

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO SMOKE-FREE WORKPLACES.

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

1           SECTION 1. The purpose of this Act is to amend chapter  
2 328K, Hawaii Revised Statutes, to reduce exposure to secondhand  
3 tobacco smoke by establishing a smoke-free environment for state  
4 employees and for members of the public visiting or using state  
5 facilities in state buildings. The legislature finds that there  
6 is consensus in the medical and scientific communities that  
7 exposure to secondhand smoke, sometimes referred to as  
8 environmental tobacco smoke, causes death and disease in  
9 nonsmokers. Although the first reports of the health hazards of  
10 secondhand smoke date back to the early 1980s, the first  
11 comprehensive report on the matter was the 1986 Surgeon  
12 General's Report on the Health Consequences of Involuntary  
13 Smoking, which concluded that:

14           (1) Involuntary smoking is a cause of disease, including  
15           lung cancer, in healthy nonsmokers;

16           (2) The children of parents who smoke compared with the

1 children of nonsmoking parents have an increased  
2 frequency of respiratory infections, and increased  
3 respiratory symptoms; and

4 (3) The simple separation of smokers and nonsmokers within  
5 the same air space may reduce the exposure of  
6 nonsmokers to environmental tobacco smoke.

7 Since the 1986 report, the evidence has continued to mount  
8 that secondhand smoke is a major public health problem. In  
9 1993, the United States Environmental Protection Agency  
10 classified tobacco smoke as a Group A carcinogen, and found that  
11 secondhand smoke increases the risk of lung cancer in healthy  
12 nonsmokers. Many other large-scale studies support the  
13 Environmental Protection Agency's conclusions.

14 A University of California, San Francisco, study in 1991  
15 found that secondhand smoke is the third leading cause of  
16 preventable death in the country, killing 53,000 nonsmokers in  
17 the United States each year. The National Cancer Institute  
18 determined in 1999 that secondhand smoke is responsible for the  
19 early deaths of as many as 65,000 Americans annually. One of  
20 the most recent studies, published by the California  
21 Environmental Protection Agency in 2005, concluded that there  
22 are "developmental, respiratory, carcinogenic and cardiovascular

1 effects for which there is sufficient evidence of a causal  
2 relationship, with exposure to environmental tobacco smoke,  
3 including fatal outcomes such as sudden infant death syndrome  
4 and heart disease mortality, as well as serious chronic diseases  
5 such as childhood asthma."

6 SECTION 2. Section 328K-2, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 **"§328K-2 Prohibition in certain areas open to the public.**

9 Except as otherwise provided in this part, smoking shall be  
10 prohibited in the following places within the State:

11 (1) Elevators in buildings open to and used by the public,  
12 including elevators in apartment and other multi-unit  
13 residential buildings;

14 (2) Semiprivate rooms, wards, waiting rooms, lobbies, and  
15 public hallways of public and private health care  
16 facilities, including but not limited to, hospitals,  
17 clinics, and physicians' and dentists' offices.

18 Smoking shall be permitted in a private room or in a  
19 semiprivate room when there is no objection by any  
20 patient occupying such room;

21 (3) Restaurants.

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1 (A) All restaurants shall provide nonsmoking areas  
2 which are reasonably proportionate to the preference  
3 of the users and so located as to obtain the maximum  
4 effect of existing physical barriers and ventilation  
5 systems, and seating arrangements, to minimize the  
6 toxic effect of smoke in adjacent nonsmoking areas;  
7 provided no fixed structural or other physical  
8 modifications of the restaurant shall be required; and

9 (B) Nothing in this paragraph shall prevent a  
10 proprietor or person in charge of a facility from  
11 designating the entire restaurant as a nonsmoking  
12 area. Owners or proprietors of restaurants may expand  
13 or contract the size of designated nonsmoking areas to  
14 meet the requirements of their patrons;

15 (4) Any room which is used primarily for exhibiting any  
16 motion picture, stage drama, dance, musical  
17 performance, or other similar performance during the  
18 time that the room is open to the public for such  
19 performance;

20 (5) Museums, libraries, and galleries;

21 (6) [~~The following facilities or areas~~] In state or county  
22 owned or controlled buildings[+]

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1           ~~(A) Meeting or conference rooms;~~  
2           ~~(B) Auditorium or sports areas that are enclosed;~~  
3           ~~(C) Community centers where persons may gather for~~  
4           ~~meetings, parties, or any other purpose where the area~~  
5           ~~is enclosed;~~  
6           ~~(D) Waiting areas, baggage claim areas, and check-in~~  
7           ~~counters within buildings in all state airports; and~~  
8           ~~(E) All areas open to the public, including service~~  
9           ~~counters and reception or waiting areas;] as required~~  
10           in section 328K-13.

11           (7) Except as otherwise provided in this section, all  
12           areas open to the public in the following business  
13           establishments:

- 14           (A) Banks;
- 15           (B) Credit unions;
- 16           (C) Financial services loan companies;
- 17           (D) Retail stores; and
- 18           (E) Savings and loan associations;

- 19           (8) Any restroom open to the public;
- 20           (9) Taxicabs, when carrying nonsmoking passengers;
- 21           (10) Cruise ships. The dining area of all cruise ships  
22           shall include a nonsmoking area which is reasonably

1 proportionate to the preference of the users and so located  
2 as to obtain the maximum effect of existing physical  
3 barriers and ventilation systems, and seating arrangements,  
4 to minimize the toxic effect of smoke; provided no fixed  
5 structural or other physical modifications of the cruise  
6 ship shall be required. This paragraph shall not apply to  
7 any cruise ship that does not serve any food or meals  
8 during its course of operation, or where the service of  
9 food is only incidental to the consumption of alcoholic  
10 beverages; and

11 (11) Notwithstanding the exceptions stated in section 328K-  
12 3, any area open to the public which has been designated by  
13 the person having control of the area as a nonsmoking area  
14 and marked with a "no smoking" sign.

15 SECTION 3. Section 328K-12, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 **"§328K-12 Definitions.** For the purposes of this part:

18 "Employee" means any person who is employed [~~more than~~  
19 ~~twenty hours per week~~] by any employer in consideration for  
20 direct or indirect monetary wages or profit."

1 "Employer" means any state or county agency, or any private  
2 corporation, firm, or association which receives state funds  
3 under chapter 42F or chapter 103F."

4 "Enclosed" means [~~closed in~~] any area covered by a roof  
5 [~~and four walls with openings for ingress and egress. Areas~~]  
6 and includes, but is not limited to, areas commonly described as  
7 public lobbies [~~are not enclosed for the purposes of this~~  
8 ~~chapter.~~], lanais, covered walkways, and any area within the  
9 exterior footprint of a building even if the area is not covered  
10 by a roof.

11 [~~"Office workplace"~~] "Workplace" means any enclosed  
12 structure or portion thereof used by an employer. Additionally,  
13 "workplace" shall include any building that is state owned,  
14 rented, or leased, or otherwise provided in part or its entirety  
15 to non-state parties.

16 "~~Simple majority~~" means ~~any number greater than half of~~  
17 ~~the persons expressing a preference in any specific work area.]~~

18 "Smoking" or "to smoke" means inhaling and exhaling the  
19 fumes of burning tobacco or any other plant material, or burning  
20 or carrying any lighted equipment for smoking tobacco or any  
21 other plant material, or the personal habit commonly known as  
22 smoking."

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1 SECTION 4. Section 328K-13, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "~~[+]§328K-13[+]~~ [Regulation of] Prohibition on smoking in  
4 the [office] workplace[-]; notice. (a) Each employer in the  
5 State shall ~~[within three months after June 24, 1987,]~~ adopt,  
6 implement, and maintain a written smoking policy which shall  
7 ~~[contain, at the minimum, the following provisions and~~  
8 ~~requirements:]~~ prohibit smoking in the workplace.

9 ~~[-(1) That if any nonsmoking employee objects to the~~  
10 ~~employer about smoke in the employee's workplace, the~~  
11 ~~employer, using already available means of ventilation~~  
12 ~~or separation or partition of office space, shall~~  
13 ~~attempt to reach a reasonable accommodation, insofar~~  
14 ~~as possible, between the preferences of nonsmoking and~~  
15 ~~smoking employees, provided that an employer is not~~  
16 ~~required by this chapter to make any expenditures or~~  
17 ~~structural changes to accommodate the preferences of~~  
18 ~~nonsmoking or smoking employees; and~~

19 ~~-(2) That if an accommodation which is satisfactory to all~~  
20 ~~affected employees cannot be reached in any given~~  
21 ~~office workplace, the preferences of a simple majority~~  
22 ~~of employees in each specifically affected area shall~~



1 ~~prevail and the employer shall accordingly prohibit or~~  
2 ~~allow smoking in that particular area of the office~~  
3 ~~workplace. If the employer's decision is~~  
4 ~~unsatisfactory to the nonsmoking employees, a simple~~  
5 ~~majority of all nonsmoking employees can appeal to the~~  
6 ~~director of health for the determination of a~~  
7 ~~reasonable accommodation. Where the employer~~  
8 ~~prohibits smoking in an office workplace, the area in~~  
9 ~~which smoking is prohibited shall be clearly marked~~  
10 ~~with signs.]~~

11 (b) ~~[The smoking policy shall be announced within two~~  
12 ~~weeks of the vote of preferences of the employees in each~~  
13 ~~respective work area and posted conspicuously in all the~~  
14 ~~affected workplaces.]~~ By October 1, 2006, each employer shall  
15 post and keep posted a notice setting forth the requirements of  
16 this part in conspicuous places in every workplace where any  
17 employee is employed so as to permit the employee to observe  
18 readily a copy on the way to or from the employee's workplace."

19 SECTION 5. Section 328K-14, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "~~[+]§328K-14[+]~~ **Where smoking not regulated.** ~~[This chapter~~  
22 ~~does not regulate smoking in the following places and under the~~

1 ~~following conditions within the State:]~~ Notwithstanding any  
2 other provision of this part to the contrary, the following  
3 areas shall be exempt from the provisions of sections 328K-12  
4 and 328K-13:

- 5 (1) Any property owned or leased by federal governmental  
6 entities; ~~[or]~~
- 7 (2) Private ~~enclosed office~~ workplaces ~~occupied~~  
8 ~~exclusively by smokers, even though such office~~  
9 ~~workplaces may be visited by nonsmokers, excepting~~  
10 places in which smoking is prohibited by a county fire  
11 department or by other law, ordinance, rule, or  
12 regulation~~[-]~~;
- 13 (3) Private residences, unless otherwise prohibited under  
14 licensure, regulation, or contracted agreement with  
15 the State; or
- 16 (4) Outdoor areas of places of employment."

1 SECTION 6. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on upon its  
4 approval.

5  
6 INTRODUCED BY: 

7 BY REQUEST

8

DEPARTMENT: Department of Health

TITLE: A BILL FOR AN ACT RELATING TO SMOKE-FREE WORKPLACES.

PURPOSE: The purpose of this bill is to reduce exposure to secondhand tobacco smoke by establishing a smoke-free environment for state employees and for members of the public visiting or using state facilities in state buildings.

MEANS: Amend sections 328K-2, 328K-12, 328K-13; and 328K-14, Hawaii Revised Statutes.

JUSTIFICATION: The current state statute was enacted in 1987 and was based upon a premise of accommodation between smokers and nonsmokers in the same workspace. Since that time the science, medical evidence, and public policy around exposure to secondhand smoke (SHS), also referred to as environmental tobacco smoke (ETS) has substantially changed. The United States Environmental Protection Agency (EPA) has identified SHS as a direct cause of lung cancer in humans and has placed it in the same cancer-causing category as radon, benzene, and asbestos. Presently over six hundred county jurisdictions and nine states have enacted laws creating smoke-free workplaces and public places alike.

In amending the current law it will be essential to protect the ability of counties to enact stricter ordinances as they deem

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necessary. The existing state statute protects against preempting that ability.

Impact on the public: This legislation would create an up to date standard of care for exposure to tobacco smoke at the state-run workplace that is current as to both public health science and public policy. The proposed statute would substantially reduce the state's potential exposure to liability for SHS-related worker compensation claims and would encourage smokers to quit.

Impact on the department and other agencies: This legislation would hold individual branches of government and their corresponding departments responsible for enforcement of the law. The Department of Health would continue to serve as the central point of contact for complaints and for violations. To date the DOH has been able to resolve every complaint without resorting to having to fine another department for failure to enforce the provisions of the existing statute.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None.

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OTHER AFFECTED  
AGENCIES:

All branches of state government  
and their corresponding  
departments.

EFFECTIVE DATE:

Upon approval.