



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/07/2019
Time: 02:05 PM
Location: 325
Committee: House Judiciary

Department: Education
Person Testifying: Dr. Christina M. Kishimoto, Superintendent of Education
Title of Bill: HB 1395 RELATING TO SMOKING.
Purpose of Bill: Establishes a \$100 fine for underage persons who smoke on public-school property or at public-school functions.

Department's Position:

The Department of Education (Department) offers comments on HB 1395:

The Department's highest priority is the safety and well-being of students. As such, the Department is working in partnership with the Hawaii State Department of Health (DOH) to educate youth to make positive decisions about their health. In raising awareness about the risks and dangers of tobacco products and electronic smoking devices (ESDs), the Department's efforts focus on the following:

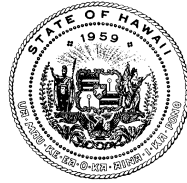
- Prevention and education regarding the harmful effects of tobacco and ESDs;
- Collaborating with DOH on the collection of Youth Risk Behavior Survey (YRBS) data on Hawaii's youth and their usage of tobacco and ESDs;
- Promoting public awareness of Section 712-1258, Hawaii Revised Statutes (HRS), which makes it unlawful for anyone under the age of 21 years of age to be sold, purchase, use, or possess tobacco products and ESDs;
- Statewide social media campaign (Facebook, Twitter, LinkedIn, Pinterest) to educate staff, students and families on the risks and dangers of the use of tobacco products and ESDs; and
- Monitoring students for compliance or violations of Title 8, Chapter 19, Hawaii Administrative Rules (HAR) Student Misconduct, Discipline, School Searches and Seizures, Reporting Offenses, Police Interviews and Arrests, and Restitution for Vandalism (Chapter 19) incidents, as it relates to the use of tobacco products and ESDs.

There is zero tolerance for tobacco products and ESDs on Department of Education campuses, transportation, and/or during sponsored activities. In addition, any tobacco product(s) or ESDs found in a student's possession is a violation of Chapter 19 is seized by the school administration, and is forfeited to law enforcement in accordance with Section 712-1258, HRS.

Therefore, the Department respectfully suggests that it is fully engaged in tobacco product and ESD-related prevention education, maintains sufficient statutory and administrative authority related to the use and possession of these products, and ensures appropriate consequences for students in violation of Hawaii's laws and Department rules. As such, this measure should be deferred.

Thank you for the opportunity to provide testimony on HB 1395.

The Hawaii State Department of Education seeks to advance the goals of the Strategic Plan which is focused on student success, staff success, and successful systems of support. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at www.hawaiipublicschools.org.



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



**Testimony COMMENTING on H.B. 1395
RELATING TO SMOKING**

REPRESENTATIVE CHRIS LEE , CHAIR
HOUSE COMMITTEE ON JUDICIARY

Hearing Date: February 7, 2019

Room Number: 325

1 **Fiscal Implications:** None

2 **Department Testimony:** The Department of Health (DOH) defers to the Department of
3 Education (DOE) regarding the details for implementation and enforcement of this measure.
4 Currently the DOE states that any tobacco product or electronic smoking device (ESD) found in
5 a student's possession is a violation of Hawaii Administrative Rules (HAR) Chapter 19 and shall
6 be seized by school administration, and forfeited to law enforcement pursuant to [Section 712-](#)
7 [1258\(6\)](#), Hawaii Revised Statutes (HRS).

8 House Bill 1395 (H.B. 1395) amends §302A-102, HRS, and adds a fine of \$100, that
9 pertains to tobacco use on public school property. This would be in addition to Act 206, Hawaii
10 Session Laws 2018 that amended §712-1258, HRS with the following consequences for people
11 under 21 years of age:

12 "Any person under twenty-one years of age who violates subsection (5)
13 shall be fined \$10 for the first offense. Any subsequent offense
14 shall subject the violator to a fine of \$50, no part of which shall be
15 suspended, or the person shall be required to perform not less than
16 forty-eight hours nor more than seventy-two hours of community service
17 during hours when the person is not employed and is not attending
18 school."

19 Laws which focus on penalizing young people for tobacco use or possession deviate from
20 other recommended youth oriented best practices and detract from more effective enforcement
21 measures and tobacco prevention and control efforts. Such laws unfairly punish and stigmatize
22 young people who are becoming addicted to nicotine as a result of the tobacco industry's
23 aggressive marketing. ¹ Policies that penalize young people for possession or purchase are

¹ Campaign for Tobacco-Free Kids. Youth Access Laws That Penalize Kids for Purchase, Use, or, Possession Are Not Proven to Reduce Tobacco Use. September 19, 2018.

1 favored by the tobacco industry to deflect public policies away from more effective prevention
2 policies to prevent access and regulate tobacco products and curb industry marketing practices.
3 H.B. 1395, includes a provision that the fine may be levied against the parent or legal guardian if
4 the person is under 18 years of age, and for some families may add unnecessary tension rather
5 than increase positive adult involvement.

6 The Department is focused on prevention strategies and partnering with the Department
7 of Education, Hawaii Association of Independent Schools, other school organizations, and
8 community groups to urgently address the youth vaping epidemic in Hawaii. The collaboration
9 between state and community organizations is providing resources, tools, information and
10 training for teachers, parents, and other youth influencers about the harmful risks and dangers of
11 vaping and the marketing of ESDs to young people. Social media messages by youth for youth to
12 counter the marketing by the tobacco industry is an integral component of the overall effort.

13 Thank you for the opportunity to comment.

14 **Offered Amendments:** None

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca A. Vogt Like
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Lihu'e, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

**THE HONORABLE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON JUDICIARY
The Thirtieth Legislature
Regular Session of 2019
State of Hawai'i**

February 7, 2019

RE: H.B. 1395: RELATING TO SMOKING.

Chair Lee, Vice-Chair San Buenaventura, and members of the House Committee on Judiciary, the Office of the Prosecuting Attorney of the County of Kauai, supports the intent of this measure but recommends an amendment. We oppose passage of the Bill in its current form.

This purpose of this Bill is to establish a \$100 fine for underage persons who smoke on school property or at school functions. This Office respectfully suggests that the Bill be amended to establish a \$100 fine for ANY PERSON who smokes on school property or at school functions. We see no basis for limiting the penalty to juveniles, who are generally deemed to be less culpable than adults for their actions. If that amendment is made, our Office would support the Bill.

Thank you for this opportunity to testify on this bill.



HIPHI Board

Michael
Robinson, MBA, MA
Chair
Hawaii Pacific Health

Mark Levin, JD
Secretary
*William S. Richardson School
of Law*

Kilikina Mahi, MBA
Treasurer
KM Consulting LLC

Joy Barua, MBA
Kaiser Permanente

Forrest Batz, PharmD
Retired, Daniel K. Inouye
College of Pharmacy

Debbie Erskine
Kamehameha Schools

Keawe'aimoku
Kaholokula, PhD
John A. Burns School of
Medicine, Department of
Native Hawaiian Health

Bryan Mih, MD, MPH
John A. Burns School of
Medicine, Department of
Pediatrics

Rachel Novotny,
PhD, RDN, LD
*University of Hawaii at Manoa,
College of Tropical Agriculture
and Human Resources*

Catherine Taschner, JD
*McCorriston Miller Mukai
MacKinnon LLP*

JoAnn Tsark, MPH
John A. Burns School of
Medicine, Native Hawaiian
Research Office

En Young, MBA
Sansei, Lanai

Date: February 6, 2019

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

Re: Opposition to HB1395, Relating to Smoking

Hrg: February 7, 2019 at 2:05pm at Conference Room 325

The Coalition for a Tobacco-Free Hawai'i, a program of the Hawai'i Public Health Institute is in **Opposition to HB1395** which would penalize underage persons who use tobacco at public schools and public school functions.

The Coalition opposes making youth use and possession of tobacco products, including electronic cigarettes unlawful.

Possession of tobacco products by underage persons (PUP) unfairly punish and stigmatize children, who become addicted at such a young age as a result of the tobacco industry's aggressive marketing to kids. PUP laws shift the blame away from the industry's irresponsible marketing and retailers' violations of our Tobacco 21 law. Further, passage of PUP laws can detract from more effective tobacco control and prevention efforts.

The Centers for Disease Control and Prevention outline a number of proven strategies to prevent youth tobacco use, none of which include penalizing youth for possession or using tobacco products. Efforts include: tobacco prevention policies and programs in schools; increased enforcement of restrictions on tobacco sales to minors; regulating tobacco products; decreased access to tobacco products; and increased price of tobacco products.

The Coalition recommends consideration of other measures to decrease youth use of tobacco products.

Hawaii is already experiencing a youth vaping epidemic. Instead of treating children as the wrongdoers, the focus must be on passing laws that counter the tobacco industry's targeted marketing to kids. Current measures are being proposed in the 2019 legislature to deter and decrease tobacco youth initiation and continued use such as ending the

sale of candy flavored tobacco, establishing a tax on e-cigarette products, and restricting online sales.

The tobacco industry still market to youth and spend approximately \$26 million per day on marketing here in Hawaii. The Coalition does not want to see youth penalized while the industry continues to profit. Penalizing children is not an effective strategy for reducing youth tobacco use and we respectfully ask that you hold this measure.

Mahalo,



Trish La Chica, MPA
Policy and Advocacy Director

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

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

Date: February 5, 2019

To: The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
Members of the House Committee on Judiciary

Re: **Strong Opposition to HB1395**, Relating to Smoking

Hrg: February 7, 2019 at 2:05 PM at Conference Room 325

Aloha House Committee on Judiciary,

As a father, community member, educator and health professional, I am writing in **strong opposition to HB1395**, which would establish a \$100 fine for underage persons who smoke on public-school property or at public-school functions.

Penalizing children has not been proven to be an effective strategy for reducing youth smoking. Some experts argue that possession by underage person (PUP) laws may actually detract from more effective enforcement measures and tobacco control efforts.

PUP laws unfairly punish and stigmatize children, many of whom became addicted to nicotine containing, health harming tobacco products at a young age as a result of aggressive marketing to kids by the tobacco industry. This only shifts the blame from irresponsible tobacco industry marketing and tobacco retailers who sell to underage persons, to the sales targets, our keiki.

Penalties against youth become even more unreasonable when little is done to counter the tobacco industry's targeted marketing to kids. Rather than treat children as the wrongdoers, youth access laws should focus on limiting access to tobacco products, including the currently proposed bills to regulate e-cigarettes and ban flavored tobacco products, making tobacco product use far less attractive to youth.

Constructive responses to youth possession focus on youth and parent tobacco education and youth tobacco cessation, both of which promote health and long-term harm reduction.

I strongly oppose HB1395 and respectfully ask you to hold this bill in committee.

Many thanks for your consideration,

Forrest Batz, PharmD
Kea'au, HI

HB-1395

Submitted on: 2/5/2019 4:03:26 PM

Testimony for JUD on 2/7/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joy Marshall	Individual	Support	No

Comments: