

GOV. MSG. NO. 865

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 7, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on July 7, 2008, the following bill was signed into law:

HB2438 HD2 SD2 CD1

A BILL FOR AN ACT RELATING TO CIGARETTES.
(ACT 218)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

Approved by the Governor

on JUL 7 2008

HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2008
STATE OF HAWAII

ACT 218
H.B. NO.

2438
H.D. 2
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO CIGARETTES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

"CHAPTER

REDUCED IGNITION PROPENSITY CIGARETTES LAW

6 § -1 Purpose. It is the intent of this chapter to
7 require that only reduced ignition propensity cigarettes be sold
8 in the State. Although these cigarettes are not guaranteed to
9 self-extinguish, they are expected to reduce accidental fires
10 and related personal injury and property damage caused by
11 cigarette smoking.

12 § -2 Definitions. For the purposes of this chapter,
13 unless the context otherwise requires:

14 "Cigarette" means:

- 15 (1) Any roll for smoking, whether made wholly or in part
16 of tobacco or any other substance, irrespective of
17 size or shape, and whether or not the tobacco or
18 substance is flavored, adulterated, or mixed with any

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1 other ingredient, with a wrapper or cover that is made
2 of paper or any other substance or material, other
3 than tobacco; or

4 (2) Any roll for smoking wrapped in any substance
5 containing tobacco, which, due to its appearance, the
6 type of tobacco used in the filler, or its packaging
7 and labeling, is likely to be offered to or purchased
8 by consumers as a cigarette as described in paragraph
9 (1).

10 "Dealer" means the same as defined in section 245-1.

11 "Manufacturer" means:

12 (1) Any entity that manufactures or otherwise produces
13 cigarettes or causes cigarettes to be manufactured or
14 produced anywhere, and intends to sell these
15 cigarettes:

16 (A) In this state; or

17 (B) Anywhere in the United States through an
18 importer;

19 (2) The first purchaser anywhere that intends to resell in
20 the United States cigarettes manufactured anywhere
21 that the original manufacturer or maker does not
22 intend to be sold in the United States; or



1 (3) Any entity that becomes a successor of an entity
2 described in paragraph (1) or (2).

3 "Quality control and quality assurance program" means
4 laboratory procedures implemented to ensure that operator bias,
5 systematic and nonsystematic methodological errors, and
6 equipment-related problems do not affect the results of the
7 testing and to ensure that the testing repeatability remains
8 within the required repeatability value for any test trial used
9 to certify cigarettes under this chapter.

10 "Repeatability" means the range of values within which the
11 repeat results of cigarette test trials from a single laboratory
12 will fall ninety-five per cent of the time.

13 "Sale" or "selling" means any transfer of title or
14 possession, exchange, or barter, conditional or otherwise, and
15 includes the giving of cigarettes as samples, prizes, or gifts,
16 and the exchange of cigarettes for any consideration.

17 "Wholesaler" means the same as defined in section 245-1.

18 § -3 Cigarettes; reduced ignition propensity;
19 manufacturer testing. (a) Except as provided in sections -7
20 and -8, no cigarettes may be sold or offered for sale in this
21 state or offered for sale or sold to persons located in this
22 state unless the cigarettes have been tested in accordance with



1 the test method and meet the performance standard specified in
2 this section, and the manufacturer has filed a written
3 certification with the state fire council in accordance with
4 section -4(a) and the cigarettes have been marked in
5 accordance with section -4(b).

6 (1) Testing of cigarettes shall be conducted in accordance
7 with the American Society of Testing and Materials
8 standard E2187-04 "Standard Test Method for Measuring
9 the Ignition Strength of Cigarettes." The state fire
10 council may adopt as rules pursuant to chapter 91, a
11 subsequent American Society of Testing and Materials
12 Standard Test Method for Measuring the Ignition
13 Strength of Cigarettes upon a finding that the
14 subsequent method does not result in a change in the
15 percentage of full-length burns exhibited by any
16 tested cigarette when compared to the percentage of
17 full-length burns the same cigarette would exhibit
18 when tested in accordance with American Society of
19 Testing and Materials standard E2187-04 and the
20 performance standard of this section;

21 (2) Testing of cigarettes shall be conducted on ten layers
22 of filter paper;



- 1 (3) No more than twenty-five per cent of the cigarettes
2 tested in a test trial shall exhibit full-length
3 burns. Forty replicate tests shall constitute a
4 complete test trial for each cigarette tested;
- 5 (4) The performance standard required by this section
6 shall only be applied to a complete test trial;
- 7 (5) Written certifications shall be based upon testing
8 conducted by a laboratory that has been accredited
9 pursuant to standard ISO/IEC 17025 of the
10 International Organization for
11 Standardization/International Electrotechnical
12 Commission, or other comparable accreditation standard
13 required by the state fire council;
- 14 (6) Laboratories that conduct tests in accordance with
15 this section shall implement a quality control and
16 quality assurance program that includes a procedure to
17 determine the repeatability of the testing results.
18 The repeatability value shall be no greater than 0.19;
- 19 (7) Each cigarette listed in a certification that uses
20 lowered permeability bands in the cigarette paper to
21 achieve compliance with the performance standard in
22 this section shall have at least two nominally



1 identical bands on the paper surrounding the tobacco
2 column. At least one complete band shall be located
3 at least fifteen millimeters from the lighting end of
4 the cigarette. For cigarettes on which the bands are
5 positioned by design, there shall be at least two
6 bands located at least fifteen millimeters from the
7 lighting end and ten millimeters from the filter end
8 of the tobacco column. In the case of an unfiltered
9 cigarette, the two complete bands shall be located at
10 least fifteen millimeters from the lighting end and
11 ten millimeters from the labeled end of the tobacco
12 column; and

13 (8) The manufacturer of a cigarette that the state fire
14 council determines cannot be tested in accordance with
15 the test method required by this section shall propose
16 to the state fire council a test method and
17 performance standard for that cigarette. The state
18 fire council may approve a test method and performance
19 standard that the state fire council determines is
20 equivalent to the requirement of this section, and the
21 manufacturer may use that test method and performance
22 standard for certification pursuant to section -4.



1 If the state fire council determines that another
2 state has enacted reduced cigarette ignition
3 propensity standards that include a test method and
4 performance standard that are the same as those
5 contained in this chapter, and the state fire council
6 finds that the officials responsible for implementing
7 those requirements have approved the proposed
8 alternative test method and performance standard for a
9 particular cigarette proposed by a manufacturer as
10 meeting the fire safety standards of that state's law
11 or regulation under a legal provision comparable to
12 this section, then the state fire council shall
13 authorize that manufacturer to employ the alternative
14 test method and performance standard to certify that
15 cigarette for sale in this State, unless the state
16 fire council demonstrates a reasonable basis why the
17 alternative test should not be accepted. All other
18 applicable requirements of this section shall apply to
19 the manufacturer.

20 (b) A manufacturer shall retain copies of the reports of
21 testing conducted on cigarettes offered for sale in the State
22 for a period of three years. The manufacturer shall provide



1 copies of these reports to the state fire council and the
2 attorney general upon written request. Any manufacturer who
3 fails to make copies of these reports available within sixty
4 days of receiving a written request shall be subject to a civil
5 penalty not to exceed \$10,000 for each day after the sixtieth
6 day that the manufacturer does not make the copies available.

7 (c) This section shall not require additional testing if
8 cigarettes are tested consistent with this chapter for any other
9 purpose.

10 (d) Testing performed or sponsored by the state fire
11 council to determine a cigarette's compliance with the
12 performance standard required by this section shall be conducted
13 in accordance with this section.

14 (e) The state fire council shall review the effectiveness
15 of this section and report every three years to the legislature
16 the state fire council's findings and, if appropriate,
17 recommendations for legislation to improve the effectiveness of
18 this chapter. The report and legislative recommendations shall
19 be submitted no later than June 30 following the conclusion of
20 each three-year period.

21 § -4 **Certification; marking.** (a) Each manufacturer
22 shall submit to the state fire council written certification



1 attesting that each cigarette has been tested in accordance
2 with, and has met the performance standard required under
3 section -3. The description of each cigarette listed in the
4 certification shall include:

- 5 (1) The brand or trade name on the package;
- 6 (2) Style, such as light or ultra light;
- 7 (3) Length in millimeters;
- 8 (4) Circumference in millimeters;
- 9 (5) Flavor, such as menthol, if applicable;
- 10 (6) Filter or nonfilter;
- 11 (7) Package description, such as a soft pack or box;
- 12 (8) The mark approved pursuant to subsection (b);
- 13 (9) The name, address, and telephone number of the
14 laboratory, if different than the manufacturer that
15 conducted the test; and
- 16 (10) The date that the testing occurred.

17 Each cigarette certified under this subsection shall be
18 recertified every three years. For each cigarette listed in a
19 certification, a manufacturer shall pay to the state fire
20 council a \$375 fee. The state fire council is authorized to
21 annually adjust this fee to ensure it defrays the actual costs



1 of the processing, testing, enforcement, and oversight
2 activities required by this chapter.

3 The certifications shall be made available to the attorney
4 general for purposes consistent with this chapter.

5 (b) Cigarettes that have been certified pursuant to
6 subsection (a) shall be marked pursuant to the following
7 requirements:

8 (1) The marking shall be in a font of at least eight-point
9 type and shall include one of the following:

10 (A) Modification of the product's universal product
11 code to include a visible mark printed at or
12 around the area of the universal product code.
13 The mark may consist of one or more alphanumeric
14 or symbolic characters permanently stamped,
15 engraved, embossed, or printed in conjunction
16 with the universal product code;

17 (B) Any visible combination of alphanumeric or
18 symbolic characters permanently printed, stamped,
19 engraved, or embossed on the cigarette package or
20 the cellophane wrap; and



1 (C) Printed, stamped, engraved, or embossed text that
2 indicates that the cigarettes meet the standards
3 of this section; and

4 (2) Prior to the certification of any cigarette, a
5 manufacturer shall request approval of a proposed
6 marking from the state fire council. Upon receipt of
7 the request, the state fire council shall approve or
8 disapprove the marking offered, except that the state
9 fire council shall approve:

10 (A) Any marking approved and in use for the sale of
11 cigarettes in the state of New York; or

12 (B) The letters "FSC," which signifies fire standards
13 compliant, appearing in eight-point type or
14 larger and permanently printed, stamped,
15 engraved, or embossed on the package at or near
16 the universal product code.

17 A marking shall be deemed approved if the state fire council
18 fails to act within ten business days of receiving a request for
19 approval. A manufacturer shall not use a modified marking
20 unless the modification has been approved in accordance with
21 this chapter. A manufacturer shall use only one marking and
22 shall apply this marking uniformly for all packages, including



1 packs, cartons, and cases, and brands marketed by that
2 manufacturer.

3 (c) The state fire council shall be notified as to the
4 marking that is selected.

5 (d) A manufacturer shall provide a copy of certifications
6 to all wholesalers to which the manufacturer sells cigarettes
7 and shall provide sufficient copies of an illustration of the
8 packaging marking approved and used by the manufacturer pursuant
9 to subsection (b) for each of the dealers that purchases
10 cigarettes from any of those wholesalers. Wholesalers shall
11 provide a copy of the illustration to all dealers to which they
12 sell cigarettes. Wholesalers and dealers shall permit the state
13 fire council and the attorney general to inspect markings on
14 cigarette packaging at any time.

15 § -5 **State fire council; rules; implementation.** The
16 state fire council:

17 (1) May adopt rules pursuant to chapter 91 necessary to
18 effectuate the purposes of this chapter;

19 (2) May examine the books, papers, invoices, and other
20 records of any person in possession, control, or
21 occupancy of any premises where cigarettes are placed,
22 stored, sold or offered for sale, as well as the stock



1 of cigarettes on the premises to enforce the
 2 provisions of this chapter, through its duly
 3 authorized representatives, or the attorney general
 4 and its duly authorized representatives, or other law
 5 enforcement personnel. Every person in the
 6 possession, control, or occupancy of any premises
 7 where cigarettes are placed, sold or offered for sale,
 8 shall give the state fire council, the attorney
 9 general, their duly authorized representatives, and
 10 other law enforcement personnel, the means,
 11 facilities, and opportunity for the examinations
 12 authorized by this paragraph; and

13 (3) Shall ensure that the implementation of this chapter
 14 is in accordance with the implementation and substance
 15 of the New York fire safety standards for cigarettes.

16 § -6 **Penalties; enforcement; attorney general.** (a) The
 17 following civil penalties may be assessed:

18 (1) Against a manufacturer, wholesaler, or any other
 19 person or entity that knowingly sells cigarettes,
 20 except by licensed retail sales, in violation of
 21 section -3, a civil penalty not to exceed \$100 for
 22 each pack of cigarettes sold or offered for sale;



- 1 provided that in no case shall the penalty exceed
2 \$100,000 during any thirty-day period;
- 3 (2) Against a manufacturer that knowingly makes a false
4 certification pursuant to section -4, a civil
5 penalty of at least \$75,000 and not to exceed \$250,000
6 for each false certification;
- 7 (3) Against a dealer that knowingly sells or offers for
8 sale cigarettes in violation of section -3, a civil
9 penalty not to exceed \$100 for each pack of cigarettes
10 sold or offered for sale; provided that in no case
11 shall the penalty exceed \$25,000 for sales or offers
12 to sell during any thirty-day period; and
- 13 (4) Against any other person that violates this chapter, a
14 civil penalty for a first offense not to exceed
15 \$1,000, and for a subsequent offense not to exceed
16 \$5,000 for each violation.
- 17 (b) Any cigarettes sold or offered for sale that do not
18 comply with the performance standard required by section -3
19 shall be subject to forfeiture under chapter 712A. Cigarettes
20 forfeited pursuant to this subsection shall be destroyed.
- 21 (c) Whenever any law enforcement officer or duly
22 authorized representative of the state fire council discovers



1 any cigarettes that have not been marked in the manner required
2 under section -4, the officer or representative may seize and
3 take possession of the cigarettes. The cigarettes shall be
4 considered contraband and may be seized with or without a
5 warrant and turned over to the attorney general. The contraband
6 cigarettes shall be subject to forfeiture under chapter 712A.
7 Cigarettes seized pursuant to this subsection shall be
8 destroyed.

9 (d) In addition to any other remedy provided by law, the
10 attorney general may file an action for a violation of this
11 section, including petitioning for injunctive relief, recovery
12 of costs or damages suffered by the State as the result of a
13 violation of this section, including enforcement costs relating
14 to the specific violation and attorney fees. Each violation of
15 this chapter or of any rule adopted pursuant to this chapter
16 shall constitute a separate civil violation for which the
17 attorney general may obtain relief.

18 § -7 **Exemption.** Nothing in this chapter shall be
19 construed to prohibit any person from manufacturing or selling
20 cigarettes that do not meet the requirements of this chapter, if
21 the cigarettes are or will be stamped for sale in another state
22 or are to be sold outside the United States.



1 § -8 Existing inventories; consumer testing. The
2 requirement that cigarettes sold in Hawaii must be in compliance
3 with this chapter shall not prohibit:

4 (1) Wholesalers or dealers from selling existing cigarette
5 inventories on or after the effective date of this
6 Act; provided that the wholesaler or dealer can
7 establish both of the following to the satisfaction of
8 the state fire council:

9 (A) The Hawaii tax stamps were affixed to the
10 cigarettes pursuant to chapter 245 prior to the
11 effective date of this Act; and

12 (B) The inventory was purchased prior to the
13 effective date of this Act, and the purchased
14 inventory is comparable to the amount of
15 inventory purchased during the same period the
16 previous year; or

17 (2) The sale of cigarettes solely for the purpose of
18 consumer testing. For the purposes of this paragraph,
19 the term "consumer testing" means an assessment of
20 cigarettes that is conducted by or under the control
21 and direction of a manufacturer for the purpose of
22 evaluating consumer acceptance of cigarettes, using



1 only the quantity of cigarettes that is reasonably
 2 necessary for the assessment, and in a controlled
 3 setting where the cigarettes are either consumed
 4 on-site or returned to the testing administrators at
 5 the conclusion of the testing."

6 SECTION 2. Section 132-16, Hawaii Revised Statutes, is
 7 amended by amending subsection (b) to read as follows:

8 "(b) In addition to adopting a state fire code pursuant to
 9 section 132-3, the state fire council shall [~~serve~~]:

10 (1) Administer the requirements for reduced ignition
 11 propensity cigarettes, in accordance with chapter
 12 _____; and

13 (2) Serve as a focal point through which all applications
 14 to the federal government for federal grant assistance
 15 for fire-related projects shall be made. Upon the
 16 receipt of any such federal grants, the state fire
 17 council shall administer those federal grants."

18 SECTION 3. This Act shall be repealed if a federal reduced
 19 cigarette ignition propensity standard that preempts this Act is
 20 adopted and becomes effective.

21 SECTION 4. Notwithstanding any other provision of law, the
 22 counties may neither enact nor enforce any ordinance or other

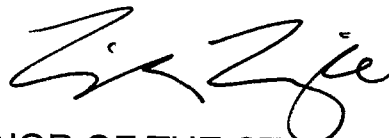


1 local law or regulation conflicting with, or preempted by, any
2 provision of this Act or with any policy of this State expressed
3 by this Act, whether that policy be expressed by inclusion of a
4 provision in this Act or by exclusion of that subject from this
5 Act.

6 SECTION 5. New statutory material is underscored.

7 SECTION 6. This Act shall take effect on September 30,
8 2009, and shall be implemented to coincide with the excise tax
9 incremental increase on cigarettes effective September 30, 2009,
10 pursuant to section 245-3, Hawaii Revised Statutes; provided
11 that section 4 shall take effect upon approval of this Act;
12 provided further that section -5(1), Hawaii Revised
13 Statutes, shall take effect upon approval of this Act.

APPROVED this 7 day of JUL , 2008



GOVERNOR OF THE STATE OF HAWAII

