

BILL ANALYSIS

H.B. 670
By: Crownover
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Consequences of secondhand smoke cost the state millions of dollars every year. According to the Health and Human Services Commission, the passage of H.B. 670 could result in \$30 million in savings to the Medicaid program during the 2012-2013 biennium. In addition, an analysis by the Texas Health Institute, The University of Texas School of Public Health, and The Texas A&M Health Science Center School of Rural Public Health estimates that the state could save over \$400 million in health care costs and increased productivity over the biennium if H.B. 670 is enacted. Many employees who are exposed to secondhand smoke in the workplace are forced to choose between their health and their paychecks. According to analysis of sales tax data in Texas and other states, smoke-free policies do not affect restaurant revenue or the sale of alcoholic beverages in bars.

There is no risk-free level of exposure to secondhand smoke. Secondhand smoke contains more than 4,000 chemicals, more than 60 of which are known or suspected to cause cancer. Secondhand smoke kills approximately 53,000 nonsmoking Americans annually and is a leading cause of preventable death. Secondhand smoke can cause lung cancer, heart disease, low birth weight, chronic lung ailments such as bronchitis and asthma, and other health problems. Secondhand smoke also causes more than one million instances of illness, such as lower respiratory tract infections and asthma, in children each year.

H.B. 670 prohibits smoking in places of employment and in certain public places, such as bars and restaurants, providing protection for employees from secondhand smoke, protecting the public health, and saving the state millions of dollars.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 670 amends the Health and Safety Code to prohibit a person from smoking in a public place in Texas; in a 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. The bill exempts the following places from provisions relating to the prohibition from smoking in public places and places of employment: a private residence, except when used as a child-care, adult day-care, or health care facility; 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 the 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; a nursing home or long-term care facility; a tobacco shop; a tobacco bar; 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 the private club is not established for the sole purpose of avoiding compliance with the

prohibition; the outdoor area of a restaurant or bar or an outdoor porch or patio that is not accessible to the public, other than areas used for seating at certain outdoor events; an enclosed workplace where tobacco or a tobacco product is heated, burned, smoked, or tested by a manufacturer, importer, or distributor of tobacco or tobacco products or by a tobacco leaf dealer as a necessary and integral part of the making, manufacturing, importing, or distributing of the tobacco or tobacco product for eventual retail sale; or a convention of tobacco-related businesses in a municipality where a convention of tobacco-related businesses is expressly authorized under an applicable municipal ordinance.

H.B. 670 authorizes an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area to declare the entire establishment, facility, or outdoor area as a nonsmoking place and prohibits a person from smoking in a place in which a conspicuous sign is posted clearly stating that smoking is prohibited. The bill requires an owner, manager, or operator of a public place or an employer in a place of employment to post clearly and conspicuously in the public place or place of employment, as applicable, 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; post at each entrance to the public place or place of employment, as applicable, a conspicuous sign clearly stating that smoking is prohibited; and remove all ashtrays from any area in which smoking is prohibited.

H.B. 670 requires the Department of State Health Services (DSHS) to enforce the bill's provisions. The bill requires an agency of the state or a political subdivision of the 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 prohibition from smoking in public places and places of employment. The bill authorizes a person to file with DSHS a complaint concerning a violation of the prohibition and authorizes DSHS or another agency of the state or a political subdivision of the state designated by DSHS to inspect an establishment for compliance with the bill's provisions. The bill requires an employer or an owner, manager, operator, or employee of an establishment regulated under the bill's provisions to inform a person violating provisions relating to the prohibition of the appropriate provisions pertaining to the violation. The bill authorizes the attorney general at the request of DSHS, or a person aggrieved by a violation of provisions relating to the prohibition, to bring an action for injunctive relief to enforce the bill's provisions, in addition to the other remedies provided by the bill's provisions.

H.B. 670 makes it a Class C misdemeanor offense punishable by a fine not to exceed \$50 for a person to smoke in a place in which smoking is prohibited. The bill makes it a Class C misdemeanor offense punishable by a fine not to exceed \$100 for an owner, manager, or operator of a public place or an employer in a place of employment, as applicable, to violate the provision requiring the posting of certain signs and removal of ashtrays. The bill requires a defendant convicted of a subsequent offense of violating the provision requiring the posting of signs and removal of ashtrays to be punished by a fine not to exceed \$200, provided it is shown on the trial of the offense that the original offense occurred within one year before the date of the subsequent offense, and requires such a defendant convicted of a third offense to be punished by a fine not to exceed \$500, provided it is shown on the trial of the offense that the first two offenses occurred within one year before the date of the third offense. The bill establishes that each day on which a violation of the prohibition occurs is considered a separate violation.

H.B. 670 establishes that provisions relating to the prohibition from smoking in public places and places of employment preempt and supersede a local ordinance, rule, or regulation adopted by any political subdivision of the state relating to smoking and clarifies that, to the extent that a local ordinance, rule, or regulation adopted by a political subdivision of the state prohibits or restricts smoking to a greater degree than the bill's provisions, the ordinance, rule, or regulation is not preempted or superseded by provisions relating to the prohibition. The bill establishes that provisions relating to the prohibition do not preempt or supersede statutory provisions

prohibiting the use or possession of tobacco products at a school-related or school-sanctioned activity. The bill requires DSHS to engage in a continuing program to explain and clarify the purpose and requirements of the bill's provisions and to guide employers, owners, operators, and managers in complying with the prohibition from smoking in public places and places of employment and authorizes the continuing program to include publication of a brochure for businesses and individuals that explains the prohibition. The bill requires DSHS to annually request other government agencies to establish local operating procedures to comply with the bill's provisions and authorizes the 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. The bill prohibits its provisions from being construed to authorize smoking where it is restricted by other applicable law and requires the bill's provisions to be liberally construed to further the purpose of the bill's provisions. The bill repeals a section of the Penal Code that makes it a Class C misdemeanor offense to possess a burning tobacco product or smoke tobacco in certain specified public places.

H.B. 670 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," and "tobacco shop." The bill makes a conforming change.

H.B. 670 repeals the following:

- Section 48.01, Penal Code
- Section 2, Chapter 290 (S.B. 59), Acts of the 64th Legislature, Regular Session, 1975

EFFECTIVE DATE

September 1, 2011.