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

Sir:

Your Committee on Commerce, Consumer Protection, and Health, to which was referred S.B. No. 2691 entitled:

"A BILL FOR AN ACT RELATING TO CHAPTER 245, HAWAII REVISED STATUTES,"

begs leave to report as follows:

The purpose and intent of this measure is to:

(1) Define "disposable electronic smoking device", "electronic smoking device", "e-liquid", and "reusable electronic smoking device" in the State's cigarette tax and tobacco tax law;

(2) Impose an excise tax on an e-liquid sold by a wholesaler or dealer on or after January 1, 2017, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;

(3) Require any increase in the excise tax rate imposed on cigarettes or little cigars on or after January 1, 2017, to trigger an automatic excise tax increase on e-liquid on or after January 1, 2017; and

(4) Impose an excise tax on the wholesale price of disposable electronic smoking devices and reusable electronic smoking devices sold by a wholesaler or dealer on or after January 1, 2017, whether or not sold...
at wholesale, or if not sold then at the same rate upon
the use by the wholesaler or dealer.

Your Committee received testimony in support of this measure
from the Department of Health, University of Hawai‘i Cancer Center,
Coalition for a Tobacco-Free Hawai‘i, American Heart Association,
and fifty-three individuals. Your Committee received testimony in
opposition to this measure from the Hawaii Smokers Alliance,
VOLCANO Fine Electronic Cigarettes, FC Gamerz Hawaii, and thirteen
individuals. Your Committee received comments on this measure
from the Department of Taxation and Tax Foundation of Hawaii.

Your Committee finds that Hawaii has a substantial interest
in reducing the number of individuals of all ages who use tobacco
products. Tobacco use in Hawaii causes approximately 1,400 deaths
per year among adults and poses a heavy burden on Hawaii’s health
care system. Research has shown that either a tax on cigarettes
or cigarette price increases have the propensity to reduce the
rate of smoking by adult and youth smokers. However, as the price
of cigarettes increases, smokers may turn to less expensive
tobacco products, including electronic smoking devices.

Your Committee further finds that the use of electronic
smoking devices is on the rise, while the electronic smoking
device industry, along with the production of e-liquid, are
growing rapidly. This growth of the electronic smoking device
industry, including retail businesses selling electronic smoking
devices or e-liquid, necessitates further regulations to protect
consumers, such as requiring retailers of electronic smoking
devices or e-liquid to obtain a retail tobacco permit. In
addition, toxicologists warn that e-liquids pose significant risks
to public health, particularly to children.

Your Committee further finds that taxes on e-liquid should be
similar to the tax rates already imposed on cigarettes. E-liquid
and tobacco products other than cigarettes are currently taxed at
a lower rate than cigarettes, even though their use carries
similar health risks. There should not be a lower-priced tobacco
alternative to cigarettes in Hawaii; therefore a similar tax rate
for cigarettes and e-liquids that acts as a deterrent for all
forms of tobacco and nicotine use is needed. Higher prices on e-
liquids and electronic smoking devices will encourage users of
electronic smoking devices to quit, sustain cessation, prevent
youth initiation, and reduce consumption among those who continue
to use.
To assist your Committee on Ways and Means with its deliberation on this measure, your Committee recommends an excise tax equal to eighty percent of the wholesale price of each disposable electronic smoking device sold, used, or possessed by a wholesaler or dealer on and after January 1, 2017, and an excise tax equal to 55 cents per milliliter of e-liquid sold, used, or possessed by a wholesaler or dealer on and after January 1, 2017.

Your Committee has amended this measure by:

(1) Requiring every retailer engaged in the retail sale of cigarettes, tobacco products, electronic smoking devices, or e-liquid to obtain a retail tobacco permit in order to sell, possess, keep, acquire, distribute, or transport cigarettes, tobacco products, electronic smoking devices, or e-liquid for retail sale;

(2) Specifying that any entity that operates as a dealer or wholesaler and also sells cigarettes, tobacco products, electronic smoking devices, or e-liquid to consumers at retail is required to acquire a separate retail tobacco permit;

(3) Inserting language related to the sales of cigarettes, tobacco products, electronic smoking devices, or e-liquid made through vending machines;

(4) Specifying that a vehicle from which cigarettes, tobacco products, electronic smoking devices, or e-liquid are sold is considered a place of business and requires a retail tobacco permit;

(5) Inserting language related to the keeping of complete and accurate records of a permittee's cigarette, tobacco product, electronic smoking device, and e-liquid inventory;

(6) Allowing electronic smoking devices, packages of electronic smoking devices, containers of electronic smoking devices, e-liquid, packages of e-liquid, and containers of e-liquid to be seized and forfeited if unlawfully sold, possessed, kept, stored, acquired, distributed, or transported;
(7) Deleting language that would have required any increase in the excise tax rate imposed on cigarettes or little cigars on or after January 1, 2017, to trigger an automatic excise tax increase on e-liquid on or after January 1, 2017;

(8) Deleting language that would have established an excise tax on each reusable electronic smoking device sold, used, or possessed by a wholesaler or dealer on and after January 1, 2017;

(9) Requiring and specifying information that every wholesaler or dealer of electronic smoking devices and e-liquid shall file with the Department of Taxation on a monthly basis;

(10) Requiring every wholesaler or dealer to keep a record of every sale of electronic smoking devices and e-liquid; the wholesale price of electronic smoking devices sold, possessed, or used; the milliliters of e-liquid sold, possessed, or used; and the taxes payable on electronic smoking devices and e-liquid sold, possessed, or used;

(11) Authorizing the Department of Taxation and Attorney General to examine certain records and operations of any person engaged in the business of wholesaling electronic smoking devices and e-liquid;

(12) Specifying monthly reporting requirements for licensees of electronic smoking devices and e-liquid;

(13) Requiring the Department of Taxation to adopt rules for licensees who pay a tobacco tax on the distribution of electronic smoking devices or e-liquid;

(14) Amending the effective date to January 1, 2017; and

(15) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2691, as amended herein, and recommends that it pass Second Reading in the form attached hereto.
as S.B. No. 2691, S.D. 1, and be referred to your Committee on Ways and Means.

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

ROSALYN H. BAKER, Chair
The Committee is reconsidering its previous decision on this measure.

If so, then the previous decision was to:

The Recommendation is:
- [ ] Pass, unamended
- [x] Pass, with amendments
- [ ] Hold
- [ ] Recommit

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Recommendation:  [ ] Adopted  [ ] Not Adopted

Chair's or Designee's Signature: [signature]

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*Only one measure per Record of Votes*