



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

ON THE FOLLOWING MEASURE:

H.B. NO. 2934, RELATING TO TOBACCO PRODUCTS.

BEFORE THE:

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS CONCERNS

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

LOCATION: State Capitol Room
Deliver to: , Room 318, 5 copies

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

Chair Yamashita and Members of the Committee:

The State Attorney General strongly supports this bill.

The current law contains a loophole that needs to be closed. 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. To close that loophole, this bill seeks to prohibit the "use" of any tobacco product by a minor.

However, the bill lacks clarity as to what is meant by the term "use." A general tenet of statutory construction provides that the words of a statute are given a plain meaning absent a specific definition. In this case the word "use" clouds the issue and does little to provide clarity as to whether possession is sufficient or if an overt act on the part of the minor such as actually smoking, inhaling, ingesting, or consuming the tobacco product in some manner is meant to be the prohibited act. Clarity is also required for investigative and evidentiary purposes, because the investigation and evidence for a possession offense is less burdensome than requiring proof of consumption or ingestion. By way of example, a pack of cigarettes or container containing a tobacco product seized from an individual who had the product in the individual's possession or control would generally suffice in a possession case.

However, where "use" meant that the person is actually inhaling the smoke from the cigarette, having the tobacco product in the person's mouth, or in any other way ingesting or consuming the tobacco product, the investigation and evidence is more expansive. Such a case would require witnesses who actually saw the person inhale the cigarette smoke, place the tobacco product in the person's mouth, or in any other way ingest or consume the tobacco product.

In addition, in certain cases the investigation may require additional scientific evidence (analogous to a breathalyzer or blood test for a DUI prosecution) to prove that the person smoked, inhaled, ingested, or otherwise consumed the prohibited tobacco product in order to overcome a defense that the tobacco product was not smoked, inhaled, ingested, or otherwise consumed.

To address this issue we respectfully suggest that it be clear that the term "use" is meant to include the actual or constructive possession of the tobacco product by the minor.

We propose a subsection (8), to contain wording 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:

Any tobacco product, as described under subsection (1), 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 a subsection (9), which 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.

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 section 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"; section 712-1250.5, Hawaii Revised Statutes, "Promoting Intoxicating Liquor to a minor"; and section 712-1251, Hawaii Revised Statutes, "Possession in a motor vehicle; prima facie evidence."

We respectfully request passage of this bill with the proposed amendments.

LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
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In reply, please refer to:
File:

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS
CONCERNS

HB 2934, RELATING TO TOBACCO PRODUCTS

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

February 5, 2008, 8:30 AM

1 **Department's Position:** The Department of Health shares the legislature's concern over the need to
2 further reduce the prevalence of youth smoking. The Department does not support this measure in that
3 the Centers for Disease Control and Prevention (CDC) has determined that laws directed at minors'
4 purchase, possession or use of tobacco products when implemented alone, yield insufficient evidence to
5 determine effectiveness. In short, while they may do no harm, they have not shown effectiveness in
6 reducing youth smoking rates.

7 **Fiscal Implications:** None

8 **Purpose and Justification:** This bill amends section 709-908, HRS to prohibit the possession and use
9 of tobacco products by minors. The bill continues to allow a minor to purchase or possess tobacco
10 products in controlled purchases as part of a law enforcement activity or authorized study. The bill
11 permits the possession of tobacco products by a minor in the course of delivery, under the direction of
12 the minor's lawful employer. The bill continues the existing structure of fines to both the buyer, seller
13 and now includes those possessing or using tobacco products be included under the existing structure of
14 fines and penalties for the "buyer".

1 Smoking and tobacco use remain the leading cause of preventable illness and death in Hawaii,
2 causing over 1,100 deaths annually and resulting in over \$525 million in economic losses. The tobacco
3 industry currently spends over \$8 billion annually on advertising and promotions, \$48 million in Hawaii.
4 The industry has unfortunately created images and messages which strongly resonate among our
5 children.

6 In the CDC Guide to Community Preventive Services, a review of laws that prohibit possession
7 or use of tobacco products by minors enacted by communities and states that require minors to receive
8 citations and participate in educational programs have been found to be ineffective. CDC's review
9 found insufficient evidence to determine the effectiveness of these laws as to whether they actually
10 worked. Further, these laws had little or no effect on the rates of youth initiation or youth access to
11 tobacco products.

12 The Department feels more effective measures to impact youth access to tobacco include: 1) the
13 tobacco permitting law passed by the legislature in 2005 and went into effect in December 2006; 2) a
14 strong merchant education effort; 3) strong enforcement; 4) consistent adjudication by the courts; and 5)
15 greater public and community awareness. These actions, when taken together, will reduce both the
16 appeal and the access to tobacco products to Hawaii's youth.

17 Thank you for the opportunity to testify.

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Improving Life, One Breath at a Time

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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 IN OPPOSITION TO HB 2934, REALTING TO
TOBACCO PRODUCTS**

Chair Yamashita, Vice Chair Wakai and Committee Members:

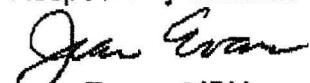
The American Lung Association of Hawaii (ALA of Hawaii) has long been a strong advocate of measures to curtail underage tobacco use. It is well documented that early onset of smoking can lead to a lifetime of addiction and damaged health.

ALA of Hawaii believes education and cessation programs are more effective than punitive sanctions that "blame the victim in reducing the incidence of teenage smoking. The steady decline in tobacco use by minors in Hawaii suggests that education programs, including positive peer pressure, are working.

While we support the intent of this measure, we do not believe that criminalizing our youth for possession of tobacco products is productive and we are especially opposed to the provision in the bill that would revoke the driver's license for one year for a minor's third offense products. A review of such prohibition laws published in the 2006 American Journal of Preventive Medicine (Vol.31, N.1) shows that they have not proven to be effective and actually work to clear the tobacco industry of its responsibility for marketing to youth.

ALA of Hawaii believes increasing the scope of youth tobacco education and cessation programs will have more lasting positive effects than this legislation would be able to achieve.

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 in Opposition to HB 2934 Relating to Tobacco Products

Hawaii Youth Services Network, a statewide coalition of more than 50 youth serving organizations, strongly opposes HB 2934 Relating to Tobacco Products.

Making the possession of tobacco products a criminal offense for minors is an ineffective and inappropriate means of reducing tobacco use.

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.

The primary outcome of making the possession of tobacco products a criminal offense for minors would be to increase the number of youth with involvement in the juvenile justice system. A criminal record stigmatizes youth, making it more difficult for them to access higher education and obtain employment.

Thank you for this opportunity to testify.

Sincerely,

Judith F. Clark, MPH
Executive Director



HAWAII FOOD INDUSTRY ASSOCIATION

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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.



**Email to: Committee on Economic Development & Business Concerns,
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 2934, 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 once again submit testimony in opposition of HB2934, 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 is an 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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COALITION FOR A
TOBACCO-FREE HAWAII

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 HB2934 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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