

Honolulu, Hawaii

January 30, 2008

RE: H.B. No. 2059
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Sir:

Your Committee on Health, to which was referred H.B. No. 2059
entitled:

"A BILL FOR AN ACT RELATING TO CIGARETTES,"

begs leave to report as follows:

The purpose of this bill is to prohibit the sale of
cigarettes in Hawaii that are not reduced ignition propensity, or
"fire-safe" cigarettes, beginning on July 1, 2009.

Specifically, this bill:

- (1) Requires that cigarettes sold in Hawaii must be certified by the Attorney General to have been tested to certain performance standards involving full-length burns, paper, permeability bands, and other specifications;
- (2) Allows a cigarette manufacturer to propose to the Attorney General an alternative test method;
- (3) Requires cigarette manufacturers to retain test data for three years and provide the data to the Attorney General upon request;
- (4) Requires a cigarette manufacturer to submit to the Attorney General written certification of successful



testing listing a description of each brand and style of cigarette to include a specific list of items;

- (5) Requires each brand and style of cigarette to be recertified every three years;
- (6) Requires certified cigarettes to be marked in a certain manner and accepts markings approved in New York, California, or Vermont;
- (7) Requires a cigarette manufacturer to use only one unmodified marking on all brands and applied uniformly on all packages;
- (8) Requires a cigarette manufacturer to provide a copy of certification to all cigarette wholesalers;
- (9) Authorizes the Attorney General to adopt rules regarding the testing, certification, marking of cigarettes and random inspections of wholesalers and dealers and implementing the substance of the New York fire safety standards for cigarettes;
- (10) Sets civil penalties applicable to manufacturers, wholesalers, retailers, dealers, and other persons;
- (11) Authorizes the Attorney General to file an action for violation of the new law as if the action were a deceptive business practice;
- (12) Grants jurisdiction for enforcement to the Attorney General;
- (13) Exempts from the new law persons who sell cigarettes stamped for sale in another state or to be sold outside the United States;
- (14) Allows wholesalers and dealers to sell existing cigarette inventories on or after July 1, 2009, if Hawaii tax stamps were affixed to them prior to July 1, 2009, and the inventory was purchased prior to July 1, 2009, and the purchased inventory is comparable to the amount of inventory purchased during the same period the previous year; and
- (15) Takes effect on July 1, 2009.



Your Committee received testimony in support of this bill from the Coalition for a Tobacco-Free Hawaii and the Hawaii Fire Fighters Association. Testimony in opposition was received from the Attorney General. The Retail Merchants of Hawaii offered comments.

Upon further consideration, your Committee has amended this bill by replacing its entire contents with language contained in a draft of a similar bill that was distributed at your Committee's hearing. The effects of this replacement are as follows:

- (1) Section 1 of the bill presenting the background and purpose is deleted;
- (2) Presents differing definitions of "cigarette" and "manufacturer";
- (3) Grants all duties, functions, and responsibilities under the bill, including adoption of rules and enforcement, to the State Fire Council rather than the Attorney General;
- (4) Adds a provision that written certifications of cigarette testing be based on testing conducted by a laboratory possessing certain accreditation;
- (5) Adds a provision that the State Fire Council may authorize a cigarette manufacturer to use an alternative test method that has the same performance standard and has been approved in another state;
- (6) Adds a civil penalty of \$10,000 for each day against a manufacturer who fails to provide copies of test reports within sixty days of a request;
- (7) Adds a provision that additional testing is not required if cigarettes are tested for any other purpose consistent with requirements under the bill;
- (8) Requires that testing to determine compliance with performance standards shall be conducted according to the requirements under the bill;



- (9) Requires the State Fire Council to review effectiveness of testing every three years and report to the Legislature by June 30;
- (10) Adds to the description listed on each certification the following:
 - (A) Trade name on the package;
 - (B) Light or ultra light, to clarify style;
 - (C) Menthol or chocolate, to clarify flavor;
 - (D) The name, address, and telephone number of the laboratory, if different from that conducting the test; and
 - (E) Date of the test;
- (11) Changes recertification provision to require recertification of each cigarette every three years;
- (12) Adds a certification fee of \$250 for each cigarette to be paid by the manufacturer to the State Fire Council, which may adjust the fee;
- (13) Adds a provision that the certifications are to be made available to the Attorney General;
- (14) Adds a provision that the State Fire Council shall approve the letters "FSC" as part of a marking on cigarettes;
- (15) Adds a provision that the State Fire Council is to be notified as to the marking selected;
- (16) Allows the State Fire Council, in addition to the Attorney General, to inspect cigarette markings at any time;
- (17) Authorizes the State Fire Council, rather than the Attorney General, to adopt rules to implement the law;
- (18) Deletes adoption of rules to conduct random inspections of wholesalers and dealers to ensure compliance;



- (19) Authorizes the State Fire Council or other law enforcement personnel, in addition to the Attorney General, to examine books, paper, records, etc.;
- (20) Changes civil penalties as follows:
 - (A) For selling non-tested and certified cigarettes in the State, adds a fine of \$100 for each pack, up to \$100,000 during any thirty-day period, rather than an amount not to exceed \$10,000 for each sale;
 - (B) For false certification, adds a fine of at least \$75,000 but not to exceed \$250,000, rather than an amount not to exceed \$10,000;
 - (C) Against dealers for selling non-tested and certified cigarettes, adds a fine of \$100 for each pack, up to \$25,000 during any thirty-day period, rather than an amount not to exceed \$500 for each sale of one thousand or fewer cigarettes;
 - (D) Deletes civil fine against dealers of an amount not to exceed \$1,000 for each sale of more than one thousand cigarettes;
 - (E) Adds a fine not to exceed \$5,000 against any other person violating the law for a subsequent offense;
- (21) Adds a provision that all non-compliant cigarettes be forfeited to the Attorney General to be destroyed; provided that the true holder of the trademark rights shall be permitted to inspect the cigarettes;
- (22) Deletes the provision that the Attorney General, in any action filed for violation of the law, shall have the same authority to investigate and obtain remedies as if the action brought was a deceptive business practice;
- (23) Deletes the provision that grants enforcement to the Attorney General, who may apply for a temporary or permanent injunction restraining a violation of the law;
- (24) Adds a provision that allows wholesalers or dealers to sell cigarettes solely for consumer testing;



- (25) Adds a provision that the Act is to be repealed if a federal reduced cigarette ignition propensity standard that preempts the Act is adopted and becomes effective;
- (26) Adds a provision to prohibit counties from enacting or enforcing any ordinance conflicting with or preempted by the Act or with any state policy; and
- (27) Changes the effective date of the Act from July 1, 2009, to "on the first day of the thirteenth month after enactment"; provided that the provision prohibiting the counties from enacting any conflicting ordinance takes effect upon approval.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2059, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2059, H.D. 1, and be referred to the Committees on Consumer Protection & Commerce and Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Health,



JOSHUA B. GREEN, M.D., Chair



