
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 the smoking ban of
2 2006 has caused significant economic hardship to a considerable
3 number of bars in Hawaii that cater exclusively to adult
4 patrons. The legislation was never intended to impede the
5 operation of bars and nightclubs, which contribute considerably
6 to the tourism economy and tax base.

7 The smoking ban has caused unforeseen noise and disruptive
8 behavior outside of bars and put licensees in direct conflict
9 with surrounding neighborhoods, because customers who want to
10 smoke are forced outside of the establishment during legal hours
11 of operation, often as late as 4:00 a.m.

12 In effect, the people who have been drinking and wish to
13 smoke must congregate late at night in unlicensed, unsafe, and
14 unmonitored areas, such as streets and sidewalks. This is
15 particularly true of urban bars, which often lack outdoor space
16 on their property. As a result, numerous community complaints
17 about the noise and disruptive behavior outside of bars are
18 reported to the liquor commission and neighborhood boards. This



1 has caused many bars and nightclubs to close or reduce
2 operations to unsustainable levels.

3 In recent years, the legislature has held hearings on a
4 number of bills aimed at restricting bar licenses and hours in
5 response to the unforeseen noise and disruptive behavior
6 resulting from the smoking ban of 2006. The smoking ban puts
7 legitimate licensees in direct conflict with local populaces and
8 county liquor commissions. This circumstance calls for the use
9 of the exceptions and exemptions within this Act as the
10 unforeseen consequences of the smoking ban have been found to
11 disturb the peace near licensed premises.

12 The legislature further finds that Hawaii is not the only
13 state to recognize that bar smoking bans greatly decrease bar
14 and pub revenues. As a result, an increasing number of bar
15 smoking bans have been made less restrictive or repealed,
16 including bans in Croatia, the Netherlands, Nevada, and
17 Galveston, Texas.

18 Therefore, the legislature finds that bars and cabarets
19 that cater exclusively to adults should be exempt from the
20 smoking ban to allow adults to choose whether they would like to
21 be in a smoking environment.



1 This Act does not and should not be interpreted to permit
2 smoking in restaurants or "family type" establishments. This
3 Act does not require any bar to allow smoking that chooses to
4 maintain a no-smoking policy, as protected by chapter 328J,
5 Hawaii Revised Statutes.

6 The purpose of this Act is make bars and cabarets exempt
7 from the smoking ban.

8 SECTION 2. 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 smoking
20 rooms on the same floor shall be contiguous and smoke
21 from these rooms shall not infiltrate into areas where
22 smoking is prohibited under this chapter. The status



- 1 of rooms as smoking or nonsmoking may not be changed,
2 except to add additional nonsmoking rooms;
- 3 (3) Retail tobacco stores; provided that smoke from these
4 places shall not infiltrate into areas where smoking
5 is prohibited under this chapter;
- 6 (4) Private and semiprivate rooms in nursing homes and
7 long-term care facilities that are occupied by one or
8 more persons, all of whom are smokers and have
9 requested in writing to be placed in a room where
10 smoking is permitted; provided that smoke from these
11 places shall not infiltrate into areas where smoking
12 is prohibited under this chapter;
- 13 (5) Outdoor areas of places of employment except those
14 covered by the provisions of sections 328J-3 and
15 328J-5;
- 16 (6) All areas covered by this chapter when smoking is part
17 of a production being filmed; [~~and~~]
- 18 (7) State correctional facilities; provided that smoking
19 shall only be authorized for employees and volunteers
20 of a correctional facility in an area outside the
21 secure confines of a correctional facility restricted
22 from access by inmates or detainees that has been



1 designated by the warden of a correctional
2 facility[-]; and

3 (8) Bars and nightclubs that hold a dispenser or cabaret
4 license under section 281-31 and post signs pursuant
5 to section 328J-9(b)."

6 SECTION 3. Section 328J-8, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) Smoking shall be prohibited in any place in which a
9 sign conforming to the requirements of section [~~328J-9~~] 328J-
10 9(a) is posted."

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

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



1 (b) Clearly legible signs that include the words "Smoking
2 Permitted" with letters of not less than one inch in height or
3 the international "Smoking Permitted" symbol, consisting of a
4 pictorial representation of a burning cigarette enclosed in a
5 green circle, shall be clearly and conspicuously posted in and
6 at the entrance to every bar or nightclub that holds a dispenser
7 or cabaret license under section 281-31 and at which the owner,
8 operator, manager, or other person in control of the bar or
9 nightclub elects to permit smoking in all or part of the
10 premises."

11 SECTION 5. Section 328J-15, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[+]§328J-15[+] **County ordinances.** (a) Nothing in this
14 chapter shall be construed to supersede or in any manner affect
15 a county smoking ordinance[~~;~~ ~~provided that the ordinance~~] that
16 is at least as protective of the rights of nonsmokers as this
17 chapter[~~-~~]; provided that no county ordinance shall prohibit or
18 impede smoking on the premises of establishments that meet the
19 exemption requirements of section 328J-7(8).

20 (b) Nothing in this chapter shall prohibit a county from
21 enacting ordinances more stringent than this chapter[~~-~~];
22 provided that no county ordinance shall more stringently



1 restrict or prohibit smoking on the premises of establishments
2 that meet the exemption requirements of section 328J-7(8)."

3 SECTION 6. Exemptions for dispensers and cabarets
4 established pursuant to this Act shall not require the amendment
5 of rules by the department of health to take effect. The
6 department of health shall not adopt rules more stringent than
7 the requirements established under chapter 328J, Hawaii Revised
8 Statutes, on dispensers and cabarets that were made exempt from
9 the smoking prohibition pursuant to this Act.

10 SECTION 7. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 8. This Act shall take effect upon its approval.
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H.B. NO. 1469

Report Title:

Smoking; Dispensers; Cabarets; Exemptions

Description:

Exempts bars and nightclubs that hold dispenser or cabaret licenses to allow smoking by posting "smoking permitted" signs. Provides that county ordinances shall not prohibit or restrict smoking in these establishments.

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