

JAN 26 2011

A BILL FOR AN ACT

RELATING TO TOBACCO SMOKE.

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

1 SECTION 1. Section 328J-1, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding three new definitions to be appropriately
4 inserted and to read:

5 "Family" means the spouse or reciprocal beneficiary of an
6 individual, the individual's minor children and grandchildren,
7 and, in the case of a minor individual, the individual's parents
8 and grandparents.

9 "Minor" means a person less than eighteen years of age.

10 "Victim" means a person who has inhaled or been exposed to
11 environmental smoke, commonly referred to as second-hand smoke,
12 due to another person's violation of the smoking prohibitions in
13 this chapter."

14 2. By amending the definitions of "employee", "enclosed or
15 partially enclosed", "open to the public", and "restaurant" to
16 read:

17 "Employee" means a person who is employed by an employer
18 in consideration for direct or indirect monetary wages or



1 profit, [~~and~~] a person who volunteers the person's services for
2 a nonprofit entity[~~-~~], and a volunteer as defined in section
3 90-1.

4 "Enclosed or partially enclosed" means closed in by a roof
5 or overhang and at least two walls[~~-~~], or by one wall and roof
6 or overhang extending at least eight feet from the wall.

7 Enclosed or partially enclosed areas include but are not limited
8 to areas commonly described as bus shelters, public lobbies,
9 lanais, interior courtyards, patios, covered parking areas, and
10 covered walkways.

11 "Open to the public" means [~~enclosed or partially enclosed~~]
12 areas to which the public is invited or permitted and areas
13 within any building available for use by or accessible to the
14 general public during the normal course of business conducted
15 therein by either private or public entities, that are:

- 16 (1) Enclosed or partially enclosed, including but not
17 limited to bars, educational facilities, financial
18 institutions, health care facilities, hotel and motel
19 lobbies, lanais, laundromats, public transportation
20 facilities, including rail transit stations, taxi or
21 bus shelters, airport areas from curb to cabin and
22 including all areas within and immediately in front of

1 and adjacent to passenger terminals and pick-up areas,
2 throughout the airport facility, and up to the
3 passenger loading gates of all state airports,
4 reception areas, restaurants, retail food production
5 and marketing establishments, retail service
6 establishments, retail stores, shopping malls, sports
7 arenas, theaters, and waiting rooms, but does not
8 include a private residence unless it is used as a
9 child care, adult day care, or health care
10 facility[-]; and

11 (2) Outdoor areas, including parking lots, benches or
12 stools at bus stops, outdoor areas of restaurants,
13 outdoor areas of shopping malls, outdoor areas of
14 sports arenas, fields and courts designed for sports,
15 grounds or campuses of public or private schools
16 grades K-12, college campuses, public beaches,
17 playgrounds, and queues or service lines.

18 "Restaurant" means an eating establishment, including but
19 not limited to coffee shops, cafeterias, sandwich stands, and
20 private and public school cafeterias, which gives or offers for
21 sale food to the public, guests, or employees, as well as
22 kitchens and catering facilities in which food is prepared on



1 the premises for serving elsewhere. The term "restaurant"
2 includes a bar area within the restaurant and outdoor areas of
3 restaurants[-], and includes all outdoor areas with tables where
4 customers may eat."

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

7 " ~~[+] §328J-3 []~~ **Prohibition in enclosed or partially**
8 **enclosed places open to the public.** (a) Smoking shall be
9 prohibited in all ~~[enclosed or partially enclosed]~~ areas open to
10 the public, and in outdoor areas specified in this section,
11 including but not limited to the following places:

- 12 (1) Airports and public transportation facilities and
13 vehicles, including buses and taxicabs, under the
14 authority of the State or county, and ticket,
15 boarding, and waiting areas of public transit depots,
16 including airports from curb to cabin and including
17 all areas within and immediately in front of and
18 adjacent to passenger terminals and pick-up areas,
19 throughout the airport facility, and up to the
20 passenger loading gates of all state airports;
21 (2) Aquariums, galleries, libraries, and museums;



- 1 (3) Areas available to and customarily used by the general
2 public, including but not limited to restrooms,
3 lobbies, reception areas, hallways, and other common
4 areas, in businesses and nonprofit entities patronized
5 by the public, including but not limited to
6 professional offices, banks, laundromats, hotels, and
7 motels;
- 8 (4) Bars;
- 9 (5) Bowling alleys;
- 10 (6) Convention facilities;
- 11 (7) Educational facilities, both public and private;
- 12 (8) Elevators;
- 13 (9) Facilities, including outdoor audience seating areas
14 and queues, primarily used for exhibiting a motion
15 picture, stage, drama, lecture, musical recital, or
16 other similar performance, except when part of the
17 performance;
- 18 (10) Health care facilities;
- 19 (11) Hotel and motel lobbies, meeting rooms, and banquet
20 facilities;
- 21 (12) Licensed child care and adult day care facilities[+],
22 including all outdoor areas of a child care facility;



1 (13) Lobbies, hallways, lanais, indoor or outdoor swimming
2 pools including areas fenced in around a pool, and
3 other common areas in apartment buildings,
4 condominiums, retirement facilities, nursing homes,
5 multifamily dwellings, and other multiple-unit
6 residential facilities;

7 (14) Nightclubs;

8 (15) Playgrounds, whether outdoors or enclosed or partially
9 enclosed, designed for use by children under eighteen
10 years of age, including areas of public parks with
11 playground equipment or play areas for children,
12 fields and courts designed for sports in public parks,
13 and within the fenced areas or enclosed or partially
14 enclosed areas of indoor or outdoor public swimming
15 pools;

16 ~~[(15)]~~ (16) Polling places;

17 ~~[(16)]~~ (17) Restaurants;

18 ~~[(17)]~~ (18) Retail stores;

19 ~~[(18)]~~ (19) Rooms, chambers, places of meeting or public
20 assembly under the control of an agency, board,
21 commission, committee or council of the State or

1 county, to the extent the place is subject to the
2 jurisdiction of the State or county;
3 ~~[(19)]~~ (20) Service lines; [and]
4 ~~[(20)]~~ (21) Shopping malls[-]; and
5 (22) Transit stations, including rail transit stations, bus
6 stops, taxi or shuttle waiting areas, and areas within
7 twenty feet of outdoor or enclosed or partially
8 enclosed transit stations or bus stop waiting areas,
9 including benches, stools, or shelters for transit
10 users.

11 (b) In addition, smoking is prohibited in all outdoor
12 areas, parking lots, beaches, public parks, playgrounds,
13 sidewalks, and streets when within twenty feet of:

- 14 (1) A pregnant woman;
- 15 (2) A minor who is not a member of the smoker's family;
- 16 and
- 17 (3) Any person who complains of a respiratory illness,
- 18 allergy, or other health concern, who requests the
- 19 smoker to stop smoking in the person's presence."

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

1 "§328J-7 **Exceptions.** Notwithstanding any other provision
2 of this chapter to the contrary, the following areas shall be
3 exempt from the provisions of sections 328J-3, 328J-4, and
4 328J-5:

5 (1) Private residences, except when used as a licensed
6 child care, adult day care, or health care facility;
7 provided that a resident or owner who resides in the
8 residence shall ensure that smoke from a private
9 residence owned, rented, or leased by that person in a
10 multifamily dwelling or condominium shall not
11 infiltrate into other private residences or into areas
12 where smoking is prohibited;

13 (2) Hotel and motel rooms that are rented to guests and
14 are designated as smoking rooms; provided that not
15 more than twenty per cent of rooms rented to guests in
16 a hotel or motel may be so designated. All smoking
17 rooms on the same floor shall be contiguous and smoke
18 from these rooms shall not infiltrate into areas where
19 smoking is prohibited under this chapter. The status
20 of rooms as smoking or nonsmoking may not be changed,
21 except to add additional nonsmoking rooms;



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



1 SECTION 4. Section 328J-12, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (a) to read:

4 "(a) A person who smokes in an area where smoking is
5 prohibited by this chapter shall be guilty of a violation and
6 fined not more than [~~\$50 to~~] \$150, of which \$50 shall be
7 transferred to the county in which the violation occurred and
8 the remainder shall be deposited into the general fund. The
9 district courts may assess costs not to exceed \$25 for issuing a
10 penal summons upon any person who fails to appear at the place
11 within the time specified in the citation issued to the person."

12 2. By amending subsection (c) to read:

13 "(c) There shall be provided for use by an officer or
14 employee of the respective government jurisdictions, duly
15 authorized to issue a summons or citation, or any police
16 officer, a form of summons or citation for use in citing a
17 violator of this chapter that shall not provide for the physical
18 arrest of the violator. The form and content of this summons or
19 citation shall be as adopted or prescribed by the administrative
20 judge of the district court. When a citation is issued, the
21 original of the citation shall be given to the violator;
22 provided that the administrative judge of the district court may



1 prescribe that the violator be given a copy of the citation and
2 provide for the disposition of the original and any other
3 copies. Every citation shall be consecutively numbered and each
4 copy shall bear the same number as its respective original.
5 Upon a victim's complaint, any police officer or other officer
6 or employee of the respective government jurisdictions, whether
7 directly observing a violation or relying upon a credible
8 witness account, shall issue a summons or citation, as
9 appropriate, upon reasonable suspicion that a violation has
10 occurred."

11 3. By amending subsections (e) and (f) to read:

12 "(e) Any police officer or other officer or employee of
13 the respective government jurisdictions may eject from the
14 premises any person to whom a citation has been issued and who
15 continues to smoke after the person has been so cited. Any
16 individual who violates this chapter and refuses to cooperate
17 with a police officer or other officer or employee of the
18 respective government jurisdiction properly issuing a summons or
19 citation, by:

20 (1) Continuing to smoke;

21 (2) Refusing to leave the premises after being ejected as
22 provided for in this section; or



1 (3) Behaving in a threatening manner consistent with
2 section 711-1101,
3 may be cited for disorderly conduct pursuant to section
4 711-1101. If appropriate under the corresponding section, the
5 individual may be cited for assault in the first, second, or
6 third degree pursuant to sections 707-710, 707-711, and 707-712,
7 respectively. If an individual smoker continues smoking within
8 twenty feet of a victim at least one additional minute after the
9 victim requests the individual to stop smoking in the victim's
10 presence, thereby causing the victim to be exposed to
11 environmental smoke, then that smoker may be cited for assault
12 in the third degree under section 707-712.

13 (f) A person who owns, manages, operates, or otherwise
14 controls any place or facility designated by this chapter and
15 fails to comply with this chapter shall be guilty of a violation
16 and fined:

- 17 (1) Not more than [~~\$100~~] \$500 for a first violation;
18 (2) Not more than [~~\$200~~] \$1,000 for a second violation
19 within one year of the date of the first violation;
20 and



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

4 SECTION 5. Section 328J-16, Hawaii Revised Statutes, is
5 amended by amending its title and subsection (a) to read as
6 follows:

7 "~~[§]328J-16[§]~~ Cigarette sales from vending machines
8 [and], by lunch wagons near schools, and by businesses with open
9 display prohibited. (a) The sale or distribution at no charge
10 of cigarettes by the following methods is prohibited:

11 (1) From cigarette vending machines unless the vending
12 machine is located in a bar, cabaret, or any
13 establishment for which the minimum age for admission
14 is eighteen; or

15 (2) From a lunch wagon engaging in any sales activity
16 within one thousand feet of any public or private
17 elementary or secondary school grounds.

18 In addition, cigarettes and other tobacco products shall
19 not be sold from any business with signage or other displays in
20 plain view, including labels of cigarette packages or cartons,
21 that promote the sale of tobacco products, unless the display is



1 visible only from inside an establishment for which the minimum
2 age for admission is eighteen years."

3 SECTION 6. Section 328L-4, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§328L-4 Use of funds appropriated to the department.** (a)

6 The department, immediately upon receipt of the moneys
7 appropriated pursuant to section 328L-2(b)(2) shall:

8 (1) ~~[Transfer]~~ Until and including June 30, 2015:

9 (A) Transfer up to ten per cent of the total moneys
10 received by the State from tobacco settlement
11 moneys to the department of human services for
12 the children's health insurance program; and

13 ~~[-(2)-]~~ (B) Expend the remainder of the moneys received by
14 the department for ~~[health]~~:

15 (i) Enforcement and public education as provided
16 in sections 328J-11 and 328J-13; and

17 (ii) Health promotion and disease prevention
18 programs, including but not limited to~~[7]~~
19 maternal child health and child development
20 programs, promotion of healthy lifestyles
21 (including fitness, nutrition, and tobacco



1 control), and prevention oriented public
2 health programs ~~[]~~; and

3 (2) Beginning July 1, 2015, expend one hundred per cent of
4 the moneys received by the department pursuant to
5 section 328L-2(b) (2) for enforcement and public
6 education as provided in sections 328J-11 and 328J-13.

7 (b) For purposes of [paragraph (2),] subsection
8 (a) (1) (A) (ii), the director shall convene an advisory group that
9 shall be separate from the tobacco prevention and control
10 advisory board, to strategically plan the development and
11 implementation of preventive systems to achieve measurable
12 outcomes and to make recommendations for the expenditure of
13 these moneys. The advisory group shall be composed of nine
14 members with expertise in the programs under ~~[paragraph (2),]~~
15 subsection (a) (1) (A) (ii) and shall be selected at the discretion
16 of the director.

17 SECTION 7. Act 119, Session Laws of Hawaii 2009, as
18 amended by section 2 of Act 138, Session Laws of Hawaii, 2010,
19 is amended by amending section 6 to read as follows:

20 "SECTION 6. This Act shall take effect on July 1, 2009,
21 and sections 1, 2, and 3 shall be repealed on June 30, 2015;
22 provided that section 328L-2, Hawaii Revised Statutes, shall be




1 reenacted in the form in which it read on the day before the
2 effective date of Act 264, Session Laws of Hawaii 2007; provided
3 further that section 328L-3, Hawaii Revised Statutes, shall be
4 reenacted in the form in which it read on the day before the
5 effective date of this Act."

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

8 SECTION 9. This Act shall take effect upon its approval.
9

INTRODUCED BY: _____



By Request



Report Title:

Smoking; Areas Prohibited; Penalties

Description:

Increases penalties for smoking, including assault charges. Prohibits smoking in certain outdoor areas. Provides for tobacco settlement moneys to go towards education and enforcement.

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

