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# A BILL FOR AN ACT

RELATING TO SMOKING.

**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 and that breathing  
3 secondhand smoke is a cause of disease in healthy nonsmokers,  
4 including heart disease, stroke, respiratory disease, and lung  
5 cancer, and is attributed to thousands of premature deaths and  
6 illnesses in Hawaii annually. In addition, the legislature  
7 finds that, since Hawaii's statewide smoking statute was passed  
8 nineteen years ago, recent research demonstrates heightened  
9 health dangers to those exposed to secondhand smoke, which  
10 justifies increased protection in the workplace and for the  
11 public in general. Specifically, in 2004, the Centers for  
12 Disease Control and Prevention issued an advisory to persons  
13 with heart disease to avoid indoor settings where smoking is  
14 allowed.

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



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

3 Therefore, the purpose of this Act is to protect the public  
4 health and welfare by prohibiting smoking in public places and  
5 places of employment and to ensure a consistent level of basic  
6 protection 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, unless the  
13 context clearly requires otherwise:

14 "Bar"

15 (1) Means an establishment that is devoted to the serving  
16 of alcoholic beverages for consumption by guests on  
17 the premises regardless of whether food is served; and

18 (2) Includes but is not limited to taverns, cocktail  
19 lounges, and cabarets, including outdoor areas of  
20 bars.

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



1 "Business"

2 (1) Means a sole proprietorship, partnership, joint  
3 venture, corporation, or other business entity, either  
4 for-profit or not-for-profit; and

5 (2) Includes retail establishments where goods or services  
6 are sold, professional corporations, and other  
7 entities where legal, medical, dental, engineering,  
8 architectural, or other professional services are  
9 delivered.

10 "Department" means the department of health.

11 "Director" means the director of health.

12 "Employee" means a person who:

13 (1) Is employed by an employer in consideration for direct  
14 or indirect monetary wages or profit; and

15 (2) Volunteers the person's services for a nonprofit  
16 entity.

17 "Employer" means a person, business, partnership,  
18 association, corporation, including the State or any of its  
19 political subdivisions, a trust, or nonprofit entity that  
20 employs the services of one or more individual persons, but does  
21 not include the United States.

22 "Enclosed or partially enclosed area"



1 (1) Means any area closed in by a roof or overhang and two  
2 walls; and

3 (2) Includes but is not limited to areas commonly  
4 described as public lobbies, lanais, interior  
5 courtyards, patios, and covered walkways.

6 "Health care facility":

7 (1) Means an office or institution, including all waiting  
8 rooms, hallways, private rooms, semiprivate rooms, and  
9 wards, providing care or treatment of diseases,  
10 whether physical, mental, or emotional, or other  
11 medical, physiological, or psychological conditions;  
12 and

13 (2) Includes but is not limited to hospitals,  
14 rehabilitation hospitals or other clinics, including  
15 weight control clinics, nursing homes, homes for the  
16 aging or chronically ill, laboratories, and offices of  
17 surgeons, chiropractors, physical therapists,  
18 physicians, dentists, and all specialists within these  
19 professions.

20 "Multifamily dwelling" means a building containing more  
21 than two dwelling units.



1 "Nightclub" means an establishment in which live  
2 entertainment is provided or facilities for dancing by patrons  
3 either by live entertainment or recorded music may be provided,  
4 regardless of whether alcoholic beverages are served.

5 "Open to the public":

- 6 (1) Means a status applying to enclosed or partially  
7 enclosed areas to which the public is invited or  
8 permitted and areas within any building available for  
9 use by or accessible to the general public during the  
10 normal course of business conducted therein by either  
11 private or public entities;
- 12 (2) Includes but is not limited to bars, educational  
13 facilities, financial institutions, health care  
14 facilities, hotel and motel lobbies, lanais,  
15 laundromats, public transportation facilities,  
16 reception areas, restaurants, retail food production  
17 and marketing establishments, retail service  
18 establishments, retail stores, shopping malls, sports  
19 arenas, theaters, and waiting rooms; and
- 20 (3) Does not include a private residence unless it is used  
21 as a child care, adult day care, or health care  
22 facility.



- 1 "Place of employment":
- 2 (1) Means an area under the control of a public or private
- 3 employer that employees normally frequent during the
- 4 course of employment;
- 5 (2) Includes but is not limited to auditoriums,
- 6 cafeterias, classrooms, clubs, common work areas,
- 7 conference rooms, elevators, employee lounges,
- 8 hallways, medical facilities, meeting rooms, private
- 9 offices, restrooms, and stairs; and
- 10 (3) Does not include a private residence unless it is used
- 11 as a child care, adult day care, or health care
- 12 facility.
- 13 "Restaurant":
- 14 (1) Means an eating establishment, that gives or offers
- 15 food for sale to the public, guests, or employees, as
- 16 well as kitchens and catering facilities in which food
- 17 is prepared on the premises for serving elsewhere; and
- 18 (2) Includes but is not limited to, coffee shops,
- 19 cafeterias, sandwich stands, private and public school
- 20 cafeterias, and bar areas within a restaurant and
- 21 outdoor areas of restaurants.



1 "Retail tobacco store" means a retail store utilized  
2 primarily 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 regardless of whether the service involves the exchange of  
6 money.

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

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

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

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



1 owned, leased, or operated by the State, or any of its political  
2 subdivisions.

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

- 7       (1) Airports and public transportation facilities and  
8           vehicles, including buses and taxicabs, under the  
9           authority of the State or the counties and ticket,  
10          boarding, and waiting areas of public transit depots;
- 11       (2) Aquariums, galleries, libraries, and museums;
- 12       (3) Areas available to and customarily used by the general  
13          public, including but not limited to restrooms,  
14          lobbies, reception areas, hallways, and other common  
15          areas, in businesses and nonprofit entities patronized  
16          by the public, including but not limited to  
17          professional offices, banks, laundromats, hotels, and  
18          motels;
- 19       (4) Bars;
- 20       (5) Bowling alleys;
- 21       (6) Convention facilities;
- 22       (7) Educational facilities, both public and private;





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



1 extent the place is subject to the jurisdiction of the  
2 State or any other governmental entity;  
3 (19) Service lines; and  
4 (20) Shopping malls.

5 § -4 **Prohibition in enclosed or partially enclosed**  
6 **places of employment.** Smoking shall be prohibited in all  
7 enclosed or partially enclosed areas or places of employment.

8 § -5 **Prohibition in sports arenas, outdoor arenas, and**  
9 **stadiums.** Smoking shall be prohibited in the enclosed or  
10 partially enclosed areas and in seating areas of outdoor arenas,  
11 stadiums, and amphitheaters.

12 § -6 **Presumptively reasonable distance.** Smoking is  
13 prohibited within a presumptively reasonable minimum distance of  
14 twenty feet from entrances, exits, windows that open, and  
15 ventilation intakes that serve an enclosed or partially enclosed  
16 area where smoking is prohibited. Owners, operators, managers,  
17 employers, or other persons who own or control a public place or  
18 place of employment may seek to rebut the presumption that  
19 twenty feet is a reasonable distance by submitting an  
20 application to the department. The presumption shall be  
21 rebutted if the applicant can show by clear and convincing  
22 evidence that, given the circumstances presented by the location



1 of entrances, exits, windows that open, ventilation intakes, or  
2 other factors, smoke will not infiltrate into the public place  
3 or place of employment.

4 § -7 **Exceptions.** Notwithstanding any provision in this  
5 chapter to the contrary, the following areas shall be exempt  
6 from sections -3, -4, and -5:

7 (1) Private residences, except when used as a licensed  
8 child care, adult day care, or health care facility;

9 (2) Hotel and motel rooms that are rented to guests and  
10 are designated as smoking rooms, provided that not  
11 more than twenty per cent of rooms rented to guests in  
12 a hotel or motel may be so designated. All smoking  
13 rooms on the same floor shall be contiguous and smoke  
14 from these rooms shall not infiltrate into areas where  
15 smoking is prohibited under this chapter. The status  
16 of rooms as smoking or nonsmoking may not be changed,  
17 except to add additional nonsmoking rooms;

18 (3) Retail tobacco stores, provided that smoke from these  
19 places does not infiltrate into areas where smoking is  
20 prohibited under this chapter;

21 (4) Private and semiprivate rooms in nursing homes and  
22 long-term care facilities that are occupied by one or



1 more persons, all of whom are smokers and have  
2 requested in writing to be placed in a room where  
3 smoking is permitted; provided that smoke from these  
4 places does not infiltrate into areas where smoking is  
5 prohibited under this chapter;

6 (5) Outdoor areas of places of employment except those  
7 subject to sections -3 and -5; and

8 (6) All areas covered under this chapter when smoking is  
9 part of a production being filmed.

10 **§ -8 Declaration of establishment as nonsmoking.** (a)

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

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

18 **§ -9 Signs.** Clearly legible signs that include the  
19 words "Smoking Prohibited by Law" with letters of not less than  
20 one inch in height or the international "No Smoking" symbol,  
21 consisting of a pictorial representation of a burning cigarette  
22 enclosed in a red circle with a red bar across it, shall be



1 clearly and conspicuously posted in and at the entrance to every  
2 public place and place of employment where smoking is prohibited  
3 by this chapter by the owner, operator, manager, or other person  
4 in control of that place.

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

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

15       §   -11   **Compliance and administration.**   (a)  The  
16 department of health shall have jurisdiction over compliance  
17 with this chapter.

18       (b)  The director shall adopt rules in accordance with  
19 chapter 91 to implement this chapter.

20       (c)  Any person who desires to register a complaint under  
21 this chapter may initiate compliance proceedings with the  
22 department as set forth in rules adopted by the director.



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

4 (e) Notwithstanding any other provision of this chapter,  
5 an employee or private citizen may bring legal action to enforce  
6 this chapter.

7 (f) The department or other government entities, county  
8 administrators, or designated persons and entities, or any  
9 person aggrieved by the failure of the owner, operator, manager,  
10 or other person in control of a public place or a place of  
11 employment to comply with this chapter may apply for injunctive  
12 relief to enforce this chapter in any court of competent  
13 jurisdiction.

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



1 (b) Any authorized police officer, upon making an arrest,  
2 shall take the name and address of the alleged violator and  
3 shall issue the violator in writing a summons or citation.

4 (c) There shall be provided for use by an officer or  
5 employee of the respective government jurisdictions, duly  
6 authorized to issue a summons or citation, or any police  
7 officer, a form of summons or citation for use in citing  
8 violators of this chapter that does not provide for the physical  
9 arrest of such violators. The form and content of the summons  
10 or citation shall be as adopted or prescribed by the  
11 administrative judge of the district court, shall be printed on  
12 a form commensurate with the form of other summons or citations  
13 used in modern methods of arrest, and so designed to include all  
14 necessary information to make the same valid within the laws and  
15 rules of the State. When a citation is issued, the original of  
16 the citation shall be given to the violator; provided that the  
17 administrative judge of the district court may prescribe that  
18 the violator be given a carbon copy of the citation and provide  
19 for the disposition of the original and any other copies. Every  
20 citation shall be consecutively numbered and each carbon copy  
21 shall bear the same number as its respective original.



1 (d) If any person fails to comply with a penal summons  
2 given to the person, the court shall immediately issue a warrant  
3 for the person's arrest.

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

8 (f) A person who owns, manages, operates, or otherwise  
9 controls any place or facility designated by this chapter and  
10 fails to comply with this chapter shall be guilty of an  
11 infraction and fined:

- 12 (1) Not more than \$100 for a first violation;
- 13 (2) Not more than \$200 for a second violation within one  
14 year of the date of the first violation; and
- 15 (3) Not more than \$500 for each additional violation  
16 within one year of the date of the preceding  
17 violation.

18 (g) In addition to the fines established by this section,  
19 violation of this chapter by a person who owns, manages,  
20 operates, or otherwise controls any place or facility designated  
21 by this chapter as nonsmoking may result in the suspension or





1 revocation of any permit or license issued to the person or the  
2 place for the premises on which the violation occurred.

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

5 § -13 **Public education.** The department shall engage in  
6 a public education program to explain and clarify the purposes  
7 and requirements of this chapter to the public and to guide  
8 owners, operators, and managers in compliance. The program may  
9 include, but shall not be limited to, publication of a brochure  
10 for affected businesses and individuals explaining this chapter.

11 § -14 **Other applicable laws.** This chapter shall not be  
12 interpreted or construed to permit smoking where it is otherwise  
13 restricted by other applicable laws.

14 § -15 **County ordinances.** (a) Nothing in this chapter  
15 shall be construed to supersede or in any manner affect a county  
16 smoking ordinance; provided that the ordinance is at least as  
17 protective of the rights of nonsmokers as this chapter.

18 (b) Nothing in this chapter shall prohibit a county from  
19 enacting ordinances more stringent than the provisions of this  
20 chapter.



1           §   -16 Cigarette sales from vending machines and by lunch  
2 **wagons prohibited.** (a) The sale or distribution at no charge of  
3 cigarettes by the following methods is prohibited:

4           (1) From cigarette vending machines unless the vending  
5 machine is located in a bar, cabaret, or any  
6 establishment for which the minimum age for admission  
7 is eighteen; or

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

11           (b) A violation of subsection (a), including placement of  
12 a cigarette vending machine in a location other than a bar,  
13 cabaret, or any establishment for which the minimum age for  
14 admission is eighteen, shall be subject to a fine of up to  
15 \$1,000 per day for each violation.

16           (c) As used in this section:

17           "Cigarette vending machine" means a self-service device  
18 that dispenses cigarettes, cigars, tobacco, or any other product  
19 containing tobacco.

20           "Lunch wagon" means a mobile vehicle designed and  
21 constructed to transport food and from which food is sold to the



1 general public and includes but is not limited to manapua  
2 trucks.

3 "Sell" or "sale" means: to solicit and receive an order  
4 for; to have, keep, offer, or expose for sale; to deliver for  
5 value or in any other manner than purely gratuitously; to  
6 peddle; to keep with intent to sell; or to traffic in.

7 § -17 **Distribution of sample cigarette or tobacco**  
8 **products, cigarette or tobacco promotional materials, and**  
9 **coupons redeemable for cigarette or tobacco products or**  
10 **promotional materials.** (a) It is unlawful for any person to  
11 distribute samples of cigarette or tobacco products, or coupons  
12 redeemable for cigarette or tobacco products, in or on any  
13 public street, sidewalk, or park or within one thousand feet of  
14 any elementary, middle or intermediate, or high school.

15 (b) It is unlawful for any person to distribute cigarette  
16 or tobacco promotional materials, or coupons redeemable for  
17 cigarette or tobacco promotional materials, within one thousand  
18 feet of any elementary, middle or intermediate, or high school.

19 (c) This section shall not apply:

20 (1) Within private commercial establishments such as  
21 stores and restaurants where tobacco products are sold



1 as long as the distribution is not visible to the  
2 public from outside the establishment; and

3 (2) To commercial establishments where access to the  
4 premises by persons under eighteen years of age is  
5 prohibited by law.

6 (d) As used in this section "distribute" means to pass out  
7 a product to members of the general public free of charge for  
8 the exclusive purpose of promoting the product.

9 (e) Any person convicted of violating this section shall  
10 be fined not more than \$1,000."

11 SECTION 3. Chapter 328K, Hawaii Revised Statutes, is  
12 repealed.

13 SECTION 4. This Act does not affect rights and duties that  
14 matured, penalties that were incurred, and proceedings that were  
15 begun, before its effective date.

16 SECTION 5. If any provision of this Act, or the  
17 application thereof to any person or circumstance is held  
18 invalid, the invalidity does not affect other provisions or  
19 applications of the Act, which can be given effect without the  
20 invalid provision or application, and to this end the provisions  
21 of this Act are severable.



1 SECTION 6. This Act shall take effect on January 1, 2007.

2

INTRODUCED BY: Shianne Chun Oakland  
Rosaly de Bahr  
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**Report Title:**

Smoking

**SB. NO. 2720**

**Description:**

Creates a new statewide smoking law and repeals current smoking law.

