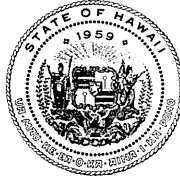


SB2688

Measure Title:	RELATING TO THE SALE OF E-LIQUID.
Report Title:	E-liquid; Electronic Smoking Devices; Packaging Requirements; Prohibitions; Penalties
Description:	Beginning January 1, 2017, prohibits the sale of an e-liquid container for an electronic smoking device unless the container is packaged in child-resistant packaging and labeled with warning language, if applicable. Establishes penalties.
Companion:	HB1950
Package:	None
Current Referral:	CPH, JDL
Introducer(s):	BAKER, TOKUDA, Chun Oakland, Dela Cruz, Gabbard, Keith-Agaran



STATE OF HAWAII
DEPARTMENT OF HEALTH

P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**Testimony in SUPPORT of SB2688
RELATING TO THE SALE OF E-LIQUID**

SENATOR ROSALYN H. BAKER, CHAIR
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
Hearing Date: February 6, 2016 Room Number: 229

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department of Health (DOH) supports this measure to protect
3 children from exposure to nicotine and other hazardous ingredients found in e-liquid products.
4 This measure also provides a warning label requirement that informs consumers about the
5 contents of the containers. The Department respectfully recommends strengthening the warning
6 label language to specifically reflect the harms caused by intentional exposure to the products'
7 contents.

8 SB2688 proposes to amend HRS Chapter 328J - to prohibit the sale of e-liquid containers unless
9 they are in child-resistant packaging. The measure also requires that the product is clearly and
10 legibly labeled with a statement about nicotine and the prohibition of sales to individuals under
11 the age of twenty-one. It also includes a definition of "child-resistant packaging," which is
12 consistent with the federal Child Nicotine Poisoning Prevention Act of 2015 (CNPPA 2015).

13 Under the new federal CNPPA 2015 law, which was signed into law by President Obama in
14 January of this year, liquid nicotine can only be sold in child-resistant bottles and containers that
15 are packaged to meet the same standards as set forth in the Poison Prevention Packaging Act of
16 1970. While this law provides a strong first level of safety regulation for e-liquid manufacturing,
17 it lacks a warning label requirement which would make explicit the dangers of the products'
18 contents. The addition of labeling through the Food and Drug Administration could take years to
19 enact. SB2688, if enacted, would proactively strengthen Hawaii requirements to protect children
20 and residents against poisoning from the nicotine contents of e-cigarettes or electronic smoking

1 devices (ESDs). Since liquid nicotine is a poison, the Hawaii Poison Prevention Packaging Act,
2 HRS Chapter 330C, also needs to include liquid nicotine by definition in any form as a poison.
3 In addition to amending HRS Chapter 328J, an amendment to Chapter 330C would make these
4 two laws consistent with SB2688.

5 Liquid nicotine poisoning especially among children has been a highly publicized problem in the
6 United States. Between 2013-2015, the Hawaii Poison Center received calls about 39 children
7 less than 6 years old for unintentional liquid nicotine exposure. Most (69%) were less than 2
8 years old. Almost half were treated in a hospital emergency department. With the average
9 hospital emergency charge estimated to be \$955.00. This represents a significant financial
10 burden for parents and insurers.

11 Nicotine, depending on the concentration can be extremely dangerous¹. For any age,
12 unintentional exposure to nicotine by swallowing or contact with the skin can result in nausea
13 and vomiting, respiratory arrest, seizures, or even death². A small dose of nicotine can be
14 hazardous to children. On milliliter of nicotine fluid can equal the amount of nicotine in 1
15 cigarette, which is enough to cause severe reaction in a child. Children are especially vulnerable
16 given they are often drawn to the products due to their attractive packaging and kid-friendly
17 flavors.^{3,4}

18 The Department of Health respectfully recommends that liquid nicotine products carry warnings
19 that are understandable, conspicuous and salient to the user⁵, reflecting the hazardous or

¹ *Electronic Cigarettes and Liquid Nicotine Data- December 31, 2015*(Rep.). (n.d.). Retrieved February 3, 2016, from American Association of Poison Control Centers website: https://aapcc.s3.amazonaws.com/files/library/E-cig_Nicotine_Web_Data_through_12.2015.pdf

² Stanton Glantz, *Child Resistant Packaging of Electronic Cigarette Devices and Refill Liquid to Prevent Child Poisoning*, Center for Tobacco Control Research & Education (July 8, 2014) Retrieved February 3, 2016, from <https://tobacco.ucsf.edu/child-resistant-packaging-electronic-cigarette-devices-and-refill-liquid-containers-containing-nicot>

³ Press Release, American Association of Poison Control Centers (AAPCC) and Poison Centers Issue Warning About Electronic Cigarettes and Liquid Nicotine (Mar. 25, 2014), available at <http://www.aapcc.org/press/29>.

⁴ *Policy Approaches to Prevent Liquid Nicotine Poisonings* (Issue brief). (n.d.). Retrieved February 3, 2016, from Tobacco Control Legal Consortium website: <http://publichealthlawcenter.org/sites/default/files/resources/tclc-fs-e-liquid-nicotine-poisonings-2015.pdf>

⁵ *Nicotine Exposure Warnings and Child-Resistant Packaging for Liquid Nicotine, Nicotine-Containing E-Liquid(s), and Other Tobacco Products; Request for Comments*. (2015, August 12). Retrieved February 3, 2016, from

1 potentially lethal nature of the products. Otherwise, these products may appear as benign and
2 marketed to be visually appealing to vulnerable populations.

3 Accidental ingestion continues to be a real threat to the health and safety of Hawaii's children
4 and families. The Department of Health supports this bill to heighten consumer awareness about
5 the toxicity of e-products and proactively prevent children and consumers from accidental
6 ingestion, injury, and even death.

7 **Offered Amendments:** The DOH respectfully recommends the inclusion of language in the bill
8 that requires warning labels on the product and packaging to have statements that address the
9 danger when in contact with skin or eyes; the amount of nicotine in e-liquids can be substantial
10 and pose serious risk including death, especially for small children; and the importance of
11 keeping products out of the reach of children and pets. DOH further respectfully recommends
12 the bill include language to amend HRS Chapter 330C to include liquid nicotine as a poison for
13 consistency in current Hawaii law and this bill should it pass.

14 Thank you for the opportunity to testify.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Written Testimony Presented Before the
Senate Committee on Commerce, Consumer Protection and Health
February 6, 2016 at 9:00 am

By
Robert Bley-Vroman, Chancellor
and
Jerris Hedges, MD, MS, MMM
Dean, John A. Burns School of Medicine
Interim Director, University of Hawai'i Cancer Center
University of Hawai'i at Mānoa

SB 2688 – RELATING TO THE SALE OF E-LIQUID

Chair Baker, Vice Chair Kidani, and Members of the Committee:

The University of Hawai'i Cancer Center strongly supports this bill.

The UH Cancer Center is one of only 69 institutions in the United States that hold the prestigious National Cancer Institute (NCI) designation, and is the only NCI-designated center in the Pacific. The NCI designation provides cancer researchers in Hawai'i with greater access to federal funding and research opportunities. More importantly, it gives the people of Hawai'i and the Pacific region access to many innovative and potentially life-saving clinical trials without the necessity of traveling to the mainland.

Our passion at the UH Cancer Center is to be a world leader in eliminating cancer through research, education, and improved patient care. Because tobacco consumption is a leading preventable cause of cancer, we take all issues related to tobacco in Hawai'i very seriously. Whereas the UH Cancer Center always has supported strong tobacco control measures in Hawai'i, the recent emergence of electronic smoking devices (e-cigarettes) presents new challenges for tobacco control and tobacco-related legislation.

To address these challenges, UH Cancer Center researchers have been actively involved in conducting studies about cigarette smoking and e-cigarette use among adolescents and young adults in Hawai'i, a vulnerable population for initiation of both cigarette smoking and e-cigarette use.

The UH Cancer Center perspective on electronic smoking devices is therefore informed by data recently obtained from Hawai'i adolescents and young adults who are participants in original research conducted by our own faculty. Research conducted in Hawai'i high schools by Thomas Wills, PhD, has confirmed that rates of e-cigarette use by Hawai'i adolescents are at least double the rate of e-cigarette use observed in studies of mainland adolescents. Furthermore, his study published in the peer-reviewed journal *Pediatrics* clarified a reason why e-cigarette use is growing nationally among

teens, as his data suggest that e-cigarettes may be operating to recruit lower-risk adolescents to smoking. And recently Pallav Pokhrel, PhD, and Thaddeus Herzog, PhD, published on the topic of e-cigarettes and motivation to quit smoking. Drs. Pokhrel and Herzog also assessed differences between smokers who used e-cigarettes to quit versus those who used FDA-approved nicotine replacement therapy. Additionally, these researchers have published on the effects of e-cigarette marketing on harm perceptions, as well as e-cigarette use expectancies and their impact on e-cigarette use among young adults.

This research is vital to gaining an evidence-based understanding of what drives acceptance of this emerging technology, what users believe regarding its safety, and what the consequences are for adolescents, whose brains are particularly susceptible to nicotine.

We have also learned that the potential for electronic smoking devices to be used as drug delivery devices for substances other than nicotine exists. Electronic smoking devices and the various liquids offered on the market are attractively packaged so as to be enticing to adolescents and children. Not only is nicotine potentially poisonous, the liquids in the e-liquid containers can also pose serious health risks to children. Packaging e-liquid in child-resistant packages and placing warning labels on those packages would reduce potential health risks to children.

We respectfully urge you to pass this bill.



Date: February 6, 2016

To: The Honorable Rosalyn Baker, Chair
The Honorable Michelle Kidani, Vice Chair
Members of the Senate Committee on Commerce, Consumer Protection, and Health

From: Trish La Chica, Policy and Advocacy Director, Hawai'i Public Health Institute

Re: **STRONG SUPPORT for SB2688, Relating to the Sale of E-Liquid**

Hrg: February 6, 2016 at 9:00am at Conference Room 229

Thank you for the opportunity to submit testimony in **STRONG SUPPORT** of SB 2688 which prohibits the sale of e-liquid used for electronic smoking devices unless the container is packaged in child-resistant packaging and labeled with warning language.

The Coalition for a Tobacco-Free Hawai'i (Coalition) is a program of the Hawai'i Public Health Institute (HIPHI) that is dedicated to reducing tobacco use through education, policy, and advocacy. With nearly two decades of history in Hawai'i, the Coalition has led several campaigns on enacting smoke-free environments, including being the first state in the nation to prohibit the sale of tobacco and electronic smoking devices to purchasers under 21 years of age.

On January 28, 2016, President Obama signed and enacted The Child and Nicotine Poisoning Prevention Act of 2015ⁱ, which requires all liquid nicotine containers used for e-cigarettes and other vaping devices to be sold in child-resistant packaging. However, **this law does not require the inclusion of warning labels, which the Coalition strongly recommends.**

There is growing concern over child poisoning cases related to e-cigarettes, which increased tenfold between 2011 and 2014 and totaled more than 3,067 in 2015ⁱⁱ, as well as one death of a 1-year-old boy resulting from ingestion of nicotine e-liquidⁱⁱⁱ.

Among all alternative tobacco products, ESDs are the least regulated. In Hawai'i, e-liquids containing nicotine do not have health warning labels. Nicotine is an addictive substance and Most e-cigarettes contain nicotine, which causes addiction, may harm brain development, and could lead to continued tobacco product use among youth. The Centers for Disease Control and Prevention (CDC), World Health Organization (WHO), U.S. Preventive Services Task Force, and the U.S. Food and Drug have not approved ESDs as a safe and effective smoking cessation device.

tobaccofreehawaii.org • hiphi.org • 850 Richards Street, suite 201 • Honolulu, Hawai'i



While the federal legislation is an important step in increasing the safety of e-cigarettes and other electronic smoking devices, safety issues still abound, with reports of toxic e-liquid flavorings causing harm to lungs when inhaled^{iv}, e-cigarettes spontaneously exploding^v, and the exposure to nicotine, a highly addictive substance^{vi}.

The Coalition urges you to protect our children from exposure to toxic e-liquid. We also support the inclusion of warning labels to educate the public on poisonous nicotine and the current law that bans the sale or use of cigarettes and electronic smoking devices for anyone under age 21. We strongly support SB 2688 and urge you to pass this measure out of committee.

Mahalo,

A handwritten signature in black ink, appearing to read "Trish", written in a cursive, flowing style.

Trish La Chica
Policy and Advocacy Director

ⁱ Child Nicotine Poisoning Prevention Act of 2015. <https://www.govtrack.us/congress/bills/114/s142>

ⁱⁱ American Association of Poison Control Centers. E-cigarettes and liquid nicotine. American Association of Poison Control Centers. Retrieved from <http://www.aapcc.org/alerts/e-cigarettes/>

ⁱⁱⁱ "First Child's Death From Liquid Nicotine Reported as 'Vaping' Gains Popularity" 12 Dec 2014. <http://abcnews.go.com/Health/childs-death-liquid-nicotine-reported-vaping-gains-popularity/story?id=27563788>

^{iv} "E-Cigarette Flavorings Can Be Toxic to Lung Cells" 18 May 2015. <https://www.healthline.com/health-news/e-cigarette-flavorings-can-be-toxic-to-lung-cells-051815>

^v "Man Suffers Severe Injuries After E-Cigarette Explodes in His Mouth" 15 Feb 2012. <http://abcnews.go.com/Health/electric-cigarette-explodes-fla-mans-face/story?id=15645605>

^{vi} U.S. Centers for Disease Control and Prevention. "E-cigarette use triples among middle and high school students in just one year." 16 April 2015. <http://www.cdc.gov/media/releases/2015/p0416-e-cigarette-use.html>



February 4, 2016

To: The Honorable Senator Rosalyn H. Baker, Chair
The Honorable Senator Michelle N. Kidani, Vice Chair
Members, Senate Committee on Commerce, Consumer Protection, & Health

From: Cory Smith, VOLCANO Fine Electronic Cigarettes®
CEO and Owner

RE: SB2688 – Support with Amendments.

Thank you for the opportunity to submit testimony.

VOLCANO Fine Electronic Cigarettes® is the largest manufacturer and retailer of vapor products and vaping accessories in the State of Hawaii. We currently own and operate 11 locations statewide and employ over 70 full-time workers to support sales of our products not only here in Hawaii, but to all 50 states as well as over 30 International countries.

We stand in support of SB2688 and the requirement that e-liquid products should be sold with necessary childproofing measures and proper warnings. However, the labeling requirement as stated in the bill should be amended to prove workable and fair.

- **We have manufactured and retailed our own brand of e-liquids with Childproof caps, California Proposition 65 warnings and general nicotine usage and warning information since as early as 2009.** We, along with the rest of vapor industry, have self regulated those measures and we firmly believe in maintaining a high level of safety and quality and are pleased to see this legislature taking steps to make sure these measures become a state mandated requirement.
- Requiring “Not for sale to persons under 21 years of age” to be included on the label is only accurate in Hawaii and does not recognize the fact that VOLCANO sells its products outside of the state. Hawaii is currently the only state restricting sales of e-liquid to persons between the ages of 18-21. However our sales are not limited to just the State of Hawaii. We also export our e-liquids to all 50 states and some 30 other countries. **As such, we suggest a change of wording to “Underage Sale Prohibited” or “Not For Sale Minors”.** This would allow flexibility for the product to be sold in different retail markets where state laws may vary and retain its eligibility to be sold without a conflict on packaging.
- **It is also important to note that the majority of e-liquid retailers in Hawaii are not manufacturers and are merely importers, thus they do not have control over the**



VOLCANO®

products packaging and labeling. These stringent and narrow warning guidelines will result in most retailers being unable to carry any e-liquid.

- The warning requirement “This product is not FDA Approved” is incorrect since vapor products are not currently under FDA authority. The FDA’s Deeming Regulations, which would give them authority over vapor products, have not been approved by the Office of Management and Budget yet. Therefore, at this time, e-liquid products do not require FDA approval to be marketed or sold in the United States and thus are not legally required to be labeled as such. **Requiring this warning would raise significant state and federal legal issues.**

We hope that you will consider our amendments and will make the necessary changes to the warning language to make this bill a successful one. If you have any questions, please feel free to contact me directly.

Sincerely,
Cory N. Smith
CEO & Owner
VOLCANO Fine Electronic Cigarettes®
1003 Bishop Street #1260
Honolulu, HI 96813
cory@volcanoecigs.com

From: mailinglist@capitol.hawaii.gov
To: [CPH Testimony](#)
Cc: sean@blacklavavape.com
Subject: Submitted testimony for SB2688 on Feb 6, 2016 09:00AM
Date: Thursday, February 04, 2016 1:04:23 PM

SB2688

Submitted on: 2/4/2016

Testimony for CPH on Feb 6, 2016 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Sean Anderson	Black Lava Vape	Support	Yes

Comments: In the vaping community, this practice has been in place well over 2 years. I see no reason this should have any opposition.

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To: [CPH Testimony](#)
Cc: brianportal808@gmail.com
Subject: *Submitted testimony for SB2688 on Feb 6, 2016 09:00AM*
Date: Thursday, February 04, 2016 8:52:33 PM

SB2688

Submitted on: 2/4/2016

Testimony for CPH on Feb 6, 2016 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Brian Santiago	Individual	Oppose	No

Comments:

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To: [CPH Testimony](#)
Cc: jjw333333@gmail.com
Subject: *Submitted testimony for SB2688 on Feb 6, 2016 09:00AM*
Date: Thursday, February 04, 2016 1:12:17 PM

SB2688

Submitted on: 2/4/2016

Testimony for CPH on Feb 6, 2016 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Jake J. Watkins	Individual	Oppose	No

Comments:

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To: [CPH Testimony](#)
Cc: wintersnicholas@rocketmail.com
Subject: *Submitted testimony for SB2688 on Feb 6, 2016 09:00AM*
Date: Wednesday, February 03, 2016 2:31:15 PM

SB2688

Submitted on: 2/3/2016

Testimony for CPH on Feb 6, 2016 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Nicholas Winters	Individual	Oppose	No

Comments:

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Cc: pk.hitest@spamgourmet.com
Subject: Submitted testimony for SB2688 on Feb 6, 2016 09:00AM
Date: Friday, February 05, 2016 8:24:47 AM

SB2688

Submitted on: 2/5/2016

Testimony for CPH on Feb 6, 2016 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
P Kuromoto	Individual	Oppose	No

Comments: This bill is unnecessary because federal law was already passed to this effect.

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Cc: surfmaster008@gmail.com
Subject: *Submitted testimony for SB2688 on Feb 6, 2016 09:00AM*
Date: Thursday, February 04, 2016 9:26:25 PM

SB2688

Submitted on: 2/4/2016

Testimony for CPH on Feb 6, 2016 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Sean Higa	Individual	Oppose	No

Comments:

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Subject: *Submitted testimony for SB2688 on Feb 6, 2016 09:00AM*
Date: Friday, February 05, 2016 9:06:27 AM

SB2688

Submitted on: 2/5/2016

Testimony for CPH on Feb 6, 2016 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Zehner	Individual	Oppose	Yes

Comments:

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To: [CPH Testimony](#)
Cc: susanlarson78@gmx.com
Subject: *Submitted testimony for SB2688 on Feb 6, 2016 09:00AM*
Date: Friday, February 05, 2016 12:33:44 PM

SB2688

Submitted on: 2/5/2016

Testimony for CPH on Feb 6, 2016 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Larson	Individual	Oppose	No

Comments:

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To: [CPH Testimony](#)
Cc: Teddykim613@yahoo.com
Subject: *Submitted testimony for SB2688 on Feb 6, 2016 09:00AM*
Date: Monday, February 01, 2016 6:36:59 PM

SB2688

Submitted on: 2/1/2016

Testimony for CPH on Feb 6, 2016 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Teddy Kim	Individual	Oppose	No

Comments:

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Cc: longtooth67@yahoo.com
Subject: Submitted testimony for SB2688 on Feb 6, 2016 09:00AM
Date: Thursday, February 04, 2016 11:26:04 PM

SB2688

Submitted on: 2/4/2016

Testimony for CPH on Feb 6, 2016 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Jacquilynn Wright	Individual	Comments Only	No

Comments: This bill seems quite redundant considering the federal government has already put in place legislation covering this exact issue. I wonder if you have even been to a shop that sells these products, as all manufacturers have already voluntarily complied with these precautions as standard procedure.

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