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FLOOR AMENDMENT NO. 11111111111111111111
HOUSE OF REPRESENTATIVES

BY: Myra Crowner

1 Amend C.S.S.B. No. 1811 (house committee printing) by
2 adding the following appropriately numbered ARTICLE to the bill
3 and renumbering subsequent ARTICLES and SECTIONS of the bill
4 accordingly:

5 ARTICLE ____. REDUCING STATE MEDICAID AND OTHER HEALTH CARE
6 COSTS BY PROHIBITING SMOKING IN CERTAIN PUBLIC PLACES

7 SECTION __.01. The legislature finds that the changes in
8 law made by this article will reduce the state's costs for
9 health care and for treatment of smoking-related illness under
10 governmentally funded insurance programs for state employees and
11 their dependents and under other taxpayer-supported programs,
12 such as Medicaid and indigent health care.

13 SECTION __.02. (a) Chapter 169, Health and Safety Code,
14 as added by this article, takes effect on the 90th day after the
15 date the executive commissioner of the Health and Human Services
16 Commission:

17 (1) certifies in writing that prohibiting smoking in
18 certain public places in accordance with Chapter 169, Health and
19 Safety Code, as added by this article, will reduce this state's
20 Medicaid expenditures in the state fiscal biennium ending August
21 31, 2013, by at least \$10 million paid from any revenue source
22 or by \$4 million paid from the general revenue fund; and

23 (2) publishes the certification in the Texas
24 Register.

25 (b) On publication of the certification as described by
26 Subsection (a)(2) of this section, the Health and Human Services
27 Commission shall post on the commission's Internet website a
28 copy of that certification and notice of the requirements of
29 Chapter 169, Health and Safety Code, as added by this article.

1 (c) Not later than the 30th day after the date the
2 executive commissioner of the Health and Human Services
3 Commission publishes the certification as described by
4 Subsection (a)(2) of this section, the Department of State
5 Health Services, the Alcoholic Beverage Commission, and each
6 county, public health district, and local health department
7 shall:

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

10 (2) provide notice to holders subject to Chapter 169,
11 Health and Safety Code, as added by this article, of the
12 requirements of that chapter.

13 (d) If the executive commissioner of the Health and Human
14 Services Commission fails to provide the certification required
15 by Subsection (a) of this section on or before January 1, 2012,
16 this article expires and Chapter 169, Health and Safety Code,
17 does not take effect.

18 SECTION __.03. Subtitle H, Title 2, Health and Safety
19 Code, is amended by adding Chapter 169 to read as follows:

20 CHAPTER 169. SMOKING PROHIBITED IN PUBLIC PLACES

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 169.001. DEFINITIONS. In this chapter:

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

26 (2) "Department" means the Department of State Health
27 Services.

28 (3) "Enclosed area" means all space between a floor
29 and ceiling that is enclosed on all sides by solid walls or
30 windows, exclusive of doorways, that extend from the floor to
31 the ceiling.

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

4 (5) "Restaurant" means an enclosed indoor
5 establishment that is open to the public and is devoted
6 primarily to the sale and service of food for immediate
7 consumption. The term includes a bar located at the
8 establishment.

9 (6) "Smoke" means to inhale, exhale, burn, or carry a
10 lighted cigar, cigarette, pipe, or other smoking equipment in
11 any manner.

12 (7) "Tobacco bar" means a business that:

13 (A) has in excess of 15 percent of gross sales
14 in tobacco products, as that term is defined by Section 155.001,
15 Tax Code, excluding sales derived from vending machines;

16 (B) holds a permit under Chapter 155, Tax Code;
17 and

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

21 (8) "Tobacco shop" means a business primarily devoted
22 to the sale of tobacco products, as that term is defined by
23 Section 155.001, Tax Code, that does not hold an alcoholic
24 beverage permit or license.

25 Sec. 169.002. APPLICABILITY. (a) Except as provided by
26 Section 169.053, this chapter applies only to a public place
27 that is owned, managed, operated, or controlled under a license,
28 certificate, registration, or other authority or permit issued
29 for the public place or to a person who owns, manages, operates,
30 or controls the public place by the Department of State Health
31 Services, the Alcoholic Beverage Commission, or a local health

1 department or, with respect to a permit requirement authorized
2 by Chapter 437, a county or public health district.

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

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

12 (d) This chapter does not preempt or supersede Section
13 38.006, Education Code.

14 Sec. 169.003. OTHER APPLICABLE LAWS. This chapter may not
15 be construed to authorize smoking where it is restricted by
16 other applicable law.

17 Sec. 169.004. LIBERAL CONSTRUCTION. This chapter shall be
18 liberally construed to further its purpose.

19 [Sections 169.005-169.050 reserved for expansion]

20 SUBCHAPTER B. PROHIBITED ACTS

21 Sec. 169.051. SMOKING PROHIBITED IN PUBLIC PLACES. A
22 person may not smoke in a public place in this state.

23 Sec. 169.052. EXCEPTIONS. (a) This subchapter does not
24 apply to:

25 (1) a tobacco shop;

26 (2) a tobacco bar;

27 (3) the outdoor area of a restaurant or bar;

28 (4) an outdoor porch or patio that is not accessible
29 to the public;

30 (5) the set of a motion picture, television, or
31 theater production; or

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

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

7 Sec. 169.053. DECLARATION OF ESTABLISHMENT AS NONSMOKING.

8 (a) An owner, operator, manager, or other person in control of
9 any establishment, facility, or outdoor area may declare that
10 entire establishment, facility, or outdoor area as a nonsmoking
11 place.

12 (b) A person may not smoke in a place in which a sign
13 conforming to the requirements of Section 169.054 is posted.

14 Sec. 169.054. DUTIES OF OWNER, MANAGER, OR OPERATOR OF
15 PUBLIC PLACE. An owner, manager, or operator of a public place
16 shall:

17 (1) post clearly and conspicuously in the public
18 place:

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

20 (B) a sign with the international "No Smoking"
21 symbol, consisting of a pictorial representation of a burning
22 cigarette enclosed in a red circle with a red bar across the
23 cigarette;

24 (2) post at each entrance to the public place a
25 conspicuous sign clearly stating that smoking is prohibited; and

26 (3) remove all ashtrays from any area in which
27 smoking is prohibited.

28 [Sections 169.055-169.100 reserved for expansion]

29 SUBCHAPTER C. ENFORCEMENT AND PENALTIES

30 Sec. 169.101. ENFORCEMENT. (a) The department shall
31 enforce this chapter.

1 (b) A governmental entity described by Section 169.002(a)
2 that issues a license, certificate, registration, or other
3 authority or permit for a public place or to a person who owns,
4 manages, operates, or controls the public place shall provide
5 notice to each applicant for the permit or authority of the
6 provisions of this chapter.

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

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

12 (e) An employer or an owner, manager, operator, or
13 employee of an establishment regulated under this chapter shall
14 inform a person violating this chapter of the appropriate
15 provisions pertaining to the violation.

16 Sec. 169.102. INJUNCTIVE RELIEF. In addition to the other
17 remedies provided by this chapter, the attorney general at the
18 request of the department, or a person aggrieved by a violation
19 of this chapter, may bring an action for injunctive relief to
20 enforce this chapter.

21 Sec. 169.103. OFFENSES; PENALTIES. (a) A person who
22 violates Section 169.051 or 169.053(b) commits an offense. An
23 offense under this subsection is a Class C misdemeanor
24 punishable by a fine not to exceed \$50.

25 (b) An owner, manager, or operator of a public place who
26 violates Section 169.054 commits an offense. An offense under
27 this subsection is a Class C misdemeanor punishable by a fine
28 not to exceed \$100.

29 (c) If it is shown on the trial of an offense under
30 Subsection (b) that the defendant has previously been finally
31 convicted of an offense under that subsection that occurred
32 within one year before the date of the offense that is the

1 subject of the trial, on conviction the defendant shall be
2 punished by a fine not to exceed \$200.

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

9 (e) If conduct that constitutes an offense under this
10 section also constitutes an offense under another law, the
11 offense may be prosecuted under this section, the other law, or
12 both this section and the other law.

13 Sec. 169.104. SEPARATE VIOLATIONS. Each day on which a
14 violation of this chapter occurs is considered a separate
15 violation.