

By Representative Fasano

1 A bill to be entitled
2 An act relating to sale of fireworks; amending
3 s. 791.001, F.S.; specifying enforcement
4 authority; amending s. 791.01, F.S.; revising
5 definitions; amending s. 791.012, F.S.;
6 correcting a cross reference; amending s.
7 791.013, F.S.; increasing criminal penalties
8 for certain violations; amending s. 791.015,
9 F.S.; revising registration requirements for
10 manufacturers, distributors, and wholesalers of
11 sparklers or fireworks; requiring certain fees;
12 creating ss. 791.016, 791.017, 791.018, and
13 791.019, F.S.; providing procedures for cease
14 and desist orders; providing for administrative
15 fines; specifying grounds for suspension or
16 revocation of registration; providing for
17 duration of suspension or revocation; amending
18 s. 791.02, F.S.; prohibiting sale or delivery
19 of sparklers or fireworks to certain persons;
20 creating s. 791.021, F.S.; prohibiting sale or
21 solicitation to sell sparklers under certain
22 circumstances; providing responsibilities of
23 manufacturers, distributors, wholesalers, and
24 retailers; amending s. 791.04, F.S.;
25 authorizing the sale at wholesale of fireworks
26 under certain circumstances; providing
27 requirements; authorizing sales of fireworks
28 for certain public display purposes under
29 certain circumstances; creating s. 791.041,
30 F.S.; prohibiting sale or solicitation to sell
31 fireworks under certain circumstances;

1 requiring maintenance of records and sales of
2 fireworks; providing requirements; providing
3 responsibilities of manufacturers,
4 distributors, wholesalers, and retailers;
5 amending s. 791.05, F.S.; providing for
6 seizure, forfeiture, and disposal of certain
7 fireworks and sparklers under certain
8 circumstances; providing procedures; providing
9 requirements; authorizing assessments to cover
10 certain costs; amending s. 791.055, F.S.;
11 specifying a rule governing the storage of
12 sparklers or fireworks; amending s. 791.06,
13 F.S.; increasing criminal penalties for certain
14 violations; creating ss. 791.061 and 791.062,
15 F.S.; providing for injunctive relief for
16 certain violations; protecting certain
17 municipal and county ordinances, rules, and
18 regulations; amending s. 791.07, F.S.;
19 providing for use of fireworks in certain
20 agricultural works or fisheries operations;
21 providing requirements; providing procedures;
22 providing a penalty; providing an effective
23 date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Section 791.001, Florida Statutes, is
28 amended to read:

29 791.001 Application and enforcement.--This chapter
30 shall be applied uniformly throughout the state. The State
31 Fire Marshal or designated agent under his authority, any

1 sheriff or deputy sheriff, any other law enforcement agency or
2 official, or any certified fire inspector, charged with the
3 enforcement of the laws of the state, shall have jurisdiction
4 to enforce the provisions of this chapter.~~Enforcement of this~~
5 ~~chapter shall remain with local law enforcement departments~~
6 ~~and officials charged with the enforcement of the laws of the~~
7 ~~state.~~

8 Section 2. Section 791.01, Florida Statutes, is
9 amended to read:

10 791.01 Definitions.--As used in this chapter, the
11 term:

12 (1) "Authority having jurisdiction" means a federal,
13 state, local, or other regional department or individual,
14 including, but not limited to, a fire chief, fire marshal,
15 chief of a fire prevention bureau, law enforcement official,
16 building official, or any other person having statutory
17 authority.

18 (2)~~(1)~~ "Distributor of sparklers" means any person or
19 organization engaged in the business of selling sparklers to a
20 wholesaler.

21 (3) "Distributor of fireworks" means any person or
22 organization engaged in the business of selling fireworks.

23 (4)~~(2)~~ "Division" means the Division of the State Fire
24 Marshal of the Department of Insurance.

25 (5)~~(3)~~ "Explosive compound" means any chemical
26 compound, mixture, or device the primary or common purpose of
27 which is to function by the substantially instantaneous
28 release of gas and heat.

29 (6)~~(4)~~ (a) "Fireworks" means and includes any
30 combustible or explosive composition or substance or
31 combination of substances or, except as hereinafter provided,

1 any article prepared for the purpose of producing a visible or
2 audible effect by combustion, explosion, deflagration, or
3 detonation. The term includes blank cartridges and toy
4 cannons in which explosives are used, the type of balloons
5 which require fire underneath to propel them, firecrackers,
6 torpedoes, skyrockets, roman candles, dago bombs, and any
7 fireworks containing any explosives or flammable compound or
8 any tablets or other device containing any explosive
9 substance.

10 (b) "Fireworks" does not include sparklers approved by
11 the division pursuant to s. 791.013; toy pistols, toy canes,
12 toy guns, or other devices in which paper caps containing
13 twenty-five hundredths grains or less of explosive compound
14 are used, providing they are so constructed that the hand
15 cannot come in contact with the cap when in place for the
16 explosion; and toy pistol paper caps which contain less than
17 twenty hundredths grains of explosive mixture, the sale and
18 use of which shall be permitted at all times.

19 (c) "Fireworks" also does not include the following
20 novelties and trick noisemakers:

21 1. A snake or glow worm, which is a pressed pellet of
22 not more than 10 grams of pyrotechnic composition that
23 produces a large, snakelike ash which expands in length as the
24 pellet burns and that does not contain mercuric thiocyanate.

25 2. A smoke device, which is a tube or sphere
26 containing not more than 10 grams of pyrotechnic composition
27 that, upon burning, produces white or colored smoke as the
28 primary effect.

29 3. A trick noisemaker, which is a device that produces
30 a small report intended to surprise the user and which
31 includes:

- 1 a. A party popper, which is a small plastic or paper
2 device containing not more than 16 milligrams of explosive
3 composition that is friction sensitive, which is ignited by
4 pulling a string protruding from the device, and which expels
5 a paper streamer and produces a small report.
- 6 b. A booby trap, which is a small tube with a string
7 protruding from both ends containing not more than 16
8 milligrams of explosive compound, which is ignited by pulling
9 the ends of the string, and which produces a small report.
- 10 c. A snapper, which is a small, paper-wrapped device
11 containing not more than four milligrams of explosive
12 composition coated on small bits of sand, and which, when
13 dropped, explodes, producing a small report. A snapper may
14 not contain more than 250 milligrams of total sand and
15 explosive composition.
- 16 d. A trick match, which is a kitchen or book match
17 which is coated with not more than 16 milligrams of explosive
18 or pyrotechnic composition and which, upon ignition, produces
19 a small report or shower of sparks.
- 20 e. A cigarette load, which is a small wooden peg that
21 has been coated with not more than 16 milligrams of explosive
22 composition and which produces, upon ignition of a cigarette
23 containing one of the pegs, a small report.
- 24 f. An auto burglar alarm, which is a tube which
25 contains not more than 10 grams of pyrotechnic composition
26 that produces a loud whistle or smoke when ignited and which
27 is ignited by use of a squib. A small quantity of explosive,
28 not exceeding 50 milligrams, may also be used to produce a
29 small report.
30
31

1 The sale and use of items listed in this paragraph are
2 permitted at all times.

3 (7) "Fixed location" means a permanent building or any
4 other structure for which a certificate of occupancy or
5 similar permit has been issued. A fixed location does not
6 include any type of tent or motorized or movable apparatus,
7 including, but not limited to, cars, trucks, and trailers.

8 (8)(5) "Manufacturer of sparklers" means any person or
9 organization engaged in the manufacture or construction of
10 sparklers in this state.

11 (9) "Manufacturer of fireworks" means any person or
12 organization engaged in the manufacture or construction of
13 fireworks in this state.

14 (10)(6) "Retailer" means any person who, at a fixed
15 location ~~place of business~~, is engaged in selling sparklers to
16 consumers at retail.

17 (11)(7) "Seasonal retailer" means any person engaged
18 in the business of selling sparklers at retail in this state
19 from June 20 through July 5 and from December 10 through
20 January 2 of each year.

21 (12)(8) "Sparkler" means a device which emits showers
22 of sparks upon burning, does not contain any explosive
23 compounds, does not detonate or explode, is hand held or
24 ground based, cannot propel itself through the air, and
25 contains not more than 100 grams of the chemical compound
26 which produces sparks upon burning. Any sparkler that is not
27 approved by the division is classified as fireworks.

28 (13)(9) "Wholesaler of sparklers" means any person or
29 organization engaged in the business of selling sparklers to a
30 retailer.

31

1 (14) "Wholesaler of fireworks" means any person or
2 organization engaged in the business of selling fireworks to a
3 wholesaler, distributor, or manufacturer registered under
4 chapter 791 or for agricultural or public display purposes.

5 Section 3. Section 791.012, Florida Statutes, 1996
6 Supplement, is amended to read:

7 791.012 Minimum fireworks safety standards.--The
8 outdoor display of fireworks in this state shall be governed
9 by the National Fire Protection Association (NFPA) 1123, Code
10 for Fireworks Display, 1995 Edition, approved by the American
11 National Standards Institute. Any state, county, or municipal
12 law, rule, or ordinance may provide for more stringent
13 regulations for the outdoor display of fireworks, but in no
14 event may any such law, rule, or ordinance provide for less
15 stringent regulations for the outdoor display of fireworks.
16 The division shall promulgate rules to carry out the
17 provisions of this section. The Code for Fireworks Display
18 shall not govern the display of any fireworks on private,
19 residential property and shall not govern the display of those
20 items included under s. 791.01(6)~~(4)~~(b) and (c) and authorized
21 for sale thereunder.

22 Section 4. Subsection (2) of section 791.013, Florida
23 Statutes, is amended to read:

24 791.013 Testing and approval of sparklers;
25 penalties.--

26 (2) Any person who alters an approved sparkler
27 product, so that it is no longer a sparkler as defined in s.
28 791.01, and subsequently sells the product as if it were
29 approved commits ~~is guilty of a felony misdemeanor~~ of the
30 third ~~first~~ degree, punishable as provided in s. 775.082 or s.
31 775.083. Any person who fraudulently represents a device as

1 approved for sale as a sparkler product when it is not so
2 approved commits ~~is guilty of a felony misdemeanor~~ of the
3 third first degree, punishable as provided in s. 775.082 or s.
4 775.083.

5 Section 5. Section 791.015, Florida Statutes, is
6 amended to read:

7 791.015 Registration of manufacturers, distributors,
8 wholesalers, and retailers of sparklers or fireworks--

9 (1) REGISTRATION REQUIREMENTS.--It is unlawful for any
10 organization or individual to engage in the business of
11 manufacturing, distributing, or selling at wholesale or retail
12 any firework or sparkler except as provided in this chapter.
13 Any manufacturer, distributor, or wholesaler of sparklers or
14 fireworks and any,retailer,or seasonal retailer of sparklers
15 who wishes to do business in this state or to otherwise sell,
16 ship, or assign for sale its products in this state must
17 register annually with the division on forms prescribed by the
18 division. A manufacturer, distributor, wholesaler, retailer,
19 or seasonal retailer must submit a separate registration form
20 and fee for each location at which sparklers will be sold. A
21 manufacturer, distributor, or wholesaler who wishes to engage
22 in the business of selling fireworks to the extent allowed
23 herein must submit a separate registration form and fee for
24 each location at which fireworks will be manufactured or sold.
25 Wholesale and retail sales shall not be conducted at the same
26 location and at no time shall the sale of fireworks be
27 conducted in the same location at which sparklers are sold.
28 Registration certificates issued by the division shall be
29 displayed on the premises and made available for immediate
30 inspection by the authority having jurisdiction. A person may
31 not alter, deface, or copy a certificate of registration. Any

1 ~~retailer who sells sparklers at more than one retail location~~
2 ~~may submit one registration form for all such locations but~~
3 ~~must provide the address of each location with the~~
4 ~~registration form; however, any retailer may submit multiple~~
5 ~~registration forms.~~

6 (2) REGISTRATION FORM.--The registration form filed
7 with the division must be notarized and must include the
8 following information: name of the individual if the
9 registration certificate is to be held in an individual
10 capacity;business name; address; telephone number; officers,
11 if the business is a corporation; and an individual designated
12 as a contact person. A firm or individual registering as a
13 manufacturer, distributor, wholesaler, retailer, or seasonal
14 retailer of sparklers shall not use the word "fireworks" as a
15 part of the business name or advertise the sale of fireworks.
16 The registration form shall be accompanied by evidence of
17 registration with the Department of Revenue pursuant to
18 chapter 212.

19 (3) FEES.--

20 (a) Each manufacturer, distributor, or wholesaler must
21 pay an annual registration fee of to be set by the division
22 ~~not to exceed~~ \$1,000. Each seasonal retailer must pay an
23 annual registration fee of to be set by the division not to
24 ~~exceed~~ \$200. Each retailer shall pay an annual registration
25 fee of to be set by the division not to exceed \$15 for each
26 retail location registered. Each certificateholder wishing to
27 have a duplicate certificate issued for one which is lost or
28 to reflect a change of mailing address shall request such
29 duplicate in writing and shall pay a fee of \$5. No duplicate
30 certificate shall be issued to reflect a change in business
31 location.

1 (b) Revenue from registration fee payments shall be
2 deposited in the Insurance Commissioner's Regulatory Trust
3 Fund for the purposes of implementing the registration and
4 testing provisions of this chapter.

5 Section 6. Sections 791.016, 791.017, 791.018, and
6 791.019, Florida Statutes, are created to read:

7 791.016 Procedures for cease and desist orders;
8 administrative fine.--

9 (1) Whenever the division believes any person is or
10 has been violating the provisions of this chapter or any rules
11 adopted pursuant to this chapter, the division shall proceed
12 to determine the matter.

13 (2) If the division determines the existence of any
14 violations of the provisions of this chapter, or rules adopted
15 pursuant to this chapter, the division shall issue to a person
16 charged with the violation an order requiring such person to
17 cease and desist from such violation or imposing an
18 administrative fine, or both.

19 (3) The provisions of this section shall be enforced
20 pursuant to chapter 120.

21 791.017 Administrative fines.--

22 (1) If any person violates any provision of this
23 chapter or any rule adopted pursuant to this chapter, or
24 violates a cease and desist order, the division may impose an
25 administrative fine, not to exceed \$1,000 for each violation,
26 or suspend or revoke the certificate of registration issued to
27 such person. The division may allow the certificateholder a
28 reasonable time, not to exceed 30 days, to pay the penalty in
29 its entirety to the division. If the certificateholder fails
30 to pay the penalty in its entirety within the period allowed,
31

1 the division shall revoke any certificates held by such
2 person.

3 791.018 Grounds for suspension or revocation of
4 registration certificate for manufacturers, distributors,
5 wholesalers, or retailers.--The division may suspend or revoke
6 the registration certificate of any manufacturer, distributor,
7 wholesaler, or retailer for any:

8 (1) Material misstatement, misrepresentation, or fraud
9 in obtaining a registration certificate or in attempting to
10 obtain a registration certificate.

11 (2) Willful use or intent to use a registration
12 certificate to circumvent any requirement or prohibition of
13 this chapter.

14 (3) Fraudulent or dishonest practice in the conduct of
15 business under the authority of a registration certificate.

16 (4) Failure to comply with any order or rule of the
17 division.

18 (5) Violation of any provision of this chapter.

19
20 The provisions of this section shall be enforced pursuant to
21 chapter 120.

22 791.019 Duration of suspension or revocation.--

23 (1) The division shall, in an order suspending the
24 registration certificate of an individual, firm, partnership,
25 association, group, or corporation, specify the period during
26 which the suspension is to be effective, not to exceed 2
27 years. The registration certificate shall remain suspended
28 during the period specified, subject to any rescission or
29 modification of the order by the division or modification or
30 reversal of the order by a court prior to expiration of the
31 suspension period. A registration certificate which has been

1 suspended shall not be reinstated except upon request for such
2 reinstatement. The division shall not grant such
3 reinstatement if the division finds any circumstance for which
4 the registration certificate was suspended or revoked still
5 exists or is likely to recur.

6 (2) No person, firm, partnership, association, group,
7 or corporation under any registration certificate revoked by
8 the division may apply for another registration certificate
9 under this chapter within 2 years after the effective date of
10 such revocation or, if judicial review of such revocation is
11 sought, within 2 years after the date of final court order or
12 decree affirming the revocation order.

13 (3) In no event shall the division issue a
14 registration certificate to an individual, firm, partnership,
15 association, group, or corporation if a registration
16 certificate of such individual, firm, partnership,
17 association, group, or corporation has been revoked at two
18 separate times.

19 (4) During the period of suspension, or after
20 revocation of the registration certificate, the former
21 certificateholder shall not engage in or attempt or profess to
22 engage in any transaction or business for which a registration
23 certificate is required by this chapter.

24 Section 7. Section 791.02, Florida Statutes, is
25 amended to read:

26 791.02 Sale of fireworks or sparklers regulated; rules
27 and regulations.--

28 (1) Except as hereinafter provided it is unlawful for
29 any person, firm, copartnership, or corporation to offer for
30 sale, expose for sale, sell at retail, ~~or~~ use, possess, or
31 explode any fireworks; provided that the board of county

1 commissioners shall have power to adopt reasonable rules and
2 regulations for the granting of permits for supervised public
3 display of fireworks by fair associations, amusement parks,
4 and other organizations or groups of individuals when such
5 public display is to take place outside of any municipality;
6 provided, further, that the governing body of any municipality
7 shall have power to adopt reasonable rules and regulations for
8 the granting of permits for supervised public display of
9 fireworks within the boundaries of any municipality. Every
10 such display shall be handled by a competent operator to be
11 approved by the chiefs of the police and fire departments of
12 the municipality or county in which the display is to be held,
13 and shall be of such a character, and so located, discharged,
14 or fired as in the opinion of the chief of the fire
15 department, after proper inspection, shall not be hazardous to
16 property or endanger any person. Application for permits
17 shall be made in writing at least 15 days in advance of the
18 date of the display. If the local authority having
19 jurisdiction does not have a permit process for the public
20 display of fireworks, application shall be made to the State
21 Fire Marshal.After such privilege shall have been granted,
22 sales, possession, use, and distribution of fireworks for such
23 display shall be lawful for that purpose only. No permit
24 granted hereunder shall be transferable. All public display of
25 fireworks shall be conducted in compliance with s. 791.012.

26 (2) A sparkler or other product authorized for sale
27 under this chapter may not be sold or shipped to a person
28 under the age of 18 years of age.A sparkler or other product
29 authorized for sale under this chapter may not be sold by a
30 retailer or seasonal retailer unless the product was obtained
31 from a manufacturer, distributor, or wholesaler registered

1 with the division pursuant to s. 791.015. Each retailer and
2 seasonal retailer shall keep, at every location where
3 sparklers are sold, a copy of an invoice or other evidence of
4 purchase from the manufacturer, distributor, or wholesaler,
5 which states the registration certificate number for the
6 particular manufacturer, distributor, or wholesaler and the
7 specific items covered by the invoice. Each seasonal retailer
8 shall, in addition, exhibit a copy of his registration
9 certificate at each retail or seasonal retail location.
10 Seasonal retail sales shall not be made from any type of
11 motorized or movable apparatus. Seasonal retail sales may be
12 made from tents which meet all applicable codes and fire
13 regulations.

14 Section 8. Section 791.021, Florida Statutes, is
15 created to read:

16 791.021 Prohibition; responsibilities; inspections.--

17 (1) It is unlawful for any manufacturer, distributor,
18 wholesaler, retailer, or seasonal retailer to purchase, sell,
19 or solicit to sell sparklers except in conformance with this
20 chapter.

21 (2) It is the responsibility of the manufacturer,
22 distributor, or wholesaler to determine if the purchaser is
23 registered with the division.

24 (3) It is the responsibility of the retailer or
25 seasonal retailer of sparklers to determine if a purchaser is
26 at least 18 years of age, evidenced by the purchaser
27 presenting a valid driver's license or a valid state
28 identification card issued by the Department of Highway and
29 Motor Vehicles.

30 Section 9. Section 791.04, Florida Statutes, is
31 amended to read:

1 791.04 Sale at wholesale, etc., exempted.--
2 (1) ~~Nothing in this chapter shall be construed to~~
3 ~~prohibit~~ Any manufacturer, distributor, or wholesaler of of
4 fireworks who has registered with the division pursuant to s.
5 791.015 may ~~to~~ sell at wholesale any such fireworks, which as
6 are not herein prohibited, to any manufacturer, distributor,
7 or wholesaler of fireworks who has registered with the
8 division and holds a current certificate of registration,
9 provided the fireworks are immediately shipped or transported
10 by the purchasing manufacturer, distributor, or wholesaler
11 directly out of state. Transport must be by a bonded
12 commercial carrier or by a person employed by the
13 manufacturer, distributor, or wholesaler of fireworks.
14 Transport must be accompanied by an invoice or bill of lading
15 identifying the manufacturer, distributor, or wholesaler of
16 fireworks with the current certificate of registration number
17 on the invoice or bill of lading and an itemized list of the
18 contents of the shipment ~~prohibit the sale of any kind of~~
19 ~~fireworks at wholesale between manufacturers, distributors,~~
20 ~~and wholesalers who have registered with the division pursuant~~
21 ~~to s. 791.015; to prohibit the sale of any kind of fireworks~~
22 ~~provided the same are to be shipped directly out of state by~~
23 ~~such manufacturer, distributor, or wholesaler; to prohibit the~~
24 ~~sale of fireworks to be used by a person holding a permit from~~
25 ~~any board of county commissioners at the display covered by~~
26 ~~such permit; or to prohibit the use of fireworks by railroads~~
27 ~~or other transportation agencies for signal purposes or~~
28 ~~illumination or when used in quarrying or for blasting or~~
29 ~~other industrial use, or the sale or use of blank cartridges~~
30 ~~for a show or theater, or for signal or ceremonial purposes in~~
31 ~~athletics or sports, or for use by military organizations, or~~

1 ~~organizations composed of the Armed Forces of the United~~
2 ~~States; provided, nothing in this chapter shall be construed~~
3 ~~as barring the operations of manufacturers, duly licensed,~~
4 ~~from manufacturing, experimenting, exploding, and storing such~~
5 ~~fireworks in their compounds or proving grounds.~~

6 (2) Fireworks may be sold to a person, holding a
7 public display permit issued by the authority having
8 jurisdiction, for the purpose of conducting a public display
9 of fireworks in compliance with s. 791.012.

10 Section 10. Section 791.041, Florida Statutes, is
11 created to read:

12 791.041 Prohibitions; maintenance of records and sales
13 of fireworks by manufacturers, distributors, or wholesalers;
14 responsibilities; inspections.--

15 (1) It is unlawful for any manufacturer, distributor,
16 or wholesaler to purchase, sell, or solicit to sell fireworks
17 except in conformance with this chapter.

18 (2) It is unlawful for any person to knowingly
19 withhold information or make any false or fictitious entry or
20 misrepresentation upon any sales invoice, sales ticket, or
21 account of inventories.

22 (3) Each sale or transaction shall be evidenced by an
23 invoice or sales ticket which shall bear the name, address,
24 and certificate of registration number of the purchaser, or in
25 the case of sales conducted for public display, a copy of the
26 permit issued by the authority having jurisdiction, the date
27 of the sale, the products sold, and the quantity sold. All
28 invoices and sales tickets shall be maintained by the
29 manufacturer, distributor, or wholesaler of fireworks, and a
30 copy shall be provided to the purchaser.

31

1 (4) Such records shall be maintained for a period of 5
2 years, subject to examination by the division or any official
3 of this state with statutory authority pursuant to s. 791.001.

4 (5) It is the responsibility of the manufacturer,
5 distributor, or wholesaler of fireworks to determine if a
6 purchaser is at least 18 years of age, evidenced by the
7 purchaser presenting a valid driver's license or a valid state
8 identification card issued by the Department of Highway Safety
9 and Motor Vehicles.

10 (6) It is the responsibility of the manufacturer,
11 distributor, or wholesaler of fireworks to determine, when
12 selling fireworks pursuant to s. 791.04, that the purchaser is
13 registered, pursuant to s. 791.015, evidenced by the purchaser
14 presenting a valid certificate of registration issued by the
15 division. If the purchase of fireworks is for public display,
16 the purchase shall be evidenced by the purchaser presenting a
17 public display permit issued by the authority having
18 jurisdiction. Agricultural purchases shall be in compliance
19 with s. 791.07.

20 Section 11. Section 791.05, Florida Statutes, is
21 amended to read:

22 791.05 Contraband; seizure, forfeiture, and disposal
23 of illegal fireworks.--

24 (1) All fireworks or sparklers controlled by this
25 chapter which are handled, delivered, possessed, manufactured,
26 or distributed contrary to any provision of this chapter, and
27 all such fireworks or sparklers the lawful possession of which
28 is not established or title to which cannot be ascertained,
29 are declared contraband and are subject to seizure and
30 confiscation by any person or law enforcement agency whose
31 duty it is to enforce the provisions of this chapter.

1 (2) The state attorney within whose jurisdiction any
2 such contraband has been seized, or any such attorney as may
3 be employed by a seizing law enforcement agency, shall
4 promptly proceed against the handler, deliverer, possessor,
5 manufacturer, or distributor of the contraband in the circuit
6 court within the jurisdiction in which the seizure or offense
7 occurred and may have such contraband forfeited to the law
8 enforcement agency making the seizure upon showing proof that
9 such contraband was being used or exists in violation of the
10 provisions of this chapter.

11 (3) Any contraband seized as evidence may be sample
12 tested and weighed by the seizing agency after the seizure.
13 Any such sample and analysis shall be admissible into evidence
14 in any civil or criminal action for the purpose of proving the
15 nature, composition, and weight of the fireworks. In addition,
16 the seizing agency may photograph or videotape, for use at
17 trial, the fireworks seized. Except for fireworks retained by
18 the seizing agency for sample testing, analysis, and evidence,
19 upon a final determination that the seized contraband was
20 being used or exists in violation of the provisions of this
21 chapter, the circuit court having jurisdiction shall order
22 such contraband forfeited and destroyed. The method of
23 destruction or disposal of such contraband shall be at the
24 discretion of the seizing agency.

25 (4) The final order of forfeiture by the court shall
26 perfect in the seizing law enforcement agency all rights,
27 title, and interest in and to such contraband and shall relate
28 back to the date of seizure.

29 (5) The court may include in its forfeiture order a
30 provision that the owner or holder of the contraband pay an
31 assessment to cover the cost of disposal of the contraband,

1 including attorney fees and costs, and any costs incurred by
2 the arresting agency in storing the contraband.~~Each sheriff,~~
3 ~~or his appointee, or any other police officer, shall seize,~~
4 ~~take, remove or cause to be removed at the expense of the~~
5 ~~owner, all stocks of fireworks or combustibles offered or~~
6 ~~exposed for sale, stored, or held in violation of this~~
7 ~~chapter.~~

8 Section 12. Section 791.055, Florida Statutes, is
9 amended to read:

10 791.055 Restrictions upon storage of sparklers or
11 fireworks.--The storage of sparklers or fireworks in this
12 state is governed by s. 1124 of the National Fire Protection
13 Association Code, as adopted by rule.

14 ~~(1) Sparklers shall not be stored or kept for sale in~~
15 ~~any store:~~

16 ~~(a) In which paints, oils, or varnishes are~~
17 ~~manufactured or kept for use or sale unless the paints, oils,~~
18 ~~or varnishes are in unbroken containers.~~

19 ~~(b) In which resin, turpentine, gasoline, or flammable~~
20 ~~substances or substances which may generate vapors are used,~~
21 ~~stored, or offered for sale unless the resin, turpentine,~~
22 ~~gasoline, or substances are in unbroken containers.~~

23 ~~(c) In which there is not at least one approved~~
24 ~~chemical fire extinguisher ready, available, and equipped for~~
25 ~~use in extinguishing fires.~~

26 ~~(2) When sparklers are in storage to be offered for~~
27 ~~sale at retail, a sign shall be conspicuously displayed over~~
28 ~~the entrance to the room in which the sparklers are stored,~~
29 ~~which sign reads: "CAUTION SPARKLERS-NO SMOKING." No person~~
30 ~~shall be in such room while in possession of a lighted cigar,~~
31 ~~cigarette, or pipe.~~

1 Section 13. Section 791.06, Florida Statutes, is
2 amended to read:

3 791.06 Penalties.--Any person, firm, partnership,
4 association, group ~~copartnership,~~ or corporation which
5 violates any provision ~~violating the provisions of ss.~~
6 791.015, 791.02, 791.021, 791.04, or 791.041 commits this
7 ~~chapter shall be guilty of a~~ felony misdemeanor of the third
8 ~~first degree, punishable as provided in s. 775.083 or, in the~~
9 ~~case of individuals, the members of a partnership and the~~
10 ~~responsible officers and agents of an association or~~
11 ~~corporation,~~ punishable as provided in s. 775.082 or s.
12 775.083.

13 Section 14. Sections 791.061 and 791.062, Florida
14 Statutes, are created to read:

15 791.061 Injunction.--In addition to the penalties and
16 other enforcement provisions of this chapter, if any person
17 engaged in any of the activities regulated by this chapter
18 violates any provision of this chapter or any rule adopted
19 pursuant to this chapter, the division is authorized to
20 institute proceedings for injunctive relief in the circuit
21 court of the county in which such person resides or has his or
22 her principal place of business, and may apply for such
23 temporary or permanent orders as the division deems necessary
24 to restrain such person from engaging in such activities,
25 until such person complies with the provisions of this chapter
26 and such rules.

27 791.062 Municipal and county ordinances, rules, and
28 regulations.--Nothing contained in this chapter affects any
29 existing ordinance, rule, or regulation, pertaining to
30 fireworks or sparklers, of any incorporated city, town,
31 county, or other local governmental entity in this state not

1 less restrictive than the provisions of this chapter and rules
2 adopted pursuant to this chapter, or affect, modify, or limit
3 the power of any such incorporated city, town, county, or
4 other local governmental entity to make ordinances, rules, or
5 regulations under this chapter pertaining to fireworks or
6 sparklers within their respective corporate limits.

7 Section 15. Section 791.07, Florida Statutes, is
8 amended to read:

9 791.07 Agricultural and fish hatchery use.--

10 (1) Nothing in this chapter shall prohibit the
11 importation, purchase, sale, or use of fireworks used or to be
12 used solely and exclusively in frightening birds from
13 agricultural works and fish hatcheries; and such use shall be
14 governed entirely by the rules prescribed by the Department of
15 Agriculture and Consumer Services.

16 (2) Any person who is engaged in agricultural works or
17 who operates a fish hatchery may use fireworks solely and
18 exclusively for the purpose of frightening birds from doing
19 harm to such person's agricultural works or fish hatchery
20 operation, provided such person first files with the sheriff
21 of the county in which he or she is engaged in agricultural
22 works or the operation of fish hatchery a sworn affidavit in
23 writing that he or she is engaged in agricultural works,
24 describing the nature of such works, or that he or she
25 operates a fish hatchery, describing the nature of such
26 operation, and desires to use fireworks to frighten birds from
27 harming the agricultural works or the fish hatchery operation
28 and that fireworks will be used solely and exclusively for
29 that purpose. The sheriff of the county, upon determining that
30 the sworn affidavit is sufficient and the request is valid,
31 shall issue a permit to the applicant on a form provided by

1 the division. The permit shall specify the identity of the
2 applicant and the quantity of fireworks to be purchased and
3 possessed. A copy of the permit shall be retained by the
4 manufacturer, distributor, or wholesaler making the sale as
5 part of their recordkeeping requirement pursuant to s. 791.041
6 and a copy shall be maintained by the applicant with the
7 fireworks covered under the permit.

8 (3) Falsification of any affidavit or permit provided
9 for in this section or providing false information in such
10 sworn affidavit is a felony of the third degree, punishable as
11 provided in s. 775.082 or s. 775.083. Falsification of any
12 such affidavit or permit includes aiding and abetting any such
13 falsification or selling fireworks when the seller knows or
14 has reason to believe the permit is falsified.

15 Section 16. This act shall take effect October 1,
16 1997.

17
18 *****

19 HOUSE SUMMARY

20 Revises provisions regulating the sale of fireworks.
21 Includes sparklers within regulatory provisions.
22 Provides for cease and desist orders and injunctions.
23 Provides for administrative fines. Provides for
24 suspending or revoking registrations. Requires
25 maintenance of records of sales. Provides for seizure,
26 forfeiture, and disposal of contraband fireworks. See
27 bill for details.
28
29
30
31