

ACT 234

H.B. NO. 464

A Bill for an Act Relating to Smoking in Public Places.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Smoking of tobacco in all forms has been demonstrated to be harmful to the health of smokers. There are documented studies to indicate that it may also be harmful to nonsmokers. It is estimated that seventy-five per cent of the population of Hawaii does not smoke. There is

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no reason for the great majority of our people to inhale the smoke of others which pollutes enclosed areas.

It is the purpose of this Act to protect the public health, comfort, and environment by providing a uniform statewide code to regulate smoking in public places.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER SMOKING IN PUBLIC PLACES

§ -1 **Definitions.** As used in this chapter, unless the context requires otherwise:

“Building” means any area enclosed by a roof and at least three walls.

“Open to the public” means areas within any building available to the general public during normal business hours.

“Restaurant” means any retail eating establishment authorized by the department of health to operate as a restaurant; except:

- (1) Any restaurant with a seating capacity of fifty or fewer patrons;
- (2) Any restaurant while it is being used solely for private parties or gatherings;
- (3) Any enclosed room of a restaurant, or a banquet room used solely for private parties or gatherings;
- (4) Any private restaurant or club to which only members or their guests are permitted;
- (5) Any seating area completely outside the building housing the restaurant; or
- (6) Bars.

“Retail store” means any establishment organized for retailing goods including but not limited to food and grocery stores.

“Small business” means those business establishments having not more than five employees working on the business premises per established work shift.

“Smoke” or “smoking” includes inhaling or exhaling upon, burning, or carrying any lit cigarette, cigar, or pipe.

§ -2 **Prohibition in certain places open to the public.** Except as otherwise provided in this chapter, smoking shall be prohibited in the following places within the State:

- (1) Elevators in buildings open to and used by the public, including elevators in apartment and other multi-unit residential buildings;
- (2) Semiprivate rooms, wards, waiting rooms, lobbies, and public hallways of public and private health care facilities, including, but not limited to, hospitals, clinics, and physicians’ and dentists’ offices. Smoking shall be permitted in a private room or in a semiprivate room when there is no objection by any patient occupying such room;
- (3) Restaurants.
 - (A) All restaurants shall provide nonsmoking areas which are reasonably proportionate to the preference of the users and so located as to obtain the maximum effect of existing

physical barriers and ventilation systems, and seating arrangements, to minimize the toxic effect of smoke in adjacent nonsmoking areas; provided no fixed structural or other physical modifications of the restaurant shall be required; and

- (B) Nothing in this paragraph shall prevent a proprietor or person in charge of a facility from designating the entire restaurant as a nonsmoking area. Owners or proprietors of restaurants may expand or contract the size of designated nonsmoking areas to meet the requirements of their patrons;
- (4) Any room which is used primarily for exhibiting any motion picture, stage drama, dance, musical performance, or other similar performance during the time that the room is open to the public for such performance;
- (5) Museums, libraries, and galleries;
- (6) The following facilities or areas in state or county owned or controlled buildings:
 - (A) Meeting or conference rooms;
 - (B) Auditorium or sports areas that are enclosed;
 - (C) Community centers where persons may gather for meetings, parties, or any other purpose where the area is enclosed;
 - (D) Waiting areas, baggage claim areas, and check-in counters within buildings in all state airports; and
 - (E) All areas open to the public, including service counters and reception or waiting areas;
- (7) Except as otherwise provided in this section, all areas open to the public in the following business establishments:
 - (A) Banks;
 - (B) Credit unions;
 - (C) Industrial loan companies;
 - (D) Retail stores; and
 - (E) Savings and loan associations;
- (8) Any restroom open to the public;
- (9) Taxicabs, when carrying non-smoking passengers; and
- (10) Notwithstanding the exceptions stated in section -3, any area open to the public which has been designated by the person having control of the area as a nonsmoking area and marked with a "no smoking" sign.

§ -3 **Exceptions.** Smoking shall not be prohibited under this chapter in the following places subject to section -2:

- (1) Small businesses;
- (2) Retail stores with less than 5000 square feet of floor space.

§ -4 **Signs.** (a) Clearly legible signs which include the words "Smoking Prohibited by Law" with letters of not less than one inch in height shall be conspicuously posted by the persons having control of such places open to the public where smoking is prohibited.

(b) "SMOKING PROHIBITED BY LAW" signs shall be posted in areas adjacent to smoking areas so that a clear delineation exists.

(c) In the case of any restaurant designated as a smoking area in its entirety, the restaurant owner or manager shall post a sign stating, "This entire establishment is a SMOKING area," or a similar statement. The sign shall be posted conspicuously at all entrances normally used by the public.

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(d) Restaurants with controlled seating, where patrons do not seat themselves, may place a sign at the dining area entry which indicates the availability of smoking and nonsmoking areas upon request in lieu of the posting requirements of this section.

(e) Alternate means of notification may be employed.

§ -5 Penalties and procedures. (a) It is a violation for any person to violate any of the provisions of this chapter.

Every person who violates any provision of this chapter for which another penalty is not provided, for a conviction thereof, shall be fined not more than \$20 to be deposited into the state general fund. The district courts may assess costs not to exceed \$25 for issuing a penal summons upon any person who fails to appear at the place within the time specified in the citation issued to the person.

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

(c) There shall be provided for use by an officer or employee of the respective government jurisdictions, duly authorized to issue a summons or citation, or any police officer, a form of summons or citation for use in citing violators of this chapter which does not provide for the physical arrest of such violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court, shall be printed on a form commensurate with the form of other summons or citations used in modern methods of arrest, and so designed to include all necessary information to make the same valid within the laws and rules of the State.

When a citation is issued, the original of the citation shall be given to the violator; provided that the administrative judge of the district court may prescribe that the violator be given a carbon copy of the citation and provide for the disposition of the original and any other copies. Every citation shall be consecutively numbered and each carbon copy shall bear the same number as its respective original.

(d) If any person fails to comply with a penal summons given to such person, the court shall forthwith issue a warrant for the person's arrest.

(e) Except as provided in subsection (g), enforcement of this chapter shall be under the jurisdiction of the appropriate police department of each county or the prosecuting attorney or other duly authorized government officer or employee.

(f) Any police officer or other officer or employee of the respective government jurisdictions may eject from the premises any person to whom a citation has been issued and who continues to smoke after the person has been so cited.

(g) The enforcement and administration of section -4 shall be under the jurisdiction of each respective government jurisdiction which shall have the power to adopt any applicable rules necessary to carry out section -4.

SECTION 3. Nothing shall prohibit a county from enacting ordinances more stringent than the provisions of this Act.

SECTION 4. Chapter 321, part XVII, Hawaii Revised Statutes, is repealed.

SECTION 5. This Act shall take effect ninety days after its approval.

(Approved June 23, 1987.)