

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4005 Fireworks
SPONSOR(S): Gaetz and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 314

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Emmanuel	Cooper
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

In Florida, the sale and use of fireworks is governed by the provisions of Chapter 791, F.S. Current law restricts the sale of fireworks to those that the State Fire Marshal has approved as “sparklers” or those considered “novelties and trick noisemakers”. Generally, anything that explodes or launches into the air is illegal. An exception exists for agricultural uses. Florida residents only need to sign a waiver for the exception to have it apply. According to the State Fire Marshal, there is no mechanism in place to check if the consumer is truthfully filling out the waiver. Commercial use of fireworks is also allowed under certain circumstances.

House Bill 4005 eliminates certain sections of Chapter 791, F.S., to allow the sale of all fireworks not otherwise prohibited by federal law. Federal law prohibits the sale of the “most dangerous” fireworks, creating a national firework baseline that states governments may raise but may not lower.

Specifically, the bill:

- Eliminates provisions limiting or restricting the sale of fireworks in Florida,
- Eliminates the statutory authority provided to the State Fire Marshal to register sparkler manufactures, retailers, distributors, and wholesalers,
- Eliminates the state requirement for public firework displays to have bonds,
- Eliminates the state law which prohibits the tampering of fireworks, and
- Eliminates the role of the State Fire Marshal in testing and approving of fireworks.

This bill will likely increase the sales of fireworks in Florida, resulting in an indeterminable increase in tax revenue. The bill also eliminates the registering requirements for retailers, which will result in a loss of registration fee revenue. In the last fiscal year, registration fees of \$233,370 were deposited into the Insurance Regulatory Trust Fund.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Sparklers and Fireworks

Florida regulates the sale and use of fireworks pursuant to Chapter 791, F.S. Currently, Florida allows residents to purchase three categories of fireworks without a license: “novelties and trick noisemakers”, sparklers, and fireworks for agricultural use. All other fireworks are prohibited without a professional license.

“Novelties and trick noisemakers” are specifically defined and legal in Florida.¹ These include New Year’s poppers, trick snakes, and other smaller products that do not contain true explosives.

Sparklers are allowed in the state of Florida. As specifically defined in the statute, sparklers do not contain explosive compounds, do not detonate or explode, must be handheld or ground based, cannot self-propel through the air, and contain no more than 100 grams of the chemical compound which produces sparks.²

Current law requires that any person interested in selling sparklers must submit samples of their product to the State Fire Marshal for approval.³ To accomplish this, the statute gives the State Fire Marshal three duties.⁴ First, the State Fire Marshal is required to adopt rules describing the testing, approval, and listing procedures. Second, the law requires that the Florida Administrative Register publish the names of the approved sparklers, and only those approved by the Division of the State Fire Marshal of the Department of Financial Services may be sold in the state. Lastly, any remaining samples must be disposed of after testing.

According to the State Fire Marshal, most companies are familiar with the current statutory scheme and only submit sparklers that are perceived to have a high chance of being approved.⁵ The State Fire Marshal conducts these tests at the Fire and Arson Laboratory. Over the past three years, 164 sparklers were submitted, 30 of which were denied. The pass rate is just over 80%. The Division conducted testing of 80 new sparkler products this past year.⁶ Once a product is approved, the sparkler may be sold in Florida.

The current law also makes the altering and selling of a sparkler, as well as the fraudulent representation of a product as a sparkler, a first-degree misdemeanor.⁷

Agricultural Exemption

Currently, any resident may purchase otherwise illegal fireworks if they are to be used for agricultural purposes. This exception, supported by both farmers and the Department of Agriculture and Consumer Services, allows farms and hatcheries to disperse birds and other predators from their crops. A portion of the justification for this exception is to prevent the use of firearms to protect crops.⁸

¹ Section 791.01(4)(c), F.S.

² Section 791.01(9), F.S.

³ Section 791.013(1), F.S.

⁴ Section 791.013(2), F.S.

⁵ Information obtained from the State Fire Marshal and Department of Financial Services, 10/20/2013. On file with the Insurance & Banking Subcommittee staff.

⁶ Email exchange with the State Fire Marshal, 10/18/2013. On file with the Insurance & Banking Subcommittee staff.

⁷ Section 791.013(1), F.S.

⁸ Information obtained from the Department of Agriculture and Consumer Services (DACs), 12/20/2013. On file with the Insurance & Banking Subcommittee staff.

Florida residents only need to sign a waiver for the exception to apply. According to the State Fire Marshal, there is no mechanism in place to check if the consumer is truthfully filling out the waiver. The Department of Agriculture does not have a role in the purchasing or selling of fireworks for that purported use.⁹

Without any significant enforcement mechanism, individuals are able to purchase otherwise illegal fireworks by claiming the exemption. A case out of the Third District Court of Appeals has held that it is not the responsibility of the retailer to check the veracity of this waiver.¹⁰ In practice, this means that many retailers have on file a pre-printed waiver that customers can sign before purchasing these products.

Retailer Registration Requirements

Current law requires that individuals or corporations seeking to sell fireworks in Florida must register with the State Fire Marshal.¹¹ According to the State Fire Marshal, the Division registered 3,963 seasonal retailers, 493 retail locations, 24 wholesalers, and 3 distributors of sparkler products in 2013. The registration includes contact information, phone numbers, and corporate officer information. Currently, companies must also pay an annual registration fee not to exceed \$1000, or a seasonal fee not to exceed \$200.¹² The fees are set by the State Fire Marshal and must be deposited into the Insurance Regulatory Trust Fund. In the last fiscal year, registration fees through this program totaled \$233,370.¹³

Public Firework Displays

Section 791.02, F.S., provides the default regimen for public firework displays. The current law makes it “unlawful for any person, firm, copartnership, or corporation to offer for sale, expose for sale, sell at retail, or use or explode any firework” unless as part of a permitted display. This is one of several provisions that give local governments the ability to regulate fireworks through ordinances.

Currently, state law demands that firework displays must be operated by a “competent operator to be approved by the chiefs of police and the fire departments of the municipality”.¹⁴ Applications for this approval must be received 15 days before the event.

Florida law also sets the minimum bonded amount of \$500 for firework displays.¹⁵ Depending on the show length, it is not unusual for local governments to have bonds significantly higher than \$500. The bond is intended to cover all potential personal or property damages caused by the permitted public display of fireworks.

Effect of the Bill

Sparklers and Fireworks

As proposed, HB 4005 eliminates the definition of “sparklers” and “fireworks” from the law, making all fireworks legal in Florida unless otherwise prohibited by federal law. The bill also deregulates the sale of fireworks by removing any licensing or authorizing requirements for retailers of fireworks.

⁹ Information obtained from DACS, 12/20/2013. On file with the Insurance & Banking Subcommittee staff.

¹⁰ See *State v. Miketa*, 824 So. 2d 970 (Fla. 3d DCA 2002), which rejected adding any due diligence requirement on firework retailers to determine the applicability of the agricultural exception.

¹¹ Section 791.015, F.S.

¹² Section 791.015(3)(a), F.S.

¹³ Bill Analysis of the Department of Financial Services, Re: House Bill 4005. On file with the Insurance & Banking Subcommittee staff.

¹⁴ Section 791.02(1), F.S.

¹⁵ Section 791.03, F.S.

Federal law has created several classifications for fireworks and set a baseline for national fireworks law. Under the bill, any product that would be legal under federal law would become legal in the state of Florida. This would include projectiles, roman candles, mortars, and smaller firecrackers.

As written, the bill does not have any guidance on firework purchases in Florida. Thus, there would be no mechanism to approve or deny the selling or use of any fireworks other than the federal baseline.

The bill also eliminates the need for fireworks manufacturers to seek the State Fire Marshal's approval. Since the sparklers tests would be no longer required, some savings should accrue at the Laboratory. Additionally, the bill eliminates the penalty for selling untested sparkler products. While this deleted portion only refers to sparkler tampering, there would be no law that speaks to the broader issue of tampering with the newly legal fireworks. Additionally, there would be no mechanism for prosecuting the altering of fireworks before sale.

Retailer Registration Requirements

The bill eliminates the current requirement that firework retailers or distributors must be licensed or registered in the state. Consequently, the only mechanism to determine who is selling fireworks in the state is removed.

The bill also repeals the statutory definitions of "distributor", "manufacturer", "retailer", "seasonal retailer", and "wholesaler".¹⁶ For conformance, HB 4005 also removes the requirement that retailers have to keep a copy of their registration on site. With no registration, this provision would be unnecessary.

Public Fireworks Displays

HB 4005 also repeals the current bonding requirement for firework displays.¹⁷ With the bonding requirement removed, there would be no mechanism to require bonds for public displays on state property. Municipalities and local governments would still be able to set any specific requirements not in conflict with state law.

The State Fire Marshal believes that the repeal of this section "would delete the requirement and authority that public displays of fireworks must have the inspection and approval by the board of county commissioners, the chiefs of police, and fire departments to assure that the displays are not a hazard to property or the public."¹⁸ However, s. 791.012, F.S., remains untouched. This statute still allows local governments to set up any ordinances, laws, or rules for the display of fireworks within their boundaries. Specifically, it provides that local governments "may provide for more stringent regulations" for firework displays.

The bill also removes the statutory minimums for public displays of fireworks. Since the requirement for bonded displays is eliminated by the removal of s. 791.02, F.S., a statutory minimum is unnecessary.

Remaining Enforcement Provisions

Section 791.05, F.S., allows sheriffs to seize any stocks of fireworks held in violation of this fireworks act, including private citizens that have purchased fireworks across the state line. With no such fireworks in violation of this act, it would appear that this provision would no longer be applicable since there would be no fireworks in violation of this act. It is unclear whether this provision would still be needed given the deregulation.

B. SECTION DIRECTORY:

¹⁶ Section 791.05, F.S.

¹⁷ Section 791.02(1), F.S.

¹⁸ State Fire Marshal Bill Analysis, Re: House Bill 4005,12/18/2013. On file with the Insurance & Banking Subcommittee staff.

Section 1: Repeals s. 791.013, 791.015, 791.02, and 791.03, F.S. Respectively, these sections require the approval of sparklers by the State Fire Marshal, require retailers to register through the State Fire Marshal to sell fireworks, prohibit the sale of any non-sparkler firework, and require bonds for public displays of fireworks.

Section 2: Deletes s. 791.01(1), 791.01(5), 791.01(6), 791.01(7), and 791.01(9), F.S., which are the statutory definitions for “distributor”, “manufacturer”, “retailer”, “seasonal retailer”, and “wholesaler”.

Section 3: Amends s. 791.012, F.S., relating to minimum fireworks safety for conformance.

Section 4: Deletes portions of s 791.04, F.S., relating to sale of fireworks, for conformance.

Section 5: Provides an effective date on becoming a law

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Sales Revenues: With new products being offered to the consumers, the state should expect an increase in sales tax revenue. The fireworks industry group American Pyrotechnics Association estimates that Americans spent \$649 million on fireworks in 2011.¹⁹ While there are no official estimates of the impact on the state’s tax base, the existence of fireworks businesses catering to Floridians at the border show that at least some potential tax revenue is being lost. The ultimate tax impact is indeterminable at this time.

Loss of Registration Fees: The removal of registration fees will cost the state some revenue. Last year, the total revenue through these licensing fees was \$233,370. This money is deposited in Insurance Regulatory Trust Fund.

2. Expenditures:

This bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have any impact on local revenue.

2. Expenditures:

Local Action Required for Requiring Bonds for Firework Displays: With the statutory minimums removed, any bonds for firework displays would have to be made at the local level through a local rule, ordinance, or law. There may be a cost associated with passing new regulations to maintain the old community standards for public safety in firework displays.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

¹⁹ U.S. Fireworks Industry Revenue Figures Breakdown by Industry Segment 1998 – 2012 American Pyrotechnics Association, (12/29/2013) <http://www.americanpyro.com/assets/docs/FactsandFigures/fireworks%20revenue%20by%20industry%20segment%201998-12.pdf>.

1. Consumers: For some Floridians, the current law may seem restrictive when compared to neighboring Alabama, which has some of the broadest firework laws in the nation. In the Panhandle, it is not uncommon to hear reports of fireworks retailers on the Alabama-Florida border catering to out of state shoppers. Consumers will now be able to legally use any firework not otherwise prohibited by federal law.
2. Age Restrictions: Sparklers may be purchased at any age under existing state law. Without any changes to the bill, it is the opinion of the State Fire Marshal that minors would be able to purchase fireworks in Florida.
3. Health and Safety Concerns: Firework-related injuries should be expected to rise under the proposed regime. To the extent that the deregulation of fireworks as contained in this bill increases greater use of products previously prohibited, firework related injuries may increase.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As mentioned in this analysis, Alabama allows the sale of substantially more fireworks than most states. Alabama State Code has two features that are not found in HB 4005: a minimum age requirement for the purchase of fireworks and a specific determination of approved fireworks.

Alabama Code has set the minimum age to buy sparklers and trick toys at 12 and the minimum age to buy all other fireworks at 16. A child may purchase any fireworks if accompanied by an adult.²⁰

Alabama relies on the federal definitions of legal fireworks. The U.S. Department of Transportation has three broad classes of fireworks: A, B, and C.²¹ Under federal law, only licensed professionals may use Class A or Class B fireworks. Alabama State Code expressly allows the sale of all Class C fireworks, as determined by the U.S. Department of Transportation.²²

²⁰ Section 8-17-222, Alabama Code.

²¹ Generally speaking, Class A fireworks are high explosives such as dynamite, black powder, and blasting caps. Class B fireworks are display level fireworks, which are used at most public displays. Class C fireworks are the lesser fireworks, which would include bottle rockets, roman candles, flares, and smaller reloadable aerial shells. Recently, the federal government has created more specific federal classifications that are used by industry professionals.

²² Section 8-17-218, Alabama Code.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES