

By Senator Lawson

6-1571-04

1 A bill to be entitled
2 An act relating to fireworks; amending s.
3 791.001, F.S.; specifying persons and entities
4 responsible for enforcing ch. 791, F.S.;
5 amending s. 791.01, F.S.; providing additional
6 definitions; amending s. 791.012, F.S.;
7 conforming a cross-reference; amending s.
8 791.015, F.S.; revising registration
9 requirements; requiring a separate registration
10 for each location at which sparklers are sold;
11 increasing certain registration fees; creating
12 s. 791.016, F.S.; providing for issuance of
13 cease and desist orders; creating s. 791.017,
14 F.S.; providing for administrative fines;
15 creating s. 791.018, F.S.; providing for
16 suspension or revocation of registration and
17 grounds therefor; creating s. 791.019, F.S.;
18 providing duration of suspensions and
19 revocations; amending s. 791.02, F.S.;
20 providing for state issuance of permits for
21 displays in the absence of a local mechanism;
22 prohibiting the sale or delivery of sparklers
23 to minors; prohibiting sales from motorized or
24 movable apparatus; creating s. 791.021, F.S.;
25 prescribing guidelines for the sale of
26 sparklers; amending s. 791.04, F.S.;
27 prescribing guidelines on the wholesale sale of
28 fireworks; creating s. 791.041, F.S.; requiring
29 records of sales to be kept and prescribing
30 duties of sellers; amending s. 791.05, F.S.;
31 revising provisions and procedures relating to

1 forfeiture of contraband fireworks; amending s.
2 791.055, F.S.; providing restrictions on
3 storage of sparklers and fireworks; amending s.
4 791.06, F.S.; providing penalties for
5 violations, including enhanced penalties for
6 second and subsequent violations; creating s.
7 791.061, F.S.; providing for injunctive relief;
8 amending s. 791.07, F.S.; prescribing
9 additional guidelines on agricultural and fish
10 hatchery use of fireworks; creating s. 791.08,
11 F.S.; declaring that the state has not
12 preempted the field of fireworks regulation;
13 requiring that local ordinances and rules must
14 be more stringent than state law; providing an
15 effective date.

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17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Section 791.001, Florida Statutes, is
20 amended to read:

21 791.001 Application and enforcement.--This chapter
22 shall be applied uniformly throughout the state. The State
23 Fire Marshal or a designated agent under his or her authority,
24 any sheriff or sheriff's deputy, any other law enforcement
25 agency or law enforcement officer, or any certified firesafety
26 inspector charged with the enforcement of the laws of this
27 state or any state agency rule, county or municipal ordinance,
28 or code provision has jurisdiction to enforce this chapter.
29 ~~Enforcement of this chapter shall remain with local law~~
30 ~~enforcement departments and officials charged with the~~
31 ~~enforcement of the laws of the state.~~

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

3 791.01 Definitions.--As used in this chapter, the
4 term:

5 (1) "Authority having jurisdiction" means the state;
6 any county, municipality, or special district; or any local or
7 other regional department, bureau, or individual such as a
8 fire chief, fire marshal, administrative head of a fire
9 prevention bureau, law enforcement officer, building official,
10 or other person having statutory authority to enforce the laws
11 of this state or any state agency rule, county or municipal
12 ordinance, or code provision.

13 (2) "Distributor of fireworks" means any person or
14 organization engaged in the business of selling fireworks.

15 (3)~~(1)~~ "Distributor of sparklers" means any person or
16 organization engaged in the business of selling sparklers to a
17 wholesaler.

18 (4)~~(2)~~ "Division" means the Division of the State Fire
19 Marshal of the Department of Financial Services.

20 (5)~~(3)~~ "Explosive compound" means any chemical
21 compound, mixture, or device the primary or common purpose of
22 which is to function by the substantially instantaneous
23 release of gas and heat.

24 (6)~~(4)~~(a) "Fireworks" means and includes any
25 combustible or explosive composition or substance or
26 combination of substances or, except as hereinafter provided,
27 any article prepared for the purpose of producing a visible or
28 audible effect by combustion, explosion, deflagration, or
29 detonation. The term includes blank cartridges and toy
30 cannons in which explosives are used, the type of balloons
31 which require fire underneath to propel them, firecrackers,

1 torpedoes, skyrockets, roman candles, dago bombs, and any
2 fireworks containing any explosives or flammable compound or
3 any tablets or other device containing any explosive
4 substance.

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

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

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

20 2. A smoke device, which is a tube or sphere
21 containing not more than 10 grams of pyrotechnic composition
22 that, upon burning, produces white or colored smoke as the
23 primary effect.

24 3. A trick noisemaker, which is a device that produces
25 a small report intended to surprise the user and which
26 includes:

27 a. A party popper, which is a small plastic or paper
28 device containing not more than 16 milligrams of explosive
29 composition that is friction sensitive, which is ignited by
30 pulling a string protruding from the device, and which expels
31 a paper streamer and produces a small report.

1 b. A booby trap, which is a small tube with a string
2 protruding from both ends containing not more than 16
3 milligrams of explosive compound, which is ignited by pulling
4 the ends of the string, and which produces a small report.

5 c. A snapper, which is a small, paper-wrapped device
6 containing not more than four milligrams of explosive
7 composition coated on small bits of sand, and which, when
8 dropped, explodes, producing a small report. A snapper may
9 not contain more than 250 milligrams of total sand and
10 explosive composition.

11 d. A trick match, which is a kitchen or book match
12 which is coated with not more than 16 milligrams of explosive
13 or pyrotechnic composition and which, upon ignition, produces
14 a small report or shower of sparks.

15 e. A cigarette load, which is a small wooden peg that
16 has been coated with not more than 16 milligrams of explosive
17 composition and which produces, upon ignition of a cigarette
18 containing one of the pegs, a small report.

19 f. An auto burglar alarm, which is a tube which
20 contains not more than 10 grams of pyrotechnic composition
21 that produces a loud whistle or smoke when ignited and which
22 is ignited by use of a squib. A small quantity of explosive,
23 not exceeding 50 milligrams, may also be used to produce a
24 small report.

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

28 (7) "Fixed location" means a building or structure
29 that is intended to remain in place for a period of more than
30 180 consecutive days.

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1 (8) "Manufacturer of fireworks" means any person or
2 organization engaged in the manufacture or construction of
3 fireworks in this state.

4 ~~(9)(5)~~ "Manufacturer of sparklers" means any person or
5 organization engaged in the manufacture or construction of
6 sparklers in this state.

7 (10) "Organization" means any club, group,
8 association, church or other religious entity, nonprofit
9 corporation, or similar entity.

10 (11) "Person" includes any individual person and any
11 firm, sole proprietorship, partnership, corporation, limited
12 liability corporation or partnership, professional
13 association, or other similar entity.

14 ~~(12)(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 ~~(13)(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 ~~(14)(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 (15) "Wholesaler of fireworks" means any person or
29 organization engaged in the business of selling fireworks to
30 another wholesaler, a distributor, or a manufacturer

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1 registered under this chapter or for agricultural or public
2 display purposes.

3 (16)(9) "Wholesaler of sparklers" means any person or
4 organization engaged in the business of selling sparklers to a
5 retailer.

6 Section 3. Section 791.012, Florida Statutes, is
7 amended to read:

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

23 Section 4. Section 791.015, Florida Statutes, is
24 amended to read:

25 791.015 Registration of manufacturers, distributors,
26 and wholesalers of sparklers or fireworks, and retailers of
27 sparklers.--

28 (1) REGISTRATION REQUIREMENTS.--It is unlawful for any
29 organization or individual to engage in the business of
30 manufacturing, distributing, or selling at wholesale or retail
31 any firework or sparkler except as provided in this section.

1 Any manufacturer, distributor, or wholesaler of sparklers or
2 fireworks and any~~retailer~~or seasonal retailer of sparklers
3 who wishes to do business in this state or to otherwise sell,
4 ship, or assign for sale its products in this state must
5 register annually with the division on forms prescribed by the
6 division. A manufacturer, distributor, wholesaler, retailer,
7 or seasonal retailer must submit a separate registration form
8 and a separate registration fee for each location where
9 sparklers will be sold. A manufacturer, distributor, or
10 wholesaler who wishes to engage in the business of
11 manufacturing, distributing, or selling fireworks to the
12 extent allowed in this chapter must submit a separate
13 registration form and a separate registration fee for each
14 location where fireworks will be manufactured or sold.
15 Registration certificates issued by the division shall be
16 displayed on the premises and made available for immediate
17 inspection by the authority having jurisdiction or the
18 division. A person may not alter, deface, or copy a
19 certificate of registration.~~Any retailer who sells sparklers~~
20 ~~at more than one retail location may submit one registration~~
21 ~~form for all such locations but must provide the address of~~
22 ~~each location with the registration form; however, any~~
23 ~~retailer may submit multiple registration forms.~~

24 (2) REGISTRATION FORM.--The registration form filed
25 with the division must be notarized and must include the
26 following information: name of individual, if certificate is
27 to be held in an individual capacity;business name; address;
28 telephone number; officers, if the business is a corporation;
29 and an individual designated as a contact person. The form for
30 application for registration by the division must be
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1 accompanied by evidence of registration with the Department of
2 Revenue under chapter 212.

3 (3) FEES.--

4 (a) Each manufacturer, distributor, or wholesaler must
5 pay an annual registration fee to be set by the division not
6 to exceed \$1,000 for each manufacturer, distributor, or
7 wholesale location registered. Each seasonal retailer must pay
8 an annual registration fee to be set by the division not to
9 exceed \$200 for each seasonal retailer location registered.

10 Each retailer shall pay an annual registration fee to be set
11 by the division not to exceed ~~\$25~~\$15 for each retail location
12 registered. Each certificateholder wishing to have a
13 duplicate certificate issued for one which is lost or to
14 reflect a change of mailing address shall request such
15 duplicate in writing and shall pay a fee of ~~\$15~~\$5. A
16 duplicate may not be issued to indicate a change in business
17 location. A change in business location requires a new
18 application for registration and fee.

19 (b) Revenue from registration fee payments shall be
20 deposited in the Insurance Regulatory Trust Fund for the
21 purposes of implementing the registration and testing
22 provisions of this chapter.

23 (4) RULES.--The State Fire Marshal may adopt rules
24 prescribing registration forms required by this section.

25 Section 5. Section 791.016, Florida Statutes, is
26 created to read:

27 791.016 Procedures for cease and desist orders;
28 administrative fine.--

29 (1) Any time the division has reason to believe that
30 any person is or has been violating this chapter or any rule
31 adopted pursuant to this chapter, it shall determine the

1 matter by issuing a notice of intent to issue a cease and
2 desist order and provide an opportunity for a hearing and all
3 other requirements of chapter 120.

4 (2) If the division determines that the acts
5 complained of are in violation of any provision of this
6 chapter, or any rule adopted pursuant to this chapter, it
7 shall issue to a person charged with the violation a final
8 order requiring such persons to cease and desist from such
9 violation or imposing an administrative fine, or both.

10 (3) This section shall be enforced pursuant to chapter
11 120.

12 Section 6. Section 791.017, Florida Statutes, is
13 created to read:

14 791.017 Administrative fines.--

15 (1) If any person violates any provision of this
16 chapter or any rule adopted pursuant to this chapter, or
17 violates any cease and desist order, the division may impose
18 an administrative fine, not to exceed \$1,000 for each
19 violation, or suspend or revoke the certificate of
20 registration issued.

21 (2) The division may allow the certificateholder a
22 reasonable time, not to exceed 30 days, to pay the penalty in
23 its entirety to the division. If the certificateholder fails
24 to pay the penalty in its entirety within the period allowed,
25 the division shall revoke the certificates held.

26 (3) If a cease and desist order has been issued, each
27 day the cease and desist order is violated constitutes a
28 separate violation for purposes of assessing an administrative
29 fine.

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1 (4) If the violation is based on an unlawful sale,
2 each sale constitutes a separate violation for purposes of
3 assessing an administrative fine.

4 (5) The maximum administrative fine imposed on any
5 person or organization may not exceed \$500,000.

6 Section 7. Section 791.018, Florida Statutes, is
7 created to read:

8 791.018 Grounds for suspension or revocation of
9 registration certificate for manufacturers, distributors,
10 wholesalers, and retailers.--

11 (1) The division may suspend or revoke the
12 registration certificate of manufacturers, distributors,
13 wholesalers, and retailers for one or more of the following
14 grounds:

15 (a) Material misstatement, misrepresentation, or fraud
16 in obtaining the registration certificate or in attempting to
17 obtain a registration certificate.

18 (b) Wilful use of a registration certificate to
19 circumvent any requirement or prohibition in this chapter.

20 (c) Fraudulent or dishonest practices in the conduct
21 of business under the authority of the registration
22 certificate.

23 (d) Violation of or failure to comply with any order
24 or rule of the division or any provision of this chapter.

25 (2) This section shall be enforced pursuant to chapter
26 120.

27 Section 8. Section 791.019, Florida Statutes, is
28 created to read:

29 791.019 Duration of suspension or revocation.--

30 (1) The division shall, in its order suspending the
31 registration certificate of an individual, firm, partnership,

1 association, group, or corporation, specify the period during
2 which the suspension is to be effective; but such period may
3 not exceed 2 years. The registration certificate shall remain
4 suspended during the period specified, subject, to any
5 rescission or modification of the order by the division or
6 modification or reversal thereof by the court prior to
7 expiration of the suspension period. A registration
8 certificate that has been suspended may not be reinstated
9 except upon request for such reinstatement; but the division
10 may not grant such reinstatement if it finds that the
11 circumstance or circumstances for which the registration
12 certificate was suspended or revoked still exist or are likely
13 to recur.

14 (2) A person or organization holding a registration
15 certificate revoked by the division may not apply for another
16 registration certificate under this chapter within 2 years
17 after the effective date of such revocation or, if judicial
18 review of such revocation is sought, within 2 years after the
19 date of the final court order or decree affirming the
20 revocation order.

21 (3) The division may not issue a registration
22 certificate to any person or organization whose registration
23 certificate has been revoked on two separate occasions.

24 (4) During the period of suspension, or after
25 revocation of the registration certificate, the former
26 certificateholder may not engage in or attempt or profess to
27 engage in any transaction or business for which a registration
28 certificate is required by this chapter.

29 Section 9. Section 791.02, Florida Statutes, is
30 amended to read:

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1 791.02 Sale of fireworks regulated; rules ~~and~~
2 ~~regulations~~.--

3 (1) Except as hereinafter provided it is unlawful for
4 any person or organization, ~~firm, copartnership, or~~
5 ~~corporation~~ to offer for sale, expose for sale, sell at
6 retail, or use or explode any fireworks; provided that the
7 board of county commissioners shall have power to adopt
8 reasonable rules ~~and regulations~~ for the granting of permits
9 for supervised public display of fireworks by fair
10 associations, amusement parks, and other organizations or
11 groups of individuals when such public display is to take
12 place outside of any municipality; provided, further, that the
13 governing body of any municipality shall have power to adopt
14 reasonable rules ~~and regulations~~ for the granting of permits
15 for supervised public display of fireworks within the
16 boundaries of any municipality. Every such display shall be
17 handled by a competent operator to be approved by the chiefs
18 of the police and fire departments of the municipality in
19 which the display is to be held, and shall be of such a
20 character, and so located, discharged, or fired as in the
21 opinion of the chief of the fire department, after proper
22 inspection, shall not be hazardous to property or endanger any
23 person. Application for permits shall be made in writing at
24 least 15 days in advance of the date of the display. If the
25 local authority licensing jurisdiction does not have a permit
26 process for the public display of fireworks, applications
27 shall be made to the State Fire Marshal.After such privilege
28 shall have been granted, sales, possession, use, and
29 distribution of fireworks for such display shall be lawful for
30 that purpose only. No permit granted hereunder shall be

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1 transferable. Any public display of fireworks must be
2 conducted in compliance with s. 791.012.

3 (2) A sparkler or other product authorized for sale
4 under this chapter may not be sold or shipped to any person
5 younger than 18 years of age.A sparkler or other product
6 authorized for sale under this chapter may not be sold by a
7 retailer or seasonal retailer unless the product was obtained
8 from a manufacturer, distributor, or wholesaler registered
9 with the division pursuant to s. 791.015. Each retailer and
10 seasonal retailer shall keep, at every location where
11 sparklers are sold, a copy of an invoice or other evidence of
12 purchase from the manufacturer, distributor, or wholesaler,
13 which states the registration certificate number for the
14 particular manufacturer, distributor, or wholesaler and the
15 specific items covered by the invoice. Each seasonal retailer
16 shall, in addition, exhibit a copy of his or her registration
17 certificate at each retail or seasonal retail location. Retail
18 sales may not be made from any type of motorized or movable
19 apparatus. Sales from tents that meet all applicable codes and
20 fire regulations are allowed.

21 Section 10. Section 791.021, Florida Statutes, is
22 created to read:

23 791.021 Sale of sparklers.--

24 (1) A person, organization, manufacturer, distributor,
25 wholesaler, retailer, or seasonal retailer may not purchase,
26 sell, or solicit to sell sparklers except in conformance with
27 this chapter.

28 (2) It is the responsibility of the person,
29 organization, manufacturer, distributor, or wholesaler to
30 determine that the purchaser is registered with the division.

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1 (3) It is the responsibility of the retailer or
2 seasonal retailer of sparklers to determine that a purchaser
3 is at least 18 years of age, evidenced by the purchaser
4 presenting a valid driver's license or a valid state
5 identification card issued by the Department of Highway Safety
6 and Motor Vehicles.

7 Section 11. Section 791.04, Florida Statutes, is
8 amended to read:

9 791.04 Sale at wholesale, etc., exempted.--

10 (1) A ~~Nothing in this chapter shall be construed to~~
11 ~~prohibit any~~ manufacturer, distributor, or wholesaler of
12 fireworks who has registered with the division pursuant to s.
13 791.015 ~~may~~ to sell at wholesale any such fireworks ~~as are~~ not
14 herein prohibited to any manufacturer, distributor, or
15 wholesaler of fireworks who has registered with the division
16 and holds a current certificate of registration.

17 (2) Fireworks shall be shipped or transported directly
18 out of state or stored in compliance with s. 791.055 by the
19 manufacturer, distributor, or wholesaler of fireworks.

20 (3) Sale of fireworks may be made to a person holding
21 a public display permit issued by the authority having
22 jurisdiction for the purpose of conducting a public display of
23 fireworks in compliance with s. 791.012. Transport must be by
24 a bonded commercial carrier or by a person employed by the
25 manufacturer, distributor, or wholesaler of fireworks.
26 Transport must be accompanied by an invoice or bill of lading
27 identifying the manufacturer, distributor, or wholesaler of
28 fireworks with the current certificate of registration number
29 on the invoice or bill of lading and an itemized list of the
30 contents of the shipment. ~~to prohibit the sale of any kind of~~
31 ~~fireworks at wholesale between manufacturers, distributors,~~

1 ~~and wholesalers who have registered with the division pursuant~~
2 ~~to s. 791.015; to prohibit the sale of any kind of fireworks~~
3 ~~provided the same are to be shipped directly out of state by~~
4 ~~such manufacturer, distributor, or wholesaler; to prohibit the~~
5 ~~sale of fireworks to be used by a person holding a permit from~~
6 ~~any board of county commissioners at the display covered by~~
7 ~~such permit; or to prohibit the use of fireworks by railroads~~
8 ~~or other transportation agencies for signal purposes or~~
9 ~~illumination or when used in quarrying or for blasting or~~
10 ~~other industrial use, or the sale or use of blank cartridges~~
11 ~~for a show or theater, or for signal or ceremonial purposes in~~
12 ~~athletics or sports, or for use by military organizations, or~~
13 ~~organizations composed of the Armed Forces of the United~~
14 ~~States; provided, nothing in this chapter shall be construed~~
15 ~~as barring the operations of manufacturers, duly licensed,~~
16 ~~from manufacturing, experimenting, exploding, and storing such~~
17 ~~fireworks in their compounds or proving grounds.~~

18 Section 12. Section 791.041, Florida Statutes, is
19 created to read:

20 791.041 Maintenance of records and sales of fireworks
21 by manufacturers, distributors, and wholesalers;
22 inspections.--

23 (1) A person, organization, manufacturer, distributor,
24 or wholesaler may not purchase, sell, or solicit to sell
25 fireworks except in conformance with this chapter.

26 (2) Each sale or transaction must be evidenced by an
27 invoice or sales ticket that bears the name, address, and
28 certificate of registration number of the purchaser or, in the
29 case of a sale conducted for public display, a copy of the
30 permit issued by the authority having jurisdiction, the date
31 of the sale, the products sold, and the quantity sold. All

1 invoices and sales tickets shall be maintained by the
2 manufacturer, distributor, or wholesaler of fireworks and a
3 copy provided to the purchaser.

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

7 (4) A person may not knowingly withhold information or
8 make any false or fictitious entry or misrepresentation upon
9 any sales invoice, sales ticket, or account of inventories.

10 (5) It is the responsibility of the manufacturer,
11 distributor, or wholesaler of fireworks to determine that a
12 purchaser is at least 18 years of age, evidenced by the
13 purchaser presenting a valid driver's license or a valid state
14 identification card issued by the Department of Highway Safety
15 and Motor Vehicles.

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

26 Section 13. Section 791.05, Florida Statutes, is
27 amended to read:

28 791.05 Contraband; seizure, forfeiture, and disposal
29 of illegal fireworks.--

30 (1) All fireworks or sparklers that are handled,
31 delivered, possessed, manufactured, or distributed contrary to

1 ny provision of this chapter and all such fireworks or
2 sparklers the lawful possession of which is not established or
3 title to which cannot be ascertained are declared contraband
4 and are subject to seizure and confiscation by any person or
5 law enforcement agency whose duty it is to enforce this
6 chapter.

7 (2) The state attorney within whose jurisdiction the
8 unlawful fireworks or sparklers have been seized or any such
9 attorney as is employed by the seizing law enforcement agency
10 shall promptly proceed against the contraband fireworks and
11 show cause in the circuit court within the jurisdiction in
12 which the seizure or offense occurred and may have such
13 contraband article or articles forfeited to the law
14 enforcement agency making the seizure upon showing proof that
15 the contraband fireworks were being used or exist in violation
16 of this chapter.

17 (3) Any fireworks seized as evidence may be sample
18 tested and weighed by the seizing agency after the seizure.
19 Any such sample and analysis thereof may be admitted into
20 evidence in any civil or criminal action for the purpose of
21 proving the nature, composition, and weight of the fireworks.
22 In addition, the seizing agency may photograph or videotape,
23 for use at trial, the fireworks seized. Except for fireworks
24 retained by the seizing agency for sample testing, analysis,
25 and evidence, upon a final determination that the seized
26 fireworks were being used or exist in violation of this
27 chapter, the circuit court having jurisdiction shall order
28 such fireworks forfeited and destroyed. The method of
29 destruction or disposal of such fireworks shall be at the
30 discretion of the seizing agency.

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1 (4) The final order of forfeiture by the court shall
2 perfect in the seizing law enforcement agency all rights,
3 title, and interest in and to such fireworks and shall relate
4 back to the date of seizure.

5 (5) The court may include in its forfeiture order a
6 provision that the owner or holder of the contraband fireworks
7 pay an assessment to cover the cost of disposal of contraband,
8 including attorney's fees and costs, and any costs incurred by
9 the arresting agency in storing the contraband.~~Each sheriff,~~
10 ~~or his or her appointee, or any other police officer, shall~~
11 ~~seize, take, remove or cause to be removed at the expense of~~
12 ~~the owner, all stocks of fireworks or combustibles offered or~~
13 ~~exposed for sale, stored, or held in violation of this~~
14 ~~chapter.~~

15 Section 14. Section 791.055, Florida Statutes, is
16 amended to read:

17 791.055 Restrictions upon storage of sparklers or
18 fireworks.--The storage of sparklers or fireworks in this
19 state is governed by the National Fire Protection Association
20 1124 Code as adopted by rule of the Department of Financial
21 Services.

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

24 ~~(a) In which paints, oils, or varnishes are~~
25 ~~manufactured or kept for use or sale unless the paints, oils,~~
26 ~~or varnishes are in unbroken containers.~~

27 ~~(b) In which resin, turpentine, gasoline, or flammable~~
28 ~~substances or substances which may generate vapors are used,~~
29 ~~stored, or offered for sale unless the resin, turpentine,~~
30 ~~gasoline, or substances are in unbroken containers.~~

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

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

10 Section 15. Section 791.06, Florida Statutes, is
11 amended to read:

12 791.06 Penalties.--

13 (1) Any person or organization that violates any
14 provision of s. 791.015, s. 791.02, s. 791.021, s. 791.04, or
15 s. 791.041 commits a misdemeanor of the first degree,
16 punishable as provided in s. 775.082 or s. 775.083.

17 (2) Any person or organization that violates any
18 provision of s. 791.015, s. 791.02, s. 791.021, s. 791.04, or
19 s. 791.041 for a second or subsequent time commits a felony of
20 the third degree, punishable as provided in s. 775.082, s.
21 775.083, or s. 775.084.~~Any firm, copartnership, or~~
22 ~~corporation violating the provisions of this chapter shall be~~
23 ~~guilty of a misdemeanor of the first degree, punishable as~~
24 ~~provided in s. 775.083 or, in the case of individuals, the~~
25 ~~members of a partnership and the responsible officers and~~
26 ~~agents of an association or corporation, punishable as~~
27 ~~provided in s. 775.082 or s. 775.083.~~

28 Section 16. Section 791.061, Florida Statutes, is
29 created to read:

30 791.061 Injunction.--In addition to the penalties and
31 other enforcement provisions of this chapter, if any person

1 engaged in any activity prohibited by this chapter violates
2 any provision of this chapter or any rule adopted pursuant to
3 this chapter, the division may resort to proceedings for
4 injunctive relief in the circuit court of the county in which
5 such person resides or has his or its principal place of
6 business and therein apply for such temporary or permanent
7 orders as the division deems necessary to restrain such person
8 from engaging in any such activities, until such person has
9 complied with the provisions of this chapter and such rules.

10 Section 17. Section 791.07, Florida Statutes, is
11 amended to read:

12 791.07 Agricultural and fish hatchery use.--

13 (1) Nothing in This chapter does not shall prohibit
14 the importation, purchase, sale, or use of fireworks used or
15 to be used solely and exclusively in frightening birds from
16 agricultural works and fish hatcheries; ~~and such use shall be~~
17 ~~governed entirely by the rules prescribed by the Department of~~
18 ~~Agriculture and Consumer Services.~~

19 (2) Any person who is engaged in agricultural works or
20 who operates a fish hatchery may use fireworks solely and
21 exclusively for the purpose of frightening birds from doing
22 harm to such person's agricultural works or fish hatchery
23 operation; however, such person must first file with the
24 sheriff of the county or the authority having jurisdiction in
25 the county in which the person is engaged in agricultural
26 works or the operation of a fish hatchery a sworn affidavit in
27 writing that he or she is engaged in agricultural works,
28 describing the nature of such, or that he or she operates a
29 fish hatchery, describing the nature of such, and desires to
30 use fireworks to frighten birds from harming the agricultural
31 works or fish hatchery operation and that fireworks will be

1 used solely and exclusively for that purpose. The sheriff of
2 the county or the authority having jurisdiction, upon
3 determining that the sworn affidavit is sufficient and the
4 request is valid, shall issue a permit, on a form provided by
5 the division, to the applicant. The permit must identify the
6 applicant and the quantity of fireworks to be purchased and
7 possessed. A copy of the permit shall be retained by the
8 manufacturer, distributor, or wholesaler making the sale as
9 part of its recordkeeping requirement pursuant to s. 791.041,
10 and a copy shall be maintained by the applicant with the
11 fireworks covered under the permit.

12 (3) Falsification of any affidavit or permit provided
13 for in this section or providing false information in such
14 sworn affidavit is a misdemeanor, of the first degree,
15 punishable as provided in s. 775.082 or s. 775.083.
16 Falsification of any affidavit or permit provided for in this
17 section includes aiding and abetting such falsification or
18 selling fireworks when the seller knows or has reason to
19 believe that the permit is falsified.

20 Section 18. Section 791.08, Florida Statutes, is
21 created to read:

22 791.08 Nonpreemption.--The state does not preempt the
23 regulation of fireworks and sparklers as provided in this
24 chapter. Any authority having jurisdiction may enact any
25 ordinance or adopt any rule related to this chapter if such
26 ordinance or rule is more stringent, or provides a higher
27 degree of safety, than provided in this chapter.

28 Section 19. This act shall take effect July 1, 2004.
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SENATE SUMMARY

Provides a comprehensive review of statutes relating to registration and regulation of manufacturers and sellers of fireworks and licensing and permitting requirements. (See bill for details.)