

A-Engrossed
Senate Bill 738

Ordered by the Senate March 31
Including Senate Amendments dated March 31

Sponsored by COMMITTEE ON ENVIRONMENT AND LAND USE

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.

[Directs office of State Fire Marshal to adopt fire safety standards for cigarettes. Requires cigarette manufacturer to certify that manufacturer's cigarettes meet fire safety standards before cigarettes may be sold in state.]

[Appropriates moneys to office of State Fire Marshal for establishing fire safety standards for cigarettes.]

[Imposes civil penalties.]

Directs State Fire Marshal to test each variety of cigarette sold in state to determine if variety is fire-safe and to publish list of varieties determined to be fire-safe. Prohibits distribution or sale of cigarette within state unless cigarette is of variety listed as fire-safe.

Allows State Fire Marshal to impose civil penalties for unlawful distribution or sale.

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:**

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

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

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 this state to a consumer within this state.

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

3 (3) "Fire-safe cigarette" means a cigarette of a variety declared to be fire-safe by the
4 State Fire Marshal under section 2 of this 2005 Act.

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

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

13 (2) Except as provided in this subsection, ignition propensity testing conducted or relied
14 upon under subsection (1) of this section must be performed using the Standard Test Method
15 for Measuring the Ignition Strength of Cigarettes, E2187-04, developed by ASTM Interna-
16 tional. The State Fire Marshal may conduct or rely upon an ignition propensity testing
17 method developed by ASTM International as a modification or replacement of the method
18 designated by this subsection if the State Fire Marshal, by rule, deems the modified or re-
19 placement method acceptable. The conducted or relied upon testing must be conducted on
20 10 layers of filter paper. The State Fire Marshal shall declare a cigarette variety to be fire-
21 safe if not more than 25 percent of the cigarettes tested burned along the full length of the
22 tobacco portion of the cigarette when subjected to ignition propensity testing.

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

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

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

32 (2) A cigarette package or carton may not bear markings, stickers, labeling or other de-
33 vices identifying cigarettes contained in the package or carton as fire-safe cigarettes unless
34 the cigarettes are of a variety the State Fire Marshal has listed as fire-safe under section 2
35 of this 2005 Act. This subsection does not apply if the cigarettes are in interstate commerce
36 and not intended for distribution in this state.

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

43 (4) The State Fire Marshal may enter into a cooperative agreement with any state or
44 local agency that allows the agency to act as an authorized representative of the State Fire
45 Marshal for enforcement purposes under subsection (3) of this section.

1 **SECTION 4.** The State Fire Marshal may impose a civil penalty for a violation of section
2 3 (1) of this 2005 Act. The civil penalty may not exceed:

3 (1) For a person who distributes or offers to sell cigarettes to a wholesaler or retailer,
4 \$10,000 or five times the value of the cigarettes involved in the violation, whichever is
5 greater.

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

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

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

10 **SECTION 5.** (1) The State Fire Marshal shall impose civil penalties under section 4 of this
11 2005 Act in the manner provided by ORS 183.745.

12 (2) An action may be brought by the Attorney General, at the request of the office of the
13 State Fire Marshal, in the name of the state, to recover civil penalties imposed under section
14 4 of this 2005 Act.

15 **SECTION 6.** (1) Notwithstanding section 2 of this 2005 Act, the State Fire Marshal,
16 without conducting testing under section 2 of this 2005 Act, shall include in the fire-safe
17 cigarette list published by the State Fire Marshal cigarettes of a variety sold in this state
18 that was certified prior to the effective date of this 2005 Act by the Office of Fire Prevention
19 and Control, Department of State, New York State, or a successor to that office, as com-
20 plying with cigarette fire safety performance standards required for cigarettes sold in New
21 York State after June 28, 2004.

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

25 **SECTION 7.** (1) Sections 3 (2) and 4 (1) of this 2005 Act become operative 30 days after
26 the effective date of this 2005 Act. Section 4 (1) of this 2005 Act applies only to violations
27 occurring 30 or more days after the effective date of this 2005 Act.

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

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

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

37 **SECTION 9.** This 2005 Act being necessary for the immediate preservation of the public
38 peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect
39 on its passage.

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