

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 65 Fireworks

SPONSOR(S): Commerce Committee, Local, Federal & Veterans Affairs Subcommittee, Business & Professions Subcommittee, Rodriguez, A. M. and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 140

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	7 Y, 5 N, As CS	Brackett	Anstead
2) Local, Federal & Veterans Affairs Subcommittee	10 Y, 1 N, As CS	Moehrle	Miller
3) Commerce Committee	17 Y, 5 N, As CS	Brackett	Hamon

SUMMARY ANALYSIS

Federal laws regulate the manufacture, sale and use of fireworks. The U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as well as the U.S. Consumer Product Safety Commission (CPSC) have general jurisdiction over what types of fireworks may be legally sold in the United States. Federal law sets the minimum standard. States are permitted to enact laws that are more stringent.

In Florida, the sale and use of fireworks are generally prohibited.

However, many exceptions to the prohibition exist. The most commonly used exceptions allow approved fireworks to be sold by a licensed retailer to a buyer who:

- has obtained a permit for a public display from a municipality or a board of county commissioners;
- is using the fireworks to scare birds away from agricultural works or fish hatcheries.

The bill creates an additional exception to the prohibition of the sale and use of fireworks.

The bill provides that federally approved consumer fireworks may be imported, sold, purchased, and used solely and exclusively for the following holidays:

- New Year's Eve, December 31st;
- New Year's Day, January 1st; and
- Independence Day, July 4th.

The bill also:

- States it is not intended to provide for the comprehensive regulation of fireworks nor is it intended to supersede any local government regulation relating to the use of fireworks;
- Provides that a person must be at least 18 years of age to purchase fireworks; and
- Provides an affirmative defense for a retailer or seasonal retailer who acts in good faith and inadvertently sells fireworks to a minor.

The bill is not expected to have a fiscal impact on state and local governments.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

Chapter 791, F.S., regulates the sale and use of fireworks and sparklers in Florida. No person may offer for sale, sell at retail, or use or explode any fireworks unless they meet the provisions or exceptions in Florida law.¹ Sparklers are permitted under Florida law under certain conditions.

According to the American Pyrotechnics Association, 46 states plus the District of Columbia allow some or all types of consumer fireworks, three states (Ohio, Illinois, and Vermont) allow only wire or wood stick sparklers, and one state (Massachusetts) bans all consumer fireworks.²

Federal Regulation of Fireworks

Fireworks are regulated by the federal government through the ATF, and the CPSC.

Federal explosives laws categorize fireworks into three types - display fireworks, consumer fireworks, and articles pyrotechnic.³

Display Fireworks

“Display fireworks” are defined as “large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation.” The ATF requires anyone engaging in the business of manufacturing, importing, or dealing in display fireworks to have an ATF explosive license, and anyone importing for their own use or receiving or transporting display fireworks to have an ATF permit.⁴

“Display fireworks” include but are not limited to:

- Aerial shells containing more than 2 grains of explosive materials;
- Aerial shells containing more than 40 grams of pyrotechnic compositions;
- Other display pieces that exceed the limits of explosive materials for consumer fireworks; and
- Fused set pieces containing components which together exceed 50 milligrams of salute powder.⁵

Consumer Fireworks

“Consumer fireworks” are defined as “any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the U.S. Consumer Product Safety Commission.” Manufacturers of “consumer fireworks” must have an ATF license. However, the ATF generally does not regulate the importation, distribution, and storage of consumer fireworks.

The definition also includes “some small devices designed to produce audible effects...such as”:

- whistling devices,

¹ See ch. 791, F.S.

² The American Pyrotechnics Association was founded in 1948, represents the entire fireworks industry, and works toward the responsible regulation of the fireworks industry. APA, *2019 State Fireworks Control Laws*, <https://www.americanpyro.com/assets/docs/FactsandFigures/Rev2019%20State%20Laws%20Firework%20Map.pdf> (last visited on Oct. 29, 2019).

³ 27 C.F.R. § 555 (2019) & 27 C.F.R. § 555.11 (2019).

⁴ 27 C.F.R. § 555.26 (2019) & 27 U.S.C. § 555.41 (2019).

⁵ 27 C.F.R. § 555.11 (2019).

- ground devices containing 50 mg or less of explosive materials, and
- aerial devices containing 130 mg or less of explosive materials.”⁶

Articles Pyrotechnic

“Articles pyrotechnic” are defined as “pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use.”⁷ A manufacturer of articles pyrotechnics must have an ATF manufacturer’s license.⁸

The Federal Hazardous Substances Act (FHSA)

The CPSC regulates the use of consumer fireworks under the FHSA.⁹ The FHSA prohibits the sale to consumers of the most dangerous types of fireworks including:

- Large reloadable mortar shells;
- Cherry bombs;
- Aerial bombs;
- M-80 aerials; and
- Larger firecrackers containing more than 2 grains of explosive materials.¹⁰

Any person who imports, distributes, or sells a prohibited firework under the FHSA to a consumer is guilty of a misdemeanor and subject to a fine of not more than \$500 and/or imprisonment for not more than 90 days. For second or subsequent offenses, or if the person intended to defraud or mislead, the person is subject to a fine of up to \$250,000 and/or imprisonment for not more than 5 years. Any person who imports, distributes, or sells a prohibited firework under the FHSA to a consumer may also be subject to a civil penalty up to \$100,000 for each violation and up to \$15,000,000 for any series of violations.¹¹

The determination of who may purchase and use consumer fireworks is left up to the states. However, the CPSC advises that young children should not be allowed to use consumer fireworks and older children should only be allowed to use consumer fireworks under the close supervision of an adult.¹²

The CPSC provides an annual report on the number of non-occupational, fireworks-related deaths and injuries in the U.S. The CPSC reported that in 2018 there were an estimated 9,100 injuries involving fireworks in the U.S. The CPSC also reported that there were at least five deaths including a 16 year old male in Florida who died after a mortar tube exploded in his hand.¹³

⁶ 27 C.F.R. § 555.11 (2019).

⁷ *Id.*

⁸ 27 C.F.R. § 555.11 (2019); 27 C.F.R. § 555.141 (2019); ATF Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Are ‘consumer fireworks’ subject to regulation under the Federal explosive laws?*, <https://www.atf.gov/explosives/qa/are-%E2%80%9Cconsumer-fireworks%E2%80%9D-subject-regulation-under-federal-explosives-laws> (last visited on Oct. 29, 2019); ATF Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Are “Articles Pyrotechnic” subject to the requirements of the Federal explosive regulations?*, <https://www.atf.gov/explosives/qa/are-%E2%80%9CArticles-pyrotechnic%E2%80%9D-subject-requirements-federal-explosives-regulations> (last visited Oct. 29, 2019).

⁹ 15 U.S.C. § 1261 (2019).

¹⁰ 16 C.F.R. § 1500.17 (2019).

¹¹ See 15 U.S.C. § 1263 (2017); 15 U.S.C. § 1264 (2019); 18 U.S.C. § 3571 (2019).

¹² U.S. Consumer Product Safety Commission, *Fireworks Fact Sheet*, <https://www.cpsc.gov/s3fs-public/Fireworks%20Fact%20Sheet%202019.pdf> (last visited on Oct. 29, 2019).

¹³ Tu, Yongling, *2018 Fireworks Annual Report: Fireworks-Related Deaths and Emergency Department-Treated Injuries During 2018*, 1 & 8 https://www.cpsc.gov/s3fs-public/Fireworks_Report_2018.pdf?5kZ4zdr9jPFyhPmeg3MoL35mGX8fB0s7 (June 2019).

Florida Regulation of Fireworks and Sparklers

In Florida, the sale, purchase, and use of fireworks is prohibited unless the seller, buyer, or user falls under an exemption. Fireworks are defined as “any combustible or explosive composition or substance or combination of substances or, except as hereinafter provided, any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation.”

Fireworks include:

- Blank cartridges and toy cannons in which explosives are used;
- 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.¹⁴

Fireworks do not include the following, which the sale and use of is permitted under certain conditions:

- Sparklers¹⁵ approved by the State Fire Marshal;
- Toy pistols, toy canes, toy guns, or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, providing that a person’s hand cannot come into contact with the cap when in place for the explosion;
- Toy pistol paper caps which contain less than twenty hundredths grains of explosive mixture; and
- A trick noisemaker, which is a device that produces a small report intended to surprise a user, including a:
 - Party popper;
 - Booby trap;
 - Snapper;
 - Trick match;
 - Cigarette load; and
 - Auto burglar alarm.
- The following novelties:
 - A snake or glow worm, which is a pressed pellet of not more than 10 grams of pyrotechnic composition that produces a large, snakelike ash which expands in length as the pellet burns and that does not contain mercuric thiocyanate; and
 - A smoke device, which is a tube or sphere containing not more than 10 grams of pyrotechnic composition that, upon burning, produces white or colored smoke as the primary effect.¹⁶

Any person who illegally purchases, uses, or sells fireworks commits a first-degree misdemeanor.¹⁷

Sparklers

All sparklers sold in Florida must be approved by the State Fire Marshal. Sparklers not approved by the State Fire Marshal are considered fireworks. Any person wishing to sell a product as a sparkler in Florida must first submit the product to the State Fire Marshal for testing to determine if the product meets the definition of a sparkler. On February 1 of each year, the State Fire Marshal must publish a

¹⁴ Ss. 791.01(4)(a) & 791.02(1), F.S.

¹⁵ S. 791.01(8), F.S. (Sparklers are hand-held or ground-based devices that emit showers of sparks when they are burned. Sparklers do not explode, detonate, contain explosive compounds, are not self-propelled, and have a limited number of combustible chemicals.)

¹⁶ S. 791.01(4)(b) & (c), F.S.

¹⁷ S. 791.06, F.S.

list of the approved sparklers. All approved sparklers may be sold until January 31st of the following year.¹⁸

Any person who alters an approved sparkler, so that it is no longer a sparkler, and subsequently sells the altered sparkler as an approved sparkler commits a first-degree misdemeanor. Any person who fraudulently represents a product that is not an approved sparkler as an approved sparkler commits a first-degree misdemeanor.¹⁹

Public Displays of Fireworks

Pursuant to s. 791.012, F.S., the outdoor display of fireworks is governed by the National Fire Protection Association (NFPA) 1121, Code for Fireworks Display, 1995 Edition, approved by the American National Standards Institute.²⁰ Any state, county, or municipal law, rule, or ordinance may provide for more stringent regulations, but in no event may any such law, rule, or ordinance provide for less stringent regulations for the outdoor display of fireworks. However, the Code for Fireworks Display does not govern the display of any fireworks on private residential property.²¹

Florida allows the public display of fireworks in municipalities if police and fire chiefs have determined that the display is done by a competent supervisor, and the display does not endanger any person and is not hazardous to property.²²

Supervised public displays of fireworks are permitted outside municipalities by fair associations, amusement parks, and other organizations or groups of individuals if the person doing the display obtains a bond of not less than \$500. The bond is for the payment of damages that may be caused to a person or property by the fireworks display, any acts of the person doing the display, his or her agents, employees, or subcontractors.²³

Municipalities and the boards of county commissioners have the power to adopt reasonable rules and regulations for the granting of permits for supervised public displays of fireworks. Application for a permit must be made in writing at least 15 days in advance of the display. Upon obtaining a permit a person may engage in the lawful sale, possession, and distribution of fireworks for the display. Permits may not be transferred.²⁴

Distributors, Manufacturers, Wholesalers, and Retailers

In order to be a retailer, manufacturer, wholesaler, or distributor²⁵ a person must register annually with the State Fire Marshal. Depending on the type of registration, the registrant is able to manufacture, construct, or sell sparklers and **may also sell fireworks:**

- To other registered wholesalers, manufacturers, and distributors;
- That are to be shipped out of Florida;
- To anyone holding a public firework display permit from a municipality or a board of county commissioners; and

¹⁸ Ss. 791.01(8) & 791.013(1), F.S.

¹⁹ S. 791.013(2), F.S.

²⁰ The National Fire Protection Association was founded in 1896 and delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by partnering with others who share an interest in furthering the mission. The American National Standards Institute is a non-profit organization that aims to strengthen the U.S. market place and assure the safety and health of consumers by creating and promulgating thousands of standards and guidelines. NFPA, *About NFPA*, <http://www.nfpa.org/about-nfpa> (last visited on Oct. 29, 2019); ANSI, *About ANSI*, https://www.ansi.org/about_ansi/overview/overview?menuid=1 (last visited on Oct. 29, 2019).

²¹ S. 791.012, F.S.

²² S. 791.02(1), F.S.

²³ *Id.* & S. 791.03, F.S.

²⁴ S. 791.02(1), F.S.

²⁵ S. 791.01(1), (5), & (9), F.S. (A distributor is defined as any person who sells sparklers to a wholesaler. A manufacturer is defined as any person engaged in the manufacture or construction of sparklers in Florida. A wholesaler is defined as any person engaged in the business of selling sparklers to a retailer.)

- To a buyer who is using the fireworks to scare birds away from agricultural works or fish hatcheries.²⁶

Retailers and seasonal retailers may not sell sparklers, fireworks, or any other product authorized for sale by ch. 791, F.S., unless the retailer or seasonal retailer obtained the product from a registered manufacturer, distributor, or wholesaler.

Retailers and seasonal retailers are also required to keep, at every location where sparklers are sold, evidence of purchases from manufacturers, distributors, or wholesalers. The evidence must have the manufacturer, distributor, or wholesaler's registration number, and the specific items purchased by the retailer or seasonal retailer. Each seasonal retailer must also display a copy of his or her registration at each seasonal location.²⁷

There are two types of retailers in Florida:

- A retailer, who is any person at a fixed place of business who sells sparklers to consumers at retail; and
- A seasonal retailer, who is any person engaged in the business of selling sparklers to consumers at retail from June 20th through July 5th and December 10th through January 2nd.²⁸

A retailer who sells sparklers at multiple locations may submit one registration form as long as the retailer lists every location on the registration form.²⁹ The registration form must include the business name, address, telephone number, corporate officers (if a corporation), and a contact person. Annual registration fees are:

- \$1,000 for registration as a manufacturer, distributor, or wholesaler;
- \$200 for registration as a seasonal retailer; and
- \$15 for each location registered by a non-seasonal retailer.³⁰

Agricultural Exception to Fireworks Prohibition

Pursuant to s. 791.07, F.S., nothing shall prohibit the importation, purchase, sale, or use of fireworks to be used solely and exclusively to scare birds from agricultural works and fish hatcheries. Such use is governed by rules prescribed by the Department of Agriculture and Consumer Services (DACS).

Current law does not provide for an age restriction for the purchase of fireworks to scare birds from agricultural works and fish hatcheries. However, on February 13, 2018, testimony was offered during the regular meeting of the Florida House of Representatives' Commerce Committee indicating that it is standard practice for retailers to refuse to sell fireworks to minors under the agricultural exception because minors cannot legally sign the legal form required by the retailers.³¹

DACS has adopted rules that require any person who wishes to use firecrackers to scare birds first file a written statement, with the sheriff in the county where the agricultural work or fish hatchery is located, attesting that he or she intends to use the firecrackers solely for the purpose of scaring birds.³² A person may purchase firecrackers from an authorized seller upon presenting the seller a copy of the written statement he or she has filed with the sheriff.³³

Local news stations have reported that the ability to buy fireworks in order to scare birds is a "loophole" to the prohibition of the purchase of fireworks by people who are not registered with the State Fire Marshal. According to the local news stations, retailers require a person to sign a form attesting that they are purchasing fireworks to scare birds from agricultural works or fish hatcheries in order to

²⁶ Ss. 791.04 & 791.07, F.S.

²⁷ S. 791.02(2), F.S.

²⁸ S. 791.01(6) & (7), F.S.

²⁹ S. 791.015(1), F.S.

³⁰ S. 791.015(3), F.S. & Rule 69A-50.005, F.A.C.

³¹ See The Florida Channel, *2/13/2018 House Commerce Committee*.

³² Rule 5A-3.001, F.A.C.

³³ Rule 5A-3.002, F.A.C.

purchase the fireworks.³⁴ In 2002, the Third District Court of Appeal held that it is not the responsibility of a seller to check the veracity of a buyer's form attesting that the fireworks are to be used to scare birds.³⁵

Consumer Fireworks Task Force/Limits on Retail Sales Facilities & Local Regulations (2007 Provisions)

The 2007 Legislature³⁶ found that:

- The state regulation of consumer fireworks in Florida provides an insufficient definition of consumer fireworks and related products used by consumers;
- There is a need for better training and education concerning the safe use of consumer fireworks;
- There should be a mechanism to help local governments fund the cleanup following the use of consumer fireworks on public property;
- Local government regulation of the agricultural uses authorized by s. 791.07, F.S., may be inconsistent with legitimate agricultural purposes;
- There is a need for consumer education relating to safety standards in the use of consumer fireworks;
- There is need for standards concerning tents and other temporary retail facilities selling consumer fireworks; and
- The state would benefit from additional funding for the training and education of fire officials.

The Consumer Fireworks Task Force (Task Force), housed within DACS, was established for the purpose of studying issues concerning consumer fireworks, including the:

- Proper use of consumer fireworks;
- The regulation of sales and temporary sale facilities;
- Regulation of the hours and location of use;
- Property zoning classifications for sale facilities;
- Funding options for fire official training and education; and
- Funding options for cleanup of expended consumer fireworks products.³⁷

In 2007, limits on the number of retail sales facilities for the sale of consumer fireworks were established:

- A new permanent fireworks retail sales facility may not be opened in Florida after March 8, 2007, for the purpose of selling fireworks in accordance with the agricultural exception, unless construction for the permanent retail sales facility received site plan approval and construction began on or before March 8, 2007; and
- The number of permits for temporary fireworks retail sales facilities, such as tents, 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 facilities selling fireworks in accordance with the agricultural exception during the 2006 calendar year.³⁸

Local governments were also prohibited from adopting any ordinance, rule, or regulation after March 8, 2007, that directly prohibits or directly interferes with the safety standards established by state law or the right to purchase, sell, use or possess consumer fireworks.³⁹

³⁴ Jenna Bourne, *Loophole in Florida fireworks law can lead to injuries, death*, Action News Jax (Jul. 4, 2019), <https://www.actionnewsjax.com/news/local/loophole-in-florida-fireworks-law-can-lead-to-injuries-death/963975096>; Nicki Ross, *Fireworks are big business – and illegal in Florida*, The Daytona Beach News-Journal (Jul. 3, 2019), <https://www.news-journalonline.com/news/20190703/fireworks-are-big-business---and-illegal-in-florida>; WFTX Digital Team, *Police: Most fireworks are illegal in Florida*, Fox4 Southwest Florida (Jul. 4, 2019) <https://www.fox4now.com/news/local-news/police-most-fireworks-are-illegal-in-florida>.

³⁵ See *State v. Miketa*, 824 So. 2d 970 (Fla. 3d DCA 2002).

³⁶ Ch. 2007-67, s. 10(1), Laws of Fla. (In 2007, the Legislature passed and the Governor signed into law Senate Bill 1372.)

³⁷ Ch. 2007-67, s. 10(2)(a), Laws of Fla.

³⁸ Ch. 2007-67, s. 10(5), Laws of Fla.

³⁹ *Id.*

The 2007 provisions were enacted with the expectation that the Legislature would review the Task Force's recommendations, and decide whether to adopt comprehensive regulations for the use of consumer fireworks based on those recommendations.⁴⁰ Therefore, the 2007 provisions were anticipated to remain in effect until the Legislature reviewed the Task Force's recommendations. However, the 2007 provisions also provided that they would expire if the Legislature adopted comprehensive regulations for the use of consumer fireworks on or before July 1, 2008.⁴¹

Although the 2007 provisions were enacted pending the Legislature's review of the Task Force's recommendations or upon the enactment of comprehensive regulations for the use of consumer fireworks, the 2007 provisions remain in effect today. Changes were not made to such provisions after the Task Force completed its report and submitted it to the Legislature on January 15, 2008.⁴²

In June 2016, the City of Altamonte Springs requested an advisory opinion from the Florida Office of the Attorney General (AG) to determine if the City could issue a new permit for the sale of fireworks. The AG determined that local governments are prohibited from allowing new facilities to be opened for the sale of fireworks, and local governments may only issue as many permits allowing temporary facilities for the sale of fireworks as they had issued in 2006.⁴³

State Fire Marshal

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire. Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.⁴⁴

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C. The State Fire Marshal adopts a new edition of the FFPC every three years. The FFPC includes national fire safety and life safety standards set forth by the NFPA, including the NFPA's Fire Code (1), Life Safety Code (101) and Guide on Alternative Approaches to Life Safety (101A).⁴⁵

According to DFS, last year there were 108 fires in Florida where fireworks were the reported cause. Those fires resulted in an estimated \$287,751 in property damage. In 2017, there were 173 fires in Florida where fireworks were the reported cause. Those fires resulted in one death and \$500,660 in property damage.⁴⁶

Effect of the Bill

The bill creates an exception to the prohibition on the sale and use of fireworks.

The bill provides that fireworks are not prohibited from being imported, sold, purchased, or used, or to be used, if they are solely and exclusively for the following holidays:

- New Year's Eve, December 31st;
- New Year's Day, January 1st; and

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² 2016-05 Fla. Op. Att'y Gen. 37 (2016).

⁴³ *Id.*

⁴⁴ S. 633.104, F.S.

⁴⁵ S. 633.202(2), F.S.

⁴⁶ Florida Department of Financial Services, Agency Analysis of 2020 House Bill 65, p. 4 (Sep. 20, 2019).

- Independence Day, July 4th.

The bill states that it is not intended to provide for the comprehensive regulation of fireworks nor is it intended to supersede any local government regulation relating to the use of fireworks. This will maintain the 2007 provisions relating to the opening of new permanent retail sales facilities, and the issuance of permits for temporary retail sales facilities in greater numbers than were permitted in 2006. It will also maintain the 2007 provisions relating to the prohibition of the enactment of local government ordinances that prohibit or directly interfere with the safety standards established by state law or the right to purchase, sell, use or possess consumer fireworks.

The bill provides that a person must be at least 18 years of age to purchase fireworks. The bill also provides an affirmative defense to a retailer or seasonal retailer who sells fireworks to a minor. A retailer or seasonal retailer has an affirmative defense if at the time the fireworks were sold, the retailer, seasonal retailer, or one of their employees or agents:

- Carefully checked a driver license, an identification card issued by this state or another state of the United States, a passport, or a United States Armed Services identification card presented by the buyer; and
- Acted in good faith and in reliance upon the representation and appearance of the buyer in the belief that the buyer was 18 years of age or older.⁴⁷

The bill takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1. Creating s. 791.08, F.S., authorizing the purchase, sale, and use of fireworks on certain holidays. Providing the statute neither creates a comprehensive regulation of fireworks nor supersedes local regulation. Providing an age requirement to purchase fireworks, and providing an affirmative defense for certain retailers.

Section 2. Provides the act is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments

⁴⁷ Current law provides a similar affirmative defense for retailers who inadvertently sell tobacco products, nicotine products, or nicotine dispensing devices to a person under 18 years of age. Ss. 569.101 & 877.112, F.S.

D. FISCAL COMMENTS:

A potential increase in the purchase and use of fireworks may have a positive economic impact on the private sector.

According to DFS, last year there were 108 fires in Florida where fireworks were the reported cause. Those fires resulted in an estimated \$287,751 in property damage. In 2017, there were 173 fires in Florida where fireworks were the reported cause. Those fires resulted in one death and \$500,660 in property damage.⁴⁸

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither requires nor provides authority for administrative agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 6, 2019, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Includes New Year's Eve as a designated holiday;
- Includes Memorial Day in the list of dates "seasonal retailers" are permitted to sell fireworks;
- Provides that a person must be at least 18 years of age to purchase fireworks;
- Provides an affirmative defense for a retailer who acts in good faith and inadvertently sells fireworks to a minor; and
- Removes the rule-making requirement.

On December 11, 2019, the Local, Federal & Veterans Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarifies that the bill is not intended to provide for the comprehensive regulation of fireworks nor is it intended to supersede local regulation of the use of fireworks as provided in ch. 2007-67, Laws of Fla.

On February 27, 2020, the Commerce Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Removes Memorial Day as a designated holiday for the sale of fireworks, and the provision allowing seasonal retailers to sell fireworks during Memorial Day.

This analysis is drafted to the committee substitute as approved by the Commerce Committee.

⁴⁸ Florida Department of Financial Services, Agency Analysis of 2020 House Bill 65, p. 4 (Sep. 20, 2019).