



STATE OF HAWAII
DEPARTMENT OF HEALTH
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Testimony in SUPPORT of HB2672
RELATING TO REAL PROPERTY

REPRESENTATIVE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH

Hearing Date: February 10, 2016

Room Number: 329

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department of Health (DOH) supports this measure to promote
3 smoke-free environments by protecting new residents and visitors in their homes from the
4 potential harms caused by exposure to secondhand and thirdhand smoke.

5 HB2672 amends HRS §508D by adding a new section that requires a seller or landlord
6 of a residential unit or apartment to disclose the smoking history of a residential unit or
7 apartment, as well as the smoking policies in existence and where on the premises they apply.
8 This information can equip individuals with the knowledge they need to make better informed
9 choices to protect their health. In 2013 and 2014, approximately 40% of complaints received by
10 the Tobacco Prevention and Education Program at the DOH involved involuntary exposure to
11 secondhand smoke infiltration from neighbors in multi-unit housing.¹

12 The World Health Organization, Institute on Medicine, and the U.S. Surgeon General

¹ Tamashiro, J. (n.d.). Hawaii State Department of Health, Tobacco Prevention and Education Program, Secondhand smoke complaints 2013-2014]. Unpublished raw data.

1 concur that secondhand smoke causes harm to human health.^{2,3,4} Even small amounts can cause
2 serious harm to health, especially to respiratory and cardiovascular systems.⁵ Pregnant women,
3 children, and infants are particularly vulnerable to the effects of exposure which can contribute
4 to, Sudden Infant Death Syndrome (SIDS), severe respiratory ailments, low birthweight, pre-
5 term birth, and other dangerous conditions.⁶ Moreover, recent research confirms that thirdhand
6 smoke, the residual contaminants from smoking are left long after a cigarette or cigar has been
7 extinguished, and is highly toxic. Nicotine remains on surfaces for days and weeks, so the
8 carcinogens continue to be created over time, which are then inhaled, absorbed or ingested.⁷
9 Thirdhand smoke poses a particular threat to children and infants who are in more direct contact
10 with surfaces that contain these toxins.⁸ When potential renters and buyers have the disclosure
11 of smoking history on the property and policies, they will be able to make informed decisions to
12 protect their health and that of their families.

13 Thank you for the opportunity to provide testimony.

14 **Offered Amendments:** None.

² U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014. Retrieved February 8, 2016 from <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>

³ Öberg M, Jaakkola MS, Prüss-Üstün A, Schweizer C, Woodward A. Second-hand smoke: Assessing the environmental burden of disease at national and local levels. Geneva, World Health Organization, 2010 (WHO Environmental Burden of Disease Series, No. 18). Retrieved February 8, 2016 from http://www.who.int/quantifying_ehimpacts/publications/SHS.pdf

⁴ IOM (Institute of Medicine). 2010. *Secondhand Smoke Exposure and Cardiovascular Effects: Making Sense of the Evidence*. Washington, DC: The National Academies Press. Retrieved February 8, 2016 from <http://www.nap.edu/read/12649/chapter/1>

⁵ See footnote 1

⁶ *Ibid.*

⁷ Sleiman, M., Gundel, L. A., Pankow, J. F., Jacob, P., Singer, B. C., & Destailats, H. (2010). Formation of carcinogens indoors by surface-mediated reactions of nicotine with nitrous acid, leading to potential thirdhand smoke hazards. *Proceedings of the National Academy of Sciences*, 107(15), 6576-6581. Retrieved February 8, 2016, from <http://www.pnas.org/content/107/15/6576.full.pdf>

⁸ Americans for NonSmokers' Rights. *Thirdhand Smoke*. (n.d.). Retrieved February 08, 2016, from <http://www.no-smoke.org/learnmore.php?id=671>



Date: February 9, 2016

To: The Honorable Della Au Belatti, Chair
The Honorable Richard Creagan, M.D., Vice Chair
Members of the House Committee on Health

From: Trish La Chica, Policy and Advocacy Director, Hawai'i Public Health Institute

Re: **Support for HB2672, Relating to Real Property**

Hrg: February 10, 2016 at 10:00am at Capitol Room 329

Thank you for the opportunity to submit testimony in **SUPPORT** of HB2672 which urges the State of Hawai'i to require the seller or landlord of a residential unit or apartment to disclose 1) whether smoking occurred within the unit or other parts of the property and 2) the applicable smoking policy for residential condominium unit, cooperative apartment, or rental dwelling unit.

The Coalition for a Tobacco-Free Hawai'i (Coalition) is a program of the Hawai'i Public Health Institute (HIPHI) that is dedicated to reducing tobacco use through education, policy, and advocacy. With nearly two decades of history in Hawai'i, the Coalition has led several campaigns on enacting smoke-free environments, including being the first state in the nation to prohibit the sale of tobacco and electronic smoking devices to purchasers under 21 years of age.

A majority of Hawai'i residents – 85%, prefer to buy or rent a house or apartment that is smoke-free.

An independent poll conducted by Ward Research Inc. for the Coalition, in November 2015 finds that 85% of registered Hawai'i voters would choose to buy or rent a smoke-free house or apartment. In addition, **74% indicated that they would want to know if their house or apartment had previously been smoked in.** The Coalition often receives calls from residents who reside in multi-unit housing and are affected by secondhand smoke exposure.

The 50th Anniversary U.S. Surgeon General Report stated that any level of exposure to secondhand smoke is dangerous and can be harmful, and over 2.5 million people have died from secondhand smoke. Secondhand smoke contains over 7,000 chemicals and is carcinogenic to humans.

Thirdhand smoke is dangerous and will remain in a home or unit even after new carpeting and paint.

Non-smokers are exposed to "thirdhand smoke" or smoke that is left behind from rooms, hallways, and elevators after someone has smoked. Residents living in multi-unit dwellings such as apartments and condominiums commonly experience tobacco smoke that drift into their unit from neighbors who

smoke. Tobacco smoke lingers in and near apartments of people who smoke indoors, even after they have moved out. Thirdhand smoke clings to walls, ceilings, carpets, draperies, and other furniture. They remain at high levels long after smoking has stopped and has shown to reemit back in the air as toxic compounds that can be inhaled by those that have moved into the homeⁱ.

Among the substances in third-hand smoke are hydrogen cyanide, used in chemical weapons; butane, used in lighter fluid; toluene, found in paint thinners; arsenic lead, carbon monoxide, and othersⁱⁱ. A 2010 study showed that thirdhand smoke remains even after smokers have moved out of their homes and resists normal cleaning, even with new carpeting and paintⁱⁱⁱ. Third-hand smoke cannot be eliminated by airing out rooms, opening windows, using fans or air conditioners, or confining smoking to only certain areas of a home.

HB2672 helps to promote, not require, smoke-free environments.

This measure helps to protect new residents and tenants as well as their visitors in private homes from the potential health dangers of moving into a home that has been exposed to indoor tobacco smoke, as well as the promotion of smoke-free environments in the community. Although the Coalition supports any efforts for multi-unit dwellings to go smoke-free, this measure does not require sellers or landlords to adopt smoke-free policies.

Some courts have found that if a dangerous condition exists on a property that a prospective resident may not be aware of or notice upon a casual inspection, then the property owner has a responsibility to warn the resident of the danger^{iv}. Just as property owners are required to warn prospective renters or homeowners on the presence of lead-based paint or radon, asbestos, and even bed bugs, this policy should extend to secondhand and thirdhand smoke as well.

Several jurisdictions such as the states of Maine and Oregon, as well as the cities of San Francisco and Oakland in California, Duluth, Minnesota, and Buffalo, New York^v now require owners to notify prospective residents about a property's smoking policy. A sample disclosure form from Maine below is 1 page long and simply requires landlords to disclose if smoking is prohibited or permitted in the property, and if permitted, to indicate which areas have been designated for smoking (See Appendix).

Many people visit and live in Hawai'i for its clean air and lush surroundings. As a leader in its smoke-free laws, Hawai'i must continue to protect the public and potential residents from the harmful impacts of secondhand and thirdhand smoke. Smoking disclosures are an important first step in improving the awareness of smoking policies in the community.

Thank you for the opportunity to testify in **support** of HB2672. We ask that you pass this measure out of committee.

Mahalo,



Trish La Chica
Policy and Advocacy Director

(Appendix) SAMPLE SMOKING POLICY DISCLOSURE FORM

The Maine Smoking Policy Awareness Law (Public Law 2011, chapter 199) requires that landlords disclose the "...policy regarding smoking on the premises..."

"Smoking" is defined as carrying or having in one's possession a lighted cigarette, cigar, pipe or other object giving off tobacco smoke.

This form provides written disclosure of the smoking policy at (address):

The smoking policy for this property is:

- Smoking is not allowed on the entire premises
- Smoking is not allowed in:
 - Inside all units
 - Inside all common areas, such as hallways or laundry rooms¹
 - Outside within ___ feet of the building
 - Outside on porches, patios, and yards adjacent to the units
 - Other:

Smoking is allowed in designated outdoor smoking area, located:

Smoking is permitted on the entire premises, excluding indoor common areas²

Acknowledgements:

I have read and understanding the smoking policy described above and agree to comply with the smoking policy at (address):

Tenant Printed Name: _____

Tenant Signature: _____ Date: _____

Landlord/Owner's Representative Printed Name: _____

Signature: _____ Date: _____

¹ Maine law prohibits smoking in indoor common areas, such as hallways, laundry rooms and recreation rooms

² Maine law prohibits smoking in indoor common areas, such as hallways, laundry rooms and recreation rooms

ⁱ Singer, B., Hodgson, A., Nazaroff, W. (2002). "Effect of sorption on exposures to organic gases from environmental tobacco smoke (ETS)" available at <http://eetd.lbl.gov/node/49332>

ⁱⁱ Coalition for a Tobacco-Free Hawai'i. "Dangers of Third-hand Smoke," available at <http://www.tobaccofreehawaii.org/uploads/Dangers-of-Thirdhand-Smoke.pdf>

ⁱⁱⁱ Matt GE, et al. "When smokers move out and non-smokers move in: residential thirdhand smoke pollution and exposure." *Tobacco Control*. online 30 Oct 2010. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3666918/>

^{iv} See Johnson v. O'Brien, 108 N.W.2d 244, 247 (1960) ("... where a landlord has information which would lead a reasonably prudent owner exercising due care to suspect that danger exists on the leased premises at the time the tenant takes possession, and that the tenant exercising due care would not discover for himself, then he must at least disclose such information to the tenant.").

^v Tobacco Control Legal Consortium, Public Health Law Center, "Disclosures of Smoking Policies in Multi-Unit Housing", available at <http://publichealthlawcenter.org/sites/default/files/resources/tclc-fs-housing-disclosure-2015.pdf>

January 10, 2016

The Honorable Della Au Belatti, Chair

House Committee on Health
State Capitol, Room 329
Honolulu, Hawaii 96813

RE: H.B. 2672, Relating to Real Property

HEARING: Wednesday, January 10, 2016, at 10:00 a.m.

Aloha Chair Belatti, Vice Chair Creagan, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,800 members. HAR **opposes** H.B. 2672 which requires both a seller and landlord of a residential unit or apartment to disclose whether:

1. Smoking occurred within the unit or apartment and other parts of the property; and
2. Whether the applicable smoking policy if the unit or apartment is a residential condominium unit, cooperative apartment, or rental dwelling unit.

HAR believes that this measure will have unintended consequences, especially from a disclosure perspective for sellers, landlords and real estate licensees. Under Hawaii's Mandatory Seller Disclosure Law, Hawai'i Revised Statutes, Chapter 508D, a seller must disclose all material facts within the knowledge or control of the seller or can be observed from visible, accessible areas. Furthermore, material fact is defined as "any fact, defect, or condition, **past or present**, that would be expected to measurably affect the value of the residential real property being offered for sale."

Under this proposed measure, a seller or landlord must disclose whether smoking occurred within the unit or any other area of the property on which the unit or property is situated. It would be very difficult and almost impossible for an owner or landlord to be aware of whether or not smoking has ever occurred in the common areas or nearby units.

HAR believe H.B. 2672 becomes a very difficult measure to enforce and exposes any seller, landlord or real estate licensee to risk from claims that smoking has occurred in and around the building. Furthermore, because of the potential risk, sellers and landlords would most likely have to respond in the affirmative that smoking has occurred from a liability perspective, despite not having any smoking occur within the unit.

Because condominiums and co-op apartments have evolved and have instituted no smoking policies in the units and common areas, there are many condominiums and co-op apartments built in the 70's, 80's and 90's that did not have such restrictions. The required smoking disclosure of such history is almost impossible.

Furthermore, as part of the disclosure for a condominium, there are house rules. The seller provides these and other governing documents to the seller for the buyer to review. If there is any smoking or no-smoking provisions within the house rules, the buyer would be made aware through the copies of the house rules. Additionally, it is the Association of Apartment Owners that would set the restrictions within the common areas, and it would have the most knowledge of said smoking policies and areas.

Furthermore, HAR would note that under Section 2, Subsection (a) and (b), it references that a smoking history disclosure must be provided to both "buyers and residents or potential buyers and residents." It is unclear as to the definition of a resident or potential buyer, and potential buyer could refer to anyone that views a unit for sale. Furthermore, if resident is referring to a tenant, it should be contained within the Landlord-Tenant Code and not the Mandatory Seller's Disclosure law.

HAR believe it is in the best interest for sellers to disclose potentially adverse property conditions, such as odors from smoking within the unit. However, this law requires a smoking disclosure for both on-site and off-site of the unit, in addition to past history, which becomes difficult and almost impossible to enforce.

For the foregoing reasons, we respectfully ask that the measure be held.

Mahalo for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 09, 2016 10:36 AM
To: HLTtestimony
Cc: richard.emery@associa.us
Subject: Submitted testimony for HB2672 on Feb 10, 2016 10:00AM

HB2672

Submitted on: 2/9/2016

Testimony for HLT on Feb 10, 2016 10:00AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Support	Yes

Comments: Associa is America's largest association management company representing approximately 550 Hawaii associations. Smoking is an issue in a condominium and poses health risks and discomfort to residents. Buyers should be aware of the association's smoking rules such as whether smoking is allowed on the lanais as it may impact their decision. The owner should also to the extent of his knowledge disclose the smoking history. It is not difficult to disclose such rules or incidents. We SUPPORT HB 2672.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Testimony in support of HB2672 Relating to Real Property.

I support HB2672 that requires a seller or landlord to disclose information about a previous resident who has smoked in the unit or apartment, as well as the applicable smoking policy if the unit or apartment is a condominium, cooperative apartment, etc.

It is important that new residents are aware of previous residents' smoking habits and accept these terms. The effects of secondhand smoke are potentially harmful, and I believe that the information should be disclosed to the new resident who will be exposed to the after effects of smoking which can lead to Asthma, bronchitis, COPD and lung cancer.

In light of these reasons I support HB2672.

Thank you for your consideration,

Sean Alueta

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 08, 2016 4:00 PM
To: HLTtestimony
Cc: SherlBlod@aol.com
Subject: Submitted testimony for HB2672 on Feb 10, 2016 10:00AM

HB2672

Submitted on: 2/8/2016

Testimony for HLT on Feb 10, 2016 10:00AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Gladys Sherley Blodgett	Individual	Oppose	No

Comments: This proposed act is merely onerous and foolish. If any building is more than 30-40 years old, there is always the possibility of it containing "thirdhand smoke" issues since a majority of blue-collar workers smoked before the Surgeon General started issuing warnings and those blue-collar workers most likely smoked during the construction of the buildings. Such regulations as these place another level of needless "notice requirements" on condominiums. I am the owner of a rental, and to my knowledge no smoking has occurred in the unit since 1993, so to place a notice that smoking has occurred sometime in the past could discourage renters from renting even though it is very unlikely that in 23 years there is any residue remaining!

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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