

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

ON THE FOLLOWING MEASURE:

H.B. NO. 2438, H.D. 2, S.D. 1, RELATING TO CIGARETTES.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, March 25, 2008 **TIME:** 9:45 AM

LOCATION: State Capitol, Room 016

Deliver to: Committee Clerk, Room 219, 1 copies

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

Chair Taniguchi 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 30, 2009, September 30, 2010, and September 30, 2011.

We offer the following amendments to the wording contained in H.B. No. 2438, H.D. 2, S.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:

and -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 subsection (b), page 14, lines 19-22 and page 15, lines 1-4, which deals with seizure and forfeiture of non-compliant cigarettes, to read:

(b) Any cigarettes sold or offered for sale that do not comply with the performance standard 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 trademark holder review the seized product prior to destruction. Similar provisions appear on page 15, lines 9-14 and we recommend similar amending wording and deletions:

. . . The 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 two-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 two-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.

Linda Lingle
Governor



Darwin L.D. Ching
Director

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

March 24, 2008

The Honorable Brian T. Taniguchi, Chair
Committee on Judiciary and Labor
The State Senate
State Capitol, Room 219
Honolulu, Hawaii 96813

Dear Chair Taniguchi:

Subject: H.B. 2438, H.D. 2, S.D. 1 Relating to Cigarettes

I am Kenneth 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. 2, S.D. 1, which establishes a process to ensure that only fire-safe cigarettes are sold in Hawaii. 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 reduced ignition propensity cigarettes.

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, 438 fires were caused by cigarettes and resulted in \$1,461,125 in property damage, ten injuries, and no loss of life between 2001 and 2006. H.B. 2438, H.D. 2, S.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 this bill.

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

Sincerely,

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

March 24, 2008

The Honorable Brian T. Taniguchi, Chair
Committee on Judiciary and Labor
The State Senate
State Capitol, Room 219
Honolulu, Hawaii 96813

Dear Chair Taniguchi:

Subject: H.B. 2438, H.D. 2 S.D. 1 Relating to Cigarettes

I am Robert Westerman, Fire Chief of the Kauai Fire Department (KFD) and member of the State Fire Council (SFC). The SFC and the KFD support H.B. 2438, H.D. 2, S.D. 1, which establishes a process to ensure that only fire-safe cigarettes are sold in Hawaii. 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 reduced ignition propensity cigarettes.

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, 438 fires were caused by cigarettes and resulted in \$1,461,125 in property damage, ten injuries and no loss of life between 2001 and 2006. H.B. 2438, H.D. 2, S.D. 1 will help reduce the number of fire incidents, dollar loss, and injuries statewide.

The SFC and the KFD request your committees' support on the passage of H.B. 2438, H.D. 2, S.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.

Robert Westerman
Fire Chief, County of Kaua'i

RFW/eld



HAWAII FIRE FIGHTERS ASSOCIATION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 1463, AFL-CIO
2305 S. BERETANIA ST., RM. 202, HONOLULU, HAWAII 96826-1493
TEL: (808) 949-1566 FAX: (808) 952-6003
www.hawaiifirefighters.org

LATE

The Twenty Fourth Legislature
Senate Committee on Judiciary and Labor

Testimony by
Hawaii Fire Fighters Association

H.B. 2438, H.D. 1, S.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, S.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, S.D. 1.

LATE



Senator Brian Taniguchi, Chair
Senator Clayton Hee, Vice Chair
Committee on Judiciary & Labor

State Capitol, Honolulu, Hawaii 96813

HEARING Tuesday, March 25, 2008
 9:45 am
 Conference Room 016

RE: HB2438, HD2, SD1 Relating to Cigarettes

Chair Taniguchi, Vice Chair Hee, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing about 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii.

RMH supports HB2438, HD2, SD1 and appreciates the provision that will facilitate seamless implementation by allowing sufficient time for sell-through of our existing inventories.

Thank you for your consideration and for the opportunity to comment on this measure.

A handwritten signature in black ink, appearing to read 'Carol Regille', is written in a cursive style.

President

RETAIL MERCHANTS OF HAWAII
1240 Ala Moana Boulevard, Suite 215
Honolulu, HI 96814
ph: 808-592-4200 / fax: 808-592-4202

LATE



National Fire Protection Association

West Coast Regional Office, 6285 E, Spring Street, Suite 363, Long Beach, CA 90808-4000 USA
Phone: 562-497-1706 • Fax: 562-497-1716 • www.nfpa.org

March 26, 2008

The Honorable Brian Taniguchi
Chair, Judiciary & Labor Committee
Hawaii State Capitol, Room 219
415 South Beretania Street
Honolulu, HI 96813

Re: HB 2438

Dear Senator Taniguchi,

I write to urge support for legislation regarding “fire-safe” cigarettes. This legislation, HB 2438, would require all cigarettes sold in Hawaii to meet a fire safety standard. There is no doubt that this important public safety bill will save lives, reduce injuries and protect property all across the state.

By taking positive action on this legislation, you will be taking a critical step to enhance fire safety by preventing fires caused by cigarettes. If the proposed fire-safe cigarette bill becomes law in Hawaii, the state will be in good company. Already, legislative requirements for fire-safe cigarettes have been adopted in 24 states — covering nearly 60 percent of the U.S. population. And there are 18 other states that are considering similar legislation this year.

Cigarettes are the leading cause of residential fire death across the country, killing 700 to 900 Americans each year. Additionally, thousands of victims suffer devastating injuries, and property losses total millions of dollars each year. Cigarette fires also create a significant risk for firefighters battling these fires.

All of these risks can be significantly reduced. Cigarette manufacturers can produce cigarettes that are more likely to go out when left unattended, greatly lowering the risk of igniting nearby combustibles. By passing this legislation, the manufacturers must produce cigarettes that comply with the fire safety standard, and there is no reason why they cannot. Technology has existed for decades that will accomplish this task.

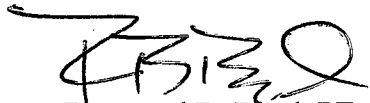
Fire-safe cigarettes really work. Initial research in New York State, the first state to pass such legislation, shows a dramatic decline in the number of fires and fatalities caused by cigarettes since the implementation of its statewide mandate. Research has also shown that these fire-safe cigarettes have not reduced sales or made cigarettes more toxic to smoke. In short, fire-safe cigarettes save lives, and can make a difference in Hawaii as well.

Senator Brian Taniguchi
March 26, 2008
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The Coalition for Fire-Safe Cigarettes is working to save lives and prevent injuries and devastation from cigarette-ignited fires. For more information about this state-by-state legislative initiative, review the model legislation, or keep up with initiatives in other states visit the Coalition web site at <http://www.firesafecigarettes.org>.

Moving this bill forward will better protect the citizens of Hawaii. Please let me know if I can be of assistance on this important public safety issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'RBizal', with a long horizontal stroke extending to the left.

Raymond B. Bizal, PE
Western Regional Manager

cc: Representative Yamane