

JAN 17 2008

A BILL FOR AN ACT

RELATING TO CIGARETTES.

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

1 SECTION 1. According to the National Fire Protection
2 Association, cigarettes are the nation's leading cause of death
3 by fire, resulting in about one thousand deaths, three thousand
4 critical injuries, especially among firefighters, and about
5 \$400,000,000 in direct property damage annually. Fire-safe, or
6 "reduced ignition propensity", cigarettes are wrapped in a
7 special paper with ultra-thin bands that work like speed bumps
8 to slow the burning of the cigarette when the smoker is not
9 taking puffs. This makes it less likely for an unattended
10 cigarette to continue burning and thus lowers the risk of
11 discarded cigarettes accidentally igniting bedding or
12 upholstery. Left unsmoked, an abandoned or discarded reduced
13 ignition cigarette would normally go out instead of causing a
14 potentially fatal fire.

15 California, New York, Vermont, and Canada have implemented
16 reduced ignition propensity cigarettes laws. Before California
17 enacted its law, researchers at the Harvard School of Public
18 Health found that, while not perfectly self-extinguishing,



1 reduced ignition propensity cigarettes sold in New York were far
2 less likely to burn to the end than cigarettes of the same
3 brands in California and Massachusetts. Only ten per cent of a
4 sample of five major cigarette brands sold in New York had a
5 "full burn" compared to 99.8 per cent of the California and
6 Massachusetts cigarettes tested.

7 The purpose of this Act is to require only reduced ignition
8 propensity cigarettes to be sold in the State.

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

12 **"CHAPTER**

13 **REDUCED IGNITION PROPENSITY CIGARETTES LAW**

14 § -1 **Purpose.** It is the intent of this chapter to
15 require that only reduced ignition propensity cigarettes be sold
16 in the State. Although these cigarettes are not guaranteed to
17 self-extinguish, they are expected to reduce accidental fires
18 and related personal injury and property damage caused by
19 cigarette smoking.

20 § -2 **Definitions.** For the purposes of this chapter,
21 unless the context otherwise requires:

22 "Cigarette" has the meaning as defined in section 245-1.



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

2 "Manufacturer" means any person or a successor that
3 manufactures or produces cigarettes or causes cigarettes to be
4 manufactured or produced, whether in the State or outside of the
5 State, and intends to sell the cigarettes in Hawaii directly or
6 through an importer, including any first purchaser that intends
7 to resell cigarettes.

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

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

18 "Sale" or "selling" means any transfer of title or
19 possession, exchange, or barter, conditional or otherwise, and
20 includes the giving of cigarettes as samples, prizes, or gifts
21 and the exchange of cigarettes for any consideration.

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



1 § -3 Cigarettes; reduced ignition propensity;
2 **manufacturer testing.** No cigarettes may be manufactured in this
3 State or sold or offered for sale to any person in this State
4 unless a sample of the cigarettes intended to be manufactured in
5 this State or intended to be sold or offered for sale in this
6 State have been tested in accordance with the test method and
7 meet the performance standard specified in this section and the
8 manufacturer has filed a written certification with the attorney
9 general in accordance with section -4. The performance
10 standard for cigarettes manufactured, sold, or offered for sale
11 in this State includes all the following:

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



1 full-length burns the same cigarette would exhibit
2 when tested in accordance with American Society of
3 Testing and Materials standard E2187-04 and the
4 performance standard of this section;

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;

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



1 (8) A manufacturer shall retain all data from testing
2 conducted under this section for a period of three
3 years. The manufacturer shall provide that data to
4 the attorney general upon request in order to ensure
5 compliance with the performance standard required by
6 this section.

7 § -4 **Certification; marking.** (a) A manufacturer that
8 intends to manufacture or sell cigarettes in the State shall
9 submit to the attorney general written certification attesting
10 that samples of each brand and style of the manufacturer's
11 cigarettes intended for manufacture or sale in the State have
12 been tested in accordance with and have met the performance
13 standard required under section -3. The description of each
14 brand and style of cigarette tested and to be listed in the
15 certification shall include:

- 16 (1) The brand;
- 17 (2) Style;
- 18 (3) Length in millimeters;
- 19 (4) Circumference in millimeters;
- 20 (5) Flavor, if applicable;
- 21 (6) Filter or nonfilter;
- 22 (7) Package description, such as a soft pack or box; and



1 (8) The mark approved pursuant to subsection (b).
2 Upon request, this certification shall be made available to the
3 attorney general. Each brand and style of cigarette certified
4 under this subsection shall be recertified every three years.

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) A manufacturer who intends to manufacture or sell
5 cigarettes in the State shall request approval of a
6 proposed marking from the attorney general. Any
7 marking approved and in use for the sale of cigarettes
8 in the states of New York, California, or Vermont
9 shall be approved. A marking shall be deemed approved
10 if the attorney general fails to act within
11 business days of receiving a request for approval.
12 The manufacturer shall not use a modified marking
13 unless the modification has been approved in
14 accordance with this chapter. The manufacturer shall
15 use only one marking on all brands that the
16 manufacturer markets. A marking or modified marking
17 approved by the attorney general shall be applied
18 uniformly on all brands marketed and on all packages,
19 including packs, cartons, and cases, marketed by that
20 manufacturer.

21 (c) The manufacturer shall provide a copy of
22 certifications to all wholesalers that sell cigarettes in the



1 State to which the manufacturer sells cigarettes and shall
2 provide sufficient copies of an illustration of the packaging
3 marking approved and used by the manufacturer pursuant to
4 subsection (b) for each of the dealers that purchases cigarettes
5 from any of those wholesalers. These wholesalers shall provide
6 a copy of the illustration to all dealers to which they sell
7 cigarettes. These wholesalers and dealers shall permit the
8 attorney general to inspect markings on cigarette packaging at
9 any time.

10 § -5 **Attorney general; testing, certification, marking,**
11 **and random inspections; rules.** The attorney general:

- 12 (1) May adopt rules under chapter 91 necessary to
13 implement and administer the testing, certification,
14 and marking of cigarettes under this chapter;
- 15 (2) May adopt rules under chapter 91 regarding the conduct
16 of random inspections of wholesalers and dealers to
17 ensure compliance with this section; and
- 18 (3) Shall ensure that the rules adopted under this section
19 are in accordance with the implementation and
20 substance of the New York fire safety standards for
21 cigarettes.



1 § **-6 Penalties; enforcement; attorney general.** (a) The
2 following civil penalties may be assessed:

3 (1) Against a manufacturer, wholesaler, retailer, or any
4 other person that knowingly sells cigarettes, except
5 by licensed retail sales, in violation of section
6 -3, a civil penalty not to exceed \$10,000 for each
7 sale;

8 (2) Against a manufacturer that knowingly makes a false
9 certification pursuant to section -4, a civil
10 penalty not to exceed \$10,000 for each false
11 certification;

12 (3) Against a dealer that knowingly sells or offers for
13 sale cigarettes in violation of section -3, a civil
14 penalty not to exceed \$500 for each sale or offer of
15 sale of one thousand or fewer cigarettes;

16 (4) Against a dealer that knowingly sells or offers for
17 sale cigarettes in violation of section -3, a civil
18 penalty not to exceed \$1,000 for each sale or offer of
19 sale of more than one thousand cigarettes; and

20 (5) Against any other person that violates any provision
21 of this section, a civil penalty not to exceed \$1,000
22 for each violation. Any cigarettes sold or offered



1 for sale that do not comply with the safety standard
2 required by section -3 shall be ordered forfeited.

3 (b) 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, recovery
6 of costs or damages suffered by the State as the result of a
7 violation of this chapter, including enforcement costs relating
8 to the specific violation and attorney 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 chapter or of any rule adopted under this
14 chapter shall constitute a separate civil violation for which
15 the attorney general may obtain relief.

16 (c) Enforcement of this chapter shall be under the
17 jurisdiction of the attorney general. The attorney general may
18 seek assistance in the enforcement of this chapter from other
19 law enforcement agencies. Notwithstanding the existence of
20 other remedies at law, the attorney general may apply for a
21 temporary or permanent injunction restraining any person from



1 violating or continuing to violate this chapter. The injunction
2 shall be issued without bond.

3 § -7 **Exemption.** Nothing in this chapter shall be
4 construed to prohibit any person from manufacturing or selling
5 cigarettes that do not meet the requirements of this chapter, if
6 the cigarettes are stamped for sale in another state or are to
7 be sold outside the United States.

8 § -8 **Existing inventories.** The requirement that
9 cigarettes sold in Hawaii must be in compliance with this
10 chapter shall not prohibit wholesalers or dealers from selling
11 existing cigarette inventories on or after July 1, 2009;
12 provided the wholesaler or dealer can establish both of the
13 following to the satisfaction of the attorney general:

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

17 (2) The inventory was purchased prior to July 1, 2009, and
18 the purchased inventory is comparable to the amount of
19 inventory purchased during the same period the
20 previous year."



1 SECTION 3. Chapter 28, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§28- Reduced ignition propensity cigarettes law;
5 enforcement. The attorney general shall adopt rules under
6 chapter 91 to implement the enforcement of the reduced ignition
7 propensity cigarettes law pursuant to chapter _____."

8 SECTION 4. New statutory material is underscored.

9 SECTION 5. This Act shall take effect on July 1, 2009.

10

INTRODUCED BY: *Joanne Chun Auldland*



Report Title:

Reduced Ignition Propensity "Fire-Safe" Cigarettes

Description:

Prohibits sale of cigarettes in Hawaii that are not reduced ignition propensity "fire-safe" beginning 7/1/2009. Sets civil fines and requires attorney general to adopt rules to enforce law.

