

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 140

INTRODUCER: Community Affairs Committee and Senators Hutson and Bradley

SUBJECT: Fireworks

DATE: December 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Palecki</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 140 provides an exemption from the prohibition of fireworks usage during designated holidays. The designated holidays are Memorial Day, the last Monday in May; Independence Day, July 4; New Year's Eve, December 31; and New Year's Day, January 1.

II. Present Situation:

Chapter 791, F.S., sets forth the framework for the regulation of fireworks in Florida under the State Fire Marshal's (SFM) office within the Department of Financial Services (DFS). While ch. 791, F.S., applies uniformly throughout the state, enforcement of these statutes resides with local law enforcement departments.¹ The statutes prohibit the retail sale and use of fireworks² by the public. However, provisions of ch. 791, F.S., exempt certain wholesale sales and commercial uses of fireworks from this general ban. The law does allow sparklers and other novelty products,³ like smoke devices and noisemakers, to be sold at retail to the public and to be used by the public.⁴ Sparklers and similar items, as opposed to fireworks, do not contain explosive

¹ Section 791.001, F.S.

² Florida Statutes provide specific definitions of what are and are not fireworks, which is outlined in later sections of the analysis.

³ Section 791.01(4)(c), F.S. Novelty products include: snakes or glow worms, smoke devices, trick noisemakers, party poppers, booby traps, snappers, trick matches, cigarette load, and auto burglar alarms.

⁴ Retailers that sell sparklers to the general public are classified into two groups: "seasonal retailers" are persons who sell sparklers only from June 20 through July 5 and from December 10 through January 2 (the temporary stands and tents near roads are operated by seasonal retailers); "retailers" are persons who sell sparklers throughout the year from a fixed location.

compounds, cannot be propelled through the air, and are hand-held or ground-based.

Federal Fireworks Provisions

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has adopted federal regulations to distinguish explosives from fireworks, which are sold in the United States as either “display fireworks” or “consumer fireworks.”⁵ Display fireworks are large fireworks used in shows, generally under the supervision of a trained pyrotechnician.⁶

ATF does not regulate consumer fireworks, which it characterizes as the small fireworks usually sold at stands around the Fourth of July holiday.⁷ The manufacturing of consumer fireworks requires an explosives license from ATF because consumer fireworks contain pyrotechnic compositions classified as explosive materials.⁸

Products Classified as Fireworks in Florida

Section 791.01(4)(a), F.S., defines the term “fireworks” as certain combustible or explosive substances or articles prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation. The term includes “blank cartridges and toy cannons in which explosives are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, skyrockets, roman candles, dago bombs, and any fireworks containing any explosives or flammable compound or any tablets or other device containing any explosive substance.” Section 791.02(1), F.S., provides that it is unlawful for any person, firm, copartnership, or corporation to offer for sale, expose for sale, sell at retail, or use or explode any fireworks.

“Sparklers” are defined as “a device which emits showers of sparks upon burning, does not contain any explosive compounds, does not detonate or explode, is handheld or ground based, cannot propel itself through the air, and contains not more than 100 grams of the chemical compound which produces sparks upon burning.” Any sparkler that is not approved by the SFM is classified as fireworks.⁹ All approved sparkler products are legal for sale until January 31 of the following year.¹⁰ Fraudulent misrepresentation of a device as approved for sale as a sparkler amounts to a misdemeanor of the first degree.¹¹

Public Displays of Fireworks in Florida

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

See s. 791.015, F.S.

⁵ See ATF, *Fireworks Safety and Security*, available at <https://www.atf.gov/explosives/fireworks-safety-and-security> (last visited Dec. 5, 2019).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Section 791.01(8), F.S.

¹⁰ Section 791.013(1), F.S.

¹¹ *Id.*

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

The outdoor display of fireworks is governed by the National Fire Protection Association (NFPA), which establishes minimum safety standards for outdoor public displays.¹² Local governments may adopt more stringent restrictions for the outdoor display of fireworks, but cannot enact less stringent provisions.¹³

State Fire Marshal Role in Fireworks Regulation

The SFM issues a Certificate of Registration to persons and companies engaged in the business of manufacturing, distributing, wholesaling, and retailing sparklers and imposes an annual fee.¹⁴ All sparklers must be annually tested¹⁵ and approved by the SFM according to specified standards prior to sale or use.¹⁶ Any product that is not approved by the SFM is classified as fireworks. The SFM promulgates an annual list of approved sparklers on its website.¹⁷

According to the SFM, there are currently 710 registered sparkler retailers, which sell to the public from 3,740 fixed places of business throughout the year. There are 841 registered sparkler seasonal retailers, which may sell from June 20 through July 5 and from December 10 through January 2. Presently, there are 92 registered sparkler wholesalers, 7 registered sparkler distributors and 3 registered sparkler manufacturers.¹⁸ Section 791.04, F.S., allows wholesalers, distributors, and manufacturers registered with the SFM to sell fireworks at wholesale, but only if the purchaser meets one of the enumerated exemptions. These exemptions allow the sale of fireworks to:

- Other manufacturers, distributors, or wholesalers registered with the SFM;
- Other registered manufacturers, distributors, or wholesalers who ship fireworks directly out of Florida;
- Persons holding a permit from any board of county commissioners (or municipality) at the display covered by such permit;
- Railroads or other transportation agencies for signal, illumination, quarrying, blasting or other industrial use;
- A show or theater for the sale or use of blank cartridges;

¹² Section 791.012, F.S.

¹³ *Id.* Section 791.055, F.S., further outlines restrictions on the storage of sparklers to ensure such products are kept in a safe manner.

¹⁴ Section 791.015, F.S. The certificate issued by the SFM is mandatory and contains the licensed address where sales are permitted and must be posted at the registered location. Fees for manufacturers, distributors, and wholesalers of sparklers are \$1,000; for retailers the fees are \$15; and for seasonal retailers, the fee is \$200. Revenue from registration fee payments is deposited in the Insurance Regulatory Trust Fund for the purposes of implementing the registration and testing provisions of ch. 791, F.S.

¹⁵ Sparklers, unless they are subsequently altered, are only tested once by the SFM.

¹⁶ Sections 791.015 and 791.013, F.S. Sparklers must be submitted for testing to the SFM's Bureau of Forensic Fire and Explosives Analysis Laboratory in Tallahassee prior to September of each year. The SFM does not test novelties or trick Noisemakers.

¹⁷ Division of State fire Marshall, *List of Approved Sparklers: February 1, 2019 to January 31*, available at: <https://www.myfloridacfo.com/division/sfm/BFP/documents/2019-2020SparklerList.pdf> (last visited December 5, 2019).

¹⁸ Section 791.01, F.S., and email from Meredith Stanfield, Director of Legislative and Cabinet Affairs, Department of Financial Services (Sep. 29, 2019) (on file with the Senate Committee on Community Affairs).

- Athletics or sports for signal or ceremonial purposes;
- Military organizations, or organizations composed of the Armed Forces of the United States; and
- Licensed manufacturers who experiment by exploding and storing fireworks in their own
- Compounds.

Enforcement of Florida Fireworks Laws

It is a first-degree misdemeanor penalty for any person, firm, copartnership, or corporation to offer for sale, expose for sale, sell at retail, or use or explode any fireworks.¹⁹ It is not, however, a violation of the law to merely possess fireworks. The law imposes a similar penalty for individuals, members of a partnership, and officers of an association or corporation who violate the terms of ch. 791, F.S.,²⁰ and for persons who alter approved sparklers and subsequently sell such products or fraudulently represent a device is approved for sale as a sparkler by the SFM when it is not approved.²¹ In addition, the sheriff or any other police officer is authorized to seize, take or remove at the expense of the owner, all stocks of fireworks or combustibles offered for sale, stored, or held in violation of ch. 791, F.S.²²

Agriculture Works and Fish Hatcheries Fireworks Exemption and Fireworks Retailer Waivers

The importation, purchase, sale, or use of fireworks to be used solely and exclusively to frighten birds from agricultural works and fish hatcheries is authorized pursuant to s. 791.07, F.S.²³ The Department of Agriculture and Consumer Services (DACCS) governs this provision pursuant to its rules, which mandate that persons who utilize this exemption must first file a written statement with the county sheriff verifying such persons are engaged in agriculture or operate a fish hatchery.²⁴ These persons must then present this statement to the seller at the point of sale. The processes and procedures for the agriculture works and fish hatcheries exemption should not be confused with “certificates,” “waivers,” or “affidavits” that fireworks retailers often ask fireworks buyers to sign when a person purchases something above a sparkler. While waivers may acknowledge and cite the agricultural exemption in s. 791.07, F.S., or the wholesale exemptions in s. 791.04, F.S., these documents do not waive these laws. The SFM has previously advised persons to not sign waivers in order to purchase illegal fireworks, stating that signing a waiver will not clear a consumer of responsibility if caught illegally using fireworks.²⁵

¹⁹ Sections 791.02, F.S., and 791.06, F.S. A misdemeanor penalty is one year in jail and a \$1,000 fine; see ss.775.082 and 775.083, F.S.

²⁰ Section 791.06, F.S. Firms, copartnerships, or corporations found to violate the law are subject to a \$1,000 fine.

²¹ Section 791.013, F.S.

²² Section 791.05, F.S.

²³ Specially designed pyrotechnic explosives and propane canons are commonly used and effective bird dispersal tools. See U.S. Department of Agriculture Animal & Plant Health Inspection Service, Bird Dispersal Technics (Aug. 2016), available at

https://www.aphis.usda.gov/wildlife_damage/reports/Wildlife%20Damage%20Management%20Technical%20Series/BirdDispersal-Techniques-WDM-Technical-Series.pdf (last visited Dec. 5, 2019).

²⁴ Rules 5A-3.001 and 5A-3.002, F.A.C.

²⁵ Florida Chief Financial Officer Press Release, Florida State Fire Marshal’s Office Urges Floridians to Celebrate Safely this Fourth of July (July 3, 2017), available at

<https://www.myfloridacfo.com/sitePages/newsroom/pressRelease.aspx?id=4848> (last visited Dec. 5, 2019).

The Miketa Case

Issues surrounding fireworks buyer certificates were addressed in 2002 in *State v. Miketa*.²⁶ The Third District Court of Appeal held that ch. 791, F.S., did not require a seller of fireworks to use due diligence to determine if a purchaser met one of the statutory wholesale exemptions under the law. The Court reasoned that all that is required of the seller, before she or he could lawfully sell the fireworks, was for the purchaser to sign a statement, supplied by the seller, that the purchaser is covered by one of the exemptions to the statute. Since the statute was penal in nature, it should be strictly construed against the state. Because the fireworks statute failed to include a requirement that the seller make a bona fide attempt to determine if the purchase is exempt by requiring supporting documentation, such a requirement could not be read into the law.

Florida Consumer Fireworks Task Force (2007-2008)

In 2007, the Legislature enacted ch. 2007-67, Laws of Florida, and established a Consumer Fireworks Task Force (Task Force) within the DACS for the purpose of studying issues concerning consumer fireworks.²⁷ Pending completion of the Legislature's review of the Task Force's report and to ensure uniformity of fire prevention and safety standards, the Legislature enacted limits on retail sales facilities for consumer fireworks, which provided:

- A new permanent retail sales facility engaged in sales permitted under s. 791.07, F.S., (i.e., for agricultural and fish hatchery uses) may not be opened in Florida after March 8, 2007, unless construction for the permanent retail sales facility received site plan approval and construction begun on or before March 8, 2007; and
- The number of permits for temporary retail sales facilities, such as tents, engaged in sales otherwise permitted by s. 791.07, F.S., (i.e., for agricultural and fish hatchery uses) issued after March 8, 2007, by a county, municipality, or other unit of local government, may not exceed the number of permits the governmental entity issued for such facilities during the 2006 calendar year.²⁸

Under ch. 2007-67, s. 10(5), Laws of Florida, a municipality, county, or other unit of local government may not adopt an ordinance, rule, regulation, or other law after March 8, 2007 which directly prohibits or directly interferes with the safety standards established by state law or the right to purchase, sell, use, or possess consumer fireworks in Florida.²⁹

Key recommendations adopted by the Task Force in its final report included:

- Clear definitions and conditions for the use of consumer fireworks;
- Removal or amendments to existing exemptions;
- Establishment of consistent local government regulations, compliance and penalties;

²⁶ 824 So. 2d 970, 974 (Fla. 3d DCA 2002).

²⁷ See ch. 2007-67, s. 10, Laws of Fla.; as set forth in s.10(4), transmittal of the Task Force report to the President of the Senate and the Speaker of the House of Representatives abolished the Task Force.

²⁸ See ch. 2007-67, s. 10(5), Laws of Fla.

²⁹ *Id.* Further, if the Legislature enacts legislation to provide for the comprehensive regulation of fire prevention and safety standards for the use of consumer fireworks to replace s. 791.07, F.S., on or before July 1, 2008, s. 791.07, F.S., does not prohibit opening any such facility, permitting any such temporary facility, or adopting any such ordinance or other law after such legislation is enacted. However, no such legislation was enacted on or before July 1, 2008.

- Baseline regulation and safety standards for temporary retail sales facilities;
- Regulation of hours and location of the use of consumer fireworks; and
- Ensure that fees be developed sufficient to ensure that all aspects of the Task Force's recommendations are revenue neutral to state and local governments.³⁰

Other States' Regulation of Fireworks

Industry association information indicates that nationally, one state, Massachusetts, bans all consumer fireworks, three states allow only wire or wood stick sparklers and other novelty items, and 46 states and the District of Columbia allow some or all types of consumer fireworks permitted by federal regulations.³¹

State law in Georgia allows fireworks use on any day from 10:00 a.m. to 11:59 p.m., unless the noise from such use is not in compliance with a noise ordinance of a county or municipal corporation.³² A noise ordinance provision does not apply on January 1, the last Saturday and Sunday in May, July 3, July 4, the first Monday in September, and December 31 of each year. In addition, on January 1 of each year, fireworks use is permitted from 12:00 midnight up to 1:00 a.m.

In Michigan,³³ local units of government may enact certain ordinances regulating fireworks but such ordinances shall not regulate the use of consumer fireworks on the following days beginning at 11:00 a.m.:

- December 31 until 1 a.m. on January 1;
- The Saturday and Sunday immediately preceding Memorial Day until 11:45 p.m. on each of those days;
- June 29 to July 4 until 11:45 p.m. on each of those days;
- July 5, if that date is a Friday or Saturday, until 11:45 p.m.; and
- The Saturday and Sunday immediately preceding Labor Day until 11:45 p.m. on each of those days.

Fireworks Related Injuries and Fires

According to the U.S. Consumer Product Safety Commission's (CPSC) 2018 Fireworks Annual

³⁰ Department of Agriculture and Consumer Services, *Florida Consumer Fireworks Task Force: Final Report* (Jan. 15, 2008), available at https://consensus.fsu.edu/Fireworks-Task-Force/pdfs/Fireworks_Final.pdf (last visited Dec. 5, 2019).

³¹ See American Pyrotechnics Association, *2019 State Fireworks Control Laws* (June 2019) available at <https://www.americanpyro.com/assets/docs/FactsandFigures/Rev2019%20State%20Laws%20Firework%20Map.pdf> (last visited Dec. 5, 2019).

³² See Official Code of Georgia, § 25-10-2, available at <https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=326894ef-3894-4c3d-a276-3c354a51ae72&config=00JAA1MDBIYzczZi11YjFILTQxMTgtYWE3OS02YTgyOGM2NWJIMDYKAFBvZENhdGFsb2fed0oM9qoQOMCSJFX5qkd&pddocfullpath=%2Fshared%2Fdocument%2Fstatuteslegislation%2Furn%3AcontentItem%3A5WRH-YDC1-JKB3-X17P-00008-00&pddocid=urn%3AcontentItem%3A5WRHYDC1-JKB3-X17P-00008-00&pdcontentcomponentid=234186&pdteaserkey=sr4&pditab=allpods&ecomp=h567kkk&earg=sr4&prid=67d7319f-75b1-4851-9d42-29b12824fa69> (last visited Oct. 29, 2019).

³³ See Michigan Fireworks Safety Act, Section 28.457, available at [http://www.legislature.mi.gov/\(S\(k5phsamwcqvfiul5qtah2lsu\)\)/mileg.aspx?page=GetObject&objectname=mcl-28-457](http://www.legislature.mi.gov/(S(k5phsamwcqvfiul5qtah2lsu))/mileg.aspx?page=GetObject&objectname=mcl-28-457) (last visited Dec. 5, 2019).

Report,³⁴ fireworks were involved in an estimated 9,100 injuries treated in U.S. hospital emergency departments during calendar year 2018. Approximately 81 percent of the victims treated at emergency departments were released upon receiving care. The report found that there is not a statistically significant trend in estimated emergency department-treated, fireworks-related injuries from 2003 to 2018. CPSC staff received reports of five non-occupational fireworks-related deaths during the year.

The National Fire Protection Association reports³⁵ that fireworks start an average of 18,500 fires per year, including 1,300 structure fires, 300 vehicle fires, and 16,900 outside and other fires. These fires caused an average of three deaths, 40 civilian injuries, and an average of \$43 million in direct property damage.

According to DFS, in 2018, there were 108 fires in Florida in which fireworks were reported as the cause.³⁶ DFS states those fires resulted in estimated property damage of \$287,751. In 2017, DFS identified 173 fires in the state in which fireworks were reported as the cause, which resulted in one civilian death and estimated property damage of \$500,660.³⁷

III. Effect of Proposed Changes:

Section 1 creates s. 791.08, F.S., to provide, during designated holidays, an exemption from the prohibition of fireworks usage. The designated holidays are Memorial Day, the last Monday in May; Independence Day, July 4; New Year's Eve, December 31; and New Year's Day, January 1.

Section 2 provides that the bill shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³⁴ U.S. Consumer Product Safety Commission, *2018 Fireworks Annual Report* (June 2019), available at https://www.cpsc.gov/s3fs-public/Fireworks_Report_2018.pdf?5kZ4zdr9jPFyhPmeg3MoL35mGX8fB0s7 (last visited Dec. 5, 2019).

³⁵ National Fire Protection Association, *Public Education: Fireworks*, available at <https://www.nfpa.org/PublicEducation/Fire-causes-and-risks/Seasonal-fire-causes/Fireworks> (last visited Dec. 5, 2019).

³⁶ Department of Financial Services, *Senate Bill 140 Agency Analysis* (Sep. 20, 2019) (on file with the Senate Committee on Community Affairs).

³⁷ *Id.*

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Sellers of fireworks may experience increased sales.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

While the bill removes the prohibition on fireworks usage on certain designated holidays, it is silent on the importation, purchase, or sale of fireworks on or for usage on these days. In addition, seasonal retailer sales dates do not currently include any time around Memorial Day.

Section 791.012, F.S., allows the adoption of any state, county, or municipal law, rule, or ordinance which requires more stringent restrictions for the outdoor display of fireworks than are required by the National Fire Protection Association (NFPA) 1123, Code for Fireworks Display, 1995 Edition.³⁸ The Florida Statutes expressly provide that in no event may any such law, rule, or ordinance provide for less stringent regulations for the outdoor display of fireworks.³⁹ This bill expressly provides that ch. 791, F.S., *does not prohibit* the use of fireworks solely and exclusively during a designated holiday. A municipality cannot forbid what the state legislature has expressly licensed, authorized, or required.⁴⁰ In the event of conflict between a local government enactment and a state law, courts will apply a preemption analysis. The absence of express preemption does not preclude a finding of preemption by implication.⁴¹ Preemption of a local government enactment is implied where the legislature has expressed its will to be the sole regulator.⁴²

³⁸ Section 791.012, F.S.

³⁹ *Id.*

⁴⁰ *City of Hollywood v. Mulligan*, 934 So. 2d 1238 (Fla. 2006).

⁴¹ *Browning v. Sarasota Alliance for Fair Elections, Inc.*, 968 So. 2d 637 (Fla. 2d DCA 2007).

⁴² *GLA and Associates, Inc. v. City of Boca Raton*, 855 So. 2d 278 (Fla. 4th DCA 2003).

VIII. Statutes Affected:

This bill creates section 791.08 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on November 4, 2019:

- Added New Year's Day to the list of designated holidays that are exempt from the current prohibition on fireworks use.
- Removed a rulemaking requirement for the Division of State Fire Marshal.

- B. **Amendments:**

None.