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EXECUTIVE SUMMARY

Tobacco industry money has not been successful in recent years in buying support from lawmakers in Hawai'i. Since 2001, major legislation on clean indoor air, tobacco tax increases and a tobacco tax stamp measure have passed by comfortable margins.

In 1994, the City Council of Honolulu passed smokefree workplaces ordinances that exempted bars and nightclubs. Mayor Jeremy Harris vetoed the bill because it covered restaurants. In 1997, Honolulu made all workplaces smokefree except restaurants and bars, which Mayor Harris signed because of the restaurant exemption. In December 2001, county government leaders of Honolulu, Kaua'i and Maui Counties announced they would be introducing legislation that would end restaurant smoking because of the state Legislature's inaction.

Honolulu passed Hawai'i's first smokefree restaurant law in 2002. The State Department of Health media campaign that started June 1, 2001 focusing on the health impact of secondhand smoke on restaurant workers may have contributed to the polling data released in January, 2002 that showed strong support for a smokefree restaurant law. In the end, it was the persistence of the tobacco control advocates that carried the day. Honolulu's law set the stage for the Kaua'i and Maui ordinances that would follow shortly.

During 2002 and 2003, each county in Hawai'i passed a smokefree restaurant or workplace law. By February 1, 2004, well over 80% of Hawai'i workplaces were smokefree and smoking was prohibited in virtually all restaurants. This status would set the tone for the passage of a sweeping statewide smokefree law.

Polling data released in December, 2005 showed very strong public support for a statewide smokefree law. The statewide clean indoor air measure passed in 2006 with virtually no amendments from introduction to final passage, and with only three Nays in the Senate (out of 25) and three Nays in the House (out of 51).

In 2007, a group of bar owners tried to undo the new statewide smokefree law in the Legislature and through a lawsuit claiming the law was unconstitutional. Tobacco control advocates prevailed in killing all of the bills that would have exempted some or all bars and restaurants with smoking rooms and the court dismissed the lawsuit.

The Department of Health, however, as of July 1, 2008, had still failed to take any effective enforcement action against repeat violators of the smokefree law, to get local law enforcement agencies to act, or to issue the administrative rules required by the state law that went into effect November 16, 2006. There has been no sustained public education campaign about the public's power for enforcement. This failure made proactive implementation of the law all but impossible and created a situation that invites pro-tobacco forces to undermine the law's long-term effectiveness.

Hawai'i has taken modest steps to control illegal sales of tobacco products to minors. Cigarette vending machines are restricted to venues in which minors under the age of 18 are not

permitted, mobile food vendors (lunch wagons) are prohibited from selling or distributing cigarettes within 1,000 feet of any school, and the sale or distribution of single cigarettes or packs of cigarettes containing fewer than 20 cigarettes is prohibited. In 1998, the fines levied against individuals who sell or distribute tobacco products to minors were raised to \$500 for the first offense and \$2,000 for subsequent offenses. However, the law does not penalize the business owner for illegal sales to minors, which probably accounts for the large number of violations found in sting operations.

In 1993, the tobacco industry was successful in replacing the Hawai'i ad valorem tax on cigarettes (40% of the wholesale price) with an excise tax, but this plan to reduce the size of the cigarette tax by switching to a per unit tax backfired. The per unit taxes established by state legislation between 1997 and 2007 exceeded the rates that cigarettes would have been taxed if the 40 percent ad valorem tax had remained in place. In 2006, the cigarette tax was increased by \$.20 per pack per year over six years to \$2.60. However, there were lost opportunities to add some of the new revenue from the increased cigarette taxes to tobacco control programs.

In 2001, Hawai'i became one of the last states to require a tax stamp on cigarette packages to reduce smuggling and improve tax collections. The tax stamp was credited in a Department of Health report with reducing the number of smuggled cigarettes sold in Hawai'i and for increasing the tax revenues by \$20 million annually.

When the Legislature in 1999 split MSA funds into two accounts for tobacco control, one for the Department of Health and one in a Trust Fund, tobacco control advocates did achieve one goal of protecting funding from administrative diversion to programs other than tobacco control by putting the money in a nongovernmental organization. What they were not able to protect was the amount of funding that went into that Trust Fund, which was cut from 25% of MSA monies to 12.5% in 2002. Heavy lobbying by the University of Hawai'i to raid the MSA funds to build medical school facilities robbed tobacco control programs of vital resources. The 25% of the MSA funds that goes to the Department of Health is to be spent for a variety of health promotion and disease prevention programs, but the Department allocates relatively little to tobacco control.

While Hawai'i has slowly improved its spending on tobacco control, it has never reached the 1999 CDC Best Practices recommendation of \$10.8 to \$23.4 million per year (reduced by CDC to \$9.6 to \$19.6 million per year in 2007). The closest it has come was 2006 when the Department of Health and the Trust Fund spent a total of \$8.2 million on tobacco control. Despite these issues, there have been continuing declines in adult and youth smoking prevalence, though per capita cigarette consumption is not showing the steady decline we see nationally.

When the Trust Fund was created from MSA monies, the legislation established an independent source of tobacco control funding, with its own Advisory Board, separate from the Department of Health which had its own MSA monies and its own tobacco control advisory group. Without any apparent statutory authority, the Department of Health has substantially interfered with that independence by effectively controlling how the Trust Fund spends its money on tobacco control by disapproving or requiring modifications of Trust Fund Advisory Board recommendations on funding, budgets and tobacco control programs.

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INTRODUCTION

In contrast to the Eurocentric history and internal geographic contiguousness of the other 49 states, Hawai'i's Polynesian heritage and insular geography present a different context in which to evaluate and understand its tobacco control history.

History

Hawai'i was first settled by Polynesians during the great Polynesian Immigration that, over a period of a thousand years (AD 200-1200), settled the inhabitable islands of the Pacific Ocean from New Zealand in the south, to Easter Island in the east and the Hawaiian Archipelago in the north. Settlement of the Hawaiian Archipelago is put at AD 650-850.¹ By the time that English navigator Captain James Cook reached the Hawaiian Islands in 1768, the native population of the islands was between 400,000 and 800,000. Captain Cook found a highly organized, self-sufficient subsistence society based on communal land tenure with a sophisticated language, culture and religion. The government consisted of regional monarchies, usually one per island.

In 1810, Kamehameha I of the Island of Hawai'i became the first King of Hawai'i after conquering Oahu and Maui, and receiving a pledge of allegiance from the ruler of Kaua'i. Kamehameha used some European advisors and weapons in his fight to conquer the island chain. In 1820, missionaries from the American Congregational Church began arriving. The missionaries taught reading and writing using the new written Hawaiian language. In 1826, the U.S. government formally recognized the Kingdom of Hawai'i as a sovereign nation. In 1848, the King issued the Mahele, which granted some monarchial lands to the people and permitted private ownership of that land. With this came American and European businessmen who bought large blocks of land and created a plantation economy based on sugar cane and pineapple production. The Native Hawaiian population was rendered virtually landless.

Diseases brought by the Americans and the Europeans decimated the native population, and by 1872, the population had dropped to 56,000. This situation required importing labor to work in the plantation economy.

In January 1893, a group of American and European businessmen conspired with the U.S. Minister to the Kingdom, John Stevens, to overthrow the monarchy with the help of the U.S. Navy and established a Provisional Government. U.S. President Grover Cleveland condemned the acts and called for the restoration of the monarchy. The Provisional Government turned to Congress. Unable to convince the U.S. Senate to support ratification of a treaty to annex Hawai'i the Provisional Government declared the Republic of Hawai'i on July 4, 1894. On July 7, 1898, President William McKinley signed the law annexing Hawai'i. On April 30, 1900 signed the Organic Act which created the Territory of Hawai'i. Hawai'i became the 50th U.S. state on August 21, 1959.

To mark the 100th anniversary of the overthrow of the Kingdom of Hawai'i, the U.S. Congress passed on November 23, 1993, what is known as the Apology Resolution,² apologizing

to the Native Hawaiian population for the overthrow of the Kingdom and the subsequent "deprivation of the rights of Native Hawaiians to self-determination".

Geography

A string of 137 islands encompassing a land area of 6,422 square miles in the north central Pacific Ocean, Hawai‘i became the 50th state in 1959. It is approximately 2,400 miles from the west coast of the continental United States.

There are eight major islands: Ni‘ihau, Kaua‘i, O‘ahu, Moloka‘i, La-na‘i, Ka-ho‘olawe, Maui, and Hawai‘i. The state is subdivided into four counties: 1) the consolidated City and County of Honolulu, which includes the Island of Oahu and the Northwest Hawaiian Islands, excluding Midway; 2) Hawai‘i County (Hawai‘i Island, also known as the Big Island); 3) Maui County (Islands of Maui, Moloka‘i, La-na‘i, and Ka-ho‘olawe); and 4) Kaua‘i County (Islands of Kaua‘i and Ni‘ihau). Of the state's 1.2 million residents, 71 percent live in the City and County of Honolulu (Table 1).

Table 1 Hawai‘i Counties			
County	Islands	Population	% of State Pop.
Honolulu	O‘ahu, Northwest Hawaiian Islands	876,156	71 %
Hawai‘i	Hawai‘i/Big Island	148,677	13 %
Maui	Maui, Moloka‘i, La-na‘i, Ka-ho‘olawe	128,094	11 %
Kaua‘i	Kaua‘i, Ni‘ihau	58,463	5 %
Source: 2000 U.S. Census ³			

Hawai‘i’s population is one of the most racially and ethnically diverse in the world with no majority group. In the 2000 census, more than 20% claimed multi-ethnic backgrounds. More than half of the population is at least part Asian, about the same is part Caucasian, and about a quarter claim Hawaiian ancestry.

Government

Hawai‘i has two levels of government: state and county. Each county has a mayor and a council; all mayors are elected in nonpartisan races. Unlike states on the U.S. mainland, Hawai‘i has no incorporated cities. The Honolulu City Council is the legislative body for the entire county, so an ordinance enacted by the City and County of Honolulu covers the entire island of Oahu. Counties provide most of the services typically assigned to municipal governments, such as police and fire protection, refuse collection, and maintenance of streets and parks. The state government's responsibilities include education, transportation networks, public health and welfare, and public works. Hawai‘i has a state Health Department with District Offices in each county, and no county health departments. Similarly, Hawai‘i is the only state with a unified

statewide school district. The state Board of Education sets educational policy and hires the state Superintendent of Schools, who oversees the state Department of Education.

Economy

Tourism is the largest industry in Hawai'i. The gross state product in 2004 was \$50 billion. Tourist expenditures accounted for \$10.9 billion, federal defense spending \$4.8 billion, and sugar and pineapple exports \$250 million. Of the 6.9 million visitors who stayed one night or longer in Hawai'i in 2004, two-thirds came from the mainland U.S. and 22 percent from Japan. The remainder of Hawai'i's economy is largely service-oriented. Federal, state, and local government accounts for a little over 8 percent of wage and salary jobs, whereas construction, manufacturing, and agriculture together account for only about 12 percent of such jobs.⁴

Tobacco Use

Seventeen percent of adult residents in Hawai'i were cigarette smokers in 2007, compared to a nationwide median adult smoking prevalence of 19.7%.⁵ Per capita consumption of cigarettes in Hawai'i was 47 packs in 2005, lower than the U.S. total per capita cigarette consumption of 67 packs.⁶ As Figure 1 shows, between 1990 and 2005 per capita consumption in Hawai'i was consistently below that in the U.S. overall. Whereas per capita consumption in the U.S. declined steadily during the 1990s and the first years of the twenty-first century, consumption in Hawai'i fluctuated and was higher in 2003 (51.2 packs) than in 1990 (48.9 packs), but declined in 2004 (47.4 packs) and 2005 (47.0 packs).

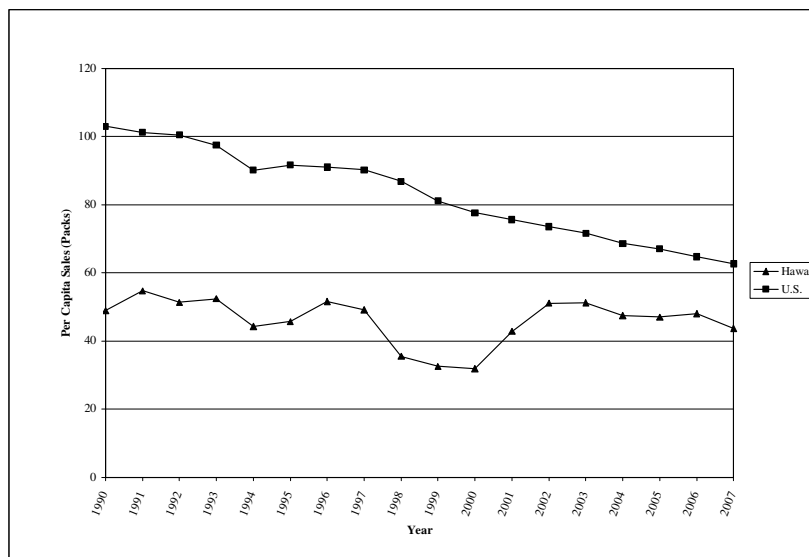


Figure 1 Per Capita Cigarette Consumption in U.S. and Hawai'i, 1990-2005⁶

Adult smoking prevalence in Hawai'i also fluctuated between 21.1 percent in 1990 and 17.0 percent in 2005 (Figure 2).

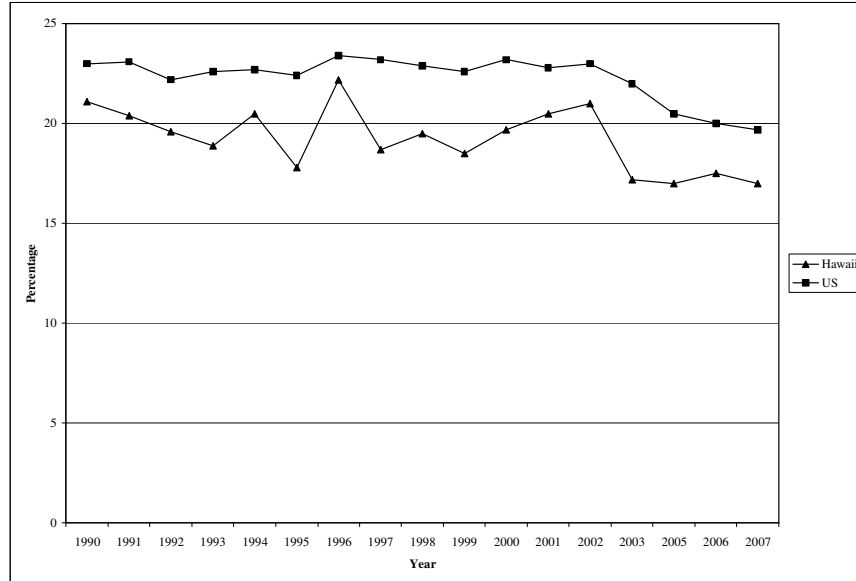


Figure 2 Adult Cigarette Smoking Prevalence in U.S. and Hawaii, 1990-2007⁵

Over 1,200 adults in Hawai‘i die each year from smoking, and the annual health care costs in Hawai‘i directly caused by smoking are \$336 million, and smoking-caused productivity losses in Hawai‘i amount to \$309 million.⁷

Between 1999 and 2005, Hawai‘i’s high school smoking prevalence dropped dramatically (Table 2), yet an estimated 27,400 youth under age 18 in Hawai‘i will ultimately die prematurely from smoking.⁷

	U.S.			Hawai‘i		
	Current Smoker ¹	Frequent Smoker ²	Ever Smoker ³	Current Smoker	Frequent Smoker	Ever Smoker
2007	20.0	8.1	51.9	12.8	4.5	N/A
2005*	23.0	9.4	54.3	16.4	4.8	N/A
1999	34.8	16.8	70.4	27.9	13.1	67.2
1997	36.4	16.7	70.2	29.2	14.5	67.4
1995	34.8	16.1	71.3	32.4	16.9	68.8
1993	30.5	13.8	69.5	28.2	13.3	65.5

Source: Youth Risk Behavior Survey⁸
¹ Smoked cigarettes on 1 or more days of the 30 days preceding the survey
² Smoked cigarettes on 20 or more days of the 30 days preceding the survey
³ Ever tried cigarette smoking, even 1 or 2 puffs
 * Hawai‘i did not participate in the YRBS in 2001 and 2003

TOBACCO CONTROL ADVOCATES

The Coalition for a Tobacco-Free Hawai‘i (Table 3) serves as a statewide resource on tobacco issues. It was established in 1997 with a three-year grant of \$800,000 from the Robert Wood Johnson Foundation's SmokeLess States Initiative with the American Cancer Society as the fiscal agent. The Coalition separated from the American Cancer Society in 2007, and shifted its funding to the Tobacco Prevention and Control Trust Fund (discussed at length below), other grants, individual and corporate donations and limited fees-for-service. Membership in the Coalition is open to every organization and individuals interested in tobacco issues and its membership roster for 2008 showed a broad base of membership with good representation from health care organizations (Table 4). The Coalition helped to mobilize the Neighbor Island Coalitions (Table 5). Each local coalition is designed to serve as a resource for information on tobacco prevention and control efforts, and to coordinate local efforts to change tobacco-related public policy.

Table 3 Founding Members of the Coalition for a Tobacco-Free Hawai‘i

American Cancer Society Hawai‘i Pacific, Inc. American Heart Association of Hawai‘i American Lung Association of Hawai‘i Cancer Research Center of Hawai‘i (University of Hawai‘i) Hawai‘i Medical Association Hawai‘i State Department of Health Hawai‘i State Department of Education

Table 4 Organization Members of the Coalition for a Tobacco-Free Hawai‘i, 2008

‘Imi Hale Aloha House American Cancer Society Hawai‘i Pacific, Inc. American College of Obstetricians and Gynecologist, Hawai‘i Section American Heart Association of Hawai‘i American Lung Association of Hawai‘i Cancer Research Center of Hawai‘i (University of Hawai‘i) Castle Medical Center – Wellness Center Hastings & Pleadwell: A Communication Company Hawai‘i Island Tobacco-Free Partnership West Hawai‘i Hawai‘i Medical Service Association Hawai‘i State Department of Education Hawai‘i State Department of Health Hui Malama Learning Center Kalihi Palama Health Center Kokua Kalihi Valley Laborer’s Union, Local 368 Maui Tobacco-Free Partnership MEO, Inc. Pacific Public Health Training Center Postcards Café REAL/Cancer Research Center Tobacco-Free Big Island Tobacco-Free Kaua‘i Waianae Coast Comprehensive Health Center 18 Individual Members
--

Table 5 County Tobacco Control Coalitions

Hawai'i Island Tobacco-Free Partnership West Hawai'i
Maui Tobacco-Free Partnership
O'ahu Tobacco-Free Partnership
Tobacco-Free Big Island
Tobacco-Free Kaua'i
Tobacco-Free Moloka'i

As will be shown below, the Coalition has become a visible, active and successful force to tobacco control advocacy in Hawai'i.

CHALLENGES TO TOBACCO CONTROL POLICYMAKING

In Hawai'i, as elsewhere, public health advocates face challenges when it comes to tobacco control policy making because of the presence of the tobacco industry that invests considerable resources toward blocking regulatory efforts to control tobacco use. Tobacco industry political strategies in state legislatures include the use of lobbying, the media, public relations, front groups, industry allies, and financial contributions to legislators. The industry's efforts have included campaigns to neutralize clean indoor air legislation, minimize tax increases, and preserve the industry's freedom to advertise and sell tobacco.⁹ As the World Health Organization (WHO) observed in a 2000 report that detailed the decades-long campaign by the tobacco industry to impede the development of WHO tobacco control initiatives:

Tobacco use is unlike other threats to global health. *Infectious diseases do not employ multinational public relations firms. There are no front groups to promote the spread of cholera. Mosquitoes have no lobbyists . . .* The evidence presented here suggests that tobacco is a case unto itself, and that reversing its burden on global health will be not only about understanding addiction and curing disease, but, just as importantly, about overcoming *a determined and powerful industry*.¹⁰ [Emphasis added]

The same is true for domestic tobacco control efforts in the United States, where the tobacco industry devotes considerable resources toward promoting adoption, continuation, and public tolerance of smoking and other forms of tobacco use, and countering efforts by public health advocates to reduce tobacco use. For example, when public health advocates succeed in passing strong local ordinances creating smokefree workplaces, including restaurants and bars, the tobacco industry works to pass weak state tobacco control laws that preempt the authority of local governments to pass stronger measures. The industry's logic behind preemption was clearly summarized in a 1994 internal Philip Morris presentation titled "Preemption/ Accommodation":

Our goal is to see some form of preemptive/accommodation legislation passed in all 50 states by the end of next year. The achievement of universal preemption/accommodation is imperative . . . *The immediate implications for our business are clear: if our consumers have fewer opportunities to enjoy our product, they will use them less frequently and the result will be an adverse impact on our bottom line*.¹¹ [Emphasis added]

Understanding the tobacco industry's evolving strategies and tactics for influencing state and local policy making increases public health advocates' likelihood of success in developing and implementing effective tobacco control policies, thereby reducing tobacco-induced disease.

Tobacco Industry Political Expenditures in Hawai'i

Campaign contribution data collected by the National Institute on Money in State Politics was used to examine tobacco industry campaign contributions.¹² The National Institute on Money in State Politics gathers their data by collecting campaign finance data submitted by candidates and political parties to respective states. Contributions made by tobacco companies, lobbyists of tobacco companies, employees of tobacco companies, and trade organizations devoted to the sale or production of tobacco were considered tobacco related contributions.

Tobacco industry efforts to buy policy success through contributions to candidates, political parties and ballot measures may have peaked in the early 21st Century. In an October 22, 2007 report,¹³ the National Institute on Money in State Politics concludes that, despite giving large amounts of money, concerted lobbying efforts and well coordinated ballot measure campaigns, tobacco interests lost many legislative battles in 2007 and five of seven ballot measures to increase tobacco excise taxes and to mandate smokefree workplaces and public places in 2006. They observed, "Laws restricting public smoking passed in 13 states in 2007. Six states increased the tobacco taxes; 23 states considered increasing the tax or still had legislation pending [as September 1, 2007]."¹³ The two ballot measures the tobacco industry won (i.e., defeated cigarette tax proposals) were defeated by very small margins (with 51.7% in California¹⁴ and 51.4% in Missouri voting "no"). However, in a special election in Oregon after the report was issued, the tobacco industry defeated a tobacco tax increase initiative, with 59.3% voting "no" after the industry spent \$12.1 million.¹⁵

It is much the same story in Hawai'i. Since 2001, the Legislature passed major legislation on clean indoor air, tobacco tax increases and a tobacco tax stamp measure have by comfortable margins despite industry opposition. The statewide clean indoor air measure passed in 2006 with virtually no amendments from introduction to final passage, and with only three Nays in the Senate (out of 25) and three Nays in the House (out of 51).

Campaign Contributions

The tobacco industry is a political force in Hawai'i and an element of the industry's political influence is campaign contributions. From 1997-2006 the tobacco industry and their allies contributed \$474,894 to the state political parties and individuals running for state office (Table 6). Details of tobacco industry campaign contributions for each of the election cycles 1998 through 2006 are shown in Appendices 1-6. The majority of party contributions from the tobacco industry have gone to candidates affiliated with the Democratic Party, because the Democratic Party is the dominant political party in Hawaii. Total tobacco industry campaign contributions by election cycle are shown in Figure

3.

Table 6 Summary of Tobacco Industry Contributions by Election Cycle						
	1997-1998	1999-2000	2001-2002	2003-2004	2005-2006	Total
Tobacco Companies						
Altria/PM	\$47,500	\$21,385	\$45,709	\$115,500	\$74,000	\$304,094
RJ Reynolds	\$33,650	\$18,250	\$28,250	\$40,750	\$24,250	\$145,150
Lorillard		\$1,200	\$200			\$1,400
Brown & Williamson		\$4,900	\$3,900			\$8,800
Tobacco Organizations						
Tobacco Institute	\$14,450					\$14,450
Smokeless Tobacco Council	\$1,000					\$1,000
Total	\$96,600	\$45,735	\$78,059	\$156,250	\$98,250	\$474,894

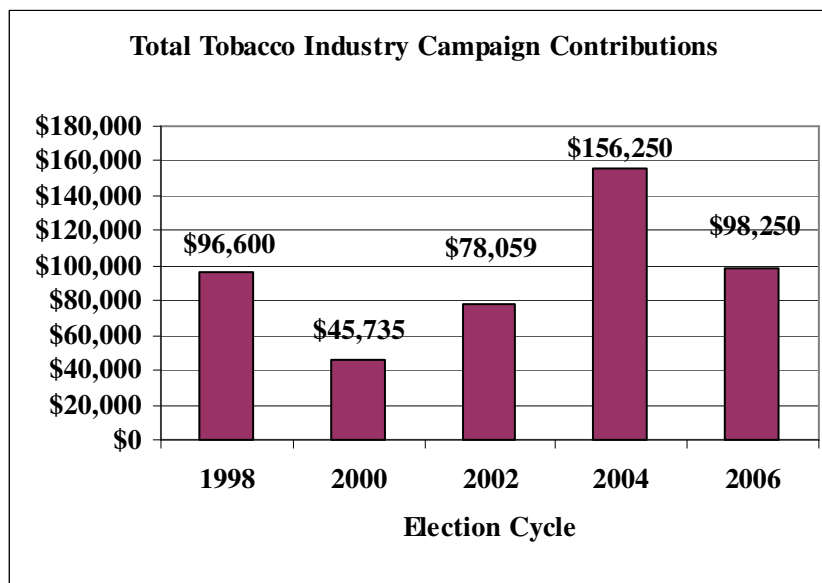


Figure 3 Total Tobacco Industry Campaign Contributions by Election Cycle, 1998-2006

The Contributors

Campaign contributions from the tobacco industry may have spiked in the 2004 and 2006 election cycles because of heavy tobacco control legislative activity in the 2003-2004 and 2005-2006 Legislatures in which major legislation was passed to raise cigarette taxes, institute a tobacco tax stamp requirement, and prohibit smoking in workplaces and public places.

From 1997 to 2006, Altria/Phillip Morris and RJ Reynolds contributed the vast majority of tobacco related campaign contributions (Table 6). During this time period Altria/Phillip

Morris contributed \$366,594 (65% of total tobacco contributions) while RJ Reynolds contributed \$169,400 (35% of total tobacco contributions).

In 2007 both Altria/Phillip Morris and RJ Reynolds discontinued their contributor committees in the state of Hawai'i. This action makes it impossible for these companies to make direct campaign contributions in the future. Health advocates in 2008 stated that tobacco companies in Hawai'i ceased making direct campaign contributions and instead funneled their contributions through lobbyists. Because lobbyists frequently work with multiple clients and industries, this practice will make it much more difficult to determine which contributions are being made on behalf of the tobacco industry.

Contributions to Political Parties

Tobacco industry contributions to political parties (Figure 4) have been relatively small because of the limitation on contributions of \$25,000 from any individual or entity in any election cycle. It is unclear why there were no contributions to political parties prior to the 2001-2002 election cycle.

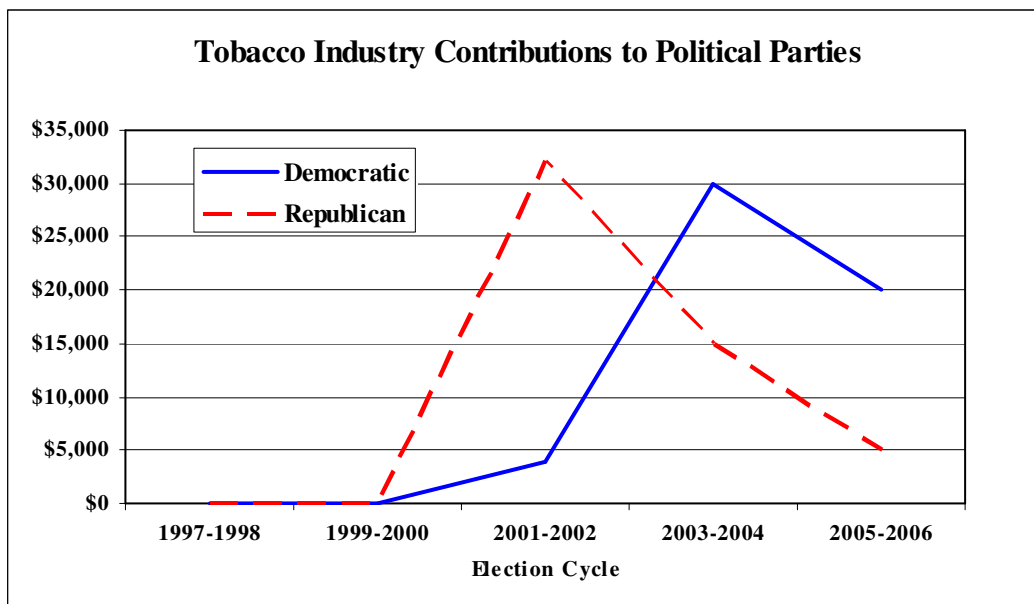


Figure 4 Tobacco Industry Contributions to Political Parties 1997- 2006

Contributions to Candidates

Contributions to candidates heavily favored Democrats, as the Democratic Party has dominated the Legislature since statehood in 1959. Total tobacco industry campaign contributions to candidates by political party are shown in Figure 5. In the 1997-1998 election cycle, independent candidates received \$2,250 and in the 2004-2006 election cycle, independent candidates received \$3,000.

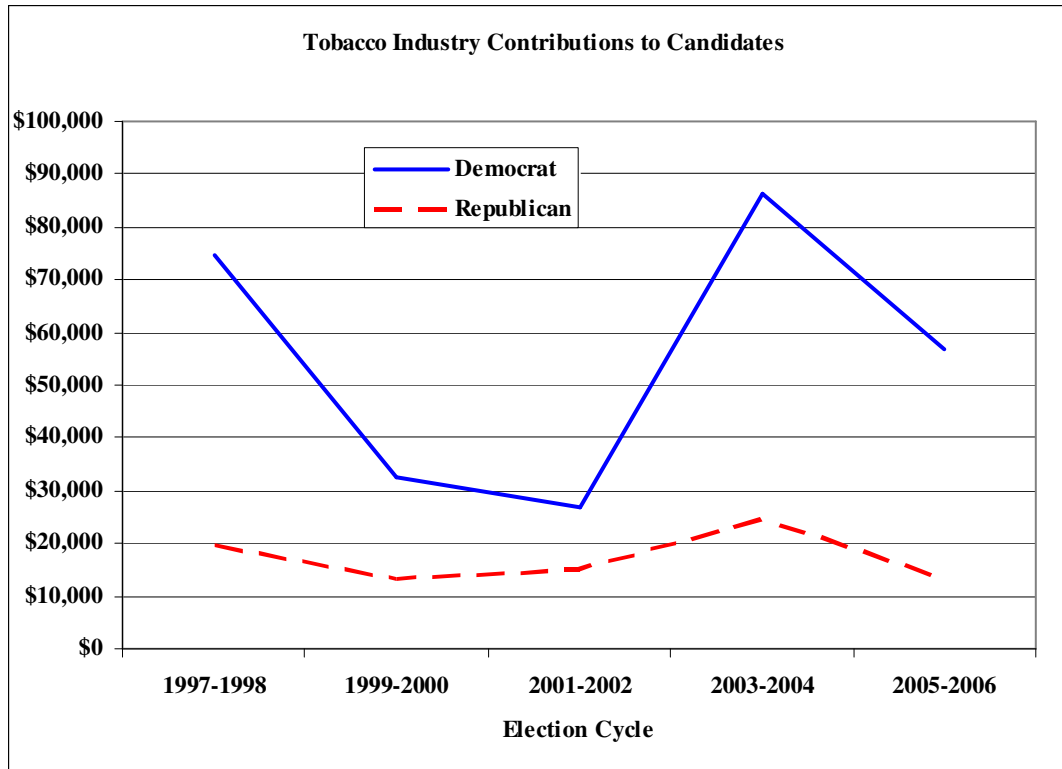


Figure 5 Total Tobacco Industry Campaign Contributions to Candidates by Political Party, 1997-2006

From 1997 to 2006, seven individuals received greater than \$8,000 in contributions from tobacco interests (Table 7). Six out of seven of these individuals are Democrats, the dominant political party in Hawai'i. Notably through 2006, Hawai'i's governor at the time, Linda Lingle (R) had not accepted campaign contributions from tobacco interests.

Name	Party	Office	Amount
Bunda, Robert	Democrat	S	\$13,750
Kawamoto, Calvin	Democrat	S	\$12,853
Nakasone, Bob	Democrat	H	\$11,959
Halford, Chris	Republican	H	\$9,541
Souki, Joe	Democrat	H	\$9,014
Espero, Will	Democrat	S	\$8,950
Baker, Rosalyn	Democrat	S	\$8,150

In the 2006 election cycle, eight individuals received \$3,000 or more in contributions from tobacco interests (Table 8), the highest contribution total from tobacco that year. All but one of these individuals are members of the Senate and seven out of eight were members of the Democratic party. Sen. Whalen and Rep. Nakasone were strong supporters of the tobacco industry and the remainder were committee chairs.

Name	Party	Office	Amount
Nakasone, Bob	Democrat	House	\$3,500
Whalen, Paul	Republican	Senate	\$3,000
English, J Kalani	Democrat	Senate	\$3,000
Taniguchi, Brian T	Democrat	Senate	\$3,000
Espero, Will	Democrat	Senate	\$3,000
Kokubun, Russell S	Democrat	Senate	\$3,000
Kim, Donna Mercado	Democrat	Senate	\$3,000
Sakamoto, Norman	Democrat	Senate	\$3,000

In the 2006 election cycle there were 28 legislators (out of 76 members) (Table 9) who did not receive any campaign contributions from the tobacco industry, six in the Senate (out of 25 members) and 22 in the House (out of 51 members).

Name	Party	Office	District
Awana, Karen Leinani	Democrat	H	44
Belatti, Della Au	Democrat	H	25
Bertram, Joe III	Democrat	H	11
Brower, Tom	Democrat	H	23
Cabanilla, Rida T.R.	Democrat	H	42
Carroll, Mele	Democrat	H	13
Chun Oakland, Suzanne	Democrat	S	13
Gabbard, Mike	Democrat	S	19
Green, Josh M.D.	Democrat	H	6
Hanohano, Faye P.	Democrat	H	4
Har, Sharon E.	Democrat	H	40
Hemmings, Fred	Republican	S	25
Lee, Marilyn B.	Democrat	H	38
Manahan, Joey	Democrat	H	29
McKelvey, Angus L.K.	Democrat	H	10
Mizuno, John	Democrat	H	30
Morita, Hermina M.	Democrat	H	14
Nishihara, Clarence K.	Democrat	S	18
Rhoads, Karl	Democrat	H	28
Sagum, Roland D. III	Democrat	H	16
Takai, K. Mark	Democrat	H	34
Takumi, Roy M.	Democrat	H	36
Thielen, Cynthia	Republican	H	50
Tokioka, James Kunane	Democrat	H	15
Tokuda, Jill N.	Democrat	S	24
Trimble, Gordon	Republican	S	12
Ward, Gene Ph.D.	Republican	H	17
Yamane, Ryan I.	Democrat	H	37

Contributions to Constitutional Officers

From 1997-2006 no tobacco related campaign contributions were made to constitutional officers.

Contributions to Legislative Leadership and Committee Members

Campaign contributions to legislative leadership (Tables 10 and 11) and members of legislative committees that had heard anti-tobacco industry legislation from 1998 through 2006 are a source of political influence for the tobacco industry. The contributions to members of legislative leadership and of select committees are summarized below.

Position	Name	Party	District	Altria/PM	RJR	2006 Total	1998-2006
President	Hanabusa, Colleen	D	21	\$2,000		\$2,000	\$3,000
Vice President	Kim, Donna Mercado	D	14	\$2,000	\$1,000	\$3,000	\$3,500
Majority Leader	Hooser, Gary L.	D	7	\$1,000		\$1,000	\$1,000
Majority Floor Leader	Ige, David Y.	D	16				\$3,050
Majority Caucus Leader	Tsutsui, Shan S.	D	4		\$1,000	\$1,000	\$1,250
Majority Policy Leader	Ihara, Les Jr.	D	9				1150
President Emeritus	Bunda, Robert	D	22	\$1,000	\$1,500	\$2,500	\$13,750
Minority Leader	Hemmings, Fred	R	25	0	0	0	0
Minority Floor Leader	Whalen, Paul	R	3	\$2,000	\$1,000	\$3,000	\$5,750

Position	Name	Party	District	Altria /PM	RJR	2006 Total	1998-2006
Speaker of the House	Say, Calvin K.Y. (D)	D	20	\$1,000	\$500	\$1,500	\$4,400
Speaker Emeritus	Souki, Joseph M.	D	8	\$1,000	\$1,500	\$2,500	\$9,014
Vice Speaker	Chong, Pono	D	49	\$1,000	\$1,000	\$2,000	\$3,000
Majority Leader	Caldwell, Kirk	D	24	\$1,000		\$1,000	\$2,250
Majority Floor Leader	Oshiro, Blake K.	D	33				\$2,750
Minority Leader	Finnegan, Lynn	R	32	\$1,000		\$1,000	\$1,000
Minority Floor Leader	Meyer, Colleen Rose	R	47	\$1,000	\$750	\$1,750	\$6,500
Assistant Minority Leader	Pine, Kymberly Marcos	R	43	\$500		\$500	\$500
Assistant Minority Floor Leader	Thielen, Cynthia	R	50	0	0	0	0

The Senate and House Health Committees (Tables 12 and 13) have played a positive and important role in the evolution of tobacco control legislation in Hawai'i. In light of that history, it is interesting that the tobacco industry has ignored the House Health Committee members for its largesse.

Name	Party	District	Altria/PM	RJR	2006 Total	1998-2006
Ige, David Y. (Chair)	D	16				\$3,050
Fukunaga, Carol (Vice Chair)	D	11	\$2,000		\$2,000	\$6,700
Baker, Rosalyn H.	D	5				\$8,150
Menor, Ron	D	17				\$5,900
Whalen, Paul	R	3	\$2,000	\$1,000	\$3,000	\$5,750

Table 13 Tobacco Industry Contributions to the House Health Committee						
Name	Party	District	Altria/PM	RJR	2006 Total	1998-2006
Green, Josh M.D. (Chair)	D	6	0	0	0	0
Mizuno, John (Vice Chair)	D	30	0	0	0	0
Awana, Karen Leinani	D	44	0	0	0	0
Belatti, Della Au	D	25	0	0	0	0
Bertram, Joe III	D	11	0	0	0	0
Cabanilla, Rida T.R.	D	42	0	0	0	0
Rhoads, Karl	D	28	0	0	0	0
Shimabukuro, Maile S. L.	D	45				\$500
Tokioka, James Kunane	D	15	0	0	0	0
Ward, Gene Ph.D.	R	17	0	0	0	0

In the Hawai'i Legislature, bills are typically heard by more than one committee. The contributions to committee members of committees that most frequently handled tobacco-related bills are shown in Tables 14 through 19.

Table 14 Tobacco Industry Contributions to the Senate Judiciary and Labor Committee						
Name	Party	District	Altria/PM	RJR	2006 Total	1998-2006
Taniguchi, Brian T. (Chair)	D	10	\$2,000	\$1,000	\$3,000	\$5,750
Hee, Clayton (Vice Chair)	D	23	\$2,000		\$2,000	\$5,000
Gabbard, Mike	D	19	0	0	0	0
Kokubun, Russell S.	D	2	\$2,000	\$1,000	\$3,000	\$4,700
Nishihara, Clarence K.	D	18				
Slom, Sam	R	8	\$2,000	\$500	\$2,500	\$4,350

Table 15 Tobacco Industry Contributions to the Senate Economic Development and Taxation Committee						
Name	Party	District	Altria/PM	RJR	2006 Total	1998-2006
Fukunaga, Carol (Chair)	D	11	\$2,000		\$2,000	\$6,700
Espero, Will (Vice Chair)	D	20	\$2,000	\$1,000	\$3,000	\$8,950
Baker, Rosalyn H.	D	5				\$8,150
English, J. Kalani	D	6	\$2,000	\$1,000	\$3,000	\$7,250
Ige, David Y.	D	16				\$3,050
Slom, Sam	R	8	\$2,000	\$500	\$2,500	\$4,350

Table 16 Tobacco Industry Contributions to the Senate Ways and Means Committee						
Name	Party	District	Altria/PM	RJR	2006 Total	1998-2006
Baker, Rosalyn H. (Chair)	D	5				\$8,150
Tsutsui, Shan S. (Vice Chair)	D	4		\$1,000	\$1,000	\$1,250
Chun Oakland, Suzanne	D	13	0	0	0	0
English, J. Kalani	D	6	\$2,000	\$1,000	\$3,000	\$7,250
Fukunaga, Carol	D	11	\$2,000		\$2,000	\$6,700
Hooser, Gary L.	D	7	\$1,000		\$1,000	\$1,000
Inouye, Lorraine R.	D	1	\$1,000	\$1,000	\$2,000	\$4,856
Kim, Donna Mercado	D	14	\$2,000	\$1,000	\$3,000	\$3,500
Menor, Ron	D	17				\$5,900
Tokuda, Jill N.	D	24	0	0	0	0
Hemmings, Fred	R	25	0	0	0	0
Whalen, Paul	R	3	\$2,000	\$1,000	\$3,000	\$5,750

Table 17 Tobacco Industry Contributions to the House Water, Land, Ocean, Resources & Hawai'i Affairs Committee						
Name	Party	District	Altria/PM	RJR	2006 Total	1998-2006
Ito, Ken (Chair)	D	48		\$500	\$500	\$6,803
Karamatsu, Jon Riki (Vice Chair)	D	41	0	0	0	0
Carroll, Mele	D	13	0	0	0	0
Magaoay, Michael Y.	D	46	\$1,000	\$750	\$1,750	\$5,250
Morita, Hermina M.	D	14	0	0	0	0
Sagum, Roland D. III	D	16	0	0	0	0
Saiki, Scott K.	D	22	\$500		\$500	\$1,750
Thielen, Cynthia	R	50	0	0	0	0

Table 18 Tobacco Industry Contributions to the House Labor & Public Employment Committee						
Name	Party	District	Altria/PM	RJR	2006 Total	1998-2006
Sonson, Alex M. (Chair)	D	35		\$750	\$750	\$2,250
Nakasone, Bob (Vice Chair)	D	9	\$2,000	\$1,500	\$3,500	\$11,959
Evans, Cindy	D	7	\$1,000		\$1,000	\$1,750
Har, Sharon E.	D	40	0	0	0	0
Lee, Marilyn B.	D	38	0	0	0	0
Luke, Sylvia	D	26	\$1,500		\$1,500	\$5,450
McKelvey, Angus L.K.	D	10	0	0	0	0
Nishimoto, Scott Y.	D	21	\$1,000		\$1,000	\$3,250
Souki, Joseph M.	D	8	\$1,000	\$1,500	\$2,500	\$9,014
Takamine, Dwight Y.	D	1				\$700
Takumi, Roy M.	D	36	0	0	0	0
Meyer, Colleen Rose	R	47	\$1,000	\$750	\$1,750	\$6,500
Pine, Kymberly Marcos	R	43	\$500		\$500	\$500

Table 19 Tobacco Industry Contributions to the House Econ. Dev. & Business Concerns Committee						
Name	Party	District	Altria/PM	RJR	2006 Total	1998-2006
Yamashita, Kyle T. (Chair)	D	12		\$750	\$750	\$750
Wakai, Glenn (Vice Chair)	D	31	\$1,000		\$1,000	\$2,500
Berg, Lyla B. Ph.D.	D	18	\$500		\$500	\$500
Brower, Tom	D	23	0	0	0	0
Chang, Jerry L.	D	2	\$1,000	\$750	\$1,750	\$6,703
Hanohano, Faye P.	D	4	0	0	0	0
Herkes, Robert N.	D	5				\$7,000
Manahan, Joey	D	29	0	0	0	0
Tsuji, Clift	D	3	\$1,000	\$750	\$1,750	\$3,750
Yamane, Ryan I.	D	37	0	0	0	0
Ching, Corinne W.L.	R	27	\$500	\$750	\$1,250	\$3,250
Marumoto, Barbara C.	R	19	\$1,000	\$500	\$1,500	\$7,250

A Comparison Between Candidate and Contributor Campaign Contribution Data

Hawaii requires campaign contributors to report campaign contributions made as well as requiring candidates reporting the contributions they have received. The candidate data that we used for our analysis of campaign contributions came from the National Institute on Money in State Politics. We compared these data for the 2004 and 2006 election cycles with data from contributor reports for Altria/Phillip Morris and RJ Reynolds obtained from Hawai'i's Campaign Spending Commission. We found 15 examples of contributions, mostly in 2004, that the

tobacco company reported making that the legislator did not report receiving (Table 20).

Name	Party	Office	District	Altria/PM	RJR	Year
Baker, Rosalyn H.	D	Senate	5		\$250	2004
Ching, Corinne W.L.	R	House	27	\$250	\$250	2004
English, J. Kalani	D	Senate	6		\$500	2004
Finnegan, Lynn	R	House	32	\$1,500	\$750	2004
Fukunaga, Carol	D	Senate	11	\$2,000		2004
Hanabusa, Colleen	D	Senate	21	\$2,000		2004
Herkes, Robert N.	D	House	5		\$1,500	2006
Inouye, Lorraine R.	D	Senate	1	\$1,000		2004
Karamatsu, Jon Riki	D	House	41		\$250	2004
Oshiro, Marcus R.	D	House	39		\$250	2004
Souki, Joseph M.	D	House	8	\$1,000		2004
Trimble, Gordon	R	Senate	12		\$250	2004
Tsuji, Clift	D	House	3		\$500	2004
Wakai, Glenn	D	House	31	\$250		2004
Whalen, Paul	R	Senate	3	\$1,000	\$250	2004

Lobbying Expenditures

A significant amount of the tobacco industry's political influence comes from lobbying. From 2005 to 2008 Tobacco interests spent \$203,840 on lobbying expenses (Table 21). In comparison the Coalition for a Tobacco-Free Hawaii spent only \$63,906 on lobbying during the same time period. In 2006, clean indoor air legislation and a tobacco tax increase were passed, necessitating more activity by tobacco industry lobbyists.

	2005	2006	2007	Total
Cigar Association	\$16,200	\$19,000	\$18,500	\$53,700
Altria/PM	\$18,610	\$50,599	\$22,900	\$92,109
RJ Reynolds	\$17,195	\$15,000	\$16,500	\$48,695
US Smokeless	\$3,100	\$3,100	\$3,136	\$9,336
Tobacco Industry Totals	\$55,105	\$87,699	\$61,036	\$203,840
Coalition for a Tobacco-Free Hawaii	\$27,945	\$28,300	\$7,661	\$63,906

Unlike California,¹⁴ for example, where the tobacco industry spends millions on lobbyists from large, well connected firms, in Hawai'i the tobacco industry spends relatively modest sums with only a few lobbyists from small, well connected firms (Table 22).

Several lobbyists for the tobacco industry also lobbied for health-related companies in the period 2005-2007 (Table 23). There is a potential for a conflict of interest when lobbyists represent entities with opposing goals. Tobacco control activists need to avoid using lobbyists who have competing interests that may lead them to propose compromising tobacco control goals on controversial issues in order to foster positive legislative relationships to achieve goals for other clients with less controversial issues.¹⁶

Table 22 Tobacco Industry and Anti-Tobacco Advocates Lobbyists 2005-2007					
	Cigar Association of America	Philip Morris	RJ Reynolds	US Smokeless Tobacco Co	Coalition for a Tobacco-Free Hawai'i
2005	Norman Suzuki	Peter Hamasaki Philip Miyoshi George Morris Celeste Nip David Tovar	John Radcliffe	Anne Horiuchi Bell Joanna Markle Gary Slovin	Lori Kaizawa Robert Toyofuku Deborah Zysman
2006	Norman Suzuki	Peter Hamasaki George Morris Celeste Nip Dan Smith	John Radcliffe	Anne Horiuchi Bell Joanna Markle Gary Slovin	Joy Kobayashi Robert Toyofuku Deborah Zysman
2007	Norman Suzuki	George Morris Celeste Nip Dan Smith	John Radcliffe	Anne Horiuchi Bell Joanna Markle Gary Slovin	Joy Kobayashi George Massengale Robert Toyofuku Deborah Zysman
Source: Hawai'i State Ethics Commission					

Table 23 Tobacco Industry Lobbyists Who Represent Health-Related Clients				
American Academy of Ophthalmology	CNA Insurance	Eli Lilly and Company	Hoana Medical, Inc.	Pharmaceutical Research and Manufacturers of America
George Morris	Gary Slovin	George Morris	George Morris	Norman Suzuki
John Radcliffe		Celeste Nip	John Radcliffe	
Source: Hawai'i State Ethics Commission				

CLEAN INDOOR AIR

Early History of the Clean Indoor Air Movement in Hawai'i

The first state clean indoor air law in Hawai'i, Act 108, was passed in 1976. It designated as smokefree buildings owned and operated by the state, including elevators, auditoriums, enclosed meeting and conference rooms, and sports arenas. This legislation was championed by State Representative Herbert Sagawa (D-Hilo), the chair of the House Health Committee from 1975 to 1985.

A prominent early advocate of clean indoor air legislation in Hawai'i was Dr. Kleona Rigney, chief of the Chronic Disease Unit of the state Department of Health in the late 1970s and 1980s. Rigney was instrumental in framing tobacco as a public health problem in Hawai'i. In 1978, Rigney conducted the first Health Department survey of smoking behavior and attitudes toward clean indoor air regulations, which aimed at determining the most effective policy to regulate smoking in public places. Responses were obtained from roughly 2,600 Health Department employees. More than three-quarters of respondents (77 percent) said that they were in favor of having nonsmoking sections in common work areas; 72 percent supported nonsmoking sections or tables in dining rooms; 60 percent favored making Department of Health clinics and waiting rooms smokefree; and nearly half of those surveyed (44 percent) supported

making all Department of Health buildings smokefree.¹⁷ In the late 1970's, when there were virtually no restrictions on smoking, public health advocates were simply calling for nonsmoking sections. The Hawai'i efforts mirrored the nonsmokers rights movement that emerged nationally in the mid 1970s, when there were efforts in various states to get some form of clean indoor air legislation.¹⁸⁻²¹

Rigney and her colleagues reported the results of their Health Department survey in a 1980 article in the Hawai'i Medical Journal¹⁷. In the article, they pointed to the dangers of secondhand smoke and advocated the implementation of clean indoor air policies:

Attitudes toward smoking are growing increasingly negative, even among smokers. There is a significant awareness of the health hazards of the habit both to the smoker and those within the smokers' environment . . . The lack of a clearly enunciated and supported policy regarding the restriction of smoking has limited, in some respects, the decline in smoking behavior . . . A clear-cut restrictive smoking policy appropriate to the work site, enforceable in part through peer pressure . . . should facilitate a reduction in tobacco use and minimize additional hazards to the non-smokers exposed to smoke in their environment.¹⁷

The Hawai'i Medical Journal article caught the attention of David Narr, who worked in public affairs at R.J. Reynolds (RJR) from 1978 to 1981.²² In a 1980 memo to Frank Colby, a longtime RJR scientist and RJR's Associate Director of Scientific Information, Narr attached a citation for the article, with the comment "This could be another 'Nebraska' test. Check with [legislative bureau] on status of legislation" written in the margin.²³ The "Nebraska test" was a reference to RJR's Nebraska Project, which studied the effects of the 1979 Nebraska Clean Indoor Air Act on attitudes and consumption of cigarettes in Nebraska, for the purpose of helping RJR "to determine when . . . to fight anti-smoking initiatives in various states."²⁴

The Nebraska Project arose out of the passage of the Nebraska Clean Indoor Air Act in May, 1979. While the Act only prohibited smoking except in designated smoking areas, for that time it was seen as a threat to the tobacco industry's sales of cigarettes.²⁴ Another major concern was that the effect of Nebraska's "restrictive law may well be to lower the overall 'social acceptability' of smoking, lower public acceptance of tobacco products, change the self-image of smokers, and provide a basis for further attack on the industry."²⁵ The final report on the Nebraska Project was presented to the Tobacco Institute in 1981.²⁶ The study showed that the Nebraska Clean Indoor Air Act had no affect on cigarette sales in Nebraska and caused very little change in public attitudes about smoking and tobacco. In a cautionary note in 1982 on the results of the Nebraska Project from Richard Nordine, RJR Market Development to Kent Wold, RJR Public Affairs, Nordine opined that "the apparent indifference of smokers to the [Nebraska] legislation already passed could allow anti-smokers the opportunity to pass even more restrictive measures in the future" and recommended "that we continue to oppose all efforts to pass restrictive legislation in other states."²⁷

The Department of Health developed a model policy for state government in 1975, restricting smoking in selected locations of the main Department of Health building. With Rigney leading the way, the Department of Health became the state's first governmental agency

to develop a policy on smoking, implemented in 1979.

Legislative Efforts at the State Level in the 1980s and Early 1990s

The push for 100% smokefree areas came after the 1986 Surgeon General's report, which concluded that "simple separation of smokers and nonsmokers in the same airspace may reduce, but will not eliminate exposure" to secondhand smoke.²⁸ Once public health advocates started pushing for 100% smokefree areas, the tobacco industry developed its "accommodation" strategy of lobbying for smoking and nonsmoking sections.²⁹

In the mid-1980s, the Department of Public Health and other health groups began to push for state legislation creating smokefree workplaces. The state legislature first considered a Bill in 1985 proposing to make both public and private workplaces smokefree. The legislation did not pass.

Opposition came primarily from third party allies of the tobacco industry in the hospitality industry. The tobacco industry developed allies in the early years in Hawai'i who were ultimately important players in a range of tobacco policy debates at the state and county levels. The surreptitious use of third parties in the hospitality industry to lobby against smokefree legislation is a standard tobacco industry strategy that dates to the mid-1970s.²⁹⁻³²

In Hawai'i, the state food and restaurant associations, the Hawai'i Food Industry Council and the Hawai'i Restaurant Association (HRA), allied with the tobacco industry in opposing clean indoor air legislation. The Tobacco Institute (TI), the tobacco industry's national lobbying arm, noted in its State of the States report in 1987:

We have been extremely fortunate in having the coalition support of the Hawai'i Food Industry Council as well as the Hawai'i Restaurant Association in recent legislative efforts. Both groups are extremely anxious about the imposition of public smoking restrictions and have been quite helpful to our legislative counsel's efforts.³³

In addition, the Tobacco Institute's State of the State 1987 Grassroots Analysis noted:

Tobacco's strongest ally in Hawai'i is the Hawai'i Food Industry Association. According to TI's Hawai'i Counsel, the Food Industry lobbyist is always helpful in making legislative contacts and willing to motivate his members for constituent contacts on tax issues. Work needs to be done to ensure that this coalition is between organizations and not just their lobbyists.³⁴

In the same document, the Tobacco Institute identified the industry's need for more allies, particularly to fight expected efforts by public health advocates to pass stronger smokefree workplace legislation:

Hawai'i appears to have few ongoing, effective coalitions and allies. It is easy to understand why in light of TI's reluctance to allow staff travel to Hawai'i. A number of years have passed with little or no TI effort to build coalitions and cultivate allies . . .

organizations which offer little or no support could possibly be turned around if concentrated, ongoing efforts were made by TI. These organizations include, the Hawai'i Tax Foundation, Hawai'i Business League, Chamber of Commerce, Retail Merchants, and the Restaurant Association. In the next year I hope new efforts can be made to improve our relationship with these groups . . . On workplace smoking issues the tobacco industry has no strong allies. Programs need to be implemented stressing sick building syndrome to labor unions. We must provide educational material to commerce and industry so they better understand the problems and issues associated with workplace smoking bans. The anti-smokers are planning to strengthen smoking restrictions in Hawai'i's next session and we desperately need allies . . . Hawai'i is no doubt a difficult state to organize under the best of circumstances, but it will have no chance to improve if TI regional staff are not allowed the opportunity to be "on-site."³⁴

It is significant that the industry acknowledged the need for allies on the workplace issue at the time. The workplace smoking bill proposed in 1985 was amended to exclude private work sites and passed the following year as Act 245. Act 245 required public-sector employers with 3 or more employees to adopt and enforce policies that "reasonably accommodate" the preferences of their smoking and nonsmoking employees. The law required each employer to adopt a written smoking policy containing, at a minimum, the following provisions:

- 1) If any nonsmoking employee objects to the employer about smoke in the workplace, the employer, using already available means of ventilation or separation or partition of office space, shall attempt to reach a reasonable accommodation, insofar as possible, between the preferences of nonsmoking and smoking employees; provided that an employer is not required by this chapter to make any expenditures or structural changes to accommodate the preferences of nonsmoking or smoking employees; and
- 2) If an accommodation which is not satisfactory to all affected employees cannot be reached in any given office workplace, the preferences of a simple majority of employees in each specifically affected area shall prevail and the employer shall accordingly prohibit or allow smoking in that particular area of the workplace. If the employer's decision is unsatisfactory to the nonsmoking employees, a simple majority of all nonsmoking employees can appeal to the director of health for the determination of a reasonable accommodation. Where the employer prohibits smoking in an office workplace, the area in which smoking is prohibited shall be clearly marked with signs (1987 Hawaii Revised Statutes §328K-11).

Legislation expanding the number of smokefree public places (Act 234) was also passed in 1986, ten years after passage of the first legislation on smoking in public places. Act 234 required nonsmoking areas in most public places, including restaurants with seating for 50 or more persons. This law was extended in 1988 to include private employers receiving state funds.

There were additional attempts by tobacco control advocates during the 1980s and early 1990s to pass state legislation extending smoking restrictions to private workplaces and restaurants, all of which failed. Legislation to restrict smoking in private workplaces was introduced and did not pass in 1988 and 1992. The 1988 HB 2196 would have extended

restrictions to businesses with more than 10 employees.

The 1992 bill, sponsored by Senator Mary-Jane McMurdo, chairwoman of the Human Services Committee, was killed in the Senate on a 13-11 vote. Opponents in the legislature framed the bill as a case of excessive governmental regulation and an economic threat to small businesses. "Government is getting involved in too many things. It's overregulation of the workplace," according to Senator Mike McCartney. "Enough leaning on small business at a time when, according to entrepreneurs who talked to me, they are somewhat precarious," argued Senate Republican leader Mary George. Added Senator Norman Mizuguchi, "There is too much infringement. Small businesses are hurting."³⁵

1993-2003: Legislative Efforts at the County Level

After years of unsuccessful efforts to pass comprehensive smokefree legislation at the state level, tobacco control advocates shifted their focus to the local level beginning in 1993. The 1986 Act 234 specifically allowed counties to enact ordinances on smoking in public places that were more stringent than the state law. Efforts continued simultaneously at the state level, however, with no success through 1990s and into the Twenty-first Century, led by the state Department of Health. In a 2005 interview, Don Weisman, American Heart Association (AHA) Government Affairs Director, who worked with the AHA in Hawai'i since 1989, recalled the obstacles that tobacco control advocates faced in the state legislature in the early 1990s:

Everything was a battle in the early years. Nothing got through without the industry getting its fingers into it. We moved a lot of our focus to the city council because at the state level we were getting nowhere fast. I mean, you're dealing with only nine people at city council, whereas at the state, you're dealing with 78 legislators I think it is. So they not only helped with giving campaign funding, but Philip Morris is Kraft foods so they'd give a lot of donations for campaign things- they'd help them out in a lot of different ways. The lobbyists for those companies also lobby for other industries and they would arrange for all kinds of favors for the legislators. So they were involved in their campaigns and we didn't have that kind of grassroots organization that they did at the state legislative level. But at the council level, they didn't have the same relationships at that point. I think they made a big emphasis to change that.³⁶

Similarly, in a 2005 interview, Julian Lipsher, coordinator for the Tobacco Prevention and Education Program at the state Department of Health, recalled:

. . . [A]fter a whole bunch of years and getting stuck at the state legislature and the evidence mounting about secondhand smoke and clean indoor air, we were able to go to the counties and say, "Okay, it's not working here. We'll continue to try and submit bills. Let's work with the counties." And we were able to find some champions at the county council in the city and county of Honolulu and we were able to start with, again, the similar kind of strategy. Workplaces- all county workplaces smokefree.³⁷

Honolulu

Initial Battle over a Smokefree Restaurant Ordinance in Honolulu (Bill 93)

In the Honolulu City Council, a bill must pass through three readings to become an ordinance. The first reading is a committee review. If approved by the appropriate committees, the bill moves to a second reading, usually held concurrently with a public hearing. A bill that passes in the second stage goes before Council members for a final vote; if passed, it is sent to the Mayor. Six votes are required on the nine-member City Council to override a mayoral veto.

In 1990, the Honolulu City Council passed an ordinance that prohibited smoking in city-owned or controlled buildings, elevators, theaters museums, libraries, galleries, most areas of health care facilities, and limited retail establishments such as grocery stores, drugstores and banks. Limited though it was, it still provided greater protection to nonsmokers than did state law at the time.

The first major campaign for comprehensive clean indoor air legislation at the county level came in 1993, when public health advocates attempted to get a smokefree restaurant ordinance in the City and County of Honolulu. Bill 93, introduced by Council-members Andy Mirikitani and Steve Holmes in 1993, proposed to make all public areas of restaurants except restaurant bars smokefree. Restaurants were distinguished from bars, which were not covered by the legislation, on the basis of food sales. An establishment was defined as a bar if food sales were less than one-third of gross sales.

The original version of the bill exempted restaurants located in hotels. Tobacco control advocates called for removal of this exemption, arguing that protection from secondhand smoke should extend to the thousands of employees working in hotel restaurants.³⁸ Complaints about the exemption also came from owners of free-standing restaurants, who maintained that it would give hotel restaurants an unfair competitive advantage.³⁹ Prior to the first committee vote, the exemption for hotel restaurants was removed; the amended version of Bill 93 covered all Oahu restaurants.

The campaign for Bill 93 followed the Honolulu City Council's passage of three ordinances on smoking in public places earlier that year. The first made all city buildings smokefree. The second prohibited smoking in enclosed or partially enclosed lobbies, hallways, corridors, stairways, waiting areas, and recreation areas of residential buildings and multi-tenant commercial buildings. Honolulu's mayor, Frank Fasi, allowed that bill to become law without his signature. The third smoking ordinance enacted that year established designated smoking and non-smoking areas in three city parks. Council members worked on these bills with the state Department of Health and a coalition of health organizations including the American Heart Association (AHA) and American Lung Association (ALA).⁴⁰

Advocates were ultimately unsuccessful in getting Bill 93 enacted. A number of subsequent efforts to pass a smokefree restaurant law in Honolulu similarly failed; it would be eight years before a clean indoor air ordinance for restaurants was passed by the Honolulu City Council and signed into law by the mayor. The prospects for Bill 93 initially looked promising,

because the proposed ordinance passed 7-2 in the first vote in committee in July 1993.

Prominent supporters of the legislation included the state Department of Health (DOH) and various health groups (Table 24). A core group of public health advocates were involved in developing and implementing a strategy to pass Bill 93. This cadre included legislative champions Holmes and Mirikitani, staff from the state DOH, several public health groups and individual grassroots tobacco control advocates. After the first committee vote, these advocates identified six "priority" organizations whose support was viewed as critical for the bill's eventual passage: the Hawai'i Restaurant Association (HRA), Hawai'i Hotel Association, Hotel and Restaurant Employees Union, Hawai'i Visitors Bureau, Chamber of Commerce, and Small Business Hawai'i.⁴¹ They also identified Mayor Frank Fasi and three Council members, Leigh Wai Doo, Arnold Morgado, and Donna Kim, as "priority" individuals who needed to be lobbied to support the legislation. Of the remaining council members, it was assumed that four could be counted on to vote for the bill: John Henry Felix, Gary Gill, Holmes and Mirikitani. The two Council members who voted against the bill in the first vote, John Desoto and Rene Mansho (the only cigarette smoker on the Council), were believed to be strongly opposed and unlikely to change their positions.⁴¹

Table 24 Support Coalition for Honolulu Bill 93
Hawai'i Department of Health (DOH)
American Heart Association (AHA)
American Lung Association (ALA)
American Cancer Society (ACS)
Hawai'i Medical Association
Hawai'i Medical Service Association
Hawai'i Chefs Association
State Representative Jim Shon (D)
American Heart Association (Don Weisman)
ALA (Shirley Robinson and Mat Matsunaga)
ACS (Bill Frensley)
Hawai'i Medical Association (Dr. John McDonnell)
Steve Atwater, Hawai'ian Islands Nonsmokers Organization (HINO)
Clark Hatch, Hawai'ian Islands Nonsmokers Organization (HINO)

Far from supporting Bill 93, the hotel and restaurant associations and the hospitality workers union emerged as vocal opponents. As discussed earlier, in the mid-1980s the Tobacco Institute had sought to cultivate alliances with the Hawai'i Restaurant Association (HRA) and Chamber of Commerce, among other groups, in order to prevent the passage of statewide smokefree workplace legislation.⁴² The HRA had already been pushing for "self-regulation, free from government mandates" prior to the introduction of Bill 93, as one spokesperson stated in an article in the Hawai'i Foodservice News, an industry trade publication.⁴³ For the HRA, self-regulation entailed accommodation of both nonsmokers and smokers. Referring to the existing state law requiring restaurants with more than 50 seats to provide designated nonsmoking sections, the HRA asserted in the same article:

The current statute already provides for non-smoking and smoking areas in our restaurants. While there are inherent problems in executing this law, it still allows the restaurant to accommodate both groups, smoking and nonsmoking, according to its

needs. We certainly don't need anymore [sic] legislation that tells us how to run our own businesses.⁴³

The HRA echoed the standard tobacco industry strategy dating to the 1970s of invoking arguments about "choice" and "freedom" to oppose the creation of non-smoking sections.²⁹ In a 1993 letter to Executive Director of the Hawai'i Restaurant Association Kathleen Masunaga, dated one day after the introduction of Bill 93, Walker Merryman, Vice President of the Tobacco Institute, framed the accommodation argument in terms of civil liberties:

It is a shame that uncomplimentary press notices can have an adverse effect on the hospitality industry of an entire state but you know better than most how easily travelers can be discouraged from visiting an area. For that reason, I bring the enclosed newspaper to your attention.

Auberon Waugh is one of Great Britain's most influential columnists. His thoughts on the issue of smoking and the recent legislative action in Vermont are troubling. He derides the state's restaurant smoking ban as "a monument to intolerance." This is the kind of publicity no one in the hospitality industry should wish to see in print.

. . . By standing up for your right to accommodate people in the manner you feel is appropriate, you will be pleasing the vast majority of your customers.⁴⁴

Tobacco control advocates countered by attempting to frame the clean indoor air question as a public health issue. This strategy was described in a memo outlining a plan to pass Bill 93, circulated by advocate Steve Atwater of the Hawaiian Islands Nonsmokers Organization to other supporters shortly after the first committee vote:

Health is the major issue, and we should cover all of the aspects carefully. We need to be able to communicate as powerfully as we can exactly what second hand smoke does to people. If we can absolutely convince people that the danger is real, and get them to feel the threat to themselves and their families, I think our chances of succeeding are greatly enhanced. This should be more than facts and figures. Lets find somebody who can use the facts, figures, and study results to get people emotionally involved.⁴¹

With respect to the civil liberties argument advanced by the tobacco industry and its third party allies, Atwater noted the importance of refocusing the debate on public health:

We need a simple and strong response when this "rights" issue is raised . . . "You can choose where to smoke, you can't choose where to breathe."⁴¹

At a public hearing held concurrently with the second vote on Bill 93, public health advocates succeeded in staying on message and getting positive media coverage. For example, an article in one of Honolulu's two daily newspapers quoted State Representative Jim Shon's (D, Dist. 24) argument that allowing restaurant customers to smoke is comparable to allowing someone "to enter the workplace and sprinkle particles of asbestos around" because it forces restaurant employees to inhale secondhand smoke, labeled a class 1 carcinogen by the federal

Environmental Protection Agency (EPA).⁴⁵ The article similarly quoted the Director of the state Health Department, John Lewin, as saying that secondhand tobacco smoke is the third leading cause of preventable death and is responsible for an estimated 53,000 deaths per year; noted that the head of the Hawai'i Chefs Association supported the bill on the grounds of worker health; and described a study cited by Julian Lipsher of the state DOH that found California waitresses to have four times the lung cancer mortality rate and 2.5 times the heart disease mortality rate of the general population.⁴⁶ Advocates aimed to "use the facts, figures, and study results to get people emotionally involved," according to their strategy plan for passage of Bill 93.⁴⁵

For their part, opponents of smokefree legislation attempted to focus the debate at the hearing on hospitality economics. Kathleen Masunaga of the Hawai'i Restaurant Association (HRA) characterized the decision to let customers smoke as an "economic issue" that restaurant owners "should decide for themselves."⁴⁵ Following standard tobacco industry strategy, she and others affiliated with the hospitality industry argued that a smokefree restaurant ordinance would cost jobs and cause a decline in tourism, especially from Asian countries. Citing an informal survey of HRA members' individual projections, Masunaga projected a total loss of 8,495 jobs and \$104 million in wages if Bill 93 became a law.⁴⁰ In response, Lewin of the DOH stated that based on available evidence, smokefree ordinances in other cities and counties have had no significant negative economic impact on restaurant sales.⁴⁰ He noted that 91 cities and counties in the U.S., as well as the state of Vermont, had adopted 100 percent smokefree restaurant ordinances.⁴⁰

Bill 93 passed 6-3 in the second vote in December 1993. As expected, Desoto and Mansho once again opposed, while the four Council members whom advocates expected to support the bill did so (Felix, Gill, Holmes and Mirikitani). Of the three Council members who had been identified as on the fence and targeted for lobbying efforts, two (Doo and Kim) voted for the bill. The bill was then referred to the Joint Committee on Parks, Health, and Safety. The chair of the committee, Councilmember Henry Felix, was a supporter of the legislation from the beginning. Mayor Frank Fasi threatened to veto the bill if it passed in the final vote.⁴⁰ To override a mayoral veto the bill would need at a minimum the six Yes votes it received in the second reading.

Preemption Bill in the Legislature: SB 256

After passing in the first two readings, Bill 93 stalled and remained pending in the Council's Parks, Health, and Safety Committee for roughly a year and a half. Momentum for a vote on the Honolulu ordinance was slowed by a preemption provision added by amendments to a workplace smoking bill, Senate Bill (SB) 256, which had first been introduced in the Legislature in January 1993. The original intent of SB 256, introduced by Senate Health Chair Bert Kobayashi (D) in 1993, was to expand the number of employees covered under the state's workplace smoking law (Act 245), passed in 1986. State law required only government agencies and private employers receiving state funds to adopt a workplace smoking policy. The initial version of SB 256 proposed extending this requirement to all employers, private as well as public, regardless of whether they received funds from the state. Supporters of the bill at this stage included the state Department of Health and a number of health groups (Table 25). Testimony in opposition to the measure was submitted by the Chamber of Commerce of Hawai'i

and the Tobacco Institute.

Table 25 Supporters and Opponents of SB 256	
Support	Oppose
Hawai'i Department of Health American Heart Association American Cancer Society	Chamber of Commerce of Hawai'i Tobacco Institute
American Lung Association Hawai'i Medical Association American Academy of Pediatrics Interagency Council on Smoking (ICOSH) Healthcare Association of Hawai'i Hawai'i Medical Service Association Kaiser Permanente Hawai'i Society for Respiratory Care	

In testimony supporting SB 256, the AHA and other health groups suggested amending the bill to establish a stronger workplace smoking policy. They recommended requiring employers to provide non-smoking employees with a smokefree work area, and allowing them to set aside a work area for smoking only if all employees smoke.⁴⁷ The Senate Committee on Education, Labor and Employment amended the bill by 1) requiring all employers to restrict smoking in their workplaces to designated smoking areas within or accessible to the workplace, and 2) establishing a civil penalty of up to \$500 for each day of violation of designated smoking area restrictions. SB 256 passed the Senate and was sent to the House, where it was referred to the Committees on Health, and Labor and Public Employment. Most of the supporters and opponents who took a position on the bill in the Senate once again submitted testimony to the House committees.

The preemption provision mentioned above was added to SB 256 in March 1994, three months after the second vote on the Honolulu ordinance. According to newspaper accounts, tobacco control advocates on the city council wanted to wait and see the outcome of the state bill before moving forward with their fight for a local ordinance because passage of the preemption version of SB 256 would preclude counties from enacting any tobacco control ordinances for four years.^{48, 49} Meanwhile, tobacco control advocates focused their time and energy on opposing the state preemption legislation, not on passing a smokefree restaurant law in Honolulu.

The House Committees on Health, and Labor and Public Employment, passed the bill out of committee for a second reading on the floor, with an amendment to strengthen the clean indoor air regulations by specifying that designated smoking areas "shall not be in a location where common air conditioning or ventilation systems recirculate environmental tobacco smoke to other areas of the workplace." In their report to Speaker of the House Joseph Souki (D-

Wailuku), recommending passage of the SB 256 as amended, committee members articulated the central public health argument and scientific facts that tobacco control advocates presented in their testimony:

. . . [B]y passing this bill out of committee, your Committees primarily seek to protect as many people as possible from the known health hazards of environmental tobacco smoke. Clearly, the recent report by the Environment Protection Agency which classified environmental tobacco smoke as a class A carcinogen cannot be ignored. Neither can your Committees ignore testimony that nationally, 53,000 deaths per year are attributed to environmental tobacco smoke exposure, and that such exposure poses special health risks to expectant mothers and their children . . . Finally, your Committees regret that the bill may not address the reduction of environmental tobacco exposure among certain food service workers. It is urged that the Department of Health develop strategies to address this issue in the near future.⁵⁰

Another amendment introduced by the Committees on Health, and Labor and Public Employment established a school smoking prevention "special fund," into which penalties recovered from employers for violations of designated smoking area regulations would be deposited. Tobacco control advocates later successfully lobbied to have this provision removed because it caused the bill to have a joint referral with the Finance Committee. They argued that removing the "special fund" provision would help the bill, if passed out of the House, go directly to the Governor for his signature -- rather than to a conference committee, where tobacco industry supporters in the Senate were expected to kill it.⁵¹

After being passing out of the Committees on Health, and Labor and Public Employment, the proposed workplace smoking bill stalled in the House Judiciary Committee. The chairman, Representative Terrance Tom (D-Kaneohe), held the bill for a year, from March 1993 to March 1994, without scheduling a hearing, reportedly arguing that it was too hard on small businesses.⁵² Representative Tom told tobacco control advocates that he would hear SB 256 after the first crossing deadline had passed. The "crossing deadline" is the deadline for bills in the legislature to be referred to more than one committee.

In March 1994, after the deadline had passed and the bill was still being held in committee, advocates lobbied Rep. Tom to commit to scheduling a hearing. Representatives of the AHA (Don Weisman, Communications Director and Elizabeth Tam, M.D., Board Member), ALA (Shirley Robinson, Environmental Health and Advocacy Director), ACS (Elizabeth Adams, M.D.), and Hawai'i Medical Association (John McDonnell, M.D., Chair of the HMA Task Force on Tobacco) met as a group with Tom to persuade him to allow a committee vote on the bill. They urged him to amend the bill to return to the language of the version that passed out of the Senate (SB 256, SD 2) by removing the "special fund" provision that had been added by the previous House committees.⁵³ On March 22, 1994, the House Judiciary Committee heard SB 256 and struck the "special fund" provision.⁵⁴

Meanwhile, the tobacco industry and its third party allies were lobbying for a version of SB 256 with weak standards and local preemption. For example, at the request and expense of the Hawai'i Hotel Association, an employee of Healthy Buildings International, Inc., Richard

Silberman, gave testimony to the House Judiciary committee on ventilation options for restaurants.⁵⁵ Healthy Buildings International, previously ACVA (Air Conditioning Ventilation Associates) Atlantic Inc., was an indoor air quality control company with close ties to the tobacco industry.³⁰ The shift in focus from the problem of secondhand smoke to the issue of overall indoor air quality was (and remains) a major strategy used by the tobacco industry worldwide.⁵⁶

The industry's effort to get a preemption bill was noted in a memo from Hurst Marshall, a regional director of government relations at RJ Reynolds Tobacco (RJRT), to Roger Mazingo, Vice President of State Government Relations for RJRT, written at the end of the 1994 legislative session:

The 1994 session of the Hawai'ian Legislature was an industry success. Despite an anti-tobacco tradition, no negative legislation was enacted. The local preemption adopted in SB 256 was an excellent team effort. This is the second year that RJRT lobbyist, John Radcliffe, has represented us and he was effective. The industry team worked extremely well together.⁵⁷

In the same memo, Marshall describes SB 256 as "industry endorsed legislation,"⁵⁷ referring to the version of SB 256 that emerged from Rep. Tom's Judiciary Committee and was ultimately passed by the House and Senate, not the version initially introduced in the House and supported by tobacco control advocates. The "anti-tobacco tradition" mentioned by Marshall in the memo presumably refers to public health advocates' efforts beginning in the mid-1980s to pass clean indoor air legislation. The "team" in Hawai'i included PM lobbyist G.A. "Red" Morris, Kathleen Masunaga of the Hawai'i Restaurant Association, and Murray Towill of the Hawai'i Hotel Associations, in addition to RJR lobbyist John Radcliffe.⁵⁸

Don Weisman, Communications Director for the American Heart Association, recalled in a 2005 interview the access to state legislators enjoyed by industry lobbyists at that time access that public health advocates did not have:

The tobacco industry really controlled what happened at the state legislature . . . the legislators saw nothing wrong with taking money from them. There was no public outcry about taking money from the tobacco industry, they felt it was a legal business and this and that. And so when we'd go down to the legislature to fight a bill, we'd be outside a legislator's office not able to get access and then the lobbyist from Philip Morris and RJ Reynolds would be running in and out of that office and then they'd come out with a new version of a bill and that was obviously written by the tobacco industry and they'd just slam it through . . .

Red Morris [PM lobbyist] would run into their office--we had no access to these people--he'd be running in and the next thing you know, they'd come out with a new bill with new wording and it was basically right out of the tobacco industry handbook. It was pretty flagrant back in the early nineties, mid nineties.³⁶

It is significant that RJR's lobbyist in Hawai'i, John Radcliffe, was simultaneously the

associate executive director (the number two executive officer) of the University of Hawai'i Professional Assembly (UHPA), the faculty union.⁵⁹ Thus, in addition to receiving a \$20,000 lobbyist fee from RJR Tobacco in 1993, Radcliffe was on the executive board of an organization that determines health benefits and would make a decision, for example, about coverage of cessation services. This type of "crossover lobbying," in which lobbyists represent both the tobacco industry and health interests at the same time, has similarly been identified in other states.⁹ It is a key tactic used by the tobacco industry to exercise influence. For example, in one prominent case in California, Steve Merksamer was a lobbyist for both the tobacco industry and the California Medical Association (CMA) when he put together the legendary "Napkin Deal" in 1987 in which the tobacco industry worked with the CMA to enact legislation (drafted on a napkin) to make it harder to bring malpractice suits against doctors and to outlaw lawsuits by smokers against the tobacco industry.²¹

Representative Tom received a total of \$1,450 in campaign contributions from R.J. Reynolds, Philip Morris (PM), and the Tobacco Institute in 1993.⁶⁰ Only two Hawai'i state representatives accepted more money from the tobacco industry that year. One was then-House Speaker Souki, who received \$1,550; the other was Representative Calvin Say (D- Palolo), who received \$2,250.⁶⁰ Rep. Say is now House Speaker. Tom received a total of \$9,200 in campaign contributions from PM and the Tobacco Institute between 1990 and 1994, approximately 7 percent of \$124,600 in total contributions he received from all sources during that period.⁶¹

Rather than amending SB 256 to resemble the version that had passed the Senate, as tobacco control advocates hoped he would do, Representative Tom drafted amendments that weakened the bill's workplace smoking restrictions, added tobacco-friendly provisions regarding the distribution of tobacco samples and the regulation of smoking in public places (including restaurants), and added a preemption clause prohibiting counties from passing any measure regulating the sale or use of tobacco products. The county preemption language was added at the last minute in the final conference committee draft, leaving public health advocates little time to mobilize effective opposition. Indeed, the evolution of SB 256 was a classic example of the tobacco industry's tactic of pushing preemption as a means of blocking local grassroots efforts to implement clean indoor air ordinances.^{62, 63}

At this point, most of the organizations and individuals who had previously supported the bill when introduced by Senator Bert Kobayashi now opposed it because of the amended version's weak provisions and the county preemption language. The Hawai'i Restaurant Association, Hawai'i Hotel Association, and a number of restaurant owners and managers became supporters of the bill. Public health advocates submitted testimony arguing that Representative Tom's amendments inappropriately lumped the issue of secondhand smoke in the workplace with other issues, arguing that the distribution of tobacco samples and smoking in restaurants should be addressed in separate legislation.⁶⁴ In terms of the provisions on restaurant smoking, advocates criticized Tom's version of the bill for establishing a temporary task force within the Department of Business, Economic Development, and Tourism to "develop legislative proposals to address the economic and environmental impacts of regulating smoking in restaurants, cabarets, and bars" without calling for any proposals to address the impact of secondhand tobacco smoke on restaurant employees and customers.

The state Department of Health and others in the public health community also opposed language specifying that American Society of Heating, Refrigeration, and Air Conditioning Engineering (ASHRAE) standards would be the basis for restaurant ventilation requirements on the grounds that ASHRAE Standard 62-89, which was developed under pressure from the tobacco industry, was designed merely to reduce the odor of tobacco smoke, not to protect health and welfare effects in exposed non-smokers.⁶⁵ In a review of Rep. Tom's proposal for John McDonnell, Chair of the Hawai'i Medical Association Task Force on Tobacco, Mark Takai of the Health Department's Tobacco Prevention and Education Project noted the tobacco industry had influenced ASHRAE in revising the treatment of secondhand smoke in Standard 62 beginning in 1989.^{55,65} (In 2005, ASHRAE finally revised Standard 62.1 to state that it was not possible to obtain acceptable indoor air quality through ventilation if tobacco smoke was present.^{66,67})

Citing the campaign contributions that Representative Tom and other legislators received from the tobacco industry, Honolulu Councilmember Steve Holmes, a strong tobacco control advocate, told reporters, "I think it's clear that the tobacco industry got to them and brought in the preemption bill."⁶¹

As part of an effort to generate public pressure on legislators to vote down Tom's version of the bill, the Hawai'i chapter of Common Cause, a national nonprofit, nonpartisan advocacy organization that deals with "clean" government, released data to the media on tobacco industry campaign contributions to Hawai'i state representatives and senators. Common Cause spokespersons called on lawmakers to refuse or return campaign contributions from the tobacco industry and to disqualify themselves from voting on issues when they take money from special interests. The Common Cause chair told one reporter, "These contributions are made with only one purpose, to make legislators more sympathetic to the cause of smoking."⁶⁸

Department of Health Director Lewin told reporters that "while the bill on the surface looks like it's an improvement, it's really the Tobacco Institute's bill."⁶⁹ He noted, for example, that although restricting free cigarette samples would be a positive action, the issue is a relatively insignificant problem in Hawai'i: "What the bill really does is what the Tobacco Institute is hoping it will do keep everything the way it is."⁶⁹ Advocates referred to Tom's bill as a tobacco industry "Trojan horse." As Don Weisman of the AHA noted in an interview in 2005, the industry was "willing to give a little bit in order to get preemption . . . But what they gave would have had little impact."³⁶

In an effort to draw media attention to the industry's national preemption strategy and pressure legislators to vote against Rep. Tom's version of SB 256, the Interagency Council on Smoking and Health (ICOSH) issued a press release at the end of March providing the media with a copy of a 1991 internal tobacco industry memo suggesting that executives developed a strategy of pushing legislation that would mislead legislators and the public by having the "'appearance' of a comprehensive scheme."⁷⁰ ICOSH was a coalition of private, professional, and the volunteer health advocacy organizations based in Honolulu that dated from the 1960's and became the Coalition for a Tobacco-Free Hawai'i in 1997. Don Weisman of the American Heart Association prepared the ICOSH press release "to hopefully stir up attention to the problems with SB 256, H.D. 2 [House Draft 2 as passed by the House]," as he said in a note attached to a

draft of the release sent to the state Health Department.⁷¹

The six page memo included in the press release, written by the president of the Smokeless Tobacco Council Michael J. Kerrigan,⁷² describes a 90-minute telephone conversation between tobacco executives in Washington, D.C. and lobbyists in Sacramento. According to the memo, Philip Morris and R.J. Reynolds executives expressed concern during the conference call about the increasing number of strong smokefree ordinances at the city and county levels and discussed the possibility of using the state legislatures for a "preemptive strike" that would prevent additional cities and counties from passing ordinances. The memo states that the idea of introducing such legislation "evolved" in part from a visit by California Assembly Speaker Willie Brown (D-San Francisco) to tobacco executives in New York City. Quoting PM lobbyist Joseph L. Lang, the memo notes:

At that time the [California Assembly] Speaker [Brown] made clear a significantly more proactive tobacco control effort would be needed to secure preemption. Out of these discussions the notion of a Comprehensive Tobacco Control Act (that would provide preemption) evolved . . . The Speaker believes the trick to doing this would be that such an act would have to have the "appearance" of a comprehensive scheme. . . Again, Joe stated that the Speaker felt the "perception" of a comprehensive regulatory scheme was essential for preemption of smoking restrictions to succeed.⁷²

The memo also states that Brown and another legislator "would attempt to make the Tobacco Control Act as close as possible in 'appearance' to the concepts that the anti-tobacco groups were fostering."⁷²

Shortly after its preparation in June 1991, this Kerrigan memo⁷² appeared mysteriously at the offices of the California voluntary health organizations and several of the state's most influential newspapers. The ensuing political storm killed the tobacco industry's preemption bill in the California legislature in August 1991.^{21, 73} The Hawai'i tobacco control advocates were hoping for the same outcome for SB 256.

In its press release, ICOSH argued that pro-tobacco forces were using the same strategy they had attempted in California in Hawai'i's House Judiciary Committee in amending Senate Bill 256. The release quoted tobacco control advocate Elizabeth Tam, M.D., a pulmonologist and AHA Board Member, as stating that "the similarities between the tobacco industry's plan and the bill passed by Representative Tom and his committee are too great to be coincidental. The seemingly strong regulations Representative Tom is suggesting are a sham."⁷¹ Describing the preemption bill as "a blatant attempt by the tobacco industry to avoid tougher regulations such as those being considered by the Honolulu City Council," Tam argues in the press release:

Health education and regulation should occur at all levels of government, not just the state. The public should have the right to home rule. Preemption, as dictated in SB 256, H.D. 2, denies that right and allows the tobacco industry to dictate what is healthy for us. We are urging the public to speak out against the preemption of local measures and for the state legislators.⁷¹

ICOSH stated in an alert urging opposition to Tom's bill:

SB 256 is cleverly disguised as a comprehensive tobacco bill when, in fact, it's a malicious attempt by the tobacco lobby to suppress the legislative efforts of concerned citizens who work to ensure the health and welfare of the smoker and nonsmoker.⁷⁴

Despite the objections of public health advocates, Tom's amended bill (SB 256, SD 2, HD 2) passed unanimously out of the House Judiciary Committee. The final version of the bill approved by conference committee (SB 256, SD 2, HD 2, CD 1), which was roughly the same as the bill drafted by Rep. Tom, passed in the final floor votes in the House and Senate with 15 and 7 No votes, respectively. Chairman of the Senate Health Committee, Bert Kobayashi, who was a conferee on the bill, strongly opposed the version that was ultimately sent to the Governor. "It says to counties that they can't do anything to protect against a Class A carcinogen even if they want to," he told reporters. He stated that he wanted to let the bill die because it no longer represented a beneficial compromise among tobacco, restaurant, and health interests.⁷⁵

Conferees approved the bill after a midnight deadline was extended by House Speaker Joe Souki and Senate President Norman Mizuguchi, both of whom were among the handful of state legislators who received more than \$1,000 in campaign contributions from the tobacco industry in 1993.⁶⁸ Souki defended the bill to reporters by stating that it balanced health and economic concerns: "It's more than we have now. You have to go in steps," he said. Not surprisingly, Kathleen Masunaga of the Hawai'i Restaurant Association called the bill "reasonable," saying that it would give restaurant owners and health advocates time to work on solutions.⁷⁵

Tobacco control advocates averted a major setback when the governor, John Waihee (D), vetoed the bill. Waihee's legislative liaison, Kate Stanley, had told Julian Lipsher, the coordinator for the Tobacco Prevention and Education Program at the state Department of Health, immediately following passage of SB 256 that the Governor would never veto the bill. Stanley called Lipsher at 10:30 pm one night two months later and said, "I don't believe it, but [the governor] has come down on the side of the angels."³⁷ Waihee vetoed the bill primarily on the basis of the preemption clause. He also argued that the bill's provision requiring restaurants to set aside a certain percentage of seating for nonsmokers was unenforceable, and opposed the provision to create a task force that would focus on the economic impacts but not the health impacts of tobacco legislation.⁷⁶

There are several factors that may have played a role in persuading the governor to veto SB 256. First, public health advocates in Hawai'i, with the help of national health groups and California-based Americans for Nonsmokers' Rights (ANR), succeeded in mobilizing national political figures as well as state and county interests to urge Governor Waihee to veto the preemption legislation (Table 26). Among those who wrote letters asking the Democratic governor to veto the bill were U.S. Representative Henry Waxman (D-California), Chairman of the House Subcommittee on Health and the Environment; U.S. Representative Mike Synar (D-Oklahoma), and the U.S. Surgeon General, Jocelyn Elders. Hillary Clinton also reportedly made a phone call to Waihee urging him to veto the legislation.⁷⁷ Lewin knew Surgeon General Elders personally and asked her to fax the Governor a letter opposing SB 256. The Surgeon

General's letter to Waihee included strong language:

Preemption laws are one of the most powerful weapons used by the tobacco industry to interfere with efforts to reduce this tobacco-related morbidity and mortality. By preventing local jurisdictions from enacting clean indoor air laws, the tobacco industry is able to frustrate one of the most effective approaches to curb tobacco use. Thus, signing a state preemption law would be a huge victory for the tobacco industry and a devastating blow to public health in your state.

I absolutely concur with Dr. Lewin that enactment of this bill would reverse your state's progressive leadership in tobacco prevention and control.⁷⁸

This type of high-level political involvement in efforts to get a preemption bill vetoed is unusual.

Julian Lipsher of the Department of Health recalled, "We worked like dogs and got all kinds of people involved and met with the governor's staff . . . Obviously, we got his attention."³⁷

Table 26 Some Individuals and Organizations Urging Gov. Waihee to Veto SB 256

U.S. Congressman Mike Synar U.S. Congressman Henry Waxman U.S. Surgeon General M. Jocelyn Elders Coalition on Smoking OR Health Americans for Nonsmokers' Rights American Heart Association-Hawai'i Affiliate American Lung Association of Hawai'i American Cancer Society-Hawai'i American Academy of Pediatrics-Hawai'i Chapter Hawai'i State Department of Health Hawai'i Firearms Control Coalition Hawai'i Medical Association Hawai'i Medical Service Association Hawai'i Public Health Association Hawai'i Society for Respiratory Care The Honolulu Advertiser The Honolulu City Council Injury Prevention Advisory Committee Kaiser Permanente Keiki Injury Prevention Coalition
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A second element in tobacco control advocates' lobbying of Governor Waihee relates to public opinion and the framing of the issue. Advocates sought to establish the moral high ground by framing the controversy as a public health issue. For example, in one letter to the editor published in the Honolulu *Star-Bulletin*, the President of the ALA of Hawai'i warned that "Hawai'i will join North Carolina, a tobacco-growing state, as the only states with a preemption provision prohibiting counties from enacting tobacco legislation"⁷⁹ The letter cited a number of health-related reasons for Governor Waihee to veto the bill:

- The City and County of Honolulu is close to passing a bill which would ensure public protection from exposure to Environmental Tobacco Smoke (ETS) in restaurants

- The Environmental Protection Agency has classified ETS as a deadly cancer-causing agent, the same dangerous level as asbestos and benzene.
- Past records indicate that the Legislature has passed weak laws addressing smoking in the workplace and public places.
- SB 256 will set a precedent on other matters which would prohibit counties from addressing the need of their constituents.
- More than 70,000 people in Hawai‘i who suffer from chronic lung disease need protection from the dangers of ETS exposure.⁷⁹

The reference to Hawai‘i joining North Carolina as the only states with county preemption on tobacco control was a message repeatedly frequently by members of the health community. For example, after Waihee vetoed the bill, Lewin told reporters, "If he had signed it, we and North Carolina would have been the only states with such a law. I would have thought we'd be shifting from sugar to tobacco as a major crop."⁸⁰ In the Health Department's official recommendation to Waihee to veto SB 256, Lewin stressed the bill's failure to protect public health:

This bill is like kissing a smoker. You may want to, but once you embrace it, you find out it stinks . . . A number of the bill's provisions, protecting individuals from exposure to tobacco smoke, now ruled a Class A carcinogen by Federal EPA, were weakened in the final conference draft . . . The non-smoking seating requirements are virtually unenforceable by DOH. None of the provisions address the health effects of tobacco smoke on restaurant employees or customers. The worksite provisions fall short in guaranteeing protection . . . This bill does not reflect the current science or policy in public health relating to smoking and tobacco use.⁸¹

A third factor may have been Gov. Waihee’s concern about his legacy in promoting Hawai‘i as the “Health State”. He was in the last months of his term as Governor, and Julian Lipsher recalled in a 2005 interview:

We ended up providing all kinds of what we thought were very good reasons, but then in the end it kind of got down, I think, to [his concern about] legacy . . . How can you let a bill with the stamp of the tobacco industry on it be part of your legacy in creating Hawai‘i, the Health State?³⁷

Waihee risked being viewed as a governor who was willing to sacrifice public health in order to support the tobacco industry if he did not veto the bill. In his official "Statement of Objections to Senate Bill No. 256," addressed to members of the Hawai‘i legislature, Governor Waihee expressed concern about the bill's negative impact on public health:

The bill's preemption provision would limit the counties' ability to protect public health within their respective jurisdictions. Current law allows the counties to establish smoking regulations that are stricter than those of the State, an arrangement that has created appropriate protections in the counties.⁷⁶

Tobacco control advocates were also successful in focusing debate on the question of

home rule. They portrayed the bill as a threat from outsiders, the tobacco industry, to the independence of Hawai'i's counties. *The Honolulu Advertiser* endorsed a veto of SB 256 on the grounds that restaurant regulations to address the problem of second-hand smoke "are clearly and properly the responsibility of local city and county governments."⁸² The editorial urged the Honolulu City Council to return to the stalled smokefree restaurant ordinance:

The Honolulu City Council has before it a strict bar on smoking in restaurants. With an election coming up and other issues crowding the agenda, that issue threatens to slip away. It should not. The Council should take up the public smoking issue at an early date—certainly before the fall elections. The other county councils should take a reading of public sentiment on their islands and then do the same.⁸²

The Health Department's official recommendation to Waihee to veto SB 256 also pointed to the home rule issue in addition to public health concerns:

S.B. 256, through its pre-emption language, removes the ability of county governments from protecting the health, safety, and welfare of their citizens. The counties feel strongly about home rule and approval of this bill would hamper their ability to act. Pre-emption [sic] is bad law and bad policy.⁸¹

Home rule is traditionally a salient issue in Hawai'i, and advocates used it to their advantage. Some in Hawai'i's public health community believe that the industry underestimated the impact of the home rule issue on the governor. "Home rule became the issue," according to Weisman. In his official explanation of his reasons for vetoing SB 256, Waihee argued that the preemption clause was one of the primary problems and stated his belief that it is inappropriate for the state to take power away from counties.⁷⁶

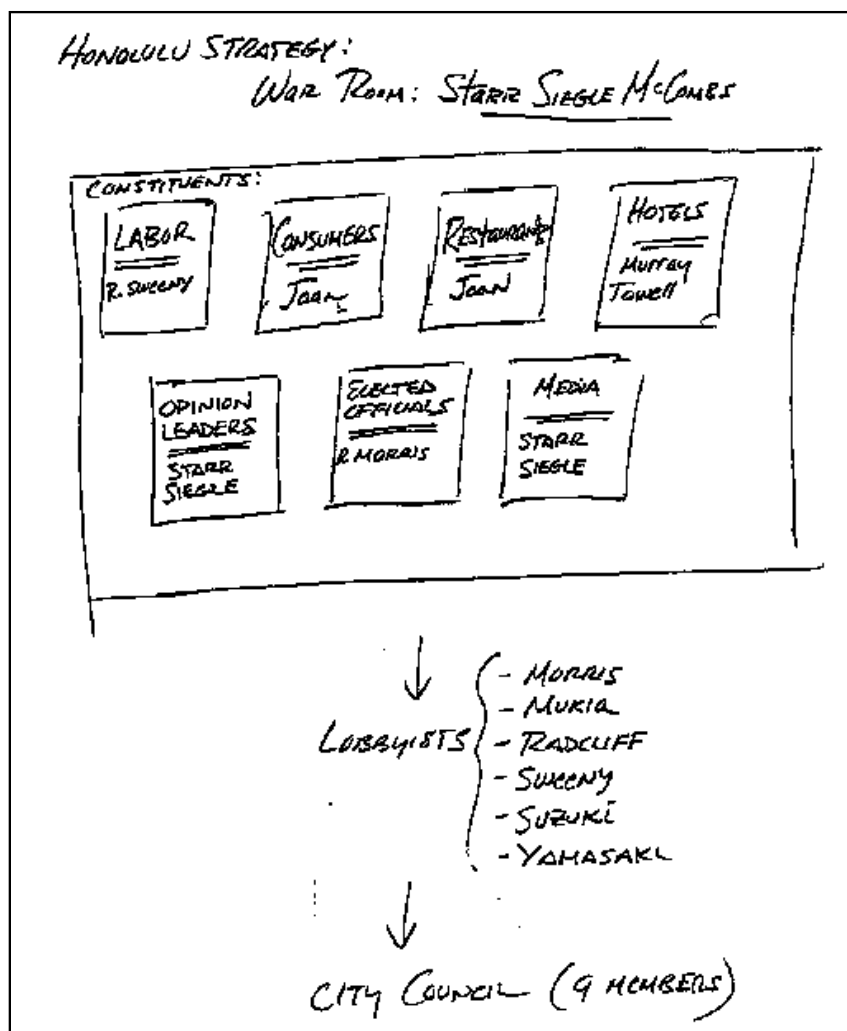
Resumption of the Battle over Bill 93 in the Honolulu City Council

After the state preemption bill was vetoed in June 1994, tobacco control advocates and Honolulu City Council members once again turned their attention to Bill 93, the smokefree restaurant ordinance. Tobacco control advocates believed that they had five votes in support of the bill on the city council, one short of the number needed to override Mayor Fasi's threatened veto.⁴⁸ Fasi was expected to resign by the middle of July to run for governor. Two council members, Gary Gill and Arnold Morgado, were in turn expected to resign to run for mayor; Gill was a supporter of Bill 93, while Morgado had voted against it in the second reading. Councilmember Henry Felix, a supporter of Bill 93 and Chair of the Parks, Health, and Safety Committee in which the legislation was sitting, noted that the smokefree restaurant issue would most likely not be considered until after the expected July resignations.⁴⁸

As expected, Fasi resigned to run for governor, and in the line of succession, was replaced by the City & County of Honolulu Managing Director Jeremy Harris. Gill and Morgado both ran for the vacated mayoral seat, but lost to Jeremy Harris, who won the special election to become the Mayor of Honolulu in September 1994. Gill and Morgado were replaced on the City Council by Mufi Hannemann and Jon Yoshimura, each of whom ultimately voted against the smokefree restaurant ordinance when it finally came up for a third vote. The other

change in the Council membership was the election of Duke Bainum to fill Leigh-Wai Doo's seat, who had supported Bill 93, who chose not to seek re-election in 1994. Bainum, a physician who had previously been an intern with Senate Health Chair Bert Kobayashi, a legislative champion of tobacco control measures, supported Bill 93.

Internal tobacco industry documents indicate that the industry began to gear up in early 1995 to fight the Honolulu smokefree restaurant ordinance, which was still stalled in the Parks, Health, and Safety Committee. A Philip Morris (PM) plan to oppose the ordinance, "Honolulu Strategy: War Room: Starr Siegle McCombs" presents a flow chart outlining a plan for lobbying Honolulu City Council members (Figure 6). Starr Siegle McCombs is a Honolulu advertising agency which, along with the Dolphin Media Group (a large California-based public relations consulting firm that helped PM in efforts to overturn local clean indoor air ordinances in California through referenda^{21, 83, 84}), worked for the tobacco industry on the campaign to oppose Bill 93.



At the top of the chart (Figure 6) are "constituents:" labor, consumers, restaurants, hotels, opinion leaders, elected officials, and media. The intermediaries between these constituents and the city council members are six lobbyists: Morris, Mukia, Radcliff, Sweeney, Suzuki, and Yamasaki.⁸⁵ Morris, Radcliff, Suzuki and Yamasaki were tobacco industry lobbyists. A March 1995 handwritten memo from Hurst Marshall, a regional director of government relations at RJ Reynolds Tobacco (RJR), to Roger Mazingo, Vice President of State Government Relations for RJRT, suggests that the tobacco industry should focus its attention and lobbying efforts on the Honolulu City Council:

Figure 6 Starr Siegle McCombs Honolulu Strategy

Radcliffe [RJR lobbyist] does not see any tobacco bills passing. Lobbyists are looking for opportunity for smoking preemption vehicle but do not see much hope. Norm Suzuki [Tobacco Institute lobbyist] sends his regards. Had lunch and dinner with John, Norm, Red Morris (PM) [lobbyist for Philip Morris], and Wayne Yamasaki (Smokeless) [lobbyist for the Smokeless Tobacco Council]. Good group and very close. Norm is still leader. Red [Morris] and John [Radcliffe] are well connected in high political circles. Can expect continuous problems in Honolulu City Council. Will be major problem for remainder of 1995. Honolulu is 80% of total population. If it restricts or bans smoking, preemption is out of the question at the state level. Norm [Suzuki] does not represent industry at local level. We should discuss small contract for John [Radcliffe] to keep him active. Red Morris says PM [Philip Morris] has PR program and grassroots but John is needed because of his relationships and pull he has with members of council.⁸⁶

The mention of a Philip Morris "PR program and grassroots" in the last sentence is presumably a reference to the Star Siegle McCombs "Honolulu strategy" outlined in the February 1995 flow chart (Figure 6).

A PM Government Affairs Weekly Report written two weeks later by Jim Pontarelli, a regional director (based in Sacramento, CA) for PM Government Affairs, and sent to a list of tobacco industry executives and other employees gave the following update on Hawai'i:

With all state legislation defeated, it is highly likely that the Honolulu City Council will now revisit the issue of smoking in restaurants, bars, and other public places. If you have any suggestions for working with the City Council, or would like to participate in our efforts to prevent a Honolulu smoking ban, please reply to Jim Pontarelli via e-mail.⁸⁷

Bill 93 was finally reported out of the Parks, Health and Safety Committee in a 4-1 vote on June 6, 1995 and scheduled for a third and final hearing in the City Council on June 20. The lone vote against the bill in committee was cast by Rene Mansho, who cited smokers' rights;⁸⁸ Mansho also opposed the proposal in the first two Council readings in 1993.

The tobacco industry employed its familiar strategy of relying on third party allies in the hospitality industry to publicly lobby against Bill 93. These allies included the Hawai'i Restaurant Association, Hawai'i Hotel Association, and the Hotel and Restaurant Employees Union (Local 5). A typical Philip Morris tactic in many states has been to co-opt local organizations as front groups and send employees from national public relations firms such as Burson-Marsteller to run local "grassroots" campaigns. For example, in its 1993 outline of the National Smokers Alliance (NSA) "political plan," PM states:

Action team leaders . . . the most important positions . . . would be filled by Burson-Marsteller professionals . . . The NSA should not leave the creation and operation of a local effort to the locals.⁸⁹

This strategy was followed in Honolulu. A memo from Jim Pontarelli, a regional director for the PM Government Affairs, to Tina Walls, Vice President of State Government Affairs for PM, is illustrative. The memo was written June 18, three days before the City Council's final

vote on the smokefree restaurant legislation:

The direct lobbying team from here out is Red Morris-PM, Stan Mukai-PM, John Radcliff-RJ, Ray Sweeney-PM, Cathy [sic] Masunaga-Restaurants, Murray Towell-Hotels. Grassroots: Fred Karger and Stacey Bailey on site, supported by Starr Seigle/ProComm [ProComm is the public relations division of Honolulu's Starr Seigle Communications]. On Thursday we made a presentation to the board of the Hawai'i Restaurant Association. They pledged their continued full support of our efforts to ensure accomodation in Honolulu . . . On Friday, Dolphin held a rally and press conference at Planet Hollywood for the Restaurant Association . . . Hotel Association executive director did a fabulous job with the media . . . Joan/Celeste continue to run phones and letters through consumers and our hospitality data base . . . Dolphin dropped a mail mobilization on behalf of the Restaurant Association on Friday afternoon. The HRA is also mobilizing members by batch fax . . . [we] produced and dropped a radio actuality featuring comments by the executive director of the Restaurant Association . . . Ted Lattanzio [then-Director of Worldwide Regulatory Affairs for PM] is coordinating resources available for testimony at the council meeting . . . Organized labor will testify and present a summary of federal OSHA activity/opposition to a ban prepared by Ted's crew . . . we will review projected economic impact data collected for the Hotel Association . . . Local 5 hospitality workers will attend the council meeting. Ray Sweeny is coordinating thier [sic] participaton [sic], transportation and prep, under Fred Karger's [employee of the Dolphin Public Relations firm⁹⁰] direction.⁵⁸

As the memo indicates, the flurry of "grassroots" opposition to Bill 93 in the week leading up to the final vote (phone calls, press releases, press conferences, and testimony) were coordinated by tobacco industry lobbyists and public relations firms (Dolphin and Star Siegle) working for the industry.

In an opinion editorial in *The Honolulu Advertiser*, the Financial Secretary/Treasurer of the Hotel Employees and Restaurant Employees Union (Local 5) responded to complaints from members about the union's opposition to Bill 93 by stating that he sided with management. He also repeated the tobacco industry's position that clean indoor air legislation would have a negative economic impact, using language that could have been mistaken for that of the tobacco industry:

Smoking is a health issue and the union should be and is concerned about our members' health . . . But a union also must be concerned about its members' financial well-being. In this instance, these two legitimate concerns were on opposite ends of the spectrum. One of management's biggest concerns in the just-concluded master agreement negotiations was to get some relief in the food and beverage area. They argued that without relief from us they would be forced to close more restaurants and lay off more members. We . . . really didn't give them what they wanted. They therefore asked us to help them defeat the restaurant smoking ban because this just wasn't the time to give tourists who smoke a reason to look elsewhere . . . And they are entirely right. Our hotel industry needs some time to heal. We had to weigh the renewed health of the industry against the potential health hazard to the individual member.⁹¹

In opposing Bill 93, tobacco industry allies used standard industry rhetoric about government over-regulation of business and the potential negative economic consequences of smokefree legislation. For example, Richard Botti, lobbyist for the Hawai'i Food Industry Council that had worked closely with Tobacco Institute in Hawai'i since at least the mid-1980s,³⁴ argued at the committee hearing that the restaurant industry was doing a good job of voluntarily moving toward smoking restrictions: "We're not pushing smoking. Let the businesses handle it. It's going that way anyway."⁹² In opposing Bill 93, Katherine Matsunaga, president of the Hawai'i Restaurant Association said, "It's hard enough as it is to do business in Hawai'i. My list of restaurant obituaries is growing every day."⁸⁸ In another common refrain, Murray Towill, president of the Hawai'i Hotel Association, warned that smokefree legislation would hurt tourism from Asia and Europe.⁸⁸ Repeating an unsubstantiated claim that has been advanced by the industry and third party allies in debates over smokefree legislation in numerous states and municipalities, the Hawai'i Restaurant Association's president, Jeff Crimin, stated that the restaurant industry's annual receipts could drop 20-25 percent if restaurants went smokefree: "That would be tremendous hit," he said. "And it would not only affect us, but our produce suppliers, butchers, even the laundries that clean tablecloths."⁹³ The Hawai'i Hotel Association similarly put forth economic arguments in opposition to the bill, estimating that it could cost the hospitality industry 6,400 jobs due to a decline in tourism.⁹³

By then, however, there was good evidence that these claims were not true.⁹⁴

Tobacco control advocates tried to counter industry lobbying efforts by focusing the debate on public health and the protection of workers. For example, at the committee hearing on Bill 93, Health Department staff stressed that restaurant employees face major health risks due to secondhand smoke exposure, citing a finding that in California waitresses have a relatively high incidence of lung cancer due to environmental tobacco smoke. Councilmember Duke Bainum justified his vote for the bill in committee by saying, "Secondary smoke does kill you and I think it's worth regulating"⁸⁸ Councilmember Steve Holmes, who introduced the smokefree restaurant ordinance, told reporters that the Council should focus on the health of restaurant employees and patrons. Similarly, Councilmember John Felix, another supporter of the ordinance, argued, "If we can punish drunk drivers, who could be dangerous to other members of the public, then we can punish smokers who expose others to dangerous conditions."⁹⁵

Advocates also focused on countering the claim that smoking restrictions would have negative economic consequences. In lobbying Council members and addressing the media, they pointed to studies in California, Colorado, and Texas showing ordinances prohibiting smoking in restaurants to have no negative impact, and if anything a positive effect, on restaurant revenues^{96,97} This argument caught the attention of tobacco industry lobbyists, who prior to the final Council vote were "preparing rebuttal of Glantz studies [of restaurant economics in California and Colorado] for use at the press conference if needed."⁵⁸

For purposes of both lobbying City Council members and educating the public through media releases, the Interagency Council on Smoking and Health (ICOSH) conducted a random telephone survey of Honolulu restaurant owners and managers to demonstrate support for a smokefree ordinance. The survey found that many local business owners did not share the Hawai'i Restaurant Association's concern that smoking restrictions would have negative

economic consequences.

In endorsing Bill 93 in an editorial immediately following its passage out of committee for the final vote, *The Honolulu Advertiser* accepted public health advocates' argument that the industry's economic claims had no basis:

The fact is . . . that there is virtually no credible evidence that smoking bans hurt business in restaurants. Indeed, in city after city, reputable studies of tax receipts and other data have suggested that, if anything, business improves when the ban is in place. That makes sense. If a majority of us do not smoke, as is the case, then a regulation that appeals to the majority of customers should have a positive impact. Honolulu is in an even stronger position than other cities. In California, for instance, there is always the potential for smoking customers to drive across county lines until they find a place where they can light up in a restaurant. That won't be possible here.⁹⁸

While the *Advertiser* endorsed Bill 93, the city's other main newspaper, the *Star-Bulletin*, opposed it in an editorial, repeating the standard industry argument that the legislation would have adverse economic effects on the restaurant business and tourism.⁹⁹

Before the final vote on Bill 93, the tobacco industry was already looking toward lobbying for a mayoral veto. In his memo to PM executive Tina Walls, Vice President of State Government Affairs for PM, three days before the vote, regional director of Government Affairs Jim Pontarelli noted:

We are now preparing to shift some attention to the Mayor, who is on the fence on the issue. We have included him as a target in the mobilization efforts, and will now begin to direct lobby. We will continue to apply as much pressure as possible tomorrow and during the council meeting, but from here on it is pure politics. The council is composed of very fragile coalitions and can be outright hostile within its own membership. It is highly likely the [sic] some members of the council will use the heat of this issue to battle other council members, further complicating matters and making the final outcome unpredictable.⁵⁸

The bill passed by a 5-4 vote in the City Council, one vote shy of the minimum needed to override a mayoral veto. One of the "no" votes was cast by Councilmember Mufi Hannemann, who had voted for the bill in committee. He apparently decided to oppose Bill 93 in the final vote because he wanted to pass a smokefree ordinance that applied to bars and nightclubs as well as restaurants. Repeating tobacco industry rhetoric, Hanneman criticized the smokefree restaurant legislation as discriminatory, saying that he "would like to see a level playing field" by including bars and nightclubs. In response to such complaints, one week before the final vote on Bill 93 Councilmembers Steve Holmes and John Henry Felix introduced a new measure (Bill 75) that would expand the smokefree venues in Honolulu to all, including bars and nightclubs. "This is a logical extension of [Bill 93]," Felix said at the time. "We were concerned about protecting restaurant employees from the effects of secondhand smoke, so we extended it to bars."¹⁰⁰ Bill 75 passed the first reading and was referred to the Committee on Parks, Health and Safety for further consideration. (The outcome of Bill 75 is discussed below.)

Meanwhile, after passing 5-4 in the city council, Mayor Harris vetoed Bill 93, citing economic concerns raised by restaurant owners as well as his opposition to government intrusion in business. Harris articulated the tobacco industry's free market argument for opposing the bill in 1995: "There's too much Big Brotherism already. I think it would be a mistake for government to intervene and implement these regulations."¹⁰¹ In a letter to the Chair of the Honolulu City Council, John DeSoto, Mayor Harris elaborated on his reasons for vetoing Bill 93. Harris' letter echoed standard tobacco industry rhetoric, including a statement about his personal dislike of smoking:

. . . In considering my decision I had to weigh my concerns about the general public's exposure to secondhand smoke with my concerns about excessive government intrusion into the marketplace and into our personal affairs. Despite my personal dislike of smoking, I concluded that this bill would overregulate our restaurant industry and would bring unfavorable economic consequences to that segment of our society. The restaurant industry has endeavored to regulate themselves in a responsible manner and for the most part, has done an admirable job. It would be wrong to punish it without further consideration of individual situations. The honorable members of the City Council who have supported this legislation are rightfully concerned about the need to protect non-smokers from exposure to secondhand smoke. It is a concern I share with them. I recognize, too, that the present system of smoking and non-smoking areas in some of Honolulu's restaurants is inadequate. These conditions must change. Therefore, today I am recommending an industry based plan which would be self-regulating and which would be an improvement over the system we now have. This plan is designed to meet both the needs of the restaurant industry and the present objections of the non-smoking public.¹⁰²

Harris' veto was not a surprise. After the Bill 93 was passed by the city council, the mayor's aides had predicted that he would veto it.⁹³ In a memo to Hurst Marshall and Jim Pontarelli (regional directors at RJR and PM, respectively) two days after the city council vote, Daniel Wahby (Tobacco Institute regional director) noted that "based upon the information we received it looks as if the next play is that Mayor Jeremy Harris will veto Bill 93."¹⁰³ In the same memo, Wahby suggested the possibility of using a recall provision to prevent the Honolulu City Council from overriding a mayoral veto and to prevent the passage of Bill 75, the other proposed clean indoor air legislation that would cover all workplaces, including restaurants, bars and nightclubs:

To make sure the City Council does not override the Mayor's veto and to possibly turn the tide on Bill 75, Bob [Pruett, then-Director of Government Affairs at the Tobacco Institute] and I discussed the strategy of using the recall provisions in the City Charter to send a strong message from the business community. Working with the business community the recall provisions would send a message to those council members who voted for the bill and those council members who may be on the fence that Honolulu businesses do not need more governmental regulations. This same strategy can apply to Bill 75 since we have a vote count on were [sic] members of the council stand on this issue.¹⁰³

Jim Pontarelli, RJR regional director of Government Affairs, responded that using the recall in Hawai'i was "absolutely not" advisable at that time.¹⁰⁴ Pontarelli did not explain his reasoning.

The "industry based plan" that Mayor Harris proposed in place of the smokefree restaurant ordinance was a voluntary sign program designating smoking and nonsmoking policies. He suggested a letter-rating system similar to that used by the movie industry. In his press release announcing the program, he again used the industry's rhetoric of "accommodation"²⁹ and explained the letter system:

I am proposing a plan which I believe will go far towards reaching a sensible compromise. It will not end all smoking in public restaurants but we cannot and should not impose such a total ban. As long as cigarette smoking is legal we must find ways to accommodate smokers and non-smokers alike. My plan is to have the food service associations rate each of their member units according to their individual smoking policies. If a restaurant chooses to be totally smoke free then they would be awarded an "N" rating . . . Conversely, a "Y" rating means that smoking is allowed in the bar or restaurant without restriction . . . In addition, I propose two additional ratings. The first would be the "YN" rating. This indicates that there are both smoking and non-smoking sections within the restaurant . . . The last rating would be "Y+". The "Y+" rating applies to restaurants which have separate smoking and non-smoking areas but where there is no complete assurance that secondhand smoke will not invade the smoking areas. Many Honolulu restaurants are in that category today.¹⁰⁵

At the time of Harris' veto, the Hawai'i Restaurant Association, Hawai'i Hotel Association, and Hawai'i Food and Beverage Association stated that they would try to implement the voluntary program by August 1 of that year. The associations said that they would pay the expected \$3,000 cost.¹⁰⁶ No such program ever materialized.¹⁰⁷ In fact, two years later, in the context of debates over another smokefree restaurant ordinance (Bill 75, discussed below), Harris acknowledged to reporters, "I'm disappointed in the restaurant industry not being more aggressive with the signage."¹⁰⁸ Katherine Masunaga, head of the Hawai'i Restaurant Association, stated in 1997 that the association had mailed about 500 of the signs to restaurants but they never caught on. Richard Botti of the Hawai'i Food Industry Association said that neither his group nor other hospitality industry associations could order compliance with voluntary programs. He told reporters, "We do not have the clout to enforce the agreement."¹⁰⁸

Bills 75 and 22: Evolution of a Smokefree Workplace Ordinance

After Bill 93 was vetoed, the fight between public health advocates and the tobacco industry and its allies in the hospitality industry over clean indoor air legislation in Honolulu focused on Bill 75. As noted above, Bill 75 was introduced by Councilmembers Steve Holmes and John Henry Felix in June 1995 as a more ambitious alternative to Bill 93 in response to hospitality industry demands for a "level playing field" with bars. The initial version, which was sent to the Committee on Parks, Health and Safety after passing its first reading, proposed to make all Honolulu workplaces smokefree, including restaurants, bars and nightclubs.

The tobacco industry continued to pay serious attention to what was happening in

Honolulu. An August 1995 Philip Morris internal Government Affairs report identified "severe local pressure to ban smoking in all workplaces/public places" as a "major threat" in Hawai'i.¹⁰⁹ A section in the report headed "1996 Objectives and Resources Needed" outlined the following plans for Hawai'i :

- Enact omnibus tobacco control law with uniformity [i.e., state preemption on all aspects of tobacco control].
- Additional representation: Sweeney [PM lobbyist in Hawai'i], ProComm [public relations division of Honolulu advertising agency Star Seigle McCombs]
 - Grassroots mobilization and management: Dolphin
 - Labor programs: Sweeney
 - Media Affairs: ProComm
 - Mobilizations: ProComm, Dolphin, (NYO)
- Defeat Honolulu workplace ban
 - Grassroots mobilization and management: Dolphin
 - HHA [Hawai'i Hotel Association] and HRA [Hawai'i Restaurant Association] trade support
 - Labor Program: Sweeney
 - Media Affairs: ProComm
 - Mobilizations: ProComm, Dolphin, NYO¹⁰⁹

This plan illustrates 1) the tobacco industry's continued focus on preemption as a strategy for fighting county-level clean indoor air legislation in Hawai'i , and 2) the industry's use of large public relations firms to create and manage a "grassroots" campaign against a Honolulu smokefree workplace ordinance. The industry had relied on the same strategies and the same public relations firms – ProComm and Dolphin – in opposing Bill 93 the previous year.

In September 1996, Bill 75 was referred to the Committee on Environment, Public Works and Transportation, chaired by Steve Holmes, a longtime tobacco control advocate and the strongest champion of clean indoor air legislation on the City Council. Holmes, seeking to come up with a bill that had a realistic chance of passing and being signed by Mayor Harris, initially amended the bill to exempt restaurants as well as bars and nightclubs from the broad workplace smoking restriction. The bill was heard in committee in November. At the start of the committee hearing, Holmes noted that restaurants were exempted to avoid the Mayor's veto. Holmes assumed that, as with Bill 93 the previous year, there were five Yes votes on the Council for a smokefree ordinance that included restaurants. Supporters would need at least one more vote to override a mayoral veto. Councilmember Bainum, another strong tobacco control advocate, similarly supported the excluding restaurants in the bill given the likelihood of a veto.

Holmes changed his mind and agreed to include restaurants in the workplace restrictions after Councilmembers Kim and Felix – also solid supporters of smokefree legislation – argued against the restaurant exemption.¹¹⁰⁻¹¹² In the ensuing discussion, all four council members noted the possibility of lobbying the mayor to avert a veto as well as lobbying their fellow council members in an effort to get the sixth vote needed to override a veto.¹¹⁰ (Councilmember

Hannemann, the committee's fifth member, was absent from the hearing. He was noncommittal on the bill, stating his displeasure with its exemption of bars and nightclubs as his reason for possibly opposing the legislation.¹¹²)

Bill 75, CD1 passed unanimously out of committee and was reported to the Council floor for a second reading and a public hearing. At this stage, the bill proposed to make most Honolulu workplaces smokefree, including small businesses and restaurants but not bars or nightclubs. While PM lobbyist Ray Sweeney was at the committee meeting, no hospitality industry representatives were in attendance because they had apparently been assured by Council staffers that restaurants would not be included in the bill.¹¹¹ Upon deciding to remove the restaurant exemption, Councilmember Holmes noted that restaurant lobbyists would be surprised.¹¹⁰ He was right. For example, Kathleen Matsunaga, executive director of the Hawai'i Restaurant Association, told reporters the next day, "I was screwed."¹¹¹ The bill passed 6-3 in the second reading in the Council in December 1996 and was referred again to the Committee on Environment, Public Works and Transportation, still chaired by Steve Holmes.

Not surprisingly, the response of the tobacco industry and its allies included pushing ventilation as an alternative to smokefree restaurants. The day after Bill 75 was reported out of committee, Ray Sweeney of Philip Morris noted in a memo to John Radcliffe, RJR's Hawai'i lobbyist: "There is no question that this [clean indoor air legislation] will again be pursued with emotion. An effort with ASHRE [sic] standards may be appropriate."¹¹⁰.

At this point the restaurant and hotel associations came forward with a compromise ventilation proposal taken straight from the tobacco industry playbook. In a January 1997 letter from Richard Botti, President of the Hawai'i Food Industry Council, to Councilmember Holmes the day before the bill was to be reported out of committee for consideration on third reading by the Council, Botti presented ventilation as a means of providing consumers with a smokefree environment, and proposed a "red light/green light" policy, which is another variation of PM's accommodation program,²⁹ in which owners post a sign indicating if smoking is permitted or not. As proposed in Hawaii, the proposal would give restaurants that hold liquor licenses the ability to dictate which hours/days they would allow smoking in their premises; restaurants are free to switch their smoking/no-smoking designation without restriction. These weak laws give the appearance of taking action without having any protective health effect.²⁹ In his letter to Holmes (with copies to the Hawai'i Restaurant Association, Hawai'i Hotel Association, and Mayor Harris), Botti stated:

The proposal we submitted [in testimony presented to the City Council the previous month] was not doing our restaurants a favor in that if adopted, it would provide a choice, but the choice comes with a substantial price tag that has an overall price tag well into the millions. Our proposal . . . provides the option of either banning smoking or providing electronic and/or mechanical air cleaning within a three year period . . . and if the location is a combination restaurant in the daytime and a nightclub or bar in the evening, that hours for smoking and non-smoking be posted by law . . . with this proposal, we will . . . allow competition and the consumer's pocketbook dictate policy, while providing consumers with a smoke-free environment . . . In looking at the positive side of our proposal, it will provide diners with cleaner air, which may be even cleaner than a total

ban on smoking, since other impurities will be removed along with the smoke.¹¹³

Botti also took issue with Holmes' proposal to include bar areas of restaurants in the smokefree ordinance, articulating the tobacco industry's standard doomsday forecast of negative economic consequences:

In our discussions . . . we talked about specific locations that are combination restaurant, bar, and/or night club. Because of the tough economic times we are in, it is not practical for most of these locations to separate out the bar if it is in the middle of the restaurant. I would suggest it would lead to financial disaster, taking into consideration costs, permits, terms of property leases, and bank loans. Yet a total ban would lead to the same end. I suggest more research on these locations.¹¹³

Holmes rejected Botti's proposal and the committee reported out Bill 75, CD2, a smokefree workplace bill (including restaurants and bar areas of restaurants, but exempting bars and nightclubs) for a final Council vote. The no-smoking provisions in the bill applied to both enclosed and partially enclosed workplaces. Health groups including the state Department of Health, ALA, ACS, Hawai'i Medical Association, and Hawai'i Medical Service Association (HMSA) submitted testimony in support of this version of Bill 75.

In a policy statement on the bill submitted to the City Council before the third reading on the Council floor, the Hawai'i Hotel Association and Hawai'i Restaurant Association continued to push ventilation as an alternative to a smokefree restaurant policy:

In an effort to reach a compromise, it is proposed that the Council consider the following alternative to Bill No. 75, C.D. 2.

- . . . [P]rovide that prior to issuing a building permit a new restaurant, bar, or night club operator would have to predetermine if the facility would either be a smoking or non-smoking establishment. This "choice" if smoking would require the installation of equipment to clean up the indoor air quality in the new establishment.
- Existing restaurants, bars, and night clubs, if they select to be a "smoking establishment," would be required to meet these indoor air quality standards within five (5) years from the day of enactment of the ordinance.
- Smoking would be permitted in bar and restaurant areas that are "outdoors."
- An industry/city task force would be required to provide indoor air quality language, standards within ninety (90) days.¹¹⁴

During the third reading of Bill 75 CD 2, supporters decided not to push for a final vote when it became apparent that Councilmember Mirikitani did not intend to support the legislation as he had in committee. Mirikitani's defection left five votes in favor, one short of the minimum needed to override a mayoral veto. A mayoral veto was expected if the bill included a smokefree restaurant provision. Mayor Harris had asked the Council to defer action on the bill in order to seek a compromise that restaurants and hotels would support. Again echoing standard tobacco industry rhetoric, Harris said he did not think it was appropriate for government to dictate to

businesses on an issue such as smoking. He said that he would support a proposal "that allows restaurants to continue to offer an area for smokers, that requires certain air-quality systems that pull the smoke out, [in] separate areas [where smokers] can continue to be clients and not be discriminated against."¹¹⁵ The City Council agreed to send the measure to the Committee on Health and Safety, chaired by John Henry Felix, for further consideration. Supporters hoped to rewrite the bill to arrive at a compromise that the mayor would support, or to pick up an additional vote in order to override a mayoral veto.

While Bill 75 sat in the Health and Safety Committee, the tobacco industry continued to cultivate third party allies in the hospitality industry to lobby for a ventilation alternative and present its position to the media and public. For example, Burson-Marsteller budgeted \$10,800 for a Hawai'i Restaurant Association "media training event" in January 1997.¹¹⁶ In February 1997, one month after Bill 75 was referred back to the Health and Safety Committee, the Hawai'i Hotel Association (HHA) paid George Benda to speak at its Oahu Chapter Meeting on ventilation and filtration systems. In an announcement sent to its members, the HHA described Benda as "a nationally recognized authority on managing the indoor environment, providing technical consulting and support to the HVAC industry, as well as building owners and managers. He . . . has agreed to brief us on alternatives to banning smoking."¹¹⁷

Far from being an independent expert, Benda was (and, as of 2008, remained) CEO of the Chelsea Group, a consulting firm first hired by Philip Morris in 1993 to recommend methods for accommodating both smokers and non-smokers as part of its Accommodation Program with ventilation systems.³⁰ The Chelsea Group received \$200,000 from PM in 1993 alone for, among other services, providing "access to Chelsea Group representatives and subcontractors upon request of an authorized Philip Morris representative for presentation and testimony."⁶⁷ Since then, the Chelsea Group has played a leading role in spreading the tobacco industry's ventilation message to the hospitality industry. For example, the firm runs the INvironment Institute's Hospitality Industry Program, which provides consulting services and materials for hospitality organizations that "do not want to ban smoking." Benda and other Chelsea Group staffers frequently comment at regulatory hearings on smokefree measures and provide "expert" testimony against smokefree ordinances at hospitality industry conventions and trade shows.^{30,}
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The Hawai'i Hotel Association continued to pay Benda through spring 1997 to advocate for ventilation as an alternative to 100 percent smokefree policies. After giving his presentation to the Oahu Chapter meeting of the Hawai'i Hotel Association in February, Benda returned to Honolulu at the end of April to speak at an event organized by the Hawai'i Hotel Association and Hawai'i Restaurant Association titled "Alternatives to a Total Ban in Eating Establishments."¹¹⁹ His presentation focused on "the technical and practical aspects of ventilation systems to improve indoor air quality."¹¹⁹

Benda was scheduled to give a presentation to members of the Honolulu City Council at a workshop on ventilation systems convened by Councilmember Felix, who aimed to bring technical experts to Honolulu "to see if there are truly effective ventilation and filtration systems."¹⁰⁸ He was not registered as a Philip Morris lobbyist and did not disclose the source of his funding.¹²⁰

Tobacco control advocates were successful in countering this element of the tobacco industry's ventilation strategy by raising questions in the media about Benda's agenda and his links to the tobacco industry. Benda cancelled the presentation to the City Council after advocates protested.³⁶

In a memo to Murray Towill, President of the Hawai'i Hotel Association, in the beginning of April, Benda projected the cost of his work on the Hawai'i "assignment" from February to May (services and expenses) at \$73,250, not including "time and expenses for any restaurant workers."¹²¹

Bill 22: Passage of Smokefree Workplace Legislation (Restaurants and Bars Exempted)

With Bill 75 sitting in Councilmember Felix's Health and Safety Committee and the prospects of enacting that or any other legislation with a smokefree restaurant provision looking doubtful, Felix (a reliable supporter of Bill 75) joined Councilmember Hannemann in March 1997 in co-introducing a compromise smokefree workplace bill that would exempt restaurants along with bars and nightclubs. The proposal, Bill 22, was roughly the same as the measure that Councilmember Holmes (with the support of tobacco control advocates) had initially planned to report out of his committee the previous year as Bill 75, CD 1, until he was persuaded by fellow council members to try for a more ambitious bill. After failing to line up the six votes or the mayoral support needed to pass smokefree restaurant legislation, tobacco control advocates on the city council were apparently more willing to take an incremental approach.

Once the smokefree restaurant provision was removed from the clean indoor air legislation, hospitality industry opposition ceased to be an obstacle. Bill 22 passed unanimously in the first, second, and third readings, moving relatively quickly through the City Council. It was signed by Mayor Harris in May 1997 as Ordinance 97-20, roughly three months after its introduction. The Ordinance made all workplaces smokefree, along with all areas within city-owned or controlled buildings and all "enclosed or partially enclosed areas" within commercial buildings, but excluded restaurants, bars and nightclubs, and hotels.

The definition of "an enclosed or partially enclosed area" in the Ordinance was subsequently criticized by the state Health Department, the AHA, and other public health advocates. Dr. Elizabeth Tam, an AHA board member and activist with the Interagency Council on Smoking and Health, expressed concern about the lack of clarity in the definition of "an enclosed or partially enclosed area" in the Ordinance:

An enclosed or partially enclosed area is any area for human occupancy that is contained on two or more sides by walls and is covered by a roof, ceiling, or overhang, such that the area of all permanent openings from the space to the open air is less than 50% of the combined areas of the walls and ceiling, roof or overhang.

One of those supporting the amendment of the definition was the operations manager of Royal Hawai'i an Shopping Center Inc., which runs several large shopping malls in Honolulu (the Waikiki center, Windward Mall and Hawai'i Kai Towne Center).¹²² Councilmember Hannemann argued afterwards that the compromise was necessary to ensure passage of the bill.

Holmes, on the other hand, while ultimately voting for the bill, fought the amendment, which he and others noted would be difficult to interpret and enforce.

The Building Department was given the responsibility of monitoring aspects of compliance such as the posting of no-smoking signs. The Honolulu Police Department was responsible for enforcement of individuals' compliance; the first violation cannot exceed \$100, the second can be no more than \$200 and the third within the same year no more than \$500. The fact that the compliance enforcement mechanism only allowed for punishment of individuals and not for punishment of businesses was a major problem, leading to almost total reliance on voluntary compliance.

Continued Efforts to Enact a Smokefree Restaurant Ordinance: Bill 82 (1998) and Bill 78 (2001)

Bill 82 – Smokefree restaurants, bars and nightclubs, hotels

In November 1998, a smokefree restaurant law, Bill 82, was introduced in the Honolulu City Council for the third time in four years. Bill 82 would make all restaurants, bars, nightclubs, and hotels smokefree. Introduced by Councilmember John Henry Felix, a longtime tobacco control advocate who had co-authored Bill 75 two years earlier, the language in Bill 82 was modeled after the California smokefree workplace law that included bars and went into effect in 1998.¹²³ The bill ultimately died in committee on November 2, 2000.

As in previous campaigns against proposed smokefree ordinances in Honolulu, the tobacco industry sought to use the hospitality industry to publicly oppose Bill 82. However, one of its key third party allies, the Hawai'i Restaurant Association (HRA), was "in a precarious state," according to a 2000 Dolphin Media Group outline of a "Hawai'i Grassroots Program" plan and budget, presumably prepared for its client Philip Morris.¹²⁴ While successful in killing Bill 93 in 1995, the Hawai'i Restaurant Association had described the fight as a "grueling battle" in a report on the issue in its newsletter shortly after "winning."¹²⁵ The tobacco industry was concerned about Bill 82 and aimed to strengthen the restaurant association, which would be used as a de facto lobbying arm and vehicle for demonstrating "grassroots" opposition from restaurant owners:

It is essential that the HRA be seen as a strong and respected organization that represents a high percentage of Honolulu's hospitality industry. A membership recruitment program must be developed and implemented so that HRA has the ability to easily and readily organize its membership upon any movement of Bill 82.¹²⁴

On behalf of the tobacco industry, Dolphin planned to "develop a script and supervise a membership recruitment phone bank program. Owners and Managers will be notified of potential tobacco legislation and the necessary establishment of a voluntary signage program."¹²⁴ Dolphin also noted its intention to "re-establish old relationships and forge new contacts with Hawai'i's state and local hospitality and business associations."¹²⁴ "The HRA and other [hospitality] industry leaders" would, according to the Dolphin plan, "serve as key speakers to notify the media of current legislation/issues related to smoking restrictions and their impacts on Honolulu's hospitality and tourism industries."¹²⁴

Dolphin also advised the tobacco industry to take advantage of the expected resignation of two city council members, one of whom was a strong tobacco control advocate, by ensuring the election of a "pro-business Council." This strategy is laid out in the Dolphin plan:

On November 2, 1998, Bill 82 had its first reading and introduction before the Honolulu City Council, passing on a 7-2 vote . . . Councilmember Mufi Hannemann, who is an opponent of smoking ban legislation, will be resigning from the Council in July in order to run for Mayor. Councilwoman Donna Mercado Kim, a supporter of smoking ban legislation, will also be resigning in July to run for a different office [state legislator]. Although Councilman Hannemann believes the Council will not act upon Bill 82 in the near future, other indications lead us to believe that this may not be the case. The resignation of these two Councilmembers is significant to our Hawai'i efforts. In the short term, we must make significant strides in re-invigorating the Hawai'i Restaurant Association, to thwart any immediate threat of a smoking ban. For long-term peace, it allows us the opportunity to insure [sic] that a pro-business Council is elected . . . It is important that we research these two Districts and identify announced candidates and their positions on business related issues. Further, we may identify and recruit candidates who are business-friendly for these districts.¹²⁴

One element of the tobacco industry's strategy for defeating Bill 82 was to "effectively demonstrate that the hospitality industry is implementing its own voluntary smoking policy program, thereby relieving some of the pressure for the [smokefree restaurant] legislation."¹²⁴ According to Dolphin, "such a program would provide support for the positions that the smoking restriction issue is under control and that legislation is no longer necessary."¹²⁴ The "voluntary smoking policy program" to which the Dolphin plan refers is apparently the sign program proposed by Mayor Harris in 1995 after his veto of Bill 93, the Council's smokefree restaurant ordinance. As noted above, in 1997, in the context of debate on another proposed smokefree restaurant law (Bill 75), both the mayor and the Hawai'i Restaurant Association acknowledged to reporters that few restaurants had put up signs.¹⁰⁸ In its plan for fighting Bill 82, the Dolphin Group saw an opportunity to build the HRA's membership while implementing the sign program:

In an effort to show that the hospitality industry has not only addressed, but has also taken action on the smoking ban issue, there must be a concerted effort to post signage within each of Honolulu's eating and drinking establishments. Coupled with the sign-posting program, Dolphin will distribute membership recruitment materials and solicit membership into the organization. In order to achieve our goal of placing window signage in highly visible establishments, we must . . . Hire a direct marketing firm to make contact with all other hospitality establishments in Honolulu for sign placement and for distributing HRA membership materials . . . Coordinate a meeting of the hospitality industry at a trendy restaurant. A meeting will be arranged at a well-known restaurant hosted by HRA with members from Honolulu's hospitality industry to 1) discuss legislative issues affecting the hospitality industry including the smoking ban issue, 2) introduce the newly established signage program, 3) solicit members for HRA and 4) generate input and participation from attendees.¹²⁴

A second element of the tobacco industry's plan to defeat Bill 82 was the familiar strategy

of creating fear within the hospitality industry about potential negative economic consequences of a smokefree ordinance:

A new public opinion research/polling study should be considered to determine the potential impact of a smoking ban on hospitality establishments as well as Honolulu's tourism Industry. The information will be a useful tool in building a ground swell of hospitality industry opposition against a smoking ban. Further, it will provide the needed arguments for HRA to present at a possible Press Conference during Council public hearings.¹²⁴

A budget of \$52,000 was projected for Dolphin's "Hawai'i Grassroots Plan" in 1998. This figure included an estimated cost of \$5,000 for an HRA membership recruitment mailing to 1,800 restaurants that were not HRA members; \$14,000 (\$7,000 per district) to "research potentially open council seats" and \$10,000 for public opinion research and polling.¹²⁴

Meanwhile, Philip Morris continued to press its Accommodation Program nationwide after the introduction of Bill 82. The Burson-Marsteller media plan for the Accommodation Program included the launching of a new advertising campaign in April 1998 with a budget of \$293,000. The plan included efforts to get materials promoting ventilation into the hands of hospitality business owners, development of key materials to make the case for accommodation, and provision of resources about ventilation. Another major part of the strategy was to argue that international tourists are heavier smokers and expect accommodation. The plan involved leveraging relationships with many hospitality trade associations in order to target their members by direct mail, advertising in trade magazines, and participation in expos and trade shows.¹²⁶

Hawai'i was also one of a number of states targeted by Philip Morris for its "Options" program, a web-based consultation program established in 1999 to promote ventilation to restaurants as a solution to secondhand smoke.³⁰ An internal Philip Morris memo outlining the Options program in 2000 includes a draft budget allocating \$6,980 to the Hawai'i Restaurant Association for sponsorship and advertising.¹²⁷

Bill 82 passed on first reading in the Council 7-2 and was referred to the Committee on Public Safety, Transportation and Environment where it died automatically on November 2, 2000 due to lack of further action. No explanation was found for the lack of action on the bill.

Bill 78 – Smokefree Restaurants

Starting on June 1, 2001, the state Department of Health and Local 5 of the Hotel and Restaurant Employees Union co-sponsored a year-long media campaign focusing on the adverse health effects of secondhand tobacco smoke on nonsmokers with emphasis on the impact on employees working in restaurants. The \$850,000 campaign was intended to make smokers aware of what they were doing to nonsmokers.¹²⁸

In August 2001, Councilmember Felix once more introduced a smokefree restaurant law (Bill 78), this time exempting bars, nightclubs, and bar areas within restaurants. Bill 78 was the fourth attempt to pass a smokefree restaurant ordinance since 1993. After being passed on the

first reading, it was referred to the Committee on Planning and Public Safety on September 11, 2001.

The hospitality industry remained a prominent opponent of a smokefree ordinance in Honolulu, continuing to advance arguments against Bill 78 about potential negative economic consequences in general and Asian tourism in particular. "What we're afraid will happen is, we'll be running off our Asian visitors," Patrick McCain, then-president of the Hawai'i Restaurant Association, told reporters after the introduction of Bill 78.¹²⁹ Similarly, a spokesperson for the Hawai'i Hotel Association asserted, "You have a higher percentage of smokers in those kinds of [Japanese and other Asian] communities and so they are more inclined to smoke and as a result they want to be able to smoke in more places. So just uniformly saying thou shalt not smoke in restaurants certainly complicates the restaurant business and we're concerned about the added economic impact of that."¹³⁰ McCain said that he would talk to Council members in an attempt to "come up with something that doesn't cause the economy to get any worse."¹²⁹ Adopting the tobacco industry's proposed solution, the HRA pushed for ventilation, suggesting that restaurant owners be given 3 to 5 years to set up a separate room that would be ventilated for smokers.¹³¹

Councilmember Steve Holmes once again joined Felix in championing smokefree legislation. In voting to move the bill out of the Planning and Public Safety Committee to a public hearing, Holmes said of the tobacco industry, "It's time we started thinking of them as a terrorist organization. It's time that we started having some moral outrage about the impact on our economy of the deaths that are caused by tobacco-related disease."¹³²

In testimony submitted to the City Council for the October 17, 2001 public hearing on Bill 78, McCain argued on behalf of the HRA that "businesses which are willing to make a capital investment in air purification systems . . . should be given an exemption. In short, air purification systems can go a long way to improve air quality."¹³³ The Hawai'i Food and Beverage Association questioned the health risks of secondhand smoke in its testimony at the public hearing, adopting a standard tactic of citing studies by the Oak Ridge National Laboratory that were conducted for the tobacco industry:

Although no one is arguing that smoking poses a health risk, the affect of second hand smoke (ETS) has not been proven conclusively as a risk to non-smokers. We see no reason to ban smoking in restaurants in Hawai'i, when there is no concrete evidence ETS is a danger to employees . . . I would expect food service workers in some fast food establishments breathe in more harmful elements from the cooking areas than they would ever receive from second hand smoke. An AMA [sic] Published in 1993 concluded the average RSP levels were 117 and 348 micrograms per cubic meter for bars and restaurants, respectively, while the Oak Ridge National Laboratory study found those levels to be 67 and 135, respectively. While higher estimates in earlier studies may be explained by the choice of establishments in which the studies were conducted, another reason for the difference could be that today's ventilation systems are more efficient. "A well-known toxicological principle is that the poison is in the dose," [Roger] Jenkins said. "It's pretty clear that the environmental tobacco smoke dose is pretty low for most people."¹³⁴

Years later, in 2006, it was demonstrated that an Oak Ridge National Laboratory study on

secondhand tobacco smoke in the workplace was actually organized and controlled by the RJ Reynolds Tobacco Company and other companies to obtain results that could be used to argue against clean indoor air regulation.¹³⁵ A more appropriate presentation of the raw data Oak Ridge collected shows that clean indoor air regulations substantially reduce exposure to secondhand smoke.¹³⁵⁻¹³⁷

Tobacco control advocates countered with testimony that the economic doomsday arguments of the tobacco industry and its allies were bogus by pointing to the fact that restaurants sales in California and municipalities in other states, if anything, increased following the implementation of smokefree laws.

Testimony from tobacco control advocates emphasized the following points: 1) Contrary to the claims of industry-funded studies, secondhand smoke is linked to tens of thousands of deaths each year, 2) Workers in restaurants deserve protection from secondhand smoke, 3) Studies examining over 82 locations that have gone smokefree indicate no decline in restaurant or hotel revenues, and 4) There are examples of restaurants in Honolulu that are smokefree and are popular with both local residents and Asian tourists. Much of the testimony was coordinated by the Coalition for a Tobacco-Free Hawai'i.

In testimony submitted to the city council, Clifford Chang, Director of the Coalition, cited studies by Glantz and Charlesworth⁹⁶ and Hyland et al.¹³⁸ showing that restaurant and hotel revenues either stayed the same or increased in various locations that went smokefree, including California and New York City, which, like Hawai'i, attract large numbers of Asian and European tourists.¹³⁹ Annemarie Charlesworth of the Center for Tobacco Control Research and Education at the University of California, San Francisco testified in person at the public hearing, discussing her study showing that smokefree ordinances do not adversely affect, and may increase, tourist business.⁹⁶

The most important testimony may have been that of tobacco control advocate and Coalition Board member Mark Levin, a law professor at the University of Hawai'i who studied smoking policy and regulation in Japan. With the first evidence-based testimony on Japanese tourism, Levin debunked the long-standing argument of the tobacco industry and its hospitality industry allies that a smoking ban would decimate the Japanese tourism upon which Hawai'i had been dependent for years. That argument was based on the observation that a large percentage of Japanese tourists smoke. Levin presented data from the Japanese government showing that only 27% of Japanese smoke, and more importantly, that 76.8% of Japanese, including more than 50% of smokers, supported workplace smoking bans.¹⁴⁰

Not only did the tobacco control organizations provide direct support for Bill 78, but they recruited a number of individuals to provide testimony in support of the measure and generated grassroots phone calls, emails, faxes and letters to Council members in support of the bill.^{141, 142} The Coalition targeted residents in three key Council districts with a special mailer to generate grassroots activity. A coordinator/consultant for an earned media campaign was hired and press packets were distributed to print and electronic media.¹⁴¹

News media attention to Bill 78 was extensive from the beginning, but, as with prior

proposals for clean indoor air legislation, Honolulu's two main newspapers split on the issue, with the *Advertiser* endorsing Bill 78 and the *Star-Bulletin* opposing it. *The Honolulu Advertiser* focused on the issue of protecting the health of restaurant employees, and argued that after the bill's passage the exemptions for bars and nightclubs should be gradually eliminated.¹⁴³ The *Star-Bulletin's* editorial in opposition to Bill 78 repeated the familiar concern about loss of tourism and also went so far as to argue that secondhand smoke poses no health risks, ignoring the 1986 Surgeon General's report that identified secondhand smoke as a cause of lung cancer and pointing out that "simple separation of smokers and nonsmokers in the same airspace"²⁸ was not adequate to control exposure to secondhand smoke, as well as and all the other scientific evidence:

[Bill 78] should not be taken seriously. While tobacco smoke is annoying to many restaurant employees and patrons, the evidence that it causes health risk is doubtful. Hawai'i's restaurants should continue providing smoking and nonsmoking sections but should not be subject to a total ban . . . Hawai'i restaurateurs are justifiably concerned about the reaction to a ban by tourists from Asia, where smoking lacks the stigma that it has acquired in the United States.¹⁴⁴

After Bill 78 failed to pass on the second reading on October 17, it was placed on the Council agenda for a final vote on November 7 to decide whether to kill the bill, leave it on the council agenda in limbo, or send it back to committee. Mark Levin sent an email on October 22 to Coalition head Clifford Chang discussing strategy. He expressed optimism about the prospects for passing a smokefree restaurant and bar ordinance in Honolulu in the near future, regardless of the outcome of Bill 78:

I think that Wednesday's hearing placed us in a position of strength . . . We certainly would like Bill 78, but we do not need Bill 78. We are going to win a restaurant (and bar) ban in Honolulu within 2-3 years . . . sooner or later the forces and trends we identified at the hearing will simply make the issue too clear for anyone to avoid. Time is on our side. On the other hand, Jon Yoshimura and HRA saw that standard arguments that have been thrown at the public by the opposition were not flying . . . Because a ban is inevitable in the not too distant future, Jon should be reminded that he has the choice of being on the winning side of this when it happens or not.¹⁴⁵

In the email, Levin stressed that agreeing to a compromise bill favorable to the industry would be a mistake:

I think we can and should be very careful regarding compromise discussions. Jon will be hoping that he can put himself out as a hero – putting a compromise plan together on his watch that gives him an accomplishment to wave around. However, if this is correct, he needs this win more than we need it, and we should guard our ground against surprises or unwanted settlement positions very carefully . . . there is no reason whatsoever to lock ourselves into any plan or program that will, in the long run, be disadvantageous to public health needs . . . ventilation exceptions, or anything that would seem to give up outdoor dining areas or bar areas to the end of time should be unacceptable. We can do better by walking away and taking this before the Council again and again until they get it right.¹⁴⁵

As predicted, Councilmember Yoshimura proposed a problematic compromise: four non-smoking days in restaurants each week (Sat-Tues.) and 3 days when smoking would be permitted (Wed.-Fri.).¹³¹ Tobacco control advocates opposed the compromise. As Julian Lipsher of the Department of Health noted the day before the final vote on Bill 78, such an arrangement would pose a substantial enforcement problem, confuse the public, and fail to protect employees from exposure to second-hand smoke in the workplace.¹³¹ Bill 78 went before the City Council for a final vote on November 7, 2001, as originally proposed (100 percent smokefree restaurants) and without the Yoshimura compromise, and was killed in a 5-4 vote. The four pro-health council members remained steadfast in their support for the bill.

City council members opposing the proposed smokefree restaurant ordinance included Council Chairman Jon Yoshimura, who said that the city should stay out of what is a business decision for restaurants. State campaign finance data indicate that Yoshimura received just over \$1,200 from tobacco companies in 2000. Two other council members who voted against the smokefree ordinance, Mirikitani and Mansho, each received contributions of more than \$2,200 from tobacco companies. Another opponent, newly elected Romy Cachola, had received contributions from the tobacco industry in his previous position as a state legislator.¹³¹

Passage of a Smokefree Restaurant Ordinance in Honolulu: Bill 99 (2002)

Six days after the defeat of Bill 78, its four supporters, Felix, Bainum, Holmes and Okino, introduced Bill 99 that was nearly identical to Bill 78, but would not go into effect until 180 days after final passage. As introduced, Bill 99 would exempt all bars, nightclubs and hotel rooms.

A few weeks later, the entire landscape changed. At the early December 2001 Hawai'i Association of Counties meeting, members of the City Council of Honolulu and the county councils of Kaua'i and Maui counties announced they would be introducing legislation that would ban restaurant smoking.¹⁴⁶ City and county leaders were grappling with the issue because the state Legislature had steered clear of the controversy, and it had become clear that restricting smoking had become an important public issue.¹⁴⁷

On December 1, 2001, Honolulu City Councilmember Mirikitani retired from office just before his sentencing on federal theft, fraud and bribery convictions. His vacant seat was filled by former State Senator Ann Kobayashi in a special election on January 26, 2002. Prior to the election, Kobayashi said she supported a ban on smoking in all restaurants.¹⁴⁸

After consistently voting against previous smokefree bills, Jon Yoshimura, the Honolulu City Council Chairman, switched his position and proposed a compromise bill in December 2001 that would introduce a provision allowing restaurants to apply for permission under certain conditions to be "all smoking" for up to two years after the ordinance took effect, but becoming smokefree after expiration of the permit. Unlike Bill 99, Yoshimura's bill would include restaurant bars in the ban.¹⁴⁶ Yoshimura, who was expected to run for lieutenant governor the following fall (he ran and lost in the primary), told reporters that it had become clear in talking with council members from other Hawai'i counties at the Hawai'i State Association of Counties meeting in early December that "it is time now that we work aggressively toward coming up

with some policy to prohibit smoking in restaurants."¹⁴⁷ Yoshimura stated that his previous votes against anti-smoking bills had been misunderstood: "I am not pro-smoking. . . I am still pro-business."¹⁴⁷

Bill 99 passed on first reading on December 12, 2001, 6-2. Bill 99 was amended in the Parks and Public Safety Committee to incorporate Chairman Yoshimura's compromise to allow restaurants to elect to remain all-smoking for up to two years, and passed 5-2 on second reading on January 30, 2002,. The amendment also exempted bar areas of nonsmoking restaurants if the bar area was separately enclosed and ventilated, and amended the definition of "bar" to more clearly differentiate the exempt "bar" from the bar area of a nonexempt restaurant and to tighten up the bar exemption by applying the food to alcohol sales ratio [gross food sales less than one-third of gross alcohol sales] to each business day. Smoking was also allowed in a "separate open air area of a restaurant" that had to meet minimum standards of separation from the restaurant itself. The effective date of the new ordinance was July 1, 2002. The bill was again referred to the Parks and Public Safety Committee.

Bill 99 was again amended in committee to terminate the exemption for the bar area of a restaurant on July 1, 2003, one year after the effective date of the ordinance, and changed the food to alcohol sales ratio test for an exempt bar from one business day to one month. The amendment also applied the same food to alcohol sales ratio test for the exempt bar area of a restaurant as applied to an exempt bar. On February 20, 2002, Bill 99 with the Committee amendments came up for third reading and was further amended on the floor by changing the bar exemption food to alcohol sales test from one month to a July 1 to June 30 annual period under which a business qualified prospectively for a one-year period July 1 to June 30 by meeting the food to alcohol sales ratio in the preceding year. A last ditch attempt by Councilwoman Mansho, the only smoker on the Council, to soften the bill was rejected.¹⁴⁹

Bill 99 passed 7-2. Long-time smokefree champions Bainum, Felix, Holmes and Okino were joined by the reformed Yoshimura and new Councilwoman Kobayashi. Councilmember Cachola, who had consistently opposed Bill 99, switched at the last minute and voted for Bill 99.¹⁴⁹

This time, tobacco control advocates were successful. Bill 99 was passed by a veto-proof 7-2 vote and signed into law by Mayor Harris, who had vetoed the 1995 restaurant smoking ordinance. Harris had vetoed the 1995 ordinance based on assurances from the restaurant industry that they would regulate themselves. Those assurances were not met, so Mayor Harris signed Bill 99.¹⁴⁹ Prior to the veto-proof 7-2 vote on Bill 99, Harris had not taken a position on the bill, but indicated he wanted some kind on legislation in place before he resigned in July 2002 to run for governor.¹⁵⁰

Bill 99 did not change the penalties for violations of the Honolulu smoking ordinance enacted in 1997, which for the time were somewhat draconian. A person smoking in violation of the ordinance faced a fine of \$100 on the first offense, \$200 for the second violation within one year of the first violation, and \$500 for the third violation within one year of the first.

As with previous attempts to pass smokefree restaurant legislation in Honolulu, the

potential impact on tourism was a central focus of debate between tobacco control advocates and opponents. The familiar third party allies of the tobacco industry-the Hawai'i Restaurant Association and the Hawai'i Food and Beverage Association-lined up in opposition to Bill 99.

Presentation of evidence by Mark Levin in support of Bill 78 debunking the industry's argument that smokefree legislation would hurt Asian tourism was instrumental in gaining the support of a council member on the fence. In a 2005 interview, ordinance supporter Levin recalled that Councilmember Gary Okino, who was not on the Council during the consideration of Bill 82 in 1998, was concerned about the Japanese tourism issue:

We met with Gary Okino and I think Gary was very influenced by [the information on Japanese tourism] because that had been one of the things that had been gnawing at him . . . We met him and he really came around and he was very, very good. He really believed in the issue as a public health issue for workers as it had been explained to him, and believed the economic information that it wouldn't sink."¹⁵¹

In addition to individual lobbying, public support for a smokefree restaurant law may also have influenced some council members who ultimately voted for Bill 99. In February 2002, two weeks before the bill passed in the final vote, a statewide poll of 600 likely voters conducted for KITV-4 News and the *Star-Bulletin* found that nearly two-thirds of Hawai'i residents favored legislation making restaurants 100 percent smokefree. Responses on Neighbor Islands mirrored those on O'ahu.¹⁵² This was the first reported poll of Hawai'i voter attitudes on smokefree restaurants.

In the days leading up to the final vote, Councilmember Rene Mansho, a consistent opponent of smokefree legislation on the stated grounds that it would hurt business, sought to amend Bill 99 to allow smoking in indoor bars within restaurants after 10 p.m., in restaurant areas with separate ventilation systems, and to relax restrictions on outdoor smoking. The president of the Hawai'i Restaurant Association, Patrick McCain, praised her efforts to "give restaurants a little bit of a break."¹⁵⁰ Mansho's suggested amendments were not adopted.

One of the seven votes for Bill 99 came from newly elected Councilmember Ann Kobayashi, who was sworn in a few days before the final reading on the bill; the vote on Bill 99 was her first Council meeting. She replaced Councilmember Andy Mirikitani after he was convicted of federal theft, fraud and bribery charges in July 2001 for receiving kickbacks from two employees in exchange for bonuses. Mirikitani, who was once a supporter of clean indoor air legislation (he co-authored the smokefree restaurant bill with Steve Holmes that was passed in 1995 and vetoed by Mayor Harris) voted against Bill 78 in 2001, citing concerns about the economic consequences after September 11.¹⁵³ Councilmember Romy Cachola, who had consistently voted against past smokefree bills and was expected to oppose Bill 99, switched his vote at the last minute.¹⁴⁹ Cachola had previously been in the state legislature, where he had been "a tobacco industry friend for a long time," according to tobacco control advocate Levin.¹⁵¹ Cachola said at the time that he had reservations about the bill but voted for it because he expected it to pass either way with the six votes needed to override a mayoral veto.¹⁵⁴ The two council members who voted against Bill 99, Rene Mansho and John DeSoto, were solidly allied with business interests hostile to Bill 99.¹⁵¹

The smokefree restaurant ordinance took effect on July 1, 2002. It requires "clearly legible signs" that include the words "smoking prohibited by law" with letters at least one inch in height. These signs must be "conspicuously posted in all places where smoking is prohibited." The law gave the Honolulu Department of Planning and Permitting jurisdiction for administration and enforcement. The fine for failing to display proper signage is \$25. Violations involving smoking are handled by the Honolulu Police Department, which can cite individual smokers for breaking the law. The absence of penalties for restaurant owners is a major weakness in the enforcement provisions. A second problem with respect to enforcement is that public health staff have no jurisdiction because the Honolulu ordinance is a county law and Hawai'i has no county-level health departments. Only county public employees can enforce county legislation; in Hawai'i, this means the police, sanitarians, or fire department. Another problematic issue involves the definition of outdoor dining areas. Drawing the boundaries lines between "indoor" and "outdoor" dining areas is somewhat complex, and thus there was some early confusion about when the smokefree law is or is not applicable.¹⁵¹

The state Department of Health and the Coalition for a Tobacco-Free Hawai'i developed a \$66,000 television, radio and newspaper advertising campaign to educate restaurants and patrons about the new law. The advertising campaign ran throughout the first month that the ordinance was in effect. The Coalition for a Tobacco-Free Hawai'i sent a brochure explaining the ordinance to restaurants in Honolulu and held a seminar on implementing the law. Brochures were also printed in Japanese and a video was shown to tourists arriving in Honolulu on flights from Japan.¹⁵⁵ Councilmember Holmes, a key champion of smokefree legislation in Honolulu from the beginning, continued to take the lead at the implementation stage by offering his office and staff to answer questions about the new law.¹⁵⁵

Enforcement of the new ordinance was complaint-driven. Honolulu Police had been enforcing the existing restrictions on smoking in most Honolulu County workplaces and public places. Because of that history, it was believed that enforcement of the restaurant smoking restrictions would be voluntary self-enforcement.¹⁵⁵ According to the spokeswoman for the Honolulu Police Department, no arrests or citations had been issued for violation of the smokefree ordinance one year after it took effect.¹⁵⁶

One year after the law took effect, the National Restaurant Association's executive summary for 2003 projected a 3 percent sales growth in food and drink in Hawai'i,¹⁵⁷ compared to 1.3 percent the year before.¹⁵⁸

Conclusion

After passage of the broad smokefree ordinance in 1997 that made most Honolulu County workplaces and public places smokefree, tobacco control advocates, despite several attempts, could not muster the City Council support to add restaurant employees to the body of protected workers. In 2002, they were able to take advantage of important political changes on the Council that made for success – one marginal opponent switched his opposition when he decided to run for Lieutenant Governor, and another was replaced by a pro-tobacco control member. The state Department of Health media campaign that started June 1, 2001 focusing on the health impact of secondhand smoke on restaurant workers may have contributed to the

polling data in January, 2002 that showed strong support for a smokefree restaurant law. In the end, it was the persistence of the tobacco control advocates in continuing the quest for smokefree restaurants that carried the day. Honolulu's Bill 99 set the stage for the Kaua'i and Maui ordinances that would follow shortly.

Maui

Maui's first smokefree legislation came in 1990, when the Maui County Council passed an ordinance making all county facilities smokefree. In 1997, the Council passed an ordinance extending the smokefree law to most public-use facilities. This included retail stores, financial institutions, healthcare facilities, elevators, movie theaters, auditoriums, museums, and art galleries. Also made smokefree were the common areas of commercial buildings, hotels and multifamily housing units. Unlike Bill 22 that passed in the Honolulu City Council in 1997, Maui did not include workplaces in the bill. The maximum penalty for smokers was a \$25 fine. Enforcement responsibility was given to all county personnel authorized to issue a summons or citation and to police officers. The person in control of any place required to be smokefree was also subject to a maximum fine of \$25 for failure to post the required signage. Signage enforcement was assigned to the Department of Fire Control. Maui County Councilmember Kalani English, Chair of the Economic Development and Environment Committee, told reporters at the time that he hoped the island's hotel and restaurants would voluntarily develop policies for addressing the health hazards of secondhand smoke. The Council sought to avoid the tensions that had occurred in Honolulu over attempts to pass smokefree restaurant legislation.¹⁵⁹ No such voluntary policies were ever implemented.

In July 2002, five months after the Honolulu smokefree ordinance passed, the Maui County Council proposed a bill that would amend the smokefree public facilities law to add restaurants and bars within restaurants to the smokefree ordinance. Once again, workplaces were not included in the proposed ordinance. The bill was drafted and introduced by Dain Kane, acting Council Chairman, whose grandmother had died of lung cancer. Kane began working on the bill prior to the passage of smokefree legislation in Honolulu in keeping with the agreement made by county council members at the December 2001 Hawai'i State Association of Counties meeting. The main force behind the effort was the Maui Tobacco-Free Partnership, chaired by Graham Watson of the American Cancer Society. The bill was supported by the state Department of Health and the Coalition for a Tobacco-Free Hawai'i.

The Maui law met little opposition. The few opponents who did show up at the committee hearing on the bill voiced the standard argument about negative economic consequences. Supporters countered by pointing to studies showing that smokefree restaurant legislation on the U.S. mainland had no negative effect on business. County Economic Development Coordinator Roz Baker reported at the hearing that "In some places like Boulder [Colorado] and Corvallis, Oregon, the revenues for those establishments actually went up".¹⁶⁰ The contentiousness that arose during the debate over the passage of the Honolulu ordinance did not emerge in Maui. Chairman Kane said at the time that he was not aware of any roadblocks as the bill went to the full council; he said in a newspaper interview, "The time is right."¹⁶⁰ In a 2005 interview, Sandy McGuinness, project coordinator for the Maui Tobacco-free Partnership and board member of the Coalition for Tobacco-Free Hawai'i, recalled the campaign for Maui

smokefree legislation:

. . . it was like a dream campaign, the dream passage, everything. As I mentioned, our council chair [Dain Kane] was very organized and he did a lot of research, his staff did a lot of research, and we coordinated the grassroots people to come and testify at every hearing. So when it was at committee, we testified and we had included a lot of youth. We made sure that we covered every single piece that could be questionable about a restaurant smoking ban, so someone who was [unintelligible] condos talked about her experience renting condos out and how people prefer smokefree ones. We had someone else do the research on economics, report on that, and [unintelligible] and the Heart Association reported on the health effects of secondhand smoke. We did a lot of things. Tourism, I know we had a piece in there. We don't have as many Japanese tourists as Oahu does, but we still put in a piece there about how it wouldn't hurt tourism and how the Japanese are more than happy to comply with the laws that are in place when they visit. We have a lot of good resources to help us. Mark Levin from UH helped us with a lot of that information so it was really neat. We had a number of people testifying. We only had three minutes. So each person focused on a different topic. From the first committee hearing, there was only one person speaking in opposition to the ban and that was someone who owned a cigar store. . . . Nothing ever happened of it [his threatened opposition].¹⁶¹

McGuinness noted that tobacco control advocates also provided a written packet to each council member about what to expect from the tobacco industry. The health advocates were prepared to testify in the event that there was opposition, but none materialized. Maui's tobacco control community also had the support of the mayor; according to McGuinness:

There was no opposition and the mayor was in support of it and one of his staff – I asked if we could use one of the rooms and she gave us his lounge to celebrate. So we ordered food and he even came to visit with us after we testified and he had lunch with us and we all celebrated and it was great. And then he invited us all back for the signing. We recruited a lot of kids . . . he sent a bus out to bring all these kids and it's about a two-hour drive.¹⁶¹

Council Chair Kane argued that part of what went wrong on Oahu, in terms of the divisive debates and initial failures to pass smokefree legislation was that opponents of the ordinance felt they hadn't been consulted. He credited his staff with laying the groundwork for relatively easy passage of the bill on Maui. First, Kane's staff conducted a survey of Maui restaurant owners and found that nearly 70 percent supported a smokefree ordinance. Second, Kane and his staff met with groups and individuals to talk about the bill prior to its introduction to inform people of what was coming.¹⁶² Kane noted that where much of the debate in Honolulu centered on the effect of the smoking policy on Japanese tourism, the issue was of lesser concern on Maui because it has a larger percentage of U.S. mainland visitors than O'ahu. He said that over 90 percent of the people who had called his office about the issue had expressed support for the ordinance.¹⁶⁰

Much of the debate over the bill in Maui occurred among tobacco control supporters, focusing on whether it was strong enough. After the bill was unanimously passed by the Human Services and Economic Development Committee in mid-July and before going to the full council the first week in August, Councilmember Jo Anne Johnson considered introducing an amendment to extend the law to bars and nightclubs; she framed it as an issue of workers' health.¹⁶³ At the County Council committee hearing at which the bill was proposed, Stephen Levine, branch director of the ALA, argued for including bars: "A Group A Carcinogen is just as deadly in a bar or nightclub as in a restaurant," he noted. In excluding bars and nightclubs, Kane said he wanted to "take small steps rather than leaping strides."¹⁶³ Similarly, County Economic Development Coordinator Roz Baker argued that passing a law limited to restaurants was preferable because adding bars would create more obstacles to passing the bill and "probably give more people heartburn."¹⁶²

For Sandy McGuinness of the Maui Tobacco-Free Partnership, the most significant tensions that arose during the campaign did not involve opponents of smokefree legislation but rather centered on relations between the local and state coalitions:

The problem we faced was from our own side and that was that I had requested that the state coalition not bring people over the same way they had before because I've gone to several hearings and I know pretty much every council member, some more closely than others. And I didn't want to burden them with the same speech that they had heard weeks ago and so at the time, the state coalition didn't honor our request and they came and did the same thing they did before. We noticed a problem with them sort of stepping over us and saying, "We can do this, we can do that," instead of working with us. But that's all changed now, but at the time it was very disturbing. Fortunately, it didn't hinder the final vote or anything because it passed very easily.¹⁶¹

The Maui ordinance passed the full council unanimously in August, 2002. It was the strongest of the county smokefree laws with respect to restaurants, prohibiting smoking in all areas of restaurants, both indoors and outdoors. The law includes bar areas of restaurants and open air, outdoor, or partially enclosed areas. (A restaurant may have a designated area outside away from the restaurant entrance for patrons to smoke.) Nightclubs and stand-alone bars (defined as establishments with annual food sales that are less than one-third of gross sales of alcoholic beverages) are exempt. Any smoker violating the law can be cited and punished by a fine of not less than \$25 and not more than \$50. Enforcement responsibility was given to all county personnel authorized to issue a summons or citation and to police officers. The person in control of any place required to be smokefree was also subject to a maximum fine of \$50 for failure to post the required signage. Signage enforcement was assigned to the Department of Fire Control.

Implementation and enforcement have been problematic, according to McGuinness, in terms of a clear understanding of governmental responsibilities:

I think things would have been a lot different with regards to the implementation and the enforcement had [the mayor] been reelected. January 1 was when [the bill] went into effect and January 1 was when the new mayor went into office. So not only did the

mayor change, but so did pretty much – they kept one or two cabinet members, but everyone else had changed and no one knew what the heck was going on. That was one of the reasons I wanted to have those few minutes with the [new] cabinet members, but that never happened. So I think everyone is a little bit unclear about who's responsible for what. And I called everybody. I called the police chief and I called the finance department and the commission because everyone was saying that someone else is responsible for this. Nobody really fully understood. I don't think they do yet . . .

It's supposed to be [the police that enforce the law]. But it still takes that person from the restaurant to call and report it and then to wait for the police to come and have to see that person smoking a cigarette to be able to fine him or her. So it's not efficient . . . We asked the police chief if during a slow time, could they just do random checks in restaurants since we receive reports that are just blatantly undefined. Can they just stop in and let them know that you cannot do this? And he said no, he wouldn't because they're totally understaffed and the patrolmen are working double-shifts and things. So I can understand that, but also the way the law was written was that it could be the police officer or someone designated by the mayor. So I don't know why he didn't have sheriffs doing it or whatever. He could actually do that – designate others to help with enforcement. So we hit a roadblock there. Fortunately, we know of just a few restaurants that are not complying.¹⁶¹

It is not clear why the public health advocates left out workplaces in general to concentrate on restaurants.

Kaua'i

Kaua'i County, the fourth largest county with 5% of the state's population, passed an ordinance in 1987 which prohibited smoking in some places owned or operated by the County, including meetings with ten or more persons, enclosed auditorium or sports arenas, and enclosed areas of community centers where ten or more persons are gathered. This very limited ordinance would remain unchanged until 2002.

In 2001, at the same time that the Maui County Council began to consider smokefree restaurant legislation, the Kaua'i County Council began similar discussions as agreed to by county council members at the December 2001 meeting of the Hawai'i State Association of Counties. Initially, the issue seems not to have been on the radar of the tobacco industry or its hospitality industry allies. No restaurant owners attended a Kaua'i County Council workshop on smokefree restaurant legislation in December, 2001. Councilmember Jimmy Tokioka, noted this lack of interest, who took the lead in championing smokefree restaurant legislation in Kaua'i. A restaurant owner himself, Tokioka characterized restaurateurs' absence as a concession that opposition to some version of a smokefree restaurant was "indefensible."¹⁶⁴

This sentiment was echoed by Council Chairman Ron Kouchi, who said that restaurant representatives apparently accepted smokefree legislation as inevitable. Noting that he had not received a single call protesting the legislation, Kouchi contrasted the lack of opposition with the reaction when the Kaua'i County Council had previously considered smokefree legislation in

1985. He recalled the 1985 debate as being "very nasty and very ugly."¹⁶⁴ On the other hand, the Coalition for a Tobacco-Free Kaua'i was told by Kouchi at the workshop that their demand for a 100 percent smokefree bill was unlikely to be met. "Sometimes when you put all or nothing on the table, if you don't get all, you get the alternative," he stated.¹⁶⁴

In July 2002, Councilmember Tokioka introduced a smokefree workplace law, Bill 2048. Bill 2048 was nearly identical to the recently passed Honolulu smoking ordinance, but it exempted small businesses having not more than five employees per workshift. While the bill was in the Finance/Intergovernmental Relations Committee, members of Tobacco-Free Kaua'i, with coalition coordinators Charles Roessler and John Hunt (a Department of Health employee) leading the way, worked with Tokioka on amendments to make it stronger than the Honolulu and Maui bills in some respects. Heading into the third committee reading in September, 2002, Bill 2048 as proposed would have designated all Kaua'i workplaces smokefree, including outdoor dining areas of restaurants and bar areas within restaurants. Free standing bars and nightclubs were exempted, which was acceptable to tobacco control advocates.

The one other exemption that remained in the bill at this stage was viewed by advocates as problematic: "small business family-owned restaurants" would not be required to go smokefree. "Small business family-owned restaurant" was defined as any owner-operated restaurant with no more than five employees on the business premises, where all of the restaurant's employees are members of the owner's family. Councilmember Tokioka made a commitment to a few family-owned restaurants to exempt them from the smokefree ordinance; these restaurant owners said that their customers were predominantly retirees, many of them smokers.¹⁶⁵ Tokioka told tobacco control advocates that he promised to include the exemption because the Kaua'i County Council had recently passed an ordinance requiring businesses to connect to the county sewer system, which forced restaurants that had been paying \$600 per year for septic system maintenance to pay \$600 every few months in sewage fees. He said that he was reluctant to further burden them financially.¹⁶⁵

Of course, there was no evidence that going smokefree would have a negative effect on business for small restaurants a point that tobacco control advocates emphasized in urging Tokioka to remove the exemption. In a letter sent to each member of the Kaua'i County Council a few days before the third committee hearing on the bill in September, Clifford Chang, then-Director of the Coalition for a Tobacco-Free Hawai'i, noted that 1) over 20 studies examining objective measures such as sales tax receipts had found smokefree restaurant ordinances to have either a positive effect or no financial effect; and 2) there was no evidence that Oahu restaurants had lost business after going smokefree two months earlier.¹⁶⁶ Public health advocates also argued that workers in small family-owned restaurants deserved the same protections from second-hand smoke as all other employees on Kaua'i. Another major concern raised by this exception related to compliance and enforcement. In the same letter to council members, Chang noted:

The success of smokefree ordinances is not because of 'heavy handed' law enforcement, but because the public clearly understands the provisions, supports them, and willingly complies . . . If some family-owned restaurants can allow smoking and others cannot, based on whether they employ non-family members or not, it is not clear to the public

what the accepted norm is. How am I to know, as a patron, whether the restaurant employs non-family members or not? How will I know if the restaurant is in compliance with the law or not?¹⁶⁶

At the committee hearing in September, those testifying in support of strong smokefree legislation and urging removal of the small business exemption included Bruce Anderson, Director of the Hawai'i Department of Health, and representatives for the American Cancer Society, the Coalition for a Tobacco-Free Hawai'i, Tobacco-Free Kaua'i, and Smoke Free Hawai'i Coalition. The Coalition for a Tobacco-Free Hawai'i submitted petitions signed by several hundred people supporting a bill without the exemption.¹⁶⁴ In his letter to council members on behalf of the Coalition for a Tobacco-Free Hawai'i, Chang stated that "the Coalition supports the passage of a bill on Kaua'i that is as strong, or stronger than that which has been passed on O'ahu and Maui."¹⁶⁶ Several restaurant owners protested the bill at the committee hearing, complaining that they had not been given adequate notice about the measure and that it would hurt business. At this point, the Hawai'i Restaurant Association got involved, testifying at the committee hearing that the bill should exempt restaurants and outdoor public areas.¹⁶⁷ Councilmember Tokioka said the measure had been discussed since November, and noted that only one restaurant owner showed up when the Council sponsored a workshop on the issue the previous year. Similarly, the Council sent a survey to restaurant owners earlier in the year and received only a few responses.¹⁶⁸

The committee amended the bill to remove the exemption for small, family-owned restaurants, as tobacco control advocates had hoped, but simultaneously significantly weakened the ordinance by adding a "part-time restaurant/bar" provision as well as retaining the exemption for workplaces with 5 or fewer employees. The bill was voted out of committee with the 3 of 5 committee members supporting it. The part-time restaurant/bar provision would allow smoking at combination bars and restaurants during hours when meals were not served. A restaurant would be allowed to go back and forth between declaring itself a restaurant (with smoking not allowed) and a bar (with smoking allowed). This amendment was intended to allow the Lihue Cafe to operate as an exempt bar at night when it did not sell food, only alcohol. It sold food only at lunchtime. As written, however, it would allow any restaurant with a bar to allow smoking by simply declaring itself a bar at any time it wanted.

Tobacco control advocates strongly opposed the new provisions. For example, Dave Walker, Chairman of the AHA's Kaua'i division, expressed his concerns in a letter to council members:

I am concerned about the 2 exemptions currently included in the proposed bill to restrict smoking in workplaces. The first exemption, which would allow businesses with 5 or less employees to continue to allow smoking, would not protect employees in the majority of Kaua'i businesses. According to state records, Kaua'i has 1,935 businesses and 1,072 (roughly 58%) of them would fall under the category of having less than 5 employees.

My second concern is in regards to the exemption that would allow restaurants to switch at will from being a restaurant to a bar in any given day. I am attaching a document from

the Americans for Non-Smokers' Rights that outlines this policy as one propagated by the tobacco industry as a way to confuse the public and make the law hard to enforce. With patrons not knowing when a restaurant allows smoking, there will be frustration among both smokers and non-smokers and eventually the law will become meaningless as no one will adhere to it. Whether a business is a restaurant or a bar should be determined strictly by tax records. If a business earns more than 30% of its gross income from the sale of alcohol it should be registered as a bar. If not, it should be registered as a restaurant. Businesses should be required to proclaim whether they are restaurants or bars and then adhere to the law depending on their designation. It is the only way that the law can be made clear to patrons and enforceable by County officers.¹⁶⁹ Similarly, a letter from the American Cancer Society, American Heart Association and American Lung Association to the Kaua'i County Council a few days before the final vote characterized the part-time restaurant bar provision as a "red light/green light" exemption, a common tobacco industry tactic that would render the smokefree law ineffective. Expressing concern about setting a precedent with a weak law, these groups threatened to pursue a mayoral veto if the bill was passed in the County Council:

We respectfully request the deletion of this provision from Bill 2048. If the Kaua'i Council passes this provision, the national health organizations will have no alternative except to pursue a veto of the legislation. The proposed exemption would give restaurants that hold liquor licenses the ability to dictate which hours/days they would allow smoking in their premises. They would be free to switch their smoking/no-smoking designation without restriction. This will lead to confusion among patrons . . . [and] confusion as to when smoking is permitted or forbidden, and eventually lead to non-compliance . . . This type of exemption was first introduced by Philip Morris's Accommodation strategy and is suggested as a ploy to defend against smoking restrictions . . .

A final but serious concern is that broad variations in restaurant smoking restrictions from county to county will set the table for the tobacco industry to approach the state legislature, where it invests much of its local political contributions, and push for statewide uniformity through a preemptive law. It will argue that visitors are confused by the array of laws governing smoking in restaurants across the state and that uniformity is needed in the law. The industry has sought to preempt home rule on numerous occasions in the past, once even succeeding in guiding a preemptive bill through the legislature before health advocates fought successfully to encourage Governor Waihee to veto it.¹⁷⁰

In response to the letter, Councilmember Ron Kouchi introduced an amendment to remove the part-time bar/restaurant provision but the Council rejected this proposal in a 4-3 vote. The council members who opposed Kouchi's proposal expressed concern that removing the provision would adversely affect establishments that are restaurants only during lunchtime and then reopen in the evening primarily as bars or clubs. Two businesses operated on Kaua'i in this manner at the time.¹⁷¹

The Kaua'i County Council passed the bill by a 7-0 vote in October of 2002. Bill 2048 makes workplaces and restaurants smokefree, exempting: 1) bars and nightclubs, 2) workplaces

with 5 or fewer employees per shift, and 3) "separate open air areas of a restaurant," at least ten feet away from tables within the main non-smoking dining area. It also retained the "part-time restaurant/bar" provision allowing restaurants that have bars to declare themselves a bar in some hours of operation (when no more than one-third of sales come from food) and a restaurant in others:

"Part-time Restaurant/Bar" means an establishment that changes its use from that of a restaurant to a bar during a specified, posted time during its hours of operation. Signs shall be posted to indicate its hours of operation in which it serves as a restaurant and as a bar. Smoking shall be permitted only during the specified time the establishment operates as a bar. The hours of operation that the establishment operates as a bar shall be filed with the Department of Liquor Control. The requirement that a part-time restaurant/bar must file its hours of operation as a bar with the Department of Liquor Control was an attempt by the County Council to address the concern of the tobacco control advocates that restaurants with bars would abuse the exemption and switch back and forth at will.¹⁷²

When the bill passed, a pronounced division emerged between members of the state Coalition for a Tobacco-Free Hawai'i and the Kaua'i coalition over the appropriate response. State coalition leaders believed that they should urge the mayor to veto the Kaua'i bill because it would do more harm than good, whereas the local tobacco control coalition wanted the bill signed despite its flaws.

Don Weisman of the AHA suggested in a 2005 interview that tobacco control advocates who supported the bill were being manipulated by the tobacco industry.³⁶ Of particular concern to the AHA, ALA and other health groups was the precedent that would be set for the Big Island, the one county that had not yet passed a smokefree workplace or restaurant ordinance, and the danger of the tobacco industry seeking statewide preemption. Cliff Chang of the state Coalition for Tobacco-Free Hawai'i provided the following analysis of the Kaua'i bill in an email to coalition members:

The bill allows for . . . "part-time restaurants/bars" . . . by allowing a restaurant to go back and forth, this means that:

- A) The workers in a restaurant will be exposed to second hand smoke when it is operating as a bar.
- B) It is very difficult, if not impossible, to enforce, as it is left up to each restaurant to decide when it is operating as a bar. Technically, a restaurant is to be operating as a bar when it meets the definition of a bar (i.e. when food revenues constitute no more than one third of the total revenue of food and alcohol) and the establishment must file the hours that it is operating as a bar with the Department of Liquor Control (this was added in response to the concerns raised by the public health community that this provision allowed restaurants to go back and forth pretty much whenever they wanted to). However, the requirement to file the hours with the Dept. of Liquor does little, in my mind, to

make the provision any easier to enforce.

C) It is no longer a simple, clear bill that is easily understood by the public. Instead of the public knowing that all enclosed areas of restaurants are meant to be smoke-free at all hours, now some restaurants will be smoke-free at some hours and not at others, and this will vary from restaurant to restaurant.

D) This provision in the Kaua'i ordinance may set the precedent for the Big Island to include such a provision in their ordinance.

E) With the Kaua'i ordinance different from either the Oahu or the Maui bills, and possibly different to what may be passed on the Big Island, weight is given to the argument for preemption at the state level so that things are uniform across the state. If this happens, and the weakest provisions of the county bills are used in the legislation, it is possible the "part-time restaurant/bar provision" becomes a feature of the state law.¹⁷³

The state Coalition for a Tobacco-Free Hawai'i as an organization ultimately did not call for a mayoral veto, though some of its members (e.g., AHA) were opponents of the bill in its final form. The Mayor signed Bill 2048, and it became effective January 1, 2003.

For their part, leaders of Tobacco-Free Kaua'i, while disappointed that the bill contained the part-time restaurant/bar provision and allowed for smoking in separate open-air areas of restaurants, argued that a flawed bill could later be improved and was better than no bill at all. They noted that although the bill would permit smoking in a few part-time restaurants/bars, it also would make all other restaurants smokefree. This, they said, represented a significant step in protecting restaurant workers from exposure to secondhand smoke. In a 2005 interview, Charles Roessler, the project coordinator for Tobacco-Free Kaua'i, explained the group's perspective:

If we [followed state coalition's advice of not compromising], it wouldn't work on Kaua'i. If we did that, we wouldn't have a law right now. We have one now, we're not thrilled with it, there are some problems with enforcement, but everyone is very, very happy that we have a law right now. Did we get all we wanted? No . . .

. . . Our argument was . . . "Oh no, we have people come in on the state coalition and say we don't support [the ordinance]." In fact, they did that on the record. They went behind us. In fact, on the state coalition, some of these people went behind us and said, we're not going to support this and we don't want it. And we said, "You don't live here and your kids aren't playing soccer with so and so's kids and you come in here and do that because you're on a high horse, we're going to end up with nothing." That's the truth.¹⁷⁴

Tobacco control advocates on Kaua'i did not have the experience of their counterparts on O'ahu (Honolulu County) and Maui in battling for smokefree ordinances in the 1990's. Thus, strong public sentiment in support of smokefree environments had not been established by late 2001 when Bill 2048 began its course to passage. Under those circumstances, it cannot fairly be

said that the Kaua‘i effort was a failure, and, as history would show, it had no adverse effect on the efforts on the Big Island or statewide.

Big Island (Hawai‘i County)

In July, 2003 the Big Island became the last county to enact a clean indoor air ordinance, when the Hawai‘i County Council voted 9-0 to pass Bill 260 (Draft 9), the strongest of the four county ordinances (Table 27). It makes workplaces, restaurants (both indoor and outdoor areas) and bowling alleys smokefree. Free-standing bars with less than 25 percent of income from food sales are exempted. Restaurants with bars were given until August 31, 2004 to either make the bar smokefree or enclose it. The law took effect in February, 2004.

The bill that was ultimately passed, the ninth amended version, was weaker than the law initially introduced by Councilmember Bobby Jean Leithead-Todd in September, 2002. Public buildings on the Big Island were already smokefree as a result of an ordinance passed by the Hawai‘i County Council in 1983. Leithead-Todd's bill would amend the Hawai‘i County Code on smoking in public places to cover all workplaces, including indoor and outdoor areas of restaurants, bars, nightclubs, and bowling alleys. In addition to Leithead-Todd, newly elected Councilmember Fred Holschuh, a retired emergency room physician and member of the Coalition for a Tobacco-Free Hawai‘i, was a champion of the smokefree legislation from the beginning.

The Coalition for a Tobacco-Free Hawai‘i supported the bill, mobilizing tobacco control advocates to testify at the first County Council hearing on the bill in September, 2002 and all subsequent public hearings and Council votes.

Representatives of the AHA, ALA, and ACS were prominent supporters. The state Department of Health also supported the bill. There was initially little organized opposition to the bill. Clifford Chang, then-director of the Coalition for a Tobacco-Free Hawai‘i, noted in his testimony at the first council hearing that the Hawai‘i Restaurant Association had surveyed 40 of its Honolulu members and found that none of them lost business following the passage of that county's smokefree restaurant ordinance.¹⁷⁵ The Coalition spent \$10,000 from December, 2002 through July, 2003 for advertisements (Figure 7) in Big Island newspapers (the Tribune-Herald and West Hawai‘i Today) aimed at building public support for passage of smokefree restaurant legislation and educating the public about implementation. This was the first time that the health groups used paid advertising for a county ordinance campaign. These advertisements were funded by the Tobacco Prevention and Control Trust Fund (discussed below).

In May 2003, the proposed smokefree legislation, covering all workplaces including indoor and outdoor areas of restaurants, bars, nightclubs, and bowling alleys, was approved in County Council's Human Services and Economic Development Committee by an 7-1 vote and sent to the full Council for the first of two necessary votes. The lone opposition vote was cast by Council Chairman James Arakaki, who expressed concern about the financial effect on bar owners and also said that he was particularly uncomfortable with the bill's provision restricting restaurant owners from smoking in their personal offices.¹⁷⁶ Councilmember Aaron Chung, while voting to give the bill approval in committee, similarly expressed reservations about


His choice
to smoke.

Our right to
breathe clean air.

Which should we protect?

Think smoking sections are a fair solution? Think again. Whenever we eat out at a restaurant that allows smoking, we share some of that smoke – no matter where we sit or whether we can detect it. That means we're being exposed to at least 69 cancer-causing chemicals with every breath.

Secondhand smoke: It's time we *all* got sick of it.


 Coalition for a
Tobacco Free
Hawai'i
www.tobaccofreehawaii.org

Hawai'i Island
Tobacco-Free
Partnership
 East Hawai'i
West Hawai'i

Paid for by the Tobacco Prevention and Control Trust Fund

Figure 7 Coalition smokefree ordinance newspaper ad

After getting committee approval, the smokefree workplace bill, including both restaurants and bars, passed 7-2 in the first full council vote in June, 2003. Mayor Harry Kim expressed concerns about including bars in the bill but said that he would be willing to sign the legislation if the Council chose to retain the provision.¹⁷⁹ The AHA and other members of the Coalition for a Tobacco-Free Hawai'i urged tobacco control advocates who lived on the Big Island to contact Mayor Kim and urge him to support the bill with the stand-alone bar provision.

Prior to the final vote in July, 2003, the legislative champions of a strong smokefree bill that would cover bars - Councilmembers Leithead-Todd, Holschuh, Bob Jacobson and Curtis Tyler - responded to the opposition of Councilmembers Arakaki, Chung, and others by reluctantly agreeing to an exemption for stand-alone bars. The four supporters of a smokefree bar provision would have needed an additional vote to pass the proposal in the nine-member county council. In a memo to his fellow council members one week before the final vote on Bill 260, Holschuh stated:

including bars in the bill; at the committee hearing, Chung said that he thought restaurant business would be the same or better with the smokefree ordinance, but that including the provision on bars "really is government going too far."¹⁷⁷

While the committee was considering the bill, the Hawai'i Restaurant Association was lobbying against the bill, arguing in letters to the County Council that the ordinance would discourage Asian tourists and would be especially detrimental to sports bars where the association alleged smoking is common.¹⁷⁸ However, most public testimony on the bill at the committee hearing was in support of strong smokefree legislation. The turnout in support of the bill reflected the organizing efforts of the Coalition for a Tobacco-Free Hawai'i. Of 30 people who testified, all but three urged the Council to pass the bill.¹⁷⁷ Speakers included high school and college students, doctors, nurses, and restaurant customers. In addition, dozens of letters were delivered to the Council, along with a petition signed by more than 900 high school students.¹⁷⁶

After reviewing bill 260, Draft 8, the following observations and comments are forwarded for your information. As a physician, and having been involved in smokefree workplace legislation nationally and statewide for years, as a general principle I do not believe that bars should be exempted. However, I recognize that there is division on this issue both on the council and among the general public . . . in the final vote on Bill 260, the exclusion of bars will probably prevail.¹⁸⁰

During the final vote, the provision making bars smokefree was almost reinserted when one of the five council members who had wanted an exemption for bars, Joe Reynolds, expressed willingness to change his position. This announcement prompted a motion to remove the bar exemption, and Reynolds' swing vote appeared to provide a 5-4 majority for making bars smokefree. This move was blocked, however, when Councilmember Gary Safarik threatened to delay vote on the bill by calling for another public hearing; a delay would likely have led to a 4-4 deadlock on the version of the bill covering bars because one of the five supporters of the bar provision, Councilmember Leithead-Todd, was resigning from the council at the end of the month.¹⁸¹

The final version of the ordinance prohibited smoking in all workplaces and public places in Hawai'i County, except for individual hotel and motel rooms, and bars. The restaurant ban included outdoor seating areas where food and beverages are served, but allowed restaurant bars to remain smoking through August 31, 2004. Beginning September 1, 2004, for smoking to be permitted the bar would have to be completely physically separated from the restaurant with no opening into the restaurant, with a separate ventilation system and a separate entrance at least 15 feet from the entrance to the restaurant. The ban also included common areas of multifamily housing units, and prohibited smoking within "a reasonable distance" to any entrance, exit or fresh air intake of any area where smoking is prohibited "to insure that tobacco smoke does not enter the enclosed area through entrances, windows ventilation systems or other means."

Enforcement of the law for smoking violations is delegated to the Police Department. The law specifies that individual smokers can be fined from \$25 to \$50, and owners and operators of businesses "who fails to comply with the provisions" of the ordinance can be fined \$100 to \$500 for violations. It is not clear if owners and operators of businesses are to enforce the no smoking requirements in addition to posting signs, and police officers are specifically authorized to eject smokers who fail to stop smoking after being cited for a violation. In terms of distinguishing between stand-alone bars and restaurants (based on the ratio of food to alcohol sales), the ordinance does not specify who is responsible for checking sales figures.

A proposed amendment to the Hawai'i County smokefree ordinance was introduced in December 2006 as Bill 365 to prohibit smoking at Kahalu'u Beach Park, one of the island's most popular beaches. It also provided for a much larger fine of \$100 for smoking in the park while leaving the fine for smoking in other prohibited venues at \$25 to \$50. On January 19, 2007, Bill 365 went into effect. The bill was proposed and pushed by the young advocates in the REAL youth movement on the Big Island.

In January 2008, buoyed by their earlier success, the young advocates persuaded Councilmember Yoshimoto to introduce Bill 224 to amend the smokefree ordinance to prohibit

smoking at all County parks and recreational facilities, including all beaches. This was the first attempt by any Hawai'i county to prohibit smoking at all county parks, recreational facilities and beaches. Bill 224 was recommended for passage on first reading by the Hawai'i County Council Committee on Public Safety and Parks and Recreation on February 5, 2008 by an 8-1 vote.¹⁸² The full Council passed Bill 224 on first reading on February 21, 2008 by a 7-1 vote with one member absent,¹⁸³ and passed on second reading on March 12, 2008 by 7-2.¹⁸³ On April 7, 2008, Mayor Harry Kim vetoed Bill 224.¹⁸⁴ Mayor Kim objected to a blanket smoking prohibition, suggesting instead addressing each facility individually and providing designated smoking areas at some of them.¹⁸⁴ A two-thirds majority vote was required to override the Mayor's veto, and on April 22, 2008, the Council overrode the veto by the same 7-2 vote as on second reading.¹⁸³

Summary of County Smokefree Ordinances

After unsuccessful fights to pass a smokefree restaurant ordinance in Honolulu beginning in 1993, tobacco control advocates passed a clean indoor air bill covering all workplaces except restaurants and bars in 1997. Perhaps an incremental approach starting with a workplace bill and then working to extend it to restaurants would have ultimately led to more rapid progress in the other Hawai'i counties.

During 2002 and 2003, each county in Hawai'i passed a smokefree restaurant or workplace law (Table 27).

Table 27 Final County Clean Indoor Air Ordinances				
	O'ahu (Honolulu)	Maui	Kaua'i	Hawai'i (Big Island)
Effective date	July 1, 2002	January 1, 2003	January 1, 2003	February 1, 2004
Workplaces	Yes (1997)	No	Five or more employees on each work shift	Yes
Restaurants	Yes	Yes	Yes ¹	Yes
Restaurant bars	Yes (July 1, 2003)	Yes	Yes ¹	Yes (September 1, 2004) ²
Stand-alone bars	No	No	No	No
Outdoor Areas	Some County Properties	Restaurants	No	Restaurants All County Recreational Areas, including beaches
Common areas of multifamily dwellings	Yes	Yes	Yes	Yes
Common areas of commercial buildings	Yes	Yes	Yes	Yes
¹ Dual use facilities that operate as a restaurant during the day but change to a stand-alone bar during posted times filed with the Department of Liquor Control may permit smoking when functioning as a stand-alone bar. ² A restaurant bar that is completely separated from the restaurant with no interior connection, separate ventilation and a separate exterior entrance and otherwise qualifies as a stand-alone bar may permit smoking.				

Except for Kaua'i, the county laws for the most part represented substantial incremental progress toward achieving strong clean indoor air legislation throughout the state. The main exception was Kaua'i, which was problematic because of both the "red light/green light" provision, which effectively writes unrestricted smoking in restaurants into law, and the

exemption for workplaces with fewer than five employees per shift. The Honolulu law which was the first passed, made workplaces with more than one employee and enclosed areas in restaurants smokefree. The Maui ordinance, which came next, is a strong smokefree restaurant law but does not cover any other workplaces. The Big Island, which was the last to enact an ordinance, has the strongest policy, making all workplaces and restaurants smokefree. The Big Island also made all county recreational areas, including beaches, smokefree. All of the ordinances exempted stand-alone bars.

Enforcement, however, is a major problem with all the county ordinances, because it is left to the county police department. Individual smokers rather than businesses are liable for smoking violations, except in Hawai'i County where businesses are subject to stiff fines.

According to a 2005 interview with Julian Lipsher of the state Department of Health, the county laws reflect the success of the decision by the tobacco control advocates to shift their focus from the state to the local level.³⁷ Clifford Chang, former Director of the Coalition for a Tobacco-Free Hawai'i, observed:

I think there was a lot of momentum once O'ahu [Honolulu] passed the smokefree ordinance and amended the bill for smokefree restaurants. There was a lot of momentum for the other counties to do the same. And so we were able to successfully – with varying degrees of success obviously based on what came out – but so Hawai'i does have in all counties at least smokefree restaurants.¹⁸⁵

In a 2005 interview, Chang elaborated on tobacco control advocates' strategy at the county level:

In each case, we would try to identify a champion on the council that was obviously introducing the bill. Then the coalition [the Coalition for a Tobacco-Free Hawai'i and the county grassroots tobacco control coalition] and the Health Department . . . basically then worked behind the scenes with those council members . . . it was very much, at least in terms of with the people that were sponsoring the bill . . . it was a joint effort. So whenever there were amendments that came up, we would have big discussions with them about what would be a good change or not a good change. The Kaua'i champion turned out to be not quite as strong as we had wanted.¹⁸⁵

The tobacco industry's complete infiltration of the hospitality industry in Hawai'i was reflected in the fights over smokefree legislation proposed in Honolulu during the 1990s. There was less opposition from the tobacco industry and its hospitality industry allies when bills were later proposed on the other islands, perhaps reflecting Honolulu's status as the largest city/county in Hawai'i, with 71 percent of the state population. The experiences of tobacco control advocates in other states suggests that in general the larger the city, the tougher the fight. Health advocates have often first worked to pass clean indoor air legislation in smaller communities, where 1) the resources that can be mobilized are more likely to be sufficient to win, and 2) legislators tend to be less sensitive to lobbyists and interest groups. In choosing Honolulu as the initial battleground, health advocates started with the most difficult case. It took nine years from the first attempt before a smokefree restaurant ordinance was enacted. The initial focus on Honolulu rather than other counties may have partly resulted from the fact that

the advocates most interested in pushing the issue lived on O‘ahu, and the state Department of Health, AHA, and other large health groups were all based in Honolulu.

By February 1, 2004, well over 80% of Hawai‘i workplaces were smokefree and smoking was prohibited in virtually all restaurants. This status would set the tone for the passage of a sweeping statewide smokefree law in 2006.

2006 CAMPAIGN FOR STATE SMOKEFREE WORKPLACE LEGISLATION

In 2005, tobacco control advocates decided to pursue a strong clean indoor air law at the state level, where efforts to pass smokefree workplace legislation had been unsuccessful since the late 1980s. The primary reasons for advocates' decision to push a statewide bill were the lack of uniformity in the county laws, enforcement problems, and the undesirable red light/green light provision in the Kaua‘i law. One factor cited by advocates as a reason for optimism about the prospects for a statewide bill was the public support in Hawai‘i for smokefree legislation. A poll conducted for the Coalition for a Tobacco-Free Hawai‘i in 2005 indicated that 85 percent of the Hawai‘i residents support a law that would make all workplaces, restaurants and bars in the state smokefree (Table 28).¹⁸⁶ The anticipated advantage of a state law was that the state Department of Health could become involved in enforcement; as noted previously, there are no county health departments in Hawai‘i, and the state Department of Health has no jurisdiction to enforce county laws.

Table 28 Summary of Voter Poll on Secondhand Smoke - 2005
85% of Hawaii voters support a statewide law that would prohibit smoking in most enclosed public places, including all workplaces, public buildings, offices, bars, nightclubs and restaurants across the state. Support is strong across all neighbor islands.
90% believe the right to breathe clean air is more important than the right to smoke
88% of those surveyed regard secondhand smoke as a health hazard.
93% believe that all workers should have protections from secondhand smoke and that everyone has the right to breathe clean air.
91% agree that there should be consistent secondhand smoke protections statewide.
31% of voters surveyed statewide say they would eat out more often if bars and restaurants were smokefree. 65% say it would make no difference in their dining habits. Only 3% said they would dine out less often.
77% agree that restaurants and bars would be healthier if they were smokefree.
Source: The Coalition for a Tobacco-Free Hawai‘i ¹⁸⁶

In deciding to pursue a statewide strategy, advocates sought to avoid the extensive grassroots work that a county-by-county strategy to improve the existing laws would entail. They reasoned that they could achieve their goal – a strong smokefree law that includes bars – more quickly in one statewide campaign rather than four separate local campaigns to improve the county ordinances. In a 2005 interview, Clifford Chang, former Director of the Coalition for a Tobacco-Free Hawai‘i, recalled:

There was some discussion if we should try to do bars county by county. I think that people were recognizing that we still may do that . . . there are some things that the counties are working on, I think, on their own. But there is agreement that it's more than time now to get a state law amended and hopefully, if it's everything we want, it's in one hundred percent of places, including bars.¹⁸⁵

In a 2005 interview, Charles Roessler, Coordinator of Tobacco-Free Kaua‘i, offered the following rationale for pursuing a statewide law:

Right or wrong, [county council members] didn't see it so much as a public health issue as more of a social issue, you know . . . So that's why some of our feeling is that a strong statewide law and the ability to pass that law can provide greater coverage for the representatives and state senators because a lot of people don't know what's going on at the state level, but they know what's going on Kaua‘i and they know which one voted for what. It's on TV, it's on public access. But these [state legislators] who go over to Oahu, out of sight, out of mind, you know? I don't even know who voted for that anti-smoking law. But it's law now.¹⁷⁴

Based on experience elsewhere, this logic seems backwards: to the extent that state legislators are "out of sight, out of mind," the tobacco industry can have more influence because representatives are less accountable to grassroots pressure from their local constituents. Indeed, the tobacco industry has repeatedly sought to take advantage of this fact in its efforts to enact state preemption as a way to stop local action, where public health forces have, despite some losses, consistently shown themselves to be more effective than the industry.^{62, 63}

Tobacco control advocates in Hawai‘i recognized the difficulty in taking on the tobacco industry beyond the local level. For example, Clifford Chang, former Director of the Coalition for a Tobacco Free-Hawai‘i, noted in a 2005 interview, "We have had strong debate about should we amend the state law in terms of smokefree workplaces or should we do it county by county. And as you know in most states success has come easier county by county because its smaller jurisdictions, it's more direct."¹⁸⁵ Chang was also cognizant of the tobacco industry's influence in the state legislature:

There's one very strong tobacco lobbyist here in town and, interesting enough, his name is Red Morris . . . Red is acknowledged as being one of the most influential lobbyists at the state legislature. He represents Philip Morris . . . [but] he doesn't just represent Philip Morris . . . I'm not sure how Red got his start and how he's so well-connected with the legislature. I've never talked to Red about that. But he's pretty strong. He can pretty much get any bill – he can always get a bill introduced if he wants. He's not always successful in getting that bill passed necessarily, but he can always get a bill introduced. So there's been some concern – this whole notion of how we want to ensure that whatever state law . . . will set a floor at a very high level and it won't preempt. It won't be a ceiling, it will be a floor and it won't preempt the counties. Red Morris really operates from what we can see much more at the state level. I don't think he has . . . the same level of influence at the county level.¹⁸⁵

This impression is consistent with a 1995 internal RJR document,⁸⁶ which recognized that Red Morris had less influence with Honolulu City Council members than with state legislators.

Advocates did recognize the danger at the state level of ending up with a weak law with preemption. The introduction of a good bill does not mean that it will pass as proposed. As discussed earlier, the tobacco industry narrowly missed getting preemption in Hawai‘i in 1994 by

amending a smokefree workplace bill initially supported by health advocates. In a 2005 interview, the AHA's Weisman recalled another nearly successful preemption effort, which is illustrative of common industry tactics in the state legislature:

One year [the industry] tried to get preemption passed and they fought a big battle with us and it looked like we had beaten them, but we got tipped off that on the final night of the legislature, they were going to be hearing a bill and they were going to gut a bill and insert language that would bring preemption at the state level over the counties. And since we were tipped off, we did our best to get the media out, let them know about it. They all showed up, the cameras were there. We had all of our tobacco control people out and they saw all these people here and they gutted the bill and instead of putting in tobacco language, they put in same sex marriage language, which . . . created a big media stir. The media ran out of the room when the hearing was over and went off looking for interviews and Dick Botti, who represented the Retail Merchants Association, the Gas Dealers Association, stayed in the room, sat there. And I told one other member from the coalition that I wasn't going to leave until he left. Everybody else had left, but I didn't trust him. We sat around for about fifteen minutes and Milton Holt and Randy Awasi came back into the room, banged the gavel, and announced that we had one more bill we wanted to address. Now this is like four hours until the session is officially over, even less than that, it was after eight at night and everybody else had gone home. And they announced that they had another bill that they were going to remove the language from and replace it with language that would give the state the control over tobacco issues, over the counties. And since no one else was there, we didn't even have a chance to submit testimony because this was the first that we had heard about this. It wasn't even something that had been announced. So, he had basically broken rules in doing this. So I didn't have written testimony in, but I still got up and presented oral testimony basically criticizing them for what they were doing and they played a tag team match on me and attacked me and tried to make me look bad, ask me all kinds of questions irrelevant to what we were doing and basically then forced the bill through anyway. I'm the only one there who was giving testimony and it was against and they passed it anyway. The next morning, it went to the Senate floor for approval and the Senate leaders decided not to approve it. They had broken too many rules and they couldn't pass the bill so it didn't get through.³⁶

At the same time, proponents of a statewide strategy argued that Hawai'i's situation is unique in ways that make a state-level effort sensible. The most common argument was that the home rule issue is unusually strong in Hawai'i, reducing the danger of the governor accepting preemption. One counter-argument was that home rule sentiment is also very strong in other states, such as Montana, which nevertheless ended up with preemption in 2003 after passage of several good local ordinances there.¹⁸⁷ While some advocates were optimistic that they could either get a strong statewide bill, or if not, walk away rather than accept a weak law, the state coalition did not have a strong consensus on this crucial point. For example, in 2005 Sandy McGuinness of the Maui Tobacco-free Partnership said:

I think we learned from our past mistakes and I think Kaua'i was really adamant about passing this law that turned out to be not so great [unintelligible]. At the time they

thought, "This is better than nothing and we're not going to have these people in place in the future, so we need to do it." . . . So during the time of that, I was actually on the side of some of the people that Kau'i was really upset with. And they were probably really upset with me too, but I actually said, "I think you should let it go and not ask." We had to take a vote – the coalition did – and it really was divisive. So I guess we'd have to do the same thing if that came up again on the state level, try to see what people would want to do. But I would lean more toward trying to have something really strong and across the board. That's what I would advocate. You know, we have smokefree states already. This is not going to be our demise. It's just communicating that and having the strength to make sure we get what we want. I guess that's the hard part.¹⁶¹

In a 2005 interview, Don Weisman echoed these sentiments, expressing optimism about the possibility of avoiding preemption and getting a good statewide bill:

We think that maybe the timing might be right to try something at the state level too, as long as we can make sure that preemption won't be a part of that. We will set a high ceiling and let the counties go further. For instance, Maui County in its restaurant bill also banned smoking in outdoor dining areas and I don't know that a state-wide bill would go that far. It would be nice, but, and if they didn't, we'd want to make sure that Maui could maintain its current laws in place because that was something that was really important to the people and they thought they wanted that because they have so many outdoor dining areas. So we think that because of what has happened in other states and other countries and we tend to be a health-conscious state to start with, our legislators tend to support health-oriented legislation. We feel like it might be a good time if we do the proper public education and do all the proper planning we might be able to get something through next year. So we're working towards that, but we'll see. And we're also, at the same time, encouraging the county coalitions to still push to tighten up their laws and maybe take them even further.³⁶

In December, 2005, the Coalition for a Tobacco-Free Hawai'i formed a group in an effort to avoid a situation where Coalition members split over whether to support a weakened amended version of their initial bill that implemented tobacco industry goals, as happened with the ordinance in Kaua'i. The key question, according to Deborah Zysman, Director of the Coalition, was "what is the cut point" at which members would decide to withdraw their support for a bill.¹⁸⁸ They could not agree on an answer. They instead said that the cut point could not be determined because it was impossible to predict what the scenario would be. Instead, they agreed that Zysman would set up a group of five members (including her) who would meet and decide what position the coalition would take at any given point in the legislative process. She chose the members of the group (9 people volunteered), considering the following qualifications: knowledgeable, team player, and county perspective. The problem with the Kaua'i situation, according to Zysman, was that the campaign was driven by the state coalition but there was no common decision-making process for all advocates, including the county coalition.

Another question raised by the statewide strategy was whether the state Department of Health would be sufficiently aggressive and the state tobacco control program infrastructure strong enough to successfully implement and enforce a statewide law. (The strength of the

Health Department and the state Tobacco Prevention and Education Program is discussed later in this report.) Health advocates were unsure of what to expect from the state's Republican governor, Linda Lingle, in terms of supporting passage and implementation of a state clean indoor air bill. (The Department of Health works for the governor.) One possibility is that she would sign a diluted bill not supported by those in the tobacco control community. If not for the veto of Governor Waihee (D) in 1994, a preemption law would have been enacted.

Governor Linda Lingle (R) was appointed in 2003 to the Board of the American Legacy Foundation (which was created to reduce smoking as part of the Master Settlement Agreement to run a national tobacco control educational campaign) by the National Governors Association (NGA), which selects two of its members to serve on the 11-member Board,¹⁸⁹ but the health advocates did not know how to read this appointment as an indicator one way or the other as to where she stood on tobacco control issues. At the time of her appointment she stated in a press release: "It is an honor to serve on the board and I look forward to working with the foundation to advance the mission of reducing tobacco use on a national level, as well as instituting their programs in Hawaii."¹⁸⁹ However, she also appointed Mark Bennett as State Attorney General even though he represented Philip Morris in litigation against the state of Hawai'i in the 1990s.¹⁹⁰⁻¹⁹² At the same time, health advocates recognized that she had been anti-drug, was a close friend of the chair of the legislative committee of the Hawai'i Medical Association, and had been a strong advocate of home rule.

The Coalition's bill was introduced on January 25, 2006 as Senate Bill 3262 by Sen. Rosalyn Baker and nine other coauthors (Chun Oakland, Fukunaga, Kanno, Inouye, Hanabusa, Ihara, Ige, Bunda and Kokubun), and proposed to make all workplaces and enclosed and partially enclosed public spaces in Hawai'i smokefree. All of the coauthors, except Chun Oakland, had accepted tobacco industry campaign contributions (Appendix 1). The Coalition had key Senators as coauthors: Sen. Baker and Sen. Chun Oakland were the Chair and Vice Chair respectively of the important Senate Committee on Health; Sen. Kanno was Chair and Sen. Ihara was the Vice Chair of the Committee on Labor; Sen. Hanabusa was Chair of the Committee on Judiciary and Hawaiian Affairs; and Sen. Bunda was President of the Senate. The three Senate Committees were the ones that would hear SB 3262.

The administration (through the Department of Health) had requested only modest changes in state law to expand the smoking prohibition to all areas of state and county owned or controlled buildings and to prohibit smoking in all workplaces of employers receiving certain state funds. State buildings, except residences, were already smokefree as the result of an Executive Order issued by Gov. Cayetano in 1997. Identical bills were also introduced on January 25, 2006 in the Senate (SB 2342) and the House (HB 2379) to implement the administration's position. SB 2342 was authored by Sen. Bunda, President of the Senate, and HB 2379 was authored by Rep. Say, Speaker of the House. Sen. Bunda was also a coauthor of the Coalition's SB 3262. By January 30, the two administration bills were effectively dead in committee, with all effort then focused on SB 3262 as the only comprehensive measure among the three bills.

SB 3262 passed first reading and was referred to the Senate Committees on Health and on Labor and Public Employment, each of which recommended that the bill be passed without

amendment and without a Nay vote in either Committee. SB 3262 passed the Senate on Second Reading and was referred to the Senate Committee on Judiciary and Hawaiian Affairs. The Committee on Judiciary and Hawaiian Affairs also recommended passage with only one Nay vote. SB 3262 passed the Senate on Third Reading, with only three Nay votes and was transmitted to the House on March 7, 2006.

In the House, SB 3262 passed First Reading and was referred the House Committee on Health. The House Committee on Health recommended that SB 3262 be passed without amendment and without a single Nay vote. The bill passed the House on Second Reading without a single Nay vote, and was referred to the House Judiciary Committee on March 24. Unlike its prior expeditious treatment in committee, SB 3262 seemed stalled in the House Judiciary Committee. The Judiciary Committee finally heard the bill and recommended it pass as amended to exempt state correctional facilities and to make the effective date July 1, 2006 to "encourage further discussion," as the bill would be headed to Conference Committee if the House passed the bill as amended by the Judiciary Committee¹⁹³ Again, there were no Nay votes in the Judiciary Committee. The bill passed the House on Third Reading with only two Nay votes.

The Senate rejected the House amendments, which sent the bill to Conference Committee. The four Senate Conferees appointed were each coauthors of SB 3262. The four House Conferees appointed had each voted for SB 3262. The Committee on Conference accepted the House amendment and further amended SB 3262 to change the effective date from July 1, 2006 to November 16, 2006 "to coincide with the date of the Great American Smokeout, an annual November event sponsored by the American Cancer Society to help smokers quit cigarettes for at least one day, in the hope they will quit forever."¹⁹⁴ On May 2, 2006, SB 3262 then went to the House for Final Reading where it passed with only three Nay votes. Later that day the Senate had Final Reading and the bill passed with only three Senators voting Nay.

On May 8, 2006, SB 3262 was sent to Governor Lingle for her action. She signed it on July 10, 2006. In her press release¹⁹⁵, Gov. Lingle stated:

It was not long ago when we believed that non-smoking sections in restaurants or on airplanes were sufficient to keep second-hand smoke away from nonsmokers," said Governor Lingle, who is a board member of the American Legacy Foundation, a national organization dedicated to preventing smoking and tobacco use among teens. "We now have concrete research about the serious dangers of secondhand smoke. We also know that tobacco is a leading cause of preventable death in Hawai'i, therefore, it is critical that we do all we can to protect the health of our residents and visitors by providing public venues that are truly smoke-free. Hawai'i's new smoke-free law will save lives. At the same time, we will continue to work with our community and health care partners to focus on preventing Hawai'i youth from starting smoking."¹⁹⁵

The Lt. Governor quit smoking after his father, a lifelong smoker died from lung cancer. His grandfather, who did not smoke but was exposed to second-hand smoke, also died from lung cancer:

It took shocking events in my life to understand the dangers of smoking and second-hand smoke and what tobacco use was doing to my health as well as the people around me," said Lt. Governor Aiona. "This new law will help protect the health of our youth and our elderly and everyone in between by minimizing the risks of exposure to second-hand smoke."¹⁹⁵

SB 3262 sailed through the Legislature virtually without change and with only token opposition from a single smoker, Robert Speck, a long-time smokers' rights spokesman.^{196, 197}

Three factors created a favorable environment for the passage of a statewide smokefree law. First, because of the success of county smokefree ordinances, albeit imperfect, the entire population of the state was already covered by some form of smokefree ordinance, with well over 80% of Hawai'i workplaces smokefree and smoking prohibited in virtually all restaurants. Second, polling data released by the Coalition in December, 2005 showed very strong public support for a statewide smokefree law (Table 28). Third, success in tobacco control, even in a favorable environment, does not come without a strong, organized and systematic effort by tobacco control advocates; Hawai'i tobacco control advocates did that for the first time with SB 3262. All of this handily overcame an upsurge in tobacco industry campaign contributions that began in 2004.

How the Coalition for a Tobacco-Free Hawai'i Did It

The first step towards this success began in 2003, when the Coalition decided to restructure itself with added membership and a new governance format, and to become more politically active. They followed this step with an objective evaluation of the weaknesses in the county smokefree ordinances.

In addition to variations in coverage from county to county (Table 27) there was the critical issue of lack of adequate enforcement of the county ordinances. While nominally the county police had enforcement authority, along with other county law enforcement employees such as sanitarians and fire departments, no one took responsibility for enforcement. There are no county health departments, and the county ordinances could not direct the state Department of Health to enforce the county ordinances. The solution was a state-wide smokefree law with adequate enforcement provisions.¹⁹⁸

The Coalition crafted a strategic plan, the Second Hand Smoke Plan, for the passage of a state-wide smokefree law. The timeline for the plan began in July 2005 and ended with introduction of a bill in January 2006.¹⁹⁶ The plan activities began with the recruitment of legislative champions. In order to determine the level of opposition that might develop, the Coalition met with the hospitality trade groups that had been active opponents in previous statewide efforts and had fought the county ordinances to listen to their concerns. The reaction was one of resignation to the inevitability of a statewide law. The fact that economic disaster had not followed the smokefree restaurant ordinances may have contributed to this attitude. Powerful labor unions that might be opponents were contacted. While several did provide support, the rest said they would not oppose the legislation.

The Coalition's lobbyist, Bob Toyofuku, was in charge of drafting the bill through a committee of lobbyists for Coalition member organizations and other activists. Research was conducted of other state smokefree laws looking for what they liked and didn't like. The committee came up with a draft that ultimately became law.

Meetings were held with legislators to poll their positions and concerns on the issue. An evaluation was made for all legislative districts to inventory grassstops and grassroots capacity in each district, and to identify important districts where the Coalition's capacity was insufficient. A public opinion poll was conducted in October to use to shape messages and measure public opinion for lobbying purposes (Table 28). A media education campaign during the summer of 2005 in during the Legislative Session in March 2006 on the dangers of secondhand tobacco smoke was carried out by the Department of Health using MSA funds from the Healthy Hawai'i Initiative, and grassroots recruitment and training was conducted. By November, targeted legislators were contacted for "persuasive meetings", and grassroots education and mobilization was begun. In January 2006, the campaign was launched with a media event, and the bill was introduced January 25, 2006.¹⁹⁹

Inevitably, there are unexpected events that can potentially derail the best of plans. The first was the failure early on in the Second Hand Smoke Plan's execution to get a complete agreement among all of the Coalition members for a Policy Scenario Agreement. The purpose of the agreement was to reach consensus on the extent to which the Coalition would compromise on bill language and at what point would the Coalition withdraw its support for an amended bill, the "cut point".¹⁹⁸ The matter was resolved in December, 2005 when it was recognized that it was impossible to predict how the scenario would unfold in the Legislature. A 5-member committee was agreed upon that would decide what position the Coalition would take at any given point in the legislative process.¹⁹⁸

The second event was the unexpected action of the Department of Health in requesting two identical administration bills that made only minor changes in the existing state law (codification of a 1997 Executive Order that made all state and county buildings smokefree and mandatory smokefree workplaces of employers receiving certain state funds). The Department of Health did not support the Coalition plan, arguing that the Coalition's comprehensive bill could not be passed. The Coalition, on the other hand, felt that any administration bill was doomed because the Governor was a Republican and the Democrats controlled the Legislature.¹⁹⁶ After the administration bills were killed in committee, the Department did provide hearing testimony that SB 3262 was good for public health. This view of the Department that the Coalition bill could not be passed continued throughout the legislative process despite no overt opposition to the Coalition bill and lopsided votes in favor of the bill.¹⁹⁶

Some surprises have positive overtones. The Coalition's Plan included heavy use of earned media, but they couldn't get the media interested because there was no controversy around the Coalition's proposed law which seemed like the right thing to do.¹⁹⁶ The Coalition backed off on earned media to avoid stirring up any controversy.¹⁹⁶ Even the *Honolulu Star-Bulletin*, that had vigorously opposed all of the Honolulu smoking ordinances, came out in support of SB 3262.^{200, 201} A convincing indicator that there was no opposition to SB 3262 is revealed in media coverage that contained no statements from opponents, and most of the letters

to the editor were from supporters of SB 3262.

The second surprise came with the Coalition's plan to use telephone banks with patch-through capability to connect grassroots supporters to their legislators. The telephone bank was launched as planned, but after only a few phone calls legislators asked that the calls be stopped as they had gotten the message.¹⁹⁶

If there was a shortcoming in the Second Hand Smoke Plan, it was in the failure to work with staff in the Governor's Office from the beginning to glean any signs of opposition from the Governor to the Coalition's bill. As a result, when SB 3262 went to the Governor for signature or veto, the Coalition did not know what she was going to do. This caused many weeks of anxiety, and reliance on rumors and third-hand information.¹⁹⁶ The rumors and third-hand information had the Governor vetoing SB 3262 at one point and at another point that she would not veto the bill, but would let it become law without her signature. The Coalition did not turn to its grassroots network to contact the Governor's Office until after the deadline for her to veto SB 3262 had passed on June 27. At that point, the Governor could sign the bill or let it become law without her signature on July 12. Then the youth tobacco activists in REAL took up the issue during their Youth Summit the week of the Fourth of July. They used email blasts and phone calls to urge the Governor to sign SB 3262. This culminated in a rally at the Capitol on Friday, July 7. The Governor sent word out to the rallying young people that she would sign SB 3262, which she did on Monday, July 10.¹⁹⁶

The Scope of SB 3262

When passed in May 2006, SB 3262 set a new "gold standard" in statewide smokefree legislation in its coverage, penalties and enforcement provisions. While it prohibited smoking in all enclosed or partially enclosed workplaces and public places, including restaurants, bars and nightclubs, it went further to protect nonsmokers from exposure to secondhand tobacco smoke. For example, it prohibits smoking in the "enclosed or partially enclosed areas and in seating areas of sports arenas, outdoor arenas, stadiums and amphitheaters," "public transportation facilities and vehicles, including buses and taxicabs," and common areas of multiple unit residential facilities.

The exceptions in the law for hotel rooms, retail tobacco stores and rooms in nursing homes and long-term care facilities are limited by the condition that "smoke shall not infiltrate into areas where smoking is prohibited." Requiring zero leakage from a smoking venue is an engineering and construction standard that is very difficult and expensive to meet.²⁰²⁻²⁰⁴

The Hawai'i law provides for effective enforcement. While the smoker is subject to a fine of up to \$50, the law also provides penalties for the owner, manager, operator or person in control of any place in which smoking is prohibited with fines of up to \$100 for the first violation, up to \$200 for a second violation within one year of the first violation, and up to \$500 for each additional violation within one year of the preceding violation, with each day on which a violation occurs is a separate and distinct violation. In addition to the fines, violations of the law may result in the suspension or revocation of any permit or license issued to the person or the place where the violation occurs, and injunctive relief is specifically authorized when the

finest fail to deter violations.

Enforcement responsibility is placed with the Department of Health, and enforcement authority is given to officers and employees of government jurisdictions authorized to issue a summons or citation (primarily law enforcement officers). If the violator refuses to stop smoking after being cited, the officer or employee may eject the smoker from the premises.

A unique feature of the Hawai'i law is the authority given to private citizens to enforce the law by (1) registering a complaint with the Department of Health, and (2) applying for injunctive relief if aggrieved by the failure of a business or employer to comply with the law. Two other states, Oklahoma and Utah, allow for similar private action by aggrieved victims of secondhand tobacco smoke by declaring secondhand tobacco smoke a public nuisance, which then allows for private action under the nuisance statutes.

The law protects the individual from retaliation by providing that "No person or employer may retaliate against any employee, applicant for employment or customer who exercises any rights under the Act or reports or attempts to prosecute a violation of the Act." There is also a provision to protect the rights of an employee who works for an employer that allows smoking by providing such employee "does not waive any rights the employee may have against the employer or any other party."

Finally, the law specifically states that it is not preemptive by providing that "any county may enact ordinances more stringent than the Act".

2007 – Challenges to the New Smokefree Law

Early in 2007, a group of bar owners launched a two-pronged attack on the new smokefree law created by SB 3262. On January 24, 2007 companion bills were introduced to exempt from the smokefree law bars that obtain a new class of liquor license. HB 1696 was introduced by Rep. Evans (D, Dist. 7) and SB 1970 was introduced by Sen. Hanabusa (D, Dist. 21). Both had received tobacco industry campaign contributions. Evans had received \$1,750 since 1998 and Hanabusa had received \$3,000 since 1998. Rep. Nakasone introduced similar legislation in HB 1800 which also would have created a new class of liquor license for an exemption from the smokefree law, but would also allow food service in the exempt bar, and would exempt a restaurant from the smoking restriction if it obtains the new class of license. Nakasone had received \$11,959 from the tobacco industry since 1998.

Broader legislation was also introduced January 19, 2007 to exempt bars, nightclubs and restaurants from the smokefree law in HB 792 by Rep. Meyer (R, Dist. 47), Cabanilla (D, Dist. 42), Awana (D, Dist. 44), Brower (D, Dist. 23), Evans (D, Dist. 7) and Ward (R, Dist. 17). Out of this group of authors, only Meyer and Evans had taken tobacco industry campaign contributions with Meyer taking \$6,500 since 1998 and Evans taking \$1,750 since 1998. Two other more restricted bills were also introduced. HB 198 by Rep. Evans would allow smoking rooms in private establishments provided no employees were unwillingly exposed to smoke. This was the third smoking exemption bill in which Rep. Evans was involved. Rep. Slom (R, Dist. 8) introduced HB 218 exempting stand-alone adult entertainment businesses from the

smokefree law. Stand-alone adult entertainment businesses included bars and nightclubs not a part of or connected to a restaurant. Slom had taken \$4,350 from the tobacco industry since 1998. Sen. Slom, and Rep. Cabanilla, Evans and Nakasone had all voted against SB 3262 in 2006. Rep. Ward, Brower and Awana were newly elected in November 2006. Sen. Hanabusa was a coauthor of SB 3262, and Rep. Meyer voted for SB 3262. Rep. Meyer apparently yielded to bar owner pressure. In defense of her stand in favor of exempting bars, Meyer stated: “The people who go into bars are grownups. Smoking and drinking have gone together for many years.”²⁰⁵ It is not clear why Sen. Hanabusa, who became the first female President of the Senate after the November 2006 election, changed her position to support an exemption for bars.

Tobacco control advocates mounted an aggressive attack on all of the legislation. All of the bills aimed at undoing the smokefree law died without any committee action except for HB 1800, heard by the House Judiciary Committee, which deferred action on it effectively killing it on February 22, 2007. The Judiciary Committee hearing was unusual because the bill had died the week before in the House Health Committee, but in an apparent back room deal, the Democratic leadership unexpectedly reassigned the bill to the Judiciary Committee where it would have a better chance of passing.²⁰⁶ Tobacco control advocates organized quickly and offered over two hours of testimony to the House Judiciary Committee in opposition to HB 1800. In the end Committee Chair Waters said that changing the law so soon would be premature.²⁰⁶ Waters had received \$3,750 from the tobacco industry between 1998 and 2004.

On January 30, 2007, a bar owners group filed a lawsuit challenging the smokefree law on the constitutional grounds of taking business from them without just compensation and of vagueness of the law.²⁰⁷ On April 11, 2007 the case was dismissed, the judge finding that the bar owners had not shown that the law was not a proper exercise of the state’s police power. Since none of the bar owners had been cited under the new law, the constitutional challenge of vagueness failed, but could be raised later if one is charged under the law.²⁰⁸

No legislative challenges to SB 3262 came in the 2008 Legislature, and no additional lawsuits had been filed challenging the law as of July 1, 2008.

Failure of the Department of Health to Enforce the Law

The enforcement responsibility for the smokefree law was given to the Department of Health. Nearly two years after the law passed and signed by the Governor (as of July 1, 2008), however, the Department of Health had still failed to issue the administrative rules required by the law. However, those administrative rules are not the only means of enforcement as the smokefree law also provides powerful remedies of injunctive relief with a court order requiring the noncompliant business to obey the law, together with the further risk of loss of permits and licenses to do business because of violations of the smokefree law. Neither of these effective deterrents had been used by the Department of Health (as of July 1, 2008) despite the very visible violation of the law by a few bars. The Department had made minimal effort to get local law enforcement agencies to assume their responsibilities under the law, and there had been no sustained campaign to educate the public on their power for enforcement. This lengthy delay is unheard of in other states. Research has shown that early and effective enforcement is critical to success of the law and to protect it from amendment or repeal by the Legislature.^{209, 210} The

World Health Organization (WHO) Tobacco Free Initiative warns: “Full enforcement of smoke-free laws is critical to establishing their credibility, especially immediately following their enactment.”^{211, 212}

The WHO “best practices” recommendations on smokefree laws specifically advise:

Enforcement of the law should communicate to the public that enforcement will be fair and that policy-makers are serious about it. Following the grace period [which is usually a few months], firm and well publicized enforcement actions should be taken, particularly with establishments that repeatedly violate the law. This effort is particularly important because the tobacco industry sometimes encourages and publicizes violations as part of its effort to create the impression that the law is not being respected.²¹³

While county police are authorized to enforce the law, they usually do so only on a complaint along with a visual verification that the smoking offence is taking place in the presence of the law enforcement officer. The Department of Health also implemented a complaint procedure. However, with properly constructed regulations the Department of Health can use its standard inspection procedures to do random inspections a useful deterrent to those businesses that escape the complaint process.

The guidelines adopted in 2007 by the Conference of Parties to the Framework Convention on Tobacco Control (FCTC), the international treaty promoted by the World Health Organization (WHO), for the implementation of FCTC Article 8: Protection from exposure to tobacco smoke, set out the minimum requirements for enforcement:²¹⁴

36. Monitoring should include a process for inspection of businesses for compliance. It is seldom necessary to create a new inspection system for enforcement of smoke free legislation. Instead, compliance can ordinarily be monitored using one or more of the mechanisms already in place for inspecting business premises and workplaces. A variety of options usually exists for this purpose. In many countries, compliance inspections may be integrated into business licensing inspections, health and sanitation inspections, inspections for workplace health and safety, fire safety inspections or similar programmes. It may be valuable to use several such sources of information gathering simultaneously.

37. Where possible, the use of inspectors or enforcement agents at the local level is recommended; this is likely to increase the enforcement resources available and the level of compliance. This approach requires the establishment of a national coordinating mechanism to ensure a consistent approach nationwide.

38. Regardless of the mechanism used, monitoring should be based on an overall enforcement plan, and should include a process for effective training of inspectors. Effective monitoring may combine regular inspections with unscheduled, surprise inspections, as well as visits made in response to complaints. Such visits may well be educative in the early period after the law takes effect, as most breaches are likely to be inadvertent. The legislation should authorize inspectors to enter premises subject to the

law and to collect samples and gather evidence, if these powers are not already established by existing law. Similarly, the legislation should prohibit businesses from obstructing the inspectors in their work.

39. The cost of effective monitoring is not excessive. It is not necessary to hire large numbers of inspectors, because inspections can be accomplished using existing programmes and personnel, and because experience shows that smoke free legislation quickly becomes self-enforcing (that is, predominantly enforced by the public). Only a few prosecutions may be necessary if the legislation is implemented carefully and active efforts are made to educate businesses and the public.

None of this has happened in Hawai'i (as of July 1, 2008) and, as a result, there are a few bar operators who openly and visibly violate the law.²¹⁵ It creates a situation that the tobacco industry could capitalize on in the future to undermine the law and its enforcement.

PASSAGE OF THE SMOKEFREE SCHOOLS LAW IN 2004

As in other states, individuals have played an important role in tobacco control policymaking in Hawai'i. Personal concern about a particular issue or problem is often the impetus for people to get involved in tobacco control advocacy as grassroots activists. The 2004 passage of state legislation prohibiting smoking in schools was largely the result of one ordinary citizen who got upset and was extremely persistent. Chris Dein-Gaughen was at her child's school on Hawai'i Island one day and happened to see a student who had been reprimanded forced to sit in a room with adults smoking. Dein-Gaughen, who was aware that Hawai'i has one of the highest asthma rates in the country, became angry and set out to prohibit smoking in schools. She contacted the AHA in 2002, which agreed to support her by lobbying for a smokefree schools law.³⁶ Dein-Gaughen had no involvement in the tobacco control movement prior to becoming interested in the issue of smoking in schools. She ended up working with the Coalition for a Tobacco-Free Hawai'i and the Department of Health on that issue, and was ultimately hired in 2003 as the coordinator of the Hawai'i Island Tobacco-Free Partnership, West Hawai'i.

HB 2871, which was signed into law on May 25, 2004, prohibits smoking on all K-12 public school campuses and at all school sponsored events in Hawai'i. The legislation ended a policy allowing public school custodians and cafeteria workers who, as members of the United Public Workers (UPW) union, had been permitted by their union contract to smoke on campus in designated indoor smoking areas under a 1995 arbitration award. All other school employees had been prohibited from smoking anywhere inside schools under the state's Tobacco-Free School System Policy, enacted in 1993.

This 1993 Board of Education action was initiated by the American Lung Association and pursued by an early tobacco control collaborative group made up of the American Lung Association, American Cancer Society, American Heart Association along with the Department of Health and the Hawaii Medical Association. There are no local school boards in Hawaii as education and health are state functions. So the State Board of Education, a constitutional elected body, has the responsibility and the authority to make rules governing public education policy.

The proposal was first debated in the Board's Health and Safety Committee and was passed there and sent on for a vote by the full Board. The Board voted to adopt the measure and it was then sent to the Superintendent of Education for implementation.

Custodians and cafeteria workers were exempted from this ban because the UPW contract included a provision granting employees the right to smoke at work; in Hawai'i, state action cannot infringe on working conditions negotiated as part of a collective bargaining agreement. However, this exemption violated the federal Pro-Children Act of 1994 (20 U.S.C. 6081 et seq.), which ended smoking in indoor areas of public school facilities or portions of public school facilities used to provide children's educational services funded directly or indirectly by federal funding, a fact that gave leverage to tobacco control advocates in pushing a comprehensive smokefree schools bill through the legislature. When Dein-Gaughen and others began to push for state legislation that would close the loophole allowing some employees to smoke on campus, opponents framed the issue as a question of union rights. The tobacco industry has a long history of working with unions against smoking policies.²¹⁶⁻²¹⁸ As Dein-Gaughen notes, "it became a whole different problem. It became a union contract law problem, as opposed to 'should people be smoking around children on school campuses?'"²¹⁹ The main opposition was the UPW and their champion in the legislature, Senator Brian Kanno (D, Dist. 20) who was the chair of the Labor Committee and very pro-union.²¹⁹

When it became clear that the federal government would begin fining the state for noncompliance with the Pro-Children Act, the UPW dropped its opposition to HB 2871. The fine could have been as much as 100% of the federal education funds received by Hawai'i each fiscal year after 1994 through 2001 and 50% of such funds for each fiscal year after 2001.

Advocates' ability to work closely with one of the aides of Senator Kanno contributed to their success. Kanno's aide "became a great line of communication"²¹⁹ between advocates and the Senator, to whom advocates had limited access. This success illustrates the value of indirectly lobbying decision-makers through individuals who have influence over them.

YOUTH SMOKING PREVENTION

In 1890, Hawai'i prohibited the sale or distribution of tobacco products to minors under the age of 15. In 1990, the age was raised to 18 for the lawful sale or distribution of tobacco products to minors and for the purchase of tobacco products by minors. The fine for unlawful sale or distribution was \$100 for the first offense and from \$100 to \$1,000 for subsequent offenses; unlawful purchase by a minor could bring a \$10 fine for the first offense and \$50 for subsequent offenses or 48 to 72 hours of community service. In 1998, the fines for unlawful sale or distribution of tobacco products to minors were substantially raised to \$500 for the first offense and from \$500 to \$2,000 for subsequent offenses. Penalties are imposed on the person who makes the illegal sale to the minor, and no penalty is imposed on the business.

Cigarette vending machines were restricted by Act 253 in 1991 to venues in which minors under the age of 18 are not permitted. Violators are subject to a fine of up to \$1,000 per day for each violation. By Act 313 (1996), mobile food vendors (lunch wagons) are prohibited from selling or distributing cigarettes within 1,000 feet of any school, and violators face fines of

up to \$1,000 per day for each violation.

Also in 1996, Act 053 prohibited the sale or distribution of single cigarettes or packs of cigarettes containing fewer than 20 cigarettes, or any cigarettes in packages other than those originating with the manufacturer and bearing the health warning label required by federal law. Fines for violations may be as high as \$2,500 for a first offense and up to \$5,000 for a second offense. In 2000, Act 201 added a class C felony penalty for knowingly violating the statute. A class C felony carries a fine up to \$10,000 and an indeterminate imprisonment for a maximum of 5 years with the minimum period of imprisonment determined by the Hawai'i paroling authority.

Retailer Licensing

In 1999, SB 613 was introduced to require a license for the retail sales of tobacco products to further control illegal sales to minors. SB 613 passed in the Senate unanimously, but was killed in the House Committee on Consumer Protection and Commerce.

In 2005, SB 682 was introduced by Sen. Robert Bunda (D, Dist. 22) at the request of the Governor's Office to enact the "Let's Help Protect Our Kids from Tobacco Act of 2005". Sen. Bunda was the President of the Senate and a frequent recipient of tobacco industry contributions. The bill required retail business location selling tobacco products to have a permit issued by the Department of Taxation. Sen. Rosalyn Baker (D, Dist. 5), chair of the Senate Health Committee, and a frequent recipient of tobacco industry campaign contributions, and Sen. Dennis Arakai (D, Dist. 30), chair of the House Health Committee, were the principal lawmakers behind SB 682.²²⁰ While it became law in June 2005, it did not require retailers to have a permit for each retail location until March 1, 2007, and the law is scheduled to "sunset" on July 1, 2009, when it is automatically repealed and the law reverts to its form prior to enactment of SB 682.

The penalties for illegally selling cigarettes without a permit are onerous enough to be a deterrent. The fine on a first offense may be up to \$2,000, but on conviction for a second offense within a five year period, the fine can be up to \$10,000 and imprisonment up to five years.

Enforcement

Despite the lack of significant fines for business owners making illegal sales of tobacco products to minors, Hawai'i has achieved some success in curbing illegal sales to minors, depending on which measure of success you use.

Hawaii uses two different compliance monitoring regimens, one for Synar Amendment (which ties federal substance abuse funding to states having a plan to reduce youth access to cigarettes and monitoring the effectiveness of that plan) compliance with an annual inspection period of about 60 days, and a separate law enforcement effort based on a partnership with the police departments of Honolulu, Maui, Hawai'i and Kaua'i counties under which an average of 100 retail stores are inspected each month. The noncompliance rates found under each are substantially different. For example, in 2004, the last year for which we have comparative data, the Synar Amendment noncompliance rate was 5.3%, but the law enforcement sting operations noncompliance rate was 15.9%.²²¹ While the Synar Amendment compliance operations show a

steady decline in noncompliance rates since 1996, the law enforcement sting operations have evidenced wide swings in noncompliance from year to year. Arizona has a similar two-tier monitoring system, with similar disparate results showing Synar Amendment noncompliance rates substantially lower than law enforcement sting operations noncompliance rates.²²²

There may be at least two explanations for the disparate noncompliance results in Hawai'i. First, the Synar Amendment compliance inspections are done annually over a short period at a predictable time of year, while the law enforcement sting operations are done year round. Second, the Synar Amendment compliance inspections in 2004, for example, targeted 211 retailers while the law enforcement sting operations hit 1136 retailers. When Act 131 compliance began with tobacco retailers applying for licenses they were required to have by March 1, 2007, 1403 locations were issued permits by the Department of Taxation.²²³

On the revenue side, in a month-to-month comparison of February 2007, the month immediately preceding the retailer permit requirement with February 2008, cigarette tax collections increased nearly 50% to \$8.8 million.²²⁴ While there was insufficient data to determine how much of the increased revenue resulted from better enforcement because there was also a \$.20 per pack cigarette tax increase (\$1.60 to \$1.80 or 12.5%) that went into effect September 30, 2007, it is safe to assume that licensing has resulted in much better tax collection enforcement.

TAXES

Taxes on tobacco products have a significant effect in reducing smoking. A 10 percent increase in the price of cigarettes is associated with a 4 percent decrease in overall cigarette consumption.²²⁵ The first tobacco tax in Hawai'i took effect in 1939 (twenty years before statehood), when the legislature passed a 6 percent (of retail price) tax on tobacco products. Legislation periodically increased the rate of this ad valorem tax (a tax that is a percentage of the price of cigarettes) over the ensuing years. In 1965, the tax increased to 40 percent of the wholesale price of tobacco products, which amounted to 8 cents per pack. The rate remained 40 percent of the wholesale price from 1966 until 1993, when legislation was passed repealing the ad valorem tax and replacing it with an excise tax (a fixed tax per pack of cigarettes).

By 1993, the 40 percent ad valorem tax in Hawai'i was equivalent to an excise tax (a fixed tax per pack of cigarettes) of 48 cents per pack. While this tax was the highest state cigarette tax in the nation at the time,⁶ the tobacco industry had pressed for this change in the hopes that over time the real value of the tax would fall.

Hawai'i was unique in having an ad valorem state cigarette tax until 1993. In contrast, other federal, state, and local cigarette taxes have always been per unit (excise) taxes.²²⁶ From the point of view of tobacco control advocates, the advantage of an ad valorem structure is that the tax increases as the cost of cigarettes rises. Conversely, using the common approach of a fixed excise tax means that the effective tax declines over time both in real dollars (because of inflation) and as a fraction of the price of a pack of cigarettes as cigarette manufacturers increase the price.

Early Industry Opposition to the Ad Valorem Tax

Not surprisingly, the tobacco industry opposed ad valorem taxation in Hawai'i. Unlike excise taxes, it continuously increased as the price of cigarettes increased without requiring legislative action that the industry could block. Tobacco industry lobbying against the ad valorem tax in Hawai'i began years before its eventual repeal by the legislature in 1993. In 1986, after Hawai'i's ad valorem tax on alcohol was changed to an excise tax, Jack Nelson, a Philip Morris executive, wrote a memo to Frank Resnik, president and CEO of Philip Morris USA, recommending that the Tobacco Institute "resolve to find a way to change the [ad valorem tobacco] tax."²²⁷ Nelson noted the beer industry's lobbying tactics, including its use of an anti-tax group, the Tax Foundation of Hawai'i, which would later become a third-party ally of the tobacco industry:

Last month the beer industry successfully lobbied to change Hawaii's ad valorem tax on beer into a specific levy. They used a variety of arguments and had the help of the local tax foundation—an anti-tax, pro-business group.²²⁷

In his memo, Nelson expressed concern about the existing tax in Hawai'i hurting industry efforts to fight the introduction of ad valorem taxation elsewhere:

Hawaii has not increased its cigarette tax rate of 40% of the wholesale price since 1965, but now its tax equals \$.28- second highest in the nation. It will soon surpass Washington state's tax of \$.31. Moreover, as other states and the federal government discuss changing their taxes to ad valorem levies, the Hawaii example weakens our case against such moves.²²⁷ Public health advocates' efforts to pass cigarette tax increases were consistently opposed by the Tax Foundation of Hawai'i, a private, nonprofit organization founded in 1953 that describes itself as a watchdog group monitoring state budget activities. The organization has an annual budget of approximately \$250,000 received largely from membership dues and 5-10% from private donations.

Prior to 1997, there were only limited links between the tobacco industry to the Tax Foundation of Hawai'i. In a December 1986 letter from Norman Suzuki, the Tobacco Institute lobbyist, to Michael Brozek, Regional Vice President of the Tobacco Institute, Suzuki reports that the Tax Foundation of Hawai'i "has in the past few years 'assisted' in our lobbying efforts against increase in the tobacco tax."²²⁸ Suzuki sought reimbursement from the Tobacco Institute for continuing his membership in the Tax Foundation.

Beginning in 1997, there were much stronger ties between the tobacco industry and the Tax Foundation. It appears that this relationship with Suzuki as the nominal member of the Tax Foundation on behalf of the Tobacco Institute continued until August 1997 when the Tobacco Institute proposed to increase its funding to the Tax Foundation from a \$300 membership fee to a \$3,000 contribution for 1998,²²⁹ which was approved.²³⁰ In August 1997, RJ Reynolds became a member of the Tax Foundation of Hawai'i for the first time with a \$5,000 contribution.²³¹ A few months later, RJR increased its contribution to the Foundation with an additional \$5,000.²³² The first record found of Philip Morris support for the Tax Foundation of Hawai'i is in 1997 when it made a \$10,000 contribution.²³³ The Tobacco Institute proposed to contribute \$3,000 to the Tax

Foundation for 1999,²³⁴ but was disbanded pursuant to the November 23, 1998 Master Settlement Agreement.²³⁵ No record was found of any continuing support of the Tax Foundation by RJ Reynolds after 1998. Philip Morris contributed \$15,000 to the Tax Foundation in 1998,²³⁶ and the last record of financial support of the Tax Foundation of Hawai'i by Philip Morris was a \$10,000 contribution in 1999.²³⁷ While financial support of the Tax Foundation of Hawai'i by Philip Morris appears to have ended in 1999, a 2001 State Coalition Status report lists the Tax Foundation as a member of the Philip Morris Hawai'i State Coalition.²³⁸ All of this financial activity in support of the Tax Foundation of Hawai'i by the tobacco industry centered around a major battle in 1998 over tobacco taxes that are described below in detail.

According to correspondence in 1986 from Alexander H. King to William P. Buckley, both of whom were Vice Presidents for the Tobacco Institute, the Tobacco Institute concluded that Hawai'i's tax system could be changed if an effort was "put together properly."²³⁹ Mike Boulware, the owner of the largest tobacco wholesaler and vendor in the islands, M & S Vending, was willing to join the Tobacco Institute in lobbying to change the structure to a per-pack tax. King argued that the Department of Revenue should be contacted and worked with from the beginning in order to avoid their "jealous opposition." He suggested that neither Norman Suzuki nor Wendell Kimura, Tobacco Institute lobbyists in Hawai'i, should "front" the effort because, "If they do, it will have the "fingerprints" of the Tobacco Institute, and the major cigarette manufacturers from the 'Mainland.'"²³⁹ Instead, King noted that an independent person "with some background," who could make both Department of Revenue contacts and grassroots contacts, would be appropriate. He suggested that Boulware could be cajoled into taking on the effort, if he were supported with the necessary resources and research.

In a 1989 report titled "The Economic Effects of Hawaii's Ad Valorem Cigarette Tax," the Tobacco Institute outlined its reasons for opposing ad valorem taxation, a higher tax rate and a resultant decline in cigarette sales:

The state of Hawaii is the only state that imposes an ad valorem cigarette tax . . . One feature of Hawaii's ad valorem cigarette tax has been its rapid expansion. The tax has tripled from 12 cents per pack in FY 1978 to an estimated 36 cents per pack in FY 1989. This 200 percent increase of the Hawaii cigarette tax is much faster than the 80 percent inflation rate that occurred from 1978 through 1988. In addition, Hawaii's cigarette tax has advanced much more quickly than the average state cigarette tax. In 1978, the average state excise tax was approximately 12 cents per pack, virtually the same as in Hawaii. However, by FY 1989 the average state excise tax advanced to 20.7 cents per pack compared to 36 cents per pack in Hawaii . . . Within the next four years, Hawaii will, more than likely, have the highest cigarette tax . . . *The rapid advance of Hawaii's cigarette tax has also contributed to a deep erosion of sales. Cigarette sales have plummeted from 78.2 million packs in 1984 to 60.5 million packs in 1988. This 22.6 percent drop far exceeds the 5.04 percent national decline in sales for the same period . . .* If the ad valorem tax remains in existence, these problems will worsen. In fact, the cigarette tax could easily zoom to 50 cents pack in just four years if past trends continue. . . . In order to restrain these burdens, Hawaii's Tax Review Commission should adopt a conventional cigarette excise tax system.²⁴⁰ (Emphasis added)

Table 29 Tobacco Institute Tax Projections vs. Actual Tax Rates, 1989-1999 (cents/pack)			
Year	Tobacco Institute Projection ²⁴⁰	Actual ⁶	Type
1989	36	36	Ad valorem
1990	39	42	Ad valorem
1991	42	47	Ad valorem
1992	46	50	Ad valorem
1993	50	52	Ad valorem
1994	55	60	Excise
1995	60	60	Excise
1996	65	60	Excise
1997	71	60	Excise
1998	77	80	Excise
1999	84	100	Excise

In the same 1989 report, the Tobacco Institute projected trends in Hawai‘i’s ad valorem tax rate through 1999. The projections were roughly accurate, as Table 29 illustrates, with the actual ad valorem tax amounts between 1990 and 1993 somewhat higher than the industry’s predictions. However, the industry did not anticipate the size of the excise taxes that the legislature would approve after the ad valorem tax was replaced by a flat rate in 1993. Increases in the tobacco excise tax passed by the

legislature beginning in 1998 are discussed below in the section on legislative activity.

A 1989 letter from Tobacco Institute lobbyist Norman Suzuki to Paul Jacobson, Regional Vice-President of the Tobacco Institute (and copied to Wendell Kimura, Esq., another Tobacco Institute lobbyist in Hawai‘i) documents the tobacco industry’s efforts to change the ad valorem tax structure. In the letter, Suzuki stresses that it is in the tobacco industry’s interest to keep authority over taxation at the state level, explaining that lobbying at the county level is more difficult and inefficient:

We have been discussing the role of Wendell Kimura and myself with respect to a tobacco industry special project to completely change the present Hawaii 40% ad valorem tax on tobacco to a fixed tax per cigarette pack. As part of this effort, we will be taking a public position with the State Tax Review Commission to see if a favorable recommendation can issue on: (1) the cigarette tax change and (2) retaining the tobacco taxing authority with the State rather than transferring it to the counties. We perceive a transfer of the tobacco tax to the counties will lead to tax increases whenever the counties are in need of funds (which is most of the time), and we also perceive an extremely difficult, time-consuming and costly county lobbying effort if the tax function were to transfer.²⁴¹

In the same letter, Suzuki outlined the tobacco industry’s lobbying plans with respect to the tax issue:

I will be taking the lead role with respect to the Tax Review Commission effort. We will be drafting the legislation for the change to the cigarette tax, and we will be working with the de facto coalition of lobbyists, including Philip Morris and R.J. Reynolds on the tax change effort. I will be coordinating the effort. I understand that George Morris, who represents Philip Morris, may also take a coordinating role.

I plan to make a presentation before the Tax Review Commission in Maui on June 30, 1989. If we can have backup from an economist or have an economist there at the time to answer questions, we will try to do so. In any event, I will prepare standby testimony

in order that our position is sure to be on record.²⁴¹

As planned, the Tobacco Institute hired an economist to testify before the Hawai'i Tax Review Commission. James Barney Marsh, a professor of economics at the University of Hawai'i; Marsh billed the Tobacco Institute \$2,595 for 3 hours of report preparation and 6 hours of testimony (including travel time from Honolulu to Maui).²⁴² In his testimony, Marsh stated that an ad valorem tax system "creates incentives to avoid or evade payment," and advocated a specific tax with a tax stamp as more difficult to evade and easier to enforce.²⁴³

After the Tax Review Commission hearing on Maui in June 1989, the Tobacco Institute agreed to pay Suzuki and Kimura \$16,500 and \$8,500, respectively, for the remainder of the year in addition to their annual retainer for state and local representation to lobby for a repeal of the ad valorem tax, to be replaced by a fixed excise tax. Suzuki and Kimura were to provide the following services for the additional payments: 1) advising the TI representatives and industry allies as to strategies for successful passage of a bill to repeal the ad valorem tax; 2) assisting in the drafting of testimony for the Tax Review Commission, 3) assisting in the drafting of necessary legislation for the 1990 session, and 4) contracting and/or coordinating activities of allies (distributors, vendors, company sales personnel, retailers, etc.) in the legislative effort.^{244,}
²⁴⁵

Two identical bills were introduced in the 1990 Legislature that would have changed the 40% ad valorem tax on cigarettes to an excise tax of \$0.018 per cigarette (36 cents per pack), HB 2989 (Rep. Souki) and SB 2780 (Sen. Yamasaki). The administration had requested SB 3119 (Sen. Wong) which made technical amendments to the ad valorem tax. The Tobacco Institute, Philip Morris, RJ Reynolds and the Hawaii Food Industry Association actively supported HB 2989 with the following arguments:

The ad valorem tax deprives the Legislature of the responsibility to increase or decrease the tax as the ad valorem tax is based on the wholesale price which includes inflation, and transportation and warehousing costs.

Hawai'i is the only state with an ad valorem tax on cigarettes and it is one of the highest taxes in the country.

Switching to a fixed rate would help avert tax erosion as smokers switch to lower quality and less expensive cigarettes.²⁴⁶

The Department of Taxation argued against the change because it would result in loss of revenue to the state since it would no longer be tied to inflation, along with the declining rate of consumption of cigarettes.²⁴⁶

HB 2989 passed in the House and was sent to the Senate at about the same time as SB 3119 passed in the Senate and was sent to the House and assigned to the House Committee on Finance, the same committee that recommended passage of HB 2989. It appears that HB 2989 was in trouble in the Senate, so the House Committee on Finance held up action on SB 3119.²⁴⁷ When the House Committee on Finance heard SB 3119, it substituted the language of HB 2989 for the language as passed in the Senate. The House passed SB 3119, just as it had passed HB

2989. The Senate did not concur in the House amendment, sending SB 3119 to conference. The Conference Committee approved the House amendments, but increased the tax to 2 cents per cigarette. SB 3119 then passed both House and Senate but was vetoed by Governor Waihee.

1993 Legislation Repealing the Ad Valorem Tax: Act 220

In 1993, legislation (SB 1729) was introduced to raise taxes through a fixed rate of 4.5 cents per cigarette, or 90 cents per pack. The 40 percent (of wholesale price) ad valorem tax amounted to a tax of 52 cents per pack. The American Heart Association submitted testimony nominally supporting SB 1729, but urging two amendments that would have undone the industry's intended purpose. First, the AHA recommended keeping the ad valorem tax and increasing it to a percentage that would equal the funds anticipated from the proposed unit tax of 4.5 cents per cigarette. This would produce the desired tax increase, while also ensuring that future revenues would keep pace with inflation and increases in tobacco prices. The AHA-Hawai'i Affiliate's president, cardiologist John Cogan, described Hawai'i's ad valorem tax as "one of the strongest and [most] effective tobacco taxes in the nation," and noted that "other states have attempted to use Hawai'i's tax code as a model, only to be thwarted by powerful lobbying by the tobacco industry."²⁴⁸ In his testimony on the bill, Cogan stated:

By raising taxes through a set rate per cigarette, Hawaii will be short-changing itself on future tax earnings. As tobacco prices increase, Hawaii will fail to recognize increased tax revenues on each cigarette. However, economic costs to the state attributed to tobacco consumption, already over \$229 million annually, will continue to rise well beyond the revenues tobacco produces for the state.²⁴⁸

The second amendment recommended by the AHA was allocation of \$1 million from the state general funds for tobacco prevention and control.

Members of the public health community testified in support of SB 1729. Supporters included the state Department of Health, Hawai'i Medical Association, Healthcare Association of Hawai'i, Hawai'i Medical Service Association, American Cancer Society, American Lung Association, American Heart Association, Hawai'i Interagency Council on Smoking and Health, and the Hawaiian Islands Nonsmokers Organization.

Opposition to the bill came from the tobacco industry, with the Tobacco Institute characterizing the proposed tax increase as punitive in nature and confiscatory.

Amendments in conference committee changed the fixed-rate tax from 4.5 cents to 3 cents per cigarette (60 cents per pack), slightly higher than the current ad valorem tax of (52 cents per pack). The final version of the bill called for the fixed rate to increase to 3.5 cents if a federal law was passed requiring military installations to purchase cigarettes in a manner similar to that required for alcoholic beverages. The amendments also removed the appropriation of tax revenues to the Department of Health for tobacco control. SB 1729 was ultimately passed and signed into law as Act 220 in 1993.

The tobacco industry got what it wanted, the elimination of the ad valorem tax, and the

final tax rate was lower than first proposed.

Legislative Activity: Excise Tax Increases, 1997-2008

The tobacco industry's plan to reduce the size of the cigarette tax by switching from an ad valorem to per unit tax backfired because the industry failed to anticipate the size of the flat rate tax that would be established. It also failed to anticipate the increases that would be passed in the state legislature in the ensuing years. As Table 31 shows, the per unit taxes established by state legislation between 1994 and 2007 exceeded the rates that cigarettes would have been taxed if the 40 percent ad valorem tax had remained in place. The difference between the old ad valorem tax rate and the new excise tax should be much greater after 2007 when it increases \$.20 per year to \$2.60.

Table 31 Tax rate if the ad valorem structure had not been repealed (cents per pack)			
Year	Estimated ad valorem tax rate*	Actual tax	Difference
1994	35.2	60	24.8
1995	36.4	60	23.6
1996	38.0	60	22.0
1997	42.8	60	17.2
1998	68.0	80	12.0
1999	75.2	100	24.8
2000	84.4	100	15.6
2001	92.0	100	8.0
2002	94.8	120	25.2
2003	94.8	130	35.2
2004	94.8	140	45.2
2005	94.8	140	45.2
2006	91.2	160	69.6
2007	91.2	160	69.6

Source: Campaign for Tobacco-Free Kids (Wholesale Prices)²⁴⁹

Attempts to increase the excise tax in the years following the 1993 tax legislation were initially unsuccessful. In 1995, HB 2250 was drafted to increase the excise tax from 3 to 5 cents per cigarette, based on cost of living adjustments. This bill died after the first reading in the Finance Committee. Similar bills were proposed in 1996, when HB 3811, HB 3484, and SB 2771 died in the Health Committee, the Finance Committee, and the Ways and Means Committee, respectively.

Legislation that was passed in 1997 (HB 1826) raised the state cigarette tax in Hawai'i from 3 to 5 cents per cigarette (from 60 cents to \$1.00 per pack). The bill called for this increase to occur in two phases: from 60 to 80 cents per pack in 1998, and from 80 cents to \$1.00 per pack in 1999. As expected, public health groups supported HB 1826, while the tobacco industry and its third party allies, most prominently the Tax Foundation of Hawai'i, opposed it.

A 1997 RJR document notes Hawai'i's consideration of a proposal to raise the tax from 60 cents to \$1.00, and states that Dan Howle, a Tobacco Institute consultant, was "looking for arguments to use in this fight."²⁵⁰ The document then describes a strategy for opposing a higher tax on grounds that it would encourage smuggling:

Minutes after hanging up with Dan [Howle], John Dunham at PM [a PM executive] called to ask if we had material on Hawaii. Dunham told me he should have a Pete Marwich-Berents study on Hawaii by middle of next week. This time the numbers are sound: Hawaii total shipments are 79 million packs. Of that military shipments are 18 million packs. This works out to be a 22-23 percent share of market for military. I will

take the PM study and use it for the basis of a Coalition smuggling briefing book. I am also getting Barry Miller to start pulling information on drug problem in Hawaii. With most consumer goods having to be shipped into Hawaii, I think we can argue that a high tax will only encourage major smuggling. (If the state has an illegal drug problem, then surely a cigarette smuggling situation will follow, since many of the same elements are involved.)²⁵⁰

Since sales of tobacco products on military installations are exempt from state and local taxes, tobacco products are cheaper than the retail cost to civilians outside of military installations. A 1997 report by the Tax Foundation of Hawai'i,²⁵¹ a tobacco industry ally, states that 22.9% of the total sales of cigarettes in Hawai'i are made on military installations while only 7.2% of the population have access to military post exchanges and commissaries, suggesting a substantial "leakage" of tax exempt cigarettes into the civilian market. The report concludes: "Should the price differential [between military and civilian sales] grow even wider, there is no doubt that the amount of leakage will grow."²⁵¹ The effect of increased leakage is to erode the revenue generating ability of a cigarette tax increase. The report, however, did not note that even with such leakage, the tax revenues to the state would increase.

In 1993, Hawai'i Governor Waihee (D) asked Congress to intervene to allow states to tax cigarettes sold on military bases to stem the revenue losses from tax exempt military cigarettes reaching the civilian market. It was estimated that 25% of the cigarettes sold in Hawai'i were sold on the military bases, but only 15% of the adult population of Hawai'i had legal access to military sales of cigarettes.

Julian Lipsher, Coordinator of the Tobacco Prevention and Education Program of the State Department of Health, was instrumental in getting this increase. Hawai'i and Alaska were the first two states to have a dollar per pack tax on cigarettes; Alaska, like Hawai'i, passed legislation in 1997 setting the tax at \$1.00 per pack.

In 2002, the House gave preliminary approval to HB 2741, a bill intended to double the state's tax to \$2 per pack. This action would have elevated Hawai'i's cigarette tax to the highest in the nation.²⁵² HB 2741 was introduced by Representatives M. Oshiro (D, Dist. 39), Arakaki (D, Dist 28), Lee (D, Dist. 38), Kanoho (D, Dist. 15), and Hale (D, Dist. 4). Kanoho and Hale had received tobacco industry campaign contributions. The House Health Committee Chairman, Dennis Arakaki (D-28th), supported the bill, suggesting that it would both discourage teen smoking by making it more expensive and help to balance out the state budget by raising an additional \$35 to \$40 million. He noted the bill would also require that approximately \$5 million be taken from extra tobacco tax money to fund anti-smoking educational efforts for youth. Rep. Arakaki also argued that education, health, and human services budgets would have to be cut if more funds were not raised through a tax increase or other means.²⁵²

Republican Representative Bob McDermott (R, Dist. 32), a recipient of tobacco industry campaign contributions, fought to kill the 2002 bill, using well-established tobacco industry arguments by framing it as a regressive tax increase that would hurt the poor by taking the price of a pack of cigarettes to over \$5. Regarding the allocation of money toward tobacco control education, he argued that people were "brain dead" if they did not know that smoking causes

cancer and other health problems. McDermott told reporters, "I don't smoke and I don't like smoking. I think it's a nasty habit, but it's [the tax legislation] just a money grab, that's all it is."²⁵²

HB 2741 passed and became Act 94 in 2002. While it did not double the tax rate as originally proposed, it provided for increases between 2002 and 2004: from \$1.00 to \$1.20 in 2002, to \$1.30 in 2003, and \$1.40 per pack in 2004. By 2003, Hawai'i's tax rate on tobacco was the seventh highest in the United States.

In 2006, another tax hike bill (SB 2961) was introduced by Senator Rosalyn Baker (D, Dist 5) and co-authored by 18 additional senators, including the Senate President Pro Tem Robert Bunda (D, Dist. 22). Both Sen. Baker and Sen. Bunda were among the overall leaders in tobacco industry campaign contributions. The original version would have increased the cigarette excise tax from \$1.40 a pack to \$1.80 January 1, 2007, \$2.20 January 1, 2008 and \$2.60 January 1, 2009. The new revenues from the taxes over \$1.40 per pack were allocated to the Cancer Research Center of Hawai'i (50%) for cancer research and operating expenses, the Department of Health (25%) for health promotion and disease prevention programs including tobacco control programs, and the Hawai'i Tobacco Prevention and Control Trust Fund (25%). SB 2961 passed the Senate without amendment.

However, the House Committee on Health substantially amended SB 2961 by deleting the specific tax increases and leaving them blank and eliminated allocations of the tax increase to the Cancer Research Center of Hawai'i, the Department of Health and to the Hawai'i Tobacco Prevention and Control Trust Fund. Instead, the Committee substitute for SB 2961 allocated the increased revenues in unspecified percentages to the University of Hawai'i School of Medicine for research and operating expenses, statewide emergency medical services, the state's trauma care resources, and to fund community health centers statewide through the Department of Health. SB 2961, as amended, passed the House. The Senate forced SB 2961 into a Conference Committee.

Four of the five Senate members of the Conference Committee were co-authors of SB 2961 as introduced. Despite this fact, the Conference Committee accepted the elimination of the tobacco control funding from SB 2961, but did increase the cigarette tax beginning September 30, 2006 by \$.20 per pack per year over six years to \$2.60 instead of over three years as originally proposed. All of the increased revenues were to be allocated to fund cancer research and operating expenses of the Cancer Research Center at the University of Hawai'i, statewide emergency medical services, the state's trauma care resources, and to fund community health centers statewide through the Department of Health. As amended in the Conference Committee, SB 2961 passed both houses and became law without the governor's signature on July 12, 2006.

Tax Stamp

In 1998, HB 3065 was introduced by House Speaker Calvin Say (D, Dist. 20), a recipient of tobacco industry campaign contributions, that proposed a tax stamp and a repeal of the \$.20 cigarette tax increase that would take effect later that year. Hawai'i did not require tax stamps on cigarette packages, and the Department of Taxation had historically resisted requiring tax

stamps, arguing that the cost of the tax stamp program would exceed any new revenue generated. The purported reason for the repeal of the scheduled tax increase was to prevent further increase in the price differential between cigarettes on which the tax was required and the military sales of tax-exempt cigarettes, citing the 1997 Tax Foundation of Hawai'i report on "leakage" of tax-exempt cigarettes into the civilian market.²⁵¹ During debate in the House on Third Reading of HB 3065, Rep. Takai warned: "And I will just caution the Legislature and my colleagues about about any comments made by the Tax Foundation of Hawaii, especially since they get some of the revenues from the tobacco companies."²⁵³

Public health groups including the ACS, AHA, and ALA strongly opposed the bill because of its provision to delay the 20 cent tax increase. The bill was passed by the legislature but vetoed by Governor Ben Cayetano (D), who stated that the proposed delay of the tax increase would undermine the original (stated) purpose of the tax increase: to discourage smoking, especially among youth. Furthermore, he noted that there was no evidence of large-scale black market cigarette sales according to federal agencies, including the U.S. Customs Service and the Bureau of Alcohol, Tobacco, and Firearms.²⁵⁴

Legislation establishing a tax stamp (SB 2486) was passed as Act 249 in 2001, with support from the Department of Taxation. In a 2005 interview, Julian Lipsher of the state Department of Health described the process by which the stamp tax legislation was introduced and passed:

It wasn't a battle. We were one of the few states who did not have a stamp. I think the Attorney General's office was the one who proposed that. Because there was, I think, a realization that there is a fair amount of product being sold that was not paying state taxes. There was a claim by the industry that there were "container loads" of untaxed product going around. But they never could produce any proof as to that. But the revenues -- I think there was a fair amount of non-reported sales, but the threat or the specter of container loads of product showing up was never proven or the industry that claimed that there was never provided the proof. ATF [the federal Bureau of Alcohol, Tobacco, and Firearms] was involved, customs was involved, and there were military police folks who were involved because you can buy products on military installations at the PX or the commissary [stores on military bases] without paying state or federal taxes.³⁷

The tax stamp was later credited in a Department of Health report with reducing the number of smuggled cigarettes sold in Hawai'i and for increasing the tax revenues by \$20 million.²⁵⁵

Summary of Tax Issues

In recent years, Hawai'i has significantly increased its cigarette tax with the specific intent to discourage consumption and youth smoking initiation. Hawai'i does enjoy some of the lowest prevalence and consumption rates in the country. It cannot address the issue of "leakage" of tax-exempt cigarettes into the civilian market from military PX and commissary sales without federal legislation requiring the military to purchase tax-paid cigarettes from local wholesalers as

has been done with alcoholic beverages. Finally adding a tax stamp to the cigarette package improved collection rates. However, there were lost opportunities to add some of the new revenue from the increased cigarette taxes to tobacco control programs.

MASTER SETTLEMENT AGREEMENT

In 1994, the Attorney General of Mississippi and the Attorney General of Minnesota sued the four major tobacco companies (Brown and Williamson, Lorillard, Philip Morris, and R.J. Reynolds) to recover the costs to their states' Medicaid programs for treating tobacco related illnesses and to force changes in tobacco industry marketing practices. Several other states followed with their own lawsuits shortly thereafter. Closed-door settlement discussions on a so-called "global settlement" of these suits, including large payments to the states, began in 1996, involving state attorneys general, private attorneys, public health advocates, and tobacco industry representatives.²⁵⁶⁻²⁵⁸ These discussions convinced most of the remaining states that there would eventually be a substantial amount of money coming from the tobacco industry to the states that had filed suit. Hawai'i became the twentieth state to file suit when Hawai'i Attorney General Margery Bronster (D, 1995-99) filed on February 3, 1997.

One week after the suit was filed, RJR's lobbyist in Hawai'i, John Radcliffe, sent a memo to RJR attorney David Powers mentioning the possibility of "making the Gov back off the suit."²⁵⁹ According to Radcliffe, the idea had come up in discussions with PM lobbyist Red Morris, PR executive Jack Seigle of Hawai'i's Star-Siegle Communications, and Stan Mukai and Bill McCorristan, attorneys with the Hawai'i law firm McCorriston, Miho, Miller, and Mukai that was Counsel for Philip Morris:

Hawaii government is in the toilet due to low revenue and high government costs . . . This [sic] not a good time to be spending at least \$2-3 million a year to prosecute a suit where a pvt [sic] attorney gets to rake off 20% of the 50% of any settlement that might be made by an industry notorious for not settling—and which can be lost—and won't do anything but cause several governmental departments to have to do more work, at great cost . . . etc. Red Morris, Stan Mukai, Bill McOrristan [sic], Jacj [sic] Seigle and Jim Boursma and I kicked around the idea of making the Gov back off the suit to save dough. we [sic] all liked it. Its [sic] pro-active, and in this media market—cost effective and has a good chance of working. Ben (Cayetano) [the Governor] can blame Margery and her little band of zealots for having moved to [sic] far too fast. What do you think?²⁵⁹

This suggestion is odd, since Gov. Cayetano had announced the filing of the lawsuit along with Attorney General Bronster, supporting it in strong terms: "This lawsuit is necessary because the tobacco companies must be held accountable for deceptive advertising practices aimed at our children."²⁶⁰ As the lawsuit proceeded, the Governor's rhetoric became stronger, and at one point he stated to the press that he would not mind seeing smoking completely banned because cigarettes are a major contributor to illnesses.²⁶¹

On behalf of the tobacco industry, attorneys William McCorriston and Mark Bennett (who became state attorney general in 2003, appointed by Republican Governor Linda Lingle) filed a motion to strike the Hawai'i complaint. In August 1998, Circuit Judge Kevin Chang ruled

that the state of Hawai‘i could proceed with every count cited in its lawsuit against the tobacco industry.^{192, 262}

On June 20, 1997 the "Global Settlement" of all public and private litigation against the tobacco industry was announced. The tobacco companies agreed to make substantial payments to government and private parties engaged in lawsuits against the industry, fund tobacco control education, and accept limited federal regulation of marketing and advertising through Food and Drug Administration (FDA) jurisdiction over tobacco products. In exchange, the tobacco industry would receive substantial immunity from punitive damages in present and future litigation, along with a cap on annual litigation payments.²⁵⁸ The immunity provisions of the Global Settlement, which required federal legislation, generated controversy within the public health community.²⁵⁶⁻²⁵⁸ The implementing legislation for the global settlement, authored by Senator John McCain R-AZ), ultimately died in the Senate in April 1998, after the immunity provision was dropped, triggering tobacco industry opposition.^{257, 258}

In November 1998, the attorneys general of 46 states, including Hawai‘i, reached a "Master Settlement Agreement" (MSA) with the four largest tobacco companies.²³⁵ Unlike the 1997 failed global settlement, the MSA simply settled the state litigation at hand and did not require legislation. Under the terms of the MSA, the 46 participating states would receive payments for an indefinite period. A total of approximately \$206 billion in payments was scheduled over the first 25 years based on a formula that allocated money to the states based on estimates of the amount of smoking-induced disease and other factors. Hawai‘i's share of the MSA settlement is approximately \$1.24 billion over the first 25 years. Table 31 shows the MSA payments received by Hawai‘i.

1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Total
\$14.9	\$32.5	\$36.5	\$43.0	\$35.1	\$37.4	\$38.4	\$35.1	\$36.5	\$56.1	\$365.5

MSA Implementing Legislation

Passage of Legislation to Spend the MSA Money (Act 304)

The MSA contained no provisions regarding how states were to spend their tobacco settlement funds because the money from the MSA was paid to the State of Hawai‘i, and state attorneys general do not have authority to appropriate state funds. In Hawai‘i, a 1999 law, Act 304 (HRS, Chapter 328L), created a fund in the state treasury called the Tobacco Settlement Special Fund (TSSF), and mandated that it be administered by the Hawai‘i Department of Health. The law requires that all tobacco settlement moneys received by the state each year, along with all interest and earnings accruing from the investment of those moneys, be deposited in the TSSF, except for the first \$350,000 received by the state each year, which is to be deposited in the state treasury to the credit of the tobacco enforcement special fund. The enforcement fund goes to the office of the state Attorney General to provide resources to ensure that tobacco companies are faithful to the MSA agreement, and to perform administrative functions such as setting up accounts for new tobacco companies added to those already allocating funds to the State of Hawai‘i under the MSA agreement.

The political battle in Hawai'i over the allocation of the MSA money began immediately after the settlement was announced in November 1998. Governor Cayetano initially proposed putting about half the MSA money into a "rainy day" fund as a hedge against future fiscal crises, with the rest for tobacco-related education and a licensing system for tobacco sales.²⁶³ Attorney General Bronster supported allocating the money to youth anti-smoking programs and for a counter-marketing campaign against smoking.²⁶⁴

In early December 1998, the Coalition for a Tobacco-Free Hawai'i prepared a detailed campaign proposal to secure tobacco settlement dollars for tobacco control.²⁶⁵ The comprehensive campaign included strategic planning, legislation and lobbying, grassroots advocacy and public relations/media components. The proposal included a budget of \$92,000 and included detailed timelines for each of the four components of the campaign. The goal was to secure as much of the tobacco settlement funds for tobacco control as possible, and to place those funds into a trust fund outside of state control.¹⁸⁵

Robert Toyofuku, a lobbyist hired by the Coalition for a Tobacco-Free Hawai'i in 1999, played a key role in developing the legislative strategy. Toyofuku dealt primarily with the Department of Health and Governor Ben Cayetano (D) in framing the MSA legislation. An attorney with over twenty years of lobbying experience, Toyofuku was one of Hawai'i's most respected and well connected lobbyists, Toyofuku first became involved in tobacco control efforts in 1997, when he was asked to speak with U.S. senators on behalf of the Campaign for Tobacco-Free Kids.

Toyofuku's first major piece of advice for members of the Coalition for a Tobacco-Free Hawai'i was to be realistic about the portion of settlement funds that they could secure for tobacco control and prevention. He recalled that it took some work to persuade all Coalition members of the need to limit the amount requested:

I think initially there were several people in the Hawai'i coalition who wanted to try to get all of the money for tobacco prevention and control. . . Once I reviewed everything, I did know that the governor, Benjamin Cayetano, wanted 50 percent of the money . . . and the Department of Health wanted the other 50 percent for their coffers, to be used in part for anti-tobacco issues and tobacco prevention and control. What I had suggested to the coalition was that they would not be able to get all of the money . . . So the first chore I had was to convince the coalition not to put in legislation for 100 percent of the money. I told them that they just had to trust me on that, and they finally did.²⁶⁶

Toyofuku and Lipsher, the head of the state Department of Health's Tobacco Prevention and Education Program, wrote the first draft of the legislation. They initially did not specify a particular dollar amount to be allocated to tobacco control and prevention. Instead, they included a provision for the creation of a tobacco control trust fund, separate from the Department of Health and not under state control, which they hoped would be protected from future legislative tampering. This decision reflected their concern that, in the absence of such a trust fund, a change in state government administration might lead to a reduction in the amount allocated to tobacco control and prevention. As Lipsher noted of the trust fund that was ultimately created:

It's outside the control of the state legislature. They hate that. But at the same time, that's why it was created. To stay away from the state legislature and everyone's notion that they want to fund their favorite charity or health program. "Oh yes, substance abuse, do it this way. Kid's programs." The money is for tobacco prevention and control and public health.³⁷

Lipsher also explained the logic for including more than tobacco in the bill in a 2005 interview:

As we wrote the bill . . . we wrote this bill so that money coming to the Department would help reinstate some of the prevention programs that had disappeared from the landscape of public health in the earlier 90's because of budget deficits and things [resulting from a decline in Japanese tourism]. So we wrote the Department's position to look at chronic disease prevention, health promotion -- tobacco, physical activity, nutrition, and children's programs -- were the statutory language where those dollars would be put toward. So we're looking at the risk factors for disease.³⁷

When SB 1034 was introduced on January 26, 1999 by Sen. Norman Mizuguchi (D, Dist. 15), who was President of the Senate, it divided the MSA money into two funds with one half going to the governor's rainy day fund and one-half going to the tobacco settlement special fund to be administered by the Department of Health, which "shall transfer up to fifty percent of the allocation to the department of human services for [needy] children's health programs." The Department of Health was directed to spend the remaining funds "to reduce cigarette smoking and tobacco use among youth and adults through education and enforcement activities, to control and prevent chronic diseases where tobacco use is a risk factor, to promote health [sic] lifestyles through better nutrition and improved physical activity, and to assess the effectiveness of health promotion and disease prevention and tobacco prevention and control programs."

After the tobacco settlement bill was introduced in the legislature, Toyofuku pushed for a three-pronged advocacy strategy: lobbying, public relations and media, and grassroots activity. He based his strategies on information from the Campaign for Tobacco-Free Kids and from the Centers for Disease Control and Prevention's recommended comprehensive program.²⁶⁷ He advised the coalition to set up a media public relations effort, and brought on board Joan Bennett, who had experience in political campaigns. The Coalition also hired a staff person as coordinator for the grassroots effort.

In terms of lobbying, a key challenge was to convince legislators of the need for a comprehensive tobacco control program and that it was worth the cost of such a program. Based on the CDC's recommendations in its Best Practices for Comprehensive Tobacco Control Programs report,²⁶⁷ the coalition had determined that between \$10 and \$23 million should be spent annually on tobacco control and prevention in Hawai'i. The CDC's recommended program to reduce tobacco use included a combination of education in the schools and community, cessation programs, and media. Toyofuku hoped to get at least 25 percent of the MSA money for the tobacco control trust fund, which would amount to at least \$10 million per year. He believed that legislators would not initially understand why this amount of money was needed for tobacco control. Toyofuku recalled in a 2005 interview:

The key was to impress [legislators] with the fact that you have to have a comprehensive program. You can't just have a cessation program. You have to have media, you have to be in the schools, in the community, etc. So that's the way we went in on a strategy basis to get the legislation.²⁶⁶

The Senate Health and Human Services Committee and Senate Ways and Means Committee jointly reported out SB 1034 with numerous amendments.²⁶⁸ The Committee Report reflects that struggle that would ensue: "The Legislature has been beset with many requests from public and private agencies to receive a portion of the tobacco settlement moneys . . . but find that the most critical areas that need funding are in the areas of health, childhood education, nutrition, early intervention, and tobacco prevention." The Committees amended SB 1034 by deleting the 50-50 allocation of the money, limiting the rainy day fund to 15% of the settlement funds and creating the Hawai'i Tobacco Prevention and Control Trust Fund as a separate fund of a nonprofit §501(c)(3) entity with a board of directors.

The amendments also detailed the programs to be funded, but without specifying the percentage funding allocation for each program. The programs were early childhood education, early intervention for infants and toddlers with developmental delays or at risk because of child abuse and neglect or economic factors, children's health insurance, child care subsidies, and promotion of healthy lifestyles through better nutrition and physical activity. Tobacco control was funded to reduce cigarette smoking among youth and adults and to control, to prevent chronic diseases where tobacco is a risk factor, to assess the effectiveness of tobacco prevention and control programs, and to assist survivors of secondhand smoke and tobacco use. The amendments also created an advisory board to assist in the expenditure of settlement monies by the Department of Health and the nonprofit entity managing the Tobacco Prevention and Control Trust Fund. SB 1034 passed the Senate 22-2. The House changed the allocation of the funds, so SB 1034 went to conference.

By the last week of the legislative session, a Conference Committee bill was set to be passed that would allocate 50 percent of the MSA money to the state's Emergency and Budget Reserve Fund, known as the "rainy day" fund, 15 percent to the tobacco control trust fund, and 35 percent to the state Department of Health. In last-minute negotiations, Toyofuku was able to convince Governor Cayetano, who was a personal friend of Toyofuku and a supporter of tobacco control programs, to reduce the state's share for the rainy day fund to 40 percent. This decision allowed the tobacco control trust fund to receive its target of one-quarter of the MSA money. In a 2005 interview, Toyofuku recalled his negotiation with the governor:

Well, I just talked to the governor . . . and I told him that we needed about 25 percent of the money [for tobacco control]. The Department of Health . . . was fine on 35 percent and I thought that 20 percent in the rainy day fund . . . would be enough as it built up over the years and it would still be a good point for economic stabilization in a time of need. [The governor] was very supportive of an anti-tobacco program . . . After we talked, he said 'Okay, I'll give you the 10 percent.' It was basically just discussing the fact that . . . the trust fund needed the money, and his 20 percent would have been sufficient over a period of time.²⁶⁶

The Department of Health, which had originally wanted 50 percent of the total payments, accepted a 35 percent share in light of the fact that an additional 25 percent of the total MSA money would be earmarked specifically for tobacco control and prevention through the trust fund.

The Conference Committee reported out the bill with amendments to allocate the funds with 40% going to the “rainy day” account, 35% to the Department of Health “for health promotion and disease prevention programs, including but not limited to, maternal child health and child development programs, promotion of healthy lifestyles (including fitness, nutrition, and tobacco control), and prevention oriented public health programs” and 25% to the Hawai‘i Tobacco Prevention and Control Trust Fund. The Conference Committee amendments also created a Tobacco Prevention and Control Advisory Board charged with developing a strategic plan for tobacco prevention and control and to advise on administration of the Tobacco Prevention and Control Trust Fund.²⁶⁹ SB 1034 passed in both houses.

The evolution of SB 1034 is shown in Table 32. As the bill changed, support ebbed and flowed, waxed and waned as the Legislature struggled with the competing interests. Toyofuku viewed the final legislation as a success for tobacco control advocates:

People really wanted this to work . . . It just took time and a lot of effort. You had to convince all the legislators, especially the money chairs . . . So I always look at this as one of the highlights of my career in lobbying. It was very satisfying to get this signed.

Version	Date of passage on floor or in committee	Main Provisions	Supporters
SB 1034	1/26/99	Specifies allocation of tobacco settlement moneys: 50% to Governor’s rainy day fund. 50% to Tobacco Settlement Special Fund for DOH funding of health promotion, disease prevention, tobacco control, and children’s health programs.	
SB 1034, S.D. 1	3/5/99	Clarifies that all tobacco settlement moneys are to be initially deposited in the Tobacco Settlement Special Fund (TSSF) before they are transferred to other funds and purposes. Changes the administrative responsibilities for the TSSF from the Dept. of Budget and Finance to the DOH. Provides for the appointment of members of the advisory board by the Director of Health. Establishes a Hawai‘i tobacco prevention and control fund as a separate fund of the Hawai‘i Community Foundation, a Hawai‘i nonprofit corporation.	<u>Support:</u> DOH, Dept of Human Services, ALA, American Academy of Pediatrics, Coalition for a Tobacco-Free Hawai‘i, ACS, Good Beginnings Alliance, Hawai‘i State Primary Care Association, Childcare Business Coalition, Healthy Start, Hawai‘i Early Intervention Coordinating Council, and Hawai‘i Association for the Education of Young Children.

SB 1034, S.D. 1, HD 1	3/24/99	The DOH shall transfer up to 50% of its allocation to the Dept of Human Services for children's health programs.	<p><u>Support:</u> Hawai'i Medical Association, Hawai'i Health Systems Corporation, West-Hawai'i Tobacco -Free Coalition, Hawai'i Family Support Center, American Academy of Pediatrics, Hawai'i Coalition for Affordable Long Term Care, Kaua'i Tobacco-Free Community Coalition, Good Beginnings Alliance, and American Cancer Society.</p> <p><u>Support for intent of the bill:</u> ALA, AHA, Kaiser Permanente, Policy Advisory Board for Elder Affairs, Coalition for a Tobacco-Free Hawai'i, and the DOH. The DOH and Department of Budget and Finance supported restoring the original provisions of the bill, as proposed by the administration.</p>
SB 1034, S.D. 1, HD 2	4/9/99	<p>Provides that an unspecified percentage of the tobacco settlement shall be deposited into the TSSF.</p> <p>Transfers an unspecified percentage of the Special Fund's allocation to DHS for children's health programs.</p> <p>Establishes an Emergency and Budget Reserve Fund into which an unspecified amount of the tobacco settlement shall be transferred.</p>	<p><u>Support:</u> Hawai'i Medical Association, Hawai'i State Primary Care Association, AARP, Hawai'i Family Support Center, Policy Advisory Board for Elder Affairs, Coalition for a Tobacco-Free Hawai'i, Hawai'i Nurses' Association, Leon and Malia Productions, Hawai'i Health Systems Corporation, and Hawai'i Public Health Association.</p> <p><u>Support for intent of the bill:</u> DOH, ALA, AHA.</p>
SB 1034, S.D. 1, HD 2, CD 1	4/30/99	<p>Specifies allocation of tobacco settlement moneys:</p> <ul style="list-style-type: none"> 40% to Emergency Reserve Fund. 35% to DOH for health related programs, including the children's health insurance program. 25% to the Hawai'i Tobacco Prevention and Control Trust Fund. <p>Creates a tobacco prevention and control advisory board.</p> <p>Requires the Director of Health to convene an advisory body for strategic planning and development of health related programs.</p>	

The Early History of the Tobacco Prevention and Control Trust Fund

Act 304 provided that the Director of Health, with concurrence of the governor, is to select the nonprofit entity into which the Tobacco Prevention and Control Trust Fund would be placed “based upon the proven record of accomplishment of the entity in administering a similar trust fund.” The Hawai'i Community Foundation was selected as repository of the Trust Fund. The Hawai'i Community Foundation is one of the oldest community foundations in the country, founded in 1916. In 2008, it managed over \$405 million in assets, mostly in endowment funds, and distributed more than \$30 million a year in grants. As a nonprofit community foundation, it serves as a repository for assets and provides grant making and asset management services for distribution of those assets to benefit the community. In the case of the Tobacco Prevention and Control Trust Fund, Act 304 gave direction that those funds were to be used “for tobacco prevention and control, including but not limited to, reducing cigarette smoking and tobacco use

among youth and adults through education and enforcement activities, and controlling and preventing chronic diseases where tobacco use is a risk factor.”

The law states that the Tobacco Prevention and Control Advisory Board, created to advise on administration of the Tobacco Prevention and Control Trust Fund, is to have 11 members, appointed by the Governor and the Director of Health after consultation with the Speaker of the House and the President of the Senate. Members serve without compensation for 3-year terms. The membership of Advisory Board “shall consist of members who are involved in tobacco prevention and control” and are selected as shown in Table 33.

Table 33 Method of Selection of Members of the Tobacco Prevention and Control Advisory Board
One member of the Governor's staff, appointed by the Governor
One member to be appointed by the Governor from a list of two names submitted by the President of the Senate
One member to be appointed by the Governor from a list of two names submitted by the Speaker of the House of Representatives
The Director of Health or the Director's designee
The Superintendent of Education or the Superintendent's designee
Three members having demonstrated interest in and having backgrounds beneficial to controlling and preventing the use of tobacco, appointed by the Director of Health
Three members representing populations at risk for tobacco use, appointed by the Governor

The Advisory Board, in collaboration with the Department of Health, is required by Act 304 to develop a statewide strategic plan for tobacco prevention and control. The plan must address 1) development and implementation of effective, cost efficient tobacco control programs; 2) adequate standards and benchmarks to evaluate program success; and 3) assessment of the effectiveness of these programs. The first five-year strategic plan was completed in 2001 and provided a rolling one-year plan for Trust Fund spending.²⁷⁰

According to Act 304, the body of the Trust Fund must be invested "in a manner intended to maximize the rate of return on investment of the trust fund, consistent with the objective of preserving the trust fund's principal." This provision was initially interpreted as allowing expenditure of only the interest and earnings on the Trust Fund. The rationale was that this would help to preserve and grow the endowment. The issue of whether to spend the Trust Fund principal has been a subject of debate among Advisory Board members. Initially the Advisory Board opposed spending of the principal, though there was disagreement among Board members. The result was a much smaller tobacco control program than would have existed had the money been spent as it came in from the MSA.

Act 14 passed in 2001 amended Act 304 to permit expenditure of up to 50 percent of the fair market value of the Trust Fund in any given year. (Act 14 is discussed in detail in the section below.) In October 2002, the Trust Fund Advisory Board approved a policy to expend a portion of the principal in addition to interest and earnings, with the goal of developing a comprehensive tobacco control program.

The Raid on the Tobacco Prevention and Control Trust Fund – Act 14 (2001)

In 2005 Toyofuku recalled, "It's a constant battle because there are always people that

want this [settlement] money. Obviously they can get the money by changing the law so that the tobacco trust fund gets a smaller percentage."²⁶⁶ According to Julian Lipsher of the Department of Health, "every year there have been efforts to raid and attack the trust fund. The trust fund dollars are strictly tobacco control. Everyone tries to shave that down."³⁷ In addition to the medical school amendment, another prominent threat to the tobacco control trust fund money has come from drug abuse advocates who pushed for a share of the settlement money to be shifted to them. According to Toyofuku, the chairs of the Ways and Means committees have preferred to protect the MSA funds and to take money for such programs from the general fund rather than dipping into Master Settlement funds.

In 2001, Governor Cayetano proposed a change in the allocation percentages set by the 1999 tobacco settlement law, suggesting an allocation to the University of Hawai'i (UH) for debt service on \$150 million in revenue bonds issued for construction of a new medical school. SB 13, passed by the Legislature in the Third Special Session called immediately after the September 11, 2001 attack, amended Chapter 328L to allocate 28 percent of the MSA funds for debt service on \$150 million in bonds issued for construction of the University of Hawai'i Health and Wellness Center, including a biomedical research center and a new medical school. The 2001 amendment cut the proportion of funds allocated to the Tobacco Prevention and Control Trust Fund from 25 to 12.5 percent, and cut the MSA apportionment to the Emergency and Budget Reserve Fund from 40 to 24.5 percent. The Department of Health share of funds remained the same: 25 percent to the State Department of Health's Healthy Hawai'i Initiative, and 10 percent to the Department of Human Services' Children's Health Insurance Program. The net result was diversion of about \$5 million a year away from tobacco control to capital costs for the medical school.

The Governor's 2001 proposal to divert money from the trust fund to the medical school construction bonds came after September 11, when an economic downturn was accompanied by an unusual number of bills to stimulate the Hawai'i economy with construction and other projects; the tobacco settlement amendment was one of seventeen economic revitalization bills in the state legislature, all of which passed.

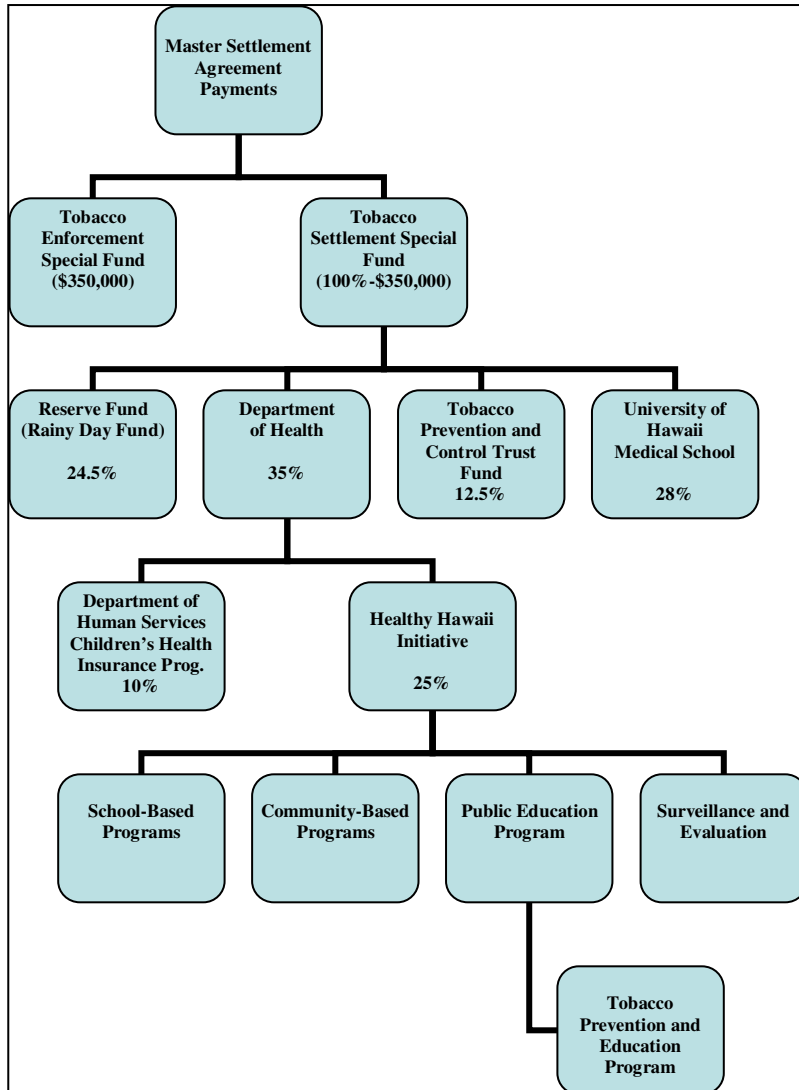
SB 13 was introduced by Sen. Bunda, President of the Senate and Sen. Slom (R, Dist. 8). Sen. Slom was a freshman senator and became a frequent supporter of the tobacco industry, but had received only a modest \$750 in tobacco industry campaign contributions in his first election bid in 2000. Since the University of Hawai'i was the principal beneficiary of SB 13, there was some question about the involvement of lobbyist John Radcliffe in SB 13. As noted earlier, RJR's main lobbyist in Hawai'i in 2001, John Radcliffe, was (and remained) also the Associate Director in the University of Hawai'i faculty union through 2006. Tobacco control advocates were concerned about crossover lobbying, as Mark Levin, a University of Hawai'i law professor, recalled in a 2005 interview:

[There was] a question of, to what extent this overlaps? And to what extent there are conflicts. We kept that in the back of our mind with the UH [smokefree campus] policy, but we figured it was unlikely that he would waste his efforts fighting the UH policy. But theoretically, if the faculty -- I have no doubt that he probably alerted RJR -- that he would have been aware of this, owing to his position as a UH faculty union official and I

do not know, but I would presume that he would have then crossed over, switched his other hat on, and alerted RJR that this was happening . . . clearly the appearance of a conflict is evident. But again, he is very well-liked and it's sort of the lay of the land here.¹⁵¹

The Coalition for a Tobacco-Free Hawai'i opposed the amendment, but according to the coalition's director at the time, Clifford Chang, "it was really a foregone conclusion. After 9-11, the money was just gone."¹⁸⁵ Toyofuku noted that lobbyists for the medical school had initially "come in quietly" to talk to the governor about taking money from the rainy day fund and the Tobacco Prevention and Control Trust Fund. "By the time the [trust fund] advisory group found out about it, it was sort of too late," Toyofuku recalled. With the Governor proposing the diversion and the stampede in the Legislature to pass economic stimulus measures, the tobacco control advocates decided that opposition was hopeless, they did not make a public issue of the medical school amendment, and there was not a large public debate.

Figure 8 shows how the MSA allocations were made after the enactment of Act 14.



In the end, tobacco control did get something from SB 13 – the Trust Fund was authorized to annually spend up to 50% of the principal of the value of the Trust Fund for tobacco prevention and control. In the short-term, this allowed for increased spending, but what the long-term effect will be remains to be seen.

The supporters of SB 13 included the Department of Budget and Finance, Hawaii Community Development Authority, University of Hawaii John Burns School of Medicine, Cancer Research Center of Hawaii, Kakaako Improvement Association, Hawaii Biotechnology Group, Healthcare Association of Hawaii, The Chamber of Commerce of Hawaii, General Contractors Association, and Victoria Ward Limited. The American Heart Association of Hawaii, American Lung

Figure 8 MSA fund allocations after passage of Act

Association of Hawaii, American Cancer Society Hawaii Pacific, Hawaii Nurses' Association, Coalition for a Tobacco-Free Hawaii, Hui Olelo Hawaii (a laryngectomee support group), and a retired physician opposed the use of Hawaii tobacco prevention and control trust fund moneys to pay for the new medical school.²⁷¹

STATE TOBACCO CONTROL PROGRAMS IN HAWAII

Tobacco control programs in Hawaii are divided between the Tobacco Prevention and Education Program (TPEP) in the State Department of Health and, since 1999, the Tobacco Prevention and Control Trust Fund (Trust Fund) managed by the Hawaii Community Foundation (HCF). Funding for TPEP comes from MSA payments, and CDC and private foundation grants. The Trust Fund receives a portion of the MSA payments and earns income on the net assets of the Trust Fund. While a tobacco control program has existed in the Department of Health since 1992, the vast majority of tobacco control programs and funding have been provided by the Trust Fund since 2003.

Tobacco Prevention and Education Program (Department of Health)

The tobacco control program in the Hawaii Department of Health, called the Tobacco Prevention and Education Program (TPEP), was established in 1992 by then-Director of Health Jack Lewin. TPEP has been managed since its inception by Julian Lipsher. Initially, Lipsher was the program's only staffer, and there was no budget beyond his salary.

The Department of Health received a grant of \$224,680 from the Centers for Disease Control and Prevention (CDC) in 1993 for FY 1994 to build a tobacco control program.²⁷² From FY 2001 through FY2006, TPEP also received some funding from the American Legacy Foundation. (The authors were able to obtain little detailed data from the Department of Health about TPEP expenditures, and what detail was obtained is shown in Table 34.) TPEP grew from one position and no budget in 1992 to eight positions and a budget of about \$1.6 million in 2008.³⁷

FUNDING SOURCE	FY1994	FY1995	FY1996	FY1997	FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008
CDC	\$224,680	\$208,022	\$208,022	\$208,022	\$392,300	\$786,572	\$874,172	\$874,172	\$874,172	\$826,325	\$874,172	\$837,568	\$790,899	\$792,409	\$790,899
American Legacy Fd.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$62,500	\$12,500	\$132,514	\$94,086	\$104,433	\$60,183	\$0	\$0
TOTAL	\$224,680	\$208,022	\$208,022	\$208,022	\$392,300	\$786,572	\$874,172	\$936,672	\$886,672	\$958,839	\$968,258	\$942,001	\$851,082	\$792,409	\$790,899
EXPENDITURES															
Contractual									\$238,904	\$159,605	\$160,070	\$181,727	\$172,062	\$198,180	\$159,980
Other									\$266,902	\$326,241	\$295,283	\$221,867	\$165,258	\$70,793	\$68,093
Quitline													\$223,261	\$104,010	\$210,891
Administration and Management									\$336,520	\$422,011	\$459,604	\$410,675	\$453,803	\$484,926	\$545,598
TOTAL									\$842,326	\$907,857	\$914,957	\$814,269	\$1,014,384	\$857,909	\$984,562

TPEP focuses on youth smoking initiation, youth and adult cessation, exposure to secondhand smoke and Hawaii's multiethnic and culturally disparate populations. Its media campaign is targeted primarily toward youth. The campaigns have received statewide Pele Awards from the Hawaii Advertising Federation and national Addie Awards. The program's ads are seen on TV, on-screen movie ads, in shopping malls, on The Bus, at Aloha Stadium, in

parking structures, in print ads, and heard on radio stations statewide.

Healthy Hawai'i Initiative (Department of Health)

In addition to CDC and American Legacy Foundation money, TPEP is funded by the Department of Health with MSA money from the Healthy Hawai'i Initiative (HHI). From FY2000 through FY2008, HHI allocated an average of a little more than \$778,000 annually in MSA money to TPEP, providing the required 1:1 match for the TPEP's CDC funding. This combination of CDC and HHI money funded TPEP's counter-marketing youth media campaign. General state funds pay Julian Lipsher's salary and benefits. Other TPEP positions are funded by HHI.

Act 304 in 1999 allocated 35% of MSA monies to the Department of Health, but none of that MSA money was targeted by law specifically for tobacco control. Act 304, and the amendments in Act 14, in 2001 requires the Department of Health to transfer up to 10 percent of the total settlement moneys received by the state each year to the Department of Human Services (DHS) for the children's health insurance program (i.e., health care for needy children). There is a Memorandum of Agreement between the DOH and the DHS documenting arrangements for transfer of needed revenue to match federal funds for the State Children's Health Insurance Program (SCHIP).²⁷⁰

The law requires that the remainder of the moneys allocated to the Department of Health (25 percent of the total received by the state each year) goes into the Healthy Hawai'i Initiative (HHI) and must be expended for "health promotion and disease prevention programs, including but not limited to, maternal child health and child development programs, promotion of healthy lifestyles (including fitness, nutrition, and tobacco control), and prevention oriented public health programs. Table 35 shows how the Department of Health spent the 25% of MSA funds going to HHI. On average, only a little more than 13.5% of HHI funds were spent on tobacco control by the Department of Health between FY2001 and FY2008.

Program	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Tobacco Control Expenditures									
Community-Based Initiatives									
REAL - Hawaii Youth Movement Against Tobacco Use			\$319,670	\$341,800					
Public Education									
Tobacco Counter-Marketing*	\$274,078	\$604,088	\$948,481	\$986,207	\$897,130	\$852,029	\$743,993	\$798,452	\$900,000
Tobacco Retailer Inspections	\$52,512	\$689,194	\$246,678	\$272,449	\$230,453	\$250,851	\$263,280	\$288,391	\$321,000
Hawaii Community Foundation Support	\$250,000		\$1,000,000	\$1,000,000					
Youth Tobacco Survey						\$50,000		\$50,000	
Total Tobacco Control Expenditures	\$676,590	\$1,293,282	\$2,614,829	\$2,600,456	\$1,127,583	\$1,152,880	\$1,007,273	\$1,136,843	\$1,221,000
Other Expenditures Non-Tobacco									
Healthy Start					\$5,330,836	\$4,742,411			
Expenditures for Primary Prevention Includes Tobacco, Nutrition, Physical Activity									
School-Based Health Initiatives	\$1,850,000	\$1,850,000	\$0	\$224,032	\$1,050,000	\$1,050,000	\$1,050,000	\$1,150,000	\$1,150,000
Community-Based Initiatives	\$1,077,399	\$900,286	\$1,832,292	\$2,541,024	\$308,090	\$81,042	\$435,403	\$254,020	\$530,234
Public Education	\$74,360	\$71,263	\$1,522,400	\$585,003	\$703,690	\$430,874	\$626,399	\$408,654	\$450,000
Professional Education				\$58,438				\$351,250	
Assessment, Technology, Research, and Evaluation***	\$418,092	\$3,699,714	\$2,581,110	\$3,663,582	\$981,625	\$2,004,098	\$4,059,189	\$3,646,883	\$5,628,425
Tobacco Settlement Fund Project/HHI Administration and Management	\$118,462	\$734,493	\$1,142,174	\$1,043,280	\$952,859	\$1,125,335	\$793,177	\$1,160,406	\$1,207,283
Total HHI Expenditures	\$4,691,493	\$9,842,320	\$12,107,634	\$13,816,271	\$11,582,266	\$11,739,520	\$8,978,714	\$9,244,899	\$11,407,942

For purposes of these programs, Act 304 mandates that the Director of Health convene a

nine-member Tobacco Settlement Health and Wellness Advisory Group to plan the development and implementation of HHI preventive systems and to make recommendations regarding the expenditure of funds. This advisory group is different from the Tobacco Prevention and Control Trust Fund Advisory Board Group described above that advises on Trust Fund budgets. The Tobacco Settlement Health and Wellness Advisory Group members are selected at the discretion of the Director of Health, and they must have expertise in the relevant programs. It is made up of representatives from community agencies and coalitions.

After Act 304 was signed into law in 1999, the Department of Health, in collaboration with its Health and Wellness Advisory Group and the CDC, created the HHI to fulfill the legislative mandate for DOH spending of MSA funds on health promotion and disease prevention programs.

The HHI aim is to encourage healthy lifestyles and environments, with an emphasis on the healthy development of youth with respect to three risk factors: 1) poor nutrition, 2) physical inactivity, and 3) tobacco use. The HHI model is adapted from the CDC's Healthy People 2010 campaign.²⁷³ The Initiative supports a mixture of public and professional education, community-based programs and school-based programs implemented by community coalitions and organizations. It has four interrelated components: 1) coordinated school-based health; 2) community-based initiatives; 3) public awareness/social marketing and professional education; and 4) surveillance, assessment, evaluation, and research.^{270, 274} HHI has created programs in each of the component areas:

- **School-based Component:** The DOH and state Department of Education (DOE) entered into a partnership (the Hawai'i Partnership for Standards-based School Health Education) in 2000.²⁷⁰ The contract allocates \$1.05 million annually to the DOE. A portion of this goes to tobacco-related activities (e.g., Hawai'i Youth Tobacco Survey) and activities that include but are not focused only on tobacco, such as the Youth Risk Behavior Survey.
- **Community-based initiatives:** the HHI has established a few unified nutrition,/physical activity and tobacco coalitions, and partnerships with communities and non-governmental organizations across the state that focus on physical activity, nutrition, and/or tobacco control.²⁷⁰ The HHI offers technical assistance on cessation and resources, smoking facts, an online "nicotine addiction calculator," and referrals to local cessation services and information.²⁷⁵
- **Public awareness and education:** the HHI public education and social marketing campaign, Start.Living.Healthy (SLH), aimed to promote healthier lifestyles: tobacco free, better nutrition, and increased physical activity.
- **Surveillance, Evaluation, and Research:** The Hawai'i Health Data Warehouse (previously called the Hawai'i Outcomes Institute) is a partnership between the University of Hawai'i, John A. Burns School of Medicine, and the Hawai'i Department of Public Health Sciences and Epidemiology to create a repository for research on health-related outcomes of social and clinical interventions. The Health Data Warehouse is responsible for data collection and analysis, and is staffed with epidemiologists, data analysts, and research statisticians.

Total Department of Health tobacco control expenditures are shown in Table 36.

	FY1994	FY1995	FY1996	FY1997	FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008
TPEP	Data requested from but not provided by the Department of Health								\$842,326	\$907,857	\$914,957	\$814,269	\$1,014,384	\$857,909	\$984,562
HHI	\$0	\$0	\$0	\$0	\$0	\$0	\$576,590	\$1,293,282	\$2,514,829	\$2,600,456	\$1,127,583	\$1,152,880	\$1,007,273	\$1,136,843	\$1,221,000
TOTAL	*	*	*	*	*	*	*	*	\$3,357,155	\$3,508,313	\$2,042,540	\$1,967,149	\$2,021,657	\$1,994,752	\$2,205,562
* Total Expenditures cannot be calculated because of missing data															

Tobacco Prevention and Control Trust Fund

The Trust Fund was created by the Legislature and funded with MSA money in Act 304 in 1999 to provide funding and programs “for tobacco prevention and control, including but not limited to, reducing cigarette smoking and tobacco use among youth and adults through education and enforcement activities, and controlling and preventing chronic diseases where tobacco use is a risk factor.”

All MSA money, less the \$350,000 for the Tobacco Enforcement Special Fund that goes to the Attorney General, goes into the Tobacco Settlement Special Fund (TSSF) administered by the Department of Health, which in turn distributes TSSF money as mandated by statute, including the percentage that goes to the Trust Fund. Act 304 authorized the Director of Health to select a nonprofit entity as fiscal agent for the Trust Fund. The first such nonprofit entity was the Hawai‘i Community Foundation (HCF). The relationship between the TSSF and HCF focuses on contractual and administrative issues, such as returns on investment and delivery of grants.

Act 304 also created the Tobacco Prevention and Control Advisory Board (Advisory Board) to advise on administration of the Tobacco Prevention and Control Trust Fund. The key player on the first Advisory Board was Margery Bronster, the former Hawai‘i Attorney General who filed the state lawsuit against the tobacco industry and first Chair of the Advisory Board. She reportedly drove the Board, and viewed it as an approval board rather than merely an advisory body, according to Dennis Kondo, former Program Manager at HCF.

The actual relationship among HCF, as fiscal agent for the Trust Fund, the State Department of Health and the Advisory Board seems to have been somewhat different from what the legislation contemplated. Act 304 provided for an independent Trust Fund and Advisory Board, but the Department of Health has taken effective control of both without any apparent statutory authority. The Department of Health convened meetings of the Advisory Board despite the power of the Advisory Board to convene its own meetings. The Advisory Board did not meet for about 18 months in 2006-2007 because the Department of Health did not call any meetings due to the inability to have a quorum at meeting resulting from vacancies on the Advisory Board that remained unfilled, some believed, due to the Department of Health. Under Hawai‘i law, it is clear that the Advisory Board has always had the power to call its own meetings by simply filing the required meeting Notice with the Office of the Lieutenant Governor.

The Department of Health has required that HCF enter into a contract with the Department of Health to provide administrative, investment, and grant making services for the

Trust Fund, even though Act 304 directs that HCF to invest and manage the money, and make grants of Trust Fund monies for tobacco prevention and control programs.^{274, 276} According to Act 304, HCF must expend moneys from the Trust Fund for tobacco prevention and control. As the HCF Trust Fund has operated, the Advisory Board makes recommendations to the Department of Health on the total amount of Trust funds to allocate, and how much to allocate in given categories. The Advisory Board recommendations approved by the Department of Health are then passed on to HCF, which HCF then treats as a budget not to be exceeded. The manager of the Tobacco Settlement Special Fund in the Department of Health serves as liaison between the HCF and the Director of Health and presents HCF reports to the Director of Health for approval. Why tobacco control advocates have allowed this interference with the independence of the Trust Fund is unclear, as the only authority given to the Director of Health by Act 304 with regard to the Trust Fund depository is to select or to rescind the selection, with the concurrence of the Governor, of the nonprofit entity to serve as the depository. Act 304 specifically gives oversight of the Trust Fund depository to the Department of Budget and Finance, not the Department of Health; it is not clear from what other statutory source the Department of Health has undertaken the authority to require a contract with HCF, which further undermines the independence of HCF as contemplated by Act 304.

As discussed above, the Advisory Board has advised the Department of Health and makes recommendations to the Director of Health on structure and priorities, overall allocations, and evaluation of effectiveness of programs for the Trust Fund, and the HCF reports to the Department of Health as a contractor. The Department of Health calls the Advisory Board's meetings and arranges the logistics (e.g., time and place), and the HCF staffs the meetings (i.e., is responsible for tasks such as the minutes and agenda). Those Advisory Board recommendations approved by the Director of Health are passed on to HCF. The Advisory Board's recommendation for the total annual funding is used by the HCF as its ceiling budget (i.e., maximum possible spending in a given year). The influence of the Advisory Board, through its recommendations to the Department of Health, is reflected in the funding for infrastructure development that the HCF decided to give after 2003. In 2005 the Advisory Board recommended spending less on training and technical assistance than the HCF had committed. The DOH rejected that recommendation because the funds were already committed, and the HCF had an obligation to pay the grantees and subcontractors.

Beyond this broad, and somewhat convoluted and apparently unauthorized, oversight by the Department of Health with respect to programming and grant-making decisions, the HCF is outside the direct control of the Department of Health or any other part of state government; it is a private, autonomous entity. Act 304 subjected the HCF management of the Tobacco Prevention and Control Trust Fund only to advice from the Trust Fund Advisory Board and audit by the Department of Budget and Finance. This means that the HCF is not constrained by regulations that apply to state government, and in theory the foundation is not affected by changes in government. At the same time, the Department of Health has exercised some leverage to control the HCF because of the management contract between Department of Health and HCF, along with the authority of the Director of Health to choose the nonprofit entity to serve as fiscal agent for the Tobacco Prevention and Control Trust Fund, albeit with the concurrence of the Governor. The degree of independence of HCF, and its reluctance to spend principal from the Trust Fund, is shown in a comparison of the budget recommended by the

Advisory Board and the actual expenditures of Trust Fund monies by HCF as shown in Table 37.

Table 37 Budget Compared with Expenditures by Hawai'i Community Foundation, 2001-2007 (Millions of Dollars)							
	CY2001	CY2002	CY2003	CY2004	CY2005	CY2006	CY2007
Budget	1.000	1.700	3.330	6.990	7.600	8.000	8.765
Expenditures	1.394	1.024	2.033	3.440	3.163	6.193	5.327
Difference	0.394	-0.676	-1.297	-3.550	-4.437	-1.807	-3.438

In developing and implementing programs and grant-making activities for 2006 and beyond, the Hawai'i Community Foundation was guided by the statewide 2005-2010 Strategic Plan for Tobacco Prevention & Control prepared by the Coalition for a Tobacco-Free Hawai'i, the Hawai'i State Department of Health, and the Tobacco Prevention and Control Trust Fund, and funded by the Trust Fund and TPEP.²⁷⁴ This Strategic Plan is not the one Act 304 requires the Advisory Board to develop, but the Plan document acknowledges the "Tobacco Prevention and Control Trust Fund Advisory Board Members" for their participation in the development of the Strategic Plan. The other participants includes the voluntary health organizations, the Department of Education, the Office of the Attorney General, members of the Legislature, virtually every tobacco control organization in Hawai'i, and an impressive number of health, healthcare and community organizations. This was viewed by its preparers to be the strategic plan required by Act 304.

The HCF has been cautious about spending the money (Table 38). Initially, from 2000 through 2003, the foundation focused on community grants for tobacco control. During this time the HCF entered into no contracts for its own tobacco control programming, partly reflecting its doubts about its own capacity in tobacco control programming. In 2003, the Advisory Board recommended that HCF expand the Tobacco Prevention and Control Trust Fund programming to include anti-tobacco media, a quit line, new management and infrastructure development, evaluation of the individual components of the programs along with evaluation of the overall Trust Fund tobacco control program, advocacy and networking, and training and technical assistance for coordination of statewide tobacco control efforts with a doubling of the budget.

Table 38 Hawai'i Tobacco Prevention and Control Trust Fund Expenditures by Category, 2000-2007							
	CY2001	CY2002	CY2003	CY2004	CY2005	CY2006	CY2007
Comprehensive Approach to Cessation	\$0	\$0	\$0	\$0	\$254,466	\$1,235,571	\$1,070,403
Training and Technical Assistance	\$0	\$0	\$430,653	\$60,000	\$360,200	\$283,399	*
Expanded Media Campaign	\$0	\$0	\$0	\$148,144	\$440,662	\$1,313,210	\$659,719
Infrastructure	\$0	\$0	\$0	\$13,503	\$135,738	\$109,544	\$163,937
Community Grants	\$1,394,040	\$1,024,085	\$1,990,714	\$2,920,315	\$1,165,163	\$2,502,316	\$3,029,152
Evaluation	\$0	\$0	\$0	\$37,500	\$210,580	\$244,119	*
Policy and Social Norm Change	\$0	\$0	\$0	\$260,832	\$596,725	\$504,365	\$404,070
TOTAL	\$1,394,040	\$1,024,085	\$2,421,367	\$3,440,294	\$3,163,534	\$6,192,524	\$5,327,281

* Included in Community Grants

In response to the Advisory Board's 2003 recommendations and the Department of Health's subsequent instructions, the HCF rolled out the "Clear the Smoke" campaign in 2004. "Clear the Smoke" was aimed at increasing awareness of the dangers of secondhand smoke, tobacco industry tactics, and nicotine addiction. This campaign included paid media, public

relations, and web components. The HCF contracted this Clear the Smoke campaign out to the Bennett Group (headed by Joan Bennett, who ran the Coalition for a Tobacco-Free Hawai'i's media campaign for the MSA implementing legislation in 1999). This ongoing campaign moved in 2007 to its "Live Tobacco-free" message promoting the elimination of tobacco from the lives of smokers and nonsmokers alike. The Clear the Smoke website (www.clearthesmoke.org) is a substantial resource for tobacco information for both youth and adults. Whereas the Department of Health (TPEP) public education campaign targeted youth, the HCF campaign focused on youth and adult social norm change. HCF evaluated the effectiveness of its media campaign, while the Department of Health did not.

HCF started a statewide tobacco quit line in 2005, dipping into the Trust Fund principal and receiving some additional funding from TPEP. HCF chose Free & Clear, a Seattle-based contractor that is one of the nation's leading providers of comprehensive tobacco cessation services. Free & Clear opened the local Hawai'i call center in October 2005. To announce the new quitline, Free & Clear mounted extensive mailings to health care providers and held a number of informational meetings on all islands. In addition, public relations events were held and picked up by the media. With an initial goal of 70 calls per week from tobacco users, with the launch of paid media in December 2005 that volume spiked to over 200 calls per week. The long-range plan of HCF was to integrate the quitline service with other cessation services, health care insurers, health care providers and individual communities.²⁷⁷ For the first quarter of 2008, Free & Clear reported a national success rate of 44.5% of its clients remaining tobacco free at six months following registration with the program. Spurred by the 5-year infrastructure plan in the 2005-2010 strategic plan, HCF commissioned an evaluation of its community grants program in 2005. SMS Research, an outside consultant, conducted the evaluation of the operational and impact elements of the program.²⁷⁸ The SMS report stated that, overall, the accomplishments of the program were impressive, especially when compared with a significant decline in smoking prevalence among both adults and youth following initiation of Trust Fund activities in 2001. Among recommendations for change were to clarify how community grants contribute to overall program objectives and what is expected from them, and better program evaluation of both Trust Fund and grantee performance.

Conclusion

While Hawai'i has slowly improved its spending on tobacco control, it has never reached the 1999 CDC Best Practices recommendation of \$10.8 to \$23.4 million per year. The closest it has come was 2006 when TPEP and HCF spent a total of \$8.2 million on tobacco control. Despite these issues, there have been continuing declines in adult and youth smoking prevalence (Figures 1 and 2), though per capita cigarette consumption is not showing the steady decline we see nationally (Figure 1). Even with the decrease in recommended spending in the 2007 CDC Best Practices (\$9.6 to \$19.6 million per year),²⁷⁹ Hawai'i has not yet reached the lower CDC Best Practices recommended spending except for Health Communication Interventions where the combination of TPEP and HCF spending exceeds the recommended annual spending of \$1.5 million.

EFFORTS TO IMPROVE COORDINATION AND INFRASTRUCTURE AMONG THE ELEMENTS OF HAWAI'I'S TOBACCO CONTROL PROGRAM

In 1999, tobacco control advocate and lobbyist for the Coalition for a Tobacco-Free Hawai'i, Bob Toyofuku, noting that a strong infrastructure for the implementation of tobacco control programs was lacking in Hawai'i, suggested that the Tobacco Prevention and Control Advisory Board hire an executive director to coordinate the anti-tobacco effort and spending of the MSA money by HCF. As of July 2008 the Advisory Board had not hired any staff to coordinate tobacco control efforts in the state. A major impetus for the efforts to develop and implement a plan for building an implementation infrastructure was that a significant portion of the MSA money was not being spent. Deborah Zysman, Director of the Coalition for a Tobacco-Free Hawai'i, stated in 2005 that annually \$7 million was allocated and \$2 million was spent on tobacco control. "We have money and nobody knows how to spend it."¹⁹⁸

Discussions leading up to the 5-year Strategic Plan²⁷⁴ began in 2005 and reflected a broad community sense of ownership. During the late summer and fall of 2005 extensive community meetings were held on all of the islands to provide members of the tobacco control community and the general public with an opportunity for dialogue and direct input into the planning process. In September, a two-day Summit Meeting was held and attended by more than 100 members of the tobacco control community from all of the islands. A draft of the Strategic Plan was circulated, and a second round of community meetings was held in November and December 2005 to allow members of the tobacco control community to comment. Those comments were incorporated into the final draft. The final report was released in April 2006 by the Coalition for a Tobacco-Free Hawai'i, the Department of Health and the Tobacco Prevention and Control Trust. The elements of the Strategic Plan are shown in Table 39.

Table 39 Elements of the 2005-2010 Strategic Plan

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| <ul style="list-style-type: none"> • Identify and eliminate disparities related to tobacco use among different population groups • Promote quitting among young people and adults • Prevent the initiation of tobacco use among all of Hawai'i's people • Eliminate nonsmokers' exposure to second hand tobacco smoke • Create a social climate in which tobacco use becomes less desirable and acceptable, counteracting the influence of the tobacco industry • Increase coordination among organizations in tobacco prevention and control • Provide training and technical assistance in capacity building to organizations engaged in tobacco prevention and control • Expand funding and sources of funding to provide longer term grants by locating new source of funding, by directing the University of Hawai'i to support or partner with tobacco prevention and control organization in return for the large amount of MSA money it receives, and by having the Department of Health devote more of the Healthy Hawai'i Initiative MSA funds to tobacco prevention and control • Provide more consistent evaluation with standardized measures to ensure that funds are directed to programs that prove effective to prevent diversion of funds to other purposes not related to tobacco prevention and control • Better inform and involve policy makers on issues of tobacco prevention and control that effect their communities • Engage new partners, including unions, the State Department of Education, healthcare professionals, businesses and employers, persons working on tobacco-related chronic diseases, State child and adult mental health agencies, organizations working in other substance abuse prevention, cessation and rehabilitation, and organizations that can assist in reaching immigrant populations |
|--|

In tandem with the development of the Strategic Plan was the development of a plan to create an implementation infrastructure and coordinate tobacco control activities in Hawai‘i to implement the Strategic Plan, including oversight of the spending of all tobacco control money and elimination of redundancies in programming. Just like the comprehensive 5-year Strategic Plan discussed above that focused on program priorities, the infrastructure plan development was facilitated and prepared by a consultant (Strategic Health Concepts) for the Tobacco Prevention and Control Advisory Board that defined the scope and functions of the infrastructure's components.²⁸⁰ Members of the Infrastructure Plan working group included many of the major players in tobacco control in Hawai‘i (Table 40). The plan for a new infrastructure was to include a central clearinghouse for information, coordinated funding for organizations, training and technical assistance for agencies operating tobacco control programs, standardized evaluation and reporting mechanisms, and coordinated advocacy on behalf of tobacco control as a whole. The infrastructure purpose and components are set forth in Table 41.

Table 40 Members of the Infrastructure Plan Working Group	
Name	Organization
Deborah Zysman, Executive Director Stacy Everson, Chair Clifford Chang, Member	Coalition for a Tobacco-Free Hawai‘i
Dennis Kondo Lynda Johnson	Hawai‘i Community Foundation
Lola Irvin Lila Johnson Julian Lipsher	Hawai‘i Department of Health
Hye-Ryeon Lee	University of Hawai‘i
Tracie Yoshimoto	East Hawai‘i Tobacco Free Coaliton

Table 41 Purpose and Components of the Proposed Tobacco Control Infrastructure – 2006
Purpose
<ul style="list-style-type: none"> • Support implementation of comprehensive strategies in the statewide tobacco prevention and control (TPC) plan. • Assure an integrated and coordinated approach to achieving the goals of the statewide tobacco prevention and control plan • Sustain a vigorous, high-quality tobacco prevention and control effort until tobacco use is no longer a major public health problem • Provide leadership, management and accountability to the tobacco prevention and control effort in Hawai‘i.
Components
<ul style="list-style-type: none"> • Leadership and Management <ul style="list-style-type: none"> Provide oversight to TPC infrastructure components Assure statewide TPC plan is making progress Assure TPC infrastructure guiding principles are adhered to Build a broader tobacco control community and consensus among partners Facilitate communication, coordination and linkages among partners Show accountability to the public, the TPC field and the statewide plan Coordinate programmatic development and efforts in all four goal areas: prevention of initiation; assisting those who want to quit using tobacco; reduction in exposure to secondhand smoke; and eliminating disparities in tobacco use and tobacco caused disease. Convene partners, solve problems and speak on behalf of the statewide plan. • Planning <ul style="list-style-type: none"> The development, implementation and periodic updating of a coordinated and integrated statewide tobacco prevention and control plan.

	Facilitate coordination and linkages between different organizations' tobacco prevention and control plans.
• Information Exchange	Development and implementation of a coordinated communication plan, processes and supporting services that include. Building on existing communications mechanisms that are working well. Seeking out/trying new channels for communication. Convening tobacco control partners regularly to exchange ideas and progress, address important issues, and enhance skills.
• Training and Technical Assistance	Development and implementation of a coordinated plan and processes to provide ongoing, sustained and statewide training and technical assistance specific to tobacco prevention and control. Assuring that training and technical assistance programs/resources are a priority, are sustained over time, are consistent, and meet both ongoing and emerging needs. Connecting tobacco prevention and control programs with existing training opportunities in more generic skills sets not limited to TPC such as fundraising, grant writing, organizational development, and general leadership training
• Funding and Resources	The development and implementation of a coordinated funding plan for TPC resources regardless of sources. Is a resource to organizations with TPC budgets as to what others are funding and how their efforts may fit within the larger picture of TPC funding throughout the state. Communication to the tobacco prevention and control field on the overall funding strategy and the components of the coordinated funding plan and funding options available and the mechanisms to access those funds.
• Surveillance, Evaluation and Research	The development and implementation of a coordinated and integrated tobacco prevention and control surveillance and evaluation plan. Establishes benchmarks and standards of measurement for the priority strategies included in the statewide plan. Ongoing communication regarding evaluation and surveillance to multiple audiences on progress, gaps, challenges and decision making implications. Establish and communicate standards for reporting, data collection and evaluation methods. Assure adequate funding to local and statewide organizations to conduct evaluations. Identify and communicate best and promising practices as a result of the evaluation(s).
• Policy and Social Norm Change	The development of a coordinated advocacy decision making process and strategy development process. Development of a 'database' for advocacy resources such as examples of advocacy initiatives at the state and local level, sample policies, advocacy 'news' and articles from across the nation and world. Proactive identification and skill development of diverse tobacco prevention and control champions.

The Infrastructure Plan included the recommendation for hiring an Executive Director with at least five years of tobacco control experience and 6.5 full time equivalent staff with existing expertise in planning, information exchange, training and technical assistance, resource development and management, surveillance and evaluation, advocacy, and project administration.

When the Infrastructure Plan was presented to the Director of Health under the misperception that her approval was required, the Director of Health rejected it on March 21 2006.²⁸¹ The Director decided that the HCF would recruit “a team leader with public health expertise to provide strategic direction and coordination of the state tobacco prevention and control activities.” In addition, the Director decided that “HCF will work with the Department of Health on a work plan to close gaps that currently exist in infrastructure functions” and outsource them through grants and contracts.

In a response to this decision, a letter dated June 19, 2006²⁸² was sent to the Director of Health and signed by most of the Infrastructure Plan working group, Jackie Young, COO of the American Cancer Society, Hawaii Pacific Inc., and three members of the Advisory Board, Margery Bronster, Chair, Dr. Elizabeth Tam, Vice Chair, and Dr. John McDonnell. Interestingly both Julian Lipsher and Lila Johnson of the Department of Health signed the letter. The group challenged the wisdom of the Director’s decision for its failure to address the needs of the tobacco control community:

“We are at a critical juncture for tobacco prevention in Hawaii where we can either continue to protect public health and save lives or stagnate and lose ground in tobacco prevention. Our first years of work were successful; however the hardest work in tobacco prevention – to maintain success and to reach those who are hardest to reach – is still to come. . .

There are many untapped opportunities to reduce smoking and protect public health – from successful cessation practices in underserved and disparate communities, discouraging youth smoking, and educating the public. Unfortunately our ability to implement some of these best practices and reach the hardest to reach communities is limited because we lack a centralized infrastructure, with adequate staff, capable of driving a strong tobacco control agenda.

In order to meet the new and more difficult challenges and continue achieving successes in the future, Hawaii must change the way it coordinates and leads tobacco prevention programs or risk losing ground to smoking and the constant marketing of tobacco.”²⁸²

The shortcomings of the decision pointed out to the Director of Health included failing to recognize that HCF was not a public health or programmatic organization, that the tobacco control community needed to be at the table to ensure that programs meet community needs, and that in order to coordinate and provide leadership, the infrastructure needed to be responsive to the needs of members of the tobacco control community which included a clarification of the lines of accountability among the Department of Health, HCF, the tobacco control community and the Trust Fund Advisory Board. The Director of Health replied that it was too late to change the contract with HCF and welcomed the suggestion of dialogue regarding infrastructure among the Department of Health, HCF, the Trust Fund Advisory Board and the tobacco control community.²⁸³ As of July 1, 2008, this had not taken place.

In 2006, HCF suggested the creation of a statewide Media Advisory Group to be made up of HCF, TPEP, the Coalition for a Tobacco-Free Hawai’i and other groups launching media

campaigns to share information about messaging, timing of campaigns, potential audiences and to develop ways to increase the impact of anti-tobacco messaging throughout the state.²⁷⁷ In response, the Department of Health took over control of all media campaigns, including the one financed by the Trust Fund.

The scope of the issue of unspent funds is shown in Table 42. In the early years of the Healthy Hawai'i Initiative, the Department of Health was not spending all of its MSA money and the Trust Fund could only spend earnings until July 1, 2002, after which it could spend up to 50% of the trust principal in any year. For the Trust Fund Balance, Table 42 does not include earnings on the Trust Fund principal. At the end of CY2006 (the latest available data) the Trust Fund balance including earnings was \$50.1 million, nearly \$11 million more than the balance without earnings shown in Table 37.²⁸⁴

Table 42 Funding Sources and Total Expenditures for Tobacco Control – 1999-2007									
	1999	2000	2001	2002	2003	2004	2005	2006	2007
Total MSA Receipts	\$14.9	\$32.5	\$36.5	\$43.0	\$35.1	\$37.4	\$38.4	\$35.1	\$36.5
Funding Sources and Expenditures by Hawai'i Community Foundation									
MSA Allocation to Tobacco Prevention and Control Trust Fund (Hawai'i Community Foundation)	\$3.7	\$8.5	\$9.1	\$11.3	\$5.2	\$4.7	\$4.8	\$4.4	\$4.6
Trust Fund Balance (Current MSA Allocation + Carryover) ¹	\$3.7	\$12.2	\$21.3	\$31.2	\$35.4	\$38.1	\$39.5	\$40.7	\$39.1
Tobacco Control Expenditures by HCF ²	\$0	\$0	\$1.4	\$1.0	\$2.0	\$3.4	\$3.2	\$6.2	\$5.3
Balance Carried Over	\$3.7	\$12.2	\$19.9	\$30.2	\$33.4	\$34.7	\$36.3	\$34.5	\$33.8
Funding Sources and Expenditures by Tobacco Prevention and Education Program (DOH)									
MSA Allocation to Department of Health (Healthy Hawai'i Initiative)	\$3.7	\$8.5	\$9.1	\$11.3	\$10.4	\$9.5	\$9.6	\$8.8	\$9.1
Total HHI Expenditures	\$0	\$4.7	\$9.8	\$12.1	\$13.8	\$11.6	\$11.7	\$9.0	\$9.2
Unexpended HHI Carryover		\$7.5	\$6.8	\$6.0	\$2.6	\$0.5	-\$1.6	-\$1.8	-\$1.9
Other Funding Sources									
CDC	\$0.8	\$0.9	\$0.9	\$0.9	\$0.8	\$0.8	\$1.0	\$1.0	\$1.0
American Legacy Foundation	\$0	\$0	\$0.06	\$0.01	\$0.1	0.09	\$0.1	\$0.1	\$0.06
Tobacco Control Expenditures by DOH from HHI Funds	\$0	\$0.6	\$1.3	\$2.5	\$2.6	\$1.1	\$1.2	\$1.0	\$1.1
Tobacco Control Expenditures from Other Funding Sources	*	*	*	\$8	\$9	\$9	\$8	\$1.0	\$9
Total DOH Tobacco Control Expenditures	**	**	**	\$3.3	\$3.5	\$2.0	\$2.0	\$2.0	\$2.0
Total Tobacco Control Expenditures from all Funding Sources	**	**	**	\$4.3	\$5.5	\$5.4	\$5.2	\$8.2	\$7.3
* Data requested from but not provided by the Department of Health									
** Cannot be calculated because of missing Department of Health data									

CONCLUSION

The passage in 2006 of the statewide smokefree workplaces and public places statute was the culmination of years of tobacco control advocates successful work at the local level. It is almost a perfect example of effective smokefree legislation in its scope. What sets it apart from all of the other statewide smokefree laws is the breadth of its enforcement scheme that does not rely on a single enforcement agency, but authorizes the Department of Health, law enforcement agencies and private citizens to take enforcement action. Tobacco control advocates did a fine job of researching and evaluating smokefree laws from other states, learning from the mistakes made in other states, and then crafting a vastly improved law that sets the standard for other states to follow.

However, the failure for two years after passage of the smokefree law of the Department of Health to take any effective enforcement action or to issue the enforcement regulations required by the smokefree law may give opponents of the law an opportunity to weaken it.

Steady progress has been made in reducing youth access to tobacco when you look at the youth smoking prevalence data that shows a steady decline, and in recent years the rate of illegal sales to minors as evidenced by law enforcement sting operations. However, the significant discrepancies between the Synar Amendment compliance checks and the law enforcement sting operations shows that the short, predictable compliance check procedure allows merchants to anticipate the surveillance and tighten up voluntary compliance, rendering the compliance checks an unreliable measure of the actual scope of illegal sales to minors.

Permitting of retail sellers of tobacco products began March 1, 2007. In a month-to-month comparison of February 2007, the month immediately preceding the permit requirement, with February 2008, cigarette tax collections increased nearly 50% to \$8.8 million.²²⁴ While there was insufficient data to determine how much of the increased revenue resulted from better enforcement because there was also a \$.20 per pack cigarette tax increase (\$1.60 to \$1.80 or 12.5%) that went into effect September 30, 2007, it is safe to assume that permitting has resulted in much better tax collection enforcement. However, it is too soon to tell if the permitting also improved compliance with the youth access laws by making enforcement easier.

In recent years, Hawai'i has significantly increased its cigarette tax with the specific intent to discourage consumption and youth smoking initiation. Hawai'i does enjoy some of the lowest prevalence and consumption rates in the country. It cannot address the issue of "leakage" of tax-exempt cigarettes into the civilian market from military PX and commissary sales without federal legislation requiring the military to purchase tax-paid cigarettes from local wholesalers as has been done with alcoholic beverages. Adding a tax stamp to the cigarette package in 2001 improved collection rates. However, there were lost opportunities to add some of the new revenue from the increased cigarette taxes to tobacco control programs.

While Hawai'i has slowly and deliberately improved its spending on tobacco control, it has never reached either the 1999 or the 2007 CDC Best Practices recommendation for Hawai'i. The closest it has come was 2006 when TPEP and HCF together spent a total of \$8.2 million on tobacco control (compared to the CDC lower recommended level of \$10.8). Despite this failure

to reach the CDC recommended spending level, the combination of clean indoor air laws, high taxes, and the anti-tobacco education programs that are in place has been associated with continuing declines in adult and youth smoking prevalence (although per capita cigarette consumption is not showing the steady decline seen nationally).

The decision of the Hawai'i Community Foundation to resist spending up to 50% a year of the principal from the Tobacco Prevention and Control Trust Fund that it is authorized by law to spend appears to have long-term positive implications. By letting the principal increase, the Trust Fund will soon generate more in annual earnings than the amount of the ever declining annual MSA payments allocated to the Trust Fund. This will provide a secure base for funding tobacco control if the Legislature decides to again reduce the amount of MSA money going to the Trust Fund. In 2006 and 2007, Trust Fund expenditures exceeded the amount of MSA funding allocated to the Trust Fund in each of those years.

The public health advocates were much less successful in taking advantage of the revenues generated from tobacco (MSA funds and taxes). No tobacco tax revenue is dedicated to tobacco control and only a little over 15% of MSA funds have been devoted to tobacco control.

Overall, the tobacco control movement in Hawai'i has evolved into a positive statewide partnership of private organizations that appears to function well. Despite that, opportunities have been missed. In the face of continued pressure from the tobacco industry, significant legislation has been passed. Perhaps the slow and deliberate approach taken by tobacco control advocates created an environment in which public opinion and support for tobacco control legislation overwhelmed the considerable power of the tobacco industry.

However, the future of tobacco control in Hawai'i has been compromised by the improper rejection by the Department of Health of plans to make substantial improvements in the tobacco control infrastructure, and the apparently unauthorized interference by the Department of Health with the independence of the Tobacco Prevention and Control Fund managed by the Hawai'i Community Foundation and with the Trust Fund Advisory Board. Unless advocates protect that independence in the future, they risk stagnation and loss of ground in tobacco control.

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APPENDICES

Appendix 1 Summary of Tobacco Industry Campaign Contributions 1998-2006 Election Cycles

Appendix 2 Tobacco Industry Campaign Contributions 2006 Election Cycle

Appendix 3 Tobacco Industry Campaign Contributions 2004 Election Cycle

Appendix 4 Tobacco Industry Campaign Contributions 2002 Election Cycle

Appendix 5 Tobacco Industry Campaign Contributions 2000 Election Cycle

Appendix 6 Tobacco Industry Campaign Contributions 1998 Election Cycle

Abbreviations

C	Challenger
DNR	Incumbent not up for reelection in that election cycle
H	House of Representatives
I	Incumbent
IC	Incumbent challenging the person holding the position
IO	Incumbent running for a different position
L	Lost
N/A	Not Applicable
O	Open position, no incumbent running for the position
OHA	Office of Hawaiian Affairs
PL	Lost in primary election
PP	Political party
S	Senate
W	Won

APPENDIX 1 Summary of Tobacco Industry Campaign Contributions 1998-2006 Election Cycles

Name	Party	Office	District	W/L	Status	1998	2000	2002	2004	2006Altria	2006RJR	1998-2006
ABINSAY JR, FELIPE P (JUN)	DEMOCRAT	H	29	W	I	500	3159		1750			5409
ADUJA, MELODIE	DEMOCRAT	S	23	PL	I			4000	500			4500
AHU ISA, LEI	DEMOCRAT	H	27	W	I	4000	2450					6450
AIONA, SAMSON	REPUBLICAN	H	24	L	I	3200						3200
AKI, JAMES	DEMOCRAT	S	21	PL	I	2100						2100
AMARAL, ANNELLE	NONPARTISAN	OHA		PL	C	2250						2250
Awana, Karen Leinani	DEMOCRAT	H	44	W								0
BAKER, ROSALYN	DEMOCRAT	S	5	W	I	4150			4000			8150
Belatti, Della Au	DEMOCRAT	H	25	W								0
BERG, LYLA	DEMOCRAT	H	18	W	I					500		500
Bertram, Joe III	DEMOCRAT	H	11	W								0
Brower, Tom	DEMOCRAT	H	23	W								0
BUEN, JANET YAGI	DEMOCRAT	S	4	W	IC	1000						1000
BUKOSKI, KIKA G	REPUBLICAN	H	12	L	I			500	1500			2000
BUNDA, ROBERT	DEMOCRAT	S	22	DNR	I	5100		1150	5000	1000	1500	13750
Cabanilla, Rida T.R.	DEMOCRAT	H	42	W								0
CACHOLA, ROMY	DEMOCRAT	H	30	W	I	400						400
CALDWELL, KIRK	DEMOCRAT	H	24	W	I				1250	1000		2250
CARROLL, JOHN	REPUBLICAN	S	1	L	C	1000						1000
Carroll, Mele	DEMOCRAT	H	13	W								0
CHANG, JERRY	DEMOCRAT	H	2	W	I	1400	553	1250	1750	1000	750	6703
CHING, CORINNE WEI LAN	REPUBLICAN	H	27	W	I			1000	1000	500	750	3250
CHONG, PONO	DEMOCRAT	H	49	W	I				1000	1000	1000	3000
CHUMBLEY, AVERY	DEMOCRAT	S	6	W	I	2150						2150
Chun Oakland, Suzanne	DEMOCRAT	S	13	W								0
CUMMINGS, MAMO P	REPUBLICAN	H	14	L	C				2500			2500
ENGLISH, J KALANI	DEMOCRAT	S	6	DNR	I				4250	2000	1000	7250
ESPERO, WILL	DEMOCRAT	S	20	W	I		2200	2250	1500	2000	1000	8950
EVANS, CINDY	DEMOCRAT	H	7	W	I				750	1000		1750
FINNEGAN, LYNN BERBANO	REPUBLICAN	H	32	W	I					1000		1000
FOX, GALEN	REPUBLICAN	H	23	W	I		1000	1700	3000			5700
FUKUNAGA, CAROL	DEMOCRAT	S	11	W	I		3950	500	250	2000		6700
Gabbard, Mike	DEMOCRAT	S	19	W								0
GARCIA, NESTOR	DEMOCRAT	H	37	W	I	500	853					1353
GOODENOW, KENNETH	DEMOCRAT	H	51	W	I	1000						1000
GOP HOUSE PAC OF HAWAII	REPUBLICAN	PP		NA	NA			3000				3000

APPENDIX 1 Summary of Tobacco Industry Campaign Contributions 1998-2006 Election Cycles

Name	Party	Office	District	W/L	Status	1998	2000	2002	2004	2006Altria	2006RJR	1998-2006
Name	Party	Office	District	W/L	Status	1998	2000	2002	2004	2006Altria	2006RJR	1998-2006
Green, Josh M.D.	DEMOCRAT	H	6	W								0
HALE, HELENE H	DEMOCRAT	H	4	W	I				500			500
HALFORD, CHRIS	REPUBLICAN	H	11	W	I	1500	2791	3000	2250			9541
HAMAKAWA, ERIC G	DEMOCRAT	H	3	W	I		400	600				1000
HANABUSA, COLLEEN	DEMOCRAT	S	21	DNR	I				1000	2000		3000
Hanohano, Faye P.	DEMOCRAT	H	4	W								0
Har, Sharon E.	DEMOCRAT	H	40	W								0
HAWAII DEMOCRATIC PARTY	DEMOCRAT	PP		NA	NA			4000	30000	20000		54000
HAWAII REPUBLICAN PARTY	REPUBLICAN	PP		NA	NA			29000	15000	5000		49000
HEE, CLAYTON	DEMOCRAT	S	23	DNR	I				3000	2000		5000
Hemmings, Fred	REPUBLICAN	S	25	W								0
HERKES, ROBERT	DEMOCRAT	H	5	W	I	3000		1000	3000			7000
HIDANO, AUDREY	DEMOCRAT	S	13	PL	C	3000						3000
HIRAKI, KENNETH	DEMOCRAT	H	28	W	I	200	1803	800	3000			5803
HOOSER, GARY	DEMOCRAT	S	7	DNR	I					1000		1000
IGE, DAVID	DEMOCRAT	S	16	W	I	1050			2000			3050
IHARA JR, LES	DEMOCRAT	S	10	W	I	1150						1150
INOUE, LORRAINE	DEMOCRAT	S	1	DNR	I			1106	1750	1000	1000	4856
ISHIMI, JON	DEMOCRAT	H	16	L	O	3000						3000
ITO, KEN	DEMOCRAT	H	48	W	I	2200	1853	500	1750		500	6803
IWASE, RANDALL	DEMOCRAT	S	18	W	I	2800						2800
JERNIGAN, MARK	REPUBLICAN	H	6	L	I				1000			1000
JONES, MERWYN	DEMOCRAT	H	44	L	I	1000						1000
KAHIKINA, MICHAEL P	DEMOCRAT	H	44	W	IO		100	100				200
KANNO, BRIAN	DEMOCRAT	S	19	DNR	I				2500			2500
KANOHO, EZRA	DEMOCRAT	H	15	W	I	750	800		500			2050
KARAMATSU, JON RIKI	DEMOCRAT	H	41	W	I				1750	1000	750	3500
Karamatsu, Jon Riki	DEMOCRAT	H	41	W								0
KAWAKAMI, BERTHA	DEMOCRAT	H	16	W	I	400	1150	450	1250			3250
KAWAMOTO, CALVIN	DEMOCRAT	S	18	PL	I	5000		1853	6000			12853
KIM, DONNA MERCADO	DEMOCRAT	S	14	W	I				500	2000	1000	3500
KOKUBUN, RUSSELL S	DEMOCRAT	S	2	W	I			200	1500	2000	1000	4700
KUSAKA, MARYANNE W	REPUBLICAN	S	7	L	C				2000			2000
Lee, Marilyn B.	DEMOCRAT	H	38	W								0
LEONG, BERTHA F K	REPUBLICAN	H	18	L	I				1000			1000

APPENDIX 1 Summary of Tobacco Industry Campaign Contributions 1998-2006 Election Cycles

Name	Party	Office	District	W/L	Status	1998	2000	2002	2004	2006Altria	2006RJR	1998-2006
Name	Party	Office	District	W/L	Status	1998	2000	2002	2004	2006Altria	2006RJR	1998-2006
LUKE, SYLVIA	DEMOCRAT	H	26	W	I		1450	1250	1250	1500		5450
MAGAOAY, MICHAEL Y	DEMOCRAT	H	46	W	I			750	2750	1000	750	5250
Manahan, Joey	DEMOCRAT	H	29	W								0
MARUMOTO, BARBARA	REPUBLICAN	H	19	W	I	400	1850	750	2750	1000	500	7250
MATSUURA, DAVID	DEMOCRAT	S	1	PL	IC	2000	500	2000				4500
MCCAIN, PATRICK	DEMOCRAT	H	25	PL	C	4000						4000
MCDERMOTT, ROBERT	REPUBLICAN	H	32	W	I	3000	1500					4500
McKelvey, Angus L.K.	DEMOCRAT	H	10	W								0
MENOR, RON	DEMOCRAT	S	17	W	I	400	2000	1500	2000			5900
METCALF III, WAYNE	DEMOCRAT	S	2	PL	I	200						200
MEYER, COLLEEN	REPUBLICAN	H	47	W	I	1000	1250	750	1750	1000	750	6500
MINDO, ROMEO M (ROMY)	DEMOCRAT	H	43	L	I				1500			1500
Mizuno, John	DEMOCRAT	H	30	W								0
MORIHARA, DAVID	DEMOCRAT	H	10	W	I	950						950
Morita, Hermina M.	DEMOCRAT	H	14	W								0
MOSES, MARK	REPUBLICAN	H	40	L	I		1500	2000	1000	1000	750	6250
NAKASONE, BOB	DEMOCRAT	H	9	W	I	600	3209	1650	3000	2000	1500	11959
Nishihara, Clarence K.	DEMOCRAT	S	18	W								0
NISHIMOTO, SCOTT Y	DEMOCRAT	H	21	W	I				2250	1000		3250
ONTAI, GUY P	REPUBLICAN	H	37	W	I				1500			1500
OSHIRO, BLAKE K	DEMOCRAT	H	33	W	I				2750			2750
Oshiro, Marcus R.	DEMOCRAT	H	39	W								0
OSHIRO, PAUL	DEMOCRAT	H	41	W	I	600						600
PENDLETON, DAVID A	REPUBLICAN	H	49	L	I				250			250
PICKARD, JOSEPH	REPUBLICAN	S	23	L	O	1000						1000
PINE, KYMBERLY (MARCOS)	REPUBLICAN	H	43	W	I					500		500
RASMUSSEN, CINDY	REPUBLICAN	S	13	L	C	3000						3000
RATH, JIM	REPUBLICAN	H	7	L	IO		500	2500				3000
REZENTS, JEFF	REPUBLICAN	H	45	L	C	2000						2000
Rhoads, Karl	DEMOCRAT	H	28	W								0
Sagum, Roland D. III	DEMOCRAT	H	16	W								0
SAIKI, SCOTT K	DEMOCRAT	H	22	W	I				1250	500		1750
SAKAMOTO, NORMAN	DEMOCRAT	S	15	W	I		950	1700	1500	2000	1000	7150
SANTIAGO, ALEXANDER	DEMOCRAT	H	45	W	I	200						200
SAY, CALVIN	DEMOCRAT	H	20	W	I	900			2000	1000	500	4400

APPENDIX 1 Summary of Tobacco Industry Campaign Contributions 1998-2006 Election Cycles

Name	Party	Office	District	W/L	Status	1998	2000	2002	2004	2006Altria	2006RJR	1998-2006
Name	Party	Office	District	W/L	Status	1998	2000	2002	2004	2006Altria	2006RJR	1998-2006
SCHATZ, BRIAN	DEMOCRAT	H	25	W	I				750			750
SHIMABUKURO, MAILE S L	DEMOCRAT	H	45	W	I				500			500
SLOM, SAM	REPUBLICAN	S	8	W	I		750	1100		2000	500	4350
SOLOMON, MALAMA	DEMOCRAT	S	1	PL	I	4950						4950
SONSON, ALEX M	DEMOCRAT	H	35	W	I				1500		750	2250
SOUKI, JOE	DEMOCRAT	H	8	W	I	900	1464	1900	2250	1000	1500	9014
STEGMAIER, DAVID	DEMOCRAT	H	15	W	I	550						550
STONEBRAKER, WILLIAM	REPUBLICAN	H	17	W	I			500	1750			2250
Takai, K. Mark	DEMOCRAT	H	34	W								0
TAKAMINE, DWIGHT	DEMOCRAT	H	1	W	I	200			500			700
Takumi, Roy M.	DEMOCRAT	H	36	W								0
TAM, ROD	DEMOCRAT	S	13	W	I	1150						1150
TANAKA, KAM	DEMOCRAT	H	10	PL	I					500		500
TANIGUCHI, BRIAN T	DEMOCRAT	S	10	W	I			500	2250	2000	1000	5750
TARNAS, DAVID	DEMOCRAT	H	6	L	I	500						500
Thielen, Cynthia	REPUBLICAN	H	50	W								0
Tokioka, James Kunane	DEMOCRAT	H	15	W								0
Tokuda, Jill N.	DEMOCRAT	S	24	W								0
TOM, TERRANCE	DEMOCRAT	S	23	PL	IO	6500						6500
Trimble, Gordon	REPUBLICAN	S	12	W								0
TSUJI, CLIFT	DEMOCRAT	H	3	W	I				2000	1000	750	3750
TSUTSUI, SHAN S	DEMOCRAT	S	4	W	I				250		1000	1250
WAKAI, GLENN	DEMOCRAT	H	31	W	I				1500	1000		2500
Ward, Gene Ph.D.	REPUBLICAN	H	17	W								0
WATERS, THOMAS (TOMMY)	DEMOCRAT	H	51	W	I				2750		1000	3750
WHALEN, PAUL C	REPUBLICAN	S	3	DNR	I			1250	1500	2000	1000	5750
WHALEN, PAUL K	REPUBLICAN	H	5	W	I	3000	2000					5000
YAMANE, BRIAN	DEMOCRAT	H	19	W	I	2400						2400
Yamane, Ryan I.	DEMOCRAT	H	37	W								0
YAMASHITA, KYLE T	DEMOCRAT	H	12	W	I						750	750
YIM, WALTER	REPUBLICAN	H	23	L	C	500						500
YONAMINE, NOBORU	DEMOCRAT	H	35	W	I	500	1000					1500
YOSHINAGA, TERRY	DEMOCRAT	H	22	W	I	1400	2750					4150

APPENDIX 2 Tobacco Industry Campaign Contributions 2006 Election Cycle

Name	Party	Office	District	W/L	Status	Altria	RJR	2006	1998-2006
ABINSAY JR, FELIPE P (JUN)	DEMOCRAT	H	29	W	I				5409
ADUJA, MELODIE	DEMOCRAT	S	23	PL	I				4500
AHU ISA, LEI	DEMOCRAT	H	27	W	I				6450
AIONA, SAMSON	REPUBLICAN	H	24	L	I				3200
AKI, JAMES	DEMOCRAT	S	21	PL	I				2100
AMARAL, ANNELLE	NONPARTISAN	OHA		PL	C				2250
Awana, Karen Leinani	DEMOCRAT	H	44	W					0
BAKER, ROSALYN	DEMOCRAT	S	5	W	I				8150
Belatti, Della Au	DEMOCRAT	H	25	W					0
BERG, LYLA	DEMOCRAT	H	18	W	I	500		500	500
Bertram, Joe III	DEMOCRAT	H	11	W					0
Brower, Tom	DEMOCRAT	H	23	W					0
BUEN, JANET YAGI	DEMOCRAT	S	4	W	IC				1000
BUKOSKI, KIKA G	REPUBLICAN	H	12	L	I				2000
BUNDA, ROBERT	DEMOCRAT	S	22	DNR	I	1000	1500	2500	13750
Cabanilla, Rida T.R.	DEMOCRAT	H	42	W					0
CACHOLA, ROMY	DEMOCRAT	H	30	W	I				400
CALDWELL, KIRK	DEMOCRAT	H	24	W	I	1000		1000	2250
CARROLL, JOHN	REPUBLICAN	S	1	L	C				1000
Carroll, Mele	DEMOCRAT	H	13	W					0
CHANG, JERRY	DEMOCRAT	H	2	W	I	1000	750	1750	6703
CHING, CORINNE WEI LAN	REPUBLICAN	H	27	W	I	500	750	1250	3250
CHONG, PONO	DEMOCRAT	H	49	W	I	1000	1000	2000	3000
CHUMBLEY, AVERY	DEMOCRAT	S	6	W	I				2150
Chun Oakland, Suzanne	DEMOCRAT	S	13	W					0
CUMMINGS, MAMO P	REPUBLICAN	H	14	L	C				2500
ENGLISH, J KALANI	DEMOCRAT	S	6	DNR	I	2000	1000	3000	7250
ESPERO, WILL	DEMOCRAT	S	20	W	I	2000	1000	3000	8950
EVANS, CINDY	DEMOCRAT	H	7	W	I	1000		1000	1750
FINNEGAN, LYNN BERBANO	REPUBLICAN	H	32	W	I	1000		1000	1000
FOX, GALEN	REPUBLICAN	H	23	W	I				5700
FUKUNAGA, CAROL	DEMOCRAT	S	11	W	I	2000		2000	6700
Gabbard, Mike	DEMOCRAT	S	19	W					0
GARCIA, NESTOR	DEMOCRAT	H	37	W	I				1353
GOODENOW, KENNETH	DEMOCRAT	H	51	W	I				1000
GOP HOUSE PAC OF HAWAII	REPUBLICAN	PP		NA	NA				3000

APPENDIX 2 Tobacco Industry Campaign Contributions 2006 Election Cycle

Name	Party	Office	District	W/L	Status	Altria	RJR	2006	1998-2006
Green, Josh M.D.	DEMOCRAT	H	6	W					0
HALE, HELENE H	DEMOCRAT	H	4	W	I				500
HALFORD, CHRIS	REPUBLICAN	H	11	W	I				9541
HAMAKAWA, ERIC G	DEMOCRAT	H	3	W	I				1000
HANABUSA, COLLEEN	DEMOCRAT	S	21	DNR	I	2000		2000	3000
Hanohano, Faye P.	DEMOCRAT	H	4	W					0
Har, Sharon E.	DEMOCRAT	H	40	W					0
HAWAII DEMOCRATIC PARTY	DEMOCRAT	PP		NA	NA	20000		20000	54000
HAWAII REPUBLICAN PARTY	REPUBLICAN	PP		NA	NA	5000		5000	49000
HEE, CLAYTON	DEMOCRAT	S	23	DNR	I	2000		2000	5000
Hemmings, Fred	REPUBLICAN	S	25	W					0
HERKES, ROBERT	DEMOCRAT	H	5	W	I				7000
HIDANO, AUDREY	DEMOCRAT	S	13	PL	C				3000
HIRAKI, KENNETH	DEMOCRAT	H	28	W	I				5803
HOOSER, GARY	DEMOCRAT	S	7	DNR	I	1000		1000	1000
IGE, DAVID	DEMOCRAT	S	16	W	I				3050
IHARA JR, LES	DEMOCRAT	S	10	W	I				1150
INOUYE, LORRAINE	DEMOCRAT	S	1	DNR	I	1000	1000	2000	4856
ISHIMI, JON	DEMOCRAT	H	16	L	O				3000
ITO, KEN	DEMOCRAT	H	48	W	I		500	500	6803
IWASE, RANDALL	DEMOCRAT	S	18	W	I				2800
JERNIGAN, MARK	REPUBLICAN	H	6	L	I				1000
JONES, MERWYN	DEMOCRAT	H	44	L	I				1000
KAHIKINA, MICHAEL P	DEMOCRAT	H	44	W	IO				200
KANNO, BRIAN	DEMOCRAT	S	19	DNR	I				2500
KANOHO, EZRA	DEMOCRAT	H	15	W	I				2050
KARAMATSU, JON RIKI	DEMOCRAT	H	41	W	I	1000	750	1750	3500
Karamatsu, Jon Riki	DEMOCRAT	H	41	W					0
KAWAKAMI, BERTHA	DEMOCRAT	H	16	W	I				3250
KAWAMOTO, CALVIN	DEMOCRAT	S	18	PL	I				12853
KIM, DONNA MERCADO	DEMOCRAT	S	14	W	I	2000	1000	3000	3500
KOKUBUN, RUSSELL S	DEMOCRAT	S	2	W	I	2000	1000	3000	4700
KUSAKA, MARYANNE W	REPUBLICAN	S	7	L	C				2000
Lee, Marilyn B.	DEMOCRAT	H	38	W					0
LEONG, BERTHA F K	REPUBLICAN	H	18	L	I				1000
LUKE, SYLVIA	DEMOCRAT	H	26	W	I	1500		1500	5450

APPENDIX 2 Tobacco Industry Campaign Contributions 2006 Election Cycle

Name	Party	Office	District	W/L	Status	Altria	RJR	2006	1998-2006
MAGAOAY, MICHAEL Y	DEMOCRAT	H	46	W	I	1000	750	1750	5250
Manahan, Joey	DEMOCRAT	H	29	W					0
MARUMOTO, BARBARA	REPUBLICAN	H	19	W	I	1000	500	1500	7250
MATSUURA, DAVID	DEMOCRAT	S	1	PL	IC				4500
MCCAIN, PATRICK	DEMOCRAT	H	25	PL	C				4000
MCDERMOTT, ROBERT	REPUBLICAN	H	32	W	I				4500
McKelvey, Angus L.K.	DEMOCRAT	H	10	W					0
MENOR, RON	DEMOCRAT	S	17	W	I				5900
METCALF III, WAYNE	DEMOCRAT	S	2	PL	I				200
MEYER, COLLEEN	REPUBLICAN	H	47	W	I	1000	750	1750	6500
MINDO, ROMEO M (ROMY)	DEMOCRAT	H	43	L	I				1500
Mizuno, John	DEMOCRAT	H	30	W					0
MORIHARA, DAVID	DEMOCRAT	H	10	W	I				950
Morita, Hermina M.	DEMOCRAT	H	14	W					0
MOSES, MARK	REPUBLICAN	H	40	L	I	1000	750	1750	6250
NAKASONE, BOB	DEMOCRAT	H	9	W	I	2000	1500	3500	11959
Nishihara, Clarence K.	DEMOCRAT	S	18	W					0
NISHIMOTO, SCOTT Y	DEMOCRAT	H	21	W	I	1000		1000	3250
ONTAI, GUY P	REPUBLICAN	H	37	W	I				1500
OSHIRO, BLAKE K	DEMOCRAT	H	33	W	I				2750
Oshiro, Marcus R.	DEMOCRAT	H	39	W					0
OSHIRO, PAUL	DEMOCRAT	H	41	W	I				600
PENDLETON, DAVID A	REPUBLICAN	H	49	L	I				250
PICKARD, JOSEPH	REPUBLICAN	S	23	L	O				1000
PINE, KYMBERLY (MARCOS)	REPUBLICAN	H	43	W	I	500		500	500
RASMUSSEN, CINDY	REPUBLICAN	S	13	L	C				3000
RATH, JIM	REPUBLICAN	H	7	L	IO				3000
REZENTS, JEFF	REPUBLICAN	H	45	L	C				2000
Rhoads, Karl	DEMOCRAT	H	28	W					0
Sagum, Roland D. III	DEMOCRAT	H	16	W					0
SAIKI, SCOTT K	DEMOCRAT	H	22	W	I	500		500	1750
SAKAMOTO, NORMAN	DEMOCRAT	S	15	W	I	2000	1000	3000	7150
SANTIAGO, ALEXANDER	DEMOCRAT	H	45	W	I				200
SAY, CALVIN	DEMOCRAT	H	20	W	I	1000	500	1500	4400
SCHATZ, BRIAN	DEMOCRAT	H	25	W	I				750
SHIMABUKURO, MAILE S L	DEMOCRAT	H	45	W	I				500

APPENDIX 2 Tobacco Industry Campaign Contributions 2006 Election Cycle

Name	Party	Office	District	W/L	Status	Altria	RJR	2006	1998-2006
SLOM, SAM	REPUBLICAN	S	8	W	I	2000	500	2500	4350
SOLOMON, MALAMA	DEMOCRAT	S	1	PL	I				4950
SONSON, ALEX M	DEMOCRAT	H	35	W	I		750	750	2250
SOUKI, JOE	DEMOCRAT	H	8	W	I	1000	1500	2500	9014
STEGMAIER, DAVID	DEMOCRAT	H	15	W	I				550
STONEBRAKER, WILLIAM	REPUBLICAN	H	17	W	I				2250
Takai, K. Mark	DEMOCRAT	H	34	W					0
TAKAMINE, DWIGHT	DEMOCRAT	H	1	W	I				700
Takumi, Roy M.	DEMOCRAT	H	36	W					0
TAM, ROD	DEMOCRAT	S	13	W	I				1150
TANAKA, KAM	DEMOCRAT	H	10	PL	I	500		500	500
TANIGUCHI, BRIAN T	DEMOCRAT	S	10	W	I	2000	1000	3000	5750
TARNAS, DAVID	DEMOCRAT	H	6	L	I				500
Thielen, Cynthia	REPUBLICAN	H	50	W					0
Tokioka, James Kunane	DEMOCRAT	H	15	W					0
Tokuda, Jill N.	DEMOCRAT	S	24	W					0
TOM, TERRANCE	DEMOCRAT	S	23	PL	IO				6500
Trimble, Gordon	REPUBLICAN	S	12	W					0
TSUJI, CLIFT	DEMOCRAT	H	3	W	I	1000	750	1750	3750
TSUTSUI, SHAN S	DEMOCRAT	S	4	W	I		1000	1000	1250
WAKAI, GLENN	DEMOCRAT	H	31	W	I	1000		1000	2500
Ward, Gene Ph.D.	REPUBLICAN	H	17	W					0
WATERS, THOMAS (TOMMY)	DEMOCRAT	H	51	W	I		1000	1000	3750
WHALEN, PAUL C	REPUBLICAN	S	3	DNR	I	2000	1000	3000	5750
WHALEN, PAUL K	REPUBLICAN	H	5	W	I				5000
YAMANE, BRIAN	DEMOCRAT	H	19	W	I				2400
Yamane, Ryan I.	DEMOCRAT	H	37	W					0
YAMASHITA, KYLE T	DEMOCRAT	H	12	W	I		750	750	750
YIM, WALTER	REPUBLICAN	H	23	L	C				500
YONAMINE, NOBORU	DEMOCRAT	H	35	W	I				1500
YOSHINAGA, TERRY	DEMOCRAT	H	22	W	I				4150

APPENDIX 3 Tobacco Industry Campaign Contributions 2004 Election Cycle

Name	Party	Office	District	W/L	Status	Altria/PM	RJR	2004	1998-2004
ABINSAY JR, FELIPE P (JUN)	DEMOCRAT	H	29	W	I	1000	750	1750	5409
ADUJA, MELODIE	DEMOCRAT	S	23	PL	I		500	500	4500
AHU ISA, LEI	DEMOCRAT	H	27	W	I				6450
AIONA, SAMSON	REPUBLICAN	H	24	L	I				3200
AKI, JAMES	DEMOCRAT	S	21	PL	I				2100
AMARAL, ANNELLE	NONPARTISAN	OHA		PL	C				2250
BAKER, ROSALYN	DEMOCRAT	S	5	W	I	4000		4000	8150
BUEN, JANET YAGI	DEMOCRAT	S	4	W	IC				1000
BUKOSKI, KIKA G	REPUBLICAN	H	12	L	I	500	1000	1500	2000
BUNDA, ROBERT	DEMOCRAT	S	22	DNR	I	4000	1000	5000	11250
CACHOLA, ROMY	DEMOCRAT	H	30	W	I				400
CALDWELL, KIRK	DEMOCRAT	H	24	W	I	500	750	1250	1250
CARROLL, JOHN	REPUBLICAN	S	1	L	C				1000
CHANG, JERRY	DEMOCRAT	H	2	W	I	1000	750	1750	4953
CHING, CORINNE WEI LAN	REPUBLICAN	H	27	W	I	500	500	1000	2000
CHONG, PONO	DEMOCRAT	H	49	W	I	1000		1000	1000
CHUMBLEY, AVERY	DEMOCRAT	S	6	W	I				2150
CUMMINGS, MAMO P	REPUBLICAN	H	14	L	C	2000	500	2500	2500
ENGLISH, J KALANI	DEMOCRAT	S	6	DNR	I	4000	250	4250	4250
ESPERO, WILL	DEMOCRAT	S	20	W	I	1000	500	1500	5950
EVANS, CINDY	DEMOCRAT	H	7	W	I	500	250	750	750
FOX, GALEN	REPUBLICAN	H	23	W	I	2000	1000	3000	5700
FUKUNAGA, CAROL	DEMOCRAT	S	11	W	I		250	250	4700
GARCIA, NESTOR	DEMOCRAT	H	37	W	I				1353
GOODENOW, KENNETH	DEMOCRAT	H	51	W	I				1000
GOP HOUSE PAC OF HAWAII	REPUBLICAN	PP		NA	NA				3000
HALE, HELENE H	DEMOCRAT	H	4	W	I	500		500	500
HALFORD, CHRIS	REPUBLICAN	H	11	W	I	1500	750	2250	9541
HAMAKAWA, ERIC G	DEMOCRAT	H	3	W	I				1000
HANABUSA, COLLEEN	DEMOCRAT	S	21	DNR	I		1000	1000	1000
HAWAII DEMOCRATIC PARTY	DEMOCRAT	PP		NA	NA	25000	5000	30000	34000
HAWAII REPUBLICAN PARTY	REPUBLICAN	PP		NA	NA	10000	5000	15000	44000
HEE, CLAYTON	DEMOCRAT	S	23	DNR	I	3000		3000	3000
HERKES, ROBERT	DEMOCRAT	H	5	W	I	2000	1000	3000	7000
HIDANO, AUDREY	DEMOCRAT	S	13	PL	C				3000
HIRAKI, KENNETH	DEMOCRAT	H	28	W	I	2000	1000	3000	5803

APPENDIX 3 Tobacco Industry Campaign Contributions 2004 Election Cycle

Name	Party	Office	District	W/L	Status	Altria/PM	RJR	2004	1998-2004
IGE, DAVID	DEMOCRAT	S	16	W	I	1500	500	2000	3050
IHARA JR, LES	DEMOCRAT	S	10	W	I				1150
INOUE, LORRAINE	DEMOCRAT	S	1	DNR	I	1000	750	1750	2856
ISHIMI, JON	DEMOCRAT	H	16	L	O				3000
ITO, KEN	DEMOCRAT	H	48	W	I	1000	750	1750	6303
IWASE, RANDALL	DEMOCRAT	S	18	W	I				2800
JERNIGAN, MARK	REPUBLICAN	H	6	L	I	1000		1000	1000
JONES, MERWYN	DEMOCRAT	H	44	L	I				1000
KAHIKINA, MICHAEL P	DEMOCRAT	H	44	W	IO				200
KANNO, BRIAN	DEMOCRAT	S	19	DNR	I	2000	500	2500	2500
KANOHO, EZRA	DEMOCRAT	H	15	W	I	500		500	2050
KARAMATSU, JON RIKI	DEMOCRAT	H	41	W	I	1250	500	1750	1750
KAWAKAMI, BERTHA	DEMOCRAT	H	16	W	I	1000	250	1250	3250
KAWAMOTO, CALVIN	DEMOCRAT	S	18	PL	I	2000	4000	6000	12853
KIM, DONNA MERCADO	DEMOCRAT	S	14	W	I		500	500	500
KOKUBUN, RUSSELL S	DEMOCRAT	S	2	W	I	1000	500	1500	1700
KUSAKA, MARYANNE W	REPUBLICAN	S	7	L	C	2000		2000	2000
LEONG, BERTHA F K	REPUBLICAN	H	18	L	I	500	500	1000	1000
LUKE, SYLVIA	DEMOCRAT	H	26	W	I	500	750	1250	3950
MAGAOAY, MICHAEL Y	DEMOCRAT	H	46	W	I	1000	1750	2750	3500
MARUMOTO, BARBARA	REPUBLICAN	H	19	W	I	2000	750	2750	5750
MATSUURA, DAVID	DEMOCRAT	S	1	PL	IC				4500
MCCAIN, PATRICK	DEMOCRAT	H	25	PL	C				4000
MCDERMOTT, ROBERT	REPUBLICAN	H	32	W	I				4500
MENOR, RON	DEMOCRAT	S	17	W	I	1000	1000	2000	5900
METCALF III, WAYNE	DEMOCRAT	S	2	PL	I				200
MEYER, COLLEEN	REPUBLICAN	H	47	W	I	1500	250	1750	4750
MINDO, ROMEO M (ROMY)	DEMOCRAT	H	43	L	I	750	750	1500	1500
MORIHARA, DAVID	DEMOCRAT	H	10	W	I				950
MOSES, MARK	REPUBLICAN	H	40	L	I	250	750	1000	4500
NAKASONE, BOB	DEMOCRAT	H	9	W	I	2000	1000	3000	8459
NISHIMOTO, SCOTT Y	DEMOCRAT	H	21	W	I	1500	750	2250	2250
ONTAI, GUY P	REPUBLICAN	H	37	W	I	750	750	1500	1500
OSHIRO, BLAKE K	DEMOCRAT	H	33	W	I	2000	750	2750	2750
OSHIRO, PAUL	DEMOCRAT	H	41	W	I				600
PENDLETON, DAVID A	REPUBLICAN	H	49	L	I	250		250	250

APPENDIX 3 Tobacco Industry Campaign Contributions 2004 Election Cycle

Name	Party	Office	District	W/L	Status	Altria/PM	RJR	2004	1998-2004
PICKARD, JOSEPH	REPUBLICAN	S	23	L	O				1000
RASMUSSEN, CINDY	REPUBLICAN	S	13	L	C				3000
RATH, JIM	REPUBLICAN	H	7	L	IO				3000
REZENTS, JEFF	REPUBLICAN	H	45	L	C				2000
SAIKI, SCOTT K	DEMOCRAT	H	22	W	I	500	750	1250	1250
SAKAMOTO, NORMAN	DEMOCRAT	S	15	W	I	1000	500	1500	4150
SANTIAGO, ALEXANDER	DEMOCRAT	H	45	W	I				200
SAY, CALVIN	DEMOCRAT	H	20	W	I	1000	1000	2000	2900
SCHATZ, BRIAN	DEMOCRAT	H	25	W	I	500	250	750	750
SHIMABUKURO, MAILE S L	DEMOCRAT	H	45	W	I	500		500	500
SLOM, SAM	REPUBLICAN	S	8	W	I				1850
SOLOMON, MALAMA	DEMOCRAT	S	1	PL	I				4950
SONSON, ALEX M	DEMOCRAT	H	35	W	I	1250	250	1500	1500
SOUKI, JOE	DEMOCRAT	H	8	W	I	1000	1250	2250	6514
STEGMAIER, DAVID	DEMOCRAT	H	15	W	I				550
STONEBRAKER, WILLIAM	REPUBLICAN	H	17	W	I	1000	750	1750	2250
TAKAMINE, DWIGHT	DEMOCRAT	H	1	W	I	500		500	700
TAM, ROD	DEMOCRAT	S	13	W	I				1150
TANIGUCHI, BRIAN T	DEMOCRAT	S	10	W	I	2000	250	2250	2750
TARNAS, DAVID	DEMOCRAT	H	6	L	I				500
TOM, TERRANCE	DEMOCRAT	S	23	PL	IO				6500
TSUJI, CLIFT	DEMOCRAT	H	3	W	I	2000		2000	2000
TSUTSUI, SHAN S	DEMOCRAT	S	4	W	I		250	250	250
WAKAI, GLENN	DEMOCRAT	H	31	W	I	1000	500	1500	1500
WATERS, THOMAS (TOMMY)	DEMOCRAT	H	51	W	I	2000	750	2750	2750
WHALEN, PAUL C	REPUBLICAN	S	3	DNR	I	1000	500	1500	2750
WHALEN, PAUL K	REPUBLICAN	H	5	W	I				5000
YAMANE, BRIAN	DEMOCRAT	H	19	W	I				2400
YIM, WALTER	REPUBLICAN	H	23	L	C				500
YONAMINE, NOBORU	DEMOCRAT	H	35	W	I				1500
YOSHINAGA, TERRY	DEMOCRAT	H	22	W	I				4150

*Legislators not listed did not receive tobacco industry contributions during the 2004 election cycle

APPENDIX 4 Tobacco Industry Campaign Contributions 2002 Election Cycle

Name	Party	Office	District	W/L	Status	Altria/PM	RJR	BW	Lor	2002	1998-2002
ABINSAY JR, FELIPE P (JUN)	DEMOCRAT	H	29	W	I						3659
ADUJA, MELODIE	DEMOCRAT	S	23	PL	I	4000				4000	4000
AHU ISA, LEI	DEMOCRAT	H	27	W	I						6450
AIONA, SAMSON	REPUBLICAN	H	24	L	I						3200
AKI, JAMES	DEMOCRAT	S	21	PL	I						2100
AMARAL, ANNELLE	NONPARTISAN	OHA		PL	C						2250
BAKER, ROSALYN	DEMOCRAT	S	5	W	I						4150
BUEN, JANET YAGI	DEMOCRAT	S	4	W	IC						1000
BUKOSKI, KIKA G	REPUBLICAN	H	12	L	I		500			500	500
BUNDA, ROBERT	DEMOCRAT	S	22	DNR	I		750	400		1150	6250
CACHOLA, ROMY	DEMOCRAT	H	30	W	I						400
CARROLL, JOHN	REPUBLICAN	S	1	L	C						1000
CHANG, JERRY	DEMOCRAT	H	2	W	I	1000	250			1250	3203
CHING, CORINNE WEI LAN	REPUBLICAN	H	27	W	I	1000				1000	1000
CHUMBLEY, AVERY	DEMOCRAT	S	6	W	I						2150
ESPERO, WILL	DEMOCRAT	S	20	W	I	1500	750			2250	4450
FOX, GALEN	REPUBLICAN	H	23	W	I	1000	500	200		1700	2700
FUKUNAGA, CAROL	DEMOCRAT	S	11	W	I		500			500	4450
GARCIA, NESTOR	DEMOCRAT	H	37	W	I						1353
GOODENOW, KENNETH	DEMOCRAT	H	51	W	I						1000
GOP HOUSE PAC OF HAWAII	REPUBLICAN	PP		NA	NA	2000	1000			3000	3000
HALFORD, CHRIS	REPUBLICAN	H	11	W	I	1500	1500			3000	7291
HAMAKAWA, ERIC G	DEMOCRAT	H	3	W	I			600		600	1000
HAWAII DEMOCRATIC PARTY	DEMOCRAT	PP		NA	NA	3000	1000			4000	4000
HAWAII REPUBLICAN PARTY	REPUBLICAN	PP		NA	NA	19000	10000			29000	29000
HERKES, ROBERT	DEMOCRAT	H	5	W	I		1000			1000	4000
HIDANO, AUDREY	DEMOCRAT	S	13	PL	C						3000
HIRAKI, KENNETH	DEMOCRAT	H	28	W	I		500	300		800	2803
IGE, DAVID	DEMOCRAT	S	16	W	I						1050
IHARA JR, LES	DEMOCRAT	S	10	W	I						1150
INOUYE, LORRAINE	DEMOCRAT	S	1	DNR	I	606	500			1106	1106
ISHIMI, JON	DEMOCRAT	H	16	L	O						3000
ITO, KEN	DEMOCRAT	H	48	W	I		500			500	4553
IWASE, RANDALL	DEMOCRAT	S	18	W	I						2800
JONES, MERWYN	DEMOCRAT	H	44	L	I						1000
KAHIKINA, MICHAEL P	DEMOCRAT	H	44	W	IO			100		100	200

APPENDIX 4 Tobacco Industry Campaign Contributions 2002 Election Cycle

Name	Party	Office	District	W/L	Status	Altria/PM	RJR	BW	Lor	2002	1998-2002
KANOHO, EZRA	DEMOCRAT	H	15	W	I						1550
KAWAKAMI, BERTHA	DEMOCRAT	H	16	W	I		250	200		450	2000
KAWAMOTO, CALVIN	DEMOCRAT	S	18	PL	I	103	750	800	200	1853	6853
KOKUBUN, RUSSELL S	DEMOCRAT	S	2	W	I			200		200	200
LUKE, SYLVIA	DEMOCRAT	H	26	W	I	500	750			1250	2700
MAGAOAY, MICHAEL Y	DEMOCRAT	H	46	W	I	500	250			750	750
MARUMOTO, BARBARA	REPUBLICAN	H	19	W	I	500	250			750	3000
MATSUURA, DAVID	DEMOCRAT	S	1	PL	IC	2000				2000	4500
MCCAIN, PATRICK	DEMOCRAT	H	25	PL	C						4000
MCDERMOTT, ROBERT	REPUBLICAN	H	32	W	I						4500
MENOR, RON	DEMOCRAT	S	17	W	I	1000	500			1500	3900
METCALF III, WAYNE	DEMOCRAT	S	2	PL	I						200
MEYER, COLLEEN	REPUBLICAN	H	47	W	I	500	250			750	3000
MORIHARA, DAVID	DEMOCRAT	H	10	W	I						950
MOSES, MARK	REPUBLICAN	H	40	L	I	1500	500			2000	3500
NAKASONE, BOB	DEMOCRAT	H	9	W	I		1250	400		1650	5459
OSHIRO, PAUL	DEMOCRAT	H	41	W	I						600
PICKARD, JOSEPH	REPUBLICAN	S	23	L	O						1000
RASMUSSEN, CINDY	REPUBLICAN	S	13	L	C						3000
RATH, JIM	REPUBLICAN	H	7	L	IO	2000	500			2500	3000
REZENTS, JEFF	REPUBLICAN	H	45	L	C						2000
SAKAMOTO, NORMAN	DEMOCRAT	S	15	W	I	1000	500	200		1700	2650
SANTIAGO, ALEXANDER	DEMOCRAT	H	45	W	I						200
SAY, CALVIN	DEMOCRAT	H	20	W	I						900
SLOM, SAM	REPUBLICAN	S	8	W	I	1000		100		1100	1850
SOLOMON, MALAMA	DEMOCRAT	S	1	PL	I						4950
SOUKI, JOE	DEMOCRAT	H	8	W	I		1500	400		1900	4264
STEGMAIER, DAVID	DEMOCRAT	H	15	W	I						550
STONEBRAKER, WILLIAM	REPUBLICAN	H	17	W	I	500				500	500
TAKAMINE, DWIGHT	DEMOCRAT	H	1	W	I						200
TAM, ROD	DEMOCRAT	S	13	W	I						1150
TANIGUCHI, BRIAN T	DEMOCRAT	S	10	W	I		500			500	500
TARNAS, DAVID	DEMOCRAT	H	6	L	I						500
TOM, TERRANCE	DEMOCRAT	S	23	PL	IO						6500
WHALEN, PAUL C	REPUBLICAN	S	3	DNR	I		1250			1250	1250
WHALEN, PAUL K	REPUBLICAN	H	5	W	I						5000

APPENDIX 4 Tobacco Industry Campaign Contributions 2002 Election Cycle

Name	Party	Office	District	W/L	Status	Altria/PM	RJR	BW	Lor	2002	1998-2002
YAMANE, BRIAN	DEMOCRAT	H	19	W	I						2400
YIM, WALTER	REPUBLICAN	H	23	L	C						500
YONAMINE, NOBORU	DEMOCRAT	H	35	W	I						1500
YOSHINAGA, TERRY	DEMOCRAT	H	22	W	I						4150

*Legislators not listed did not receive tobacco industry contributions during the 2002 election cycle

APPENDIX 5 Tobacco Industry Campaign Contributions 2000 Election Cycle

Name	Party	Office	District	W/L	Status	Altria/PM	RJR	BW	Lor	2000	1998-2000
ABINSAY JR, FELIPE P (JUN)	DEMOCRAT	H	29	W	I	2209	750	200		3159	3659
AHU ISA, LEI	DEMOCRAT	H	27	W	I	1500	750		200	2450	6450
AIONA, SAMSON	REPUBLICAN	H	24	L	I						3200
AKI, JAMES	DEMOCRAT	S	21	PL	I						2100
AMARAL, ANNELLE	NONPARTISAN	OHA		PL	C						2250
BAKER, ROSALYN	DEMOCRAT	S	5	W	I						4150
BUEN, JANET YAGI	DEMOCRAT	S	4	W	IC						1000
BUNDA, ROBERT	DEMOCRAT	S	22	DNR	I						5100
CACHOLA, ROMY	DEMOCRAT	H	30	W	I						400
CARROLL, JOHN	REPUBLICAN	S	1	L	C						1000
CHANG, JERRY	DEMOCRAT	H	2	W	I	103	250	200		553	1953
CHUMBLEY, AVERY	DEMOCRAT	S	6	W	I						2150
ESPERO, WILL	DEMOCRAT	S	20	W	I	1000	1000	200		2200	2200
FOX, GALEN	REPUBLICAN	H	23	W	I	500	500			1000	1000
FUKUNAGA, CAROL	DEMOCRAT	S	11	W	I	2000	1750	200		3950	3950
GARCIA, NESTOR	DEMOCRAT	H	37	W	I	603	250			853	1353
GOODENOW, KENNETH	DEMOCRAT	H	51	W	I						1000
HALFORD, CHRIS	REPUBLICAN	H	11	W	I	1291	1500			2791	4291
HAMAKAWA, ERIC G	DEMOCRAT	H	3	W	I			400		400	400
HERKES, ROBERT	DEMOCRAT	H	5	W	I						3000
HIDANO, AUDREY	DEMOCRAT	S	13	PL	C						3000
HIRAKI, KENNETH	DEMOCRAT	H	28	W	I	603	1000	200		1803	2003
IGE, DAVID	DEMOCRAT	S	16	W	I						1050
IHARA JR, LES	DEMOCRAT	S	10	W	I						1150
ISHIMI, JON	DEMOCRAT	H	16	L	O						3000
ITO, KEN	DEMOCRAT	H	48	W	I	603	750	300	200	1853	4053
IWASE, RANDALL	DEMOCRAT	S	18	W	I						2800
JONES, MERWYN	DEMOCRAT	H	44	L	I						1000
KAHIKINA, MICHAEL P	DEMOCRAT	H	44	W	IO			100		100	100
KANOHO, EZRA	DEMOCRAT	H	15	W	I			600	200	800	1550
KAWAKAMI, BERTHA	DEMOCRAT	H	16	W	I	500	250	200	200	1150	1550
KAWAMOTO, CALVIN	DEMOCRAT	S	18	PL	I						5000
LUKE, SYLVIA	DEMOCRAT	H	26	W	I	750	500	200		1450	1450
MARUMOTO, BARBARA	REPUBLICAN	H	19	W	I	1250	500	100		1850	2250
MATSUURA, DAVID	DEMOCRAT	S	1	PL	IC		500			500	2500
MCCAIN, PATRICK	DEMOCRAT	H	25	PL	C						4000

APPENDIX 5 Tobacco Industry Campaign Contributions 2000 Election Cycle

Name	Party	Office	District	W/L	Status	Altria/PM	RJR	BW	Lor	2000	1998-2000
MCDERMOTT, ROBERT	REPUBLICAN	H	32	W	I	1000	500			1500	4500
MENOR, RON	DEMOCRAT	S	17	W	I	500	1000	500		2000	2400
METCALF III, WAYNE	DEMOCRAT	S	2	PL	I						200
MEYER, COLLEEN	REPUBLICAN	H	47	W	I	5000	250			1250	2250
MORIHARA, DAVID	DEMOCRAT	H	10	W	I						950
MOSES, MARK	REPUBLICAN	H	40	L	I	750	750			1500	1500
NAKASONE, BOB	DEMOCRAT	H	9	W	I	1709	1000	300	200	3209	3809
OSHIRO, PAUL	DEMOCRAT	H	41	W	I						600
PICKARD, JOSEPH	REPUBLICAN	S	23	L	O						1000
RASMUSSEN, CINDY	REPUBLICAN	S	13	L	C						3000
RATH, JIM	REPUBLICAN	H	7	L	IO	500				500	500
REZENTS, JEFF	REPUBLICAN	H	45	L	C						2000
SAKAMOTO, NORMAN	DEMOCRAT	S	15	W	I	500	250	200		950	950
SANTIAGO, ALEXANDER	DEMOCRAT	H	45	W	I						200
SAY, CALVIN	DEMOCRAT	H	20	W	I						900
SLOM, SAM	REPUBLICAN	S	8	W	I	500	250			750	750
SOLOMON, MALAMA	DEMOCRAT	S	1	PL	I						4950
SOUKI, JOE	DEMOCRAT	H	8	W	I	264	500	700		1464	2364
STEGMAIER, DAVID	DEMOCRAT	H	15	W	I						550
TAKAMINE, DWIGHT	DEMOCRAT	H	1	W	I						200
TAM, ROD	DEMOCRAT	S	13	W	I						1150
TARNAS, DAVID	DEMOCRAT	H	6	L	I						500
TOM, TERRANCE	DEMOCRAT	S	23	PL	IO						6500
WHALEN, PAUL K	REPUBLICAN	H	5	W	I	1000	1000			2000	5000
YAMANE, BRIAN	DEMOCRAT	H	19	W	I						2400
YIM, WALTER	REPUBLICAN	H	23	L	C						500
YONAMINE, NOBORU	DEMOCRAT	H	35	W	I	500	500			1000	1500
YOSHINAGA, TERRY	DEMOCRAT	H	22	W	I	500	1750	300	200	2750	4150

*Legislators not listed did not receive tobacco industry contributions during the 2000 election cycle

APPENDIX 6 Tobacco Industry Campaign Contributions 1998 Election Cycle

Name	Party	Office	District	W/L	Status	Altria/PM	RJR	TI	UST	1998
ABINSAY JR, FELIPE P (JUN)	DEMOCRAT	H	29	W	I	500				500
AHU ISA, LEI	DEMOCRAT	H	27	W	I	4000				4000
AIONA, SAMSON	REPUBLICAN	H	24	L	I	2000	1000	200		3200
AKI, JAMES	DEMOCRAT	S	21	PL	I		1650	450		2100
AMARAL, ANNELLE	NONPARTISAN	OHA		PL	C	1000	850	400		2250
BAKER, ROSALYN	DEMOCRAT	S	5	W	I	500	2750	900		4150
BUEN, JANET YAGI	DEMOCRAT	S	4	W	IC	1000				1000
BUNDA, ROBERT	DEMOCRAT	S	22	DNR	I	3000	1500	600		5100
CACHOLA, ROMY	DEMOCRAT	H	30	W	I			400		400
CARROLL, JOHN	REPUBLICAN	S	1	L	C	1000				1000
CHANG, JERRY	DEMOCRAT	H	2	W	I	500	500	400		1400
CHUMBLEY, AVERY	DEMOCRAT	S	6	W	I	1000	550	600		2150
GARCIA, NESTOR	DEMOCRAT	H	37	W	I	250	250			500
GOODENOW, KENNETH	DEMOCRAT	H	51	W	I		1000			1000
HALFORD, CHRIS	REPUBLICAN	H	11	W	I		1500			1500
HERKES, ROBERT	DEMOCRAT	H	5	W	I		3000			3000
HIDANO, AUDREY	DEMOCRAT	S	13	PL	C	2000	1000			3000
HIRAKI, KENNETH	DEMOCRAT	H	28	W	I			200		200
IGE, DAVID	DEMOCRAT	S	16	W	I		850	200		1050
IHARA JR, LES	DEMOCRAT	S	10	W	I	250	500	400		1150
ISHIMI, JON	DEMOCRAT	H	16	L	O	2000	1000			3000
ITO, KEN	DEMOCRAT	H	48	W	I	1000	1000	200		2200
IWASE, RANDALL	DEMOCRAT	S	18	W	I	250	1750	800		2800
JONES, MERWYN	DEMOCRAT	H	44	L	I	1000				1000
KANOHO, EZRA	DEMOCRAT	H	15	W	I		300	450		750
KAWAKAMI, BERTHA	DEMOCRAT	H	16	W	I			400		400
KAWAMOTO, CALVIN	DEMOCRAT	S	18	PL	I	2250	1950	800		5000
MARUMOTO, BARBARA	REPUBLICAN	H	19	W	I			400		400
MATSUURA, DAVID	DEMOCRAT	S	1	PL	IC	2000				2000
MCCAIN, PATRICK	DEMOCRAT	H	25	PL	C	2000	2000			4000
MCDERMOTT, ROBERT	REPUBLICAN	H	32	W	I	2000	1000			3000
MENOR, RON	DEMOCRAT	S	17	W	I			400		400
METCALF III, WAYNE	DEMOCRAT	S	2	PL	I			200		200
MEYER, COLLEEN	REPUBLICAN	H	47	W	I	1000				1000
MORIHARA, DAVID	DEMOCRAT	H	10	W	I	500	250	200		950
NAKASONE, BOB	DEMOCRAT	H	9	W	I		500	100		600

APPENDIX 6 Tobacco Industry Campaign Contributions 1998 Election Cycle

Name	Party	Office	District	W/L	Status	Altria/PM	RJR	TI	UST	1998
OSHIRO, PAUL	DEMOCRAT	H	41	W	I	500		100		600
PICKARD, JOSEPH	REPUBLICAN	S	23	L	O		1000			1000
RASMUSSEN, CINDY	REPUBLICAN	S	13	L	C	2000	1000			3000
REZENTS, JEFF	REPUBLICAN	H	45	L	C	500	1500			2000
SANTIAGO, ALEXANDER	DEMOCRAT	H	45	W	I			200		200
SAY, CALVIN	DEMOCRAT	H	20	W	I			900		900
SOLOMON, MALAMA	DEMOCRAT	S	1	PL	I	4000	250	700		4950
SOUKI, JOE	DEMOCRAT	H	8	W	I			900		900
STEGMAIER, DAVID	DEMOCRAT	H	15	W	I			550		550
TAKAMINE, DWIGHT	DEMOCRAT	H	1	W	I			200		200
TAM, ROD	DEMOCRAT	S	13	W	I	500	250	400		1150
TARNAS, DAVID	DEMOCRAT	H	6	L	I	500				500
TOM, TERRANCE	DEMOCRAT	S	23	PL	IO	4000	1000	500	1000	6500
WHALEN, PAUL K	REPUBLICAN	H	5	W	I	2000	1000			3000
YAMANE, BRIAN	DEMOCRAT	H	19	W	I	1000	1000	400		2400
YIM, WALTER	REPUBLICAN	H	23	L	C	500				500
YONAMINE, NOBORU	DEMOCRAT	H	35	W	I			500		500
YOSHINAGA, TERRY	DEMOCRAT	H	22	W	I	1000		400		1400

*Legislators not listed did not receive tobacco industry contributions during the 1998 election cycle