

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

2 "Multifamily dwelling" shall have the same meaning as in
3 section 328J-1.

4 "Plant material" includes, but is not limited to, tobacco
5 and plant material used for otherwise legal medical purposes.

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

10 "Smoke" or "smoking" means inhaling or exhaling the fumes
11 of any plant material, or burning or carrying any lighted
12 smoking equipment for any plant material.

13 § -2 **Prohibition in dwelling units of multifamily**
14 **dwelling.** Smoking shall be prohibited in any dwelling unit of
15 a multifamily dwelling and on any outdoor balcony, lanai, porch,
16 deck, or patio of that dwelling unit, if the smoking creates a
17 nuisance that interferes with another person's quiet enjoyment
18 of another dwelling unit. This section shall apply regardless
19 of whether or not a landlord or association consents to the
20 smoking.

21 § -3 **Prohibition in enclosed and partially enclosed**
22 **areas of multifamily dwellings.** Smoking shall be prohibited in



1 any enclosed or partially enclosed common areas and common
2 elements of a multifamily dwelling, regardless of whether or not
3 those common areas and common elements are also open to the
4 general public.

5 § -4 **Prohibition based on distance.** Smoking in a
6 outdoor area that is not an outdoor balcony, lanai, porch, deck,
7 or patio of a dwelling unit as described in section -2 is
8 nonetheless prohibited if the smoking occurs within twenty feet
9 of any entrance, exit, window that opens, or ventilation intake
10 on the premises of a multifamily dwelling.

11 § -5 **Compliance and administration.** (a) Enforcement
12 of compliance with this chapter shall be under the jurisdiction
13 of the department.

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

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

20 (d) A landlord or an association of a premises regulated
21 by this chapter shall give oral or written notice to persons
22 violating sections -2, -3, and -4 of the provisions of those



1 sections. A landlord or association that complies with this
2 subsection is not subject to civil liability to an individual or
3 agency with regard to the association's or landlord's notice.

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) may apply for
11 injunctive relief to enforce this chapter in any court of
12 competent jurisdiction.

13 § -6 **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 5(d) shall be fined not more than \$25 for each separate offense.

20 (c) Any action taken to collect a penalty provided for in
21 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 the department gave notice to the violating party, a hearing was
11 held or the time granted for requesting a hearing has expired
12 without such a request, the administrative penalty was imposed,
13 and that the penalty remains unpaid.

14 § -7 **Other applicable laws.** This chapter shall not be
15 interpreted or construed to permit smoking of any plant material
16 where it is otherwise restricted by other applicable laws.

17 § -8 **County ordinances.** (a) Nothing in this chapter
18 shall be construed to supersede or in any manner affect a county
19 ordinance; provided that the ordinance is at least as protective
20 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 § -9 **Smoking not required to be permitted.** Nothing in
2 this chapter shall be construed to require any landlord or
3 association to permit smoking in places not addressed in this
4 chapter."

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

8 "§514A- Adoption of rules; prohibition of smoking. (a)

9 Unless an association is prohibited in its articles of
10 incorporation or bylaws from doing so, an association of a
11 multifamily dwelling shall adopt bylaws or rules to prohibit
12 unit owners, guests, and all other persons from smoking:

13 (1) In any dwelling unit and on any outdoor balcony,
14 lanai, porch, deck, or patio of that dwelling unit, if
15 the smoking creates a nuisance that interferes with
16 another person's quiet enjoyment of another dwelling
17 unit;

18 (2) In any enclosed or partially enclosed common elements;
19 and

20 (3) Within twenty feet of any entrance, exit, window that
21 opens, or ventilation intake located within the
22 community property regime.



1 (b) An association that complies with subsection (a) by
2 adopting or enforcing rules or bylaws consistent with the anti-
3 smoking language of that subsection is not subject to civil
4 liability to an individual or agency with regard to the
5 association's adoption or enforcement of those rules or bylaws.

6 (c) For the purposes of this section, the term "enclosed
7 or partially enclosed" shall have the same meaning as in section
8 328J-1.

9 (d) For the purposes of this section, the terms
10 "multifamily dwelling" and "smoking" shall have the same meaning
11 as in section -1."

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

15 **"§514B- Adoption of rules; prohibition of smoking. (a)**
16 Unless an association is prohibited in its articles of
17 incorporation or bylaws from doing so, an association of a
18 multifamily dwelling shall adopt bylaws or rules to prohibit
19 unit owners, guests, and all other persons from smoking:

20 (1) In any dwelling unit and on any outdoor balcony,
21 lanai, porch, deck, or patio of that dwelling unit, if
22 the smoking creates a nuisance that interferes with



1 another person's quiet enjoyment of another dwelling
2 unit;

3 (2) In any enclosed or partially enclosed common elements;
4 and

5 (3) Within twenty feet of any entrance, exit, window that
6 opens, or ventilation intake located within the
7 community property regime.

8 (b) An association that complies with subsection (a) by
9 adopting or enforcing rules or bylaws consistent with the anti-
10 smoking language of that subsection is not subject to civil
11 liability to an individual or agency with regard to the
12 association's adoption or enforcement of those rules or bylaws.

13 (c) For the purposes of this section, the term "enclosed
14 or partially enclosed" shall have the same meaning as in section
15 328J-1.

16 (d) For the purposes of this section, the terms
17 "multifamily dwelling" and "smoking" shall have the same meaning
18 as in section -1."

19 SECTION 4. New statutory material is underscored.

20 SECTION 5. This Act does not affect the rights and duties
21 that matured, penalties that were incurred, and proceedings that
22 were begun, before its effective date.



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

7 SECTION 7. This Act shall take effect upon its approval.
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Report Title:

Smoking; Prohibition

Description:

Prohibits smoking in units of multifamily residential dwellings if the smoke is a nuisance. Requires some condominium associations, if not prohibited by bylaws or articles of incorporation, to adopt bylaws or rules that prohibit smoking in certain areas.

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