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## A BILL FOR AN ACT

RELATING TO REAL PROPERTY.

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

1           SECTION 1. The legislature finds that exposure to smoke,  
2 whether direct or secondhand, causes adverse health outcomes  
3 such as asthma and other respiratory illnesses, cardiovascular  
4 disease, and cancer. The Surgeon General of the United States  
5 has found that there is no safe level or amount of exposure to  
6 secondhand smoke. In 2006, Hawaii enacted Act 295, Session Laws  
7 of Hawaii 2006, a smoke-free workplace and public places law to  
8 protect the public from involuntary exposure to smoke in  
9 enclosed and partially-enclosed areas. Further, Act 91, Session  
10 Laws of Hawaii, 2014, assisted in providing secondhand smoke-  
11 free environments for families by prohibiting smoking in and  
12 around public housing projects, state low-income housing  
13 projects, and elder or elderly households. These laws, however,  
14 exclude private residences.

15           The legislature further finds that residents living in  
16 multiple dwelling units such as apartments and condominiums  
17 commonly experience tobacco smoke drifting into their units from



1 neighbors who smoke. Often, the stale odor of tobacco smoke  
2 lingers in and near apartments of people who smoke indoors, even  
3 after they have vacated the apartment. This is an indicator of  
4 "thirdhand smoke", which is the residual contamination that is  
5 left behind from cigarettes, cigars, and other tobacco products.  
6 This residue builds up on surfaces and furnishings and lingers  
7 in rooms long after smoking stops. A non-smoker can be exposed  
8 to thirdhand smoke from entering an elevator or a room where  
9 someone has smoked. Among the substances in thirdhand smoke are  
10 hydrogen cyanide, used in chemical weapons; butane, used in  
11 lighter fluid; toluene, found in paint thinners; arsenic lead;  
12 and carbon monoxide.

13       The legislature further finds that a 2010 study  
14 demonstrated that thirdhand smoke remains after smokers have  
15 vacated their homes and thirdhand smoke resists normal cleaning,  
16 even when new carpeting and paint are applied. Thirdhand smoke  
17 cannot be eliminated by airing out rooms, opening windows, using  
18 fans or air conditioners, or confining smoking to only certain  
19 areas of a home.

20       The legislature finds that, as researchers continue to  
21 explore the potential dangers of thirdhand smoke, new smoke-free



1 policies have benefited prospective residents who are seeking  
2 protection from smoke. Several jurisdictions have required  
3 landlords to disclose their smoking policies, such as Maine and  
4 Oregon; as well as the cities of San Francisco and Oakland,  
5 California; Duluth, Minnesota; and Buffalo, New York. Some  
6 courts have found that if a dangerous condition exists on a  
7 property that a prospective resident may not be aware of or  
8 notice upon a casual inspection, then the property owner has a  
9 responsibility to warn the resident of the danger. Just as  
10 property owners are required to warn prospective renters or  
11 homeowners on the presence of lead-based paint or radon,  
12 asbestos, and even bed bugs, these jurisdictions now require  
13 owners to notify prospective residents about a property's  
14 smoking policy.

15 Buyers and tenants of residential real properties need to  
16 be notified in advance whether residents and guests may be  
17 exposed to secondhand and thirdhand smoke. Advance notices also  
18 benefit sellers and landlords by reducing buyer and tenant  
19 complaints.

20 The purpose of this Act is to promote smoke-free  
21 environments in the community by protecting new residents and



1 their visitors in private homes from the potential dangers of  
2 secondhand and thirdhand smoke. Specifically, this Act requires  
3 a seller or landlord of a residential unit or apartment to  
4 provide:

- 5 (1) A smoking history disclosure that states whether  
6 smoking occurred within the unit or apartment and  
7 other parts of the property; and
- 8 (2) A smoking policy disclosure if the unit or apartment  
9 is a residential condominium unit, cooperative  
10 apartment, or rental dwelling unit.

11 The legislature does not intend for this Act to require  
12 cooperative housing corporations, condominium projects, and  
13 landlords to adopt policies that prohibit smoking.

14 SECTION 2. Chapter 508D, Hawaii Revised Statutes, is  
15 amended by adding a new section to be appropriately designated  
16 and to read as follows:

17 "§508D- Disclosure of smoking history; smoking policy.

18 (a) A disclosure statement relating to a dwelling unit,  
19 residential condominium unit, or cooperative apartment shall  
20 include a smoking history disclosure that notifies buyers and  
21 residents or potential buyers and residents whether smoking



1 occurred within the unit or apartment and any other area of the  
2 property on which the unit or apartment is situated.

3 (b) A disclosure statement relating to a residential  
4 condominium unit or cooperative apartment shall include a  
5 smoking policy disclosure that notifies residents or potential  
6 residents whether smoking is prohibited or allowed in the unit  
7 or apartment and any other area of the premises; provided that  
8 if the condominium project or cooperative housing corporation  
9 allows smoking in limited areas on the premises, the disclosure  
10 shall identify the areas on the premises where smoking is  
11 allowed.

12 (c) For the purposes of this section:

13 "Premises" means a condominium unit or cooperative  
14 apartment, and any appurtenances thereto, grounds, common areas,  
15 and facilities held out for the use of owners and residents of  
16 units or apartments generally and any other area or facility of  
17 the condominium project or cooperative housing corporation whose  
18 use is promised to those owners and residents.

19 "Smoking" shall have the same meaning as provided in  
20 section 328J-1."



1 SECTION 3. Section 521-43, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§521-43 Rental agreement, disclosure. (a) A landlord or  
4 any person authorized to enter into a rental agreement on the  
5 landlord's behalf shall disclose to the tenant in writing at or  
6 before the commencement of the tenancy the name and address of:

7 (1) Each person authorized to manage the premises; and

8 (2) Each person who is an owner of the premises or who is  
9 authorized to act for or on behalf of the owner for  
10 the purpose of service of process and receiving and  
11 receipting for rents, notices, and demands.

12 The information required to be furnished shall be kept  
13 current and shall be enforceable against any successor landlord,  
14 owner, or manager.

15 (b) A person who fails to comply with subsection (a)  
16 becomes an agent of each person who is a landlord for:

17 (1) Service of process and receiving and receipting for  
18 rents, notices, and demands; and

19 (2) Performing the obligations of the landlord under this  
20 chapter and under the rental agreement and expending



1           or making available for the purpose all rent collected  
2           from the premises.

3           (c) Any owner or landlord not dealing directly with the  
4 tenant shall be responsible for compliance with this section by  
5 an owner or landlord dealing directly with the tenant and shall  
6 be stopped from any objection to a failure to serve process upon  
7 an owner or landlord in any proceeding arising under this  
8 chapter when such failure is due to failure to comply with this  
9 section. The owner or landlord who deals directly with the  
10 tenant and fails to comply with this section shall be deemed an  
11 agent of every other landlord under the rental agreement for  
12 performing the obligations of the landlord under this chapter  
13 and under the rental agreement.

14           (d) In the case of a written rental agreement, the  
15 landlord shall furnish a copy of the lease or rental agreement  
16 to the tenant.

17           (e) The landlord shall furnish to the tenant a written  
18 receipt for rents paid at the time of payment. Canceled checks  
19 shall also constitute and fulfill the requirement of a written  
20 receipt. If rent is paid by check, the landlord shall furnish a  
21 receipt therefor, provided a receipt is requested by the tenant.



1           (f) Any owner or landlord who resides without the State or  
2 on another island from where the rental unit is located shall  
3 designate on the written rental agreement an agent residing on  
4 the same island where the unit is located to act in the owner's  
5 or landlord's behalf. In the case of an oral rental agreement,  
6 the information shall be supplied to the tenant, on demand, in a  
7 written statement.

8           (g) Subsections (a) and (b) to the contrary  
9 notwithstanding, the information required to be disclosed to a  
10 tenant, instead of being disclosed in the manner described in  
11 subsections (a) and (b), may be disclosed as follows:

12           (1) In each multi-unit single-owner dwelling structure  
13 containing an elevator, a printed or typewritten  
14 notice containing the information required by  
15 subsections (a) and (b) shall be placed and  
16 continuously maintained in every elevator and in one  
17 other conspicuous place;

18           (2) In each multi-unit single-owner dwelling structure not  
19 containing an elevator, a printed or typewritten  
20 notice containing the information required by  
21 subsections (a) and (b) shall be placed and



1 continuously maintained in at least two conspicuous  
2 places;

3 (3) In each multi-unit dwelling structure, a printed or  
4 typewritten notice containing the information required  
5 by subsections (a) and (b) shall be posted within the  
6 unit in a conspicuous place.

7 (h) Landlords shall provide their general excise tax  
8 number to all tenants for the purpose of filing for a low-income  
9 tax credit.

10 (i) The landlord or any person authorized to enter into a  
11 rental agreement on the landlord's behalf shall include in the  
12 rental agreement:

13 (1) A smoking history disclosure that notifies tenants or  
14 potential tenants whether smoking occurred within the  
15 dwelling unit and any other area of the premises; and

16 (2) A smoking policy disclosure that notifies tenants or  
17 potential tenants whether smoking is prohibited or  
18 allowed on the premises; provided that if the landlord  
19 allows smoking in limited areas on the premises, the  
20 disclosure shall identify the areas on the premises  
21 where smoking is allowed.



1        (j) For the purposes of this section, "smoking" shall have  
2 the same meaning as provided in section 328J-1."

3        SECTION 4. New statutory material is underscored.

4        SECTION 5. This Act shall take effect on August 1, 2016,  
5 and shall apply to any applicable agreement, contract, or  
6 mandatory seller disclosure statement entered into or required  
7 by law after September 1, 2016.

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INTRODUCED BY:

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# H.B. NO. 2672

**Report Title:**

Smoking; Real Property Seller Disclosures; Landlord Disclosures

**Description:**

Requires the seller or landlord of a residential unit or apartment to disclose (1) whether smoking occurred within the unit or apartment and other parts of the property; and (2) the applicable smoking policy if the unit or apartment is a residential condominium unit, cooperative apartment, or rental dwelling unit.

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