

1 A bill to be entitled
2 An act relating to fireworks; amending s. 791.001, F.S.;
3 specifying persons and entities responsible for enforcing
4 ch. 791, F.S.; amending s. 791.01, F.S.; revising and
5 providing additional definitions; amending s. 791.012,
6 F.S.; conforming a cross reference; amending s. 791.015,
7 F.S.; revising registration requirements for
8 manufacturers, distributors, and wholesalers of sparklers
9 or fireworks and retailers of sparklers; requiring a
10 separate registration for each location at which sparklers
11 are sold and for each location at which fireworks will be
12 manufactured or sold; increasing certain registration
13 fees; creating s. 791.016, F.S.; providing for issuance of
14 cease and desist orders; creating s. 791.017, F.S.;
15 providing for administrative fines; creating s. 791.018,
16 F.S.; providing for suspension or revocation of
17 registration and grounds therefor; creating s. 791.019,
18 F.S.; providing duration of suspensions and revocations;
19 amending s. 791.02, F.S.; providing for state issuance of
20 permits for public displays of fireworks in the absence of
21 a local permitting process; prohibiting the sale or
22 delivery of sparklers or other fireworks to minors;
23 prohibiting sales from motorized or movable apparatus;
24 authorizing sales from tents meeting applicable codes and
25 fire regulations; creating s. 791.021, F.S.; prescribing
26 guidelines for the sale of sparklers; amending s. 791.04,
27 F.S.; prescribing guidelines for the sale at wholesale and
28 the transport of fireworks; creating s. 791.041, F.S.;

29 providing recordkeeping requirements; providing duties of
 30 manufacturers, distributors, and wholesalers with respect
 31 to determination of purchasers' ages and registration;
 32 amending s. 791.05, F.S.; revising provisions and
 33 procedures relating to forfeiture of contraband fireworks;
 34 authorizing an assessment for disposal, including
 35 attorney's fees and costs; amending s. 791.055, F.S.;
 36 providing restrictions on the storage of sparklers and
 37 fireworks; amending s. 791.06, F.S.; providing penalties
 38 for violations, including enhanced penalties for second
 39 and subsequent violations; creating s. 791.061, F.S.;
 40 providing for injunctive relief; amending s. 791.07, F.S.;
 41 prescribing additional guidelines for the use of fireworks
 42 by persons engaged in agricultural works or the operation
 43 of a fish hatchery; creating s. 791.08, F.S.; declaring
 44 that the state does not preempt the field of fireworks
 45 regulation; authorizing the adoption of local ordinances
 46 and rules that are more stringent than state law;
 47 providing an effective date.

48
 49 Be It Enacted by the Legislature of the State of Florida:
 50

51 Section 1. Section 791.001, Florida Statutes, is amended
 52 to read:

53 791.001 Application and enforcement.--This chapter shall
 54 be applied uniformly throughout the state. The State Fire
 55 Marshal or a designated agent under his or her authority, any
 56 sheriff or sheriff's deputy, any other law enforcement agency or

CODING: Words **stricken** are deletions; words **underlined** are additions.

57 law enforcement officer, or any certified firesafety inspector
 58 charged with enforcing the laws of this state or any state
 59 agency rule, county or municipal ordinance, or code provision
 60 has jurisdiction to enforce this chapter. ~~Enforcement of this~~
 61 ~~chapter shall remain with local law enforcement departments and~~
 62 ~~officials charged with the enforcement of the laws of the state.~~

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

65 791.01 Definitions.--As used in this chapter, the term:

66 (1) "Authority having jurisdiction" means the state; any
 67 county, municipality, or special district; or any local or other
 68 regional department, bureau, or individual, such as a fire
 69 chief, fire marshal, administrative head of a fire prevention
 70 bureau, law enforcement officer, building official, or other
 71 person, having statutory authority to enforce the laws of this
 72 state or any state agency rule, county or municipal ordinance,
 73 or code provision.

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

76 (3)(1) "Distributor of sparklers" means any person or
 77 organization engaged in the business of selling sparklers to a
 78 wholesaler.

79 (4)(2) "Division" means the Division of the State Fire
 80 Marshal of the Department of Financial Services.

81 (5)(3) "Explosive compound" means any chemical compound,
 82 mixture, or device the primary or common purpose of which is to
 83 function by the substantially instantaneous release of gas and
 84 heat.

85 (6)~~(4)~~(a) "Fireworks" means and includes any combustible
86 or explosive composition or substance or combination of
87 substances or, except as hereinafter provided, any article
88 prepared for the purpose of producing a visible or audible
89 effect by combustion, explosion, deflagration, or detonation.
90 The term includes blank cartridges and toy cannons in which
91 explosives are used, the type of balloons which require fire
92 underneath to propel them, firecrackers, torpedoes, skyrockets,
93 roman candles, dago bombs, and any fireworks containing any
94 explosives or flammable compound or any tablets or other device
95 containing any explosive substance.

96 (b) "Fireworks" does not include sparklers approved by the
97 division pursuant to s. 791.013; toy pistols, toy canes, toy
98 guns, or other devices in which paper caps containing twenty-
99 five hundredths grains or less of explosive compound are used,
100 providing they are so constructed that the hand cannot come in
101 contact with the cap when in place for the explosion; and toy
102 pistol paper caps which contain less than twenty hundredths
103 grains of explosive mixture, the sale and use of which shall be
104 permitted at all times.

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

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

111 2. A smoke device, which is a tube or sphere containing
112 not more than 10 grams of pyrotechnic composition that, upon

113 burning, produces white or colored smoke as the primary effect.

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

116 a. A party popper, which is a small plastic or paper
117 device containing not more than 16 milligrams of explosive
118 composition that is friction sensitive, which is ignited by
119 pulling a string protruding from the device, and which expels a
120 paper streamer and produces a small report.

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

125 c. A snapper, which is a small, paper-wrapped device
126 containing not more than four milligrams of explosive
127 composition coated on small bits of sand, and which, when
128 dropped, explodes, producing a small report. A snapper may not
129 contain more than 250 milligrams of total sand and explosive
130 composition.

131 d. A trick match, which is a kitchen or book match which
132 is coated with not more than 16 milligrams of explosive or
133 pyrotechnic composition and which, upon ignition, produces a
134 small report or shower of sparks.

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

139 f. An auto burglar alarm, which is a tube which contains
140 not more than 10 grams of pyrotechnic composition that produces

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141 a loud whistle or smoke when ignited and which is ignited by use
142 of a squib. A small quantity of explosive, not exceeding 50
143 milligrams, may also be used to produce a small report.

144

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

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

150 (8) "Manufacturer of fireworks" means any person or
151 organization engaged in the manufacture or construction of
152 fireworks in this state.

153 (9)(5) "Manufacturer of sparklers" means any person or
154 organization engaged in the manufacture or construction of
155 sparklers in this state.

156 (10) "Organization" means any club, group, association,
157 church or other religious entity, nonprofit corporation, or
158 similar entity.

159 (11) "Person" includes any individual person and any firm,
160 sole proprietorship, partnership, corporation, limited liability
161 corporation or partnership, professional association, or other
162 similar entity.

163 (12)(6) "Retailer" means any person who, at a fixed
164 location ~~place of business~~, is engaged in selling sparklers to
165 consumers at retail.

166 (13)(7) "Seasonal retailer" means any person engaged in
167 the business of selling sparklers at retail in this state from
168 June 20 through July 5 and from December 10 through January 2 of

169 each year.

170 ~~(14)(8)~~ "Sparkler" means a device which emits showers of
 171 sparks upon burning, does not contain any explosive compounds,
 172 does not detonate or explode, is hand held or ground based,
 173 cannot propel itself through the air, and contains not more than
 174 100 grams of the chemical compound which produces sparks upon
 175 burning. Any sparkler that is not approved by the division is
 176 classified as fireworks.

177 (15) "Wholesaler of fireworks" means any person or
 178 organization engaged in the business of selling fireworks to
 179 another wholesaler, a distributor, or a manufacturer registered
 180 under this chapter or for agricultural or public display
 181 purposes.

182 ~~(16)(9)~~ "Wholesaler of sparklers" means any person or
 183 organization engaged in the business of selling sparklers to a
 184 retailer.

185 Section 3. Section 791.012, Florida Statutes, is amended
 186 to read:

187 791.012 Minimum fireworks safety standards.--The outdoor
 188 display of fireworks in this state shall be governed by the
 189 National Fire Protection Association (NFPA) 1123, Code for
 190 Fireworks Display, 1995 Edition, approved by the American
 191 National Standards Institute. Any state, county, or municipal
 192 law, rule, or ordinance may provide for more stringent
 193 regulations for the outdoor display of fireworks, but in no
 194 event may any such law, rule, or ordinance provide for less
 195 stringent regulations for the outdoor display of fireworks. The
 196 division shall adopt ~~promulgate~~ rules to carry out ~~the~~

197 ~~provisions~~ of this section. The Code for Fireworks Display
 198 shall not govern the display of any fireworks on private,
 199 residential property and shall not govern the display of those
 200 items included under s. 791.01(6)(b) and (c) ~~s. 791.01(4)(b) and~~
 201 ~~(e)~~ and authorized for sale thereunder.

202 Section 4. Section 791.015, Florida Statutes, is amended
 203 to read:

204 791.015 Registration of manufacturers, distributors, and
 205 wholesalers of sparklers or fireworks, and retailers of
 206 sparklers.--

207 (1) REGISTRATION REQUIREMENTS.--An organization or
 208 individual may not engage in the business of manufacturing,
 209 distributing, or selling at wholesale or retail any firework or
 210 sparkler except as provided in this section. Any manufacturer,
 211 distributor, or wholesaler of sparklers or fireworks and any,
 212 retailer, or seasonal retailer of sparklers who wishes to do
 213 business in this state or to otherwise sell, ship, or assign for
 214 sale its products in this state must register annually with the
 215 division on forms prescribed by the division. A manufacturer,
 216 distributor, wholesaler, retailer, or seasonal retailer must
 217 submit a separate registration form and a separate registration
 218 fee for each location where sparklers will be sold. A
 219 manufacturer, distributor, or wholesaler who wishes to engage in
 220 the business of manufacturing, distributing, or selling
 221 fireworks to the extent allowed in this chapter must submit a
 222 separate registration form and a separate registration fee for
 223 each location where fireworks will be manufactured or sold.
 224 Registration certificates issued by the division shall be

225 displayed on the premises and made available for immediate
226 inspection by the authority having jurisdiction or the division.
227 A person may not alter, deface, or copy a certificate of
228 registration. Any retailer who sells sparklers at more than one
229 retail location may submit one registration form for all such
230 locations but must provide the address of each location with the
231 registration form; however, any retailer may submit multiple
232 registration forms.

233 (2) REGISTRATION FORM.--The registration form filed with
234 the division must be notarized and must include the following
235 information: name of the individual, if the certificate is to be
236 held in an individual capacity; business name; address;
237 telephone number; officers, if the business is a corporation;
238 and an individual designated as a contact person. The form for
239 application for registration by the division must be accompanied
240 by evidence of registration with the Department of Revenue under
241 chapter 212.

242 (3) FEES.--

243 (a) Each manufacturer, distributor, or wholesaler must pay
244 an annual registration fee to be set by the division not to
245 exceed \$1,000 for each manufacturer, distributor, or wholesale
246 location registered. Each seasonal retailer must pay an annual
247 registration fee to be set by the division not to exceed \$200
248 for each seasonal retailer location registered. Each retailer
249 shall pay an annual registration fee to be set by the division
250 not to exceed \$25 ~~\$15~~ for each retail location registered. Each
251 certificateholder wishing to have a duplicate certificate issued
252 for one which is lost or to reflect a change of mailing address

253 shall request such duplicate in writing and shall pay a fee of
 254 \$15 ~~\$5~~. A duplicate certificate may not be issued to indicate a
 255 change in business location. A change in business location
 256 requires a new application for registration and fee.

257 (b) Revenue from registration fee payments shall be
 258 deposited in the Insurance Regulatory Trust Fund for the
 259 purposes of implementing the registration and testing provisions
 260 of this chapter.

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

263 Section 5. Section 791.016, Florida Statutes, is created
 264 to read:

265 791.016 Procedures for cease and desist orders;
 266 administrative fine.--

267 (1) Any time the division has reason to believe that a
 268 person is committing or has committed a violation of this
 269 chapter or any rule adopted under this chapter, the division
 270 shall determine the matter by issuing a notice of intent to
 271 issue a cease and desist order and provide an opportunity for a
 272 hearing and all other requirements of chapter 120.

273 (2) If the division determines that the acts complained of
 274 are in violation of any provision of this chapter or any rule
 275 adopted under this chapter, the division shall issue a final
 276 order requiring the person to cease and desist from the
 277 violation or imposing an administrative fine, or both.

278 (3) This section shall be enforced as provided in chapter
 279 120.

280 Section 6. Section 791.017, Florida Statutes, is created

281 to read:

282 791.017 Administrative fines.--

283 (1) If a person violates any provision of this chapter or
 284 any rule adopted under this chapter, or violates a cease and
 285 desist order, the division may impose an administrative fine,
 286 not to exceed \$1,000 for each violation, or suspend or revoke
 287 the certificate of registration issued.

288 (2) The division may allow the certificateholder a
 289 reasonable time, not to exceed 30 days, to pay the penalty in
 290 its entirety to the division. If the certificateholder fails to
 291 pay the penalty in its entirety within the period allowed, the
 292 division shall revoke the certificates held.

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

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

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

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

303 791.018 Grounds for suspension or revocation of
 304 registration certificate for manufacturers, distributors,
 305 wholesalers, and retailers.--

306 (1) The division may suspend or revoke the registration
 307 certificate of manufacturers, distributors, wholesalers, and
 308 retailers for one or more of the following grounds:

309 (a) Material misstatement, misrepresentation, or fraud in
 310 obtaining or attempting to obtain a registration certificate.

311 (b) Willful use of a registration certificate to
 312 circumvent any requirement or prohibition in this chapter.

313 (c) Fraudulent or dishonest practices in the conduct of
 314 business under the authority of the registration certificate.

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

317 (2) This section shall be enforced as provided in chapter
 318 120.

319 Section 8. Section 791.019, Florida Statutes, is created
 320 to read:

321 791.019 Duration of suspension or revocation.--

322 (1) The division shall, in its order suspending the
 323 registration certificate of an individual, firm, partnership,
 324 association, group, or corporation, specify the period during
 325 which the suspension is to be effective, but such period may not
 326 exceed 2 years. The registration certificate shall remain
 327 suspended during the period specified, subject to any rescission
 328 or modification of the order by the division or modification or
 329 reversal thereof by the court prior to expiration of the
 330 suspension period. A registration certificate that has been
 331 suspended may not be reinstated except upon request for
 332 reinstatement, but the division may not grant such reinstatement
 333 if it finds that the circumstance or circumstances for which the
 334 registration certificate was suspended or revoked still exist or
 335 are likely to recur.

336 (2) A person or organization holding a registration

337 certificate revoked by the division may not apply for another
 338 registration certificate under this chapter within 2 years after
 339 the effective date of revocation or, if judicial review of
 340 revocation is sought, within 2 years after the date of the final
 341 court order or decree affirming the revocation order.

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

345 (4) During the period of suspension, or after revocation
 346 of the registration certificate, the former certificateholder
 347 may not engage in, or attempt or profess to engage in, any
 348 transaction or business for which a registration certificate is
 349 required by this chapter.

350 Section 9. Section 791.02, Florida Statutes, is amended to
 351 read:

352 791.02 Sale of fireworks regulated; rules ~~and~~
 353 ~~regulations~~.--

354 (1) Except as hereinafter provided it is unlawful for any
 355 person or organization, ~~firm, copartnership, or corporation~~ to
 356 offer for sale, expose for sale, sell at retail, or use or
 357 explode any fireworks; provided that the board of county
 358 commissioners shall have power to adopt reasonable rules ~~and~~
 359 ~~regulations~~ for the granting of permits for supervised public
 360 display of fireworks by fair associations, amusement parks, and
 361 other organizations or groups of individuals when such public
 362 display is to take place outside of any municipality; provided,
 363 further, that the governing body of any municipality shall have
 364 power to adopt reasonable rules ~~and regulations~~ for the granting

365 of permits for supervised public display of fireworks within the
366 boundaries of any municipality. Every such display shall be
367 handled by a competent operator to be approved by the chiefs of
368 the police and fire departments of the municipality in which the
369 display is to be held, and shall be of such a character, and so
370 located, discharged, or fired as in the opinion of the chief of
371 the fire department, after proper inspection, shall not be
372 hazardous to property or endanger any person. Application for
373 permits shall be made in writing at least 15 days in advance of
374 the date of the display. If the local authority licensing
375 jurisdiction does not have a permit process for the public
376 display of fireworks, applications shall be made to the State
377 Fire Marshal. After such privilege is ~~shall have been~~ granted,
378 sales, possession, use, and distribution of fireworks for such
379 display shall be lawful for that purpose only. No permit
380 granted hereunder shall be transferable. Any public display of
381 fireworks must be conducted in compliance with s. 791.012.

382 (2) A sparkler or other product authorized for sale under
383 this chapter may not be sold or shipped to any person younger
384 than 18 years of age. A sparkler or other product authorized for
385 sale under this chapter may not be sold by a retailer or
386 seasonal retailer unless the product was obtained from a
387 manufacturer, distributor, or wholesaler registered with the
388 division pursuant to s. 791.015. Each retailer and seasonal
389 retailer shall keep, at every location where sparklers are sold,
390 a copy of an invoice or other evidence of purchase from the
391 manufacturer, distributor, or wholesaler, which states the
392 registration certificate number for the particular manufacturer,

393 distributor, or wholesaler and the specific items covered by the
 394 invoice. Each seasonal retailer shall, in addition, exhibit a
 395 copy of his or her registration certificate at each retail or
 396 seasonal retail location. Retail sales may not be made from any
 397 type of motorized or movable apparatus. Sales from tents that
 398 meet all applicable codes and fire regulations are allowed.

399 Section 10. Section 791.021, Florida Statutes, is created
 400 to read:

401 791.021 Sale of sparklers.--

402 (1) A person, organization, manufacturer, distributor,
 403 wholesaler, retailer, or seasonal retailer may not purchase,
 404 sell, or solicit to sell sparklers except in conformance with
 405 this chapter.

406 (2) It is the responsibility of the person, organization,
 407 manufacturer, distributor, or wholesaler to determine that the
 408 purchaser is registered with the division.

409 (3) It is the responsibility of the retailer or seasonal
 410 retailer of sparklers to determine that a purchaser is at least
 411 18 years of age, evidenced by the purchaser presenting a valid
 412 driver's license or a valid state identification card issued by
 413 the Department of Highway Safety and Motor Vehicles.

414 Section 11. Section 791.04, Florida Statutes, is amended
 415 to read:

416 791.04 Sale at wholesale; requirements for transport,
 417 etc., exempted.--

418 (1) ~~Nothing in this chapter shall be construed to~~
 419 ~~prohibit any~~ manufacturer, distributor, or wholesaler of
 420 fireworks who has registered with the division pursuant to s.

421 791.015 ~~may~~ to sell at wholesale ~~any such~~ fireworks ~~as are~~ not
 422 herein prohibited to any manufacturer, distributor, or
 423 wholesaler of fireworks who has registered with the division and
 424 holds a current certificate of registration.

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

428 (3) Sale of fireworks may be made to a person holding a
 429 public display permit issued by the authority having
 430 jurisdiction for the purpose of conducting a public display of
 431 fireworks in compliance with s. 791.012. Transport must be by a
 432 bonded commercial carrier or by a person employed by the
 433 manufacturer, distributor, or wholesaler of fireworks. Transport
 434 must be accompanied by an invoice or bill of lading identifying
 435 the manufacturer, distributor, or wholesaler of fireworks with
 436 the current certificate of registration number on the invoice or
 437 bill of lading and an itemized list of the contents of the
 438 shipment. ~~to prohibit the sale of any kind of fireworks at~~
 439 ~~wholesale between manufacturers, distributors, and wholesalers~~
 440 ~~who have registered with the division pursuant to s. 791.015; to~~
 441 ~~prohibit the sale of any kind of fireworks provided the same are~~
 442 ~~to be shipped directly out of state by such manufacturer,~~
 443 ~~distributor, or wholesaler; to prohibit the sale of fireworks to~~
 444 ~~be used by a person holding a permit from any board of county~~
 445 ~~commissioners at the display covered by such permit; or to~~
 446 ~~prohibit the use of fireworks by railroads or other~~
 447 ~~transportation agencies for signal purposes or illumination or~~
 448 ~~when used in quarrying or for blasting or other industrial use,~~

449 ~~or the sale or use of blank cartridges for a show or theater, or~~
450 ~~for signal or ceremonial purposes in athletics or sports, or for~~
451 ~~use by military organizations, or organizations composed of the~~
452 ~~Armed Forces of the United States; provided, nothing in this~~
453 ~~chapter shall be construed as barring the operations of~~
454 ~~manufacturers, duly licensed, from manufacturing, experimenting,~~
455 ~~exploding, and storing such fireworks in their compounds or~~
456 ~~proving grounds.~~

457 Section 12. Section 791.041, Florida Statutes, is created
458 to read:

459 791.041 Maintenance of records of sales of fireworks by
460 manufacturers, distributors, and wholesalers; examination of
461 records; responsibility to determine purchaser's age and
462 registration.--

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

466 (2) Each sale or transaction must be evidenced by an
467 invoice or sales ticket that bears the name, address, and
468 certificate of registration number of the purchaser or, in the
469 case of a sale conducted for public display, a copy of the
470 permit issued by the authority having jurisdiction, the date of
471 the sale, the products sold, and the quantity sold. All invoices
472 and sales tickets shall be maintained by the manufacturer,
473 distributor, or wholesaler of fireworks and a copy provided to
474 the purchaser.

475 (3) Such records shall be maintained for 5 years, subject
476 to examination by the division or any official of this state

477 with statutory authority under s. 791.001.

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

481 (5) It is the responsibility of the manufacturer,
 482 distributor, or wholesaler of fireworks to determine that a
 483 purchaser is at least 18 years of age, evidenced by the
 484 purchaser's presenting a valid driver's license or a valid state
 485 identification card issued by the Department of Highway Safety
 486 and Motor Vehicles.

487 (6) It is the responsibility of the manufacturer,
 488 distributor, or wholesaler of fireworks to determine, when
 489 selling fireworks under s. 791.04, that the purchaser is
 490 registered under s. 791.015, evidenced by the purchaser
 491 presenting a valid certificate of registration issued by the
 492 division. If the purchase of fireworks is for public display,
 493 the purchase must be evidenced by the purchaser presenting a
 494 public display permit issued by the authority having
 495 jurisdiction. Agricultural purchases shall be in compliance with
 496 s. 791.07.

497 Section 13. Section 791.05, Florida Statutes, is amended
 498 to read:

499 791.05 Contraband; seizure, forfeiture, and disposal of
 500 illegal fireworks.--

501 (1) All fireworks or sparklers that are handled,
 502 delivered, possessed, manufactured, or distributed contrary to
 503 any provision of this chapter and all such fireworks or
 504 sparklers the lawful possession of which is not established or

505 title to which cannot be ascertained are declared contraband and
506 are subject to seizure and confiscation by any person or law
507 enforcement agency whose duty it is to enforce this chapter.

508 (2) The state attorney within whose jurisdiction the
509 unlawful fireworks or sparklers have been seized or any such
510 attorney as is employed by the seizing law enforcement agency
511 shall promptly proceed against the contraband fireworks and show
512 cause in the circuit court within the jurisdiction in which the
513 seizure or offense occurred and may have such contraband article
514 or articles forfeited to the law enforcement agency making the
515 seizure upon showing proof that the contraband fireworks were
516 being used or exist in violation of this chapter.

517 (3) Any fireworks seized as evidence may be sample tested
518 and weighed by the seizing agency after the seizure. Any such
519 sample and analysis thereof may be admitted into evidence in any
520 civil or criminal action for the purpose of proving the nature,
521 composition, and weight of the fireworks. In addition, the
522 seizing agency may photograph or videotape, for use at trial,
523 the fireworks seized. Except for fireworks retained by the
524 seizing agency for sample testing, analysis, and evidence, upon
525 a final determination that the seized fireworks were being used
526 or exist in violation of this chapter, the circuit court having
527 jurisdiction shall order such fireworks forfeited and destroyed.
528 The method of destruction or disposal of such fireworks shall be
529 at the discretion of the seizing agency.

530 (4) The final order of forfeiture by the court shall
531 perfect in the seizing law enforcement agency all rights, title,
532 and interest in and to such fireworks and shall relate back to

533 the date of seizure.

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

543 Section 14. Section 791.055, Florida Statutes, is amended
 544 to read:

545 791.055 Restrictions upon storage of sparklers and
 546 fireworks.--The storage of sparklers and fireworks in this state
 547 is governed by the National Fire Protection Association 1124
 548 Code as adopted by rule of the Department of Financial Services.

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

551 ~~(a) In which paints, oils, or varnishes are manufactured~~
 552 ~~or kept for use or sale unless the paints, oils, or varnishes~~
 553 ~~are in unbroken containers.~~

554 ~~(b) In which resin, turpentine, gasoline, or flammable~~
 555 ~~substances or substances which may generate vapors are used,~~
 556 ~~stored, or offered for sale unless the resin, turpentine,~~
 557 ~~gasoline, or substances are in unbroken containers.~~

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

561 ~~(2) When sparklers are in storage to be offered for sale~~
 562 ~~at retail, a sign shall be conspicuously displayed over the~~
 563 ~~entrance to the room in which the sparklers are stored, which~~
 564 ~~sign reads: "CAUTION SPARKLERS NO SMOKING." No person shall be~~
 565 ~~in such room while in possession of a lighted cigar, cigarette,~~
 566 ~~or pipe.~~

567 Section 15. Section 791.06, Florida Statutes, is amended
 568 to read:

569 791.06 Penalties.--

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

574 (2) Any person or organization that commits a second or
 575 subsequent violation of any provision of s. 791.015, s. 791.02,
 576 s. 791.021, s. 791.04, or s. 791.041 commits a felony of the
 577 third degree, punishable as provided in s. 775.082, s. 775.083,
 578 or s. 775.084. Any firm, copartnership, or corporation violating
 579 the provisions of this chapter shall be guilty of a misdemeanor
 580 of the first degree, punishable as provided in s. 775.083 or, in
 581 the case of individuals, the members of a partnership and the
 582 responsible officers and agents of an association or
 583 corporation, punishable as provided in s. 775.082 or s. 775.083.

584 Section 16. Section 791.061, Florida Statutes, is created
 585 to read:

586 791.061 Injunction.--In addition to the penalties and
 587 other enforcement provisions of this chapter, if any person
 588 engages in any activity prohibited by this chapter or violates

589 any provision of this chapter or any rule adopted under this
 590 chapter, the division may resort to proceedings for injunctive
 591 relief in the circuit court of the county in which such person
 592 resides or has a principal place of business and therein apply
 593 for such temporary or permanent orders as the division deems
 594 necessary to restrain the person from engaging in any such
 595 activities, until such person has complied with the provisions
 596 of this chapter and such rules.

597 Section 17. Section 791.07, Florida Statutes, is amended
 598 to read:

599 791.07 Agricultural and fish hatchery use.--

600 (1) Nothing in This chapter does not shall prohibit the
 601 importation, purchase, sale, or use of fireworks used or to be
 602 used solely and exclusively in frightening birds from
 603 agricultural works and fish hatcheries; ~~and such use shall be~~
 604 ~~governed entirely by the rules prescribed by the Department of~~
 605 ~~Agriculture and Consumer Services.~~

606 (2) Any person who is engaged in agricultural works or who
 607 operates a fish hatchery may use fireworks solely and
 608 exclusively for the purpose of frightening birds in order to
 609 prevent them from doing harm to such person's agricultural works
 610 or fish hatchery operation; however, such person must first file
 611 with the sheriff of the county or the authority having
 612 jurisdiction in the county in which the person is engaged in
 613 agricultural works or the operation of a fish hatchery a sworn
 614 affidavit in writing that he or she is engaged in agricultural
 615 works, describing the nature of such, or that he or she operates
 616 a fish hatchery, describing the nature of such, and desires to

617 use fireworks to frighten birds in order to prevent them from
 618 harming the agricultural works or fish hatchery operation and
 619 that fireworks will be used solely and exclusively for that
 620 purpose. The sheriff of the county or the authority having
 621 jurisdiction, upon determining that the sworn affidavit is
 622 sufficient and the request is valid, shall issue a permit, on a
 623 form provided by the division, to the applicant. The permit must
 624 identify the applicant and the quantity of fireworks to be
 625 purchased and possessed. A copy of the permit shall be retained
 626 by the manufacturer, distributor, or wholesaler making the sale
 627 as part of its recordkeeping requirement under s. 791.041, and a
 628 copy shall be maintained by the applicant with a listing of the
 629 fireworks covered under the permit.

630 (3) Falsification of any affidavit or permit provided for
 631 in this section or providing false information in such sworn
 632 affidavit is a misdemeanor of the first degree, punishable as
 633 provided in s. 775.082 or s. 775.083. Falsification of any
 634 affidavit or permit provided for in this section includes aiding
 635 and abetting such falsification or selling fireworks when the
 636 seller knows or has reason to believe that the permit is
 637 falsified.

638 Section 18. Section 791.08, Florida Statutes, is created
 639 to read:

640 791.08 Nonpreemption.--The state does not preempt the
 641 regulation of fireworks and sparklers as provided in this
 642 chapter. Any authority having jurisdiction may enact any
 643 ordinance or adopt any rule related to this chapter if such
 644 ordinance or rule is more stringent, or provides a higher degree

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645 | of safety, than provided in this chapter.

646 | Section 19. This act shall take effect July 1, 2005.