

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 810
95TH GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organizations and Elections, April 1, 2010, with recommendation that the Senate Committee Substitute do pass.

4400S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 320.106, 320.111, 320.131, and 320.136, RSMo, and to enact in lieu thereof four new sections relating to fireworks.

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

Section A. Sections 320.106, 320.111, 320.131, and 320.136, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 320.106, 320.111, 320.131, and 320.136, to read as follows:

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

3 (1) "American Pyrotechnics Association (APA), Standard 87-1", or
4 subsequent standard which may amend or supersede this standard for
5 manufacturers, importers and distributors of fireworks;

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

9 (3) "Consumer fireworks", explosive devices designed primarily to produce
10 visible or audible effects by combustion and includes aerial devices and ground
11 devices, all of which are classified as fireworks, [UN0336, 1.4G by regulation of]
12 **by** the United States Department of Transportation, [as amended from time to
13 time, and which were formerly classified as class C common fireworks by
14 regulation of the United States Department of Transportation] **at 49 CFR**
15 **172.101 as UN0336;**

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

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

18 (5) "Dispenser", a device designed for the measurement and delivery of
19 liquids as fuel;

20 (6) "Display fireworks", explosive devices designed primarily to produce
21 visible or audible effects by combustion, deflagration or detonation. This term
22 includes devices containing more than two grains (130 mg) of explosive
23 composition intended for public display. These devices are classified as
24 fireworks[, UN0335, 1.3G by regulation of the United States Department of
25 Transportation, as amended from time to time, and which were formerly classified
26 as class B display fireworks by regulation of the United States Department of
27 Transportation] **by the United States Department of Transportation at 49**
28 **CFR 172.101 as UN0333, UN0334, or UN0335;**

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

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

38 (9) "Fireworks", any composition or device for producing a visible, audible,
39 or both visible and audible effect by combustion, deflagration, or detonation and
40 that meets the definition of consumer, proximate, or display fireworks as set forth
41 by 49 CFR Part 171 to end, United States Department of Transportation
42 hazardous materials regulations[, and American Pyrotechnics Association 87-1
43 standards];

44 (10) "Fireworks season", the period beginning on the twentieth day of
45 June and continuing through the tenth day of July of the same year and the
46 period beginning on the twentieth day of December and continuing through the
47 second day of January of the next year, which shall be the only periods of time
48 that seasonal retailers may be permitted to sell consumer fireworks;

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

54 (12) "Licensed operator", any person who supervises, manages, or directs
55 the discharge of outdoor display fireworks, either by manual or electrical means;
56 who has met additional requirements established by promulgated rule and has
57 successfully completed a display fireworks training course recognized and
58 approved by the state fire marshal;

59 (13) "Manufacturer", any person engaged in the making, manufacture,
60 assembly or construction of fireworks of any kind within the state of Missouri;

61 (14) "NFPA", National Fire Protection Association, an international codes
62 and standards organization;

63 (15) "Permanent structure", buildings and structures with permanent
64 foundations other than tents, mobile homes, and trailers;

65 (16) "Permit", the written authority of the state fire marshal issued
66 pursuant to sections 320.106 to 320.161 to sell, possess, manufacture, discharge,
67 or distribute fireworks;

68 (17) "Person", any corporation, association, partnership or individual or
69 group thereof;

70 (18) "Proximate fireworks", a chemical mixture used in the entertainment
71 industry to produce visible or audible effects by combustion, deflagration, or
72 detonation, as defined [by the most current edition of the American Pyrotechnics
73 Association (APA), Standard 87-1, section 3.8, specific requirements for theatrical
74 pyrotechnics] **by the United States Department of Transportation at 49**
75 **CFR 172.101 as UN0431 or UN0432;**

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

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

86 (21) "Seasonal retailer", any person within the state of Missouri engaged
87 in the business of making sales of consumer fireworks in Missouri only during a
88 fireworks season as defined by subdivision (10) of this section;

89 (22) "Wholesaler", any person engaged in the business of making sales of

90 consumer fireworks to any other person engaged in the business of making sales
91 of consumer fireworks at retail within the state of Missouri.

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

10 2. The state fire marshal has the authority and is authorized and directed
11 to issue permits [for the sale of fireworks] **to carry out the provisions of this**
12 **section.** No permit shall be issued to a person under the age of eighteen years
13 **or to any person failing to provide the division of fire safety with proof**
14 **of liability insurance in an amount set by rule.** All permits except for
15 seasonal retailers shall be for the calendar year or any fraction thereof and shall
16 expire on the thirty-first day of December of each year.

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

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

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

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

30 (1) Manufacturer, a fee of seven hundred seventy-five dollars per calendar
31 year;

32 (2) Distributor, a fee of seven hundred seventy-five dollars per calendar
33 year;

34 (3) Wholesaler, a fee of two hundred seventy-five dollars per calendar

35 year;

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

38 (5) Seasonal retailer, a fee of fifty dollars per calendar year per sales
39 location;

40 (6) Display fireworks, a fee of one hundred dollars per calendar year per
41 location;

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

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

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

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

50 8. A holder of a distributor's permit shall not be required to have any
51 additional permits in order to sell to wholesalers, jobbers, seasonal retailers or
52 to sell display, or proximate fireworks.

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

56 10. All fees collected for permits issued pursuant to this section shall be
57 deposited to the credit of the fire education fund created pursuant to section
58 320.094. Any person engaged in more than one permit classification shall pay
59 one permit fee based upon the permit classification yielding the highest amount
60 of revenue.

61 11. The state fire marshal is charged with the enforcement of the
62 provisions of sections 320.106 to 320.161 and may call upon any state, county or
63 city peace officer for assistance in the enforcement of the provisions of sections
64 320.106 to 320.161. The state fire marshal may promulgate rules pursuant to the
65 requirements of this section and chapter 536, RSMo, necessary to carry out his
66 or her responsibilities under this act including rules requiring training,
67 examination, and licensing of licensed operators and pyrotechnic operators
68 engaging in or responsible for the handling and use of display and proximate
69 fireworks. The test shall incorporate the rules of the state fire marshal, which
70 shall be based upon nationally recognized standards.

71 No rule or portion of a rule promulgated pursuant to this chapter shall become
72 effective unless it has been promulgated pursuant to the provisions of chapter
73 536, RSMo.

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

79 13. A holder of a distributor, wholesaler, or jobber's permit shall be
80 required to operate out of a permanent structure in compliance with all applicable
81 building and fire regulations in the city or county in which said person is
82 operating a fireworks business. Seasonal retail permit locations shall be in
83 compliance with all applicable building and fire regulations. The applicant may
84 be subject to a fire safety inspection by the state fire marshal based upon
85 promulgated rules and regulations adopted by the state fire marshal.

86 14. It is unlawful for any manufacturer, distributor, wholesaler, or jobber
87 to sell consumer fireworks to a seasonal retailer who has not acquired an
88 appropriate permit from the state fire marshal for the current permit period. A
89 seasonal retailer shall acquire and present the appropriate permit from the state
90 fire marshal before any manufacturer, distributor, wholesaler or jobber is allowed
91 to sell consumer fireworks to such seasonal retailer, provided that such seasonal
92 retailer is purchasing the consumer fireworks for resale in this state. **The state
93 fire marshal or state fire marshal's deputies may examine any records
94 of fireworks sales to assure compliance with this section.**

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

101 16. In addition to any other penalty, any person who manufactures, sells,
102 offers for sale, ships or causes to be shipped into or caused to be shipped into the
103 state of Missouri, for use in Missouri, any items of fireworks without first having
104 the required applicable permit shall be assessed a civil penalty of up to a one
105 thousand dollar fine for each day of operation up to a maximum of ten thousand
106 dollars.

320.131. 1. It is unlawful for any person to possess, sell or use within the
2 state of Missouri, or ship into the state of Missouri, except as provided in section
3 320.126, any pyrotechnics commonly known as "fireworks" and defined as
4 consumer fireworks in subdivision (3) of section 320.106 other than items now or
5 hereafter classified as fireworks [UNO336] **UN0336**, 1.4G by the United States
6 Department of Transportation that comply with the construction, chemical
7 composition, labeling and other regulations relative to consumer fireworks
8 regulations promulgated by the United States Consumer Product Safety
9 Commission and permitted for use by the general public pursuant to such
10 commission's regulations.

11 2. No wholesaler, jobber, or seasonal retailer, or any other person shall
12 sell, offer for sale, store, display, or have in their possession any consumer
13 fireworks that have not been approved as fireworks [UNO336] **UN0336**, 1.4G by
14 the United States Department of Transportation.

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

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

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

320.136. Ground salutes commonly known as "cherry bombs", "M-80's",
2 "M-100's", "M-1000's", and any other tubular salutes or any items described as
3 prohibited chemical components or forbidden devices as listed in the American
4 Pyrotechnics Association Standard 87-1 or which exceed the [federal] limits set

5 for **consumer** fireworks [UNO336, 1.4G formerly known as class C common
6 fireworks, display fireworks UNO335, 1.3F, and proximate fireworks UNO431,
7 1.4F/UNO432, 1.4S by the United States Department of Transportation], **display**
8 **fireworks or proximate fireworks** for explosive composition are expressly
9 prohibited from shipment into, manufacture, possession, sale, or use within the
10 state of Missouri for consumer use. Possession, sale, manufacture, or transport
11 of this type of illegal explosive shall be punished as provided by the provisions
12 of section 571.020, RSMo.

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