

SB 642

Measure Title: RELATING TO HEALTH.
Report Title: Tobacco; Tobacco Products; Placement
Description: Requires cigarettes and tobacco products to be stored for sale behind a counter in certain establishments.
Companion: [HB722](#)
Package: None
Current Referral: HTH, CPN
Introducer(s): GREEN, CHUN OAKLAND, Nishihara, Ruderman, Shimabukuro

<u>Sort by Date</u>		Status Text
1/18/2013	S	Introduced.
1/22/2013	S	Passed First Reading.
1/22/2013	S	Referred to HTH, CPN.
2/1/2013	S	The committee(s) on HTH has scheduled a public hearing on 02-06-13 2:15PM in conference room 229.
2/6/2013	S	The committee(s) on HTH deferred the measure until 02-11-13 2:30PM in conference room 229.
2/11/2013	S	The committee(s) on HTH recommend(s) that the measure be PASSED, UNAMENDED. The votes in HTH were as follows: 4 Aye(s): Senator(s) Green, Baker, Chun Oakland, Nishihara; Aye(s) with reservations: none ; 1 No(es): Senator(s) Slom; and 0 Excused: none.
2/14/2013	S	Reported from HTH (Stand. Com. Rep. No. 314) with recommendation of passage on Second Reading and referral to CPN.
2/14/2013	S	Report adopted; Passed Second Reading and referred to CPN.
2/15/2013	S	The committee(s) on CPN will hold a public decision making on 02-20-13 9:30AM in conference room 229.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:
S.B. NO. 642, RELATING TO HEALTH.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Wednesday, February 20, 2013 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Blair Goto or Earl R. Hoke, Jr.,
Deputy Attorneys General, at 587-3050 or 586-1203)

Chair Baker 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 practical reasons.

The purpose of this bill is to add a new section to chapter 328J, Hawaii Revised Statutes, that would require that cigarettes or tobacco products be stored for sale behind a counter in an area accessible only to employees of the business.

We are concerned that the new section being added to chapter 328J, contained in section 2 of the bill, will adversely impact the ability of the Tobacco Enforcement Unit of the Department of the Attorney General to ascertain whether cigarettes are properly stamped with tax stamps and whether cigarettes are approved for sale in the State of Hawaii. Historically, those who wished to evade the payment of cigarette taxes often stored the noncompliant product in back areas or under counters that were not readily visible to those tasked with investigating contraband cigarette sales. By requiring that cigarettes and tobacco products that are for sale be stored behind a counter accessible only to the personnel of the business, this new section will, unintentionally, facilitate the sale of untaxed, contraband cigarettes.

Accordingly, we respectfully ask the Committee to hold this bill.



To: The Honorable Rosalyn Baker, Chair, Committee on Commerce & Consumer Protection
The Honorable Brickwood Galuteria, Vice Chair, Committee on Commerce & Consumer Protection
Members, Senate Committee on Commerce & Consumer Protection

From: Jessica Yamauchi, Executive Director

Date: February 19, 2013

Hrg: Senate Committee on Commerce & Consumer Protection; Wed., February 20, 2013 at 9:30 a.m. in Rm 229

Re: **Support for SB 642, Relating to Health**

Thank you for the opportunity to offer comment in support of SB 642 which requires all tobacco products to be placed behind the counter, eliminating self-service displays.

The Coalition for a Tobacco Free Hawaii (Coalition) is an independent organization in Hawaii working to reduce tobacco use through education, policy and advocacy. Our organization is a small nonprofit organization of over 100 member organizations and 2,000 advocates that works to create a healthy Hawaii through comprehensive tobacco prevention and control efforts.

Other Tobacco Products or OTPs are usually located on the counter at the point of sale in most convenient stores, where they are easily accessible. Research has shown that preventing the display of tobacco products leads to a decrease in the number of adolescents experimenting with and becoming addicted to those tobacco products.¹ This bill will reduce youth access to tobacco, as well as the theft of tobacco products. The World Health Organization has endorsed a ban on retail tobacco product displays as an effective method of reducing tobacco use.²

OTPs should be kept behind the counter, like cigarettes, where the product is only accessible by an employee. This will keep the products away from eyesight of our youth and take away a powerful marketing tool currently enjoyed by a deadly industry. Prohibiting self-service tobacco displays is a promising practice that many states are considering or have enacted. Minnesota law prohibits self-service displays of cigarettes and smokeless tobacco, except in age-restricted retail tobacco stores that derive at least 90 percent of their revenue from the sale of tobacco and tobacco-related products.³ Similarly, New York State prohibits self-service tobacco displays in retail stores that are open to minors.⁴

Tobacco products are still the leading cause of preventable disease and death. We can reduce this by making sure youth never start and tobacco users have every opportunity to quit. This measure will continue to place Hawaii at the forefront of tobacco prevention and control.

¹ Markus P. Bidell, *Case Study of Attempts to Enact Self Service Tobacco Display Ordinances: A Tale of Three Communities*, Tobacco Control, 71-77 (2000)

² World Health Organization Framework Convention on Tobacco Control, *Guidelines for Implementation of Article 13*, adopted Nov. 2008

³ MINN. STAT. § 461.18, subd. 1.

⁴ N.Y. PUB. HEALTH LAW § 1399-cc(7).



Thank you for the opportunity to testify in support of this measure.



Jessica Yamauchi, M.A.
Executive Director

**Testimony of Professor Mark A. Levin
in strong support of to SB 642, Relating to Health
Senate Committee on Economic Revitalization & Business
February 20, 2013**

Chair Baker, Vice-Chair Galuteria, and members of the Committee on Commerce and Consumer Protection:

Aloha. My name is Mark Levin. I am a Professor at the William S. Richardson School of Law. My testimony is based on nearly twenty years of engagement with international and comparative tobacco law and policy. Among many activities in this field, I have published in leading journals and worked as a temporary advisor on tobacco control policy for the World Health Organization. My commentary on the U.S. Supreme Court decision Lorillard Tobacco et al. v. Reilly, 533 U.S. 525 (2001) appeared in Japan's leading law journal, *Jurist* in 2002.

I strongly support requiring all retailers in Hawai'i to store all tobacco products for sale behind the counter for the obvious public health reasons that many other testifiers have shared with you.

We know that the tobacco industry, found liable in 2006 for violations the federal Racketeer Influenced and Corrupt Organizations Act (RICO), has targeted our youth as their entry customers: "...the base of our business is the high school student." (Lorillard, 1978). "[I]t is during the teenage years that the initial brand choice is made...." (Philip Morris, 1981). "We were targeting kids, and I said at the time it was unethical and maybe illegal, but I was told it was just company policy." (R.J. Reynolds sales rep., 1990)*

This measure will enact a vital approach to reduce youth access to tobacco and lower youth tobacco use rates. It will keep products away from eyesight of our youth and take away a powerful marketing tool currently enjoyed by a deadly and corrupt industry.

I wish to share two other points addressing the proceedings before the Senate Committee on Health and its report out.

First, Committee Report, SSCR314, mentions concerns regarding constitutionality of this measure. However, with all due respect for Senator Green, I fear there may have been a misunderstanding. As the Department of the Attorney General's testimony correctly noted, there were likely constitutional issues with regards to the advertising restrictions in SB 652 as originally introduced. However, such concerns were not raised by the Department of the Attorney General with regards to SB 642. This is because SB 642 does not address advertising placement restrictions called into question by the Reilly decision. Rather, the Reilly decision

makes clear that sales practice restrictions as contemplated by SB No. 642 are neither constitutionally objectionable nor federally pre-empted.

Second, I was troubled by testimony of the Department of the Attorney General suggesting that a law of this kind might adversely impact the ability of the Tobacco Enforcement Unit of the Department to carry out its work. Again with due respect, I find this testimony to be somewhat incredulous. The Department has been highly capable in enforcing similar issues with regards to liquor sales, where I assume there can be warrantless inspections during operational hours, examination of records, opening of store rooms, and examination of stock, among other things. Would these tools not be available to the Department for illicit trade in tobacco products? In any case, it should be easy to look to the experience in other states to confirm that putting products behind the counter and out of sight does not adversely impact tax enforcement, but I did not note any evidence suggesting the Department had done so before putting forward its opposition.

In fact, illicit trade in tobacco products is a global problem that has attracted attention from nations around the world. After a protracted set of international negotiations bringing together public health, law enforcement, and tax authorities for comment, the United Nations last month opened signature on a new treaty to reduce this problem across national borders. Importantly, the new Protocol to Eliminate Illicit Trade in Tobacco Products fits beneath the global Framework Convention on Tobacco Control, which VERY CLEARLY calls upon parties in Art. 16 to prevent sales to minors, including "banning the sale of tobacco products in any manner by which they are directly accessible, such as store shelves." (FCTC Art. 16.1(b)).

In short, *the understanding and practice agreed upon by 176 nations around the world is that tobacco products should not be directly accessible to youth.* Last November, representatives of 176 nations as parties to the FCTC gathered in Seoul and reached a conclusion opposite to the Department's claim here. This global consensus seems to me to be ample reason to not delay and instead to move forward by passing SB 642 in the current legislative session.

Mahalo.

Professor Mark A. Levin
The William S. Richardson School of Law
The University of Hawai'i at Mānoa
2515 Dole St., Honolulu, HI 96822
Tel: 1-808-956-3302

*(Quotes from "Trust Us, We're the Tobacco Industry, Campaign for Tobacco Free-Kids, pp. 42-44, cites to original sources at p. 46 (2001)). Affiliations are given for identification purposes only. Opinions presented here are personal views and not the official views of the University of Hawai'i or any other organization or entity.

To: Senator Rosalyn Baker, Chair
Senator Brickwood Galuteria, Vice Chair
Members, Senate Committee on Commerce and Consumer Protection

Re: Strong Support for SB 642: Relating to Tobacco Products

Hrg: February 20, 2013 at 9:30 am, Room 229

I am in strong support of requiring all retailers to store all tobacco products for sale behind the counter. I believe that if the tobacco products were out of sight there would be less influence by the tobacco industry on Hawaii's youth. This is a cutting-edge approach to reduce youth access to tobacco and lower youth tobacco use rates.

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Tobacco products, regardless of form, are still the leading cause of preventable disease. We can stop this by making sure youth never start and tobacco users have every opportunity to quit. Storing tobacco products behind the counter is a critical step in our tobacco prevention and control efforts.

Thank you for the opportunity to provide testimony in support of this measure.

Lara O'Connor

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Crissy Kawamoto

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Jermy Domingo

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Barbara Nosaka

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Mary Browne

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Debbie Odo

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Kristen Scholly

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Koa Robinson

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Erin Pfuntner

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Kanani Kilbey

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Mahalo for the opportunity to provide testimony in support of this measure.

Marilyn Gagen

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As a 50+ year tobacco-free advocate, I continue to oppose the efforts of "big tobacco" to addict our youth to nicotine. We know that youth are attracted to cleverly advertised products of all kind, including tobacco products. Keeping these products out of sight would reduce their impact.

Many aspects of life in Hawaii would be positively impacted if we can reduce youth access to tobacco and lower youth tobacco use rates.

Tobacco products, regardless of form, are still the leading cause and exacerbators of preventable disease. Please continue to move forward with tobacco prevention and control efforts. All of these efforts help to educate youth and the general populations about the devastating destructiveness of tobacco products.

Thank you for the opportunity to provide testimony in support of this measure.

Hannah Hedrick

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I am in strong support of requiring all retailers to store all tobacco products for sale behind the counter. I strongly believe that if tobacco products were placed out of Hawaii's youth eye sight there would be less influence by the tobacco industry. The younger a person is when they start using tobacco products the stronger their addiction is. We need to keep tobacco products out of the hands of Hawaii's youth to help decrease the number of youth who start smoking on a daily basis.

Other Tobacco Products or OTPs are usually located on the counter at the point of sale in most convenient stores, where they are easily accessible. The colorful packaging and various candy flavors of other tobacco products draw the youth, which is very dangerous. OTPs should be kept behind the counter, like cigarettes, where the product is only accessible by an employee. This will keep the products away from eyesight of our youth.

Tobacco products, regardless of form, are still the leading cause of preventable disease in the United States of America. We can lower the \$336 million in health care costs that are directly attributed to smoking by not giving our youth such a chance to start smoking. Ninety percent of all adult smokers began while in their teens or earlier. Storing tobacco products behind the counter is a critical step in our tobacco prevention and control efforts.

Thank you for the opportunity to provide testimony in support of this measure.

Erin Mina

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Michele Nihipali

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Melissa Little

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Erin Moncada

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Other Tobacco Products or OTPs are usually located on the counter at the point of sale in most convenient stores, where they are easily accessible. The colorful packaging and various candy flavors of other tobacco products attract the youth, which is very dangerous. OTPs should be kept behind the counter, like cigarettes, where the product is only accessible by an employee. This will keep the products out of eyesight of our youth.

Tobacco products, regardless of form, are still the leading cause of preventable disease. We can stop this by making sure youth never start and tobacco users have every opportunity to quit. Storing tobacco products behind the counter is a critical step in our tobacco prevention and control efforts.

Thank you for the opportunity to provide testimony in support of this measure.

Allison Seales

To: Senator Rosalyn Baker, Chair
Senator Brickwood Galuteria, Vice Chair
Members, Senate Committee on Commerce and Consumer Protection

Re: Strong Support for SB 642: Relating to Tobacco Products

Hrg: February 20, 2013 at 9:30 am, Room 229

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Antoinette Everett

To: Senator Rosalyn Baker, Chair
Senator Brickwood Galuteria, Vice Chair
Members, Senate Committee on Commerce and Consumer Protection

Re: Strong Support for SB 642: Relating to Tobacco Products

Hrg: February 20, 2013 at 9:30 am, Room 229

I am a former smoker, I started as a 14yo while attending Wai`anae Intermediate School. My first introduction to tobacco use were cigarillos. I quit using tobacco four years ago and at the age of 39 I had been a smoker for more than half my life. I am in strong support of requiring all retailers to store all tobacco products for sale behind the counter. Doing so limits access to youth (whether purchasing or stealing, as I suspect much of it is stolen).

I also believe that if the tobacco products were out of sight there would be less influence by the tobacco industry on Hawaii's youth. This is a cutting-edge approach to reduce youth access to tobacco and lower youth tobacco use rates.

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Bryan Talisayan

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Senator Brickwood Galuteria, Vice Chair
Members, Senate Committee on Commerce and Consumer Protection

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Heidi Hao

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Senator Brickwood Galuteria, Vice Chair
Members, Senate Committee on Commerce and Consumer Protection

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Rose Murtagh

To: Senator Rosalyn Baker, Chair
Senator Brickwood Galuteria, Vice Chair
Members, Senate Committee on Commerce and Consumer Protection

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Thank you for the opportunity to provide testimony in support of this measure.

kim Ora-a

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Senator Brickwood Galuteria, Vice Chair
Members, Senate Committee on Commerce and Consumer Protection

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Thank you for the opportunity to provide testimony in support of this measure.

Ronald Kuriki

To: Senator Rosalyn Baker, Chair
Senator Brickwood Galuteria, Vice Chair
Members, Senate Committee on Commerce and Consumer Protection

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Tobacco products, regardless of form, are still the leading cause of preventable disease. We can stop this by making sure youth never start and tobacco users have every opportunity to quit. Storing tobacco products behind the counter is a critical step in our tobacco prevention and control efforts.

Thank you for the opportunity to provide testimony in support of this measure.

Michelle Gray

To: Senator Rosalyn Baker, Chair
Senator Brickwood Galuteria, Vice Chair
Members, Senate Committee on Commerce and Consumer Protection

Re: Strong Support for SB 642: Relating to Tobacco Products

Hrg: February 20, 2013 at 9:30 am, Room 229

My name is Ryan Mandado and I am encouraging you to require all retailers to store all tobacco products for sale behind the counter. Keeping these items away from the eyes of our youth will be one step closer for our youth to make healthier decisions with their lives. Cigarettes are the cause for many instances of lung cancer and we need to reduce the amount of people dying due to tobacco products.

This is a cutting-edge approach to reduce youth access to tobacco and lower youth tobacco use rates.

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Thank you for the opportunity to provide testimony in support of this measure.

Ryan Mandado

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Senator Brickwood Galuteria, Vice Chair
Members, Senate Committee on Commerce and Consumer Protection

Re: Strong Support for SB 642: Relating to Tobacco Products

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I am in strong support of requiring all retailers to store all tobacco products for sale behind the counter. I believe that if the tobacco products were out of sight there would be less influence by the tobacco industry on Hawaii's youth. This is a easy and creative approach to reduce youth access to tobacco and lower youth tobacco use rates.

The colorful packaging and various candy flavors of other tobacco products attract the youth, which is very dangerous. These products should be kept behind the counter, like cigarettes, where the product is only accessible by an employee. This will keep the products out of eyesight of our youth.

We can stop tobacco use as the leading cause of preventable disease by making sure youth never start and tobacco users have every opportunity to quit. Storing tobacco products behind the counter is an important step in Hawaii's model tobacco prevention and control efforts.

Mahalo for the opportunity to provide testimony in support of this measure.

Edmar Castillo

SB642

Submitted on: 2/17/2013

Testimony for CPN on Feb 20, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Troy Abraham	Individual	Support	No