

JAN 23 2006

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# 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:



# S.B. NO. 2177

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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SB2177

**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.

