



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

S.B. NO. 1244, S.D. 2, H.D. 1, RELATING TO THE SALE OF TOBACCO PRODUCTS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Monday, March 18, 2019

TIME: 2:05 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
Delanie D. Prescott-Tate, Deputy Attorney General

Chair Lee and Members of the Committee:

The Department of the Attorney General offers the following comments.

The purpose of this bill is to amend section 712-1258, Hawaii Revised Statutes (HRS) (2017), by shifting criminal liability for selling or furnishing cigarettes, tobacco products, and electronic smoking devices to persons under twenty-one years of age, from the individual that actually conducts the retail sales transaction to the “retailer, permittee, or registrant who violates or whose employee violates subsection (1) or (4), or both[.]” The bill also adds definitions of “permittee,” “registrant,” and “retailer” for use in specifically identifying the entity liable for the illegal sale of cigarettes, tobacco products, and electronic smoking devices.

According to Standing Committee Report No. 1375, dated March 15, 2019, the Committee on Health expressed its concern about placing the liability for under age sales of tobacco products solely upon the retailer, retail tobacco permit holder, or electronic smoking device registrant. The Department of the Attorney General would note that, in regards to subsection (4), creating such a liability may be appropriate as subsection (4) requires the posting of age-restrictive notices at or near the point of sale within the retail establishment. However, prohibiting the prosecution from charging the person who actually conducts the sales transaction imposes a barrier to the prosecutor’s ability to charge blameworthy individuals. The power to charge culpable

individuals for violating section 712-1258(1), HRS, should remain within the prosecutor's discretion.

For purposes of establishing penal liability of corporations and unincorporated associations, section 702-227, HRS (2014), states "[a] corporation or unincorporated association is guilty of an offense when . . . (3) The conduct or result specified in the definition of the offense is engaged in or caused by an agent of the corporation or the unincorporated association while acting within the scope of the agent's office or employment and in behalf of the corporation or the unincorporated association and:

- (a) The offense is a misdemeanor, petty misdemeanor, or violation; or
- (b) The offense is one defined by a statute which **clearly indicates a legislative purpose** to impose such criminal liability on a corporation or unincorporated association."

(Emphasis added.)

Section 702-228, HRS (2014), further speaks to the liability of persons acting, or under a duty to act, in behalf of corporations or unincorporated associations, explaining that "(1) A person is legally accountable for any conduct the person performs or causes to be performed in the name of a corporation or an unincorporated association or in its behalf to the same extent as if it were performed in the person's own name or behalf."

The Department of the Attorney General would suggest that S.B. NO. 1244, S.D. 2, H.D. 1, section 1, be amended to add a subsection that demonstrates the Legislature's intent to hold the retailer's agent or employee responsible for underage sales in violation of section 712-1258(1), HRS, as well as the retailer, permittee, or registrant, such as:

Liabilities. For purposes of construing and enforcing the provisions of subsection (1), the act, omission, or failure of any retailer, permittee, or registrant, or other person acting as an agent for or employed by any retailer, permittee, or registrant, shall in every case be deemed to be the act, omission, or failure of such retailer, permittee, or registrant, as well as that of the person acting as an agent or employee of the retailer, permittee, or registrant.

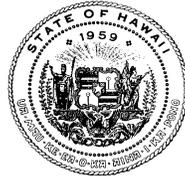
Adding a subsection that demonstrates legislative intent to place liability for wrong doing on the retailer, permittee, or registrant, **and** the individual who actually

furnishes or sells the tobacco product to a person under twenty-one years of age, preserves prosecutorial discretion for use in those situations where probable cause exists to believe that the agent or employee is also a culpable party.

The Department of the Attorney General would also suggest that the term “agent” be added to subsection (6), and that subsection (6) be amended to read: “Any retailer, permittee or registrant who violates subsection (1) or (4), or both, or whose **agent or** employee violates subsection (1), shall be fined \$500 for the first offense. . . .” (Emphasis added.)

Use of the term “agent” clearly conveys the concept of liability being attached to the business entity, and will cover those situations where the tobacco products or electronic smoking devices are sold or furnished to a person under twenty-one years of age by someone other than an “employee” (i.e., vendor).

Thank you for the opportunity to provide testimony and comments on this measure.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**Testimony in SUPPORT of S.B. 1244, SD2, HD1
RELATING TO THE SALE OF TOBACCO PRODUCTS**

REPRESENTATIVE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON JUDICIARY

Hearing Date: March 18, 2019

Room Number: 325

1 **Fiscal Implications:** None

2 **Department Testimony:** The Department of Health is in strong support of Senate Bill 1244,
3 Senate Draft 2, House Draft 1 (S.B. 1244, SD2, HD1) that clearly establishes the legal
4 responsibility of the retailer who sells tobacco products and the liability incurred when illegal
5 tobacco sales are made to anyone under twenty-one years of age.

6 S.B. 1244, SD2, HD1 removes the ambiguity of simply referring to a “person” rather than
7 specifying the retailer, permittee, or registrant who violates, or whose employee violates, the law
8 by illegally selling to someone under twenty-one years of age or fails to display the legally
9 required signage. The fine remains at \$500 for the first offense and any subsequent offenses
10 shall subject the retailer or permittee to a fine not less than \$500 nor more than \$2,000.

11 The focus of fines on the retailer/permittee/registrant provides a greater incentive to
12 comply with tobacco sales laws by holding the licensees responsible for the actions of their
13 employees, and employee training and education. Precedent for this clarification to the proposed
14 amendment to §712-1258, Hawaii Revised Statutes (HRS) is in §712-1250.5(1), HRS, where the
15 person, including any licensee is identified in committing the offense of promoting intoxicating
16 liquor to a person under the age of twenty-one. The Honolulu Liquor Commission (HLC) takes
17 civil action against a licensee as defined in §281-1, HRS, as “all agents, servants, and employees
18 of the holder of a license.” The State Legislative Actions on Tobacco Issues (SLATI) database
19 in the Institute of Medicine Report summarizes information on states that have passed laws

1 requiring that tobacco retailers and permittees are penalized for illegal tobacco sales. Four states
2 have penalties for the employee or person that violates the law, eleven states penalize the
3 licensee, and seven states provide penalties for both the employee and the licensee.¹ The
4 proposed change also aligns with the U.S. Food and Drug Administration that addresses warning
5 letters on inspection violations, corrective action, and possible regulatory action to the retailers,
6 not employees.

7 Thank you for the opportunity to provide testimony.

8 **Offered Amendments:** None

¹ IOM (Institute of Medicine). 2015. *Public health implications of raising the minimum age of legal access to tobacco products*. Washington, DC: The National Academies Press



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Research Office

En Young, MBA
Sansei, Lanai

Date: March 17, 2019

To: Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair
Members of Judiciary Committee

Re: Support for SB1244 SD2 HD1, Relating to the Sale of Tobacco
Products

Hrg: March 18, 2019 at 2:05pm at Conference Room 325

The Coalition for a Tobacco-Free Hawai'i, a program of the Hawai'i Public Health Instituteⁱ is in **Support of SB1244 SD2 HD1** which clarifies that liability for illegally selling tobacco products to persons under 21 is borne by the retail entity rather than the employee.

The Coalition supports SB1244 SD2 HD1, shifting the responsibility from an individual employee to the retailer or permittee who or whose employees to receive education and direction on our state law, and it will ensure retailers keep closer oversight of the sale activities in their stores. This change places majority of the responsibility on the entity with the power to ensure compliance with Hawaii's Tobacco 21 law.

Thank you for the opportunity to testify. We support SB1244 SD2, HD1 and respectfully ask you to pass this measure out of committee.

Mahalo,

A handwritten signature in black ink that reads 'Jessica Yamauchi'.

Jessica Yamauchi, MA
Executive Director

ⁱThe Coalition for a Tobacco-Free Hawai'i (Coalition) is a program of the Hawai'i Public Health Institute (HIPHI) that is dedicated to reducing tobacco use through education, policy, and advocacy. With more than two decades of history in Hawai'i, the Coalition has led several campaigns on enacting smoke-free environments, including being the first state in the nation to prohibit the sale of tobacco and electronic smoking devices to purchasers under 21 years of age.

The Hawai'i Public Health Institute is a hub for building healthy communities, providing issue-based advocacy, education, and technical assistance through partnerships with government, academia, foundations, business, and community-based organizations.



**TESTIMONY OF TINA YAMAKI
PRESIDENT
RETAIL MERCHANTS OF HAWAII
March 18, 2019**

Re: SB 1244 SD2 HD1 Relating to the Sale of Tobacco Products

Good afternoon Chairperson Lee and members of the House Committee on Judiciary. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii (RMH) as founded in 1901 and is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

RMH is OPPOSED SB 1244 SD2 HD1 Relating to the Sale of Tobacco Products. This measure establishes the offense of unlawful shipment of e-liquid products; includes e-liquid and electronic smoking devices in regulatory and taxation requirements applicable to tobacco products; increases tobacco wholesaler or dealer license fees and retail permit fees; allocates portions of tobacco tax revenues to the Hawaii Tobacco Prevention and Control Trust Fund and to support tobacco and cancer prevention research. Repeals statutory provisions made obsolete.

The majority of the employer who sell tobacco and vape products have ongoing training for their employees that includes NOT selling these products to those under 21 years of age, but also carding people to verify their age.

To some extent, the employee needs to also be responsible not just make a sale but to card the customer and ensure that they are indeed 21 years of age or older. We recognize that there are some very realistic fake ID cards that may even stump someone with a vigilant eye.

The legitimate law abiding retailers are not the ones intentionally selling the cigarettes and the vaping devices to those who are under 21 years of age. Many of who are underage are obtaining their cigarettes and vaping devices from their parents or older friends or purchasing them on the black market. We have seen a significant spike in theft and tobacco products are a favorite to be stolen. Those selling the stolen goods do not card to see how old someone is.

We urge you to hold this measure. Mahalo for this opportunity to testify.

SB-1244-HD-1

Submitted on: 3/16/2019 10:02:54 AM

Testimony for JUD on 3/18/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Neil Ishida	ABC Stores	Oppose	No

Comments:

ABC Stores oppose SB 1244 SD2, HD1 Relating to the Sale of Tobacco Products. This measure would clarify that the liability for illegally selling tobacco products to person under 21 is borne by the retail entity or individual who holds a valid permit to sell tobacco products, as opposed to an employee.

ABC Stores and the majority of the employers who sell tobacco and vape products have ongoing training for their employees that includes NOT selling these products to those under 21 years of age. ABC Stores also train employees to card people that look 40 years old and younger, and require an government issued ID to verify their age. To some extent, the employee need to also be responsible, not just to make a sale, but to card the customer to ensure that the customer is indeed 21 years of age or older. Our effort to prevent the sale of tobacco to minors is successful only when employees share in the responsibility of PREVENTING the sale of tobacco to minors. We urge you to hold this measure. Mahalo for this opportunity to testify.

SB-1244-HD-1

Submitted on: 3/17/2019 5:32:45 PM

Testimony for JUD on 3/18/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Zehner	Hawaii Smokers Alliance	Oppose	No

Comments:

LATE

March 18, 2019

RE: **Support of SB1244 SD2 HD1** Relating to Tobacco

Aloha Chair Lee, Vice-Chair San Buenaventura, and Members of the House Judiciary Committee:

Blue Zones Project–Hawaii supports SB1244 SD2 HD1, shifting the responsibility from an individual person to the retailer or permittee who or whose employee violates the Tobacco 21 laws will incur the fine. This shift of responsibility will create the need for employees to receive education and direction on our state law, and it will ensure retailers keep closer oversight of the sale activities in their stores.

This change puts the majority of the responsibility on the entity with the greater power to ensure our Tobacco 21 laws are being upheld at the point of sale. To provoke meaningful change, it is necessary to leverage the places that have the broader scale effect.

Mahalo for this opportunity to testify in support of SB1244 SD2 HD1. It is one more way to make sure we are protecting our youth from the adverse effects of tobacco.

Sincerely,

Peggy Mierzwa

Peggy Mierzwa
Blue Zones Project—Hawaii

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LATE

Testimony of Jim Yates,
President of the Hawaii Petroleum Marketers Association

**IN OPPOSITION TO SENATE BILL 1244, SENATE DRAFT 2, HOUSE DRAFT 1,
RELATING TO THE SALE OF TOBACCO PRODUCTS**

House Committee on Judiciary
The Honorable Chris Lee, Chair
The Honorable Joy San Buenaventura, Vice Chair

Monday, March 18, 2019 at 2:05 p.m.
Hawaii State Capitol, Conference Room 329

Chair Lee, Vice Chair San Buenaventura and members of the Committee,

I am Jim Yates, president of the Hawaii Petroleum Marketers Association (“HPMA”). HPMA is a non-profit trade association comprised of members who directly market liquid motor fuel products across the Hawaiian Islands. Our membership includes individuals and companies who operate as independent marketers, jobbers or distributors of petroleum products and who buy liquid motor fuel products at the wholesale level and sell or distribute products to retail customers, other wholesalers, and other bulk consumers. HPMA’s primary purpose is to protect and advance its members’ legislative and regulatory interests in Hawaii and Washington, DC.

Senate Bill 1244, Senate Draft 2, House Draft 1 clarifies that liability for illegally selling tobacco products and electronic smoking devices to persons under 21 is borne by the retail entity, entity that holds a retail tobacco permit, or entity registered to sell electronic smoking devices, as opposed to an employee.

HPMA stands in strong opposition to this bill. Insulating frontline employees from liability would work against the overall objective of keeping tobacco products out of the hands of underage buyers.

Thank you for allowing HPMA the opportunity to submit written testimony on this bill.



LATE

To: House Committee on Judiciary
From: Jon Miyabuchi, Vice President Retail Operations
Hawaii Petroleum, Inc.
RE: SB1244 SD2 HD1, Relating to the Sale of Tobacco Products

Date: March 15, 2019

Thank you for the opportunity to provide testimony. Hawaii Petroleum is an independent petroleum marketer operating on the islands of Maui and Hawaii, and employees approximately 325 people on the two islands. Hawaii Petroleum **STRONGLY OPPOSES SB 1244 SD2 HD1** for the following reasons.

- 1) **Bill punishes all retailers, especially those that follow the law:** Hawaii Petroleum does not advocate nor condone smoking by Hawaii's underaged youth. Our retail outlets require every person, regardless of age and appearance of age that wants to purchase tobacco products, including vape supplies and e-cigarettes, to present a valid government I.D. We have an exemplary record against tobacco stings. We do sell tobacco to adults that choose to smoke.

The majority of employers who sell tobacco and vape products have ongoing training for their employees that includes **NOT** selling these products to those under 21 years of age, but also carding people to verify their age.

To some extent, the employee needs to also be responsible not just to make a sale, but to card the customer and ensure that they are indeed 21 years of age or older. We recognize that there are some very realistic fake ID cards that may even stump someone with a vigilant eye.

The legitimate law-abiding retailers are not the ones intentionally selling the cigarettes and the vaping devices to those who are under 21 years of age. Many of who are underage are obtaining their cigarettes and vaping devices from their parents or older friends or purchasing them on the black market. Those selling the stolen goods do not card to see how old someone is.

I urge you to consider the above items when considering SB 1244 SD2 HD1 to craft a bill that is effective, yet fair.

Mahalo.

Maui: 385 Hukilike Street, #101 | Kahului, Hawaii 96732 | t: 808.270.2800 | f: 808.270.2801

Hilo: 16 Railroad Avenue, #202 | Hilo, Hawaii 96720 | t: 808.935.6641 | f: 808.934.7197

Kona: 74-5558 B Kaiwi Street | Kailua-Kona, Hawaii 96740 | t: 808.329.1862 | f: 808.326.2755

e-mail: sales@hawaiipetroleum | www.hawaiipetroleum.com | www.ohanafuels.com | www.ministop.com

LATE

SB-1244-HD-1

Submitted on: 3/18/2019 4:06:06 PM

Testimony for JUD on 3/18/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Keanu Esser	Irie Hawaii	Oppose	No

Comments:

I oppose this bill.

SB-1244-HD-1

Submitted on: 3/15/2019 4:23:17 PM

Testimony for JUD on 3/18/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jake J. Watkins	Individual	Oppose	No

Comments:

SB-1244-HD-1

Submitted on: 3/15/2019 7:51:50 PM

Testimony for JUD on 3/18/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
April Pacheco	Individual	Oppose	No

Comments:

SB-1244-HD-1

Submitted on: 3/16/2019 9:38:48 AM

Testimony for JUD on 3/18/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Watanabe	Individual	Oppose	No

Comments:

SB-1244-HD-1

Submitted on: 3/16/2019 10:55:24 AM

Testimony for JUD on 3/18/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nicholas Winters	Individual	Oppose	No

Comments:

We don't need this attack on businesses.

SB-1244-HD-1

Submitted on: 3/16/2019 1:50:17 PM

Testimony for JUD on 3/18/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael S. Nakasone	Individual	Oppose	No

Comments:

SB-1244-HD-1

Submitted on: 3/16/2019 5:39:32 PM

Testimony for JUD on 3/18/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dallas Nelson	Individual	Oppose	No

Comments:

SB1244 is nasty to people who vape.

SB-1244-HD-1

Submitted on: 3/17/2019 8:17:15 AM

Testimony for JUD on 3/18/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kathy Kim	Individual	Oppose	No

Comments:

Strong Opposition

LATE

SB-1244-HD-1

Submitted on: 3/18/2019 6:43:45 PM

Testimony for JUD on 3/18/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Alex Abe	Individual	Oppose	No

Comments: