



**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FIFTH LEGISLATURE, 2009**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1417, H.D. 1, RELATING TO MOBILE BILLBOARDS.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, March 3, 2009 **TIME:** 2:00 PM

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Mark J. Bennett, Attorney General,  
or Margaret S. Ahn, Deputy Attorney General

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Chair Karamatsu and Members of the Committee:

The Department of the Attorney General provides these comments regarding constitutional issues in this bill.

This bill provides that vehicles "actively used in the daily function of the business to which the advertising device relates" are exempt from the prohibition on carrying or displaying advertising devices for consideration. This bill also deletes the clarification that "consideration or any other economic benefit" does not include the benefit derived from the effect of the advertising.

Exempting vehicles "actively used in the daily function of the business to which the advertising device relates" potentially subjects this bill to a challenge under the Constitution's First Amendment because it creates an impermissible content-based regulation. By allowing certain paid commercial advertising, this bill effectively discriminates against paid non-commercial speech.

Also, the current statutory language clarifying that consideration or other economic benefit does not include the benefit derived from the effect of the advertising is necessary and should not be deleted. First, without this language any advertising could be deemed to render an "economic benefit" and be prohibited, even if the operator of the

vehicle is not compensated for displaying the advertising. Second, the inclusion of this language avoids Equal Protection and First Amendment issues.

We respectfully recommend that the exemption discussed above and contained on page 2, lines 12 to 15 of the bill be deleted. We further recommend not deleting the clarification of "consideration or any other economic benefit" contained on page 2, lines 9 to 12 of the bill.

March 3, 2009

The Honorable Representative Jon Riki Karamatsu, Chair  
And Committee Members  
Committee on the Judiciary  
Hawai'i State Capitol  
Honolulu, HI 96813

RE: Strong Support for HB1417 HD1 Relating to Mobile Billboards

Chair Karamatsu, Vice Chair Ito and Members of the Committee:

Thank you for this opportunity to present testimony on HB1417 HD1 on behalf of Na Leo Pohai, The Outdoor Circle.

This legislation will close a loophole left by the successful passage of the 2006 Vehicular Advertising law. The 2006 law supports the 82 year old ban on billboards in Hawai'i by prohibiting so-called billboard trucks from operating in our state.

However, the advertising industry has found another way to get around our laws. This time the issue involves Hawaii companies that sell space on their own vehicles to advertisers who, for a substantial fee, are allowed to place huge signs and banners on vehicles. These same signs would be illegal if they were posted almost anywhere else in our state such as on buildings, or along the roadside. But because the advertising is placed on vehicles that are not exclusively billboard trucks, there is no violation of the law.

Another, possibly even more alarming circumstance exists with mainland advertising companies who are paying owners of vehicle fleets in Hawaii to place large billboards on their vehicles. Again, because the vehicles are not primarily used for displaying advertising, the signs are not illegal and are being displayed as we speak on the roadways of our state.

Yet another form of vehicle advertising that has slipped through the cracks is advertising posted on vehicles and parked on the side of the road to attract customers. We see a lot of this on Oahu's North Shore—particularly with the shrimp truck industry. SB1091 SD1 would make these signs illegal unless the vehicle owner could prove that the vehicle is used as a regular part of the business being advertised.

To be clear, HB1417 HD1 would not infringe on the practice of businesses advertising their own companies or products on their own vehicles that are used to conduct their business. Frito-Lay, for example, would still be able to have a big bag of potato chips on the side of its trucks, but it could not also sell advertising space on its trucks to Pepsi.

We believe this simple change in Hawaii's law will reap statewide benefits by closing the loophole that enables some companies to skirt the laws designed to reduce billboards and other inappropriate advertising in our islands. It also helps level the playing field for the vast majority of business who understand that this type of advertising is a detriment to our state and the quality of life of our residents.

Hawai'i is a national leader in protecting the beauty of its state against the proliferation of commercial advertising. We are one of only four states that prohibits billboards—and has done so since the billboard ban was passed in 1927 by the Territorial Legislature. Our constitution requires that the fragile and invaluable beauty of our state be protected and this legislation will help fulfill that obligation while preventing our communities from further degradation by inappropriate advertising.

We urge you to pass this legislation, in the best interest of our people and our beautiful state.

Mary Steiner  
CEO

March 3, 2009

The Honorable Representative Jon Riki Karamatsu, Chair  
And Committee Members  
Committee on the Judiciary  
Hawai'i State Capitol  
Honolulu, HI 96813

RE: Strong Support for HB1417 HD1 Relating to Mobile Billboards

Chair Karamatsu, Vice Chair Ito and Members of the Committee:

Thank you for this opportunity to present testimony on HB1417 HD1 on behalf of Na Leo Pohai, the public policy affiliate of The Outdoor Circle.

In 1927, at a time when huge advertisements literally lined the main thoroughfares of Honolulu, the Territorial Legislature created one of the most valuable and enduring laws in the history of our islands.... it banned billboards.

I'm sure all of you have been to the mainland and seen first hand how these outrageously large advertisements by the hundreds and thousands.... line the freeways— of nearly every city. Your wise predecessors had the vision to see that this type of advertising and the unique, unparalleled beauty of Hawaii simply cannot coexist.

Over the years, through the great depression and the hard times that have come and gone the billboard ban has remained. And when advertisers devised alternative ways to display their huge signs Hawaii's leaders have always answered the call by taking decisive action to protect the fragile beauty of our home. First, when advertisers wanted to take their billboards into the sky, aerial advertising was prohibited. Then when sophisticated billboard trucks invaded the islands—they too were banned.

But unfortunately that law only banned vehicles whose sole purpose is to display advertising. That left a loophole that is now bringing another type of mobile billboards to Hawaii. This picture shows a local beverage distribution company truck on Oahu that is displaying large billboards for Magic Johnson and Tax Busters. On the Big Island the same company has displayed billboards for Sports Authority and it has other trucks in the other counties. The billboards are provided by a mainland advertising company which specializes in what is called "truckside billboards." These 18 to 24 foot signs have the ability to turn our roadways into a constant eyesore....and create the kind of distractions and diversions that will make Hawaii's roads even more dangerous than they already are.

This mainland company's marketing materials provide a stronger argument for this scenario than I could ever create: "These truckside billboard ads ride above the traffic lanes and they can't be tuned out or turned off." The billboards are: "...unobstructed and guaranteed to grab customer attention." "As more regions ban billboards, look to mobile billboards to deliver your message."

This assault on the beauty of Hawaii and the safety hazard these billboards create for our motorists can be eliminated by passing SB1091.

Locally a few other companies also display large advertisements on vehicles that create similar problems in the same way as the truckside billboards. Most notable are dozens of trolleys that display temporary banners advertising everything from sashimi to cosmetics to credit cards. The advertisers, mostly large corporations located outside Hawaii, pay thousands of dollars each month to have their banners carried throughout Honolulu...rates few local companies can even afford. Trolley advertising creates a steady source of complaints by the public who call The Outdoor Circle for help. But we have to tell them that while these banners would be illegal if hung from any building in any county in the state, because the laws do not include signs on vehicles, nothing can be done to stop it.

SB1091 will close the loopholes that allow these two unacceptable forms of advertising to exist. Simply put, it allows all businesses to display their vehicles company names, logos, images of its products—virtually anything related to the company's business. It prohibits that same business from receiving any economic benefit for displaying signs for unrelated businesses or products. In other words, under this law, the Frito-Lay truck could display a big bag of potato chips, but could not sell advertising space on its trucks to Pepsi.

We strongly urge this committee to take action to protect public safety and to continue to protect the visual environment of our islands. In banning billboard trucks three years ago, the legislature nipped in the bud an outdoor advertising industry that now runs rampant on the mainland. Truckside billboards are the next wave of inappropriate advertising that must be stopped at our shores before they become so big, pervasive and entrenched that we will never be rid of them.

The people are our greatest resource...the beauty of the Hawaii—our greatest treasure. By passing SB 1091 you have the great opportunity to both protect the safety our people and preserve the magnificence of our islands for future generations.

Bob Loy  
Director of Environmental Programs