STAND. COM. REP. NO. 269

Honolulu, Hawaii

MAR 0 4 2016

RE: S.B. No. 2246

Honorable Ronald D. Kouchi President of the Senate Twenty-Eighth State Legislature Regular Session of 2016 State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred S.B. No. 2246 entitled:

"A BILL FOR AN ACT RELATING TO TESTING FOR INTOXICANTS,"

begs leave to report as follows:

The purpose and intent of this measure is to repeal the provision making refusal to submit to a breath, blood, or urine test upon arrest, a petty misdemeanor.

Your Committee received testimony in support of this measure from the Department of Transportation; Department of the Prosecuting Attorney, County of Maui; Office of the Prosecuting Attorney, County of Kaua'i; and Office of the Public Defender.

Your Committee finds that this measure brings Hawaii law into compliance with the Hawaii Supreme Court ruling in <u>State v. Yong</u> <u>Shik Won</u>, 136 Hawaii 292 (2015). In that case, the Court ruled that section 291E-68, Hawaii Revised Statutes, is unconstitutional because it prescribes a petty misdemeanor penalty for refusal to submit to a breath, blood, or urine test. The criminal penalty of a petty misdemeanor tends to negate any voluntary choice by the driver because there is an element of coercion. In <u>Yong Shik Won</u>, the Court ruled, "Here, because voluntary consent has not been demonstrated and no other exception to the warrant requirement is applicable, the result of Won's breath test, the product of the warrantless search, is not admissible into evidence."

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report,



STAND. COM. REP. NO. 2191 Page 2

your Committee is in accord with the intent and purpose of S.B. No. 2246 and recommends that it pass Third Reading.

Respectfully submitted on behalf of the members of the Committee on Judiciary and Labor,

ODA BC. Kuth.a

GILBERT S.C. KEITH AGARAN, Chair

,



The Senate Twenty-Eighth Legislature State of Hawaiʻi

Record of Votes Committee on Judiciary and Labor JDL

Bill / Resolution No.:*	Committee Referral: Date:				
SB 2246	TRE, JDL 3/1/16				
The Committee is reconsidering its previous decision on this measure.					
If so, then the previous decision was to:					
The Recommendation is:					
Pass, unamended Pass, with amendments Hold Recommit 2312 2311 2310 2313					
Members		Ауе	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)					
SHIMABUKURO, Maile S.L. (VC)					
GABBARD, Mike					
KAHELE, Kaiali'i					
KIM, Donna Mercado					/
THIELEN, Laura H.		/			
SLOM, Sam		/			
		·	<u> </u>		
			<u></u>		
			, <u> </u>		
			 		
					<u> </u>
				<u>-</u>	
		- /-	<u> </u>		0
TOTAL		4			5
Recommendation:					
Chair's or Designee's Signature:					
Distribution: Original File with Committee Re	•		Pink Goldenrod Drafting Agency Committee File Copy		

*Only one measure per Record of Votes