

1 STATE FIRE MARSHAL MODIFICATIONS

2 2010 GENERAL SESSION

3 STATE OF UTAH

4 Chief Sponsor: Ronda Rudd Menlove

5 Senate Sponsor: Curtis S. Bramble

7 LONG TITLE

8 General Description:

9 This bill modifies the Utah Fire Prevention and Safety Act in the Public Safety Code to
10 regulate the storage, sale, and distribution of novelty lighters that have a shape
11 resembling or imitating a toy or object other than a lighter.

12 Highlighted Provisions:

13 This bill:

- 14 ▶ authorizes the Utah Fire Prevention Board to adopt administrative rules to:
 - 15 • identify lighters or classes or types of lighters that are commonly referred to as
16 novelty lighters; and
 - 17 • provide for review of a decision of the State Fire Marshal Division regarding
18 these lighters;
- 19 ▶ requires the state fire marshal to maintain and make available to the public a list of
20 novelty lighters;
- 21 ▶ prohibits the sale, distribution, or possession of novelty lighters for the purpose of
22 selling or distributing the novelty lighters within the state;
- 23 ▶ authorizes the state fire marshal, a representative of the state fire marshal, a local
24 fire enforcement official, and a law enforcement agency to seize and destroy certain
25 novelty lighters;
- 26 ▶ provides civil penalties and authorizes the state fire marshal to assess a civil penalty
27 on an importer, wholesaler, seller, or distributor of the novelty lighters;
- 28 ▶ grants the state fire marshal, a representative of the state fire marshal, or a local fire
29 enforcement official authority to inspect facilities and business records pertaining

58 (1) "Audio effect" includes music, animal sounds, whistles, buzzers, or other noises
59 not pertinent to the flame-producing function of the lighter.

60 (2) (a) "Distribute" means to:

61 (i) deliver to a person other than the purchaser; or

62 (ii) provide as part of a commercial promotion or as a prize or premium.

63 (b) "Distribute" does not include providing as a personal gift.

64 (3) "Importer" means a person who causes a lighter to enter this state from a
65 manufacturing, wholesale, distribution, or retail sales point outside this state:

66 (a) for the purpose of selling or distributing the lighter within this state; or

67 (b) with the result that the lighter is sold or distributed within this state.

68 (4) "Lighter" means a handheld mechanical device of a type typically used for igniting
69 tobacco products by use of a flame.

70 (5) "Misleading design" means a lighter that:

71 (a) has a shape that resembles or imitates an object other than a lighter;

72 (b) may have one or more audio or visual effects; and

73 (c) has other features of a type that would reasonably be expected to make the lighter
74 appealing or attractive to a child younger than 10 years of age.

75 (6) "Novelty lighter":

76 (a) means a lighter that has:

77 (i) a misleading design; and

78 (ii) operates on any fuel, including butane or liquid fuel;

79 (b) does not mean:

80 (i) a lighter manufactured before January 1, 1980;

81 (ii) a lighter that has been rendered permanently incapable of producing a flame or
82 otherwise causing combustion; or

83 (iii) a mechanical device primarily used to ignite fuel for fireplaces, or for charcoal or
84 gas grills.

85 (7) "Sell" means to provide or promise to provide a product to a wholesale, retail,

86 mail-order, or other purchaser in exchange for consideration.

87 (8) "Visual effect":

88 (a) includes flashing lights, color-changing lights, or changing images; and

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

90 Section 3. Section **53-7-503** is enacted to read:

91 **53-7-503. Rulemaking authority -- Publicly accessible list of contraband lighters**
92 **maintained by the state fire marshal -- Authority to seize and destroy novelty lighters.**

93 (1) The Utah Fire Prevention Board, created in Section 53-7-203, may adopt rules in
94 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

95 (a) identify lighters or classes or types of lighters that are novelty lighters; and

96 (b) provide for an informal adjudicative hearing, as provided in Section 63G-4-203, by
97 the board to hear appeals of decisions of the State Fire Marshal Division under this part.

98 (2) (a) The state fire marshal shall establish and maintain a list of lighters, or classes
99 and types of lighters, that the state fire marshal has determined to be novelty lighters under this
100 part.

101 (b) The state fire marshal shall make the list available on the website maintained by
102 the Department of Public Safety.

103 (3) A lighter is a contraband item subject to seizure and destruction by the state fire
104 marshal, a representative of the state fire marshal, a local fire enforcement official, or by a law
105 enforcement agency, if the lighter is:

106 (a) listed, or of a class or type listed, by the state fire marshal as a novelty lighter; and

107 (b) offered for sale, sold, or distributed in this state.

108 (4) (a) The state fire marshal, a representative of the state fire marshal, a local fire
109 enforcement official, or a law enforcement agency may seize a novelty lighter that is not
110 described in Subsection (3).

111 (b) Upon finding that the person from whom the novelty lighter was seized is subject
112 to a civil penalty under Section 53-7-504 for being an importer, wholesaler, seller, or
113 distributor of the novelty lighter, the state fire marshal or a representative may order that the

114 novelty lighter be forfeited and destroyed.

115 Section 4. Section **53-7-504** is enacted to read:

116 **53-7-504. Offenses -- Civil penalties -- Penalty monies to be deposited in the Fire**
117 **Academy Support Fund.**

118 (1) (a) A person may not sell, offer for sale, or distribute a novelty lighter in this state.

119 (b) A person may not import a novelty lighter into this state for the purpose of selling
120 or distributing the novelty lighter within this state.

121 (c) A person may not possess a novelty lighter in inventory for the purpose of selling
122 or distributing the novelty lighter within this state.

123 (2) (a) The state fire marshal may assess a civil penalty against a person who violates
124 Subsection (1) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

125 (b) The civil penalty for a violation of Subsection (1) may not exceed:

126 (i) \$10,000 for the importation of novelty lighters;

127 (ii) \$1,000 if the person acts as a wholesaler of novelty lighters or distributes novelty
128 lighters by means other than distribution directly to consumers; and

129 (iii) \$500 if the person is:

130 (A) a retail seller of novelty lighters; or

131 (B) a person distributing novelty lighters, other than as a manufacturer, importer, or
132 wholesaler.

133 (3) If a person continues to violate this section after the state fire marshal gives the
134 person written notice of a violation, each day that the violation continues after written notice is
135 given is a separate offense subject to a civil penalty.

136 (4) (a) For purposes of imposing civil penalties, it is prima facie evidence that a lighter
137 is a novelty lighter if the lighter is listed by the state fire marshal as a novelty lighter under
138 Section 53-7-503, or is of a class or type of lighter listed by the state fire marshal as a novelty
139 lighter.

140 (b) Listing by the state fire marshal is not a requirement for a determination that a
141 lighter is a novelty lighter.

142 (5) All moneys collected from civil penalties under this section shall be deposited in
143 the Fire Academy Support Account created in Section 53-7-204.2.

144 (6) A person may seek judicial review of a final agency action under this part as
145 provided in Title 63G, Chapter 4, Administrative Procedures Act.

146 Section 5. Section **53-7-505** is enacted to read:

147 **53-7-505. Authority to have reasonable access to inspect facilities and records.**

148 (1) The state fire marshal, a representative of the state fire marshal, or a local fire
149 enforcement official may conduct inspections to ensure compliance with Section 53-7-504.

150 The state fire marshal, a representative of the state fire marshal, or a local fire enforcement
151 official may, regarding facilities within this state used in the business of importing,

152 distributing, selling, or storing of lighters:

153 (a) have access during reasonable business hours;

154 (b) inspect the facilities and any lighters located at the facilities; and

155 (c) inspect all business records pertaining to lighter import, distribution, sale, or
156 storage.

157 (2) A person engaged in this state in the business of importing, distributing, selling, or
158 storing lighters shall grant the state fire marshal, a representative of the state fire marshal, or a

159 local fire enforcement official reasonable access for conducting inspections under Subsection
160 (1).

161 Section 6. Section **53-7-506** is enacted to read:

162 **53-7-506. Attorney general may bring action at request of the state fire marshal.**

163 The state attorney general may bring an action at the request of the state fire marshal,
164 in the name of the state, seeking:

165 (1) injunctive relief to prevent or end a violation of Section 53-7-504 or 53-7-505;

166 (2) to recover civil penalties imposed under Section 53-7-504;

167 (3) to obtain access for inspections under Section 53-7-505; or

168 (4) to recover attorney fees and other enforcement costs.

169 Section 7. **Effective date.**

170

This bill takes effect on July 1, 2010.