

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Banking and Insurance Committee

BILL: SB 746

SPONSOR: Senator Lawson

SUBJECT: Fireworks

DATE: April 25, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	Favorable
2.	_____	_____	<u>AG</u>	_____
3.	_____	_____	<u>CA</u>	_____
4.	_____	_____	<u>CJ</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

For purposes of public safety, Florida has banned the retail sale of fireworks to and the use of fireworks by the general public since 1941, but allows sparklers and other novelty products to be sold. Chapter 791, F.S., sets forth the framework for the regulation of sparklers and fireworks in Florida under the State Fire Marshal's office (SFM),¹ however, enforcement of the law is lodged with local county and municipal law enforcement agencies. Although the law prohibits the sale and use of fireworks by the public, the law allows wholesale exceptions to this prohibition which have resulted in illegal fireworks sales.

Senate Bill 746 provides for comprehensive regulation of the fireworks and sparkler industry. It provides the SFM with clear authority to enforce the provisions of chapter 791 and provides for the following:

- Eliminates most wholesale fireworks exemptions except for certain provisions which allow sales that must be verified at point of sale;
- Authorizes the SFM to have cease and desist powers, suspension and revocation authority, and injunctive relief powers, including imposing administrative fines;
- Requires manufacturers, distributors, and wholesalers of fireworks to register with and pay fees to the SFM for each location where such products are manufactured, distributed or wholesaled;
- Establishes a minimum age (18 years old) to purchase sparklers and fireworks;

¹ The SFM is under the Department of Financial Services.

- Provides for forfeiture and disposal of fireworks or sparklers;
- Requires the storage of sparklers or fireworks according to national standards;
- Increases the penalty provisions (to a third degree felony) for persons who violate specific fireworks code provisions a second or subsequent time; and,
- Clarifies that the state does not preempt the regulation of fireworks and sparklers so long as local jurisdictions enact ordinances or rules which are more stringent, or provide a higher degree of safety, than provided under chapter 791, F.S.

This bill substantially amends the following sections of the Florida Statutes: 791.001, 791.01, 791.012, 791.015, 791.02, 791.04, 791.05, 791.055, 791.06, and 791.07.

The bill creates the following sections of the Florida Statutes: 791.016, 791.017, 791.018, 791.019, 791.021, 791.041, 791.061, and 791.08.

II. Present Situation:

Florida's Fireworks Law

Traditionally, fireworks² have been used in our country to celebrate various occasions such as, the Fourth of July, and New Year's Eve. Today fireworks are used throughout the year to celebrate festive occasions ranging from parades and cookouts to concerts and sporting events. However, fireworks can turn a joyful celebration into a painful memory when children and adults are injured while using these products. Although some pyrotechnic devices like sparklers³ can be relatively safe, all fireworks are hazardous and can cause injury. Even sparklers, when lit, can reach temperatures between 1,300 and 1,800 degrees, which is at least 200 degrees hotter than a standard butane lighter.⁴

For purposes of public safety, Florida banned the retail sale of fireworks to, and the use of fireworks by, the general public in 1941 when the fireworks code was initially enacted.⁵ This provision has remained in the law during its sixty-four year history. However, the law provides exceptions to this general prohibition which have resulted in illegal fireworks sales to the public, as discussed below.

² "Fireworks" means any combustible or explosive substance or combination of substances or any article prepared for producing a visible or audible effect by combustion, explosion, deflagration, or detonation. The term includes blank cartridges and toy cannons in which explosives are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, skyrockets, roman candles, dago bombs, and any fireworks containing any explosives or flammable compound or any tablets or other device containing any explosive substance (s.791.01(4)(a), F.S.).

³ "Sparkler" means a device which emits showers of sparks upon burning, does not contain any explosive compounds, does not detonate or explode, is hand held or ground based, cannot propel itself through the air, and contains not more than 100 grams of the chemical compound which produces sparks upon burning (s.791.01(8), F.S.).

⁴ State Fire Marshal's office.

⁵ Chapter 41-20445, L.O.F. (Chapter 791, F.S.) See *State v. Mitchell*, 652 S.2d 473 (Fla. 2nd DCA 1995), where the Court found that it is "clear that the legislature intended to regulate all aspects of legal and illegal uses of explosives to protect the public safety."

Chapter 791, F.S., sets forth the framework for the regulation of fireworks and sparklers in Florida under the State Fire Marshal's office (SFM) within the Department of Financial Services (DFS); however, the enforcement of this law is lodged with local law enforcement departments.⁶ The law does allow sparklers and other novelty products,⁷ like smoke devices and noisemakers, to be sold at retail to and used by the public.⁸ This is because sparklers and similar items, as opposed to fireworks, do not contain explosive compounds, cannot be propelled through the air, and are hand held or ground based.

The SFM issues a Certificate of Registration to persons and companies engaged in the business of manufacturing, distributing, wholesaling, and retailing sparklers and imposes an annual fee.⁹ All sparklers must be annually tested¹⁰ and approved by the SFM according to specified standards prior to sale or use.¹¹ Pursuant to s. 719.01(8), F.S., any sparkler that is not approved by the SFM is classified as fireworks and therefore subject to the fireworks provisions under the law. The SFM promulgates an annual list of approved sparklers every year, which is on its website.¹²

According to the SFM, there are currently 3,384 retailers, 1,297 seasonal retailers, 115 wholesalers, and 9 distributors registered with that office in Florida. There are no manufacturers of fireworks registered in the state.

The law allows wholesalers, distributors, and manufacturers registered with the SFM to sell fireworks at wholesale, but only if the purchaser meets one of the nine exceptions enumerated under the fireworks code.¹³ These exemptions allow the sale of fireworks to:

1. other manufacturers, distributors, or wholesalers registered with the SFM;
2. other registered manufacturers, distributors, or wholesalers who ship fireworks directly out of Florida;
3. persons holding a permit from any board of county commissioners (or municipality) at the display covered by such permit;¹⁴

⁶ Section 791.001, F.S. Chapter 552, F.S., regulates the use of explosives and specifically excludes fireworks as defined under ch. 791, F.S. (s. 552.081(2), F.S.), as does chapter 790, F.S., which regulates weapons and firearms (s. 790.001(5), F.S.).

⁷ Section 791.01(4)(c), F.S. Novelty products include: snakes or glow worms, smoke devices, trick noisemakers, party poppers, booby traps, snappers, trick matches, cigarette load, and auto burglar alarms.

⁸ Retailers that sell sparklers to the general public are classified into two groups: "seasonal retailers" are persons who sell sparklers only from June 20 through July 5 and from December 10 through January 2 (the temporary stands and tents near roads are operated by seasonal retailers); "retailers" are persons who sell sparklers throughout the year from a fixed location, for example, convenience stores and supermarkets (s. 791.015, F.S.).

⁹ Section 791.05, F.S. The certificate issued by the SFM is mandatory and contains the licensed address where sales are permitted and must be posted at the registered location. Fees for manufactures, distributors, and wholesalers of sparklers are \$1,000; for retailers the fees are \$15; and for seasonal retailers, the fee is \$200.

¹⁰ Sparklers, unless they are subsequently altered, are only tested once by the SFM.

¹¹ Sections 791.015 and 791.013, F.S. Sparklers must be submitted for testing to the SFM's Bureau of Forensic Fire and Explosives Analysis Laboratory in Tallahassee prior to September of each year. The SFM does not test novelties or trick noisemakers.

¹² <http://www.fldfs.com/sfm/sparklerindex.htm>. The SFM also publishes its list of approved sparklers in the Florida Administrative Weekly. The list is effective February 1 of each year and expires each January 31.

¹³ Sections 791.04 and 791.07, F.S. The sale must be a wholesale transaction.

¹⁴ Section 791.02, F.S., allows counties and cities to adopt reasonable rules and regulations for the granting of permits for the supervised public display of fireworks within their boundaries. Display operators must apply for a permit at least 15 days in

4. railroads or other transportation agencies for signal, illumination, quarrying, blasting or other industrial use;
5. a show or theater for the sale or use of blank cartridges;
6. athletics or sports for signal or ceremonial purposes;
7. military organizations, or organizations composed of the Armed Forces of the United States;
8. licensed manufacturers who experiment by exploding and storing fireworks in their own compounds; and,
9. agricultural works and fish hatcheries in order to frighten birds. The Department of Agriculture and Consumer Services governs this provision pursuant to their rules, which mandate that persons who utilize this exemption must first file a written statement with the county sheriff verifying such persons are engaged in agriculture or operate a fish hatchery.¹⁵ These persons must then present this statement to the seller at the point of sale.¹⁶

It is a first-degree misdemeanor penalty for any person, firm, copartnership, or corporation to offer for sale, expose for sale, sell at retail, or use or explode any fireworks.¹⁷ It is not, however, a violation of the law to merely possess fireworks. The law imposes a similar penalty for individuals, members of a partnership, officers of an association or corporation who violate the terms of the fireworks code¹⁸ and for persons who alter approved sparklers and subsequently sell such products or fraudulently represent a device is approved for sale as a sparkler by the SFM when it is not approved.¹⁹ In addition, the sheriff or any other police officer is authorized to seize, take or remove at the expense of the owner, all stocks of fireworks or combustibles offered for sale, stored, or held in violation of chapter 791, F.S.²⁰

The outdoor display of fireworks is governed by the National Fire Protection Association (NFPA), which establishes minimum safety standards for outdoor public displays.²¹ Local governments may adopt more stringent restrictions for the outdoor display of fireworks, but cannot enact less stringent provisions. The law further outlines restrictions on the storage of sparklers to ensure such products are kept in a safe manner.²²

advance and obtain approval from municipal chiefs of police and fire departments. Section 791.03, F.S., authorizes counties to require a bond of not less than \$500 for any damages caused by a fireworks display.

¹⁵ Rules 5A-3.001 and 5A-3.002, F.A.C.

¹⁶ According to the Department of Agriculture and Consumer Affairs, this provision is used primarily by small blueberry and strawberry farmers and those who operate small tropical fish hatcheries to scare away birds. Under s. 597.004, F.S., (aquaculture regulation) fish farmers must apply to the Department to receive a certificate and be inspected. Large agriculture farmers do not use fireworks, but employ propane air cannons to frighten birds.

¹⁷ Section 791.02, F.S. A misdemeanor penalty is one year in jail and a \$1,000 fine.

¹⁸ Section 791.06, F.S. Firms, copartnerships, or corporations found to violate the law are subject to a \$1,000 fine.

¹⁹ Section 791.013, F.S.

²⁰ Section 791.05, F.S.

²¹ Section 791.012, F.S. NFPA 1123, Code for Fireworks Display, 1995 Edition, approved by the American National Standards Institute. The NFPA 1123 Code applies to the construction, handling, use, and operation of fireworks intended solely for public outdoor fireworks display and to the general conduct and operation of the display.

²² Section 791.055, F.S.

Federal Fireworks Provisions

The Federal Hazardous Substances Act (Act)²³ classifies explosives, including fireworks, and prohibits the sale of the most dangerous types of fireworks to consumers. These banned fireworks include large reloadable mortar shells, cherry bombs, aerial bombs, M-80 salutes and larger firecrackers containing more than two grains of powder. Also banned are mail-order kits designed to build these fireworks. The U.S. Consumer Product Safety Commission (CPSC) is responsible for enforcing the fireworks regulations under the Act, including preventing the import of illegal fireworks from other countries. It is a violation of Federal law to sell, distribute, or import fireworks that violate provisions of the Act.

The CPSC regulates all fireworks devices intended for use by consumers,²⁴ (so called “consumer fireworks” which are legal under the Act) and has issued mandatory safety regulations for these devices. In order to be classified as “consumer fireworks,” the CPSC tests these products, which must meet various requirements with regard to composition, the quality of pyrotechnic material, and the stability of the product under heat and stress.²⁵ These regulations aim to prevent injuries and death from hazards from fireworks to ensure that such devices work properly and safely. Fireworks, which do not meet these requirements, are banned hazardous substances.

Florida law limits the types of “consumer fireworks” that may be sold to and used by the public. Only devices that meet the definition of “sparkler” and have been tested and approved by the SFM are allowed to be sold to the public. Pursuant to s. 719.01(8), F.S., any sparkler that is not approved by the SFM is classified as fireworks which means that such products may only be sold subject to persons qualifying for one of the wholesale exemptions noted earlier in this report.

Fireworks Related Injuries, Deaths, and Fires

In its annual fireworks report, the U.S. Consumer Product Safety Commission (CPSC) estimates that fireworks devices were involved in 9,300 injuries treated in U. S. hospital emergency departments during calendar year 2003.²⁶ Six deaths were associated with fireworks during the same period. Of the six deaths, four were associated with aerial fireworks while the other two occurred in fires that were started by fireworks.

²³ 15 U.S.C. s. 1261.

²⁴ The term “*consumer fireworks*” means any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and cautionary labeling regulations of the CPSC, as set forth in title 16, Code of Federal Regulations, parts 1500 and 1507. Some small devices designed to produce audible effects are included, such as whistling devices, ground devices containing 50 mg. or less of explosive materials, and aerial devices containing 130 mg. or less of explosive materials. The U.S. Dept. of Transportation (DOT) at 49 CFR 172.01 classifies consumer fireworks as fireworks UN0336 and UN0337. The DOT sets standards for the classification and transportation of consumer fireworks, (referred to as DOT 1.4G).

²⁵ These performance requirements range from specifying the types of fuses used in fireworks to prohibiting the use of certain chemicals. Fireworks intended solely for commercial use, such as fireworks used in public displays, are not covered by CPSC regulations. However, any professional or display fireworks device which contains a specific defect that presents a risk to consumers (such as those observing fireworks displays) may be subject to provisions of the Consumer Product Safety Act, 15 U.S.C., s. 2064.

²⁶ 2003 *Fireworks Annual Report*, U.S. Consumer Product Safety Commission (CPSC). The CPSC monitors a sample of hospital departments and produces annual injury estimates associated with fireworks and other consumer products based upon the injuries that are recorded by these selected hospitals. The CPSC also conducts telephone follow-up investigations of some fireworks-related injuries.

During 2003, the CPSC reports that an estimated 6,800 fireworks-related injuries were treated in hospital emergency departments during the one-month period surrounding the Fourth of July (June 20, 2003 - July 20, 2003).²⁷ This figure represents over two-thirds of the annual fireworks-related injuries for that year.²⁸ For 2002, the report estimates that there were 8,800 fireworks injuries with 5,700 injuries during the one-month period surrounding the Fourth of July.

Injuries to children were a major component of the total fireworks-related injuries with children under 15 accounting for almost half the estimated injuries. The highest injury rates were for young teenagers--those aged 10 to 14. Sparklers accounted for more than half the injuries for children under 5 years of age.

Nationwide, there were 24,200 fires associated with fireworks in 1999 according to the National Fire Protection Association (NFPA). Most of the fires were outdoor brush or refuse fires which usually began with the outdoor use of fireworks.

According to the SFM, there is no standardized statewide tracking system for the reporting of fireworks related injuries or deaths in Florida. Nor does that office track the number of fires that are associated with fireworks. Some local governments keep track of this type of data, but there are no uniform record-keeping procedures in place.

Recent Litigation Involving Fireworks and Local Ordinances Regulating Fireworks

Three years ago, the Third District Court of Appeal in *State v. Miketa*, held that chapter 791, F.S., did not require a seller of fireworks to use due diligence to determine if a purchaser met one of the statutory wholesale exemptions under the law.²⁹ The Court reasoned that all that is required of the seller, before he could lawfully sell the fireworks, was for the purchaser to sign a statement, supplied by the seller, that he is covered by one of the exemptions to the statute. Since the statute was penal in nature, it should be strictly construed against the state. Because the fireworks statute failed to include a requirement that the seller make a bona fide attempt to determine if the purchase is exempt by requiring supporting documentation, such a requirement could not be read into the law.

The *Miketa* case involved the criminal prosecution of an individual for the illegal sale of fireworks to an undercover detective in violation of s. 791.04, F.S. The State had argued that when a purchaser of fireworks executes an affidavit (declaring that the purchaser meets one of the statutorily provided exemptions for sales under s. 791.04, F.S.), the seller of the fireworks must request further documentation to establish the transaction is, in fact, exempt.

This decision has rendered the proscriptions against selling illegal fireworks “meaningless,” according to the Director of the State Fire Marshal’s office.³⁰ This is because fireworks sellers routinely use these affidavits and require buyers to sign these forms “falsely,” stating that they

²⁷ Staff with the CPSC estimated that there were 5,700 injuries during 2002 for that one-month period.

²⁸ There were a relatively small number of injuries (100) associated with public fireworks displays.

²⁹ 824 So.2d 970 (Fla 3rd DCA 2002). The Court noted that the question of how the fireworks sale was treated for sales tax purposes would be instructive as to the legality of the sale. That is because no collection of sales tax would be evidence of a wholesale transaction while the collection of sales tax in conjunction with the purchase would be evidence of a retail sale. See, Attorney General Opinion to Senator Lawson (AGO 2001-35).

³⁰ Memorandum to Committee Staff from Randall Napoli, Director, October 25, 2004.

are purchasing fireworks under one of the exemptions when in fact they are not, according to the Director and other fire officials. Since the affidavit is not verified, virtually anyone can purchase illegal fireworks. These officials further state that they do not know of any successful prosecutions which have occurred under the fireworks law.

In the past several years, at least sixty-five municipalities and ten counties have enacted ordinances to provide for more stringent regulation of the sale and use of fireworks than under chapter 791, F.S.³¹ According to local government officials, passage of these ordinances is due to scores of complaints these officials have received from citizens concerning the illegal use of fireworks.³² This is because these devices are no longer just a nuisance, but cause injury, property damage, noise pollution, and result in local entities expending scarce resources to clean up fireworks debris.

Several of the ordinances require fireworks buyers to provide documentation showing compliance with the exemption requirements under ch. 791, F.S., and mandate vendors obtain and record copies of a buyer's documentation, or occupational or business license evidencing such compliance. The regulations furthermore range from completely banning the sale of all fireworks within the city's limits (and prohibiting any exemptions from the ban)³³ to establishing permitting, zoning, storage, and disposal restrictions on the sale of fireworks and sparklers.

In 2003, Pinellas County enacted an ordinance applying stricter requirements as to the enforcement of the state fireworks law because both purchasers and fireworks sellers were able to "circumvent state law and hide behind the guise of sparkler sales in order to sell illegal fireworks in Pinellas County."³⁴ In passing the ordinance, the county stated that it was a proper exercise of its home rule authority to enact legislation for the safety and welfare of its citizens. Phantom Fireworks Company sued the county stating that the Pinellas ordinance was preempted by the sale of fireworks under ch. 791, F.S. The Circuit Court rejected Phantom's argument and on appeal, the Second District Court of Appeal³⁵ upheld the decision of the lower court by finding that chapter 791, F.S., did not preempt the field of fireworks regulation by Pinellas County. The Court found that the county was free to enact regulations regarding the operation of businesses involving fireworks.³⁶

³¹ Committee staff obtained these estimates from the League of Cities and the Florida Assn. of Counties.

³² Greg Northrup, Mayor of Daytona Beach Shores.

³³ St. Augustine ordinance 2004-18; enacted October 25, 2004. It does authorize the granting of permits for supervised public displays of fireworks.

³⁴ Fireworks Ordinance #03-48. Answer Brief of Respondent Pinellas County in *Phantom Fireworks of Clearwater v. Pinellas County*; Appeal No. 2D03-5408.

³⁵ 894 So.2d 1011 (Fla. 2nd DCA 2005).

³⁶ In another case, the City of Daytona Beach Shores (*Davken v. City of Daytona Beach Shores*, (Case No. 6:04-cv-207-Orl-19DAB, U.S. District Court for the Middle District of Florida) prevailed in an action in Federal Court involving its fireworks ordinance.³⁶ That regulation established building permit requirements along with other restrictions for selling fireworks. A local fireworks seller challenged the ordinance on a number of grounds including due process, equal protection, inverse condemnation, and state preemption. The Court rejected all the seller's arguments and granted the City's summary judgment motion.

Advocates for More Stringent Fireworks Regulation and Enforcement

In November 2004, the Florida Fire Service Task Force on Fireworks issued its “White Paper” recommending that “more stringent” fireworks laws be adopted by the State since the law had “not undergone a comprehensive legislative review since its inception in 1941.” The Task Force, composed of a cross section of state, county, and city fire, law enforcement, health, and government officials,³⁷ found that injuries, deaths, and property damage were caused by the illegal sales of fireworks; that the exemptions under current law were utilized by the fireworks industry to circumvent the law and allow for the purchase of illegal fireworks (due to the use of unverified exemption affidavits); and that the materials used in the construction of fireworks could be used to create explosive and incendiary devices which could pose a “threat to homeland security.” It recommended, at a minimum, that proper documentation and verification procedures be used by persons qualifying for an exemption and that exemption provisions be clearly defined.

State and local fire and government officials state that most of the fireworks exemptions enacted in 1941 are no longer necessary. According to the Director of the office of SFM, with the “exception of the occasional locally produced theatre performance, we are unable to verify that any of the exemptions are being used as they were intended. Since there is no verification of one’s claim to an exemption, they have simply become the rule for doing business rather than the exception.” Railroads, military organizations, organizers of sporting events, theaters and large agricultural concerns no longer utilize fireworks, but employ other means.³⁸ For example, as noted above, the vast majority of agriculture farmers employ air cannons set on timers to scare away birds.

On July 1, 2004, a national consortium of leading health and safety groups called for a ban by the states as to all consumer fireworks.³⁹ Citing deaths, injuries and fires, the group strongly recommended that adults and children not use these devices and instead attend public fireworks displays conducted by professionals. The group came together to call attention to the dangers of seemingly harmless fireworks. For example, in 2002, eight out of nine emergency department fireworks injuries involved fireworks that federal regulations permit consumers to use, e.g., “consumer fireworks.” The advocates stated that “fireworks can result in scars and disfigurement that can last a lifetime.”

Response of the Fireworks Industry in Florida

According to industry representatives, the fireworks industry in Florida brings revenue and jobs to the state. The industry consists primarily of twelve corporate entities⁴⁰ and numerous smaller “mom and pop” companies. Economically, this breaks down to approximately 1,100 jobs, an estimated \$1 million in tax revenues, and another \$3 million in related commerce annually

³⁷ Members of the Task Force included the following: Florida Fire Chiefs Assn.; Florida Professional Firefighters; Florida League of Cities; Florida Assn. of Counties; Florida Division of the State Fire Marshal; Florida Division of Forestry; Florida Sheriffs Assn.; Florida Fire Marshals and Inspectors Assn.; Florida Emergency Physicians; National Fire Protection Assn.; Ft Lauderdale Fire Rescue; City of Daytona Beach Shores; Florida State Attorneys Office; and, Florida Department of Revenue.

³⁸ For example, railroads may obtain explosives under other state laws including chapter 552, F.S.

³⁹ Members of the group are: American Academy of Ophthalmology; American Academy of Pediatrics; American Assn. for Hand Surgery; American Burn Assn.; American College of Emergency Physicians; International Assn. of Fire Chiefs; International Assn. of Fire Fighters; International Fire Marshals Assn.; National Assn. of State Fire Marshals; and, National Fire Protection Assn.

according to these representatives. For example, one of the larger Florida-based companies is Galaxy Fireworks, a multi-million dollar corporation that wholesales, retails, and imports consumer fireworks products in three states. Located in Tampa, it has both permanent stores and temporary tent locations and, along with its full-time staff, utilizes an estimated 100-125 independent contractors per sales season (March through July) to carry out these operations. It has an estimated market share of 20 percent statewide and 75 percent in the Tampa Bay area.

Industry representatives stress that if the State further restricts the sales of consumer fireworks, then a large portion of the revenues listed above would be lost, and many of the people currently employed by the industry would be filing for unemployment compensation. This does not include the budgetary increases that would be required at the State level for additional enforcement costs, the cost of potential lawsuits from retailers and users alike and the increased injuries from illegal devices that tend to fill the void when consumer fireworks are unavailable.

The volume of current consumer fireworks sales in Florida should be an obvious indication of the level of demand by the citizenry for the products, state these representatives. For example, the usage rate for consumer fireworks has steadily increased over the past 20 years, growing from 51.9 million lbs. in 1983 to over 220 million lbs. in 2003. In 2002, the total volume of consumption of all types of fireworks was 190.1 million pounds.

Industry officials further state that:

- fireworks are safe due to state and federal testing programs and regulations;
- statistics relating to injuries, deaths, and property damage cited by advocates for stricter laws are based only on estimates and have been decreasing over the years even though the fireworks sales are increasing; and,
- the use of the verification form furnished by the seller and signed by the purchaser under one of the exemptions under ss. 791.04 and 791.07, F.S., is regarded as a “legitimate business decision made by the defendants in an effort to get an affirmative representation from the seller as to their intended uses” under the *Miketa* decision.

Committee Staff Interim Project Report

The above information is from the Interim Report (2005-108) by the staff of the Banking and Insurance Committee, *Enforcing the Ban on the Retail Sale of Fireworks*.⁴¹ The Interim Report recommended that the fireworks law be strengthened in the following manner: a) Establish a centralized fireworks injury-reporting program within the Office of the State Fire Marshal (SFM); b) Eliminate all of the wholesale fireworks exemptions except for certain specified provisions which must be verified at point of sale; c) Require fireworks sales facilities to carry a public and product liability insurance policy in an amount not less than \$2 million; d) Authorize the SFM to have cease and desist powers, suspension and revocation authority, and injunctive relief powers, including imposing administrative fines; e) Require manufacturers, distributors, and wholesalers of fireworks to register with and pay fees to the SFM; f) Establish a minimum age (18 years old) to purchase sparklers; g) Provide for forfeiture and disposal of fireworks or sparklers; h) Require the storage of sparklers or fireworks according to national standards; i) Increase the penalty provisions (to a third degree felony) for persons who violate specific

⁴¹ http://www.flsenate.gov/data/Publications/2005/Senate/reports/interim_reports/pdf/2005-108bi.pdf.

fireworks code provisions a second or subsequent time; and, j) Clarify that the state does not preempt the regulation of fireworks and sparklers so long as local jurisdictions enact ordinances or rules which are more stringent, or provide a higher degree of safety, than provided under chapter. 791.

III. Effect of Proposed Changes:

Section 1. Amends s. 791.001, F.S., to provide clarification as to uniform applicability and enforcement responsibilities under chapter 791, F.S. The bill states that the SFM or designated agent, any sheriff, deputy sheriff, any other law enforcement agency or officer, or any certified firesafety inspector charged with enforcing the laws of this state or any agency rule, county or municipal ordinance or code, has jurisdiction to enforce the provisions of this chapter.

Section 2. Amends s. 791.01, F.S., to provide new definitions to support the registration and identification of those persons and organizations that must register to sell fireworks within the parameters established under s. 791.04, F.S. (Section 11 of the bill). The bill defines the following terms “*authority having jurisdiction*” to include state, county, municipal, special district or local fire or law enforcement officer or other person having statutory authority to enforce the laws of this state or county or municipal ordinance or code; “*distributor of fireworks*” means any person selling fireworks; “*fixed location*” means a building intended to remain in place for more than 180 consecutive days; “*manufacturer of fireworks*” means a person engaged in the manufacture of fireworks; “*wholesaler of fireworks*” means any person engaged in the selling of fireworks to another wholesaler or manufacturer registered under this chapter or for agricultural or public display purposes; “*organization*” means any club or group, etc.; and, “*person*” means a person and any firm, partnership, corporation, etc.

Section 3. Amends s. 791.012, F.S., to correct a cross reference as to the minimum fireworks safety standards for the outdoor display of fireworks and clarifies that the SFM may adopt rules to carry out the provisions of the section.

Section 4. Amends s. 791.015, F.S., regarding the registration of manufacturers, distributors, and wholesalers of sparklers and fireworks. The bill establishes registration requirements for those persons or organizations engaged in the sale of fireworks by requiring a separate registration form and fee for each location where fireworks are manufactured or sold. Such registration form must be submitted to the SFM with evidence of registration with the Department of Revenue. The bill requires that registration certificates issued by the SFM be displayed at each location and made available for inspection by the authorities having jurisdiction to enforce the chapter. Persons may not alter or deface a certificate of registration.

The fee for each manufacturer, distributor or wholesaler cannot exceed \$1000 and the fee for each seasonal retail location cannot exceed \$200. The registration fee for each retail location is increased from \$15 to \$25. The bill requires that if a business changes its location, it must submit a new application and registration fee.

Section 5. Creates s. 791.016, F.S., which establishes procedures for cease and desist orders for the SFM and administrative fines. Currently, the SFM cannot administratively enforce chapter 791, F.S. The bill creates an administrative procedure for the SFM to enforce the chapter or any

rule promulgated thereunder. The SFM must issue a “notice of intent” to issue a cease and desist order for a suspected violation and once a determination is made that a violation has occurred, the SFM shall issue a final order requiring the person to cease and desist from committing further violations and may impose an administrative fine.

Section 6. Creates s. 791.017, F.S., relating to administrative fines. The bill provides that if a person violates any provision of the chapter or SFM rule, or violates a cease and desist order, the SFM may impose an administrative fine not to exceed \$1,000 for each violation or may suspend or revoke the certificate of registration. A person must pay such fine within 30 days and failure to do so results in revocation of the certificate. If a cease and desist order is issued, each day the order is violated constitutes a separate violation and if a violation is based on an unlawful sale, each sale constitutes a separate violation. The maximum administrative fine imposed may not exceed \$500,000.

Section 7. Creates s. 791.018, F.S., relating to grounds for suspension and revocation of a registration certificate. The SFM may suspend or revoke the registration certificate of manufacturers, distributors, wholesalers, and retailers if a person makes a material misstatement, misrepresentation or fraud in obtaining a registration certificate; willful use of a certificate to circumvent any requirement or prohibition in this chapter; fraudulent or dishonest practices in the conduct of a business; or violation of or failure to comply with any order or rule of the SFM. The provisions of ch. 120, F.S., apply to this section.

Section 8. Creates s. 791.019, F.S., concerning the duration of time for the suspension or revocation of a certificate. The bill creates provisions for suspending or revoking the certificate of registration and provides that if a certificate is suspended, such suspension may not exceed two years. Provisions for reinstatement are also outlined. If a certificate is revoked, then a person or organization must wait two years before reapplying and if a certificate is revoked a second time, the person or organization cannot be issued another certificate. In addition, during the period of suspension or revocation, the person or organization may not engage in any transaction that requires a certificate.

Section 9. Amends s. 791.02, F.S., relating to the sale of fireworks for public display. The bill provides the SFM with the authority to permit a public display of fireworks when a local governmental authority does not have a permitting process. The legislation provides that a sparkler or other product may not be sold or shipped to any person younger than 18 years of age. Also, retail sales of sparklers may not be made from any type of motorized or movable apparatus and further provides that only tents that meet all applicable codes and fire regulations are allowed to sell sparklers.

Section 10. Creates s. 791.021, F.S., applying to the sale of sparklers. The bill requires all retailers to determine that a purchaser of sparklers is at least 18 years old by evidencing a valid driver’s license or state identification. Also, the bill requires a person, organization, manufacturer, distributor, or wholesaler to determine that the purchaser of sparklers is registered with the SFM.

Section 11. Amends s. 791.04, F.S., pertaining to wholesale sales of fireworks. The bill eliminates most of the current wholesale exemptions for the sale of fireworks except for the following provisions:

- a manufacturer, distributor, or wholesaler of fireworks who is registered with the SFM may sell at wholesale any fireworks to any fireworks' manufacturer, distributor, or wholesaler who holds a current certificate of registration;
- a manufacturer, distributor, or wholesaler may ship or transport fireworks directly out of state;
- the sale of fireworks may be made to a person holding a public display permit issued by the authority having jurisdiction to issue such a permit.

Section 12. Creates s. 791.041, F.S., regarding the maintenance of records of fireworks sales by manufacturers, distributors or wholesalers. The bill requires that each sale must be evidenced by an invoice or sales ticket that bears the name, address, certificate of registration number of the purchaser and the date of sale and requires these records be maintained for five years. The bill requires that it is the responsibility of the manufacturer, distributor, or wholesaler of fireworks to determine that a purchaser is at least 18 years of age and is registered with the SFM.

Section 13. Amends s. 791.05, F.S., relating to forfeiture and disposal of sparklers and fireworks. All fireworks or sparklers that are handled, delivered, possessed, manufactured, or distributed contrary to chapter 791, F.S., or which lawful title cannot be ascertained, are declared contraband and subject to seizure and confiscation by any law enforcement agency with enforcement responsibilities under this chapter. The state attorney may proceed to circuit court to have the confiscated items forfeited upon proof of a violation under the chapter. Once declared forfeited by the circuit court, these items must be destroyed by the seizing agency. The owner of the forfeited fireworks or sparklers may be required to pay attorneys fees, and costs for the storage and disposal of these items.

Section 14. Amends s. 791.055, F.S., by eliminating the current restrictions upon storage of sparklers and fireworks and requires that storage be governed by the National Fire Protection Association Standard 1124 Code as adopted by rule of the Department of Financial Services.

Section 15. Amends s. 791.06, F.S., relating to penalties. The bill provides for misdemeanor and felony criminal penalties for a number of sections under the chapter. These sections relate to the registration and licensing requirements; the sale of sparklers and fireworks; and record keeping for fireworks sales. If a person or organization violates any of these provisions the first time, they commit a misdemeanor in the first degree. If a person or organization violates these provisions a second or subsequent time, they commit a third degree felony.

Section 16. Creates s. 791.061, F.S., relating to injunctive relief for violations of this chapter. The SFM may seek an injunction against a person or organization that violates provisions of this chapter. However, it is not clear if the Division has to exhaust its administrative remedies first prior to seeking an injunction.

Section 17. Amends s. 791.07, F.S., relating to agricultural and fish hatchery use. The bill removes the Department of Agriculture and Consumer Services from promulgating rules for the purchase of fireworks in frightening birds from agricultural works and fish hatcheries. The

legislation provides that any person who is engaged in agricultural works or who operates a fish hatchery may use fireworks *solely* to frighten birds; however, the person must first file with the sheriff a sworn affidavit in writing that he or she is engaged in such works or hatcheries. The sheriff must determine if the affidavit is sufficient and then issue a permit on a form provided by the SFM. A copy of the permit must be retained by the manufacturer, distributor, or wholesaler making the sale. The bill provides that it is a first degree misdemeanor to falsify an affidavit or permit.

Section 18. Creates s. 791.08, F.S., to clarify that the state does not preempt the regulation of fireworks and sparklers and provides that any authority having jurisdiction may enact any ordinance or rule related to this chapter if such ordinance or rule is more stringent, or provides a higher degree of safety, than that provided in this chapter.

Section 19. Provides that the act shall take effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Based upon the DFS bill analysis, persons engaged in the manufacture, distribution or wholesaling of fireworks will have to pay registration fees and such fees are expected to provide a minimum of \$180,000 in revenue to the SFM. See Government Sector Impact below.

C. Government Sector Impact:

Revenues:	(FY 05-06)	(FY 06 07)	(FY 07-08)
	Amount / FTE	Amount / FTE	Amount / FTE
Recurring Revenues	*\$183,510	\$187,180	\$190,923

* This revenue increase is estimated based upon current registrations, according to DFS. The costs associated with obtaining a certificate of registration will increase from \$15 to \$25, per location. Persons engaging in the business of selling fireworks to the extent allowed under the bill will be required to obtain an additional registration for the manufacture, distribution or wholesaling of fireworks of approximately \$1,000, per location.

Expenditures:

\$2,400 (Cost to revise current Licensing System for DFS)

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
