

STAND. COM. REP. NO.

2358

Honolulu, Hawaii

FEB 14 2014

RE: S.B. No. 2376

S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 2376 entitled:

"A BILL FOR AN ACT RELATING TO ADVERTISING,"

begs leave to report as follows:

The purpose and intent of this measure is to prohibit advertisements for massage, relaxation, spa, escort, or body rubs from including certain types of pictures and referring to the personal physical qualities of a person other than the hands, wrists, and forearms.

Your Committee received testimony in support of this measure from The Pacific Alliance to Stop Slavery; IMUAlliance; The Wayne Foundation, Inc.; Courage Worldwide Hawaii; and fifteen individuals. Your Committee received comments on this measure from the Board of Massage Therapy.

Your Committee finds that in today's world, the Internet has become the predominant vehicle for advertising black market services, including sex-trafficking. Your Committee further finds that approximately three hundred advertisements publicizing Hawaii-based prostitution are posted online every day. This measure addresses this troubling problem by prohibiting certain references in advertisements for massage, relaxation, spa, escort services, and body rubs and targeting the third-party publishers or producers of these advertisements.



However, your Committee has heard the concerns that this measure contains language that is very similar to certain paragraphs in section 452-23(a), Hawaii Revised Statutes. In 1998, the Department of the Attorney General opined that language in section 452-23(a), Hawaii Revised Statutes, was overly broad and infringed upon commercial speech rights afforded by the First Amendment. Amendments are therefore necessary to narrow the restrictions imposed under this measure.

Accordingly, your Committee has amended this measure by:

- (1) Prohibiting advertisements or directories that include images depicting any person being advertised as a massage therapist, relaxation therapist, or escort in a nude or semi-nude condition, rather than prohibiting pictures depicting any personal physical qualities other than the hands, wrists, and forearms of a person advertised as a massage therapist or relaxation therapist;
- (2) Prohibiting advertisements that refer to the intimate areas of persons advertised as a massage therapist, relaxation therapist, or escort, rather than prohibiting advertisements that refer to any personal physical qualities of these persons;
- (3) Prohibiting publishers or producers of advertising mediums from publishing or broadcasting advertisements or listings for escorts or escort services that do not comply with the requirements of this measure;
- (4) Specifying that publishers or producers who obtain an agreement from an escort that the escort will not advertise in violation of state or federal law are entitled to a rebuttable presumption of compliance;
- (5) Inserting the new definitions proposed by this measure into section 712-1210, Hawaii Revised Statutes, rather than a new section under part II, chapter 712, Hawaii Revised Statutes;
- (6) Adding definitions of "escort", "escort service", "intimate areas", and "semi-nude";

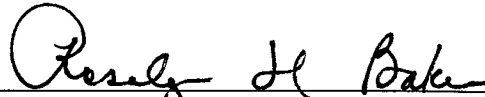


- (7) Inserting an effective date of July 1, 2050, to encourage further discussion; and
- (8) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

Your Committee notes that the restrictions in this amended measure have been narrowed in an attempt to address First Amendment commercial free speech rights. Your Committee acknowledges that the Department of the Attorney General may still have constitutional concerns regarding this amended measure and therefore requests your Committee on Judiciary and Labor to further examine this issue.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2376, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2376, S.D. 1, and be referred to the Committee on Judiciary and Labor.

Respectfully submitted on
behalf of the members of the
Committee on Commerce and
Consumer Protection,



ROSALYN H. BAKER, Chair



