

PROPOSED

THE SENATE
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

S.B. NO. 3262
S.D. 1

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, since Hawaii passed a statewide anti-smoking
9 statute seventeen years ago. In 2004, the Centers for Disease
10 Control and Prevention issued an advisory to persons with heart
11 disease to avoid indoor settings where smoking is allowed, which
12 warrants increased protections in the workplace and for the
13 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 pick-up areas, throughout the airport facility, and up to the
2 passenger loading gates of all state airports, reception areas,
3 restaurants, retail food production and marketing
4 establishments, retail service establishments, retail stores,
5 shopping malls, sports arenas, theaters, and waiting rooms, but
6 does not include a private residence unless it is used as a
7 child care, adult day care, or health care facility.

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

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

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1 includes a bar area within the restaurant and outdoor areas of
2 restaurants.

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

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

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

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

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

21 **§ -2 Prohibition in facilities owned by the State or**
22 **county.** Smoking shall be prohibited in all enclosed or



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1 partially enclosed areas, including buildings and vehicles
2 owned, leased, or operated by the State or any county.

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 county, and ticket,
10 boarding, and waiting areas of public transit depots
11 including airports from curb to cabin, including all
12 areas within and immediately in front of and adjacent
13 to passenger terminals and pick-up areas, throughout
14 the airport facility, and up to the passenger loading
15 gates of all state airports;

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

17 (3) Areas available to and customarily used by the general
18 public, including but not limited to restrooms,
19 lobbies, reception areas, hallways, and other common
20 areas, in businesses and nonprofit entities patronized
21 by the public, including but not limited to

1 (17) Retail stores;

2 (18) Rooms, chambers, places of meeting or public assembly
3 under the control of an agency, board, commission,
4 committee or council of the State or county, to the
5 extent the place is subject to the jurisdiction of the
6 State or county;

7 (19) Service lines; and

8 (20) Shopping malls.

9 § -4 **Prohibition in enclosed or partially enclosed**
10 **places of employment.** Smoking shall be prohibited in all
11 enclosed or partially enclosed areas of places of employment.

12 § -5 **Prohibition in sports arenas, outdoor arenas and**
13 **stadiums.** Smoking shall be prohibited in the enclosed or
14 partially enclosed areas and in seating areas of outdoor arenas,
15 stadiums, and amphitheaters.

16 § -6 **Presumptively reasonable distance.** Smoking is
17 prohibited within a presumptively reasonable minimum distance of
18 twenty feet from entrances, exits, windows that open, and
19 ventilation intakes that serve an enclosed or partially enclosed
20 area where smoking is prohibited. Owners, operators, managers,
21 employers, or other persons who own or control a public place or
22 place of employment may seek to rebut the presumption that

1 twenty feet is a reasonable distance by submitting an
 2 application to the department. The presumption will be rebutted
 3 if the applicant can show by clear and convincing evidence that,
 4 given the circumstances presented by the location of entrances,
 5 exits, windows that open, ventilation intakes, or other factors,
 6 smoke will not infiltrate into the public place or place of
 7 employment.

8 § -7 **Exceptions.** Notwithstanding any other provision
 9 of this chapter to the contrary, the following areas shall be
 10 exempt from the provisions of sections -3, -4, and -5:

- 11 (1) Private residences, except when used as a licensed
 12 child care, adult day care, or health care facility;
- 13 (2) Hotel and motel rooms that are rented to guests and
 14 are designated as smoking rooms, provided that not
 15 more than twenty per cent of rooms rented to guests in
 16 a hotel or motel may be so designated. All smoking
 17 rooms on the same floor must be contiguous and smoke
 18 from these rooms must not infiltrate into areas where
 19 smoking is prohibited under the provisions of this
 20 chapter. The status of rooms as smoking or nonsmoking
 21 may not be changed, except to add additional
 22 nonsmoking rooms;

- 1 (3) Retail tobacco stores, provided that smoke from these
- 2 places does not infiltrate into areas where smoking is
- 3 prohibited under the provisions of this chapter;
- 4 (4) Private and semiprivate rooms in nursing homes and
- 5 long-term care facilities that are occupied by one or
- 6 more persons, all of whom are smokers and have
- 7 requested in writing to be placed in a room where
- 8 smoking is permitted, provided that smoke from these
- 9 places does not infiltrate into areas where smoking is
- 10 prohibited under the provisions of this chapter;
- 11 (5) Outdoor areas of places of employment except those
- 12 covered by the provisions of sections -3 and -5;
- 13 (6) All areas covered by this chapter when smoking is part
- 14 of a production being filmed.

15 § -8 Declaration of establishment as nonsmoking. (a)

16 Notwithstanding any other provision of this chapter, an owner,
17 operator, manager, or other person in control of an
18 establishment, facility, or outdoor area may declare that an
19 entire establishment, facility, or outdoor area or any part
20 thereof as a place where smoking is prohibited.

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



1 § -9 **Signs.** Clearly legible signs that include the
2 words "Smoking Prohibited by Law" with letters of not less than
3 one inch in height or the international "No Smoking" symbol,
4 consisting of a pictorial representation of a burning cigarette
5 enclosed in a red circle with a red bar across it, shall be
6 clearly and conspicuously posted in and at the entrance to every
7 public place and place of employment where smoking is prohibited
8 by this chapter by the owner, operator, manager, or other person
9 in control of that place.

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

16 (b) An employee who works in a setting where an employer
17 allows smoking does not waive or otherwise surrender any legal
18 rights the employee may have against the employer or any other
19 party.

20 § -11 **Compliance and administration.** (a) Enforcement
21 of compliance with the provisions of this chapter shall be under
22 the jurisdiction of the department.

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

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

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

10 (e) Notwithstanding any other provision of this chapter,
11 an employee or private citizen may bring legal action to enforce
12 this chapter.

13 (f) Notwithstanding any other provision of this chapter,
14 the department, other appropriate county agency, county, or any
15 other person aggrieved by the failure of the owner, operator,
16 manager, or other person in control of a public place or a place
17 of employment to comply with the provisions of this chapter may
18 apply for injunctive relief to enforce those provisions in any
19 court of competent jurisdiction.

20 § -12 Penalties. (a) A person who smokes in an area
21 where smoking is prohibited by the provisions of this chapter
22 shall be guilty of a violation and fined not more than \$50 to be

1 deposited into the general fund. The district courts may assess
 2 costs not to exceed \$25 for issuing a penal summons upon any
 3 person who fails to appear at the place within the time
 4 specified in the citation issued to the person.

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

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

1 (d) If any person fails to comply with a penal summons
2 given to the person, the court shall issue a warrant for the
3 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 the provisions of this chapter shall be
11 guilty of an 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 may result in the suspension or revocation of



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1 any permit or license issued to the person or the place for the
2 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 their compliance with it.
9 The program may include but is not limited to publication of a
10 brochure for affected businesses and individuals explaining the
11 provisions of this chapter.

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

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

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



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

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

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1 sold, as long as distribution is not visible to the
2 public from outside the establishment; or

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

8 (e) As used in this section:

9 "Distribute" means to pass out to members of the general
10 public free of charge for the exclusive purpose of promoting a
11 product."

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

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

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

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Report Title:

Smoking; Health; Secondhand Smoke

Description:

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. Repeals chapter 328K. (SD1)

