
A BILL FOR AN ACT

RELATING TO HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that tobacco smoke is a
2 major contributor to many health problems. Secondhand smoke
3 causes heart disease, stroke, respiratory disease, and lung
4 cancer in healthy nonsmokers. It is attributed to thousands of
5 premature deaths and illnesses in Hawaii annually.

6 The legislature further finds that recent research
7 demonstrates heightened health dangers to those exposed to
8 secondhand smoke, even though Hawaii passed a statewide anti-
9 smoking statute seventeen years ago. In 2004, the Centers for
10 Disease Control and Prevention issued an advisory to persons
11 with heart disease to avoid indoor settings where smoking is
12 allowed, which warrants increased protections in the workplace
13 and for the public in general.

14 The counties in Hawaii have adopted ordinances that offer
15 varying levels of protection to workers and the public against
16 secondhand smoke. The legislature acknowledges that a
17 consistent level of basic protection from secondhand smoke is



1 needed to protect Hawaii's citizens from the health dangers of
2 secondhand smoke.

3 The purpose of this Act is to protect the public health and
4 welfare by prohibiting smoking in public places and places of
5 employment through ensuring a consistent level of basic
6 protections statewide from exposure to secondhand smoke.

7 SECTION 2. The Hawaii Revised Statutes is amended by
8 adding a new chapter to be appropriately designated and to read
9 as follows:

10 **"CHAPTER**

11 **SMOKING**

12 **§ -1 Definitions.** As used in this chapter:

13 "Bar" means an establishment that is devoted to the serving
14 of alcoholic beverages for consumption by guests on the premises
15 regardless of whether food is served, including but not limited
16 to taverns, cocktail lounges, and cabarets, including outdoor
17 areas of bars.

18 "Building" means any area enclosed or partially enclosed by
19 a roof and at least three walls.

20 "Business" means a sole proprietorship, partnership, joint
21 venture, corporation, or other business entity, either for-
22 profit or not-for-profit, including retail establishments where



1 goods or services are sold, professional corporations, and other
2 entities where legal, medical, dental, engineering,
3 architectural, or other professional services are delivered.

4 "Department" means the department of health.

5 "Director" means the director of health.

6 "Employee" means a person who is employed by an employer in
7 consideration for direct or indirect monetary wages or profit,
8 and a person who volunteers his or her services for a nonprofit
9 entity.

10 "Employer" means a person, business, partnership,
11 association, corporation, including the State or any of its
12 political subdivisions, a trust, or nonprofit entity that
13 employs the services of one or more individual persons, but
14 shall not include the United States.

15 "Enclosed or partially enclosed area" means any area closed
16 in by a roof or overhang and two walls and includes, but is not
17 limited to, areas commonly described as public lobbies, lanais,
18 interior courtyards, patios, and covered walkways.

19 "Health care facility" means an office or institution,
20 including all waiting rooms, hallways, private rooms,
21 semiprivate rooms, and wards, providing care or treatment of
22 diseases, whether physical, mental, or emotional, or other



1 medical, physiological, or psychological conditions, including
2 but not limited to, hospitals, rehabilitation hospitals or other
3 clinics, including weight control clinics, nursing homes, homes
4 for the aging or chronically ill, laboratories, and offices of
5 surgeons, chiropractors, physical therapists, physicians,
6 dentists, and all specialists within these professions.

7 "Multifamily dwelling" means a building containing more
8 than two dwelling units.

9 "Nightclub" means an establishment in which live
10 entertainment is provided or facilities for dancing by patrons
11 either by live entertainment or recorded music may be provided,
12 regardless of whether alcoholic beverages are served.

13 "Open to the public" means enclosed or partially enclosed
14 areas to which the public is invited or permitted and areas
15 within any building available for use by or accessible to the
16 general public during the normal course of business conducted
17 therein by either private or public entities, including but not
18 limited to bars, educational facilities, financial institutions,
19 health care facilities, hotel and motel lobbies, lanais,
20 laundromats, public transportation facilities including airport
21 areas from curb to cabin, reception areas, restaurants, retail
22 food production and marketing establishments, retail service



1 establishments, retail stores, shopping malls, sports arenas,
2 theaters, and waiting rooms, but does not include a private
3 residence unless it is used as a child care, adult day care, or
4 health care facility.

5 "Place of employment" means an area under the control of a
6 public or private employer that employees normally frequent
7 during the course of employment, including, but not limited to,
8 auditoriums, cafeterias, classrooms, clubs, common work areas,
9 conference rooms, elevators, employee lounges, hallways, medical
10 facilities, meeting rooms, private offices, restrooms, and
11 stairs. A private residence is not a "place of employment"
12 unless it is used as a child care, adult day care, or health
13 care facility.

14 "Restaurant" means an eating establishment, including but
15 not limited to coffee shops, cafeterias, sandwich stands, and
16 private and public school cafeterias, which gives or offers food
17 for sale to the public, guests, or employees, as well as
18 kitchens and catering facilities in which food is prepared on
19 the premises for serving elsewhere. The term "restaurant"
20 includes a bar area within the restaurant and outdoor areas of
21 restaurants.



1 "Retail tobacco store" means a retail store used primarily
2 for the sale of tobacco products and accessories.

3 "Service line" means an indoor line in which one or more
4 persons are waiting for or receiving service of any kind,
5 whether or not the service involves the exchange of money.

6 "Shopping mall" means an enclosed or partially enclosed
7 public walkway or hall area that serves to connect retail or
8 professional establishments.

9 "Smoke" or "smoking" means inhaling or exhaling the fumes
10 of tobacco or any other plant material, or burning or carrying
11 any lighted smoking equipment for tobacco or any other plant
12 material.

13 "Sports arena" means any sports pavilion, stadium,
14 gymnasium, health spa, boxing arena, swimming pool, roller or
15 ice rink, bowling alley, and any other similar place where
16 members of the general public assemble to engage in physical
17 exercise, participate in athletic competition, or witness sports
18 or other events.

19 **§ -2 Prohibition in facilities owned by the State or**
20 **county.** Smoking shall be prohibited in all enclosed or
21 partially enclosed areas, including buildings and vehicles
22 owned, leased, or operated by the State or any county.



1 § -3 Prohibition in enclosed or partially enclosed
2 public places. Smoking shall be prohibited in all enclosed or
3 partially enclosed areas open to the public, including but not
4 limited to the following places:

5 (1) Airports and public transportation facilities and
6 vehicles, including buses and taxicabs, under the
7 authority of the State or county, and ticket,
8 boarding, and waiting areas of public transit depots
9 including airports from curb to cabin;

10 (2) Aquariums, galleries, libraries, and museums;

11 (3) Areas available to and customarily used by the general
12 public, including but not limited to restrooms,
13 lobbies, reception areas, hallways, and other common
14 areas, in businesses and nonprofit entities patronized
15 by the public, including but not limited to
16 professional offices, banks, laundromats, hotels, and
17 motels;

18 (4) Bars;

19 (5) Bowling alleys;

20 (6) Convention facilities;

21 (7) Educational facilities, both public and private;

22 (8) Elevators;



- 1 (9) Facilities primarily used for exhibiting a motion
- 2 picture, stage, drama, lecture, musical recital, or
- 3 other similar performance, except when part of the
- 4 performance;
- 5 (10) Health care facilities;
- 6 (11) Hotel and motel lobbies, meeting rooms, and banquet
- 7 facilities;
- 8 (12) Licensed child care and adult day care facilities;
- 9 (13) Lobbies, hallways, and other common areas in apartment
- 10 buildings, condominiums, retirement facilities,
- 11 nursing homes, multifamily dwellings, and other
- 12 multiple-unit residential facilities;
- 13 (14) Nightclubs;
- 14 (15) Polling places;
- 15 (16) Restaurants;
- 16 (17) Retail stores;
- 17 (18) Rooms, chambers, places of meeting or public assembly
- 18 under the control of an agency, board, commission,
- 19 committee or council of the State or county, to the
- 20 extent the place is subject to the jurisdiction of the
- 21 State or county;
- 22 (19) Service lines; and



1 (20) Shopping malls.

2 § -4 Prohibition in enclosed or partially enclosed
3 places of employment. Smoking shall be prohibited in all
4 enclosed or partially enclosed areas of places of employment.

5 § -5 Prohibition in sports arenas, outdoor arenas and
6 stadiums. Smoking shall be prohibited in the enclosed or
7 partially enclosed areas and in seating areas of outdoor arenas,
8 stadiums, and amphitheatres.

9 § -6 Presumptively reasonable distance. Smoking is
10 prohibited within a presumptively reasonable minimum distance of
11 twenty feet from entrances, exits, windows that open, and
12 ventilation intakes that serve an enclosed or partially enclosed
13 area where smoking is prohibited. Owners, operators, managers,
14 employers, or other persons who own or control a public place or
15 place of employment may seek to rebut the presumption that
16 twenty feet is a reasonable distance by submitting an
17 application to the department. The presumption will be rebutted
18 if the applicant can show by clear and convincing evidence that,
19 given the circumstances presented by the location of entrances,
20 exits, windows that open, ventilation intakes, or other factors,
21 smoke will not infiltrate into the public place or place of
22 employment.



1 § -7 **Exceptions.** Notwithstanding any other provision of
2 this chapter to the contrary, the following areas shall be
3 exempt from the provisions of sections -3, -4, and -5:

- 4 (1) Private residences, except when used as a licensed
5 child care, adult day care, or health care facility;
- 6 (2) Hotel and motel rooms that are rented to guests and
7 are designated as smoking rooms, provided that not
8 more than twenty per cent of rooms rented to guests in
9 a hotel or motel may be so designated. All smoking
10 rooms on the same floor must be contiguous and smoke
11 from these rooms must not infiltrate into areas where
12 smoking is prohibited under the provisions of this
13 chapter. The status of rooms as smoking or nonsmoking
14 may not be changed, except to add additional
15 nonsmoking rooms;
- 16 (3) Retail tobacco stores, provided that smoke from these
17 places does not infiltrate into areas where smoking is
18 prohibited under the provisions of this chapter;
- 19 (4) Private and semiprivate rooms in nursing homes and
20 long-term care facilities that are occupied by one or
21 more persons, all of whom are smokers and have
22 requested in writing to be placed in a room where



1 smoking is permitted, provided that smoke from these
2 places does not infiltrate into areas where smoking is
3 prohibited under the provisions of this chapter;

4 (5) Outdoor areas of places of employment except those
5 covered by the provisions of sections -3 and -5;

6 (6) All areas covered by this chapter when smoking is part
7 of a production being filmed.

8 **§ -8 Declaration of establishment as nonsmoking.** (a)

9 Notwithstanding any other provision of this chapter, an owner,
10 operator, manager, or other person in control of an
11 establishment, facility, or outdoor area may declare that an
12 entire establishment, facility, or outdoor area or any part
13 thereof as a place where smoking is prohibited.

14 (b) Smoking shall be prohibited in any place in which a
15 sign conforming to the requirements of section -9 is posted.

16 **§ -9 Signs.** Clearly legible signs that include the
17 words "Smoking Prohibited by Law" with letters of not less than
18 one inch in height or the international "No Smoking" symbol,
19 consisting of a pictorial representation of a burning cigarette
20 enclosed in a red circle with a red bar across it, shall be
21 clearly and conspicuously posted in and at the entrance to every
22 public place and place of employment where smoking is prohibited



1 by this chapter by the owner, operator, manager, or other person
2 in control of that place.

3 § -10 **Nonretaliation and nonwaiver of rights.** (a) No
4 person or employer shall discharge, refuse to hire, or in any
5 manner retaliate against an employee, applicant for employment,
6 or customer because that employee, applicant, or customer
7 exercises any rights afforded by this chapter or reports or
8 attempts to prosecute a violation of this chapter.

9 (b) An employee who works in a setting where an employer
10 allows smoking does not waive or otherwise surrender any legal
11 rights the employee may have against the employer or any other
12 party.

13 § -11 **Compliance and administration.** (a) Enforcement
14 of compliance with the provisions of this chapter shall be under
15 the jurisdiction of the department.

16 (b) The director shall adopt rules under chapter 91 as are
17 appropriate to carry out this chapter and for the efficient
18 administration thereof.

19 (c) Any citizen who wants to register a complaint under
20 this chapter may initiate an enforcement action with the
21 department as set forth by the director.



1 (d) An owner, manager, operator, or employee of an
2 establishment regulated by this chapter shall inform persons
3 violating this chapter of its provisions.

4 (e) Notwithstanding any other provision of this chapter,
5 an employee, private citizen, the department, other appropriate
6 county agency, county, or any other person aggrieved by the
7 failure of the owner, operator, manager, or other person in
8 control of a public place or a place of employment to comply
9 with the provisions of this chapter may apply for injunctive
10 relief to enforce those provisions in any court of competent
11 jurisdiction.

12 § -12 Penalties. (a) A person who smokes in an area
13 where smoking is prohibited by the provisions of this chapter
14 shall be guilty of a violation and fined not more than \$50 to be
15 deposited into the general fund. The district courts may assess
16 costs not to exceed \$25 for issuing a penal summons upon any
17 person who fails to appear at the place within the time
18 specified in the citation issued to the person.

19 (b) Any authorized police officer, upon making an arrest,
20 shall take the name and address of the alleged violator and
21 shall issue the violator a summon or citation in writing.



1 (c) There shall be provided for use by an officer or
2 employee of the respective government jurisdictions, duly
3 authorized to issue a summons or citation, or any police
4 officer, a form of summons or citation for use in citing
5 violators of this part that does not provide for the physical
6 arrest of such violators. The form and content of this summons
7 or citation shall be as adopted or prescribed by the
8 administrative judge of the district court. When a citation is
9 issued, the original of the citation shall be given to the
10 violator; provided that the administrative judge of the district
11 court may prescribe that the violator be given a copy of the
12 citation and provide for the disposition of the original and any
13 other copies. Every citation shall be consecutively numbered
14 and each copy shall bear the same number as its respective
15 original.

16 (d) If any person fails to comply with a penal summons
17 given to the person, the court shall issue a warrant for the
18 person's arrest.

19 (e) Any police officer or other officer or employee of the
20 respective government jurisdictions may eject from the premises
21 any person to whom a citation has been issued and who continues
22 to smoke after the person has been so cited.



1 (f) A person who owns, manages, operates, or otherwise
2 controls any place or facility designated by this chapter and
3 fails to comply with the provisions of this chapter shall be
4 guilty of an infraction and fined:

- 5 (1) Not more than \$100 for a first violation;
- 6 (2) Not more than \$200 for a second violation within one
7 year of the date of the first violation; and
- 8 (3) Not more than \$500 for each additional violation
9 within one year of the date of the preceding
10 violation.

11 (g) In addition to the fines established by this section,
12 a violation of this chapter by a person who owns, manages,
13 operates, or otherwise controls any place or facility designated
14 by this chapter may result in the suspension or revocation of
15 any permit or license issued to the person or the place for the
16 premises on which the violation occurred.

17 (h) Each day on which a violation of this chapter occurs
18 shall be considered a separate and distinct violation.

19 § -13 **Public education.** The department shall engage in
20 a public education program to explain and clarify the purposes
21 and requirements of this chapter to the public, and to guide
22 owners, operators, and managers in their compliance with it.



1 The program may include, but is not limited to, publication of a
2 brochure for affected businesses and individuals explaining the
3 provisions of this chapter.

4 § -14 **Other applicable laws.** This chapter shall not be
5 interpreted or construed to permit smoking where it is otherwise
6 restricted by other applicable laws.

7 § -15 **County ordinances.** (a) Nothing in this chapter
8 shall be construed to supersede or in any manner affect a county
9 smoking ordinance provided that the provisions of the ordinance
10 are at least as protective of the rights of nonsmokers as the
11 provisions of this chapter.

12 (b) Nothing in this chapter shall prohibit a county from
13 enacting ordinances more stringent than the provisions of this
14 chapter.

15 § -16 **Cigarette sales from vending machines and by lunch**
16 **wagons prohibited.** (a) The sale or distribution at no charge
17 of cigarettes by the following methods is prohibited:

18 (1) From cigarette vending machines unless the vending
19 machine is located in a bar, cabaret, or any
20 establishment for which the minimum age for admission
21 is eighteen; and



1 (2) From a lunch wagon engaging in any sales activity
2 within one thousand feet of any public or private
3 elementary or secondary school grounds.

4 (b) Violations of subsection (a), including placement of a
5 cigarette vending machine in a location other than a bar,
6 cabaret, or any establishment for which the minimum age for
7 admission is eighteen, are subject to a fine of up to \$1,000 per
8 day for each violation.

9 (c) As used in this section:

10 "Cigarette vending machine" means a self-service device
11 that dispenses cigarettes, cigars, tobacco, or any other product
12 containing tobacco.

13 "Lunch wagon" means a mobile vehicle designed and
14 constructed to transport food and from which food is sold to the
15 general public and includes, but is not limited to manapua
16 trucks.

17 "Sell" or "sale" means to solicit and receive an order for;
18 to have, keep, offer, or expose for sale; to deliver for value
19 or in any other manner than purely gratuitously; to peddle; to
20 keep with intent to sell; or to traffic in.

21 § -17 Distribution of sample cigarette or tobacco
22 products, cigarette or tobacco promotional materials, and



1 coupons redeemable for cigarette or tobacco products or
2 promotional materials. (a) It is unlawful for any person to
3 distribute samples of cigarette or tobacco products, or coupons
4 redeemable for cigarette or tobacco products, in or on any
5 public street, sidewalk, or park, or within one thousand feet of
6 any elementary, middle or intermediate, or high school.

7 (b) It is unlawful for any person to distribute cigarette
8 or tobacco promotional materials, or coupons redeemable for
9 cigarette or tobacco promotional materials, within one thousand
10 feet of any elementary, middle or intermediate, or high school.

11 (c) This section shall not apply:

12 (1) Within private commercial establishments, such as
13 stores and restaurants, where tobacco products are
14 sold, as long as distribution is not visible to the
15 public from outside the establishment; or

16 (2) To commercial establishments where access to the
17 premises by persons under eighteen years of age is
18 prohibited by law.

19 (d) Any person convicted of violating any provision of
20 this section shall be fined not more than \$1,000.

21 (e) As used in this section:

1 "Distribute" means to pass out to members of the general
2 public free of charge for the exclusive purpose of promoting a
3 product."

4 SECTION 3. Chapter 328K, Hawaii Revised Statutes, is
5 repealed.

6 SECTION 4. This Act does not affect the rights and duties
7 that matured, penalties that were incurred, and proceedings that
8 were begun, before its effective date.

9 SECTION 5. This Act shall take effect on January 1, 2007.

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HB 2072

Report Title:

Tobacco Free Bill; Smoking; Secondhand Smoke

Description:

Repeals chapter 328K and establishes a new chapter that protects the public health and welfare by prohibiting smoking in public places and places of employment, ensuring a consistent level of basic protections statewide from exposure to secondhand smoke.

