

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 Commerce and Tourism

BILL: CS/SB 314

INTRODUCER: Commerce and Tourism Committee and Senator Brandes

SUBJECT: Fireworks

DATE: January 8, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Malcolm</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Fav/CS</u>
2.	_____	_____	<u>RI</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 314 repeals the ban on the sale and use of fireworks in Florida, but it prohibits the sale of fireworks, sparklers, and novelties to any person under 16 years old. It also gives local governments the authority to regulate the sale and use of fireworks, sparklers, and novelties, and the authority to require retailers to take reasonable steps to determine that a buyer is eligible to purchase fireworks under an exemption.

The bill also repeals regulations related to sparklers, including the testing and approval requirements for sparklers; the penalty for selling unapproved sparklers; and the registration and fee requirements for manufacturers, distributors, and wholesalers of sparklers. The bill retains the storage requirement for sparklers.

The bill requires fireworks retailers to annually register with the State Fire Marshall; to pay an annual registration fee of \$15 per location for retailers and \$200 for seasonal retailers; and to obtain at least \$2 million in comprehensive, liability, and property damage insurance coverage and provide proof of coverage to the State Fire Marshall. Retailers are also required to provide buyers with a disclaimer that the buyer must sign and date. The disclaimer acknowledges that the buyer is at least 16 years old; has read ch. 791, F.S.; and is purchasing and using the fireworks under the agricultural and fisheries exception or is purchasing and using the fireworks for personal recreational use; and understands that fireworks are inherently dangerous and may result in fire, property damage, or serious bodily harm.

The bill repeals the state requirement that public displays of fireworks must have the inspection and approval of the county commissioners, the chief of police, and the fire department, and it repeals the bond requirement for such approved public fireworks displays.

The bill retains the requirements that outdoor displays of fireworks are regulated by the National Fireworks Association Code of Fireworks Display and that counties and municipalities may enact more stringent regulations for outdoor fireworks displays done on property other than private, residential property. The bill updates the Code of Fireworks Display to the 2014 edition.

II. Present Situation:

Fireworks-Related Injuries and Deaths

In 2012, approximately 8,700 people nationwide were treated in emergency rooms for fireworks-related injuries, with 60 percent of injuries (approximately 5,200) occurring around July 4.¹ There were six reported non-occupational fireworks-related deaths in 2012.²

Federal Fireworks Regulations

The production, distribution, and sale consumer of fireworks is regulated at the federal and state levels. At the federal level, the U.S. Consumer Product Safety Commission (CPSC) regulates consumer fireworks under the Federal Hazardous Substances Act (FHSA).³ The CPSC prohibits the sale to consumers of a number of fireworks, such as large reloadable mortar shells, cherry bombs, aerial bombs, M-80 salutes, and larger firecrackers containing more than two grams of powder.⁴

CPSC regulations also contain labelling and performance requirements for permitted fireworks and firecrackers.⁵ According to the CPSC, permitted fireworks include: “shells and mortars, multiple tube devices, Roman candles, rockets, sparklers, firecrackers with no more than 50 milligrams of powder, and novelty items, such as snakes, airplanes, ground spinners, helicopters, fountains, and party poppers.”⁶

¹ United States Consumer Product Safety Commission, *Fireworks: Publication #12*, June 2013, available at <http://www.cpsc.gov/PageFiles/121339/012.pdf> (last visited Dec. 16, 2013).; United States Consumer Product Safety Commission, *2012 Fireworks Annual Report: Fireworks-Related Deaths, Emergency Department-Treated Injuries, and Enforcement Activities During 2012*, 1-2, June 2013, available at http://www.cpsc.gov/Global/Research-and-Statistics/Injury-Statistics/Fuel-Lighters-and-Fireworks/Fireworks_Report_2012.pdf (last visited Dec.16, 2013).

² CPSC, 2012 Fireworks Annual Report at 1.

³ See 15 U.S.C. ss. 1261–1278; 16 C.F.R. ss. 1500, 1507.

⁴ CPSC, *Fireworks: Publication #12*; 16 C.F.R. s. 1500.17(a)(3), (8), (11), (12).

⁵ See 16 C.F.R. s. 1500.14(b)(7); 16 C.F.R. s. 1507; 16 C.F.R. s. 1500.85(a)(2).

⁶ CPSC, *Fireworks: Publication #12*.

Florida's Fireworks Regulations

As of June 1, 2013, 40 states allow some or all types of consumer fireworks, five states only allow sparklers or other novelties, one state only allows novelty fireworks, and four states ban all consumer fireworks.⁷

Chapter 791, F.S., regulates fireworks in Florida. Generally, the sale and use of fireworks is prohibited in Florida.⁸ As stated by one state fire marshal, “As a general rule anything that flies, explodes or shoots flaming balls is not legal.”⁹ Specifically, the ban on fireworks includes “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 [or other device] containing any explosives or flammable compound”¹⁰ Local law-enforcement departments, rather than the State Fire Marshall, are charged with enforcing the fireworks ban and other provisions of ch. 791, F.S.¹¹

Exemptions

Section 791.04, F.S., contains a number of broad user-based exemptions from the ban on the sale or use of fireworks: wholesale transactions and out-of-state shipments among registered fireworks business; sales to entities permitted by a board of county commissioners to provide outdoor fireworks displays; the use of fireworks by transportation agencies for signaling, blasting or other industrial uses; the sale or use of blank cartridges for theatrical, signal, or ceremonial purposes; and the manufacture, experimentation, exploding, and storing of fireworks by licensed manufacturers. Additionally, s. 791.07, F.S., exempts the sale and use of fireworks to frighten birds from agricultural goods and fish hatcheries.¹²

In addition to the user-based exemptions in ss. 791.04 and 791.07, F.S., there are also a number of product-based exemptions in ch. 791, F.S. Novelties and trick noisemakers, such as toy guns, smoke devices, party poppers, snappers, and snakes, are not banned and may be sold and used at all times.¹³

⁷ CPSC, *Fireworks: Publication #12*; see also American Pyrotechnics Association, *2013 State Fireworks Control Laws*, June 1, 2013, available at http://www.americanpyro.com/assets/docs/State_Laws/2013%20state%20laws%20firework%20map.pdf (last visited Dec. 16, 2013); but see Department of Financial Services, Division of State Fire Marshall, *Fireworks and Sparkler Enforcement: Law Enforcement and Inspections Guide*, 3, June 2004, available at http://www.myfloridacfo.com/division/sfm/bfp/RegulatoryLicensing/documents/Fireworks_Enforcement_Guide_2004_text.pdf (last visited Dec. 17, 2013) (including Florida as one of the seven states that bans all retail sales of fireworks).

⁸ Section 791.02, F.S.

⁹ Eric Newcomer, *Many South Floridians buy fireworks and use them illegally*, SUN SENTINEL, July 2, 2010, available at http://articles.sun-sentinel.com/2010-07-02/news/fl-fireworks-and-the-law-20100702_1_vice-president-of-phantom-fireworks-purchase-fireworks-bill-weimer (last visited Dec. 18, 2013).

¹⁰ Section 791.01(4)(a), F.S.

¹¹ Section 791.001, F.S.; A violation of ch. 791, F.S., including violations of the sparkler testing and approval regulations, is a first-degree misdemeanor. Sections 791.013(2) and 791.06, F.S.

¹² Unlike the exemptions in s. 791.04, F.S., which do not provide the Department of Financial Services with rulemaking authority to govern the use of exemptions, the exemption in s. 791.07, F.S., are governed by rules prescribed by the Department of Agriculture and Consumer Services. See Ch. 5A-3 F.A.C.

¹³ Section 791.01(b)-(c), F.S.; see Division of State Fire Marshall, *Fireworks and Sparkler Enforcement Guide*, 6, June 2004.

Sparklers

Though the sale and use of sparklers is not banned, sparklers must be tested and approved by the State Fire Marshall before they may be sold.¹⁴ A list of approved sparklers is published annually by the State Fire Marshall.¹⁵ For 2013, the State Fire Marshall tested 80 new sparkler products.¹⁶ Stores that sell sparklers must also comply with storage requirements, such as restrictions on keeping sparklers in the same store in which there are unopened containers of other flammable substances and requirements for warning signs and the availability of fire extinguishers.¹⁷

A business that manufactures, distributes, or sells (either wholesale or at retail) sparklers must annually register with the State Fire Marshall and pay a registration fee.¹⁸ The annual registration fee for manufacturers, distributors, and wholesalers is \$1,000.¹⁹ For seasonal retailers, the annual fee is \$200, and for non-seasonal retailers the fee is \$15 for each retail location.²⁰ For 2013, 3,963 seasonal retailers, 493 retail locations, 24 wholesalers, and 3 distributors registered with the State Fire Marshall.²¹

Public Displays

Although the sale and use of fireworks is banned in Florida, ch. 791, F.S., allows public displays of fireworks when they are regulated by county commissioners or other municipal body. The police chief and fire chief in the municipality must approve the display operator, and the fire chief must determine that the character and location of the display are not hazardous to property or people.²² Additionally, county commissioners must require a bond from the operator of the public fireworks display to pay for any personal or property damage caused by the display.²³ After a permit for a public fireworks display has been granted, sales, possession, use, and distribution of fireworks for the display is allowed.²⁴

Under s. 791.012, F.S., the outdoor display of fireworks is regulated by the National Fire Protection Association Code for Fireworks Display (the Code). While counties and municipalities may provide for more stringent regulations for outdoor fireworks displays, they may not provide less stringent regulations than those in the Code.²⁵ However, the Code does not govern fireworks displays on private, residential property, nor does it govern the display of other non-banned items such as sparklers, other novelties, or trick noisemakers.²⁶

¹⁴ Section 791.013, F.S.; *see* Ch. 69A-50, F.A.C.

¹⁵ Section 791.013, F.S.

¹⁶ Department of Financial Services, *Analysis of CS/SB 314*, Nov. 22, 2013 (on file with the Senate Committee on Commerce and Tourism).

¹⁷ Section 791.055, F.S.

¹⁸ Sections 791.015(1) and 791.02(2), F.S.; Revenue from the registration fees is deposited in the Insurance Regulatory Trust Fund. Section 791.015(b), F.S.

¹⁹ Section 791.015(3)(a), F.S.

²⁰ *Id.*

²¹ Department of Financial Services, *Analysis of CS/SB 314*.

²² Section 791.02(1), F.S.

²³ Section 791.03, F.S. The bond must be at least \$500. *Id.*

²⁴ Section 791.02(1), F.S.

²⁵ Section 791.012, F.S.

²⁶ *Id.*

The Miketa Case

In 2002, the Third District Court of Appeal in *State v. Miketa*, agreed with a lower court's ruling that when a fireworks buyer signs a certificate acknowledging that the purchase and use of the fireworks falls within the exemptions specified in s. 791.04, F.S., the seller is not required to request further documentation that the transaction is, in fact, exempt because there is no due diligence requirement for fireworks sellers in ch. 791, F.S.²⁷ No other district court of appeal has ruled on this issue.

III. Effect of Proposed Changes:

Section 1 amends s. 791.01, F.S., to remove and modify definitions that are either no longer necessary or must be modified to reflect the repeal of ss. 791.013 and 791.02, F.S., in Sections 3 and 5 of the bill.

Section 2 amends s. 791.012, F.S., to correct a cross-reference due to the amendments to s. 791.01, F.S., in Section 1 of the bill and to update the Code for Fireworks Display to the 2014 edition.

Section 3 repeals ss. 791.013, to eliminate the testing and approval requirements for sparklers and the penalty for selling unapproved sparklers.

Section 4 amends s. 791.015, to eliminate the registration and fee requirements for manufacturers, distributors, wholesalers, and retailers of sparklers. The bill requires all retailers to annually register with the State Fire Marshall; to pay an annual registration fee of \$15 per location for retailers and \$200 for seasonal retailers; and to obtain at least \$2 million in comprehensive, liability, and property damage insurance coverage and provide proof of such coverage to the State Fire Marshall.

The bill also requires retailers to provide buyers with a disclaimer that the buyer must sign and date at the point of sale. The disclaimer acknowledges that the buyer is at least 16 years old; has read ch. 791, F.S., and is purchasing and using the fireworks under the agricultural and fisheries exception or is purchasing and using the fireworks for personal recreational use; and understands that fireworks are inherently dangerous and may result in fire, property damage, or serious bodily harm for which the buyer may be liable.

Section 5 repeals ss. 791.02 and 791.03, F.S., to eliminate the ban on the sale or use of fireworks; the requirement that public displays of fireworks have the inspection and approval of the county commissioners, the chief of police, and the fire department; and the bond requirement for public fireworks displays.

Section 6 amends s. 791.04, F.S., to repeal types of transactions not prohibited under ch. 791, F.S., due to the repeal of s. 791.02, F.S., in Section 5 of the bill. The bill retains current law exemptions from ch. 791, F.S., for the use of fireworks by transportation agencies for signaling,

²⁷ 824 So. 2d 970, 974.

illumination, quarrying, blasting or other industrial uses; for the sale or use of blank cartridges for theatrical, signal, or ceremonial purposes; and for the manufacturing, experimenting, exploding, and storing fireworks by licensed manufacturers.

Section 7 creates s. 791.08, F.S., to prohibit the sale of fireworks, sparklers, and novelties to a person under 16 years of age.

Section 8 creates s. 791.09, F.S., to authorize a county or municipality to regulate the sale and use of fireworks, sparklers, and novelties except when the sale or use is exempt under ss. 791.04 or 791.07, F.S. The bill also authorizes a county or municipality to require retailers to take reasonable steps to determine a buyer's eligibility to purchase items that are exempt under ss. 791.04 or 791.07, F.S.

Section 9 provides that the bill will 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill repeals the annual registration fees of \$1,000 for manufacturers, distributors, and wholesalers of sparklers. The bill requires all fireworks retailers to pay an annual registration fee of \$200 for seasonal retailers and \$15 for each location operated by a non-seasonal retailer. The fees are consistent with the fees in current law, which apply to all retailers of sparklers.

B. Private Sector Impact:

Manufacturers, distributors, and wholesalers of sparklers will no longer be required to annually register and pay a fee to the State Fire Marshall. Sparkler sellers will also no longer be required to submit and pay for the testing and approval of new sparkler products.²⁸

²⁸ Department of Financial Services, *Analysis of CS/SB 314*.

The bill requires all fireworks retailers to annually register and pay a fee to the State Fire Marshall; to obtain at least \$2 million in comprehensive liability insurance coverage and provide proof of such coverage to the State Fire Marshall; and to provide buyers a disclaimer, which the buyer must sign and date at the point of sale.

C. **Government Sector Impact:**

The Department of Financial Services has not performed an analysis of the CS.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unknown what affect the bill will have on existing and future municipal regulations of the sale and use of fireworks.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: ss. 791.01, 791.012, 791.015, and 791.04, F.S.

The bill creates the following sections of the Florida Statutes: ss. 791.08 and 791.09, F.S.

The bill repeals the following sections of the Florida Statutes: ss. 791.013, 791.02, and 791.03, F.S.

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 Commerce and Tourism Committee on January 8, 2014:

The committee substitute:

- Requires fireworks retailers to annually register with the State Fire Marshall and pay annual registration fees of \$15 per location for retailers and \$200 for seasonal retailers.
- Requires fireworks retailers to have \$2 million of comprehensive, liability, and property damage, insurance coverage and to provide proof of coverage to the State Fire Marshall.
- Requires a person who buys fireworks to sign a disclaimer acknowledging the buyer:
 - is at least 16 years old;
 - has read ch. 791, F.S., and is purchasing and using the fireworks under the agricultural and fisheries exception or is purchasing and using the fireworks for personal recreational use; and
 - understands fireworks are inherently dangerous and may result in fire, property damage, or serious bodily harm.

- Prohibits the sale of fireworks, sparklers, and novelties to any person under 16 years old.
- Updates the Code for Fireworks Display to the 2014 edition.
- Gives counties and municipalities the authority to regulate the sale and use of fireworks, sparklers, or novelties and the authority to require retailers to take reasonable steps to determine a buyer is eligible to purchase fireworks under an exemption.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
