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**STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE**

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EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY

TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
ON
HOUSE BILL NO. 826, H.D. 1

**February 17, 2021
2:00 p.m.
Room 329**

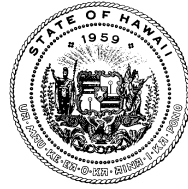
RELATING TO ELETRONIC SMOKING DEVICES

The Department of Budget and Finance (B&F) offers comments on House Bill (H.B.) No. 826, H.D. 1.

H.B. No. 826, H.D. 1, amends Chapter 28, HRS, to: rename the Electronic Smoking Device Retailer Registration Unit to the Electronic Smoking Device Retailer Registration and Enforcement Unit (ESDRREU) within the Department of the Attorney General (AG); expand the scope of the ESDRREU to include the enforcement of compliance of any electronic smoking device with the Federal Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act and its regulations; establish the ESDRREU Special Fund, to be administered by the AG, into which all moneys collected for violations of electronic smoking device compliance shall be deposited; expand the purposes for which moneys in the Tobacco Enforcement Special Fund can be used to include enforcement of Chapter 28, HRS; and amend the fine amounts for first and subsequent offenses to undetermined amounts.

As a matter of general policy, B&F does not support the creation of any special fund, which does not meet the requirements of Section 37-52.3, HRS. Special funds should: 1) serve a need as demonstrated by the purpose, scope of work and an explanation why the program cannot be implemented successfully under the general fund appropriation process; 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue; 3) provide an appropriate means of financing for the program or activity; and 4) demonstrate the capacity to be financially self-sustaining. Regarding H.B. No. 826, H.D. 1, it is difficult to determine whether the proposed special fund would be self-sustaining.

Thank you for your consideration of our comments.



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

Testimony in OPPOSITION to H.B. 826, H.D. 1
RELATING TO ELECTRONIC SMOKING DEVICES

REPRESENTATIVE AARON LING JOHANSON, CHAIR
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Hearing Date: 2/17/2021

Room Number: Videoconference

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

3 **Department Testimony:** The DOH opposes House Bill 826, House Draft 1 (H.B. 826, H.D. 1)
4 in respect to protecting children and youth in Hawaii. From 2017 to 2019, high school electronic
5 smoking devices (ESDs) or e-cigarette use increased from 25% to 31%.¹ The U.S. Federal Drug
6 Administration's (FDA) rulemaking, enforcement, and scientific review process has not been
7 sufficiently expeditious to protect keiki in Hawaii from the proliferation and marketing of
8 e-cigarette products. The preamble of H.B. 826 correctly states the current situation that
9 products on the market have submitted applications, and not yet received thorough scientific
10 review by the FDA to receive authorization and are in a status known as premarket authorization.
11 Also, in the introduction is that while the U.S. Postal Office will be promulgating rules for parity
12 to include ESDs in the prohibition of mailing cigarettes, private package services may continue
13 delivering ESDs.

14 In regard to Section 4, tobacco purchase and possession penalties for youth are not
15 strategies recommended by public health authorities. Youth penalties shift responsibility away
16 from the tobacco industry and onto young consumers.² Such laws stigmatize youth who smoke,

¹ Centers for Disease Control and Prevention, Youth Risk Behavior Survey, Hawaii Results 2017 to 2019.

² ChangeLab Solutions. PUP in Smoke: Why youth tobacco possession and use penalties are ineffective and inequitable. Fact Sheet retrieved January 31, 2020 from <https://www.changelabsolutions.org/product/pup-smoke>

1 whereas the tobacco industry spends millions of dollars deliberately targeting them via
2 promotion and advertising.³ Psychologists have found that punishment is not an optimal strategy
3 for behavior change, and even less effective for addictive behaviors.⁴ Penalties
4 disproportionately affect low-income communities, youth of color, LGBT youth, youth with
5 disabilities, and boys.⁵ Instead, policies that place responsibility on retailers, youth cessation and
6 education programs, and other tobacco product regulations (e.g., price and flavor restrictions) are
7 proven to be more effective.⁶

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

9 **Offered Amendments:** None

³ Ibid.

⁴ Volkow ND, Baler RD, Goldstein RZ. Addiction: pulling at the neural threads of social behaviors. *Neuron*. 2011;69(4):599-602.

⁵ ChangeLab Solutions. PUP in Smoke: Why youth tobacco possession and use penalties are ineffective and inequitable. Fact Sheet retrieved January 31, 2020 from <https://www.changelabsolutions.org/product/pup-smoke>

⁶ Ibid.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

H.B. NO. 826, H.D. 1, RELATING TO ELECTRONIC SMOKING DEVICES.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Wednesday, February 17, 2021 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Via Videoconference, Room 329

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

Chair Johanson and Members of the Committee:

The Department of the Attorney General (Department) opposes sections 2 and 5 of this bill and provides the following comments.

The bill seeks to better regulate electronic smoking devices by amending:

(1) section 28-15, Hawaii Revised Statutes (HRS), to expand the purposes for which moneys in the tobacco enforcement special fund may be used to include all functions of the Department (section 2, page 3, line 20, to page 4, line 17); (2) section 28-166, HRS, to require the ESDRR Unit to enforce “compliance of any electronic smoking device with the Federal Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act and its regulations,” by endowing the electronic smoking device retailer registration unit (the ESDRR Unit) with the “powers necessary for the enforcement of compliance, including but not limited to inspection warrants, search warrants, warning letters, seizure and disposal, injunction, and criminal prosecution and fines” (section 5, page 6, line 4 to line 10); (3) section 28-166, HRS, to establish a new special fund for moneys collected for violations of electronic smoking device compliance, which could be used to support ESDRR operating expenses (section 5, page 6, line 13 to line 20); and (4) section 712-1258(6), HRS, to adjust the fines for persons under twenty-one years of age who purchase or possess electronic smoking devices or tobacco products (section 6, page 7, line 5, line 7 and line 9). The Department suggests adding the word “of” after the word “fine” in page 7,

line 5 for grammatical purposes.

The Department supports the fight against the vaping epidemic among Hawaii's youth and is committed to fulfilling its statutory responsibilities relating to electronic smoking device compliance. However, we note that the expanded use of tobacco funds as well as the creation of Department enforcement authority in sections 2 and 5 of this bill could be deemed contrary to the obligations established by the 1998 Tobacco Master Settlement Agreement (MSA) and in turn jeopardize Hawaii's receipt of millions in tobacco fund moneys.

The tobacco enforcement special fund was created in 2001 via section 28-15, HRS, after Hawaii became a signatory to the MSA. Section 28-15 specifies that the moneys in the fund are to be used "for administering, operating, monitoring, and ensuring compliance with and enforcement" of the MSA, as well as chapter 675, HRS (the Tobacco Liability Act), chapter 486P, HRS (Tobacco Products Reporting), chapter 245 (Cigarette Tax and Tobacco Tax Law), and other statutes or programs relating to the enumerated chapters. The Department's tobacco enforcement unit, created shortly after the MSA was signed, is a team of investigators, attorneys and staff funded by the tobacco enforcement special fund and tasked with enforcement of the MSA and Hawaii laws related to the MSA as set forth in section 28-15(b), HRS.

To expand the use of the tobacco enforcement special fund to all Department functions, as opposed to only matters relating to the MSA and other laws relating to tobacco regulation, could put Hawaii at risk of being found non-diligent under the terms of the MSA. Any state found non-diligent faces the loss of all or a portion of its annual MSA payments. Hawaii, for example, could face the loss of over half of its expected annual MSA payment, if found non-diligent. As an example, although Hawaii is settled for 2021, the amount at risk if Hawaii were to be found non-diligent in 2021 could have been nearly \$20,000,000. Pennsylvania was found to be non-diligent in the most recent completed MSA arbitration and lost over \$116 million of its expected annual MSA payment. The section 2 amendment would expand the use of tobacco enforcement money to purposes that would likely be deemed contrary to the purposes dictated by the MSA and could therefore jeopardize millions in Hawaii's MSA payments.

Section 5 changes the responsibilities of the ESDRR Unit from registration only to include enforcement of federal laws relating to electronic smoking device regulation and creates a special fund into which all moneys collected pursuant to such enforcement will be deposited. However, these amendments of sections 28-161 and 28-166, HRS, fail to clarify how the ESDRR Unit will conduct such enforcement. Section 5 does not specify the authority by which state agents will enforce federal law so it is not clear whether these enforcement actions must be prosecuted in federal court or which specific federal crimes or violations the ESDRR Unit would be enforcing. This section also fails to clarify how enforcement of federal statutes could result in penalties deposited in the new state special fund. Further, there is no appropriation provision that would enable the Department to spend any funds from the new special fund.

Even if the above concerns could be addressed, there are no provisions for additional positions and resources to enable the Department to take on the added powers and responsibilities to enforce electronic smoking device compliance. Because the ESDRR Unit is already responsible for enforcing the State's tobacco and cigarette laws as required by the MSA, the Department would need additional resources to take on the responsibilities required by this bill.

For the reasons articulated above, the Department respectfully suggests the deletion of sections 2 and 5 of this bill.

Thank you for the opportunity to provide comments.

HB-826-HD-1

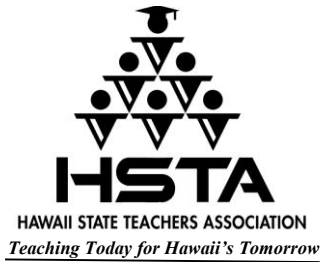
Submitted on: 2/17/2021 1:38:30 PM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Stacey	Attorney General	Oppose	No

Comments:

I am available for comments.



Corey Rosenlee
President

Osa Tui, Jr.
Vice President

Logan Okita
Secretary-Treasurer

Wilbert Holck
Executive Director

TESTIMONY BEFORE THE HOUSE COMMITTEE ON CONSUMER
PROTECTION & COMMERCE

RE: HB 826, HD1 - RELATING TO ELECTRONIC SMOKING DEVICES

WEDNESDAY, FEBRUARY 17, 2021

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Johanson and Members of the Committee:

The Hawaii State Teachers Association **supports** **HB 826, HD1**, relating to electronic smoking devices, **with suggested amendments**. This bill expands the purposes for which moneys in the tobacco enforcement special fund may be used to include all functions of the department of the attorney general. Renames the electronic smoking device retailer registration unit the electronic smoking device retailer registration and enforcement unit. Expands the scope of the unit to include enforcement of compliance of electronic smoking devices with the Federal Food, Drug, and Cosmetic Act. Establishes a special fund for moneys received from enforcement actions. Amends the fine amount for persons under twenty-one years of age who purchase or possess tobacco products or electronic smoking devices. Effective 07/01/2060. (HD1)

The Hawaii State Teachers Association supports not only taxing vaping products in the same way that other tobacco products are taxed and regulated, but we also support an amendment to ban flavored vaping products as well. HSTA opposes any increase of fines for youth in this bill, as we feel they are the victims in this case. It is the predatory tactics of the vaping industry on our youth that need to be regulated and taxed. So please do NOT add any fines or punishment on our youth who are the victims here. **Imposing fines on our youth is not what works to prevent youth vaping; however, raising the price point through taxes and banning flavors does work to reduce youth use.**

In September 2009, the FDA banned flavored cigarettes. The ban was intended to end the sale of tobacco products with chocolate, vanilla, clove and other flavorings that lure children and teenagers into smoking. According to Dr. Margaret A. Hamburg, commissioner of food and drugs for the FDA

from 2009 – 2015 “flavored cigarettes are a gateway for many children and young adults to become regular smokers.” **Nevertheless, here we are in 2021 with a proliferation of flavored tobacco in the form of e-liquids luring our children into becoming lifelong and habitual nicotine users.**

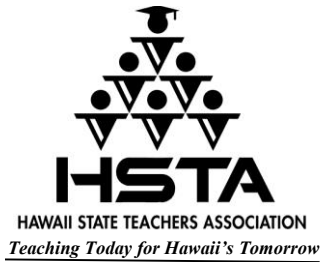
The use of e-smoking products among youth is at epidemic levels. According to data from the Centers for Disease Control and Prevention and the Food and Drug Administration’s National Youth Tobacco Survey, **the percentage of high school-age children reporting past 30-day use of e-cigarettes rose by more than 75 percent between 2017 and 2018. Use among middle school-age children also increased nearly 50 percent.** Furthermore, 1 in 5 high school students reported using e-cigarettes in the past month according to the Surgeon General. **Locally, Hawaii’s 2017 Youth Risk Behavior Survey revealed that over 42% of Hawaii high school students have tried using electronic smoking devices and over 25% of Hawaii high school students indicated that they are regular users. Our schools are seeing a rise in cases of e-cig use even in our elementary schools now.**

Adolescence is a time of crucial brain development; it has been documented that nicotine exposure during adolescence and young adulthood can cause addiction and harm the developing brain. Additionally, nicotine is not the only harmful ingredient in electronic smoking devices; other harmful and potentially harmful ingredients include ultrafine particles that can be inhaled deep into the lungs, flavorants such as diacetyl, a chemical linked to serious lung disease, volatile organic compounds, and heavy metals such as nickel, tin, and lead.

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/vaping 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.

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.

Furthermore, the allocation of a portion of excise tax funds to go towards trauma system special fund, community health centers special fund, and emergency medical services special fund thus extending protections for our youth and goes hand in hand



Corey Rosenlee
President

Osa Tui, Jr.
Vice President

Logan Okita
Secretary-Treasurer

Wilbert Holck
Executive Director

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, with our suggested amendments.**



**American
Heart
Association.**

American Heart Association testimony in OPPOSITION to HB 826, “Relating to Electronic Smoking Devices”

The American Heart Association opposes HB 826.

One of the stated purposes of the bill is to:

“Curb the use of electronic smoking devices and tobacco products by amending the fine amounts for persons under twenty-one years of age who purchase or possess such devices or products.

Laws that penalize underage youth for purchase, use or possession (PUP) of tobacco products are ineffective in reducing underage tobacco use, difficult to enforce and raise the possibility of selective enforcement against young people of color. The tobacco industry has targeted youths for decades, seeking to create new generations of addicted customers. Instead of holding the industry and the retailers accountable, PUP laws shift the responsibility to their victims – young customers who are purchasing and using a deadly and highly addictive product.

Additionally, PUP laws are unlikely to reduce youth initiation and smoking prevalence at the population level. They are also inequitable because they disproportionately affect youth of color, LGBT youth, youth with disabilities and boys who are more likely to smoke and vape because they have been targeted via advertising and retailer placement by the tobacco industry.

Primary enforcement should focus on retailer compliance with not selling to minors rather than on illegal purchases or youth possession. Research has shown that there is differential enforcement of tobacco purchasing laws based on race. One of the reasons that the tobacco industry focuses on criminalizing youthful purchasers of tobacco is to make it difficult or impossible to research and monitor merchant compliance programs. Criminalizing youthful purchases may also help shield tobacco producers from civil liability claims.

Best practices for limiting youth access to tobacco products include having an articulated plan for retailer enforcement, giving enforcement responsibility to a single agency (in Hawaii, the Department of Taxation has a successful record of enforcing illegal sales of traditional tobacco products to minors that has reduced Hawaii’s youth smoking rates to record low levels), conducting ongoing compliance checks and inspections, allocating funding for enforcement inspections, prosecuting violators, setting high penalties for violations, and practicing effective merchant education. Comprehensive tobacco retailer licensing (TRL) policies, with appropriate funding and enforcement, have proven to be more effective than PUP laws in reducing youth initiation and ongoing tobacco use.

Mahalo for this opportunity to provide testimony on HB 826.

Respectfully submitted,

Chairman of the Board

Glen Kaneshige

President

Michael Lui, MD

Board Members

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Jackie De Luz

Brandt Farias

Jason Fujita

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“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.

Donald B. Weisman
Government Relations/Communications Director



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Kaiser Permanente*

*Catherine Taschner, JD
McCorriston Miller Mukai
MacKinnon LLP*

Date: February 15, 2021

To: Representative Aaron Ling Johanson, Chair
Representative Lisa Kitagawa, Vice Chair
Members of the Consumer Protection & Commerce Committee

Re: Opposition to HB 826, HD1, Relating to Electronic Smoking
Devices

Hrg: February 17, 2021 at 2:00 PM via Videoconference

The Coalition for a Tobacco-Free Hawai'i, a program of the Hawai'i Public Health Instituteⁱ **opposes HB 826, HD1**, which would expand the Electronic Smoking Device Registration Unit with the Department of the Attorney General to enforce recent federal regulations on electronic smoking devices. The measure also includes unspecified fines on youth under the age of 21 for possession or purchase of tobacco products.

The Coalition opposes laws that focus on penalizing youth use and possession of tobacco products because they don't work and disproportionately hurt communities of color.

Possession of tobacco products by underage persons ("PUP") laws are a known tobacco industry tacticⁱⁱ that shift the blame away from the industry and onto the children who are victims of their aggressive marketing tactics. There are also equity concerns, as these laws disproportionately hurt youth of color or from low-income communities due to the industry's history of targeted advertising in these communities. Even worse, PUP laws are not effective on reducing underage tobacco use and divert policy attention from effective tobacco control strategies and reinforce the tobacco industry's position that parents or guardians are responsible for restricting minors' access to tobacco. Punishment may even deter addicted youth from seeking help to quitⁱⁱⁱ.

The Coalition supports the enforcement of recent federal e-cigarette regulations, but cautions that they are several years too late and do not go far enough to end the youth vaping epidemic.

In 2020, the federal government took much-needed action on e-cigarettes, but these long overdue regulations left loopholes that the tobacco industry can (and will) exploit.

In January 2020, the FDA cracked down on flavored cartridge-based e-cigarettes, popularized by Juul^{iv}. However, the rule exempted menthol,

one of the most popular flavors among youth, and disposable e-cigarettes quickly rose in popularity as the industry quickly adapted^v.

After years of delays, the deadline for the FDA's pre-market tobacco product applications came in September 2020. The deeming rule, which was finalized in 2016, gave FDA the authority to regulate electronic smoking devices as tobacco products^{vi}. With this rule, all electronic smoking devices would be need to submit a pre-market tobacco application (PMTA) in order to stay on the market. The FDA now has a year to review the PMTAs to ensure these tobacco products are "appropriate for the protection of public health." In the meantime, these products can remain on the market, despite the epidemic-levels of youth e-cigarette use driven by the abundance of kid-friendly flavors.

In the last few days of December 2020, Congress passed the "Preventing Online Sales of E-Cigarettes to Children Act." This legislation expands the 2009 Prevent All Cigarette Trafficking (PACT) Act to cover electronic smoking devices, thus requiring them to age verification by online retailers and private delivery companies, labels on packaging to indicate they contain tobacco products, and compliance with state and local tobacco taxes^{vii}. It also prohibits the shipment of electronic smoking devices through USPS, though there is an exemption for Hawai'i and Alaska to allow for intra-state shipping^{viii}. With this exemption, state action to restrict online sales to licensed wholesalers or retailers is both warranted and necessary to prevent youth from accessing these products online.

States have the authority and opportunity to enact regulations on electronic smoking devices that are more effective than youth penalties.

Instead of criminalizing our children, the focus should be on passing laws that are known to be effective at reducing tobacco use. For several years, the Hawai'i State legislature has considered numerous bills to regulate e-cigarettes, including taxation^{ix}, removing flavors from tobacco products^x, and restricting online sales to licensed tobacco retailers. These proven strategies reduce the appeal of and access to tobacco products by youth, as well as robust cessation and prevention education programs.

Thank you for the opportunity to provide testimony in **opposition to HB 826, HD1.**

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.

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- ⁱⁱ Wakefield M, Giovino G. Teen penalties for tobacco possession, use, and purchase: evidence and issues *Tobacco Control* 2003;12:i6-i13; via https://tobaccocontrol.bmj.com/content/12/suppl_1/i6.citation-tools
- ⁱⁱⁱ Hrywna, M, et al., "Content Analysis and Key Informant Interviews to Examine Community Response to the Purchase, Possession, and/or Use of Tobacco by Minors," *J Comm Health*, 29(3):209-216, 2004; Wakefield, M, and Giovino, G, "Teen penalties for tobacco possession, use, and purchase: evidence and issues," *Tobacco Control*, 12(Suppl 1):i6-i13, 2003; Loukas, A, et al., "Examining the Perspectives of Texas Minors Cited for Possession of Tobacco," *Health Promotion Practice*, 7(2):197-205, 2006.
- ^{iv} U.S. Food and Drug Administration. (2020, January 2). *FDA finalizes enforcement policy on unauthorized flavored cartridge-based e-cigarettes that appeal to children, including fruit and mint* [Press release]. Retrieved from <https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>.
- ^v Kaplan, S. (2020, June 2). Lawmakers Say Puff Bar Used Pandemic to Market to Teens. *The New York Times*. Retrieved from <https://www.nytimes.com/2020/06/02/health/puff-bar-teens.html>
- ^{vi} U.S. Food and Drug Administration. (2020, June 3). Retrieved from <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/fdas-deeming-regulations-e-cigarettes-cigars-and-all-other-tobacco-products>.
- ^{vii} Public Health Law Center. (2021, January 27). Deliver us from evil: E-cigarettes and the PACT Act. Retrieved from <https://www.publichealthlawcenter.org/webinar/deliver-us-evil-e-cigarettes-and-pact-act>.
- ^{viii} United States Postal Service. PACT Act Update: Priority Mail With Delivery Confirmation for Shipments to APO/FPO/DPO Addresses. Retrieved from <https://about.usps.com/postal-bulletin/2010/pb22292/html/kit.htm>
- ^{ix} Centers for Disease Control and Prevention. Response to increases in cigarette prices by race/ethnicity, income, and age groups-- United States, 1976-1993. *MMWR Morbidity and mortality weekly report*. 1998;47(29):605-609.
- ^x Rossheim, M. E., Livingston, M. D., Krall, J. R., Barnett, T. E., Thombs, D. L., McDonald, K. K., & Gimm, G. W. (2020). Cigarette Use Before and After the 2009 Flavored Cigarette Ban. *Journal of Adolescent Health*, 67(3), 432-437. <https://doi.org/10.1016/j.jadohealth.2020.06.022>

HB-826-HD-1

Submitted on: 2/16/2021 8:59:38 AM

Testimony for CPC on 2/17/2021 2:00:00 PM

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

Comments:

These vaping ban bills are only going to hurt the people of Hawaii. 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.



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

House Committee on Consumer Protection & Commerce
Representative Aaron Johanson, Chair
Representative Lisa Kitagawa, Vice Chair

Hearing Date: Wednesday, February 17, 2021

HB 826 HD1 – RELATING TO ELECTRONIC SMOKING DEVICES.

Cynthia Au, Grassroots Manager – Hawaii Pacific
American Cancer Society Cancer Action Network

Thank you for the opportunity to OPPOSE HB 826 HD1: RELATING TO ELECTRONIC SMOKING DEVICES on tobacco enforcement and amends the fine amount for persons under twenty-one years of age who purchase or possess tobacco products or electronic smoking devices.

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 opposes laws that focus on penalizing youth for the purchase, use, or possession (PUP) of tobacco products. PUP laws are not an effective approach to reducing youth tobacco use and inappropriately shift the blame for underage tobacco use from the tobacco industry and retailers. We recommend the removal of the youth penalties in section [§245-17] and recommend holding the tobacco industry and tobacco retailers accountable instead of punishing kids who have fallen victim to their predatory marketing tactics.

PUP laws unfairly punish youth, many of whom became addicted at a young age as a result of the tobacco industry's aggressive marketing to kids. As a result, PUP laws shift blame away from the industry's irresponsible marketing, to its victims. PUP laws also minimize the responsibility of the retailer. Instead of treating children as the wrongdoers, youth access laws should focus on limiting access to tobacco products. Rigorous enforcement of restrictions against sales to underage persons is critical to minimizing the accessibility of tobacco products and, ultimately, reducing youth tobacco use. The most successful youth access programs incorporate routine retailer compliance checks which use underage persons to attempt tobacco purchases.¹

¹ Campaign for Tobacco-Free Kids. "Youth Purchase, Use, Or Possession Laws Are Not Effective Tobacco Prevention"

Tobacco companies and their allies have a history of supporting PUP laws as alternatives to other laws that would produce greater declines in youth smoking. In focusing on youth penalties, enforcement resources can divert enforcement officials' attention from stopping retailers from illegally selling tobacco to kids. PUP laws are more difficult to systematically enforce than sanctions against retailers. It is easier and more effective to conduct compliance checks for retailers, who are fewer in number compared to youth and whose locations are both known and constant.²

Thank you for the opportunity to comment on this matter.

² Wakefield, M, and Giovino, G, "Teen penalties for tobacco possession, use, and purchase: evidence and issues," Tobacco Control, 12(Suppl 1):i6-i13, 2003.

Smoke-Free Alternatives Trade Association

1629 K Street NW
Suite 300
Washington, DC 20006



House of Representatives of Hawaii
COMMITTEE ON CONSUMER PROTECTION & COMMERCE
(Hearing Date February 17, 2021)
Position: Oppose

RE: H.B.826 Title: Electronic Smoking Devices; Tobacco Enforcement Special Fund; Electronic Smoking Device Retailer Registration and Enforcement Unit; Special Fund; Attorney General

Chairs Johanson and Kitagawa and members of the Committee on Consumer Protection & Commerce:

Thank you for the opportunity to submit testimony regarding House Bill 826 (HB826), AN ACT Expands the purposes for which money in the tobacco enforcement special fund may be used to include all functions of the department of the attorney general.

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.

HB826 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

Smoke-Free Alternatives Trade Association

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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.

HB826 seeks to address enforcement of products and alludes to the harms associated with vapor products. But the legislatures does not distinguish between smoking and vaping clearly. It is disingenuous that lawmakers would purport to protect public health yet restrict access or provide inaccurate information regarding safer products. Rather than restricting access to tobacco harm reduction products and flavored vapor products, lawmakers should encourage the use of e-cigarettes and work towards earmarking adequate funding for smoking education and prevention programs.

Smoking is the issue and we must not overlook this fact. Vaping has and continues to offer alternatives to traditional analog cigarettes and has been found to be less harmful by many organizations as well.

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>

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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.⁵⁶⁷

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.⁸

To address youth use of age-restricted products, as well as adult use of deadly combustible cigarettes, Hawaii must allocate additional funding from revenue generated from existing excise taxes and settlement payments. It should not seek additional funding from vapor products and the public via additional taxation of far less harmful products. This would be counter intuitive.

We recommend Hawaii's education and health departments must work with tobacco and vapor product retailers to ensure there are no sales of age-restricted products to minors. Any solution to address such strategies must include all actors – not only proponents of draconian prohibitionist policies.

Reasonable regulation is paramount, but HB826 is not reasonable, as it places extreme requirements on law-abiding businesses and exerts significant burdens on an industry that has the effect of helping smokers' transition or switch to lower risk products. The goal should be harm reduction and quitting smoking, or switching to vapor products, which accomplishes this objective.

Lawmakers' must face the reality of a larger illicit market in the wake of false and misleading campaigns of vapor products – prohibition does not automatically translate into reduced use, just different markets.

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 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>

⁶ 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>

⁷ 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>

⁸ 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>

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or perceived themselves as able to switch, had e-cigarettes only been available in the flavors that are available through conventional cigarettes.”⁹

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 HB826 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.

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.

⁹ 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
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SFATA opposes this legislation, and we urge the committee to vote NO on HB826.

Respectfully,

Mark Anton

Executive Director



ALOHACARE

To: The Honorable Representative Aaron Ling Johanson, Chair
The Honorable Representative Lisa Kitagawa, Vice-Chair
Committee on Commerce and Consumer Protection

Hrg: February 17, 2021 at 2:00pm, Room 329/Zoom

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

RE: **HB826 HD1, Relating to Electronic Smoking Devices - Oppose**

AlohaCare appreciates the opportunity to provide testimony to oppose **HB826 HD1**, which would expand the responsibilities of the Department of the Attorney General to include electronic smoking device retailer registration, enforcement, and compliance. The measure also amends the fines imposed on youth who purchase or possess tobacco products.

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 appreciates the Legislature's intent to address the youth vaping epidemic. However, AlohaCare believes that the proposed solution included in this measure inequitably focuses on youth who are already addicted to tobacco products. Similar to substance abuse, dependence on nicotine among youth negatively impacts many aspects of an individual's life. This can lead to problems at school and at home and develop into lifelong chronic health problems.

AlohaCare supports policies to intervene early in the lives of youth to prevent and treat substance abuse, support young people, and provide them with the tools to choose healthier options. We believe that focusing penalties on youth and policing their behavior does not set them on the right path to health, nor do these policies prevent new youth from using tobacco and getting addicted to nicotine.

Finally, the Centers for Disease Control and Prevention lists the [following strategies](#) known to be effective in reducing youth tobacco use:

- Higher costs for tobacco products (for example, through increased taxes)
- Prohibiting smoking in indoor areas of workplaces and public places
- Raising the minimum age of sale for tobacco products to 21 years
- TV and radio commercials, posters, and other media messages aimed at kids and teens in order to counter tobacco product ads

- Community programs and school and college policies that encourage tobacco-free places and lifestyles
- Community programs that lower tobacco advertising, promotions, and help make tobacco products less easily available

While we are grateful to the Committee for addressing the increasing use of tobacco and electronic smoking devices by youth, it is also important to consider whether enforcement and placing the blame and responsibility on youth will lead to better health outcomes, rather than worsening inequities.

Thank you for the opportunity to testify.



February 16, 2021

To: Chair Aaron Ling Johanson
Vice Chair Lisa Kitagawa
House Committee on Consumer Protection and Commerce

RE: **OPPOSITION to HB826 HD1**

Thank you for this opportunity to testify in **OPPOSITION to HB826 HD1**. Blue Zones Project was brought to Hawai'i by HMSA to help increase overall well-being of our communities and to make Hawai'i a healthier, happier place to live, work, and play. To accomplish that goal, we work to lower rates of obesity, tobacco use, and chronic disease.

Electronic smoking device (ESD) use by youth is on an upward trend; from 2017-2019, ESD use more than doubled among high school students and tripled among middle school students.¹ Locally, 27% of middle school students and 42% of public high school students acknowledged trying electronic smoking devices in 2017.² Data from local and national sources, including the Centers for Disease Control and Prevention (CDC), cite numerous safety and public health concerns with its use. According to the CDC, "young people who use e-cigarettes may be more likely to smoke cigarettes in the future."³

Despite the many public health concerns tied with ESD use among youth, HB826 HD1 adds youth penalties that are concerning. Rather, the tobacco industry should be held accountable instead of punishing youth who are victim to the predatory marketing of the tobacco industry. Taxation of tobacco products, restriction of online sales, and ending the sale of flavored tobacco products are preferred alternatives to reducing the rates of tobacco use.

Thank you for this opportunity to testify in **OPPOSITION to HB826 HD1**.

Sincerely,

Colby Takeda, MPH, MBA
Senior Manager

¹ Wang, T. W., et al. (2019). Tobacco Product Use and Associated Factors Among Middle and High School Students. Centers for Disease Control and Prevention. *Surveillance Summaries*, 68(12):1–22

² 2017 Hawai'i Youth Risk Behavior Survey.

³ Dunbar, M. S., Davis, J. P., Rodriguez, A., Tucker, J. S., Seelam, R., & D'Amico, E. J. (2018). Disentangling Within- and Between-Person Effects of Shared Risk Factors on E-cigarette and Cigarette Use Trajectories from Late Adolescence to Young Adulthood. *Nicotine & Tobacco Research*, nty179.

HB-826-HD-1

Submitted on: 2/16/2021 4:51:28 PM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Zehner	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 hb826 are purely special interest in nature and don't reflect the needs of normal citizens.

HB-826-HD-1

Submitted on: 2/12/2021 7:54:17 PM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sheldon Miyakado	Individual	Oppose	No

Comments:

STRONGLY OPPOSE

Date: February 13, 2021

To: The Honorable Aaron Ling Johanson, Chair
The Honorable Lisa Kitagawa, Vice Chair
Members of the House Committee on Consumer Protection & Commerce

Re: **Opposition to HB826 HD1**, Relating to Taxation

Hrg: February 17, 2021 at 2:00 PM via Videoconference in Conference Room 329

Aloha House Committee on Consumer Protection & Commerce,

As a parent, community member and healthcare professional I am writing in **strong opposition to HB826 HD1**, which expands the purposes for which moneys in the tobacco enforcement special fund may be used to include all functions of the department of the attorney general; renames the electronic smoking device retailer registration unit the electronic smoking device retailer registration and enforcement unit; expands the scope of the unit to include enforcement of compliance of electronic smoking devices with the Federal Food, Drug, and Cosmetic Act; establishes a special fund for moneys received from enforcement actions; amends the fine amount for persons under twenty-one years of age who purchase or possess tobacco products or electronic smoking devices.

Hawai'i is in the midst of a youth vaping epidemic. Approximately 31% of Hawai'i high school students and 18% of Hawai'i middle schoolers are current e-cigarette users. For Native Hawaiian and Pacific Island (NHPI) youth these numbers climb to 40% for high school and 30% for middle school students.

HB826 HD1 would increase fines on youth for vaping. **Youth are the victims** of the predatory behavior of vape companies that target youth with tempting candy and dessert flavors, compelling yet unregulated social media campaigns and easy online availability. Fines have little or no impact on youth behavior, whereas regulation, taxation and education do.

Effective approaches to reducing youth vaping include regulating and taxing vape products similarly to other tobacco products (price increase), removing all flavored tobacco products including menthol from the market, prohibiting all but face-to-face tobacco product purchases, as well as education, prevention and treatment programs.

I **strongly oppose HB826 HD1** and respectfully ask you to hold this bill in committee.

Many thanks for your consideration,

Forrest Batz, PharmD
Kea'au, HI

HB-826-HD-1

Submitted on: 2/15/2021 8:55:14 AM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
mary santa maria	Individual	Oppose	No

Comments:

I oppose this bill. and any legislation that penalizes youth who are victims of the Tobacco Industries practices, instead of the Tobacco industry itself. Please do not pass a bill that would further jeopardize prevention and quitting efforts by the youth and their supporters. We know that youth penalties do not work to make youth stop using electronic smoking devices or any tobacco products.

Mahalo for letting me testify,

Mary Santa Maria

Public Health Educator and Maui resident

HB-826-HD-1

Submitted on: 2/15/2021 11:23:06 AM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Johnathon G. Myers	Individual	Comments	No

Comments:

Respectfully, House of Representatives Committee members and Senate Committee members:

You cannot ban/restrict electronic cigarettes on one hand [HB598 (HD1), HB992, HB993, HB1327, HB1328, SB63, SB621, SB1146, SB1147], and on the other hand impose taxation on the very same electronic cigarettes [HB476 (HD1), HB630, HB826 (HD1), HB1329, SB894]!

This is a gross misuse of House Committee members', Senate Committee members', and constituents' time and resources.

I recommend reading and understanding the peer-reviewed journals, CDC articles, and UK's longitudinal studies/research presented in the testimony submitted by Mr. Scott Rasak (COO, Volcano Vape Shops).

Sincerely,
Johnathon Myers
Concerned Constituent

HB-826-HD-1

Submitted on: 2/15/2021 1:21:40 PM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Shelly Ogata	Individual	Oppose	No

Comments:

Aloha Chair Johanson and members of the Committee on Consumer Protection & Commerce:

I am writing in **STRONG OPPOSITION** to HB826, HD1. As a RN with a long history of experience working within the mental health and substance abuse field, I am very concerned about the youth penalties in this bill. We must hold the tobacco industry accountable instead of punishing our youth who have fallen **VICTIM** to their predatory marketing tactics. To truly reduce youth e-cigarette use in Hawaii, the state must regulate these products via taxation, restriction of online sales and ending the sale of flavors in tobacco products. It's appalling to me that fellow social workers and healthcare workers would even consider "blaming the victim (our youth)".

In closing, let's do the right thing and hold the right people accountable instead of blaming the victims and punishing our youth. **DO NOT SUPPORT HB826.**

Shelly Ogata, RN, MPH

HB-826-HD-1

Submitted on: 2/15/2021 2:09:08 PM

Testimony for CPC on 2/17/2021 2:00:00 PM

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

Comments:

I oppose this bill

HB-826-HD-1

Submitted on: 2/15/2021 2:17:05 PM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Eric Heaukulani	Individual	Oppose	No

Comments:

I strongly oppose this bill!

HB-826-HD-1

Submitted on: 2/15/2021 2:37:05 PM

Testimony for CPC on 2/17/2021 2:00:00 PM

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

Comments:

I oppose

HB-826-HD-1

Submitted on: 2/15/2021 2:44:57 PM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bryan Mih	Individual	Comments	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.

Flavored nicotine products have been shown to be disproportionately used by young people, especially teenagers, as the flavors make it easier to start using tobacco and nicotine. Once young people are addicted to nicotine, it is extremely difficult to quit.

The main concern with this bill is that it punishes the users. Instead, the penalties should be directed to the tobacco and nicotine industry that targets our youth. Please hold tobacco and e-cigarette companies responsible for this problem, as they want to shift the blame from their billion-dollar industry onto the young people that they have targeted with their deadly and highly addictive product.

A common sense approach would be thorough regulation with taxation, restriction of online sales, banning of flavors, and comprehensive tobacco retailer licensing policies. These measures have proven more effective in reducing youth initiation of tobacco and nicotine.

Mahalo for your consideration.

Sincerely,

Bryan Mih, MD, MPH, FAAP

Pediatrician

HB-826-HD-1

Submitted on: 2/15/2021 4:51:08 PM

Testimony for CPC on 2/17/2021 2:00:00 PM

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

Comments:

Cigarettes have been around for years, and it's good for your health which is why electronic e-cigarettes came around and now you fight so hard to take it away. If it's because of underaged I don't support that as well which is why I feel you should have didn't programs or rules focusing on underaged and not the people that are legally aloud to purchase it

HB-826-HD-1

Submitted on: 2/15/2021 5:18:59 PM

Testimony for CPC on 2/17/2021 2:00:00 PM

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

Comments:

Stop attacking the vaping community!

HB-826-HD-1

Submitted on: 2/15/2021 5:39:46 PM

Testimony for CPC on 2/17/2021 2:00:00 PM

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

Comments:

To be quite frank this bill totally sounds like the government is trying to milk more money off of hard working citizens who use e-cigarettes to rid their habits. Vape isn't killing people, it helps thousands, so for the government to down play how helpful e-cigarettes are is complete idiocracy.

HB-826-HD-1

Submitted on: 2/15/2021 5:52:12 PM

Testimony for CPC on 2/17/2021 2:00:00 PM

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

Comments:

I'm still opposed to this needless overregulation. Not happy to have to testify AGAIN on this foolish bill.

HB-826-HD-1

Submitted on: 2/15/2021 8:55:53 PM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
candice costales	Individual	Oppose	No

Comments:

I oppose bill HB826 because I think it is unnecessary.

HB-826-HD-1

Submitted on: 2/15/2021 11:34:08 PM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Monique gunn	Individual	Oppose	No

Comments:

Oppose

HB-826-HD-1

Submitted on: 2/16/2021 7:11:40 AM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
John A. H. Tomoso	Individual	Oppose	No

Comments:

02-16-21

RE: HB826HD1

Aloha

I write to strongly oppose any and all "youth penalties" in this Bill. This is wrong and does not help our youth and doesn't provide for incentivizing producers and purveyors of these products to stop the flow. Why are we penalizing the victim?

Mahalo

John A H Tomoso+, MSW (Priest and Social Worker)

51 Ku'ula Street, Kahului, HI 96732-2906

808-280-1749, john.a.h.tomoso@gmail.com

cc:CTFH-Maui

HB-826-HD-1

Submitted on: 2/16/2021 7:53:07 AM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Erin Alicia Wiggins	Individual	Oppose	No

Comments:

I oppose

HB-826-HD-1

Submitted on: 2/16/2021 9:06:14 AM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kathleen Koga	Individual	Oppose	No

Comments:

I strongly oppose HB 826, HD1 that would increase the fine amounts for underage youth possession and purchase of tobacco products. The imposition of costly youth penalties in this bill are inappropriate and raise serious concerns. These penalties are ineffective and have not been proven to reduce underage tobacco use.

The tobacco industry continues to target youth with their slick and devious marketing tactics and Hawaii youth have been lured into believing that these addictive and dangerous vapor products are harmless. Hawaii is now experiencing a youth vaping epidemic. The state must take immediate action to prevent further harm from these tobacco products and focus on holding the tobacco industry accountable for their predatory actions instead of punishing vulnerable youth. Please consider regulating electronic cigarettes by taxation, restriction of online sales and banning flavored tobacco products instead of increasing fines for underage youth possession and purchase of tobacco products.

I am in strong opposition to HB 826, HD1 and respectfully request that the Consumer Protection and Commerce committee members vote to oppose this bill. Please protect the health of Hawaii's youth by making this your top priority. Thank you for your consideration and the opportunity to testify.

HB-826-HD-1

Submitted on: 2/16/2021 9:36:41 AM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mariner Revell	Individual	Oppose	No

Comments:

Currently ecig products fall under the Hawaii tobacco enforcement unit. Why would the state create another unit just to enforce ecigs? It will only WASTE more of tax payers money!

To all legislators reading this, let's say you have a babysitter. You pay that babysitter \$1500 a month to watch your child. Would you pay an additional \$1500 a month by hiring another babysitter bringing your babysitter bill to a total of \$3000 a month for the same work your original babysitter does? The only difference with the with the second babysitter you hired is you call that person a Child care professional instead of a babysitter! Does this make any sense at all?

Please spend tax payers monies as if it were your own! Stop wasting our money!!!!!!

HB-826-HD-1

Submitted on: 2/16/2021 10:29:57 AM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Riley	Individual	Oppose	No

Comments:

No way



American Vaping Association | www.vaping.org

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

February 16, 2021

RE: HB 476 HD1, taxation and MRTP taxation of electronic smoking devices

Chairman Johanson, Vice Chair Kitagawa, and members of the Consumer Protection & Commerce Committee:

On behalf of the American Vaping Association, a nonprofit organization that advocates for tobacco harm reduction policies to reduce smoking rates, we are writing to urge you to oppose all bills that include new excise taxes on vaping products, including HB 476 HD1. With over 130,000 Hawaiian adults still using combustible tobacco products, we are concerned that any new taxes on vaping products could cause fewer adults to successfully quit.

Nonetheless, if a tax must be enacted, the bifurcated structure found in HB 476 HD1 is the most optimal way to do so. This tax structure recognizes that there are fundamentally two different kinds of vaping products – ‘closed system’ devices that are used with prefilled pods or cartridges (like JUUL or Vuse) and ‘open systems’ that are refilled with nicotine-containing or nicotine-free bottled e-liquids (commonly sold by independent specialty retail stores).

Under the bifurcated system proposed in this bill, the consumable product (the liquid) is what is subject to the excise tax. This will remove concerns that standalone devices sold with no liquid contained inside, which can range in cost from \$20 to \$500-plus, will be subject to a high excise tax that would encourage black market sales and discount brand purchases.

A recent article in the Wall Street Journal underscores how important it is that taxation policy is done correctly. Last month, the newspaper sounded a warning bell – cigarette sales have increased during the COVID-19

pandemic, thanks in no small part to misinformation over the health risks of vaping.¹

This confusion about the risks of vaping and smoking underscores the importance of tax language that encourages manufacturers to put their products through the Food & Drug Administration’s modified risk tobacco product (MRTP) application process. This is a very lengthy and expensive science-based process overseen by career officials at the FDA Center for Tobacco Products, through which a company applies to make claims about reduced health risks or reduced exposure to harmful chemicals. Getting through this process is cost prohibitive for smaller retailers, but this recognition is nonetheless important for solving consumer confusion.

Colorado, Connecticut, Kentucky, North Carolina, Washington, and Utah all have similar language in their tax statutes. These states vary politically, but elected leaders across both political parties have recognized the power of the tax code to encourage companies to take positive regulatory steps that may not otherwise result in increased profits.

Again, while we urge the committee to reject new taxes on vaping products, we nonetheless offer our sincere gratitude to legislators who are willing to work toward a system that keeps these products available and affordable to adult smokers throughout Hawaii.

Sincerely,



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

¹ “Smoking’s Long Decline Is Over.” Wall Street Journal. January 28, 2021. <https://www.wsj.com/articles/during-covid-19-lockdowns-people-went-back-to-smoking-11611829803>

BUSINESS

Smoking's Long Decline Is Over

Slide in cigarette sales stopped last year amid Covid-19 lockdowns and health concerns about e-cigarettes

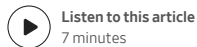


U.S. cigarette sales last year topped those of 2015, when many consumers switched back to cigarettes after trying first-generation vaping devices.

PHOTO: PAUL WEAVER/ZUMA PRESS

By [Jennifer Maloney](#)

Updated Jan. 28, 2021 10:58 am ET

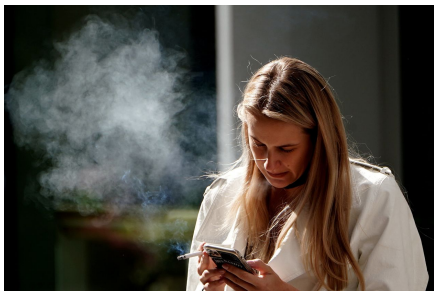


The decadeslong decline in U.S. cigarette sales halted last year as people in lockdown lit up more frequently and health concerns around e-cigarettes caused some vapers to switch back to cigarettes.

Before the pandemic, U.S. cigarette unit sales had been falling at an accelerating rate, hitting 5.5% in 2019, as smokers quit or switched to alternatives like e-cigarettes. The pandemic put the brakes on that slide. In 2020, the U.S. cigarette industry's unit sales were flat compared to the previous year, according to data released Thursday by Marlboro maker Altria Group Inc.

People had more opportunities to smoke because they spent more time at home and had more money to spend on cigarettes because they spent less on gas, travel and entertainment, Altria said. They drank more liquor, too, buoying spirits makers.

At the same time, some e-cigarette users turned back to combustible cigarettes because of increased e-cigarette taxes, bans on flavored vaping products and confusion about the health effects of vaping, consumers and industry officials say. Altria on Thursday didn't offer a projection for cigarette sales in 2021, saying it would depend in part on the rollout of the Covid-19 vaccine and how consumers' behavior changes after they are vaccinated.



A woman smokes a cigarette while standing on Wall Street in New York City.

PHOTO: CARLO ALLEGRI/REUTERS

U.S. cigarette sales were even stronger last year than they were in 2015, when gas prices dropped sharply, allowing consumers more discretionary spending, and many people switched back to cigarettes after trying first-generation vaping devices. Those early products didn't deliver nicotine effectively enough to satisfy some addicted cigarette smokers. But e-cigarette sales took off again in 2017, spurred by the popularity of a new vaporizer called Juul.

E-cigarette sales were booming in the fall of 2019 when the U.S. Centers for Disease Control and Prevention, investigating an outbreak of a mysterious lung illness, warned consumers not to use any vaping products. Sales took a nosedive. The illness later was [linked to vitamin E oil](#) in marijuana vaping products, but the public's perception of e-cigarette safety hasn't rebounded and neither have sales.

Bisher Kunbargi, a software developer in San Antonio, gave up Marlboros for e-cigarettes around 2018 and switched back to cigarettes in late 2019.

"Trust the devil you know," said Mr. Kunbargi, who is 28. "I keep smoking, it's going to give me cancer. Whereas vaping is much more uncharted territory."

Working at home with a laptop outside on his front patio during the pandemic, he said, he is smoking more than he did before—as many 10 cigarettes a day.

"I can't take 10 breaks a day" at the office, he said. At home, "I can have a cigarette whenever I want."

Public health officials say that while e-cigarette use isn't risk-free, it poses significantly less risk than cigarette smoking, which is associated with more than 480,000 deaths in the U.S. each year. Yet according to a Euromonitor survey in early 2020, 73% of U.S. respondents said vaping products were as harmful or more harmful than cigarettes. Euromonitor reported that public perceptions of e-cigarette safety worsened in all 20 of the countries it surveyed.

"This weakness was undoubtedly a factor in the relative robustness of cigarette volumes in 2020," the research firm said.

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. Those people should consider using FDA-approved smoking cessation medications, and if they choose to use e-cigarettes, they should switch completely from cigarettes, he added.

During the lung-illness investigation, the CDC promptly shared the latest data with the public and [refined its recommendations](#) based on available scientific evidence, Dr. King said. The CDC now recommends that people avoid vaping products containing THC, the psychoactive ingredient in marijuana, particularly from informal sources like friends, family, or in-person or online dealers.

Other adult smokers said in interviews that restrictions on fruity and minty e-cigarette flavors have nudged them back to cigarettes.

Seeking to curb an uptick in underage vaping, federal legislation in 2020 raised the legal tobacco purchase age to 21 and the Food and Drug Administration [took some sweet and mint-flavored e-cigarette refill cartridges off the market](#).

Those measures appear to have worked. In a federal survey conducted between January and March of 2020, 19.6% of high-school students said they had vaped in the past 30 days, compared with 27.5% in the same period a year earlier. But vaping also declined among adults. The number of vapers 21 years or older in the U.S. fell to 9.8 million last year from 11.8 million in 2019, according to Altria's estimates.

An FDA spokeswoman said changes in tobacco consumption couldn't be attributed to a single policy, event or piece of legislation. She noted that adult consumers still had access to flavored vaping products like disposable e-cigarettes and tank systems.

“Covid-19 has created a drastic change in daily life, including increased stress and anxiety, that may contribute to a smaller-than-expected reduction in cigarette sales,” she said. She added that because cigarette smoking increases the risk of more severe illness with Covid-19, “There has never been a better time to try to quit.”

Altria, the biggest U.S. tobacco company, reported that sales rose 4.9% to \$6.3 billion in the quarter ended Dec. 31 from \$6.0 billion a year earlier. Its revenue from cigarettes and cigars was \$5.6 billion.

E-cigarette market leader Juul Labs Inc. reported \$1.9 billion in sales in the first nine months of 2019. The CDC in September of that year warned people not to vape, and Juul later that autumn voluntarily stopped selling its sweet and mint-flavored refill pods in anticipation of federal flavor restrictions. The company's revenue dropped to \$1.1 billion in the first nine months of 2020 and was an estimated \$340 million in the last quarter of the year. Altria holds a 35% stake in Juul.

Write to Jennifer Maloney at jennifer.maloney@wsj.com

Appeared in the January 29, 2021, print edition as 'American Smokers Quit Trying to Quit.'

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THE OHIO STATE UNIVERSITY

COLLEGE OF PUBLIC HEALTH

Knee-jerk vaping bans will fail public health, experts argue

Evidence supports e-cigarettes as a harm-reduction tool

Bans and other policies restricting e-cigarette sales could do more public harm than good, according to a group of public-health, tobacco-policy and ethics experts.

In a piece published online today (Dec. 12, 2019) in the journal [*Science*](#), the authors, including three public health deans, caution that blanket policies developed in a rush to address two different concerns come with dangerous downsides – most notably the risk of taking away a powerful tool to help smokers quit.



“Illnesses and deaths, which appear to be related to vaping illicit THC oils, have caused justifiable alarm as has the rise of young people who are vaping nicotine. But in our response we must not lump together these troubling developments and fail to consider the powerful evidence supporting the availability of legal nicotine products,” said lead author [Amy Fairchild, dean of The Ohio State University College of Public Health.](#)

In *Science*, she and her co-authors write that “Restricting access and appeal among less harmful vaping products out of an abundance of caution while leaving deadly combustible products on the market does not protect public health. It threatens to derail a trend that could hasten the demise of cigarettes, poised to take a billion lives this century.”

The paper comes after the emergence this year of vaping-related lung injuries and deaths throughout the U.S. The Centers for Disease

Control and Prevention has reported 2,291 cases of serious lung injury and 48 deaths as of last week. Authorities have identified vitamin E acetate, a THC-product additive, as a “chemical of concern” and said that many of the products appear to have been acquired through informal sources – not from retail establishments selling products directly from known manufacturers. THC, or Tetrahydrocannabinol, is the primary psychoactive component of marijuana.

Many policymakers and organizations including the American Medical Association have called for an across-the-board ban on vaping, and some municipalities and states have moved to ban either all vaping products or those with flavors other than tobacco flavoring, including menthol.

Fairchild said that vaping policy discussions and debates should include an examination of the immediate crisis in the context of all of the scientific evidence regarding the risks and benefits.

“There are important distinctions to be made between nicotine and THC products, between products manufactured by reputable companies and those sold on the black market, and between the potential risks and benefits to adolescents and to adults,” she said.

Drawing comparisons to initial reluctance to offer needle exchange programs that promote safety by preventing life-threatening infections for people who aren’t ready to quit heroin, the authors write that evidence about harm reduction should outweigh emotional responses.

“We should be careful to remain aware of the unintended consequences of extreme measures and the important lessons that harm reduction has provided us in areas such as heroin use, HIV prevention and alcohol control,” said co-author [Cheryl G. Heaton, dean of New York University’s College of Global Public Health.](#)

The authors point to research showing that not only vaping – but flavored products, in particular – can help adult smokers quit and provide a more effective and appealing option than nicotine replacement therapy.

They urge continued efforts to better understand the risks and benefits of vaping and call for regulatory measures that strike a balance between “making regulated nicotine vaping products available to smokers while adopting forceful measures to limit the risks to and use by youth as much as possible.”

Among their suggestions to combat youth use: Implementation and enforcement of laws that restrict purchases to those 21 and older and prohibitions against predatory marketing to children and teens.

They call for the U.S. Food and Drug Administration to implement a product monitoring system and for a surveillance system to detect unanticipated harm early.

Regulatory bans on the menthol front should start with cigarettes and inexpensive little cigars, not with nicotine vape products, they argue.

“Despite two FDA-derived reports that recommended a ban on menthol in combustibles, there has been policy paralysis in the face of appalling evidence,” they write, citing statistics showing that more than half of young people and more than 90 percent of African-American youth start smoking with menthol.

Fairchild and her co-authors stress that they take the illnesses and deaths due to vaping seriously but emphasize that each day more than 2,500 U.S. teens start smoking and

about 1,300 adults die due to cigarettes. Taking vaping – including flavored products – away as a smoking-cessation and harm-reduction tool now will amount to a public health failure, they argue.

“It is crucial to identify the source of serious lung injuries and closely monitor and regulate the vaping industry – including how it markets its products to young people,” said co-author [James Curran, dean of the Rollins School of Public Health at Emory University.](#)

“But the evidence so far supports continuing to allow nicotine vaping as a harm-reduction alternative to smoking, which remains the largest preventable cause of death and disability in our country.”

Other authors of the paper were [Ronald Bayer of Columbia University](#) and [David Abrams of NYU.](#)

“Restricting access and appeal among less harmful vaping products out of an abundance of caution while leaving deadly combustible products on the market...threatens to derail a trend that could hasten the demise of cigarettes, poised to take a billion lives this century.”

HB-826-HD-1

Submitted on: 2/16/2021 11:00:46 AM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
AJ McCabe	Individual	Oppose	No

Comments:

I stand with my people I live with and I oppose bill HB 826.

HB-826-HD-1

Submitted on: 2/16/2021 11:25:01 AM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Sarabia	Individual	Oppose	No

Comments:

I oppose this bill.

HB-826-HD-1

Submitted on: 2/16/2021 11:39:31 AM

Testimony for CPC on 2/17/2021 2:00:00 PM

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

Comments:

I oppose this bill!

HB-826-HD-1

Submitted on: 2/16/2021 11:58:43 AM

Testimony for CPC on 2/17/2021 2:00:00 PM

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

Comments:

Aloha,

Please Oppose bill HB826. 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-826-HD-1

Submitted on: 2/16/2021 12:09:30 PM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andy Takaaze	Individual	Oppose	No

Comments:

We don't need any more taxes or costs put on already struggling small businesss. We don't need anymore laws, We need to enforce the laws in place. STOP WASTING MY TAX DOLLARS ON NONENSENSE!

HB-826-HD-1

Submitted on: 2/16/2021 1:38:15 PM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Scott Rasak	Individual	Oppose	No

Comments:

To: The Honorable Rep. Aaron Ling Johanson, Chair

Rep. Lisa Kitagawa, Vice Chair

From: Scott Rasak, VOLCANO Vape Shops

Chief Operating Officer

RE HB826 – 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.

HB826 imposes harsh increases in registration fees which are a burden for already battered local retailers. We urge you not to support this bill since it would damage the local retailers who need to keep up with increased fees during these difficult times.

HB-826-HD-1

Submitted on: 2/16/2021 1:56:39 PM

Testimony for CPC on 2/17/2021 2:00:00 PM

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

Comments:

Aloha Please oppose this bill

HB-826-HD-1

Submitted on: 2/16/2021 5:41:57 PM

Testimony for CPC on 2/17/2021 2:00:00 PM

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

Comments:

Vaping products help people quit. This bill won't help anyone.