

By Senator Lawson

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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.; providing  
5           additional definitions; amending s. 791.012, F.S.;  
6           conforming a cross-reference; amending s. 791.015, F.S.;  
7           revising registration requirements for manufacturers,  
8           distributors, and wholesalers of sparklers or fireworks  
9           and retailers of sparklers; requiring a separate  
10          registration for each location at which sparklers are  
11          sold; increasing certain registration fees; creating s.  
12          791.016, F.S.; providing for issuance of cease and desist  
13          orders; creating s. 791.017, F.S.; providing for  
14          administrative fines; creating s. 791.018, F.S.; providing  
15          for suspension or revocation of registration and grounds  
16          therefor; creating s. 791.019, F.S.; providing duration of  
17          suspensions and revocations; amending s. 791.02, F.S.;  
18          providing for state issuance of permits for displays in  
19          the absence of a local mechanism; prohibiting the sale or  
20          delivery of sparklers to minors; prohibiting sales from  
21          motorized or movable apparatus; creating s. 791.021, F.S.;  
22          prescribing guidelines for the sale of sparklers; amending  
23          s. 791.04, F.S.; prescribing guidelines on the wholesale  
24          sale of fireworks; creating s. 791.041, F.S.; requiring  
25          records of sales to be kept and prescribing duties of  
26          sellers; amending s. 791.05, F.S.; revising provisions and  
27          procedures relating to forfeiture of contraband fireworks;  
28          authorizing an assessment of attorney's fees and costs;  
29          amending s. 791.055, F.S.; providing restrictions on the

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30 storage of sparklers and fireworks; amending s. 791.06,  
31 F.S.; providing penalties for violations, including  
32 enhanced penalties for second and subsequent violations;  
33 creating s. 791.061, F.S.; providing for injunctive  
34 relief; amending s. 791.07, F.S.; prescribing additional  
35 guidelines on agricultural and fish hatchery use of  
36 fireworks; creating s. 791.08, F.S.; declaring that the  
37 state has not preempted the field of fireworks regulation;  
38 requiring that local ordinances and rules must be more  
39 stringent than state law; providing an effective date.

40  
41 Be It Enacted by the Legislature of the State of Florida:

42  
43 Section 1. Section 791.001, Florida Statutes, is amended to  
44 read:

45 791.001 Application and enforcement.--This chapter shall be  
46 applied uniformly throughout the state. The State Fire Marshal or  
47 a designated agent under his or her authority, any sheriff or  
48 sheriff's deputy, any other law enforcement agency or law  
49 enforcement officer, or any certified firesafety inspector  
50 charged with enforcing the laws of this state or any state agency  
51 rule, county or municipal ordinance, or code provision has  
52 jurisdiction to enforce this chapter. ~~Enforcement of this chapter~~  
53 ~~shall remain with local law enforcement departments and officials~~  
54 ~~charged with the enforcement of the laws of the state.~~

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

57 791.01 Definitions.--As used in this chapter, the term:

58 (1) "Authority having jurisdiction" means the state; any

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59 county, municipality, or special district; or any local or other  
60 regional department, bureau, or individual such as a fire chief,  
61 fire marshal, administrative head of a fire prevention bureau,  
62 law enforcement officer, building official, or other person  
63 having statutory authority to enforce the laws of this state or  
64 any state agency rule, county or municipal ordinance, or code  
65 provision.

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

68 (3)~~(1)~~ "Distributor of sparklers" means any person or  
69 organization engaged in the business of selling sparklers to a  
70 wholesaler.

71 (4)~~(2)~~ "Division" means the Division of the State Fire  
72 Marshal of the Department of Financial Services.

73 (5)~~(3)~~ "Explosive compound" means any chemical compound,  
74 mixture, or device the primary or common purpose of which is to  
75 function by the substantially instantaneous release of gas and  
76 heat.

77 (6)~~(4)~~(a) "Fireworks" means and includes any combustible or  
78 explosive composition or substance or combination of substances  
79 or, except as hereinafter provided, any article prepared for the  
80 purpose of producing a visible or audible effect by combustion,  
81 explosion, deflagration, or detonation. The term includes blank  
82 cartridges and toy cannons in which explosives are used, the type  
83 of balloons which require fire underneath to propel them,  
84 firecrackers, torpedoes, skyrockets, roman candles, dago bombs,  
85 and any fireworks containing any explosives or flammable compound  
86 or any tablets or other device containing any explosive  
87 substance.

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

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

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

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

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

108 a. A party popper, which is a small plastic or paper device  
109 containing not more than 16 milligrams of explosive composition  
110 that is friction sensitive, which is ignited by pulling a string  
111 protruding from the device, and which expels a paper streamer and  
112 produces a small report.

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

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117 c. A snapper, which is a small, paper-wrapped device  
118 containing not more than four milligrams of explosive composition  
119 coated on small bits of sand, and which, when dropped, explodes,  
120 producing a small report. A snapper may not contain more than  
121 250 milligrams of total sand and explosive composition.

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

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

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

135  
136 The sale and use of items listed in this paragraph are permitted  
137 at all times.

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

141 (8) "Manufacturer of fireworks" means any person or  
142 organization engaged in the manufacture or construction of  
143 fireworks in this state.

144 (9) ~~(5)~~ "Manufacturer of sparklers" means any person or  
145 organization engaged in the manufacture or construction of

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146 sparklers in this state.

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

150 (11) "Person" includes any individual person and any firm,  
151 sole proprietorship, partnership, corporation, limited liability  
152 corporation or partnership, professional association, or other  
153 similar entity.

154 (12)~~(6)~~ "Retailer" means any person who, at a fixed  
155 location ~~place of business~~, is engaged in selling sparklers to  
156 consumers at retail.

157 (13)~~(7)~~ "Seasonal retailer" means any person engaged in the  
158 business of selling sparklers at retail in this state from June  
159 20 through July 5 and from December 10 through January 2 of each  
160 year.

161 (14)~~(8)~~ "Sparkler" means a device which emits showers of  
162 sparks upon burning, does not contain any explosive compounds,  
163 does not detonate or explode, is hand held or ground based,  
164 cannot propel itself through the air, and contains not more than  
165 100 grams of the chemical compound which produces sparks upon  
166 burning. Any sparkler that is not approved by the division is  
167 classified as fireworks.

168 (15) "Wholesaler of fireworks" means any person or  
169 organization engaged in the business of selling fireworks to  
170 another wholesaler, a distributor, or a manufacturer registered  
171 under this chapter or for agricultural or public display  
172 purposes.

173 (16)~~(9)~~ "Wholesaler of sparklers" means any person or  
174 organization engaged in the business of selling sparklers to a

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175 retailer.

176 Section 3. Section 791.012, Florida Statutes, is amended to  
177 read:

178 791.012 Minimum fireworks safety standards.--The outdoor  
179 display of fireworks in this state shall be governed by the  
180 National Fire Protection Association (NFPA) 1123, Code for  
181 Fireworks Display, 1995 Edition, approved by the American  
182 National Standards Institute. Any state, county, or municipal  
183 law, rule, or ordinance may provide for more stringent  
184 regulations for the outdoor display of fireworks, but in no event  
185 may any such law, rule, or ordinance provide for less stringent  
186 regulations for the outdoor display of fireworks. The division  
187 shall adopt ~~promulgate~~ rules to carry out ~~the provisions of this~~  
188 section. The Code for Fireworks Display shall not govern the  
189 display of any fireworks on private, residential property and  
190 shall not govern the display of those items included under s.  
191 791.01(6)(b) and (c) ~~s. 791.01(4)(b) and (c)~~ and authorized for  
192 sale thereunder.

193 Section 4. Section 791.015, Florida Statutes, is amended to  
194 read:

195 791.015 Registration of manufacturers, distributors, and  
196 wholesalers of sparklers or fireworks, and retailers of  
197 sparklers.--

198 (1) REGISTRATION REQUIREMENTS.--An organization or  
199 individual may not engage in the business of manufacturing,  
200 distributing, or selling at wholesale or retail any firework or  
201 sparkler except as provided in this section. Any manufacturer,  
202 distributor, or wholesaler of sparklers or fireworks and any,  
203 retailer, or seasonal retailer of sparklers who wishes to do

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204 business in this state or to otherwise sell, ship, or assign for  
205 sale its products in this state must register annually with the  
206 division on forms prescribed by the division. A manufacturer,  
207 distributor, wholesaler, retailer, or seasonal retailer must  
208 submit a separate registration form and a separate registration  
209 fee for each location where sparklers will be sold. A  
210 manufacturer, distributor, or wholesaler who wishes to engage in  
211 the business of manufacturing, distributing, or selling fireworks  
212 to the extent allowed in this chapter must submit a separate  
213 registration form and a separate registration fee for each  
214 location where fireworks will be manufactured or sold.  
215 Registration certificates issued by the division shall be  
216 displayed on the premises and made available for immediate  
217 inspection by the authority having jurisdiction or the division.  
218 A person may not alter, deface, or copy a certificate of  
219 registration. ~~Any retailer who sells sparklers at more than one~~  
220 ~~retail location may submit one registration form for all such~~  
221 ~~locations but must provide the address of each location with the~~  
222 ~~registration form; however, any retailer may submit multiple~~  
223 ~~registration forms.~~

224 (2) REGISTRATION FORM.--The registration form filed with  
225 the division must be notarized and must include the following  
226 information: name of the individual, if the certificate is to be  
227 held in an individual capacity; business name; address; telephone  
228 number; officers, if the business is a corporation; and an  
229 individual designated as a contact person. The form for  
230 application for registration by the division must be accompanied  
231 by evidence of registration with the Department of Revenue under  
232 chapter 212.

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233 (3) FEES.--

234 (a) Each manufacturer, distributor, or wholesaler must pay  
235 an annual registration fee to be set by the division not to  
236 exceed \$1,000 for each manufacturer, distributor, or wholesale  
237 location registered. Each seasonal retailer must pay an annual  
238 registration fee to be set by the division not to exceed \$200 for  
239 each seasonal retailer location registered. Each retailer shall  
240 pay an annual registration fee to be set by the division not to  
241 exceed \$25 ~~\$15~~ for each retail location registered. Each  
242 certificateholder wishing to have a duplicate certificate issued  
243 for one which is lost or to reflect a change of mailing address  
244 shall request such duplicate in writing and shall pay a fee of  
245 \$15 ~~\$5~~. A duplicate may not be issued to indicate a change in  
246 business location. A change in business location requires a new  
247 application for registration and fee.

248 (b) Revenue from registration fee payments shall be  
249 deposited in the Insurance Regulatory Trust Fund for the purposes  
250 of implementing the registration and testing provisions of this  
251 chapter.

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

254 Section 5. Section 791.016, Florida Statutes, is created to  
255 read:

256 791.016 Procedures for cease and desist orders;  
257 administrative fine.--

258 (1) Any time the division has reason to believe that a  
259 person is or has been violating this chapter or any rule adopted  
260 under this chapter, the division shall determine the matter by  
261 issuing a notice of intent to issue a cease and desist order and

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262 provide an opportunity for a hearing and all other requirements  
263 of chapter 120.

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

269 (3) This section shall be enforced as provided in chapter  
270 120.

271 Section 6. Section 791.017, Florida Statutes, is created to  
272 read:

273 791.017 Administrative fines.--

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

279 (2) The division may allow the certificateholder a  
280 reasonable time, not to exceed 30 days, to pay the penalty in its  
281 entirety to the division. If the certificateholder fails to pay  
282 the penalty in its entirety within the period allowed, the  
283 division shall revoke the certificates held.

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

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

290 (5) The maximum administrative fine imposed on any person

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291 or organization may not exceed \$500,000.

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

294 791.018 Grounds for suspension or revocation of  
295 registration certificate for manufacturers, distributors,  
296 wholesalers, and retailers.--

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

300 (a) Material misstatement, misrepresentation, or fraud in  
301 obtaining the registration certificate or in attempting to obtain  
302 a registration certificate.

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

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

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

309 (2) This section shall be enforced as provided in chapter  
310 120.

311 Section 8. Section 791.019, Florida Statutes, is created to  
312 read:

313 791.019 Duration of suspension or revocation.--

314 (1) The division shall, in its order suspending the  
315 registration certificate of an individual, firm, partnership,  
316 association, group, or corporation, specify the period during  
317 which the suspension is to be effective; but such period may not  
318 exceed 2 years. The registration certificate shall remain  
319 suspended during the period specified, subject to any rescission

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320 or modification of the order by the division or modification or  
321 reversal thereof by the court prior to expiration of the  
322 suspension period. A registration certificate that has been  
323 suspended may not be reinstated except upon request for  
324 reinstatement; but the division may not grant such reinstatement  
325 if it finds that the circumstance or circumstances for which the  
326 registration certificate was suspended or revoked still exist or  
327 are likely to recur.

328 (2) A person or organization holding a registration  
329 certificate revoked by the division may not apply for another  
330 registration certificate under this chapter within 2 years after  
331 the effective date of revocation or, if judicial review of  
332 revocation is sought, within 2 years after the date of the final  
333 court order or decree affirming the revocation order.

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

337 (4) During the period of suspension, or after revocation of  
338 the registration certificate, the former certificateholder may  
339 not engage in or attempt or profess to engage in any transaction  
340 or business for which a registration certificate is required by  
341 this chapter.

342 Section 9. Section 791.02, Florida Statutes, is amended to  
343 read:

344 791.02 Sale of fireworks regulated; rules ~~and~~  
345 ~~regulations.--~~

346 (1) Except as hereinafter provided it is unlawful for any  
347 person or organization, ~~firm, copartnership, or corporation~~ to  
348 offer for sale, expose for sale, sell at retail, or use or

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349 explode any fireworks; provided that the board of county  
350 commissioners shall have power to adopt reasonable rules ~~and~~  
351 ~~regulations~~ for the granting of permits for supervised public  
352 display of fireworks by fair associations, amusement parks, and  
353 other organizations or groups of individuals when such public  
354 display is to take place outside of any municipality; provided,  
355 further, that the governing body of any municipality shall have  
356 power to adopt reasonable rules ~~and regulations~~ for the granting  
357 of permits for supervised public display of fireworks within the  
358 boundaries of any municipality. Every such display shall be  
359 handled by a competent operator to be approved by the chiefs of  
360 the police and fire departments of the municipality in which the  
361 display is to be held, and shall be of such a character, and so  
362 located, discharged, or fired as in the opinion of the chief of  
363 the fire department, after proper inspection, shall not be  
364 hazardous to property or endanger any person. Application for  
365 permits shall be made in writing at least 15 days in advance of  
366 the date of the display. If the local authority licensing  
367 jurisdiction does not have a permit process for the public  
368 display of fireworks, applications shall be made to the State  
369 Fire Marshal. After such privilege shall have been granted,  
370 sales, possession, use, and distribution of fireworks for such  
371 display shall be lawful for that purpose only. No permit granted  
372 hereunder shall be transferable. Any public display of fireworks  
373 must be conducted in compliance with s. 791.012.

374 (2) A sparkler or other product authorized for sale under  
375 this chapter may not be sold or shipped to any person younger  
376 than 18 years of age. A sparkler or other product authorized for  
377 sale under this chapter may not be sold by a retailer or seasonal

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378 retailer unless the product was obtained from a manufacturer,  
379 distributor, or wholesaler registered with the division pursuant  
380 to s. 791.015. Each retailer and seasonal retailer shall keep,  
381 at every location where sparklers are sold, a copy of an invoice  
382 or other evidence of purchase from the manufacturer, distributor,  
383 or wholesaler, which states the registration certificate number  
384 for the particular manufacturer, distributor, or wholesaler and  
385 the specific items covered by the invoice. Each seasonal  
386 retailer shall, in addition, exhibit a copy of his or her  
387 registration certificate at each retail or seasonal retail  
388 location. Retail sales may not be made from any type of motorized  
389 or movable apparatus. Sales from tents that meet all applicable  
390 codes and fire regulations are allowed.

391 Section 10. Section 791.021, Florida Statutes, is created  
392 to read:

393 791.021 Sale of sparklers.--

394 (1) A person, organization, manufacturer, distributor,  
395 wholesaler, retailer, or seasonal retailer may not purchase,  
396 sell, or solicit to sell sparklers except in conformance with  
397 this chapter.

398 (2) It is the responsibility of the person, organization,  
399 manufacturer, distributor, or wholesaler to determine that the  
400 purchaser is registered with the division.

401 (3) It is the responsibility of the retailer or seasonal  
402 retailer of sparklers to determine that a purchaser is at least  
403 18 years of age, evidenced by the purchaser presenting a valid  
404 driver's license or a valid state identification card issued by  
405 the Department of Highway Safety and Motor Vehicles.

406 Section 11. Section 791.04, Florida Statutes, is amended to

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407 read:

408 791.04 Sale at wholesale, etc., exempted.--

409 (1) A Nothing in this chapter shall be construed to  
410 prohibit any manufacturer, distributor, or wholesaler of  
411 fireworks who has registered with the division pursuant to s.  
412 791.015 may to sell at wholesale any such fireworks as are not  
413 herein prohibited to any manufacturer, distributor, or wholesaler  
414 of fireworks who has registered with the division and holds a  
415 current certificate of registration.

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

419 (3) Sale of fireworks may be made to a person holding a  
420 public display permit issued by the authority having jurisdiction  
421 for the purpose of conducting a public display of fireworks in  
422 compliance with s. 791.012. Transport must be by a bonded  
423 commercial carrier or by a person employed by the manufacturer,  
424 distributor, or wholesaler of fireworks. Transport must be  
425 accompanied by an invoice or bill of lading identifying the  
426 manufacturer, distributor, or wholesaler of fireworks with the  
427 current certificate of registration number on the invoice or bill  
428 of lading and an itemized list of the contents of the shipment.  
429 ~~to prohibit the sale of any kind of fireworks at wholesale~~  
430 ~~between manufacturers, distributors, and wholesalers who have~~  
431 ~~registered with the division pursuant to s. 791.015; to prohibit~~  
432 ~~the sale of any kind of fireworks provided the same are to be~~  
433 ~~shipped directly out of state by such manufacturer, distributor,~~  
434 ~~or wholesaler; to prohibit the sale of fireworks to be used by a~~  
435 ~~person holding a permit from any board of county commissioners at~~

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436 ~~the display covered by such permit; or to prohibit the use of~~  
437 ~~fireworks by railroads or other transportation agencies for~~  
438 ~~signal purposes or illumination or when used in quarrying or for~~  
439 ~~blasting or other industrial use, or the sale or use of blank~~  
440 ~~cartridges for a show or theater, or for signal or ceremonial~~  
441 ~~purposes in athletics or sports, or for use by military~~  
442 ~~organizations, or organizations composed of the Armed Forces of~~  
443 ~~the United States; provided, nothing in this chapter shall be~~  
444 ~~construed as barring the operations of manufacturers, duly~~  
445 ~~licensed, from manufacturing, experimenting, exploding, and~~  
446 ~~storing such fireworks in their compounds or proving grounds.~~

447 Section 12. Section 791.041, Florida Statutes, is created  
448 to read:

449 791.041 Maintenance of records and sales of fireworks by  
450 manufacturers, distributors, and wholesalers; inspections.--

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

454 (2) Each sale or transaction must be evidenced by an  
455 invoice or sales ticket that bears the name, address, and  
456 certificate of registration number of the purchaser or, in the  
457 case of a sale conducted for public display, a copy of the permit  
458 issued by the authority having jurisdiction, the date of the  
459 sale, the products sold, and the quantity sold. All invoices and  
460 sales tickets shall be maintained by the manufacturer,  
461 distributor, or wholesaler of fireworks and a copy provided to  
462 the purchaser.

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

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465 statutory authority under s. 791.001.

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

469 (5) It is the responsibility of the manufacturer,  
470 distributor, or wholesaler of fireworks to determine that a  
471 purchaser is at least 18 years of age, evidenced by the purchaser  
472 presenting a valid driver's license or a valid state  
473 identification card issued by the Department of Highway Safety  
474 and Motor Vehicles.

475 (6) It is the responsibility of the manufacturer,  
476 distributor, or wholesaler of fireworks to determine, when  
477 selling fireworks under s. 791.04, that the purchaser is  
478 registered under s. 791.015, evidenced by the purchaser  
479 presenting a valid certificate of registration issued by the  
480 division. If the purchase of fireworks is for public display, the  
481 purchase must be evidenced by the purchaser presenting a public  
482 display permit issued by the authority having jurisdiction.  
483 Agricultural purchases shall be in compliance with s. 791.07.

484 Section 13. Section 791.05, Florida Statutes, is amended to  
485 read:

486 791.05 Contraband; seizure, forfeiture, and disposal of  
487 illegal fireworks.--

488 (1) All fireworks or sparklers that are handled, delivered,  
489 possessed, manufactured, or distributed contrary to any provision  
490 of this chapter and all such fireworks or sparklers the lawful  
491 possession of which is not established or title to which cannot  
492 be ascertained are declared contraband and are subject to seizure  
493 and confiscation by any person or law enforcement agency whose

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494 duty it is to enforce this chapter.

495 (2) The state attorney within whose jurisdiction the  
496 unlawful fireworks or sparklers have been seized or any such  
497 attorney as is employed by the seizing law enforcement agency  
498 shall promptly proceed against the contraband fireworks and show  
499 cause in the circuit court within the jurisdiction in which the  
500 seizure or offense occurred and may have such contraband article  
501 or articles forfeited to the law enforcement agency making the  
502 seizure upon showing proof that the contraband fireworks were  
503 being used or exist in violation of this chapter.

504 (3) Any fireworks seized as evidence may be sample tested  
505 and weighed by the seizing agency after the seizure. Any such  
506 sample and analysis thereof may be admitted into evidence in any  
507 civil or criminal action for the purpose of proving the nature,  
508 composition, and weight of the fireworks. In addition, the  
509 seizing agency may photograph or videotape, for use at trial, the  
510 fireworks seized. Except for fireworks retained by the seizing  
511 agency for sample testing, analysis, and evidence, upon a final  
512 determination that the seized fireworks were being used or exist  
513 in violation of this chapter, the circuit court having  
514 jurisdiction shall order such fireworks forfeited and destroyed.  
515 The method of destruction or disposal of such fireworks shall be  
516 at the discretion of the seizing agency.

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

521 (5) The court may include in its forfeiture order a  
522 provision that the owner or holder of the contraband fireworks

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523 pay an assessment to cover the cost of disposal of contraband,  
524 including attorney's fees and costs, and any costs incurred by  
525 the arresting agency in storing the contraband. ~~Each sheriff, or~~  
526 ~~his or her appointee, or any other police officer, shall seize,~~  
527 ~~take, remove or cause to be removed at the expense of the owner,~~  
528 ~~all stocks of fireworks or combustibles offered or exposed for~~  
529 ~~sale, stored, or held in violation of this chapter.~~

530 Section 14. Section 791.055, Florida Statutes, is amended  
531 to read:

532 791.055 Restrictions upon storage of sparklers or  
533 fireworks.--The storage of sparklers or fireworks in this state  
534 is governed by the National Fire Protection Association 1124 Code  
535 as adopted by rule of the Department of Financial Services.

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

538 ~~(a) In which paints, oils, or varnishes are manufactured or~~  
539 ~~kept for use or sale unless the paints, oils, or varnishes are in~~  
540 ~~unbroken containers.~~

541 ~~(b) In which resin, turpentine, gasoline, or flammable~~  
542 ~~substances or substances which may generate vapors are used,~~  
543 ~~stored, or offered for sale unless the resin, turpentine,~~  
544 ~~gasoline, or substances are in unbroken containers.~~

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

548 ~~(2) When sparklers are in storage to be offered for sale at~~  
549 ~~retail, a sign shall be conspicuously displayed over the entrance~~  
550 ~~to the room in which the sparklers are stored, which sign reads:~~  
551 ~~"CAUTION SPARKLERS-NO SMOKING." No person shall be in such room~~

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552 ~~while in possession of a lighted cigar, cigarette, or pipe.~~

553 Section 15. Section 791.06, Florida Statutes, is amended to  
554 read:

555 791.06 Penalties.--

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

560 (2) Any person or organization that violates any provision  
561 of s. 791.015, s. 791.02, s. 791.021, s. 791.04, or s. 791.041  
562 for a second or subsequent time commits a felony of the third  
563 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
564 775.084. Any firm, copartnership, or corporation violating the  
565 provisions of this chapter shall be guilty of a misdemeanor of  
566 the first degree, punishable as provided in s. 775.083 or, in the  
567 case of individuals, the members of a partnership and the  
568 responsible officers and agents of an association or corporation,  
569 punishable as provided in s. 775.082 or s. 775.083.

570 Section 16. Section 791.061, Florida Statutes, is created  
571 to read:

572 791.061 Injunction.--In addition to the penalties and other  
573 enforcement provisions of this chapter, if any person engaged in  
574 any activity prohibited by this chapter violates any provision of  
575 this chapter or any rule adopted under this chapter, the division  
576 may resort to proceedings for injunctive relief in the circuit  
577 court of the county in which such person resides or has a  
578 principal place of business and therein apply for such temporary  
579 or permanent orders as the division deems necessary to restrain  
580 the person from engaging in any such activities, until such

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581 person has complied with the provisions of this chapter and such  
582 rules.

583 Section 17. Section 791.07, Florida Statutes, is amended to  
584 read:

585 791.07 Agricultural and fish hatchery use.--

586 (1) Nothing in This chapter does not shall prohibit the  
587 importation, purchase, sale, or use of fireworks used or to be  
588 used solely and exclusively in frightening birds from  
589 agricultural works and fish hatcheries; ~~and such use shall be~~  
590 ~~governed entirely by the rules prescribed by the Department of~~  
591 ~~Agriculture and Consumer Services.~~

592 (2) Any person who is engaged in agricultural works or who  
593 operates a fish hatchery may use fireworks solely and exclusively  
594 for the purpose of frightening birds from doing harm to such  
595 person's agricultural works or fish hatchery operation; however,  
596 such person must first file with the sheriff of the county or the  
597 authority having jurisdiction in the county in which the person  
598 is engaged in agricultural works or the operation of a fish  
599 hatchery a sworn affidavit in writing that he or she is engaged  
600 in agricultural works, describing the nature of such, or that he  
601 or she operates a fish hatchery, describing the nature of such,  
602 and desires to use fireworks to frighten birds from harming the  
603 agricultural works or fish hatchery operation and that fireworks  
604 will be used solely and exclusively for that purpose. The sheriff  
605 of the county or the authority having jurisdiction, upon  
606 determining that the sworn affidavit is sufficient and the  
607 request is valid, shall issue a permit, on a form provided by the  
608 division, to the applicant. The permit must identify the  
609 applicant and the quantity of fireworks to be purchased and

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610 possessed. A copy of the permit shall be retained by the  
611 manufacturer, distributor, or wholesaler making the sale as part  
612 of its recordkeeping requirement under s. 791.041, and a copy  
613 shall be maintained by the applicant with the fireworks covered  
614 under the permit.

615 (3) Falsification of any affidavit or permit provided for  
616 in this section or providing false information in such sworn  
617 affidavit is a misdemeanor of the first degree, punishable as  
618 provided in s. 775.082 or s. 775.083. Falsification of any  
619 affidavit or permit provided for in this section includes aiding  
620 and abetting such falsification or selling fireworks when the  
621 seller knows or has reason to believe that the permit is  
622 falsified.

623 Section 18. Section 791.08, Florida Statutes, is created to  
624 read:

625 791.08 Nonpreemption.--The state does not preempt the  
626 regulation of fireworks and sparklers as provided in this  
627 chapter. Any authority having jurisdiction may enact any  
628 ordinance or adopt any rule related to this chapter if such  
629 ordinance or rule is more stringent, or provides a higher degree  
630 of safety, than provided in this chapter.

631 Section 19. This act shall take effect July 1, 2008.