

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)

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 selling, offering for sale or distributing novelty lighters. Prohibits manufacture or importing of novelty lighters for purpose of sale or distribution in this state. Prohibits possession of novelty lighter in inventory for purposes of sale or distribution in this state. Applies to sales and distribution 91 days after effective date of Act. Applies to manufacture and import on or after effective date of Act. Creates exceptions for lighters manufactured before January 1, 1980, and for lighters permanently altered to prevent flame or other causes of combustion.

Makes violations subject to civil penalty, not to exceed \$500 per day for retail seller or distributor, \$1,000 per day for wholesaler or \$10,000 per day for manufacturer or importer.

Authorizes State Fire Marshal to create and maintain list identifying lighters and classes or types of lighters that are novelty lighters. Makes State Fire Marshal listing of lighter as novelty lighter prima facie evidence lighter is novelty lighter.

Declares novelty lighter listed by State Fire Marshal to be contraband subject to seizure, forfeiture and destruction. Allows seizure, forfeiture and destruction of unlisted novelty lighter after finding grounds for imposing civil penalty. Becomes operative 91 days after effective date of Act.

Authorizes State Fire Marshal or representative to conduct inspections of facilities, inventory and business records related to manufacture, import, wholesale, storage, sale or distribution of lighters. Allows State Fire Marshal to enter into agreements for state or local agencies to act as representatives of State Fire Marshal.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to novelty lighters; and declaring an emergency.

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

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

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

7 (2) **"Distribute" means to:**

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

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

10 (3) **"Importer" means a person who causes a lighter to enter this state from a manu-**
11 **facturing, wholesale, distribution or retail sales point outside this state, for the purpose of**
12 **selling or distributing the lighter within this state or with the result that the lighter is sold**
13 **or distributed within this state.**

14 (4) **"Lighter" means a handheld device of a type typically used for igniting tobacco pro-**
15 **ducts by use of a flame.**

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

18 (6) **"Novelty lighter":**

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

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 (b) Does not mean:

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

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

5 (7) "Sell" means to provide or promise to provide to a wholesale, retail, mail-order or
6 other purchaser in exchange for consideration.

7 (8) "Visual effect":

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

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

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

14 (a) Cartoon characters, figurines or action figures;

15 (b) Toys or game pieces;

16 (c) Musical instruments;

17 (d) Vehicles;

18 (e) Animals;

19 (f) Human body parts;

20 (g) Food, beverages or food or beverage packages;

21 (h) Weaponry;

22 (i) Furniture;

23 (j) Sports equipment;

24 (k) Holiday decoration;

25 (L) Tools; or

26 (m) Household products.

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

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

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

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

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

44 **SECTION 3.** (1) A person may not sell, offer for sale or distribute a novelty lighter in this
45 state. A person may not manufacture a novelty lighter in this state, or import a novelty

1 lighter into this state, for the purpose of selling or distributing the novelty lighter within this
 2 state. A person may not possess a novelty lighter in inventory for the purpose of selling or
 3 distributing the novelty lighter within this state.

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

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

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

9 (c) \$500 if the person is:

10 (A) A retail seller of lighters; or

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

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

16 (4) The State Fire Marshal shall impose civil penalties under this section as provided in
 17 ORS 183.745. For purposes of ORS 183.417, it is prima facie evidence that a lighter is a novelty
 18 lighter if the lighter is listed by the State Fire Marshal as described in section 2 of this 2009
 19 Act as a novelty lighter, or is of a class or type of lighter listed by the State Fire Marshal
 20 as novelty lighters. However, listing by the State Fire Marshal is not a prerequisite for
 21 finding that a lighter is a novelty lighter.

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

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

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

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

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

33 (2) A person engaged in this state in the business of manufacturing, importing, distrib-
 34 uting, selling or storing lighters shall grant the State Fire Marshal or a representative rea-
 35 sonable access for conducting inspections as described in subsection (1) of this section.

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

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

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

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

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

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

45 **SECTION 7.** (1) Notwithstanding section 2 of this 2009 Act, the State Fire Marshal, a

1 representative of the State Fire Marshal or a law enforcement agency may not seize a nov-
2 elty lighter before the 91st day following the effective date of this 2009 Act.

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

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

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

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

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