
A BILL FOR AN ACT

RELATING TO SMOKING.

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

1 SECTION 1. Chapter 328J, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§328J-A Smoking establishment permit; fee. (a)
5 Notwithstanding sections 328J-3, 328J-4, and 328J-14, or any
6 other law to the contrary, the department of taxation shall
7 issue smoking establishment permits pursuant to this section to
8 applicant businesses that meet the requirements of this section
9 and rules adopted by the director of health pursuant to chapter
10 91 and hold a class 5, class 6, or class 11 liquor license under
11 chapter 281. Permits issued pursuant to this section shall be
12 renewed annually according to a schedule that corresponds to the
13 established fiscal year of the county liquor commission with
14 jurisdiction over the permitted establishment.

15 (b) The annual fee for a smoking establishment permit
16 shall be:

17 (1) \$1,000 for class 5 category (1)(A) standard bars and
18 class 6 clubs as specified in section 281-31;



1 (2) \$2,000 for class 5 category (1)(C) and (1)(D) premises
2 as specified in section 281-31; and

3 (3) \$3,000 for class 11 cabarets and class 5 category
4 (1)(B) premises as specified in section 281-31.

5 Fees charged pursuant to this section shall be chargeable on an
6 annual basis and shall not be prorated.

7 (c) The smoking establishment permit fees established by
8 this section shall be collected by the department of taxation
9 and shall be deposited into the general fund of the State;
10 provided that the department of taxation may retain a portion of
11 the funds collected not to exceed twenty per cent to offset the
12 actual costs and expenses of issuing smoking establishment
13 permits under this section.

14 (d) A smoking establishment permit issued pursuant to this
15 section may be surrendered at any time upon written request by
16 the permit holder. Upon surrender of a smoking establishment
17 permit, all fees paid by the permit holder shall be forfeited.
18 Once surrendered, a smoking establishment permit shall not be
19 reinstated except upon a new application and payment of the full
20 annual fee.

21 (e) Pursuant to section 328J-11, the department of health
22 shall be responsible for the administration and enforcement of



1 this section, other than the issuance of permits and collection
2 of fees, and for matters concerning environmental tobacco smoke
3 related to permits issued pursuant to this section. The
4 department of taxation shall be indemnified from any claims or
5 matter relating to environmental tobacco smoke arising from
6 permits issued pursuant to this section.

7 §328J-B Smoking establishment signs. (a) Each
8 establishment or premises that holds a smoking establishment
9 permit pursuant to section 328J-A shall at all times post a sign
10 that meets the requirements of this section in a clear and
11 conspicuous manner at every entrance of the establishment or
12 premises.

13 (b) Signs required by this section shall be no smaller
14 than eight and one-half inches by eleven inches and shall:

15 (1) State in block letters at least one inch high as
16 follows: "SMOKING PERMITTED BY LAW"; or

17 (2) Bear the internationally recognized symbol of a green
18 circle encasing a lit cigarette."

19 SECTION 2. Section 328J-3, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "[+]§328J-3[+] Prohibition in enclosed or partially
22 enclosed places open to the public. Smoking shall be prohibited



1 in all enclosed or partially enclosed areas open to the public,
2 including but not limited to the following places:

- 3 (1) Airports and public transportation facilities and
4 vehicles, including buses and taxicabs, under the
5 authority of the State or county, and ticket,
6 boarding, and waiting areas of public transit depots,
7 including airports from curb to cabin and including
8 all areas within and immediately in front of and
9 adjacent to passenger terminals and pick-up areas,
10 throughout the airport facility, and up to the
11 passenger loading gates of all state airports;
- 12 (2) Aquariums, galleries, libraries, and museums;
- 13 (3) Areas available to and customarily used by the general
14 public, including but not limited to restrooms,
15 lobbies, reception areas, hallways, and other common
16 areas, in businesses and nonprofit entities patronized
17 by the public, including but not limited to
18 professional offices, banks, laundromats, hotels, and
19 motels;
- 20 (4) Bars [?] that do not hold a valid smoking establishment
21 permit issued pursuant to section 328J-A;
- 22 (5) Bowling alleys;



- 1 (6) Convention facilities;
- 2 (7) Educational facilities, both public and private;
- 3 (8) Elevators;
- 4 (9) Facilities primarily used for exhibiting a motion
5 picture, stage, drama, lecture, musical recital, or
6 other similar performance, except when part of the
7 performance;
- 8 (10) Health care facilities;
- 9 (11) Hotel and motel lobbies, meeting rooms, and banquet
10 facilities;
- 11 (12) Licensed child care and adult day care facilities;
- 12 (13) Lobbies, hallways, and other common areas in apartment
13 buildings, condominiums, retirement facilities,
14 nursing homes, multifamily dwellings, and other
15 multiple-unit residential facilities;
- 16 (14) Nightclubs[?] that do not hold a valid smoking
17 establishment permit issued pursuant to section
18 328J-A;
- 19 (15) Polling places;
- 20 (16) Restaurants;
- 21 (17) Retail stores;



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

6 (19) Service lines; and

7 (20) Shopping malls."

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

10 "**§328J-7 Exceptions.** Notwithstanding any other provision
11 of this chapter to the contrary, the following areas shall be
12 exempt from the provisions of sections 328J-3, 328J-4, and
13 328J-5:

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

16 (2) Hotel and motel rooms that are rented to guests and
17 are designated as smoking rooms; provided that not
18 more than twenty per cent of rooms rented to guests in
19 a hotel or motel may be so designated[~~—All~~] and
20 smoking rooms on the same floor shall be contiguous
21 and smoke from these rooms shall not infiltrate into
22 areas where smoking is prohibited under this chapter[~~-~~



1 ~~The~~]; and provided further that the status of rooms as
2 smoking or nonsmoking may not be changed, except to
3 add additional nonsmoking rooms;

4 (3) Retail tobacco stores; provided that smoke from these
5 places shall not infiltrate into areas where smoking
6 is prohibited under this chapter;

7 (4) Private and semiprivate rooms in nursing homes and
8 long-term care facilities that are occupied by one or
9 more persons, all of whom are smokers and have
10 requested in writing to be placed in a room where
11 smoking is permitted; provided that smoke from these
12 places shall not infiltrate into areas where smoking
13 is prohibited under this chapter;

14 (5) Outdoor areas of places of employment except those
15 covered by the provisions of sections 328J-3 and
16 328J-5;

17 (6) All areas covered by this chapter when smoking is part
18 of a production being filmed; [~~and~~]

19 (7) State correctional facilities; provided that smoking
20 shall only be authorized for employees and volunteers
21 of a correctional facility in an area that has been
22 designated by the warden of a correctional facility



1 outside the secure confines of a correctional facility
2 and restricted from access by inmates or detainees
3 ~~[that has been designated by the warden of a~~
4 ~~correctional facility.]~~; and
5 (8) Establishments and premises that possess a valid
6 smoking establishment permit issued pursuant to
7 section 328J-A."

8 SECTION 4. Section 328J-15, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "~~[+]§328J-15[+]~~ **County ordinances.** (a) Nothing in this
11 chapter shall be construed to supersede or in any manner affect
12 a county smoking ordinance ~~[, provided that the ordinance]~~ that
13 is at least as protective of the rights of nonsmokers as this
14 chapter~~[-]~~; provided that no county ordinance shall prohibit the
15 permitted operations of an establishment or premises that holds
16 a valid smoking establishment permit issued under section
17 328J-A.

18 (b) Nothing in this chapter shall prohibit a county from
19 enacting ordinances more stringent than this chapter~~[-]~~;
20 provided that no county shall prohibit or impede the permitted
21 operations of an establishment or premises that holds a smoking
22 establishment permit issued under section 328J-A."



1 SECTION 5. In codifying the new sections added by section
 2 1 of this Act, the revisor of statutes shall substitute
 3 appropriate section numbers for the letters used in designating
 4 the new sections in this Act.

5 SECTION 6. This Act does not affect rights and duties that
 6 matured, penalties that were incurred, and proceedings that were
 7 begun before its effective date.

8 SECTION 7. Statutory material to be repealed is bracketed
 9 and stricken. New statutory material is underscored.

10 SECTION 8. This Act shall take effect on July 1, 2011.

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INTRODUCED BY:

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JAN 26 2011

Report Title:

Smoking Establishment Permit; Department of Taxation

Description:

Requires the Department of Taxation to issue smoking establishment permits to establishments and premises that hold certain classes of liquor licenses; requires permit holders to post specified signs; specifies that conflicting county laws shall not supersede state law; makes conforming amendments.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

