A BILL FOR AN ACT

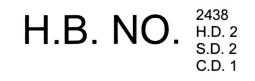
RELATING TO CIGARETTES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1	SECTION 1. The Hawaii Revised Statutes is amended by
2	adding a new chapter to be appropriately designated and to read
3	as follows:
4	"CHAPTER
5	REDUCED IGNITION PROPENSITY CIGARETTES LAW
6	§ -1 Purpose. It is the intent of this chapter to
7	require that only reduced ignition propensity cigarettes be sold
8	in the State. Although these cigarettes are not guaranteed to
9	self-extinguish, they are expected to reduce accidental fires
10	and related personal injury and property damage caused by
11	cigarette smoking.
12	§ -2 Definitions. For the purposes of this chapter,
13	unless the context otherwise requires:
14	"Cigarette" means:
15	(1) Any roll for smoking, whether made wholly or in part
16	of tobacco or any other substance, irrespective of
17	size or shape, and whether or not the tobacco or
18	substance is flavored, adulterated, or mixed with any
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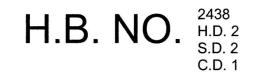
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1		other ingredient, with a wrapper or cover that is made
2		of paper or any other substance or material, other
3		than tobacco; or
4	(2)	Any roll for smoking wrapped in any substance
5		containing tobacco, which, due to its appearance, the
6		type 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	"Dea	ler" means the same as defined in section 245-1.
11	"Man	ufacturer" 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		<pre>importer;</pre>
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
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1 (3) Any entity that becomes a successor of an entity described in paragraph (1) or (2). 2 3 "Quality control and quality assurance program" means laboratory procedures implemented to ensure that operator bias, 4 5 systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the 6 7 testing and to ensure that the testing repeatability remains within the required repeatability value for any test trial used 8 9 to certify cigarettes under this chapter. 10 "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory 11 12 will fall ninety-five per cent of the time. 13 "Sale" or "selling" means any transfer of title or possession, exchange, or barter, conditional or otherwise, and 14 15 includes the giving of cigarettes as samples, prizes, or gifts, and the exchange of cigarettes for any consideration. 16 17 "Wholesaler" means the same as defined in section 245-1. -3 Cigarettes; reduced ignition propensity; 18 S **manufacturer testing.** (a) Except as provided in sections 19 -7 20 -8, no cigarettes may be sold or offered for sale in this and 21 state or offered for sale or sold to persons located in this state unless the cigarettes have been tested in accordance with 22



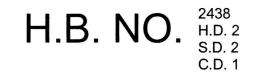


1 the test method and meet the performance standard specified in
2 this section, and the manufacturer has filed a written
3 certification with the state fire council in accordance with
4 section -4(a) and the cigarettes have been marked in
5 accordance with section -4(b).

6 (1)Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials 7 standard E2187-04 "Standard Test Method for Measuring 8 9 the Ignition Strength of Cigarettes." The state fire 10 council may adopt as rules pursuant to chapter 91, a 11 subsequent American Society of Testing and Materials Standard Test Method for Measuring the Ignition 12 13 Strength of Cigarettes upon a finding that the subsequent method does not result in a change in the 14 15 percentage of full-length burns exhibited by any 16 tested cigarette when compared to the percentage of 17 full-length burns the same cigarette would exhibit 18 when tested in accordance with American Society of Testing and Materials standard E2187-04 and the 19 20 performance standard of this section;

21 (2) Testing of cigarettes shall be conducted on ten layers
22 of filter paper;





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

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

13 (8) The manufacturer of a cigarette that the state fire 14 council determines cannot be tested in accordance with 15 the test method required by this section shall propose 16 to the state fire council a test method and 17 performance standard for that cigarette. The state 18 fire council may approve a test method and performance 19 standard that the state fire council determines is 20 equivalent to the requirement of this section, and the 21 manufacturer may use that test method and performance 22 standard for certification pursuant to section -4.

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

20 (b) A manufacturer shall retain copies of the reports of
21 testing conducted on cigarettes offered for sale in the State
22 for a period of three years. The manufacturer shall provide



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1 copies of these reports to the state fire council and the
2 attorney general upon written request. Any manufacturer who
3 fails to make copies of these reports available within sixty
4 days of receiving a written request shall be subject to a civil
5 penalty not to exceed \$10,000 for each day after the sixtieth
6 day that the manufacturer does not make the copies available.

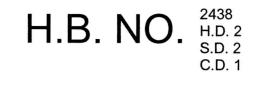
7 (c) This section shall not require additional testing if
8 cigarettes are tested consistent with this chapter for any other
9 purpose.

10 (d) Testing performed or sponsored by the state fire 11 council to determine a cigarette's compliance with the 12 performance standard required by this section shall be conducted 13 in accordance with this section.

14 (e) The state fire council shall review the effectiveness
15 of this section and report every three years to the legislature
16 the state fire council's findings and, if appropriate,

17 recommendations for legislation to improve the effectiveness of 18 this chapter. The report and legislative recommendations shall 19 be submitted no later than June 30 following the conclusion of 20 each three-year period.

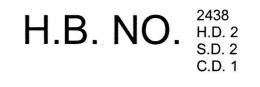
\$ -4 Certification; marking. (a) Each manufacturer
 shall submit to the state fire council written certification
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1	attesting	that each cigarette has been tested in accordance
2	with, and	has met the performance standard required under
3	section	-3. The description of each cigarette listed in the
4	certifica	tion shall include:
5	(1)	The brand or trade name on the package;
6	(2)	Style, such as light or ultra light;
7	(3)	Length in millimeters;
8	(4)	Circumference in millimeters;
9	(5)	Flavor, such as menthol, if applicable;
10	(6)	Filter or nonfilter;
11	(7)	Package description, such as a soft pack or box;
12	(8)	The mark approved pursuant to subsection (b);
13	(9)	The name, address, and telephone number of the
14		laboratory, if different than the manufacturer that
15		conducted the test; and
16	(10)	The date that the testing occurred.
17	Each	cigarette certified under this subsection shall be
18	recertifie	ed every three years. For each cigarette listed in a
19	certificat	tion, a manufacturer shall pay to the state fire
20	council a	\$375 fee. The state fire council is authorized to
21	annually a	adjust this fee to ensure it defrays the actual costs



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1	of the process	sing, testing, enforcement, and oversight
2	activities rec	quired by this chapter.
3	The cert	ifications shall be made available to the attorney
4	general for pu	irposes consistent with this chapter.
5	(b) Ciga	arettes that have been certified pursuant to
6	subsection (a)	shall be marked pursuant to the following
7	requirements:	
8	(1) The	marking shall be in a font of at least eight-point
9	type	e and shall include one of the following:
10	(A)	Modification of the product's universal product
11		code to include a visible mark printed at or
12		around the area of the universal product code.
13		The mark may consist of one or more alphanumeric
14		or symbolic characters permanently stamped,
15		engraved, embossed, or printed in conjunction
16		with the universal product code;
17	(B)	Any visible combination of alphanumeric or
18		symbolic characters permanently printed, stamped,
19		engraved, or embossed on the cigarette package or
20		the cellophane wrap; and

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1		(C) Printed, stamped, engraved, or embossed text that
2		indicates that the cigarettes meet the standards
3		of this section; and
4	(2)	Prior to the certification of any cigarette, a
5		manufacturer shall request approval of a proposed
6		marking from the state fire council. Upon receipt of
7		the request, the state fire council shall approve or
8		disapprove the marking offered, except that the state
9		fire council shall approve:
10		(A) Any marking approved and in use for the sale of
11		cigarettes in the state of New York; or
12		(B) The letters "FSC," which signifies fire standards
13		compliant, appearing in eight-point type or
14		larger and permanently printed, stamped,
15		engraved, or embossed on the package at or near
16		the universal product code.
17	A marking	shall be deemed approved if the state fire council
18	fails to	act within ten business days of receiving a request for
19	approval.	A manufacturer shall not use a modified marking
20	unless th	e modification has been approved in accordance with
21	this chap	ter. A manufacturer shall use only one marking and
22	shall app	ly this marking uniformly for all packages, including
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1 packs, cartons, and cases, and brands marketed by that 2 manufacturer.

3 (c) The state fire council shall be notified as to the4 marking that is selected.

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(d) A manufacturer shall provide a copy of certifications 5 6 to all wholesalers to which the manufacturer sells cigarettes 7 and shall provide sufficient copies of an illustration of the 8 packaging marking approved and used by the manufacturer pursuant 9 to subsection (b) for each of the dealers that purchases 10 cigarettes from any of those wholesalers. Wholesalers shall 11 provide a copy of the illustration to all dealers to which they sell cigarettes. Wholesalers and dealers shall permit the state 12 fire council and the attorney general to inspect markings on 13 cigarette packaging at any time. 14

15 § -5 State fire council; rules; implementation. The 16 state fire council:

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

19 (2) May examine the books, papers, invoices, and other
20 records of any person in possession, control, or
21 occupancy of any premises where cigarettes are placed,
22 stored, sold or offered for sale, as well as the stock



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1		of cigarettes on the premises to enforce the
2		provisions of this chapter, through its duly
3		authorized representatives, or the attorney general
4		and its duly authorized representatives, or other law
5		enforcement personnel. Every person in the
6		possession, control, or occupancy of any premises
7		where cigarettes are placed, sold or offered for sale,
8		shall give the state fire council, the attorney
9		general, their duly authorized representatives, and
10		other law enforcement personnel, the means,
11		facilities, and opportunity for the examinations
12		authorized by this paragraph; and
13	(3)	Shall ensure that the implementation of this chapter
14		is in accordance with the implementation and substance
15		of the New York fire safety standards for cigarettes.
16	S	-6 Penalties; enforcement; attorney general. (a) The
17	following	civil penalties may be assessed:
18	(1)	Against a manufacturer, wholesaler, or any other
19		person or entity that knowingly sells cigarettes,
20		except by licensed retail sales, in violation of
21		section -3 , a civil penalty not to exceed \$100 for
22		each pack of cigarettes sold or offered for sale;

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1		provided that in no case shall the penalty exceed
2		\$100,000 during any thirty-day period;
3	(2)	Against a manufacturer that knowingly makes a false
4		certification pursuant to section -4 , a civil
5		penalty of at least \$75,000 and not to exceed \$250,000
6		for each false certification;
7	(3)	Against a dealer that knowingly sells or offers for
8		sale cigarettes in violation of section -3 , a civil
9		penalty not to exceed \$100 for each pack of cigarettes
10		sold or offered for sale; provided that in no case
11		shall the penalty exceed \$25,000 for sales or offers
12		to sell during any thirty-day period; and
13	(4)	Against any other person that violates this chapter, a
14		civil penalty for a first offense not to exceed
15		\$1,000, and for a subsequent offense not to exceed
16		\$5,000 for each violation.
17	(b)	Any cigarettes sold or offered for sale that do not
18	comply wi	th the performance standard required by section -3
19	shall be	subject to forfeiture under chapter 712A. Cigarettes
20	forfeited	pursuant to this subsection shall be destroyed.

21 (c) Whenever any law enforcement officer or duly22 authorized representative of the state fire council discovers



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1 any cigarettes that have not been marked in the manner required under section -4, the officer or representative may seize and 2 3 take possession of the cigarettes. The cigarettes shall be 4 considered contraband and may be seized with or without a 5 warrant and turned over to the attorney general. The contraband 6 cigarettes shall be subject to forfeiture under chapter 712A. 7 Cigarettes seized pursuant to this subsection shall be 8 destroyed.

9 (d) In addition to any other remedy provided by law, the attorney general may file an action for a violation of this 10 11 section, including petitioning for injunctive relief, recovery 12 of costs or damages suffered by the State as the result of a violation of this section, including enforcement costs relating 13 14 to the specific violation and attorney fees. Each violation of 15 this chapter or of any rule adopted pursuant to this chapter 16 shall constitute a separate civil violation for which the 17 attorney general may obtain relief.

18 § -7 Exemption. Nothing in this chapter shall be
19 construed to prohibit any person from manufacturing or selling
20 cigarettes that do not meet the requirements of this chapter, if
21 the cigarettes are or will be stamped for sale in another state
22 or are to be sold outside the United States.

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1	Ş	-8 E	xisting inventories; consumer testing. The
2	requireme	nt th	at cigarettes sold in Hawaii must be in compliance
3	with this	chap	ter shall not prohibit:
4	(1)	Whol	esalers or dealers from selling existing cigarette
5		inve	ntories on or after the effective date of this
6		Act;	provided that the wholesaler or dealer can
7		esta	blish both of the following to the satisfaction of
8		the	state fire council:
9		(A)	The Hawaii tax stamps were affixed to the
10			cigarettes pursuant to chapter 245 prior to the
11			effective date of this Act; and
12		(B)	The inventory was purchased prior to the
13			effective date of this Act, and the purchased
14			inventory is comparable to the amount of
15			inventory purchased during the same period the
16			previous year; or
17	. (2)	The	sale of cigarettes solely for the purpose of
18		cons	umer testing. For the purposes of this paragraph,
19		the	term "consumer testing" means an assessment of
20		ciga	rettes that is conducted by or under the control
21		and	direction of a manufacturer for the purpose of
22		eval	uating consumer acceptance of cigarettes, using

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1	only the quantity of cigarettes that is reasonably
2	necessary for the assessment, and in a controlled
3	setting where the cigarettes are either consumed
4	on-site or returned to the testing administrators at
5	the conclusion of the testing."
6	SECTION 2. Section 132-16, Hawaii Revised Statutes, is
7	amended by amending subsection (b) to read as follows:
8	"(b) In addition to adopting a state fire code pursuant to
9	section 132-3, the state fire council shall [serve]:
10	(1) Administer the requirements for reduced ignition
11	propensity cigarettes, in accordance with chapter
12	; and
13	(2) Serve as a focal point through which all applications
14	to the federal government for federal grant assistance
15	for fire-related projects shall be made. Upon the
16	receipt of any such federal grants, the state fire
17	council shall administer those federal grants."
18	SECTION 3. This Act shall be repealed if a federal reduced
19	cigarette ignition propensity standard that preempts this Act is
20	adopted and becomes effective.
21	SECTION 4. Notwithstanding any other provision of law, the

22 counties may neither enact nor enforce any ordinance or other



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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.

6 SECTION 5. New statutory material is underscored.

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.



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Report Title:

Fire-Safe Cigarettes; State Fire Council

Description:

Establishes a process to ensure that only fire-safe cigarettes are sold in Hawaii. Effective 9/30/2009. (HB2438 CD1)

