



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2023**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 345, RELATING TO THE ENVIRONMENT.

**BEFORE THE:**

HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

**DATE:** Thursday, February 16, 2023      **TIME:** 9:15 a.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Lyle T. Leonard, Deputy Attorney General

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Chair Lowen and Members of the Committee:

The Department of the Attorney General offers the following comments on this bill.

The bill adds a new section to chapter 342B, Hawaii Revised Statutes (HRS), that specifies that no law, rule, ordinance, or code, including the state building code shall prohibit or limit the use of a refrigerant designated as acceptable for use pursuant to title 42 United States Code section 7671k, with a proviso for certain safety standards.

We have the following concerns about this bill. Similar measures concerning acceptable refrigerant use have been adopted in certain states like Oregon and Washington. Those measures were adopted into the building code laws in those jurisdictions and not into laws concerning air quality. We respectfully recommend that the Committee amend this bill to place the new section in part II of chapter 107, HRS, regarding state building code and design standards, or another suitable chapter.

If the Committee is inclined to place this new section in chapter 342B, HRS, we note that this would create a private right of action, pursuant to section 342B-56, HRS, against government (and private) entities alleged to be in violation in the section. Under section 342B-56, a private person could file a civil action and collect attorney's fees to enforce compliance with the new section. This may increase the risk of frivolous litigation against the State.

Additionally, this bill does not allow a prohibition or limit to the use of a refrigerant provided it meets the following conditions: "the refrigerant is listed and installed in accordance with appropriate safety standards and use conditions." (Page 1, lines 8-10). Section 342B-51, HRS, creates an affirmative enforcement obligation of state and county health authorities and police officers to enforce chapter 342B. As a result, the state and counties may have an affirmative obligation to ensure that any refrigerant meets these conditions in order to be free of any prohibition or limitation. However, enforcement may be burdensome and difficult because the bill does not define what constitutes "appropriate" safety standards. This could subject the state and counties to increased litigation under section 342B-56, HRS, from private individuals who disagree on what is "appropriate". We recommend that the Committee amend the bill to provide additional guidance as to what constitutes "appropriate" safety standards.

Thank you for the opportunity to testify.



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
KA 'OIHANA OLAKINO  
P. O. BOX 3378  
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In reply, please refer to:  
File:

**Testimony COMMENTING on HB0345  
RELATING TO THE ENVIRONMENT**

REPRESENTATIVE NICOLE E. LOWEN, CHAIR  
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION  
Hearing Date: 2/16/2023 Room Number: 325

1 **Fiscal Implications:** This measure may impact the priorities identified in the Governor's  
2 Executive Budget Request for the Department of Health's (Department) appropriations and  
3 personnel priorities.

4 **Department Testimony:** The Department supports the measure's intent to facilitate the  
5 transition from refrigerants with high global warming potentials (GWPs) to the use of low-GWP  
6 alternatives, which would reduce the refrigerants' impact on climate change. However, the bill  
7 in its current form inappropriately places the provision in the air pollution control section of the  
8 Hawaii Revised Statutes (HRS) Chapter 342B, rather than in the building code section (HRS  
9 Chapter 107). This requires the air program to assume responsibility of and capacity to  
10 determine compliance with safety standards and use conditions, including fire and related  
11 hazards. Such responsibilities are more suitable with and better provided under the purview of  
12 the State Building Code Council. Moreover, the placement of the measure under HRS  
13 Chapter 342B could expose the air program to liability and would contradict with the placement  
14 of similar language that has been or is being adopted by other states in their building code  
15 sections of their statutes.

16 The proposed language prevents any law, rule, ordinance, or code, including building  
17 codes, from prohibiting the use of refrigerants deemed as acceptable pursuant to federal  
18 regulations, provided that any equipment containing the refrigerant is installed in accordance  
19 with appropriate safety standards and use conditions. This language is inappropriately placed in  
20 HRS Chapter 342B as the Department's Clean Air Branch does not have jurisdiction over, or any

1 expertise concerning building codes and/or safety standards. While the Department advocates  
2 the use of low-GWP refrigerants in order to protect the environment and public health, we are  
3 not the authorities on their proposed uses in terms of building, electrical, energy, and fire and life  
4 safety.

5 In addition, HRS Section 342B-56 allows citizen suits to be filed against any person,  
6 including the State and director, who violates or fails to perform the duties of this chapter. This  
7 provision is intended, in large part, to ensure that the Department carries out our responsibilities  
8 regarding air pollution control, a matter over which we do have authority and expertise.  
9 However, this provision, if included in HRS Chapter 342B, would now expand our exposure to  
10 lawsuits regarding building codes, an area in which we do not have authority or expertise.

11 Over a dozen states, including Washington, Oregon, California, and Arizona, have  
12 adopted or are proposing to adopt similar language to that proposed in this bill. However, these  
13 provisions are placed in their building code or building construction/planning regulations.

14 Finally, this language can be found in HB0197 HD1, Section 3, where, consistent with  
15 other states, the requirements are more appropriately placed in Chapter 107 of the HRS  
16 pertaining to the state Building Code and Design Standards.

17 Thank you for the opportunity to testify.

18 **Offered Amendments:** The Department proposes language similar to that found in HB0197  
19 HD1, Section 3, be adopted in HRS, Chapter 107.



TESTIMONY OF MIKE NEROZZI  
DIRECTOR OF GOVERNMENT AFFAIRS

ON BEHALF OF  
THE AIR-CONDITIONING, HEATING, AND REFRIGERATION INSTITUTE

BEFORE THE HAWAII STATE HOUSE  
COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

HEARING ON HOUSE BILL 345

FEBRUARY 16, 2023

Good morning, Chair Lowen, Vice Chair Cochran, and members of House Committee on Energy and Environmental Protection. My name is Mike Nerozzi, Director of Government Affairs for the Air-Conditioning, Heating, and Refrigeration Institute (AHRI). Thank you for allowing me to speak with you today and convey AHRI's strong support for House Bill 345, sponsored by Representative Lowen, which will provide the HVACR industry with the certainty needed to comply with forthcoming federal regulations phasing down the use of hydrofluorocarbons (HFCs).

AHRI represents more than 300 manufacturers of air conditioning, heating, commercial refrigeration, and water heating equipment. Our member companies, some of which operate factories or are headquartered here in Hawaii, produce more than 90 percent of the residential and commercial air conditioning, heating, and commercial refrigeration equipment made in North America. We are also pleased to share with you that the HVACR industry supports more than two thousand jobs in Hawaii and more than 883,000 jobs nationwide.

As members of the Committee may be aware, the American Innovation and Manufacturing Act of 2020 (AIM Act) is phasing down the production and import of a class of chemicals known as hydrofluorocarbons (HFCs), which are primarily used as refrigerants in air conditioners and refrigerators and in a range of other applications, such as foams, solvents, and fire suppressants.

The U.S. Environmental Protection Agency (EPA) is in the process of implementing the AIM Act in a way that will guide an orderly, market-, consumer-, and environmentally-friendly transition to a range of substitute refrigerants.

Importantly, substitutes exist and are commercially available for all major uses of HFCs. U.S. manufacturers already are planning transitions to substitutes, which is creating jobs, stimulating new investment, and positioning the United States to sustain its technology leadership in the heating, ventilation, air conditioning, and refrigeration (HVACR) industry across the world.

The challenge is that state building codes do not allow the use of certain substitute refrigerants. AHRI and its member companies are working diligently to amend state building codes to allow these substitute refrigerants. To date, more than 20 states have adopted changes to state building codes substantially similar to HB 345. Most other states are in the process of doing so. By the end of the year, if not sooner, AHRI is expecting all states needing to make changes to state building codes will have done so.

The most important issue right now is time. New regulations proposed by EPA will significantly restrict the upstream supply of HFCs beginning in 2024 and, separately, prohibit the use of certain HFCs in most air conditioning and refrigeration product categories beginning in 2025.

As manufacturers start to transition product lines to HFC substitutes, they need to know that they can sell products with these HFC substitutes in U.S. markets, including Hawaii. The most significant barrier these manufacturers face to doing so is the state's building code.

What HB 345 does is amend the state's building code this year to allow any HFC substitute that has already been approved by EPA to be used in air conditioning and refrigeration equipment. If this change is not made this year, manufacturers will face significant risk of being unable to sell new air conditioning and refrigeration equipment into the state once new EPA regulations take effect. HB 345 does not make any other change to state law; it simply removes a barrier to ensure Hawaii consumers and businesses enjoy uninterrupted access to air conditioning and refrigeration equipment with the latest, most advanced, and most climate-friendly technologies available.

The climate benefits of AIM Act implementation are considerable. Because many HFCs are thousands of times more powerful than carbon dioxide at warming the planet, the transition from HFCs will reduce U.S. greenhouse gas (GHG) emissions by approximately 2.4 billion tons of carbon dioxide-equivalent by 2036. Globally, the AIM Act assures U.S. compliance with the Kigali Amendment to the Montreal Protocol, which phases down HFCs worldwide and avoids up to 0.5 C of projected warming by 2100.

Thank you again for the opportunity to present testimony at this hearing. AHRI looks forward to continuing to work with the Hawaii legislature to achieve both the economic and environmental benefits of the phase down of HFCs.

**HB-345**

Submitted on: 2/9/2023 12:15:09 PM

Testimony for EEP on 2/16/2023 9:15:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Caroline Azelski	Individual	Oppose	Written Testimony Only

Comments:

If a chemical is restricted or prohibited there is a good reason for it.





To: The Honorable Chair Nicole Lowen, the Honorable Vice Chair Elle Cochran, and Members of the Committee and Energy and Environmental Protection

From: Climate Protectors Hawai'i (by Ted Bohlen)

Re: **Hearing HB345 RELATING TO THE ENVIRONMENT.**

Hearing: Thursday February 16, 2023, 9:15 a.m., room 325

Aloha Chair Lowen, Vice Chair Cochran, and Members of the Committee on Energy and Environmental Protection:

**The Climate Protectors Hawai'i respectfully OPPOSES HB345!**

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The Hawai'i Legislature has declared that we are in a climate emergency! One way to address that emergency and help the State achieve its carbon negative clean economy target as soon as practicable but not later than 2045 is to reduce the use of refrigerants that are potent greenhouse gases, such as hydrofluorocarbons, that are up to one thousand times more damaging to the climate than carbon.

This bill may be well intentioned, with possible concern about regulation of mildly flammable A2L refrigerants. But it appears to be overbroad in specifying

that “no law, rule, ordinance, or code, including the state building code shall prohibit or limit the acceptable use of a refrigerant.”

Please defer this bill!

Mahalo!

Climate Protectors Hawai‘i (by Ted Bohlen)

**HB-345**

Submitted on: 2/16/2023 9:14:46 AM

Testimony for EEP on 2/16/2023 9:15:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Shannon Amiot	Individual	Oppose	Written Testimony Only

Comments:

I am a citizen of Hawaii that has served on commercial fishing vessels in Alaska (and here in Hawai`i). I know the dangers of re Fridgerant and I can easily this law being abused to maintain continued use of toxic/poisonous re Fridgerants that often turn into toxic gas. I believe the state should have control to enforce these re Fridgerants as we have already seen the private sector abuse the privileges of federal use protections many times previously. Just because a product is federally approved does NOT mean it is safe for certain environments (Hawai`i's being unique) or for the environment (when used at a certain frequency). As we have seen in the past with COVID policies and the Red Hill situation, it is important that states keep their power to control any potential toxic substances.

Thank you for your time,

Shannon Amiot - Kane`ohe resident