ACT 295

THE SENATE
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

S.B. NO. 3262 S.D. 1 H.D. 1 C.D. 1

A BILL FOR AN ACT

RELATING TO HEALTH.

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

SECTION 1. The legislature finds that tobacco smoke is a major contributor to many health problems. Secondhand smoke causes heart disease, stroke, respiratory disease, and lung cancer in healthy nonsmokers. Thousands of premature deaths and illnesses in Hawaii are attributed to it annually.

The legislature further finds that recent research demonstrates heightened health dangers to those exposed to secondhand smoke, since Hawaii passed a statewide anti-smoking statute seventeen years ago. In 2004, the Centers for Disease Control and Prevention issued an advisory to persons with heart disease to avoid indoor settings where smoking is allowed, which warrants increased protections in the workplace and for the public in general.

The counties in Hawaii have adopted ordinances that offer varying levels of protection to workers and the public against secondhand smoke. The legislature acknowledges that a consistent level of basic protection from secondhand smoke is

needed to protect Hawaii's citizens from the health dangers of secondhand smoke.

The purpose of this Act is to protect the public health and welfare by prohibiting smoking in places open to the public and places of employment to ensure a consistent level of basic protections statewide from exposure to secondhand smoke.

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

"CHAPTER

SMOKING

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

"Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises regardless of whether food is served, including but not limited to taverns, cocktail lounges, and cabarets, including outdoor areas of bars.

"Building" means any area enclosed or partially enclosed by a roof and at least three walls.

"Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-

1 profit or not-for-profit, including retail establishments where
2 goods or services are sold, professional corporations, and other
3 entities where legal, medical, dental, engineering,
4 architectural, or other professional services are delivered.
5 "Department" means the department of health.
6 "Director" means the director of health.
7 "Employee" means a person who is employed by an employer in
8 consideration for direct or indirect monetary wages or profit,
9 and a person who volunteers the person's services for a
10 nonprofit entity.
11 "Employer" means a person, business, partnership,
12 association, corporation, including the State or any of its
13 political subdivisions, a trust, or nonprofit entity that
14 employs the services of one or more individual persons, but
15 shall not include the United States.
16 "Enclosed or partially enclosed" means closed in by a roof
17 or overhang and at least two walls. Enclosed or partially
18 enclosed areas include but are not limited to areas commonly
19 described as public lobbies, lanais, interior courtyards,
20 patios, and covered walkways.
21 "Health care facility" means an office or institution,
22 including all waiting rooms, hallways, private rooms,

1 semiprivate rooms, and wards, which provides care or treatment
2 of diseases, whether physical, mental, or emotional, or other
3 medical, physiological, or psychological conditions, including
4 but not limited to hospitals, rehabilitation hospitals or other
5 clinics, including weight control clinics, nursing homes, homes
6 for the aging or chronically ill, laboratories, and offices of
7 surgeons, chiropractors, physical therapists, physicians,
8 dentists, and all specialists within these professions.
9 "Multifamily dwelling" means a building containing more
10 than two dwelling units.
11 "Nightclub" means an establishment in which live
12 entertainment is provided or facilities for dancing by patrons
13 either by live entertainment or recorded music may be provided,
14 regardless of whether alcoholic beverages are served.
15 "Open to the public" means enclosed or partially enclosed
16 areas to which the public is invited or permitted and areas
17 within any building available for use by or accessible to the
18 general public during the normal course of business conducted
19 therein by either private or public entities, including but not
20 limited to bars, educational facilities, financial institutions,
21 health care facilities, hotel and motel lobbies, lanais,
22 laundromats, public transportation facilities, including airport

1 areas from curb to cabin and including all areas within and
2 immediately in front of and adjacent to passenger terminals and
3 pick-up areas, throughout the airport facility, and up to the
4 passenger loading gates of all state airports, reception areas,
5 restaurants, retail food production and marketing
6 establishments, retail service establishments, retail stores,
7 shopping malls, sports arenas, theaters, and waiting rooms, but
8 does not include a private residence unless it is used as a
9 child care, adult day care, or health care facility.
10 "Place of employment" means an area under the control of a
11 public or private employer that employees normally frequent
12 during the course of employment, including but not limited to
13 auditoriums, cafeterias, classrooms, clubs, common work areas,
14 conference rooms, elevators, employee lounges, hallways, medical
15 facilities, meeting rooms, private offices, restrooms, and
16 stairs. A private residence is not a "place of employment"
17 unless it is used as a child care, adult day care, or health
18 care facility.
19 "Restaurant" means an eating establishment, including but
20 not limited to coffee shops, cafeterias, sandwich stands, and
21 private and public school cafeterias, which gives or offers for
22 sale food to the public, guests, or employees, as well as

1 kitchens and catering facilities in which food is prepared on
2 the premises for serving elsewhere. The term "restaurant"
3 includes a bar area within the restaurant and outdoor areas of
4 restaurants.
5 "Retail tobacco store" means a retail store used primarily
6 for the sale of tobacco products and accessories.
7 "Service line" means an indoor line in which one or more
8 persons are waiting for or receiving service of any kind,
9 whether or not the service involves the exchange of money.
10 "Shopping mall" means an enclosed or partially enclosed
11 public walkway or hall area that serves to connect retail or
12 professional establishments.
13 "Smoke" or "smoking" means inhaling or exhaling the fumes
14 of tobacco or any other plant material, or burning or carrying
15 any lighted smoking equipment for tobacco or any other plant
16 material.
17 "Sports arena" means any sports pavilion, stadium,
18 gymnasium, health spa, boxing arena, swimming pool, roller or
19 ice rink, bowling alley, and any other similar place where
20 members of the general public assemble to engage in physical
21 exercise, participate in athletic competition, or witness sports
22 or other events.

§ -2 **Prohibition in facilities owned by the State or the counties.** Smoking shall be prohibited in all enclosed or partially enclosed areas, including buildings and vehicles owned, leased, or operated by the State or any county.

§ -3 **Prohibition in enclosed or partially enclosed places open to the public.** Smoking shall be prohibited in all enclosed or partially enclosed areas open to the public, including but not limited to the following places:

(1) Airports and public transportation facilities and vehicles, including buses and taxicabs, under the authority of the State or county, and ticket, boarding, and waiting areas of public transit depots, including airports from curb to cabin and including all areas within and immediately in front of and adjacent to passenger terminals and pick-up areas, throughout the airport facility, and up to the passenger loading gates of all state airports;

(2) Aquariums, galleries, libraries, and museums;

(3) Areas available to and customarily used by the general public, including but not limited to restrooms, lobbies, reception areas, hallways, and other common areas, in businesses and nonprofit entities patronized

by the public, including but not limited to professional offices, banks, laundromats, hotels, and motels;

(4) Bars;

(5) Bowling alleys;

(6) Convention facilities;

(7) Educational facilities, both public and private;

(8) Elevators;

(9) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance, except when part of the performance;

(10) Health care facilities;

(11) Hotel and motel lobbies, meeting rooms, and banquet facilities;

(12) Licensed child care and adult day care facilities;

(13) Lobbies, hallways, and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, multifamily dwellings, and other multiple-unit residential facilities;

(14) Nightclubs;

(15) Polling places;

(16) Restaurants;

(17) Retail stores;

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

(19) Service lines; and

(20) Shopping malls.

§ -4 **Prohibition in enclosed or partially enclosed places of employment.** Smoking shall be prohibited in all enclosed or partially enclosed areas of places of employment.

§ -5 **Prohibition in sports arenas, outdoor arenas, stadiums, and amphitheaters.** Smoking shall be prohibited in the enclosed or partially enclosed areas and in seating areas of sports arenas, outdoor arenas, stadiums, and amphitheaters.

§ -6 **Presumptively reasonable distance.** Smoking is prohibited within a presumptively reasonable minimum distance of twenty feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited. Owners, operators, managers, employers, or other persons who own or control a place open to

1 the public or place of employment may seek to rebut the
2 presumption that twenty feet is a reasonable distance by
3 submitting an application to the department. The presumption
4 will be rebutted if the applicant can show by clear and
5 convincing evidence that, given the circumstances presented by
6 the location of entrances, exits, windows that open, ventilation
7 intakes, or other factors, smoke will not infiltrate into the
8 place open to the public or place of employment.
9 § -7 **Exceptions.** Notwithstanding any other provision
10 of this chapter to the contrary, the following areas shall be
11 exempt from the provisions of sections -3, -4, and -5:
12 (1) Private residences, except when used as a licensed
13 child care, adult day care, or health care facility;
14 (2) Hotel and motel rooms that are rented to guests and
15 are designated as smoking rooms; provided that not
16 more than twenty per cent of rooms rented to guests in
17 a hotel or motel may be so designated. All smoking
18 rooms on the same floor shall be contiguous and smoke
19 from these rooms shall not infiltrate into areas where
20 smoking is prohibited under this chapter. The status
21 of rooms as smoking or nonsmoking may not be changed,
22 except to add additional nonsmoking rooms;

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

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

(5) Outdoor areas of places of employment except those covered by the provisions of sections -3 and -5;

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

(7) State correctional facilities.

§ -8 **Declaration of establishment as nonsmoking.** (a) Notwithstanding any other provision of this chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that an entire establishment, facility, or outdoor area or any part thereof as a place where smoking is prohibited.

1 (b) Smoking shall be prohibited in any place in which a
2 sign conforming to the requirements of section -9 is posted.
3 § -9 **Signs.** Clearly legible signs that include the
4 words "Smoking Prohibited by Law" with letters of not less than
5 one inch in height or the international "No Smoking" symbol,
6 consisting of a pictorial representation of a burning cigarette
7 enclosed in a red circle with a red bar across it, shall be
8 clearly and conspicuously posted in and at the entrance to every
9 place open to the public and place of employment where smoking
10 is prohibited by this chapter by the owner, operator, manager,
11 or other person in control of that place.
12 § -10 **Nonretaliation and nonwaiver of rights.** (a) No
13 person or employer shall discharge, refuse to hire, or in any
14 manner retaliate against an employee, applicant for employment,
15 or customer because that employee, applicant, or customer
16 exercises any rights afforded by this chapter or reports or
17 attempts to prosecute a violation of this chapter.
18 (b) An employee who works in a setting where an employer
19 allows smoking does not waive or otherwise surrender any legal
20 rights the employee may have against the employer or any other
21 party.

1 § -11 **Compliance and administration.** (a) Enforcement
2 of compliance with this chapter shall be under the jurisdiction
3 of the department.
4 (b) The director shall adopt rules under chapter 91 as are
5 appropriate to carry out the purposes of this chapter and for
6 the efficient administration thereof.
7 (c) Any citizen who wants to register a complaint under
8 this chapter may initiate an enforcement action with the
9 department as set forth by the director.
10 (d) An owner, manager, operator, or employee of an
11 establishment regulated by this chapter shall inform persons
12 violating this chapter of its provisions.
13 (e) Notwithstanding any other provision of this chapter,
14 an employee or private citizen may bring legal action to enforce
15 this chapter.
16 (f) Notwithstanding any other provision of this chapter,
17 the department, other appropriate county agency, county, or any
18 other person aggrieved by the failure of the owner, operator,
19 manager, or other person in control of a place open to the
20 public or a place of employment to comply with this chapter may
21 apply for injunctive relief to enforce this chapter in any court
22 of competent jurisdiction.

1 § -12 **Penalties.** (a) A person who smokes in an area
2 where smoking is prohibited by this chapter shall be guilty of a
3 violation and fined not more than $50 to be deposited into the
4 general fund. The district courts may assess costs not to
5 exceed $25 for issuing a penal summons upon any person who fails
6 to appear at the place within the time specified in the citation
7 issued to the person.
8 (b) Any authorized police officer, upon making an arrest,
9 shall take the name and address of the alleged violator and
10 shall issue the violator a summons or citation in writing.
11 (c) There shall be provided for use by an officer or
12 employee of the respective government jurisdictions, duly
13 authorized to issue a summons or citation, or any police
14 officer, a form of summons or citation for use in citing a
15 violator of this chapter that shall not provide for the physical
16 arrest of the violator. The form and content of this summons or
17 citation shall be as adopted or prescribed by the administrative
18 judge of the district court. When a citation is issued, the
19 original of the citation shall be given to the violator;
20 provided that the administrative judge of the district court may
21 prescribe that the violator be given a copy of the citation and
22 provide for the disposition of the original and any other

1 copies. Every citation shall be consecutively numbered and each
2 copy shall bear the same number as its respective original.
3 (d) If any person fails to comply with a penal summons
4 given to the person, the court shall issue a warrant for the
5 person's arrest.
6 (e) Any police officer or other officer or employee of the
7 respective government jurisdictions may eject from the premises
8 any person to whom a citation has been issued and who continues
9 to smoke after the person has been so cited.
10 (f) A person who owns, manages, operates, or otherwise
11 controls any place or facility designated by this chapter and
12 fails to comply with this chapter shall be guilty of a violation
13 and fined:
14 (1) Not more than $100 for a first violation;
15 (2) Not more than $200 for a second violation within one
16 year of the date of the first violation; and
17 (3) Not more than $500 for each additional violation
18 within one year of the date of the preceding
19 violation.
20 (g) In addition to the fines established by this section,
21 violation of this chapter by a person who owns, manages,
22 operates, or otherwise controls any place or facility designated

by this chapter may result in the suspension or revocation of any permit or license issued to the person or the place for the premises on which the violation occurred.

(h) Each day on which a violation of this chapter occurs shall be considered a separate and distinct violation.

§ -13 **Public education.** The department shall engage in a public education program to explain and clarify the purposes and requirements of this chapter to the public, and to guide owners, operators, and managers in their compliance with it. The program may include but is not limited to publication of a brochure for affected businesses and individuals explaining this chapter.

§ -14 **Other applicable laws.** This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

§ -15 **County ordinances.** (a) Nothing in this chapter shall be construed to supersede or in any manner affect a county smoking ordinance; provided that the ordinance is at least as protective of the rights of nonsmokers as this chapter.

(b) Nothing in this chapter shall prohibit a county from enacting ordinances more stringent than this chapter.

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

general public and includes but is not limited to manapua trucks.

"Sell" or "sale" means to solicit and receive an order for; to have, keep, offer, or expose for sale; to deliver for value or in any other manner than purely gratuitously; to peddle; to keep with intent to sell; or to traffic in.

§ -17 Distribution of sample cigarette or tobacco products, cigarette or tobacco promotional materials, and coupons redeemable for cigarette or tobacco products or promotional materials. (a) It is unlawful for any person to distribute samples of cigarette or tobacco products, or coupons redeemable for cigarette or tobacco products, in or on any public street, sidewalk, or park, or within one thousand feet of any elementary, middle or intermediate, or high school.

(b) It is unlawful for any person to distribute cigarette or tobacco promotional materials, or coupons redeemable for cigarette or tobacco promotional materials, within one thousand feet of any elementary, middle or intermediate, or high school.

(c) This section shall not apply:

(1) Within private commercial establishments, such as stores and restaurants, where tobacco products are

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 this section shall
7 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

1 invalid provision or application, and to this end the provisions
2 are severable.
3 SECTION 6. This Act shall take effect on November 16,
4 2006.

GOVERNOR OF THE STATE OF HAWAII

Approved this day: JUL 10 2006

S.B. No. 3262, S.D. 1, H.D. 1, C.D. 1

THE SENATE OF THE STATE OF HAWAII

Date: May 2, 2006
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.

President of the Senate

Clerk of the Senate

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2006
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the House of Representatives of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.

Speaker, House of Representatives

Clerk, House of Representatives