

ACT 218

H.B. NO. 2438

A Bill for an Act Relating to Cigarettes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
REDUCED IGNITION PROPENSITY CIGARETTES LAW**

§ -1 **Purpose.** It is the intent of this chapter to require that only reduced ignition propensity cigarettes be sold in the State. Although these cigarettes are not guaranteed to self-extinguish, they are expected to reduce accidental fires and related personal injury and property damage caused by cigarette smoking.

§ -2 **Definitions.** For the purposes of this chapter, unless the context otherwise requires:

“Cigarette” means:

- (1) Any roll for smoking, whether made wholly or in part of tobacco or any other substance, irrespective of size or shape, and whether or not the tobacco or substance is flavored, adulterated, or mixed with any other ingredient, with a wrapper or cover that is made of paper or any other substance or material, other than tobacco; or
- (2) Any roll for smoking wrapped in any substance containing tobacco, which, due to its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette as described in paragraph (1).

“Dealer” means the same as defined in section 245-1.

“Manufacturer” means:

- (1) Any entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere, and intends to sell these cigarettes:
  - (A) In this state; or
  - (B) Anywhere in the United States through an importer;
- (2) The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or
- (3) Any entity that becomes a successor of an entity described in paragraph (1) or (2).

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

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

“Sale” or “selling” means any transfer of title or possession, exchange, or barter, conditional or otherwise, and includes the giving of cigarettes as samples, prizes, or gifts, and the exchange of cigarettes for any consideration.

“Wholesaler” means the same as defined in section 245-1.

**§ -3 Cigarettes; reduced ignition propensity; manufacturer testing.** (a) Except as provided in sections -7 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 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).

- (1) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials standard E2187-04 “Standard Test Method for Measuring the Ignition Strength of Cigarettes.” The state fire council may adopt as rules pursuant to chapter 91, a subsequent American Society of Testing and Materials Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with American Society of Testing and Materials standard E2187-04 and the performance standard of this section;
- (2) Testing of cigarettes shall be conducted on ten layers of filter paper;
- (3) No more than twenty-five per cent of the cigarettes tested in a test trial shall exhibit full-length burns. Forty replicate tests shall constitute a complete test trial for each cigarette tested;
- (4) The performance standard required by this section shall only be applied to a complete test trial;
- (5) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization/International Electrotechnical Commission, or other comparable accreditation standard required by the state fire council;
- (6) Laboratories that conduct tests in accordance with this section shall implement a quality control and quality assurance program that includes a procedure to determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19;
- (7) Each cigarette listed in a certification that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard in this section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands located at least fifteen millimeters from the lighting end and ten millimeters from the filter end of the tobacco column. In the case of an unfiltered cigarette, the two complete

bands shall be located at least fifteen millimeters from the lighting end and ten millimeters from the labeled end of the tobacco column; and

- (8) The manufacturer of a cigarette that the state fire council determines cannot be tested in accordance with the test method required by this section shall propose to the state fire council a test method and performance standard for that cigarette. The state fire council may approve a test method and performance standard that the state fire council determines is equivalent to the requirement of this section, and the manufacturer may use that test method and performance standard for certification pursuant to section -4. If the state fire council determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this chapter, and the state fire council finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, then the state fire council shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this State, unless the state fire council demonstrates a reasonable basis why the alternative test should not be accepted. All other applicable requirements of this section shall apply to the manufacturer.

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

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

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

(e) The state fire council shall review the effectiveness of this section and report every three years to the legislature the state fire council's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this chapter. The report and legislative recommendations shall be submitted no later than June 30 following the conclusion of each three-year period.

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

- (1) The brand or trade name on the package;
- (2) Style, such as light or ultra light;
- (3) Length in millimeters;
- (4) Circumference in millimeters;
- (5) Flavor, such as menthol, if applicable;
- (6) Filter or nonfilter;
- (7) Package description, such as a soft pack or box;
- (8) The mark approved pursuant to subsection (b);

- (9) The name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test; and
- (10) The date that the testing occurred.

Each cigarette certified under this subsection shall be recertified every three years. For each cigarette listed in a certification, a manufacturer shall pay to the state fire council a \$375 fee. The state fire council is authorized to annually adjust this fee to ensure it defrays the actual costs of the processing, testing, enforcement, and oversight activities required by this chapter.

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

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

- (1) The marking shall be in a font of at least eight-point type and shall include one of the following:
  - (A) Modification of the product's universal product code to include a visible mark printed at or around the area of the universal product code. The mark may consist of one or more alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed in conjunction with the universal product code;
  - (B) Any visible combination of alphanumeric or symbolic characters permanently printed, stamped, engraved, or embossed on the cigarette package or the cellophane wrap; and
  - (C) Printed, stamped, engraved, or embossed text that indicates that the cigarettes meet the standards of this section; and
- (2) Prior to the certification of any cigarette, a manufacturer shall request approval of a proposed marking from the state fire council. Upon receipt of the request, the state fire council shall approve or disapprove the marking offered, except that the state fire council shall approve:
  - (A) Any marking approved and in use for the sale of cigarettes in the state of New York; or
  - (B) The letters "FSC," which signifies fire standards compliant, appearing in eight-point type or larger and permanently printed, stamped, engraved, or embossed on the package at or near the universal product code.

A marking shall be deemed approved if the state fire council fails to act within ten business days of receiving a request for approval. A manufacturer shall not use a modified marking unless the modification has been approved in accordance with this chapter. A manufacturer shall use only one marking and shall apply this marking uniformly for all packages, including packs, cartons, and cases, and brands marketed by that manufacturer.

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

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

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

- (1) May adopt rules pursuant to chapter 91 necessary to effectuate the purposes of this chapter;
- (2) May examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where ciga-

rettes are placed, stored, sold or offered for sale, as well as the stock of cigarettes on the premises to enforce the provisions of this chapter, through its duly authorized representatives, or the attorney general and its duly authorized representatives, or other law enforcement personnel. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, sold or offered for sale, shall give the state fire council, the attorney general, their duly authorized representatives, and other law enforcement personnel, the means, facilities, and opportunity for the examinations authorized by this paragraph; and

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

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

- (1) Against a manufacturer, wholesaler, or any other person or entity that knowingly sells cigarettes, except by licensed retail sales, in violation of section -3, a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale; provided that in no case shall the penalty exceed \$100,000 during any thirty-day period;
  - (2) Against a manufacturer that knowingly makes a false certification pursuant to section -4, a civil penalty of at least \$75,000 and not to exceed \$250,000 for each false certification;
  - (3) Against a dealer that knowingly sells or offers for sale cigarettes in violation of section -3, a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale; provided that in no case shall the penalty exceed \$25,000 for sales or offers to sell during any thirty-day period; and
  - (4) Against any other person that violates this chapter, a civil penalty for a first offense not to exceed \$1,000, and for a subsequent offense not to exceed \$5,000 for each violation.
- (b) Any cigarettes sold or offered for sale that do not comply with the performance standard required by section -3 shall be subject to forfeiture under chapter 712A. Cigarettes forfeited pursuant to this subsection shall be destroyed.
- (c) Whenever any law enforcement officer or duly authorized representative of the state fire council discovers any cigarettes that have not been marked in the manner required under section -4, the officer or representative may seize and take possession of the cigarettes. The cigarettes shall be considered contraband and may be seized with or without a warrant and turned over to the attorney general. The contraband cigarettes shall be subject to forfeiture under chapter 712A. Cigarettes seized pursuant to this subsection shall be destroyed.
- (d) In addition to any other remedy provided by law, the attorney general may file an action for a violation of this section, including petitioning for injunctive relief, recovery of costs or damages suffered by the State as the result of a violation of this section, including enforcement costs relating to the specific violation and attorney fees. Each violation of this chapter or of any rule adopted pursuant to this chapter shall constitute a separate civil violation for which the attorney general may obtain relief.

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

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

- (1) Wholesalers or dealers from selling existing cigarette inventories on or after the effective date of this Act; provided that the wholesaler or dealer can establish both of the following to the satisfaction of the state fire council:
  - (A) The Hawaii tax stamps were affixed to the cigarettes pursuant to chapter 245 prior to the effective date of this Act; and
  - (B) The inventory was purchased prior to the effective date of this Act, and the purchased inventory is comparable to the amount of inventory purchased during the same period the previous year; or
- (2) The sale of cigarettes solely for the purpose of consumer testing. For the purposes of this paragraph, the term “consumer testing” means an assessment of cigarettes that is conducted by or under the control and direction of a manufacturer for the purpose of evaluating consumer acceptance of cigarettes, using only the quantity of cigarettes that is reasonably necessary for the assessment, and in a controlled setting where the cigarettes are either consumed on-site or returned to the testing administrators at the conclusion of the testing.”

SECTION 2. Section 132-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to adopting a state fire code pursuant to section 132-3, the state fire council shall ~~serve~~:

- (1) Administer the requirements for reduced ignition propensity cigarettes, in accordance with chapter \_\_\_\_\_; and
- (2) Serve as a focal point through which all applications to the federal government for federal grant assistance for fire-related projects shall be made. Upon the receipt of any such federal grants, the state fire council shall administer those federal grants.”

SECTION 3. This Act shall be repealed if a federal reduced cigarette ignition propensity standard that preempts this Act is adopted and becomes effective.

SECTION 4. Notwithstanding any other provision of law, the counties may neither enact nor enforce any ordinance or other local law or regulation conflicting with, or preempted by, any provision of this Act or with any policy of this State expressed by this Act, whether that policy be expressed by inclusion of a provision in this Act or by exclusion of that subject from this Act.

SECTION 5. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect on September 30, 2009, and shall be implemented to coincide with the excise tax incremental increase on cigarettes effective September 30, 2009, pursuant to section 245-3, Hawaii Revised Statutes; provided that section 4 shall take effect upon approval of this Act; provided further that section -5(1), Hawaii Revised Statutes, shall take effect upon approval of this Act.

(Approved July 7, 2008.)

**Note**

1. Act also includes bracketed and stricken material.