



Senator Russell Kokubun, Chair
Senator David Ige, Vice Chair
Committee on Commerce, Consumer Protection & Affordable Housing
State Capitol, Honolulu, Hawaii 96813

HEARING Tuesday, February 5, 2008
 9:00 am
 Conference Room 229

RE: SB2128, Relating to Cigarettes

Chair Kokubun, Vice Chair Ige, 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.

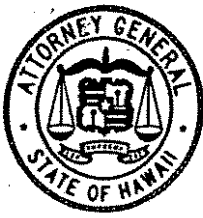
RMH supports the intent of this measure. However, understanding that the initial burden primarily is on the manufacturer, but that the civil penalties and fines are applicable to retailers as well, we do have one comment.

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

ON THE FOLLOWING MEASURE:

S.B. NO. 2128, RELATING TO CIGARETTES.

LATE

BEFORE THE:

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND AFFORDABLE HOUSING

DATE: Tuesday, February 5, 2008 **TIME:** 9:00 AM

LOCATION: State Capitol Room
Deliver to: Committee Clerk, Room 407, 1 copies

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

Chair Kokubun and Members of the Committee:

The Department of the Attorney General respectfully opposes this bill, because the department lacks the training, expertise, and resources necessary to bear the responsibility for the administration and enforcement of this fire safety measure.

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. We note that H.B. No. 2438 and H.B. No. 2059, H.D. 1, place the 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. If the Legislature decides that fire safe cigarette legislation is appropriate for Hawaii at this time, it should be adopted, implemented, and administered within the existing statutory authority. 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.

It would be impractical to assign the implementation, administration, and enforcement of a reduced ignition propensity cigarette program to a state agency other than the State Fire Council and county fire chiefs. Because the underlying issues are fire safety and preventing deaths and injuries from cigarette-ignited fires, fire professionals must be involved in scrutinizing certifications and maintaining information on acceptable reduced ignition propensity product.

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.

The proposed legislation calls for technical expertise not possessed by the Department of the Attorney General. In addition, the economic cost to implement and enforce this proposal is undetermined, is without funding, and lacks an identified source of funding. Reason dictates that effective enforcement of this law requires periodic laboratory testing of cigarettes to ensure compliance with the articulated standards. This measure is void of 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.

In addition, a component of an investigation into the loss of life or property where a cigarette is suspected as being the cause of the fire would necessarily entail a determination of whether in fact the cigarette that caused the fire was compliant with this proposed legislation. That function rests with the fire departments, fire investigators, and other applicable law enforcement agencies normally at the county level. We note that H.B. No. 2376, Relating to the State Fire Council, calls for the State Fire Council to deal with mitigation of statewide brushfires and specifically states, "the state fire council shall investigate the potential effects of widespread use of reduced ignition propensity cigarettes in the prevention of brushfires throughout the State." H.B. No. 2376 also appropriates out of the general fund \$400,000 for fiscal year 2008-2009, to establish and staff a minimum

of four positions to implement a public education program on brushfire prevention and safety.

The Department of the Attorney General lacks the funding, relevant expertise, and resources to be the agency responsible for dealing with fire safe cigarettes.

The Department of the Attorney General may be able to provide collateral assistance in the inspection process. We note that the activities of the department's Tobacco Enforcement Unit are supported by a special fund the use of which is constrained by statute. Section 28-15, Hawaii Revised Statutes, states in relevant part:

(a) There is established in the state treasury the tobacco enforcement special fund, into which shall be deposited the tobacco settlement moneys as provided by section 328L-2(a), the allocated portion of the stamp fee designated to pay for the cost of enforcing the cigarette tax stamp as provided by section 245-26, and fines as provided for by section 245-41.

(b) The tobacco enforcement special fund shall be administered by the department of the attorney general and shall be used for administering, operating, monitoring, and ensuring compliance with and enforcement of:

- (1) The Master Settlement Agreement as defined in chapter 675 and any other statutes or programs relating to that agreement;
- (2) Chapter 675;
- (3) Tobacco prevention programs;
- (4) The cigarette tax stamp as defined in chapter 245 and any other statutes or programs relating to that chapter;
- (5) Chapter 245;
- (6) Chapter 486P and any other statutes or programs relating to that chapter; and
- (7) Any other requirement deemed necessary to carry out the purposes of the fund.

Further, section 37-52.3, Hawaii Revised Statutes, sets forth the criteria for the establishment and continuance of special funds and states in relevant part that:

Special funds shall only be established pursuant to an act of the legislature. The legislature, in establishing or reviewing a special fund to determine whether it should be continued, shall ensure that the special fund:

- (1) Serves the purpose for which it was originally established;
- (2) Reflects a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program, as opposed to serving primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriation process;
- (3) Provides an appropriate means of financing for the program or activity; and
- (4) Demonstrates the capacity to be financially self-sustaining.

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. We urge the Legislature to await further developments in the industry, other states, and possibly federal reduced ignition propensity cigarette regulation.

For the reasons noted above the Department of the Attorney General respectfully opposes this bill as presently drafted.



HAWAII FIRE FIGHTERS ASSOCIATION

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LATE

LATE TESTIMONY

The Twenty Fourth Legislature
The Senate
Committee on Commerce, Consumer Protection and Affordable Housing

Testimony by
Hawaii Fire Fighters Association

S.B. No. 2128 **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 S.B. No. 2128, which prohibits sale of cigarettes in Hawaii that are not reduced ignition propensity "fire-safe" beginning 7/1/2009.

The HFFA supports S.B. No. 2128, 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 S.B. No. 2128.