

STAND. COM. REP. NO. **2457**

Honolulu, Hawaii

FEB 19 2016

RE: S.B. No. 2691
S.D. 1

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, PC 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;



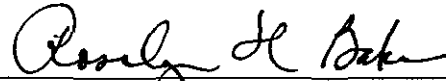
- (7) Deleting language that would have required any increase in the excise tax rate imposed on cigarettes or little cigars on or after January 1, 2017, to trigger an automatic excise tax increase on e-liquid on or after January 1, 2017;
- (8) Deleting language that would have established an excise tax 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 Senate
 Twenty-Eighth Legislature
 State of Hawai'i

Record of Votes
Committee on Commerce, Consumer Protection, and Health
CPH

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 2691	CPH, WAM	2-6-14		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	/			
KIDANI, Michelle N. (VC)	/			
ESPERO, Will	/			
IHARA, Jr., Les				/
NISHIHARA, Clarence K.	/			
RUDERMAN, Russell E.				/
SLOM, Sam				/
TOTAL	4			3
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original	Yellow	Pink	Goldenrod	
File with Committee Report	Clerk's Office	Drafting Agency	Committee File Copy	

*Only one measure per Record of Votes