

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 Regulated Industries

BILL: CS/SB 198

INTRODUCER: Regulated Industries Committee and Senator Steube

SUBJECT: Fireworks

DATE: October 11, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 198:

- Prohibits the sale of fireworks to any person under 18 years of age.
- Authorizes the State Fire Marshal to adopt rules governing fireworks under ch. 791, F.S.
- Repeals the requirement for county commissioners to impose a bond for the payment of damages caused by a public display of fireworks.

As to sparklers¹, CS/SB 198 repeals:

- The required testing and approval of sparklers by the Division of the State Fire Marshal of the Department of Financial Services;
- All associated registration of sparkler distributors, manufacturers, wholesalers, and retailers;
- A requirement that sparklers for retail sale must be obtained from a registered manufacturer, distributor, or wholesaler; and
- All annual registration fees for the sale or shipping of sparklers in Florida.

¹ Sparklers, either hand-held or ground-based devices, emit showers of sparks when they are burned, do not contain explosive compounds, are not self-propelled, and have a limited amount of combustible chemicals. *See* s. 791.01(8), F.S.

The bill also repeals:

- A requirement for retailers to keep a copy of every invoice or proof of purchase from registered manufacturers, distributors, or wholesalers for products authorized to be sold under ch. 791, F.S.
- Rulemaking authority granted to the State Fire Marshal for registration of sparkler distributors, manufacturers, wholesalers, and retailers and product testing; and
- A bond requirement for the payment of damages caused by a display and arising from certain acts.²

The bill does not alter:

- Current law prohibiting the retail sale, use, or exploding of fireworks by any person, firm, copartnership, or corporation, except under certain conditions.
- Current law authority of local governments to regulate public displays of fireworks.
- The minimum fireworks safety standards for the outdoor display of fireworks, governed by the National Fire Protection Association (NFPA) 1123, Code for Fireworks Display, 1995 Edition.
- The current law authorization for any state, county, or municipal law, rule, or ordinance to provide more stringent regulations than the minimum standards for the supervised, public outdoor display of fireworks.

The Department of Financial Services estimates the bill will reduce annual recurring revenue associated with regulation of fireworks and sparklers by \$300,000.³

The bill is effective upon becoming law.

II. Present Situation:

Introduction

Florida, in ch. 791, F.S., regulates the sale and use of fireworks. Generally, no person may offer for sale, sell at retail, or use or explode any fireworks, unless authorized pursuant to ch. 791, F.S.⁴

Sections 791.01(4)(b) and (c), F.S., describe items exempted from the prohibition on fireworks, including an exception for sparklers. The Division of the State Fire Marshal (division) of the Department of Financial Services must test and approve sparklers, one of many exempted products, to determine whether they meet statutory requirements.⁵ Distributors, manufacturers, wholesalers, and retailers of sparklers who seek to do business in Florida or to sell or ship products in Florida must register annually with the division.⁶

² See s. 791.03, F.S.

³ See *2017 Agency Legislative Bill Analysis by Department of Financial Services* for SB 198, dated Sep. 28, 2017 (on file with Senate Committee on Regulated Industries) at pages 1-2.

⁴ See s. 791.02, F.S.

⁵ See s. 791.013, F.S.

⁶ See s. 791.015, F.S.

Local law enforcement departments and officials charged with enforcement of state law are responsible for the enforcement of ch. 791, F.S.⁷ In addition, sheriffs, including their appointees, and other police officers, are authorized to seize or cause to be removed all fireworks or combustibles offered or exposed for sale, stored, or held in violation of ch. 791, F.S.⁸ Violations of ch. 791, F.S., by any firm, copartnership, or corporation are subject to a fine not to exceed \$1,000.⁹ Violations by any individual, a member of a partnership, or the responsible officer and agent of an association or corporation are punishable as misdemeanors of the first degree, subject to a term of imprisonment not to exceed one year or a fine not to exceed \$1,000.¹⁰

Other States' Regulation of Fireworks

Nationally, two states ban all consumer fireworks, three states allow only wire or wood stick sparklers and other novelty items, and 45 states and the District of Columbia allow some or all types of consumer fireworks permitted by federal regulations.¹¹

Federal Regulation of Fireworks

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.”¹² Display fireworks are large fireworks used in shows, generally under the supervision of a trained pyrotechnician.¹³ Any person in the business of importing, manufacturing, dealing in, or otherwise receiving display fireworks must first obtain an explosives license or permit from ATF.¹⁴

ATF does not regulate consumer fireworks, which it characterizes as the small fireworks usually sold at stands around the Fourth of July holiday.¹⁵ The manufacturing of consumer fireworks requires an explosives license from ATF because consumer fireworks contain pyrotechnic compositions classified as explosive materials.¹⁶

The production, distribution, and sale of consumer fireworks is regulated by the United States Consumer Product Safety Commission (CPSC) pursuant to the Federal Hazardous Substances Act (FHSA).¹⁷ According to the CPSC, in 2015 about 11,900 people were treated in emergency

⁷ See s. 791.001, F.S.

⁸ See s. 791.05, F.S. Such action is at the expense of the owner of such fireworks or combustibles.

⁹ See s. 791.06, F.S.

¹⁰ *Id.*

¹¹ See <http://www.americanpyro.com/assets/docs/FactsandFigures/2017updated%20state%20laws%20firework%20map.pdf> (last visited Oct. 2, 2017).

¹² See the ATF's Fireworks Safety and Security website at <https://www.atf.gov/explosives/fireworks-safety-and-security> (last visited Oct. 2, 2017).

¹³ *Id.*

¹⁴ See <https://www.gpo.gov/fdsys/granule/CFR-2012-title27-vol3/CFR-2012-title27-vol3-part555/content-detail.html> (last visited Oct. 2, 2017).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See 15 U.S.C. ss. 1261–1278 at <https://www.govinfo.gov/content/pkg/USCODE-2015-title15/pdf/USCODE-2015-title15-chap30.pdf>, and the CPSC's enforcement regulations, 16 C.F.R. ss. 1500 and 1507, at <https://www.gpo.gov/fdsys/pkg/CFR-2017-title16-vol2/pdf/CFR-2017-title16-vol2-part1500.pdf> and <https://www.gpo.gov/fdsys/pkg/CFR-2017-title16-vol2/pdf/CFR-2017-title16-vol2-part1507.pdf>, respectively (all last visited Oct. 2, 2017).

rooms for injuries associated with fireworks; children under age 15 account for 38 percent of those injuries.¹⁸

The CPSC prohibits the sale to consumers of a number of fireworks, such as “large reloadable mortar shells, cherry bombs, M-80 salutes, aerial bombs, and larger firecrackers containing more than two grains¹⁹ of powder.”²⁰ Permitted consumer fireworks include: “shells and mortars, multiple tube devices, Roman candles, rockets, sparklers, firecrackers with no more than 50 milligrams²¹ of powder, and novelty items, such as snakes, airplanes, ground spinners, helicopters, fountains, and party poppers.”²² The CPSC has also issued labelling and performance requirements for permitted fireworks and firecrackers.²³

The FHSA governs the enforcement of the CPSC’s fireworks regulations.²⁴ Importing, distributing, or selling fireworks in violation of CPSC regulations violates the FHSA.²⁵ Penalties include fines and imprisonment as well as civil penalties.²⁶

In addition, for banned hazardous substances, after the required due process hearing, and if the CPSC determines notification to the public is required to protect the public, the CPSC may order the manufacturer, distributor, or dealer of the article or the substance to take one or more of the following actions:²⁷

- Give public notice in the form directed by the CPSC of the nature of the article or substance as a banned hazardous substance.
- Mail such notice to each manufacturer, distributor, or dealer of such article or substance.
- Mail such notice to every person to whom the person giving the notice knows such article or substance was delivered or sold.

¹⁸ See *Fireworks: Publication #12* (6/16) on the CPSC’s website at https://www.cpsc.gov/s3fs-public/2016%20Fireworks%20Fact%20Sheet_0.pdf (last visited Oct. 2, 2017).

¹⁹ The measurement of a “grain” derives from a single seed of a grain of barley or wheat; one grain is equal to .00228571 ounces. See <https://www.bing.com/search?q=grains%20to%20ounces&q=n&form=QBRE&sp=-1&pq=grains%20to%20ounces&sc=8-16&sk=&cvid=913C180CFDC3482CA6DD4B3CC4E2148A> (last visited Oct. 2, 2017).

²⁰ See *Fireworks: Publication #12* (6/16), *supra* note 17; see also 16 C.F.R. s. 1500.17(a)(3), (8), (11), and (12) at <https://www.gpo.gov/fdsys/pkg/CFR-2017-title16-vol2/pdf/CFR-2017-title16-vol2-part1500.pdf> (last visited Oct. 2, 2017).

²¹ One milligram is 1/1,000th of a gram (equal to .00056438 ounces).

²² See *Fireworks: Publication #12* (6/16), *supra* note 17.

²³ See 16 C.F.R. s. 1500.14(b)(7) at <https://www.gpo.gov/fdsys/pkg/CFR-2017-title16-vol2/pdf/CFR-2017-title16-vol2-part1500.pdf>, 16 C.F.R. s. 1507 at <https://www.gpo.gov/fdsys/pkg/CFR-2017-title16-vol2/pdf/CFR-2017-title16-vol2-part1507.pdf>, and 16 C.F.R. s. 1500.85(a)(2) at <https://www.gpo.gov/fdsys/pkg/CFR-2017-title16-vol2/pdf/CFR-2017-title16-vol2-sec1500-85.pdf> (all last visited Oct. 2, 2017).

²⁴ See 15 U.S.C. ss.1274 at <https://www.govinfo.gov/content/pkg/USCODE-2015-title15/pdf/USCODE-2015-title15-chap30.pdf> (last visited Oct. 2, 2017).

²⁵ See 15 U.S.C. s. 1263 at <https://www.govinfo.gov/content/pkg/USCODE-2015-title15/pdf/USCODE-2015-title15-chap30.pdf> (last visited Oct. 2, 2017).

²⁶ See 15 U.S.C. s. 1264(a), (b) and (c) at <https://www.govinfo.gov/content/pkg/USCODE-2015-title15/pdf/USCODE-2015-title15-chap30.pdf> (last visited Oct. 2, 2017). Violators may be found guilty of a misdemeanor, and be subject to a fine of not more than \$500 or to imprisonment for not more than ninety days, or both, unless the violator acted in good faith; for offenses committed with intent to defraud or mislead, or for second and subsequent offenses, the penalty is imprisonment for not more than 5 years, a fine based upon the circumstances, or both. Under certain circumstances and when the violator knowingly violates 15 U.S.C. s. 1263, a civil penalty not exceeding \$100,000 for each violation may be imposed.

²⁷ See 15 U.S.C. s. 1274 at <https://www.govinfo.gov/content/pkg/USCODE-2015-title15/pdf/USCODE-2015-title15-chap30.pdf> (last visited Oct. 2, 2017).

The CPSC may similarly order actions concerning repairs, replacements, or refunds, and may order a manufacturer, distributor, or dealer to take whichever of the following actions it may elect:²⁸

- To make repairs or changes to the article or substance, if such repairs or changes may be made so the article or substance will not be a banned hazardous substance.
- To replace such article or substance with a like or equivalent article or substance which is not a banned hazardous substance.
- To refund the purchase price of the article or substance (less a reasonable allowance for use, if the article or substance has been in the possession of the consumer for one year or more (1) at the time of public notice, or (b) at the time the consumer receives actual notice of the nature of the article or substance as a banned hazardous substance, whichever first occurs).

Products Classified as Fireworks under Florida Law

Section 791.014(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,²⁹ or detonation.³⁰ 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,³¹ and any fireworks containing any explosives or flammable compound or any tablets or other device containing any explosive substance.”³²

The term “fireworks” does not include:

- Sparklers approved by the division pursuant to s. 791.013, F.S., (*see* the section of this analysis below on sparklers);
- Toy pistols, toy canes, toy guns, or other devices in which paper caps containing twenty-five hundredths grains³³ or less of explosive compound are used, if constructed to prevent a hand from contacting the cap to be exploded; and
- Toy pistol paper caps which contain less than twenty hundredths grains of explosive mixture.³⁴

²⁸ *Id.*

²⁹ The term “deflagration” includes combustion occurring through the transfer of heat. *See* <https://www.bing.com/search?q=deflagration+definition&src=IE-SearchBox&FORM=IESR02> (last visited Oct. 2, 2017).

³⁰ The term “detonation” includes rapid combustion resulting in a shock wave. *See* <https://www.bing.com/search?q=detonation%20definition&qsn&form=QBRE&sp=-1&pq=detonation%20definition&sc=7-21&sk=&cvid=D6F818A2A39F45A8A71452D2469D9DA0> (last visited Oct. 2, 2017).

³¹ Such a bomb is similar to a large firecracker which explodes in the sky; it usually has a bright tail when ascending, and explodes with a bright white flash and an impressive sound. *See* <http://www.urbandictionary.com/define.php?term=Dago%20Bomb> (last visited Oct. 2, 2017).

³² Section 791.01(4)(a), F.S.

³³ The measurement of a “grain” derives from a single seed of a grain of barley or wheat; one grain is equal to .00228571 ounces. *See* <https://www.bing.com/search?q=grains%20to%20ounces&qsn&form=QBRE&sp=-1&pq=grains%20to%20ounces&sc=8-16&sk=&cvid=913C180CFDC3482CA6DD4B3CC4E2148A> (last visited Oct. 2, 2017).

³⁴ *See* s. 791.01(4)(b), F.S.; the sale and use of toy pistol paper caps is permitted at all times.

Certain novelties and trick noisemakers are also not included in the term “fireworks,” and their sale and use are permitted at all times:³⁵

- Snakes or glow worms (pressed pellets limited in size and composition which produce a large, snakelike ash which expands in length upon burning);
- Smoke devices (tubes or spheres with limited explosives producing white or colored smoke upon burning); and
- Trick noisemakers (devices producing a small noise (report) intended to surprise the user), including the following:
 - Party poppers (small plastic or paper devices with friction-sensitive limited explosives,³⁶ ignited by pulling a string protruding from the device, which expel a paper streamer and produce a small report).
 - Booby traps (small tubes with limited explosives³⁷ ignited by pulling the ends of the string protruding from the tubes at either end, which produce a small report).
 - Snappers (small, paper-wrapped devices with limited explosives,³⁸ which explode when dropped and produce a small report).
 - Trick matches (kitchen or book matches coated with limited explosives,³⁹ which produce a small report or shower of sparks when ignited).
 - Cigarette loads (small wooden pegs coated with limited explosives⁴⁰ producing a small report when a cigarette containing a peg is ignited).
 - Auto burglar alarms (tubes containing limited explosives⁴¹ which produce a loud whistle or smoke when ignited by using a squib.⁴²

Sparklers

Sparklers eligible to be sold or shipped in Florida are hand-held or ground-based devices which emit showers of sparks when they are burned, do not contain explosive compounds,⁴³ do not detonate or explode, are not self-propelled, and have a limited amount of combustible chemicals.⁴⁴

³⁵ See s. 791.01(4)(c), F.S.

³⁶ Party poppers are limited to not more than 16 milligrams of explosive composition; one milligram is 1/1,000th of a gram (equal to .00056438 ounces). See s. 791.01(4)(c)3.a., F.S. The term “explosive composition” is not defined in ch. 791, F.S.

³⁷ Booby traps are limited to not more than 16 milligrams of explosive compound. See s. 791.01(4)(c)3.b, F.S. The term “explosive compound” includes “any chemical compound, mixture, or device the primary or common purpose of which is to function by the substantially instantaneous release of gas and heat.” See s. 791.01(3), F.S.

³⁸ Snappers are limited to not more than four milligrams of explosive composition coated on small bits of sand, and may not contain more than 250 milligrams (equal to .00881849 ounces) of total sand and explosive composition. See s. 791.01(4)(c)3.c., F.S.

³⁹ Trick matches are limited to not more than 16 milligrams of explosive or pyrotechnic composition; one milligram is 1/1,000th of a gram (equal to .00056438 ounces). See s. 791.01(4)(c)3.d., F.S.

⁴⁰ Cigarette loads are limited to not more than 16 milligrams of explosive composition. See s. 791.01(4)(c)3.e., F.S.

⁴¹ Auto burglar alarms are limited to not more than 10 grams of pyrotechnic composition; a small quantity of explosive, not exceeding 50 milligrams, may also be used to produce a small report. See s. 791.01(4)(c)3.f., F.S.

⁴² A “squib,” a miniature explosive device used in a wide range of industries including special effects and military applications, resembles a tiny stick of dynamite, but with much less explosive power. See [https://en.wikipedia.org/wiki/Squib_\(explosive\)](https://en.wikipedia.org/wiki/Squib_(explosive)) (last visited Oct. 2, 2017).

⁴³ Section 791.01(3), F.S.

⁴⁴ Section 791.01(8), F.S.; the chemical compound in a sparkler which produces sparks upon burning may not exceed 100 grams (equivalent to 0.00000353 ounces). See also Fla. Admin. Code R. 69A-50.013 (2017), which defines the terms

All sparklers must be approved by the Division of the State Fire Marshal (division), which must publish the list of approved sparklers, make the list available to the public, and provide copies of the list to all sheriffs and police chiefs in Florida.⁴⁵ Sparklers not approved by the division are classified as fireworks.⁴⁶

In order to sell or ship sparklers in Florida, distributors, manufacturers, wholesalers, and retailers of sparklers must register annually with the division.⁴⁷ The term “manufacturer” includes any person engaged in the manufacture or construction of sparklers in Florida.⁴⁸ The term “distributor” includes any person engaged in selling sparklers to a wholesaler, and the term “wholesaler” includes any person engaged in selling sparklers to a retailer.⁴⁹ A retailer may have a fixed place of business throughout the year to engage in retail sales of sparklers to consumers, or may be a “seasonal retailer” selling sparklers to consumers annually during the periods of June 20 to July 5 and December 10 to January 2.⁵⁰

Registration forms must include the business name, address, telephone number, corporate officers (if a corporation), and a contact person.⁵¹ Annual registration fees are \$1,000 for each manufacturer, distributor, or wholesaler, \$200 for each seasonal retailer, and \$15 for each location registered by a non-seasonal retailer.⁵²

Section 791.02(2), F.S., provides a sparkler or other product authorized for sale under ch. 791, F.S., may not be sold by a retailer or seasonal retailer unless the product was obtained from a manufacturer, distributor, or wholesaler registered with the division. Each retailer and seasonal retailer must keep a copy of an invoice or other evidence of purchase from the manufacturer, distributor, or wholesaler at every location where sparklers are sold.⁵³ In addition, each seasonal retailer must exhibit a copy of its registration certificate at each seasonal retail location.⁵⁴

“emits,” “sparks,” “detonate,” “explode,” “hand-led,” “ground-based,” “propel itself through the air,” and “chemical compound which produces sparks upon burning.”

⁴⁵ See Fla. Admin. Code R. 69A-50.017(2) and (3) (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=69A-50.017> (last visited Oct. 2, 2017), and the current list of approved sparklers at <https://www.myfloridacfo.com/Division/SFM/BFP/RegulatoryLicensing/documents/2017-2018SparklerListC2.pdf> (last visited Oct. 2, 2017), at pp. 1-71.

⁴⁶ See s. 791.01(8), F.S.

⁴⁷ See s. 791.015, F.S.

⁴⁸ See s. 791.01(5), F.S.

⁴⁹ See ss. 791.01(1) and (9), F.S.

⁵⁰ See ss. 791.01(6) and (7), F.S.

⁵¹ See s. 791.015(2), F.S.

⁵² See s. 791.015(3)(a), F.S. By rule, the division has set the applicable fee equal to the maximum fees established in s. 791.015, F.S. See Fla. Admin. Code R. 69A-50.005(3) (2017). Fee payments must be deposited in the Insurance Regulatory Trust Fund to implement registration and testing under ch. 791, F.S. See s. 791.015(3)(b), F.S.

⁵³ See s. 791.02(2), F.S. The specific items covered by the invoice and the registration certificate number for the particular manufacturer, distributor, or wholesaler must be stated on the invoice.

⁵⁴ *Id.*

Samples of sparkler products must be submitted to the division for testing to verify they qualify as legal sparklers in Florida.⁵⁵ Applications must be submitted by September 1 each year, and on February 1 of each year, the division must approve those products qualified for sale in Florida through the next January 31.⁵⁶

A person who alters an approved sparkler product, so it no longer qualifies for sale in Florida, and subsequently sells the product as if it were approved, is guilty of a misdemeanor of the first degree.⁵⁷ A person who fraudulently represents a device as approved for sale as a sparkler product when it is not approved is guilty of a misdemeanor of the first degree.⁵⁸

Sparklers may not be stored or kept for sale in any store in which:⁵⁹

- Paints, oils, or varnishes are manufactured or kept for use or sale in opened containers;
- Resin, turpentine, gasoline, or flammable substances or substances which may generate vapors are used, stored, or offered for sale in opened containers; or
- There is not at least one approved chemical fire extinguisher ready, available, and equipped for use in extinguishing fires.

When sparklers for retail sale are stored, there must be a sign conspicuously displayed over the entrance to the storage room which reads: “CAUTION SPARKLERS-NO SMOKING,” and no person in the storage room may possess a lighted cigar, cigarette, or pipe.⁶⁰

Public Displays of Fireworks

Boards of county commissioners pursuant to s. 791.02(1), F.S., may adopt reasonable rules and regulations for the granting of permits for supervised public display of fireworks outside the boundaries of a municipality by fair associations,⁶¹ amusement parks, and other organizations or group of individuals.⁶² In addition, for supervised public display of fireworks within the boundaries of a municipality, the governing body of the municipality may adopt reasonable rules and regulations for the granting of permits.

Section 791.02(1), F.S., requires every public display of fireworks in a municipality be handled by a competent operator approved by the chiefs of the municipality’s police and fire departments

⁵⁵ See s. 791.013, F.S. As set forth in s. 791.01(8), F.S., such sparklers must be hand-held or ground-based devices emitting showers of sparks when they are burned, do not contain explosive compounds, do not detonate or explode, are not self-propelled, and have a limited amount of combustible chemicals.

⁵⁶ *Id.*

⁵⁷ See s. 791.013(2), F.S. Section 775.082, F.S., provides a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S., provides a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

⁵⁸ *Id.* See *supra* note 56 regarding the penalties which may be imposed upon a person guilty of a misdemeanor of the first degree.

⁵⁹ See s. 791.055(1), F.S.

⁶⁰ See s. 791.055(2), F.S.

⁶¹ Under s. 616.001(11), F.S, the term “fair association” includes a nonprofit association incorporated under ch. 616, F.S., for the purpose of conducting and operating public fairs or expositions to benefit and develop the educational, agricultural, horticultural, livestock, charitable, historical, civic, cultural, scientific, and other resources of Florida, or any county, municipality, or other community in Florida. See s. 616.001(12), F.S.

⁶² See s. 791.02(1), F.S.

and the chief of the fire department issue an opinion stating the public display of fireworks is to be located, discharged, or fired in a manner so it will not cause people to be endangered or create a hazard to property.

Permit applications must be made in writing at least 15 days before the date of the proposed public display, and upon issuance of a permit, the sale, possession, use, and distribution of fireworks for such public display is lawful for such purpose only.⁶³

Section 791.012, F.S., establishes minimum fireworks safety standards for the outdoor display of fireworks based on the Code for Fireworks Display (the Code) promulgated by the National Fire Protection Association (NFPA) in 1995.⁶⁴ The Code addresses requirements for aerial shells and equipment, site selection, operations, ignition and setup of displays, fireworks transportation, operator qualifications and licensing, labeling, permitting, and display planning and preparation.

A state, county, or municipal law, rule, or ordinance may provide for more stringent regulations than required by the Code for outdoor fireworks displays, but they may not provide less stringent regulations.⁶⁵ However, pursuant to s. 791.012, F.S., the Code does not govern the display of fireworks on private, residential property, or the display of products not classified as fireworks, such as sparklers, novelties, and trick noisemakers.⁶⁶

Bond Requirement for Public Displays

For public displays of fireworks outside the boundaries of a municipality, a board of county commissioners must require a bond it deems adequate (but not less than \$500) from the licensee,⁶⁷ for the payment of all damages which may be caused either to a person or to property by reason of the licensee's display, and arising from any acts of the licensee, his or her agents, employees or subcontractors.⁶⁸ No bond requirement for the public display of fireworks within the boundaries of a municipality is imposed by statute, but the municipality's governing body has the power to adopt reasonable rules and regulations for the granting of permits for such displays located within its jurisdiction.⁶⁹

⁶³ *Id.*; such issued permits are nontransferable.

⁶⁴ See the 1995 version of the Code at <http://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1123> (last visited Oct. 2, 2017). While the Code is not a publicly available document, a copy may be purchased from the NFPA (current list price is \$47.50). The State Fire Marshal has adopted the 2010 edition of the Code as part of the uniform fire safety standards applicable pursuant to s. 633.206(1), F.S., to all new, existing, and proposed state-owned and state-leased buildings, hospitals, nursing homes, assisted living facilities, adult family-care homes, correctional facilities, public schools, transient public food service and lodging establishments, elevators, migrant labor camps, mobile home parks, lodging parks, recreational vehicle parks, recreational camps, residential and nonresidential child care facilities, facilities for the developmentally disabled, motion picture and television special effects productions, tunnels, and self-service gasoline stations. See Fla. Admin. Code R. 69A-3.012(1)(sssss) (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=69A-3.012> (last visited Oct. 2, 2017).

⁶⁵ See s. 791.012, F.S.

⁶⁶ *Id.*

⁶⁷ The term "licensee" is only used in s. 791.03, F.S., and refers to persons granted a permit for a supervised public display of fireworks located outside of a municipality pursuant to s. 791.02(1), F.S.

⁶⁸ See s. 791.03, F.S.

⁶⁹ See s. 791.02(1), F.S.

Fireworks Exemptions

Sales at Wholesale

Section 791.04, F.S., exempts the sale of most fireworks at wholesale by manufacturers, distributors, or wholesalers registered with the division, the shipping of all fireworks to be shipped directly out-of-state, and the sale of fireworks to be used by persons holding a permit from a county commission for a public display of fireworks.

Uses by Railroads, and of Blank Cartridges at Theatrical, Athletic and Military Events

Chapter 791, F.S., also exempts the use of:⁷⁰

- Fireworks by railroads or other transportation agencies for signal purposes or illumination or for quarrying or blasting or other industrial use; and
- Blank cartridges used at theatrical shows or for signal or ceremonial purposes in athletic or sports events or by military or United States Armed Forces organizations.

Licensed manufacturers may also manufacture, experiment with, explode, and store fireworks at their locations or testing areas.⁷¹

Agricultural Works and Fish Hatcheries

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. (agricultural uses) and is expressly not prohibited by ch. 791, F.S.⁷² Such agricultural uses are governed entirely by rules prescribed by the Department of Agriculture and Consumer Services, which has adopted by rule an Aquaculture Best Management Practices Manual,⁷³ which incorporates documents regarding the use of explosives as part of bird dispersal techniques and the prevention of bird damage at aquaculture facilities.⁷⁴

Consumer Fireworks Task Force; Limits on Retail Sales Facilities

In 2007, the Legislature enacted ch. 2007-67, Laws of Florida, and established a Consumer Fireworks Task Force (task force) within the Department of Agriculture and Consumer Services 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.⁷⁵

⁷⁰ See s. 791.04, F.S.

⁷¹ *Id.*

⁷² See s. 791.07, F.S.

⁷³ See Fla. Admin. Code R. 5L-3.004(1) (2017), referencing FDACS-02034 (rev. Nov. 2016), at <https://www.flrules.org/Gateway/reference.asp?No=Ref-07694> (last visited Oct. 2, 2017).

⁷⁴ *Id.* and see Fla. Admin. Code R. 5L-3.004(2)(h) and (i) (2017), at <https://www.flrules.org/Gateway/reference.asp?No=Ref-05849> and <https://www.flrules.org/Gateway/reference.asp?No=Ref-05850>, respectively (last visited Oct. 2, 2017).

⁷⁵ 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.

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 provide:

- 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.⁷⁶

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.⁷⁷

Manufacture, Distribution, and Use of Explosives

Manufacturer-distributors, dealer, users, and blasters of explosives must possess a license or permit issued by the division pursuant to ch. 552, F.S.⁷⁸ However, the term "explosives" expressly does not include fireworks as defined in ch. 791, F.S.⁷⁹

III. Effect of Proposed Changes:

CS/SB 198 prohibits the sale of fireworks to any person under 18 years of age and authorizes the State Fire Marshal to adopt rules governing fireworks under ch. 791, F.S.

The bill retains current law prohibiting the retail sale, use, or exploding of fireworks by any person, firm, copartnership, or corporation, except under certain conditions, and retains the authority granted in s. 791.02, F.S., for local governments to adopt reasonable rules and regulations for the issuance of permits for public displays of fireworks. Minimum fireworks safety standards for the outdoor display of fireworks, governed by the National Fire Protection Association (NFPA) 1123, Code for Fireworks Display, 1995 Edition, (the Code) are retained, and s. 791.012, F.S., will continue to provide that any state, county, or municipal law, rule, or ordinance may provide for more stringent regulations than the minimum standards for the

⁷⁶ See ch. 2007-67, s. 10(5), Laws of Fla. and s. 791.07, F.S., and note thereto. According to information provided to the Senate Committee on Regulated Industries at its public meeting on October 11, 2017, retail sellers generally require that consumers certify in writing that the consumer's planned use of fireworks to be purchased is permitted under s. 791.07, F.S.

⁷⁷ *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.

⁷⁸ See s. 552.091, F.S.

⁷⁹ See s. 552.081(2), F.S.

outdoor display of fireworks; the Code does not apply to the display of fireworks on private, residential property.⁸⁰

As to sparklers⁸¹, CS/SB 198 repeals:

- The required testing and approval of sparklers by the Division of the State Fire Marshal of the Department of Financial Services;
- All associated registration of sparkler distributors, manufacturers, wholesalers, and retailers;
- A requirement that sparklers for retail sale must be obtained from a registered manufacturer, distributor, or wholesaler;
- All annual registration fees for the sale or shipping of sparklers in Florida (currently estimated by the Department of Financial Services to be \$275,000 annually)⁸²; and
- Terms used in ch. 791, F.S., to describe persons engaged in distributing, manufacturing, or selling sparklers in Florida.

The bill also repeals:

- A requirement for retailers to keep a copy of every invoice or proof of purchase from registered manufacturers, distributors, or wholesalers for products authorized to be sold under ch. 791, F.S.⁸³
- Rulemaking authority granted to the State Fire Marshal to adopt rules for registration forms and product testing⁸⁴, as well as a bond requirement for the payment of damages caused by a display and arising from certain acts.⁸⁵

CS/SB 198 includes technical changes to conform to bill drafting conventions, to delete references to sections repealed in the bill, and to re-enact s. 791.06, F.S., dealing with penalties for violation of ch. 791, F.S., to incorporate by reference the amendment to s. 791.02, F.S., prohibiting the sale of fireworks to persons under 18 years of age.

The bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁸⁰ See s. 791.012, F.S.

⁸¹ Sparklers, either hand-held or ground-based devices, emit showers of sparks when they are burned, do not contain explosive compounds, are not self-propelled, and have a limited amount of combustible chemicals. See s. 791.01(8), F.S.

⁸² See *2017 Agency Legislative Bill Analysis by Department of Financial Services* for SB 198, dated Sep. 28, 2017 (on file with Senate Committee on Regulated Industries) at pages 1-2.

⁸³ See s. 791.02(2), F.S.

⁸⁴ See s. 791.015(4), F.S.

⁸⁵ See s. 791.03, F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 198 repeals required testing and approval of sparklers by the Division of the State Fire Marshal of the Department of Financial Services (department), which will eliminate fees for such testing and approval. The bill also repeals all associated registration of sparkler distributors, manufacturers, wholesalers, and retailers and eliminates the associated registration fees. The department estimates a reduction of \$300,000 in annual recurring revenues associated with the repeal of the regulation of fireworks and sparklers.⁸⁶

C. Government Sector Impact:

The department estimates the bill will reduce annual recurring revenue associated with regulation of fireworks and sparklers by \$300,000, a thirty percent reduction in the revenues of the Regulatory Licensing Section of the Bureau of Fire Prevention of the State Fire Marshal (Licensing Section).⁸⁷ Registration fees associated with sparkler registration and testing are deposited in the Insurance Regulatory Trust Fund.⁸⁸

While the elimination of the sparkler registration program is estimated to reduce annual revenue, the department maintains that staffing for the Licensing Section will be unaffected by the revenue reduction.⁸⁹

VI. Technical Deficiencies:

None.

⁸⁶ See *2017 Agency Legislative Bill Analysis by Department of Financial Services* for SB 198, dated Sep. 28, 2017 (on file with Senate Committee on Regulated Industries) at pages 1-2.

⁸⁷ *Id.* The Regulatory Licensing Section, which approves sparklers, collects \$1,075,000 annually.

⁸⁸ See s. 791.015(3)(b), F.S.

⁸⁹ See *2017 Agency Legislative Bill Analysis by Department of Financial Services* for SB 198, dated Sep. 28, 2017 (on file with Senate Committee on Regulated Industries) at page 2. According to the department, while sparklers are tested at the arson lab campus of the Bureau of Forensic Fire and Explosives Analysis, such testing is performed by staff of the Bureau of Fire Prevention. See E-mail from B.G. Murphy, Deputy Legislative Director, Office of Chief Financial Officer to M. Sanders, Legislative Analyst, Senate Appropriations Subcommittee on General Government (Oct. 2, 2017) (on file with the Senate Regulated Industries Committee).

VII. Related Issues:

CS/SB 198 amends s. 791.02(2), F.S. to prohibit the sale of fireworks to any person under the age of 18. However, s. 791.07, F.S., dealing with the sale of fireworks for agricultural and fish hatchery purposes, provides that “[n]othing in this chapter shall prohibit the sale or use of fireworks” for those purposes. For clarification, consideration should be given to revising the text of the amendment to s. 791.02(2), F.S., to read: “A person, firm, copartnership, or corporation may not sell any fireworks, *including those to be used for the purposes authorized pursuant to s. 791.07*, to any person under 18 years of age.”

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 791.01, 791.012, 791.02, and 791.04.

This bill repeals the following sections of the Florida Statutes: 791.013, 791.015, and 791.03.

This bill re-enacts section 791.06 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 Regulated Industries on October 11, 2017:

The committee substitute:

- Prohibits the sale of fireworks to any person under 18 years of age;
- Authorizes the State Fire Marshal to adopt rules governing fireworks under ch. 791, F.S.
- Re-enacts s. 791.06, F.S., dealing with penalties for violation of ch. 791, F.S., to incorporate the amendment to s. 791.02, F.S., in the bill which prohibits the sale of fireworks by any person, firm, copartnership, or corporation to persons under 18 years of age.
- Retains requirements for the supervised public display of fireworks and the current law authority of counties and municipalities relating to such displays.

- B. **Amendments:**

None.