

**TESTIMONY**

**SB2409**

**HTH Committee Hearing 1/27/2012**



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

In reply, please refer to:  
File:

**LATE**

**Senate Committee on Health**

**SB 2409, MAKING AN APPROPRIATION FOR EMERGENCY MEDICAL SERVICES**

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

**Friday, January 27, 2012, 2:45 PM**

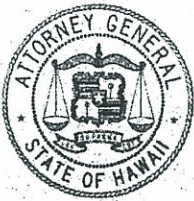
1 **Department's Position:** The Department of Health supports the intent of this measure provided that it  
2 does not reduce or replace priorities within our Supplemental Budget Request.

3 **Fiscal Implications:** Appropriates \$1.5 million dollars for pre-hospital emergency medical services on  
4 Oahu.

5 **Purpose and Justification:** The Department of Health is collaborating with the City and County of  
6 Honolulu Emergency Medical Services Division, American Medical Response, the Healthcare  
7 Association of Hawaii, and Oahu hospitals and providers of urgent care services to address the closure  
8 in December of two acute care hospitals on Oahu. All have come forward with creative and  
9 collaborative efforts to minimize negative impacts on patients and the community. The additional  
10 services needed to continue to compensate for the loss of these hospitals is costly, but we are not  
11 prepared to suggest a specific dollar amount at this time.

12 The Department recommends that the Committee consider not specifying an exact location and  
13 hours of specific ambulance units to be implemented with additional funding. Flexibility in determining  
14 the location and hours of operation of additional ambulance or response units, will allow for the most  
15 efficient and effective use of these resources.

16 Thank you for the opportunity to testify on this bill.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2012**

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**ON THE FOLLOWING MEASURE:**  
S.B. NO. 2425, RELATING TO TOBACCO.

**BEFORE THE:**

SENATE COMMITTEE ON HEALTH

**DATE:** Friday, January 27, 2012 **TIME:** 2:45 p.m.

**LOCATION:** State Capitol, Room 229

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Blair Goto, Deputy Attorney General, or  
Earl R. Hoke, Deputy Attorney General

**LATE**

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Chair Green and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill in trying to decrease the use of tobacco products. However, we oppose the bill for legal and practical reasons.

The purposes of this bill are to: (1) require that cigarettes or tobacco products are stored for sale behind a counter in an area accessible only to employees of the business, (2) ban advertising that promotes or encourages the purchase or use of cigarettes or tobacco products within twenty-five feet of children's products or toys or within twenty-five feet of where cookies, candy, ice cream, gum, or snacks are sold, and (3) require that advertisements that promote or encourage the purchase or use of cigarettes or tobacco products be displayed at least four feet from the floor.

We note that advertising restrictions similar to purposes (2) and (3) above were adopted in Massachusetts in 1999. With respect to cigarette advertising, the U.S. Supreme Court found that a restriction similar to (3) was pre-empted by the Federal Cigarette Labeling and Advertising Act (FCLAA). Lorillard Tobacco Co. v. Reilly, 533 U.S. 525, 551 (2001). Based upon the reasoning of the Court, we would anticipate that, with respect to cigarette advertising, a court would also find FCLAA pre-emption for restriction (2). In addition, the Reilly Court found with respect to other tobacco (non-cigarette) products, that the First Amendment bars a restriction similar to (3). *See Reilly* at 566. Again, based upon the Court's reasoning, we would anticipate that restriction (2) with respect to other tobacco products would also be invalidated by the First

Amendment. Accordingly, we recommend that the new section to be added to chapter 328J, Hawaii Revised Statutes, by section 2 of the bill on page 4, lines 7-22, be deleted.

As to the remaining new section, we note that the bill requires cigarettes and tobacco products to be sold behind a counter. Our concern is that it is unclear whether the intent of the bill is for cigarettes and tobacco products to be sold in an area that is totally closed off from public view. If that is the case, then it will be difficult for the Department of the Attorney General's Special Agents to have easy visual access to determine whether cigarettes bear the Hawaii tax stamp that is evidence that the taxes have been paid on the cigarettes that are on sale. We are concerned that mandating that the businesses sell their cigarettes from an area that is in effect "behind closed doors" or "under the counter" may have the unintended consequence of making it easier for businesses to have dual inventories of taxed cigarettes and untaxed cigarettes. In fact, since the tobacco tax stamp program was initiated, we have worked hard to make the sale of cigarettes as transparent as possible. Our experience has shown that those who are so inclined will take advantage of such a "behind closed doors" or "under the counter" mandate particularly as the tax rate on cigarettes continues to climb. Perhaps the answer to the question would be to prohibit the "self service" sale of cigarettes and other tobacco products as House Bill No. 1960 does. This would be the recommended manner to deal with this issue. We note that it is unclear what agency or agencies would be tasked with enforcement of this measure and what types of penalties a business may face should this bill become law. As an aside, we note that section 709-908, Hawaii Revised Statutes, already prohibits the sale or furnishing of tobacco in any shape or form to a minor under the age of eighteen years.

Accordingly, we respectfully ask that this bill be held.



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SENATE COMMITTEE ON HEALTH  
Senator Josh Green, Chair

Conference Room 229  
January 27, 2012 at 2:45 p.m.

**Supporting SB 2409: Making an Appropriation for Emergency Medical Services.**

The Healthcare Association of Hawaii advocates for its member organizations that span the entire spectrum of health care, including all acute care hospitals, as well as long term care facilities, home care agencies, and hospices. In addition to providing quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 40,000 people. Thank you for this opportunity to testify in support of SB 2409, which appropriates funds for emergency medical services in West Oahu and Central Oahu.

Two emergency rooms on Oahu closed when the Hawaii Medical Center hospitals ceased operations in December of 2011. Predictably, the remaining emergency rooms on Oahu have experienced significantly increased usage since then. This bill appropriates funds to increase emergency medical services where they are most needed, specifically on the Leeward Coast of Oahu and at Wahiawa General Hospital, which has the emergency room that is closest to the Leeward Coast.

For the foregoing reasons, the Healthcare Association supports SB 2409.

Testimony for HTH 1/27/2012 2:45:00 PM SB2409

Conference room: 229

Testifier position: Oppose

Testifier will be present: Yes

Submitted by: Scott Wall

Organization: Individual

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Submitted on: 1/25/2012

Comments: