

H.B. NO. 1153

A BILL FOR AN ACT

RELATING TO PROHIBITIONS ON UNIVERSITY OF HAWAII PREMISES.

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

1 SECTION 1. The legislature finds in accordance with
2 article X, section 6, of the state constitution that this Act is
3 of statewide concern.

4 The legislature finds that tobacco use is the single most
5 preventable cause of death in the United States, with tobacco-
6 related disease resulting in \$96,000,000,000 in health care
7 costs annually. The 2012 United States Surgeon General Report
8 states that tobacco use and exposure to second-hand smoke are
9 serious public health concerns and that there is no safe level
10 of exposure to environmental tobacco smoke.

11 Additional concerns have been raised about the growing
12 popularity of electronic smoking devices. Sales of electronic
13 smoking devices in the United States have doubled each year
14 since 2008, with sales in 2013 estimated to have reached
15 \$1,700,000,000. Due to the relative lack of research data on
16 electronic smoking devices, many public health organizations and
17 policymakers are concerned about the safety and impact of these
18 products on public health.

1 Smoking and all tobacco use is already prohibited on over
2 seven hundred sixty college and university campuses in the
3 United States. Many colleges and universities are including
4 electronic smoking devices in these campus-wide bans. Smoking
5 and tobacco use on the University of Hawaii premises present
6 substantial fiscal burdens for employee health care costs,
7 absenteeism, and turnover; for the maintenance and upkeep of
8 physical facilities; for fire risks and losses; and for litter
9 control, and impose an adverse impact on the surrounding land
10 and water environments.

11 The University of Hawaii's executive policy E10.102
12 prohibits smoking under certain circumstances, but it does not
13 make all of the campuses smoke- and tobacco-free.

14 The purpose of this Act, therefore, is to promote positive
15 health practices and protect University of Hawaii students,
16 employees, and visitors from exposure to second-hand smoke and
17 other potentially harmful substances by prohibiting smoking,
18 including the use of electronic smoking devices, and tobacco use
19 on University of Hawaii premises.

20 SECTION 2. Chapter 304A, Hawaii Revised Statutes, is
21 amended by adding a new section to be appropriately designated
22 and to read as follows:

23 "§304A- Smoking and tobacco use prohibitions on
24 University of Hawaii premises. (a) The University of Hawaii

1 shall prohibit smoking and tobacco use by any person on
2 University of Hawaii premises, to the extent that such a
3 prohibition is not prohibited by federal law. Mere possession
4 or storage of cigarettes, tobacco products, or electronic
5 smoking devices for use outside the University of Hawaii
6 premises shall not constitute a violation of any policy adopted
7 pursuant to this subsection.

8 (b) This section shall not be subject to chapter 328J.
9 Pursuant to section 89-9(d), the smoking and tobacco use
10 prohibitions under this section shall not be subject to
11 collective bargaining.

12 (c) The University of Hawaii shall be responsible for
13 educating students, employees, and all visitors about the
14 smoking and tobacco use prohibitions under this section.
15 Clearly legible signs shall be prominently displayed stating
16 that "smoking, including the use of electronic smoking devices,
17 and tobacco use are prohibited by law" at all entrances to the
18 premises and at other conspicuous outdoor locations throughout
19 the premises.

20 (d) As used in this section:

21 "Cigarette" has the same meaning as in section 486P-1.

22 "Electronic smoking device" means any electronic product
23 that can be used to aerosolize and deliver nicotine or other
24 substances to the person inhaling from the device, including but

1 not limited to an electronic cigarette, electronic cigar,
2 electronic cigarillo, electronic pipe, hookah pipe, or hookah
3 pen, and any cartridge or other component of the device or
4 related product, whether or not sold separately.

5 "Premises" means all indoor and outdoor areas within
6 property owned or controlled by the university or for which the
7 university is otherwise responsible.

8 "Smoke" or "smoking" means inhaling, exhaling, burning, or
9 carrying any lighted or heated tobacco product or plant product
10 intended for inhalation in any manner or in any form. "Smoking"
11 includes the use of an electronic smoking device.

12 "Tobacco products" means any products made or derived from
13 tobacco, that contain nicotine or other substances, and are
14 intended for human consumption or are likely to be consumed,
15 whether smoked, heated, chewed, absorbed, dissolved, inhaled, or
16 ingested by any other means, including, but not limited to, a
17 cigarette, cigar, pipe tobacco, chewing tobacco, snuff, snus, or
18 an electronic smoking device. "Tobacco products" do not include
19 drugs, devices, or combination products approved for sale by the
20 United States Food and Drug Administration, as those terms are
21 defined in the Federal Food, Drug, and Cosmetic Act.

22 "Tobacco use" means the personal use of any tobacco
23 product, including the use of smokeless tobacco."

H.B. NO. 1153

1 SECTION 3. Section 89-9, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

3 "(d) Excluded from the subjects of negotiations are
4 matters of classification, reclassification, benefits of but not
5 contributions to the Hawaii employer-union health benefits trust
6 fund, recruitment, examination, initial pricing, and retirement
7 benefits except as provided in section 88-8(h). The employer
8 and the exclusive representative shall not agree to any proposal
9 which would be inconsistent with the merit principle or the
10 principle of equal pay for equal work pursuant to section 76-1
11 or which would interfere with the rights and obligations of a
12 public employer to:

- 13 (1) Direct employees;
- 14 (2) Determine qualifications, standards for work, and the
15 nature and contents of examinations;
- 16 (3) Hire, promote, transfer, assign, and retain employees
17 in positions;
- 18 (4) Suspend, demote, discharge, or take other disciplinary
19 action against employees for proper cause;
- 20 (5) Relieve an employee from duties because of lack of
21 work or other legitimate reason;
- 22 (6) Maintain efficiency and productivity, including
23 maximizing the use of advanced technology, in
24 government operations;

H.B. NO. 1153

1 (7) Determine methods, means, and personnel by which the
2 employer's operations are to be conducted; [~~and~~]

3 (8) Take such actions as may be necessary to carry out the
4 missions of the employer in cases of emergencies [~~-~~];
5 and

6 (9) Prohibit smoking, including the use of electronic
7 smoking devices, and tobacco use on the premises of
8 all facilities owned or operated by the University of
9 Hawaii within the State.

10 This subsection shall not be used to invalidate provisions
11 of collective bargaining agreements in effect on and after June
12 30, 2007, and shall not preclude negotiations over the
13 procedures and criteria on promotions, transfers, assignments,
14 demotions, layoffs, suspensions, terminations, discharges, or
15 other disciplinary actions as a permissive subject of bargaining
16 during collective bargaining negotiations or negotiations over a
17 memorandum of agreement, memorandum of understanding, or other
18 supplemental agreement.

19 Violations of the procedures and criteria so negotiated may
20 be subject to the grievance procedure in the collective
21 bargaining agreement."

22 SECTION 4. Statutory material to be repealed is bracketed
23 and stricken. New statutory material is underscored.

H . B . NO . 1153

1 SECTION 5. This Act, upon its approval, shall take effect
2 on July 1, 2017.

3
4
5

INTRODUCED BY: _____



BY REQUEST

JAN 23 2017

H.B. NO. 1153

Report Title:

University of Hawaii; Smoking; Tobacco; Electronic Smoking Devices; Prohibitions

Description:

Prohibits smoking and tobacco use, including the use of electronic smoking devices, on University of Hawaii premises.

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

JUSTIFICATION SHEET

DEPARTMENT: University of Hawaii

TITLE: A BILL FOR AN ACT RELATING TO PROHIBITIONS ON UNIVERSITY OF HAWAII PREMISES.

PURPOSE: Prohibits smoking and tobacco use, including the use of electronic smoking devices, on University of Hawaii premises.

MEANS: Add a new section to chapter 304A, Hawaii Revised Statutes (HRS), and amend section 89-9(d), HRS.

JUSTIFICATION: Tobacco use is the single most preventable cause of death in the United States, with tobacco-related disease resulting in \$96,000,000,000 in health care costs annually. The 2012 United States Surgeon General Report states that tobacco use and exposure to secondhand smoke are serious public health concerns and that there is no safe level of exposure to environmental tobacco smoke.

The legislature has recognized through the years that smoking and secondhand smoke exposure are major contributors to many health problems and has imposed smoking restrictions within state facilities. Counties in Hawaii have also addressed at varying levels the concern over smoking in public areas. To address these varying levels of protection within ordinances adopted by counties in Hawaii, Act 295 was passed in 2006 to create a new chapter (chapter 328J, HRS) ensuring a consistent level of basic protections statewide from exposure to secondhand smoke and expanding the scope of smoke free prohibitions in various enclosed and partially enclosed areas. Act 87, Session Laws of Hawaii (SLH) 2004, imposed a smoking ban on employees in

all Hawaii public schools and at public school functions, with certain exceptions. These exceptions were later removed by Act 232, SLH 2014, which imposed a complete ban on smoking at all K-12 public schools and public school functions in the state. Act 91, SLH 2014, prohibited smoking in and around public housing projects. Act 123, SLH 2015, prohibited smoking and the use of tobacco products and e-cigarettes within the state park system. And in 2015, via Act 122, Hawaii became the first state in the nation to raise the legal smoking age to 21.

According to the University of Hawaii's Institutional Research and Analysis Office, during the Fall 2015 semester, approximately 40 percent of the total students enrolled or 20,627 in the UH system were under the age of 21.

Allowing smoking and tobacco use on the University of Hawaii premises both presents substantial fiscal burdens for employee health care costs, absenteeism, and turnover; the maintenance and upkeep of physical facilities; fire risks and losses; and litter control as well as imposes an adverse impact on the surrounding land and water environments.

The University of Hawaii's executive policy E10.102 prohibits smoking under certain circumstances, but it does not make all of the campuses smoke- and tobacco-free.

Additionally, concerns have been raised about the growing popularity of electronic smoking devices among our youth. Due to the relative lack of research data on electronic smoking devices, many public health organizations and policymakers are concerned about the safety and impact of these products on public health.

The purpose of this Act is to promote positive health practices and protect

University of Hawaii students, employees, and visitors from exposure to secondhand smoke and other potentially harmful substances by prohibiting smoking, including the use of electronic smoking devices, and tobacco use on University of Hawaii premises.

Impact on the public: The University of Hawaii sees the health and safety of our faculty, staff, and students, as well as visitors to each of our 10 campuses, to be paramount. As mentioned above, tobacco use and exposure to secondhand smoke are serious public health concerns and there is no safe level of exposure to environmental tobacco smoke.

Impact on the department and other agencies:
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: UOH-100, UOH-210, UOH-700, UOH-800, UOH-881.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2017.