

By Senator Lawson

6-508-06

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 for manufacturers, distributors,
10 and wholesalers of sparklers or fireworks and
11 retailers of sparklers; requiring a separate
12 registration for each location at which
13 sparklers are sold; increasing certain
14 registration fees; creating s. 791.016, F.S.;
15 providing for issuance of cease and desist
16 orders; creating s. 791.017, F.S.; providing
17 for administrative fines; creating s. 791.018,
18 F.S.; providing for suspension or revocation of
19 registration and grounds therefor; creating s.
20 791.019, F.S.; providing duration of
21 suspensions and revocations; amending s.
22 791.02, F.S.; providing for state issuance of
23 permits for displays in the absence of a local
24 mechanism; prohibiting the sale or delivery of
25 sparklers to minors; prohibiting sales from
26 motorized or movable apparatus; creating s.
27 791.021, F.S.; prescribing guidelines for the
28 sale of sparklers; amending s. 791.04, F.S.;
29 prescribing guidelines on the wholesale sale of
30 fireworks; creating s. 791.041, F.S.; requiring
31 records of sales to be kept and prescribing

1 duties of sellers; amending s. 791.05, F.S.;
2 revising provisions and procedures relating to
3 forfeiture of contraband fireworks; authorizing
4 an assessment of attorney's fees and costs;
5 amending s. 791.055, F.S.; providing
6 restrictions on the storage of sparklers and
7 fireworks; amending s. 791.06, F.S.; providing
8 penalties for violations, including enhanced
9 penalties for second and subsequent violations;
10 creating s. 791.061, F.S.; providing for
11 injunctive relief; amending s. 791.07, F.S.;
12 prescribing additional guidelines on
13 agricultural and fish hatchery use of
14 fireworks; creating s. 791.08, F.S.; declaring
15 that the state has not preempted the field of
16 fireworks regulation; requiring that local
17 ordinances and rules must be more stringent
18 than state law; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 791.001, Florida Statutes, is
23 amended to read:

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

1 ~~Enforcement of this chapter shall remain with local law~~
2 ~~enforcement departments and officials charged with the~~
3 ~~enforcement of the laws of the state.~~

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

6 791.01 Definitions.--As used in this chapter, the
7 term:

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

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

18 (3)(1) "Distributor of sparklers" means any person or
19 organization engaged in the business of selling sparklers to a
20 wholesaler.

21 (4)(2) "Division" means the Division of the State Fire
22 Marshal of the Department of Financial Services.

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

27 (6)(4)(a) "Fireworks" means and includes any
28 combustible or explosive composition or substance or
29 combination of substances or, except as hereinafter provided,
30 any article prepared for the purpose of producing a visible or
31 audible effect by combustion, explosion, deflagration, or

1 | detonation. The term includes blank cartridges and toy
2 | cannons in which explosives are used, the type of balloons
3 | which require fire underneath to propel them, firecrackers,
4 | torpedoes, skyrockets, roman candles, dago bombs, and any
5 | fireworks containing any explosives or flammable compound or
6 | any tablets or other device containing any explosive
7 | substance.

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

17 | (c) "Fireworks" also does not include the following
18 | novelties and trick noisemakers:

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

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

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

30 | a. A party popper, which is a small plastic or paper
31 | device containing not more than 16 milligrams of explosive

1 composition that is friction sensitive, which is ignited by
2 pulling a string protruding from the device, and which expels
3 a paper streamer and produces a small report.

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

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

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

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

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

28
29 The sale and use of items listed in this paragraph are
30 permitted at all times.

31

1 (7) "Fixed location" means a building or structure
2 that is intended to remain in place for a period of more than
3 180 consecutive days.

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

7 (9)(5) "Manufacturer of sparklers" means any person or
8 organization engaged in the manufacture or construction of
9 sparklers in this state.

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

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

17 (12)(6) "Retailer" means any person who, at a fixed
18 location ~~place of business~~, is engaged in selling sparklers to
19 consumers at retail.

20 (13)(7) "Seasonal retailer" means any person engaged
21 in the business of selling sparklers at retail in this state
22 from June 20 through July 5 and from December 10 through
23 January 2 of each year.

24 (14)(8) "Sparkler" means a device which emits showers
25 of sparks upon burning, does not contain any explosive
26 compounds, does not detonate or explode, is hand held or
27 ground based, cannot propel itself through the air, and
28 contains not more than 100 grams of the chemical compound
29 which produces sparks upon burning. Any sparkler that is not
30 approved by the division is classified as fireworks.

31

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

6 ~~(16)(9)~~ "Wholesaler of sparklers" means any person or
7 organization engaged in the business of selling sparklers to a
8 retailer.

9 Section 3. Section 791.012, Florida Statutes, is
10 amended to read:

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

26 Section 4. Section 791.015, Florida Statutes, is
27 amended to read:

28 791.015 Registration of manufacturers, distributors,
29 and wholesalers of sparklers or fireworks, and retailers of
30 sparklers.--
31

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

28 (2) REGISTRATION FORM.--The registration form filed
29 with the division must be notarized and must include the
30 following information: name of the individual, if the
31 certificate is to be held in an individual capacity; business

1 name; address; telephone number; officers, if the business is
2 a corporation; and an individual designated as a contact
3 person. The form for application for registration by the
4 division must be accompanied by evidence of registration with
5 the Department of Revenue under chapter 212.

6 (3) FEES.--

7 (a) Each manufacturer, distributor, or wholesaler must
8 pay an annual registration fee to be set by the division not
9 to exceed \$1,000 for each manufacturer, distributor, or
10 wholesale location registered. Each seasonal retailer must pay
11 an annual registration fee to be set by the division not to
12 exceed \$200 for each seasonal retailer location registered.
13 Each retailer shall pay an annual registration fee to be set
14 by the division not to exceed ~~\$25~~\$15 for each retail location
15 registered. Each certificateholder wishing to have a
16 duplicate certificate issued for one which is lost or to
17 reflect a change of mailing address shall request such
18 duplicate in writing and shall pay a fee of ~~\$15~~\$5. A
19 duplicate may not be issued to indicate a change in business
20 location. A change in business location requires a new
21 application for registration and fee.

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

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

28 Section 5. Section 791.016, Florida Statutes, is
29 created to read:

30 791.016 Procedures for cease and desist orders;
31 administrative fine.--

1 (1) Any time the division has reason to believe that a
2 person is or has been violating this chapter or any rule
3 adopted under this chapter, the division shall determine the
4 matter by issuing a notice of intent to issue a cease and
5 desist order and provide an opportunity for a hearing and all
6 other requirements of chapter 120.

7 (2) If the division determines that the acts
8 complained of are in violation of any provision of this
9 chapter or any rule adopted under this chapter, the division
10 shall issue a final order requiring the person to cease and
11 desist from the violation or imposing an administrative fine,
12 or both.

13 (3) This section shall be enforced as provided in
14 chapter 120.

15 Section 6. Section 791.017, Florida Statutes, is
16 created to read:

17 791.017 Administrative fines.--

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

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

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

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 as provided in
26 chapter 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 reinstatement; but the division may
10 not grant such reinstatement if it finds that the circumstance
11 or circumstances for which the registration certificate was
12 suspended or revoked still exist or are likely to recur.

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

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

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

27 Section 9. Section 791.02, Florida Statutes, is
28 amended to read:

29 791.02 Sale of fireworks regulated; rules ~~and~~
30 ~~regulations.~~--

31

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

31

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

19 Section 10. Section 791.021, Florida Statutes, is
20 created to read:

21 791.021 Sale of sparklers.--

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

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

29 (3) It is the responsibility of the retailer or
30 seasonal retailer of sparklers to determine that a purchaser
31 is at least 18 years of age, evidenced by the purchaser

1 presenting a valid driver's license or a valid state
2 identification card issued by the Department of Highway Safety
3 and Motor Vehicles.

4 Section 11. Section 791.04, Florida Statutes, is
5 amended to read:

6 791.04 Sale at wholesale, etc., exempted.--

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

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

17 (3) Sale of fireworks may be made to a person holding
18 a public display permit issued by the authority having
19 jurisdiction for the purpose of conducting a public display of
20 fireworks in compliance with s. 791.012. Transport must be by
21 a bonded commercial carrier or by a person employed by the
22 manufacturer, distributor, or wholesaler of fireworks.
23 Transport must be accompanied by an invoice or bill of lading
24 identifying the manufacturer, distributor, or wholesaler of
25 fireworks with the current certificate of registration number
26 on the invoice or bill of lading and an itemized list of the
27 contents of the shipment.; ~~to prohibit the sale of any kind of~~
28 ~~fireworks at wholesale between manufacturers, distributors,~~
29 ~~and wholesalers who have registered with the division pursuant~~
30 ~~to s. 791.015; to prohibit the sale of any kind of fireworks~~
31 ~~provided the same are to be shipped directly out of state by~~

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

15 Section 12. Section 791.041, Florida Statutes, is
16 created to read:

17 791.041 Maintenance of records and sales of fireworks
18 by manufacturers, distributors, and wholesalers;
19 inspections.--

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

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

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

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

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

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

23 Section 13. Section 791.05, Florida Statutes, is
24 amended to read:

25 791.05 Contraband; seizure, forfeiture, and disposal
26 of illegal fireworks.--

27 (1) All fireworks or sparklers that are handled,
28 delivered, possessed, manufactured, or distributed contrary to
29 any provision of this chapter and all such fireworks or
30 sparklers the lawful possession of which is not established or
31 title to which cannot be ascertained are declared contraband

1 and are subject to seizure and confiscation by any person or
2 law enforcement agency whose duty it is to enforce this
3 chapter.

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

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

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

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

11 Section 14. Section 791.055, Florida Statutes, is
12 amended to read:

13 791.055 Restrictions upon storage of sparklers or
14 fireworks.--The storage of sparklers or fireworks in this
15 state is governed by the National Fire Protection Association
16 1124 Code as adopted by rule of the Department of Financial
17 Services.

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

20 ~~(a) In which paints, oils, or varnishes are~~
21 ~~manufactured or kept for use or sale unless the paints, oils,~~
22 ~~or varnishes are in unbroken containers.~~

23 ~~(b) In which resin, turpentine, gasoline, or flammable~~
24 ~~substances or substances which may generate vapors are used,~~
25 ~~stored, or offered for sale unless the resin, turpentine,~~
26 ~~gasoline, or substances are in unbroken containers.~~

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

30 ~~(2) When sparklers are in storage to be offered for~~
31 ~~sale at retail, a sign shall be conspicuously displayed over~~

1 ~~the entrance to the room in which the sparklers are stored,~~
2 ~~which sign reads: "CAUTION SPARKLERS NO SMOKING." No person~~
3 ~~shall be in such room while in possession of a lighted cigar,~~
4 ~~cigarette, or pipe.~~

5 Section 15. Section 791.06, Florida Statutes, is
6 amended to read:

7 791.06 Penalties.--

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

12 (2) Any person or organization that violates any
13 provision of s. 791.015, s. 791.02, s. 791.021, s. 791.04, or
14 s. 791.041 for a second or subsequent time commits a felony of
15 the third degree, punishable as provided in s. 775.082, s.
16 775.083, or s. 775.084. Any firm, copartnership, or
17 corporation violating the provisions of this chapter shall be
18 guilty of a misdemeanor of the first degree, punishable as
19 provided in s. 775.083 or, in the case of individuals, the
20 members of a partnership and the responsible officers and
21 agents of an association or corporation, punishable as
22 provided in s. 775.082 or s. 775.083.

23 Section 16. Section 791.061, Florida Statutes, is
24 created to read:

25 791.061 Injunction.--In addition to the penalties and
26 other enforcement provisions of this chapter, if any person
27 engaged in any activity prohibited by this chapter violates
28 any provision of this chapter or any rule adopted under this
29 chapter, the division may resort to proceedings for injunctive
30 relief in the circuit court of the county in which such person
31 resides or has a principal place of business and therein apply

1 for such temporary or permanent orders as the division deems
2 necessary to restrain the person from engaging in any such
3 activities, until such person has complied with the provisions
4 of this chapter and such rules.

5 Section 17. Section 791.07, Florida Statutes, is
6 amended to read:

7 791.07 Agricultural and fish hatchery use.--

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

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

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

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

15 Section 18. Section 791.08, Florida Statutes, is
16 created to read:

17 791.08 Nonpreemption.--The state does not preempt the
18 regulation of fireworks and sparklers as provided in this
19 chapter. Any authority having jurisdiction may enact any
20 ordinance or adopt any rule related to this chapter if such
21 ordinance or rule is more stringent, or provides a higher
22 degree of safety, than provided in this chapter.

23 Section 19. This act shall take effect July 1, 2006.

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26 SENATE SUMMARY

27 Provides a comprehensive review of statutes relating to
28 registration and regulation of manufacturers and sellers
29 of fireworks and of licensing and permitting
30 requirements. (See bill for details.)
31