
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
15 be sold in this state, including cigarettes intended
16 to be sold in the United States through an importer;
17 or
- 18 (2) The first purchaser anywhere that intends to resell in
19 the United States cigarettes manufactured anywhere
20 that the original manufacturer or maker does not
21 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" has the meaning as defined in section 245-1.

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



1 with the test method and meet the performance standard specified
2 in 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). The performance standard for
6 cigarettes sold or offered for sale in this state includes all
7 the following:

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



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



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

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



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



- 1 (9) A manufacturer shall retain copies of the reports of
2 testing conducted on cigarettes offered for sale in
3 Hawaii for a period of three years. The manufacturer
4 shall provide copies of these reports to the state
5 fire council and the attorney general upon written
6 request. Any manufacturer who fails to make copies of
7 these reports available within sixty days of receiving
8 a written request shall be subject to a civil penalty
9 not to exceed \$10,000 for each day after the sixtieth
10 day that the manufacturer does not make such copies
11 available;
- 12 (10) This section does not require additional testing if
13 cigarettes are tested consistent with this chapter for
14 any other purpose;
- 15 (11) Testing performed or sponsored by the state fire
16 council to determine a cigarette's compliance with the
17 performance standard required by this section shall be
18 conducted in accordance with this section; and
- 19 (12) The state fire council shall review the effectiveness
20 of this section and report every three years to the
21 legislature the state fire council's findings and, if
22 appropriate, recommendations for legislation to



1 improve the effectiveness of this chapter. The report
2 and legislative recommendations shall be submitted no
3 later than June 30, following the conclusion of each
4 three-year period.

5 § -4 **Certification; marking.** (a) Each manufacturer
6 shall submit to the state fire council written certification
7 attesting that each cigarette has been tested in accordance
8 with, and has met the performance standard required under
9 section, -3. The description of each cigarette listed in the
10 certification shall include:

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



1 Each cigarette certified under this subsection shall be
2 recertified every three years. For each cigarette listed in a
3 certification, a manufacturer shall pay to the state fire
4 council a \$250 fee. The state fire council is authorized to
5 annually adjust this fee to ensure it defrays the actual costs
6 of the processing, testing, enforcement, and oversight
7 activities required by this chapter.

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

10 (b) Cigarettes that have been certified pursuant to
11 subsection (a) shall be marked pursuant to the following
12 requirements:

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

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



- 1 (B) Any visible combination of alphanumeric or
2 symbolic characters permanently printed, stamped,
3 engraved, or embossed on the cigarette package or
4 the cellophane wrap; and
- 5 (C) Printed, stamped, engraved, or embossed text that
6 indicates that the cigarettes meet the standards
7 of this section;
- 8 and
- 9 (2) Prior to the certification of any cigarette, a
10 manufacturer shall request approval of a proposed
11 marking from the state fire council. Upon receipt of
12 the request, the state fire council shall approve or
13 disapprove the marking offered, except that the state
14 fire council shall approve:
- 15 (A) Any marking approved and in use for the sale of
16 cigarettes in the state of New York; or
- 17 (B) The letters "FSC," which signifies fire standards
18 compliant, appearing in eight-point type or
19 larger and permanently printed, stamped,
20 engraved, or embossed on the package at or near
21 the universal product code.



1 A marking shall be deemed approved if the state fire council
2 fails to act within ten business days of receiving a request for
3 approval. A manufacturer shall not use a modified marking
4 unless the modification has been approved in accordance with
5 this chapter. A manufacturer shall use only one marking, and
6 shall apply this marking uniformly for all packages, including
7 packs, cartons, and cases, and brands marketed by that
8 manufacturer.

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

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

21 § -5 State fire council; rules; implementation. The
22 state fire council:



- 1 (1) May adopt rules under chapter 91 necessary to
2 effectuate the purposes of this chapter;
- 3 (2) To enforce the provisions of this chapter, through its
4 duly authorized representatives, or the attorney
5 general and its duly authorized representatives, or
6 other law enforcement personnel, may examine the
7 books, papers, invoices and other records of any
8 person in possession, control or occupancy of any
9 premises where cigarettes are placed, stored, sold or
10 offered for sale, as well as the stock of cigarettes
11 on the premises. Every person in the possession,
12 control or occupancy of any premises where cigarettes
13 are placed, sold or offered for sale, is hereby
14 directed and required to give the state fire council,
15 the attorney general, their duly authorized
16 representatives and other law enforcement personnel,
17 the means, facilities and opportunity for the
18 examinations authorized by this subsection; and
- 19 (3) Shall ensure that the implementation of this chapter
20 is in accordance with the implementation and substance
21 of the New York fire safety standards for cigarettes.



- 1 § -6 Penalties; enforcement; attorney general. (a) The
2 following civil penalties may be assessed:
- 3 (1) Against a manufacturer, wholesaler or any other person
4 or entity that knowingly sells cigarettes, except by
5 licensed retail sales, in violation of section -3,
6 a civil penalty not to exceed \$100 for each pack of
7 such cigarettes sold or offered for sale; provided
8 that in no case shall the penalty against any such
9 person or entity exceed \$100,000 during any thirty-day
10 period;
- 11 (2) Against a manufacturer that knowingly makes a false
12 certification pursuant to section -4, a civil
13 penalty of at least \$75,000 and not to exceed \$250,000
14 for each such false certification;
- 15 (3) Against a dealer that knowingly sells or offers for
16 sale cigarettes in violation of section -3, a civil
17 penalty not to exceed \$100 for each pack of such
18 cigarettes sold or offered for sale; provided that in
19 no case shall the penalty against any dealer exceed
20 \$25,000 for sales or offers to sell during any thirty-
21 day period; and



1 (4) Against any other person that violates any provision
2 of this section, a civil penalty for a first offense
3 not to exceed \$1,000, and for a subsequent offense not
4 to exceed \$5,000 for each such violation. Any
5 cigarettes sold or offered for sale that do not comply
6 with the performance standard required by section
7 -3 shall be turned over to the attorney general and
8 ordered forfeited. Cigarettes forfeited pursuant to
9 this subsection shall be destroyed; however, prior to
10 the destruction of any cigarette forfeited pursuant to
11 these provisions, the true holder of the trademark
12 rights in the cigarette brand shall be permitted to
13 inspect the cigarette.

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



1 (c) Whenever any law enforcement officer or duly
2 authorized representative of the state fire council shall
3 discover any cigarettes that have not been marked in the manner
4 required by section -4, such person is hereby authorized and
5 empowered to seize and take possession of such cigarettes. Such
6 cigarettes shall be turned over to the attorney general and
7 ordered forfeited. Cigarettes seized pursuant to this
8 subsection shall be destroyed; provided, however, that prior to
9 the destruction of any cigarette seized pursuant to these
10 provisions, the true holder of the trademark rights in the
11 cigarette brand shall be permitted to inspect the cigarette.

12 § -7 **Exemption.** Nothing in this chapter shall be
13 construed to prohibit any person from manufacturing or selling
14 cigarettes that do not meet the requirements of this chapter, if
15 the cigarettes are or will be stamped for sale in another state
16 or are to be sold outside the United States.

17 § -8 **Existing inventories; consumer testing.** The
18 requirement that cigarettes sold in Hawaii must be in compliance
19 with this chapter shall not prohibit:

20 (1) Wholesalers or dealers from selling existing cigarette
21 inventories on or after the effective date of this
22 chapter, provided the wholesaler or dealer can



1 establish both of the following to the satisfaction of
2 the state fire council:

3 (A) The Hawaii tax stamps were affixed to the
4 cigarettes pursuant to chapter 245, Hawaii
5 Revised Statutes, prior to the effective date of
6 this chapter; and

7 (B) The inventory was purchased prior to the
8 enactment of this chapter, and the purchased
9 inventory is comparable to the amount of
10 inventory purchased during the same period the
11 previous year;

12 or

13 (2) The sale of cigarettes solely for the purpose of
14 consumer testing. For the purposes of this
15 subsection, the term "consumer testing" means an
16 assessment of cigarettes that is conducted by or under
17 the control and direction of a manufacturer, for the
18 purpose of evaluating consumer acceptance of such
19 cigarettes, using only the quantity of cigarettes that
20 is reasonably necessary for such assessment, and in a
21 controlled setting where the cigarettes are either



1 consumed on-site or returned to the testing
2 administrators at the conclusion of the testing."

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

6 SECTION 3. Notwithstanding any other provision of law, the
7 counties may neither enact nor enforce any ordinance or other
8 local law or regulation conflicting with, or preempted by, any
9 provision of this Act or with any policy of this State expressed
10 by this Act, whether that policy be expressed by inclusion of a
11 provision in this Act or by exclusion of that subject from this
12 Act.

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



Report Title:

Fire-Safe Cigarettes; State Fire Council

Description:

Establishes a process to ensure that only fire-safe cigarettes are sold in Hawaii. (HB2438 HD1)

