

STAND. COM. REP. NO.

301

Honolulu, Hawaii

FEB 15 2017

RE: S.B. No. 342  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Twenty-Ninth State Legislature  
Regular Session of 2017  
State of Hawaii

Sir:

Your Committees on Commerce, Consumer Protection, and Health and Judiciary and Labor, to which was referred S.B. No. 342 entitled:

"A BILL FOR AN ACT RELATING TO REMOTE SALES OF CIGARETTES AND TOBACCO PRODUCTS,"

beg leave to report as follows:

The purpose and intent of this measure is to prohibit the shipment of certain tobacco products purchased through the Internet or by mail order to anyone other than licensed wholesalers or dealers or retailers with a valid retail tobacco permit.

Your Committees received testimony in support of this measure from the Department of Health, American Heart Association, Hawai'i Public Health Institute, University of Hawaii Student Health Advisory Council, American Cancer Society Cancer Action Network, and seven individuals. Your Committees received testimony in opposition to this measure from Cigar Rights of America, Hawaii; Hawaii Cigar Association; Kauai Cigar Company; Volcano Fine Electronic Cigarettes; Sub Ohm Vapes, LLC; and thirty-two individuals. Your Committees received comments on this measure from the Department of Taxation, Department of the Attorney General, and one individual.

Your Committees find that the harmful effects of tobacco use are well established and that electronic smoking devices are now considered tobacco products under the Federal Food, Drug, and

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Cosmetic Act. Your Committees further find that a recent and alarming public health concern is the extremely high number of youth that are using electronic smoking devices. Electronic smoking devices are now the most commonly used tobacco product among youth in the nation and in Hawaii, with retail and online sales of electronic smoking devices projected to reach \$10,000,000,000 in 2017.

Your Committees also find that legislation to prohibit the sale of tobacco products has specifically focused on preventing youth access and initiation of tobacco use, and has addressed face-to-face transactions. The acceleration of online tobacco product sales, however, has created a dangerous loophole, undermining efforts to protect public health and providing an appealing option for underage smokers as they can easily circumvent the age verification process for purchasing tobacco through the unregulated online market.

Your Committees note the testimony submitted by the Department of the Attorney General related to the penalty imposed by this measure, suggesting that declaring violations of the prohibition on the remote sale and distribution of cigarettes and tobacco products to be a class C felony subject to a maximum fine of \$5,000 does not align with the penalties established in the penal code for class C felonies. Your Committees find that this concern deserves consideration and merits further discussion.

Your Committees have amended this measure by:

- (1) Amending the penalty section to specify that each shipment, instead of each distribution, that violates or fails to comply with the unlawful transport of tobacco products ordered through remote sale shall be a separate and distinct violation; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Commerce, Consumer Protection, and Health and Judiciary and Labor that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 342, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 342, S.D. 1, and be referred to your Committee on Ways and Means.



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



GILBERT S.C. KEITH-AGARAN, Chair




ROSALYN H. BAKER, Chair





The Senate  
 Twenty-Ninth Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:* <b>SB 342</b>	Committee Referral: <b>CPH / JDL, WAM</b>	Date: <b>2/10/17</b>		
<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
KEITH-AGARAN, Gilbert S.C. (C)	✓			
RHOADS, Karl (VC)	✓			
GABBARD, Mike				✓
KIM, Donna Mercado	✓			
THIELEN, Laura H.	✓			
<b>TOTAL</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>1</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
<b>Distribution:</b> Original     Yellow     Pink     Goldenrod File with Committee Report     Clerk's Office     Drafting Agency     Committee File Copy				

\*Only one measure per Record of Votes