

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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES, AND HOMELESSNESS

DATE: Friday, February 5, 2021 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Via Videoconference Conference Room 329

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

Chair Yamane and Members of the Committee:

The Department of the Attorney General (Department) opposes this bill as to section 2 and section 5, and provides the following comments.

The bill seeks to better regulate electronic smoking devices by expanding the scope of the electronic smoking device retailer registration unit (the unit) within the Department. In addition, the bill seeks to curb the use of electronic smoking devices and tobacco products by amending the fine amounts for persons under the age of twenty-one years who purchase or possess such items.

Major amendments of the bill include amending section 28-15, Hawaii Revised Statutes (HRS), to expand the use of the tobacco enforcement special fund to ensure compliance with all aspects of chapter 28, HRS (section 2, page 3, line 14, to page 4, line 12); amending section 28-166, HRS, to add certain responsibilities and authority to the unit, including 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," (section 5, page 6, lines 1-4, and further granting the unit "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, lines 4-7). The bill also amends section 28-166 to establish a new special fund for the unit to be administered by the Department and where moneys collected for

violations shall be deposited (section 5, page 6, lines 10-17). In addition, the bill amends section 712-1258(6), HRS, regarding the amount of fines for persons under twenty-one years of age who are found in violation for purchasing or possessing electronic smoking devices or tobacco products (section 6, page 7, lines 2-9).

Section 2 of this bill is problematic, amending subsection (b) of section 28-15, HRS, to expand the use of moneys from the tobacco enforcement special fund to all of chapter 28, HRS. This expands the use of moneys from the tobacco enforcement special fund beyond the original purpose of the special fund by allowing the funds to be used for non-tobacco enforcement purposes. The tobacco enforcement special fund, as created in 2001 by section 28-15, HRS, after Hawaii became a signatory to the 1998 Tobacco Master Settlement Agreement (MSA), specifies that the moneys are to be used consistently with enforcement of the MSA, including diligent enforcement of chapter 675, HRS (the Tobacco Liability Act), chapter 486P, HRS (Tobacco Products Reporting), and numerous other enforcement requirements. To expand the use of the tobacco enforcement special fund beyond its original purpose could put Hawaii at risk of being found non-diligent, in addition to creating issues relating to the good faith and fair dealing of the settlement entered into with other parties by Hawaii. 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 MSA payment, nearly \$20,000,000, if found non-diligent. Chapter 28, HRS, "Attorney General", applies to various functions and authorities of the Attorney General, including protection of charitable assets; criminal research prevention and education; organized crime; Medicaid fraud, and many others unrelated to tobacco enforcement. The amendment would effectively expand the use of tobacco enforcement money for purposes other than what it was originally intended for – tobacco enforcement relating to cigarettes.

Section 5 is concerning as it expands the powers of the unit to enforce federal law and creates a new special fund. Section 5 does not specify the authority for state agents to enforce federal law, whether enforcement actions would take place in federal court, or exactly which specific crimes or violations the unit would be enforcing based on federal statutes. Clarification would also be necessary to indicate the

process by which enforcement of federal statutes would lead to moneys being deposited in the new special fund. In addition, there is no appropriation provision that would allow spending of any funds from the new special fund. Further, there are no provisions for additional positions and resources to take on the added powers and responsibilities envisioned by section 5.

The Department respectfully suggests that section 2 and section 5 be removed from the bill if it moves forward.

Thank you for the opportunity to provide comments on this bill.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

ROBERT YU
DEPUTY DIRECTOR

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

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

P.O. BOX 150
HONOLULU, HAWAII 96810-0150

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 HEALTH, HUMAN
SERVICES, & HOMELESSNESS
ON
HOUSE BILL NO. 826

February 5, 2021

8:30 a.m.

Room 329

RELATING TO ELECTRONIC SMOKING DEVICES

The Department of Budget and Finance (department) offers comments on House Bill (H.B.) No. 826.

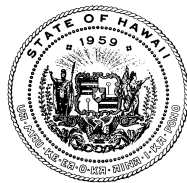
H.B. No. 826 amends Chapter 28, HRS, to: rename the Electronic Smoking Device Retailer Registration Unit to the Electronic Smoking Device Retailer Registration and Enforcement Unit (ESDRREU) within the Department of the Attorney General (AG); expand the scope of the ESDRREU to include the enforcement 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, the department 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, 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 COMMENTING on H.B. 826
RELATING TO ELECTRONIC SMOKING DEVICES**

REPRESENTATIVE RYAN I. YAMANE, CHAIR
HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES, AND HOMELESSNESS

Hearing Date: 2/5/2021

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 offers the following comments in respect to protecting
4 children and youth in Hawaii. From 2017 to 2019 high school electronic smoking devices
5 (ESDs) or e-cigarette use increased from 25% to 31%.¹ The U.S. Federal Drug Administration's
6 (FDA) rulemaking, enforcement, and scientific review process has not been sufficiently
7 expeditious to protect keiki in Hawaii from the proliferation and marketing of e-cigarette
8 products. The preamble of H.B. 826 correctly states the current situation that products on the
9 market have submitted applications, and not yet received thorough scientific review by the FDA
10 to receive authorization, and are in a status known as premarket authorization. Also, in the
11 introduction is that while the U.S. Postal Office will be promulgating rules for parity to include
12 ESDs in the prohibition of mailing cigarettes, private package services may continue delivering
13 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 **Offered Amendments:** None

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

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 to the House Committee on Health, Human Services, & Homelessness
Friday, February 5, 2021; 8:30 a.m.
State Capitol, Conference Room 329
Via Videoconference**

RE: HOUSE BILL NO. 0826, RELATING TO ELECTRONIC SMOKING DEVICES.

Chair Yamane, Vice Chair Tam, and Members of the Committee:

The Hawaii Primary Care Association (HPCA) is a 501(c)(3) organization established to advocate for, expand access to, and sustain high quality care through the statewide network of Community Health Centers throughout the State of Hawaii. The HPCA **SUPPORTS** House Bill No. 0826, RELATING TO ELECTRONIC SMOKING DEVICES.

The bill, as received by your Committee, would:

- (1) Ensure the removal of unsafe, noncertified electronic nicotine delivery systems from the marketplace by expanding the scope of the electronic smoking device retailer registration unit within the Department of the Attorney General; and
- (2) Curb the use of electronic smoking devices and tobacco products by amending the fine amounts for persons under twenty-one who purchase or possess such devices or products.

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.

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.

Testimony on House Bill No. 0826
Friday, February 5, 2021; 8:30 a.m.
Page 2

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

As a matter of principle, the HPCA urges the banning of these products.

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.



February 3, 2020

To: The Honorable Rep Ryan Yamane, Chair
The Honorable Rep Adrian Tam, 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. We stand in opposition to HB826 for the following:

- Most recently, the FDA has issued updated guidance on vapor products which create a pathway for them to be brought to market. Currently, all products which are being distributed nationally have been registered under the PMTA pathway and are awaiting pending approval from the FDA. HB826 would add unnecessary burden of enforcement and state level burden since there is already federal oversight into the category.
- 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

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,

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

HB-826

Submitted on: 2/3/2021 8:57:49 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
azaya mandini	Irie Hawaii Waimea	Oppose	No

Comments:

Electronic vape product is safer on the lungs compared to cigarettes.

HB-826

Submitted on: 2/3/2021 8:58:53 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Juliette Devost	Irie Hawaii	Oppose	No

Comments:

E-juice is a better alternative to cigarettes and tobacco.



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*

*Catherine Taschner, JD
McCorriston Miller Mukai
MacKinnon LLP*

Date: February 3, 2021

To: Representative Ryan I. Yamane, Chair
Representative Adrian K. Tam, Vice Chair
Members of the Health, Human Services, and Homelessness
Committee

Re: Comments for HB 826, Relating to Electronic Smoking Devices

Hrg: February 5, 2020 at 8:30 AM in Conference Room 329

The Coalition for a Tobacco-Free Hawai'i, a program of the Hawai'i Public Health Instituteⁱ provides **Comments on HB 826**, 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 supports the enforcement of recent federal e-cigarette regulations, but caution 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 regulations were long overdue and 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 Juulⁱⁱ. 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 adaptedⁱⁱⁱ.

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^{iv}. 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^v. It also prohibits shipments of electronic smoking devices through USPS, effective April 26, 2021.

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 tactic^{vi} 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 quit^{vii}.

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^{viii}, removing flavors from tobacco products^{ix}, 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 comments.

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. (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>.

ⁱⁱⁱ 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>

^{iv} 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>.

^v 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>.

^{vi} 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

^{vii} 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.

^{viii} 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.

^{ix} 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>



**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

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

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.

Donald B. Weisman
Government Relations/Communications Director

LATE

HB-826

Submitted on: 2/4/2021 4:31:12 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

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.



LATE

TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
February 5, 2021

Re: HB 826 Relating to Electronic Smoking Devices

Good morning Chair Yamane and members of the House Committee on Health, Human Services & Homelessness. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii was founded in 1901, RMH is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. Our membership includes small mom & pop stores, large box stores, resellers, luxury retail, department stores, shopping malls, local, national, and international retailers, chains, and everyone in between.

We **OPPOSE HB 826** Relating to Electronic Smoking Devices. This measure 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; 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; amends the fine amount for persons under twenty-one years of age who purchase or possess tobacco products or electronic smoking devices; and is effective 01/01/2022.

Currently Hawaii has a law in place that states that it is unlawful for a person under the age of 21 years to purchase electronic vaping devices, e-liquids, and tobacco products. However, we are finding that the retailers are not intentionally selling these products and devices to those under the age of 21. With new technology and printers, some of the fake IDs that the minors present to the sales staff upon check out look like the real state IDs.

The majority of the vape shops on our islands are responsible and have a policy that they will not sell a vape device or cigarettes to anyone 21 years old and under. Retailers often go as far as to not selling to the adult that accompanies the minor into the store if it is revealed that the device or product that they are seeking to purchase is for the minor. Retailers have no control over their products once they are sold and the customer walks out the door with them. It is often the case that an adult family member or friend that purchases the vape devices for the minors and gives the device to the minor away from the retail store.

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

We also wonder if the state has the funds to expand the personnel needed to do the enforcement at a time when the state is in debt.

Many retailers statewide are already operating on a thin margin and face stiff competition. Taking on a "tobacco tax" and permit fee will truly hurt locally owned businesses, especially the small locally owned businesses'.

The retail industry has been one of the hardest hit during the pandemic. Since the pandemic, those retailers who were deemed non-essential were forced to close their businesses for months due to government orders. Those on Oahu were forced to close their businesses a second time with no income from online sales unless they were fulfilling the orders from home. Retailers have also had to endure an almost 50% rate increase in interisland shipping. Many stores who rely directly on the visitors are not opening until the customer base returns - if they can hold on that long. They have also reduced their staff, taken pay-cuts and more to survive. The 3rd Commercial Lease Rent survey from data collected between December 1 and 31, 2020 revealed:

- One in 10 Hawaii businesses permanently closed over the course of the pandemic, and 67 percent were impacted significantly by government restrictions.
- From April through December 2020, 50 percent of businesses did not pay their rent in full.
- Three in 10 businesses expected to miss three full rent payments between October and December 2020, and more than half expected to miss at least one full rent payment between January and June 2021.
- Tourism accounts for at least one-quarter of the overall revenue of 37 percent of Hawaii businesses.
- 86 percent of businesses saw their annual revenue decrease in 2020, and 82 percent expect a decrease in 2021 as well.

Retailers like many businesses are struggling to survive and keep their employees employed. Many cannot afford an increase in doing business.

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

HB-826

Submitted on: 2/2/2021 6:52:59 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kimo Cruz	Individual	Oppose	No

Comments:

This bill is asinine overregulation.

HB-826

Submitted on: 2/3/2021 2:47:48 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

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

Comments:

Chair Yamane and members of the Health & Human Services & Homelessness Committee:

I support the enforcement of new federal regulations on the sale of and shipment of electronic smoking devices. In fact, existing federal regulations do not go far enough so additional state regulations on restriction of flavors and taxation are still needed to reduce youth tobacco use in Hawaii.

HOWEVER, I am very concerned about the youth penalties in this bill as it continues to promote the "blaming the victim" mentality vs holding the tobacco industry accountable for their predatory marketing tactics.

Mahalo for your time and attention.

Shelly Ogata, RN, MPH

HB-826

Submitted on: 2/3/2021 4:24:08 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

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

Comments:

I strongly oppose this bill.

HB-826

Submitted on: 2/3/2021 4:33:44 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

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

Comments:

Aloha,

Please Oppose Bill HB826

Thanks for your time,

Valentino Miranda-Kepa

HB-826

Submitted on: 2/3/2021 4:34:19 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Katelyn Kapua	Individual	Oppose	No

Comments:

Oppose

HB-826

Submitted on: 2/3/2021 4:41:11 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Choe	Individual	Oppose	No

Comments:

Vaping is a healthier and currently cheaper alternative to smoking tobacco ciggarettes. There are many positive studies regarding vaping from counties like the UK.

HB-826

Submitted on: 2/3/2021 4:47:01 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

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

Comments:

I oppose

HB-826

Submitted on: 2/3/2021 4:54:12 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Shelby Pakele	Individual	Oppose	No

Comments:

I strongly oppose this bill.

HB-826

Submitted on: 2/3/2021 5:00:30 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Helena Ankien	Individual	Oppose	No

Comments:

I STAND FIRMLY IN OPPOSITION TO THIS BILL!

HB-826

Submitted on: 2/3/2021 5:07:50 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

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

Comments:

I Oppose this bill.

HB-826

Submitted on: 2/3/2021 5:34:56 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel Ingersoll	Individual	Oppose	No

Comments:

I oppose to this bill.

HB-826

Submitted on: 2/3/2021 5:49:27 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

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

Comments:

Oppose

HB-826

Submitted on: 2/3/2021 5:54:47 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dustin Hirayama	Individual	Oppose	No

Comments:

I oppose this bill!

HB-826

Submitted on: 2/3/2021 6:12:26 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Naomi C. Liu	Individual	Oppose	No

Comments:

If you don't like the products then don't buy them.

HB-826

Submitted on: 2/3/2021 6:20:31 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
francis luu	Individual	Oppose	No

Comments:

I oppose this bill

HB-826

Submitted on: 2/3/2021 6:20:33 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

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

Comments:

I Oppose This Bill.

HB-826

Submitted on: 2/3/2021 6:43:24 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

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

Comments:

I believe that these people in office are finding ways to tax us so they can make more money. E-cigarettes are not bad unless in the hands of the wrong person. There are already many rules and regulations to stop underage sales and illegal sales. There is no sense to keep taxing something that actually helps people. If a person purchases a product correctly then they should be able to use that product, not get taxed extra for abiding rules.

HB-826

Submitted on: 2/3/2021 6:44:33 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
James Toyomura	Individual	Oppose	No

Comments:

Vaping has helped me to quit smoking.

HB-826

Submitted on: 2/3/2021 7:40:16 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

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

Comments:

I oppose to the HB826 bill because I agree that underage should be allowed to vape and posses any tobacco products

HB-826

Submitted on: 2/3/2021 10:05:59 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

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

Comments:

I oppose this bill!

HB-826

Submitted on: 2/3/2021 10:14:38 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Crystal Robello	Individual	Support	No

Comments:

In support of this bill because there are not enough regulation on tobacco or electronic smoking devies.

LATE

HB-826

Submitted on: 2/4/2021 11:30:55 AM

Testimony for HHH on 2/5/2021 8:30:00 AM

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

Comments:

I oppose this bill!

LATE

HB-826

Submitted on: 2/4/2021 12:28:21 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

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

Comments:

I oppose this bill.

LATE

To whom it may concern,

I am opposing the current bill (HB826) that will destroy the vaping industry here in Hawaii and put hundreds of people out of employment. Our goal for public health is to have people quit smoking traditional tobacco cigarette which is the #1 cause for 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 is about protecting children, vape shops here including stores in the mainland have strict guidelines and rules they follow that does not allow anyone under 21 to purchase any type of vaping devices, juice or accessories.

This Taxation you are supporting will only increase the sales of traditional tobacco cigarettes, pushing people back into the old dangerous habit of cancer-causing smokes.

I implore you to take your time and review these bills that could possibly destroy something that in my opinion, a "PUBLIC HEALTH MIRACLE".

Vinh Tran,

Resident of Honolulu, Hawaii.

LATE

HB-826

Submitted on: 2/4/2021 12:30:53 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rafael Montero	Individual	Oppose	No

Comments:

I strongly oppose.

LATE

HB-826

Submitted on: 2/4/2021 12:39:41 PM

Testimony for HHH on 2/5/2021 8:30:00 AM

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

Comments:

Hello,

I would like to oppose this HB826. We are already facing an Epidemic Crisis in the world with the Virus and if this Bill gets approved more people will loose there jobs. This will require more people to require Goverment assistants. Hawaii living expenses are high and there are a lot of people not able to find jobs. This will be shutting down more small businesses that actually help people quit smoking. If you look at the facts Electronical Cigarettes help people quit smoking all together and live a healthier lifestyle. Furthermore, I hope you guys look at the data of real people switching to Electronical Cigarettes and how they overcame the crave for Cigarettes which has more dangerous ingredients.

LATE

HB-826

Submitted on: 2/5/2021 12:29:44 AM

Testimony for HHH on 2/5/2021 8:30:00 AM

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 support the prohibition of the sale or distribution of electronic cigarettes. The federal rules are an acceptable start, but Hawaii should strive to do more to protect our keiki.

The American Academy of Pediatrics has strongly supported elimination of flavored tobacco products. These products have been shown to be disproportionately used by young people, especially teenagers, as flavors make it easier to start using tobacco and nicotine.

Hawaii has one of the highest rates of middle schoolers and high schoolers 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.

Please hold tobacco and e-cigarette companies responsible for this problem. They hope to shift the blame from this billion-dollar industry onto the young people that they have targeted with their deadly and highly addictive product. Comprehensive tobacco retailer licensing policies place responsibility on retailers rather than young consumers. With appropriate funding and enforcement, these retailer licensing policies 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

Submitted on: 2/16/2021 7:51:53 AM

Testimony for HHH on 2/5/2021 8:30:00 AM

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

Comments: