

JAN 23 2009

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# A BILL FOR AN ACT

RELATING TO CONDOMINIUM PROPERTY REGIMES.

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

1           SECTION 1.   Section 514A-13.4, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "~~§~~514A-13.4~~§~~ **Telecommunications equipment.**   (a)

4 Notwithstanding any other provisions to the contrary in this  
5 chapter, in the declaration of any project, or in the bylaws of  
6 any association:

7           (1)   The board of directors of an association shall have  
8                the authority to install or cause the installation of  
9                antennas, conduits, chases, cables, wires, and other  
10               television signal distribution and telecommunications  
11               equipment upon the common elements of the project;  
12               provided that the same shall not be installed upon any  
13               limited common element without the consent of the  
14               owner or owners of the apartment or apartments for the  
15               use of which the limited common element is reserved;  
16               and

17           (2)   The installation of antennas, conduits, chases,  
18               cables, wires, and other television signal



1 distribution and telecommunications equipment upon the  
2 common elements by the board shall not be deemed to  
3 alter, impair, or diminish the common interest,  
4 elements, and easements appurtenant to each apartment  
5 or to be a structural alteration or addition to any  
6 building different in any material respect from the  
7 plans of the project filed in accordance with section  
8 514A-12; provided that no such installation shall  
9 directly affect any nonconsenting apartment owner.

10 (b) Notwithstanding any other provision to the contrary in  
11 this chapter, in the declaration of any project or in the bylaws  
12 of any association:

13 (1) The board shall be authorized to abandon or change the  
14 use of any television signal distribution and  
15 telecommunications equipment due to technological or  
16 economic obsolescence or to provide an equivalent  
17 function by different means or methods; and

18 (2) The abandonment or change of use of any television  
19 signal distribution or telecommunications equipment by  
20 the board due to technological or economic  
21 obsolescence or to provide an equivalent function by  
22 different means or methods shall not be deemed to



1 alter, impair, or diminish the common interest,  
2 elements, and easements appurtenant to each apartment  
3 or to be a structural alteration or addition to any  
4 building different in any material respect from the  
5 plans of the project filed in accordance with section  
6 514A-12.

7 (c) Notwithstanding any other provision to the contrary in  
8 this chapter, in the declarations of any project, or in the  
9 bylaws of any association:

10 (1) The board of directors of an association shall have  
11 the authority to permit owners to install antennas for  
12 amateur radios in their apartments or their limited  
13 common element without the consent of the owner or  
14 owners of the apartment or apartments for the use of  
15 which the limited common element is reserved;

16 (2) The installation of antennas for amateur radios  
17 approved by the board pursuant to paragraph (1) shall  
18 not be deemed to alter, impair, or diminish the common  
19 interest, elements, and easements appurtenant to each  
20 apartment or to be a structural alteration or addition  
21 to any building different in any material respect from  
22 the plans of the project filed in accordance with



1 section 514A-12; provided that no such installation  
2 shall directly affect any nonconsenting apartment  
3 owner; and

4 (3) If a board of directors in its sole discretion denies  
5 an owner permission to install an antenna for amateur  
6 radio in the owner's apartment or limited common  
7 element, the board shall provide the reasons for the  
8 denial in writing.

9 [~~e~~] (d) As used in this section:

10 "Directly affect" means the installation of television  
11 signal distribution and telecommunications equipment in a manner  
12 which would specially, personally, and adversely affect an  
13 apartment owner in a manner not common to the apartment owners  
14 as a whole.

15 "Television signal distribution" and "telecommunications  
16 equipment" shall be construed in their broadest possible senses  
17 in order to encompass all present and future forms of  
18 communications technology."

19 SECTION 2. Section 514B-140, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "**§514B-140 Additions to and alterations of condominium.**

22 (a) No unit owner shall do any work that may jeopardize the



1 soundness or safety of the property, reduce the value thereof,  
2 or impair any easement, as reasonably determined by the board.

3 (b) Subject to the provisions of the declaration, no unit  
4 owner may make or allow any material addition or alteration, or  
5 excavate an additional basement or cellar, without first  
6 obtaining the written consent of sixty-seven per cent of the  
7 unit owners, the consent of all unit owners whose units or  
8 appurtenant limited common elements are directly affected, and  
9 the approval of the board, which shall not unreasonably withhold  
10 such approval. The declaration may limit the board's ability to  
11 approve or condition a proposed addition or alteration; provided  
12 that the board shall always have the right to disapprove a  
13 proposed addition or alteration that the board reasonably  
14 determines could jeopardize the soundness or safety of the  
15 property, impair any easement, or interfere with or deprive any  
16 nonconsenting owner of the use or enjoyment of any part of the  
17 property.

18 (c) Subject to the provisions of the declaration,  
19 nonmaterial additions to or alterations of the common elements  
20 or units, including, without limitation, additions to or  
21 alterations of a unit made within the unit or within a limited  
22 common element appurtenant to and for the exclusive use of the



1 unit, shall require approval only by the board, which shall not  
2 unreasonably withhold the approval, and such percentage, number,  
3 or group of unit owners as may be required by the declaration or  
4 bylaws; provided that the installation of solar energy devices  
5 shall be allowed on single-family residential dwellings or  
6 townhouses pursuant to the provisions in section 196-7.

7 As used in this subsection:

8 "Nonmaterial additions and alterations" means an addition  
9 to or alteration of the common elements or a unit that does not  
10 jeopardize the soundness or safety of the property, reduce the  
11 value thereof, impair any easement, detract from the appearance  
12 of the project, interfere with or deprive any nonconsenting  
13 owner of the use or enjoyment of any part of property, or  
14 directly affect any nonconsenting owner.

15 "Solar energy device" means any new identifiable facility,  
16 equipment, apparatus, or the like which makes use of solar  
17 energy for heating, cooling, or reducing the use of other types  
18 of energy dependent upon fossil fuel for its generation;  
19 provided that if the equipment sold cannot be used as a solar  
20 device without its incorporation with other equipment, it shall  
21 be installed in place and be ready to be made operational in  
22 order to qualify as a "solar energy device"; provided further



1 that "solar energy device" shall not include skylights or  
2 windows.

3 "Townhouse" means a series of individual houses, having  
4 architectural unity and a common wall between each unit,  
5 provided that each unit extends from the ground to the roof.

6 (d) Notwithstanding any other provisions to the contrary  
7 in this chapter or in any declaration or bylaws:

8 (1) Regarding the installment of telecommunications  
9 equipment:

10 (A) The board shall have the authority to install or  
11 cause the installation of antennas, conduits,  
12 chases, cables, wires, and other television  
13 signal distribution and telecommunications  
14 equipment upon the common elements of the  
15 project; provided that the same shall not be  
16 installed upon any limited common element without  
17 the consent of the owner or owners of the unit or  
18 units for the use of which the limited common  
19 element is reserved; and

20 (B) The installation of antennas, conduits, chases,  
21 cables, wires, and other television signal  
22 distribution and telecommunications equipment



1           upon the common elements by the board shall not  
2           be deemed to alter, impair, or diminish the  
3           common interest, common elements, and easements  
4           appurtenant to each unit, or to be a structural  
5           alteration or addition to any building  
6           constituting a material change in the plans of  
7           the project filed in accordance with sections  
8           514B-33 and 514B-34; provided that no such  
9           installation shall directly affect any  
10          nonconsenting unit owner; and

11          (2) Regarding the abandonment of telecommunications  
12          equipment:

13           (A) The board shall be authorized to abandon or  
14           change the use of any television signal  
15           distribution and telecommunications equipment due  
16           to technological or economic obsolescence or to  
17           provide an equivalent function by different means  
18           or methods; and

19           (B) The abandonment or change of use of any  
20           television signal distribution or  
21           telecommunications equipment by the board due to  
22           technological or economic obsolescence or to





1 provide an equivalent function by different means  
2 or methods shall not be deemed to alter, impair,  
3 or diminish the common interest, common elements,  
4 and easements appurtenant to each unit or to be a  
5 structural alteration or addition to any building  
6 constituting a material change in the plans of  
7 the project filed in accordance with sections  
8 514B-33 and 514B-34.

9 As used in this subsection:

10 ~~["Directly affect" means the installation of television~~  
11 ~~signal distribution and telecommunications equipment in a manner~~  
12 ~~which would specially, personally, and adversely affect a unit~~  
13 ~~owner in a manner not common to the unit owners as a whole.]~~

14 "Television signal distribution" and "telecommunications  
15 equipment" shall be construed in their broadest possible senses  
16 in order to encompass all present and future forms of  
17 communications technology.

18 (e) Notwithstanding any other provision to the contrary in  
19 this chapter, in the declaration of any project, or in the  
20 bylaws of any association:

21 (1) The board of directors of an association shall have  
22 the authority to permit owners to install antennas for



1 amateur radios in their apartments or their limited  
2 common element without the consent of the owner or  
3 owners of the apartment or apartments for the use of  
4 which the limited common element is reserved;

5 (2) The installation of antennas for amateur radios  
6 approved by the board pursuant to paragraph (1) shall  
7 not be deemed to alter, impair, or diminish the common  
8 interest, elements, and easements appurtenant to each  
9 apartment or to be a structural alteration or addition  
10 to any building different in any material respect from  
11 the plans of the project filed in accordance with  
12 section 514A-12; provided that no such installation  
13 shall directly affect any nonconsenting apartment  
14 owner; and

15 (3) If a board of directors in its sole discretion denies  
16 an owner permission to install an antenna for amateur  
17 radio in the owner's apartment or limited common  
18 element, the board shall provide the reasons for the  
19 denial in writing.

20 (f) As used in this section, "directly affect" means the  
21 installation of television signal distribution and  
22 telecommunications equipment in a manner which would specially,



1 personally, and adversely affect a unit owner in a manner not  
2 common to the unit owners as a whole."

3 SECTION 3. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect upon its approval.

6

INTRODUCED BY: Carol Furumaga  
Randy H. Park  
Franne Chun Dalland  
[Signature]  
[Signature]  
[Signature]  
[Signature]



**Report Title:**

Condominium Property Regimes; HAM Radio Equipment

**Description:**

Allows the board of directors of an association to allow owners to install antennas for amateur radios. Requires a written statement of the reasons for a denial.



JAN 23 2009

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# A BILL FOR AN ACT

RELATING TO SMOKING.

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

1           SECTION 1. Section 514B-105, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3           "(b) Unless otherwise permitted by the declaration,  
4 bylaws, or this chapter, an association may adopt rules and  
5 regulations that affect the use of or behavior in units that may  
6 be used for residential purposes only to:

7           (1) Prevent any use of a unit which violates the  
8 declaration or bylaws;

9           (2) Regulate any behavior in or occupancy of a unit which  
10 violates the declaration or bylaws or unreasonably  
11 interferes with the use and enjoyment of other units  
12 or the common elements by other unit owners; ~~[or]~~

13           (3) Prohibit smoking by an owner, resident, or guest in  
14 all units, common elements, and limited common  
15 elements as defined in section 514B-3; or

16           ~~[-(3)]~~ (4) Restrict the leasing of residential units to the  
17 extent those rules are reasonably designed to meet  
18 underwriting requirements of institutional lenders who



1 regularly lend money secured by first mortgages on  
2 units in condominiums or regularly purchase those  
3 mortgages.

4 Otherwise, the association may not regulate any use of or  
5 behavior in units, by means of the rules and regulations."

6 SECTION 2. Chapter 421I, Hawaii Revised Statutes, is  
7 amended by adding a new section to be appropriately designated  
8 and to read as follows:

9 "§421I- Adoption of rules and regulations; prohibition  
10 of smoking permitted. Unless otherwise prohibited by the  
11 articles of incorporation or bylaws, a corporation may adopt  
12 rules to prohibit tenant shareholders, guests, and all other  
13 persons from smoking in dwelling units, common elements, and  
14 limited common elements of the corporation."

15 SECTION 3. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect upon its approval.

18

INTRODUCED BY:

*James Mercedes Ks*  
*Carol Fukunaga*  
*Quincy H Baker*  
*Erzanne Chun Calland*  
*Fred Hummer*



**Report Title:**

Smoking; Condominium Property Regimes; Cooperative Housing Corporations; Prohibition by Rule

**Description:**

Allows condominium property regimes and cooperative housing corporations to prohibit smoking pursuant to an adoption of a rule.





SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION,  
REGARDING SENATE BILL 595

Hearing Date : Tuesday, February 24, 2009  
Time : 8:30 a.m.  
Place : Conference Room 229

Chair Baker and Committee Members,

My name is John Morris, and I am testifying on behalf of the Community Associations Institute Hawaii Chapter Legislative Action Committee ("CAI"). CAI Hawaii is the local chapter of a national organization dedicated to improving the management and operation of community associations nationwide. CAI has over 200 members in Hawaii and over 14,000 nationwide.

This bill seems to indicate that the board of directors will have the sole discretion to decide whether antennas should be installed. As part of that process, the bill also provides that the board will have the authority to override the rights of apartment owners to control what is installed on or in their apartments or limited common elements. Allowing the board to override the rights of apartment owners in favor of other apartment owners (or even tenants of units), as this bill proposes, may be difficult to justify. The practice may even be unconstitutional, since it impairs valid and substantial property rights of individual owners.

As pointed out in connection with testimony on other bills, the board may be comprised of as few as five members out of the hundreds of members in a particular condominium association. Therefore, the Legislature should carefully consider whether the practice proposed by this bill is advisable.

For those reasons, CAI requests that the committee hold this bill.

Thank you for this opportunity to testify.

Very truly yours,

John A. Morris  
Hawaii Legislative Action Committee  
of the Community Associations Institute

JAM:alt





## Hawaii Council of Associations of Apartment Owners

P.O. Box 726, Aiea, HI, 96701  
Phone: 485-8282 Fax: 485-8282  
Email: HCAA@hawaii.rr.com

February 21, 2009

Sen. Rosalyn Baker, Chair  
Sen. David Ige, Vice-Chair  
Senate Committee on Commerce and Consumer Protection

RE: TESTIMONY IN OPPOSITION TO SB 595 RE CONDOMINIUMS  
Hearing: Tuesday, Feb. 24, 2009, 8:30 a.m. Conf. Rm. #229

Chair Baker, Vice-Chair Ige and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAA).

HCAA opposes this bill and asks that you defer it.

We support the testimony of Community Association Institute (CAI) in opposition to this bill.

Thank you for the opportunity to testify.

A handwritten signature in black ink that reads 'Jane Sugimura'.

Jane Sugimura  
President



Mililani Town Association

95-303 Kaloapau Street  
Mililani Town, HI 96789  
Phone (808) 623-7300

February 20, 2009

Senator Rosalyn Baker, Chair  
Senator David Ige, Vice-Chair  
Committee on Commerce & Consumer  
Protection  
State Capitol  
Honolulu, HI 96813

VIA EMAIL: CPNTestimony@Capitol.hawaii.gov

Re: S.B. No. 595 – Relating to Condominium Property Regimes  
Hearing: Tuesday, February 24, 2009, 8:30 am, Conf Room 229

Dear Chair Baker, Vice-Chair Ige and Committee Members:

My name is Eric Matsumoto, Vice-President of the Mililani Town Association (MTA). I have served in MTA leadership capacities on the board for 24 of the last 30 years. MTA encompasses 16,000 plus units involving both single family units and numerous townhouse and apartment sub-associations.

We strongly oppose this measure. This bill sends the wrong message to residents who have purchased in or are contemplating purchasing in planned communities and AOA projects for the following reasons:

- The restrictive covenants of associations are contained as part of the purchase documents entered into the contract at the time of purchase, at which time the purchaser has a choice to reside in the community/project where such restrictions on amateur radio antennas are in effect.
- Amateur radio antennas vary widely in size and shape, but as important is the configurations that depend upon the parameters, including the types of communications the operator desires to engage in, the intended distance of the communications, and the frequency band. Amateur radio antennas, depending upon the objectives of the operator, can vary from a whip attached to a vehicle, mounted on a structure a hundred feet tall or even much more in length. They can be constructed of various materials occupying the equivalent of a whole backyard, and may consist of an array of antennas.
- There are other consequences that include safety hazards, interference to other electronic equipment in the home such as televisions, radios, and stereos, in addition to the detracting effects from the aesthetic appearance of the community or project.
- Governmental agencies requiring communications during emergencies do have the necessary back-ups.

In conclusion, the interests in preserving the integrity of contractual relations are very important and the FCC is "reluctant to pre-empt private parties' freedom contract unless it is shown that private agreements will seriously disrupt the federal regulatory scheme or unless there is another strong countervailing reason to do so...." The American Radio Relay League (ARRL) has been unable to show that restrictive documents prevent amateur radio operators from pursuing the basis and purpose of the amateur service.

Based on the above, we strongly urge this bill be deferred.

Sincerely yours,

Eric M. Matsumoto  
Vice-President, Board of Directors

Cc: Sen Kidani, Sen Bunda  
Rep Lee, Rep Yamane