

1 result in billions of dollars of property losses and damage in
2 the United States and millions of dollars of losses in this
3 State. Cigarette fires unnecessarily jeopardize firefighters
4 and result in avoidable emergency response costs for the
5 counties.

6 The legislature further finds that the state of New York
7 has enacted a cigarette fire safety regulation effective June
8 28, 2004, that requires that cigarettes sold in that state meet
9 a fire safety performance standard. In 2005, the states of
10 Vermont and California signed into law cigarette fire safety
11 laws that directly incorporate New York's regulations and in
12 2006, the states of Illinois, New Hampshire, and New Jersey did
13 the same. Canada implemented the New York state fire safety
14 standard as of October 2005 and became the first nation to have
15 a cigarette fire safety standard.

16 The legislature finds that New York state's cigarette fire
17 safety standard is based upon decades of research by the
18 National Institute of Standards and Technology, congressional
19 research groups, and private industry.

20 It is the legislature's intent that the State adopt the
21 cigarette fire safety standard that is in effect in New York,
22 California, Vermont, and Canada to reduce the likelihood that



1 cigarettes will cause fires and result in deaths, injuries, and
2 property damage. It is further the intent of the legislature to
3 adopt such a cigarette fire safety standard with a minimum of
4 cost to the State and with minimal burden to cigarette
5 manufacturers, distributors, and retail sellers as set forth
6 herein.

7 **§ -3 Definitions.** As used in this chapter:

8 "Agent" means any person authorized by the State to
9 purchase and affix tax stamps on packages of cigarettes.

10 "Cigarette" shall mean any roll for smoking whether made
11 wholly or in part of tobacco or any other substance,
12 irrespective of size or shape and whether or not that tobacco or
13 substance is flavored, adulterated, or mixed with any other
14 ingredient, the wrapper or cover of which is made of paper or
15 any other substance or material except tobacco, and that because
16 of its size, appearance, type of tobacco used in its filler, or
17 its packaging or labeling, is likely to be offered to, or
18 purchased by, consumers as a cigarette or cigarette equivalent.

19 "Commissioner" means the commissioner of

20 "Manufacturer" means:

21 (1) Any entity that manufactures or otherwise produces
22 cigarettes or causes cigarettes to be manufactured or



1 produced anywhere that the manufacturer intends to be
2 sold in this State, including cigarettes intended to
3 be sold in the United States through an importer;

4 (2) The first purchaser anywhere that intends to resell in
5 the United States cigarettes manufactured anywhere
6 that the original manufacturer or maker does not
7 intend to be sold in the United States; or

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

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 "Retail dealer" means any person other than a manufacturer
14 or wholesale dealer engaged in selling cigarettes or tobacco
15 products.

16 "Sale" means any transfer of title or possession, or both,
17 exchange or barter, conditional or otherwise, in any manner or
18 by any means whatsoever or any agreement therefor. In addition
19 to cash and credit sales, the giving of cigarettes as samples,
20 prizes, or gifts, and the exchanging of cigarettes for any
21 consideration other than money are considered sales.

22 "Sell" means to sell, to offer, or agree to do the same.



1 "Quality control and quality assurance program" means the
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. This program ensures that the testing repeatability
6 remains within the required repeatability values stated in
7 section -4 for all test trials used to certify cigarettes in
8 accordance with this chapter.

9 "Wholesale dealer" means any person who sells cigarettes or
10 tobacco products to retail dealers or other persons for purposes
11 of resale and any person who owns, operates, or maintains one or
12 more cigarette or tobacco product vending machines in, at, or
13 upon premises owned or occupied by any other person.

14 **§ -4 Standards for cigarette fire safety.** (a) No
15 cigarettes may be sold or offered for sale in this State or
16 offered for sale or sold to persons located in this State unless
17 the cigarettes have been tested in accordance with the test
18 method and meet the performance standard specified in this
19 section and unless a written certification has been filed by the
20 manufacturer with the commissioner in accordance with
21 section -5. The performance standard for cigarettes sold or
22 offered for sale in this State includes all the following:



- 1 (1) Testing of cigarettes shall be conducted in accordance
2 with the American Society for Testing and Materials
3 Standard E2187-04 "Standard Test Method for Measuring
4 the Ignition Strength of Cigarettes";
- 5 (2) Testing of cigarettes shall be conducted on ten layers
6 of filter paper;
- 7 (3) No more than twenty-five per cent of the cigarettes
8 tested in a test trial shall exhibit full-length
9 burns. Forty replicate tests shall constitute a
10 complete test trial for each cigarette tested;
- 11 (4) The performance standard required by this section
12 shall only be applied to a complete test trial;
- 13 (5) Laboratories that conduct tests in accordance with
14 this section shall implement a quality control and
15 quality assurance program that includes a procedure to
16 determine the repeatability of the testing results.
17 The repeatability value shall be no greater than 0.19;
- 18 (6) Each cigarette listed in a certification that uses
19 lowered permeability bands in the cigarette paper to
20 achieve compliance with the performance standard in
21 this section shall have at least two nominally
22 identical bands on the paper surrounding the tobacco



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

- 12 (7) The manufacturer of a cigarette that the commissioner
13 determines cannot be tested in accordance with the
14 test method required by this section shall propose to
15 the commissioner a test method and performance
16 standard for that cigarette. The commissioner may
17 approve a test method and performance standard that
18 the commissioner determines is equivalent to the
19 requirement of this section, and the manufacturer may
20 use that test method and performance standard for
21 certification pursuant to section -5.



1 (b) In order to ensure compliance with the performance
2 standard specified, data from testing conducted by manufacturers
3 to comply with this performance standard shall be kept on file
4 by the manufacturers for a period of three years and shall be
5 sent to the commissioner or the attorney general upon request

6 (c) The commissioner may adopt a subsequent American
7 Society for Testing and Materials standard test method upon a
8 finding that the subsequent method does not result in a decrease
9 in the percentage of full-length burns exhibited by any tested
10 cigarette when compared to the percentage of full-length burns
11 the same cigarette would exhibit when tested in accordance with
12 American Society of Testing and Materials Standard E2187-04.

13 (d) Beginning on January 1, 2010, and at least every three
14 years thereafter, the commissioner shall undertake a review of
15 the performance standard set forth in this section including,
16 but not limited to, incidents of cigarette-caused fires,
17 advances in cigarette fire safety, including improvements in
18 cigarette technology, and the data submitted to demonstrate
19 compliance with the performance standard. Based upon the
20 review, the commissioner may revise the performance standard so
21 that it is more stringent than the performance standard set
22 forth in this section to provide the public with a greater level



1 of fire safety protection. The revised performance standard
2 shall be effective one hundred eighty days after the final
3 standard is published in the state register.

4 **§ -5 Certification of compliance by manufacturers.** (a)

5 Each manufacturer shall submit to the commissioner written
6 certification attesting that each cigarette has been tested in
7 accordance with and has met the performance standard required
8 under section -4. The description of each cigarette listed
9 in the certification shall include:

- 10 (1) The brand or trade name;
- 11 (2) Style, such as light or ultra light;
- 12 (3) Length in millimeters;
- 13 (4) Circumference in millimeters;
- 14 (5) Flavor, if applicable;
- 15 (6) Filter or nonfilter;
- 16 (7) Package description, such as a soft pack or box; and
- 17 (8) The mark approved pursuant to subsection (b).

18 Upon request, this certification shall be made available to the
19 attorney general and department of taxation. Each cigarette
20 certified under this subsection shall be recertified every three
21 years.



1 (b) The manufacturer shall pay to the commissioner a fee
2 of \$1,000 for each cigarette tested. The commissioner may adopt
3 rules in accordance with chapter 91 to adjust the amount of this
4 fee to ensure it is sufficient to cover all implementation costs
5 incurred under this chapter.

6 (c) There is established within the state treasury a
7 special fund to be known as the "cigarette fire safety and
8 firefighter protection enforcement fund" to be administered by
9 the comptroller. The fund shall consist of all certification
10 fees submitted by manufacturers and, in addition to any other
11 moneys made available for that purpose, shall be available to
12 the department of _____ and shall be used solely to
13 support state processing, testing, enforcement, and oversight
14 activities related to this chapter. All payments from the
15 cigarette fire safety and firefighter protection enforcement
16 fund shall be made on the audit and warrant of the comptroller
17 on vouchers certified and submitted by the commissioner.

18 **§ -6 Package markings.** (a) Cigarettes that have been
19 certified pursuant to section -5 shall be marked pursuant to
20 the following requirements:

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



- 1 (A) Modification of the product's universal product
2 code to include a visible mark printed at or
3 around the area of the universal product code.
4 The mark may consist of one or more alphanumeric
5 or symbolic characters permanently stamped,
6 engraved, embossed, or printed in conjunction
7 with the universal product code;
- 8 (B) Any visible combination of alphanumeric or
9 symbolic characters permanently printed, stamped,
10 engraved, or embossed on the cigarette package or
11 the cellophane wrap; and
- 12 (C) Printed, stamped, engraved, or embossed text that
13 indicates that the cigarettes meet the standards
14 of this section; and
- 15 (2) Prior to the certification of any cigarette, a
16 manufacturer shall request approval of a proposed
17 marking from the commissioner. The commissioner shall
18 approve any marking approved and in use for the sale
19 of cigarettes in the states of New York, California,
20 or Vermont unless the commissioner determines that
21 cigarettes approved for sale in New York, California,



1 or Vermont do not meet the requirements for
2 certification under this chapter; and
3 (3) A manufacturer shall use only one marking on all
4 brands that the manufacturer markets. A marking or
5 modified marking approved by the state fire council
6 shall be applied uniformly on all brands marketed and
7 on all packages, including packs, cartons, and cases,
8 marketed by that manufacturer.

9 A marking shall be deemed approved if the commissioner fails to
10 act within ten business days of receiving a request for
11 approval. No manufacturer shall modify its approved marking
12 unless the modification has been approved by the commissioner.

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



1 **§ -7 Enforcement and penalties.** (a) Any manufacturer,
2 wholesale dealer, agent, or any other person or entity who
3 knowingly sells cigarettes, other than through retail sale, in
4 violation of section -4, for a first offense, shall be subject
5 to a civil penalty not to exceed \$10,000 for each sale of
6 cigarettes, and for a subsequent offense, be subject to a civil
7 penalty not to exceed \$25,000 per each sale of cigarettes. Any
8 retail dealer who knowingly sells cigarettes in violation of
9 section -4 shall be subject to the following:

- 10 (1) For a first offense, be subject to a civil penalty not
11 to exceed \$500, and for a subsequent offense, be
12 subject to a civil penalty not to exceed \$2,000 for
13 each sale or offer for sale of cigarettes; provided
14 that the total number of cigarettes sold or offered
15 for sale does not exceed one thousand cigarettes;
- 16 (2) For a first offense, be subject to a civil penalty not
17 to exceed \$1,000, and for a subsequent offense, be
18 subject to a civil penalty not to exceed \$5,000 for
19 each sale or offer for sale of cigarettes; provided
20 that the total number of cigarettes sold or offered
21 for sale exceeds one thousand cigarettes.



1 In addition to any penalty prescribed by law, any corporation,
2 partnership, sole proprietor, limited partnership, or
3 association engaged in the manufacture of cigarettes that
4 knowingly makes a false certification pursuant to section -5,
5 for a first offense, shall be subject to a civil penalty not to
6 exceed \$10,000 and for a subsequent offense, a civil penalty not
7 to exceed \$25,000 for each false certification. Any person
8 violating any other provision in this section shall be subject
9 to a civil penalty for a first offense not to exceed \$1,000 and
10 for a subsequent offense, subject to a civil penalty not to
11 exceed \$5,000 for each violation. Any cigarettes that have been
12 sold or offered for sale that do not comply with the safety
13 standard required by section -4 shall be deemed contraband
14 and subject to seizure and disposal by the State.

15 (b) The commissioner is authorized to enforce this chapter
16 and to adopt rules in accordance with chapter 91 as necessary to
17 implement and administer this chapter.

18 (c) The commissioner, in consultation with the department
19 of taxation and the attorney general, may adopt rules in
20 accordance with chapter 91 to conduct random inspections of
21 wholesale dealers, agents, and retail dealers to ensure that



1 only cigarettes complying with this chapter are sold in the
2 State.

3 (d) In addition to any other remedy provided by law, the
4 attorney general may file an action for a violation of this
5 chapter, including petitioning for injunctive relief or to
6 recover any costs or damages suffered by the State because of a
7 violation of this section, including enforcement costs relating
8 to the specific violation and attorneys' fees. In any such
9 action, the attorney general shall have the same authority to
10 investigate and obtain remedies, except civil penalties under
11 subsection (a), as if the action were brought pursuant to
12 section 708-870 relating to deceptive business practices. Each
13 violation of this section or of rules adopted under this section
14 constitutes a separate civil violation for which the attorney
15 general may obtain relief.

16 **§ -8 Fire prevention and public safety fund.** There is
17 established within the state treasury a special fund to be known
18 as the "fire prevention and public safety fund" to be
19 administered by the comptroller. The fund shall consist of all
20 moneys recovered as penalties under this chapter and shall be
21 deposited to the credit of the fund and, in addition to any
22 other moneys made available, shall be available to the



1 commissioner to support fire safety and prevention programs.
2 All payments from the fund shall be made on the audit and
3 warrant of the comptroller on vouchers certified and submitted
4 by the commissioner.

5 **§ -9 Effect of federal regulation.** This chapter shall
6 be preempted if a federal cigarette fire safety performance
7 standard becomes effective and the commissioner makes a
8 determination that that standard provides equal or stronger
9 protections against cigarette-started fires than this chapter.
10 Portions of this chapter shall only be preempted to the extent
11 expressly preempted by federal law.

12 **§ -10 Existing inventories.** Wholesalers or dealers may
13 sell existing cigarette inventories on or after July 1, 2009;
14 provided the wholesaler or dealer can establish both of the
15 following to the satisfaction of the state fire council:

16 (1) The Hawaii tax stamps were affixed to the cigarettes
17 pursuant to chapter 245, Hawaii Revised Statutes,
18 prior to July 1, 2009; and

19 (2) The inventory was purchased prior to July 1, 2009 and
20 the purchased inventory is comparable to the amount of
21 inventory purchased at the same time the previous
22 year.



1 Furthermore, the sale of cigarettes solely for the purpose of
 2 consumer testing shall be exempt from this chapter. For the
 3 purposes of this section, the term "consumer testing" means an
 4 assessment of cigarettes that is conducted by or under the
 5 control of a manufacturer for the purpose of evaluating consumer
 6 acceptance of those cigarettes, using only a quantity of
 7 cigarettes that is reasonably necessary for the assessment;
 8 provided that the assessment is conducted in a controlled
 9 setting where the cigarettes are either consumed immediately at
 10 the site of the assessment or returned immediately to the person
 11 conducting the assessment."

12 SECTION 2. This Act shall take effect on July 1, 2009, and
 13 shall be repealed on the date of completion of:

14 (1) Delivery of a written certification by the
 15 commissioner to the governor that a federal reduced
 16 ignition propensity standard preempting this Act has
 17 been adopted; and

18 (2) Issuance of a proclamation by the governor of the
 19 delivery of certification.

20

INTRODUCED BY: Calvin H. Ay
 BY REQUEST

Report Title:

Fire-safe Cigarettes

Description:

Prohibits sale of cigarettes in Hawaii that are not reduced ignition propensity "fire-safe" beginning 07/01/09. Sets civil fines and requires state fire council to adopt rules to enforce law.

