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## A BILL FOR AN ACT

RELATING TO THE CLEAN AIR BILL OF RIGHTS.

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

1       SECTION 1. The legislature finds that air pollution from  
2 secondhand smoke, fugitive dust, and chemical overspray is  
3 harmful to the overall health and quality of life for residents  
4 of Hawaii.

5       The legislature further recognizes that air pollution  
6 remains one of the key environmental issues affecting Hawaii and  
7 the nation. According to an April 22, 2021 article by CNBC,  
8 "Although it has seen incredible improvement since the 1970s  
9 thanks to the Environmental Protection Agency and the Clean Air  
10 Act, the number of Americans exposed to poor air quality has  
11 consistently stayed over 125 million since 2013." Americans  
12 living with polluted air place their health and lives at risk,  
13 with poor air quality costing the U.S. roughly \$617 billion  
14 annually. Additionally, the Environmental Protection Agency  
15 estimates the U.S. spends about \$65 billion every year on clean  
16 air.



1       The legislature further finds that article XI, section 9,  
2   of the Hawaii State Constitution states, "Each person has the  
3   right to a clean and healthful environment, as defined by laws  
4   relating to environmental quality, including control of  
5   pollution and conservation, protection and enhancement of  
6   natural resources. Any person may enforce this right against  
7   any party, public or private, through appropriate legal  
8   proceedings. . ."

9       The purpose of this Act is to clarify that involuntary  
10   exposure to secondhand smoke, fugitive dust, and chemical  
11   overspray is a violation of the constitutional right to a clean  
12   and healthy environment.

13       SECTION 2. The Hawaii Revised Statutes is amended by  
14   adding a new chapter to be appropriately designated and to read  
15   as follows:

16                               **"CHAPTER**

17                               **CLEAN AIR BILL OF RIGHTS**

18       §   -1   **Definitions.** As used in this chapter, unless the  
19   context otherwise requires:

20       "Cannabis" has the same meaning as in section 329-121.



1 "Electronic smoking device" has the same meaning as in  
2 section 28-162.

3 "Fugitive dust" has the same meaning as in section 342B-1.

4 "Pesticide" has the same meaning as in section 149A-2.

5 "Pesticide drift" means the movement of pesticide dust or  
6 droplets through air at the time it is applied or soon after  
7 that spreads the pesticide beyond the intended area of  
8 application.

9 "Secondhand smoke" means smoke inhaled involuntarily from  
10 tobacco, electronic smoking devices, or cannabis being smoked by  
11 others.

12 § -2 **Purpose.** The purpose of this chapter is to protect  
13 and promote a clean and healthy environment for every person in  
14 the State by recognizing their right to breathe clean air.

15 § -3 **Clean air bill of rights; findings.** The  
16 legislature finds that every person has a right to be protected  
17 from secondhand smoke, pesticide drift, aerosolized chemicals,  
18 and fugitive dust and to breathe clean air that will have no  
19 negative impact on their health or well-being.

20 It is well documented that inhaling secondhand smoke, in  
21 the traditional sense of smoke generated by tobacco use, causes



1 many detrimental health effects. The Centers for Disease  
2 Control and Prevention states that secondhand smoke exposure  
3 contributes to approximately forty-one thousand deaths among  
4 nonsmoking adults and four hundred deaths in infants each year,  
5 and that children who are exposed to secondhand smoke are at  
6 increased risk for sudden infant death syndrome, acute  
7 respiratory infections, middle ear disease, more severe asthma,  
8 respiratory symptoms, and slowed lung growth. The Centers for  
9 Disease Control and Prevention also advises that aerosol from e-  
10 cigarettes can contain cancer-causing chemicals and heavy metals  
11 like nickel, tin, and lead, among other things.

12 The legislature also finds that when pesticides drift, they  
13 could be inhaled or land on skin or in the eyes of a person who  
14 is not the applicator or in the area of their intended use.  
15 Whether inhalation or exposure due to pesticide drift has the  
16 potential to cause harm depends on the type of pesticide and how  
17 much of it the person is exposed to.

18 The legislature recognizes the rights set forth in article  
19 XI, section 9, of the Hawaii State Constitution, which provides,  
20 "Each person has the right to a clean and healthful environment,  
21 as defined by laws relating to environmental quality, including



1 control of pollution and conservation, protection and  
2 enhancement of natural resources. Any person may enforce this  
3 right against any party, public or private, through appropriate  
4 legal proceedings, subject to reasonable limitations and  
5 regulation as provided by law."

6       **§ -4 Bill of rights.** (a) The clean air bill of rights  
7 includes the following guarantees to every person:

8           (1) The right to breathe clean air that will have no  
9           negative impact on a person's health or well-being;

10          (2) The right to be free from exposure to secondhand smoke  
11          or pesticide drift; and

12          (3) The right to be free from exposure to aerosolized  
13          chemicals or fugitive dust that creates a nuisance or  
14          disturbs the peaceful enjoyment of a person's  
15          property.

16          (b) The rights afforded to persons to ensure that their  
17 person, property, and environment are safeguarded and protected  
18 as set forth in this chapter are available only insofar as they  
19 are implemented in accordance with other state or county laws,  
20 state rules and regulations, federal law, and the constitutions



1 of the State and the United States. Nothing in this chapter  
2 shall be interpreted to create new legal rights for persons.

3       §   -5   **Citizen suits.** (a) Except as provided in  
4 subsection (b), any person, acting as a private attorney  
5 general, may commence a civil suit on the person's behalf  
6 against any person or entity that is alleged to be in violation  
7 of the terms of this chapter.

8       (b) The circuit environmental courts shall have  
9 jurisdiction to enforce this section or to order the person or  
10 entity to perform any act or duty required under this section;  
11 provided that no action may be commenced less than thirty days  
12 after written notice of the alleged violation has been given to  
13 the person or entity alleged to be in violation of this section,  
14 except that the action may be brought immediately after the  
15 notification in the case of an emergency posing a significant  
16 risk to the well-being of any person.

17       (c) Any suit brought pursuant to this section may be  
18 brought in the judicial circuit where the alleged violation  
19 occurred or is occurring. In any suit brought pursuant to this  
20 section where the State is not a party, the attorney general, at



1 the request of the department, may intervene on behalf of the  
2 State as a matter of right.

3 (d) The injunctive relief provided by this section shall  
4 not restrict any right that any person or class of persons may  
5 have under any other law, including common law, to seek  
6 enforcement of any standard or limitation or to seek any other  
7 relief, including relief against any instrumentality or agency  
8 of the State."

9 SECTION 3. This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun before its effective date.

12 SECTION 4. This Act shall take effect upon its approval.

13 INTRODUCED BY:

Tim Winkler

JAN 21 2022



# H.B. NO. 1905

**Report Title:**

Clean Air Bill of Rights; Secondhand Smoke; Pesticide Drift;  
Aerosolized Chemicals; Fugitive Dust; Citizen Suits

**Description:**

Affirms the right of every person in the State to breathe clean air that will have no negative impact on their health or well-being, the right to be free from exposure to secondhand smoke or pesticide drift, and the right to be free from exposure to aerosolized chemicals or fugitive dust that creates a nuisance or disturbs the peaceful enjoyment of a person's property. Recognizes the right to bring citizen suits.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

