

STAND. COM. REP. NO. **2203**

Honolulu, Hawaii

FEB 12 2018

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

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committees on Commerce, Consumer Protection, and Health and Judiciary, to which was referred S.B. No. 2304 entitled:

"A BILL FOR AN ACT RELATING TO TOBACCO,"

beg leave to report as follows:

The purpose and intent of this measure is to reduce use of, and access and exposure to tobacco products by youth through prohibiting the issuance and renewal of retail tobacco permits and the sale of tobacco products or electronic smoking devices within seven hundred fifty feet of schools, public parks, and public housing complexes.

Your Committees received testimony in support of this measure from the Hawaii Public Housing Authority, Blue Zones Project Koolaupoko, American Heart Association, Hawaii Public Health Association, Hawaii Public Health Institute, Hawaii Children's Action Network, Blue Zones Project, Hawaii Chapter - American Academy of Pediatrics, HEALTHY Quit Smoking Program - Kapiolani Medical Center, Keiki Injury Prevention Coalition, American Cancer Society - Cancer Action Network, and thirty-six individuals. Your Committees received testimony in opposition to this measure from the Libertarian Party of Hawaii, Aloha Petroleum, Volcano Fine Electronic Cigarettes, Hawaii Food Industry Association, Retail Merchants of Hawaii, Smokeless Hawaii, Island Vapor, Hawaii Smokers Alliance, Cigar Rights of America, Vape Hawaii, Hawaii Cigar Association, Kauai Cigar Company, Mysteries of Hawaii, and



forty-three individuals. Your Committees received comments on this measure from the Department of the Attorney General, Department of Taxation, and Department of Health.

While walking or riding to school, youth may be exposed to advertising of tobacco products and electronic smoking devices or the availability of those products for sale at locations near the school, such as convenience stores, grocery stores, and gas stations. Your Committees note that several cities in the United States have established tobacco retail buffer zones, which are areas in which sales of tobacco products are prohibited, or tobacco products are required to be hidden from view, in retail establishments located within a certain distance of sites such as schools or playgrounds. Retail buffer zones can also be implemented as the issuance of a tobacco retail permit conditioned upon the retailer not operating within a certain distance of sites such as schools or playgrounds. Your Committees find tobacco retail buffer zones to be an effective regulatory strategy in preventing youth initiation to tobacco products.

However, your Committees have also heard the concerns of the tobacco and electronic smoking device industries, which found the definitions of park and school in this measure to be ambiguous and broad enough to possibly put nearly every tobacco and electronic smoking device retailer in the State out of business. Your Committees have also heard concerns from the Department of the Attorney General that this measure could constitute a regulatory taking if existing permits are not grandfathered in, and that this measure could face equal access challenges from adults residing in public housing complexes.

Your Committees find that existing laws, especially the liquor license prohibition codified at section 281-39.5, Hawaii Revised Statutes (HRS), provide a useful guide that addresses many of the above concerns. Your Committees further find that a more narrowly-drawn measure will accomplish many of the same benefits as the original measure while avoiding legal challenges. Your Committees also find that, for ease of regulation, it is preferable to statutorily place the language in this measure in chapter 328J, HRS, rather than to establish a new offense.

Accordingly, your Committees have amended this measure by:



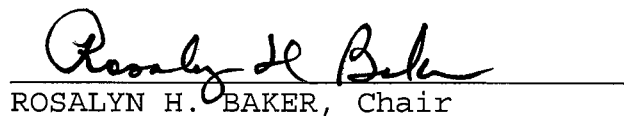
- (1) Changing the statutory placement of the prohibition on sale within chapter 328J, HRS, rather than within chapter 712, HRS;
- (2) Placing the buffer zones only around preschools; public and private elementary, intermediate, or high schools; and public playgrounds utilized extensively by minors, rather than around parks, public housing projects, or schools for adults;
- (3) Reducing the size of the buffer zone from seven hundred fifty feet to five hundred feet, and clarifying that the buffer zone shall extend from the boundary of the protected area to the boundary of the place of business;
- (4) Grandfathering in existing permits until November 30, 2019;
- (5) Including additional clarifying language from section 281-39.5, HRS; and
- (6) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Commerce, Consumer Protection, and Health and Judiciary that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2304, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2304, S.D. 1, and be referred to your Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committees on Commerce,
Consumer Protection, and Health
and Judiciary,



BRIAN T. TANIGUCHI, Chair



ROSALYN H. BAKER, Chair



The Senate
 Twenty-Ninth Legislature
 State of Hawai'i

Record of Votes
Committee on Commerce, Consumer Protection, and Health
CPH

Bill / Resolution No.:* SB 2304	Committee Referral: CPH/JDC, WAM	Date: 2/7/18		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
TOKUDA, Jill N. (VC)				✓
CHANG, Stanley	✓			
ESPERO, Will	✓			
IHARA, Jr., Les				✓
NISHIHARA, Clarence K.		✓		
RUDERMAN, Russell E.				✓
TOTAL	3	1		3
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes

The Senate
 Twenty-Ninth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary
JDC

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<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, Brian T. (C)	✓			
RHOADS, Karl (VC)	✓			
GABBARD, Mike	✓			
KIM, Donna Mercado		✓		
THIELEN, Laura H.				✓
TOTAL	3	1	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>Karl Rhoads</i>				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

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