

Honolulu, Hawaii

, 2018

MAR 16

RE: S.B. No. 2304
S.D. 2
H.D. 1

Honorable Scott K. Saiki
Speaker, House of Representatives
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committee on Health & Human Services, to which was referred S.B. No. 2304, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO TOBACCO,"

begs leave to report as follows:

The purpose of this measure is to reduce the use of tobacco products among youth. This measure prohibits the issuance and renewal of retail tobacco permits and the sale of tobacco products within five hundred feet of schools and playgrounds used extensively by minors.

The County of Hawaii Office of the Prosecuting Attorney, American Heart Association, Hawaii COPD Coalition, Hawai'i Public Health Institute, Student Health Advisory Council, Hawaii Public Health Association, Blue Zones Project-Hawaii, Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i, Hawaii Children's Action Network, Pioneering Healthier Communities of Honolulu, Breathe Aloha Club at the University of Hawaii at Manoa and several concerned individuals provided testimony in support of this measure. The Hawaii Food Industry Association, Volcano eCigs, Retail Merchants of Hawaii, Hawaii Cigar Association, PCG Enterprises LLC, Irie Hawaii Smoke Shop, Irie Hawaii Stores, Eciggity, Hawaii Petroleum, Kauai Cigar Company, Seven-Eleven Hawaii, Inc., Aloha Petroleum, Ltd., Hawaii



Smokers Alliance, Hawaii Petroleum Marketers Association and numerous individuals provided testimony in opposition to this measure. The Department of Health, Department of Taxation, and Department of the Attorney General provided comments.

Your Committee has amended this measure by:

- (1) Clarifying that the distance of five hundred feet shall be measured from the boundary of the preschool, school, or public playground to the boundary of the place of business's premises;
- (2) Clarifying that public and private beaches and private day care centers located in or adjacent to commercial areas shall not be deemed schools or public playgrounds;
- (3) Clarifying that vocational, licensing, and other schools attended primarily by adults shall not be considered schools; and
- (4) Adding that a person or entity whose retail permit is void under section 245-2.5, Hawaii Revised Statute, shall be deemed to have committed the offense of unlawful tobacco retailing in the first degree and unlawful tobacco retailing in the second degree.

Your Committee notes comments from the Department of the Attorney General that the permitting restrictions in this measure may give rise to a constitutional challenge under the Fifth Amendment of the United States Constitution from adversely affected businesses. The Department of the Attorney General commented that possible remedies include grandfathering in existing permit holders such that the existing businesses would be allowed to continue the sale of tobacco products and electronic smoking devices.

Should your Committee on Consumer Protection & Commerce consider this measure, your Committee requests that the Attorney General or the Department of Health provide a proposed definition for "public playground."

As affirmed by the record of votes of the members of your Committee on Health & Human Services that is attached to this report, your Committee is in accord with the intent and purpose of



S.B. No. 2304, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2304, S.D. 2, H.D. 1, and be referred to your Committee on Consumer Protection & Commerce.

Respectfully submitted on
behalf of the members of the
Committee on Health & Human
Services,


JOHN M. MIZUNO, Chair



