

Honolulu, Hawaii

FEB 28 2013

RE: S.B. No. 945  
S.D. 2

Honorable Donna Mercado Kim  
President of the Senate  
Twenty-Seventh State Legislature  
Regular Session of 2013  
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 945, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO SMOKING,"

begs leave to report as follows:

The purpose and intent of this measure is to allow condominium associations and cooperative housing corporations to adopt rules to prohibit smoking in units, common elements, or limited common elements if a majority of the tenant shareholders or owners approved the smoking prohibition.

Your Committee received testimony in support of this measure from four individuals. Your Committee received testimony in opposition to this measure from the Hawaii Council of Associations of Apartment Owners and two individuals. Your Committee received comments on this measure from the Community Associations Institute, Hawaii Chapter and Coalition for a Tobacco-Free Hawai'i.

Your Committee finds that in 2010, the United States Surgeon General noted that any level of exposure to secondhand smoke is dangerous and can be harmful. Your Committee further finds that residents who live in multi-unit housing can be negatively affected by secondhand smoke exposure from other residents. Your Committee additionally finds that this measure would allow condominium associations and cooperative housing corporations to regulate smoking within and outside of individual units.



However, your Committee has heard concerns that although this measure requires a majority of shareholder or owner approval to prohibit smoking outside of individual units, condominium boards of directors are already authorized to regulate the use of common elements and limited common elements. Your Committee has also heard testimony that section 328J-3(13), Hawaii Revised Statutes, limits smoking in certain common areas of buildings, including apartments, condominiums, multifamily dwellings, and other multiple-unit residential facilities. Your Committee concludes that this measure should be amended to apply to chapter 514A, Hawaii Revised Statutes, as well as chapters 421I and 514B, Hawaii Revised Statutes. Your Committee also concludes that this measure should be amended to preserve and maintain the existing authority of shareholders and condominium boards of directors. Your Committee also finds that amendments to this measure are necessary to provide smokers with a commercially reasonable time to sell their units or apartments after a cooperative housing corporation, association of apartment owners, or condominium association adopts a prohibition on smoking.

Accordingly, your Committee has amended this measure by:

- (1) Allowing cooperative housing corporations, associations of apartment owners, and condominium associations to adopt rules to prohibit smoking in units or apartments if a majority of the tenant shareholders or owners approved the smoking prohibition; provided that a rule to prohibit smoking shall not become effective sooner than one hundred eighty days after the prohibition is approved;
- (2) Inserting an effective date of July 1, 2050, to encourage further discussion; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 945, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 945, S.D. 2.



Respectfully submitted on  
behalf of the members of the  
Committee on Commerce and  
Consumer Protection,



ROSALYN H. BAKER, Chair



The Senate  
 Twenty-Seventh Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Commerce and Consumer Protection**  
**CPN**

|  |  |                         |            |                |
|--|--|-------------------------|------------|----------------|
| Bill / Resolution No.:*<br><b>SB 945, SD1</b>  | Committee Referral:<br><b>HTH, CPN</b> | Date:<br><b>2/20/13</b> |            |                |
| <input type="checkbox"/> The committee is reconsidering its previous decision on this measure.<br>If so, then the previous decision was to: _____  |  |                         |            |                |
| The Recommendation is:<br><input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313 |  |                         |            |                |
| <b>Members</b>   | <b>Aye</b>                             | <b>Aye (WR)</b>         | <b>Nay</b> | <b>Excused</b> |
| BAKER, Rosalyn H. (C)  | ✓                                      |                         |            |                |
| GALUTERIA, Brickwood (VC)  | ✓                                      |                         |            |                |
| NISHIHARA, Clarence K.   | ✓                                      |                         |            |                |
| SOLOMON, Malama  | ✓                                      |                         |            |                |
| TANIGUCHI, Brian T.  |  |                         |            | ✓              |
| WAKAI, Glenn   | ✓                                      |                         |            |                |
| SLOM, Sam  | ✓                                      |                         |            |                |
|  |  |                         |            |                |
|  |  |                         |            |                |
|  |  |                         |            |                |
|  |  |                         |            |                |
|  |  |                         |            |                |
|  |  |                         |            |                |
|  |  |                         |            |                |
|  |  |                         |            |                |
|  |  |                         |            |                |
|  |  |                         |            |                |
|  |  |                         |            |                |
| <b>TOTAL</b>   | <b>6</b>                               |                         |            | <b>1</b>       |
| Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted   |  |                         |            |                |
| Chair's or Designee's Signature:<br>   |  |                         |            |                |
| <b>Distribution:</b> Original     Yellow     Pink     Goldenrod<br>File with Committee Report     Clerk's Office     Drafting Agency     Committee File Copy   |  |                         |            |                |

\*Only one measure per Record of Votes