



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

Testimony in SUPPORT of SB0802, SD2
RELATING TO SMOKING

REPRESENTATIVE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH

Hearing Date: March 25, 2015

Room Number: 329

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department of Health (DOH) supports this measure to protect the
3 tenants in condominiums and housing corporations from exposure to secondhand smoke (SHS).

4 SHS incursions in multi-unit housing, such as condominiums and apartments, are a
5 common and pervasive problem in Hawaii and the United States. A nationally representative
6 study published in August 2014 of the American Journal of Public Health, "Tobacco Incursions
7 in Multi-Unit Housing," found that approximately 30% of survey respondents reported smoke
8 incursions in their buildings, and 16% of these reported incursions in their own unit. In Hawaii,
9 approximately 40% of the complaint calls received by the DOH, regarding SHS exposure, are
10 about infiltration in multi-unit housing. Moreover, the U.S. Census data indicates that 38% of
11 housing in Hawaii is represented by multi-unit structures as compared to the national average of
12 26%.

13 Smoke-free policies in housing are increasing as a protective strategy around the country.
14 Between 2000 to 2014, the number of public housing authorities with smoke-free policies
15 increased from 2 to 500, and this number continues to grow. As of 2015, all tax credit and
16 affordable housing to be constructed will be smoke-free according to Hawaii Housing and
17 Finance Development Corporation policy. Furthermore, many market-rate properties are also
18 adopting voluntary policies for their communities.

19 SHS contains 7,000 chemicals, of which 69 are known carcinogens. The scientific
20 findings from the 2006 U.S. Surgeon General's Report, "The Health Consequences of

1 Involuntary Exposure to Tobacco Smoke,” disclosed that there is no safe level or amount of
2 exposure to SHS; even small amounts can be harmful, especially to the cardiovascular and
3 respiratory systems. SHS can lead to heart disease and lung cancer, and can also trigger heart
4 attacks. Exposure is associated with asthma, ear infections and Sudden Infant Death Syndrome
5 in children.

6 Smoke-free policies are evidence-based strategies recommended to completely eliminate
7 exposure to SHS. According to the American Society of Heating, Refrigerating, and Air-
8 Conditioning Engineers, ventilation and other air filtration technologies cannot eliminate all the
9 health risks caused by SHS exposure. The Center for Energy and the Environment, confirms that
10 approximately 65% of the air is shared between units in apartment buildings. In other words, if
11 one person smokes, SHS can potentially affect all other units in the building.

12 The 2014 Hawaii State Legislature enacted a groundbreaking law that prohibits smoking
13 in all public housing across the state, affecting approximately 23,000 residents in Hawaii. The
14 DOH supports this measure that will enable providers of market-rate and affordable housing to
15 provide similar health and safety protections for tenants in other types of multi-unit housing.
16 Hawaii has an above average number of multi-unit dwellers and dwellings as compared to the
17 rest of the nation. By passing this measure, many individuals in Hawaii will be given a greater
18 opportunity to choose a home without the threat of being exposed to the hazards of SHS.

19 Thank you for the opportunity to testify.



To: The Honorable Della Au Belatti, Chair
The Honorable Richard P. Creagan, Vice Chair
Members, House Committee on Health

From: Lyndsey Garcia, Policy & Advocacy Director

Date: March 23, 2015

Hrg: House Committee on Health; Wednesday, March 25, 2015 at 8:30AM in Rm 329

Re: **Support for SB 802, SD2, Relating to Smoking**

Thank you for the opportunity to offer testimony in **support of SB 802, SD2**, which allows condominiums and cooperative housing corporations to adopt rules to prohibit smoking in units, common elements, or limited common elements.

The Coalition for a Tobacco Free Hawai`i (Coalition) is a program of the Hawai`i Public Health Institute working to reduce tobacco use through education, policy and advocacy. Our program consists of over 100 member organizations and 2,000 advocates that work to create a healthy Hawai`i through comprehensive tobacco prevention and control efforts. The Coalition also supports the public through its Smoke-Free Homes Initiative, designed to create smoke-free apartments and condos through voluntary policy adoption.

Secondhand smoke has killed 2.5 million Americans and should be eliminated.

Secondhand smoke is dangerous; the 50th Anniversary U.S. Surgeon General Report released on January 17, 2014 states 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.¹ The International Agency for Research on Cancer and the U.S. Environmental Protection Agency both note that environmental tobacco smoke (or secondhand smoke) is carcinogenic to humans. Secondhand smoke contains 7,000 identifiable chemicals, 69 of which are known or probable carcinogens.

The Coalition receives calls from residents who reside in multi-unit housing and who have asthma and other health issues affected by secondhand smoke exposure. The Coalition supports efforts that will encourage any multi-unit dwelling to go smoke-free. Currently, condominiums usually vote on bylaws to create smoke-free policies which can be a long and costly process. A law allowing condominium boards to adopt smoke-free policies through house rules will give the condominium boards and residents stronger legal support should they be interested in pursuing a smoke-free policy. Through our efforts we have learned that all residents—regardless if they have asthma, COPD or other health issues—are impacted by the hazards of secondhand smoke.

All families deserve to live free of second-hand smoke. The only way to ensure this is to prohibit smoking in units.

¹ U.S. Department of Health and Human Services. (2014). "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.



The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) adopted a position that states, “At present, the only means of effectively eliminating health risks associated with indoor exposure is to ban smoking activity. . . No other engineering approaching, including current and advanced dilution ventilation or air cleaning technologies, have demonstrated or should be relied upon to control health risks from ETS [environmental tobacco smoke] exposure in spaces where smoking occurs.”²

The Coalition supports SB 802, SD2 and respectfully asks the committee to pass the measure.

Thank you for the opportunity to testify on this matter.

Respectfully,

A handwritten signature in black ink that reads "Lyndsey Garcia". The signature is written in a cursive, flowing style.

Lyndsey Garcia
Policy and Advocacy Director

² ASHRAE Position Document on Environmental Tobacco Smoke Reaffirmed by ASHRAE Technology Council, June 25, 2013.



March 23, 2015

VIA WEB TRANSMITTAL & EMAIL

Hearing Date: Wednesday, March 25, 2015

Time: 8:30 a.m.

Place: Conference Room 329

Committee on Health

House of Representatives, the 28th Legislature

Regular Session of 2015

Re: Testimony in Opposition to SB 802

Dear Chair Au Belatti, Vice Chair Creagan and Committee members:

I am the Chair of the Community Associations Legislative Action Committee (“CAI”). CAI opposes the current version of SB 802, and respectfully submits its concerns and proposed amendments to SB 802.

The language used in SB802, e.g. “A corporation may adopt rules to prohibit ...” and “An association may adopt rules that affect ...” is vague and ambiguous as to whether the Board of a co-operative housing corporation or the Board of a condominium association alone has the authority to adopt such rules banning smoking not only in the common elements, limited common elements but also in individual dwelling units, without seeking approval from members of the association or co-op.

HRS § 328J-3 prohibits smoking in enclosed or partially enclosed places open to the public, including but not limited to **lobbies, hallways, and other common areas in apartment buildings, condominiums**, retirement facilities, nursing homes, **multifamily dwellings, and other multiple-unit residential facilities**, elevators, hotel

and motel lobbies, meeting rooms and banquet facilities. HRS § 328J-7 specifically exempts private residences from the provisions of HRS § 328J-3.

Thus, under existing law, if a condominium (“condo”) association or cooperative housing corporation (“co-op”) wants to prohibit smoking inside individual units, the Board of Directors is required to seek ownership approval (at least 67% for condominium and at least two thirds for cooperative housing corporation) from other members of such condo association or co-op to amend the Bylaws to that effect.

CAI takes the position that the status quo should not be changed. Whether a condo or co-op building should be smoking free should be determined via the democratic process by all unit owners of the Association or lessors/stock holders of the co-op.

1. It is fair to have all unit owners, including smokers who already made the investment in their apartments, participate in the process of determining whether their building should be smoking free;
2. Allowing the Board alone to ban smoking in individual dwelling units may make it difficult for unit owners or tenants who smoke to find alternative affordable housing;
3. We anticipate allowing the Board alone to have the power to ban smoking inside each unit and enforcement of such a smoking ban would lead to more disputes among neighbors or between the unit owners or tenants and the Association or its Board.

The current version of the bill does not even provide a grandfathering option or grace period for the homeowners who are smokers. To allow several board directors (i.e., a majority of a quorum of the board, which could be as few as two or three persons), to create rules to dictate what other unit owners (hundreds of or even thousands of people for large projects) cannot do inside their own privately owned units is unreasonable and imprudent. This will not only take away their certain rights for full use and enjoyment of their personal residence but may also negatively impact the marketability of their units and property values.

It is likely that smoker-homeowners will make efforts to run for Board directors and try to change the project rules following a smoking ban adopted by a certain board alone. The project rules on smoking will then change from year to year depending on

who wins the Board election. Based on past industry experience and many attorneys and property managers can confirm this point, disgruntled owners' claims and Board election related disputes make up a large portion of litigation against the condominium associations and its Board.

CAI agrees that second hand smoking is harmful and preventing exposure to second hand smoking is a meaningful legislative purpose. However, the current version of SB802 brings more problems than it attempts to solve. CAI LAC members have met with representatives of Hawaii State Department of Health, Hawaii Public Health Institute and American Cancer Society and understood their perspective on this issue; nonetheless CAI LAC's position focuses on what is in the best interest of the majority of community association members.

We note that most of the disputes on second hand smoking centered on smoking on lanais, because lanai is a gray area under existing law, as it may either be a limited common element or a part of the individual unit under the declaration of a condominium property regime. CAI respectfully request the Committee consider the following proposed amendments to SB802, which would allow the Board of Directors of a condo association or co-op to prohibit smoking on lanais of individual units after obtaining over a majority of homeowners' or shareholders' approval.

The following is LAC's proposed amendment to SB802, with deletions marked by **red bold strikethrough**, additions marked by **red bold italics**.

SECTION 1. Chapter 421I, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§421I- Adoption of rules; prohibition of smoking permitted. (a) ***The Board of Directors of a A*** corporation may adopt rules to prohibit tenant shareholders, guests, and all other persons from smoking, including but not limited to electronic cigarettes, in ~~dwelling units~~, common elements, or limited common elements of the corporation. ***The Board of***

Directors of a corporation may also adopt rules to prohibit tenant shareholders, guests, and all other persons from smoking on lanais of individual dwelling units after obtaining at least a majority of shareholders' approval by vote or written consent.

(b) For purposes of this section, "electronic smoking device" means any electronic product that can be used to aerosolize and deliver nicotine or other substances to the person inhaling from the device including but not limited to an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, hookah pipe, or hookah pen, and any cartridge or other component of the device or related product, whether or not sold separately.

SECTION 2. Section 514B-105, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) [~~Unless otherwise permitted by the declaration, bylaws, or this chapter, an~~] **The Board of Directors of an An** association may adopt rules and regulations that affect the use of or behavior in units that may be used for residential purposes only to:

- (1) Prevent any use of a unit [~~which~~] that violates the declaration or bylaws;
- (2) Regulate any behavior in or occupancy of a unit [~~which~~] that violates the declaration or bylaws or

unreasonably interferes with the use and enjoyment of other units or the common elements by other unit owners; [~~or~~]

- (3) Prohibit smoking, including but not limited to electronic cigarettes, by an owner, resident, or guest in all ~~units,~~ common elements~~,~~ or limited common elements as defined in section 514B-3 and lanais of individual units, provided that at least a majority of unit owners shall first approve the smoking ban on lanais; or

- ~~(3)~~ (4) Restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders who regularly lend money secured by first mortgages on units in condominiums or regularly purchase those mortgages.

Otherwise, the association may not regulate any use of or behavior in units by means of the rules [~~and regulations~~]."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2050.

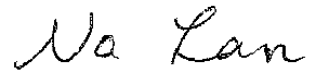
CAI represents many thousands of condominium owners and cooperative housing corporation members in Hawaii, and respectfully submits its position on SB802 for your consideration.

House Committee on Health

March 23, 2015

Page 6

Sincerely yours,

A handwritten signature in cursive script that reads "Na Lan".

Na Lan, Chair of CAI LAC Hawaii

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 24, 2015 11:06 AM
To: HLTtestimony
Cc: mz9995@hotmail.com
Subject: Submitted testimony for SB802 on Mar 25, 2015 08:30AM

SB802

Submitted on: 3/24/2015

Testimony for HLT on Mar 25, 2015 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Zehner	Hawaii Smokers Alliance	Oppose	Yes

Comments: This bill sets a scary precedence in condo law. It denies proper direct democracy to owners. It can force owners to evict tenants for smoking without compensation for money lost while the unit sits empty. In addition, it promotes condo boards to consider a gross violation of a person's right to privacy and for the quiet enjoyment of their home.

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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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 22, 2015 12:18 PM
To: HLTtestimony
Cc: kalelekai002@hawaii.rr.com
Subject: Submitted testimony for SB802 on Mar 25, 2015 08:30AM

SB802

Submitted on: 3/22/2015

Testimony for HLT on Mar 25, 2015 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Takumi	Individual	Oppose	No

Comments: I am opposed to the bill as currently written. While I support having the association determine if they wish to ban smoking in their association, I am unsure if this bill requires owner's approval or just the board's approval. If just the board, this may lead to dissension and confusion in the community if only a small number of owners can decide this issue. If a board consists of 9 members and 5 show up for a meeting, 3 of the 5 could vote to ban or allow smoking in the association. This issue could change anytime a board membership changes every annual meeting. This should also require a "grandfather" clause since it may cause a financial hardship if an owner is required to move if they still want to smoke in the association. I also don't understand why this was not included in 421J for planned communities since many are multi-family dwellings.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 23, 2015 1:20 PM
To: HLTtestimony
Cc: joanipt@hawaii.rr.com
Subject: Submitted testimony for SB802 on Mar 25, 2015 08:30AM

SB802

Submitted on: 3/23/2015

Testimony for HLT on Mar 25, 2015 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Joanne Taylor	Individual	Oppose	No

Comments: I oppose SB 802, SD2 as written. I am a member of an association with 575+ units and in excess of 2000 residents, over 1000 voters. In addition I volunteered and served on the Board of Directors for over 25 years. I am very aware of some proposed ideas Boards suggest, but are restricted by covenant or statute from implementing. Community Associations were intended to be self governing with each association having their own restrictive covenants. Hawaii Revised Statutes does provide guidance; however, to overrule the individual association restrictions and procedures and to grant the majority of a Board of Directors to impose restrictions on all association members that has any impact on life style within their individual units defies the democratic process. Decisions with this degree of impact on the entire membership need to be made by the majority of the association members. Thank you for letting me testify. Joanne Taylor

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From: Alika Spahn Naihe <vishus808@hawaii.rr.com>
Sent: Monday, March 23, 2015 11:22 PM
To: HLTtestimony
Subject: Oppose SB802

To: Rep. Della Au Belatti, Chair, Rep. Richard P. Creagan, Vice Chair, and members of the committee

Re: Opposition to SB802

Hearing: HLT, Wednesday, March 25, 2015 8:30 am

I oppose bill SB802. The ability to control what a person does in their own home is a power that should never be granted frivolously.

The inclusion of e-cigarettes and vapor products in this bill is unjustified and inappropriate. E-cigarettes are scientifically proven to produce no significant secondhand exposures to toxins in indoor environments, so there is no validity to the claim that vapor from inside a dwelling could present such an issue for adjacent common areas or dwellings that a person's activities in their own home must be curtailed. There is no more risk to adjacent areas than from air fresheners or cooking.

E-cigarettes are used largely to avoid smoking, so banning their use in homes is actually bad for public health.

Finally, this bill would be largely unenforceable, as vapor dissipates quickly and leaves no residue.

Thank you for your time and consideration.

Alika Spahn Naihe
Kalihi, Honolulu, HI

creagan3 - Karina

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 23, 2015 6:50 PM
To: HLTtestimony
Cc: 808aprilpacheco@gmail.com
Subject: *Submitted testimony for SB802 on Mar 25, 2015 08:30AM*

SB802

Submitted on: 3/23/2015

Testimony for HLT on Mar 25, 2015 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
April Pacheco	Individual	Oppose	No

Comments:

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creagan3 - Karina

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 23, 2015 9:50 PM
To: HLTtestimony
Cc: bigcoopatroopa@gmail.com
Subject: *Submitted testimony for SB802 on Mar 25, 2015 08:30AM*

SB802

Submitted on: 3/23/2015

Testimony for HLT on Mar 25, 2015 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Cooper	Individual	Oppose	No

Comments:

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creagan3 - Karina

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 23, 2015 8:30 PM
To: HLTtestimony
Cc: devin@pcgamerzhawaii.com
Subject: Submitted testimony for SB802 on Mar 25, 2015 08:30AM

SB802

Submitted on: 3/23/2015

Testimony for HLT on Mar 25, 2015 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Devin Wolery	Individual	Oppose	Yes

Comments: They should have policy's and bylaws for this. Not require actual laws.

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GORDON M. ARAKAKI

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94-1176 Polinahe Place
Waipahu, Hawaii 96797
Cell: (808) 542-1542
E-mail: gordonarakaki@hawaiiantel.net

March 23, 2015

Hearing Date: Wednesday, March 25, 2015
Time: 8:30 a.m.
Place: Conference Room 329

The Honorable Della Au Belatti, Chair
The Honorable Richard P. Creagan, Vice Chair
House Committee on Health

Re: Testimony in Opposition to S.B. No. 802, SD2 – Relating to Smoking

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

I am Gordon M. Arakaki, testifying as an individual in opposition to SB 802, SD2, which would allow condominiums and cooperative housing corporations to prohibit smoking (including electronic smoking devices) in privately owned units by board-adopted rule instead of a bylaws amendment adopted by a two-thirds majority of unit owners.¹

By way of background, from December 2000 through June 2004, I served as the Hawaii Real Estate Commission's Condominium Law Recodification Project Attorney. During my time as the Recodification Project Attorney, I worked with lawmakers, the Commission, a blue ribbon advisory committee, and stakeholders throughout the State to “update, clarify, organize, deregulate, and provide for consistency and ease of use” of Hawaii's then 44+ year old condominium law. I am the author of the Commission's final report to the Legislature on the recodification of Hawaii's condominium property regimes law, which the Legislature stated should be used as an aid in understanding and interpreting the new law (Hawaii Revised Statutes Chapter 514B). For my work with the condominium community in “helping craft and advance the next generation of the Hawaii Condominium Property Act,” I received the Community Associations Institute—Hawaii Chapter's 2004 “Public Advocate Award.” Since that time (with a two year break spent serving as Chief of Staff/Committee Clerk of the Senate Ways and Means Committee), I have worked as a private attorney specializing in, among a few other things, condominium law.

Finally, in case anyone is wondering, I have never smoked tobacco, e-cigarettes, or any electronic smoking device; not even once.

¹ Although SB 802, SD2 implies otherwise, boards already have the authority to ban smoking in common areas by rule. [See, HRS §514B-104(a)(6)]

Although preventing exposure to second hand smoke is a laudable goal, I oppose SB 802, SD2 because:

1. It is wrong to allow a tiny fraction of owners (i.e., a majority of a quorum of a board) to dictate to hundreds (perhaps more than a thousand) of other owners what they can and cannot do in their privately owned units;
2. Single-family detached unit homes can be held in the condominium (or co-op) form of ownership, and it is wrong to allow a tiny fraction of owners to dictate to hundreds (perhaps thousands) of other owners what they can and cannot do in their privately owned single-family detached unit homes; and
3. Treating electronic smoking as the equivalent of tobacco smoking is questionable at best.

Analysis

- 1. It is wrong to allow a tiny fraction of owners to dictate to hundreds (perhaps thousands) of other owners what they can and cannot do in their privately owned units.**

Pursuant to Hawaii Revised Statutes (“HRS”) §514B-105 (Association; limitations on powers), boards currently do not have the authority to ban smoking (by rule) in residential units.² For good reason, a bylaws amendment is necessary to ban smoking in residential units.

Rules may be adopted by a majority of a quorum of a condominium association board.³ This can be as few as two or three board members, even for very large condominium projects.

Consider a 500 unit condominium project with nine board members. A quorum can consist of five members, and a majority of a quorum can be as few as three members. If this bill were to become law, as few as three board members could dictate to 500 to 1,000 other owners (if there is an average of two owners per unit) what they can and cannot do in their privately owned units.

Nationally, there are concerns over boards unreasonably regulating associations by rules and associations attempting to unreasonably restrict uses and behaviors in people’s homes. Such

² HRS §514B-105 reads in pertinent part as follows:

- (b) Unless otherwise permitted by the declaration, bylaws, or this chapter, an association may adopt rules and regulations that affect the use of or behavior in units that may be used for residential purposes only to:
 - (2) Regulate any behavior in or occupancy of a unit which violates the declaration or bylaws or unreasonably interferes with the use and enjoyment of other units or the common elements by other unit owners;

Otherwise, the association may not regulate any use of or behavior in units by means of the rules and regulations.

³ Depending on the number of units in a condominium, a board may consist of three to nine members. Condominium projects with one hundred or more units must have nine board members (with certain exceptions).

concerns prompted the National Conference of Commissioners on Uniform State Laws to add a new section explicitly dealing with association rules (§3-120) to the Uniform Common Interest Ownership Act (“UCIOA”), as well as other limitations on associations regulating uses of or behavior in units, as part of its 2008 amendments to UCIOA.⁴

For example, UCIOA (2008) §2-117(f) imposes an **80% declaration amendment approval requirement**, among other things, to “prohibit or materially restrict” any permitted uses of or behavior in a unit.⁵ This requirement is not part of Hawaii’s condominium, cooperative, or planned community association laws, but it clearly reflects current concerns over associations unreasonably restricting uses and behaviors in people’s homes.

Finally, it makes sense to adopt smoking restrictions through bylaws amendments because a bylaws amendment is recorded in the Bureau of Conveyances or Land Court and is a covenant running with the land, putting anyone who purchases a condominium unit on notice of the restrictions contained in the condominium’s bylaws. (*See, Taniguchi v. King Manor*, 155 P.3d 1138 (2007).) Rules are subordinate to a condominium association’s declaration and bylaws, and are not recorded in the Bureau of Conveyances or Land Court.

2. Single-family detached unit homes can be held in the condominium (or co-op) form of ownership, and it is wrong to allow a tiny fraction of owners to dictate to hundreds (perhaps thousands) of other owners what they can and cannot do in their privately owned single-family detached unit homes.

Condominiums can take many physical forms – from high-rise developments to townhouses to single-family detached units.⁶ “Condominiums” are simply a form of real property ownership where each individual member holds title to a specific unit and an undivided interest as a “tenant-in-common” with other unit owners in common elements such as the exterior of buildings, structural components, grounds, amenities, and internal roads and infrastructure.⁷

⁴ UCIOA (1994) §3-102(c) is the source of HRS §514B-105(b). [*See, “Final Report to the Legislature, Recodification of Chapter 514A, Hawaii Revised Statutes (Condominium Property Regimes) In Response to Act 213, Section 4 (SLH 2000),” dated December 31, 2003, at Appendix G, Part V, Page 7.*] UCIOA covers condominiums, cooperatives, and planned communities.

⁵ UCIOA (2008) §2-117(f) reads as follows:

- (f) An amendment to the declaration may prohibit or materially restrict the permitted uses of or behavior in a unit or the number or other qualifications of persons who may occupy units only by vote or agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated, unless the declaration specifies that a larger percentage of unit owners must vote or agree to that amendment or that such an amendment may be approved by unit owners of units having at least 80 percent of the votes of a specified group of units that would be affected by the amendment. An amendment approved under this subsection must provide reasonable protection for a use or occupancy permitted at the time the amendment was adopted.

⁶ The Federal Housing Administration (“FHA”) defines “single family detached dwellings encumbered by a declaration of condominium covenants or condominium form of ownership” as “Site Condominiums.”

⁷ HRS §514B-3 defines a “condominium” as “real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.”

SB 802, SD2 would apply to all condominium projects, including single-family detached unit condominium projects that are physically no different than other single-family detached unit developments, with homes separated from each other by yards, walls, fences, and more.

The Heights at Wailuna (Pearl City, Oahu) and 49 Black Sand Beach (Mauna Lani detached unit luxury residences on the Big Island) are two examples of single-family detached unit condominium projects. Allowing a tiny fraction of owners (i.e., a majority of a quorum of a board) to prohibit smoking for all owners in such single-family detached residences would be unreasonable and wrong.

3. Treating electronic smoking as the equivalent of tobacco smoking is questionable at best.

Always remember that the legal basis for government laws banning tobacco smoking relate to the health and safety of people around the smoker who are subjected to second-hand smoke. The same cannot be said of electronic smoking at this time.

Risk of second-hand vapors from electronic smoking devices has not been evaluated by the Food & Drug Administration, and electronic smoking appears to be safer for smokers than tobacco. Therefore, using the risk of second-hand vapors as a reason for banning electronic smoking in privately owned residential units (or even common areas) does not make sense. Indeed, second-hand smoke from barbeque grilling is more dangerous,⁸ and perfume and cologne can be just as offensive as vapors from electronic smoking devices.

For all of the reasons discussed above, I respectfully request that SB 802, SD2 be held in committee.

Sincerely,

Gordon M. Arakaki

⁸ A 2003 French study found that a two-hour barbeque can release the same level of cancer-causing dioxins as up to 220,000 cigarettes.

creagan3 - Karina

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 24, 2015 7:18 AM
To: HLTtestimony
Cc: kathyk323@hotmail.com
Subject: *Submitted testimony for SB802 on Mar 25, 2015 08:30AM*

SB802

Submitted on: 3/24/2015

Testimony for HLT on Mar 25, 2015 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Kathy Kim	Individual	Oppose	No

Comments:

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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creagan3 - Karina

From: P Kuromoto <pk.hitest@spamgourmet.com>
Sent: Tuesday, March 24, 2015 12:01 AM
To: HLTtestimony
Subject: Oppose SB802

To: Rep. Della Au Belatti, Chair, Rep. Richard P. Creagan, Vice Chair, and members of the committee

Re: Opposition to SB802

Hearing: HLT, Wednesday, March 25, 2015 8:30 am

I oppose bill SB802. The ability to control what a person does in their own home is a power that should never be granted frivolously.

The inclusion of e-cigarettes and vapor products in this bill is unjustified and inappropriate. E-cigarettes are scientifically proven to produce no significant secondhand exposures to toxins in indoor environments, so there is no validity to the claim that vapor from inside a dwelling could present such an issue for adjacent common areas or dwellings that a person's activities in their own home must be curtailed. There is no more risk to adjacent areas than from air fresheners or cooking.

E-cigarettes are used largely to avoid smoking, so banning their use in homes is actually bad for public health.

Finally, this bill would be largely unenforceable, as vapor dissipates quickly and leaves no residue.

Thank you for your time and consideration.

P Kuromoto
Honolulu

From: Nancy Wilson <hawaiiwilson@yahoo.com>
Sent: Tuesday, March 24, 2015 8:17 AM
To: HLTtestimony
Subject: Oppose SB802

To: Rep. Della Au Belatti, Chair, Rep. Richard P. Creagan, Vice Chair, and members of the committee

Re: Opposition to SB802

Hearing: HLT, Wednesday, March 25, 2015 8:30 am

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Finally, this bill would be largely unenforceable, as vapor dissipates quickly and leaves no residue.

Thank you for your time and consideration.

Nancy Wilson
Waipahu, HI

creagan3 - Karina

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 24, 2015 8:46 AM
To: HLTtestimony
Cc: antonchris10@gmail.com
Subject: *Submitted testimony for SB802 on Mar 25, 2015 08:30AM*

SB802

Submitted on: 3/24/2015

Testimony for HLT on Mar 25, 2015 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Anton	Individual	Oppose	No

Comments:

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creagan3 - Karina

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 24, 2015 9:14 AM
To: HLTtestimony
Cc: konaking@live.com
Subject: Submitted testimony for SB802 on Mar 25, 2015 08:30AM

SB802

Submitted on: 3/24/2015

Testimony for HLT on Mar 25, 2015 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Jeff Stevens	Individual	Oppose	No

Comments: Condo association boards should NOT have so much power over owners like bill 802 wants. I stand strongly opposed to SB802 and others like it.

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creagan3 - Karina

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 24, 2015 10:23 AM
To: HLTtestimony
Cc: anthony_orozco@yahoo.com
Subject: *Submitted testimony for SB802 on Mar 25, 2015 08:30AM*

SB802

Submitted on: 3/24/2015

Testimony for HLT on Mar 25, 2015 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Anthony Orozco	Individual	Oppose	No

Comments:

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creagan1 - Dannah

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 24, 2015 2:26 PM
To: HLTtestimony
Cc: chevyriderhhh@gmail.com
Subject: *Submitted testimony for SB802 on Mar 25, 2015 08:30AM*

SB802

Submitted on: 3/24/2015

Testimony for HLT on Mar 25, 2015 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Wells	Individual	Oppose	No

Comments:

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creagan1 - Dannah

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 24, 2015 1:34 PM
To: HLTtestimony
Cc: mikenakas@hotmail.com
Subject: *Submitted testimony for SB802 on Mar 25, 2015 08:30AM*

SB802

Submitted on: 3/24/2015

Testimony for HLT on Mar 25, 2015 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Michael S. Nakasone	Individual	Oppose	No

Comments:

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creagan1 - Dannah

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 24, 2015 3:41 PM
To: HLTtestimony
Cc: freedom1979hi@gmail.com
Subject: *Submitted testimony for SB802 on Mar 25, 2015 08:30AM*

SB802

Submitted on: 3/24/2015

Testimony for HLT on Mar 25, 2015 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Cindy Nettles	Individual	Oppose	No

Comments:

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creagan3 - Karina

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 24, 2015 4:20 PM
To: HLTtestimony
Cc: awatanabe67@gmail.com
Subject: *Submitted testimony for SB802 on Mar 25, 2015 08:30AM*

SB802

Submitted on: 3/24/2015

Testimony for HLT on Mar 25, 2015 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Watanabe	Individual	Oppose	No

Comments:

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creagan1 - Dannah

From: Brandi Burks <bburks0211@gmail.com>
Sent: Tuesday, March 24, 2015 8:52 PM
To: HLTtestimony
Subject: Oppose SB802

To: Rep. Della Au Belatti, Chair, Rep. Richard P. Creagan, Vice Chair, and members of the committee

Re: Opposition to SB802

Hearing: HLT, Wednesday, March 25, 2015 8:30 am

I oppose bill SB802. The ability to control what a person does in their own home is a power that should never be granted frivolously.

The inclusion of e-cigarettes and vapor products in this bill is unjustified and inappropriate. E-cigarettes are scientifically proven to produce no significant secondhand exposures to toxins in indoor environments, so there is no validity to the claim that vapor from inside a dwelling could present such an issue for adjacent common areas or dwellings that a person's activities in their own home must be curtailed. There is no more risk to adjacent areas than from air fresheners or cooking.

E-cigarettes are used largely to avoid smoking, so banning their use in homes is actually bad for public health.

Finally, this bill would be largely unenforceable, as vapor dissipates quickly and leaves no residue.

Thank you for your time and consideration.

Brandi Burks
Pearl City HI

creagan1 - Dannah

From: Chris <chrisquihano@yahoo.com>
Sent: Tuesday, March 24, 2015 8:55 PM
To: HLTtestimony
Subject: Oppose SB802

To: Rep. Della Au Belatti, Chair, Rep. Richard P. Creagan, Vice Chair, and members of the committee

Re: Opposition to SB802

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Thank you for your time and consideration.

Chris

creagan1 - Dannah

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 25, 2015 7:54 AM
To: HLTtestimony
Cc: calbright138@gmail.com
Subject: Submitted testimony for SB802 on Mar 25, 2015 08:30AM

SB802

Submitted on: 3/25/2015

Testimony for HLT on Mar 25, 2015 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Connie Albright	Individual	Support	No

Comments: Please allow condo Boards to decide if smoking is allowed. I have COPD and one person smoking on their lanai can put me in a full attack. I do not smoke, I never smoked. We have owned our condo for 12 years Thank you Connie and Verne Albright

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creagan1 - Dannah

From: Danielle <danielleleong73@yahoo.com>
Sent: Tuesday, March 24, 2015 8:55 PM
To: HLTtestimony
Subject: Oppose SB802

To: Rep. Della Au Belatti, Chair, Rep. Richard P. Creagan, Vice Chair, and members of the committee

Re: Opposition to SB802

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Finally, this bill would be largely unenforceable, as vapor dissipates quickly and leaves no residue.

Thank you for your time and consideration.

Danielle

PLEASE ALLOW CONDO BOARDS TO BAN SMOKING BY HOUSE RULES

ALOHA, I am Jon Givens, President and Board member of the condo association Wavecrest AOA located on the friendly isle of Molokai. We need SB 802 to pass to allow condo boards like ours to ban smoking on lanais and in other areas to protect the health of our owners and renters. Smoking on lanais and in other areas where second hand smoke can enter other people's lanais, living rooms, and other parts of their homes creates a serious public health risk. Our island has limited health care facilities and our condo project is occupied mainly by people 60 years old and over; however there are a few families with young children who are also currently being exposed to second hand cigarette smoke from smokers in other units.

We have had many on going complaints about smoking. 2 weeks ago we had an owner file a written complaint at our association, that she was breathing second hand cigarette smoke on her lanai (enclosed on all sides but one) and inside her unit. She has asthma and has health problems from second hand smoke. Yesterday, March 24, 2015, our condo association received a written complaint from a different unit from a renter who has heart issues and asthma and she has a chain smoker in the next unit. She spoke with the chain smokers and they refuse to stop sending cigarette smoke into her unit. We presently have owners and renters demanding our aoao regulate cigarette smoke on lanais and other areas.

On March 18, 2015 Wavecrest held its annual homeowner meeting, we need 50 % of owners to attend by proxy or in person. The meeting was delayed by an hour while we tried to get enough proxies to even hold the meeting. In order to amend our bylaws to ban smoking we need 67% of owners to agree, which is virtually impossible to achieve on any subject. This is not because we cant agree, but between foreclosures, and many out of state and out of country owners, we just do not get that level of participation in any condo business. We desperately need SB 802 to allow us to protect our elderly, children, and other occupants from cancer causing cigarette smoke via a house rule as amending the bylaws is not a realistic option.

Wavecrest consists of 3 buildings oriented to take advantage of the trade winds. The result is a single smoker can send from their lanai, second-hand smoke into dozens of other units. Personally I have 30 units upwind of my lanai and unit. I have been disturbed on many occasions by the offensive smell of cigarettes, pipes and cigars from people on their lanais, whose smoke drifts into my lanai and into my living room. However, it is not a smell issue. The real issue is cigarette smoke is a public health danger. The State of Hawaii, County of Maui, and the United States Surgeon General (our highest authority on public health) have all recognized second hand cigarette smoke is a public health risk and it kills over 50,000 people per year in America alone. The consequence of second hand smoke is not just an obnoxious smell, it is potential death.

Myself and other owners should not have to live in fear of getting cancer from sitting on our couch in our living room. Cigarette smoke contains over 5 dozen cancer causing substances. This means cigarette smoke is actually a trespass onto my private property as someone is sending physical particles and chemicals into my living room. Condo associations should be able to regulate public health risks and trespass by house rules.

In addition to the public health risk, there is also a liability concern. As an attorney, I know that recently in California a condo association was successfully sued by a non-smoker who was exposed to second hand cigarette smoke in their unit from another unit. I am concerned that without the ability to pass house rules on smoking concerning lanais and other areas, we will be sued and our aoao would have legal concerns and expenses. Please let us protect all owners financial resources by passing rules to address smoking.

Regards
Jon Givens
President
Wavecrest AOAO

creagan1 - Dannah

From: Naomi Leong <niburks0705@gmail.com>
Sent: Tuesday, March 24, 2015 8:51 PM
To: HLTtestimony
Subject: Oppose SB802

To: Rep. Della Au Belatti, Chair, Rep. Richard P. Creagan, Vice Chair, and members of the committee

Re: Opposition to SB802

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Thank you for your time and consideration.

Naomi Leong
Pearl City, HI

creagan3 - Karina

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 24, 2015 4:11 PM
To: HLTtestimony
Cc: steve@myplaceinparadise.com
Subject: *Submitted testimony for SB802 on Mar 25, 2015 08:30AM*

SB802

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Submitted By	Organization	Testifier Position	Present at Hearing
Steve Miller	Individual	Oppose	No

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