

ACT 245

S.B. NO. 350

A Bill for an Act Relating to Smoking in the Workplace.

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

SECTION 1. Because smoking is dangerous to the health of smokers and others who must breathe secondhand smoke in confined places, the legislature declares that the purpose of this Act is to protect the public health by requiring government offices to adopt office smoking policies that accommodate the preferences of nonsmokers and smokers and, if satisfactory accommodation cannot be reached, to adopt policies reflecting the preference of a simple majority of the employees in each affected area in the office work place. This Act is intended to regulate smoking in the workplaces where the government allows employees to smoke, and is not intended to create any right to smoke or to impair or alter the government's prerogative to prohibit smoking in the work place.

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 THE WORK PLACE**

§ -1 **Title.** This chapter shall be known and may be cited as the Smoking in the Work Place Act.

§ -2 **Definitions.** For the purpose of this chapter:

“Employee” means any person who is employed more than twenty hours per week by any employer in consideration for direct or indirect monetary wages or profit.

“Employer” means any state or county agency.

"Enclosed" means closed in by a roof and four walls with openings for ingress and egress. Areas commonly described as public lobbies are not enclosed for the purposes of this chapter.

"Office work place" means any enclosed structure or portion thereof used by governmental entities.

"Simple majority" means any number greater than half of the persons expressing a preference in any specific work area.

"Smoking" or "to smoke" means inhaling and exhaling the fumes of burning tobacco or any other plant material, or burning or carrying any lighted equipment for smoking tobacco or any other plant material, or the personal habit commonly known as smoking.

§ -3 Regulation of smoking in the office work place. (a) Each employer in the State shall within three months after the effective date of this chapter adopt, implement, and maintain a written smoking policy which shall contain, at the minimum, the following provisions and requirements:

- (1) That if any nonsmoking employee objects to the employer about smoke in the employee's work place, the employer, using already available means of ventilation or separation or partition of office space, shall attempt to reach a reasonable accommodation, insofar as possible, between the preferences of nonsmoking and smoking employees; provided that an employer is not required by this chapter to make any expenditures or structural changes to accommodate the preferences of nonsmoking or smoking employees; and
 - (2) That if an accommodation which is satisfactory to all affected employees cannot be reached in any given office work place, the preferences of a simple majority of employees in each specifically affected area shall prevail and the employer shall accordingly prohibit or allow smoking in that particular area of the office work place. If the employer's decision is unsatisfactory to the nonsmoking employees, a simple majority of all nonsmoking employees can appeal to the director of health for the determination of a reasonable accommodation. Where the employer prohibits smoking in an office work place, the area in which smoking is prohibited shall be clearly marked with signs.
- (b) The smoking policy shall be announced within two weeks of the vote of preferences of the employees in each respective work area and posted conspicuously in all the affected work places.

§ -4 Where smoking not regulated. This chapter does not regulate smoking in the following places and under the following conditions within the State:

- (1) Any property owned or leased by federal governmental entities; or
- (2) Private enclosed office work places occupied exclusively by smokers, even though such office work places may be visited by nonsmokers, excepting places in which smoking is prohibited by a county fire department or by other law, ordinance, rule, or regulation.

§ -5 Penalties and enforcement. (a) The director of health shall enforce section -3 against violations by the following actions:

- (1) Serving notice requiring the correction of any violation of this chapter;

- (2) Calling upon the attorney general to maintain an action for injunction to enforce this chapter, to cause the correction of any violation, and for assessment and recovery of a civil penalty for such violation; or
- (3) Calling upon the governor, or the mayor, as the case may be, to enforce compliance.

(b) Any person who violates section -3 shall be liable for a civil penalty not to exceed \$500, which penalty shall be assessed and recovered in a civil action in any court of competent jurisdiction. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such. Any penalty assessed and recovered in an action brought pursuant to this section shall be paid to the general fund.

(c) Any member of the general public may request the department of health to enforce any violations of this chapter.

(d) In enforcing this chapter, the State is undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

§ -6 Additional to provisions on smoking in state facilities. This chapter shall be additional to the provisions under chapter 321, part XVII. In case of conflict between this chapter and chapter 321, part XVII, the stricter prohibition on smoking shall apply.”

SECTION 3. This Act shall take effect upon its approval.

(Approved June 24, 1987.)