

1 other ingredient, with a wrapper or cover that is made
2 of paper or any other substance or material, other
3 than tobacco; or

4 (2) Any roll for smoking wrapped in any substance
5 containing tobacco, which, due to its appearance, the
6 type of tobacco used in the filler, or its packaging
7 and labeling, is likely to be offered to or purchased
8 by consumers as a cigarette as described in paragraph
9 (1).

10 "Dealer" means the same as defined in section 245-1.

11 "Manufacturer" means:

12 (1) Any entity that manufactures or otherwise produces
13 cigarettes or causes cigarettes to be manufactured or
14 produced anywhere, and intends to sell these
15 cigarettes:

16 (A) In this State; or

17 (B) Anywhere in the United States through an
18 importer;

19 (2) The first purchaser anywhere that intends to resell in
20 the United States cigarettes manufactured anywhere
21 that the original manufacturer or maker does not
22 intend to be sold in the United States; or



1 (3) Any entity that becomes a successor of an entity
2 described in paragraph (1) or (2).

3 "Quality control and quality assurance program" means
4 laboratory procedures implemented to ensure that operator bias,
5 systematic and nonsystematic methodological errors, and
6 equipment-related problems do not affect the results of the
7 testing and to ensure that the testing repeatability remains
8 within the required repeatability value for any test trial used
9 to certify cigarettes under this chapter.

10 "Repeatability" means the range of values within which the
11 repeat results of cigarette test trials from a single laboratory
12 will fall ninety-five per cent of the time.

13 "Sale" or "selling" means any transfer of title or
14 possession, exchange, or barter, conditional or otherwise, and
15 includes the giving of cigarettes as samples, prizes, or gifts,
16 and the exchange of cigarettes for any consideration.

17 "Wholesaler" means the same as defined in section 245-1.

18 **§ -3 Cigarettes; reduced ignition propensity;**
19 **manufacturer testing.** (a) Except as provided in sections -7
20 and -8, no cigarettes may be sold or offered for sale in this
21 State or offered for sale or sold to persons located in this
22 State unless the cigarettes have been tested in accordance with



1 the test method and meet the performance standard specified in
2 this section, and the manufacturer has filed a written
3 certification with the state fire council in accordance with
4 section -4(a) and the cigarettes have been marked in
5 accordance with section -4(b). The performance standard for
6 cigarettes sold or offered for sale in this State shall include
7 all of the following:

- 8 (1) Testing of cigarettes shall be conducted in accordance
9 with the American Society of Testing and Materials
10 standard E2187-04 "Standard Test Method for Measuring
11 the Ignition Strength of Cigarettes." The state fire
12 council may adopt as rules pursuant to chapter 91, a
13 subsequent American Society of Testing and Materials
14 Standard Test Method for Measuring the Ignition
15 Strength of Cigarettes upon a finding that the
16 subsequent method does not result in a change in the
17 percentage of full-length burns exhibited by any
18 tested cigarette when compared to the percentage of
19 full-length burns the same cigarette would exhibit
20 when tested in accordance with American Society of
21 Testing and Materials standard E2187-04 and the
22 performance standard of this section;



- 1 (2) Testing of cigarettes shall be conducted on ten layers
2 of filter paper;
- 3 (3) No more than twenty-five per cent of the cigarettes
4 tested in a test trial shall exhibit full-length
5 burns. Forty replicate tests shall constitute a
6 complete test trial for each cigarette tested;
- 7 (4) The performance standard required by this section
8 shall only be applied to a complete test trial;
- 9 (5) Written certifications shall be based upon testing
10 conducted by a laboratory that has been accredited
11 pursuant to standard ISO/IEC 17025 of the
12 International Organization for
13 Standardization/International Electrotechnical
14 Commission, or other comparable accreditation standard
15 required by the state fire council;
- 16 (6) Laboratories that conduct tests in accordance with
17 this section shall implement a quality control and
18 quality assurance program that includes a procedure to
19 determine the repeatability of the testing results.
20 The repeatability value shall be no greater than 0.19;
- 21 (7) Each cigarette listed in a certification that uses
22 lowered permeability bands in the cigarette paper to



1 achieve compliance with the performance standard in
2 this section shall have at least two nominally
3 identical bands on the paper surrounding the tobacco
4 column. At least one complete band shall be located
5 at least fifteen millimeters from the lighting end of
6 the cigarette. For cigarettes on which the bands are
7 positioned by design, there shall be at least two
8 bands located at least fifteen millimeters from the
9 lighting end and ten millimeters from the filter end
10 of the tobacco column. In the case of an unfiltered
11 cigarette, the two complete bands shall be located at
12 least fifteen millimeters from the lighting end and
13 ten millimeters from the labeled end of the tobacco
14 column; and

- 15 (8) The manufacturer of a cigarette that the state fire
16 council determines cannot be tested in accordance with
17 the test method required by this section shall propose
18 to the state fire council a test method and
19 performance standard for that cigarette. The state
20 fire council may approve a test method and performance
21 standard that the state fire council determines is
22 equivalent to the requirement of this section, and the



1 manufacturer may use that test method and performance
2 standard for certification pursuant to section -4.
3 If the state fire council determines that another
4 state has enacted reduced cigarette ignition
5 propensity standards that include a test method and
6 performance standard that are the same as those
7 contained in this chapter, and the state fire council
8 finds that the officials responsible for implementing
9 those requirements have approved the proposed
10 alternative test method and performance standard for a
11 particular cigarette proposed by a manufacturer as
12 meeting the fire safety standards of that state's law
13 or regulation under a legal provision comparable to
14 this section, then the state fire council shall
15 authorize that manufacturer to employ the alternative
16 test method and performance standard to certify that
17 cigarette for sale in this State, unless the state
18 fire council demonstrates a reasonable basis why the
19 alternative test should not be accepted. All other
20 applicable requirements of this section shall apply to
21 the manufacturer.



1 (b) A manufacturer shall retain copies of the reports of
2 testing conducted on cigarettes offered for sale in the State
3 for a period of three years. The manufacturer shall provide
4 copies of these reports to the state fire council and the
5 attorney general upon written request. Any manufacturer who
6 fails to make copies of these reports available within sixty
7 days of receiving a written request shall be subject to a civil
8 penalty not to exceed \$10,000 for each day after the sixtieth
9 day that the manufacturer does not make the copies available.

10 (c) This section shall not require additional testing if
11 cigarettes are tested consistent with this chapter for any other
12 purpose.

13 (d) Testing performed or sponsored by the state fire
14 council to determine a cigarette's compliance with the
15 performance standard required by this section shall be conducted
16 in accordance with this section.

17 (e) The state fire council shall review the effectiveness
18 of this section and report every three years to the legislature
19 the state fire council's findings and, if appropriate,
20 recommendations for legislation to improve the effectiveness of
21 this chapter. The report and legislative recommendations shall



1 be submitted no later than June 30 following the conclusion of
2 each three-year period.

3 **§ -4 Certification; marking.** (a) Each manufacturer
4 shall submit to the state fire council written certification
5 attesting that each cigarette has been tested in accordance
6 with, and has met the performance standard required under
7 section -3. The description of each cigarette listed in the
8 certification shall include:

- 9 (1) The brand or trade name on the package;
- 10 (2) Style, such as light or ultra light;
- 11 (3) Length in millimeters;
- 12 (4) Circumference in millimeters;
- 13 (5) Flavor, such as menthol, if applicable;
- 14 (6) Filter or nonfilter;
- 15 (7) Package description, such as a soft pack or box;
- 16 (8) The mark approved pursuant to subsection (b);
- 17 (9) The name, address, and telephone number of the
18 laboratory, if different than the manufacturer that
19 conducted the test; and
- 20 (10) The date that the testing occurred.

21 Each cigarette certified under this subsection shall be
22 recertified every two years. For each cigarette listed in a



1 certification, a manufacturer shall pay to the state fire
2 council a \$250 fee. The state fire council is authorized to
3 annually adjust this fee to ensure it defrays the actual costs
4 of the processing, testing, enforcement, and oversight
5 activities required by this chapter.

6 The certifications shall be made available to the attorney
7 general for purposes consistent with this chapter.

8 (b) Cigarettes that have been certified pursuant to
9 subsection (a) shall be marked pursuant to the following
10 requirements:

11 (1) The marking shall be in a font of at least eight-point
12 type and shall include one of the following:

13 (A) Modification of the product's universal product
14 code to include a visible mark printed at or
15 around the area of the universal product code.

16 The mark may consist of one or more alphanumeric
17 or symbolic characters permanently stamped,
18 engraved, embossed, or printed in conjunction
19 with the universal product code;

20 (B) Any visible combination of alphanumeric or
21 symbolic characters permanently printed, stamped,



1 engraved, or embossed on the cigarette package or
2 the cellophane wrap; and

3 (C) Printed, stamped, engraved, or embossed text that
4 indicates that the cigarettes meet the standards
5 of this section; and

6 (2) Prior to the certification of any cigarette, a
7 manufacturer shall request approval of a proposed
8 marking from the state fire council. Upon receipt of
9 the request, the state fire council shall approve or
10 disapprove the marking offered, except that the state
11 fire council shall approve:

12 (A) Any marking approved and in use for the sale of
13 cigarettes in the state of New York; or

14 (B) The letters "FSC," which signifies fire standards
15 compliant, appearing in eight-point type or
16 larger and permanently printed, stamped,
17 engraved, or embossed on the package at or near
18 the universal product code.

19 A marking shall be deemed approved if the state fire council
20 fails to act within ten business days of receiving a request for
21 approval. A manufacturer shall not use a modified marking
22 unless the modification has been approved in accordance with



1 this chapter. A manufacturer shall use only one marking and
2 shall apply this marking uniformly for all packages, including
3 packs, cartons, and cases, and brands marketed by that
4 manufacturer.

5 (c) The state fire council shall be notified as to the
6 marking that is selected.

7 (d) A manufacturer shall provide a copy of certifications
8 to all wholesalers to which the manufacturer sells cigarettes
9 and shall provide sufficient copies of an illustration of the
10 packaging marking approved and used by the manufacturer pursuant
11 to subsection (b) for each of the dealers that purchases
12 cigarettes from any of those wholesalers. Wholesalers shall
13 provide a copy of the illustration to all dealers to which they
14 sell cigarettes. Wholesalers and dealers shall permit the state
15 fire council and the attorney general to inspect markings on
16 cigarette packaging at any time.

17 § -5 State fire council; rules; implementation. The
18 state fire council:

19 (1) May adopt rules pursuant to chapter 91 necessary to
20 effectuate the purposes of this chapter;

21 (2) May examine the books, papers, invoices, and other
22 records of any person in possession, control, or



1 occupancy of any premises where cigarettes are placed,
2 stored, sold or offered for sale, as well as the stock
3 of cigarettes on the premises to enforce the
4 provisions of this chapter, through its duly
5 authorized representatives, or the attorney general
6 and its duly authorized representatives, or other law
7 enforcement personnel. Every person in the
8 possession, control, or occupancy of any premises
9 where cigarettes are placed, sold or offered for sale,
10 shall give the state fire council, the attorney
11 general, their duly authorized representatives, and
12 other law enforcement personnel, the means,
13 facilities, and opportunity for the examinations
14 authorized by this paragraph; and

- 15 (3) Shall ensure that the implementation of this chapter
16 is in accordance with the implementation and substance
17 of the New York fire safety standards for cigarettes.

18 **§ -6 Penalties; enforcement; attorney general.** (a) The
19 following civil penalties may be assessed:

- 20 (1) Against a manufacturer, wholesaler, or any other
21 person or entity that knowingly sells cigarettes,
22 except by licensed retail sales, in violation of



1 section -3, a civil penalty not to exceed \$100 for
2 each pack of cigarettes sold or offered for sale;
3 provided that in no case shall the penalty exceed
4 \$100,000 during any thirty-day period;

5 (2) Against a manufacturer that knowingly makes a false
6 certification pursuant to section -4, a civil
7 penalty of at least \$75,000 and not to exceed \$250,000
8 for each false certification;

9 (3) Against a dealer that knowingly sells or offers for
10 sale cigarettes in violation of section -3, a civil
11 penalty not to exceed \$100 for each pack of cigarettes
12 sold or offered for sale; provided that in no case
13 shall the penalty exceed \$25,000 for sales or offers
14 to sell during any thirty-day period; and

15 (4) Against any other person that violates this chapter, a
16 civil penalty for a first offense not to exceed
17 \$1,000, and for a subsequent offense not to exceed
18 \$5,000 for each violation.

19 (b) Any cigarettes sold or offered for sale that do not
20 comply with the performance standard required by section -3
21 shall be turned over to the attorney general and ordered
22 forfeited. Cigarettes forfeited pursuant to this subsection



1 shall be destroyed; however, prior to the destruction of any
2 cigarette forfeited pursuant to these provisions, the true
3 holder of the trademark rights in the cigarette brand shall be
4 permitted to inspect the cigarette.

5 (c) Whenever any law enforcement officer or duly
6 authorized representative of the state fire council discovers
7 any cigarettes that have not been marked in the manner required
8 under section -4, the officer or representative may seize and
9 take possession of the cigarettes. The cigarettes shall be
10 turned over to the attorney general and ordered forfeited.
11 Cigarettes seized pursuant to this subsection shall be
12 destroyed; provided that prior to the destruction of any
13 cigarette seized, the true holder of the trademark rights in the
14 cigarette brand shall be permitted to inspect the cigarette.

15 (d) In addition to any other remedy provided by law, the
16 attorney general may file an action for a violation of this
17 section, including petitioning for injunctive relief, recovery
18 of costs or damages suffered by the State as the result of a
19 violation of this section, including enforcement costs relating
20 to the specific violation and attorney fees. Each violation of
21 this chapter or of any rule adopted pursuant to this chapter



1 shall constitute a separate civil violation for which the
2 attorney general may obtain relief.

3 **§ -7 Exemption.** Nothing in this chapter shall be
4 construed to prohibit any person from manufacturing or selling
5 cigarettes that do not meet the requirements of this chapter, if
6 the cigarettes are or will be stamped for sale in another state
7 or are to be sold outside the United States.

8 **§ -8 Existing inventories; consumer testing.** The
9 requirement that cigarettes sold in Hawaii must be in compliance
10 with this chapter shall not prohibit:

11 (1) Wholesalers or dealers from selling existing cigarette
12 inventories on or after the effective date of this
13 Act; provided that the wholesaler or dealer can
14 establish both of the following to the satisfaction of
15 the state fire council:

16 (A) The Hawaii tax stamps were affixed to the
17 cigarettes pursuant to chapter 245 prior to the
18 effective date of this Act; and

19 (B) The inventory was purchased prior to the
20 effective date of this Act, and the purchased
21 inventory is comparable to the amount of



1 inventory purchased during the same period the
2 previous year; or

3 (2) The sale of cigarettes solely for the purpose of
4 consumer testing. For the purposes of this paragraph,
5 the term "consumer testing" means an assessment of
6 cigarettes that is conducted by or under the control
7 and direction of a manufacturer for the purpose of
8 evaluating consumer acceptance of cigarettes, using
9 only the quantity of cigarettes that is reasonably
10 necessary for the assessment, and in a controlled
11 setting where the cigarettes are either consumed on-
12 site or returned to the testing administrators at the
13 conclusion of the testing."

14 SECTION 2. This Act shall be repealed if a federal reduced
15 cigarette ignition propensity standard that preempts this Act is
16 adopted and becomes effective.

17 SECTION 3. Notwithstanding any other provision of law, the
18 counties may neither enact nor enforce any ordinance or other
19 local law or regulation conflicting with, or preempted by, any
20 provision of this Act or with any policy of this State expressed
21 by this Act, whether that policy be expressed by inclusion of a



1 provision in this Act or by exclusion of that subject from this
2 Act.

3 SECTION 4. This Act shall take effect on September 30,
4 2010 to coincide with the effective date of a new cigarette tax
5 rate and stamp under section 245-3, Hawaii Revised Statutes.



Report Title:

Fire-Safe Cigarettes; State Fire Council

Description:

Establishes a process to ensure that only fire-safe cigarettes are sold in Hawaii. (SD1)

