

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1196
92ND GENERAL ASSEMBLY

Reported from the Committee on Commerce and the Environment, April 15, 2004, with recommendation that the Senate Committee Substitute do pass.

4284S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 320.106, 320.111, 320.116, 320.126, 320.131, 320.136, 320.146, 320.151, and 320.161, RSMo, and to enact in lieu thereof nine new sections relating to fireworks regulations, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 320.106, 320.111, 320.116, 320.126, 320.131, 320.136, 320.146, 320.151, and 320.161, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 320.106, 320.111, 320.116, 320.126, 320.131, 320.136, 320.146, 320.151, and 320.161, to read as follows:

320.106. As used in sections 320.106 to 320.161, unless clearly indicated otherwise, the following terms mean:

(1) ["Distributor", any person engaged in the business of selling fireworks to wholesalers, jobbers, seasonal retailers, other persons, or governmental bodies that possess the necessary permits as specified in sections 320.106 to 320.161, including any person that imports any fireworks of any kind in any manner into the state of Missouri;] **"American Pyrotechnics Association (APA), Standard 87-1", or subsequent standard which may amend or supersede this standard for manufacturers, importers, and distributors of fireworks;**

(2) **"Chemical composition", all pyrotechnic and explosive composition contained in fireworks devices as defined in American Pyrotechnics Association (APA), Standard 87-1;**

(3) **"Consumer fireworks", explosive devices designed primarily to produce visible or audible effects by combustion[. This term] and includes aerial devices and ground devices, all of which are classified as fireworks, UNO336, 1.4G by regulation of the United States**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Department of Transportation, as amended from time to time, and which were formerly classified as class C common fireworks by regulation of the United States Department of Transportation;

(4) **"Discharge site", the area immediately surrounding the fireworks mortars used for an outdoor fireworks display;**

(5) **"Display fireworks", explosive devices designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. This term includes devices containing more than two grains (130 mg) of explosive composition intended for public display. These devices are classified as fireworks, UNO335, 1.3G by regulation of the United States Department of Transportation, as amended from time to time, and which were formerly classified as class B display fireworks by regulation of the United States Department of Transportation;**

(6) **"Display site", the immediate area where a fireworks display is conducted, including the discharge site, the fallout area, and the required separation distance from mortars to spectator viewing areas, but not spectator viewing areas or vehicle parking areas;**

(7) **"Distributor", any person engaged in the business of selling fireworks to wholesalers, jobbers, seasonal retailers, other persons, or governmental bodies that possess the necessary permits as specified in sections 320.106 to 320.161, including any person that imports any fireworks of any kind in any manner into the state of Missouri;**

(8) **"Fireworks", any composition or device for producing a visible, audible, or both visible and audible effect by combustion, deflagration, or detonation and that meets the definition of "consumer", "proximate", or "display" fireworks as set forth by Title 49 CFR (Code of Federal Regulations) Part 171 to end, United States Department of Transportation "Hazardous Materials Regulations" and American Pyrotechnics Association 87-1 Standards;**

[(3)] (9) **"Fireworks season", the period beginning on the twentieth day of June and continuing through the tenth day of July of the same year and the period beginning on the twentieth day of December and continuing through the second day of January of the next year, which shall be the only periods of time that seasonal retailers may be permitted to sell consumer fireworks;**

[(4)] (10) **"Jobber", any person engaged in the business of making sales of consumer fireworks at wholesale or retail, within the state of Missouri to nonlicensed buyers for use and distribution outside the state of Missouri during a calendar year from the first day of January through the thirty-first day of December;**

(11) **"Licensed operator", any person who supervises, manages, or directs the discharge of outdoor display fireworks, either by manual or electrical means, who**

has met additional requirements established by promulgated rule and has successfully completed a display fireworks training course recognized and approved by the state fire marshal;

[(5)] (12) "Manufacturer", any person engaged in the making, manufacture, assembly or construction of fireworks of any kind within the state of Missouri;

(13) "NFPA", the National Fire Protection Association, an international codes and standards organization;

[(6)] (14) "Permanent structure", buildings and structures with permanent foundations other than tents, mobile homes, and trailers;

[(7)] (15) "Permit", the written authority of the state fire marshal issued pursuant to sections 320.106 to 320.161 to sell, **possess, manufacture, discharge, or distribute** fireworks;

[(8)] (16) "Person", any corporation, association, partnership or individual or group thereof;

(17) "Proximate fireworks", a chemical mixture used in the entertainment industry to produce visible or audible effects by combustion, deflagration, or detonation, as defined by the most current edition of the American Pyrotechnics Association (APA), Standard 87-1, Section 3.8 Specific Requirements for Theatrical Pyrotechnics;

(18) "Pyrotechnic operator" (special effects operator), an individual who has responsibility for pyrotechnic safety and who controls, initiates, or otherwise creates special effects for proximate fireworks and who has met additional requirements established by promulgated rules and has successfully completed a proximate fireworks training course recognized and approved by the state fire marshal;

[(9)] (19) "Sale", an exchange of articles of fireworks for money, including barter, exchange, gift or offer thereof, and each such transaction made by any person, whether as a principal proprietor, salesman, agent, association, copartnership or one or more individuals;

[(10)] (20) "Seasonal retailer", any person within the state of Missouri engaged in the business of making sales of consumer fireworks in Missouri only during a fireworks season as defined by subdivision [(3)] (9) of this section;

[(11)] "Special fireworks", explosive devices designed primarily to produce visible or audible effects by combustion, deflagration or detonation. This term includes devices containing more than two grains (130 mg) of explosive composition intended for public display. These devices are classified as fireworks, UNO335, 1.3G by regulation of the United States Department of Transportation, as amended from time to time, and which were formerly classified as class B display fireworks by regulation of the United States Department of Transportation;

(12)] (21) "Wholesaler", any person engaged in the business of making sales of consumer fireworks to any other person engaged in the business of making sales of consumer fireworks at retail within the state of Missouri.

320.111. 1. It is unlawful for any person to manufacture, sell, offer for sale, ship or cause to be shipped into or within the state of Missouri except as herein provided, any item of fireworks, without first having secured the required applicable permit as a manufacturer, distributor, wholesaler, jobber or seasonal retailer from the state fire marshal **and applicable federal permit or license**. Possession of said permit is a condition precedent to manufacturing, selling or offering for sale, shipping or causing to be shipped any fireworks into the state of Missouri, except as herein provided. This provision applies to nonresidents as well as residents of the state of Missouri.

2. The state fire marshal has the authority and is authorized and directed to issue permits for the sale of fireworks. No permit shall be issued to a person under the age of eighteen years. All permits except for seasonal retailers shall be for the calendar year or any fraction thereof and shall expire on the thirty-first day of December of each year.

3. Permits issued must be displayed in the permit holder's place of business. No permit provided for herein shall be transferable nor shall a person operate under a permit issued to another person or under a permit issued for another location. Manufacturer, **wholesaler, jobber**, and distributor permit holders operating out of multiple locations shall obtain a permit for each location.

4. Failure to make application for a permit by May thirty-first of the calendar year may result in the fire marshal's refusal to issue a license to the licensee or applicant for such calendar year.

5. **Any false statement or declaration made on a permit application may result in the state fire marshal's refusal to issue such permit to the requesting person for a period of time not to exceed three years.**

6. The state fire marshal is authorized and directed to charge the following fees for permits:

(1) Manufacturer, a fee of seven hundred [fifty] **seventy-five** dollars per **calendar** year;

(2) Distributor, a fee of seven hundred [fifty] **seventy-five** dollars per **calendar** year;

(3) Wholesaler, a fee of two hundred [fifty] **seventy-five** dollars per **calendar** year;

(4) Jobber, a fee of five hundred **twenty-five** dollars per **calendar** year per sales location;

(5) Seasonal retailer, a fee of [twenty-five] **fifty** dollars per **calendar** year per sales location;

(6) [Special] **Display** fireworks [(displays)] **permit**, a fee of [twenty-five] **one**

hundred dollars per calendar year per location;

(7) Proximate fireworks display permit, a fee of one hundred dollars per calendar year per location;

(8) Licensed operator, a fee of one hundred dollars for a three-year license;

(9) Pyrotechnic operator, a fee of one hundred dollars for a three-year license.

[6.] **7.** A holder of a manufacturer's permit shall not be required to have any additional permits in order to sell to distributors, wholesalers, jobbers or seasonal retailers, or to sell [special], **display, or proximate** fireworks.

[7.] **8.** A holder of a distributor's permit shall not be required to have any additional permits in order to sell to wholesalers, jobbers, seasonal retailers or to sell [special], **display, or proximate** fireworks.

[8.] **9.** A holder of a jobber's permit shall not be required to have any additional permit in order to sell consumer fireworks at retail during the fireworks season from such jobber's permanent structure.

[9.] **10.** All fees collected for permits issued pursuant to this section shall be paid to the Missouri department of revenue and deposited in the general revenue fund. Any person engaged in more than one permit classification shall pay one permit fee based upon the permit classification yielding the highest amount of revenue.

[10.] **11.** The state fire marshal is charged with the enforcement of the provisions of sections 320.106 to 320.161 and may call upon any state, county or city peace officer for assistance in the enforcement of the provisions of sections 320.106 to 320.161. The state fire marshal may promulgate rules pursuant to the requirements of this section and chapter 536, RSMo, **necessary to carry out its responsibilities under sections 320.106 to 320.161, including rules requiring training, examination, and licensing of licensed operators and pyrotechnic operators engaging in or responsible for the handling and use of display and proximate fireworks. The test shall incorporate the rules of the state fire marshal, which shall be based upon nationally recognized standards.** No rule or portion of a rule promulgated pursuant to this chapter shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

[11.] **12.** The state fire marshal, upon notification by the department of revenue, may withhold permits from applicants upon evidence that all state sales taxes for the preceding year or years have not been paid; except, this subsection shall not apply if an applicant is pursuing any proper remedy at law challenging the amount, collection, or assessment of any sales tax.

[12.] **13.** A holder of a **distributor, wholesaler, or** jobber's permit shall be required to operate out of a permanent structure in compliance with all applicable building regulations in the city or county in which said person is [selling consumer fireworks] **operating a**

fireworks business. Seasonal retail permit locations shall be in compliance with all applicable building and fire regulations in the city or county where located. In the absence of city or county building or fire regulations, the applicant may be subject to a fire safety inspection by the state fire marshal based upon promulgated rules and regulations adopted by the state fire marshal.

[13.] **14.** It is unlawful for any manufacturer, distributor, wholesaler, or jobber to sell consumer fireworks to a seasonal retailer who has not acquired an appropriate permit from the state fire marshal **for the current permit period.** A seasonal retailer shall acquire and present the appropriate permit from the state fire marshal before any manufacturer, distributor, wholesaler or jobber is allowed to sell consumer fireworks to such seasonal retailer, provided that such seasonal retailer is purchasing the consumer fireworks for resale in this state.

[14.] **15.** The state fire marshal and the marshal's deputies may conduct inspections of any premises and all portions of buildings where fireworks are stored, **manufactured, kept, or being offered for sale.** ~~[Licensees]~~ **All persons selling, offering for sale, barter, gift, exchange, or offer thereof any fireworks** shall cooperate fully with the state fire marshal and the marshal's deputies during any such inspection. **This inspection shall be performed during normal business hours.**

16. In addition to any other penalty, any person who manufactures, sells, offers for sale, ships, or causes or caused to be shipped into the state of Missouri for use in Missouri any items of fireworks without first having the required applicable permit shall be assessed a civil penalty of up to one thousand dollars for each day of operation not to exceed ten thousand dollars.

17. The department of revenue shall transfer from the general revenue fund to the state treasurer thirteen dollars of each fee paid by an applicant for a permit or license authorized pursuant to subdivisions (1) to (6) of subsection 6 of this section and fifty dollars of each fee paid by an applicant for a permit or license authorized pursuant to subdivisions (7) to (9) of subsection 6 of this section. The state treasurer shall deposit said amount into the fire education fund, established pursuant to section 320.094.

320.116. 1. The state fire marshal may revoke any permit issued pursuant to sections 320.106 to 320.161 upon evidence that the holder has violated any of the provisions of sections 320.106 to 320.161.

2. The state fire marshal, in his or her discretion, may refuse to issue a permit, for a period not to exceed three years, to a person whose permit has been revoked as the result of a conviction for the possession or sale of illegal fireworks, as referred to in section 320.136.

3. The state fire marshal, the marshal's deputies, the marshal's designees or any authorized police or peace officer shall seize as contraband any illegal fireworks as defined

pursuant to sections 320.106 to 320.161. Such illegal fireworks seized in the enforcement of sections 320.106 to 320.161 shall be held in custody of the state fire marshal in proper storage facilities. The person surrendering the fireworks may bring an in rem proceeding in the circuit court of the county where the fireworks were seized. Upon hearing, the circuit court may authorize the return of all or part of the confiscated fireworks or the court may authorize and direct that such contraband fireworks be destroyed. If a proceeding is not brought within thirty days, the fireworks shall be destroyed by the state fire marshal. The state fire marshal shall seize, take, remove or cause to be removed, at the expense of the owner, all stocks of fireworks offered or exposed for sale, stored or held in violation of the provisions of sections 320.106 to 320.161. **All costs, including any expenses incurred with the seizure, shall be the responsibility of the adjudicated party if case disposition is in the favor of the state fire marshal.**

4. Any person aggrieved by any official action of the state fire marshal affecting their [licensed] **permit** status including revocation, suspension, failure to renew a [license] **permit**, or refusal to grant a [license] **permit** may seek a determination thereon by the administrative hearing commission pursuant to the provisions of section 621.045, RSMo.

320.126. 1. Any person [possessing or], **entity, partnership, corporation, or association** transporting [special] **display or proximate** fireworks into the state of Missouri for the purpose of resale or to conduct a [special firework] display shall be [licensed] **permitted** by the state fire marshal as a distributor **or manufacturer and have obtained applicable federal license or permit.**

2. [Possession and] Sale of [special] **display or proximate** fireworks shall be limited to a holder of a federal license or **permit and** a distributor or manufacturer permit issued [for special fireworks displays] **by the state fire marshal.**

3. Possession of [special] **display or proximate** fireworks for resale to holders of a permit for [public] **display or proximate fireworks** shall be confined to holders of a state manufacturer or distributor permit **and applicable federal license or permit.**

4. Permits for [public displays for special] **display or proximate** fireworks may be granted to municipalities, fair associations, amusement parks, organizations, **persons**, firms or corporations. Such permits may be granted upon application and approval by the state fire marshal or local fire service authorities of the community where the display is proposed to be held. **All applications submitted for display or proximate fireworks permits must be submitted to the office of the state fire marshal a minimum of ten working days prior to the date of the event. The application shall be made on a form provided or approved by the state fire marshal.** Every such display shall be **supervised, managed, or directed by a Missouri licensed operator or pyrotechnic operator on site pursuant to subsections 11 and 18 of section 320.106** and shall be located, discharged, or fired so as in the opinion of the [chief of the fire department]

permitting authority, after proper inspection based on the most current edition of the National Fire Protection Association standards, NFPA 1123, NFPA 1124, and NFPA 1126, to not be hazardous to any person or property. After a permit has been granted, the sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. A copy of all permits issued for [special] display or proximate fireworks [displays] shall be forwarded by the permit holder to the state fire marshal's office. No permit granted hereunder shall be transferable and shall apply to only one location. No holder of a manufacturer or distributor permit shall sell, barter, or transfer display or proximate fireworks to anyone not possessing an applicable permit or license.

5. Possession of display or proximate fireworks shall be limited to a holder of a display or proximate fireworks permit issued by the authority having jurisdiction where the display or proximate fireworks is proposed to be held or the state fire marshal or a holder of a state manufacturer or distributor permit and applicable federal license or permit.

6. Before issuing any permit for [a special] display or proximate fireworks [display shall be issued], the municipality, fair association, amusement park, organization, firm, person, or corporation making application therefor shall furnish proof of financial responsibility in an amount established by promulgated rule to the permitting authority in order to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of such person, firm or corporation or any agent or employee thereof.

7. Any establishment where proximate fireworks are to be discharged shall be inspected by the state fire marshal or local fire department having jurisdiction for compliance with NFPA 101 Life Safety Code or equivalent nationally recognized code in relation to means of egress, occupancy load, and automatic sprinkler and fire alarm systems. All permits issued will be forwarded to the state fire marshal by the permit holder. Permits will be issued in the same manner as those required in this section.

320.131. 1. It is unlawful for any person to possess, sell or use within the state of Missouri, or ship into the state of Missouri, except as provided in section 320.126, any pyrotechnics commonly known as "fireworks" and defined as consumer fireworks in subdivision [(2)] (3) of section 320.106 other than items now or hereafter classified as fireworks UNO336, 1.4G by the United States Department of Transportation that comply with the construction, chemical composition, labeling and other regulations relative to consumer fireworks regulations promulgated by the United States Consumer Product Safety Commission and permitted for use by the general public pursuant to such commission's regulations.

2. No [retailer, dealer,] wholesaler, jobber, seasonal retailer, or any other person

shall sell, offer for sale, store, display, or have in their possession any consumer fireworks that have not been approved as fireworks UNO336, 1.4G by the United States Department of Transportation.

3. No jobber, wholesaler, manufacturer, or distributor shall sell to seasonal retailer dealers, or any other person, in this state for the purpose of resale, or use, in this state, any consumer fireworks which do not have the numbers and letter "1.4G" printed within an orange, diamond-shaped label printed on or attached to the fireworks shipping carton.

4. This section does not prohibit a manufacturer, distributor or any other person from storing, selling, shipping or otherwise transporting [special] **display or proximate** fireworks, defined as fireworks UNO335, 1.3G/**UNO431, 1.4G or UNO432, 1.4S** by the United States Department of Transportation, provided they possess the proper [licensing] **permits** as specified by state and federal law.

5. Matches, toy pistols, toy canes, toy guns, party poppers, or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound, provided that they are so constructed that the hand cannot come into contact with the cap when in place for use, and toy pistol paper caps which contain less than twenty-five hundredths grains of explosive mixture shall be permitted for sale and use at all times and shall not be regulated by the provisions of sections 320.106 to 320.161.

320.136. Ground salutes commonly known as "cherry bombs", "M-80's", "M-100's", "M-1000's", and [various] **any other tubular salutes or any item described as prohibited chemical components or forbidden devices as listed in the American Pyrotechnics Association Standard 87-1 or** which exceed the federal limits set for fireworks UNO336, 1.4G formerly known as class C common fireworks, **display fireworks UN0335, 1.3G, and proximate fireworks UN0431 1.4G/UN0432 1.4S** by the United States Department of Transportation for explosive composition are expressly prohibited from shipment into, manufacture, possession, sale, [and] **or** use within the state of Missouri for [any purpose] **consumer use**. Possession, sale, manufacture, or transport of this type of illegal explosive shall be punished as provided by the provisions of section 571.020, RSMo.

320.146. 1. It shall be unlawful to expose fireworks to direct sunlight through glass to the merchandise displayed, except where the fireworks are in the original package. All fireworks which the public may examine shall be kept for sale in original packages, except where an attendant is on duty at all times where fireworks are offered for sale. Fireworks shall be kept in showcases out of the reach of the public when an attendant is not on duty. One or more signs reading, "FIREWORKS--NO SMOKING" shall be displayed at all places where fireworks are stored or sold in letters not less than four inches in height.

2. Fireworks shall not be stored, kept or sold within fifty feet of any gasoline pump, gasoline filling station, gasoline bulk station, or any building in which gasoline or volatile liquids are sold in quantities in excess of one gallon. The provisions of this subsection shall

not apply to stores where cleaners, paints, and oils are sold in the original containers to consumers.

3. It shall be unlawful to permit the presence of lighted cigars, cigarettes, pipes, or any other open flame within [ten] **twenty-five** feet of where fireworks are **manufactured, stored, kept, or** offered for sale.

4. Fireworks shall not be **manufactured**, stored, kept or sold within [fifty] **one hundred** feet of any [area in which] **dispensing unit** for ignitable liquids or gases [are stored above the surface of the ground].

320.151. 1. It is unlawful to attempt to sell or to sell at retail any fireworks to children under the age of fourteen years except when such child is in the presence of a parent or guardian.

2. It is unlawful for any person under the age of sixteen to sell fireworks or work in a facility where fireworks are stored, sold, or offered for sale unless supervised by an adult.

3. It is unlawful to explode or ignite **consumer** fireworks within six hundred feet of any church, hospital, mental health facility, school, or within one hundred feet of [a permanent structure] **any location** where fireworks are stored, sold, or offered for sale.

4. No person shall ignite or discharge any permissible articles of **consumer** fireworks within or throw the same from a [motor] **motorized** vehicle, **including watercraft or any other means of transportation, except where display permit has been issued for a floating vessel or floating platform**, nor shall any person place or throw any ignited article of fireworks into or at a [motor] **motorized** vehicle, **including watercraft or any other means of transportation**, or at or near any person or group of people.

5. No person shall ignite or discharge **consumer** fireworks within three hundred feet of any **permanent storage of ignitable liquid, gases**, gasoline pump, gasoline filling station, or any nonpermanent structure where fireworks are stored, sold or offered for sale.

6. **No items of explosive or pyrotechnic composition other than fireworks as defined by subdivisions (3), (6), and (17) of section 320.106 shall be displayed, sold, or offered for sale within the applicable permit location as identified on such permit granted by the state fire marshal.**

7. **Proximate fireworks shall not be allowed to be stored with consumer fireworks.**

8. **All storage and transportation of fireworks shall be in accordance with all federal and state rules or regulations.**

9. Nothing in sections 320.106 to 320.161 shall be construed to prevent permittees from demonstrating or testing fireworks. Any such demonstration or test shall require the notification and approval of the local fire service or the state fire marshal.

320.161. [1.] Any person violating any provision of sections 320.106 to 320.161 [except section 320.136] is guilty of a class [B] **A** misdemeanor, **except that a person**

violating section 320.136 is guilty of a class C felony.

[2. Any person violating the provisions of section 320.136 is guilty of a class A misdemeanor.]

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