



To: Senator Brian T. Taniguchi, Chair, Judiciary and Government Operations Committee
Senator Dwight Y. Takamine, Vice Chair, Judiciary and Government Operations Committee
Members, Senate Committee on Judiciary and Government Operations
From: Trisha Y. Nakamura, Policy and Advocacy Director *TYN*
Date: February 11, 2009
Hrg: Senate Judiciary and Government Operations Committee; February 12, 2009 at 9:30 a.m.
Re: **Strong Opposition to SB 525, Relating to Tobacco**

Thank you for the opportunity to testify in opposition to SB 525 which on the surface appears to provide appropriate sentencing of recidivist tobacco retailers who sell tobacco to minors. We ask you to hold this measure.

The Coalition for a Tobacco Free Hawaii ("Coalition") is the only independent organization in Hawaii whose sole mission is to reduce tobacco use through education, policy and advocacy. The Coalition provides leadership for the tobacco control community, develops networks, helps coordinate tobacco control programs and builds community awareness.

I. SB 525, Section 1 Will Undermine Current Laws That Establish Strong and Fair Comprehensive Laws on Tobacco

SB 525, Section 1, is poor policy and sets dangerous precedent by stalling administration of penalties for those who violate our strong laws on tobacco. This measure will undermine the comprehensive systems already in place and working. Less youth smokers report "store purchase" as their usual source for obtaining cigarettes—7.1% in 2007 compared to 25.9% in 2000. HRS 709-908, HRS Chapter 245, the administrative provisions promulgated pursuant to HRS Chapter 245, and the Hawaii Administrative Procedures Act work to effectively address law violations by tobacco retailers.

Penalties Must Be Immediate and Direct

SB 525 seeks to weaken effective procedures already in place to suspend or revoke the permits of tobacco retailers who violate the Tobacco Tax and Cigarette Tax Law. HRS 245-2 empowers the Department of Taxation ("Department") to establish immediate sanctions for retailers who violate the law. The Department has the power to quickly suspend a retailer's permit if a retailer violates Chapter 245 or for good cause. In assessing whether good cause exists to suspend, revoke, or decline to renew a tobacco retail permit, the Department may already consider whether the retailer or retailer's employees have violated HRS 709-908. (*See* HAR § 18-245-2.5-4(b)). If the retailer contests the Department's suspension of its permit to sell tobacco, it must seek agency review and perhaps appeal the agency's decision in the Circuit Court. During this process, the retailer's permit is suspended and it cannot sell tobacco. This immediate sanction directly prevents the retailer from continuing to re-offend.

Current Structures Work to Issue Fair Sanctions for Law Violations

HRS Chapter 245, HAR Title 18 Chapter 25, and HRS §91-14 establish a fair structure for issuing penalties for violating the tax code and other laws (*See* HAR § 18-245-2.5-4(c)), while balancing the due process rights of the offender (retailer). The penalty for the individual business (temporary loss in tobacco sales and revenue) is fairly balanced with the significant harm to the State (ongoing loss in tax revenue and inability to monitor the tobacco retailer). The penalty is direct and immediate. Tobacco retailers stand to lose the ability to sell tobacco if they violate tax laws and sell tobacco to minors. This sends a clear message to tobacco retailers that violations of Chapter 245 and other laws will not be tolerated.

II. SB 525, Section 2 Will Eliminate the Sunset of the Retail Tobacco Permit Law

The Coalition strongly supports numerous measures (SB 847, SB 528, HB 896, and HB 1029) that will eliminate the sunset of the retail tobacco permit law. The retail tobacco permit law is part of a comprehensive approach to reduce smoking and tobacco use.

The retail tobacco permit requires tobacco retailers to acquire a permit from the Department to sell tobacco. The permit helps our State maintain a complete list of tobacco retailers that is used to help enforce tobacco laws, including verifying that retailers are selling cigarettes that are tax-stamped as well as not selling tobacco to minors.

The Coalition supports eliminating the sunset of the retail tobacco permit law and recommends SB 847, SB 528, HB 896, and HB 1029 as the best vehicles to do so.

Lawmakers Must Not Undermine Strong Enforcement of Tobacco Laws

SB 525 is a tobacco industry ploy to introduce legislation that appears strong and proactive on its face. The legislation appears to increase penalties for retailers who violate the law; in fact, the measure includes a provision which the Coalition supports: the elimination of the sunset date of the retail tobacco permit law.

The Coalition offers that this legislation does the opposite of what it purports to do. The legislation does not increase penalties for law violators—it sets us on a dangerous path to undermine strong policies for issuing fair, direct, and immediate penalties as a means to protect a multitude of interests including collecting tax revenue on tobacco and protecting minors from tobacco. The measure purports to target law violators. In reality, the measure creates avenues for law violators to continue violating the law while the matter is tied up in judicial hearings

The Coalition applauds efforts to target retailers who sell tobacco to minors; however, this measure does not do this. All penalties must be mandatory and not discretionary. Issuance of penalties for law violations must be immediate and direct—not held up in judicial hearings at the District Court while tobacco retailers are able to potentially sell tobacco to minors.

Please hold this measure in Committee. Thank you for the opportunity to testify on this matter.



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February 12, 2009

To: Senate Committee on Judiciary & Government Operations
Senator Brian Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair

By: Richard C. Botti, President
Lauren Zirbel, government Relations

Re: SB 525 RELATING TOBACCO

Chairs & Committee Members:

While we support the removal of the sunset date for the law as established by Act 131, 2005, we have major concerns with the revocation of the permit unless it can be shown that gross negligence was involved such as the store holding the permit could not demonstrate that an educational compliance program was properly instituted, with evidence that employee training existed.

The current \$500 penalty for the first violation is a major deterrent for the sales clerk, so long as the employer doesn't reimburse the employee the \$500. It is the clerk that made the sale that pays the fine.

The problem with suspension or revocation of the permit is that while the employer may provide the training, this is no assurance that the employee will comply, especially since the employee does not have an investment in the establishment.

With our current unemployment, employees are more apt to comply with rules, laws, and policies. Two years ago, industry members were not in this situation, and an employee could violate policy, or even steal from the store, with generally the most severe punishment is termination.

Thus, this measure is a double edged sword. You punish the establishment because of what an employee did, and you punish all other employees, you create higher unemployment and a drain on the unemployment system, and you penalize the state of tax revenues from both the former employees and the establishment. That's called the domino affect.

However, if it were the owner of the store that did the selling, then the penalty of loss of permit is justified and warranted.

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Testimony Strongly **OPPOSING SB 525** "Relating To Tobacco"

The American Heart Association strongly opposes SB 525.

Put simply, this bill is a wolf in sheep's clothing. It has all the signs of being a tobacco industry-promoted law.

While the American Heart Association strongly supports eliminating the sunset provision in Hawaii's current tobacco retailer permit law and making that law permanent, SB 525 would have just the opposite effect for which the tobacco retailer permit law is intended.

Instead of serving as a disincentive to retailers who might profit by illegally selling tobacco products to minors, it would instead make enforcement of the law cumbersome by tying up cases against unlawful retailers in court. It would weaken the Department of Taxation's powers to rescind the license of retailers who repeatedly sell tobacco products illegally to our keiki.

The current tobacco retail licensing law is working; there is no need to alter it except to remove its sunset date. The Senate Health Committee on Wednesday passed unanimously SB 528, which would eliminate the sunset clause in the law and allow the current law to continue unchanged.

The American Heart Association strongly urges legislators to support SB 528, but to **HOLD SB 525.**

Respectfully submitted,

Don Weisman
Hawaii Communications and Marketing/Government Affairs Director

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