

Honolulu, Hawaii

FEB 08 , 2024

RE: H.B. No. 1778
H.D. 1

Honorable Scott K. Saiki
Speaker, House of Representatives
Thirty-Second State Legislature
Regular Session of 2024
State of Hawaii

Sir:

Your Committee on Health & Homelessness, to which was referred H.B. No. 1778 entitled:

"A BILL FOR AN ACT RELATING TO TOBACCO PRODUCTS,"

begs leave to report as follows:

The purpose of this measure is to:

- (1) Prohibit the sale of flavored tobacco products, including products containing menthol, and mislabeled e-liquid products that contain nicotine; and
- (2) Repeal language making the sale of cigarettes, tobacco products, and electronic smoking devices a statewide concern and preempting county ordinances and regulations.

Your Committee received testimony in support of this measure from the Department of Health; Department of Education; Department of the Attorney General; one member of the Maui County Council; Hawaii Medical Service Association; Kaiser Permanente Hawai'i; Hawaii Dental Association; Hawai'i Primary Care Association; Hawaii Substance Abuse Coalition; Hawai'i Youth Services Network; Hawai'i Public Health Association; Hawai'i Public Health Institute; American Lung Association in Hawai'i; Hawai'i Children's Action Network Speaks!; Coalition for a Tobacco-Free Hawai'i Youth



Council; Hawai'i Health & Harm Reduction Center; Hawaii Association of Health Plans; Hawaii COPD Coalition; Campaign for Tobacco-Free Kids; Tobacco-Free Kids Action Fund; University of Hawai'i Student Health Advisory Council; Hawai'i State Teachers Association; Hāmākua-Kohala Health; We Are One, Inc.; Hawai'i State Youth Commission; and numerous individuals. Your Committee received testimony in opposition to this measure from the Hawaii Energy Marketers Association; Cigar Association of America, Inc.; ABC Stores; Retail Merchants of Hawaii; Reason Foundation; R Street Institute; Consumer Choice Center; Hawaii Smokers Alliance; VOLCANO; National Association of Tobacco Outlets; Consumer Advocates for Smoke-free Alternatives Association; Vape Element, LLC d.b.a BLVK E-Liquid; Vape Kings LLC; Americans for Tax Reform; and numerous individuals. Your Committee received comments on this measure from the Taxpayers Protection Alliance.

Your Committee finds that tobacco use remains the leading cause of preventable death in Hawaii. Of particular concern is the rising rate of tobacco use by youth across the State. According to the 2019 Hawaii State and Counties Youth Risk Behavior Surveys, 30.6 percent of public middle school students and 48.3 percent of public high school students have tried using electronic smoking devices.

Your Committee further finds that because of the significant geographic disparities in tobacco usage across the State, the counties are uniquely positioned to quickly address the health needs of their communities. Historically, Hawaii has passed forward-thinking legislation to address the high usage of tobacco products. These policies, such as raising the minimum age for the purchase of tobacco products or prohibiting smoking in public places, were first adopted by the counties before being implemented on a statewide level. However, existing law preempts any county ordinance that regulates the sale and use of tobacco products, unless that ordinance is more stringent than state law. Your Committee recognizes that there is ambiguity in the effectiveness of county ordinances that are not in conflict with existing law and in the exact nature of the authority granted to the counties to regulate the sale of cigarettes, tobacco products, and electronic smoking devices in their communities.

Your Committee notes that last year the Legislature passed Act 62, Session Laws of Hawaii 2023, which, among other things, imposed a general excise tax on electronic smoking devices and e-



liquids that is in line with similar taxes imposed on cigarettes and other tobacco products. Your Committee believes that while greater regulation of the sale of cigarettes, tobacco products, and electronic smoking devices should be vested in the counties, the regulation of the taxation of these products should remain a matter of statewide concern. Accordingly, your Committee believes that clarifying the respective regulatory authority of the State and counties will enable the State and counties to work collaboratively together to develop a flexible regulatory system to address the State's youth vaping epidemic.

Your Committee has amended this measure by:

- (1) Deleting language imposing a ban on the sale of all flavored tobacco products and mislabeled e-liquid products that contain nicotine;
- (2) Reverting to existing statutory language making the regulation of cigarettes, tobacco products, and electronic smoking devices a matter of statewide concern, but limiting this preemption of county ordinances to solely the taxation of cigarettes, tobacco products, and electronic smoking devices;
- (3) Authorizing the counties to adopt ordinances regulating the sale of cigarettes, tobacco products, and electronic smoking devices within each respective county, as long as the ordinances do not conflict and are more stringent than applicable state law;
- (4) Specifying that any county ordinance or regulation of the sale of cigarettes, tobacco products, and electronic smoking devices that imposes a fee or tax on the sale of these products shall be null and void;
- (5) Changing the effective date to July 1, 3000, to encourage further discussion; and
- (6) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

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



H.B. No. 1778, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1778, H.D. 1, and be referred to your Committee on Judiciary & Hawaiian Affairs.

Respectfully submitted on
behalf of the members of the
Committee on Health &
Homelessness,

Della Au Belatti

DELLA AU BELATTI, Chair



