

PROPOSED

THE SENATE  
TWENTY-THIRD LEGISLATURE, 2006  
STATE OF HAWAII

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

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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, 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 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; including all areas within and  
22 immediately in front of and adjacent to passenger terminals and



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"



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

PROPOSED

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

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 professional offices, banks, laundromats, hotels, and
- 2 motels;
- 3 (4) Bars;
- 4 (5) Bowling alleys;
- 5 (6) Convention facilities;
- 6 (7) Educational facilities, both public and private;
- 7 (8) Elevators;
- 8 (9) Facilities primarily used for exhibiting a motion
- 9 picture, stage, drama, lecture, musical recital, or
- 10 other similar performance, except when part of the
- 11 performance;
- 12 (10) Health care facilities;
- 13 (11) Hotel and motel lobbies, meeting rooms, and banquet
- 14 facilities;
- 15 (12) Licensed child care and adult day care facilities;
- 16 (13) Lobbies, hallways, and other common areas in apartment
- 17 buildings, condominiums, retirement facilities,
- 18 nursing homes, multifamily dwellings, and other
- 19 multiple-unit residential facilities;
- 20 (14) Nightclubs;
- 21 (15) Polling places;
- 22 (16) Restaurants;



- 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

**PROPOSED****S.B. NO. 3262  
S.D. 1**

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



PROPOSED

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.



PROPOSED

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

1           §     -16 Cigarette sales from vending machines and by  
2 lunch wagons prohibited. (a) The sale or distribution at no  
3 charge of 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) Violations of subsection (a), including placement of a  
12 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, are subject to a fine of up to \$1,000 per  
15 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 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

PROPOSED

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

PROPOSED

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

1 invalid provision or application, and to this end the provisions  
2 are severable.

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

# PROPOSED

**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)

