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GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.  
ACTING DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

## HOUSE COMMITTEE ON JUDICIARY

### H.B. 98 H.D. 1, RELATING TO TOBACCO

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.  
Acting Director of Health

March 1, 2011  
2:00 p.m.

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 laws directed at minors' purchase, possession or use of tobacco products when implemented alone, yield  
4 insufficient evidence to determine effectiveness. In short, according to the Centers for Disease Control  
5 and Prevention (CDC), these laws have not shown to be successful in reducing youth smoking rates.

6 **Fiscal Implications:** None

7 **Purpose and Justification:** This bill amends section 709-908, HRS, to prohibit the possession or use of  
8 tobacco products by minors. The bill continues to allow a minor to purchase or possess tobacco  
9 products in controlled purchases as part of a law enforcement activity or authorized study and permits  
10 the possession of tobacco products by a minor in the course of delivery, under the direction of the  
11 minor's lawful employer. The bill continues the existing structure of fines to both the buyer and seller  
12 and now adds those possessing or using tobacco products be included. It would also change the  
13 requirement for community service by a minor from "shall" to "may" and changes the effective date to  
14 July 1, 2012.

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, \$42 million in Hawaii.  
4 The industry has continued to market their products with images and messages which strongly resonate  
5 among our children.

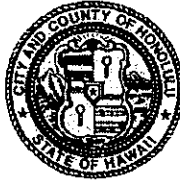
6 In the CDC Guide to Community Preventive Services, a review of laws that prohibit possession  
7 or use of tobacco products by minors that require minors to receive citations and participate in  
8 educational programs have been found to be ineffective. Further, these laws had little or no effect on the  
9 rates of youth initiation, or youth access to tobacco products.

10 The Department feels more effective measures to impact youth access to tobacco include: 1) the  
11 passage of laws that impact the time, place, and manner as to how tobacco products are sold; 2) a strong  
12 merchant education effort; 3) strong enforcement 4) consistent adjudication by the courts; and 5) greater  
13 public and community awareness. These actions, when taken together, will reduce both the appeal and  
14 the access to tobacco products to Hawaii's youth.

15 Thank you for the opportunity to testify.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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March 1, 2011

The Honorable Gilbert S. C. Keith-Agaran, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

Subject: House Bill No. 98, H.D. 1, Relating to Tobacco

I am Janna Mizuo, Major of the Community Affairs Division of the Honolulu Police Department (HPD), City and County of Honolulu.


The HPD supports House Bill No. 98, H.D. 1. This bill clarifies and amends the law to say that it shall be unlawful for a minor to purchase, possess, or use any tobacco product. It also further clarifies the conditions where a minor may be in possession of tobacco products without violating the law.

The HPD has worked in partnership with the State Department of Health's Alcohol and Drug Abuse Division and the University of Hawaii Cancer Center by conducting tobacco compliance checks on retailers who sell tobacco to minors in the community.

The health and welfare of our youth is an utmost concern for the HPD. We need to send a strong message to minors that purchasing, possessing, or using tobacco in any form is not condoned. We believe that a stiffer penalty assessed to the minor would prevent future behavior.

Thank you for the opportunity to testify.

APPROVED:

  
LOUIS M. KEALOHA  
Chief of Police

Sincerely,

  
JANNA MIZUO, Major  
Community Affairs Division

*Serving and Protecting With Aloha*



the  
**Drug Policy  
Forum**  
of hawai'i

March 1, 2011

To: Rep. Gilbert Keith-Agaran, Chair  
Rep. Karl Rhoads, Vice Chair and  
Members of the Committee on Judiciary

From: Jeanne Y. Ohta, Executive Director

RE: HB 98 HD1 Relating to Tobacco  
Hearing: Tuesday, March 1, 2011, 2:00 p.m., Room 325

Position: Opposed

The Drug Policy Forum of Hawai'i writes in opposition to HB 98 HD 1 which would make it unlawful for minors to possess or use tobacco products.

The use of drugs in our community is a public health problem and should be addressed through public health measures, not through policing and a system of escalating fines or penalties. Prevention and education should be the main tools used to discourage teen use of tobacco. Treatment or cessation programs should also be easily accessible to teens.

Best practices to reduce youth initiation of tobacco use include countermarketing, anti-tobacco programs and policies in schools. The Centers for Disease Control does not recommend making youth use and possession unlawful.

Effective and responsible drug policies rely on evidence-based programs. Due to the lack of scientific data on the effectiveness of possession and use laws, we ask that the committee hold this measure.

Thank you for the opportunity to testify on this measure.

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## *The Official Sponsor of Birthdays*

February 27, 2011

Committee on Judiciary  
Representative Gilbert Keith-Agaran, Chair  
Representative Karl Rhoads, Vice Chair

### **Hearing:**

2:00 p.m., Tuesday, March 1, 2011  
Hawaii State Capitol, Room 325

**RE: HB 98, HD1 – Relating to Tobacco**

### **Testimony in Opposition**

Chair Keith-Agaran, Vice Chair Rhoads, and members of the Committee on Judiciary. Thank you for the opportunity to offer this testimony in opposition of HB 98, HD1 which prohibits the possession of tobacco products by minors.

As the committee members know, the American Cancer Society in Hawaii has been a long time supporter of measures that curtail underage tobacco use. It is well documented that tobacco use at an early age usually leads to a lifetime of addiction and a high risk of cancer and/or heart disease.

We have reviewed the provisions of HB 98, HD1 as well as the current science associated with the effectiveness of youth tobacco possession laws or PUP laws. With respect to PUP Laws (possession, use, and purchase), there is little empirical data on the effectiveness of these laws. Even arguments in favor of PUP laws and against have been controversial.

#### **Those in favor of PUP laws argue that:**

- They add a cost to youth for tobacco use.
- They promote youth accountability.
- They de-normalize tobacco use among youth.

#### **Those against PUP laws contend that:**

- They divert attention from other tobacco control efforts, including merchant responsibility.
- Enforcement cost and difficulty can be high.
- There is no empirical evidence that PUP laws actually reduce tobacco use among children and youth.

**In the end, all analyses have not suggested a relationship between the presence of state PUP laws and adolescent smoking behavior. We would note that PUP laws were only somewhat associated with lower smoking rates among the youngest adolescents at low or medium risk who had access to readily available tobacco intervention program. At this time, Hawaii does not provide such program availability.**

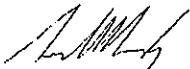
We would note for the committee that in 2000, Hawaii's youth smoking rate was 24.5% for public high school students and in 2006 the rate dropped to 12.6%. In 2008, the rate decreased even further to 9.7%. However, there as been a slight creeping upwards in the high school smoking rate, which is now 11.3%. We attribute this increase to focus marketing by the tobacco industry, and a decrease in our tobacco prevention effort due to state budget cuts that reduced funds into the Hawaii Tobacco Trust Fund administered by the Hawaii Community Foundation. **Despite all this, our tobacco prevention control efforts continue to work.**

Tobacco sales to minors declined because of public education, counter marketing, and as noted, youth directed prevention efforts. **Criminalizing youth possession of tobacco products is not the right solution, nor the most effective way to reduce youth access to tobacco. What does work is strict compliance with tobacco retail permits and enforcement of tobacco sales to youth.**

**A thorough review of the research on the efficacy of PUP law leads to the conclusion that the impact of PUP laws is mixed and inconclusive, and that these laws had little or no impact on youth smoking rates. Because of this lack of solid empirical data, we would ask that the committee defer this measure.**

Mahalo, for giving us the opportunity to testify today.

Sincerely,



George S. Massengale, JD  
Director of Government Relations



American Heart Association® | American Stroke Association®

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## Testimony Opposing HB98, HD1

The American Heart Association **opposes** HB98, HD1, "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 over to \$40 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.

**Rather than focus efforts on punishing the victims of tobacco, we need to focus on the victimizers.** Even after being found guilty of a decades-long conspiracy to deceive and defraud the American people, the tobacco companies still do not want to tell the truth about their deadly and addictive products. The companies are doing everything they can to delay and weaken the public statements a federal judge has ordered them to make to correct their past lies and prevent future deceptions.

In a victory for public health, U.S. District Court Judge Gladys Kessler on Feb. 23 rejected the companies' latest delaying tactics, stating forcefully that "Defendants will not be allowed to succeed in that endeavor." Judge Kessler made public the very strong corrective statements that the U.S. Department of Justice is recommending, rejecting a tobacco industry bid to keep them secret.

The Justice Department is proposing that the tobacco companies be required to finally tell the truth to the American people. The government's corrective statements would force the tobacco companies to admit that they lied to the American people and set the record straight about the serious health risks of smoking and secondhand smoke, the addictiveness of nicotine, how they manipulate nicotine, and their deceptive marketing of light and low-tar cigarettes.

The government's proposed statements are strong, factually accurate and entirely consistent with Judge Kessler's findings in her landmark 2006 verdict that the tobacco companies are guilty of violating civil racketeering laws. By challenging these statements, the tobacco companies are showing that they are still unwilling to tell the truth.

In 2006, Judge Kessler issued a 1,683-page opinion finding the major cigarette manufacturers guilty of violating civil provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO). In June 2010, the U.S. Supreme Court refused to hear appeals in the case, allowing Judge Kessler's verdict to stand.

One of Judge Kessler's remedies, since upheld on appeal, requires the tobacco companies to make corrective statements in newspaper and television advertising, at point of sale, on their web sites and on cigarette packaging. The government conducted extensive research before proposing what it believes are the most effective statements. Judge Kessler will determine the final corrective statements.

### 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)

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**Hawaii:**  
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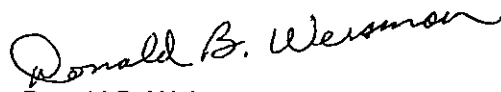
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*"Building healthier lives,  
free of cardiovascular  
diseases and stroke."*

By shifting the focus to youth possession of tobacco products, Hawaii legislators 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 HB 98, HD1.

Respectfully submitted by, —



Donald B. Weisman  
Hawaii Government Affairs Director



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Lung HelpLine  
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### Fighting for Air

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



Chair Gilbert S.C. Keith-Agaran  
Vice Chair Karl Rhoads  
Members, House Committee on Judiciary

Date: February 28, 2011

Hrg: House JUD; Tues, March 1, 2011 at 2:00 p.m. in Rm 325

Re: **Opposition to HB 98, HD 1 Relating to Tobacco**

My name is Debbie Odo and I represent the American Lung Association in Hawaii. We provide tobacco prevention and cessation services statewide.

I ask that you hold HB 98, HD 1 in committee. Our organization supports decreasing youth use of tobacco. This measure, however, does not accomplish this.

The American Lung Association in Hawaii oppose this bill because making tobacco use and possession unlawful has not been proven to actually deter youth tobacco use.

This bill, if passed, would shift responsibility from adults and the tobacco industry to youth who are being targeted by the tobacco industry as "replacement smokers." The tobacco industry spends more than \$42 million in Hawaii to market their products. We must make sure that tobacco retailers are continuing to not sell tobacco to minors.

We must also continue to fund programs like Teens Against Tobacco Use, REAL, and Youth Health Corp at Waianae Coast Comprehensive Health Center, that use counter-marketing tactics to educate young people about the tobacco industry. Counter-marketing and anti-tobacco media are some of the proven strategies that work to prevent youth tobacco use.

I ask that you continue to support strategies that are recommended by the Centers for Disease Control and Prevention to work, including increasing the price of tobacco products, supporting and funding anti-tobacco youth programs and youth prevention programs, and enforcing existing laws that prohibit the sale of tobacco to minors.

Thank you!

Sincerely,

Debbie Odo, Tobacco Control Manager  
American Lung Association in Hawaii  
Phone: (808) 537-5966 ext 216  
E-mail: [Dodo@ala-hawaii.org](mailto:Dodo@ala-hawaii.org)



Tuesday, March 1, 2011, 2:00 PM  
State Capitol Room 325

### **Testimony of the Democratic Party of Hawai'i**

To the House Committee on Judiciary  
Representative Gilbert Keith-Agaran, Chair  
Representative Karl Rhoads, Vice-Chair

### **Testimony to SUPPORT HB 98 HD1 Relating to Tobacco**

To Chair Keith-Agaran, Vice Chair Rhoads, and Members of the House Committee on Judiciary:

Thank you for this opportunity to testify on behalf of the Democratic Party of Hawai'i.

**The Democratic Party of Hawai'i testifies in SUPPORT of HB 98 HD1.** Delegates at the 2010 Democratic Party of Hawai'i Convention adopted a Resolution (ENV 2010-20) to protect children from tobacco smoke. This resolution is a Democratic Party *legislative priority* for 2011. Based on recent studies and papers published at the National Institutes of Health (NIH), the "Purchase, Use and Possession" or PUP strategy taken by HB 98 will reduce the number of new youth smokers.

Because PUP laws can reduce the number of new youth smokers, passing HB98 HD1 can prevent deadly disease and save lives of youth who would otherwise become addicted smokers. To protect youth from tobacco smoke, the current laws against smoking in workplaces and public spaces, and against sales to minors, need more diligent enforcement alongside new prohibition against use and possession of tobacco by minors.

These conclusions are supported by the articles: "Effects of Youth Tobacco Access and Possession Policy", published December 23, 2008 in the International Journal of Environmental Research and Public Health, and "Youth Tobacco Access and Possession Policy Interventions: Effects on Observed and perceived Tobacco use" posted September 1, 2010 at the National Institutes of Health Public Access web page. Abstracts of both articles from the NIH Public Access web page, authored by Jason, Pokorny, Adams, Topliff, Harris and Hunt, are attached to this testimony.

The articles document a study that followed demographically similar towns in Illinois from 2001 to 2005. Some towns only prohibited tobacco sales to minors, while others also prohibited use and possession (PUP) by minors. Towns enforcing PUP laws had fewer new youth smokers than towns that only prohibited retail sales. Benefits enjoyed by PUP towns included: youth observed less public smoking, youth perceived lower rates of smoking by their peers, and smoking by youth decreased. The study advised, however, that communities who adopt PUP laws need also enforce them at all levels to be most

effective, including prohibition of retail sales to minors. Hawaii should therefore increase enforcement of current tobacco laws alongside the adoption of PUP strategy with HB98.

The importance of preventing youth smoking is clear. The 2006 Surgeon General Report concluded that developing bodies of children are especially vulnerable to poisons in tobacco smoke. Serious health consequences for children include: lower respiratory tract infections, pneumonia, ear infection, new asthma and more severe asthma cases, including life-threatening attacks requiring emergency room treatment and hospitalization, and death. Long-term addiction begun in childhood results in earlier onset of deadly disease, including cancer and heart disease.

Some in the anti-tobacco community may follow the advice of the 2001 Canadian Cancer Society paper, "Youth Tobacco Possession Laws Policy Analysis." That 10-year-old analysis advised an "incremental" approach to adopting PUP laws. It concluded society need adopt other measures first: Retail & tobacco sales restrictions, higher tobacco taxes, smoke-free workplaces and public spaces, restrictions on tobacco advertising, counteradvertising campaign, and anti-tobacco education. Much has changed since 2001. Ten years later, most of those concerns and conditions have been met in Hawaii. In 2011, Hawaii already prohibits tobacco sales to youth, has smoke-free workplaces and public spaces, restricts advertising that target youth, and conducts counteradvertising. It is time for the next step in the incremental approach: prohibit youth possession and use alongside the prohibition against tobacco retail sales to minors.

Furthermore, there is sympathy with the value that youth not be "criminalized" for illegal smoking. HB98 HD1 provides for a very small fine of \$10 for the first violation – less than most parking tickets. This consequence would not criminalize youth, but protect youth from deadly disease by reducing youth smoking.

Children need the protection that HB98 HD1 provides. Youth are especially vulnerable to influence of peers, marketing, and health effects of tobacco smoke. When peers are permitted to smoke, other youth are influenced to start. While it is illegal to sell cigarettes to minors, unhealthful use of cigarettes by minors is permitted. Business owners and police who encounter smoking youth may than instruct them to move 20 feet away from building entrances. While protecting building occupants, this suggests smoking is okay for youth if they smoke away from buildings. Passage of HB 98 will allow responsible adults and officers to instruct a smoking youth to stop smoking – a far more consistent message to youth about the dangers of smoking.

To protect youth from tobacco smoke, the Democratic Party of Hawai'i respectfully requests the Committee to pass HB 98 HD1.

Respectfully submitted,

Joy Kobashigawa Lewis & Douglas Pyle, Co-Chairs  
Legislation Committee of the State Central Committee, Democratic Party of Hawai'i

ATTACHMENTS: Abstracts of two articles cited in this testimony

## ATTACHMENT #1 to TESTIMONY from the Democratic Party of Hawaii

(Citation below is for reference & informational purposes only. It does not imply or suggest endorsement by article's authors of this testimony or of the Party. Full article with data is available to the public online at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2672330/pdf/ijerph-06-00001.pdf>):

*Int. J. Environ. Res. Public Health* **2009**, *6*, 1-9; doi:10.3390/ijerph6010001  
International Journal of  
**Environmental Research and  
Public Health**  
ISSN 1660-4601  
[www.mdpi.com/journal/ijerph](http://www.mdpi.com/journal/ijerph)

*Article***Effects of Youth Tobacco Access and Possession Policy Interventions on Heavy Adolescent Smokers**

**Leonard A. Jason** <sup>1,\*</sup>, **Steven B. Pokorny** <sup>2</sup>, **Monica L. Adams** <sup>1</sup>, **Annie Topliff** <sup>1</sup>,  
**Courtney C. Harris** <sup>1</sup> and **Yvonne Hunt** <sup>3</sup>

<sup>1</sup> DePaul University, Center for Community Research, 990 Fullerton Avenue, Suite 3100, Chicago, Illinois 60614, USA; E-mails: madams8@depaul.edu (M. L. A.); atopliff@gmail.com (A. T.); charri30@depaul.edu (C. C. H.)

<sup>2</sup> University of Florida, Department of Health Education & Behavior, P.O. Box 118210 / FLG – 5 Gainesville, FL 32611-8210, USA; E-mail: spokorny@hhp.ufl.edu (S. B. P.)

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\* Author to whom correspondence should be addressed; E-mail: ljason@depaul.edu; Tel.: +1-773-325-2018

*Received: 29 October 2008 / Accepted: 17 December 2008 / Published: 23 December 2008*

**Abstract:** This study evaluated the effects of tobacco PUP (Purchase, Use and Possession) laws on tobacco use patterns among students in twenty-four towns, which were randomly assigned into an experimental and a control group. The experimental group involved both PUP law enforcement and reducing minors' access to commercial sources of tobacco, and the condition for the control group involved only efforts to reduce minors' access to commercial sources of tobacco. The present study found that adolescents in the control group had a significantly greater increase in the percentage of youth who smoked 20 or more cigarettes per day when compared to the experimental group.

**Keywords:** PUP laws; minors' access to tobacco.


**Discussion**

These results complement the findings by Jason *et al.* [8], who found differences in student use of current smoking. These studies support the efficacy of combined approaches involving efforts to both reduce youth access to tobacco as well as provide

consequences for adolescent use of tobacco. This current research suggests that the enforcement of PUP laws does impact youth who smoke 20 or more cigarettes daily.

## ATTACHMENT #2 to TESTIMONY from the Democratic Party of Hawaii

(Citation below is for reference & informational purposes only. It does not imply or suggest endorsement by article's authors of this testimony or of the Party. Full article with data is available to the public online at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2913699/pdf/nihms223432.pdf> ):



**NIH Public Access**  
**Author Manuscript**  
*Am J Addict*. Author manuscript; available in PMC 2010 September 1.

Published in final edited form as:  
*Am J Addict* 2009 ; 18(5): 367-374. doi:10.3109/10550490903077788.

**Youth Tobacco Access and Possession Policy Interventions:  
Effects on Observed and Perceived Tobacco Use**

**Leonard A. Jason,**  
DePaul University

**Steven B. Pokorny,**  
University of Florida

**Monica Adams,**  
DePaul University

**Annie Topfiff,**  
DePaul University

**Courtney Harris, and**  
DePaul University

**Yvonne Hunt**  
Cancer Prevention Fellowship Program, National Cancer Institute

**Abstract**

This study evaluated the effects of tobacco Purchase, Use and Possession (PUP) laws on student perceptions of adolescent tobacco use within towns and schools. Twenty-four towns were randomly assigned into two conditions, the experimental condition (E PUP) involved efforts to increase both PUP law enforcement and reduce minors' access to commercial sources of tobacco, whereas the control condition (C) focused only on efforts to reduce minors' access to commercial sources of tobacco. A Hierarchical Linear Modeling analytical approach was selected due to the multilevel data and nested design. The present study found that over time, youth in the experimental PUP condition observed less youth tobacco usage at school and in their town, and perceived lower rates of tobacco among their peers at school and among friends than youth in the control condition.

The findings suggest that PUP law enforcement might be used to strengthen community norms against youth tobacco use.

**Keywords**

Drug use; sales of drugs; PUP laws; minors' access to tobacco

Population-based approaches for smoking cessation attempt to reduce or eliminate tobacco use by changing the environment in which an individual smokes. Examples of population-based interventions include restricting where smoking is allowed (e.g., workplace bans), increasing the cost of cigarettes (e.g., taxation), and changing community norms (e.g., education, mass-media campaigns). Population-based approaches to cessation have a particular instrumental value, given their capacity to impact large numbers of smokers

Address correspondence to: Leonard A. Jason, Ph.D., Center for Community Research, 990 Fullerton Avenue, Suite 3100, Chicago, Illinois 60614.



Committee: Committee on Judiciary  
Hearing Date/Time: Tuesday, March 1, 2011, 2:00 p.m.  
Place: Room 325  
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 98 HD1, Relating to Civil Rights

Dear Chair Keith-Agaran and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in opposition to H.B. 98, HD1, which seeks to criminalize youth possession of tobacco.

While reducing youth tobacco use is a laudable goal, funneling children into the criminal justice system is a poor way to accomplish that goal; simply put, the criminal justice system is not the appropriate tool to use to address a public health issue. Furthermore, this bill would give police officers a pretext by which to stop and search teenagers, potentially infringing on their constitutional rights and exposing the State to liability.

Finally, this bill does nothing to address the costs of processing all of these children – and the additional strain on the courts and the police department. We suspect that the State could accomplish its educational and public health goals far more economically through the Departments of Health and Education than through the Judiciary and the Department of Public Safety.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 45 years.

Thank you for this opportunity to testify.

Sincerely,

Daniel M. Gluck  
Senior Staff Attorney  
ACLU of Hawaii

American Civil Liberties Union of Hawaii  
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Honolulu, Hawai'i 96801  
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[www.acluhawaii.org](http://www.acluhawaii.org)

To: Committee on Judiciary  
Rep. Gilbert Keith-Agaran, Chair  
Rep. Karl Rhoads, Vice-Chair

Date: Tuesday, March 01, 2011  
Time: 2:00 PM, Conference Room 325

Re: **Testimony in Support of HB 98**

Thank you Chair Keith-Agaran, Vice-Chair Rhoads and members of the Judiciary Committee for allowing me to comment in support of HB 98.

My name is Lyn Pyle. I am a nurse specializing in pediatrics and I support HB 98, which makes it illegal for minors to possess or use tobacco products.

Failing to make the possession and use of tobacco products illegal sends a mixed message to our youth. A youth may ask, "If it's not okay to buy cigarettes at the corner store, why is it okay to smoke them if your friends give them to you?" An adult's answer to this question should be that it's never okay to smoke. We must send a strong consistent message to our youth.

According to the Centers for Disease Control and Prevention, children and teens who smoke have more respiratory illnesses. The lung functioning of smokers in general declines faster than that of nonsmokers. Nicotine causes increases in blood pressure, heart rate, blood flow from the heart and narrowing of the arteries. Preventing youth from smoking by outlawing possession and use, combined with enforcement against retail sales to minors, is good public health policy.

Currently the only preventative measure in law is the prohibition on retailers selling tobacco to minors.

The hospital where I am employed does not allow smoking on the campus. Smokers are directed to go to the public sidewalk, provided they are 20 feet from any intake vent or entry way. Unfortunately, if we have adolescent visitors or even adolescent patients who smoke, we have no means to prevent them from smoking. The only thing we can do is ask them not to smoke. This is very frustrating for hospital staff because it's more than likely that they're going to do it anyway.

We are responsible citizens of the state of Hawaii. Why would we allow children and adolescents to do something that will lead to health problems sooner in life? Why wouldn't we want to do all that we can to prevent more people from being added to the hospital rolls in the future? Why wouldn't we want to pursue an action that will help keep the cost of health care down?

I appreciate the opportunity to provide my support for this measure. Thank you very much.

Sincerely,

Lyn Pyle, RN





CARRIE ANN SHIROTA  
ATTORNEY AT LAW  
1839 Wells Street  
Wailuku, Hawaii 96793  
Phone: 808-269-3858

February 27, 2011

**COMMITTEE ON JUDICIARY**

Rep. Gilbert S.C. Keith-Agaran, Chair  
Rep. Karl Rhoads, Vice Chair  
Tuesday, March 01, 2011  
Room 325 at 2:00pm

**OPPOSE –HB 98, HD1 Criminalizing Youth for Tobacco Possession & Use**

Dear Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committee:

My name is Carrie Ann Shirota, and I am writing in strong opposition to HB 98, HD1 that makes youth use and possession of tobacco products unlawful and imposes penalties for violations.

I speak from my experience as a former Enforcement Attorney with the Hawai'i Civil Rights Commission, Office of the Public Defender, Director of MEO's Being Empowered and Safe Together (BEST) Reintegration Program, and as the current Coordinator for Community Alliance on Prisons' Maui Chapter. During the past ten years, I have focused on alternatives to mass incarceration and policies that have proven effective in reducing crime, and providing men, women and youth involved in the criminal justice with the education, training and treatment necessary to turn their lives around.

This bill would create poor public policy for the following reasons:

- The enactment of laws making tobacco use and possession unlawful has not been proven to actually deter youth tobacco use.
- This bill criminalizes youth for tobacco possession and use, rather than focusing on proven strategies to prevent youth tobacco use as outlined by the Centers for Disease Control and Prevention. These proven strategies include increasing the price of tobacco products, supporting and funding anti-tobacco youth programs and youth prevention programs, and enforcing existing laws that prohibit the sale of tobacco to minors.
- The enforcement of this statute would require taxpayers to foot the bill for costs associated with prosecution for minor's tobacco possession and use. As a result, this bill would waste precious taxpayer dollars on a measure that is not supported by research to be an effective tool in reducing youth tobacco use.
- This bill shifts responsibility from adults and the tobacco industry to youth who are being targeted by the tobacco industry as "replacement smokers." Rather than punishing our youth, we must ensure that tobacco retailers, that spend more than \$42 million dollars in Hawai'i to market their products, are not selling tobacco to minors.

Thank you for the opportunity to submit testimony in opposition to this bill.

Sincerely,  
Carrie Ann Shirota



To: Chair Gilbert S.C. Keith-Agaran  
Vice Chair Karl Rhoads  
Members, House Committee on Judiciary  
Date: February 28, 2011  
Hrg: House JUD: Tues, March 1, 2011 at 2:00 p.m. in Rm 325  
Re: **Opposition to HB 98, HD 1 Relating to Tobacco**

My name is Valerie Chang. I am Executive Director of the Hawaii COPD Coalition. Our organization provides services and support and improves treatment for Hawaii's people affected by Chronic Obstructive Pulmonary Disease (COPD), more commonly known as emphysema, chronic bronchitis and similar conditions. COPD and other respiratory conditions are the third leading cause of death in the US. Our 2007 and 2008 survey data reveal that 2.2 to 3.2% or 22,000 to 30,800 Hawaii adults have been told they have COPD, emphysema and/or chronic bronchitis. It is estimated that at least another 22,000 to 30,800 Hawaii adults remain undiagnosed while suffering from COPD. In 2008, COPD ER visits and hospitalizations were responsible for \$55.9 million in charges for that year alone! Tobacco smoking is the major cause of these health conditions. For more information and Hawaii Department of Health's Burden of COPD in Hawaii 2010 Report to go <http://hawaiicopd.org>. Our organization provides dozens of free breathing test clinics statewide, counseling and support for people to quit smoking, a monthly support group for folks with lung disease and their caregivers, and an annual COPD Education Day. We are staffed with healthcare professionals.

**I ask that you hold HB 98, HD 1 in committee.** Our organization supports decreasing youth use of tobacco. This measure, however, does not accomplish this.

The Centers for Disease Control establishes the best practices and proven methods for reducing youth initiation of tobacco use. Making youth use and possession of tobacco criminal is not named by the CDC as best practice.

We must continue to enforce our strong laws **holding retailers accountable for unlawful sales to minors.** The tobacco industry works hard to find "replacement smokers": they rely on advertising and marketing to get youth to use its tobacco products. **We must hold the industry responsible.**

I urge the Legislature to support other efforts that do work to reduce youth use of tobacco including increased taxes on tobacco products and efforts that do countermarketing. Our prevention programs must be funded fully to continue to help decrease youth use of tobacco.

Please hold this measure in Committee. Thank you for your time.

Aloha,  
Valerie Chang, JD  
Executive Director  
Hawaii COPD Coalition  
Website: <http://hawaiicopd.org>.  
e-mail: [copd.hawaii@yahoo.com](mailto:copd.hawaii@yahoo.com)  
(808)699-9839  
733 Bishop Street, Suite 1550  
Honolulu, HI 96813



To: The Honorable Gilbert S.C. Keith-Agaran, Chair  
The Honorable Karl Rhoads, Vice Chair  
Members, House Committee on Judiciary  
From: Trisha Y. Nakamura, Policy and Advocacy Director  
Hrg: House Committee on Judiciary; Tues, March 1, 2011 at 2:00 p.m. in Rm 325  
Re: **Opposition to HB 98, HD 1 Relating to Tobacco**

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Thank you for the opportunity to testify in opposition to HD 98, HD 1, which makes youth use and possession of tobacco products unlawful and imposes penalties for violations. The Coalition for a Tobacco Free Hawaii is the only independent organization in Hawaii whose sole mission is to reduce tobacco use through education, policy and advocacy.

Simply put, this legislation does not work to reduce youth tobacco use. The Centers for Disease Control and Prevention ("CDC") outlines a number of proven strategies to prevent youth initiation of tobacco use. None of these strategies include policies that make youth use or possession of tobacco unlawful. CDC recommended efforts include: anti-tobacco programs in schools; increased restriction and enforcement of restrictions on tobacco sales to minors; reduced tobacco industry influences; decreased access to tobacco products; and increased price of tobacco products.<sup>1</sup>

We urge further consideration of other measures to decrease youth tobacco use including:

- continued strong funding for tobacco prevention programs and counter-marketing campaigns
- increasing the taxes on tobacco products, and creating parity between the taxes on other tobacco products and cigarettes
- restricting the ways tobacco is sold and advertised to young people.

We must work to hold the tobacco industry accountable. The tobacco industry spends more than \$42 million in Hawaii on marketing. The tobacco industry aggressively works to link tobacco use with independence, choice, and rebellion. This measure would make tobacco use more appealing to young people. It is our role as adults to make sure that existing rules that prohibit the sale of tobacco to minors are being enforced.

Hawaii's youth smoking rates are low at 11.3%.<sup>2</sup> There is still work to be done; however, this measure is not the proven method of ensuring that our children never use tobacco. We ask that you hold this measure in Committee. Thank you for the opportunity to testify on this matter.

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<sup>1</sup> See Centers for Disease Control and Prevention, KEY OUTCOME INDICATORS FOR EVALUATING COMPREHENSIVE TOBACCO CONTROL PROGRAMS ("Preventing Initiation of Tobacco Use Among Young People" logical model chart and explanations pp. 19-23). May 2005.

<sup>2</sup> Hawaii State Department of Health, "Data Highlights from the 2009 Hawaii Youth Tobacco Survey (YTS) and Comparisons with Prior Years."

To: Chair Gilbert S.C. Keith-Agaran  
Vice Chair Karl Rhoads  
Members, House Committee on Judiciary  
Date: February 28, 2011  
Hrg: House JUD; Tues, March 1, 2011 at 2:00 p.m. in Rm 325  
Re: **Opposition to HB 98, HD 1 Relating to Tobacco**

My name is Valerie K. Saiki, and I am a Tobacco Control Specialist that works within Kapaa High School and its feeder school in Tobacco Education, Prevention and Cessation for Kauai's School Based Tobacco Control Program.

I ask that you hold HB 98, HD 1 in committee. Our organization supports decreasing youth's use of tobacco through education and cessation efforts. This measure, however, does not accomplish this.

The Centers for Disease Control establish the best practices and proven methods for reducing youth initiation of tobacco use, which we incorporate in our program, however, youth use and/or possession of tobacco products is not named by the CDC as best practice.

As adults, we must take the responsibility of youth possession, the law cannot and should not punish youth for possession of a product that is unlawful for youth to purchase. Instead, we must continue to enforce our strong laws holding retailers accountable for unlawful sales to minors. I urge the Legislature to support other efforts that do work to reduce youth use of tobacco, including increased taxes on tobacco products and efforts that do countermarketing. Our Kauai School Based Tobacco Control Program is one of many programs across the state that must be funded fully to continue to help decrease youth use of tobacco.

Please hold this measure in Committee. Thank you for your time.

Valerie K. Saiki  
4883 Nonou Rd.  
Kapaa, HI 96746  
(808)346-3950

M A R I L Y N J . G A G E N , C P A L L C

To: Chair Gilbert S.C. Keith-Agaran  
Vice Chair Karl Rhoads  
Members, House Committee on Judiciary  
Date: February 28, 2011  
Hearing: House JUD; Tues, March 1, 2011 at 2:00 p.m. in Rm 325  
Regarding: **Opposition to HB 98, HD 1 Relating to Tobacco**

My name is Marilyn J. Gagen, a volunteer with the Coalition for a Tobacco-Free Hawaii. The Coalition for a Tobacco-Free Hawaii is the only independent organization in Hawai'i dedicated to reducing tobacco use through education, policy and advocacy.

I ask that you hold HB 98, HD 1 in committee. Our organization supports decreasing youth use of tobacco. This measure, I believe, will not accomplish this.

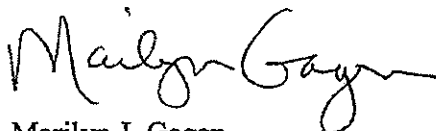
The Centers for Disease Control ("CDC") establish the best practices and proven methods for reducing youth initiation of tobacco use. Making youth use and possession of tobacco a criminal offense is not named by the CDC as a best practice.

We must continue to enforce our strong laws holding retailers accountable for unlawful sales to minors. The tobacco industry works hard to find "replacement smokers". They rely on advertising and marketing to get youth to use their tobacco products. We must hold the industry responsible.

I urge the Legislature to support other efforts that do work to reduce youth use of tobacco including increased taxes on tobacco products and efforts that do counter marketing. Our prevention programs must be funded fully to continue to help decrease youth use of tobacco.

Please hold this measure in Committee. Thank you for your time.

Sincerely,



Marilyn J. Gagen