

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

**Testimony in SUPPORT of H.B. 982
RELATING TO FUNDING FOR THE DEPARTMENT OF THE ATTORNEY
GENERAL TOBACCO ENFORCEMENT UNIT**

REPRESENTATIVE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH & HOMELESSNESS

Hearing Date: February 8, 2023

Room Number: Conference Room 329
& Videoconference

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

4 **Department Testimony:** The DOH supports House Bill 982 (H.B. 982) as a public health
5 measure to ensure sustainability of the State's tobacco enforcement activities and compliance
6 requirements. H.B. 982 proposes to increase the amount of funds that the tobacco enforcement
7 special fund can carry over, increases cigarette tax stamp fees, increases the percent allocated to
8 the tobacco enforcement special fund, and increases the sum of money received from the tobacco
9 settlement special fund (TSSF).

10 The nexus between the DOH and the AG Tobacco Enforcement Unit (TEU) began when
11 the State of Hawaii joined in the multi-state suit against the tobacco manufacturers. The public
12 health and economic cost of smoking was increasing with almost one in five adults and nearly
13 one in three youth smoking by 1997.¹ Hawaii with forty-six other states agreed on the Master
14 Settlement Agreement (MSA) with the tobacco manufacturers with the intent of furthering,
15 "policies designed to reduce youth smoking, to promote the public health and to secure monetary

¹ Hawaii Department of Health. 1997 Hawaii Behavioral Risk Factors Surveillance System, and 1997 Youth Risk Behavior Survey.

1 payments to the Settling States.”² The AG Tobacco Enforcement special fund portion, used for
2 the diligent enforcement of the MSA is described in §328L-2(a), and the remaining portion of the
3 TSSF is distributed by the DOH pursuant to §328L-2(b), Hawaii Revised Statutes (HRS).

4 Sufficient funding for the AG tobacco enforcement special fund will assure the diligent
5 enforcement of the tobacco MSA including requirements in Chapters 486P and 675, HRS, so
6 Hawaii remains in compliance as a settling state. The impact of negligence due to shortfalls in
7 the AG TEU may have negative consequences for the annual payment to Hawaii from the MSA
8 with cascading public health consequences for tobacco prevention and cessation services in
9 Hawaii provided through the Hawaii tobacco prevention and control trust fund that are funded
10 through the TSSF. The other portions to be negatively impacted are to the emergency and
11 budget reserve fund, university revenue-undertakings fund, and the state general fund.

12 Thank you for the opportunity to testify.

13 **Offered Amendments:** None

² Master Settlement Agreement. January 2019 Printing. (retrieved 2-06-23:
<https://naagweb.wpenginepowered.com/wp-content/uploads/2020/09/2019-01-MSA-and-Exhibits-Final.pdf>)

JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

Ka 'Oihana 'Auhau
P.O. BOX 259

HONOLULU, HAWAII 96809
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GARY S. SUGANUMA
DIRECTOR

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

**TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

TESTIMONY ON THE FOLLOWING MEASURE:

H.B. No. 982, Relating to Funding for the Department of the Attorney General Tobacco Enforcement Unit

BEFORE THE:

House Committee on Health & Homelessness

DATE: Wednesday, February 8, 2023

TIME: 8:30 a.m.

LOCATION: State Capitol, Room 329

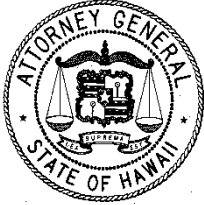
Chair Au Belatti, Vice-Chair Takenouchi, and Members of the Committee:

The Department of Taxation ("Department") supports H.B. 982, an Administration measure, and offers the following comments for your consideration.

H.B. 982 seeks to amend section 28-15(c) Hawaii Revised Statutes (HRS), to increase funding from \$500,000 to \$750,000 for the Tobacco Enforcement Special Fund, which is used to support the Tobacco Enforcement Unit within the Department of the Attorney General. Additionally, section 245-26(a) will be amended to increase cigarette stamp fees from 1.7 to 2.2 percent of the denominated value of each stamp sold. The measure will take effect on July 1, 2023.

The Department is able to administer this measure as currently written and with its current effective date of July 1, 2023.

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



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

H.B. NO. 982, RELATING TO FUNDING FOR THE DEPARTMENT OF THE ATTORNEY GENERAL TOBACCO ENFORCEMENT UNIT.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH AND HOMELESSNESS

DATE: Wednesday, February 08, 2023 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Richard W. Stacey, Deputy Attorney General

Chair Belatti and Members of the Committee:

The Department of the Attorney General (Department) strongly supports this bill and offers the following comments.

The purpose of this bill is to stabilize funding for the Tobacco Enforcement Unit (Unit) within the Department by increasing the amount of funds that the Tobacco Enforcement Special Fund (Special Fund) can carry over at the end of the fiscal year from \$500,000 to \$750,000; increasing a portion of the cigarette tax stamp fee allotted to the Special Fund from 1.5 percent to 2.0 percent, thereby increasing the total cigarette stamp fee from 1.7 percent to 2.2 percent; and increasing the sum of moneys received from the tobacco Master Settlement Agreement (MSA) annual payment from \$350,000 to \$750,000. Any remaining funds in excess of the carried over amount will continue to lapse to the general fund at the end of each fiscal year.

In 1998, Hawaii and 45 other states signed the MSA with the four largest tobacco manufacturers in the United States to settle smoking-related claims. The MSA stipulated that these manufacturers provide annual payments to the signing states, including Hawaii. Hawaii's MSA payment for fiscal year 2021-2022 was over \$38.4 million. The MSA requires states to diligently enforce the requirements of the "model statute," which Hawaii enacted as the Tobacco Liability Act, chapter 675, Hawaii Revised Statutes (HRS).

Under the MSA, tobacco manufacturers can contest the diligent enforcement of states, leading to arbitration. It is crucial to diligently enforce the Tobacco Liability Act, because failure to do so may result in Hawaii losing a significant portion of its MSA payments. Recent arbitration decisions found Washington, Missouri, and New Mexico non-diligent and placed their annual MSA payments at risk. These decisions make it clear that the Unit needs to stabilize funding to maintain and further its diligent enforcement efforts and reduce the risk of losing MSA funds as a result of future arbitrations.

The Legislature established the Special Fund in 2001 for the Department to administer, monitor, and enforce the MSA, the cigarette tax stamp program, and any other related statutes or programs (see section 28-15(a), HRS). The Special Fund receives \$350,000 of the MSA annual payment (see section 328L-2, HRS). At the close of each fiscal year, up to \$500,000 carries over to the Special Fund for the next fiscal year, and the remainder lapses to the credit of the state general fund (see section 28-15(c), HRS). The majority of the Special Fund's revenue is derived from a percentage of the cigarette tax stamp collection (see section 245-26(a)(2), HRS).

The cigarette tax stamp revenues reported by the Department of Taxation have plummeted, from over \$116 million in fiscal year 2015-2016 to just over \$85 million in fiscal year 2021-2022. The cigarette tax stamp fee revenues deposited into the tobacco enforcement special fund have similarly dropped – from \$1.74 million in fiscal year 2015-2016 to \$1.27 million in fiscal year 2021-2022. This downward trend is expected to continue and, if so, the Special Fund will be unable to cover the Unit's expenditures in the near future. Despite this decline in revenue resources, the Unit's responsibilities to enforce the MSA remain the same. This bill will provide more funding stability in anticipation of further reductions in cigarette tax revenues, allowing the Unit to maintain the resources necessary for the required diligent enforcement and to prepare for arbitration.

The attached chart was created to demonstrate the flow of the cigarette and tobacco tax and license money and the effect of this bill on the funding stream.

We respectfully urge the Committee to pass this bill and thank you for this opportunity to testify.

CIGARETTE AND TOBACCO TAX AND LICENSE MONEY



Cigarette Tax Stamp
 \$ 0.16/cigarette or little cigar
 \$3.20/pack of 20
\$85,131,574 (FY22)

2 cents	Hawaii Cancer Research Special Fund	\$10,583,348 (FY 22)
1.125 cents	Trauma System Special Fund	\$5,953,133 (FY 22)
1.250 cents	Community Health Centers Special Fund	\$6,614,592 (FY 22)
1.250 cents	Emergency Medical Services Special Fund	\$6,614,592 (FY 22)
§245-15, HRS		

"Stamp Fee"
 § 245-26, HRS

1.5%	0.2%	Total: 1.7%
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**Tobacco Enforcement
 Special Fund (AG)**
\$1,270,002 (FY 22)
 12.6% decrease from FY 21

**Cigarette Tax Stamp
 Administrative
 Special Fund (DOTAX)**
\$169,334 (FY 22)

remainder → **General Fund**
~\$65,658,000 (FY22)

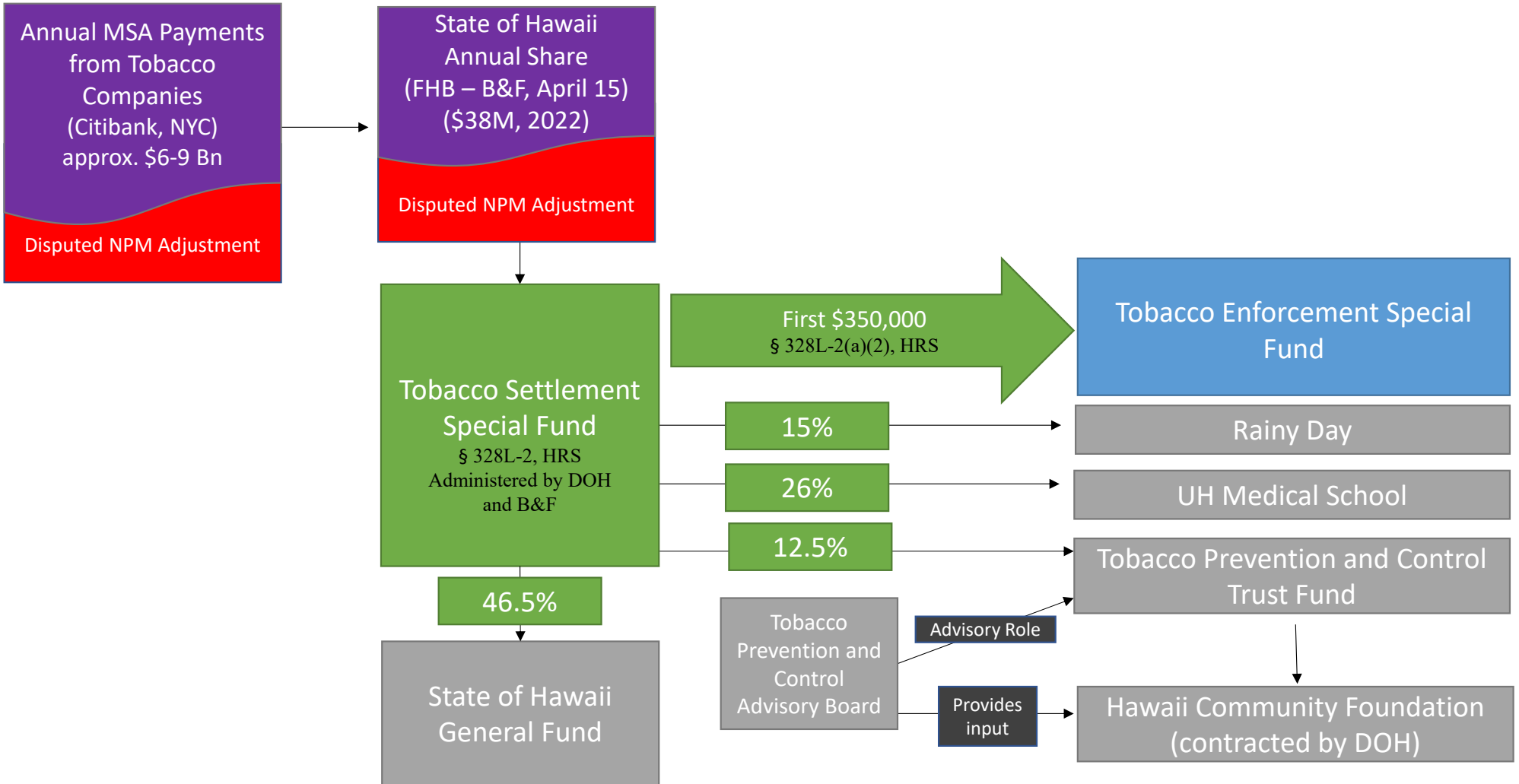
All other tobacco products
 70% of wholesale
 §245-3, HRS

Large Cigars
 50% of wholesale
 §245-3, HRS

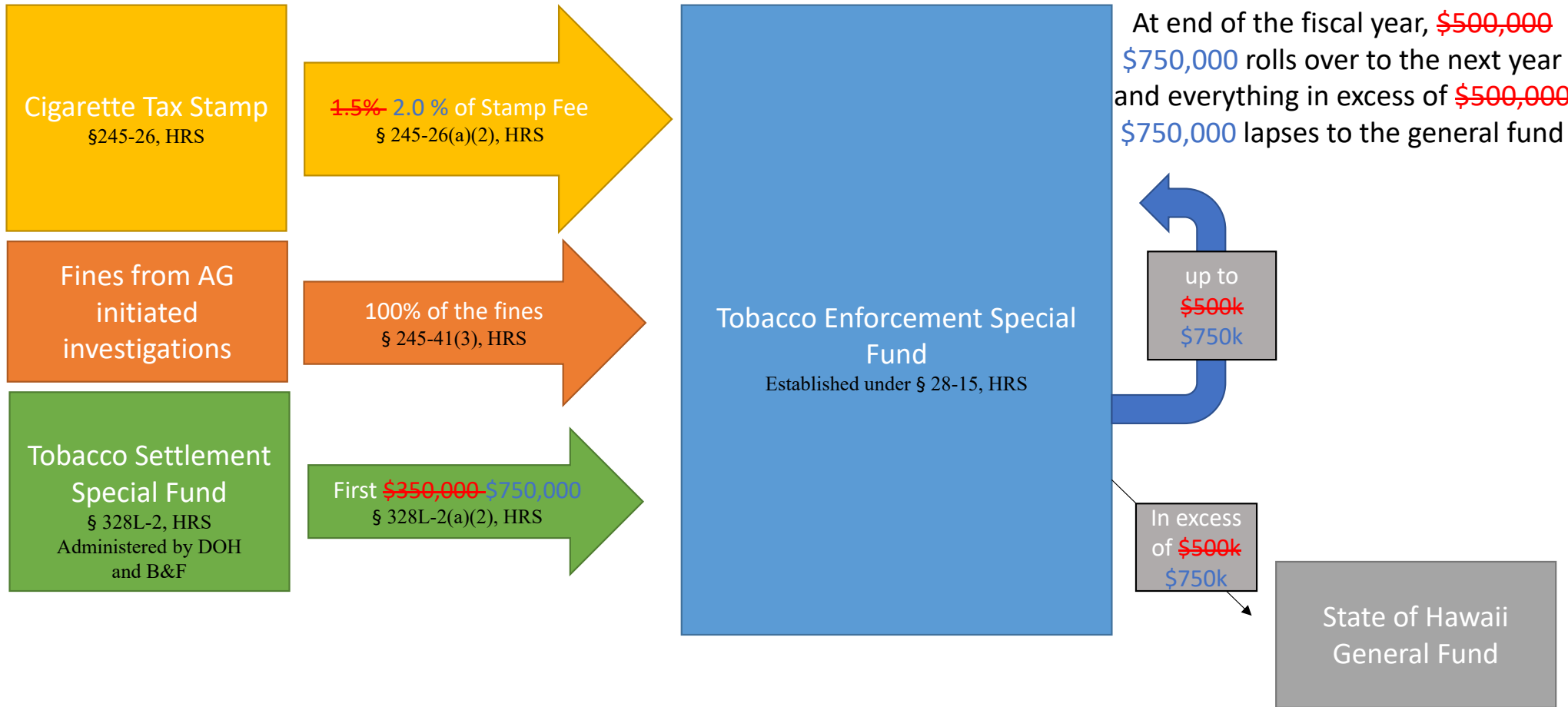
\$2.50/tobacco license fee
 §245-3, HRS

\$20.00/retail permit
 §245-3, HRS

TOBACCO MASTER SETTLEMENT AGREEMENT



SUMMARY OF HB982/SB1280





fightcancer.org

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

House Committee on Health and Homelessness
Representative Della Au Belatti, Chair
Representative Jenna Takenouchi, Vice Chair

Hearing Date: Wednesday, February 8, 2023

**ACS CAN SUPPORTS HB 982 – RELATING TO FUNDING FOR THE DEPARTMENT OF THE ATTORNEY
GENERAL TOBACCO ENFORCEMENT UNIT.**

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

Thank you for the opportunity to SUPPORT HB 982: RELATING TO FUNDING FOR THE DEPARTMENT OF THE ATTORNEY GENERAL TOBACCO ENFORCEMENT UNIT.

The American Cancer Society Cancer Action Network (ACS CAN) is the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society. We support evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. ACS CAN supports efforts to invest in comprehensive policies that would strengthen the health infrastructure in Hawaii to prevent kids from starting to use tobacco and help adults already addicted to tobacco to quit.

Lung cancer remains the leading cause of cancer deaths in Hawaii with an estimated 1,400 adults dying from smoking every year.ⁱ There are 21,000 keiki who are alive now that will die prematurely due to smoking-related disease.ⁱⁱ Tobacco use remains the leading preventable cause of death nationwide. ACS CAN supports increasing funding to ensure effective enforcement of the tobacco Master Settlement Agreement and related laws as well as enforcing the cigarette tax stamp program.

Thank you for the opportunity to comment on this important matter. Should you have any questions, please do not hesitate to contact Cynthia Au at 808.460.6109, or Cynthia.au@cancer.org.

ⁱ Campaign for Tobacco-Free Kids. The Toll of Tobacco in Hawaii. Updated January 20, 2023. <https://www.tobaccofreekids.org/problem/toll-us/hawaii>

ⁱⁱ Campaign for Tobacco-Free Kids. The Toll of Tobacco in Hawaii. Updated January 20, 2023. <https://www.tobaccofreekids.org/problem/toll-us/hawaii>



**Testimony to the House Committee on Health and Homelessness
Wednesday, February 8, 2023; 8:30 a.m.
State Capitol, Conference Room 329
Via Videoconference**

RE: HOUSE BILL NO. 0982, RELATING TO FUNDING FOR THE DEPARTMENT OF THE ATTORNEY GENERAL TOBACCO ENFORCEMENT UNIT.

Chair Belatti, Vice Chair Takenouchi, 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. 0982, RELATING TO FUNDING FOR THE DEPARTMENT OF THE ATTORNEY GENERAL TOBACCO ENFORCEMENT UNIT.

By way of background, the HPCA represents Hawaii's Federally Qualified Health Centers (FQHCs). FQHCs provide desperately needed medical services at the frontlines to over 150,000 patients each year who live 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.

This bill, as received by your Committee, would stabilize and increase funding for the Tobacco Enforcement Unit within the Department of the Attorney General by:

- (1) Increasing the amount of funds that the Tobacco Enforcement Special Fund (Special Fund) can carry over at the end of the fiscal year;
- (2) Increasing the Cigarette Tax Stamp Fee (Fee) and the percentage of the Fee allocated to the Special Fund; and
- (3) Increasing the sum of moneys received from the Tobacco Settlement.

This bill is part of the Administration's legislative package and it was proposed by the Department of the Attorney General (ATG-04(23)).

Testimony on House Bill No. 0982
Wednesday, February 8, 2023; 8:30 a.m.
Page 2

FQHCs have long seen first-hand how tobacco has literally destroyed the lives of our patients and their families. Because of the ubiquity of cigarettes, chewing tobacco, and now electronic smoking devices, the impacts of tobacco harms our citizenry on a generational basis with people experimenting at even earlier ages. Accordingly, the HPCA supports efforts that would improve enforcement of existing laws and create disincentives for consumers to use these products.

The HPCA urges your favorable consideration of this measure.

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.



HIPHI Board

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Titiimaea Ta'ase, JD
State of Hawai'i, Deputy Public
Defender

HIPHI Initiatives

Coalition for a
Tobacco-Free Hawai'i

Community Health
Worker Initiative

COVID-19 Response

Hawai'i Drug & Alcohol-Free
Coalitions

Hawai'i Farm to School Hui

Hawai'i Oral Health Coalition

Hawai'i Public Health Training Hui

Healthy Eating + Active Living

Kūpuna Collective

Date: February 7, 2023

To: Representative Della Au Belatti, Chair
Representative Jenna Takenouchi, Vice Chair
Members of the Committee on Labor & Government Operations

Re: Support HB 982 Relating to Funding For the Department of the
Attorney General Tobacco Enforcement Unit

Hrg: Wednesday, February 8, 2023, at 8:30 AM, Conf Rm 329

The Coalition for a Tobacco-Free Hawai'i, a program of the Hawai'i Public Health Instituteⁱ is in **Support of HB 982**, which would stabilize and increase funding for the tobacco enforcement unit within the Department of the Attorney General through several ways. It will increase the amount of funds that the tobacco enforcement special fund can carry over at the end of the fiscal year; increase the cigarette tax stamp fee and by concurrently increasing the percentage of the cigarette tax stamp fee deposited to the tobacco enforcement special fund; and amend the amount of funds to be deposited in the tobacco enforcement special fund from the Hawaii tobacco settlement special fund.

In short, this bill will support the work of the tobacco enforcement unit within the Department of the Attorney General. The tobacco enforcement unit administers, monitors, and enforces the tobacco master settlement agreement and related Hawai'i laws. The funding for supporting this unit has decreased over time because of the reduced number of cigarette sales.

The decrease in cigarette use is hopeful, and the trend is expected to continue. One day that number could be zero, and it is because of the comprehensive approach that has been taken to regulate cigarettes through taxes, regulation, licensing and permitting, and enforcement. By increasing access to funding, we can ensure that the Enforcement Unit will continue to do its job, supporting that comprehensive approach.

Thank you for considering HB 982 and other policies that will support a comprehensive approach to tobacco regulation.

Mahalo,

A handwritten signature in black ink that reads "Peggy Mierzwa". The signature is written in a cursive style and is set against a light blue rectangular background.

Peggy Mierzwa
Policy & Advocacy Director
Hawai'i Public Health Institute

ⁱ The Coalition for a Tobacco-Free Hawai'i (Coalition) is a program of the Hawai'i Public Health Institute (HIPHI) 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.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TOBACCO, Increase User Fees, Alter Earmarks

BILL NUMBER: HB 982, SB 1280 [ATG-04]

INTRODUCED BY: HB by SAIKI; SB by KOUCHI (Governor's Package)

EXECUTIVE SUMMARY: Increases and stabilizes the amount of funding for the tobacco enforcement special fund within the Department of the Attorney General by: (1) increasing the amount of funds that the tobacco enforcement special fund can carry over at the end of the fiscal year; (2) increasing the cigarette tax stamp fee and by concurrently increasing the percentage of the cigarette tax stamp fee deposited to the tobacco enforcement special fund; and (3) amending the amount of funds to be deposited in the tobacco enforcement special fund from the Hawai'i tobacco settlement special fund..

SYNOPSIS: Amends section 28-15, HRS, to allow the tobacco enforcement special fund to accumulate funds up to \$750,000 (up from \$500,000) without the excess lapsing to the general fund.

Amends section 245-26, HRS, to increase the stamp fee from 1.7% to 2.2% of the value of tax stamps sold, and to route the additional 0.5% to the tobacco enforcement special fund.

Amends section 328L-2, HRS, to increase the earmark on tobacco settlement moneys to the tobacco enforcement special fund from \$350,000 to \$750,000 per fiscal year.

EFFECTIVE DATE: July 1, 2023.

STAFF COMMENTS: This is an Administration bill sponsored by the Department of Attorney General and designated ATG-04 (23).

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

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

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

Probably the best example is what people like to call sin taxes, those excise taxes that are levied on tobacco and alcohol products. After all, smoking causes cancer and alcohol causes all sorts of problems including driving under the influence. Lawmakers and

community advocates shake their heads and push for higher tax rates, arguing that making these products more expensive will deter folks from using these products.

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

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

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

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

Kalapa, "Finding the Blame for What Ails You," at <https://www.tfhawaii.org/wordpress/-blog/2012/10/finding-the-blame-for-what-ails-you/> (Oct, 28, 2012).

Digested: 2/6/2023



February 06, 2023

From: Scott Rasak, VOLCANO Vape Shops
Chief Operating Officer

RE HB982 – 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 15 locations statewide and employ over 90 full-time workers to support sales of our products in Hawaii. We service thousands of adult Hawaii consumers who legally purchase vaping products overwhelmingly in flavored variations. Roughly, 99% of all Hawaii based vapor sales to legal adult consumers are flavored vapor products.

While we stand in overwhelming support of the harsh restrictions measures and laws to restrict use of vapor products among youth, the suggestions put forth for flavor prohibition sales **have not and will not** yield the results that lawmakers are proposing. We stand in opposition to HB982 for the following:

Effects of Flavor Bans

Flavor bans have had little effect on reducing youth e-cigarette use and may lead to increased combustible cigarette rates, as evidenced in San Francisco, California (“Vaping Up, Smoking Increasing Among Teens in San Francisco – Despite Bans,” *Tobacco Harm Reduction 101*, July 28, 2020, <https://www.thr101.org/research/2020/vaping-up-smoking-increasing-among-teens-in-san-francisco-despite-bans>).

In April 2018, a ban on the sale of flavored e-cigarettes and vapor products went into effect in San Francisco and in January, 2020, the city implemented a full ban on any electronic vapor product. Unfortunately, these measures have failed to lower youth tobacco and vapor product use. Data from an analysis of the 2019 Youth Risk Behavior Survey show that 16 percent of San Francisco high school students had used a vapor product on at least one occasion in 2019 – a 125 percent increase from 2017 when 7.1 percent of San Francisco high school students reported using an e-cigarette. (Centers for Disease Control and Prevention, “San Francisco, CA 2017 Results,” *High School Youth Risk Behavior Survey*, 2017, <https://nccd.cdc.gov/youthonline/App/Results.aspx?LID=SF>)

Daily use more than doubled, from 0.7 percent of high school students in 2017, to 1.9 percent of San Francisco high school students reporting using an e-cigarette or vapor product every day in 2019. Worse, despite nearly a decade of significant declines, youth use of combustible cigarettes seems to be on the rise in Frisco. In 2009, 35.6 percent of San Francisco high school students reported ever trying combustible cigarettes. This figure continued to decline to 16.7 percent in 2017. In 2019, the declining trend reversed and 18.6 percent of high school students reported ever trying a combustible cigarette.

Similarly, current cigarette use increased from 4.7 percent of San Francisco high school students in 2017 to 6.5 percent in 2019. An April 2020 study in *Addictive Behavior Reports* examined the impact of San Francisco’s flavor ban on young adults by surveying a sample of San Francisco residents aged 18 to 34 years. (Yong Yang et al., “The Impact of a Comprehensive Tobacco Product Flavor Ban in San Francisco Among Young Adults,” *Addictive Behavior Reports*, April 1, 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7186365/#!po=0.961538>.) Although the ban did have an effect in



decreasing vaping rates, the authors noted “a significant increase in cigarette smoking” among participants aged 18 to 24 years old.

Other municipal flavor bans have also had no effect on youth e-cigarette use. (“Flavor Bans Do Not Reduce Youth E-Cigarette Use,” *Tobacco Harm Reduction 101*, 2019, <https://www.thr101.org/research/2019/flavor-bans-do-not-reduce-youth-e-cigarette-use>) For example, Santa Clara County, California, banned flavored tobacco products to age-restricted stores in 2014. Despite this, youth e-cigarette use *increased*. In the 2015-16 California Youth Tobacco Survey (CYTS), 7.5 percent of Santa Clara high school students reported current use of e-cigarettes. In the 2017-18 CYTS, this *increased* to 10.7 percent.

Youths Are Not Relying On Internet for E-Cigarette Products

Despite many claims, most youth are not purchasing tobacco and vapor products online. Indeed, in analysis of state Youth Risk Behavior Surveys, youth are relying on social sources – including friends and family members – to obtain vapor products.

Arkansas In 2019, among all Arkansas high school students, only 1.1 percent of reported using the internet to get their own vapor product. Alternatively, 7.3 percent of Arkansas high school students reported borrowing them and 5.1 percent reported that someone else bought them. (Arkansas High School Survey, “2019 Youth Risk Behavior Survey Results,” 2019, http://dese.ade.arkansas.gov/public/userfiles/Learning_Services/School_Health_Services/YRBS/2019/2019ARH_Detail_Tables.pdf)

Maryland In 2018, among all Maryland high school students, only 1.3 percent reported using the internet to get their own electronic cigarette or vapor product. Further, 9.7 percent of Maryland high school students reported borrowing vapor products, and 4.3 percent reported that someone else bought them. (Maryland High School Survey, “2018 Youth Risk Behavior Survey Results,” 2018, <https://phpa.health.maryland.gov/ccdpc/Reports/Documents/2018%20YRBS%20YTS%20Reports/Maryland/2018MDH%20Detail%20Tables.pdf>)

Montana In 2019, among all Montana high school students, 0.7 percent reported using the internet to get their own electronic cigarette or vapor product. Moreover, 10.6 percent of Montana high school students reported borrowing vapor products and 6.9 percent reported giving “someone else money to buy them for me.” (Montana Office of Public Instruction, “2019 Montana Youth Risk Behavior Survey High School Results,” 2019, http://opi.mt.gov/Portals/182/Page%20Files/YRBS/2019YRBS/2019_MT_YRBS_FullReport.pdf?ver=2019-08-23-083248-820)

New Hampshire In 2019, among all New Hampshire high school student, 0.5 percent reported using the internet to get their own electronic cigarette or vapor product. Further, 13.9 percent of New Hampshire high school students reported borrowing vapor products, and 5.8 percent reported that someone else bought them. (New Hampshire High School Survey, “2019 Youth Risk Behavior Survey Results,” 2019, <https://www.education.nh.gov/sites/g/files/ehbemt326/files/files/inline-documents/2019nhdetailtables.pdf>)

Vermont In 2019, among Vermont high school students that reported current e-cigarette use and were under the age of 18, only 3 percent reported using the internet to get obtain vapor products. Further, 52 percent of Vermont high school students that were current e-cigarette users reported borrowing them and 26 percent reported giving “someone else money to buy them.” (Vermont Department of Health, “2019



Vermont Youth Risk Behavior Survey Statewide Results,” March, 2020, https://www.healthvermont.gov/sites/default/files/documents/pdf/CHS_YRBS_statewide_report.pdf)

Menthol Bans Have Little Effect on Smoking Rates, Lead to Black Markets, Lost Revenue and Will Create Racial Tension

Beyond e-cigarettes, policymakers’ fears about the role of menthol and flavorings in cigarettes and cigars are overblown and banning these products will likely lead to black markets.

Data from the National Health Interview Survey (NHIS) finds nearly a third of all American adult smokers smoke menthol cigarettes. In a 2015 NHIS survey, “of the 36.5 million American adult smokers, about 10.7 million reported that they smoked menthol cigarettes,” and white menthol smokers “far outnumbered” the black and African American menthol smokers. (Brad Rodu, “Who Smokes Menthol Cigarettes?” *Tobacco Truth*, December 4, 2018, <https://rodutobaccotruth.blogspot.com/2018/12/who-smokes-menthol-cigarettes.html>)

Although lawmakers believe banning menthol cigarettes will deter persons from smoking those, such a ban will likely lead to black markets. A 2012 study featured in the journal *Addiction* found a quarter of menthol smokers surveyed indicated they would find a way to purchase, even illegally, menthol cigarettes should a menthol ban go into place. (RJ O’Connor *et al.*, “What would menthol smokers do if menthol in cigarettes were banned?” *Addiction*, April 4, 2012, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3370153/>)

Further, there is little evidence that smokers would actually quit under a menthol ban. A 2015 study in *Nicotine & Tobacco Research* found only 28 percent of menthol smokers would give up cigarettes if menthol cigarettes were banned. (Olivia A. Wackowski, PhD, MPH, *et al.*, “Switching to E-Cigarettes in the Event of a Menthol Cigarette Ban,” *Nicotine & Tobacco Research*, January 29, 2015, https://www.researchgate.net/publication/271592485_Switching_to_E-Cigarettes_in_the_Event_of_a_Menthol_Cigarette_Ban)

Moreover, there is no evidence to suggest that menthol cigarettes lead to youth tobacco use. Analysts at the Reason Foundation examined youth tobacco rates and menthol cigarette sales. The authors of the 2020 report found that states “with more menthol cigarette consumption relative to all cigarettes have *lower* rates of child smoking.” Indeed, the only “predictive relationship” is between child and adult smoking rates, finding that “states with higher rates of adult use cause higher rates of youth use.” (Guy Bentley and J.J. Rich, “Does Menthol Cigarette Distribution Affect Child or Adult Cigarette Use?” Policy Study, Reason Foundation, January 30, 2020, <https://reason.org/policy-study/does-menthol-cigarette-distribution-affect-child-or-adult-cigarette-use/>)

Lawmakers should take note that menthol sales bans will strain minority communities. Although white Americans smoke more menthol cigarettes than black or African Americans, “black smokers [are] 10-11 times more likely to smoke” menthol cigarettes than white smokers. (D. Lawrence *et al.*, “National patterns and correlates of mentholated cigarette use in the United States,” *Addiction*, December, 2010, <https://www.ncbi.nlm.nih.gov/pubmed/21059133>)

Given African Americans’ preference for menthol cigarettes, a ban on menthol cigarettes would force police to further scrutinize African Americans and likely lead to unintended consequences. A 2015 analysis from the National Research Council examined characteristics in the illicit tobacco market. (National Research Council, “Understanding the U.S. Illicit Tobacco Market: Characteristics, Policy Context and Lessons from International Experiences,” *The National Academies Press*, 2015, <https://www.nap.edu/download/19016>)



The researchers found that although lower income persons were less likely to travel to purchase lower-taxed cigarettes, “having a higher share of non-white households was associated with a lower probability of finding a local tax stamp” and “neighborhoods with higher proportions of minorities are more likely to have formal or informal networks that allow circumvention of the cigarette taxes.”

Lawmakers in New Hampshire should reexamine the case of Eric Garner, a man killed in 2014 while being arrested for selling single cigarettes in the city. In a 2019 letter to the New York City council, Garner’s mother, as well as Trayvon Martin’s mother, implored officials to “pay very close attention to the unintended consequences of a ban on menthol cigarettes and what it would mean for communities of color.” Both mothers noted that a menthol ban would “create a whole new market for loosies and re-introduce another version of stop and frisk in black, financially challenged communities.” (Carl Campanile, “Menthol cig ban will lead to more stop-and-frisk: Moms of Garner, Martin,” *New York Post*, October 16, 2019, <https://nypost.com/2019/10/16/menthol-cig-ban-will-lead-to-more-stop-and-frisk-moms-of-garner-martin/>)

Conclusion & Policy Recommendations:

It is disingenuous that lawmakers would purport to protect public health yet restrict access to 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.

- 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.
 - 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.
 - Lawmakers’ must face the reality of a larger illicit market in the wake of a ban on flavored tobacco and vapor products – prohibition does not automatically translate into reduced use, just different markets.
-
- Most recently, the FDA has issued updated guidance on vapor products which limit a flavor restriction to prefilled pods such as the Juul device which has been proven in the recent CDC Youth Tobacco Risk Survey to be the #1 brand choice for youth usage. This is a measured approach to an issue The FDA purposefully left the “open tank” market off their guidance for flavor restrictions because they want to keep the adult users and industry participants insulated from a blanket ban that would send adults back to cigarettes and put 15,000 small businesses out of business & 100,000 people out of work nationally.
 - HB982 will deny current combustible tobacco smokers vital products needed to help them quit smoking. Furthermore, a flavor ban would no doubt force the closure of over 50+ businesses in Hawaii and immediate loss in employment as well as retail leases and supporting businesses. It’s the small independent vape shops which play a vital role in helping adults make a successful transition off tobacco cigarettes, not convenience stores.



- To date there is no manufacturer that sells as successful line of unflavored eliquid to legal adult users 21+. These products rely heavily on their ability to offer flavor diversity to adults to increase their success in secession rates from tobacco cigarettes.
- A flavor ban would force a black market “Do it yourself” experimental market due to the massive adult population who currently use these products in Hawaii. Currently, all products being distributed by Hawaii vape shops are third party batch tested and registered with the FDA with assigned TP numbers. The factories manufacturing the products that currently sit on the shelves are quality controlled. The black-market conditions which would arise from the passing of this bill would inflict a huge quality void in the market and expose the adult population to greater risks. The unintended consequences of this bill outweigh the hypothetical gain.
- Flavored alcohol products remain in plentiful abundance at every retail outlet even with high rates of youth usage, associated death and disease, in addition to all the addiction and abuse of those items as well. The vapor category is being held to a different standard in regards to flavors on the retail market. Its potential to be a risk reduction tool is proven to assist adults in a path off of using the known killer of tobacco cigarettes and should be supported instead of denied the single largest public health with of our lifetime.





- Vapor products and e-liquids contain NO tobacco, often times contain NO nicotine, and ultimately emit NO smoke when vaporized; yet HB982 deceptively refers to vapor products as “Electronic Smoking Devices” to mislead the public and creates a false perception of the nature of these products. This misclassification establishes the idea that vapor products are the same as tobacco products and thus, should be viewed, controlled, and perceived the same way as traditional tobacco products. This is a complete disregard of the fact that vapor products are fundamentally different from tobacco products in every way.

- HB982 states in its justification that the bill and its regulations are needed to curb youth usage. However, it fails to mention the latest available CDC report that shows youth use of all tobacco products, including e-cigarettes are at the lowest levels ever. Furthermore, a study done the following year at the University of Michigan found that the majority of youth who have reported using e-cigarettes are not using e-liquids that contain nicotine - further suggesting that youth who do use ecigarettes are doing so to replace the use of traditional tobacco.

- o <https://www.cdc.gov/media/releases/2017/p0615-youth-tobacco.html>

- The most Recent CDC report has shown e-cigarettes have supplanted all other traditional nicotine replacement therapies and are now the most commonly used product by consumers to quit using traditional tobacco cigarettes

- o http://www.journalnow.com/business/business_news/local/cdc-report-shows-moresmokers-try-to-quit-with-e/article_a33383f3-5300-5178-9f14-28b52884c45c.html

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

- o <https://www.nejm.org/doi/full/10.1056/NEJMoa1808779>

- A recent study by the National Academy of Sciences, Engineering, and Medicine stated: "there is conclusive evidence that completely substituting e-cigarettes for combustible tobacco cigarettes reduces users' exposure to numerous toxicants and carcinogens present in combustible tobacco cigarettes." The findings add to the already weighty body of evidence showing vaping to be far less hazardous than smoking.

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

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

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

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



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
330 Sand Island Access Rd. #400
Honolulu, HI 96819
scott@volcanoecigs.com



Vape Element, LLC dba BLVK
1718 Potrero Ave #A
South El Monte, CA 91733
United States

**Official Opposition Comment to HB982 Relating to Funding for the Department of the Attorney
General Tobacco Enforcement Unit**

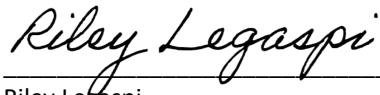
To Whom It May Concern:

On behalf of Vape Element, LLC dba BLVK, a California-based e-liquid manufacturer with a significant presence in the state of Hawaii, we strongly oppose HB982 and its proposed legislation to increase the funding of the Tobacco Enforcement Unit. Beyond having a vested interest as a business in the state, it is not a good idea to expand the tobacco enforcement unit on an already heavy-regulated industry for several reasons.

Businesses that are already struggling to survive in the industry suffer from an expansion of enforcement. While the intent of tobacco enforcement largely comes down to penalizes businesses that fail to remit taxes due, the vast majority of offending businesses come from smoke shops and convenience stores where youth prevention is not regularly practiced. By expanding the Tobacco Enforcement Unit, adult-only vape shops whose entire business model thrives off distributing vapor products to adults only further curtails their already-beleaguered business. This spells disaster for an entire industry sector and individual tax paying adults like you and I to lose their jobs.

Lawmakers have a tendency to push laws without fully developing a method and process on how to remain compliant. HB982 is no different. According to the bill, funding will be given to expand the Tobacco Enforcement Unit. Given the funding, how would the expansion ultimately affect the enforcement process? Will there be more agents on the ground? Will consequences be explicitly explained? How would an agent differentiate an offending business from a compliant one? Should this bill pass, what are the next steps? What *exactly* is required of businesses to maintain compliance?

From the standpoint of not only a business that operates in the state of Hawaii, but a collective of individuals with a heavy emphasis in the freedom of choice, HB982 is a social contract that fails to act in favor of the people. Rather, it stands to severely limit a business's ability to operate and service its constituents in a manner that is not obstructed with ever-restrictive laws and regulations. Should this bill pass, the government is once again stepping up to the plate to destroy an industry, cut jobs, limit access to adults that are of smoking age to consume these products, and adds another useless law with no infrastructure around it to provide a net benefit to society. On behalf of Vape Element, LLC dba BLVK, we strongly oppose HB982.



Riley Legaspi
Chief Compliance Officer at BLVK
888-392-2585
riley@blvk.com

HB-982

Submitted on: 2/6/2023 10:09:50 AM

Testimony for HLT on 2/8/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Travis Bagano	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill

HB-982

Submitted on: 2/6/2023 10:17:16 AM

Testimony for HLT on 2/8/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Dejen	Individual	Oppose	Written Testimony Only

Comments:

I OPPOSE THIS BILL

HB-982

Submitted on: 2/6/2023 10:21:37 AM

Testimony for HLT on 2/8/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Naomi Muronaka	Individual	Oppose	Written Testimony Only

Comments:

I OPPOSE THIS BILL

HB-982

Submitted on: 2/6/2023 10:26:40 AM

Testimony for HLT on 2/8/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Erin Alicia Wiggins	Individual	Oppose	Written Testimony Only

Comments:

I oppose

HB-982

Submitted on: 2/6/2023 10:33:43 AM

Testimony for HLT on 2/8/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Robert Riley	Individual	Oppose	Written Testimony Only

Comments:

No

HB-982

Submitted on: 2/6/2023 11:07:54 AM

Testimony for HLT on 2/8/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
dillon rellez	Individual	Oppose	Written Testimony Only

Comments:

I strongly oppose raising taxes to try and stop a problem that the government needs to solve. No company here is really selling these vapes to kids, there are rules against it, start arresting kids who are vaping then we can get to the real problem.

HB-982

Submitted on: 2/6/2023 11:13:46 AM

Testimony for HLT on 2/8/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Hoku	Individual	Oppose	Written Testimony Only

Comments:

I oppose bill HB982. I would not like the amount of funds that tobacco enforcement special fund can carry over at the end of the fiscal year to increase. I would not like an increase of the cigarette tax stamp fee or increase of the percentage of the cigarette tax stamp fee and allow it to be deposited to the tobacco enforcement special fund. I would not like the amount of funds (deposited in the tobacco enforcement special fund) to be amended from the Hawaii tobacco settlement special fund. Thank you.

HB-982

Submitted on: 2/6/2023 11:32:39 AM

Testimony for HLT on 2/8/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
ellen benton	Individual	Oppose	Written Testimony Only

Comments:

I urge you to oppose this bill

HB-982

Submitted on: 2/6/2023 11:37:28 AM

Testimony for HLT on 2/8/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Chelsey Leialoha	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill

HB-982

Submitted on: 2/6/2023 11:37:58 AM

Testimony for HLT on 2/8/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Sasha Kauwale	Individual	Oppose	Written Testimony Only

Comments:

I oppose

HB-982

Submitted on: 2/6/2023 4:49:31 PM

Testimony for HLT on 2/8/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Karyne	Individual	Oppose	Written Testimony Only

Comments:

I opposed the bill HB982 because it is restricting legal adults alternative options to cigarettes. Many legal adults utilize flavored vaporizers to quit their cigarette addiction, and approving this bill may pusj them back to cigarettes.

HB-982

Submitted on: 2/6/2023 4:55:36 PM

Testimony for HLT on 2/8/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Eric Heaulani	Individual	Oppose	Written Testimony Only

Comments:

Why? Doesn't make sense.

HB-982

Submitted on: 2/6/2023 6:41:26 PM

Testimony for HLT on 2/8/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mark Owens	Individual	Oppose	Written Testimony Only

Comments:

Too much funding already.

HB-982

Submitted on: 2/6/2023 6:59:54 PM

Testimony for HLT on 2/8/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Tyler Hodges	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill that would increase taxes on cigarettes as it would have a domino effect on small business which would force them to increase prices on an already inflated economy causing loss of customers and possible foreclosures.

HB-982

Submitted on: 2/6/2023 8:19:22 PM

Testimony for HLT on 2/8/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Cara valenzuela	Individual	Oppose	Written Testimony Only

Comments:

I oppose this testimony please oppose this bill

HB-982

Submitted on: 2/7/2023 4:48:07 PM

Testimony for HLT on 2/8/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Chris Anton	Individual	Oppose	Written Testimony Only

Comments:

WTF. More wasted money.

HB-982

Submitted on: 2/7/2023 5:19:08 PM

Testimony for HLT on 2/8/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Nicholas Winters	Individual	Oppose	Written Testimony Only

Comments:

The tobacco enforcement unit is abusive waste.

HB-982

Submitted on: 2/8/2023 4:08:49 PM

Testimony for HLT on 2/8/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Michael Zehner	Hawaii Smokers Alliance	Oppose	Written Testimony Only

Comments:

We oppose this bill. Throwing more money down the toilet for "enforcement" against people's civil right to smoke or vape is not the answer. The money should instead be placed in the general fund to benefit everyone.

Mahalo,

Hawaii Smokers Alliance