

Honolulu, Hawaii
February 5, 2014

RE: H.B. No. 958
H.D. 1

Honorable Joseph M. Souki
Speaker, House of Representatives
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 958 entitled:

"A BILL FOR AN ACT RELATING TO TAX FRAUD,"

begs leave to report as follows:

The purpose of this measure is to prevent tax fraud by prohibiting the purchase, possession, installation, update, maintenance, upgrade, transfer, use, or creation of automated sales suppression devices, zappers, or phantom-ware, which are utilized by individuals or businesses to underreport the amount of taxable revenue on sales.

The Department of Taxation testified in support of this measure.

Your Committee notes that it has amended the effective date of this measure to January 1, 2014, which will grant retroactive effect to the provisions of this bill. Your Committee has concerns that giving retroactive effect to a measure establishing criminal sanctions may raise constitutional concerns, including due process issues. Accordingly, your Committee respectfully requests that the Committee on Finance consider the implications of such an effective date and whether it should be further amended to apply prospectively.



Your Committee has amended this measure by:

- (1) Making the state of mind requirement consistent throughout the measure by removing the term "wilfully";
- (2) Changing the grade of offense for the use, purchase, sale, installation, update, maintenance, upgrade, transfer, possession, or creation of an automated sales suppression device, zapper, or phantom-ware from a class B to a class C felony and adjusting the fine and imprisonment terms to a maximum of \$100,000 and five years, respectively;
- (3) Changing the effective date to January 1, 2014; and
- (4) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 958, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 958, H.D. 1, and be referred to the Committee on Finance.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,



KARL RHOADS, Chair



