

1-1 By: Ellis, et al. S.B. No. 28
1-2 (In the Senate - Filed June 2, 2011; June 13, 2011, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 June 20, 2011, reported favorably by the following vote: Yeas 5,
1-5 Nays 4; June 20, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to reducing state Medicaid and other health care costs by
1-9 prohibiting smoking in certain public places; providing penalties.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. The legislature finds that the changes in law
1-12 made by this Act will reduce the state's costs for health care and
1-13 for treatment of smoking-related illness under governmentally
1-14 funded insurance programs for state employees and their dependents
1-15 and under other taxpayer-supported programs, such as Medicaid and
1-16 indigent health care.

1-17 SECTION 2. (a) Chapter 172, Health and Safety Code, as
1-18 added by this Act, takes effect on the 90th day after the date the
1-19 executive commissioner of the Health and Human Services Commission:

1-20 (1) certifies in writing that prohibiting smoking in
1-21 certain public places in accordance with Chapter 172, Health and
1-22 Safety Code, as added by this Act, will reduce this state's Medicaid
1-23 expenditures in the state fiscal biennium ending August 31, 2013,
1-24 by at least \$10 million paid from any revenue source or by \$4
1-25 million paid from the general revenue fund; and

1-26 (2) publishes the certification in the Texas Register.

1-27 (b) On publication of the certification as described by
1-28 Subdivision (2), Subsection (a) of this section, the Health and
1-29 Human Services Commission shall post on the commission's Internet
1-30 website a copy of that certification and notice of the requirements
1-31 of Chapter 172, Health and Safety Code, as added by this Act.

1-32 (c) Not later than the 30th day after the date the executive
1-33 commissioner of the Health and Human Services Commission publishes
1-34 the certification as described by Subdivision (2), Subsection (a)
1-35 of this section, the Department of State Health Services, the
1-36 Alcoholic Beverage Commission, and each county, public health
1-37 district, and local health department shall:

1-38 (1) post a copy of the certification on its Internet
1-39 website; or

1-40 (2) provide notice to holders subject to Chapter 172,
1-41 Health and Safety Code, as added by this Act, of the requirements of
1-42 that chapter.

1-43 (d) If the executive commissioner of the Health and Human
1-44 Services Commission fails to provide the certification required by
1-45 Subsection (a) of this section on or before January 1, 2012, this
1-46 Act expires and Chapter 172, Health and Safety Code, does not take
1-47 effect.

1-48 SECTION 3. Subtitle H, Title 2, Health and Safety Code, is
1-49 amended by adding Chapter 172 to read as follows:

1-50 CHAPTER 172. SMOKING PROHIBITED IN CERTAIN PUBLIC PLACES

1-51 SUBCHAPTER A. GENERAL PROVISIONS

1-52 Sec. 172.001. DEFINITIONS. In this chapter:

1-53 (1) "Bar" means an enclosed indoor establishment that
1-54 is open to the public and is devoted primarily to the sale and
1-55 service of alcoholic beverages for on-premises consumption.

1-56 (2) "Department" means the Department of State Health
1-57 Services.

1-58 (3) "Enclosed area" means all space between a floor
1-59 and ceiling that is enclosed on all sides by solid walls or windows,
1-60 exclusive of doorways, that extend from the floor to the ceiling.

1-61 (4) "Public place" means an enclosed area the public
1-62 is invited or allowed to enter, including a bar and a restaurant.

1-63 (5) "Restaurant" means an enclosed indoor
1-64 establishment that is open to the public and is devoted primarily to

2-1 the sale and service of food for immediate consumption. The term
2-2 includes a bar located at the establishment.

2-3 (6) "Smoke" means to inhale, exhale, burn, or carry a
2-4 lighted cigar, cigarette, pipe, or other smoking equipment in any
2-5 manner.

2-6 (7) "Tobacco bar" means a business that:
2-7 (A) has in excess of 15 percent of gross sales in
2-8 tobacco products, as that term is defined by Section 155.001, Tax
2-9 Code, excluding sales derived from vending machines;

2-10 (B) holds a permit under Chapter 155, Tax Code;
2-11 and

2-12 (C) holds an alcoholic beverage permit or license
2-13 issued under Chapter 25, 28, 32, or 69, Alcoholic Beverage Code, or
2-14 under Section 11.10, Alcoholic Beverage Code.

2-15 (8) "Tobacco shop" means a business primarily devoted
2-16 to the sale of tobacco products, as that term is defined by Section
2-17 155.001, Tax Code, that does not hold an alcoholic beverage permit
2-18 or license.

2-19 Sec. 172.002. APPLICABILITY. (a) Except as provided by
2-20 Section 172.053, this chapter applies only to a public place that is
2-21 owned, managed, operated, or controlled under a license,
2-22 certificate, registration, or other authority or permit issued for
2-23 the public place or to a person who owns, manages, operates, or
2-24 controls the public place by the Department of State Health
2-25 Services, the Alcoholic Beverage Commission, or a local health
2-26 department or, with respect to a permit requirement authorized by
2-27 Chapter 437, a county or public health district.

2-28 (b) Except as provided by Subsection (c), this chapter
2-29 preempts and supersedes a local ordinance, rule, or regulation
2-30 adopted by any political subdivision of this state relating to
2-31 smoking.

2-32 (c) To the extent that a local ordinance, rule, or
2-33 regulation adopted by a political subdivision of this state
2-34 prohibits or restricts smoking to a greater degree than this
2-35 chapter, the ordinance, rule, or regulation is not preempted or
2-36 superseded by this chapter.

2-37 (d) This chapter does not preempt or supersede Section
2-38 38.006, Education Code.

2-39 Sec. 172.003. OTHER APPLICABLE LAWS. This chapter may not
2-40 be construed to authorize smoking where it is restricted by other
2-41 applicable law.

2-42 Sec. 172.004. LIBERAL CONSTRUCTION. This chapter shall be
2-43 liberally construed to further its purpose.

2-44 [Sections 172.005-172.050 reserved for expansion]

2-45 SUBCHAPTER B. PROHIBITED ACTS

2-46 Sec. 172.051. SMOKING PROHIBITED IN PUBLIC PLACES. A
2-47 person may not smoke in a public place in this state.

2-48 Sec. 172.052. EXCEPTIONS. (a) This subchapter does not
2-49 apply to:

- 2-50 (1) a tobacco shop;
- 2-51 (2) a tobacco bar;
- 2-52 (3) the outdoor area of a restaurant or bar;
- 2-53 (4) an outdoor porch or patio that is not accessible to

2-54 the public;

- 2-55 (5) the set of a motion picture, television, or
- 2-56 theater production; or

2-57 (6) a convention of tobacco-related businesses in a
2-58 municipality where a convention of tobacco-related businesses is
2-59 expressly authorized under an applicable municipal ordinance.

2-60 (b) The exception under Subsection (a)(5) applies only to an
2-61 actor who is portraying the use of a tobacco product during the
2-62 motion picture, television, or theater production.

2-63 Sec. 172.053. DECLARATION OF ESTABLISHMENT AS NONSMOKING.

2-64 (a) An owner, operator, manager, or other person in control of any
2-65 establishment, facility, or outdoor area may declare that entire
2-66 establishment, facility, or outdoor area as a nonsmoking place.

2-67 (b) A person may not smoke in a place in which a sign
2-68 conforming to the requirements of Section 172.054 is posted.

2-69 Sec. 172.054. DUTIES OF OWNER, MANAGER, OR OPERATOR OF

3-1 PUBLIC PLACE. An owner, manager, or operator of a public place
 3-2 shall:
 3-3 (1) post clearly and conspicuously in the public
 3-4 place:
 3-5 (A) a sign with the words "No Smoking"; or
 3-6 (B) a sign with the international "No Smoking"
 3-7 symbol, consisting of a pictorial representation of a burning
 3-8 cigarette enclosed in a red circle with a red bar across the
 3-9 cigarette;
 3-10 (2) post at each entrance to the public place a
 3-11 conspicuous sign clearly stating that smoking is prohibited; and
 3-12 (3) remove all ashtrays from any area in which smoking
 3-13 is prohibited.

3-14 [Sections 172.055-172.100 reserved for expansion]

3-15 SUBCHAPTER C. ENFORCEMENT AND PENALTIES

3-16 Sec. 172.101. ENFORCEMENT. (a) The department shall
 3-17 enforce this chapter.

3-18 (b) A governmental entity described by Section 172.002(a)
 3-19 that issues a license, certificate, registration, or other
 3-20 authority or permit for a public place or to a person who owns,
 3-21 manages, operates, or controls the public place shall provide
 3-22 notice to each applicant for the permit or authority of the
 3-23 provisions of this chapter.

3-24 (c) A person may file with the department a complaint
 3-25 concerning a violation of this chapter.

3-26 (d) The department or another agency of this state or a
 3-27 political subdivision of this state designated by the department
 3-28 may inspect an establishment for compliance with this chapter.

3-29 (e) An employer or an owner, manager, operator, or employee
 3-30 of an establishment regulated under this chapter shall inform a
 3-31 person violating this chapter of the appropriate provisions
 3-32 pertaining to the violation.

3-33 Sec. 172.102. INJUNCTIVE RELIEF. In addition to the other
 3-34 remedies provided by this chapter, the attorney general at the
 3-35 request of the department, or a person aggrieved by a violation of
 3-36 this chapter, may bring an action for injunctive relief to enforce
 3-37 this chapter.

3-38 Sec. 172.103. OFFENSES; PENALTIES. (a) A person who
 3-39 violates Section 172.051 or 172.053(b) commits an offense. An
 3-40 offense under this subsection is a Class C misdemeanor punishable
 3-41 by a fine not to exceed \$50.

3-42 (b) An owner, manager, or operator of a public place who
 3-43 violates Section 172.054 commits an offense. An offense under this
 3-44 subsection is a Class C misdemeanor punishable by a fine not to
 3-45 exceed \$100.

3-46 (c) If it is shown on the trial of an offense under
 3-47 Subsection (b) that the defendant has previously been finally
 3-48 convicted of an offense under that subsection that occurred within
 3-49 one year before the date of the offense that is the subject of the
 3-50 trial, on conviction the defendant shall be punished by a fine not
 3-51 to exceed \$200.

3-52 (d) If it is shown on the trial of an offense under
 3-53 Subsection (b) that the defendant has previously been finally
 3-54 convicted of two offenses under that subsection that occurred
 3-55 within one year before the date of the offense that is the subject
 3-56 of the trial, on conviction the defendant shall be punished by a
 3-57 fine not to exceed \$500.

3-58 (e) If conduct that constitutes an offense under this
 3-59 section also constitutes an offense under another law, the offense
 3-60 may be prosecuted under this section, the other law, or both this
 3-61 section and the other law.

3-62 Sec. 172.104. SEPARATE VIOLATIONS. Each day on which a
 3-63 violation of this chapter occurs is considered a separate
 3-64 violation.

3-65 SECTION 4. This Act takes effect on the 91st day after the
 3-66 last day of the legislative session.

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