

JAN 23 2009

A BILL FOR AN ACT

RELATING TO ENFORCEMENT OF THE SMOKING PROHIBITION.

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

1 SECTION 1. Section 281-17, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The liquor commission, within its own county, shall
4 have the sole jurisdiction, power, authority, and discretion,
5 subject only to this chapter:

6 (1) To grant, renew, refuse, suspend, and revoke any
7 licenses for the manufacture, importation, and sale of
8 liquors; provided that a license renewal for the
9 applicable class of license for a bar, business,
10 nightclub, or restaurant, as those terms are defined
11 in section 328J-1, shall not be renewed unless the
12 licensee:

13 (A) Shows satisfactory proof of compliance with the
14 signage requirements of section 328J-9; and

15 (B) Has not had a verified complaint filed against
16 the licensee with the department of health or the
17 commission for violation of chapter 328J;



1 (2) To take appropriate action against a person who,
2 directly or indirectly, manufactures, sells, or
3 purchases any liquor without being authorized pursuant
4 to this chapter; provided that in counties which have
5 established by charter a liquor control adjudication
6 board, the board shall have the jurisdiction, power,
7 authority, and discretion to hear and determine
8 administrative complaints of the director regarding
9 violations of the liquor laws of the State or of the
10 rules of the liquor commission, and impose penalties
11 for violations thereof as may be provided by law;

12 (3) To control, supervise, and regulate the manufacture,
13 importation, and sale of liquors by investigation,
14 enforcement, and education; provided that any
15 educational program shall be limited to licensees and
16 their employees and shall be financed through the
17 money collected from the assessment of fines against
18 licensees;

19 (4) From time to time to make, amend, and repeal such
20 rules, not inconsistent with this chapter, as in the
21 judgment of the commission seem appropriate for
22 carrying out this chapter and for the efficient



1 administration thereof, and the proper conduct of the
2 business of all licensees, including every matter or
3 thing required to be done or which may be done with
4 the approval or consent or by order or under the
5 direction or supervision of or as prescribed by the
6 commission; which rules, when adopted as provided in
7 chapter 91 shall have the force and effect of law;

8 (5) Subject to chapter 76, to appoint and remove an
9 administrator, who may also be appointed an
10 investigator and who shall be responsible for the
11 operations and activities of the staff. The
12 administrator may hire and remove hearing officers,
13 investigators, and clerical or other assistants as its
14 business may from time to time require, to prescribe
15 their duties, and fix their compensation; to engage
16 the services of experts and persons engaged in the
17 practice of a profession, if deemed expedient. Every
18 investigator, within the scope of the investigator's
19 duties, shall have the powers of a police officer;

20 (6) To limit the number of licenses of any class or kind
21 within the county, or the number of licenses of any
22 class or kind to do business in any given locality,



- 1 when in the judgment of the commission such
2 limitations are in the public interest;
- 3 (7) To prescribe the nature of the proof to be furnished,
4 the notices to be given, and the conditions to be met
5 or observed in case of the issuance of a duplicate
6 license in place of one alleged to have been lost or
7 destroyed, including a requirement of any indemnity
8 deemed appropriate to the case;
- 9 (8) To fix the hours between which licensed premises of
10 any class or classes may regularly be open for the
11 transaction of business, which shall be uniform
12 throughout the county as to each class respectively;
- 13 (9) To prescribe all forms to be used for the purposes of
14 this chapter not otherwise provided for in this
15 chapter, and the character and manner of keeping of
16 books, records, and accounts to be kept by licensees
17 in any matter pertaining to their business;
- 18 (10) To investigate violations of this chapter, chapter
19 244D, and chapter 328J (including complaints of
20 violations), and, notwithstanding any law to the
21 contrary, violations of the applicable department of
22 health's allowable noise levels, through its



- 1 investigators or otherwise, to include covert
2 operations, and to report violations to the
3 prosecuting officer for prosecution and, where
4 appropriate, the director of taxation to hear and
5 determine complaints against any licensee;
- 6 (11) To prescribe, by rule, the terms, conditions, and
7 circumstances under which persons or any class of
8 persons may be employed by holders of licenses;
- 9 (12) To prescribe, by rule, the term of any license or
10 solicitor's and representative's permit authorized by
11 this chapter, the annual or prorated amount, the
12 manner of payment of fees for the licenses and
13 permits, and the amount of filing fees; [~~and~~]
- 14 (13) To prescribe, by rule, the circumstances and penalty
15 for the unauthorized manufacturing or selling of any
16 liquor[-]; and
- 17 (14) To issue a summons or citation for violation of
18 chapter 328J, as provided in section 328J-12."

19 SECTION 2. Section 281-20, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§281-20 General right of inspection.** Any investigator
22 may, at all times, without notice and without any search warrant



1 or other legal process, visit and have immediate access to every
2 part of the premises of every licensee for the purpose of making
3 any examination or inspection thereof or inquiry into the books
4 and records therein, to ascertain whether all of the conditions
5 of the license and all provisions of this chapter [~~and~~], chapter
6 244D, and chapter 328J are being complied with by the licensee."

7 SECTION 3. Section 328J-6, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "~~[§]328J-6[§]~~ **Presumptively reasonable distance.** (a)

10 Smoking is prohibited within a presumptively reasonable minimum
11 distance of twenty feet from entrances, exits, windows that
12 open, and ventilation intakes that serve an enclosed or
13 partially enclosed area where smoking is prohibited. Owners,
14 operators, managers, employers, or other persons who own or
15 control a place open to the public or place of employment may
16 seek to rebut the presumption that twenty feet is a reasonable
17 distance by submitting an application to the department. The
18 presumption will be rebutted if the applicant can show by clear
19 and convincing evidence that, given the circumstances presented
20 by the location of entrances, exits, windows that open,
21 ventilation intakes, or other factors, smoke will not infiltrate
22 into the place open to the public or place of employment.



1 (b) Satisfactory proof of compliance with the signage
2 requirements of section 328J-9 by a bar, business, nightclub, or
3 restaurant shall be a prerequisite for renewal of the applicable
4 class of liquor license as provided in section 281-17."

5 SECTION 4. Section 328J-9, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "~~[+]~~§328J-9~~[+]~~ **Signs.** (a) Clearly legible signs that
8 include the words "Smoking Prohibited by Law" with letters of
9 not less than one inch in height or the international "No
10 Smoking" symbol, consisting of a pictorial representation of a
11 burning cigarette enclosed in a red circle with a red bar across
12 it, shall be clearly and conspicuously posted in and at the
13 entrance to every place open to the public and place of
14 employment where smoking is prohibited by this chapter by the
15 owner, operator, manager, or other person in control of that
16 place. Signs shall also include notification of the distance
17 requirements of section 328J-6, where applicable.

18 (b) Compliance with subsection (a) by a bar, business,
19 nightclub, or restaurant shall be a prerequisite for renewal of
20 the applicable class of liquor license as provided in section
21 281-61."



1 SECTION 5. Section 328J-11, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Enforcement of compliance with this chapter shall be
4 under the concurrent jurisdiction of the department[-] and the
5 liquor commission."

6 SECTION 6. Section 328J-12, Hawaii Revised Statutes, is
7 amended by amending subsections (f) and (g) to read as follows:

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 a violation
11 and fined:

12 (1) Not more than [~~\$100~~] \$500 for a first violation;

13 (2) Not more than [~~\$200~~] \$1,000 for a second violation
14 within one year of the date of the first violation;
15 and

16 (3) Not more than [~~\$500~~] \$2,000 for each additional
17 violation within one year of the date of the preceding
18 violation.

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



1 any permit or license issued to the person or the place for the
 2 premises on which the violation occurred. A third violation of
 3 this chapter shall result in the revocation of a liquor license
 4 issued under chapter 281 to the person or the place for the
 5 premises on which the violation occurred."

6 SECTION 7. Enforcement of this Act by the liquor
 7 commission as provided in section 1 of this Act shall not
 8 require the adoption of rules by the department of health.

9 SECTION 8. Statutory material to be repealed is bracketed
 10 and stricken. New statutory material is underscored.

11 SECTION 9. This Act shall take effect upon its approval.
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Report Title:

Smoking

Description:

Makes compliance with smoking restriction law by nightclubs and restaurants a condition of renewal for a liquor license. Authorizes the liquor commission to enforce smoking laws, concurrently with the department of health. Increases fines for violation of smoking restriction law. Requires revocation of liquor license for third violation of smoking law.

