

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
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DEPUTY DIRECTOR

**STATE OF HAWAII
DEPARTMENT OF TAXATION**

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To: The Honorable Roy M. Takumi, Chair
and Members of the House Committee on Consumer Protection & Commerce

Date: Wednesday, February 13, 2019
Time: 2:00 P.M.
Place: Conference Room 329, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 387, H.D. 1, Relating to Health

The Department of Taxation (Department) has serious concerns about several of the provisions of H.B. 387, H.D. 1, and offers the following comments for the Committee's consideration. A summary of the key provisions of H.B. 387, H.D. 1, are as follows:

- Adds a new section to the Hawaii Revised Statutes (HRS) saying it may be a misdemeanor to ship tobacco products in the State unlawfully;
- Adds a new section to HRS stating the Department may conduct an investigation if it receives a report that a person violated the section
- May make it a misdemeanor to ship tobacco products into the State unlawfully;
- Raises the fee for a tobacco wholesaler or dealer license from \$2.50 annually to \$250 annually;
- Raises the fee for a tobacco retailer permit from \$20 per location annually to \$50 per location annually;
- Amends the tax rate on cigarettes and tobacco products to unspecified amounts; and
- Has a defective effective date of July 1, 2050.

First, the Department has serious concerns about the two new sections added related to a misdemeanor for unlawful shipment of tobacco products. The use of the term "may" rather than "shall" with respect to creating a crime in law is potentially problematic. The Department does not believe that the new criminal provisions can be enforced as currently written.

Second, the Department notes that the newly created section 245-A(d), HRS, states that tobacco products *may* be liable for taxes imposed under Title 14. It is the Department's position that any person or entity that purchases, uses, controls, or possesses any tobacco products for

which the applicable taxes imposed under title 14 have not been paid **shall** be liable for the applicable taxes, plus any penalty and interest as provided for by law. Subsection (d) as currently written directly contradicts imposition of the tobacco tax itself and will likely result in reduced revenue. The Department suggests amending subsection (d) to say “shall” as the original version of this measure did.

Third, the Department believes the newly created section 245-B in this bill is unnecessary. Any new crime created under Chapter 245, HRS, is already under the Department's purview and the Department would be free to investigate and enforce any such provision without this section. In the event that the Department's investigation concluded a crime had been committed, the Department will coordinate with the Department of the Attorney General or a county prosecutor's office to prosecute the crime. The addition of this section actually makes the new crime more difficult to enforce because it could be interpreted to prevent the Department from investigating or enforcing the crime under section 245-A without first documenting the reception of a report of a violation.

Fourth, the Department notes that the amendments to the cigarette and tobacco taxes under Section 5 of the bill are confusing and potentially problematic. The newly created section 245-3(a)(12), HRS, amends the tax on cigarettes to a new, unspecified amount, but does not amend the rate on little cigars. The cigarette tax is enforced through the purchase and application of stamps affixed to the packs of cigarettes and little cigars. Amending the rate in this manner would require taxpayers to purchase two different types of stamps to affix to the two different types of products and would make enforcement more difficult.

Fifth, the amendment to the tobacco tax under Section 5 of the bill is also problematic. The amendment to section 245-3(a)(14), HRS, changes the tax on tobacco products other than large cigars from 70% of the wholesale price to an unspecified amount, but also deletes the exception for large cigars. This makes it ambiguous at what rate large cigars are taxed. Are they taxed at the rate of 50% specified for large cigars under paragraph (15) or are they taxed at the unspecified rate under paragraph (14) because large cigars are a type of tobacco product?

Finally, the Department requests that the increase in cigarette tax be made effective no earlier than January 1, 2020 to allow the Department sufficient time make necessary changes, to the forms, instructions, computer system, and cigarette stamps.

Thank you for the opportunity to provide comments.

Council Chair
Kelly T. King

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
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Riki Hokama
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Director of Council Services
Maria E. Zielinski

COUNTY COUNCIL
COUNTY OF MAUI
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February 12, 2019

Kelly King

TO: The Honorable Roy Takumi, Chair
House Committee on Consumer Protection and Commerce

FROM: Kelly T. King
Council Chair

SUBJECT: **HEARING OF FEBRUARY 13, 2019; TESTIMONY IN SUPPORT OF
HB 387, HD 1, RELATING TO HEALTH**

Thank you for the opportunity to testify in **support** of this important measure. The purpose of this bill is to prohibit the shipment and transport of tobacco products to anyone other than a licensee and to increase the license fees and excise taxes on wholesalers or dealers.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I support this measure for the following reasons:

1. Unregulated shipping and importing of tobacco products undermine efforts to protect underage smokers who often circumvent the age-verification process for purchasing tobacco.
2. Tobacco licensing is an effective tool for limiting the negative public health consequences of tobacco use by ensuring that wholesalers and retailers comply with responsible sales practices.
3. While all cigarettes are dangerous, illegally imported or counterfeit cigarettes often contain higher levels of tar, nicotine, and carbon monoxide than other cigarettes, and may contain contaminants such as sand and packaging materials.

For the foregoing reasons, I **support** this measure.



**Testimony to the House Committee on Consumer Protection and Commerce
Wednesday, February 13, 2019; 2:00 p.m.
State Capitol, Conference Room 329**

RE: SUPPORTING HOUSE BILL NO. 0387, HOUSE DRAFT 1, RELATING TO HEALTH.

Chair Takumi, Vice Chair Ichiyama, and Members of the Committee:

The Hawaii Primary Care Association (HPCA) is a 501(c)(3) organization established to advocate for, expand access to, and sustain high quality care through the statewide network of Community Health Centers throughout the State of Hawaii. The HPCA **SUPPORTS** House Bill No. 0387, House Draft 1, RELATING TO HEALTH.

The bill, as received by your Committee, would:

- (1) Make unlawful the shipment of tobacco products to anyone other than a licensee;
- (2) Make unlawful the transport of tobacco products ordered through remote sale to anyone other than a licensee;
- (3) Increase the license fee for persons engaged as a wholesaler or dealer of cigarettes and tobacco products;
- (4) Increase the retail tobacco permit fee for retailers engaged in the retail sale of cigarettes and tobacco products; and
- (6) Take effect on July 1, 2050.

Federally Qualified Health Centers (FQHCs) provide desperately needed medical services at the frontlines in rural communities. Long considered champions for creating a more sustainable, integrated, and wellness-oriented system of health, FQHCs provide a more efficient, more effective and more comprehensive system of health.

Testimony on House Bill No. 0387, House Draft 1
Wednesday, February 13, 2019; 2:00 p.m.
Page 2

FQHCs have long seen first-hand how tobacco has literally destroyed the lives of our patients and their families. Because of the ubiquity of cigarettes, chewing tobacco, and now electronic smoking devices, the impacts of tobacco affects our citizenry on a generational basis with people experimenting at even earlier ages.

It is for this reason that the HPCA joins the Hawaii Public Health Institute and other advocates in strong support of all efforts to rid the marketplace of these products.

In advance, thank you for your consideration of our testimony.



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Paul Kosasa, ABC Stores, *Advisor*
Barry Taniguchi, KTA Superstores, *Advisor*
Derek Kurisu, KTA Superstores, *Advisor*

TO:
Committee on Consumer Protection and Commerce
Representative Nicole E. Lowen, Chair
Representative Rep. Tina Wildberger, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: February 13, 2019
TIME: 2pm
PLACE: Conference Room 329

RE: HB387 HD1 Relating to Health

Position: Comments

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

We oppose Sections 3 of this bill that seek to increase fees on retail tobacco licenses and permits. This measure would increase the license fee for tobacco by 10,000%, which is excessive and unnecessary.

Hawaii has the second highest tobacco taxes of any state. By attempting to increase license and permit fees, this bill unfairly and misguidedly targets retailers and wholesalers rather than tobacco users.

There is no nexus between license fees and smoking cessation. Retailer license fees exist to pay for the licensing process and enforcement; these fees were not created to fund other programs. Using licensing fees to fund programs for which they were not intended creates a situation where fees are likely to rise unpredictably, this impedes retailers' ability to budget and creates unnecessary financial and administrative burdens. We thank you for the opportunity to testify.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TOBACCO, Prohibits Shipment of Tobacco Products, Adds Electronic Smoking Devices, Hikes Rates and Fees

BILL NUMBER: HB 387, HD-1

INTRODUCED BY: House Committee on Health

EXECUTIVE SUMMARY: Prohibits the shipment of tobacco products, and the transport of tobacco products ordered or purchased through a remote sale, to anyone other than a licensee. Makes all provisions of the cigarette tax and tobacco tax law that relate to tobacco products applicable to e-liquid. Increases the license fee for wholesalers or dealers and the retail tobacco permit fee. Amends the taxes on cigarettes and tobacco products. Increases the excise tax for each cigarette or little cigar sold, used, or possessed by a wholesaler or dealer. Increases the excise tax on the wholesale price of each article or item of tobacco products, other than large cigars, sold by the wholesaler or dealer. Our question is whether tax increases are an effective way to advance the social policy goals contained in this measure.

SYNOPSIS: Adds a new section to chapter 245, HRS, to establish the offense of unlawful shipment of tobacco products. If a person is in the business of selling tobacco products and ships to a person in Hawaii that is not a tobacco tax licensee, a person transporting tobacco products under federal control, or a customs bonded warehouse, the person commits the offense. Exceptions are provided if the tobacco products are exempt from Hawaii tobacco tax, a specified notice is placed on the shipment, or Hawaii tobacco tax on the products is already fully paid. The offense is a misdemeanor and the offender also may be subject to a civil fine of up to \$5000 per offense.

Amends section 245-2, HRS, to raise the annual fee for a tobacco license from \$2.50 to \$250.00.

Amends section 245-2.5, HRS, to raise the annual fee for a retail tobacco permit from \$20 to \$50.

Amends section 245-3, HRS, to raise the tobacco tax for cigarettes and little cigars from 16 cents to an unspecified amount, and to raise the tax rate for other tobacco products, except for large cigars, from 70% of the wholesale price to an unspecified percentage.

EFFECTIVE DATE: July 1, 2050.

STAFF COMMENTS: The question that should be asked is the purpose of the tobacco tax. If the goal is to make people stop smoking by making it cost-prohibitive to smoke, then (a) it's working, as hikes in the cigarette tax have begun to exert downward pressure on collections not only locally but also nationally, but (b) it shouldn't be expected to raise revenue, because of (a). If the goal is really to stop the behavior, why are we not banning it?

As the Foundation's previous President, Lowell Kalapa, wrote in the Tax Foundation of Hawaii's weekly commentary on October 28, 2012:

Lawmakers seem to have a simplistic reaction to solving problems the solution to which plagues their constituents – tax it.

Probably the best example is what people like to call sin taxes, those excise taxes that are levied on tobacco and alcohol products. After all, smoking causes cancer and alcohol causes all sorts of problems including driving under the influence. Lawmakers and community advocates shake their heads and push for higher tax rates, arguing that making these products more expensive will deter folks from using these products.

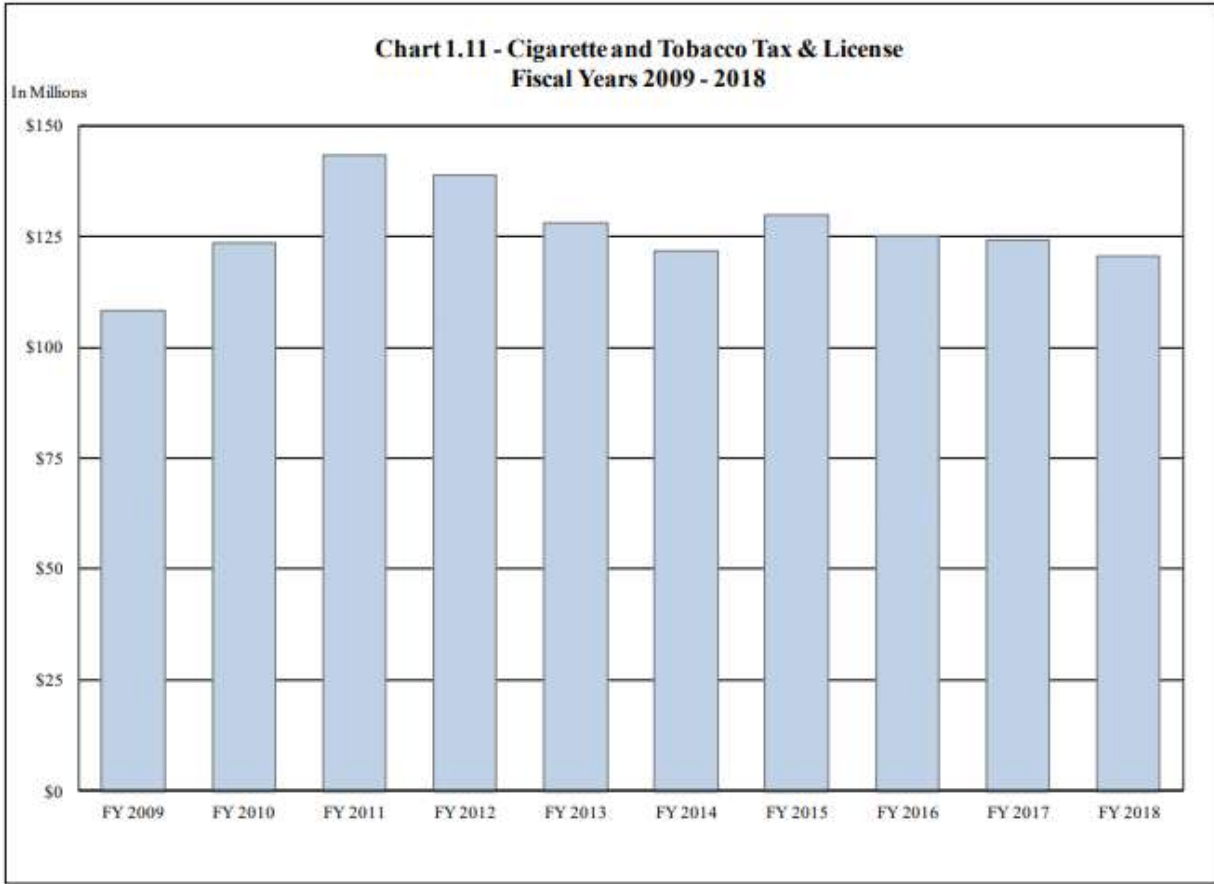
The problem is that lawmakers also like the revenues that are generated from the sales of these products and, in some cases, they have tried to link the use and sale of these products with noble causes such as the funding of the Cancer Research Center that is currently being built. Again, the argument is that smokers should pay for programs and projects which seek to cure the related ill which in this case is cancer caused by smoking.

The irony is that arguments to increase the tax on tobacco and, more specifically, cigarettes, is a goal of getting smokers to quit while depending on the revenues from tobacco and cigarette taxes to fund an ongoing program, in this case the Cancer Research Center. So, which is it folks, stop smokers from smoking and if successful, there won't be any revenues to fund the Cancer Research Center?

The fact of the matter is that it appears that both locally and nationally, higher taxes on cigarettes is having an effect on smokers as, for the first time, tax collections on the sale of cigarettes have fallen below the previous year's tax collections. Certainly some of the decline is due to smokers actually quitting, but to some degree one has to suspect that some purchases were made via mail order from exempt Indian reservation outlets while others may be what is called gray market purchases, that is from sources outside the country.

What should come as a surprise is that most of the folks who have quit are of some means as they are more likely to recognize the health hazard caused by use of this product. That means most of those who are still smoking are among the lower-income members of our community. Thus, the tax is regressive, generating less and less collections from middle and higher-income individuals.

As predicted, programs that have been fed by earmarks from the tobacco tax, like the Cancer Research Center, have become a victim of the success of tobacco cessation programs and publicity. Revenues produced by the tobacco tax have been in steady decline over the past few years despite tax rate increases, and hoisting the smoking age to 21 in the 2015 session certainly didn't reverse the trend.



Source: [Department of Taxation Annual Report](#) (2017-2018), page 22.

Do we really need an elaborate study to tell ourselves that fiscal reliance on funds from a sin tax is inadvisable or outright dangerous? If the goal is to affect social behavior, use of the tax law is not the most effective way to do so.

Digested 2/10/2019

HB-387-HD-1

Submitted on: 2/11/2019 1:46:13 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jostin Iriarte	Hi Lyfe Vaporz,LLC	Oppose	No

Comments:

Aloha,

My name is Jostin,

I oppose HB 387,

As a small business owner in the state of Hawaii we own several business within the Vape industry, we comply with all rules, laws & regulations set forth by the State of Hawaii, also other states we do business in as well as remain up to date and compliant with The Federal Food & Drug Administration. We are a registered as a manufacture and a Retail business. We understand the teenage vaping epidemic is an issue but raising fees and adding taxes isn't the right way to go about resolving this issue. I personally support the fact and need for tobacco products "eliquid" to be taxed and understand fees to be inflated on a reasonable scale. But in all fairness the issues and the epidemic of teen vaping is caused by certain tobacco products like "Juul" being easily accessible in stores and places who don't follow all the rules and regulations, there should be more stings and a group to follow up on those issues to stop the sale to teens, websites like ours follow all protocol and regulations for example our website has a 2 verification process one is to enter and the much more strict one is to process payment and complete an order the "FDA" has already required us to implement a special age verification software, the process we have implemented is greatly effective we have tested our website many times and often check it. Please have in place to fine or otherwise Regulate those who aren't complying with all rules and regulations set by the state and FDA. If fees and taxes are to be implemented I/we HiLyfe Vaporz, LLC support fair practices when it comes to adding tax or inflating fees at a reasonable rate or percentages. Unfair fees, taxes or percentages will negatively impact small business like ours as well as employees and adults who have transitioned over to an alternative that has impacted Hawaii and the world's health and epidemic on combustible cigarettes. We will support the fact of having taxes and fees that won't negatively impact the public to resort back to combustible cigarettes. Mahalo Nui loa For Your Time asl belo is a statement by the "FDA"

Here is a letter from The FDA Commissioner, Scott Gottlieb. It states that the use of electronic nicotine delivery systems (ENDS) has contributed to a decline of combustible tobacco, which is known to cause cancer. It also clearly states that it intends on limiting flavored cigarettes to age restricted stores, or areas.

Mahalo Nui Loa for your your time

HB-387-HD-1

Submitted on: 2/11/2019 2:01:40 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jostin A Iriarte	VapeWithAloha	Oppose	No

Comments:

Aloha,

Dear representatives,

My name is Jostin,

I strongly oppose House Bill 387 "HB 387",

As a small business owner in the state of Hawaii we own several businesses within the Vape industry, we comply with all rules, laws & regulations set forth by the State of Hawaii, also other states we do business in as well as remain up to date and compliant with The Federal Food & Drug Administration. We are a registered as a manufacture and a Retail business. We understand the teenage vaping epidemic is an issue but raising fees and adding taxes isn't the right way to go about resolving this issue. I personally support the fact and need for tobacco products to be taxed and understand fees to be inflated on a reasonable scale. But in all fairness the issues and the epidemic of teen vaping is caused by certain tobacco products like "Juul" being easily accessible in stores and places who don't follow all the rules and regulations, there should be more stings and a group to follow up on those issues to stop the sale to teens, websites like ours follow all protocol and regulations for example our website has a 2 verification process one is to enter and the much more strict one is to process payment and complete an order the "FDA" has already required us to implement a special age verification software, the process we have implemented is greatly effective we have tested our website many times and often check it. Please have in place to fine or otherwise Regulate those who aren't complying with all rules and regulations set by the state and FDA. If fees and taxes are to be implemented I/we HiLyfe Vaporz, LLC support fair practices when it comes to adding tax or inflating fees at a reasonable rate or percentages. Unfair fees, taxes or percentages will negatively impact small business like ours as well as employees and adults who have transitioned over to an alternative that has impacted Hawaii and the world's health and epidemic on combustible cigarettes. We will support the fact of having taxes and fees that won't negatively impact the public to resort back to combustible cigarettes. Mahalo Nui loa For Your Time. Below is a statement by the "FDA"

Here is a letter from The FDA Commissioner, Scott Gottlieb. It states that the use of electronic nicotine delivery systems (ENDS) has contributed to a decline of combustible tobacco, which is known to cause cancer. It also clearly states that it intends on limiting

flavored cigarettes to age restricted stores, or areas.
Mahalo Nui Loa for your your time & consideration.



February 13, 2019

RE: SUPPORT HB387 HD1 Relating to Health

Dear Chair Takumi, Vice Chair Ichiyama, & Members of the Consumer Protection and Commerce Committee:

At Blue Zones Projects we are working to make Hawaii a happier, healthier place to live, work and play. We support HB387 HD1, which will help to achieve better health for many of our residents, but especially our youth.

Although Hawaii, along with California, has the strictest laws in the nation prohibiting the sale of tobacco to individuals under the age of 21, our children are easily able to purchase cigarettes and other tobacco products via the Internet. This legislation will close that loophole by only allowing the shipment of cigarettes and OTPs to licensed retailers, where a person would then be able to pick up the product ordered online.

Hawaii continues to see a steep rise in the use of electronic smoking devices and the unregulated industry of online sales helps to further allow for means in which to easily obtain these products. There is very little oversight to ensure the age of the purchaser is 21 and in accordance with our state law. Online purchases enable individuals to circumvent paying a variety of taxes on their purchases.

We also support proposed increases in licensure and permitting fees. The current fees have been in place over 20 years. This measure will also include e-liquid in the meaning of tobacco products, which will bring more clarity for the consumer that ESDs are tobacco products. This correct identification will make a positive impact on public health.

We are grateful to the Committee for hearing HB387 HD1 and hope that you will strongly consider passing this bill in order to help decrease the illegal access tobacco products and create a better, healthier Hawaii.

Sincerely,

Peggy Mierzwa

Peggy Mierzwa
Statewide Policy Lead
Blue Zones Project—Hawaii

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February 10, 2019

To: The Honorable Senator Roy M. Takumi, Chair
The Honorable Senator Linda Ichiyama, Vice Chair
Members, House Committee on Consumer Protection & Commerce

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

RE: HB 387 HD1– oppose.

Thank you for the opportunity to submit testimony.

VOLCANO Fine Electronic Cigarettes® is the largest independent retailer & wholesaler of vapor products and vaping accessories in the State of Hawaii. We currently own and operate 16 locations statewide and employ over 110 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 opposition to HB 387 HD1 for the following:

- Vapor products and e-liquids contain NO tobacco, often times contain NO nicotine, and ultimately emit NO smoke when vaporized; yet **HB 387 HD1 deceptively refers to vapor products as “Electronic Smoking Devices”** to mislead the public and creates a false perception of the nature of these products. This misclassification establishes the idea that vapor products are the same as tobacco products and thus, should be viewed, controlled, and perceived the same way as traditional tobacco products. This is a complete disregard of the fact that vapor products are fundamentally different from tobacco products in every way.
- The most Recent CDC report has shown e-cigarettes have supplanted all other traditional nicotine replacement therapies and are now the most commonly used product by consumers to quit using traditional tobacco cigarettes
 - http://www.journalnow.com/business/business_news/local/cdc-report-shows-more-smokers-try-to-quit-with-e/article_a33383f3-5300-5178-9f14-28b52884c45c.html
- **HB 387 HD1 Exempts all traditional nicotine replacement therapy products even though a recent study published by the New England Journal of Medicine concluded that vapor products, namely e-cigarettes, are twice as effective for smoking cessation than traditional nicotine replacement therapy products.**
 - <https://www.nejm.org/doi/full/10.1056/NEJMoa1808779>
- **A recent study by the National Academy of Sciences, Engineering, and Medicine stated: "there is conclusive evidence that completely substituting e-cigarettes for combustible tobacco cigarettes reduces users' exposure to numerous toxicants and carcinogens present in combustible tobacco cigarettes." The findings add to the already weighty body of evidence showing vaping to be far less hazardous than smoking.**



- <http://www.washingtonexaminer.com/landmark-e-cigarette-report-explodes-myth-that-vaping-is-as-toxic-as-smoking/article/2646804>
- http://nationalacademies.org/hmd/reports/2018/public-health-consequences-of-e-cigarettes.aspx?utm_source=Hootsuite&utm_medium=Dashboard&utm_campaign=SentviaHootsuite
-
- **HB 387 HD1 would amount to a 9900% increase in licensing fees. This is a highly unreasonable increase that will result in a significant financial burden for all retailers included in the bills definition.**
- **Taxing e-liquid products would further discourage their use by committed smokers who use them as an alternative to traditional tobacco cigarettes. The vast majority of all e-cigarette starter kits and bottles of e-liquid are already higher priced in comparison to tobacco cigarettes.** An average reusable electronic cigarette starter kit ranges in price from \$30 to upwards of \$300 depending on the device. Furthermore, a 15ml bottle of e-liquid (the smallest bottle size currently offered) is currently retailed at \$12.99 at all of our locations, which is nearly 33% more costly than a standard pack of cigarettes, yet it provides nearly the same amount of puffs.
- **HB 387 HD1 would not successfully remove vapor products from the Internet. It would simply restrict local based businesses from competing with businesses from the 49 other states who would not be subject to this regulation and would result in job and revenue loses in the state.**
- Age restriction technologies are already required and being employed to prevent youth access to these products.
- Internet sales provide access to vapor products for many local customers who live in remote locations. By restricting local Internet retailers, those purchases would simply be sent to mainland-based suppliers.
- **Most troubling is the fact that by subjecting vapor products to this proposed tax, the additional costs to consumers will likely result in the state seeing less tax revenue, and even worse, former smokers returning to tobacco use. The tax will result in current vapor users purchasing from online vendors who would not be subject to state taxes. Local manufacturers, wholesalers and retailers would be put at a massive competitive disadvantage and most retail customers would send their money out-of-state effectively lowering the tax revenue already being generated by sales of vapor products here in the state.** We would be unable to compete in other out-of-state and international markets with competitors who are not subjected to the same tax, which would put our local operations in severe jeopardy meaning an immediate loss of jobs and existing revenues. This bill would also effectively reduce access to a modified risk product that has been a public health win and would simply prop up and protect the proven deadly tobacco market.



VOLCANO®

It is our belief that this continuing unjustified classification and requirements are not in the best interests of the State of Hawaii. Thank you for your time and consideration. 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

Wednesday, February 13, 2019 at 2:00 PM
Conference Room 329

House Committee on Consumer Protection & Commerce

To: Representative Roy Takumi, Chair
Representative Linda Ichiyama, Vice Chair

From: Michael Robinson
Vice President, Government Relations & Community Affairs

Re: **Testimony in Support of HB 387, HD1
Relating to Health**

My name is Michael Robinson, Vice President, Government Relations & Community Affairs at Hawai'i Pacific Health. Hawai'i Pacific Health is a not-for-profit health care system comprised of its four medical centers – Kapi'olani, Pali Momi, Straub and Wilcox and over 70 locations statewide with a mission of creating a healthier Hawai'i.

I write in support of HB 387, HD1 which would prohibit the shipment of tobacco products and the transport of tobacco products ordered or purchased through a remote sale to anyone other than a licensee. The measure also increases the wholesale license fee for wholesalers or dealers and the retain tobacco permit fee, increases the excise tax for each cigarettes and increases the excise tax on the wholesale price of each article or item of tobacco products.

E-cigarette use or vaping among youth and young adults has become a national public health concern. E-cigarettes are now the most popularly used tobacco product among youth and young adults, surpassing cigarettes. While smoking rates in Hawaii have decreased through the years, ESD use has rapidly increased, threatening significant public health gains through our Tobacco 21 law and tobacco youth access laws. This is particularly concerning because e-cigarettes provide a new way to deliver the addictive drug nicotine. No matter how it is delivered, nicotine exposure can lead to addiction and harm the developing brain. Studies are also finding that ESDs can lead to smoking cigarettes for new users, including kids.

Without regulation, e-cigarette manufacturers will continue to aggressively market their products by using young adults and celebrities as endorsers, glamorizing its use, promoting deep discounts, and offering popular local e-liquid flavors such as Kona coffee, Maui mango, and pineapple.

The current draft of HB 387 removes the definition of e-liquid and the inclusion of e-liquids as part of the definition of tobacco products. Now that the FDA has deemed ESDs as tobacco products, the regulation of the transport of tobacco products ordered or purchased through a remote sale unless the recipient is a licensee, and the imposition of a tax on e-liquids, which are not currently taxed, the same way as other tobacco products is timely and appropriate. We, therefore, ask that this Committee reinsert the definition of e-liquid into the bill and include e-liquids as part of the definition of tobacco products.

Thank you for the opportunity to testify.



**TESTIMONY OF TINA YAMAKI
PRESIDENT
RETAIL MERCHANTS OF HAWAII
February 13, 2019**

Re: HB 387 HD1 Relating to Health

Good afternoon Chairperson Takumi and members of the House Committee on Consumer Protection and Commerce. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii (RMH) as founded in 1901 and is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

We OPPOSE HB 387 HD 1 Relating to Heath. This bill would prohibit the shipment of tobacco products through remote sales as well as raises taxes and license fees.

It is not fair to categorize vapor products and e-liquids as a tobacco product. They are not the same. E-cigarettes contains NO tobacco and NO smoke is emitted when vaporized. The New England Journal of Medicine published an article this week that found that e-cigarettes were nearly twice as effective as conventional nicotine replacement products, like patches and gum, for quitting smoking. The study was conducted in Britain and funded by the National Institute for Health Research and Cancer Research UK.

Retail has changed over the years in how consumers purchase products. We are seeing a surge in online sales for all types of merchandise including electronic devices, clothing, home goods and more. Local retailers are participating in online sales to remain competitive and in business. Banning online sales would only be unenforceable with the hundreds of thousands of worldwide websites that people would still be able to purchase these items from.

Many retailers statewide are already operating on a thin margin and face stiff competition. Raising the tobacco tax and permit fee will truly hurt locally owned businesses, especially the small locally owned businesses' and may potentially force some of them to close. This would mean the convenient corner store would be gone, having people return to smoking cigarettes and leaving people out of work.

We urge you to hold this measure. Mahalo for this opportunity to testify.

HB-387-HD-1

Submitted on: 2/12/2019 12:42:32 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

HB-387-HD-1

Submitted on: 2/10/2019 11:13:38 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sean Anderson	Black Lava Vape	Oppose	No

Comments:

I 100% would support this for tobacco products. But there is NO tobacco in vape juice. There is nicotine, which is addictive. But again, a quick Google search will show that nicotine by its self is not what causes death, or any of the problems that come with combustible tobacco. It's the combustion of tobacco (and the chemicals that are added to tobacco) that causes ALL the ailments that come with smoking traditional cigarettes. Just as inhaling any type of smoke would do. Combustion does not happen in any ENDS device(s). Fun fact, all forms of the nightshade family of plants have nicotine in them including, but not limited to: tomatoes, potatoes, eggplants, even goji berries. Tobacco is part of the nightshade family. There is another contradiction with this bill. If the state is going to consider nicotine to be what classifies a product as "tobacco", then products such as the Nicotine Patch, Nicotine Gum, and Nicotine Lozenges would have to be considered a "tobacco" product, as well as all the nightshade family mentioned above. Here is one more thing that is habitually overlooked or ignored. +30% of all e-liquid sold has NO nicotine. How can something that has NO nicotine be considered a tobacco product. To surmise, there is NO tobacco in 100% of e-liquid, and in +30% of e-liquid that is sold, there is not a drop of nicotine.

Out of all of this is an obvious irony. The state is currently trying to legalize marijuana for recreational use, which is mostly a combustible product. It can be also be vaporized, but it's mostly combusted for consumption. I support the legalization of marijuana. But the irony is pretty thick.

HB-387-HD-1

Submitted on: 2/11/2019 1:57:24 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Dau	Keiki Injury Prevention Coalition	Support	No

Comments:

HB-387-HD-1

Submitted on: 2/8/2019 8:32:16 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
April Pacheco	Individual	Oppose	No

Comments:

HB-387-HD-1

Submitted on: 2/8/2019 11:47:33 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

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

Comments:

HB-387-HD-1

Submitted on: 2/9/2019 5:08:43 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Stevenson	Individual	Oppose	No

Comments:

Aloha,

My name is Shannon Stevenson and I oppose bill HB387. It does not clarify how much of an increase in tax will be enforced on each article of tobacco related products. Though I am torn on the remote sales restriction. Local brick and mortar shops will be seeing a lot more of the clients in person and it will probably cut down on underage teens circumventing the sites that don't have better age verifications in place. Although that may seem like a win of some sorts. Some customers like E-liquids that are not locally sold or manufactured. So the only way to get those products is to purchase online and have it sent to your home. That online traffic will suffer for sales to a premium Vape shop like Hillye Vaporz in Waianae. We send product to soldiers overseas and various other places. A lot of the customers that we meet at shows are adults and they love the flavors available to them. Their only option is to purchase online. If a business can not thrive and make money. Where will your taxes come from? With vaping on the rise it would make sense to help an industry that will be profitable so your taxes can continue and it will be a win win for ALL.

HB-387-HD-1

Submitted on: 2/9/2019 6:23:52 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

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

Comments:

HB-387-HD-1

Submitted on: 2/9/2019 7:02:56 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
jason graham	Individual	Oppose	No

Comments:

I am a vaper and having been vaping since 2013, prior to that I have been smoking for over ten years. I personally believe vaping is not only a safer alternative to smoking cigarettes but definitely a true way to quit smoking that actually shows results. I understand that the state is looking to find more avenues to increase revenue but to address vaping in this way will definitely decrease health in the state. If the state truly wants to have a true cigarette smoking state, then I suggest letting vaping to not be included

HB-387-HD-1

Submitted on: 2/9/2019 7:50:52 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kaenz	Individual	Oppose	Yes

Comments:

HB-387-HD-1

Submitted on: 2/10/2019 9:05:20 AM

Testimony for CPC on 2/13/2019 2:00:00 PM

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

Comments:

HB-387-HD-1

Submitted on: 2/10/2019 12:27:20 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ann Chung	Individual	Oppose	Yes

Comments:

HB387, while well-intentioned is NOT the solution and has very negative unintended consequences.

1. NOT ALL E-LIQUIDS CONTAIN NICOTINE

I started at the highest level of nicotine (over 24 mg) and am now at ZERO nicotine. If you ask many of the local vape shops, their biggest sellers are 0 and 3 mg.

2. E-LIQUIDS ARE NOT TOBACCO

Those against e-liquids consistently mix-up the terms “tobacco”, “nicotine” and “e-liquids”. E-liquids are flavored fluid that produce vapor.

3. BANNING E-LIQUIDS WILL DECIMATE HAWAII’S LOCAL MOM & POP STORES

Anecdotally, there are about 200 local vape shops in Hawaii – each with about 10 employees. Banning e-liquids will close these local businesses, cause about 2000 workers to lose their jobs, and significantly reduce tax revenues to the state.

4. LOCAL VAPE STORES DO NOT WANT KIDS VAPING

Local vape owners have already followed FDA regulations and have re-packaged their products. They are all interested in working with organizations like the DOE to educate our keiki about vaping.

5. BANNING E-LIQUIDS WILL CAUSE ADULTS TO GO BACK TO CIGARETTES

According to a study by the International Journal of Environmental Research & Public Research, a ban will cause adults who successfully stopped smoking cigarettes by using flavored e-liquids – to go back to smoking cigarettes. This is a terrible unintended public health consequence of this bill.

I urge you to reconsider and defer this bill.

Mahalo for the opportunity to testify.

HB-387-HD-1

Submitted on: 2/10/2019 1:43:50 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
austin kelliinoi-westbrook	Individual	Oppose	No

Comments:

HB-387-HD-1

Submitted on: 2/11/2019 10:53:55 AM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Marc	Individual	Oppose	No

Comments:

HB-387-HD-1

Submitted on: 2/11/2019 12:11:11 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

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

Comments:

HB-387-HD-1

Submitted on: 2/11/2019 1:35:26 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jostin A Iriarte	Individual	Oppose	No

Comments:

Aloha,

As an individual in the vape industry and as customer, a former smoker

I oppose HB 387,

As a law abiding citizen and a smoker of 20 years many vape shops comply with all rules, laws & regulations set forth by the State of Hawaii, as well as remain up to date and compliant with The Federal Food & Drug Administration. They are a registered as a manufacture and or Retail business. I understand the teenage vaping epidemic is an issue but raising fees and adding taxes isn't the right way to go about resolving this issue. I personally support the fact and need for tobacco products to be taxed and understand fees to be inflated on a reasonable scale. But in all fairness the issues and epidemic of teen vaping is caused by certain tobacco products like "Juul" being easily accessible in stores and places who don't follow all the rules and regulations, there should be more stings and a group to follow up on that issues to stop the sale to teens, websites like some I purchase from follow all protocol and regulations, for example our www.hilyfevaporz.com has a 2 verification process one is to enter and the much stricter one is to process payment and complete an order, the "FDA" has already required businesses to implement a special age verification software, the process that has been implemented is greatly effective. Please have in place a way to fine or otherwise Regulate those who aren't complying with all rules and regulations set by the state and FDA. If fees and taxes are to be implemented I support fair practices when it comes to adding tax or inflating fees at a reasonable rate or percentages. Unfair fees, taxes or percentages may negatively impact small business their employees and adults who have transitioned over to an alternative that has impacted Hawaii and the world's health and epidemic on combustible cigarettes. I will support the fact of having taxes and fees that won't negatively impact the public to resort back to combustible cigarettes. Mahalo Nui loa For Your Time also below is a statement by the "FDA"

Here is a letter from The FDA Commissioner, Scott Gottlieb. It states that the use of electronic nicotine delivery systems (ENDS) has contributed to a decline of combustible tobacco, which is known to cause cancer. It also clearly states that it intends on limiting flavored cigarettes to age restricted stores, or areas.

Mahalo Nui Loa for your your time

HB-387-HD-1

Submitted on: 2/11/2019 2:06:40 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Devin Wolery	Individual	Oppose	No

Comments:

HB-387-HD-1

Submitted on: 2/11/2019 3:03:01 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

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

Comments:

To whom it may concern,

I am opposing the bill presented. As a long time vaper of 7+ years, vaping has been a huge help in my life and my health. I've been cigarette free for the last 4 years due to vaping and my doctor has commended me for the improvement of my overall health condition.

I believe this bill is unfair and unconstitutional to what us Americans believe in, which freedom of choice. It's unfair that something like vaping which is so innovative in helping millions of Americans quit dangerous traditional tobacco cigarette is being ignored and demonized as being far more dangerous, even though there's hundreds of studies saying otherwise or opposite.

This bill will cause thousand of Hawaii residents to go right back to smoking and thousand who work at small mom and pop vape shops to be unemployed, and their shops shut down and go out of business. There are much bigger issues here in Hawaii:

-Homelessness

-Alcohol, Flavored Alcohol, deaths caused by drunk driving which was recently in the news.

-High cost of living and limited homes and apartments for locals born and raised here, causing thousand each year to leave their homes to live in the mainland.

I implore you to please look over this bill you're trying to pass and see if it's in the best interest for the people of Hawaii.

I vape and I use flavored e-liquids and it saved my life along with millions around the world. Please don't take that away from us.

Sincerely, Vince Tran of Honolulu, Hawaii

HB-387-HD-1

Submitted on: 2/11/2019 4:10:55 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Henry weaver	Individual	Oppose	No

Comments:

My name is Henry I am a former smoker of 20 year's, I oppose HB276, for the simple fact that this bill is unfair in the statement of Flavors is the reason of being the root cause of the teenage vaping epidemic is false, as a former smoker of traditional combustible cigarettes, vaping and its Flavors has helped myself, family members and friends of legal smoking and vaping age whether it be State age laws or federal to stay away from and stop smoking cigarettes, since I've quit smoking and started vaping having flavors to enjoy as a law abiding citizen while vaping should be a right that shouldn't be taken away to legal adults. As an adult we should have a choice to vape a flavor!! The vaping epidemic in Hawaii and the USA of teenager are because of certain devices like "Juul" and similar ones like it being easily accessible through gas stations, convenience stores ect, at least 90% of actual vape shops have taken part in sales to minors prior to laws being in place it started from 18 years of age now in some states like here in Hawaii its 21, these vape shops, manufactures and companies who follow the rules will be getting punished for the fact that the reasons behind the epidemic isn't being directed toward. The product that most of the vaping community disagrees with due to the accessibility in gas stations & convenience stores is what most teens are using because place other than vape shops dont take it seriously when asking for ID. There should be more stings to help aid the root cause & not punishing responsible Vape shops and adults. By taking away something "flavors" vaping Eliquids ect that has made a huge impact by lessing the amount of Traditional tobacco cigarette use state and nation wide, will greatly impact citizens to go back to combustible cigarettes which is definitely more toxic due to the fact my own Doctor has told me since I quit smoking cigarettes my health is much better in comparison.

Attachment "A1" is a letter from The FDA Commissioner, Scott Gottlieb. It states that the use of electronic nicotine delivery systems (ENDS) has contributed to a decline of combustible tobacco, which is known to cause cancer. It also clearly states that it intends on limiting flavored cigarettes to age restricted stores, or areas.

Thank you for your your time

HB-387-HD-1

Submitted on: 2/11/2019 5:45:48 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nathan Alana-Duones	Individual	Oppose	No

Comments:

Aloha my name is nathan and i amopposing to bill hb387 due to the simle fact that as an everyday vapor banning the shipment of tobacco products thisis including eliquids and nicotine delivery systems it will cause a great ordeal for my self and others in the community.i my self love choosing my flavored eliquids and devices that are not sold in our local vape shops.it brodens our selection and knowledge, not only this we get to contact other people in differnt states even countrys who share the same passion. i myself have made alot of friends i now consider family threw vaping. by passing this bill we will no longer share this type of connection with one and other. this is a few of many reasons why im opposing this bill. mahalo for your time

HB-387-HD-1

Submitted on: 2/12/2019 9:35:17 AM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Laksmi M Abraham	Individual	Support	No

Comments:



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

H.B. NO. 387, H.D. 1, RELATING TO HEALTH.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Wednesday, February 13, 2019 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Clare E. Connors, Attorney General, or
Richard W. Stacey, Deputy Attorney General

Chair Takumi and Members of the Committee:

The Department of the Attorney General provides the following comments and suggested amendments.

This bill seeks to prevent shipment of tobacco products to anyone other than a licensee; makes unlawful the transport of tobacco products ordered through remote sale to anyone other than a licensee; increases licensing and permit fees for wholesalers, dealers and retailers of cigarettes and tobacco products; and increases the tax rate on cigarettes and certain tobacco products. House Draft 1 also adds a section relating to the investigation of unlawful shipment of tobacco, no longer includes “e-liquid” within the definition of “tobacco products,” and has a defective date of July 1, 2050.

The Department believes there may be a possible constitutional problem relating to the title of this bill, “Relating to Health.” Although the title may ultimately be defensible, it may be subject to constitutional challenge, and the Department therefore suggests that the Committee find another vehicle to pass the substance of this bill. Article III, section 14, of the Constitution of the State of Hawaii mandates that “[e]ach law shall embrace but one subject, which shall be expressed in its title.” There are two parts to the analysis of this Constitutional provision – that there be only one subject, and that this subject be expressed in its title. The bill’s title is “Relating to Health,” which by itself appears to embrace only one subject – health.

The Hawaii Supreme Court has liberally construed the term “subject” with respect to the title of a law as having a “broad and extended meaning.” Schwab v. Ariyoshi, 58 Haw. 25, 33, 564 P.2d 135, 140 (1977). Therefore, it is sufficient if the title of a law “fairly indicates to the ordinary mind the general subject of the act, is comprehensive enough to reasonably cover all its provisions, and is not calculated to mislead.” Schwab, 58 Haw. at 34, 564 P.2d at 141.

Here, the bill amends various sections of chapter 245, Hawaii Revised Statutes (HRS), relating to the taxation of cigarettes and other tobacco products. The title “relating to health” may not fairly indicate to the ordinary person that this bill pertains to taxation of tobacco products. The title may not be “comprehensive enough to reasonably cover all its provisions.” Schwab, 58 Haw. at 34, 564 P.2d at 141.

The Department also notes that section 2 of this bill provides for exemptions to the offense of unlawful shipment of tobacco products, including an exemption if the shipment includes a certain legible notice. This wording appears to be derived from section 245-16(b)(3)(B), HRS, relating to cigarettes. The statutory wording in section 245-16(b)(3)(B), HRS, however, is tied to section 245-16(b)(3)(A), HRS, and applies to entities who have “fully complied with all of the requirements of chapter 10A (commencing with section 375) of title 15 of the United States Code, otherwise known as the Jenkins Act.”¹ The purpose of the Jenkins Act is to provide the tax administrator with information about shipments of cigarettes or smokeless tobacco that may be evading the payment of the relevant tobacco taxes. The Jenkins Act applies to cigarettes, not e-liquids, and therefore the exemption would result in the unintended consequence of allowing e-liquids to come into the State without first being reported to the Department of Taxation and potentially evading the payment of the relevant tobacco taxes by merely applying a label.

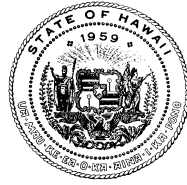
¹ The Jenkins Act requires filing with both federal and state tobacco tax administrators by Any person who sells, transfers, or ships for profit cigarettes or smokeless tobacco in interstate commerce, whereby such cigarettes or smokeless tobacco are shipped into a State, locality, or Indian country of an Indian tribe taxing the sale or use of cigarettes or smokeless tobacco, or who advertises or offers cigarettes or smokeless tobacco for such a sale, transfer, or shipment...” Section 376(a), 15 U.S.C.A..

In section 2, the new section 245-A(c) states that “[a]ny person or entity that knowingly violates this section may be guilty of a misdemeanor. Each shipment that violates or fails to comply with this section may be a separate and distinct violation.” (Page 3, lines 12-15, emphasis added). It is suggested that different wording be used for this new criminal offense, since the word “may” is equivocal and may not allow for successful prosecution. We recommend using the word “shall” instead of “may,” or “a person commits the offense of,” followed by the described offense and the acts and elements constituting the crime.²

Section 2 of House Draft 1 also adds a new section 245-B (page 4, line 20), to add some authority for the Department of Taxation to conduct investigations. Section 245-B(a) states that “the department may conduct an investigation for the limited purposes of determining whether the person or entity is unlawfully shipping tobacco...” (page 5, lines 1-4). This express limitation of the authority of the Department of Taxation to conduct investigations may hamper the Department in its duties.

We respectfully suggest that the bill be held and that the Committee find another vehicle to pass the substance of this bill. Thank you for the opportunity to testify and provide comments and suggested amendments on this bill.

² See section 707-712(1), HRS (“[a] person commits the offense of assault in the third degree if the person intentionally, knowingly or recklessly causes bodily injury to another person...”); and section 708-815(1), HRS (“[a] person commits the offense of simple trespass if the person knowingly enters or remains unlawfully in or upon premises.”)



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**Testimony in OPPOSITION to H.B. 387, HD1
RELATING TO HEALTH**

REPRESENTATIVE ROY TAKUMI, CHAIR
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Hearing Date: February 13, 2019 Room Number: 329

1 **Fiscal Implications:** The Department of Health (DOH) defers to the Department of Taxation
2 (DOTAX) for fiscal implications of implementation and to the Department of the Attorney
3 General (AG) for fiscal implications for enforcement.

4 **Department Testimony:** The DOH opposes House Bill 387, House Draft 1 (H.B. 387, H.D. 1)
5 as a measure that no longer protects the public's health. The H.D. 1 introduced new permissive
6 language that makes violations in the shipment and transport of tobacco products unenforceable.
7 The removal of e-liquid from the definition of tobacco product eliminates the inherent tax
8 provision as well as licensing and permitting requirements. The removal of little cigars from
9 proposed excise tax provision would create a new and separate excise tax amount from
10 cigarettes.

11 The Department supports the proposed increase to the license fee for wholesalers/dealers of
12 cigarettes and tobacco products from \$2.50 a year to \$250 a year, and increase to the retail
13 tobacco permit fee for retailers engaged in the sale of cigarettes and tobacco products from \$20 a
14 year to \$50 a year, and increase to the excise tax for cigarettes.

15 Thank you for the opportunity to testify.

16

17 **Offered Amendments:** None



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MacKinnon LLP

JoAnn Tsark, MPH
John A. Burns School of
Medicine, Native Hawaiian
Research Office

En Young, MBA
Sansei, Lanai

Date: February 12, 2019

To: Representative Roy M. Takumi, Chair
Representative Linda Ichiyama, Vice Chair
Members of the Consumer Protection & Commerce Committee

Re: Support for HB 387 HD1, Relating to Health

Hrg: February 13, 2019 at 2:00pm at Conference Room 329

The Coalition for a Tobacco-Free Hawai'i, a program of the Hawai'i Public Health Institute¹ is in **Support of HB387 HD1** which (1) restricts the shipment of tobacco products to anyone other than a licensee; (2) increases the wholesale license and retailer license fee; (3) amends the taxes on cigarettes and tobacco products. The Coalition also offers recommendations.

E-cigarette use among youth and young adults has become a public health concern.

In 2017, 1 in 4 (25.5%) public high school students and more than 1 in 6 (15.7%) public middle school students in Hawai'i reported that they are regularly vaping. Hawai'i has the third highest high school e-cigarette rate in the Country. Because ESDs remain unregulated, e-cigarette companies have aggressively marketed their products by glamorizing their use, using celebrities and young adults as endorsers, and making false health claims. E-cigarettes often contain nicotine, which is addictive and harmful particularly to adolescents, whose brains are still developing. A 2016 report by the Surgeon General concluded that e-cigarettes are dangerous and a health threat to youth and young adultsⁱⁱ.

This measure corrects the loophole in our minimum age selling and tax laws.

Online tobacco sellers simply ask users to click a button to verify their age – a process that is both ineffective and inadequate. This measure helps to correct this loophole by requiring that tobacco products be shipped to a registered and licensed seller allowing the State to enforce current tobacco selling and taxation laws. The Coalition recommends changing the “may” to “shall” in this section of the bill. In addition, the Coalition recommends including electronic smoking devices and e-liquid to 245-A to ensure that ESDs and e-liquid have the same online restrictions as other tobacco products.

ESD licensing and permits protect both consumers and merchants.

The Coalition supports the proposed increased fees for the tobacco permit and license and recommends that ESD retailers and wholesalers also be required to obtain a tobacco permit and/or license. This consistency would assist with the communication and enforcement of current tobacco tax and purchase laws.

The Coalition supports increasing the cigarette and other tobacco products (OTP) tax.

Raising taxes is a proven strategy to reduce consumption on tobacco products for both adults and youth. The Coalition notes that there has not been an increase in taxes on cigarettes and little cigars in the last eight years and for other tobacco products, other than large cigars, the last tax increase occurred in 2009. Majority of registered Hawai'i voters support an increase in cigarette taxes (74%) and nine in ten registered voters (94%) feel that it is important for the State to dedicate part of its tobacco tax revenue to tobacco prevention and cessation programs. The Coalition requests that HB387 HD1 dedicate a portion of the proposed revenue to tobacco prevention and control programs.

Tobacco use is still the number one preventable cause of death and costs our State \$526 million annually. According to the Campaign for Tobacco-Free Kids, an estimated 400 kids become new daily smokers each yearⁱⁱⁱ. Raising tobacco taxes encourages people to quit smoking and will help to prevent youth and young adult from using tobacco products.

Thank you for the opportunity to testify. We support HB 387 HD1 and respectfully ask you to pass this measure out of committee.

Mahalo,



Jessica Yamauchi, MA
Executive Director

ⁱ 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 more than 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.

The Hawai'i Public Health Institute is a hub for building healthy communities, providing issue-based advocacy, education, and technical assistance through partnerships with government, academia, foundations, business, and community-based organizations.

ⁱⁱ U.S. Department of Health and Human Services. *E-cigarette Use Among Youth and Young Adults, a Report from the Surgeon General* (2017). From https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Exec_Summ_508.pdf

ⁱⁱⁱ Coalition for Tobacco-Free Kids. "The Toll of Tobacco in Hawaii" from <https://www.tobaccofreekids.org/problem/toll-us/hawaii>

HB-387-HD-1

Submitted on: 2/12/2019 5:04:23 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Zehner	Hawaii Smokers Alliance	Oppose	No

Comments:

In strong opposition to this unfair and bigoted bill.

HB-387-HD-1

Submitted on: 2/12/2019 2:42:12 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Chris C.K. Arakaki	Individual	Oppose	No

Comments:

HB-387-HD-1

Submitted on: 2/12/2019 3:00:45 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carissa Holley	Individual	Support	No

Comments:

I support HB387. Online sales make it much too easy to access contraband and controlled substances. There needs to be barriers in place so that our underage youth can't access tobacco or tobacco products.

HB-387-HD-1

Submitted on: 2/12/2019 3:46:13 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
taeleipu liliu	Individual	Oppose	No

Comments:

I'm am opposing hb387 because I am of legal age to purchase tobacco products but now your saying I will have to get a permit to purchase any tobacco products. I oppose the banning of a remote sale . A \$5000 fine is to outrageously unreasonable. I am opened for the taxing of vape and tobacco products but 70% is ridiculous be more reasonable.

HB-387-HD-1

Submitted on: 2/12/2019 6:20:53 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Monika Lopez	Individual	Oppose	No

Comments:

HB-387-HD-1

Submitted on: 2/12/2019 7:38:54 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jessica Chang	Individual	Oppose	No

Comments:

HB-387-HD-1

Submitted on: 2/13/2019 12:45:28 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Helene	Individual	Oppose	No

Comments:

HB-387-HD-1

Submitted on: 2/13/2019 4:33:20 PM

Testimony for CPC on 2/13/2019 2:00:00 PM

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

Comments: