
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:

4 **"CHAPTER**

5 **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 such tobacco or
18 substance is flavored, adulterated, or mixed with any



1 other ingredient, the wrapper or cover of which is
2 made of paper or any other substance or material,
3 other than leaf tobacco; or
4 (2) Any roll for smoking wrapped in any substance
5 containing tobacco which, because of its appearance,
6 the type of tobacco used in the filler, or its
7 packaging and labeling, is likely to be offered to, or
8 purchased by, consumers as a cigarette as described in
9 paragraph (1) of this definition.

10 "Dealer" has the meaning as defined in section 245-1.

11 "Manufacturer" means:

- 12 (1) Any entity which manufactures or otherwise produces
13 cigarettes or causes cigarettes to be manufactured or
14 produced anywhere that such manufacturer intends to be
15 sold in this State, including cigarettes intended to
16 be sold in the United States through an importer; or
17 (2) The first purchaser anywhere that intends to resell in
18 the United States cigarettes manufactured anywhere
19 that the original manufacturer or maker does not
20 intend to be sold in the United States; or
21 (3) Any entity that becomes a successor of an entity
22 described in paragraph (1) or (2).



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

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

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

15 "Wholesaler" has the meaning as defined in section 245-1.

16 § -3 **Cigarettes; reduced ignition propensity;**
 17 **manufacturer testing.** Except as provided in section -7 and
 18 section -8, no cigarettes may be sold or offered for sale in
 19 this State or offered for sale or sold to persons located in
 20 this State unless the cigarettes have been tested in accordance
 21 with the test method and meet the performance standard specified
 22 in this section and the manufacturer has filed a written



1 certification with the state fire council in accordance with
2 section -4(a), and the cigarettes have been marked in
3 accordance with section -4(b).

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

19 (2) Testing of cigarettes shall be conducted on ten layers
20 of filter paper;

21 (3) No more than twenty-five per cent of the cigarettes
22 tested in a test trial shall exhibit full-length



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



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

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



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

- 17 (9) A manufacturer shall retain copies of the reports of
18 testing conducted on cigarettes offered for sale in
19 Hawaii for a period of three years. The manufacturer
20 shall provide copies of these reports to the state
21 fire council and the attorney general upon written
22 request. Any manufacturer who fails to make copies of



1 these reports available within sixty days of receiving
2 a written request shall be subject to a civil penalty
3 not to exceed \$10,000 for each day after the sixtieth
4 day that the manufacturer does not make such copies
5 available;

6 (10) This section does not require additional testing if
7 cigarettes are tested consistent with this chapter for
8 any other purpose;

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

13 (12) The state fire council shall review the effectiveness
14 of this section and report every three years to the
15 legislature the state fire council's findings and, if
16 appropriate, recommendations for legislation to
17 improve the effectiveness of this chapter. The report
18 and legislative recommendations shall be submitted no
19 later than June thirtieth 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 with
2 and has met the performance standard required under section

3 -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 or chocolate, 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 \$250 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 Complaint, 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 under chapter 91 necessary to
18 effectuate the purposes of this chapter;
- 19 (2) To enforce the provisions of this chapter, through its
20 duly authorized representatives, or the attorney
21 general and its duly authorized representatives, or
22 other law enforcement personnel, may examine the



1 books, papers, invoices and other records of any
2 person in possession, control or occupancy of any
3 premises where cigarettes are placed, stored, sold or
4 offered for sale, as well as the stock of cigarettes
5 on the premises. Every person in the possession,
6 control or occupancy of any premises where cigarettes
7 are placed, sold or offered for sale, is hereby
8 directed and required to give the state fire council,
9 the attorney general, their duly authorized
10 representatives and other law enforcement personnel,
11 the means, facilities and opportunity for the
12 examinations authorized by this subsection.

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 person
19 or entity that knowingly sells cigarettes, except by
20 licensed retail sales, in violation of section -3,
21 a civil penalty not to exceed \$100 for each pack of
22 such cigarettes sold or offered for sale; provided



1 that in no case shall the penalty against any such
2 person or entity exceed \$100,000 during any thirty-day
3 period;

4 (2) Against a manufacturer that knowingly makes a false
5 certification pursuant to section -4, a civil
6 penalty of at least \$75,000 and not to exceed \$250,000
7 for each such false certification;

8 (3) Against a dealer that knowingly sells or offers for
9 sale cigarettes in violation of section -3, a civil
10 penalty not to exceed \$100 for each pack or such
11 cigarettes sold or offered for sale; provided that in
12 no case shall the penalty against any dealer exceed
13 \$25,000 for sales or offers to sell during any thirty-
14 day period;

15 (4) Against any other person that violates any provision
16 of this section, a civil penalty for a first offense
17 not to exceed \$1,000, and for a subsequent offense not
18 to exceed \$5,000 for each such violation. Any
19 cigarettes sold or offered for sale that do not comply
20 with the performance standard required by section
21 -3 shall be turned over to the attorney general and
22 ordered forfeited. Cigarettes forfeited pursuant to



1 this subsection shall be destroyed; however, prior to
2 the destruction of any cigarette forfeited pursuant to
3 these provisions, the true holder of the trademark
4 rights in the cigarette brand shall be permitted to
5 inspect the cigarette.

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

15 (c) Whenever any law enforcement personnel or duly
16 authorized representative of the state fire council shall
17 discover any cigarettes that have not been marked in the manner
18 required by section -4, such personnel is hereby authorized
19 and empowered to seize and take possession of such cigarettes.
20 Such cigarettes shall be turned over to the attorney general and
21 ordered forfeited. Cigarettes seized pursuant to this
22 subsection shall be destroyed; provided, however, that prior to



1 the destruction of any cigarette seized pursuant to these
2 provisions, the true holder of the trademark rights in the
3 cigarette brand shall be permitted to inspect the cigarette.

4 § **-7 Exemption.** Nothing in this chapter shall be
5 construed to prohibit any person from manufacturing or selling
6 cigarettes that do not meet the requirements of this chapter, if
7 the cigarettes are or will be stamped for sale in another state
8 or are to be sold outside the United States.

9 § **-8 Existing inventories; consumer testing.** The
10 requirement that cigarettes sold in Hawaii must be in compliance
11 with this chapter shall not prohibit:

12 (1) Wholesalers or dealers from selling existing cigarette
13 inventories on or after the effective date of this
14 chapter, provided the wholesaler or dealer can
15 establish both of the following to the satisfaction of
16 the state fire council:

17 (A) The Hawaii tax stamps were affixed to the
18 cigarettes pursuant to chapter 245, Hawaii
19 Revised Statutes, prior to the effective date of
20 this chapter; and

21 (B) The inventory was purchased prior to the
22 effective date of this chapter, and the purchased



1 inventory is comparable to the amount of
 2 inventory purchased during the same period the
 3 previous year; or

4 (2) The sale of cigarettes solely for the purpose of
 5 consumer testing. For purposes of this subsection,
 6 the term "consumer testing" means an assessment of
 7 cigarettes that is conducted by a manufacturer (or
 8 under the control and direction of a manufacturer),
 9 for the purpose of evaluating consumer acceptance of
 10 such cigarettes, utilizing only the quantity of
 11 cigarettes that is reasonably necessary for such
 12 assessment, and in a controlled setting where the
 13 cigarettes are either consumed on-site or returned to
 14 the testing administrators at the conclusion of the
 15 testing."

16 SECTION 2. This Act shall be repealed if a federal reduced
 17 cigarette ignition propensity standard that preempts this Act is
 18 adopted and becomes effective.

19 SECTION 3. Notwithstanding any other provision of law, the
 20 counties may neither enact nor enforce any ordinance or other
 21 local law or regulation conflicting with, or preempted by, any
 22 provision of this Act or with any policy of this State expressed



1 by this Act, whether that policy be expressed by inclusion of a
2 provision in this Act or by exclusion of that subject from this
3 Act.

4 SECTION 4. This Act shall take effect on the first day of
5 the thirteenth month after enactment; provided that section 3
6 shall take effect upon approval of this Act.



Report Title:

Fire-Safe Cigarettes; State Fire Council

Description:

Requires only fire-safe cigarettes to be sold in the State.
(HB2059 HD1)

