



*The Judiciary, State of Hawaii*

**Testimony to the Senate Committee on Judiciary and Government Operations**

The Honorable Brian T. Taniguchi, Chair  
The Honorable Dwight Y. Takamine, Vice Chair  
Thursday, February 12, 2009, 9:30 a.m.  
State Capitol, Conference Room 016

by  
Judge Derrick Chan  
Deputy Chief Judge, First Circuit

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**WRITTEN TESTIMONY ONLY**

**Bill No. and Title:** Senate Bill No. 525, Relating to Tobacco.

**Purpose:** Authorizes suspension and revocation of retail tobacco permit for repeat violations of prohibition against sale of tobacco to minors. Permanently enacts retail tobacco permit requirement.

**Judiciary's Position:**

The Judiciary takes no position on Senate Bill No. 525.

However, the Judiciary would like to note that it may be more appropriate for the prosecuting authority (Attorney General) to inform the Department of Taxation when there is a suspension or revocation. This is currently the established protocol for the Attorney General prosecutions for welfare fraud, tax fraud or other violations involving state agencies. It is our understanding that the Attorney General's Office has an open line of communication with all state agencies that are required to take action based on the court's order and/or sentencing.

Although the court may order the suspension or revocation, the Attorney General represents the Department of Taxation, and will be the prosecuting authority in these actions. Therefore, the Attorney General should be responsible for informing the Department of Taxation of the court's order.

Thank you for the opportunity to testify on Senate Bill No. 525.



**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FIFTH LEGISLATURE, 2009**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 525, RELATING TO TOBACCO.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

**DATE:** Thursday, February 12, 2009 **TIME:** 9:30 AM

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Mark J. Bennett, Attorney General  
or Alex R. Barrett, Deputy Attorney General

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Chair Taniguchi and Members of the Committee:

The Department of the Attorney General supports the intent of this bill to reduce tobacco sales to minors. However, **we have legal concerns with section 1 of the bill, and recommend that the bill be amended to conform to S.B. No. 847.**

Section 1 of this bill would amend section 709-908(4), Hawaii Revised Statutes, by allowing courts to order the suspension or revocation of retail tobacco permits for subsequent violations of the law prohibiting the sale of tobacco to minors. Our concern is that when a clerk sells tobacco to a minor, a citation is issued to the clerk, not to the business where the sale occurred. Retail tobacco permits are normally held in a business or corporate name, not by an individual. There are due process concerns where a permit holder is not given the opportunity to be heard or object to the suspension or revocation. Currently the Department of Taxation may revoke, suspend, or decline to renew a retail tobacco permit for any good cause pursuant to section 18-245-2.5-3, Hawaii Administrative Rules. This rule provides for notice to the permit holder and the opportunity to dispute the department's actions.

The purpose of section 2 of this bill is to continue the requirement that businesses engaged in the sale of cigarettes and other tobacco products at the retail level acquire a retail tobacco permit from the Department of Taxation to engage in such activity. Act 131, Session Laws of Hawaii 2005, which enacted the requirement of a retail tobacco permit, contains a sunset clause that will repeal Act 131 on July 1, 2009.

Section 2 removes that sunset clause and keeps in place the requirement that an entity engaged in the retail sale of cigarettes or other tobacco products obtain a retail tobacco permit. The retail tobacco permit facilitates the enforcement of chapter 245 (cigarette tax stamps) and chapter 486P (tobacco directory), Hawaii Revised Statutes, by providing a known and measurable list of entities engaged in the retail sale of cigarettes and other tobacco products. More than 1,500 entities in Hawaii engaged in the retail sale of cigarettes and other tobacco products have applied for and received a retail tobacco permit.

Act 131 allows for the inspection of records and invoices that are to be kept by the retail tobacco permit holder to facilitate a determination of the proper source of cigarettes and tobacco products as well as payment of taxes. It requires that a permit be acquired for each location where cigarettes are sold at retail.

Every holder of a retail tobacco permit is required to keep a complete and accurate record of the permit holder's cigarette or tobacco product inventory. This requirement is intended to ensure that all tobacco products sold at retail are compliant and that all tobacco taxes are paid. In testimony submitted to the Legislature in 2008, the Department of Taxation projected that any loss in enforcement efforts in the monitoring of tobacco retailers could result in a revenue loss of approximately \$4,700,000 per year.

The retail tobacco permit program facilitates the collection of cigarette taxes by making it clear that no retailer or cigarette vending machine operator shall purchase any pack of cigarettes without

the appropriate tax stamp affixed to the bottom of each pack of cigarettes as required by chapter 245. For fiscal year 2007-2008, the Department of Taxation reports cigarette tax revenues of \$101,560,051, which represents an increase of \$12,788,385 or 12.6 percent over the \$88,771,666 in cigarette tax revenues collected in fiscal year 2006-2007.

Section 2 of this bill is identical to section 2 of S.B. No. 847; both bills delete the sunset provision in Act 131. However, we favor S.B. No. 847 because (1) section 1 of SB. No. 847 explains why the sunset provision is being deleted, and (2) S.B. No. 847 specifies an effective date of June 30, 2009, which avoids the possibility of this bill taking effect after the sunset date of July 1, 2009.

We respectfully request passage of this bill with the recommended revisions.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org

MUFU HANNEMANN  
MAYOR



BOISSE P. CORREA  
CHIEF

PAUL D. PUTZULU  
KARL A. GODSEY  
DEPUTY CHIEFS

OUR REFERENCE MT-JNB

February 12, 2009

The Honorable Brian Taniguchi, Chair  
and Members  
Committee on Judiciary  
The Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members:

Subject: Senate Bill No. 525, Relating to Tobacco

I am Michael Thomas, Major of the Juvenile Services Division, Honolulu Police Department.

The Honolulu Police Department supports the Senate Bill No. 525, Relating to Tobacco. Bill No. 525 would remove the sunset clause in Act 131, Session Laws of Hawaii 2005, which contains a repeal date of July 1, 2009.

Bill No. 525 allows the court to suspend or revoke a retail tobacco permit for subsequent violations. Section 245-2.5, Retail tobacco permit, requires every retailer engaged in the retail sales of cigarettes and other tobacco products to obtain a retail tobacco permit.

The Honolulu Police Department urges you to support Senate Bill No. 525.

Sincerely yours,

  
MICHAEL THOMAS, Major  
Juvenile Services Division

APPROVED:

for:   
BOISSE P. CORREA  
Chief of Police

*Serving and Protecting With Aloha*



February 10, 2009

Committee on Judiciary and Government Operations  
Senator Brian T. Taniguchi, Chair  
Senator Dwight Y. Takamine, Vice Chair

**Hearing:**

9:30 A.M. Thursday, February 12, 2009  
Hawaii State Capitol, Room 016

**RE: SB525—Relating to Tobacco**

**Testimony in Opposition**

Chair Taniguchi, Vice Chair Takamine, and members of the Committee on Judiciary and Government Operations. My name is George Massengale and I am the Director of Government Relations with American Cancer Society Hawaii Pacific Inc. Thank you for the opportunity to testify in opposition of SB525 which purports to authorize suspension and revocation of retail tobacco permits for repeat violations of prohibition against sale of tobacco to minors. Also it permanently enacts a retail tobacco permit requirement.

The American Cancer Society Hawaii Pacific Inc., was founded in 1948, and is a community-based, voluntary health organization dedicated to eliminating cancer as a major health problem by preventing cancer, saving lives, and diminishing suffering from cancer, through research, education, advocacy, and service. This mission includes advocating for effective tobacco control measures to reduce and prevent smoking by children and young adults.

We have studied the provisions of SB525; on the surface it would appear that this bill is strengthening HRS Chapter 709-908, Hawaii's current law that addresses tobacco sales to minors. The addition of new language that subjects the tobacco retailer to court sanctions is in reality a move to remove regulatory enforcement from the Department of Taxation to the Judiciary. Doing so would have the indirect impact of delaying enforcement and sanctions as the case moves so-ever-slowly through the court system. An iniquitous retailer could take advantage of this situation by deciding to actively sell tobacco products to minors.

From what we can ascertain there is nothing wrong with the current statutes that address cigarette and tobacco sales in general and to minors; HRS Chapter 245 & HRS Chapter 709-908. These statutes are working just fine. In 1998, when the legislature increased the fine for violations, the number of violations for illegal tobacco sales to youth dropped dramatically. Today at 9.7%, Hawaii has one of the lowest youth smoking rates in the nation. The number one factor in decrease was the positive ID provision ensuring that the person making the purchase was of legal age.

American Cancer Society Hawai'i Pacific, Inc., 2370 Nu'uuanu Avenue, Honolulu, Hawaii 96817-1714  
•Phone: (808) 595-7500 •Fax: (808) 595-7502 •24-Hour Cancer Info: (800) 227-2345 •<http://www.cancer.org>

We commend the Chair for wanting to strengthen our existing law, to prevent our youth from being able to purchase tobacco products. Our primary concern at this point is the state of our economy, as the legislature grapples with the budget deficit, we hope there will remain sufficient moneys to continue public education, counter marketing, and prevention efforts. I would love to come back before this committee next year and report that our youth smoking rate is even lower.

In preparing our testimony for this hearing, an idiom came to mind, "if it ain't broke, don't fix it." We would request that the measure be deferred.

Mahalo for the opportunity to provide testimony on this measure.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Massengale".

George Massengale, JD  
Director of Government Relations



Senator Brian Taniguchi, Chair  
Senator Dwight Takamine, Vice Chair  
Committee on Judiciary and Government Operations  
State Capitol, Honolulu, Hawaii 96813

HEARING      Thursday, February 12, 2009  
                  9:30 am  
                  Conference Room 016

RE:      SB 525, Relating to Tobacco

Chair Taniguchi, Vice Chair Takamine and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii.

**RMH opposes SB525**, which authorizes suspension and revocation of retail tobacco permit for repeat violations of prohibition against sale of tobacco to minors and permanently enacts retail tobacco permit requirement.

Act 313, Session Laws of Hawaii 2005, must be allowed to sunset; and if so, there is no need for the suspension and revocation provision in SB525.

Retail sales have declined steadily since the second quarter of 2008. Holiday sales, which account for 25% to 40% of a retailer's annual business, were down double digits this year. Hawaii's retailers are struggling to maintain operations, and, more specifically, to retain their employees and avoid layoffs.

We must assist our businesses keep needed and valuable cash resources in their hands and, hopefully, **help them keep their doors open for business.**

We respectfully request that you hold SB525. Thank you for your consideration and for the opportunity to comment on this measure.

A handwritten signature in cursive script, appearing to read 'Carol Prejill'.

President

RETAIL MERCHANTS OF HAWAII  
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ph: 808-592-4200 / fax: 808-592-4202