

## testimony

---

**From:** Michael758 [michael808a@hawaiiantel.net]  
**Sent:** Tuesday, February 12, 2008 6:40 PM  
**To:** testimony  
**Subject:** SB2859

### Testimony in Opposition

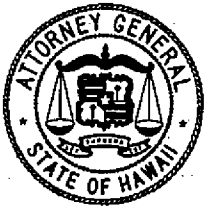
#### SB2859

Dear Senate Health Committee,

I oppose this bill because it would only glamourize tobacco smoking for teens much like marijuana is glamourized for being illegal. In the "Hip Hop / Rap" community which is very popular with a sizable segment of our youth this is already the case with marijuana, from "leaf print" T-shirts to various rap / hip hop artists. While I make no personal effort to tell anyone not to smoke, it's probably better that our youth don't have to face the bigotry and interance of the Coalition for a Tobacco Free Hawaii their whole lives by simply not starting. As for us adults already set in our ways and both unable and unwilling to change, we still require justice.

This is certainly the case thanks to the **death sentence Chair lge just handed down to the segment of bars** where the vast majority of their customers smoke and have to let them brake the law to stay in business. Josh Green's tax exempt bill is DEAD. In a few months, the Health Department will likely be enforcing this law, driving most of their customers away, and causing them to fail. It'll be a year until any new bills can be introduced to fix the problem and these bars can't wait that long.

Sincerely, Michael Zehner  
750 Amana st.  
Honolulu, HI 96814



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

---

**ON THE FOLLOWING MEASURE:**

S.B. NO. 2859, RELATING TO TOBACCO PRODUCTS.

**BEFORE THE:**

SENATE COMMITTEE ON HEALTH

**DATE:** Wednesday, February 13, 2008 **TIME:** 1:15 PM

**LOCATION:** State Capitol Room  
*Deliver to: committee clerk, Room 215, 1 copies*

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

---

Chair Ige and Members of the Committee:

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

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:

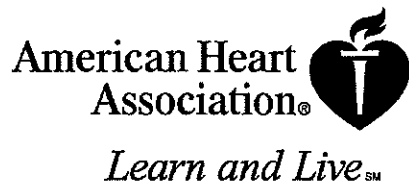
Any tobacco product, as described under subsection (1), that is purchased, possessed, or used, by a minor shall be considered contraband and subject to confiscation and seizure with or without a warrant. The contraband tobacco product is subject to summary forfeiture without regard to the procedures 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."

The American Heart  
Association mission is:  
To reduce disability and death  
from cardiovascular diseases  
and stroke.



Serving Hawaii

## Testimony Opposing SB 2859; "Relating To Tobacco"

The American Heart Association opposes SB 2859, "Relating To Tobacco."

Until comprehensive efforts to address the marketing of tobacco products to minors are exhausted, the AHA feels it would be inappropriate to hold youth responsible for behavior encouraged by tobacco marketers advertising. The industry spends upward of \$12 billion nationally each year and close to \$50 million in Hawaii to recruit new smokers, most of them less than 18 years of age.

Evidence indicates that the industry pays retailers exorbitant product placement fees to insure that their products are located where they will become easily recognizable by youths, often next to candy or other sweet items that attract children's attention. The industry knows that it needs to imprint its brand on minors today to insure that they will eventually become addicted adult tobacco users. The industry's most recent ploy targeted at enticing young people involves the inclusion of candy and fruit flavors in tobacco products and marketing those products in a way that makes them most attractive to the young.

If you think that well-funded tobacco prevention and control programs don't work, look no further than Massachusetts which saw its once well-funded tobacco control program stripped of its tobacco settlement funding and within a year witnessed youth smoking rates triple. Rather than focus efforts on punishing the victims of tobacco, we need to focus on the victimizers.

By shifting the focus to youth possession of tobacco products, you would be diverting the focus from the root cause of the problem—tobacco industry marketing tactics—and onto children who succumb to the industry's subliminal advertising messages. You would also be feeding the industry's advertising and marketing strategy to make tobacco appear to be an adult "privilege" and portray smoking as "cool" to those youths reaching for a "forbidden fruit." The end effect would help the tobacco industry to lure those children most vulnerable to their marketing messages and those most likely to rebel.

Please vote no on SB 2859.

Respectfully submitted by,

Donald B. Weisman  
Hawaii Communications and Marketing/Government Affairs Director

Serving Hawaii since 1948

For information on the AHA's  
educational or research  
programs, contact your  
nearest AHA office,  
or visit our web site at  
[www.americanheart.org](http://www.americanheart.org)  
or e-mail us at  
[hawaii@heart.org](mailto:hawaii@heart.org)

**Oahu:**  
245 N. Kukui Street, Ste. 204  
Honolulu, HI 96817-3985  
Phone: 808-538-7021  
Fax: 808-538-3443

**Maui County:**  
J. Walter Cameron Center  
95 Mahalani Street, No. 13  
Wailuku, HI 96793-2598  
Phone: 808-244-7185  
Fax: 808-242-1857

**East Hawaii:**  
400 Hualani Street, Ste. 15  
Hilo, HI 96720-4344  
Phone: 808-961-2825  
Fax: 808-961-2827

**West Hawaii:**  
74-5588 Pawai Place, Bldg. H  
Kailua-Kona, HI 96740-3140  
Phone: 808-329-0783  
Fax: 808-329-0784

**Kauai:**  
PO Box 1214  
Lihue, HI 96766-5214  
Phone: 808-245-7311  
Fax: 808-245-7311

Please remember the American Heart Association in your will.