

JAN 21 2011

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# A BILL FOR AN ACT

RELATING TO HEALTH.

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

1           SECTION 1. Section 46-17, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§46-17 Regulation of certain public nuisances.** (a) Any  
4 provision of law to the contrary notwithstanding, the council of  
5 any county may adopt and provide for the enforcement of  
6 ordinances regulating or prohibiting noise, smoke, dust,  
7 vibration, or odors which constitute a public nuisance. No such  
8 ordinance shall be held invalid on the ground that it covers any  
9 subject or matter embraced within any statute or rule of the  
10 State; provided that in any case of conflict between a statute  
11 or rule and an ordinance, the law affording the most protection  
12 to the public shall apply, with the exception that:

13           (1) An ordinance shall not be effective to the extent that  
14           it is inconsistent with any permit for agricultural  
15           burning granted by the department of health under  
16           authority of chapter 342B, or to the extent that it  
17           prohibits, subjects to fine or injunction, or declares



1 to be a public nuisance any agricultural burning  
2 conducted in accordance with such a permit; and

3 (2) An ordinance shall not be effective to the extent that  
4 it is inconsistent with any noise rule adopted by the  
5 department of health under authority of chapter 342F.

6 (b) A county shall investigate and notify the state  
7 department of health of any report of an actual or suspected  
8 source of air pollution, as defined in section 342B-1, for  
9 purposes of section 322-1, without regard to whether the actual  
10 or suspected air pollutant is a regulated air pollutant under  
11 section 342B-11."

12 SECTION 2. Section 322-1, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "§322-1 Removal, prevention. (a) The department of  
15 health and its agents shall examine into all nuisances, foul or  
16 noxious odors, gases or vapors, water in which mosquito larvae  
17 exist, sources of filth, and all causes of sickness or disease,  
18 on shore, and in any vessel, which may be known to them or  
19 brought to their attention, which in their opinion are dangerous  
20 or injurious to health, and into any and all conditions created  
21 or existing which cause or tend to cause sickness or disease or



1 to be dangerous or injurious to health, and shall cause the same  
2 to be abated, destroyed, removed, or prevented.

3 (b) For purposes of this section, a nuisance shall include  
4 [~~toxic~~]:

5 (1) Toxic materials that are used in or by-products of the  
6 manufacture or conversion of methamphetamine, and  
7 clandestine drug labs that manufacture  
8 methamphetamine[-]; and

9 (2) Foul or noxious odors, gases, or vapors such as those  
10 emanating from buildings."

11 SECTION 3. Section 342B-41, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "[+]§342B-41[+] **Inspection of premises.** (a) The  
14 director, in accordance with the law, may enter and inspect any  
15 building or place to investigate an actual or suspected source  
16 of air pollution, to ascertain compliance or noncompliance with  
17 this chapter or any rule or standard adopted by the department  
18 pursuant to this chapter, or any permit or other approval  
19 granted by the department pursuant to this chapter, and to make  
20 reasonable tests in connection therewith. No confidential  
21 information secured pursuant to this section by any official or  
22 employee of the department within the scope and course of the



1 official's or employee's employment in the prevention, control,  
2 or abatement of air pollution shall be disclosed by the official  
3 or employee except as it relates directly to air pollution and  
4 then only in connection with the official's or employee's  
5 official duties and within the scope and course of the  
6 official's or employee's employment.

7 (b) The director, upon receipt of a complaint of foul or  
8 noxious odors, gases, or vapors emanating from a building may  
9 enter and inspect any building or place to investigate an actual  
10 or suspected source of air pollution for purposes of subsection  
11 (a) or for the existence of a nuisance under section 322-1."

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

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

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**Report Title:**

Health; Air Pollution; Nuisance

**Description:**

Requires a county to investigate and notify the state department of health of a report of possible nuisance involving air pollution; clarifies that a nuisance includes foul or noxious odors, gases, or vapors, including those emanating from buildings; allows the director of health, upon receipt of a complaint of foul or noxious odors, gases, or vapors emanating from buildings, to enter and inspect any building or place to investigate an actual or suspected source of air pollution or for the existence of a nuisance.

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

