

By Senator Margolis

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1 A bill to be entitled
2 An act relating to fireworks; reordering and amending
3 s. 791.01, F.S.; providing and revising definitions;
4 amending s. 791.013, F.S.; revising terminology;
5 deleting an obsolete provision; amending s. 791.02,
6 F.S.; requiring each county to designate at least one
7 area for the use of aerial devices; providing for
8 interlocal agreements in lieu of such a designation;
9 specifying minimum periods in which aerial devices may
10 be used; providing for additional days for use of such
11 devices by localities; prohibiting the sale or
12 possession of consumer fireworks by persons under 18
13 years of age; providing an exception; prohibiting the
14 sale of certain consumer fireworks; amending s.
15 791.04, F.S.; deleting an exemption from specified
16 provisions for railroads or other transportation
17 agencies for certain purposes; deleting an exemption
18 for the sale of blank cartridges for specified
19 purposes; amending s. 791.07, F.S.; revising an
20 exemption from specified provisions for agricultural
21 and fish hatchery uses; amending s. 870.045, F.S.;
22 authorizing a prohibition on the sale of consumer
23 fireworks and fireworks during a declared state of
24 emergency; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Section 791.01, Florida Statutes, is reordered
29 and amended to read:

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30 791.01 Definitions.—As used in this chapter, the term:

31 (1) "Aerial devices" means devices described in the
32 American Pyrotechnics Association standard 87-1 at 3.1.2 and
33 includes sky rockets, missile-type rockets, roman candles, and
34 mine and shell devices.

35 (2) "Consumer" means a person purchasing or possessing a
36 product for personal use.

37 (3) "Consumer fireworks" means small fireworks that are
38 designed primarily to produce visible effects by combustion and
39 that are required to comply with the construction, chemical
40 composition, and cautionary labeling regulations of the Consumer
41 Product Safety Commission as provided in 16 C.F.R. parts 1500
42 and 1507 and the American Pyrotechnics Association standard 87-
43 1. The term also includes some small devices designed to produce
44 an audible effect, such as whistling devices, ground devices
45 containing 50 milligrams or less of explosive composition, and
46 aerial devices containing 100 milligrams or less of explosive
47 composition. The term also includes novelties and devices
48 classified by United States Department of Transportation in 49
49 C.F.R. s. 172.01 as consumer fireworks UN0336 and UN0337.

50 (4)~~(1)~~ "Distributor" means any person engaged in the
51 business of selling sparklers to a wholesaler.

52 (5)~~(2)~~ "Division" means the Division of the State Fire
53 Marshal of the Department of Financial Services.

54 (6)~~(3)~~ "Explosive compound" means any chemical compound,
55 mixture, or device the primary or common purpose of which is to
56 function by the substantially instantaneous release of gas and
57 heat.

58 (7)~~(4)(a)~~ "Fireworks" means and includes any combustible or

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59 explosive composition or substance or combination of substances
60 or, except as hereinafter provided, any article prepared for the
61 purpose of producing a visible or audible effect by combustion,
62 explosion, deflagration, or detonation. The term includes blank
63 cartridges and toy cannons in which explosives are used, the
64 type of balloons which require fire underneath to propel them,
65 firecrackers, torpedoes, skyrockets, roman candles, dago bombs,
66 and any fireworks containing any explosives or flammable
67 compound or any tablets or other device containing any explosive
68 substance. The term

69 ~~(b) "Fireworks"~~ does not include consumer fireworks,
70 novelties, or sparklers approved by the division pursuant to s.
71 791.013; toy pistols, toy canes, toy guns, or other devices in
72 which paper caps containing twenty-five hundredths grains or
73 less of explosive compound are used, providing they are so
74 constructed that the hand cannot come in contact with the cap
75 when in place for the explosion; and toy pistol paper caps which
76 contain less than twenty hundredths grains of explosive mixture,
77 the sale and use of which shall be permitted at all times.

78 (9)(e) "Novelties" means those devices identified in the
79 American Pyrotechnics Association standard 87-1 as novelty
80 devices at 2.12, and includes "Fireworks" ~~also does not include~~
81 the following novelties and trick noisemakers:

82 (a)1- A snake or glow worm, which is a pressed pellet of
83 not more than 10 grams of pyrotechnic composition that produces
84 a large, snakelike ash which expands in length as the pellet
85 burns and that does not contain mercuric thiocyanate.

86 (b)2- A smoke device, which is a tube or sphere containing
87 not more than 10 grams of pyrotechnic composition that, upon

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

89 ~~(c)3.~~ A trick noisemaker, which is a device that produces a
90 small report intended to surprise the user and which includes:

91 1.a. A party popper, which is a small plastic or paper
92 device containing not more than 16 milligrams of explosive
93 composition that is friction sensitive, which is ignited by
94 pulling a string protruding from the device, and which expels a
95 paper streamer and produces a small report.

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

100 3.e. A snapper, which is a small, paper-wrapped device
101 containing not more than four milligrams of explosive
102 composition coated on small bits of sand, and which, when
103 dropped, explodes, producing a small report. A snapper may not
104 contain more than 250 milligrams of total sand and explosive
105 composition.

106 ~~4.d.~~ A trick match, which is a kitchen or book match which
107 is coated with not more than 16 milligrams of explosive or
108 pyrotechnic composition and which, upon ignition, produces a
109 small report or shower of sparks.

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

114 ~~6.f.~~ An auto burglar alarm, which is a tube which contains
115 not more than 10 grams of pyrotechnic composition that produces
116 a loud whistle or smoke when ignited and which is ignited by use

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117 of a squib. A small quantity of explosive, not exceeding 50
118 milligrams, may also be used to produce a small report.

119

120 ~~The sale and use of items listed in this paragraph are permitted~~
121 ~~at all times.~~

122 (8)~~(5)~~ "Manufacturer" means any person engaged in the
123 manufacture or construction of sparklers in this state.

124 (10)~~(6)~~ "Retailer" means any person who, at a fixed place
125 of business, is engaged in selling sparklers to consumers at
126 retail.

127 (11)~~(7)~~ "Seasonal retailer" means any person engaged in the
128 business of selling sparklers at retail in this state from June
129 20 through July 5 and from December 10 through January 2 of each
130 year.

131 (12)~~(8)~~ "Sparkler" means a device which emits showers of
132 sparks upon burning, does not contain any explosive compounds,
133 does not detonate or explode, is handheld or ground based,
134 cannot propel itself through the air, and contains not more than
135 200 ~~400~~ grams of the chemical compound which produces sparks
136 upon burning. The term includes ground and hand-held sparkling
137 devices as described in the American Pyrotechnics Association
138 standard 87-1 at 3.1.1. Any sparkler that is not approved by the
139 division is classified as fireworks.

140 (13)~~(9)~~ "Wholesaler" means any person engaged in the
141 business of selling sparklers to a retailer.

142 Section 2. Section 791.013, Florida Statutes, is amended to
143 read:

144 791.013 Testing and approval of sparklers; penalties.—

145 (1) A person who wishes to sell sparklers must submit

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146 samples of his or her product to the division for testing to
147 determine whether it is a sparkler as defined in s. 791.01. Such
148 samples must be received by the division by September 1 to be
149 considered for approval the following year. On February 1 of
150 each year the division shall approve those products which it has
151 tested and found to meet the requirements for sparklers. All
152 approved sparkler products are legal for sale until January 31
153 of the following year. The list of approved sparkler products
154 shall be published in the Florida Administrative Weekly and
155 shall prominently state the dates between which the products may
156 be sold. The division shall make copies of this list available
157 to the public. A product must be tested and approved for sale in
158 accordance with the rules adopted to implement this section.
159 ~~Beginning February 1, 1988,~~ Only those products approved by the
160 division may be sold in the state. The State Fire Marshal shall
161 adopt rules describing the testing, approval, and listing
162 procedures.

163 (2) Any person who alters an approved sparkler product, so
164 that it is no longer a sparkler as defined in s. 791.01, and
165 subsequently sells the product as if it were approved commits ~~is~~
166 ~~guilty of~~ a misdemeanor of the first degree, punishable as
167 provided in s. 775.082 or s. 775.083. Any person who
168 fraudulently represents a device as approved for sale as a
169 sparkler product when it is not so approved commits ~~is guilty of~~
170 a misdemeanor of the first degree, punishable as provided in s.
171 775.082 or s. 775.083.

172 (3) For purposes of the testing requirement by this
173 section, the division shall perform such tests as are necessary
174 to determine compliance with the performance standards in the

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175 definition of sparklers, pursuant to s. 791.01. The State Fire
176 Marshal shall adopt, by rule, procedures for testing products to
177 determine compliance with this chapter. The division shall
178 dispose of any samples which remain after testing.

179 Section 3. Section 791.02, Florida Statutes, is amended to
180 read:

181 791.02 Sale of fireworks regulated; rules and regulations;
182 exceptions.—

183 (1) (a) Except as otherwise hereinafter provided in this
184 section, it is unlawful for any person, firm, copartnership, or
185 corporation to offer for sale, expose for sale, sell at retail,
186 or use or explode any fireworks. ~~;~~ ~~provided that~~ The board of
187 county commissioners of any county may ~~shall have power to~~ adopt
188 reasonable rules and regulations for the granting of permits for
189 supervised public display of fireworks by fair associations,
190 amusement parks, and other organizations or groups of
191 individuals when such public display is to take place outside of
192 any municipality. ~~;~~ ~~provided, further, that~~ The governing body of
193 any municipality may ~~shall have power to~~ adopt reasonable rules
194 and regulations for the granting of permits for supervised
195 public display of fireworks within its ~~the~~ boundaries ~~of any~~
196 ~~municipality~~. Every such display shall be handled by a competent
197 operator to be approved by the chiefs of the police and fire
198 departments of the municipality in which the display is to be
199 held, and shall be of such a character, and so located,
200 discharged, or fired as in the opinion of the chief of the fire
201 department, after proper inspection, ~~shall~~ not to be hazardous
202 to property or to endanger any person. Application for permits
203 shall be made in writing at least 15 days in advance of the date

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204 of the display. After such privilege is ~~shall have been~~ granted,
205 sales, possession, use, and distribution of fireworks for such
206 display shall be lawful for that purpose only. No permit granted
207 under this subsection ~~hereunder~~ shall be transferable.

208 (b) Each county shall designate at least one area that is
209 not adjacent to residential areas for the use of aerial devices.
210 A county may enter into an interlocal agreement with another
211 entity for a location for such use in lieu of providing a
212 location within the county. Counties and municipalities must
213 agree on a designated location through an interlocal agreement
214 if the location is contiguous with a municipal border or is
215 within a municipality.

216 (c) The statewide minimum permitted hours for the use of
217 aerial devices are July 1-5 between noon and 11 p.m., and
218 between 5 p.m. on December 31 and 1 a.m. on January 1. Local
219 governments may add to these dates for other holidays celebrated
220 in their communities.

221 (2) A sparkler or other product authorized for sale under
222 this chapter may not be sold by a retailer or seasonal retailer
223 unless the product was obtained from a manufacturer,
224 distributor, or wholesaler registered with the division pursuant
225 to s. 791.015. Each retailer and seasonal retailer shall keep,
226 at every location where sparklers are sold, a copy of an invoice
227 or other evidence of purchase from the manufacturer,
228 distributor, or wholesaler, which states the registration
229 certificate number for the particular manufacturer, distributor,
230 or wholesaler and the specific items covered by the invoice.
231 Each seasonal retailer shall, in addition, exhibit a copy of his
232 or her registration certificate at each seasonal retail

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233 location.

234 (3) Consumer fireworks may not be sold to or possessed by
235 persons under 18 years of age, except that novelties may be used
236 by a person under 18 years of age if the person is being
237 directly supervised by an adult.

238 (4) The following consumer fireworks may not be sold in
239 this state:

240 (a) Wheel, as described in American Pyrotechnics
241 Association standard 87-1 at 3.1.1.4.

242 (b) Bottle rocket, as described in American Pyrotechnics
243 Association standard 87-1 at 3.1.2.1.

244 (c) Helicopter or aerial spinner, as described in American
245 Pyrotechnics Association standard 87-1 at 3.1.2.3.

246 (d) Aerial shell kit or reloadable tube, as described in
247 American Pyrotechnics Association standard 87-1 at 3.1.2.6.

248 (e) Chaser, as described in American Pyrotechnics
249 Association standard 87-1 at 3.1.3.2.

250 Section 4. Section 791.04, Florida Statutes, is amended to
251 read:

252 791.04 Sale at wholesale, etc., exempted. ~~Nothing in This~~
253 ~~chapter does not shall be construed to~~ prohibit any
254 manufacturer, distributor, or wholesaler who has registered with
255 the division pursuant to s. 791.015 to sell at wholesale such
256 fireworks as are not herein prohibited; ~~to~~ prohibit the sale of
257 any kind of fireworks at wholesale between manufacturers,
258 distributors, and wholesalers who have registered with the
259 division pursuant to s. 791.015; ~~to~~ prohibit the sale of any
260 kind of fireworks provided they ~~the same~~ are to be shipped
261 directly out of state by such manufacturer, distributor, or

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262 wholesaler; or to prohibit the sale of fireworks to be used by a
263 person holding a permit from any board of county commissioners
264 at the display covered by such permit.; ~~or to prohibit the use~~
265 ~~of fireworks by railroads or other transportation agencies for~~
266 ~~signal purposes or illumination or when used in quarrying or for~~
267 ~~blasting or other industrial use, or the sale or use of blank~~
268 ~~cartridges for a show or theater, or for signal or ceremonial~~
269 ~~purposes in athletics or sports, or for use by military~~
270 ~~organizations, or organizations composed of the Armed Forces of~~
271 ~~the United States; provided, nothing in This chapter does not~~
272 ~~bar licensed~~ shall be construed as barring the operations of
273 manufacturers, ~~duly licensed,~~ from manufacturing, experimenting,
274 exploding, and storing such fireworks in their compounds or
275 proving grounds.

276 Section 5. Section 791.07, Florida Statutes, is amended to
277 read:

278 791.07 Agricultural and fish hatchery use.—A person who is
279 engaged in agricultural business on land classified as
280 agricultural pursuant to s. 193.461 or certified as an
281 aquaculture activity pursuant to s. 597.004 may use legal
282 consumer fireworks solely and exclusively for frightening birds
283 from the agricultural or aquaculture business. This chapter does
284 not prohibit the purchase or use of legal consumer fireworks for
285 this purpose as long as the purchaser holds an agricultural
286 license ~~Nothing in this chapter shall prohibit the importation,~~
287 ~~purchase, sale, or use of fireworks used or to be used solely~~
288 ~~and exclusively in frightening birds from agricultural works and~~
289 ~~fish hatcheries; and such use shall be governed entirely by the~~
290 ~~rules prescribed by the Department of Agriculture and Consumer~~

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291 Services.

292 Section 6. Subsection (7) is added to section 870.045,
293 Florida Statutes, to read:

294 870.045 Discretionary emergency measures.—Whenever the
295 public official declares that a state of emergency exists,
296 pursuant to s. 870.043, he or she may order and promulgate all
297 or any of the following emergency measures, in whole or in part,
298 with such limitations and conditions as he or she may deem
299 appropriate:

300 (7) The prohibition of the sale of consumer fireworks and
301 fireworks as defined in s. 791.01.

302

303 Any such emergency measure so ordered and promulgated shall be
304 in effect during the period of said emergency in the area or
305 areas for which the emergency has been declared.

306 Section 7. This act shall take effect October 1, 2013.