

Honolulu, Hawaii

FEB 13 2014

RE: S.B. No. 2495
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawaii

Madam:

Your Committees on Health and Commerce and Consumer Protection, to which was referred S.B. No. 2495 entitled:

"A BILL FOR AN ACT RELATING TO ELECTRONIC SMOKING DEVICES,"

beg leave to report as follows:

The purpose and intent of this measure is to regulate electronic smoking devices by:

- (1) Requiring wholesalers, dealers, and retailers of electronic smoking devices to obtain a license from the Department of Health;
- (2) Amending Hawaii's anti-smoking statute to prohibit the use of electronic smoking devices in places open to the public and places of employment; and
- (3) Clarifying that the sale, distribution, or display of electronic smoking devices is restricted in the same manner as cigarettes and other tobacco products.

Your Committees received testimony in support of this measure from the Department of Health, American Heart Association, American Cancer Society Cancer Action Network, Coalition for a Tobacco-free Hawai'i, and two individuals. Your Committees received testimony in opposition to this measure from Volcano Fine Electronic Cigarettes, Black Lava Vape, Hawaii Smokers Alliance, Vapors Anonymous, and sixteen individuals. Your Committees



received comments on this measure from the Hawaii Food Industry Association and HI Vapor Emporium.

Your Committee finds that in *Sottera, Inc. v. Food & Drug Admin.*, the United States Court of Appeals for the District of Columbia Circuit held that electronic cigarettes and other products made or derived from tobacco can be regulated as "tobacco products" under the federal Family Smoking Prevention and Tobacco Control Act of 2009. However, the federal Food and Drug Administration has not yet exercised its regulatory authority over electronic smoking devices. Your Committee further finds that electronic smoking devices are manufactured without regulatory oversight or quality control. This is especially troubling because the safety of electronic smoking devices has not yet been fully studied.

Your Committees have heard the concerns that the Department of Health lacks the capacity and fiscal resources to conduct electronic smoking device licensing and enforcement as proposed by this measure. Your Committees understand and appreciate these concerns and note that the Department of Taxation licenses and enforces the sale of cigarettes and other tobacco products under the existing chapter 245, Hawaii Revised Statutes, the cigarette tax and tobacco tax law. Your Committees conclude it is more appropriate to amend this measure to include electronic smoking devices under chapter 245, Hawaii Revised Statutes, thereby providing the Department of Taxation with the authority to issue licenses and permits and tax these products.

Your Committees further find that by including electronic smoking devices under the existing definition of "tobacco products" in section 245-1, Hawaii Revised Statutes, the licensing and permitting requirements for tobacco products under chapter 245, Hawaii Revised Statutes, will now apply to electronic smoking devices. This includes the licensing requirements for wholesalers and dealers under section 245-2, Hawaii Revised Statutes, and the retail tobacco permitting requirements of section 245-2.5, Hawaii Revised Statutes.

Your Committees additionally find that the licensing and permit fees under chapter 245, Hawaii Revised Statutes, should be increased. When compared to other states, Hawaii's tobacco licensing fees are among the lowest in the country. Hawaii's license fee for a wholesaler or dealer has not increased since 1995, and the State is one of only two that charge a wholesaler or



dealer less than a retailer for a license. Accordingly, amendments to this measure are necessary.

Your Committees also find that amendments to this measure are needed to establish an excise tax on electronic smoking device kits, nicotine cartridges, and nicotine refills. Your Committees note that other states have extremely high tax rates on tobacco products, including electronic smoking devices. For instance, Minnesota taxes tobacco products and electronic smoking devices at ninety-five percent. Your Committees believe that the Hawaii tax rate on these products should be somewhere between ten and fifty percent, but have concluded that the excise tax rate on electronic smoking devices and related products should be left unspecified at this time, so as to encourage further discussion on this issue.

Finally, your Committees have heard testimony that electronic smoking devices are not distributed to potential customers, but rather sampled. Amendments are therefore necessary to clarify that the sampling of tobacco products, including electronic smoking devices, is prohibited.

Accordingly, your Committees have amended this measure by:

- (1) Deleting language that would have established a new chapter in the Hawaii Revised Statutes for the regulation of electronic smoking devices;
- (2) Including electronic smoking devices within the definition of "tobacco products" under chapter 245, Hawaii Revised Statutes, thereby:
 - (A) Subjecting wholesalers and dealers of electronic smoking devices to the same licensing requirements as wholesalers and dealers of cigarettes and other tobacco products; and
 - (B) Subjecting retailers of electronic smoking devices to the same permitting requirements as retailers of cigarettes and other tobacco products;
- (3) Increasing the license fee for persons engaged as a wholesaler or dealer of cigarettes or tobacco products, including electronic smoking devices, from \$2.50 to \$250;



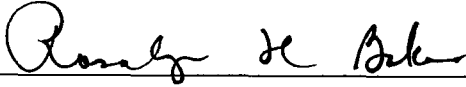
- (4) Increasing the retail tobacco permit fee for retailers engaged in the retail sale of cigarettes or tobacco products, including electronic smoking devices, from \$20 to \$50;
- (5) Establishing an excise tax on electronic smoking devices of an unspecified percent of the wholesale price of each electronic smoking device kit, electronic smoking device nicotine cartridge, or electronic smoking device nicotine refill sold, used, or possessed by a wholesaler or dealer on or after October 1, 2014;
- (6) Amending the definitions of "smoke" or "smoking" and "electronic smoking devices" and adding a new definition of "tobacco products" under chapter 328J, Hawaii Revised Statutes, that includes electronic smoking devices;
- (7) Clarifying that the sale, distribution, sampling, or display of tobacco products, including electronic smoking devices, and the distribution of promotional materials, or coupons redeemable for promotional materials, for tobacco products, including electronic smoking devices, are restricted in the same manner as cigarettes and other tobacco products;
- (8) Updating the purpose section for clarity;
- (9) Changing the effective date to upon approval; provided that the license and permit fees and excise tax proposed by this measure shall take effect on January 1, 2015; and
- (10) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

Your Committees note that this amended measure is intended to strike a balance between public health and smoking cessation and legitimate business interests. It is your Committees' intent for there to be an ongoing dialogue regarding the excise tax rate for electronic smoking devices. Your Committees note that this amended measure is not intended to create a hardship for businesses, but it is important to find common ground in the regulation of electronic smoking devices, while working toward smoking cessation amongst Hawaii residents.



As affirmed by the records of votes of the members of your Committees on Health and Commerce and Consumer Protection that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2495, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2495, S.D. 1, and be referred to the Committee on Ways and Means.

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



ROSALYN H. BAKER, Chair

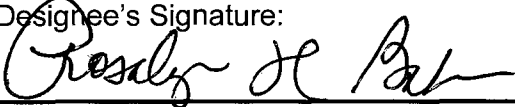


JOSH GREEN, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Health
HTH

Bill / Resolution No.:*	Committee Referral:	Date:		
SB2495	HTH/CPN, WAM	2-10-2014		
<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
GREEN, M.D., Josh (C)	✓			
BAKER, Rosalyn H. (VC)	✓			
CHUN OAKLAND, Suzanne			✓	
NISHIHARA, Clarence K.		✓		
SLOM, Sam				✓
TOTAL	2	1	1	1
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

The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 2495	HTH/CPN, WAM	2/10/14		
<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)	✓			
TANIGUCHI, Brian T. (VC)		✓		
NISHIHARA, Clarence K.		✓		
WAKAI, Glenn				✓
SLOM, Sam				✓
TOTAL	1	2	0	2
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				

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