

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 417 Novelty Lighters

SPONSOR(S): Plakon and others

TIED BILLS: IDEN./SIM. BILLS: SB 806

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	7 Y, 0 N, As CS	Krol	Kramer
2)	Insurance, Business & Financial Affairs Policy Committee	19 Y, 0 N	Tanner	Cooper
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

CS/HB 417 makes it a second degree misdemeanor to sell at retail, give away, or distribute novelty lighters.

This bill provides a definition for the term novelty lighter as a mechanical device that uses a flammable gas or liquid or an electrical current to commonly ignite cigarettes, cigars, or pipes and resembles a:

- Cartoon character,
- Animal,
- Toy,
- Gun,
- Watch,
- Musical instrument,
- Vehicle, or
- An item that plays sounds or musical notes or displays flashing lights or other visual effects.

This bill exempts lighters that were manufactured before January 1, 1980 and also provides that a second offense will be a first degree misdemeanor.

The bill has no fiscal impact to state or local government.

This bill provides an effective date of July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

The federal Consumer Product Safety Commission sets standards for cigarette lighters.<sup>1</sup> The relevant federal regulation defines the term "novelty lighter" as "a lighter that has entertaining audio or visual effects, or that depicts (logos, decals, art work, etc.) or resembles in physical form or function articles commonly recognized as appealing to or intended for use by children under 5 years of age. This includes, but is not limited to, lighters that depict or resemble cartoon characters, toys, guns, watches, musical instruments, vehicles, toy animals, food or beverages, or that play musical notes or have flashing lights or other entertaining features. A novelty lighter may operate on any fuel, including butane or liquid fuel."<sup>2</sup>

The federal regulation specifies that novelty lighters must be child resistant. In order to establish this, each lighter is put through a test panel of children aged 42-51 months (3.25 to 4.25 years of age).<sup>3</sup> A lighter that is identical to the lighter being tested but produces no flame, only a click to signify activation,<sup>4</sup> is presented to a panel of 100 children for testing. A novelty lighter is considered child resistant when 85% of a panel cannot successfully operate the lighter.<sup>5</sup>

While data is available on fires started with lighters, there is currently no data available on fires started with novelty lighters. Starting January 1, 2008, the United States Fire Administration's National Fire

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<sup>1</sup> 16 C.F.R. 1210 (Safety Standard for Cigarette Lighters).

<sup>2</sup> 16 C.F.R. 1210.2(d).

<sup>3</sup> 16 C.F.R. 1210.4(a).

<sup>4</sup> Surrogate lighter defined in 16 C.F.R. 12.02(f).

<sup>5</sup> 16 C.F.R. 1210.4(h).

Incident Reporting System will collect information specifically on novelty lighters to replace the more general term of "cigarette or cigar lighter."

Ordinances in various cities and state laws in Tennessee<sup>6</sup> and Maine<sup>7</sup> prohibit the sale and distribution of novelty lighters.

Currently there is no law in the state of Florida that prohibits the sale or distribution of novelty lighters.

### **Effect of Bill**

This bill would create a second degree misdemeanor penalty<sup>8</sup> for anyone who sells at retail, gives away, or distributes novelty lighters to the public in the state of Florida.

This bill provides a definition for the term novelty lighter as a mechanical device that uses a flammable gas or liquid or an electrical current to commonly ignite cigarettes, cigars, or pipes and resembles a:

- Cartoon character,
- Animal,
- Toy,
- Gun,
- Watch,
- Musical instrument,
- Vehicle, or
- An item that plays sounds or musical notes or displays flashing lights or other visual effects.

This bill exempts lighters that were manufactured before January 1, 1980. The exemption date of January 1, 1980 was apparently selected based upon an estimation that lighters sold prior to that had certain collectable value.<sup>9</sup>

This bill also provides that a second offense is punishable by a first degree misdemeanor.<sup>10</sup>

#### **B. SECTION DIRECTORY:**

Section 1. Creates unnumbered section of statute, defines novelty lighter and creates penalties for the sale and distribution of novelty lighters.

Section 2. Provides an effective date of July 1, 2009.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

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<sup>6</sup> Title 47 Chapter 18 T.C.A. §47-18-129.

<sup>7</sup> Title 25 Chapter 317 M.R.S. §2467.

<sup>8</sup> A second degree misdemeanor is punishable by up to 60 days in a jail and a \$500 fine, ss. 775.082 and 775.083, F.S.

<sup>9</sup> Telephone conversation with Karen Suhr, Government Relations, National Association of State Fire Marshalls (March 18, 2009).

<sup>10</sup> A first degree misdemeanor is punishable by up to a year in a jail and a \$1000 fine, ss. 775.082 and 775.083, F.S.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill creates a second degree misdemeanor offense relating to selling or giving away a novelty lighter. This may have a county jail impact.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill will affect businesses that sell or distribute novelty lighters.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 6, 2009, the Public Safety & Domestic Security Policy Committee adopted an amendment that amends the bill as follows:

- Removes language that defines a novelty lighter as an item that is typically appealing to or intended to be used by children 10 years or younger;
- Removes language that defines a novelty lighter as resembling food or beverage; and
- Removes the exemption for lighters that are considered collectibles.