

BILL ANALYSIS

Senate Research Center

S.B. 28
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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, and leads to the death of 53,000 Americans each year. Twenty-nine states have already adopted smoke-free laws, and seven other states are currently considering becoming smoke-free.

The proposed bill applies to enclosed public areas of businesses that seek a permit from the Department of State Health Services or the Texas Alcoholic Beverage Commission, and are open to the public. The bill exempts businesses that primarily sell tobacco and does not apply to any outdoor areas, including the patios of restaurants and other businesses. Further, the proposed bill outlines the notice requirements of employers, enforcement procedures by local governments, and penalties assessed.

The health risk of second hand smoke is the specific problem being addressed by this legislation. This legislation seeks to protect Texans from the effects of toxic secondhand smoke in 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 pass or enforce this type of legislation.

This legislation provides for a statewide ban of smoking in most workplaces and public places.

As proposed, S.B. 28 amends current law relating to reducing state Medicaid and other health care costs by prohibiting smoking in certain 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. Provides that the legislature finds that the changes in law made by this Act will reduce the state's cost 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 2. (a) Effective date, Chapter 172, Health and Safety Code, as added by this Act: the 90th day after the date the executive commissioner of the Health and Human Services Commission (HHSC):

(1) certifies in writing that prohibiting smoking in certain public places in accordance with Chapter 172, Health and Safety Code, as added by this Act, will reduce the 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) Requires HHSC, on publication of the certification as described by Subsection (a)(2) of this section, to post on HHSC's Internet website a copy of that certification and notice of the requirements of Chapter 172, Health and Safety Code, as added by this Act.

(c) Requires the Department of State Health Services (DSHS), the Alcoholic Beverage Commission, and each county, public health district, and local health department, not later than the 30th day after the date the executive commissioner of HHSC publishes the certification as described by Subsection (a)(2), to:

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

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

(d) Provides that if the executive commissioner of HHSC fails to provide the certification required by Subsection (a) of this section on or before January 1, 2012, this Act expires and Chapter 172, Health and Safety Code, does not take effect.

SECTION 3. Amends Subtitle H, Title 2, Health and Safety Code, by adding Chapter 172, as follows:

CHAPTER 172. SMOKING PROHIBITED IN CERTAIN PUBLIC PLACES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 172.001. DEFINITIONS. Defines, in this chapter, "bar," "department," "enclosed area," "public place," "restaurant," "smoke," "tobacco bar," and "tobacco shop."

Sec. 172.002. APPLICABILITY. (a) Provides that 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 DSHS, the Alcoholic Beverage Commission, or a local health department or, with respect to a permit requirement authorized by Chapter 437 (Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, and Roadside Food Vendors), a county or public health district, except as provided by Section 172.053,

(b) Provides that, 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) 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.

(d) Provides that this chapter does not preempt or supersede Section 38.006 (Tobacco on School Property), Education Code.

Sec. 172.003. OTHER APPLICABLE LAWS. Prohibits this chapter from being construed to authorize smoking where it is restricted by other applicable law.

Sec. 172.004. LIBERAL CONSTRUCTION. Requires that this chapter be liberally construed to further its purpose.

[Reserves Sections 172.005-172.050 for expansion.]

SUBCHAPTER B. PROHIBITED ACTS

Sec. 172.051. SMOKING PROHIBITED IN PUBLIC PLACES. Prohibits a person from smoking in a public place in this state.

Sec. 172.052. EXCEPTIONS. (a) Provides that this subchapter does not apply to:

- (1) a tobacco shop;
- (2) 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) Provides that 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. 172.053. DECLARATION OF ESTABLISHMENT AS NONSMOKING. (a) Authorizes an owner, operator, manager, or other person in control of any 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 172.054 is posted.

Sec. 172.054. DUTIES OF OWNER, MANAGER, OR OPERATOR OF PUBLIC PLACE. Requires an owner, manager, or operator of a public place to:

- (1) post clearly and conspicuously in the public place 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 a conspicuous sign clearly stating that smoking is prohibited; and
- (3) remove all ashtrays from any area in which smoking is prohibited.

[Reserves Sections 172.055-172.100 for expansion.]

SUBCHAPTER C. ENFORCEMENT AND PENALTIES

Sec. 172.101. ENFORCEMENT. (a) Requires DSHS to enforce this chapter.

(b) Requires a governmental entity described by Section 172.002(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 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. 172.102. 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. 172.103. OFFENSES; PENALTIES. (a) Provides that a person who violates Section 172.051 or 172.053(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 who violates Section 172.054 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, on conviction 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, to be punished by a fine not to exceed \$200.

(d) Provides that 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 is required to be punished by a fine not to exceed \$500.

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

Sec. 172.104. SEPARATE VIOLATIONS. Provides that each day on which a violation of this chapter occurs is considered a separate violation.

SECTION 4. Effective date: the 91st day after the last day of the legislative session.