

SUBJECT: Comprehensive smoking ban

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — Kolkhorst, Naishtat, Alvarado, Coleman, V. Gonzales, S. King, Truitt, Zerwas

2 nays — Laubenberg, Schwertner

1 absent — S. Davis

WITNESSES: For — John Carlo, American Heart Association and Texas Medical Association; Boyer Derise, Flemings Prime Steakhouse; Joel Dunnington, American Cancer Society; James Gray, American Cancer Society; Carlos Higgins, Texas Silver-Haired Legislature; Philip Huang, Austin/Travis County Health Dept. and Smoke-Free Texas; Jacqueline Petterson, American Heart Association; Kristy Sommers, Coalition for a Smoke Free Texas; Trena Stafford, Texas PTA; Michael Brown; Kathleen Foster; Johnson, Katherine; Mitchell Moore; (*Registered, but did not testify:* Brandon Aghamalian, City of Denton, Mayor and Council and City of Corpus Christi, Mayor and Council; Joel Ballew, Texas Health Resources; Yannis Banks, Texas NAACP; Tom Banning, Texas Academy of Family Physicians and Texas Pediatric Society; Ed Berger, Seton Family of Hospitals; Jaime Capelo, Texas Chapter American College of Cardiology; Teresa Devine, Blue Cross Blue Shield of Texas; Darrick Eugene, Texas Carbon Capture and Storage Association; Marisa Finley, Scott & White Center for Healthcare Policy; Amanda Fredriksen, AARP; Duane Galligher, Greater San Antonio Chamber of Commerce and Association of Substance Abuse Programs of Texas; Edward Gomez, Greater Austin Hispanic Chamber of Commerce; Liza Gonzalez, Greater San Antonio Chamber of Commerce; Lauren Hutton Bibiahaus, Livestrong; Richie Jackson, Texas Restaurant Association; Sara Kemptner, Aetna; Lee Lane, Texas Association of Local Health Officials; Melinda Little, Campaign for Tobacco Free Kids; Mark Malone, Humana Health Plans; James Martinez, The American Lung Association; David Marwitz, Texas Dermatological Society; Luke Metzger, Environment Texas; Mary Nava, Bexar County Medical Society; Anne Olson, Texas Baptist Christian Life Commission; David Pearson, Texas Organization of Rural and Community Hospitals; David Power, Public Citizen; Cyrus Reed, Lone Star Chapter Sierra Club;

Andrew Rivas, Texas Catholic Conference; Claudia Rodas, American Cancer Society; Joel Romo, American Heart Association and Texas Public Health Coalition; Denise Rose, Texas Hospital Association; Lauren Rose, Texans Care For Children; Susan Ross, Texas Dental Association; Mari Ruckel, Texas Oil and Gas Association; Jason Sabo, United Ways of Texas; Gabriela Saenz, CHRISTUS Health; Morgan Sanders, March of Dimes; Emily Shelton, Texas Impact; Andrew Smith, University Health System; Bryan Sperry, Children's Hospital Association of Texas; David Weinberg, Texas League of Conservation Voters; James Willmann, Texas Nurses Association; Stacy Wilson, Community Care; Jared Wolfe, Texas Association of Health Plans; Eric Woomer, Texas Wings, Incorporated; Joseph Blackburn; Melody Chatelle; Ruby Moore; Sylvia Stern)

Against — Philip Robert Brinson, Fast Eddie's Billiards; (*Registered, but did not testify*: Steve Bresnen, Coalition for the Survival of Charitable Bingo; Cathy Dewitt, Texas Association of Business; Stephen Fenoglio, Texas Charity Advocates; Cindy Mallette, Americans for Prosperity)

On — Rick Allgeyer, Health and Human Services Commission; Lewis Foxhall, UT MD Anderson Cancer Center; Lauri Kalanges, Texas Department of State Health Services; (*Registered, but did not testify*: Penny Harmonson and Adolfo Valadez, Texas Department of State Health Services)

DIGEST:

HB 670 would add sec. 169 to the Health and Safety Code to prohibit smoking in certain public spaces, places of employment, and outdoor events. The bill would supersede any local ordinance, rule, or regulation, unless the local provision was more restrictive.

The bill would provide a specific list of areas where individuals would be prohibited from smoking, including:

- restaurants, bars, shopping malls, and other enclosed retail or service establishments;
- theaters, convention facilities, sports arenas, and outdoor events;
- enclosed places of employment;
- government buildings;
- public transportation facilities, including ticketing and boarding areas;
- health care facilities and licensed child and adult care providers;

and

- other common areas, including public restrooms, lobbies, hallways, elevators, and reception areas.

Owners, operators, and managers would have to post conspicuous “no smoking” signs.

The bill would allow the following exemptions from the smoking ban:

- a private residence, except when used as a child care, adult day care, or health care facility;
- a nursing home or long-term care facility;
- a patio or outdoor seating area of a bar or restaurant;
- a tobacco shop or bar;
- a tobacco convention;
- a tobacco-related business where the product was subject to manufacturer testing;
- a private club that had no employees, was not used for public functions, and was not established to avoid compliance; and
- certain hotel or motel rooms that were designated as smoking rooms.

The Department of State Health Services (DSHS) would have to provide a continuing education program to explain the purpose and requirements of the smoking ban to employers, owners and operators, and managers.

DSHS would have to enforce the smoking ban. The bill would authorize DSHS or any other state agency or political subdivision to inspect an establishment for compliance. A person could file a complaint concerning a violation. The attorney general could bring an action for injunctive relief to enforce the ban.

A person who committed a violation of the smoking ban would commit a class C misdemeanor, punishable by a maximum \$50 fine. An owner, manager, operator, or employer in violation would commit a class C misdemeanor punishable by a maximum \$100 fine or a maximum \$200 fine if it was a repeat offense within the past year.

The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

HB 670 would improve public health and lower health care costs in Texas. The public health risks associated with tobacco products are very serious. Tobacco use is the leading cause of preventable deaths in the state, killing up to 25,000 Texans each year.

The bill would protect nonsmoking Texans from the dangers of second hand smoke at work and in public places. Secondhand smoke kills approximately 53,000 nonsmoking Americans per year, illustrating that smokers are not the only people affected by tobacco use. All exposed individuals are more likely to develop cancer and heart and lung disease. People who work in bars and restaurants are exposed to secondhand smoke at even higher levels than those who work in offices. Individuals working at restaurants where smoking is permitted are more likely than other workers to die of lung cancer. Every Texan has a right to be protected from toxic hazards at work, and HB 670 would help to ensure that workers in this state have access to safe working conditions.

Most Texans working in bars and restaurants are uninsured and receive lower wages, which makes it difficult for them to access health care. They often wait until the illness becomes more advanced and then seek care in more expensive settings like emergency rooms or hospitals, which pass the costs onto taxpayers or to the insured through higher premiums. HB 670 would save the state millions of dollars in health care costs by preventing exposure to secondhand smoke.

HB 670 also could help businesses achieve significant cost savings. Independent studies have shown that the hospitality industry in cities with comprehensive smoking bans have not been negatively impacted. Studies conducted in Houston and El Paso determined that the smoking ban had no adverse impact on bars, restaurants, or tourism. Businesses also could experience reduced health care costs and cleaning costs.

HB 670 would not infringe upon the liberty of others because it would not prohibit individuals from smoking; it would simply ask them to step outside, to avoid harming the health of others.

**OPPONENTS
SAY:**

HB 670 would represent an over-expansion of government and set a dangerous precedent for banning legal activity in public. The bill would violate the rights of individuals and business property owners. Tobacco is a legal product that millions of Americans choose to enjoy.

The bill would harm small businesses, particularly restaurant and bar owners, in Texas. Some businesses have noted significant drops in business after implementation of a smoking ordinance. This economic burden also impacts the restaurants and bar staff who rely heavily on tips. Many bars and restaurants spent large amounts of money to install air filtration systems as a response to restrictive smoking ordinances. These systems are expensive, and their costs cannot be recovered.

HB 670 also would reduce the charitable revenue generated through bingo parlors. Surveys conducted in bingo halls have revealed that most players are smokers. The implementation of local smoking ordinances in the city of Dallas closed several bingo parlors, and the charitable organizations never recovered.

NOTES:

The fiscal note suggests that there would be no significant fiscal impact for the state, but the bill could have a secondary effect resulting in significant savings in the state's various health care programs.

The companion bill, SB 355 by Ellis, was reported favorably as substituted by the Senate Health and Human Services Committee on March 14.