



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

H.B. NO. 2025, RELATING TO TOBACCO.

**LATE
Testimony**

BEFORE THE:

HOUSE COMMITTEE ON HEALTH

DATE: Wednesday, January 23, 2008 **TIME:** 8:00 AM

LOCATION: State Capitol Room 329

Deliver to: vice chair, Room 436, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Earl R. Hoke, Jr., Deputy Attorney General
or Blair Goto, Deputy Attorney General

Chair Green and Vice Chair Mizuno and Members of the Committee:

The Attorney General provides the following recommendations and comments concerning this measure.

We are aware of only one other state that has a prohibition on flavored cigarette sales. The State of Maine's legislation was adopted effective September 30, 2007. The prohibition on the sale or distribution of flavored cigarettes or flavored cigars begins July 1, 2009. We are unsure if there will be constitutional challenges to the Maine statute on the basis of a violation of the Commerce Clause, which regulates interstate commerce. Should there be challenges to the Maine statute the result may implicate any statute passed in this jurisdiction. We note that §709-908, Hawaii Revised Statutes, prohibits the sale of tobacco in any form including chewing tobacco and snuff to a minor.

On October 11, 2006, it was announced that R.J. Reynolds Tobacco Company and the Attorneys General of 38 states including Hawaii, entered into a settlement that ends the sale of candy, fruit and alcohol flavored cigarettes manufactured and sold by the company. Under the settlement, Reynolds agreed to a ban in the United States of its Camel, Kool, and Salem flavored cigarettes. The agreement also imposes significant marketing restrictions to prevent Reynolds from marketing a flavored cigarette to youth in the future.

The following restrictions apply to any cigarettes manufactured by Reynolds in the future that have a characterizing flavor other than tobacco or menthol:

The name of the cigarette may not be that of a candy, a fruit or an alcoholic beverage, and may not include any of a number of specified terms that evoke imagery of candy, fruit or alcoholic beverages. Reynolds may not use print advertising, point of sale materials, exterior packaging, or non-age verified direct mail or internet advertising that contain (i) names of a candy, a fruit or an alcoholic beverage, (ii) any of a number of specified terms that evoke imagery of candy, fruit or alcoholic beverages, or (iii) imagery of candy, fruit, sweet desserts or alcoholic beverages; and Reynolds may not distribute scented promotional materials, such as "Lift and Sniffs" or "Scratch and Sniffs."

The states had asserted that Reynolds was violating the 1998 tobacco Master Settlement Agreement's prohibition on youth targeting through its advertising, marketing and promotion of its flavored cigarettes.

The evidence that led the states to conclude that Reynolds was targeting youth included: use of candy, fruit and alcohol flavors with high youth appeal; use of advertising and packaging with graphics, typography, colors, styles and themes that were enticing to youth; and use of "Scratch and Sniff" and "Lift and Sniff" promotional cards scented with sweet, candy aromas, but with none of the scent of tobacco.

The brand styles of flavored cigarettes sold by Reynolds that are banned by the Agreement are: Camel Exotic Blends: Mandarin Mint, Dark Mint, Crema, Izmir Stinger, Twist, Cinnzabar, Mandalay Lime, Aegean Spice, Bayou Blast, Beach Breezer, Margarita Mixer, Midnight Madness, Back Alley Blend, Kauai Kolada, Twista Lime, Winter

MochaMint, Warm Winter Toffee, Blackjack Gin, Screwdriver Slots and SnakeEyes Scotch; Salem Silver: Dark Currents, Fire & Ice, Deep Freeze and Cool Myst; and Kool Smooth Fusions: Mintrigue, Mocha Taboo, Midnight Berry and Caribbean Chill.

Flavored cigarettes and smokeless tobacco products are sold in the State of Hawaii. Cigarettes containing menthol have been a long standing preference among Hawaii smokers. According to the Department of Health, bidi cigarettes were banned in the City and County of Honolulu primarily because they contained candy like flavors and were marketed in order to be attractive to minors. While there is no specific Hawaii data on the appeal of flavored cigarettes to youth products that are candy or fruit flavored such as drinks, candies, and other products have been shown to have a greater appeal to youth, on the national level. The use of fruit and candy flavor names entices children to try cigarettes and smokeless tobacco products that have flavors with which they are familiar. Flavored cigarettes and smokeless tobacco products thus encourage children to begin using tobacco products.

This bill would ban the sale, offering for sale, and distribution of flavored cigarettes and smokeless tobacco products that impart a characterizing flavor, other than tobacco, menthol, or clove, prior to or during consumption. The bill provides that the Attorney General may enforce the ban by seeking a civil injunction, a \$5,000 civil penalty, and costs including attorneys' fees.

Should this measure move forward we respectfully offer the following change to the definition of "characterizing flavor" and "component parts" in order to better address the issue of natural or artificial flavoring devices, methodology, or technology utilized by the industry in flavoring cigarettes.

"Characterizing flavor" means any distinguishable or distinctive natural or artificial taste, flavor, smell, or aroma, other than tobacco, menthol, or

clove, which emanates from or is imparted by the smokeless tobacco product, cigarette, the cigarette's smoke, or any of the cigarette's component parts at any time prior to or during consumption.

"Component parts" includes but is not limited to the tobacco, filter, paper, or natural or artificial flavoring device or substance in a cigarette.

We understand that cigarette flavoring technology includes the use of pellets that are imbedded in the cigarettes themselves that impart the flavoring to the cigarette. With this technology there may not be a specific smell or flavor that would be readily detected without actually lighting the cigarette itself. Absent disclosure of the technology and laboratory tests to determine if the cigarette imparts a flavor, taste, or smell other than those allowed by this bill the industry or manufacturers could easily get around the law. To strengthen enforcement of the bill, we recommend that a section be added that would authorize the Department of Health to have access to information from cigarette and smokeless tobacco product manufacturers, which discloses the characterizing flavor, flavoring device, or technology being used to produce the characterizing flavor in the cigarettes or smokeless tobacco product that would make them "flavored" under the bill. This information should be defined as proprietary and subject to protective orders. The records should be exempted from disclosure under chapter 92F, Hawaii Revised Statutes. The Department of Health should be provided with the laboratory resources and funding to conduct such testing.

In addition, we recommend that a new Section -4, titled "Presumption," be added to the bill that would read as follows:

§ -4 Presumption. The fact that the cigarette, component part of a cigarette, or smokeless tobacco product is labeled, advertised, promoted, or marketed as having or producing any natural or artificial flavor, taste, or aroma other than tobacco, menthol,

or clove shall be prima facie evidence that the entity engaged in the conduct with knowledge of the flavored character and nature of the cigarettes or smokeless tobacco product that are being sold, offered for sale, or distributed.

This provision would allow enforcement of the ban on sale, offering for sale, or distribution of flavored cigarettes or smokeless tobacco products without having to prove that an actual ingredient imparts a characterizing flavor. These proposed amendments will clarify potential ambiguities and aid in enforcement of the bill.

The Attorney General supports the intent of reducing the use of all tobacco products by the children of this State.