

HB1176 HD2

Measure Title: RELATING TO CONSUMER PROTECTION.

Report Title: Consumer Protection; Prescription Drugs (\$)

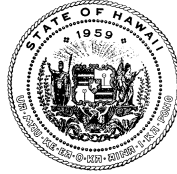
Description: Prohibits doctors and podiatrists from prescribing more than three sequential thirty-day prescriptions totaling a ninety-day supply of a schedule II controlled substance. Prohibits refills of a schedule III controlled substance more than five times. (HB1176 HD2)

Companion:

Package: None

Current Referral: CPH/JDL

Introducer(s): YAMASHITA



**STATE OF HAWAII
DEPARTMENT OF HEALTH**

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

**Testimony in SUPPORT of HB1176 HD2 Proposed SD1
RELATING TO THE SALE OF E-LIQUID**

SENATOR ROSALYN H. BAKER, CHAIR
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND HEALTH
and

SENATOR GILBERT S. C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR

Hearing Date: Fri, April 1, 2016 10:30am Room Number: 016

1 **Fiscal Implications:** None to the Department of Health.

2 **Department Testimony:** The Department of Health (DOH) supports HB1176 HD2 Proposed
3 SD1 to protect children from exposure to nicotine and other hazardous ingredients found in e-
4 liquid products. This measure also provides a warning label requirement that informs consumers
5 about the contents of the containers. The DOH proposes amendments to update the labeling
6 language to reflect SB2688 HD1.

7 HB1176 HD2 Proposed SD1 strengthens the warning label language to specifically reflect the
8 harms caused by intentional exposure to the products' contents. The addition of a new section
9 on e-liquid packaging standards and expanded definition of hazardous substances that includes e-
10 liquids to HRS Chapter 330C, Hawaii Poison Prevention Act, will make Hawaii's current law
11 consistent with the proposed measure.

12 Under the new federal Child Nicotine Poisoning Prevention Act, which was signed into law by
13 President Obama in January of this year, liquid nicotine can only be sold in child-resistant bottles
14 and containers that are packaged to meet the same standards as set forth in the Poison Prevention
15 Packaging Act of 1970. While this law provides a strong first level of safety regulation for e-
16 liquid manufacturing, it lacks a warning label requirement which would make explicit the
17 dangers of the products' contents. The addition of labeling through the Food and Drug

1 Administration could take years to enact. HB1176 HD2 Proposed SD1, if enacted, would
2 proactively strengthen Hawaii requirements to protect children and residents against poisoning
3 from the nicotine contents of e-cigarettes or electronic smoking devices (ESDs).

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

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

17 HB1176 HD2 Proposed SD1 reinforces current research that liquid nicotine products carry
18 warnings that are understandable, conspicuous and salient to the user⁵, reflecting the hazardous

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 University of California San Francisco Center for Tobacco Control and Research website: https://tobacco.ucsf.edu/sites/tobacco.ucsf.edu/files/u9/Liquid_nicotine_public_comment-1jz-8kin-qyu8.pdf

1 or 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 following amendments to
8 Section 2, subsection (b) to reflect preferred labeling language (additions are highlighted in **bold**
9 for clarity):

10 (1) "Warning – contains nicotine: _____ (mg/mL). **Over 21 only.**"

11 (2) "Do not swallow or get on skin or eyes. Keep out of reach of children and pets. For
12 help call **911** or Hawaii Poison Control Center – 800-222-1222."

13 (3) ~~"This product is not FDA approved."~~

14 Thank you for the opportunity to testify.



Date: March 31, 2016

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

The Honorable Gilbert Keith-Agara, Chair
The Honorable Maile Shimabukuro, Vice Chair
Members of the Senate Committee on Judiciary and Labor

From: Jessica Yamauchi, Executive Director, Hawai'i Public Health Institute

Re: **STRONG SUPPORT for HB 1176, HD2, Proposed SD1 Relating to Consumer Protection**

Hrg: April 1, 2016 at 10:30am at Conference Room 016

Thank you for the opportunity to submit testimony in **STRONG SUPPORT** of HB1176, Proposed SD1 which prohibits the sale of e-liquid used for electronic smoking devices (ESDs) unless the container is in child-resistant packaging and labeled with appropriate 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.**

The Coalition supports the language in this measure to include a warning label that will educate the public on nicotine content, and on the current law not to sell to persons under 21 years of age.

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 the death of a 1-year-old boy who died after drinking from an e-liquid bottle left on a dining room tableⁱⁱⁱ. Just a teaspoon of liquid nicotine can be toxic, and e-liquids are offered in kid-friendly flavors such as gummy bear, vanilla cupcake, and banana split, that often look and smell like candy.



Compared to other tobacco products, ESDs are not regulated. 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 Administration have not approved ESDs as a safe and effective smoking cessation device.

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 and others from exposure and accidental ingestion of toxic e-liquid.

We **strongly support HB1176, proposed SD1** and respectfully ask you to pass this measure out of committee.

Mahalo,

A handwritten signature in black ink that reads 'Jessica Yamauchi'.

Jessica Yamauchi
Executive 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>



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SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
SENATE COMMITTEE ON JUDICIARY AND LABOR
Joint Hearing Scheduled 10:30 am Friday, April 1, 2016, Conference Room 016
HB 1176, HD 2, PROPOSED SD 1 RELATING TO CONSUMER PROTECTION
TESTIMONY
Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chairs Baker and Keith-Agaran, Vice-Chairs Kidani and Shimabukuro, and Committee Members:

The League of Women Voters of Hawaii opposes HB 1176, HD 2, Proposed SD 1 because the subject of the Proposed SD 1 has no rational connection to the subject of HB 1176, HD 2. HB 1176, HD 2 regulates prescription of schedule II and schedule III controlled substances. HB 1176, HD 2, Proposed SD 1 regulates sale of e-liquid containers for electronic smoking devices and defines e-liquids as a "hazardous substance" under the Hawaii Poison Prevention Packaging Act.

When the subject of a bill is gutted and replaced with a totally unrelated subject after crossover, as with HB 1176, HD 2, Proposed SD 1, the bill's new subject may pass the Legislature with only one reading and no public hearings by the originating house. However, Article III, Sections 14 and 15 of the Hawaii Constitution require that before a bill is passed by the Legislature, the subject of that bill (*not just the bill title and bill number*) must have three readings in both houses of the Legislature. According to the Hawaii Supreme Court the three-reading requirement is not optional.

Thank you for the opportunity to submit testimony.



VOLCANO®

March 29, 2016

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

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

RE: HB1176 SD1 – 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 HB1176 SD1 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.

- **President Obama has already signed into law the Child Nicotine Poisoning Prevention Act of 2015 requiring at the federal level that all e-liquid containers sold in the US have child-resistant caps. This law would supersede any law passed in the state and has already accomplished what this bill is set to do.**
- **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” and “For Help Call the Hawaii Poison Center – 808-222-1222” to be included on the label is only accurate in Hawaii and does not recognize the fact that VOLCANO, along with several other Hawaii based manufacturers, sell 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



VOLCANO®

and some 30 other countries. **As such, we suggest a change of wording to “Underage Sale Prohibited” or “Not For Sale Minors”.** We do not agree with requiring a local poison control center number for the same reason. These narrow labeling requirements do not 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 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: [Cory Chun](#)
To: [CPH Testimony](#)
Subject: Testimony in support of HB1176 SD1 proposed
Date: Thursday, March 31, 2016 12:30:26 PM

Date: March 31, 2016

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

The Honorable Gilbert Keith-Agara, Chair
The Honorable Maile Shimabukuro, Vice Chair
Members of the Senate Committee on Judiciary and Labor

Re: Strong Support for HB 1176, HD2, Proposed SD1 Relating to Consumer Protection

Hrg: April 1, 2016 at 10:30am at Capitol Room 016

I strongly support HB 1176, Proposed SD1 which prohibits the sale of e-liquid used for electronic smoking devices (ESDs) unless the container is in child-resistant packaging and labeled with appropriate warning language.

Child poisoning cases related to exposure to nicotine in e-cigarettes have increased tenfold since 2011. Concentrated nicotine in e-liquid form is incredibly toxic, and poisoning can occur when nicotine is ingested, inhaled, or absorbed through contact with the skin and eyes.

Compared to other tobacco products, electronic smoking devices are not regulated. This is particularly concerning because e-liquids are being offered in sweet-smelling and candy-like flavors that are appealing to children. Many e-cigarette users have families with children, and not knowing about the potential dangers can lead to poisoning, and even death. Often, users believe that e-cigarettes are not harmful to their health and requiring warning labels will help inform them about the potential health hazards and consequences caused by nicotine.

Stringent packaging requirements and labeling requirements are necessary for our public's safety and health. I strongly support HB 1176, Proposed SD1 and respectfully ask you to pass this out of committee.

Mahalo,

Cory Chun

From: mailinglist@capitol.hawaii.gov
To: [CPH Testimony](#)
Cc: brianportal808@gmail.com
Subject: *Submitted testimony for HB1176 on Apr 1, 2016 10:30AM*
Date: Wednesday, March 30, 2016 5:54:14 PM

HB1176

Submitted on: 3/30/2016

Testimony for CPH/JDL on Apr 1, 2016 10:30AM in Conference Room 016

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

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
To: [CPH Testimony](#)
Cc: chevyriderhhh@gmail.com
Subject: Submitted testimony for HB1176 on Apr 1, 2016 10:30AM
Date: Wednesday, March 30, 2016 2:52:01 PM

HB1176

Submitted on: 3/30/2016

Testimony for CPH/JDL on Apr 1, 2016 10:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Wells	Individual	Oppose	No

Comments: This bill should not be used as a rider for the proposed senate draft.

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From: mailinglist@capitol.hawaii.gov
To: [CPH Testimony](#)
Cc: surfmaster008@gmail.com
Subject: Submitted testimony for HB1176 on Apr 1, 2016 10:30AM
Date: Thursday, March 31, 2016 12:52:46 PM

HB1176

Submitted on: 3/31/2016

Testimony for CPH/JDL on Apr 1, 2016 10:30AM in Conference Room 016

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

Comments: Opposed to the proposed senate draft.

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