

Part 5 Regulation of Novelty Lighters

53-7-501 Title.

This part is known as "Regulation of Novelty Lighters."

Enacted by Chapter 376, 2010 General Session

53-7-502 Definitions.

As used in this part:

- (1) "Audio effect" includes music, animal sounds, whistles, buzzers, or other noises not pertinent to the flame-producing function of the lighter.
- (2)
 - (a) "Distribute" means to:
 - (i) deliver to a person other than the purchaser; or
 - (ii) provide as part of a commercial promotion or as a prize or premium.
 - (b) "Distribute" does not include providing as a personal gift.
- (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:
 - (a) for the purpose of selling or distributing the lighter within this state; or
 - (b) with the result that the lighter is sold or distributed within this state.
- (4) "Lighter" means a handheld mechanical device of a type typically used for igniting tobacco products by use of a flame.
- (5) "Misleading design" means a lighter that:
 - (a) has a shape that resembles or imitates an object other than a lighter;
 - (b) may have one or more audio or visual effects; and
 - (c) has other features of a type that would reasonably be expected to make the lighter appealing or attractive to a child younger than 10 years of age.
- (6) "Novelty lighter":
 - (a) means a lighter that has:
 - (i) a misleading design; and
 - (ii) operates on any fuel, including butane or liquid fuel;
 - (b) does not mean:
 - (i) a lighter manufactured before January 1, 1980;
 - (ii) a lighter that has been rendered permanently incapable of producing a flame or otherwise causing combustion; or
 - (iii) a mechanical device primarily used to ignite fuel for fireplaces, or for charcoal or gas grills.
- (7) "Sell" means to provide or promise to provide a product to a wholesale, retail, mail-order, or other purchaser in exchange for consideration.
- (8) "Visual effect":
 - (a) includes flashing lights, color-changing lights, or changing images; and
 - (b) does not include logos, decals, decorative artwork, or heat-shrinkable sleeves.

Enacted by Chapter 376, 2010 General Session

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

- (1) The Utah Fire Prevention Board, created in Section 53-7-203, may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
 - (a) identify lighters or classes or types of lighters that are novelty lighters; and
 - (b) provide for an informal adjudicative hearing, as provided in Section 63G-4-203, by the board to hear appeals of decisions of the State Fire Marshal Division under this part.
- (2)
 - (a) The state fire marshal shall establish and maintain a list of lighters, or classes and types of lighters, that the state fire marshal has determined to be novelty lighters under this part.
 - (b) The state fire marshal shall make the list available on the website maintained by the Department of Public Safety.
- (3) A lighter is a contraband item subject to seizure and destruction by the state fire marshal, a representative of the state fire marshal, a local fire enforcement official, or by a law enforcement agency, if the lighter is:
 - (a) listed, or of a class or type listed, by the state fire marshal as a novelty lighter; and
 - (b) offered for sale, sold, or distributed in this state.
- (4)
 - (a) The state fire marshal, a representative of the state fire marshal, a local fire enforcement official, or a law enforcement agency may seize a novelty lighter that is not described in Subsection (3).
 - (b) Upon finding that the person from whom the novelty lighter was seized is subject to a civil penalty under Section 53-7-504 for being an importer, wholesaler, seller, or distributor of the novelty lighter, the state fire marshal or a representative may order that the novelty lighter be forfeited and destroyed.

Enacted by Chapter 376, 2010 General Session

53-7-504 Offenses -- Civil penalties -- Penalty money to be deposited into the Fire Prevention Support Account.

- (1)
 - (a) A person may not sell, offer for sale, or distribute a novelty lighter in this state.
 - (b) A person may not import a novelty lighter into this state for the purpose of selling or distributing the novelty lighter within this state.
 - (c) A person may not possess a novelty lighter in inventory for the purpose of selling or distributing the novelty lighter within this state.
- (2)
 - (a) The state fire marshal may assess a civil penalty against a person who violates Subsection (1) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
 - (b) The civil penalty for a violation of Subsection (1) may not exceed:
 - (i) \$10,000 for the importation of novelty lighters;
 - (ii) \$1,000 if the person acts as a wholesaler of novelty lighters or distributes novelty lighters by means other than distribution directly to consumers; and
 - (iii) \$500 if the person is:
 - (A) a retail seller of novelty lighters; or
 - (B) a person distributing novelty lighters, other than as 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 a violation, each day that the violation continues after written notice is given is a separate offense subject to a civil penalty.

- (4)
- (a) For purposes of imposing civil penalties, it is prima facie evidence that a lighter is a novelty lighter if the lighter is listed by the state fire marshal as a novelty lighter under Section 53-7-503, or is of a class or type of lighter listed by the state fire marshal as a novelty lighter.
 - (b) Listing by the state fire marshal is not a requirement for a determination that a lighter is a novelty lighter.
- (5) All money collected from civil penalties under this section shall be deposited into the Fire Prevention Support Account created in Section 53-7-204.2.
- (6) A person may seek judicial review of a final agency action under this part as provided in Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 403, 2020 General Session

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

- (1) The state fire marshal, a representative of the state fire marshal, or a local fire enforcement official may conduct inspections to ensure compliance with Section 53-7-504. The state fire marshal, a representative of the state fire marshal, or a local fire enforcement official may, regarding facilities within this state used in the business of importing, distributing, selling, or storing of lighters:
- (a) have access during reasonable business hours;
 - (b) inspect the facilities and any lighters located at the facilities; and
 - (c) inspect all business records pertaining to lighter import, distribution, sale, or storage.
- (2) A person engaged in this state in the business of importing, distributing, selling, or storing lighters shall grant the state fire marshal, a representative of the state fire marshal, or a local fire enforcement official reasonable access for conducting inspections under Subsection (1).

Enacted by Chapter 376, 2010 General Session

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

The state 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 53-7-504 or 53-7-505;
- (2) to recover civil penalties imposed under Section 53-7-504;
- (3) to obtain access for inspections under Section 53-7-505; or
- (4) to recover attorney fees and other enforcement costs.

Enacted by Chapter 376, 2010 General Session