

**Enrolled**  
**House Bill 2365**

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Consumer Protection)

CHAPTER .....

AN ACT

Relating to novelty lighters; and declaring an emergency.

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

**SECTION 1. As used in sections 1 to 6 of this 2009 Act:**

(1) **“Audio effects”** includes music, animal sounds and whistles, buzzers, beepers or other noises not pertinent to the flame-producing function of the lighter.

(2) **“Distribute”** means to:

(a) **Deliver to a person other than the purchaser; or**

(b) **Provide as part of a commercial promotion or as a prize or premium.**

(3) **“Importer”** means a person who causes a lighter to enter this state from a manufacturing, wholesale, distribution or retail sales point outside this state, for the purpose of selling or distributing the lighter within this state or with the result that the lighter is sold or distributed within this state.

(4) **“Lighter”** means a handheld device of a type typically used for igniting tobacco products by use of a flame.

(5) **“Misleading design”** means that a lighter has a shape that resembles or imitates an object other than a lighter.

(6) **“Novelty lighter”:**

(a) **Means a lighter that has misleading design, audio effects or visual effects, or that has other features of a type that would reasonably be expected to make the lighter appealing or attractive to a child less than 10 years of age.**

(b) **Does not mean:**

(A) **A lighter manufactured before January 1, 1980; or**

(B) **A lighter that has been rendered permanently incapable of producing a flame or otherwise causing combustion.**

(7) **“Sell”** means to provide or promise to provide to a wholesale, retail, mail-order or other purchaser in exchange for consideration.

(8) **“Visual effect”:**

(a) **Includes flashing lights, color-changing lights and changing images; and**

(b) **Does not include logos, decals, decorative artwork or heat-shrinkable sleeves.**

**SECTION 2. (1) The State Fire Marshal may adopt rules to identify lighters or classes or types of lighters that are novelty lighters. The novelty lighters identified by the State Fire Marshal may include, but need not be limited to, lighters of misleading design that resemble or imitate:**

- (a) Cartoon characters, figurines or action figures;
- (b) Toys or game pieces;
- (c) Musical instruments;
- (d) Vehicles;
- (e) Animals;
- (f) Human body parts;
- (g) Food, beverages or food or beverage packages;
- (h) Weaponry;
- (i) Furniture;
- (j) Sports equipment;
- (k) Holiday decoration;
- (L) Tools; or
- (m) Household products.

(2) The State Fire Marshal shall establish and maintain a list of lighters, and of classes and types of lighters, that the State Fire Marshal has determined to be novelty lighters. The State Fire Marshal shall make the list available to the public in electronic form or in other forms selected by the State Fire Marshal.

(3) A lighter is a contraband item subject to seizure and destruction by the State Fire Marshal or a representative of the State Fire Marshal, or by a law enforcement agency, if the lighter is:

(a) Listed, or of a class or type listed, in State Fire Marshal rules as a novelty lighter; and

(b) Offered for sale, sold or distributed in this state or manufactured or possessed for the purpose of sale or distribution in this state.

(4) The State Fire Marshal or a representative of the State Fire Marshal, or a law enforcement agency, may seize a novelty lighter that is not described in subsection (3) of this section. Upon finding that the person from whom the lighter was seized is subject to imposition of a civil penalty under section 3 of this 2009 Act for being a manufacturer, importer, wholesaler, storer, seller or distributor of the lighter, the State Fire Marshal or a representative may order that the lighter be forfeited and destroyed.

**SECTION 3.** (1) A person may not sell, offer for sale or distribute a novelty lighter in this state. A person may not manufacture a novelty lighter in this state, or import a novelty lighter into this state, for the purpose of selling or distributing the novelty lighter within this state. A person may not possess a novelty lighter in inventory for the purpose of selling or distributing the novelty lighter within this state.

(2) The State Fire Marshal may impose a civil penalty against a person who violates subsection (1) of this section. The civil penalty may not exceed:

(a) \$10,000 if the person is a manufacturer or importer of lighters.

(b) \$1,000 if the person is a wholesaler of lighters or distributes lighters by means other than distribution directly to consumers.

(c) \$500 if the person is:

(A) A retail seller of lighters; or

(B) A person distributing lighters, if the person is other than a manufacturer, importer or wholesaler.

(3) If a person continues to violate this section after the State Fire Marshal gives the person written notice of the violation, each day that the violation continues is a separate offense subject to a civil penalty.

(4) The State Fire Marshal shall impose civil penalties under this section as provided in ORS 183.745. For purposes of ORS 183.417, it is prima facie evidence that a lighter is a novelty lighter if the lighter is listed by the State Fire Marshal as described in section 2 of this 2009 Act as a novelty lighter, or is of a class or type of lighter listed by the State Fire Mar-

shal as novelty lighters. However, listing by the State Fire Marshal is not a prerequisite for finding that a lighter is a novelty lighter.

(5) All moneys collected from civil penalties under this section shall be deposited to the credit of the State Fire Marshal Fund.

**SECTION 4.** (1) The State Fire Marshal, or a representative of the State Fire Marshal, may conduct inspections to ensure compliance with section 3 of this 2009 Act. The State Fire Marshal or representative may:

(a) Have access during reasonable business hours to facilities within this state used in the business of manufacturing, importing, distributing, selling or storing lighters;

(b) Inspect the manufacturing, importing, distribution, sales or storage facilities and any lighters located at the facilities; and

(c) Inspect all business records pertaining to lighter manufacture, import, distribution, sale or storage.

(2) A person engaged in this state in the business of manufacturing, importing, distributing, selling or storing lighters shall grant the State Fire Marshal or a representative reasonable access for conducting inspections as described in subsection (1) of this section.

**SECTION 5.** The State Fire Marshal may enter into agreements with any state or local agency to allow the agency to act as a representative of the State Fire Marshal for purposes of sections 3 and 4 of this 2009 Act.

**SECTION 6.** The Attorney General may bring an action at the request of the State Fire Marshal, in the name of the state, seeking:

(1) Injunctive relief to prevent or end a violation of section 3 or 4 of this 2009 Act;

(2) To recover civil penalties imposed under section 3 of this 2009 Act;

(3) To obtain access for inspections under section 4 of this 2009 Act; or

(4) To recover attorney fees and other enforcement costs and disbursements.

**SECTION 7.** (1) Notwithstanding section 2 of this 2009 Act, the State Fire Marshal, a representative of the State Fire Marshal or a law enforcement agency may not seize a novelty lighter before the 91st day following the effective date of this 2009 Act.

(2) Section 3 of this 2009 Act applies to:

(a) The manufacture or import of lighters on or after the effective date of this 2009 Act; and

(b) The sale or distribution of lighters on or after the 91st day following the effective date of this 2009 Act.

**SECTION 8.** This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

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**Passed by House February 4, 2009**

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Chief Clerk of House

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Speaker of House

**Passed by Senate February 23, 2009**

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President of Senate

**Received by Governor:**

.....M,....., 2009

**Approved:**

.....M,....., 2009

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2009

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Secretary of State