

**SUBJECT:** Allowing prison employees to smoke on TDCJ property

**COMMITTEE:** Corrections — committee substitute recommended

**VOTE:** 6 ayes — Hightower, Allen, Edwards, Gray, Marchant, Serna  
0 nays  
3 absent — Alexander, Farrar, Hupp

**WITNESSES:** For — Carlos Carrasco, American Federation of State, County and Municipal Employees  
Against — None

**BACKGROUND :** In March 1995, the Texas Board of Criminal Justice banned the use and possession of tobacco products on property under the jurisdiction of the Texas Department of Criminal Justice (TDCJ). The ban covers all inmates and employees but does not apply to state-owned housing located on TDCJ property.

**DIGEST:** CSHB 1427 would require that TDCJ rules governing tobacco products provide times and locations when employees could use these products. The locations would have to be a sufficient distance away from work areas so that the use of the tobacco products would not physically affect any nonsmoking employee or negatively affect the comfort or safety of employees or inmates.  
  
CSHB 1427 would take immediate effect if finally approved by a two-thirds record vote of the membership of each house. The board would have to amend its rules to comply with the bill within 90 days of the effective date.

**SUPPORTERS SAY:** CSHB 1427 would return to TDCJ employees the rights still enjoyed by other state workers. The ban on tobacco products at state prisons means employees are forced to drive off TDCJ property during breaks and lunch hours to smoke. Other state employees can just walk outside the doors of state office buildings. The choice of whether to smoke or not is an individual decision that should not be regulated by the state.

CSHB 1427 would respect the board's authority by allowing it to designate appropriate locations as smoking areas. It would be easy to find an appropriate location that did not interfere with an employee's rights to a smoke-free environment. Most TDCJ property — correctional prisons, state jails, substance abuse and parole facilities — are located on large tracts of land with plenty of free space at a remove from shared working areas. The bill would further protect the rights of non-smokers by stipulating that designated locations could not negatively affect the comfort or safety of any TDCJ employee or inmate.

Because of the ban, employees who inadvertently bring tobacco products or related implements onto TDCJ property now can be subjected to disciplinary action for carrying contraband. CSHB 1427 would correct this unintentional effect by directing the board to amend its rules on tobacco use by employees.

OPPONENTS  
SAY:

CSHB 1427 would be an improper imposition on an agency's right to direct its workforce as it deems necessary to carry out its mission. Correctional facilities are different types of workplaces, unlike the standard office complex normally associated with state workers. The nature of the duties is also quite different; these employees are not dealing with average citizens for a brief period of time but with a society of offenders day in and day out. These circumstances warrant special operating rules. Tobacco is used in prisons as a contraband currency, much like drugs and other illegal substances. The board has banned all use of tobacco on the premises to counter the flow of contraband in the prison society. Permitting employees to carry these banned products onto TDCJ property would open the door to abuses. The Legislature should not try to second guess the board's reasons for the ban or interfere with its authority to control its workforce. Tobacco products should remain contraband for both inmates and employees alike; allowing employees to use tobacco on TDCJ property would make it more difficult to keep tobacco out of the hands of inmates.

OTHER  
OPPONENTS  
SAY:

Tobacco is a drug and smoking and other tobacco use can cause serious health problems. Those two reasons should be enough to sustain the board's ban. There is no good reason to smoke, and encouraging smoking by public employees is bad public policy for the state. Furthermore, allowing employees to indulge in their unhealthy habits means exposing other

workers to problems associated with second-hand smoke. Although CSHB 1427 would provide for the “comfort” of other employees and inmates, this is a vague term with unclear meaning. Smokers cannot sense the impact of their smoke, which clings to clothing and can permeate a work area even if the act of smoking was conducted somewhere else.

NOTES: The committee substitute made two technical corrections to the original bill.