

## TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2615, RELATING TO HEALTH.

**BEFORE THE:**

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS CONCERNS

**DATE:** Tuesday, February 5, 2008 **TIME:** 8:30 AM

**LOCATION:** State Capitol Room 325

*Deliver to: , Room 318, 5 copies*

**TESTIFIER(S):** Mark J. Bennett, Attorney General,  
or Earl R. Hoke, Jr., Deputy Attorney General

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Chair Yamashita and Members of the Committee:

The State Attorney General supports the intent of this bill and provides the following comments.

This measure proposes that a new part be added to chapter 321, of the Hawaii Revised Statutes to address the issue of tobacco products being in the possession of minors. Currently section 709-908, Hawaii Revised Statutes, addresses the prohibition against the selling of tobacco products to minors. Under the current law, while it is illegal for a minor to purchase tobacco products, the law does not address the problem of the minor circumventing the regulatory process and actually possessing or using tobacco products. While we agree that a loophole exists it may be prudent to fix the problem within the existing statutory structure.

We note that this bill addresses concerns that we raised in our testimony with regard to H.B. No. 2934 where we indicated that it was necessary to include actual or constructive possession in defining the term "use." Further that the exemptions contained in this measure are worthy of being added to the consideration of H.B. No. 2934.

With regard to the enforcement provisions of this bill we propose that wording be added that makes clear that any tobacco product purchased, possessed, or used, by a minor is to be

considered contraband and subject to being confiscated and seized with or without a warrant and subject to summary forfeiture. To this end we offer the following wording:

**§ 321-E Seizure and forfeiture.** Any tobacco product, as described under section 321-A, that is purchased, possessed, or used, by a minor shall be considered contraband and subject to confiscation and seizure with or without a warrant. The contraband tobacco product is subject to summary forfeiture without regard to the procedures set forth in chapter 712A.

We also propose wording that adds a presumption that if a tobacco product is labeled or packaged as such it should be deemed to be a tobacco product without the necessity for chemical analysis.

**§ 321-F Presumption.** The fact that a tobacco product is labeled or packaged as such shall be prima facie evidence that the person engaged in the conduct specified by this chapter with knowledge of the character, nature, and quantity of the tobacco product purchased, possessed, or used.

Examples of similar wording are found in section 712-1252, Hawaii Revised Statutes, "Knowledge of character, nature, or quantity of substance ...; prima facie evidence"; and section 712-1251, Hawaii Revised Statutes, "Possession in a motor vehicle; prima facie evidence."



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

## HOUSE COMMITTEE ON ECONOMIC AND BUSINESS CONCERNS

### HB 2615, RELATING TO HEALTH

Testimony of Chiyome Leinaala Fukino, M.D.  
Director of Health

February 5, 2008, 8:30AM

1 **Department's Position:**

2 **Fiscal Implications:** Appropriation of an unspecified amount of general funds for development of a  
3 youth smoking education program to be expended by the Department of Health.

4 **Purpose and Justification:** This bill establishes a new part to Chapter 321 to prohibit the possession  
5 and use of tobacco products by minors. The bill requires the issuance of a citation by the Department or  
6 a law enforcement officer and for the Department of Health to adopt penalties by establishing fines and  
7 community service requirements. The bill makes an appropriation to the Department for the  
8 development and implementation of a youth smoking educational program.

9 Smoking and tobacco use remain the leading cause of preventable illness and death in Hawaii,  
10 causing over 1,100 deaths annually and resulting in over \$525 million in economic losses. The tobacco  
11 industry currently spends over \$8 billion annually on advertising and promotions, \$48 million in Hawaii.  
12 The industry has unfortunately created images and messages which strongly resonate among our  
13 children. The appeal to youth through this massive advertising campaign remains substantially  
14 unregulated. The Department feels that more effective measures to impact youth access to tobacco  
15 included the following: 1) the statewide smoke-free law in public places, enforcement of school policies  
16 prohibiting smoking on school campuses, and the tobacco permitting law that went into effect since

1 December 2006; 2) a strong merchant education effort; 3) strong enforcement 4) consistent adjudication  
2 by the courts; and 5) greater public and community awareness. These actions, when taken together, will  
3 reduce both the appeal and the access to tobacco products to Hawaii's youth.

4 Thank you for the opportunity to testify.

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**Improving Life One  
 Breath at a Time**

Founded in 1904, the  
 American Lung Association  
 includes affiliated associations  
 throughout the U.S.

**TO:** House Committee On Economic Development & Business  
 Concerns

**FOR:** Hearing scheduled for Tuesday, February 5, 2008

**RE:** TESTIMONY OPPOSING THE CURRENT VERSION OF  
 HB 2615, REALTING TO HELATH

Chair Yamashita, Vice Chair Wakai and Committee Members:

While the American Lung Association of Hawaii (ALA of Hawaii) supports the intent of HB 2615 to reduce the incidence of teenage smoking, we believe education and cessation programs are more effective in achieving that goal.

ALA of Hawaii has been an active participant for generations in the campaign against tobacco use throughout our population as one of the surest ways to damage one's health. The research on the harmful effects of tobacco use is substantial and irrefutable. Nevertheless, significant numbers of Hawaii's youth continue to experiment with tobacco.

HB 2615 will escalate the stakes in the fight against teenage tobacco use by making it illegal for minors to possess tobacco products. However, experience among states across the country shows that youth possession laws have not been effective in reducing tobacco use among minors.

ALA of Hawaii does, however, strongly support the increased resources for youth smoking education programs in this measure. This recommendation is in keeping with our belief that education programs are more effective than punitive measures in effecting long-term change in smoking habits.

Respectively submitted,

Jean Evans, MPH  
 Executive Director  
 American Lung Association of Hawaii

# HAWAII YOUTH SERVICES NETWORK

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Joseph Fichter, President

Judith F. Clark, Executive Director

Adolescent Services Program, Kaiser  
Permanente Medical Care System

American Civil Liberties Union of Hawaii

Bay Clinic, Inc.

Big Brothers Big Sisters of Honolulu

Big Island Substance Abuse Council

Blueprint for Change

Bobby Benson Center

Boys and Girls Club of the Big Island

Catholic Charities Hawaii

Child and Family Service

Coalition for a Drug Free Hawaii

Domestic Violence Clearinghouse  
and Legal Hotline

EPIC, Inc.

Family Support Services of West Hawaii

Foster Family Programs of Hawaii

Hale Kipa, Inc.

Hale 'Opio Kauai, Inc.

Hawaii Behavioral Health

Hawaii Island YWCA

Hawaii Foster Parent Association

Healthy Mothers Healthy Babies Coalition

Hina Mauka Teen Care

John Howard Association

Kahi Mohala Hospital

Kahuku United Methodist Church

Kama'aina Kids, Inc.

Kids Behavioral Health

Kids Hurt Too

KMC Teen Intervention Program

Life Foundation

Marimed Foundation

The Maui Farm, Inc.

Maui Youth and Family Services

Palama Settlement

Parents and Children Together (PACT)

Queen's Medical Center, Family  
Treatment Center

Rainbow House

Salvation Army Family Intervention Services

Salvation Army Family Treatment Services

Sex Abuse Treatment Center

Sisters Offering Support

Susannah Wesley Community Center

Surfing the Nations

The Center

Turning Point for Families

Waikiki Health Center

Women Helping Women

World Healing Institute

YWCA of Kauai

January 30, 2007

To: Representative Kyle Yamashita, Chair  
And members of the Committee on Economic Development and Business  
Concerns

## Testimony on HB 2615 Relating to Health

Hawaii Youth Services Network, a statewide coalition of more than 50 youth serving organizations, supports the intent of HB 2615 Relating to Health.

Hawaii Youth Services Network supports educational programs to prevent tobacco use and programs that assist tobacco users to quit. We believe that sanctions such as fines are an ineffective and inappropriate means of addressing this issue.

Existing laws already prohibit the sale of tobacco products to minors. The State of Hawaii has greatly reduced the availability of tobacco products through enforcement of this statute.

High quality education and prevention programs, especially those that have input from young people about how to reach at-risk teens, are already in place and have demonstrated their effectiveness in reducing the number of youth who start to use Hawaii.

Thank you for this opportunity to testify.

Sincerely,

Judith F. Clark, MPH  
Executive Director



## HAWAII FOOD INDUSTRY ASSOCIATION

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The right way to trash plastic bags

February 5, 2008

To: Committee on Economical Development & Business Cerncers  
Rep. Kyle T. Yamashita, Chair / Rep. Glenn Wakai, Vice Chair

By: Hawaii Food Industry Association  
Lauren Zirbel or Richard Botti

RE: HB 2934 and HB 2615

HFIA supports these measures.

We believe in retailer responsibility as well as consumer honesty. HFIA members work hard to make every effort to curb youth tobacco use by abiding by state laws designed to prevent underage consumption of tobacco.

While retailers are the gatekeeper of the cigarettes, we strongly support mandated fines and punishment of those minors who attempt to evade these laws with their attempts to purchase the product when they are fully aware that it is an illegal product for them to purchase and use.

02/04/08 12:29 PM FAX:8085229707

**TESTIMONY TO THE  
HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS CONCERNS  
AND HOUSE COMMITTEE ON AGRICULTURE  
ON  
H.B. 2615 RELATING TO HEALTH**

**By  
Gary Altman  
General Manager of Company Operated Stores  
Aloha Petroleum, Ltd.**

Chair Yamashita and Members of the House Committee on Economic Development and Business Concerns and Chair Tsuji and Members of the House Committee on Agriculture, I am Gary Altman, General Manager of Company Operated Stores of Aloha Petroleum, Ltd.

Aloha Petroleum supports House Bill 2615 relating to health which prohibits possession of tobacco products by any person under age 18, requires Department of Health to adopt penalties, and makes appropriation to the Department of Health for youth smoking educational programs.

Thank you for the opportunity to testify in support of House Bill 2615.





**Email to: Committee on Economic Development & Business Concerns,  
[EDBtestimony@Capitol.hawaii.gov](mailto:EDBtestimony@Capitol.hawaii.gov)**

**RE: House Committee on Economic Development & Business Concerns, hearing schedule,  
February 5, 2008, 8:30 A.M., Conference Rm. 325, Representative Kyle Yamashita, Chair &  
Representative Glenn Wakai, Vice Chair**

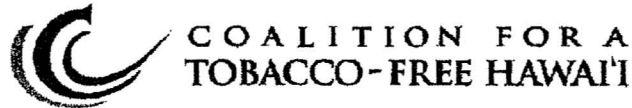
**RE: Testimony in Opposition of HB 2615, Relating to Tobacco Products.**

Chair Yamashita, Vice Chair Wakai, and members of the Committee on Economic Development & Business Concerns. Thank you once again for the opportunity to submit testimony in opposition of HB2615, which prohibits the use of tobacco in shape or form, including chewing tobacco and snuff. My name is George Massengale, I am the Policy Director, for the Coalition for a Tobacco Free Hawaii, a statewide association of nonprofit organizations, large and small businesses, and more that 2,000 individuals committed to working together to reduce the negative impact of tobacco on the health of Hawaii's children, adults, and visitors.

As this committee is aware, the Coalition continues to be unyielding supporter of efforts that reduce the number of youth who use tobacco products. In previous years we have testified that we believed that youth need to accept their share of responsibility for their tobacco use, little progress will be made in lowering teen tobacco use unless responsibility is allocated in an equitable fashion and measures are taken based on the best available research. The latest research still shows that criminalizing underage tobacco use and possession without penalizing underage sales to minors, without curtailing and counteracting promotion of tobacco to minors, without curtailing adult smoking in public places, without increasing the price of tobacco, and without developing smoking cessation programs for youth would be counterproductive.

Also in the past when testifying before this committee on this particular issue we have succinctly pointed out that the tobacco industry was systematically urging states and municipalities around the country to pass laws that would punish minors for the purchase and possession of tobacco products. This strategy takes the responsibility for the illegal sale off the retailers and put the responsibility on the minor. We have not changed our position with respect to this, and as we have pointed out previously, this type of law is virtually impossible to enforce. We continue to think that the **real focus of enforcement should be on the sellers of tobacco products.**

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We are still unable to chance upon any reliable findings that support the idea that penalizing kids will deter youth from tobacco use. Rather than penalizations, the following actions that have been proven to reduce youth tobacco use should be considered:

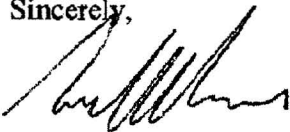
- Tobacco retail permits and enforcement for sales to youth
- Increased spending on counter marketing advertising
- Increase funding for tobacco prevention programs which are currently below CDC minimum suggested guidelines.

We readily admit that tobacco use among Hawai'i's youth continues to be a problem. The Coalition is extremely concerned that youth are beginning to smoke at a younger age. In the 2000, Hawai'i's youth smoking rate was 24.5% for public high school students and 12.9% for public middle school students. In 2006, the rate was 12.6% for public high school students, and 7.9% for middle school students. Tobacco sales to minors, is declining because of public education, counter marketing, and prevention efforts. **Clearly these efforts are working** and criminalizing youth possession of tobacco products is **not the right solution**, nor the most effect way to reduce youth access to tobacco.

For all the reasons stated above we oppose HB2615 and request that it be held in committee.

Thank you for this opportunity to testify.

Sincerely,



George S. Massengale, JD

Policy Director

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