

SENATE AMENDMENTS TO SENATE BILL 738

By COMMITTEE ON COMMERCE

March 31

1 On page 1 of the printed bill, delete lines 4 through 28 and delete page 2 and insert:

2 **“SECTION 1. As used in this section and sections 2 and 3 of this 2005 Act:**

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

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

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

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

13 **“(2) ‘Distribute’ means to do any of the following:**

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

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

18 **“(c) Place cigarettes in vending machines.**

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

21 **“(e) Buy cigarettes directly from a manufacturer or wholesaler for resale in this state.**

22 **“(3) ‘Fire-safe cigarette’ means a cigarette of a variety declared to be fire-safe by the**
23 **State Fire Marshal under section 2 of this 2005 Act.**

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

27 **“SECTION 2. (1) The State Fire Marshal shall determine for each variety of cigarette sold**
28 **or proposed for sale in this state whether that variety of cigarette is fire-safe. The State Fire**
29 **Marshal may make the determination by conducting ignition propensity testing or by ac-**
30 **cepting the results of ignition propensity testing conducted by any source the State Fire**
31 **Marshal recognizes as reliable.**

32 **“(2) Except as provided in this subsection, ignition propensity testing conducted or relied**
33 **upon under subsection (1) of this section must be performed using the Standard Test Method**
34 **for Measuring the Ignition Strength of Cigarettes, E2187-04, developed by ASTM Interna-**
35 **tional. The State Fire Marshal may conduct or rely upon an ignition propensity testing**

1 method developed by ASTM International as a modification or replacement of the method
2 designated by this subsection if the State Fire Marshal, by rule, deems the modified or re-
3 placement method acceptable. The conducted or relied upon testing must be conducted on
4 10 layers of filter paper. The State Fire Marshal shall declare a cigarette variety to be fire-
5 safe if not more than 25 percent of the cigarettes tested burned along the full length of the
6 tobacco portion of the cigarette when subjected to ignition propensity testing.

7 “(3) The State Fire Marshal shall issue, keep current and make available to the public a
8 list of the cigarette varieties determined by the State Fire Marshal to be fire-safe.

9 “(4) The State Fire Marshal, by rule or upon application, may approve cigarette package
10 or carton markings, stickers, labeling or other devices that identify a cigarette variety as
11 fire-safe.

12 “SECTION 3. (1) A person may not distribute or offer to sell a cigarette within this state
13 unless the cigarette is of a variety the State Fire Marshal has listed as fire-safe under sec-
14 tion 2 of this 2005 Act. This subsection does not apply to a distribution of, or offer to sell,
15 cigarettes exempted from state taxation under ORS 323.040, 323.050 or 323.055.

16 “(2) A cigarette package or carton may not bear markings, stickers, labeling or other
17 devices identifying cigarettes contained in the package or carton as fire-safe cigarettes un-
18 less the cigarettes are of a variety the State Fire Marshal has listed as fire-safe under sec-
19 tion 2 of this 2005 Act. This subsection does not apply if the cigarettes are in interstate
20 commerce and not intended for distribution in this state.

21 “(3) The State Fire Marshal, an authorized representative of the State Fire Marshal or
22 any law enforcement agency may immediately seize and subject to forfeiture any cigarettes
23 distributed or offered for sale in violation of subsection (1) of this section and any cigarettes
24 contained in packages or cartons bearing markings, stickers, labeling or other devices in vi-
25 olation of subsection (2) of this section. The State Fire Marshal shall destroy cigarettes
26 seized and forfeited under this subsection.

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 subsection (3) of this section.

30 “SECTION 4. The State Fire Marshal may impose a civil penalty for a violation of section
31 3 (1) of this 2005 Act. The civil penalty may not exceed:

32 “(1) For a person who distributes or offers to sell cigarettes to a wholesaler or retailer,
33 \$10,000 or five times the value of the cigarettes involved in the violation, whichever is
34 greater.

35 “(2) For a person who distributes or offers to sell cigarettes to the public:

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

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

39 “SECTION 5. (1) The State Fire Marshal shall impose civil penalties under section 4 of
40 this 2005 Act in the manner provided by ORS 183.745.

41 “(2) An action may be brought by the Attorney General, at the request of the office of
42 the State Fire Marshal, in the name of the state, to recover civil penalties imposed under
43 section 4 of this 2005 Act.

44 “SECTION 6. (1) Notwithstanding section 2 of this 2005 Act, the State Fire Marshal,
45 without conducting testing under section 2 of this 2005 Act, shall include in the fire-safe

1 cigarette list published by the State Fire Marshal cigarettes of a variety sold in this state
2 that was certified prior to the effective date of this 2005 Act by the Office of Fire Prevention
3 and Control, Department of State, New York State, or a successor to that office, as com-
4 plying with cigarette fire safety performance standards required for cigarettes sold in New
5 York State after June 28, 2004.

6 “(2) The State Fire Marshal shall publish an initial list of cigarette varieties declared to
7 be fire-safe under section 2 of this 2005 Act no later than 20 days after the effective date of
8 this 2005 Act.

9 “SECTION 7. (1) Sections 3 (2) and 4 (1) of this 2005 Act become operative 30 days after
10 the effective date of this 2005 Act. Section 4 (1) of this 2005 Act applies only to violations
11 occurring 30 or more days after the effective date of this 2005 Act.

12 “(2) Section 4 (2) of this 2005 Act becomes operative January 1, 2006, and applies only to
13 violations occurring on or after January 1, 2006.

14 “SECTION 8. (1) The Cigarette Fire Safety Fund is established in the State Treasury,
15 separate and distinct from the General Fund. The fund shall consist of all moneys recovered
16 from the imposition of civil penalties under section 4 of this 2005 Act. Interest earned by the
17 Cigarette Fire Safety Fund shall be credited to the fund.

18 “(2) All moneys in the fund established under subsection (1) of this section are contin-
19 uously appropriated to the Department of State Police for use by the office of the State Fire
20 Marshal for fire safety, enforcement and fire prevention programs.

21 “SECTION 9. This 2005 Act being necessary for the immediate preservation of the public
22 peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect
23 on its passage.”.

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