

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

**Testimony in SUPPORT of H.B. 476, H.D. 3
RELATING TO TAXATION**

SENATOR JARRETT KEOHOKALOOLE, CHAIR
SENATE COMMITTEE ON HEALTH

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

Hearing Date: 3/19/2021

Room Number: Videoconference

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 supports, and offers amendments to, House Bill 476, House
5 Draft 3 (H.B. 476, H.D. 3) as a public health measure to address Hawaii's youth vaping
6 epidemic. This measure establishes new taxes for some e-liquid products and amends relevant
7 sections to reference these new definitions. H.B. 476, H.D. 3 extends permitting requirements to
8 include taxed e-liquids and classifies failures to obtain a permit as a petty misdemeanor. H.B.
9 476, H.D. 3 also addresses record keeping of taxed e-liquids, delivery sales, directs the DOTAX
10 to adopt rules related to products shipped out of the State, and specifies that the tax for each
11 modified risk tobacco product sold, used or possessed by a wholesaler shall be fifty percent of
12 the applicable cigarette or tobacco tax. The DOH offers recommendations on amendments for
13 parity and consistency.

14 Electronic smoking devices (ESDs), also known as e-cigarettes, have become the most
15 commonly used tobacco products among youth in the United States and in Hawaii. The 2019
16 Youth Risk Behavior Survey reported that cigarette smoking among Hawaii high school students
17 decreased to 5.3%, a 73.5% reduction from 20% in 2000. At the same time, youth ESD use has

1 continued to rise. High school youth experimentation with ESDs grew from 22% in 2015 to
2 48% in 2019. In 2015, over one in four (26%) high school students reported being current users,
3 and today it is almost one in three (31%). Regular use is highest for Native Hawaiian youth at
4 42% and neighbor island counties, Kauai (36%), Maui (36%), and Hawaii (35%).¹

5 In Hawaii, ESDs are not taxed like other tobacco products and often can be purchased at
6 lower prices than cigarettes. According to the U.S. Surgeon General, increasing the price of
7 tobacco products is the single most effective way to reduce consumption.² Data from the
8 University of Illinois report that increasing the price of ESDs by 10% has been shown to lead to
9 a 10% to 18% reduction in the demand and consumption of ESDs – a higher price elasticity
10 compared to combustible cigarettes. Increasing the price of tobacco products has the greatest
11 impact on youth, who are particularly price sensitive.³ The DOH recommends the imposition of
12 an excise tax equal to 70% of the wholesale price of each e-liquid and ESD to be consistent with
13 the tax on other tobacco products. Achieving tax parity for all tobacco products will protect
14 against price disparities and the resultant migration from one product to another in the event that
15 some products are significantly more affordable.

16 In the fall of 2019, the U.S. Food and Drug Administration (FDA) granted modified risk
17 orders to eight smokeless tobacco products for the first time ever.⁴ The current amendment to
18 tax modified risk tobacco products (MRTP) at a rate that is lower than 70% is premature. Given
19 the newness of these products on the market and their current inaccessibility in Hawaii, creating
20 a tax structure lower than other tobacco products is without merit. More research is needed to

¹ Hawaii State Departments of Health and Education, Hawaii Health Data Warehouse, Youth Risk Behavior Survey. [YRBS 2019](#). Accessed 3-17-2021.

² U.S. Department of Health and Human Services. [Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General](#). Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2012 [accessed 2018 Jan 22].

³ Chaloupka, F. Macro-Social Influences: The Effects of Prices and Tobacco Control Policies on the Demand for Tobacco Products, 1 Nicotine & Tobacco Research S105 (Supp. 1 1999).

⁴ Commissioner, O. of the. (2020, March 24). *FDA grants first-ever modified risk orders to eight smokeless tobacco products*. FDA; FDA. <https://www.fda.gov/news-events/press-announcements/fda-grants-first-ever-modified-risk-orders-eight-smokeless-tobacco-products>

1 determine the best taxation strategy for any emerging product. The DOH recommends that this
2 entire section be deleted.

3 The DOH supports components of H.B. 476, H.D. 3 as a means to address the youth
4 vaping epidemic and offers recommended amendments to use standardized definitions to
5 achieve tax parity with other tobacco products and consistency with other tobacco control laws.

6 Thank you for the opportunity to testify on this measure.

7 **Offered Amendments:**

8 Delete page 1, line 1 through line 16.

9 Delete all reference to “e-liquid” and “open-system e-liquid” by deleting page 2, lines 1 through
10 page 10, line 3; page 11, line 3 through page 24, line 6; page 28, line 1 through page 36, line 19.

11 Delete page 10, line 8 through page 11, line 2 and insert the following three definitions:

12 “E-liquid” means any liquid or like substance, which may or may not contain nicotine, that is
13 designed or intended to be used in an electronic smoking device, whether or not packaged in a
14 cartridge or other container. E-liquid shall not include prescription drugs; medical cannabis or
15 manufactured cannabis products pursuant to chapter 329D; or medical devices used to
16 aerosolize, inhale, or ingest prescription drugs, including manufactured cannabis products
17 manufactured or distributed in accordance with section 329D—10(a)”

18 ““Tobacco products” means [~~tobacco~~]: (1) Tobacco in any form, other than cigarettes or little
19 cigars [~~that is prepared or intended for consumption or for personal use by humans, including~~
20 large cigars and any substitutes thereof other than cigarettes that bear the semblance thereof,
21 snuff, chewing or smokeless tobacco, and smoking or pipe tobacco.] that is intended for human
22 consumption, or is likely to be consumed whether smoked, heated, chewed, absorbed, dissolved,
23 inhaled, or ingested by other means; (2) E—liquid; or (3) Electronic smoking device. Tobacco
24 products includes but is not limited to large cigars and any substitutes thereof other than
25 cigarettes that bear the semblance thereof, pipe tobacco, chewing or smokeless tobacco, snuff,

1 snus, e-liquid, electronic smoking device, any cartridge or other component part of the device or
2 product, and related products."

3 "Smoke" or "smoking" means inhaling, exhaling, burning, carrying, or possessing any lighted or
4 heated tobacco product, or similar substance intended for human consumption, including the use
5 of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form."

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

ISAAC W. CHOY
DIRECTOR OF TAXATION

To: The Honorable Jarrett Keohokalole, Chair;
The Honorable Rosalyn H. Baker, Vice Chair;
and Members of the Senate Committee on Health

The Honorable Rosalyn H. Baker, Chair;
The Honorable Stanley Chang, Vice Chair;
and Members of the Senate Committee on Commerce and Consumer Protection

From: Isaac W. Choy, Director
Department of Taxation

Date: March 19, 2021
Time: 9:30 A.M.
Place: Via Video Conference, State Capitol

Re: H.B. 476, H.D. 3, Relating to Taxation

The Department of Taxation (Department) offers the following comments on H.B. 476, H.D. 3, for your consideration.

H.B. 476, H.D. 3, reduces by 50% the tobacco tax on modified risk tobacco products, and also subjects e-liquid cartridges and e-liquid to the tobacco tax under chapter 245, Hawaii Revised Statutes (HRS). It makes several related amendments such as amending the title of chapter 245, HRS, requiring wholesalers and retailers of e-liquid cartridges and e-liquid to obtain licenses and permits to operate, amending definitions, and making conforming amendments to other parts of the tax law to treat e-liquid cartridges and e-liquid like cigarettes and tobacco products. The measure has a defective effective date of July 1, 2060.

First, on page 35, the Department recommends the amendments to section 245-31, HRS, be changed to instead delete section 245-31, HRS, entirely. That section creates a reporting requirement redundant with the Department's authority to already collect this information on the return under section 245-5, HRS.

In addition, the Department respectfully requests that the effective date of the new taxes imposed be made no earlier than January 1, 2022. This will allow sufficient time to make the form, instruction, and computer system changes required by this measure.

Thank you for the opportunity to provide testimony on this measure.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TOBACCO, GENERAL EXCISE, USE, Include electronic smoking devices

BILL NUMBER: HB 476, HD3

INTRODUCED BY: House Committee on Finance

EXECUTIVE SUMMARY: Imposes an excise tax of fifty percent of the otherwise applicable tax under section 245-3, HRS, on every wholesaler for each modified risk tobacco product sold, used, or possessed by a wholesaler. Defines modified risk tobacco product. Establishes taxation of e-liquids used in electronic smoking devices. Requires wholesalers and dealers to be licensed. Requires retailers of tobacco and e-liquids to obtain permits. Effective 7/1/2060.

SYNOPSIS: Adds a new section to chapter 245, HRS, to establish a 50% tax of the otherwise applicable tax on any product for which a modified risk tobacco product order has been issued by the U.S. Department of Health and Human Services under 21 U.S.C. section 387k(g).

Retitles chapter 245, HRS, as the Cigarette Tax, Tobacco Tax, and E-Liquid Tax Law.

Amends section 245-1, HRS, by adding definitions for E-liquid, E-liquid cartridge, electronic smoking device, open system e-liquid, and unit of open system e-liquid.

Makes various changes in chapter 245, HRS, to make the tobacco tax provisions apply to E-liquid as well.

Amends section 245-3, HRS, to impose tax of 25 cents per e-liquid cartridge sold, used, or possessed by a wholesaler or dealer; and to impose tax of 15% of the wholesale price of each unit of open system e-liquid sold, used, or possessed by a wholesaler or dealer.

Makes technical and conforming amendments to sections 237-24, 237-25, and 238-3. HRS, as well as to numerous sections within chapter 245, HRS.

EFFECTIVE DATE: 7/1/2060.

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.

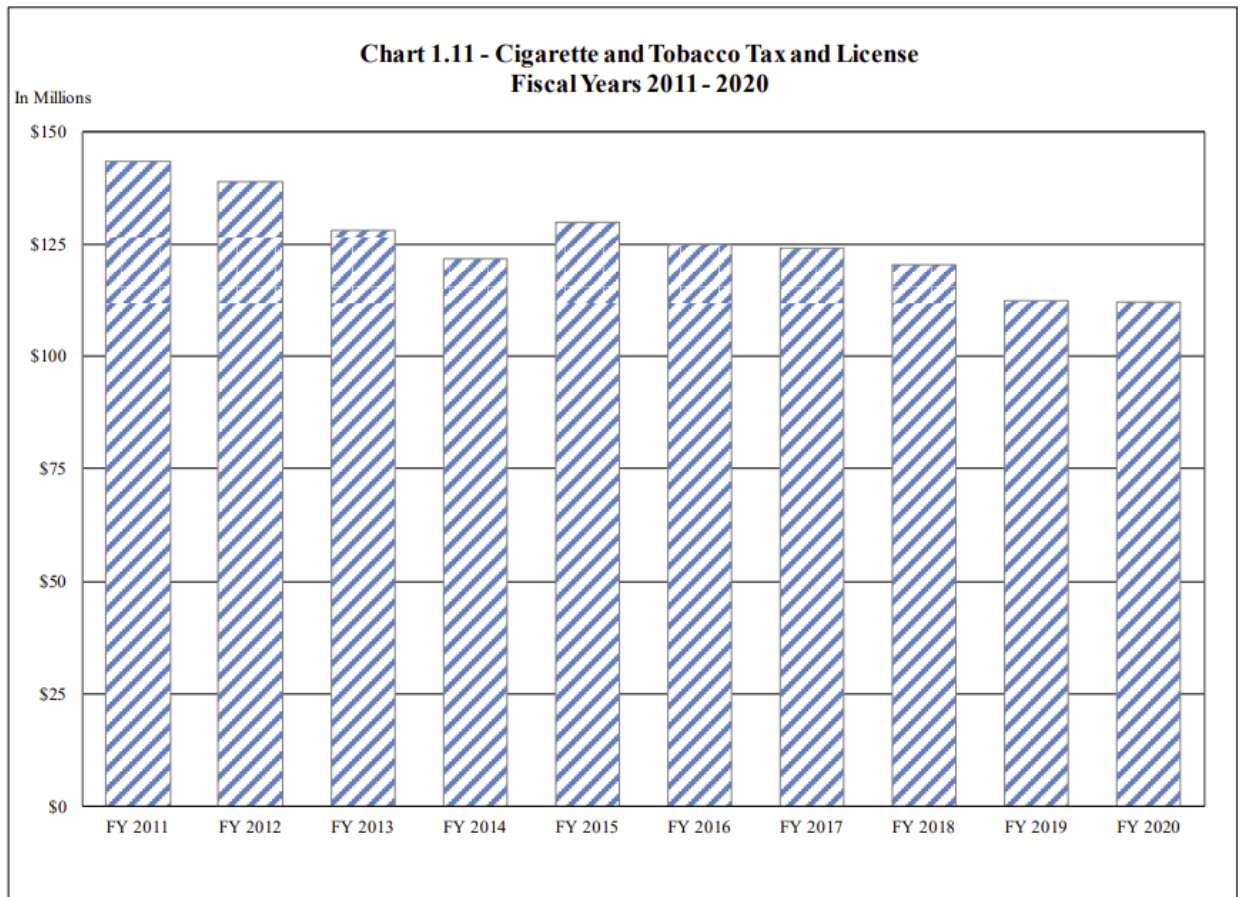
The problem is that lawmakers also like the revenues that are generated from the sales of these products and, in some cases, they have tried to link the use and sale of these products with noble causes such as the funding of the Cancer Research Center that is currently being built. Again, the argument 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 are influencing smokers as tax collections on the sale of cigarettes have fallen. 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 (2019-2020), page 23.

Fiscal reliance on funds from a sin tax is inadvisable, perhaps outright dangerous. If the goal is to affect social behavior, use of the tax law is not the most effective way to do so.

We also note that the American Rescue Plan Act of 2021, signed into law by President Biden on March 11, 2021, contains provisions disqualifying or restricting federal aid that otherwise could be available to the State if new or extended tax incentives are enacted after March 3, 2021.

Section 9901 of the Act enacts a new section 602(c)(2)(A) in Title VI of the Social Security Act which states:

A State or territory shall not use the funds provided under this section or transferred pursuant to section 603(c)(4) to either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.

Section 602(g)(1) defines the “covered period” as beginning on March 3, 2021 and ending on the last day of the State’s fiscal year in which all federal aid dollars are either spent, returned, or recovered against the State by the Treasury.

Although the bill overall appears to be a revenue gainer, the modified risk tobacco product section operates as a reduction in the tax rate otherwise applicable to qualifying products. If considered in isolation, the provision appears to violate the above quoted provision in the American Rescue Plan Act prohibiting “a reduction in a rate.” Without guidance from Treasury, we cannot tell whether this provision would be problematic.

Digested 3/16/2021



American Cancer Society
Cancer Action Network
2370 Nu'uau Avenue
Honolulu, Hi 96817
808.432.9139
www.fightcancer.org

Senate Committee on Health
Senator Jarrett Keohokalole, Chair
Senator Rosalyn Baker, Vice Chair

Senate Committee on Commerce And Consumer Protection
Senator Rosalyn Baker, Chair
Senator Stanley Chang, Vice Chair

Hearing Date: Friday, March 19, 2021

HB476 HD3 – RELATING TO TAXATION.

Cynthia Au, Interim Government Relations Director – Hawaii Pacific
American Cancer Society Cancer Action Network

Thank you for the opportunity to OPPOSE HB476 HD3 – RELATING TO TAXATION which would establish taxation of e-liquids used in electronic smoking devices, requires wholesalers and dealers to be licensed and requires retailers of tobacco and e-liquids to obtain permits.

The American Cancer Society Cancer Action Network (ACS CAN), the nonprofit, non-partisan advocacy affiliate of the American Cancer Society advocates for public policies that reduce death and suffering from cancer. ACS CAN works with federal, state, and local government bodies to support evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem.

ACS CAN supports regular and significant tax increases on all tobacco products, including e-cigarettes, to reduce tobacco use and recommends defining e-cigarettes as a tobacco product and regulating them as such. To maximize health and revenue gains, simplify tax collections, and make many dangerous and addictive products that are attractive to kids cost prohibitive, ACS CAN recommends taxing all e-cigarettes as a tobacco product at a percent of their price parallel to the cigarette tax rate. For Hawaii, this means taxing all e-cigarette products at 70% of their wholesale price. ACS CAN opposes a two-tier tax system for e-cigarettes, or any efforts to tax them at any taxation methods other than a percent of price.

Currently in Hawaii, e-cigarettes are not included in tobacco excise taxes making them an appealing alternative for price-sensitive consumers including youth. Increasing tobacco taxes is one of the best ways to reduce tobacco use. It is important that tax increases apply to all tobacco products at an equivalent rate to encourage people to quit rather than switch to a cheaper product as well as to prevent youth from starting to use any tobacco product. If all tobacco products are not taxed at an equivalent rate, Hawaii

can expect to see diminished positive outcomes for both revenue and public health. **ACS CAN recommends that all e-cigarette products, including both the liquid and the devices, are taxed at 70% of their wholesale price, in line with other tobacco products (OTP).** To prevent consumers from switching to lower-taxed, lower-cost products, we recommend to increase the tax on cigarettes by at least \$1 per pack and tax all OTP including e-cigarettes at a rate parallel to the new cigarette tax.

Currently as written, the bill would only tax nicotine-containing e-liquid. Hawaii does not have the resources to verify nicotine content, leaving it to trust what the manufacturer says about nicotine content. Nicotine has been found in products claiming to contain no nicotine.

ACS CAN has serious concerns on the tax reductions on “modified risk” products. Increasing tobacco taxes is one of the most effective ways to reduce tobacco use, especially among kids, and tobacco companies know it. Lowering the tax, and therefore the price of tobacco products is one major way for the tobacco industry to protect their bottom line, addict people with cheap products, and keep them addicted.

- Any action at the state or local level to regulate so-called modified risk tobacco products differently from cigarettes and other tobacco products (OTPs) is premature.
- Modified risk does not mean “safe.” All tobacco products have health harms.
- Lowering taxes on any tobacco product reduces state tax revenue.
- States should not change state tobacco control laws to accommodate any new product marketing claims.

Proceeds collected should go toward tobacco prevention and cessation for all tobacco products, including e-cigarettes, according to Centers for Disease Control and Prevention’s (CDC) best practices. CDC’s evidence-based recommendations for a comprehensive tobacco control program provides states with the needed framework to educate people on the dangers of tobacco use as well as connect people who are already addicted to tobacco to resources to help them quit. Comprehensive tobacco control programs establish smoke-free policies and social norms, promote tobacco cessation and support those trying to quit, prevent initiation of tobacco use among prospective new users including youth and reduce tobacco-related health disparities among disparate populations.¹ When appropriately funded in accordance with CDC recommendations, comprehensive tobacco control programs are able to reduce tobacco use.²

Finally, we have serious concerns in the creation of new categories of products, as some products may be exempt from various tobacco control laws, and as it is defined in the bill may not capture all products. We recommend that the bill be amended to add “electronic smoking devices” to the definition of “tobacco products” for the purpose of licensing and permitting and for tax parity. Further, we do not recommend defining “e-liquid” separately from electronic smoking devices. Here are our recommended definitions:

“Electronic smoking device” means any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. Electronic smoking device does not include any battery or battery charger when sold separately. In addition, electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S.

¹ CDC, 2014.

² CDC, 2014.

Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

"Tobacco product" means any product that is made from or derived from tobacco, or that contains nicotine, other than cigarettes or little cigars, that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco product" also means electronic smoking devices and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, and substances used in electronic smoking devices, whether or not they contain nicotine. "Tobacco product" does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

Smoking has a monetary cost placed on the State of Hawaii. The annual health care costs in Hawaii directly caused by smoking is \$526 million. Medicaid costs caused by smoking in Hawaii is \$141.7 million annually. Residents' state & federal tax burden from smoking-caused government expenditures is \$835 per household. Smoking-caused productivity losses in Hawaii is \$387.3 million. These amounts do not include health costs caused by exposure to secondhand smoke, smoking-caused fires, smokeless tobacco use, or cigar and pipe smoking. Proportion of cancer deaths in Hawaii attributable to smoking is 24.6%.³

Thank you for the opportunity to oppose this bill.

³ ACS, State-Specific Smoking-Related Cancer Cases and Deaths, 2017 Updated December 3, 2020
<https://www.fightcancer.org/sites/default/files/State-Specific%20Smoking-Attributable%20Cancer%20Cases%20and%20Deaths%20Factsheet%20FINAL%2012.11.20.pdf>



**American
Heart
Association.**

**American Heart Association comments for HB476, HD 3
“Relating to Taxation” with suggested amendments**

The American Heart Association supports the intent of HB476, HD 3 but recommends amendments.

Chairman of the Board

Glen Kaneshige

President

Michael Lui, MD

Board Members

Rick Bruno, MD, FACEP

Jackie De Luz

Brandt Farias

Jason Fujita

Mimi Harris

Zia Khan, MD

Brandon Kurisu

Arnold Martines

Michael Rembis, FACHE

Andrew S. Rosen

Timothy Slottow

Jennifer Walker

The American Heart Association supports taxing electronic smoking devices but feels that the tax should create parity with the taxes already applied to traditional cigarettes and other tobacco products. The taxes proposed under HB476, HD3 fall well below a level of parity. **The Association recommends that an excise tax be set at 70 percent of the wholesale price of the gross proceeds from the retail sale of each electronic smoking device sold.** Without parity with other tobacco products, electronic smoking devices would remain more attractive to Hawaii youths.

We also recommend that all electronic smoking devices, including modified risk tobacco products, and their components should be subject to the full tobacco tax. All tobacco products pose a harm to health, and creating an unbalanced tax on some products over others only serves to incentive the lower priced, or untaxed, products as entry level-products to be promoted by the tobacco industry to unwitting, price-sensitive, and industry marketing-vulnerable youths.

In addition, the definitions in HB476, HD 3 for electronic smoking devices are too narrow and leave possible gaps that would allow newer devices untaxed. In fact, the proposed definitions may not cover all current e-cigarettes. It is unclear where disposable e-cigs would fall - as "e-liquid cartridge," "open system e-liquid," or as devices? Disposable e-cigarettes are in pre-filled and sealed disposable containers, but they are not "used with an electronic smoking device" because they are devices already containing e-liquid. The word "can" in the "e-liquid cartridge" definition may cause confusion and may not be sufficient to ensure disposables are included. So, it is possible that disposables would then be considered "electronic smoking devices," and since the proposed tax specifically only applies to "e-liquid cartridges" and "open system e-liquid" but not devices, disposables wouldn't be taxed at all. This is a major concern because disposables have grown in popularity with youth, and this possible loophole needs to be eliminated so that those and any new electronic smoking devices that come onto the market in the future would be subject to the tax. **The different definitions of e-cigarettes between this proposed bill and the state's Tobacco to 21 law passed in 2015 could also result in enforcement challenges for illegal sales to minors of electronic smoking devices. The American Heart Association recommends that the definitions in HB476, HD3 be amended to include “e-liquid, electronic smoking devices containing e-liquid, and components or parts containing e-liquid.”**

Mahalo for opportunity to recommend amendments to HB476, HD 3 to begin reducing Hawaii's youth electronic cigarette epidemic.

Respectfully submitted,

I 96813

Serving Hawaii since 1948

Our Mission:

“To be a relentless force for a world of longer, healthier lives.”

For more information on the AHA's educational or research programs, visit www.heart.org or contact your nearest AHA office.

Don Weisman
Government Relations/Communications Director

COMMITTEE ON HEALTH

Senator Jarrett Keohokalole, Chair
Senator Rosalyn H. Baker, Vice Chair

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

Friday, March 19, 2021 9:30 AM, Conference Room 229

Comments for Amendments for House Bill 476 House Draft 3 Relating to Taxation

The American Lung Association is the leading organization working to save lives by improving lung health and preventing lung disease, through research, education, and advocacy. The work of the American Lung Association in Hawaii and across the nation is focused on four strategic imperatives: to defeat lung cancer; to improve the air we breathe; to reduce the burden of lung disease on individuals and their families; and to eliminate tobacco use and tobacco-related diseases.

The American Lung Association in Hawaii supports the intent of this legislation and asks for the following amendments:

- 1. We strongly oppose reduced tobacco tax on modified risk tobacco products. Please bring tax parity with other tobacco products** There is no public health reason to lower the tax rate or reduce regulations on any tobacco products. Regardless of the specification for any tobacco products, they are still tobacco products that should all be taxed equally. Research has shown that increasing taxes on tobacco decreases its use, particularly amongst youth. Bringing tax parity between all forms of tobacco has the best chance for reducing our youth vaping rates.
- 2. Include disposable e-cigarettes in the definition of devices included in this legislation.** Disposable e-cigs are in pre-filled and sealed disposable containers, but are not "used with an electronic smoking device" because they are devices with e-liquid already in them, and therefore may cause confusion for retailers and a loophole for the industry.
- 3. Invest in tobacco cessation for youth.** As Hawaii currently only spends a 66% of what are the Centers for Disease Control and Prevention recommended spending levels for tobacco control¹, we recommend a portion of this new tax revenue to be reserved to support Hawaii's cessation resources for youth.

The need for Hawaii to protect youth from tobacco is more urgent than ever, with youth e-cigarette use reaching epidemic levels. According to the Centers for Disease Control, in 2019 nearly every 1 in 3 high schoolers in Hawaii vape regularly. This is an over 70% increase in youth vaping rates since 2017. Native Hawaiians and Pacific Islanders have even higher vaping rates than the youth state average.¹

¹ American Lung Association (2021, January). State of tobacco control - Hawaii.

The American Lung Association in Hawaii urges legislators to continue to support and advocate for policies to protect youth from tobacco use through tax parity. We recommend the above stated edits to House Bill 476, House Draft 3 and to make this make this bill a strong vehicle for tobacco control and ending our youth vaping epidemic.



Pedro Haro
Executive Director
American Lung Association in Hawaii
pedro.haro@lung.org



American Vaping Association | www.vaping.org

6 Landmark Square, 4th Floor, Stamford, CT 06901
(609) 947 - 8059

March 18, 2021

RE: HB 598 HD 2 (companion to SB 621), unlawful shipment of tobacco products and electronic smoking devices

Chairs Keohokalole and Baker, Vice-Chairs, and members of the committee:

On behalf of the American Vaping Association, a nonprofit organization that advocates for tobacco harm reduction policies to reduce smoking rates, I am writing to urge the committee to reject HB 598 HD 2. While we understand the legislature's concern about internet sales of vaping products, the combination of existing Hawaii law governing these sales in combination with new federal laws provide ample enforcement power to stop bad actors. Hawaii is also given special status in the new federal law allowing USPS to continue to handle intrastate shipments under strict conditions.

Internet and mail order sales of vaping products will be federally-regulated in the next month.

As you may be aware, Congress recently passed a bill adding vaping products to the federal Prevent All Cigarette Trafficking Act of 2009 (PACT Act). This law strictly regulates the sale of vaping products through the internet and mail and imposes stiff penalties – including prison time – on those who violate the law. The era where internet retailers could be lax with their adherence to state and local laws and regulations is officially over.

Beginning at the end of March, any retailer shipping products to Hawaii will have to register with the state, obtain any necessary licenses, collect and remit any Hawaii taxes, and for consumer sales, perform third-party age verification and ship the product using a delivery service that checks the recipient's proof of age at delivery. These registrations are already underway right now.

In the continental United States, the USPS will not be permitted to deliver vaping products to consumers. **However, unlike other states, USPS**

regulations contain a special carveout for Hawaii and Alaska that permit the intrastate shipping of vaping products to consumers.

The language of the PACT Act is quite similar to language that is being repealed towards the bottom of this bill (Section 245-17, Hawaii Revised Statutes). Before passing a ban, the committee should ask what efforts have been made over the last several years to enforce this law. Why ban when you can charge retailers for licenses and enforce the law strictly?

Hawaii's vape businesses and vapers want to be a part of the solution. However, punishing adults by making it harder for them to quit smoking is not the answer. Hawaii should vigorously enforce its numerous existing laws on vaping products, but online sales bans are not the answer.

Again, we urge you to reject this bill.

Sincerely,

A handwritten signature in cursive script that reads "Gregory Conley".

Gregory Conley, J.D., M.B.A.
President, American Vaping Association



HIPHI Board

*Kilikina Mahi, MBA
Chair
KM Consulting LLC*

*Michael Robinson, MBA, MA
Immediate Past Chair
Hawai'i Pacific Health*

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

*Debbie Erskine
Treasurer
Kamehameha Schools*

*Keshia Adolpho, LCSW
Molokai Community Health
Center*

*Keawe'aimoku
Kaholokula, PhD
John A. Burns School of
Medicine, Department of
Native Hawaiian Health*

*Mark Levin, JD
William S. Richardson School
of Law*

*Rachel Novotny, PhD, RDN, LD
University of Hawai'i at
Mānoa, College of Tropical
Agriculture and Human
Resources*

*May Okihiro, MD, MS
John A. Burns School of
Medicine, Department of
Pediatrics*

*Misty Pacheco, DrPH
University of Hawai'i at Hilo,
Department of Kinesiology and
Exercise Sciences*

*Garret Sugai
Kaiser Permanente*

Date: March 18, 2021

To: Senator Jarrett Keohokalole, Chair
Senator Rosalyn H. Baker, Vice Chair
Members of the Senate Committee on Health

Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair
Members of the Senate Committee on Commerce and Consumer
Protection

Re: Opposition to HB 476, HD3, Relating to Taxation

Hrg: March 19, 2021 at 9:30 AM via Videoconference

The Coalition for a Tobacco-Free Hawai'i, a program of the Hawai'i Public Health Institute **opposes HB 476, HD3**, which:

- Reduces the tobacco tax on modified risk tobacco products by 50%;
- Creates new definitions for e-liquids, e-liquid cartridges, electronic smoking devices, open system e-liquids, and units of open system e-liquid;
- Establishes a tax on e-liquids used in electronic smoking devices; and
- Requires wholesalers and dealers to be licensed, and retailers to obtain permits.

While the Coalition appreciates the intent of measure to apply a tobacco tax to e-liquid, we are concerned about the decreased tobacco tax on modified risk tobacco products and the narrow definitions for tobacco products that could lead to tax loopholes for future products.

There is no public health reason to lower the tax on any tobacco product, including modified risk tobacco products.

The FDA has cautioned that the modified risk tobacco products are not "FDA-approved," and all tobacco products are potentially harmful. In addition, the modified risk designation only affects the marketing and promotion of these tobacco products – and does not mean that they should be regulated any differently from other tobacco products.

The Coalition also has concerns about the purported safety and thoroughness of the review process, as at least one modified risk tobacco product, Phillip Morris' IQOS, was approved against the advice of the Tobacco Product Scientific Advisory Committee (TPSAC). TPSAC's purpose is to review and evaluate the safety and health issues relating to

tobacco products based on scientific evidence, and its duties include making recommendations on modified risk tobacco productsⁱⁱ. A majority of TPSAC members did not believe IQOS was likely to make a substantial reduction in morbidity and/or mortality, did not find it likely that smokers would switch completely to IQOS, and determined that consumers wouldn't be able to understand the risks of IQOS as conveyed through modified risk labeling and advertisingⁱⁱⁱ.

These findings undermine the safety and public trust in the FDA's process of approving modified risk tobacco products. It is clear that these products have health risks, and the modified risk designation makes it difficult for consumers to understand the true risks of using these products. As such, we feel it is unnecessary and dangerous to regulate or tax modified risk tobacco products differently from cigarettes and other tobacco products.

Electronic smoking devices are the only tobacco product without a tobacco tax.

In 2016, the FDA deemed e-cigarettes, including its components and parts as tobacco products. In a poll^{iv} conducted by Ward Research Inc. for the Coalition in October 2020, 91% of registered Hawai'i voters were in support of taxing e-cigarettes at the same rate as cigarettes or other tobacco products. Because electronic smoking devices are not subject to current state tobacco tax laws, they are seen as lower-priced tobacco alternatives with virtually no restrictions that can be appealing to the youth. A local retailer is selling 30mL of e-liquid, some with strengths up to 50 mg of nicotine per mL, for as little as \$2.99^v. Some companies have starter kits for \$0.99. Raising taxes and increasing the price of tobacco products is a proven strategy to reduce consumption for both adults and youth.

We must ensure that regulations can adapt to the constantly evolving landscape of electronic smoking devices.

The rapid evolution and wide range of products that fall under the category of electronic smoking devices have made regulatory action difficult. As Hawai'i considers a tobacco tax for these electronic smoking devices, it is important that the definition is broad enough to fully capture all of the current products and future iterations.



As of June 25, 2020, 25 states and the District of Columbia^{vi} have imposed a tobacco tax on e-cigarettes, though the approaches have varied. Some states have taxed them as a percentage of the price, others at a fixed rate (i.e. cents per milliliter), or a combination of the two approaches.

The Coalition has several concerns about the e-liquid tax in HB 476, HD3:

- The tax would only apply to e-liquids that contain nicotine. A 2018 study found that 91% of no-nicotine e-juice was mislabeled and actually did contain nicotine^{vii}. **We recommend** taxing all e-liquid, regardless of whether it contains nicotine, to make it easier to administer the tax and remove the burden of lab testing to prove whether or not each product contains nicotine.

- The e-liquid cartridge and open-systems e-liquid definitions are very specific and could lead to loopholes or ambiguity. For example, it is ambiguous if disposable e-cigarettes, which are pre-filled devices, would fall under e-liquid cartridge or open-systems e-liquid. It could be argued that it is an e-liquid cartridge, as it is pre-filled, sealed, and disposable. Conversely, it could be argued that it is not an e-liquid cartridge because it cannot be used *with* an electronic smoking device – it *is* an electronic smoking device. There is also the question of how to only tax the e-liquid when the product contains both e-liquid and the device itself. These considerations are all very important, as disposable e-cigarettes have rapidly increased in popularity in recent years.

To avoid these challenges and potential loopholes, **we recommend** taxing electronic smoking devices (includes both the device and e-liquid) instead of the e-liquid alone. For administrative simplicity and to achieve tax parity, we propose subjecting electronic smoking devices to the existing Other Tobacco Product tax (70% wholesale price).

While the Coalition is very concerned about several aspects of this bill, our keiki cannot wait another year for regulations on e-cigarettes. **We respectfully ask that HB598 be amended to its original form, thus subjecting electronic smoking devices to the other tobacco tax, and that HB476, HD3 is held in committee.** Thank you for the opportunity to testify.

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. Food and Drug Administration. (2019, November 12). Tobacco Products Scientific Advisory Committee. Retrieved from <https://www.fda.gov/advisory-committees/committees-and-meeting-materials/tobacco-products-scientific-advisory-committee#:~:text=Purpose,the%20regulation%20of%20tobacco%20products>.

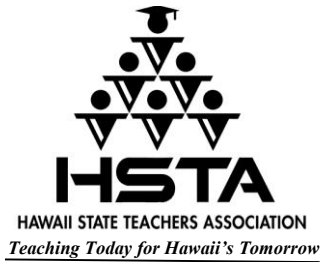
ⁱⁱⁱ Tobacco Products Scientific Advisory Committee. 2018. In *January 24-25, 2018: Summary Minutes 24-25 January 2018*. U.S. Food and Drug Administration: FDA White Oak Conference Center. Retrieved from <https://www.fda.gov/media/111455/download>

^{iv} This study by Ward Research, Inc. summarizes findings from a phone survey among n=800 Hawaii registered voters (maximum sampling error +/-3.3%), conducted between September 21 – October 16, 2020.

^v <https://volcanoecigs.com/collections/nicotine-salt-e-liquids/products/beard-vape-the-salty-one-apple-nicotine-salt-30ml?variant=29461231992855> on January 29, 2020.

^{vi} Cammenga, J. (2020, June 3). How high are vapor taxes in your state? Tax Foundation. Retrieved from <https://taxfoundation.org/vaping-taxes-by-state-2020/>

^{vii} Raymond BH, Collette-Merrill K, Harrison RG, Jarvis S, Rasmussen RJ. The Nicotine Content of a Sample of E-cigarette Liquid Manufactured in the United States. *J Addict Med.* 2018 Mar/Apr;12(2):127-131. doi: 10.1097/ADM.0000000000000376. PMID: 29280749.



Corey Rosenlee
President
Osa Tui, Jr.
Vice President
Logan Okita
Secretary-Treasurer
Wilbert Holck
Executive Director

TESTIMONY BEFORE THE SENATE COMMITTEE ON HEALTH and
THE COMMITTEE ON COMMERCE & CONSUMER PROTECTION

RE: HB 476, HD3 - RELATING TO TAXATION

FRIDAY, MARCH 19, 2021

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Keohokalole, Chair Baker, and Members of the Committees:

The Hawaii State Teachers Association **supports HB 476, HD3**, relating to taxation, **with suggested amendments**. This bill imposes an excise tax of fifty percent of the otherwise applicable tax under section 245-3, HRS, on every wholesaler for each modified risk tobacco product sold, used, or possessed by a wholesaler. Defines modified risk tobacco product. Establishes taxation of e-liquids used in electronic smoking devices. Requires wholesalers and dealers to be licensed. Requires retailers of tobacco and e-liquids to obtain permits. Effective 7/1/2060. (HD3)

We are concerned that the definitions in this bill for "e-liquid cartridge" and "open system e-liquid" may not capture the disposable e-cigarettes that are popular with youth. We recommend amending the language by including the broader definition of "electronic smoking devices" to avoid potential loopholes.

We also recommend amending this bill to create policy parity between electronic smoking devices and other tobacco products through the Other Tobacco Product (OTP) tax, which is 70% of the wholesale price.

Taxing tobacco products and cigarettes is a proven strategy to reduce youth initiation and encourage those who smoke or use tobacco products to quit. Licensing and permitting of retailers and wholesalers are critical for education and enforcement of existing laws.

The electronic cigarette industry has gone largely unregulated for far too long and has therefore been able to market their products both directly and indirectly to our youth. It is time that regulation of the e-cigarette industry

be on par with the regulation of traditional tobacco products. As such, we should align taxation of electronic smoking device products to that of other tobacco products. Because taxation of tobacco products is a proven strategy to reduce usage among youth, this bill would help deter children from not only trying e-cigarettes but also from becoming habitual users of these products.

Furthermore, the allocation of a portion of excise tax funds to go towards health education, prevention, and nicotine cessation programs extends protections for our youth and goes hand in hand with the regulations outlined in this bill as well as a portion of the collections going to our state's general fund to shore up our lost revenue as a state.

Because research shows that increasing the cost of tobacco products, through taxes, decreases the amount used by youth. The price point does matter. We respectfully ask you to support this bill.

HB-476-HD-3

Submitted on: 3/17/2021 4:41:43 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

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

Comments:

We are taxed enough already! Strongly Opposed.

HB 476, HD 3
Committee on Finance
March 19, 2021

Good Morning
Chairs Keohokaole, Baker, Vice Chairs, Members

I am Julian Lipsher, a member of the Coalition For a Tobacco Free Hawaii, testifying as a private citizen.

I am testifying in opposition to HB 476, HD 3.

The bill would:

- * Require licensing and permitting for e-cigarette wholesalers and retailers, provision for which are contained in HB 598, HD 2.
- * Reduce tobacco taxes on modified risk tobacco products by 50%.
- * Establish a tobacco tax on electronic smoking devices at 25 cents per e-liquid cartridge or 15% of the wholesale price for open-system e-liquids.

There is no proven or evidence-based rationale to create lower tax rates or reduce regulations on any tobacco products. This includes the new and misleading category of Modified Risk Tobacco Products, as every tobacco product poses a health risk. It would be as, if back in the day, the tobacco companies claimed that putting filters on unfiltered cigarettes would constitute a 'modified risk' and thus should be taxed at a lower tax rate.

While other parts of the bill would create a tax on electronic smoking devices as part of an overall tobacco tax, the evidence for tax parity in creating a rate at 70% of the wholesale value remains the preferred method and can be accomplished in HB 598, HD 2 as a preferred measure.

It is important to note that reductions in tobacco consumption/usage on "Other Tobacco Products" are best attained when the tax is raised to a the same level as the tax on traditional cigarettes. When that has occurred, we have seen usage rates among our middle and high school youth fall below national averages. Fewer smokers will save both healthcare costs and lives.

Thank you for the opportunity to testify.

HB-476-HD-3

Submitted on: 3/17/2021 9:17:14 AM

Testimony for HTH on 3/19/2021 9:30:00 AM

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

Comments:

These vaping ban bills are only going to hurt the people of Hawaii. This all comes down to a rhetorical question. Does the state want to see an increase in the use of traditional tobacco? I would implore any of you, especially representatives from my districts to actually come into any vape shop and just talk to the customers before making any decision? It seems that the only constituents that are considered are that of a minority of people. The majority of these individuals do have a valid concern, however. Underage vaping is something we in the vaping community are passionately trying to prevent. Just as the alcohol industry works with the local and federal government to prevent underage drinking, we would love to have the same opportunities afforded to them. How can anyone make an informed decision without talking to the people that actually benefit from using vaping products? I don't think it unreasonable to ask any of you to visit any one of these businesses that, if these laws pass, will ensure they and their employees are out of work. Doing your due diligence by talking to the moms, dads, uncles, aunties, & grandparents that vaping has literally saved their lives will only give you a better understanding of how vaping works. The vape industry is not "Big Tobacco" and doesn't have resources such as the alcohol industry has. If you look at the numbers, 90% - 95% of this industry is run by local, very small businesses. Our business is run by myself, my mom, & my dad. Our employees have families with mouths to feed. Please come and talk to us.



Date: March 19, 2021

To: The Honorable Jarrett Keohokalole, Chair
Members of the Senate Committee on Health

The Honorable Rosalyn H. Baker, Chair
Members of the Senate Committee on Commerce and Consumer Protection

From: Liza Ryan Gill, Campaign Manager, Campaign for Tobacco-Free Kids HI

Re: **Comments for HB476 HD3, Relating to Taxation**

Hrg: March 19th, 2021 at 9:30am

Thank you for the opportunity to submit comments on HB476 HD3, which would establish taxation for electronic smoking devices and the e-liquids used in them.

The Campaign for Tobacco-Free Kids' goal is to protect children and save lives from the leading cause of preventable death: tobacco use. We envision a future free of death and disease caused by tobacco and support policies that will help us achieve those goals.

The need for us to act quickly has never been more urgent, as new tobacco products have come to market in sweet candy flavors aimed at attracting our youth. Hawai'i has one of the highest rates of middle school students who vape in the US and nearly one in three of our high schoolers have used an e-cigarette in the last 30 days. Of those youth who use e-cigarettes, more than 80% of them use flavored products.

Taxation of tobacco products is a proven strategy that improves the health of residents, and helps to balance budgets. Nationally, every 10 percent increase in cigarette prices reduces consumption by about four percent. Taxing e-cigarettes is an important tool to curb this dramatic rise in e-cigarette use.

The e-cigarette tax established in this bill is a great first step in seeking to address this issue. When coupled with strong regulatory protections, and an end to the sale of flavored tobacco products, will result in real wins for our youth.

In addition to a comprehensive approach to addressing this critical issue, we recommend that a stronger definition be considered. We are concerned that the current definitions for "e-liquid" and "open system e-liquid" may leave out popular devices used by youth here in Hawai'i.

Furthermore, as we have learned across the country, any effective tobacco tax establishes parity in taxation among tobacco products. Without such parity, youth will continue to gravitate to lower price, lower taxed options.

Recently adopted amendments to this bill would establish a lower tax rate for products approved by the FDA to be Modified Risk. There is a common tactic, pushed by the tobacco industry in many states, to establish a loophole that would allow for lower taxation of their products. Modified Risk Tobacco Products should not be taxed any differently than other tobacco products. This ensures that tobacco users are encouraged to quit smoking, rather than switch to a different tobacco product.

Mahalo,

Liza Ryan Gill, Campaign for Tobacco-Free Kids HI



March 19, 2021

9:30 a.m.

VIA VIDEOCONFERENCE

Conference Room 229

To: Senate Committee on Health
Senator Jarrett Keohokalole, Chair
Senator Rosalyn H. Baker, Vice Chair

Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

From: Grassroot Institute of Hawaii
Joe Kent, Executive Vice President

RE: HB476 HD3 — RELATING TO TAXATION

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on HB476, which would impose a 50% excise tax on the wholesale price of every wholesaler for each modified risk tobacco product sold, used, or possessed by a wholesaler. The bill would also establish taxation of e-liquids used in electronic smoking devices and require licensing and permits for wholesalers and retailers of such products.

We are gravely concerned about the impact of this tax hike and the many fees, tax increases, and surcharges that have been proposed this legislative session. Hawaii residents are already among the most taxed in the country; the state has the [second highest overall tax burden](#) in the U.S.

That high tax burden contributes to Hawaii's cost of living and is one of the reasons why so many Hawaii residents have been leaving in search of greater opportunities elsewhere.

Given the state's already-high tax burden, there is never a good time to raise taxes. But this proposal comes at an especially bad time. Hawaii is still in a state of emergency, tourism has slowed to a trickle, businesses are closing and unemployment is high. The economy will take years to recover from the pandemic and lockdowns. The last thing Hawaii residents and businesses need at this point is a tax hike.

There are myriad reasons policy makers should be wary of implementing tax hikes at this time. Here are just a few:

>> Hawaii cannot sustain a hike in taxes since its already-damaged economy was hit harder by the lockdowns than any other state in the nation.¹

>> State lawmakers increased taxes and fees substantially following the Great Recession of 2007-2008,² despite a windfall in revenues from an economic boom over the past decade. Taxes and fees ballooned on motor vehicles, transient accommodations, estates, fuel, food, wealthy incomes, property, parking and businesses.

>> Hawaii's population reduction of 21,879 people since fiscal 2016³ has left Hawaii's remaining taxpayers with a greater tax burden.

>> Hawaii businesses will be experiencing an average 38% increase in their state unemployment tax in 2021.⁴ The UI tax rate depends not only on individual employer's claims experiences but also on the overall health of the state's unemployment insurance fund, which is hundreds of millions of dollars in the red.⁵

>> Hawaii already has a regressive general excise tax that disproportionately hits the poor.⁶

¹ Dave Segal, "[Hawaii's unemployment rate hit nation-high 15% in September](#)," Honolulu Star-Advertiser, Oct. 20, 2020.

² "[Tax Acts \(by Year\)](#)," Tax Foundation of Hawaii, accessed Feb. 8, 2021.

³ "[Annual Estimates of the Resident Population for the United States, Regions, States, and the District of Columbia: April 1, 2010 to July 1, 2020 \(NST-EST2020\)](#)" U.S. Census Bureau, Population Division, December 2020.

⁴ "[Grassroot Institute UI contribution analysis](#)" Grassroot Institute of Hawaii, Nov. 13, 2020, sheet 2.

⁵ "[UI Budget](#)," United States Department of Labor, Employment & Training Administration, Feb. 8, 2021.

⁶ "Rich States, Poor States: ALEC-Laffer State Economic Competitiveness Index: "[Sales Tax Burden](#)," American Legislative Exchange Council, 2021. Note that Hawaii does not have a sales tax, but a state general excise tax that is levied on almost all goods and services, and imposed multiple times throughout the production chain.

>> Hawaii has a progressive income tax that taxes high-income earners at 11%, second only to California at 13.3%.⁷ Hawaii's top 1% already pays 23% of all income taxes in the state.⁸

>> Closing tax exemptions would amount to a tax hike for Hawaii businesses already facing a steep spike in their unemployment insurance taxes.

Hawaii needs leadership that will stabilize the current financial crisis, reduce unsustainable long-term costs and lower the cost of living. Balancing the books without tax increases or future debt could send a message that Hawaii is a good place for businesses and future generations, and this could help the economy thrive while motivating people to return to the islands.

If the state needs more revenues, policymakers should focus on growing the economy. In our current condition, even small economic gains would have big effects.

If the purpose of the tax is to alter behavior, consider that the negative impact of a tax hike can far outweigh whatever policy goal is being pursued.

Hawaii's residents and businesses need a break from new taxes, fees, surcharges and tax hikes. This is not the time to make Hawaii a more expensive place to live and do business.

Thank you for the opportunity to submit our comments.

Sincerely,

Joe Kent
Executive Vice President,
Grassroot Institute of Hawaii

⁷ Katherine Loughhead, "[State Individual Income Tax Rates and Brackets for 2020](#)," Tax Foundation, Feb. 4, 2020.

⁸ "[Hawaii Individual Income Tax Statistics](#)," Hawaii Department of Taxation, December 2020, Table 13A.



Hawaii COPD Coalition
700 Richards St., Suite 2410
Honolulu, HI 96813
Valerie@hawaiicopd.org
(808)699-9839

March 16, 2021

Honorable Chairs Senators Jarrett Keohokalole and Rosalyn Baker
Honorable Vice-Chairs Senators Rosalyn Baker and Stanley Chang
Members of the Health Committee and Commerce & Consumer Protection Committee

RE: **Strong Opposition to HB476, HD3**

Dear Honorable Senators Keohokalole, Baker and Chang, members of the Health Committee and members of Commerce & Consumer Protection Committee,

This measure is extremely critical to the health of the people of our state, especially our keiki. **Please vote in opposition to HB476, HD3** which would reduce tobacco taxes on modified risk tobacco products by 50%. There is absolutely no health justification for reducing taxes as all tobacco products post harm to health of those using the products and those who may inhale or come into contact with any emissions.

I am Executive Director of the Hawaii COPD Coalition and serve over 45,000 Hawaii adults diagnosed with COPD in Hawaii (with an estimated equal number still undiagnosed). Chronic Obstructive Pulmonary Disease or COPD is an umbrella of diseases which include emphysema, chronic bronchitis and chronic asthma. Since 2007, I have worked in Hawaii, nationally and internationally with countless people who have had their lungs and lives horribly affected by tobacco and nicotine. Many of these people have become disabled and unable to perform jobs and hobbies they enjoyed, spending a lot more time and resources with healthcare providers than they or any of us would like.

The intent of the bill in taxing electronic smoking devices as a tobacco tax is appropriate, but it should have tax parity and a tax rate that is on par with other tobacco products, which is 70% of the wholesale price. The original language of HB598 would accomplish this and is also on this calendar for the committees' consideration.

Thank you for considering this important issue and the bills to tax electronic smoking devices. **Please vote in opposition to HB476, HD3.** Thank you.

Very truly yours,

Valerie Chang

Valerie Chang
Executive Director



HB476 HD3 Tax e-Liquid and E-Cigarette

COMMITTEE ON HEALTH:

Sen. Jarrett Keohokalole, Chair; Sen. Rosalyn Baker, Vice Chair

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION:

Sen. Rosalyn Baker, Chair; Sen. Stanley Chang, Vice Chair

Friday, Mar. 19 2021: 9:30: Videoconference

Hawaii Substance Abuse Coalition Supports HB476 HD3:

ALOHA CHAIR, VICE CHAIR AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide organization of over 30 substance use disorder and co-occurring mental health disorder treatment and prevention agencies.

HSAC is in full support to tax, both for our economic recovery and out of major concern for our children:

- Have parity in tax rates with other tobacco products.
- Have a broader, more inclusive, definition of tobacco products that include all electronic smoking devices and e-liquids.
- Given the Surgeon General's warning about the dangers of vaping, especially by the historic rise in its use by youth, allocating taxes can help to reduce consumption and increase revenues for economic recovery.
- The danger to children is a growing major public health concern.
- Excise taxes and the continuing increase in taxes has proven to help people quit or sustain cessation.

HSAC humbly recommends that the House consider that some of the tax could support the much needed youth tobacco prevention programs.

We appreciate the opportunity to provide testimony and are available for questions.



**Testimony to the Senate Joint Committee on Health, and Commerce and Consumer
Protection
Friday, March 19, 2021; 9:30 a.m.
State Capitol, Conference Room 229
Via Videoconference**

RE: HOUSE BILL NO. 0476, HOUSE DRAFT 3, RELATING TO TAXATION.

Chair Keohokalole, Chair Baker, and Members of the Joint 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. 0826, House Draft 3, RELATING TO TAXATION.

The bill, as received by your Committee, would:

- (1) Imposes a 50% tax on products with a modified risk tobacco product order issued by the secretary of the United States Department of Health and Human Services;
- (2) Apply the Cigarette Tax and Tobacco Tax Law, Chapter 245, Hawaii Revised Statutes, to E-liquid, E-liquid cartridges, and electronic smoking devices;
- (3) Require wholesalers and dealers to be licensed; and
- (4) Require retailers to obtain permits.

The bill would also take effect on July 1, 2060, to facilitate continued discussion.

By way of background, the HPCA represents Hawaii Federally-Qualified Health Centers (FQHCs). FQHCs provide desperately needed medical services at the frontlines in rural and underserved 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 healthcare.

Testimony on House Bill No. 0476, House Draft 3
Friday, March 19, 2021; 9:30 a.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 affect our citizenry on a generational basis with people experimenting at even earlier ages.

Pragmatically speaking, tobacco will continue to be consumed regardless of anything done at the Legislature. **But, if regulation and a tax increase can serve as a disincentive for consuming these products, especially by our youth, then the interests of the general public are served.**

It should be noted that previous tax increases as well as public health media campaigns have been effective in reducing consumption of tobacco to the point where collections of the Cigarette Tax and Tobacco Tax have steadily diminished in recent years. Proceeds from the Cigarette Tax and Tobacco Tax have served as a dedicated source of revenue for very important public health programs. The one most directly affecting our organization is the Community Health Center Special Fund, which is essential for the operations of most of our member FQHCs. However, it is unclear whether the use of Cigarette Tax and Tobacco Tax collections as a dedicated source of revenue for essential public health programs will continue to be sustainable.

It should be noted that the House of Representatives approved on Third Reading House Bill No. 1296, House Draft 1, a measure that would, among other things, repeal the Hawaii Tobacco Prevention and Control Trust Fund (Trust Fund), and transfer all unencumbered balances to the General Fund on July 1, 2021. Should that measure be enacted, it is unclear how much Cigarette Tax and Tobacco Tax revenue would ultimately go to the General Fund from this bill after July 1st.

The HPCA opposes House Bill No. 1296 and believes that the Trust Fund is an essential funding mechanism for vital public health programs. **To the extent that this measure can help to preserve the Trust Fund, the HPCA wholeheartedly supports this bill.**

Thank you for the opportunity to testify. Should you have any questions, please do not hesitate to contact Public Affairs and Policy Director Erik K. Abe at 536-8442, or eabe@hawaiiipca.net.

HB-476-HD-3

Submitted on: 3/17/2021 10:36:18 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
makela	Testifying for irie hawaii	Oppose	No

Comments:

Oppose

Smoke-Free Alternatives Trade Association

1629 K Street NW
Suite 300
Washington, DC 20006



House of Representatives of Hawaii - Senate
COMMITTEE ON Health/Commerce and Consumer Protection
(Hearing Date March 19, 2021)
Position: Oppose

RE: H.B. 476 Title: Electronic Smoking Devices; E- Liquid; Taxation; Regulation; Modified Risk Tobacco Products; Retail Tobacco and E-Liquid Permits

Chair Senator Jarrett Keohokalole and Vice Chair Senator Rosalyn H. Baker and members of the Committee on Health:

Chair Senator Rosalyn H. Baker and Vice Chair Senator Stanley Chang and members of the Committee on Commerce and Consumer protection:

Thank you for the opportunity to submit testimony regarding House Bill 476 (HB 476).

My name is Mark Anton, and I am the Executive Director of the Smoke-Free Alternatives Trade Association (SFATA), based out of Washington, DC.

SFATA, a 501(c)(6) organization, is a national trade association of businesses that work in, or in service of, the vapor products industry, including manufacturers, distributors, and retailers. SFATA's mission is to advocate for a reasonably regulated U.S. marketplace, which allows its member companies to provide smoke-free products to adult consumers, while promoting a positive public image for vapor products, and educating businesses in our industry. All SFATA members must agree to adhere to the association's Member Code of Responsible Conduct, which includes, among other things, strict marketing and packaging guidelines. That document can be found here:

https://www.sfata.org/content.aspx?page_id=22&club_id=89995&module_id=294336

SFATA also assists its members, which are small companies, with compliance of federal and state regulations. One of the ways we do this is by providing educational webinars regarding the development and building of Pre-Market Tobacco Applications with the Food and Drug Administration (FDA), and how to comply with new federally mandated shipping requirements, based on the PACT Act to prevent youth access to vapor products recently passed in the Omnibus spending bill.

Our members are law-abiding businesses and want to comply, but they are small and lack the resources of big tobacco firms to understand how to comply with federal and state laws, and SFATA helps them accomplish this. They are eager to work to help adult smokers with an alternative to smoking combustible cigarettes and prevent youth access, as they themselves are former smokers.

It is our assessment that HB 476, if enacted, would significantly harm consumer welfare, lead to avoidable negative health outcomes, and cause unnecessary hardship on Hawaii small businesses.

Smoke-Free Alternatives Trade Association

1629 K Street NW
Suite 300
Washington, DC 20006



These restrictions would be particularly harmful to Hawaii’s consumers, because it would prevent those trying to stop smoking from accessing vaping products that have been proven to help smokers quit, or switch from combustible cigarette use, the deadliest form of nicotine consumption.

In 2016, the tobacco age was raised to 21 in Hawaii. In January 2020, the Food and Drug Administration (FDA) banned the sale of all fruit and sweet flavors in pod and cartridge-based e-cigarettes. The FDA took this action as they found, based on science, that cartridge-based e-cigarettes were the predominant vehicle of youth use of flavored vapor products. The FDA also noted that open-system flavored e-liquid did not play a substantial role in youth use.

HB 476 does not distinguish between e-cigarettes and traditional tobacco products, placing both under the same category as “smoking” products, even though e-cigarettes are much safer than the combustible alternative. The scientific evidence from both the United States and European Union has proven beyond any reasonable doubt that e-cigarettes are safer than combustible cigarettes and are significantly more successful in helping smokers quit than traditional nicotine replacement therapies.¹²³

Yale University School of Public Health performed a discreet choice study to determine the likely impacts of an FDA-proposed ban on flavors, on rates of smoking combustible cigarettes, and e-cigarette use. The conclusion found a ban on flavored e-cigarettes alone would likely increase the choice of cigarettes in smokers, arguably the more harmful way of obtaining nicotine.⁴

We must be reminded of the benefits of flavors in vaping products for the consumers of Hawaii and not impose such hardships on the businesses that provide such vital information and quality products to the consumer. Driving small vaping businesses out of the market will just put consumers in peril of not understanding the products and options that might remain.

The bill HB476 provides an alternative tax rate of 50% for Modified Risk Tobacco Products. This clear delineation shows an inherent misunderstanding of the Federal Tobacco Control Act of 2009. If a tobacco product is a new tobacco product and applies for a Modified Risk Tobacco Product order it must also satisfy the requirements of a new tobacco application and receive a marketing order.

¹ Royal College of Physicians. “Nicotine without the smoke: Tobacco harm reduction.” London RCP, 2016.
<https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>

² Stephens WE. “Comparing the cancer potencies of emissions from vapourised nicotine products including e-cigarettes with those of tobacco smoke.” Tobacco Control 2018;27:10-17.
<https://tobaccocontrol.bmj.com/content/27/1/10>

³ Hajek, Peter et al. “A Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy.” N Engl J Med 2019; 380:629-637 <https://www.nejm.org/doi/full/10.1056/NEJMoa1808779>

⁴ Buckell J, Marti J, Sindelar JL. “Should flavours be banned in cigarettes and e-cigarettes? Evidence on adult smokers and recent quitters from a discrete choice experiment.” Tobacco Control. 2019;28:168-175.
<https://tobaccocontrol.bmj.com/content/28/2/168.citation-tools>

Smoke-Free Alternatives Trade Association

1629 K Street NW
Suite 300
Washington, DC 20006



SFATA does not believe our products are tobacco products as such, the deeming by the FDA has brought vapor products under the tobacco control act. However, the Pre-Market Tobacco Application (PMTA), requires that the product be appropriate for the protection of public health (APPH) to be authorized to sell.

This includes a comprehensive scientific review and as such will be compared to current conventional cigarettes. The application must also show the effects on non-users and the potential for initiation. If authorized for market the FDA will have clearly determined that products are appropriate for protection of public health and do not pose a significant risk on non-users. In which it would make no sense to tax these products at all, but encourage the switching of current smokers to the authorized products for sale.

The historical purpose of excise taxes on conventional cigarettes was to reduce smoking rates. Smoking is the number one preventable reason for death and disease of its users. Tobacco takes many forms but burning shredded leaves is by far the deadliest form according to the Centers for Disease Control (CDC). Vaping and electronic cigarettes show a significant benefit to users who have switched completely and it is this reason that we oppose the introduction of any taxes on vapor products.

In a Wall Street Journal article, a CDC employee made the following comment: “Adults using e-cigarettes as an alternative to cigarettes shouldn’t go back to smoking,” said Brian King, a deputy director of the CDC’s Office on Smoking and Health and a senior official involved in the agency’s vaping-related illness response.⁵

While we are in support of the noble goal of preventing youth use, we cannot support this bill with the inevitable outcome of hurting adults. However, if Hawaii follows US trends, then we should see the following: teen vaping dropped 29% between 2019 and March 2020 (when schools closed)⁶, and another 32% by Nov. 2020⁷. We should build on this and make vapor products stronger as an alternative.

A study in the Harm Reduction Journal in 2018 concluded: “Judgements on whether authorizing marketing of flavored e-cigarettes would be appropriate for the benefit and protection of the public health should account for the possibility that adults who have switched completely from smoking cigarettes to using e-cigarettes in non-tobacco flavors may not have attempted to switch to e-cigarettes,

⁵ <https://www.wsj.com/articles/during-covid-19-lockdowns-people-went-back-to-smoking-11611829803>

⁶ <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6937e1-H.pdf>

⁷

https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2773494?utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_term=120320

Smoke-Free Alternatives Trade Association

1629 K Street NW
Suite 300
Washington, DC 20006



or perceived themselves as able to switch, had e-cigarettes only been available in the flavors that are available through conventional cigarettes.”⁸

We believe that the FDA is best suited for making this determination. The PMTA process is the most scientific and appropriate vehicle to make this determination. The applicants, of which many of our Hawaii members have initiated with the FDA, must show toxicology reports on harmful and potentially harmful constituents, as well as clinical reviews on the use of these products.

They also must demonstrate that they are appropriate for use by adult consumers and prove they are only marketing to adults who either vape or smoke currently. They must also show how they are going to prevent youth access and uptake of the products they are marketing.

This application and scientific review are very expensive, as well as exhaustive. Introducing and passing HB476 would effectively cause significant financial harm to our members, but it would also render the FDA process mute. This would not only be harmful to the businesses trying to comply, but would also put consumers in peril, especially if the FDA finds these products appropriate for the protection of public health.

Many health and public groups have made the false claim that vaping by youth leads to smoking. The following data puts that premise to rest. In 2008, the year vaping was introduced to the general market, the adult smoking rate was 20.6%, and the youth smoking rate in 2011 was 15.8%. However, the smoking rate among adults in 2018 was at 13.7% a 33.5% drop in adults, while the youth smoking rate in most recent data from National Youth Tobacco Survey shows the rate at 4.6%, a huge drop of 71%. The data does not indicate that vaping may lead to youth uptake of smoking. In fact, it is quite the opposite.

SFATA believes that we can accomplish the goal of both restricting youth access while also allowing adult access. This is the best strategy to keep reducing the overall smoking rates of adults. We have introduced our Responsible Industry Network (RIN) program to the Centers of Tobacco Products (CTP) at FDA. This program is designed to restrict flavors to adult-only vape stores, to products that have gone through the PMTA process. This will allow marketing to adults of products in the program, while at the same time putting strict conditions and compliance checks on the retailers selling these products.

You will find a summary of this program attached at the end of this testimony. We hope you will find it informative and proves that the vapor store retailers are responsible community members who take Tobacco Harm Reduction seriously.

⁸ Russell, C., McKeganey, N., Dickson, T. *et al.* Changing patterns of first e-cigarette flavor used and current flavors used by 20,836 adult frequent e-cigarette users in the USA. *Harm Reduct J* **15**, 33 (2018).
<https://doi.org/10.1186/s12954-018-0238-6>

Smoke-Free Alternatives Trade Association

1629 K Street NW
Suite 300
Washington, DC 20006



It is our position to oppose this bill, as it would put many adults at risk of lapsing back to, or not initiating a switch away from, combustible cigarettes. It would put the youth at risk of illicit or underground markets of unknown manufacture and would cost the state of Hawaii considerable revenue.

SFATA opposes this legislation, and we urge the committee to vote NO on HB 476.

Respectfully,

Mark Anton

Executive Director

Smoke-Free Alternatives Trade Association

1629 K Street NW
Suite 300
Washington, DC 20006



Smoke-Free Alternatives Trade Association (SFATA) Responsible Industry Network (RIN):

Proposal and Program Overview

I. Summary

- As a national trade association of businesses in the electronic nicotine delivery systems (ENDS) industry, the Smoke-Free Alternatives Trade Association (“SFATA” or “Organization”) requires its members to uphold the highest standards of excellence and adhere to the Organization’s Member Code of Responsible Conduct to offer less risky alternatives to combustible cigarettes for adult smokers that are appropriate for the protection of the public health. SFATA believes its members, including its retailer members, can further the U.S. Food and Drug Administration’s (FDA) public health mission by self-regulating and complying with Organization’s set standards, as well as all applicable health and safety requirements of state and local health authorities.
- SFATA advocates ENDS such as electronic cigarettes and e-liquids for adult use only. Accordingly, SFATA supports age restrictions on all tobacco products, including ENDS. We expect FDA to be supportive of innovative solutions to limit youth access. SFATA believes that controlled distribution would advance FDA’s goals of restricting youth access to ENDS products, as described in FDA’s Youth Tobacco Prevention Plan.⁹
- SFATA proposes its Responsible Industry Network (“RIN”) program, which requires adherence to certain regulatory standards and SFATA’s own, additional criteria for participation in a controlled network of eligible ENDS manufacturers, distributors, and retailers, implementation of robust age verification (including requirements for adult-only retail establishments) and product tracking measures, routine monitoring and data collection to further FDA’s postmarket surveillance efforts and enhanced enforcement through program-related corrective actions and penalties and data sharing with law enforcement and regulatory authorities.

II. SFATA Background and Mission Statement

- SFATA is a national trade association of businesses that work in, or in service of, the ENDS industry. Our members represent a wide cross-section of ENDS industry members, including

⁹ See U.S. Food & Drug Admin., FDA’s Youth Tobacco Prevention Plan (updated September 14, 2020) (available at <https://www.fda.gov/tobacco-products/youth-and-tobacco/fdas-youth-tobacco-prevention-plan>).

Smoke-Free Alternatives Trade Association

1629 K Street NW
Suite 300
Washington, DC 20006



distributors, manufacturers, and retailers. Firms must agree to uphold SFATA Principles as a condition of membership.

- SFATA believes in self-regulation and setting the standard for the vaping industry. As responsible business owners, our members understand that model corporate citizenship is vital to ensuring the continued availability of effective, innovative products that have the potential to eliminate the public health hazards caused by use of combusted cigarettes. Specifically, our members believe we have a responsibility to self-regulate the manufacturing, marketing, and sale of ENDS products based on compliance with regulatory requirements and commitment to SFATA's mission and adherence to the association's member Code of Conduct.
- We believe that a controlled distribution network that spans from the manufacturer, to the distributor, and on to the retailer, coupled with the robust age verification and data gathering measures described in this Proposal, would advance FDA's goals of restricting youth access to ENDS products and protecting the public health.

III. Program Objectives

SFATA's proposed RIN is intended to help FDA fulfill its public health mission by seeking to:

- Facilitate and monitor compliance of SFATA member ENDS products companies, including retailers, distributors, and manufacturers, to the Organization's mission and guiding principles, FDA regulatory requirements, and state and local laws.
- Control product marketing and sales and limit access via a controlled distribution buying network.
- Enable robust product tracking and tracing (and deter straw sales) via TraceVerify partnership or other measures that allow the product RFID tag/ QR Code (tracing lot number) to the purchaser ID at the point of sale.
- Direct accountability to manufacturers, distributors, and retailers with concrete, tangible corrective actions and consequences for non-compliance, including loss of the Organization's membership, program participation, and access to industry partners.
- Require retail participants in SFATA's RIN to sell products distributed by manufacturers also participating in the program, ensuring a closed loop system of control.

Smoke-Free Alternatives Trade Association

1629 K Street NW
Suite 300
Washington, DC 20006



- Generate and compile comprehensive, broader postmarket surveillance data. By using a collaborative, joint approach to discover any new youth-attractive trends, industry can take a proactive approach in curbing youth uptake and assist in fulfilling FDA’s public health mission.
- Establish a robust reporting and records system that will help eliminate youth use of adult vapor products.
- Further enforcement efforts by regulatory and law enforcement authorities to deter bad actors and straw purchasers.

IV. Responsible Industry Network – Program Overview

- SFATA’s RIN program requires adherence to FDA regulatory standards and SFATA’s own, additional criteria for participation in a controlled network of eligible manufacturers, distributors, and retailers. Key components of the RIN program are:
 - Controlled Distribution Network - Retail participants in the RIN program are committed to selling ENDS products distributed by manufacturers also participating in the program, ensuring a closed-loop system of control. Membership criteria ensures the RIN program is limited to responsible, like-minded business members. RIN members will only sell products that submitted Pre-Market Tobacco Applications (PMTAs) to FDA.
 - Robust Age Verification – Includes requirements for adult-only¹⁰ retail establishments and eCommerce platforms.
 - Upgraded Product Tracking Measures – Partnership with TraceVerify or other tools to link product manufacturing history (RFID tag/QR code) to Purchaser ID.
 - Routine Monitoring and Data Collection - To further FDA’s postmarket surveillance efforts, a SFATA compliance officer will work with SFATA’s Oversight Committee to ensure participating members operate within the parameters of the RIN Program.
 - Enhanced Enforcement - Through program-related corrective actions and penalties, and data sharing with law enforcement and regulatory authorities.
 - This Proposal is intended to reduce the resource burden on both FDA and responsible industry members while furthering the public health, and

¹⁰ “Adult-only” is defined as requiring each person present to provide a government-issued identification showing a photograph and a date of birth indicating the holder is at least 21 years of age. Parents with minors present are allowed in when necessary to obtain supplies. See SFATA RIN “Program Requirements.”

Smoke-Free Alternatives Trade Association

1629 K Street NW
Suite 300
Washington, DC 20006



establishes a more robust reporting and record system that will help minimize youth access to adult ENDS products.

V. Postmarket Surveillance

- Although postmarket surveillance typically requires well-designed monitoring of product safety for *users*, given that FDA’s mandate is to protect population health, SFATA believes that surveillance must be broader and must assess impact on users and non-users, transitions among tobacco-use states, and change over time.
- Postmarket data is needed to assess these parameters and how those data apply to real-world users. The challenge, however, is that new tobacco products may have small user bases. Thus, although surveillance mandates fall on each company, multiple, overlapping efforts may be wasteful, yielding fragmented and contradictory results. Rather, industry would benefit from collaboration on surveillance efforts, since collaborative joint effort would allow more robust, consistent results and perspective.
- Data will be submitted to FDA on an as-needed basis on behalf of all RIN program participants, streamlining the process for both industry and FDA.

VI. Enforcement

- SFATA believes members can work together to increase law enforcement and regulatory agencies’ effectiveness, by means of deterring straw buyers and bad actors, to drastically reduce underage use of ENDS products by utilizing our controlled network to predict trends, to locate weaknesses, and build strengths.
- Through TraceVerify, the customer’s age, driver’s license number, and the state of issue will be permanently linked to the unique identifying number of the purchased ENDS product and be stored in a secure cloud database that law enforcement can access to cross-reference purchase data against DMV information. This will identify the offending straw buyer, or conversely, the employee who either did not scan the customer’s ID or scanned the ID of an underage user, so authorities can levy the appropriate enforcement actions.

HB-476-HD-3

Submitted on: 3/16/2021 5:18:54 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Anthony Orozco	Individual	Oppose	No

Comments:

If you want my vote in next years' election you better not raise or create new taxes on these products.

HB-476-HD-3

Submitted on: 3/16/2021 6:58:02 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Clayton Silva	Individual	Oppose	No

Comments:

Opposed to HB476. Leave our e-cigs alone. They help me smoke less and that helps my health.

Date: March 17, 2021

To: The Honorable Jarrett Keohokalole, Chair
The Honorable Rosalyn H. Baker, Vice Chair
Members of the Senate Committee on Health

The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection

Re: **Strongly oppose HB476 HD3**, Relating to Taxation

Hrg: March 19, 2021 at 9:30 AM in Conference Room 229 & Videoconference

Aloha Senate Committees on Health and Commerce and Consumer Protection,

As a parent, community member and healthcare professional I am writing in **strong opposition to HB476 HD3**, which imposes an excise tax of fifty percent of the otherwise applicable tax under section 245-3, HRS, on every wholesaler for each modified risk tobacco product sold, used, or possessed by a wholesaler; defines modified risk tobacco product; establishes taxation of e-liquids used in electronic smoking devices; requires wholesalers and dealers to be licensed; requires retailers of tobacco and e-liquids to obtain permits.

I strongly oppose the reduced tobacco tax on modified risk tobacco products. There is no public health reason to lower the tax rate or reduce regulations on any tobacco products, including modified risk tobacco products, as **all tobacco products pose harm to health.**

While I support the intent of the bill in taxing electronic smoking devices as a tobacco tax, I advocate for tax parity and request a tax rate that is on par with other tobacco products (70% wholesale price). **Restoring HB598 to its original language would accomplish this.**

I strongly oppose HB476 HD3 and respectfully ask you to hold this bill in committee.

Many thanks for your consideration,

Forrest Batz, PharmD
Kea'au, HI

HB-476-HD-3

Submitted on: 3/17/2021 9:15:13 AM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Erin R.	Individual	Oppose	No

Comments:

Dear Chair and Committee Members:

I am very strongly opposed to all of the vaping bills that are in committees this year as vaping is extremely important to me as It has allowed me to not smoke deadly cigarettes. If you were in mine and millions of others' shoes you would understand why being able to afford to vape and how important this is for us. Since I started vaping over two years ago I have cut the nicotine in my e-liquid from 24mg to zero nicotine, but still being able to obtain the hand to mouth ritual that was embedded in me when I smoked for 45yrs. You don't have the opportunity to go to zero nicotine with cigarettes. I feel you need to separate vaping from tobacco and put vaping as a completely separate category of its own. I feel it is not justifiable for us vapers to be clumped into the same category as smoking because smoking causes cancer and vaping does not. I cannot find any data on people dying from vaping.

Cigarettes contain over 4000 chemicals, 43 known carcinogens, and 400 toxins. Science states that it is not the nicotine that kills, it is the tar that sticks to your lungs. Vaping has been proven to be at least 95% less harmful than cigarettes and many new reputable, peer-reviewed scientific studies prove this and these scientists have no agenda as to how the outcome will be.

There are also studies out there that are old and not reputable and have been debunked. I have yet to figure why the Health Care Organizations want to keep quoting these bad science reports. I thought we are all working toward the same goal, which is to get people off cigarettes and stop all the related deaths it causes.

I am asking you to please put our health and our Adult choices above trying to obtain more revenue from vaping. It saddens me to see all the taxes you are trying to impose

on vaping. This could cause vaping to go underground which would mean that Hawaii will get less tax money coming in and will put people's lives in jeopardy by possibly obtaining products that are not safe. I don't want to be forced to buy unsafe products which will put even more burden on our health care system if people get sick or die from using the unsafe products.

If vape shops shut down it will also create even more burden on the system because people will be unemployed, there will be empty storefronts and people will lose the ability to keep on vaping unless they drive or fly to a more vape friendly state. It will also be detrimental to the people who still smoke to be able to have another choice to try to quit along with all the Pharmaceuticals.

For the millions of Americans who find it difficult to quit smoking or are unwilling to forgo nicotine, the answer should not be "quit or die." Instead, policymakers would improve both public health and job creation by embracing a message of harm reduction paired with a respect for consumer choice. I will end by saying, I hope the voice of your community matters and you take their concerns seriously about this issue.

Mahalo,

A considered community member.

HB-476-HD-3

Submitted on: 3/17/2021 9:18:33 AM

Testimony for HTH on 3/19/2021 9:30:00 AM

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

Comments:

Taxing E-cigarettes will make them a lot more expensive than traditional cigarettes. This will drive people to go back to using combustible tobacco, which will be even more detrimental to the health of the users.

HB-476-HD-3

Submitted on: 3/17/2021 10:47:45 AM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Blaine K	Individual	Oppose	No

Comments:

I oppose this bill.

HB-476-HD-3

Submitted on: 3/17/2021 11:39:16 AM

Testimony for HTH on 3/19/2021 9:30:00 AM

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

Comments:

I oppose this bill.

HB-476-HD-3

Submitted on: 3/17/2021 11:40:17 AM

Testimony for HTH on 3/19/2021 9:30:00 AM

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

Comments:

Hello,

I highly Oppose this Bill. Many small businesses will go out of business and this will cause people to move out of Hawaii because the cost of living is ridiculous and we can't find jobs to support out family.

HB-476-HD-3

Submitted on: 3/17/2021 11:50:44 AM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
PAUL LACUESTA	Individual	Oppose	No

Comments:

HB-476-HD-3

Submitted on: 3/17/2021 1:06:38 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
naea oda	Individual	Oppose	No

Comments:

vaping is a better option for me than smoking cigarettes

HB-476-HD-3

Submitted on: 3/17/2021 2:56:58 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
VALENTINO MIRANDA-KEPA	Individual	Oppose	No

Comments:

Aloha,

Please Oppose bill HB476. We do not need a Tax Increase for Vaping I feel if the State put forward a Strict Possession Law for Under Age for Tobacco or Vape products that will hinder under age use. Do not punish law abiding Adults for an under age epidemic.

Thanks

Valentino Miranda-kepa

HB-476-HD-3

Submitted on: 3/17/2021 2:57:59 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
ASHLEY MATTOS	Individual	Oppose	No

Comments:

I strongly oppose this bill!

HB-476-HD-3

Submitted on: 3/17/2021 2:59:04 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
tania faris	Individual	Oppose	No

Comments:

Aloha,

Please Oppose bill HB476. We do not need a Tax Increase for Vaping I feel if the State put forward a Strict Possession Law for Under Age for Tobacco or Vape products that will hinder under age use. Do not punish law abiding Adults for an under age epidemic.

Thanks

HB-476-HD-3

Submitted on: 3/17/2021 2:59:35 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Naomi Muronaka	Individual	Oppose	No

Comments:

I oppose

HB-476-HD-3

Submitted on: 3/17/2021 3:03:44 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Randi D	Individual	Oppose	No

Comments:

Aloha,

Please Oppose bill HB476. We do not need a Tax Increase for Vaping I feel if the State put forward a Strict Possession Law for Under Age for Tobacco or Vape products that will hinder under age use. Do not punish law abiding Adults for an under age epidemic.

Thanks

HB-476-HD-3

Submitted on: 3/17/2021 3:05:33 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jonah K Manuel	Individual	Oppose	No

Comments:

Aloha,

Please Oppose bill HB476. We do not need a Tax Increase for Vaping I feel if the State put forward a Strict Possession Law for Under Age for Tobacco or Vape products that will hinder under age use. Do not punish law abiding Adults for an under age epidemic.

Thanks

HB-476-HD-3

Submitted on: 3/17/2021 3:13:11 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Venessa Viernes	Individual	Oppose	No

Comments:

I quit smoking, vaping has made me stop. So I oppose this bill to screw up vaping ability, I no like smoke cigarettes any more. Hawaii is taxed so much already, Is this the way of democracy? taxing me up the yin yang

HB-476-HD-3

Submitted on: 3/17/2021 3:19:42 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Linda Weiner	Individual	Oppose	No

Comments:

I am writing in regards to the E-cigarette Tax HB 476 that requires licensing and permitting of e-cigarette wholesalers and retailers, and imposes a 50% tax on modified risk tobacco products as well as a tax on cartridges. I am urging that the House impose a 75% tax on the wholesale price of all so-called modified risk tobacco products, the same as regular tobacco products. Electronic tobacco products have a concentrated nicotine amount, similar to smoking multiple cigarettes. This predisposes the user to become addicted to the nicotine content. Medical research has demonstrated that e-cigarettes are actually a gateway to regular cigarette smoking, due to the nicotine addiction. In addition, e-cigarettes are associated with severe lung disease, and even death (EVALI) in young users. The goal is to prevent young people from becoming users of electronic tobacco products, for which high taxation would be a disincentive. There is no reason to tax electronic tobacco products at a lower rate than regular tobacco products.

Linda Weiner, MD

Pediatrics

Kalaheo, Kauai

HB-476-HD-3

Submitted on: 3/17/2021 3:27:07 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Darren Gamayo Jr	Individual	Oppose	No

Comments:

i do not agree on this bill oppose oppose oppose

HB-476-HD-3

Submitted on: 3/17/2021 4:38:51 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jenny Chan	Individual	Oppose	No

Comments:

HB476 is an unfair ripoff.

HB-476-HD-3

Submitted on: 3/17/2021 5:32:08 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tj Robinson	Individual	Oppose	No

Comments:

Please don't tax anymore! This is better for me and the environment as cigarettes pollute the ocean with cigarette butts and have abad smell. Vape no pollute the oceans and they smell good

HB-476-HD-3

Submitted on: 3/17/2021 8:47:55 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mikhaila Millikan	Individual	Oppose	No

Comments:

Adding taxes to these products will make them less accessible to those in the community seeking alternatives to conventional cigarettes. It will also encourage underground markets to open up which could bring unregulated products into the community, putting the health of the very people you are trying to protect at risk.

HB-476-HD-3

Submitted on: 3/17/2021 9:08:15 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

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

Comments:

Do not favor.

HB-476-HD-3

Submitted on: 3/18/2021 12:39:35 AM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Bryan Mih	Individual	Oppose	No

Comments:

Dear Representatives:

As a pediatrician and medical director of the Kapi'olani Smokefree Families Program, I would like to comment on this bill.

Electronic smoking devices are used in a similar manner as cigarettes, yet are not taxed as such. The American Academy of Pediatrics strongly supports regulation and taxation of electronic smoking devices to prevent initiation of use, especially by young people.

Hawaii has one of the highest rates of middle schoolers (16%) and high schoolers (26%) currently using e-cigarettes—it is twice the national average. Nicotine is a highly addictive drug that impacts the adolescent brain, reducing impulse control and affecting mood. Those who use e-cigarettes are four times more likely to smoke regular cigarettes later on. The e-cigarette industry claims these are cessation devices, but a recent study has shown that even if one adult can quit with these devices, the trade-off is 81 young people who will start the habit in their place. This is completely unacceptable.

Once young people are addicted to nicotine, it is extremely difficult to quit. By appropriately regulating and taxing these products, we have the chance to improve the health of many, especially of our keiki.

All electronic smoking devices and their components should be subject to a tobacco tax, and at a tax rate that is on par with other tobacco products. Please close the loophole for electronic smoking devices and any modified-risk tobacco products, as all tobacco products pose harm to health.

Mahalo for your consideration.

Sincerely,

Bryan Mih, MD, MPH, FAAP

Pediatrician

To whom it may concern,

I am opposing the current bill (HB476 HD3) that will destroy the vaping industry here in Hawaii and put hundreds of people out of jobs. Our goal for public health is to have people quit smoking traditional tobacco cigarette which is the #1 cause of cancer here in America.

Yet our own Government demonize this new technology which has helped millions of Americans make the switch and drastically improving their health. If this bill were to pass, the industry will be dead, business will go out and people will go back to smoking traditional tobacco cigarettes.

The government already has in place a strict guideline vape shops must follow, or heavy fines will be applied or even jail time. Yet they are somehow made the enemy of public health. Meanwhile flavored alcohol can be advertised online/TV Commercials/Super Bowl and sold in supermarkets.

I implore you to take your time and review these bills that could possibly destroy something that in my opinion, a PUBLIC HEALTH MIRACLE. Especially at a time when the PANDEMIC is still killing thousands of people and putting thousands of others out of jobs.

Vinh Tran,

Resident of Honolulu, Hawaii.

HB-476-HD-3

Submitted on: 3/18/2021 8:02:14 AM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Maher	Individual	Oppose	No

Comments:

I strongly disagree with passage of HB476 HD3

HB-476-HD-3

Submitted on: 3/18/2021 8:04:10 AM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
HANALEI BENN	Individual	Oppose	No

Comments:

We don't need anymore laws!

In place the laws we already have instead of taking and spending our hard working tax money.

Focus on the laws that are already in place.

HB-476-HD-3

Submitted on: 3/18/2021 8:10:34 AM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
dillon rellez	Individual	Oppose	No

Comments:

I'm tired of opposing these bills that don't even matter. We shouldn't have to pay more taxes on something that's safe and helps people quit smoking.

Aloha and mahalo for the opportunity to submit testimony. I oppose the reduced tobacco tax on modified risk tobacco products. There is no reason to lower the tax rate or reduce regulations on any tobacco products, including modified risk tobacco products, as all tobacco products pose some harm to health. While I support the intent of the bill in taxing electronic smoking devices as a tobacco tax, I support tax parity and request a tax rate that is on par with other tobacco products (70% wholesale price). The original language of HB 598 would accomplish this. Thank you again for this opportunity to submit testimony and oppose HB476, HD3 (E-Cigarette Tax + Tax Reduction for Modified Risk Tobacco Products).

HB-476-HD-3

Submitted on: 3/18/2021 8:25:35 AM

Testimony for HTH on 3/19/2021 9:30:00 AM

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

Comments:

I oppose this bill.

HB-476-HD-3

Submitted on: 3/18/2021 8:54:30 AM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rob Shapiro	Individual	Oppose	No

Comments:

As an ex-smoker who was able to quit by using e-cigs, **I completely oppose this bill as it punishes me for doing something that society wants me to do, namely quit smoking!**



ALOHACARE

LATE

To: The Honorable Senator Jarrett Keohokalole, Chair
The Honorable Senator Rosalyn Baker, Vice-Chair
Committee on Health

The Honorable Senator Rosalyn Baker, Chair
The Honorable Senator Stanley Chang, Vice-Chair
Committee on Commerce and Consumer Protection

From: Trish La Chica, Community and Government Relations Manager, External Affairs

Hrg: March 19, 2021 at 9:30am, Room 229/Zoom

RE: **HB476 HD3, Relating to Taxation – Oppose**

AlohaCare appreciates the opportunity to testify in opposition to **HB476 HD3**, which has been amended to establish a tax on modified risk tobacco products and e-liquids and would require licensing and permitting for electronic smoking devices (ESDs). AlohaCare is concerned with the different tax levels on e-cigarettes and carving out a definition for modified risk tobacco products (MRTPs) while reducing the tax on these products by 50% as of HD3.

Founded in 1994, AlohaCare is a community-rooted, non-profit health plan serving 73,000 Medicaid and dual-eligible health plan members on all islands. Our mission is to serve individuals and communities in the true spirit of aloha by ensuring and advocating access to quality health care for all. We believe that health is about supporting whole-person care, including access to housing and food security, to build a stronger, healthier Hawaii.

AlohaCare is concerned with the addition of modified risk tobacco products which were not originally addressed in HB476. While we appreciate the Legislature's intent to tax these products, it is important to note that despite being designated as "modified risk", that these products are still not safe, and that there's still a level of risk with all tobacco products. Carving out a separate definition with different policies generates confusion with the public.

AlohaCare believes that the proposal to tax electronic smoking devices and MRTPs differently will not create tax parity between e-cigarettes and other tobacco products. AlohaCare respectfully requests that the existing tax rate of 70% on wholesale products be applied to all electronic smoking devices and e-liquids as it is important to treat all ESDs and e-liquids as tobacco products for the protection of public health. Increasing prices through taxation is a proven strategy to reduce consumption and initiation of tobacco products.

We are grateful to the Committee for hearing HB476 HD3 and the opportunity to testify.

TESTIMONY BEFORE THE SENATE COMMITTEE ON HEALTH and THE
COMMITTEE ON COMMERCE & CONSUMER PROTECTION

RE: HB 476, HD3 – RELATING TO TAXATION

FRIDAY, MARCH 19, 2021

MITZIE HIGA, LEGISLATIVE CHAIR
DEMOCRATIC PARTY OF HAWAII LABOR CAUCUS



Chair Keohokalole, Chair Baker, and Members of the Committees:

The Democratic Party of Hawaii Labor Caucus **supports HB 476, HD3**, relating to taxation, **with suggested amendments**. This bill imposes an excise tax of fifty percent of the otherwise applicable tax under section 245-3, HRS, on every wholesaler for each modified risk tobacco product sold, used, or possessed by a wholesaler. Defines modified risk tobacco product. Establishes taxation of e-liquids used in electronic smoking devices. Requires wholesalers and dealers to be licensed. Requires retailers of tobacco and e-liquids to obtain permits. Effective 7/1/2060. (HD3)

We recommend amending the language by including the broader definition of “electronic smoking devices” to avoid potential loopholes.

We also recommend amending this bill to create policy parity between electronic smoking devices and other tobacco products through the Other Tobacco Product (OTP) tax, which is 70% of the wholesale price.

The electronic cigarette/vaping industry has gone largely unregulated for far too long and has therefore been able to market their products both directly and indirectly to our youth, **while also not allowing the state to collect the appropriate taxes as they do with other tobacco products. It is time that our state regulates the e-cigarette/vaping industry to be on par with the regulation of traditional tobacco products.** As such, we should align taxation of electronic smoking device products to that of other tobacco products. Because taxation of tobacco products is a proven strategy to reduce usage among youth, this bill would also help to deter children from not only trying e-cigarettes but also from becoming habitual users of these products.

Furthermore, the allocation of a portion of excise tax funds to go towards health education, prevention, and nicotine cessation programs extends protections for our youth and goes hand in hand with the regulations outlined in this bill as well as a portion of the collections going to our state’s general fund to shore up our lost revenue as a state.

Because the state should be collecting taxes in line with other tobacco products for electronic smoking devices, vaping, and e-liquids, we respectfully ask you to support this bill.



1050 Bishop St. PMB 235 | Honolulu, HI 96813
P: 808-533-1292 | e: info@hawaiiifood.com

Executive Officers

Joe Carter, Coca-Cola Bottling of Hawaii, *Chair*
Charlie Gustafson, Tamura Super Market, *Vice Chair*
Eddie Asato, The Pint Size Corp., *Secretary/Treas.*
Lauren Zirbel, HFIA, *Executive Director*
John Schlif, Rainbow Sales and Marketing, *Advisor*
Stan Brown, Acosta Sales & Marketing, *Advisor*
Paul Kosasa, ABC Stores, *Advisor*
Derek Kurisu, KTA Superstores, *Advisor*
Beau Oshiro, C&S Wholesale Grocers, *Advisor*
Toby Taniguchi, KTA Superstores, *Advisor*

TO:

Committee on Health and Committee on Commerce and Consumer Protection
Senator Jarrett Keohokalole and Senator Rosalyn H. Baker, Chairs
Senator Rosalyn H. Baker and Senator Stanley Chang, Vice Chairs

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

LATE

DATE: March 19, 2021
TIME: 9:30am
PLACE: Via Videoconference

RE: HB476 HD3 Relating to Taxation

Position: Oppose

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.

HFIA is in opposition to imposing an excise tax of fifty percent of the otherwise applicable tax under section 245-3, HRS, on every wholesaler for each modified risk tobacco product sold, used, or possessed by a wholesaler. The measure does not provide a justification or reasoning behind this very high tax rate for these products. Thank you for the opportunity to testify.



March 18, 2020

To:

Senator Jarrett Keohokalole, Chair
Senator Rosalyn H. Baker, Vice Chair

LATE

From: Scott Rasak, VOLCANO Vape Shops
Chief Operating Officer

RE HB476 HSCR 141– oppose.

Thank you for the opportunity to submit testimony.

VOLCANO 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 80 full-time workers to support sales of our products not only here in Hawaii, but to most USA states as well as over 30 International countries. We stand in opposition to HB476 for the following:

- Most recently, the FDA has issued updated guidance on vapor products which limit a flavor restriction to prefilled pods such as the Juul device which has been proven in the recent CDC Youth Tobacco Risk Survey to be the #1 brand choice for youth usage. This is a measured approach to an issue The FDA purposefully left the “open tank” market off their guidance for flavor restrictions because they want to keep the adult users and industry participants insulated from a blanket ban that would send adults back to cigarettes and put 15,000 small businesses out of business & 100,000 people out of work nationally.
- Vapor products and e-liquids contain NO tobacco, often times contain NO nicotine, and ultimately emit NO smoke when vaporized; yet HB476 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.
- HB476 states in its justification that the bill and its regulations are needed to curb youth usage. However, it fails to mention the latest available CDC report that shows youth use of all tobacco products, including e-cigarettes are at the lowest levels ever. Furthermore, a study done the following year at the University of Michigan found that the majority of youth who have reported using e-cigarettes are not using e-liquids that contain nicotine - further suggesting that youth who do use ecigarettes are doing so to replace the use of traditional tobacco.
o <https://www.cdc.gov/media/releases/2017/p0615-youth-tobacco.html>
- 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
o http://www.journalnow.com/business/business_news/local/cdc-report-shows-moresmokers-try-to-quit-with-e/article_a33383f3-5300-5178-9f14-28b52884c45c.html



- A recent study published by the New England Journal of Medicine concluded that ECigarettes are twice as effective for smoking cessation than traditional nicotine replacement therapy products which are not taxed or controlled the same way this bill proposes to tax and control E-Cigarettes. The state should be creating easier access for these products, not tighter regulations that steers vapers back towards tobacco cigarettes

- o <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.

- o <http://www.washingtonexaminer.com/landmark-e-cigarette-report-explodes-myththat-vaping-is-as-toxic-as-smoking/article/2646804>

- o http://nationalacademies.org/hmd/reports/2018/public-health-consequences-of-ecigarettes.aspx?utm_source=Hootsuite&utm_medium=Dashboard&utm_campaign=SentviaHootsuite

- Vapor Products are not the same as tobacco products, and thus, should not be regulated in the same fashion. Vapor products have not been demonstrated to have the same detrimental effects of combustible tobacco products and have otherwise been shown in recent studies to be as much as 95% less toxic than traditional Cigarettes. Creating extraneous regulations that aim to limit access only serves to protect deadly tobacco markets.

- o https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/457102/Ecigarettes_an_evidence_update_A_report_commissioned_by_Public_Health_England_FINAL.pdf

- HB476 justification states that without taxing vapor products, "smokers may be tempted to purchase less expensive products such as e-liquid". This is false. Virtually all e-cigarette starter kits and bottles of e-liquid are already higher priced in comparison to tobacco cigarettes.

- 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.

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,



VOLCANO®

Scott Rasak
Chief Operating Officer
VOLCANO Vape Shops
197 Sand Island Access Rd. #213
Honolulu, HI 96819
scott@volcanoecigs.com

LATE

HB-476-HD-3

Submitted on: 3/18/2021 4:41:14 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

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

Comments:

We are opposed to this bill because it is harmful to business and to civil liberties. Bills such as hb476 are purely special interest in nature and don't reflect the needs of normal citizens. Furthermore this needless tax will only cause a drop in sales because of the internet.

LATE

HB-476-HD-3

Submitted on: 3/18/2021 10:20:53 AM
Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Brandon Babauta	Individual	Oppose	No

Comments:

As a citizen and caper I am opposed this bill.It is not only detrimental to businesses but consumers as well.The health risk of having people reverting back to traditional tobacco products is very great!

LATE

HB-476-HD-3

Submitted on: 3/18/2021 10:41:35 AM
Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jess Lovely	Individual	Oppose	No

Comments:

I'm not really sure if taxing vapor products is a viable option for generating revenue for balancing the budget deficit in Hawaii. If the State wants to generate more revenue just raise the excise tax by 2%. Our local sales tax is less than half of the rest of the country. The State could generate unreal amounts of money on both tourists and locals.

LATE

HB-476-HD-3

Submitted on: 3/18/2021 1:58:58 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Linda D Roberts	Individual	Oppose	No

Comments:

I oppose any position by the Hawaii State Legislature that imposes taxes in an attempt to control an adult Citizen's rights and freedoms due to the person feelings of an elected Legislator.

LATE

HB-476-HD-3

Submitted on: 3/18/2021 2:45:12 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lucky Robinson	Individual	Oppose	No

Comments:

Please do not impose additional excise taxes on wholesalers of these products this will help to provide additional resources to help the people of the island. Especially, if they are already licensed and following the rules and regulations of the state.

LATE

HB-476-HD-3

Submitted on: 3/18/2021 5:00:49 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

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

Comments:

.

LATE

HB-476-HD-3

Submitted on: 3/18/2021 5:58:35 PM
Testimony for HTH on 3/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
David McCann	Individual	Oppose	No

Comments:

No bans, no new taxes, and no tax hikes.

LATE

HB-476-HD-3

Submitted on: 3/18/2021 6:57:12 PM

Testimony for HTH on 3/19/2021 9:30:00 AM

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

Comments:

I love to smoke, I love to vape, and I love to vote.

LATE

HB-476-HD-3

Submitted on: 3/18/2021 7:05:49 PM
Testimony for HTH on 3/19/2021 9:30:00 AM

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

Comments:

Don't raise my taxes.