

STAND. COM. REP. NO.

2506

Honolulu, Hawaii

FEB 16 2018

RE: S.B. No. 2654
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred S.B. No. 2654 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 decrease the use
of electronic smoking devices, especially by young users, by:

- (1) Prohibiting the shipment of tobacco products to anyone
other than a licensee;
- (2) Including e-liquid within the definition of "tobacco
products", as used in the cigarette tax and tobacco tax
law, thereby:
 - (A) Subjecting e-liquid to the excise tax on tobacco
products;
 - (B) Requiring retailers of e-liquid to obtain a retail
tobacco permit to sell, possess, keep, acquire,
distribute, or transport e-liquid;
 - (C) Prohibiting persons from engaging in the business
of a wholesaler or dealer of e-liquid without first



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obtaining a license from the department of taxation; and

- (D) Applying other requirements of chapter 245, Hawaii Revised Statutes;
- (3) Increasing the license fee for persons engaged as a wholesaler or dealer of cigarettes and tobacco products; and
- (4) Increasing the retail tobacco permit fee for retailers engaged in the retail sale of cigarettes and tobacco products.

Your Committee received testimony in support of this measure from the Department of Health, University of Hawaii Cancer Center, Hawaii Public Health Institute, American Heart Association, Hawaii Public Health Association, and fifty-seven individuals. Your Committee received testimony in opposition to this measure from Retail Merchants of Hawaii, Vape Hawaii, Hawaii Smokers Alliance, Cigar Rights of America, Island Vapor, Smokeless Hawaii, Volcano eCigs, and forty individuals. Your Committee received comments on this measure from the Department of the Attorney General, Department of Taxation, and Tax Foundation of Hawaii.

Your Committee finds that tobacco use continues to be a problem in Hawaii, causing approximately 1,400 deaths per year among adults, and that approximately 21,000 children currently under the age of eighteen will ultimately die prematurely from smoking. Your Committee also finds that each year, smoking costs approximately \$526,000,000 in direct health care expenditures and \$387,000,000 in lost productivity in Hawaii. Consequently, your Committee finds that Hawaii has a substantial interest in reducing the number of individuals of all ages who use tobacco products, and a particular interest in protecting adolescents from tobacco dependence and the illnesses and premature death associated with tobacco use.

Your Committee further finds that the electronic smoking device industry has grown astronomically, especially among youth and young adults, with a nine hundred percent increase in use among high school students from 2011 to 2015. Your Committee finds that e-cigarette use among youth and young adults is



strongly associated with the use of other tobacco products, including combustible tobacco products.

Your Committee additionally finds that the federal Food and Drug Administration recently finalized a rule that expands its regulatory authority to include all tobacco products, including electronic smoking devices. Your Committee notes that, despite this change in regulatory authority, there is no state tobacco tax attached to e-liquid. Therefore, your Committee finds that increases in prices of cigarettes may simply drive smokers to turn to electronic smoking devices that may be less expensive, rather than quitting, as smokers, especially youth smokers, are particularly price sensitive.

Accordingly, your Committee finds that imposing a tax on e-liquids will encourage users to quit or reduce use, and prevent youth initiation of use. Your Committee also finds that these taxes may be circumvented by consumers purchasing electronic smoking devices from out-of-state, including through the Internet. Accordingly, your Committee finds that additional steps are necessary to capture this tax revenue.

Your Committee has heard the concerns of the Department of the Attorney General with respect to several technical and legal changes, including that:

- (1) The term "export warehouse provider", as used in federal statutes, has a meaning that may conflict with the intent of this measure, and different language should be used;
- (2) The requirements for shippers of tobacco products to comply with title 15 United States Code chapter 10A may cause undue confusion and should be deleted;
- (3) An option should be included to allow for payment of taxes on tobacco shipments to not constitute the offense of unlawful shipment of tobacco products;
- (4) Existing penalty language may be subject to legal challenge and should be clarified; and



- (5) The definition of e-liquid should include a requirement that the liquid contains nicotine, to minimize confusion.

However, your Committee notes that other states, including Indiana, Pennsylvania, and West Virginia, successfully tax e-liquids that may or may not contain nicotine. Your Committee also notes that, if too broadly construed, a definition of e-liquid could include prescription medications and medical cannabis, which would be an unintended consequence.

Your Committee has also heard the concerns of the Department of Taxation requesting a delayed effective date of January 1, 2019, to allow for the Department to make the necessary system changes.

Accordingly, your Committee has amended this measure by:

- (1) Replacing the reference to "export warehouse proprietor" with language proposed by the Department of the Attorney General to better achieve the purpose of this measure;
- (2) Deleting the requirement for shippers of tobacco products to comply with title 15 United States Code chapter 10A, including the requirement to file a required report with the Department of Taxation;
- (3) Allowing the proper payment of taxes on tobacco products to not constitute the offense of unlawful shipment of tobacco products;
- (4) Inserting a state of mind element in committing certain acts that would constitute the offense of unlawful shipment of tobacco products;
- (5) Adding an additional offense of unlawful transport of tobacco products ordered through remote sale to anyone other than a licensee;
- (6) Clarifying within the definition of "e-liquid" that an e-liquid is a liquid or like substance that may or may not contain nicotine, but does not include medical cannabis or any prescription drug;

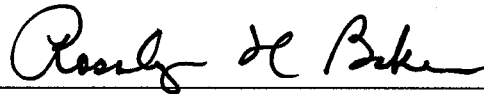


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- (7) Changing the effective date to January 1, 2019; and
- (8) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

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. 2654, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2654, 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-Ninth Legislature
State of Hawai'i

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

Bill / Resolution No.:* <div style="font-size: 1.2em; font-family: cursive;">SB 2654</div>	Committee Referral: <div style="font-size: 1.2em; font-family: cursive;">CPH, WAM</div>	Date: <div style="font-size: 1.2em; font-family: cursive;">2/8/18</div>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div> <input type="checkbox"/> Pass, unamended 2312 </div> <div> <input checked="" type="checkbox"/> Pass, with amendments 2311 </div> <div> <input type="checkbox"/> Hold 2310 </div> <div> <input type="checkbox"/> Recommit 2313 </div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	—			
TOKUDA, Jill N. (VC)	—			
CHANG, Stanley	—			
ESPERO, Will				—
IHARA, Jr., Les				—
NISHIHARA, Clarence K.				—
RUDERMAN, Russell E.	—			
TOTAL	4			3
Recommendation: <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted </div>				
Chair's or Designee's Signature: <div style="font-size: 1.5em; font-family: cursive; margin-top: 10px;">Jm</div>				
<div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div> Distribution: Original File with Committee Report </div> <div> Yellow Clerk's Office </div> <div> Pink Drafting Agency </div> <div> Goldenrod Committee File Copy </div> </div>				

***Only one measure per Record of Votes**