries of a municipality that adopts an ordinance under Subsection (a).

SECTION 2. Amends Subchapter A, Chapter 2166, Government Code, by adding Section 2166.009, as follows:

Sec. 2166.009. CONTRACTOR PREFERENCES: NONSMOKING POLICY. Requires the Texas Building and Procurement Commission to give preference to a proposed state contractor in awarding contracts under this chapter, including contracts for services related to contracts under this chapter, to a contractor who has a work site nonsmoking policy for the contractor's employees.

SECTION 3. Repealer: Section 48.01 (Smoking Tobacco), Penal Code, and Section 2 (regarding smoking tobacco in public places), Chapter 290, Acts of the 64th Legislature, Regular Session, 1975.

SECTION 4. Makes application of the repeal by this Act of Section 48.01, Penal Code, prospective.

SECTION 5. Effective date: January 1, 2008.