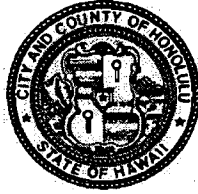


LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU

711 KAPIOLANI BOULEVARD, SUITE 600 • HONOLULU, HAWAII 96813-5249
PHONE: (808) 768-7300 or (808) 768-7355 • FAX: (808) 591-2700
E-mail address: liquor@honolulu.gov • INTERNET: www.honolulu.gov/llq

MUFI HANNEMANN
MAYOR



February 17, 2009

Senator David Y. Ige, Chair
Senator Josh Green, M.D., Vice Chair
Committee on Health

Senator J. Kalani English, Chair
Senator Mike Gabbard, Vice Chair
Committee on Transportation, International and Intergovernmental Affairs

Hearing: Wednesday, February 18, 2009
2:45 pm; Room 016

Position: Oppose SB56 Relating to Enforcement of the Smoking Prohibition

The Departments of Liquor Control for the Counties of Hawaii, Kauai, and Maui and the City and County of Honolulu Liquor Commission oppose SB56 and respectfully request that SB56 be held.

Chapter 328J currently imposes jurisdiction on smoking on the Department of Health (DOH), who is the recipient of tobacco monies to effect education and enforcement. We respectfully request that Your Committees determine the following prior to taking action on SB56:

1. Does the DOH currently enforce Chapter 328J?
2. Why is this transfer of authority to county liquor commissions necessary?
3. Has DOH promulgated rules for the administration of this chapter pursuant to 328J-11?
4. How much money is currently received for the administration of this chapter?
5. If the transfer of jurisdiction is imposed on county liquor commissions, will the commissions receive all tobacco monies currently appropriated for enforcement and signage?
6. Does SB56 extend jurisdiction to premises which do not have liquor licenses?

In addition, we respectfully advise Your Committees of the following:

As currently written, this bill will require the county liquor commissions to take action on **"verified complaints"** filed with the Department of Health. We request that Your Committees seek a definition of "verified complaint". We are unaware of any DOH rules

DENNIS ENOMOTO
CHAIRMAN

DANNY KIM
CO-VICE CHAIR

IRIS R. OKAWA
CO-VICE CHAIR

JON F. YAMAGUCHI
COMMISSIONER

GREGORY HAMMER
COMMISSIONER

DEWEY H. KIM, JR.
ADMINISTRATOR

promulgated under Chapter 328J; whether or not those rules have been published and circulated; and the procedures for filing complaints and standards of proof to substantiate a violation.

Section 328J-12 (Penalties) currently imposes monetary fines for violations ranging from \$25 - \$500. It is unclear if violations of Section 328J by liquor-licensed establishments are subject to the penalties in Section 328J in addition to, or in place of, the penalties established in Chapter 281. Chapter 281 already provides for disciplinary action and penalties against a licensee for violations of law. Should this bill pass, violations of Section 328J should be held to the substantive and procedural standards already contained in Chapter 281.

We are opposed to language which will require our investigators to ensure that signage requirements are in place prior to renewal. This would require our staff to visit approximately 300-plus (Hawaii County), 200-plus (Kauai County) 400-plus (Maui County), and 1,400 (Honolulu County) premises annually. Licensees currently must comply with a number of signage requirements (e.g., driving under the influence), but we submit that attaching the signage compliance to the license renewal process will not appreciably increase smoking ban effectiveness while unduly burdening county liquor commission investigative staff.

Finally, we are opposed to the harsh actions which will cause the cessation of business and loss of employment of its employees for smoking violations, without any discretion given the county liquor commission decision makers to consider mitigating circumstances. If this bill goes forward, licensee penalties should be limited to those provided in Section 281-91.

We oppose SB56 and respectfully request that SB56 be held.

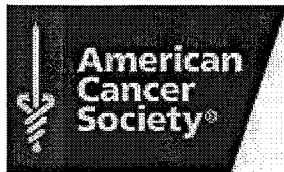
Janice Pakele, Director
County of Hawaii

Eric Honma, Director
County of Kauai

Franklyn Silva, Director
County of Maui



Dewey H. Kim, Jr., Administrator
City and County of Honolulu Liquor Commission



February 16, 2009

Committee on Health
Senator David Ige, Chair
Senator Josh Green, MD, Vice Chair

Committee on Transportation, International, and Intergovernmental Affairs
Senator J. Kalani English, Chair
Senator Mike Gabbard, Vice Chair

Hearing:

2:45 P.M., Wednesday, February 18, 2009
Hawaii State Capitol, Room 016

RE: SB56, Relating to Enforcement of the Smoking Prohibition

Testimony in Strong Support

Chair's Ige and English, and members of the joint Committee's. My name is George Massengale and I am the Director of Government Relations with the American Cancer Society Hawaii Pacific Inc. Thank you for the opportunity to testify in strong support of SB56, which would make compliance with our secondhand smoking law (HRS Chapter 328J), a condition for renewal of a liquor license. It will authorize the county liquor commissions to enforce the law current with the Department of Health.

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 which includes enforcement.

As these committees know, in 2006, the American Cancer Society advocated tirelessly for passage of our secondhand smoking law. Once passed we leverage our resources with State of Hawaii, and the Coalition for a Tobacco-Free Hawaii, to promote a public education campaign on the provisions of the law. Tobacco-Free Hawaii even prepared the first draft administrative rules as to expedite the formation of the administrative regulations needed for enforcement by the Department of Health. **I am sorry that I must report to the committees that after 30 months we still do not have regulations in place.**

In crafting our smoke-free law, much consideration was given as to what types of businesses would be covered and would there be exemptions? In the end the decision was made to include most all businesses and to keep exemptions to a minimum (such as retail tobacco stores, outdoor areas of employment, film productions, and by request, state correctional facilities. [§328J-7].

The primary consideration was to ensure that there was a level playing field, that all businesses would be impacted equally by the provisions of the law. **Since the law went into effect, a small but steady growing numbers of recalcitrant businesses, mostly bars and nightclubs, have continued to allow smoking in violations of the provisions of Chapter 328J.** A review of gross liquor sales reports for the City and County of Honolulu show that certain bars have had increased liquor sales as a result of their flagrant disregard of our secondhand smoking law.

We also have had reports that customers who complain about smoking are either refused service or asked to leave, and employees who have complained have been threatened with termination. Both actions are in clear violation of the “Nonretaliation and nonwaiver of rights provisions” of Chapter 328J.

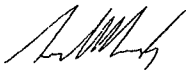
We would point out that other states have promulgated administrative rules within weeks to a few months after passage of their secondhand smoking law. The Society believes that 30 months is entirely too long to wait for administrative rules to allow enforcement by the Department of Health.

We believe that the provisions of SB56 that create a nexus to smoking compliance to liquor license renewals is well thought-out and should be an effective method to ensure our bar and nightclub workers are protected from the hazards of secondhand smoke. We also believe that reported incidents of employee and customer retaliation will also be effectively curtailed.

We would ask that the committees pass this measure for a final hearing before the Senate Judiciary Committee.

Mahalo for giving me the opportunity to provide testimony here today.

Sincerely,



George Massengale, JD
Director of Government Relations

Oahu
680 Iwilei Road, Suite 575
Honolulu, HI 96817
Tel: (808) 537-5966
Fax: (808) 537-5971
lung@ala-hawaii.org

Kauai
2992 Umi Street
Lihue, HI 96766
Tel: (808) 245-4142
Fax: (808) 245-8488
alahkauai@ala-hawaii.org

Maui
95 Mahalani Street,
Suite # 28-1A
Wailuku, HI 96793
Tel: (808) 244-5110
Fax: (808) 242-9041
alahmaui@ala-hawaii.org

Hawaii
39 Ululani Street
Hilo, HI 96720
Tel: (808) 935-1206
Fax: (808) 935-7474
alahbi@ala-hawaii.org

Website:
www.ala-hawaii.org

E-mail:
lung@ala-hawaii.org

Lung HelpLine
1-800- LUNG-USA
(586-4872)

BOARD OF DIRECTORS

Karen J. Lee
President

Wendy Akita
Sherri Bulkley
Cathy Foy-Mahi
David Ing
Malcolm T. Koga
Joseph S. Pina, M.D.
Rose Ann Poyzer, RN
Douglas Q.L. Yee
Sterling Q.L. Yee

Improving Life

One Breath at a Time

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



TO: Senate Committee on Health

**Senate Committee on Transportation, International &
Governmental Affairs**

**FOR: Hearing Scheduled for 2:24 pm on Wednesday,
February 18, 2009**

**RE: TESTIMONY IN SUPPORT OF SB 56 RELATING TO
THE ENFORCEMENT OF THE SMOKING
PROHIBITION**

Chairs Ige, and English; Vice Chairs Green and Gabbard; and
Committee Members:

The American Lung Association in Hawaii supports any
measure that will enforce the smoking ban in public places. Our
mission is to prevent lung disease and promote lung health
through research, education and advocacy. We are dedicated
to fighting for clean air both indoors and outside. Everyone has
a right to breathe clean air no matter where they work, dine or
are entertained.

When State legislators enacted the 2006 public places smoking
ban, they did so knowing there is no risk-free level of exposure
to secondhand smoke. While that law took effect in November
2006, to date, the enforcement rules have yet to be adopted.
We are pleased that most nightclubs voluntarily comply with the
ban. However a few continue to blatantly ignore the law
without any worry of sanction, thus putting at risk, not only the
health of their customers, but also that of their employees.

As a society, we strive to improve working conditions and
eliminate threats to health and safety. The no-smoking law
must be enforced. This measure will do that.

Respectively Submitted,

Jean Evans, MPH, Executive Director
American Lung Association in Hawaii

From: Michael758 [michael808a@hawaiiantel.net]
Sent: Monday, February 16, 2009 10:18 PM
To: HTHTestimony
Subject: Testimony for SB56

Categories: Green Category, Blue Category

COMMITTEE ON HEALTH
Senator David Y. Ige, Chair
Senator Josh Green, M.D., Vice Chair

COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL
AFFAIRS
Senator J. Kalani English, Chair
Senator Mike Gabbard, Vice Chair

DATE: Wednesday February 18, 2009
TIME: 2:45 PM
PLACE: Conference Room 016

SB56

Position - Strongly Opposed

RELATING TO A DRACONIC ENFORCEMENT SCHEME REGARDING THE SMOKING BAN

Dear Senate Health and Transportation, International, and Intergovernmental Affairs committees,

This bill is an unfair and mean spirited attack on small businesses which already are forced to cope with the costly and pretentious folly of banning smoking in bars. The reason some establishments are allowing smoking is out of financial hardship. They tried this ban for months and in some cases a year after it came out, the ban failed them in many cases. I think consenting adults can make their OWN choices on private property and history has shown that they do indeed make their own choices.

There are also serious legal and liability issues with this measure. I respectfully request that this measure be deferred.

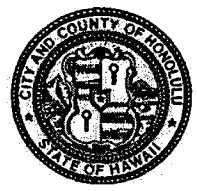
Mahalo, Michael Zehner
750 Amana St. #608
Honolulu, HI 96814

LATE

**LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU**

711 KAPIOLANI BOULEVARD, SUITE 600 HONOLULU, HAWAII 96813-5249
PHONE (808) 768-7300 • FAX (808) 591-2700
INTERNET ADDRESS: www.honolulu.gov/liq • E-MAIL: liquor@honolulu.gov

MUFI HANNEMANN
MAYOR



February 17, 2009

DENNIS ENOMOTO
CHAIRMAN

DANNY KIM
CO-VICE CHAIR

IRIS R. OKAWA
CO-VICE CHAIR

JON F. YAMAGUCHI
COMMISSIONER

GREGORY HAMMER
COMMISSIONER

DEWEY H. KIM, JR.
ADMINISTRATOR

Senator David Y. Ige, Chair
Senator Josh Green, M.D., Vice Chair
Committee on Health

Senator J. Kalani English, Chair
Senator Mike Gabbard, Vice Chair
Committee on Transportation, International and Intergovernmental Affairs

Hearing: Wednesday, February 18, 2009
2:45 p.m.; Room 016

Position: Oppose SB56 Relating to Enforcement of the Smoking Prohibition

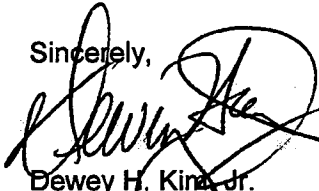
The City & County of Honolulu Liquor Commission would like to add an additional issue to our opposition to SB56 "Relating to Enforcement of the Smoking Prohibition".

Expense:

If the Honolulu Liquor Commission were to be authorized to enforce the smoking prohibition in the 1400 licensee premises the cost would be high. In our experience with giving violations and testifying in District Court for underage drinking, the cases are often continued 3-4 times before our investigators can testify. The agency pays them overtime for two (2) hours for each appearance. In addition, if the appearance in court does not leave enough time between their weekly shifts, the agency must pay the investigators overtime for the entire following shift.

Failure for our investigators to appear would allow the case to be dismissed, which will eliminate the deterrent effect of giving out violations. We do not see any funding provisions for this legislation which would have to be significant. As such we oppose passage of SB56.

If you have any questions, do not hesitate to call me at 768-7301.

Sincerely,

Dewey H. Kim, Jr.
Administrator



COALITION FOR A
TOBACCO-FREE HAWAII

LATE

To: Senator David Y. Ige, Chair, Health Committee
Senator Josh Green, MD, V. Chair, Health Committee
Senator J. Kalani English, Chair, Transportation, Int'l & Intergov't'l Affairs Committee
Senator Mike Gabbard, V. Chair, Transportation, Int'l & Intergov't'l Affairs Committee
Members, Health & Transportation, Int'l & Intergov't'l Affairs Joint Committee

From: Trisha Y. Nakamura, Policy and Advocacy Director

Date: February 17, 2009

Hrg: Senate Health & Transportation, Int'l & Intergov't'l Affairs Joint Committee
February 18, 2009 at 2:45 p.m.

Re: **Support for SB 56, Relating to Enforcement of the Smoking Prohibition**

Thank you for the opportunity to testify in support of SB 56 which increases penalties for violations of the Smoke-Free Law passed in 2006, makes compliance with HRS Chapter 328J a condition of liquor-license renewal, and provides shared jurisdiction of enforcing HRS Chapter 328J to the Department of Health and the liquor commission.

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. The Coalition, many partner organizations, and the public advocated for the passage of the Smoke-Free Law in 2006.

I. Legislature Intended the Smoke-Free Law to Be Enforced to Protect the Public Health

The Smoke-Free Law passed in 2006 by an overwhelming majority: with 22 ayes in the Senate and 47 in the House. The Legislature noted its purpose was to “protect the public health and welfare by prohibiting smoking in places open to the public and places of employment to ensure a consistent level of basic protections statewide from expose to secondhand smoke.” (S.B. 3262 S.D. 1 H.D. 1 C.D. 1, 23rd Leg., Reg. Sess. (Haw. 2006)). The Smoke-Free Law continues to be favored by the public—over 85% of Hawaii residents favor the law. In addition, there is no evidence that the Smoke-Free Law has caused adverse economic outcomes to the tourism and hospitality industries. (See Andrew Hyland, Ph.D. et. al., *One Year After the Hawaii Smokefree Law: Tourism and Hospitality Economic Indicators Appear Unaffected*, Jan. 2008).

After two years, the State has not seen its Smoke-Free Law enforced. Most businesses are voluntarily complying. However, some businesses are still choosing to violate the Law and have faced no penalties. The Coalition is concerned that the longer the Smoke-Free Law goes unenforced, the greater the likelihood that other businesses -will choose to violate the law. By moving legislation forward that provides jurisdiction to the liquor commission, the Legislature restores an implied promise to the public to ensure partially enclosed and enclosed areas open to the public are free of dangerous second-hand smoke.

II. SB 56 Is Clear; Violations of the Smoke-Free Law Will Not Be Tolerated

SB 56 enhances the penalties for violations of the Smoke-Free Law.

The penalties demonstrate the importance of the public's health. Businesses which have the privilege to sell liquor in our State should honor all the law and not engage in business at the expense of workers and the public's health. This measure will ensure that workers are safe from secondhand smoke and all can go to restaurants and bars without fear of health concerns.

This measure seeks to ensure that the promise the 23rd Legislature made to the public to ensure that all workplaces are safe and healthy

We ask that you pass this measure out of Committee. Thank you for the opportunity to testify on this matter.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 17, 2009 7:43 PM
To: HTHTestimony
Cc: Bill@ejlounge.com
Subject: Testimony for SB56 on 2/18/2009 2:45:00 PM

Categories: Green Category, Blue Category

LATE

Testimony for HTH-TIA 2/18/2009 2:45:00 PM SB56

Conference room: 016
Testifier position: oppose
Testifier will be present: Yes
Submitted by: Bill Comerford
Organization: Individual
Address: 10 Marin Lane Honolulu, HI
Phone: 223-3997
E-mail: Bill@ejlounge.com
Submitted on: 2/17/2009

Comments:

I would like to submit testimony on this matter.
I am strongly opposed.

1/ The Health Department has passed a smoking ban in direct opposition to 60+ years of existing liquor laws. Their ban threatens your license by putting your customers on the streets and sidewalks where litter, noise, fights and other violations are beyond your legal control. Prior laws put your patrons inside your establishment where they were under your legal control. When outside your legal supervision these violations threaten your license.

2/ The Health Department as a State Agency introduced this bill and was empowered to enforce the bill. However despite their wealth of tobacco money they have failed to fund their enforcement and now are asking a city agency to do their job for them.

3/ To date they have not passed any administrative rules to enforce the law upon businesses. They do have the power to enforce against individuals yet there is only one citation in 2+ years of this law. It is clear that they are not interested in stopping smoking as much as they are interested in punishing our industry.

4/ The severity of the punishment is well beyond the infraction. Do we need to close businesses to help the employees? Clearly there is malice here that is not sympathetic to the employees financial health. If an individual smokes they are fined \$75.00. If a business is fined three times they lose their livelihood for someone elses actions. The business didn't smoke an individual did. Where is the fair expectations of law?

5/ Currently if we call the police on a smoker in the establishment we are calling the police on ourselves. The Health Dept does not differentiate who calls in a violation it remains a violation against the licensee. There is only self indictment when you enforce the law.

6/ Is there any due process in their proposal? There was none in their ban and none in their proposed administrative rules.

- 7/ Is there a legal standard here being followed? Why are they asking a Liquor Agency to enforce tobacco laws or public health laws? Is it not their own responsibility?
- 8/ The health committee has introduced a number of laws to benefit themselves financially at the cost of liquor and tobacco related sales. Why can't they fund themselves out of the proposed increases? They are asking us to fund their pet projects and yet they will not allow the legislature to hear our modest request for exemptions. The Liquor Commissions operate on fees we as licensees pay. The law is that they have to operate within those budgets. Should we be forced to pay for their enforcement?
- 9/ They have passed the strictest law in the nation without any enforcement. If they can't enforce their law then most likely the law is not rational and they should allow for realistic exemptions for bars.
- 10/ They have taken the economic incentive out of operating within our industry without our consent or our concerns. They do not consider the economic aspects on our employees, ourselves and the overall economy. They remain single minded to a bigotted purpose. No business can survive catering to their non customers yet this law demands we cater to phantom customers. With no sins there are no sin taxes.
- 11/ They ignore the fact the majority of our employees and customers smoke. They demand a tyranny of the majority yet that majority is not in the bars.
- 12/ The Liquor Commission is currently opposed to the passing of this law.

Bill Comerford,
Spokesman
Hawaii Bar Owners Association
10 Marin Lane
Honolulu, HI 96813
808-223-3997
bill@ejlounge.com
hiboa.net

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 18, 2009 8:37 AM
To: HTHTestimony
Cc: fred@ejlounge.com
Subject: Testimony for SB56 on 2/18/2009 2:45:00 PM

LATE

Categories: Green Category, Blue Category

Testimony for HTH-TIA 2/18/2009 2:45:00 PM SB56

Conference room: 016
Testifier position: oppose
Testifier will be present: No
Submitted by: Fred Remington
Organization: Individual
Address: 92-1353 Hoalii St Kapolei, HI
Phone: 479-0782
E-mail: fred@ejlounge.com
Submitted on: 2/18/2009

Comments:

Am opposed to this unfair and unjust bill. Whatever happened to freedom of choice? Let the business and bars owners decide to allow smoking or not. The Liquor invesigators don't want to become the smoking police.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 18, 2009 6:57 AM
To: HTHTestimony
Cc: m4793995@hotmail.com
Subject: Testimony for SB56 on 2/18/2009 2:45:00 PM

Categories: Green Category, Blue Category

LATE

Testimony for HTH-TIA 2/18/2009 2:45:00 PM SB56

Conference room: 016
Testifier position: oppose
Testifier will be present: No
Submitted by: mike
Organization: Individual
Address: kapolei,hawaii
Phone: 479-3995
E-mail: m4793995@hotmail.com
Submitted on: 2/18/2009

Comments:

i strongly oppose these bills. why should the liquor commission be tasked with enforcement of a law that should not have been passed in the first place. let business and individuals make their own choices on this issue. our individual rights are being beaten down by laws like these. if the health dept wants a law like this, then let them enforce it. the liquor commission does a great job with all issues concerning liquor and the establishments that sell liquor products. let them do what they do best!!! don't bog the existing infrastructure down by forcing them to enforce a law that is not, and should not be, part of their portfolio. thank you