

SENATE BILL REPORT

ESSB 5011

As Amended by House, April 6, 2009

Title: An act relating to fire safety standards for novelty lighters.

Brief Description: Prohibiting the sale or distribution of certain novelty lighters.

Sponsors: Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Kauffman, Kohl-Welles, Kline and Keiser).

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/26/09, 2/16/09 [DPS].

Passed Senate: 3/03/09, 43-3; 3/04/09, 46-2.

Passed House: 4/06/09, 85-8.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 5011 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Holmquist, Ranking Minority Member; Franklin, Honeyford, King and Kline.

Staff: Ingrid Mungia (786-7423)

Background: The Office of the State Fire Marshal, Fire Protection Bureau (Bureau) is within the Washington State Patrol and provides various services to fire districts, government agencies, and the public. Examples of these services include coordination of the state fire service resources for mobilization during disasters, fire incident reporting and data collection, fire code review and adoption, and construction plan reviews for fire sprinkler and alarm systems. The Bureau also regulates the fireworks and sprinkler industries. In addition, the Bureau provides high-risk fire training to fire departments and fire protection districts, hazardous materials training, and fire prevention education.

Summary of Engrossed Substitute Bill: The sale and distribution of novelty lighters is prohibited. Wholesalers and retailers may continue to sell existing inventory for 90 days after this prohibition goes into effect.

A novelty lighter has features that are attractive to children including visual effects, flashing lights, musical sounds, and toy-like designs. A novelty lighter is not a disposable lighter that

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is printed or decorated with logos, decals, artwork, or heat shrinkable sleeves. In determining whether a lighter can be considered a novelty lighter, the State Director of Fire Protection (Director) must consider the shape of the lighter as the most important characteristic.

The Director may enter into cooperative agreements with state or local agencies to act as authorized representatives of the Director for purposes of enforcement. These provisions do not apply to novelty lighters in interstate commerce that are not intended for distribution in the state.

Several provisions are included for the enforcement of the prohibition. The Director may impose a civil penalty that may not exceed:

- for a wholesale dealer, a written warning for the first violation and \$500 for each subsequent violation; and
- for a retail dealer, a written warning for the first violation and \$250 for each subsequent violation.

At the request of the Director, the Attorney General may bring an action seeking:

- injunctive relief to prevent or end a violation;
- to recover civil penalties; or
- to recover attorneys' fees and other enforcement costs.

A district court has jurisdiction to enforce the penalty provisions.

The Novelty Lighter Fire Safety Account (Account) is created in the custody of the State Treasurer. Receipts from the imposition of civil penalties must be deposited to the Account or an account designated by the local agency. Expenditures from the Account may be used only for fire safety, enforcement, and prevention programs. Only the Director or the Director's designee may authorize expenditures from the Account.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is one of the fire chiefs' top priorities. This is about lighters that are shaped liked toys. These are lighters that have regular lighter fuel and butane. Children will think these are toys and this could cause potential dangers. It is predictable that children will start fires with novelty lighters. We want this to be a state-wide ban with enforcement at the local level. The fire chiefs have no problem removing the "etc." in the definition of novelty lighters in the bill. In 2006 Yakima instituted a ban on novelty lighters. Many retailers in Yakima don't want to sell novelty lighters and didn't understand why manufacturers would want to make lighters to look like toys. Currently, ten states are talking about similar bans. The Neighborhood Stores Association supports the initiative to ban these lighters. However, they would like to see a cleaner definition of novelty lighters in the bill. The industry would also be interested in the enforcement

authority being housed with the Liquor Control Board and a 90-days grace period to get rid of inventory so the stores don't have to absorb the cost.

Persons Testifying: PRO: Senator Kauffman, prime sponsor; Mike Brown, Washington Fire Chiefs; Ron Melcher, Yakima Fire Department; Gary Aleshire, Snohomish Fire District 1; T.K. Bentler, Washington Association of Neighborhood Stores.

House Amendment(s): Defines "authority having jurisdiction" as the local organization, office, or individual responsible for enforcing the requirements of the State Fire Code. Clarifies that the definition of "retail dealer" means an entity at a single location. Removes the director of fire protection's authority to enforce the prohibition and to enter into cooperative enforcement agreements with local governments. Authorizes the authority having jurisdiction to enforce the prohibition and impose civil penalties. Eliminates the Novelty Lighter Fire Safety Account. Requires that penalties be deposited in an appropriate account designated by the authority having jurisdiction.