



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON HEALTH

DATE: Friday, February 1, 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

Chair Green 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 this bill as a means of clarifying its application, certification, and funding.

(1) An amendment to page 4, lines 2 thru 8 to read:

No cigarettes may be manufactured in this State or sold or offered for sale to any person or entity 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.

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 8, lines 19-20 to read:

(b) For each cigarette listed in a certification the manufacturer shall pay to the state fire council a fee of \$250.

The purpose of the amendment is to clarify that the proposed fee of \$250 is to be paid for each cigarette being certified with the State of Hawaii and not the number of cigarette styles or brand families actually tested by the manufacturer. A manufacturer may actually test more brand styles or families than those actually being offered for sale in Hawaii by the manufacturer.

With a regard to the three-year certification period and fee of \$250 we would defer to the State Fire Council as to the costs to administer, implement, and enforce the fire safe cigarette program. We also defer to the State Fire Council on whether a special fund should be set up to receive the fees from the certifications 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 would be foolhardy to 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

January 31, 2008

The Honorable Josh Green, M.D., Chair
Committee on Health
House of Representatives
State Capitol, Room 436
Honolulu, Hawaii 96813

Dear Chair Green:

Subject: H.B. 2438 - 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, which proposes to prohibit the sale of cigarettes in Hawaii that are not reduced ignition propensity or "fire-safe" beginning July 1, 2009, and also sets civil fines and requires the attorney general to adopt rules to enforce the law.

H.B. 2438 will help reduce the number of fire incidents, dollar loss, and injuries statewide. Between 2003 and 2005, 216 fires were caused by cigarettes and resulted in \$283,570 in property damage and three injuries.

The SFC and the HFD request your committee's support on the passage of H.B. 2438.

Should you have any questions, please call Acting SFC Administrator William H. Melemai III at 723-7152.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kenneth G. Silva".

KENNETH G. SILVA
Chair

KGS/WHM:jl

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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 of Representatives
Committee on Health

Testimony by
Hawaii Fire Fighters Association

H.B. 2438 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, 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, 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. No. 2438.

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Email to: Committee on Health, HLTtestimony@Capitol.hawaii.gov

**RE: House Committee on Health, hearing schedule, February 1, 2008, 8:00 A.M., Room 329.
Representative Josh Green, M.D., Chair & Representative John Mizuno, Vice Chair**

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

Chair Green, Vice Chair Mizuno, and members of the Committee on Health

Thank you for the opportunity to submit testimony in **strong support** of HB 2438, 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 offered testimony last week on HB2059 and identical measure to this bill. 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,

A handwritten signature in black ink, appearing to read "G. Massengale". The signature is fluid and cursive, written over a light blue horizontal line.

George S. Massengale, JD
Policy Director

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Representative Josh Green, MD., Chair
Representative John Mizuno, Vice Chair
Committee on Health
State Capitol, Honolulu, Hawaii 96813

HEARING Friday, February 1, 2008
 8:00 am
 Conference Room 329

RE: HB2438, Relating to Cigarettes

Chair Green, Vice Chair Mizuno, 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 the intent of this measure. However, understanding that the initial burden primarily is on the manufacturer, but that the civil penalties and fines are applicable to retailers as well, we do have one comment.

To facilitate seamless implementation, it is imperative to allow sufficient time for retailers to sell through existing inventories, particularly in the instance of multi-store locations that have different rates of sell-through. We respectfully request your providing a minimum period of one full year from enactment to afford full compliance.

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

Carol Pregill,
President

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