

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

ON THE FOLLOWING MEASURE:

H.B. NO. 2438, H.D. 1, RELATING TO CIGARETTES.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Tuesday, February 26, 2008 **TIME:** 2:15 PM

LOCATION: State Capitol Room 308
Deliver to: Committee Clerk, Room 306, 2 copies

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

Chair Oshiro and Members of the Committee:

The Department of the Attorney General supports the intent of this measure and provides the following comments and recommendations.

The impetus for this bill rests in the area of fire safety and protection, which by statute is the province and jurisdiction of the State Fire Council and fire departments of each county as articulated in chapter 132, Hawaii Revised Statutes. This measure places the primary responsibility to administer and enforce fire safe cigarettes with the State Fire Council, which is consistent with other jurisdictions that have fire safe cigarettes statutes.

Any fire safe cigarette legislation that proposes creating a program with the stated legislative purpose of improving fire safety standards to reduce fires that may result in deaths, injuries, and property damage should not be undertaken lightly. Careful thought must be given to the legislation to ensure that the agency entrusted with administering the fire safe cigarette program has the proper expertise in fire safety not only to properly monitor compliance with fire safety standards, but also to determine acceptable alternative standards if necessary. In Hawaii, pursuant to chapter 132, Hawaii Revised Statutes, issues of fire safety and fire

protection are delegated to the State Fire Council and county fire chiefs.

Chapter 132, Hawaii Revised Statutes, deals with fire protection. Section 132-1(b), Hawaii Revised Statutes, provides that the fire chief of each county shall:

- (1) Investigate the cause, origin, and circumstances of fires;
- (2) Supervise and make or cause to be made periodically a thorough inspection of all property which might constitute a fire hazard within the county.

Section 132-2, Hawaii Revised Statutes, provides the authority to the fire chiefs to make rules related to:

- (1) Prevention of fires, and the inspection of property, periodically or otherwise, or for the prevention of or reduction of loss by fire, or to promote the safety of persons in case of fire;
- (2) Manufacture, storage, sale, and use of combustibles and explosives.

Section 132-3, Hawaii Revised Statutes, calls for the establishment of a state fire code by the State Fire Council that sets forth minimum requirements relative to the protection of persons and property from fire loss, including the storage, handling and use of hazardous substances, materials, and devices. Section 132-5, Hawaii Revised Statutes, provides for right of entry to the fire chiefs of each county to make any inspection, investigation, or examination authorized under chapter 132.

In other jurisdictions, agencies tasked with fire protection or public safety are the lead agencies tasked with the administration, and enforcement of the "fire safe cigarette laws." The research indicates that, in those states where reduced ignition propensity cigarette statutes have passed, the agencies tasked with fire protection or public safety are the agencies tasked with taking the lead in administering and making broad rules regarding reduced ignition propensity cigarette laws. For example, the State Fire Marshall in California; the Office of Fire Prevention and Control in New York; the Commissioner of Public Safety who is the ex officio

fire marshal in Vermont; the Director of the Division of Consumer Affairs in the Department of Public Safety in consultation with the Division of Fire Safety in the Department of Community Affairs in New Jersey; the Commissioner of Safety in New Hampshire (the Division of Fire Safety, whose head is the State Fire Marshall, is a division within the Department of Safety in New Hampshire); the Office of the State Fire Marshall in Illinois; the Secretary of the Office of Public Safety in Massachusetts (the Department of Fire Services, whose head is the State Fire Marshall, is a department within the Executive Office of Public Safety and Security in the State of Massachusetts); the State Fire Marshall in the State of Kentucky; the State Fire Marshall in Alaska, Department of Public Safety in Iowa (the State Fire Marshall Division is a division within the Department of Public Safety in Iowa); the Comptroller, State Fire Safety Commission, and Attorney General in Maryland; Commissioner of Revenue and State Fire Marshall in Minnesota; Department of Justice and State Fire Marshall in Montana; State Fire Marshall in Oregon; State Fire Marshall in Delaware; State Fire Marshall in Texas; State Fire Marshall in Maine; State Fire Marshall in Louisiana; State Fire Marshall in Connecticut; State Fire Marshall in Utah; Director of the Department of Health in Rhode Island; and the Commissioner of Insurance who is the State Fire Marshall in North Carolina all have the primary administrative responsibility over fire safe cigarettes in those jurisdictions.

We recommend that the effective date of this proposed program coincide with the tax stamp increases. As a practical matter this would afford ease of transition and allow for only the stamping of fire safe cigarettes with the new tax stamps that come into play with a new cigarette tax rate. In accord with section 245-3, Hawaii Revised Statutes, an increase in cigarette taxes will occur on or after September 30, 2008, September 20, 2009, September 30, 2010, and September 30, 2011.

We offer the following amendments to the language contained in H.B. No. 2438, H.D. 1, as a means of clarifying provisions related to application, certification, seizure of contraband cigarettes, and disposition of seized contraband cigarettes.

(1) An amendment to page 3, lines 20 thru 22 and page 4, lines 1 thru 5, to read:

section -8, no cigarettes may be sold or offered for sale in this State or offered for sale or sold to persons located in this State unless the cigarettes comply with all applicable federal, state, county, and local laws, ordinances, rules, and regulations pertaining to cigarettes, have been tested in accordance with the test method, and meet the performance standard specified in this section and the manufacturer has filed a written certification with the state fire council in accordance with section -4(a), and the cigarettes have been marked in accordance with section -4(b). . . .

The purpose of this amendment is to put the manufacturers, dealers, distributors, and retailers on notice that the cigarettes must satisfy all other state, federal, and county regulatory requirements in order to be sold in the State.

(2) An amendment to page 15, lines 4-13, which would designate the last part of paragraph (4) as a new paragraph (5) to deal with seizure and forfeiture of non-compliant cigarettes, to read:

(5) Any cigarettes sold or offered for sale that do not comply with the performance standards required by section -3 shall be considered contraband and may be seized with or without a warrant and turned over to the attorney general [and ordered forfeited]. The contraband cigarettes are subject to summary forfeiture without regard to the procedures set forth in chapter 712A. Cigarettes forfeited pursuant to this subsection shall be destroyed[; ~~however, prior to the destruction of any cigarette forfeited pursuant to these provisions, the true holder of the trade mark rights in the cigarette brand shall be permitted to inspect the cigarette].~~

We are proposing that wording requiring the State to provide access to the trademark holder be struck for the simple reason that

logistically it may be impossible to have every trade mark holder review the seized product prior to destruction. Similar provisions appear on page 16, lines 5-11 and we recommend similar amending wording and deletions:

. . . Such cigarettes shall be considered contraband and may be seized with or without a warrant and turned over to the attorney general~~[and ordered forfeited]~~. The contraband cigarettes are subject to summary forfeiture without regard to the procedures set forth in chapter 712A. Cigarettes seized pursuant to this subsection shall be destroyed~~[; provided, however, that prior to the destruction of any cigarette seized pursuant to these provisions, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette]~~.

With regard to the three-year certification period and fee of \$250, we would defer to the State Fire Council as to the necessary personnel and costs to administer, implement, and enforce the fire safe cigarette program. We also defer to the State Fire Council whether a special fund should be set up to receive the fees from the certifications, the necessary appropriations, and whether the certification period should be shorter than the proposed three-year period. Reason dictates that effective enforcement of this law requires periodic laboratory testing of cigarettes to ensure compliance with the articulated standards. This measure currently calls for a \$250 fee per cigarette. An appropriate fee amount is necessary to provide a funding and allocation mechanism of moneys for testing and other compliance and enforcement measures.

Given that cigarettes are imported from all over the world and given the cigarette industries record for candor, it is not recommended that the State rely solely on an individual manufacturer or industry representations that the cigarettes are compliant without having a means to independently verify the cigarettes' compliance. This testing may reasonably require laboratory testing or some other forensic testing to determine compliance with the

articulated standards. Should the State of Hawaii enact a reduced ignition propensity cigarette statute, it is not recommended that Hawaii simply rely on New York State's certification of compliance with the reduced ignition propensity cigarette standards. Instead, the State of Hawaii should test cigarettes for compliance with any reduced ignition propensity cigarette program enacted by the Legislature. Three laboratories have been identified as potential candidates to provide testing for the State of Hawaii. Those laboratories are:

- VGO Testing and Inspection Engineers of Portland, Oregon.;
- Kidde-Fenwal, Inc., Combustion Research Center, located in Massachusetts; and
- Arista Laboratories, Inc., of Richmond, Virginia.

The cost to test each cigarette brand style is not insignificant and ranges from approximately \$760 per brand style to \$2,000 per brand style. Currently Hawaii has 2,156 brand styles listed in the Hawaii Tobacco Directory. The State of New York's reduced ignition propensity cigarette directory lists approximately 1,216 brand styles of which 1,152 brand styles are also listed on Hawaii's Tobacco Directory. Assuming 1,152 of the brand styles of cigarettes listed on Hawaii's Tobacco Directory certifies as reduced ignition propensity cigarettes, testing costs for one test per year would be in the range of \$875,520 to \$2,304,000. Assuming the same number as reduced ignition propensity cigarettes certified in New York, the laboratory costs could range between \$924,160 and \$2,432,000. The laboratory testing costs do not include the cost of purchasing the cigarettes at retail at an estimated \$5.00 to \$6.00 per pack which ranges from \$23,040 to \$27,648 for four packs of the 1,152 brand styles currently listed on both New York's reduced ignition propensity cigarette directory and Hawaii's Tobacco Directory. The cost of purchasing cigarettes at retail increases to \$43,120 to \$51,744 for four packs needed to conduct one test of all 2,156 brand styles listed in the Hawaii's Tobacco Directory.

Because fire safe cigarette legislation is relatively new, the complexities of the issues and the practical realities of running an effective program have not been realized, even in states that have already passed fire safe cigarette legislation. Accordingly, the true impact of fire safe cigarette legislation in other states will not be evident for several years, and extrapolating anything learned from those states to Hawaii is premature. As such, the Legislature may elect to await further developments in the industry, other states, and possibly federal reduced ignition propensity cigarette regulation.



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
State Fire Council
830 Punchbowl Street
Honolulu, Hawaii 96813

February 26, 2008

The Honorable Marcus R. Oshiro, Chair
Committee on Finance
House of Representatives
State Capitol, Room 306
Honolulu, Hawaii 96813

Dear Chair Oshiro:

Subject: H.B. 2438, H.D. 1 Relating to Cigarettes

I am Kenneth G. Silva, Chair of the State Fire Council (SFC) and Fire Chief of the Honolulu Fire Department (HFD). The SFC and the HFD support H.B. 2438, H.D. 1, which would require that only reduced ignition propensity cigarettes be sold in Hawaii beginning July 1, 2009. We believe that this bill is in alignment with legislation passed by 22 other states, which affects 52 percent of the United States (U.S.), and Canada. Fifteen states have pending legislation requiring "fire-safe" cigarettes.

The SFC recommends the following revisions to accomplish a successful enactment of the bill:

"SECTION 1. § -4 (a) Each cigarette certified under this subsection shall be recertified every ~~three~~ two years."

This will coincide with the biennial state budget cycle.

"SECTION 4. This Act shall ~~take effect on the first day of the thirteenth month after enactment; provided that section 3 shall take effect upon approval of this Act~~ coincide with the effective date of a new cigarette tax rate and stamp scheduled for September 2010."

In 2005, there were 82,400 smoking material fires in the U.S. that killed 800 people and injured 1,660 others. Ninety-three percent of the deaths and 78 percent of the injuries were in home fires. Property losses from smoking material fires total millions of dollars each year. In Hawaii, 216 fires were caused by cigarettes and resulted in \$283,570 in

The Honorable Marcus R. Oshiro, Chair
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February 26, 2008

property damage and three injuries between 2003 and 2005. H.B. 2438, H.D. 1 will help reduce the number of fire incidents, dollar loss, and injuries statewide. The SFC and the HFD request your committee's support on the passage of H.B. 2438, H.D. 1.

Should you have any questions, please call SFC Legislative Liaison Lloyd Rogers at 723-7171.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth G. Silva". The signature is written in a cursive style with a large initial "K" and a long, sweeping underline.

KENNETH G. SILVA
Chair

KGS/LR:cn



COUNTY OF KAUAI
Fire Department
Mo'ikeha Building
4444 Rice Street, Suite 295
Lihu'e, Kaua'i, Hawaii 96766

February 26, 2008

The Honorable Marcus R. Oshiro, Chair
Committee on Finance
House of Representatives
State Capitol, Room 306
Honolulu, Hawaii 96813

Dear Chair Oshiro:

Subject: H.B. 2438, H.D. 1 Relating to Cigarettes

I am Robert F. Westerman, Fire Chief of the Kauai Fire Department (KFD) and a member of the State Fire Council (SFC). The SFC and the KFD support H.B. 2438, H.D. 1, which would require that only reduced ignition propensity cigarettes be sold in Hawaii beginning July 1, 2009. We believe that this bill is in alignment with legislation passed by 22 other states, which affects 52 percent of the United States (U.S.), and Canada. Fifteen states have pending legislation requiring "fire-safe" cigarettes.

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The Honorable Marcus R. Oshiro, Chair

Page 2

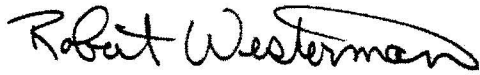
February 26, 2008

property damage and three injuries between 2003 and 2005. H.B. 2438, H.D. 1 will help reduce the number of fire incidents, dollar loss, and injuries statewide.

The SFC and the KFD request your committee's support on the passage of H.B. 2438, H.D. 1.

Should you have any questions, please call me at (808) 241-6500.

Sincerely,

A handwritten signature in black ink that reads "Robert Westerman". The signature is written in a cursive style with a large, sweeping flourish over the name.

Robert Westerman
Fire Chief, County of Kaua'i

RFW/eld

FINtestimony

From: Mae Kishimoto [kishimotm001@hawaii.rr.com]
Sent: Monday, February 25, 2008 10:19 AM
To: FINtestimony
Subject: Testimony in Support of HB2481 HD1

House Committee on Finance
Marcus R. Oshiro-Chair
Marilyn B. Lee-Vice-Chair

Testimony in SUPPORT of HB2481 HD1

Tuesday, February 26, 2008
3:30 p.m.
Conference Room 308
State Capitol
415 South Beretania Street

Finance Chair Oshiro and members of the House Committee on Finance,

Thank you for accepting my testimony in SUPPORT of HB2481 HD1 (VEBA Trusts; Bargaining Unit 5; Repeal Sunset).

I am a teacher at Ahuimanu Elementary School. I have served on the Membership Services Committee of HSTA for over fifteen years. During the years when our share of the Health benefits was ported over to the Member Benefits Corporation, we enjoyed excellent coverage on health benefits. My eye doctor said that we had the best vision plan. My dentist said that we had the best dental plan. And NO monies were returned to the state. Our benefits got better and better, until it was yanked from us and sent us all to the EUTF.

Needless to say, I was extremely disappointed. My drug expenses, especially, nearly ran me broke. There are certain drugs that I need that require it to be name brands. The coverage was dismal or none at all. My asthma inhalers cost \$65/ inhaler.

The nightmare was solved when VEBA was returned to us. I am very pleased with what the Trust is doing in reversing the nightmare of having to deal with the EUTF.

Please support the repeal of the sunset on VEBA. I would also urge you to support not having VEBA return monies to the State. According to ERISA rules (Federal Guidelines), monies going into a VEBA are to be used solely for the benefit of its members.

Thank you for your attention to my testimony.

Aloha, Mae T. Kishimoto

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HAWAII FIRE FIGHTERS ASSOCIATION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 1463, AFL-CIO
2305 S. BERETANIA ST., RM. 202, HONOLULU, HAWAII 96826-1493
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The Twenty Fourth Legislature
House Committee on Finance

Testimony by
Hawaii Fire Fighters Association

H.B. 2438, H.D. 1 Relating to Cigarettes

My name is Robert H. Lee and I am the President of the Hawaii Fire Fighters Association, Local 1463, IAFF, AFL-CIO. On behalf of the 1,800 professional and 800 retired fire fighters throughout the State, the Hawaii Fire Fighters Association supports H.B. No. 2438, H.D. 1, which prohibits sale of cigarettes in Hawaii that are not reduced ignition propensity "fire-safe" beginning 7/1/2009.

The HFFA supports H.B. No. 2438, H.D. 1, because of the impact on fire fighters throughout the State. This initiative will help prevent fires, save lives, and property. As of January 1, 2008, 22 states have enacted similar legislation. In Washington State, the Ways and Means Committee just passed a similar bill on January 22, 2008.

This initiative helps protect the community and fire fighters. Thank you for the opportunity to testify and we ask for your support of H.B. 2438, H.D. 1.



COALITION FOR A
TOBACCO-FREE HAWAII

Email to: Committee on Finance, FINtestimony@Capitol.hawaii.gov

**RE: House Committee on Finance, hearing schedule, February 26, 2008, 2:15 P.M., Room 308.
Representative Marcus Oshiro, Chair & Representative Marilyn Lee, Vice Chair**

RE: Testimony in strong support of HB 2438 HD1, Relating to Reduced Ignition Propensity Cigarettes.

Chair Oshiro, Vice Chair Lee, and members of the Committee on Finance. Thank you for the opportunity to submit testimony in **strong support** of HB2438 HD1, which prohibits the sale of cigarettes in Hawaii that are not of reduced ignition propensity or "fire-safe" beginning July 1, 2009. My name is George Massengale, I am the Policy Director, for the Coalition for a Tobacco Free Hawaii, a statewide association of nonprofit organizations, businesses and more than 2,000 individuals committed to working together to reduce the negative impact of tobacco on the health of Hawaii's children, adults, and visitors.

As this committee knows, the Coalition's primary mission is reducing the harmful impact of tobacco usage among the residents of our state. We also support the efforts of other organizations that also want to reduce the harm caused by smoking cigarettes, in this particular instance, the Hawaii State Fire Council's efforts to address the issue of cigarette fires which are the number one leading cause of fire deaths and property damage in the United States.

We've offered testimony previously on this bill, noting that **we particularly support Section 4, the "Certification and Marking" provision that mandates State approval to manufacture or sell cigarettes in Hawaii. Additionally we also believe that the penalties outlined in Section 6, will also impact the sale of black market cigarettes, as well as sales by unlicensed vendors.**

In closing we would note that 22 other States covering 52% of the U.S. population, and 14 nations around the world have passed "fire safe cigarette" legislation.

Sincerely yours,

George S. Massengale, JD
Policy Director



February 25, 2008

TO: Chair Marcus R. Oshiro and Members of the House Committee on Finance

FROM: Cigar Association of America, Inc.
(Norman H. Suzuki)

RE: **HB 2438, H.D. 1** Relating to Cigarettes

Hearing Date: 2/26/08 at 2:15 p.m.
Agenda #5

My name is Norman Suzuki. I represent the Cigar Association of America, Inc.

We do not oppose the intent of the bill but believe the current definition of "cigarette" in H.D. 1 has unintended consequences.

The bill was intended to require the sale of reduced ignition propensity cigarettes. However, the amendment to the original bill changed the definition of cigarette so most cigars are now included in the definition.

The original definition, which is the definition of "cigarette" for tax purposes, excluded cigars because it **excluded rolls of tobacco wrapped in a wrapper containing tobacco**. By the insertion of the word "**leaf**" before "tobacco" in H.D. 1, Section 2, page 2, line 13, the definition of cigarette would exclude only high-end cigars which are wrapped in leaf tobacco but would essentially ban the sale of most inexpensive and moderate-priced cigars which are made with a wrapper containing tobacco but not necessarily "leaf" tobacco.

If the Committee decides to pass out the bill, we respectfully request that the word "leaf" be deleted so that inexpensive and moderate-priced cigars can continue to be available in Hawaii.

Thank you for considering this testimony.