



June 22, 2018

The Honorable David Y. Ige
Governor, State of Hawaii
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

RE: Strong concerns over House Bill 1895, Conference Draft 1, which preempts local governments from enacting ordinances to regulate the sale of tobacco products

Dear Governor Ige:

The American Cancer Society Cancer Action Network (ACS CAN), American Lung Association and Campaign for Tobacco-Free Kids opposes portions of House Bill 1895, Conference Draft 1, which would preempt local ordinances and regulations governing the sale of all tobacco products including cigarettes and electronic smoking devices. While the bill also contains appropriations for the recertification of dialysis centers in part 1, part 2 of the measure contains regulations and amendments specific to electronic smoking devices, cigarettes, and tobacco products.

Tobacco is an addictive and deadly product. 1,400 Hawaii residents lose their lives each year from smoking. 21,000 kids alive today in Hawaii will die prematurely from smoking if nothing is done to reduce our tobacco use rates.¹

While our organizations applaud efforts by the Legislature and your administration in the last few years to address this pressing health concern, we feel that provisions in House Bill 1895, Conference Draft 1, could severely impede future progress to save more lives from tobacco use.

Harmful Effects of Preemption on Public Health

Generally, local ordinances would be preempted if the statutory regulatory scheme is considered comprehensive and exclusive.² While the Legislature has the purview and authority to limit localities from regulatory functions, as a public policy it may impede necessary restrictions to protect the health of local communities under current law.³

¹ See Campaign for Tobacco-Free Kids. The Toll of Tobacco in Hawaii. Updated April 10, 2018. https://www.tobaccofreekids.org/facts_issues/toll_us/hawaii

² See *Syngenta Seeds, Inc. v. County of Kauai*, 842 F.3d 669 at 679.

³ "Each county shall have the power to enact ordinances deemed necessary to protect health, life, and property, and to preserve the order and security of the county and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute where the statute does not disclose an express or implied intent that the statute shall be exclusive or uniform throughout the State. . ." Section 46-1.5 (13), Hawaii Revised Statutes.

House Bill 1895, CD1, will make tobacco control efforts even more difficult by preventing local governments to enact ordinances to protect their communities by regulating the sale of tobacco products. Section 6 of the measure inserts new language that would nullify any new or existing local regulations. While the Legislature has the authority to preempt local ordinances, this action creates more harm to public health than any benefit because localities have played an integral role in shaping tobacco control policy in the state.

In the effort to protect Hawaii's people from the devastating effects of tobacco, many times local governments have taken the lead. For smoke-free air regulations, the counties took the lead in passing clean indoor air ordinances in 2002 and 2003.⁴ The Legislature did not act on a comprehensive smoke-free statute until 2006, when the state clean air law was passed.⁵ Similarly, for regulating the sale of tobacco products, Hawaii County enacted an ordinance to raise the age of sale of tobacco products from 18 to 21 in 2014.⁶ The state followed in 2015 with a state law to accomplish the same policy.⁷ The counties have proven over time that they are an effective policy testing tool – allowing the Legislature to determine whether these policies have the intended effects and thus acting on them in a state-wide application. By preventing local governments from taking necessary and bold moves to protect the health and safety of their communities from tobacco, the progress made on tobacco control may slow.

Further Amendments to Tobacco Control Statutes Pose Additional Problems

There are other provisions in the bill, other than preemptions, that also raise concerns. In section 4 of the measure, rather than require retailers who sell e-cigarettes to obtain a tobacco retailer license from the Department of Taxation, this bill only requests they register with the Attorney General's office. This will impede efforts to enforce tobacco control laws and ensure these retailers are complying and in the event these retailers are found out of compliance, there are no consequences. In Section 7, the bill goes on to unnecessarily amend the law restricting the sale of tobacco products to face to face sales only to allow tobacco displays in locked containers and behind counters which only stands to increase the visibility and promotion of these products to young people. In section 8, the bill also focuses on possession of tobacco products by young people while providing defenses for retailers who sell tobacco products to kids in the first place. Penalizing youth for possession has never proven to be an effective tobacco prevention measure. In fact, it may detract from more effective enforcement measures and tobacco control efforts and unfairly punishes and stigmatizes children, many of whom become addicted at a young age as a result of the tobacco industry's aggressive marketing to kids. In this way, this language shifts the blame away from the industry's irresponsible marketing and retailers' irresponsible sales to its victims.

Lack of Transparency Requires Additional Scrutiny

During the 2018 legislative session, the preemption clause in Section 6 of House Bill 1895, CD1, first appeared in Senate Bill 2654, House Draft 2. At this point in the session SB 2654 had already crossed over from the Senate and into the House – with this language being inserted before third reading after

⁴ See Maui County Code 8.20(P), Kauai County Code 22-8.20(P), Revised Ordinances of Honolulu 41-21.2(F) 7-8, and Hawaii County Code 14-21(2).

⁵ Section 328J, Hawaii Revised Statutes.

⁶ Hawaii County Code 14-138(A)

⁷ Section 712.1258, and Section 321.212, Hawaii Revised Statutes

crossover, thus this language was not present in the other five readings in both the House and Senate. The language was then inserted into HB 1895, which appropriated funds for dialysis services.

While the Legislature has the purview to make or change its own rules and procedures, transparency should outweigh expediency in this instance. The public is not served by the lack of public input on an important policy change like this. Even if the passage of House Bill 1895, CD1, passes constitutional muster it has the potential to further erode the trust between the public and its representative government.

Preemption of tobacco control does not belong in House Bill 1895

Our organizations recognize that the measure before you also implements and funds important services for the public. We do not object to those provisions; rather, we ask that your administration consider the implications to all public health by allowing this bill to become law. There are far too many concerns for public health with regards to addressing the scourge of tobacco on this state, the rising health care costs associated with diseases and cancer from tobacco use, and the many lives lost each year as a result.

Because of the ramifications of halting local progress on tobacco control policy, our organizations ask that you veto House Bill 1895. Your veto of this bill will allow local progress to continue toward protecting communities against the deadly effects of tobacco use.

Sincerely,



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Deborah P. Brown
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William P. Lee
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