

House Bill 2163

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of State Police)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits distribution or sale of cigarette within state unless cigarette is of variety listed as fire-safe. Directs State Fire Marshal to determine whether variety is fire-safe. Allows State Fire Marshal to impose civil penalties for distribution or sale of cigarettes that are not fire-safe or that are improperly marked as fire-safe.

Continuously appropriates moneys recovered from imposition of civil penalties to Department of State Police for use by office of State Fire Marshal for fire safety, enforcement and fire prevention programs.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to fire safety standards for cigarettes; appropriating money; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

SECTION 1. As used in sections 1 to 9 of this 2007 Act:

4
5 (1) **"Cigarette" means a product that contains nicotine, is intended to be burned or**
6 **heated under ordinary conditions of use and consists of or contains:**

7 (a) **A roll of tobacco wrapped in paper or in any substance not containing tobacco;**

8 (b) **Tobacco, in any form, that is functional in the product and that, because of its ap-**
9 **pearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be**
10 **offered to or purchased by consumers as a cigarette; or**

11 (c) **Any roll of tobacco that is wrapped in a substance containing tobacco and that, be-**
12 **cause of its appearance, the type of tobacco used in the filler or its packaging and labeling,**
13 **is likely to be offered to or purchased by consumers as a cigarette described in paragraph**
14 **(a) of this subsection.**

15 (2) **"Distribute" means to do any of the following:**

16 (a) **Sell cigarettes or deliver cigarettes for sale by another person to consumers.**

17 (b) **Receive or retain more than 199 cigarettes at a place of business where the person**
18 **receiving or retaining the cigarettes customarily sells cigarettes or offers cigarettes for sale**
19 **to consumers.**

20 (c) **Place cigarettes in vending machines.**

21 (d) **Sell or accept orders for cigarettes that are to be transported from a point outside**
22 **this state to a consumer within this state.**

23 (e) **Buy cigarettes directly from a manufacturer or wholesale dealer for resale in this**
24 **state.**

25 (f) **Give cigarettes as a sample, prize, gift or other promotion.**

26 (3) **"Fire-safe" means meeting the fire safety performance standard described in section**
27 **5 (5) of this 2007 Act.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (4) “Manufacturer” means:

2 (a) An entity that produces, or causes the production of, cigarettes for sale in this state;

3 (b) An importer or first purchaser of cigarettes that intends to resell within this state
4 cigarettes that were produced for sale outside this state; or

5 (c) A successor to an entity, importer or first purchaser described in paragraph (a) or
6 (b) of this subsection.

7 (5) “Packaging” includes, but is not limited to, cigarette soft packs, boxes, cartons and
8 cases.

9 (6) “Quality control and assurance program” means laboratory procedures implemented
10 to ensure that operator bias, systematic and nonsystematic methodological errors and
11 equipment-related problems do not affect the results of testing.

12 (7) “Repeatability” means the range of values within which the repeat results of ignition
13 propensity testing by a single laboratory will fall 95 percent of the time.

14 (8) “Retail dealer” means a person, other than a manufacturer or wholesale dealer, that
15 engages in distributing cigarettes.

16 (9) “Sell” means to transfer, or agree to transfer, title or possession for a monetary or
17 nonmonetary consideration.

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

21 (11) “Wholesale dealer” means a person that distributes cigarettes to:

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

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

25 **SECTION 2.** (1) A person may not distribute or offer to sell a cigarette within this state
26 unless the cigarette is of a variety the State Fire Marshal has determined to be fire-safe
27 under section 5 of this 2007 Act. This subsection does not apply to a distribution of, or an
28 offer to sell, cigarettes exempted from state taxation under ORS 323.040, 323.050 or 323.055.

29 (2) Cigarette packaging may not bear a marking or other device identifying the packaged
30 cigarettes as fire-safe other than a packaging marking approved for use with those cigarettes
31 by the State Fire Marshal under section 8 of this 2007 Act. This subsection does not apply
32 if the cigarettes are in interstate commerce and not intended for distribution in this state.

33 (3) The State Fire Marshal, an authorized representative of the State Fire Marshal or
34 any law enforcement agency may immediately seize and subject to forfeiture any cigarettes
35 distributed or offered for sale in violation of subsection (1) of this section and any packaging,
36 and cigarettes contained in that packaging, that violates subsection (2) of this section. The
37 State Fire Marshal shall destroy cigarettes and packaging seized and forfeited under this
38 subsection.

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

42 (5) The State Fire Marshal or an authorized representative, upon oral or written demand,
43 may inspect the inventory of cigarette manufacturers, wholesale or retail dealers and
44 transporters as the State Fire Marshal or an authorized representative deems necessary to
45 ensure compliance with this section. The State Fire Marshal may adopt rules to require re-

ports, in a form prescribed by the State Fire Marshal, by cigarette manufacturers, wholesale or retail dealers and transporters for the purpose of ensuring compliance with this section.

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

(1) For a person that distributes or offers to sell cigarettes to a wholesale or retail dealer, \$10,000 or five times the value of the cigarettes involved in the violation, whichever is greater.

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

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

(b) For a distribution or offer of more than 1,000 cigarettes, \$1,000 or five times the retail value of the cigarettes involved in the violation, whichever is greater.

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

(2) The Attorney General may bring an action at the request of the office of the State Fire Marshal, in the name of the state, to recover civil penalties imposed under section 3 of this 2007 Act.

SECTION 5. (1) For each variety of cigarette sold or proposed for sale in this state, the State Fire Marshal shall determine whether that variety of cigarette is fire-safe. The State Fire Marshal may make the determination by conducting ignition propensity testing on the cigarettes or by accepting a manufacturer certification of fire safety under section 7 of this 2007 Act.

(2) Except as provided in this section, ignition propensity testing conducted or accepted under subsection (1) of this section must be performed using ASTM International specification E2187-04, Standard Test Method for Measuring the Ignition Strength of Cigarettes. The ignition propensity testing must consist of 40 or more replicate tests, each conducted on 10 layers of filter paper.

(3) The State Fire Marshal may rely upon ignition propensity testing that uses a method developed by ASTM International as a modification or replacement of the method designated by subsection (2) of this section if the State Fire Marshal, by rule, deems the modified or replacement method acceptable for determining cigarette fire safety. However, the State Fire Marshal may not rely upon testing that uses a modified or replacement method that in repeated testing results in a smaller percentage of cigarettes burning along the full length of the tobacco portion than the percentage produced on the same variety of cigarettes by use of the ASTM E2187-04 method.

(4) If the State Fire Marshal determines that ignition propensity testing cannot be performed on a cigarette using a method described in subsection (2) or (3) of this section, the manufacturer may propose an alternative testing method and an alternative fire safety performance standard for the cigarette. If the State Fire Marshal approves the alternative testing method and determines that the alternative fire safety performance standard is equivalent to the fire safety performance standard described in subsection (5) of this section, the manufacturer may use the alternative testing method and the alternative fire safety performance standard for the purpose of certifying the cigarette under section 7 of this 2007 Act. Except as provided under the approved alternative testing method and the alternative fire safety performance standard, a cigarette described in this subsection remains subject to sections 1 to 9 of this 2007 Act.

1 (5) The State Fire Marshal shall declare a cigarette variety to be fire-safe if not more
 2 than 25 percent of the cigarettes tested burned along the full length of the tobacco portion
 3 of the cigarette when subjected to ignition propensity testing.

4 (6) The State Fire Marshal shall issue, keep current and make available to the public a
 5 list of the cigarette varieties the State Fire Marshal has determined to be fire-safe.

6 (7) A cigarette listed in a certification under section 7 of this 2007 Act that uses lowered
 7 permeability bands in the cigarette paper to achieve compliance with the fire safety per-
 8 formance standard described in subsection (5) of this section must have at least two nomi-
 9 nally identical bands on the paper surrounding the tobacco column. If the bands are not
 10 positioned on the cigarette by design, at least one complete band must be at least 15 milli-
 11 meters from the lighting end of the cigarette. If the bands are positioned on the cigarette
 12 by design, the cigarette must have at least two bands that are entirely located at least 15
 13 millimeters from the lighting end and:

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

16 (b) If the cigarette is nonfiltered, that are located at least 10 millimeters from the labeled
 17 end of the tobacco column.

18 **SECTION 6.** (1) A laboratory that conducts ignition propensity testing for purposes of
 19 section 5 of this 2007 Act must have a quality control and assurance program. The program
 20 must include a procedure for ensuring that the repeatability value of the laboratory test
 21 results does not exceed 0.19 for all tests included in a manufacturer certification accepted
 22 under section 7 of this 2007 Act.

23 (2) Ignition propensity testing used in a manufacturer certification accepted under sec-
 24 tion 7 of this 2007 Act must be conducted in a laboratory that has been accredited under:

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

27 (b) A standard recognized in State Fire Marshal rules as comparable to prevailing inter-
 28 national accreditation standards.

29 **SECTION 7.** (1) A manufacturer shall submit a written certification attesting that each
 30 variety of cigarette listed in the certification has been subjected to ignition propensity test-
 31 ing described in section 5 of this 2007 Act and meets the fire safety performance standard
 32 described in section 5 (5) of this 2007 Act. The State Fire Marshal shall examine the certif-
 33 ication and accept or reject the certification for each of the varieties listed in the certif-
 34 ication.

35 (2) The certification shall provide the following information for each variety of cigarette
 36 listed:

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

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

39 (c) The length in millimeters.

40 (d) The circumference in millimeters.

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

42 (f) Whether the cigarette is filtered or nonfiltered.

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

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

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

3 (j) The date of the ignition propensity testing.

4 (3) The certification of a cigarette variety is valid for three years from the date of ac-
 5 ceptance by the State Fire Marshal.

6 (4) If the manufacturer makes any change to a cigarette variety that may affect the fire
 7 safety of the cigarette, before distributing the changed cigarette variety in this state, the
 8 manufacturer shall retest the ignition propensity of that variety. Notwithstanding sub-
 9 section (3) of this section, a manufacturer may not sell a cigarette variety described in this
 10 subsection unless that variety continues to meet the fire safety performance standard de-
 11 scribed in section 5 (5) of this 2007 Act.

12 (5) A manufacturer shall retain copies of all ignition propensity test data for cigarette
 13 varieties listed in the certification, including any retesting performed under subsection (4)
 14 of this section. The manufacturer shall retain the test data for not less than three years.
 15 The manufacturer shall provide copies of the test data upon request to the State Fire Mar-
 16 shal and to the Attorney General.

17 (6) The State Fire Marshal may revoke the certification for a cigarette variety if the
 18 State Fire Marshal determines that the cigarette variety does not meet the fire safety per-
 19 formance standard described in section 5 (5) of this 2007 Act. A revocation under this sub-
 20 section is subject to ORS chapter 183. Failure of a manufacturer to provide copies of ignition
 21 propensity test data requested by the State Fire Marshal or Attorney General creates a
 22 rebuttable presumption that a cigarette variety does not meet the standard.

23 **SECTION 8.** (1) A manufacturer shall submit to the State Fire Marshal a proposal for
 24 marking cigarette packaging to indicate that cigarettes of the manufacturer sold in this
 25 state meet the fire safety performance standard established in section 5 (5) of this 2007 Act.
 26 The manufacturer shall propose a single type of marking for use on all packaging for ciga-
 27 rettes of the manufacturer sold in this state. The proposed marking must be in an eight-
 28 point font or larger and consist of one of the following:

29 (a) Modification of the universal product code to indicate a visible mark printed at or
 30 around the universal product code. The mark may consist of alphanumeric or symbolic
 31 characters permanently printed, stamped, engraved or embossed in conjunction with the
 32 universal product code.

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

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

37 (2) The State Fire Marshal shall approve or disapprove the proposal for packaging
 38 marking. In determining whether to approve or disapprove a proposal for packaging marking,
 39 the State Fire Marshal shall give preference to packaging marking that is consistent with
 40 any packaging marking approved for that cigarette variety in other states. A proposal for
 41 packaging marking is approved unless the State Fire Marshal disapproves the proposal on
 42 or before the 10th day after receipt. The approved packaging marking may be used for the
 43 cigarette variety upon acceptance by the State Fire Marshal of the manufacturer certif-
 44 ication for that variety under section 7 of this 2007 Act.

45 (3) A manufacturer may not modify the approved packaging marking unless the modifi-

1 cation has been submitted to and approved by the State Fire Marshal.

2 **SECTION 9.** (1) A manufacturer selling cigarettes to a wholesale dealer in this state shall
3 provide the wholesale dealer with a copy of the certification for those cigarettes accepted
4 by the State Fire Marshal under section 7 of this 2007 Act. The manufacturer shall also
5 provide the wholesale dealer with copies of an illustration of the packaging marking approved
6 for the cigarettes by the State Fire Marshal under section 8 of this 2007 Act. The manufac-
7 turer shall supply copies of the illustration to the wholesale dealer in sufficient number to
8 allow one copy for each retail dealer receiving the cigarettes from the wholesale dealer.

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

13 **SECTION 10.** (1) Notwithstanding section 5 of this 2007 Act, the State Fire Marshal,
14 without conducting ignition propensity testing under section 5 of this 2007 Act or requiring
15 the submission of a certification under section 7 of this 2007 Act, no later than 60 days after
16 the effective date of this 2007 Act shall accept as fire-safe any cigarettes of a variety sold in
17 this state that was certified prior to the effective date of this 2007 Act by the Office of Fire
18 Prevention and Control, Department of State, New York State, or a successor to that office,
19 as complying with the cigarette fire safety performance standard required for cigarettes sold
20 in New York State after June 28, 2004.

21 (2) Notwithstanding section 8 of this 2007 Act, no later than 60 days after the effective
22 date of this 2007 Act the State Fire Marshal shall approve for use by a manufacturer on
23 cigarettes described in subsection (1) of this section any proposed cigarette packaging
24 marking approved for use on the same variety of cigarettes prior to the effective date of this
25 2007 Act by the Office of Fire Prevention and Control, Department of State, New York State,
26 or a successor to that office, to indicate compliance with the cigarette fire safety perform-
27 ance standard required for cigarettes sold in New York State after June 28, 2004.

28 (3) The State Fire Marshal shall publish an initial list of fire-safe cigarette varieties as
29 provided under section 5 of this 2007 Act no later than 60 days after the effective date of this
30 2007 Act. The initial list shall include, but need not be limited to, the cigarette varieties ac-
31 cepted as fire-safe by the State Fire Marshal under this section.

32 **SECTION 11.** (1) Sections 2 (2) and 3 (1) of this 2007 Act become operative 180 days after
33 the effective date of this 2007 Act. Section 3 (1) of this 2007 Act applies only to violations
34 occurring 180 or more days after the effective date of this 2007 Act.

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

37 **SECTION 12.** (1) The Cigarette Fire Safety Fund is established in the State Treasury,
38 separate and distinct from the General Fund. The Cigarette Fire Safety Fund shall consist
39 of all moneys recovered from the imposition of civil penalties under section 3 of this 2007
40 Act. Interest earned by the Cigarette Fire Safety Fund shall be credited to the fund.

41 (2) All moneys in the fund are continuously appropriated to the Department of State
42 Police for use by the office of the State Fire Marshal for fire safety, enforcement and fire
43 prevention programs.

44 **SECTION 13.** This 2007 Act being necessary for the immediate preservation of the public
45 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect

1 **on its passage.**

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