

STAND. COM. REP. NO.

544

Honolulu, Hawaii

February 17, 2017

RE: H.B. No. 246
H.D. 1

Honorable Joseph M. Souki
Speaker, House of Representatives
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred H.B. No. 246 entitled:

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

begs leave to report as follows:

The purpose of this measure is to protect public health and safety with regard to nicotine products by:

- (1) Imposing an excise tax on electronic smoking devices, disposable electronic smoking devices, reusable electronic smoking devices, and e-liquid sold or used by a wholesaler or dealer;
- (2) Requiring every retailer engaged in the retail sale of electronic smoking devices or e-liquid to obtain a retail tobacco permit;
- (3) Increasing the license fee for persons engaged as a wholesaler or dealer of cigarettes, tobacco products, electronic smoking devices, or e-liquid; and
- (4) Increasing the retail tobacco permit fee for retailers engaged in the retail sale of cigarettes, tobacco products, electronic smoking devices, or e-liquid.



The Department of Health, University of Hawaii Cancer Center, University of Hawaii Student Health Advisory Council, Hawaii Children's Action Network, Hawaii Public Health Institute, Coalition for a Tobacco Free Hawaii, American Heart Association, American Lung Association, and several concerned individuals testified in support of this measure. The Hawaii Smokers Alliance, Mokuleia Cigar Company, PC Gamerz, Smoke-Free Alternatives Trade Association Hawaii, Havana Club Honolulu, Chika Nakano Repair Shop, Retail Merchants of Hawaii, and numerous individuals testified in opposition to this measure. The Department of the Attorney General, Department of Taxation, and Tax Foundation of Hawaii provided comments.

The rapidly increasing use of electronic smoking devices in the United States, particularly among youth, has become a major public health concern. Electronic smoking devices, also known as e-cigarettes, are battery-operated products designed to deliver nicotine, flavor, and other chemicals to the user by turning chemicals including highly addictive nicotine into an aerosol that is inhaled by the user. Public health and safety concerns, as well as fairness in the imposition of applicable taxes to the tobacco industry, necessitates consideration of imposing a tax on electronic smoking devices.

While your Committee notes that imposing a tax may encourage users of electronic smoking devices to quit, sustain cessation, or reduce consumption, and encourage youth to refrain from starting to use these devices, your Committee has some concerns regarding this measure. First, your Committee finds that components of electronic smoking devices, such as batteries, coils, and tips are being taxed by this measure and this may not fall within the scope of the measure title. Second, your Committee notes that electronic smoking devices may be used by medical marijuana patients and the imposition of this tax on these devices may have an unintended consequence of imposing a tax on those individuals. Third, your Committee notes that there is still debate on the use of electronic smoking devices, the harmful effects of these devices, and the efficacy of the imposition of a tax on these devices on cessation of use. However, your Committee finds that this measure deserves further consideration.

As such, your Committee has amended this measure by:

- (1) Deleting references to components of electronic smoking devices in the definition of an electronic smoking device;



- (2) Changing the amount of the excise tax imposed from 70 percent to an unspecified amount and imposing this tax only on e-liquid;
- (3) Clarifying the term "hookah pipe" in the definition of an electronic smoking device to mean "electronic hookah pipe";
- (4) Making conforming amendments to the definitions of "business location", "license", "retail sale", and "tobacco retailing" to correctly reference electronic smoking devices and e-liquids;
- (5) Changing its effective date to January 1, 2018, to afford the Department of Taxation time to process forms and instructions; and
- (6) Making technical, nonsubstantive amendments for clarity consistency, and style.

Should the Committee on Finance deliberate this measure further, your Committee on Consumer Protection and Commerce respectfully requests that the Committee on Finance examine whether any revenues generated by a tax on e-liquid should become general realizations of the State and not be placed into any special fund for greater fiscal accountability and oversight by the Legislature.

Finally, your Committee notes that, while references were made during testimony at the public hearing that use of electronic smoking devices leads to greater use of combustible tobacco products, your Committee finds that no evidence exists that people who use electronic smoking devices are more susceptible to start using combustible tobacco products.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 246, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 246, H.D. 1, and be referred to your Committee on Finance.



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



ANGUS L.K. MCKELVEY, Chair



