

## HOUSE AMENDMENTS TO HOUSE BILL 2163

By COMMITTEE ON BUSINESS AND LABOR

February 16

- 1 On page 1 of the printed bill, delete lines 4 through 27 and delete pages 2 through 7 and insert:  
2 **“SECTION 1. As used in sections 1 to 9 of this 2007 Act:**  
3 **“(1) ‘Cigarette’ means a roll for smoking:**  
4 **“(a) That is made wholly of tobacco, or of tobacco and any other substance, regardless**  
5 **of size, shape or flavoring or adulteration by or mixing with other ingredients, the wrapper**  
6 **of which is made of paper or other nontobacco materials; and**  
7 **“(b) That, because of its appearance, the type of tobacco used in the filler or its pack-**  
8 **aging and labeling, is likely to be offered to or purchased by consumers as a cigarette.**  
9 **“(2) ‘Distribute’ means to do any of the following:**  
10 **“(a) Sell cigarettes or deliver cigarettes for sale by another person to consumers.**  
11 **“(b) Receive or retain more than 199 cigarettes at a place of business where the person**  
12 **receiving or retaining the cigarettes customarily sells cigarettes or offers cigarettes for sale**  
13 **to consumers.**  
14 **“(c) Place cigarettes in vending machines.**  
15 **“(d) Sell or accept orders for cigarettes that are to be transported from a point outside**  
16 **this state to a consumer within this state.**  
17 **“(e) Buy cigarettes directly from a manufacturer or wholesale dealer for resale in this**  
18 **state.**  
19 **“(f) Give cigarettes as a sample, prize, gift or other promotion.**  
20 **“(3) ‘Manufacturer’ means:**  
21 **“(a) An entity that produces, or causes the production of, cigarettes for sale in this state;**  
22 **“(b) An importer or first purchaser of cigarettes that intends to resell within this state**  
23 **cigarettes that were produced for sale outside this state; or**  
24 **“(c) A successor to an entity, importer or first purchaser described in paragraph (a) or**  
25 **(b) of this subsection.**  
26 **“(4) ‘Packaging’ includes, but is not limited to, cigarette soft packs, boxes, cartons and**  
27 **cases.**  
28 **“(5) ‘Quality control and assurance program’ means laboratory procedures implemented**  
29 **to ensure that operator bias, systematic and nonsystematic methodological errors and**  
30 **equipment-related problems do not affect the results of testing.**  
31 **“(6) ‘Reduced ignition propensity’ means meeting the fire safety performance standard**  
32 **described in section 5 (6) of this 2007 Act.**  
33 **“(7) ‘Repeatability’ means the range of values within which the repeat results of ignition**  
34 **propensity testing by a single laboratory will fall 95 percent of the time.**  
35 **“(8) ‘Retail dealer’ means a person, other than a manufacturer or wholesale dealer, that**

1 engages in distributing cigarettes.

2 “(9) ‘Sell’ means to transfer, or agree to transfer, title or possession for a monetary or  
3 nonmonetary consideration.

4 “(10) ‘Variety’ means a type of cigarette marketed by the manufacturer as being distinct  
5 from other types of cigarettes on the basis of brand name, length, filter, wrapping, flavoring  
6 or other characteristics as the State Fire Marshal may provide by rule.

7 “(11) ‘Wholesale dealer’ means a person that distributes cigarettes to:

8 “(a) A retail dealer or other person for resale; or

9 “(b) A person that owns, operates or maintains cigarette vending machines on premises  
10 owned or operated by another person.

11 “SECTION 2. (1) A person may not distribute or offer to sell a cigarette within this state  
12 unless the cigarette is of a variety the State Fire Marshal has determined to have reduced  
13 ignition propensity.

14 “(2) Cigarette packaging may not bear a marking or other device identifying the packaged  
15 cigarettes as having reduced ignition propensity other than a packaging marking approved  
16 for use with those cigarettes by the State Fire Marshal under section 8 of this 2007 Act. This  
17 subsection does not apply if the cigarettes are in interstate commerce and not intended for  
18 distribution in this state.

19 “(3) The State Fire Marshal, an authorized representative of the State Fire Marshal or  
20 any law enforcement agency may immediately seize and subject to forfeiture any cigarettes  
21 distributed or offered for sale in violation of subsection (1) of this section and any packaging,  
22 and cigarettes contained in that packaging, that violates subsection (2) of this section. The  
23 State Fire Marshal shall destroy cigarettes and packaging seized and forfeited under this  
24 subsection. However, prior to destroying cigarettes or packaging seized under this sub-  
25 section, the State Fire Marshal shall allow the true holder of the trademark rights in the  
26 cigarette variety to inspect the cigarettes and packaging.

27 “(4) The State Fire Marshal may enter into a cooperative agreement with any state or  
28 local agency that allows the agency to act as an authorized representative of the State Fire  
29 Marshal for enforcement purposes under this section.

30 “(5)(a) The State Fire Marshal or an authorized representative, upon oral or written de-  
31 mand, may inspect the inventory of cigarette manufacturers, wholesale or retail dealers and  
32 transporters as the State Fire Marshal or an authorized representative deems necessary to  
33 ensure compliance with this section. The State Fire Marshal may adopt rules to require re-  
34 ports, in a form prescribed by the State Fire Marshal, by cigarette manufacturers, wholesale  
35 or retail dealers and transporters for the purpose of ensuring compliance with this section.

36 “(b) As used in this subsection, ‘transporter’ has the meaning given that term in ORS  
37 323.010.

38 “SECTION 3. The State Fire Marshal may impose a civil penalty for a violation of section  
39 2 (1) of this 2007 Act. The civil penalty may not exceed:

40 “(1) For a person that distributes or offers to sell cigarettes to a wholesale or retail  
41 dealer, \$10,000 or five times the wholesale invoice cost of the cigarettes involved in the vio-  
42 lation, whichever is greater.

43 “(2) For a person that distributes or offers to sell cigarettes to consumers:

44 “(a) For a distribution or offer of not more than 1,000 cigarettes, \$500.

45 “(b) For a distribution or offer of more than 1,000 cigarettes, \$1,000 or five times the

1 retail value of the cigarettes involved in the violation, whichever is greater.

2 “(3) For a continuing violation of section 2 (1) of this 2007 Act, each day that a person  
3 distributes or offers to sell cigarettes after being notified by the State Fire Marshal that the  
4 distribution or offer to sell cigarettes violates section 2 (1) of this 2007 Act is a separate vi-  
5 olation subject to civil penalty. For purposes of this subsection, a person is notified by the  
6 State Fire Marshal that the distribution or offer to sell cigarettes violates section 2 (1) of  
7 this 2007 Act only after the person receives a notice, has been provided an opportunity for  
8 a hearing and has exhausted all opportunities for administrative or judicial review of the  
9 notice in the manner provided for contested cases under ORS chapter 183.

10 “**SECTION 4.** (1) The State Fire Marshal shall impose civil penalties under section 3 of  
11 this 2007 Act in the manner provided by ORS 183.745.

12 “(2) The Attorney General may bring an action at the request of the office of the State  
13 Fire Marshal, in the name of the state, seeking:

14 “(a) Injunctive relief to prevent or end a violation of section 2 of this 2007 Act;

15 “(b) To recover civil penalties imposed under section 3 of this 2007 Act; or

16 “(c) To recover attorney fees and other enforcement costs and disbursements.

17 “**SECTION 5.** (1) For each variety of cigarette sold or proposed for sale in this state, the  
18 State Fire Marshal shall determine whether that variety of cigarette has reduced ignition  
19 propensity.

20 “(2) Any cigarette variety certified by a manufacturer under section 7 of this 2007 Act  
21 shall be determined to have reduced ignition propensity.

22 “(3) Except as provided in this section, ignition propensity testing certified, conducted  
23 or accepted by a manufacturer or the State Fire Marshal must be performed using ASTM  
24 International specification E2187-04, Standard Test Method for Measuring the Ignition  
25 Strength of Cigarettes. The ignition propensity testing must be conducted on 10 layers of  
26 filter paper. Forty replicate tests shall constitute a complete test trial for each cigarette  
27 variety tested. The fire safety performance standard described in subsection (6) of this sec-  
28 tion applies only to a completed test trial.

29 “(4) The State Fire Marshal may adopt an ignition propensity testing method developed  
30 by ASTM International as a modification or replacement of the method designated by sub-  
31 section (3) of this section if the State Fire Marshal, by rule, deems the modified or replace-  
32 ment method acceptable for determining cigarette fire safety. However, the State Fire  
33 Marshal may not adopt a modified or replacement method that in repeated testing results  
34 in a change in the percentage of cigarettes exhibiting full-length burns from the percentage  
35 produced on the same variety of cigarettes by use of the ASTM E2187-04 method or that  
36 otherwise affects the ability of the cigarette to meet the fire safety performance standard  
37 described in subsection (6) of this section.

38 “(5) If the State Fire Marshal determines that ignition propensity testing cannot be per-  
39 formed on a cigarette using a method described in subsection (3) or (4) of this section, the  
40 manufacturer may propose an alternative testing method and an alternative fire safety per-  
41 formance standard for the variety. If the State Fire Marshal approves the alternative testing  
42 method and determines that the alternative fire safety performance standard is equivalent  
43 to the fire safety performance standard described in subsection (6) of this section, the man-  
44 ufacturer may use the alternative testing method and the alternative fire safety performance  
45 standard for the purpose of certifying the variety of cigarette under section 7 of this 2007

1 Act. Except as provided under the approved alternative testing method and the alternative  
2 fire safety performance standard, a cigarette variety described in this subsection remains  
3 subject to sections 1 to 9 of this 2007 Act.

4 “(6) For a cigarette variety to be declared to have reduced ignition propensity, no more  
5 than 25 percent of the cigarettes in a complete test trial conducted in accordance with an  
6 ignition propensity testing method described in this section shall exhibit full-length burns.

7 “(7) The State Fire Marshal shall issue, keep current and make available to the public a  
8 list of the cigarette varieties the State Fire Marshal has determined to have reduced ignition  
9 propensity.

10 “(8) A cigarette listed in a certification under section 7 of this 2007 Act that uses lowered  
11 permeability bands in the cigarette paper to achieve compliance with the fire safety per-  
12 formance standard described in subsection (6) of this section must have at least two nomi-  
13 nally identical bands on the paper surrounding the tobacco column. If the bands are not  
14 positioned on the cigarette by design, at least one complete band must be at least 15 milli-  
15 meters from the lighting end of the cigarette. If the bands are positioned on the cigarette  
16 by design, the cigarette must have at least two bands that are entirely located at least 15  
17 millimeters from the lighting end and:

18 “(a) If the cigarette is filtered, that are located at least 10 millimeters from the filter end  
19 of the tobacco column; or

20 “(b) If the cigarette is nonfiltered, that are located at least 10 millimeters from the la-  
21 beled end of the tobacco column.

22 “SECTION 6. (1) A laboratory that conducts ignition propensity testing for purposes of  
23 section 5 of this 2007 Act must have a quality control and assurance program. The program  
24 shall be designed to ensure the testing repeatability value for all test trials used to certify  
25 a cigarette variety. The repeatability value of ignition propensity testing may not be greater  
26 than 0.19.

27 “(2) Ignition propensity testing used in a manufacturer certification submitted under  
28 section 7 of this 2007 Act must be conducted in a laboratory that has been accredited under:

29 “(a) The ISO/IEC 17025 standard of the International Organization for Standardization,  
30 as amended and in effect on the effective date of this 2007 Act; or

31 “(b) A standard recognized in State Fire Marshal rules as comparable to prevailing  
32 international accreditation standards.

33 “SECTION 7. (1) A manufacturer shall submit a written certification attesting that each  
34 variety of cigarette listed in the certification has been subjected to ignition propensity test-  
35 ing described in section 5 of this 2007 Act and meets the fire safety performance standard  
36 described in section 5 (6) of this 2007 Act.

37 “(2) The certification shall provide the following information for each variety of cigarette  
38 listed:

39 “(a) The brand name shown on the cigarette packaging.

40 “(b) The style, such as light or ultralight.

41 “(c) The length in millimeters.

42 “(d) The circumference in millimeters.

43 “(e) The flavor, such as menthol or chocolate, if applicable.

44 “(f) Whether the cigarette is filtered or nonfiltered.

45 “(g) A packaging description, such as soft pack or box.

1           “(h) A description of the packaging marking approved by the State Fire Marshal under  
2 section 8 of this 2007 Act.

3           “(i) The name, address and telephone number of the laboratory conducting the ignition  
4 propensity testing, if other than the laboratory of the manufacturer.

5           “(j) The date of the ignition propensity testing.

6           “(3) The certification of a cigarette variety is valid for three years from the date of re-  
7 ceipt by the State Fire Marshal.

8           “(4) If the manufacturer certifies a cigarette variety and later makes any change that is  
9 likely to alter the cigarette variety’s compliance with the fire safety performance standard  
10 described in section 5 (6) of this 2007 Act, before distributing the changed cigarette variety  
11 in this state the manufacturer shall retest the ignition propensity of that variety.  
12 Notwithstanding subsection (3) of this section, a manufacturer may not sell a cigarette va-  
13 riety described in this subsection unless that variety continues to meet the fire safety per-  
14 formance standard described in section 5 (6) of this 2007 Act.

15           “(5) A manufacturer shall retain copies of all ignition propensity test data for cigarette  
16 varieties listed in the certification, including any retesting performed under subsection (4)  
17 of this section. The manufacturer shall retain the test data for not less than three years.  
18 The manufacturer shall provide copies of the test data upon request to the State Fire Mar-  
19 shal and to the Attorney General. Failure of a manufacturer to provide copies of ignition  
20 propensity test data requested by the State Fire Marshal or the Attorney General creates a  
21 rebuttable presumption that a cigarette variety does not meet the fire safety performance  
22 standard described in section 5 (6) of this 2007 Act.

23           “(6) The State Fire Marshal may determine that a cigarette variety certified under this  
24 section does not have reduced ignition propensity only if:

25           “(a) The test data provided to the State Fire Marshal by the manufacturer demonstrate  
26 that the cigarette variety does not meet the fire safety performance standard described in  
27 section 5 (6) of this 2007 Act; or

28           “(b) The State Fire Marshal conducts ignition propensity testing on the cigarette variety  
29 and the test results demonstrate that the cigarette variety does not meet the fire safety  
30 performance standard described in section 5 (6) of this 2007 Act.

31           “(7) Ignition propensity testing by the State Fire Marshal under subsection (6) of this  
32 section shall be conducted in accordance with the testing requirements applicable to man-  
33 ufacturers by a laboratory meeting the requirements described under section 6 of this 2007  
34 Act.

35           “(8) Upon a determination by the State Fire Marshal under subsection (6) of this section,  
36 the State Fire Marshal may seek the remedies described in section 4 of this 2007 Act.

37           “SECTION 8. (1) A manufacturer shall place a single type of marking on all packaging  
38 for cigarettes of the manufacturer sold in this state to indicate that cigarettes of the man-  
39 ufacturer sold in this state meet the fire safety performance standard established in section  
40 5 (6) of this 2007 Act.

41           “(2) A manufacturer shall submit to the State Fire Marshal a proposal for marking cig-  
42 arette packaging. The proposed marking must be in an eight-point font or larger and consist  
43 of one of the following:

44           “(a) Modification of the universal product code to indicate a visible mark printed at or  
45 around the universal product code. The mark may consist of alphanumeric or symbolic

1 characters permanently printed, stamped, engraved or embossed in conjunction with the  
2 universal product code.

3 “(b) A visible combination of alphanumeric or symbolic characters permanently stamped,  
4 engraved or embossed upon the packaging or cellophane wrapping.

5 “(c) Printed, stamped, engraved or embossed text indicating that the cigarettes meet the  
6 fire safety performance standard established in section 5 (6) of this 2007 Act.

7 “(3) The State Fire Marshal shall approve or disapprove the proposal for packaging  
8 marking. In determining whether to approve or disapprove a proposal for packaging marking,  
9 the State Fire Marshal:

10 “(a) Shall give preference to packaging marking that is consistent with the packaging  
11 marking in use and approved for that cigarette variety in the State of New York; and

12 “(b) Shall approve packaging marking that bears the letters ‘FSC’.

13 “(4) A proposal for packaging marking is approved unless the State Fire Marshal disap-  
14 proves the proposal on or before the 10th day after receipt. The approved packaging marking  
15 may be used for the cigarette variety upon receipt by the State Fire Marshal of the man-  
16 ufacturer certification for that variety under section 7 of this 2007 Act.

17 “(5) A manufacturer may not modify the approved packaging marking unless the mod-  
18 ification has been submitted to and approved by the State Fire Marshal.

19 “SECTION 9. (1) A manufacturer selling cigarettes to a wholesale dealer in this state  
20 shall provide the wholesale dealer with a copy of the certification for those cigarettes sub-  
21 mitted to the State Fire Marshal under section 7 of this 2007 Act. The manufacturer shall  
22 also provide the wholesale dealer with copies of an illustration of the packaging marking  
23 required under section 8 of this 2007 Act. The manufacturer shall supply copies of the illus-  
24 tration to the wholesale dealer in sufficient number to allow one copy for each retail dealer  
25 receiving the cigarettes from the wholesale dealer.

26 “(2) A wholesale dealer shall provide a copy of the illustration described in subsection (1)  
27 of this section to each retail dealer that receives cigarettes of the manufacturer from the  
28 wholesale dealer. A wholesale dealer is not required to provide a retail dealer of the ciga-  
29 rettes of a manufacturer with more than one copy of the illustration for that manufacturer.

30 “SECTION 10. (1) Notwithstanding section 5 of this 2007 Act, the State Fire Marshal,  
31 without requiring the submission of a certification under section 7 of this 2007 Act, no later  
32 than 60 days after the effective date of this 2007 Act shall accept as having reduced ignition  
33 propensity any cigarettes of a variety sold in this state that was certified prior to the effec-  
34 tive date of this 2007 Act to the Office of Fire Prevention and Control, Department of State,  
35 New York State, or a successor to that office, as complying with the cigarette fire safety  
36 performance standard required for cigarettes sold in New York State after June 28, 2004.

37 “(2) The manufacturer of a cigarette variety accepted as having reduced ignition pro-  
38 pensity under subsection (1) of this subsection shall recertify the variety under section 7 of  
39 this 2007 Act not later than three years after the effective date of this 2007 Act.

40 “(3) Notwithstanding section 8 of this 2007 Act, no later than 60 days after the effective  
41 date of this 2007 Act the State Fire Marshal shall approve for use by a manufacturer on  
42 cigarettes described in subsection (1) of this section any proposed cigarette packaging  
43 marking approved for use on the same variety of cigarettes prior to the effective date of this  
44 2007 Act by the Office of Fire Prevention and Control, Department of State, New York State,  
45 or a successor to that office, to indicate compliance with the cigarette fire safety perform-

1 **ance standard required for cigarettes sold in New York State after June 28, 2004.**

2 **“(4) The State Fire Marshal shall publish an initial list of cigarette varieties having re-**  
3 **duced ignition propensity as provided under section 5 of this 2007 Act no later than 60 days**  
4 **after the effective date of this 2007 Act. The initial list shall include, but need not be limited**  
5 **to, the cigarette varieties accepted by the State Fire Marshal under this section as having**  
6 **reduced ignition propensity.**

7 **“SECTION 11. (1) Section 2 (2) of this 2007 Act becomes operative January 1, 2008.**

8 **“(2) Section 3 (1) of this 2007 Act becomes operative July 1, 2007, and applies only to vi-**  
9 **olations occurring on or after July 1, 2007.**

10 **“(3) Section 3 (2) of this 2007 Act becomes operative January 1, 2008, and applies only to**  
11 **violations occurring on or after January 1, 2008.**

12 **“(4) Section 8 (1) of this 2007 Act becomes operative January 1, 2008.**

13 **“SECTION 12. The interpretations given to the New York Fire Safety Standards for Cig-**  
14 **arettes (Part 429, Title 19, New York Environmental Conservation Rules and Regulations)**  
15 **shall be persuasive authority in the interpretation of sections 1 to 9 of this 2007 Act.**

16 **“SECTION 13. Sections 1 to 9 of this 2007 Act do not apply to any cigarette variety that**  
17 **the State Fire Marshal determines is subject to a federal law that imposes a cigarette fire**  
18 **safety performance standard that is at least as strict as the standard imposed under section**  
19 **5 of this 2007 Act.**

20 **“SECTION 14. (1) The Cigarette Fire Safety Fund is established in the State Treasury,**  
21 **separate and distinct from the General Fund. The Cigarette Fire Safety Fund shall consist**  
22 **of all moneys recovered from the imposition of civil penalties under section 3 of this 2007**  
23 **Act. Interest earned by the Cigarette Fire Safety Fund shall be credited to the fund.**

24 **“(2) All moneys in the fund are continuously appropriated to the Department of State**  
25 **Police for use by the office of the State Fire Marshal for fire safety, enforcement and fire**  
26 **prevention programs.**

27 **“SECTION 15. This 2007 Act being necessary for the immediate preservation of the public**  
28 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**  
29 **on its passage.”.**

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