
A BILL FOR AN ACT

RELATING TO SMOKING.

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

1 SECTION 1. The legislature finds that the Environmental
2 Protection Agency classifies secondhand smoke as a carcinogen.
3 While current state law takes due note of the risks of
4 secondhand smoke, that law was designed to prohibit smoking in
5 places open to the general public and places of employment.

6 The dangers of secondhand smoke, however, not only lurk in
7 those places, but also in multiple-unit high-rise facilities. A
8 number of elderly people and young children call these dwellings
9 home, as do many working, middle-aged individuals. Residents
10 living in single family residences can usually smoke with little
11 or no interference to their neighbors. Residents living in
12 multiple-unit high-rise facilities, however, live in close
13 proximity to each other, often share extensive ventilation
14 systems in which smoke can travel, and regularly face conflicts
15 due to competing interests. Further, unlike other residents,
16 children and the elderly are less likely to be able to move to a
17 new home.



1 Further, even smokers who rent units in other types of
2 buildings impose a nuisance if their landlords do not approve of
3 their smoking. The State, therefore, recognizes the need to
4 update current law.

5 The purpose of this Act is to expand the protections
6 granted to the public health and welfare by prohibiting smoking
7 in high-rise residential buildings in order to ensure an
8 increased level of basic protections statewide from unwanted
9 exposure to secondhand smoke.

10 SECTION 2. The Hawaii Revised Statutes is amended by
11 adding a new chapter to be appropriately designated and to read
12 as follows:

13 **"CHAPTER**

14 **SMOKING IN RESIDENTIAL AREAS**

15 § -1 **Definitions.** As used in this chapter, unless the
16 context otherwise requires:

17 "Association" means a condominium unit owners' association
18 organized under section 514B-102 or under condominium property
19 regime statutes.

20 "Building" shall have the same meaning as in section 328J-
21 1.

22 "Department" means the department of health.



1 "Director" means the director of health.

2 "Dwelling unit" shall have the same meaning as in section
3 521-8.

4 "Enclosed or partially enclosed" shall have the same
5 meaning as in section 328J-1.

6 "High-rise residential building" means a building that
7 contains dwelling units located more than seventy-five feet
8 above street level.

9 "Landlord" shall have the same meaning as in section 521-8.

10 "Premises" means a dwelling unit, appurtenances thereto,
11 grounds, and facilities held out for the use of condominium unit
12 owners or tenants generally and any other area or facility whose
13 use is promised to condominium unit owners or tenants.

14 "Rental agreement" shall have the same meaning as in
15 section 521-8.

16 "Single family residence" means a house or other dwelling
17 unit that is detached and not connected to any other dwelling
18 unit.

19 "Smoke" or "smoking" shall have the same meaning as in
20 section 328J-1.



1 "Standard-sized multifamily dwelling" means a building,
2 other than a high-rise residential building, that contains two
3 or more dwelling units.

4 § -2 **Prohibition in dwelling units of high-rise**
5 **residential buildings.** Smoking shall be prohibited in the
6 dwelling units of high-rise residential buildings, and the
7 outdoor balconies, lanais, porches, decks, and patios of those
8 dwelling units. This section shall apply regardless of whether
9 or not a landlord or association consents to the smoking.

10 § -3 **Prohibition in enclosed and partially enclosed**
11 **areas of high-rise residential buildings.** Smoking shall be
12 prohibited in any enclosed or partially enclosed common areas
13 and common elements of high-rise residential buildings,
14 regardless of whether or not those common areas and common
15 elements are also open to the general public.

16 § -4 **Smoking authorized in certain outdoor areas of**
17 **high-rise residential buildings.** (a) No landlord or condominium
18 association of a high-rise residential building may designate a
19 smoking area on the premises unless that designated smoking area
20 is:

- 21 (1) Conspicuously designated by signs;
22 (2) Located outdoors; and



1 (3) Not located in an area used primarily by children or
2 the elderly.

3 (b) Smoking is prohibited outside any designated smoking
4 area as described in subsection (a).

5 (c) This section shall not be construed to require
6 landlords and associations to provide designated smoking areas.

7 § -5 **Smoking prohibited in certain rented dwelling**
8 **units absent consent of the landlord.** Smoking shall be
9 prohibited in rented single family residences and rented
10 dwelling units within standard-sized multifamily dwellings,
11 provided that this section shall not apply if a landlord permits
12 the smoking through a rental agreement.

13 § -6 **Compliance and administration.** (a) Enforcement
14 of compliance with this chapter shall be under the jurisdiction
15 of the department.

16 (b) The director shall adopt rules under chapter 91 as are
17 appropriate to carry out the purposes of this chapter and for
18 the efficient administration thereof.

19 (c) Any citizen who wants to register a complaint under
20 this chapter may initiate an enforcement action with the
21 department as set forth by the director.



1 (d) A landlord or an association of a premises regulated
2 by this chapter shall inform persons violating sections -2, -3,
3 and -4(b) of the provisions of those sections.

4 (e) Notwithstanding any other provision of this chapter,
5 an employee or private citizen may bring legal action to enforce
6 this chapter.

7 (f) Notwithstanding any other provision of this chapter,
8 the department, other appropriate county agency, county, or any
9 private citizen aggrieved by the failure of a landlord or
10 association to comply with subsection (d) or section -4(a) may
11 apply for injunctive relief to enforce this chapter in any court
12 of competent jurisdiction.

13 § -7 **Administrative Penalties.** (a) Any person who, by
14 engaging in prohibited smoking, violates this chapter or any
15 rule adopted by the department pursuant to this chapter shall be
16 fined not more than \$50 for each separate offense.

17 (b) A landlord or an association of a building or premises
18 regulated by this chapter that fails to comply with section -
19 6(d) or section -4(a) shall be fined not more than \$25 for each
20 separate offense.

21 (c) Any action taken to collect a penalty provided for in
22 this section shall be considered a civil action.



1 (d) In addition to any other administrative or judicial
2 remedy provided by this chapter, or by rules adopted pursuant to
3 this chapter, the director may impose by order the
4 administrative penalties specified in this section. Factors to
5 be considered in imposing the administrative penalty include the
6 nature and history of the violation and of any prior violation,
7 and the opportunity, difficulty, and history of corrective
8 action. For any judicial proceeding to recover the
9 administrative penalty imposed, the director need only show that
10 that the department gave notice to the violating party, a
11 hearing was held or the time granted for requesting a hearing
12 has expired without such a request, the administrative penalty
13 was imposed, and that the penalty remains unpaid.

14 § -8 **Other applicable laws.** This chapter shall not be
15 interpreted or construed to permit smoking where it is otherwise
16 restricted by other applicable laws.

17 § -9 **County ordinances.** (a) Nothing in this chapter
18 shall be construed to supersede or in any manner affect a county
19 smoking ordinance; provided that the ordinance is at least as
20 protective of the rights of nonsmokers as this chapter.

21 (b) Nothing in this chapter shall prohibit a county from
22 enacting ordinances more stringent than this chapter."



1 SECTION 3. Chapter 514A, Hawaii Revised Statutes, is
2 amended by adding a new section to part V to be appropriately
3 designated and to read as follows:

4 "§514A- Adoption of rules; prohibition of smoking. (a)

5 Unless an association is prohibited in its articles of
6 incorporation or bylaws from doing so, an association of a high-
7 rise residential building shall adopt bylaws or rules to
8 prohibit unit owners, guests, and all other persons from smoking
9 in all:

10 (1) Dwelling units;

11 (2) Outdoor balconies, lanais, porches, decks, and patios
12 of dwelling units;

13 (3) Common elements that are enclosed or partially
14 enclosed;

15 (4) Areas that are not designated smoking areas as defined
16 in section -4(a).

17 (b) For the purposes of this section, the term "enclosed
18 or partially enclosed" is as defined in section 328J-1.

19 (c) For the purposes of this section, the term "high-rise
20 residential building" is as defined in -1."



1 SECTION 4. Chapter 514B, Hawaii Revised Statutes, is
2 amended by adding a new section to part VI to be appropriately
3 designated and to read as follows:

4 "§514B- Adoption of rules; prohibition of smoking. (a)
5 Unless an association is prohibited in its articles of
6 incorporation or bylaws from doing so, an association of a high-
7 rise residential building shall adopt bylaws or rules to
8 prohibit unit owners, guests, and all other persons from smoking
9 in all:

- 10 (1) Dwelling units;
11 (2) Outdoor balconies, lanais, porches, decks, and patios
12 of dwelling units;
13 (3) Common elements that are enclosed or partially
14 enclosed;
15 (4) Areas that are not designated smoking areas as defined
16 in section -4(a).
- 17 (b) For the purposes of this section, the term "enclosed
18 or partially enclosed" is as defined in section 328J-1.
- 19 (c) For the purposes of this section, the term "high-rise
20 residential building" is as defined in -1."

21 SECTION 5. New statutory material is underscored.



1 SECTION 6. This Act does not affect the rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun, before its effective date.

4 SECTION 7. If any provision of this Act, or the
5 application thereof to any person or circumstance is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act, which can be given effect without the
8 invalid provision or application, and to this end the provisions
9 are severable.

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

11

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H.B. NO. 2699

Report Title:

Smoking; Prohibition

Description:

Prohibits smoking in certain rented units and condominium units. Requires some condominium associations, if not prohibited by bylaws or articles of incorporation, to adopt bylaws or rules that prohibit smoking in certain areas.

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

