



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

ON THE FOLLOWING MEASURE:

H.B. NO. 896, RELATING TO TOBACCO.

BEFORE THE:

HOUSE COMMITTEE ON COMMITTEE ON HEALTH

DATE: Friday, February 13, 2009 **TIME:** 8:30 AM

LOCATION: State Capitol, Room 329

TESTIFIER(S): Mark J. Bennett, Attorney General,
or Alex R. Barrett, Deputy Attorney General

Chair Yamane and Members of the Committee:

The Attorney General supports this bill, but **recommends that it be amended to conform to H.B. No. 1029.**

The purpose of this bill is to continue the requirement that businesses engaged in the sale of cigarettes and other tobacco products at the retail level acquire a retail tobacco permit from the Department of Taxation to engage in such activity. Act 131, Session Laws of Hawaii 2005, which enacted the requirement of a retail tobacco permit, contains a sunset clause that will repeal Act 131 on July 1, 2009.

This bill removes that sunset clause and keeps in place the requirement that an entity engaged in the retail sale of cigarettes or other tobacco products obtain a retail tobacco permit. The retail tobacco permit facilitates the enforcement of chapter 245, Hawaii Revised Statutes, by providing a known and measurable list of entities engaged in the retail sale of cigarettes and other tobacco products. More than 1,500 entities in Hawaii engaged in the retail sale of cigarettes and other tobacco products have applied for and received a retail tobacco permit.

The current statute allows for the inspection of records and invoices that are to be kept by the retail tobacco permit holder to

facilitate a determination of the proper source of cigarettes and tobacco products as well as payment of taxes. The statute requires that a permit be acquired for each location where cigarettes are sold at retail.

Every holder of a retail tobacco permit is required to keep a complete and accurate record of the permit holder's cigarette or tobacco product inventory. This requirement is intended to ensure that all tobacco products sold at retail are compliant and that all tobacco taxes are paid. In testimony submitted to the Legislature in 2009, the Department of Taxation projected that any loss in enforcement efforts in the monitoring of tobacco retailers could result in a revenue loss of approximately \$5,300,000 per year.

The retail tobacco permit program facilitates the collection of cigarette taxes by making it clear that no retailer or cigarette vending machine operator shall purchase any pack of cigarettes without the appropriate tax stamp being affixed to the bottom of each pack of cigarettes as required by chapter 245. For fiscal year 2007-2008, the Department of Taxation reports cigarette tax revenues of \$101,560,051, which represents an increase of \$12,788,385 or 12.6 percent over the \$88,771,666 in cigarette tax revenues collected in fiscal year 2006-2007.

This bill is similar to H.B. No. 1029 in that both bills delete the sunset provision in Act 131. However, we favor H.B. No. 1029 because (1) section 1 of H.B. No. 1029 explains why the sunset provision is being deleted, and (2) H.B. No. 1029 specifies an effective date of June 30, 2009, which avoids the possibility of this bill taking effect after the sunset date of July 1, 2009.

We respectfully request passage of this bill with the recommended revisions.



Representative Ryan Yamane, Chair
Representative Scott Nishimoto, Vice Chair
Committee on Health
State Capitol, Honolulu, Hawaii 96813

HEARING Friday, February 13, 2009
 8:30 am
 Conference Room 329

RE: **HB896, Relating to Tobacco**

Chair Yamane, Vice Chair Nishimoto, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii.

RMH opposes HB896, which makes permanent the retail tobacco permit law.

Retail sales have declined steadily since the second quarter of 2008. Holiday sales, which account for 25% to 40% of a retailer's annual business, were down double digits last year. Hawaii's retailers are struggling to maintain operations, and, more specifically, to retain their employees and avoid layoffs.

Maintaining the repeal provision of Act 313, Session Laws of Hawaii 2005, would keep valuable cash resources in retailers hands and, hopefully, **keep their doors open for business**.

We respectfully request that you hold HB896. Thank you for your consideration and for the opportunity to comment on this measure.

A handwritten signature in black ink, appearing to read 'Carol Brizell', is written in a cursive style.

President

RETAIL MERCHANTS OF HAWAII
1240 Ala Moana Boulevard, Suite 215
Honolulu, HI 96814
ph: 808-592-4200 / fax: 808-592-4202



February 11, 2009

Committee on Health
Representative Ryan I. Yamane, Chair
Representative Scott Y. Nishimoto, Vice Chair

Hearing:

8:30 A.M., Friday, February 13, 2009
Hawaii State Capitol, Room 329

RE: HB896, Relating to Tobacco

Testimony in Support

Chair Yamane, Vice Chair Nishimoto, and members of the Committee on Health. My name is George Massengale and I am the Director of Government Relations for the American Cancer Society Hawaii Pacific Inc. Thank you for the opportunity to testify in support of HB896, which would remove the sunset clause in Act131, thus retaining retail tobacco sales permits.

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 to reduce and prevent smoking by children and young adults.

In 2005, the legislature passed Act 131, which mandated that businesses engaged in the sale of cigarettes and other tobacco products at the retail level acquire a retail tobacco permit from the Department of Taxation. Removing the sunset clause will keep in place the provisions of Act 131. In addition to the tax revenues being collected, **the permitting law has had an impact on our youth smoking rates, which is slightly under 10%**. The issuing of retail tobacco sales permits enabled the State to compile an accurate list of retail tobacco vendors. The list was then utilized for SYNAR compliance inspections.

In 1992, Congress enacted legislation aimed at decreasing youth access to tobacco products. The legislation, known as the SYNAR Regulation (named for Congressman Mike Synar of Oklahoma), requires states to enact and enforce laws prohibiting any manufacturer, retailer, or distributor from selling or distributing tobacco products to individuals under 18 years of age. In addition to enacting and enforcing a law, states must implement annual random, unannounced compliance inspections (RUIs) to determine their buy rates of tobacco products sold to youth under the age of 18.

Tobacco sales to minors in Hawaii are declining because of youth public education, counter marketing, prevention efforts and SYNAR compliance, of which retail tobacco sales permits are an integral component.

We would request that HB896, be passed on for additional hearings by the House Finance Committee.

Mahalo for the opportunity to provide testimony in support this measure. Please do not hesitate to contact me directly if you require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Massengale", written in a cursive style.

George Massengale, JD
Director of Government Relations



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Testimony for HB 896, Relating To Tobacco

The American Heart Association of Hawaii supports HB 896 to repeal the sunset clause in Act 131, Session Laws of Hawaii 2005, and require tobacco retailers to acquire a permit. The permitting, and threat of loss of a permit to sell tobacco, can be an effective deterrent to those who would illegally sell tobacco products to a minor. It is one part of a scientifically-based, comprehensive effort that has been proven to help reach the goal of reducing youth access to tobacco. It also provides the Attorney General's office with an important tool to identify locations selling tobacco to insure that those retailers pay the appropriate taxes on their sales.

In Hawaii each year, there are close to 1,100 deaths related to tobacco use. That amounts to almost 12 percent of all resident deaths. Tobacco use is *the* most preventable cause of premature death. Each year, smoking kills more people than AIDS, alcohol, drug abuse, car crashes, murders, suicides, and fires *combined*. Tobacco use costs Hawaii over a half-billion dollars annually in medical costs and lost productivity. Tobacco remains the only legal, consumable product that when used as directed will kill approximately one-third of its users.

Most smokers begin their nicotine addiction as a teen or youth. The success that Hawaii has had in reducing teen smoking levels could quickly reverse as tobacco education, prevention and cessation funding falls victim to inflation and threats of cuts due to economic pressures to the state. Add to that increasingly clever tobacco industry efforts to target young potential smokers through marketing and advertising campaigns, and the need for vigilant surveillance of, and enforcement against, those who would sell tobacco to minors is magnified.

The American Heart Association feels that making the requirement to obtain a permit to sell tobacco, as proposed by HB 896, would provide a strong deterrent to those who might purposely, or accidentally, sell tobacco to minors. It would encourage retailers to be more vigilant in insuring that their sales staff is trained in checking for appropriate age identification when selling tobacco products.

The AHA urges Hawaii legislators to pass HB 896.

Respectfully submitted,

Donald B. Weisman
Hawaii Communications and Marketing/Government Affairs Director

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For information on the AHA's educational or research programs, contact your nearest AHA office, or visit our web site at www.americanheart.org or e-mail us at hawaii@heart.org

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February 13, 2009

To: House Committee on Health
Ryan I. Yamane, Chair
Rep. Scott Y. Nishimoto, Vice Chair

By: Richard C. Botti, President
Lauren Zirbel, Government Relations

Re: HB 896 RELATING TO CIGARETTES

In Support

Chairs & Committee Members:

This is one of those unfortunate situations where a law is necessary to provide a means of knowing who sells tobacco products, as well as a means of controlling both illegal sales to minors, and illegal sales intended to avoid paying the taxes.

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



TO: House Committee on Health

**FOR: Hearing Scheduled for 8:30 am
Friday February 13, 2009**

**RE: TESTIMONY IN STRONG SUPPORT HB 896 RELATING
TO TOBACCO**

Chair Yamane, Vice Chair Nishimoto and Committee Members:

The American Lung Association in Hawaii strongly supports HB 896, which extends without time limit the requirement for retailers who sell tobacco to obtain a retail tobacco permit from the Department of Taxation.

Removal of the provision in the existing law that sunsets the permit requirement in July 2009 would ensure continuation of an important element in the ongoing effort to regulate and control tobacco use among Hawaii's minors. Although the percentage of frequent smokers among high school students is declining (and stands presently at approximately 9.7 percent), surveys indicate nearly 7 out of 10 high school students in Hawaii have tried smoking.

The most recent statistic available from the Hawaii Department of Health reveal that "1 in 6 Hawaii high school underage smokers who bought their last pack of cigarettes in a store were neither asked to show ID nor refused sale, according to a student survey."

Clearly, improved regulation and monitoring of tobacco retail sales is required to help stem the illegal sale of tobacco products to minors. ALA in Hawaii believes adoption of HB 896 will be an important step in achieving that goal.

Respectively submitted,

Jean Evans, MPH
Executive Director
American Lung Association in Hawaii