

CHAPTER 394

PROFESSIONS AND OCCUPATIONS

SENATE BILL 04-071

BY SENATOR(S) Anderson and Arnold;
also REPRESENTATIVE(S) Fairbank.

AN ACT

CONCERNING THE REGULATION OF FIREWORKS, AND, IN CONNECTION THEREWITH, CLARIFYING THE DEFINITIONS OF A "FIREWORK" AND "PERMISSIBLE FIREWORK" AND CLARIFYING WHEN FIREWORKS MAY BE PROHIBITED DURING AN OPEN FIRE BAN.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 12-28-101 (1), (3) (a), (3) (b) (I), and (8), Colorado Revised Statutes, are amended, and the said 12-28-101 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

12-28-101. Definitions. As used in this article, unless the context otherwise requires:

(1) ~~"Display retailer" means any person, including a manufacturer, who is licensed as a display retailer under the provisions of section 12-28-104 and who sells, delivers, consigns, gives, or otherwise furnishes fireworks to any person authorized by section 12-28-103 to discharge fireworks in Colorado.~~ "ARTICLES PYROTECHNIC" MEANS PYROTECHNIC SPECIAL EFFECTS MATERIALS AND PYROTECHNIC DEVICES FOR PROFESSIONAL USE THAT ARE SIMILAR TO CONSUMER FIREWORKS IN CHEMICAL COMPOSITION AND CONSTRUCTION BUT ARE INTENDED FOR THEATRICAL PERFORMANCES AND NOT INTENDED FOR CONSUMER USE. "ARTICLES PYROTECHNIC" SHALL ALSO INCLUDE PYROTECHNIC DEVICES MEETING THE WEIGHT LIMITS FOR CONSUMER FIREWORKS BUT ARE NOT LABELED AS SUCH AND ARE CLASSIFIED AS UN0431 OR UN0432 PURSUANT TO 49 CFR SEC. 172.101, AS AMENDED.

(1.5) "DISPLAY FIREWORKS" MEANS LARGE FIREWORKS DESIGNED PRIMARILY TO PRODUCE VISIBLE OR AUDIBLE EFFECTS BY COMBUSTION, DEFLAGRATION, OR DETONATION AND INCLUDES, BUT IS NOT LIMITED TO, SALUTES CONTAINING MORE THAN ONE HUNDRED THIRTY MILLIGRAMS OF EXPLOSIVE MATERIAL, AERIAL SHELLS

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

CONTAINING MORE THAN FORTY GRAMS OF PYROTECHNIC COMPOSITIONS, AND OTHER DISPLAY PIECES THAT EXCEED THE LIMITS OF EXPLOSIVE MATERIALS FOR CLASSIFICATION AS CONSUMER FIREWORKS AS DEFINED IN 16 CFR SECS. 1500.1 TO 1500.272 AND 16 CFR 1507.1 TO 1507.12 AND ARE CLASSIFIED AS FIREWORKS UN0333, UN0334, OR UN0335 PURSUANT TO 49 CFR 172.101, AS AMENDED, AND INCLUDING FUSED SET PIECES CONTAINING COMPONENTS THAT EXCEED FIFTY MILLIGRAMS OF SALUTE POWDER.

(1.7) "DISPLAY RETAILER" MEANS A PERSON, INCLUDING A MANUFACTURER, WHO IS LICENSED AS A DISPLAY RETAILER UNDER THE PROVISIONS OF SECTION 12-28-104 AND WHO SELLS, DELIVERS, CONSIGNS, GIVES, OR OTHERWISE FURNISHES DISPLAY FIREWORKS OR ARTICLES PYROTECHNIC TO A PERSON AUTHORIZED BY SECTION 12-28-103 TO DISCHARGE FIREWORKS IN COLORADO.

(3) (a) "Fireworks" means ~~any article, device, or substance prepared for the primary purpose of producing a visual or auditory sensation by combustion, explosion, deflagration, or detonation which meets the description of fireworks as set forth in the United States Department of Transportation Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 173.88 and 173.100~~ ANY COMPOSITION OR DEVICE DESIGNED TO PRODUCE A VISIBLE OR AUDIBLE EFFECT BY COMBUSTION, DEFLAGRATION, OR DETONATION, AND THAT MEETS THE DEFINITION OF ARTICLES PYROTECHNIC, PERMISSIBLE FIREWORKS, OR DISPLAY FIREWORKS.

(b) "Fireworks" does not include:

(I) Toy caps, ~~which~~ PARTY POPPERS, AND ITEMS SIMILAR TO TOY CAPS AND PARTY POPPERS THAT DO NOT CONTAIN MORE THAN ~~twenty-five hundredths of a grain of explosive compound per cap~~ SIXTEEN MILLIGRAMS OF PYROTECHNIC COMPOSITION PER ITEM AND SNAPPERS THAT DO NOT CONTAIN MORE THAN ONE MILLIGRAM OF EXPLOSIVE COMPOSITION PER ITEM;

(3.5) "FIREWORKS DISPLAY OPERATOR" INCLUDES AN INDIVIDUAL WHO, BY EXPERIENCE AND TRAINING, HAS DEMONSTRATED THE REQUIRED SKILL AND ABILITY TO SAFELY SET UP AND DISCHARGE DISPLAY FIREWORKS.

(8) (a) "Permissible fireworks" means the following ~~items designed primarily to produce visual or audible effects by combustion, including certain~~ SMALL FIREWORKS devices designed to produce audible or visual effects ~~except that no device or component shall, upon functioning, project or disburse any metal, glass, or brittle plastic fragments~~ BY COMBUSTION, COMPLYING WITH THE REQUIREMENTS OF THE UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION AS SET FORTH IN 16 CFR SECS. 1500.1 TO 1500.272 AND 1507.1 TO 1507.12, AND CLASSIFIED AS CONSUMER FIREWORKS UN0336 AND UN0337 PURSUANT TO 49 CFR 172.101:

~~(a)~~ (I) Cylindrical fountains, total pyrotechnic composition not to exceed seventy-five grams each in weight. ~~The inside diameter shall not exceed three-quarters of one inch~~ FOR A SINGLE TUBE OR, WHEN MORE THAN ONE TUBE IS MOUNTED ON A COMMON BASE, A TOTAL PYROTECHNIC COMPOSITION OF NO MORE THAN TWO HUNDRED GRAMS;

~~(b)~~ (II) Cone fountains, total pyrotechnic composition not to exceed fifty grams

each ~~in weight~~ FOR A SINGLE CONE OR, WHEN MORE THAN ONE CONE IS MOUNTED ON A COMMON BASE, A TOTAL PYROTECHNIC COMPOSITION OF NO MORE THAN TWO HUNDRED GRAMS;

~~(c)~~ (III) Wheels, total pyrotechnic composition not to exceed sixty grams for each driver unit or two hundred ~~forty~~ grams for each complete wheel; ~~The inside tube diameter of driver units shall not exceed one-half of one inch.~~

~~(d)~~ (IV) Ground spinner, a small device containing not more than twenty grams of pyrotechnic composition venting out of an orifice usually in the side of the tube, similar in operation to a wheel, but intended to be placed flat on the ground;

~~(e)~~ (V) Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed ~~one~~ TWO hundred grams each; ~~in weight;~~

~~(f)~~ (VI) Dipped sticks and sparklers, the total pyrotechnic composition of which does not exceed one hundred grams, of which the composition of any chlorate or perchlorate shall not exceed five grams;

~~(g)~~ (VII) ANY OF THE FOLLOWING THAT DO NOT CONTAIN MORE THAN FIFTY MILLIGRAMS OF EXPLOSIVE COMPOSITION:

~~(A) Explosive auto alarms; as described in Title 49, code of federal regulations, part 173.100;~~

(B) TOY PROPELLANT DEVICES;

(C) CIGARETTE LOADS;

(D) STRIKE-ON-BOX MATCHES; OR

(E) OTHER TRICK NOISE MAKERS;

~~(h) Toy propellant devices and toy smoke devices, as described in Title 49, code of federal regulations, part 173.100;~~

~~(i) Cigarette loads, as described in Title 49, code of federal regulations, part 173.100;~~

~~(j) Trick matches consisting of book matches, strike-anywhere matches, or strike-on-box matches, as described in Title 49, code of federal regulations, part 173.100;~~

~~(k) Trick noise makers, as described in Title 49, code of federal regulations, part 173.100;~~

~~(l)~~ (VIII) Snake or glow worm pressed pellets of NOT MORE THAN TWO GRAMS OF pyrotechnic composition ~~that produce a large snake-like ash upon burning~~ AND PACKAGED IN RETAIL PACKAGES OF NOT MORE THAN TWENTY-FIVE UNITS;

~~(m) Novelties consisting of two or more devices enumerated in this subsection (8);~~

~~(n)~~ (IX) Fireworks ~~which~~ THAT are used exclusively for testing or research by a licensed explosives laboratory.

(X) MULTIPLE TUBE DEVICES WITH:

(A) EACH TUBE INDIVIDUALLY ATTACHED TO A WOOD OR PLASTIC BASE;

(B) THE TUBES SEPARATED FROM EACH OTHER ON THE BASE BY A DISTANCE OF AT LEAST ONE-HALF OF ONE INCH;

(C) THE EFFECT LIMITED TO A SHOWER OF SPARKS TO A HEIGHT OF NO MORE THAN FIFTEEN FEET ABOVE THE GROUND;

(D) ONLY ONE EXTERNAL FUSE THAT CAUSES ALL OF THE TUBES TO FUNCTION IN SEQUENCE; AND

(E) A TOTAL PYROTECHNIC COMPOSITION OF NO MORE THAN FIVE HUNDRED GRAMS.

(b) "PERMISSIBLE FIREWORKS" DO NOT INCLUDE AERIAL DEVICES OR AUDIBLE GROUND DEVICES, INCLUDING, BUT NOT LIMITED TO, FIRECRACKERS.

(9.5) "PYROTECHNIC OPERATOR" INCLUDES AN INDIVIDUAL WHO, BY EXPERIENCE AND TRAINING, HAS DEMONSTRATED THE REQUIRED SKILL AND ABILITY TO SAFELY SET UP AND DISCHARGE ARTICLES OF PYROTECHNICS.

SECTION 2. 12-28-103 (1), (2), and (4), Colorado Revised Statutes, are amended to read:

12-28-103. Permits - exceptions to permit requirements. (1) Any governing body has the power to grant nontransferable and nonassignable permits within the area under its jurisdiction for the storage of fireworks or for the facilities used for the retail sales of fireworks, including permissible fireworks, by any person and to adopt reasonable rules ~~and regulations~~ for the granting of such permits. THE FEE FOR A PERMIT ISSUED PURSUANT TO THIS SUBSECTION (1) SHALL BE LIMITED TO WHAT IS REASONABLE AND NECESSARY TO COVER THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH THE GRANTING AND ENFORCEMENT OF SUCH PERMITS.

(2) Any governing body has the power to grant nontransferable and nonassignable permits within the area under its jurisdiction for displays of fireworks OR PYROTECHNIC SPECIAL EFFECTS PERFORMANCES by any person, fair association, amusement park, or other organizations or groups and to adopt reasonable rules ~~and regulations~~ for the granting of such permits.

(4) The discharge of fireworks pursuant to a permit provided for in subsection (2) of this section, or as otherwise provided in subsection (3) of this section, shall be lawful in Colorado, if the display OR PYROTECHNIC SPECIAL EFFECTS PERFORMANCE is performed in accordance with the requirements of the national fire protection association as stated in NFPA-1123, code for the outdoor display of fireworks OR NFPA-1126, STANDARD FOR THE USE OF PYROTECHNICS BEFORE A PROXIMATE AUDIENCE.

SECTION 3. 12-28-104 (1), (2), (3), (4), (5), (6), and (7), Colorado Revised Statutes, are amended to read:

12-28-104. Licensing - creation of fireworks licensing cash fund. (1) No person shall sell, offer for sale, expose for sale, or possess with intent to sell permissible fireworks for retail until that person first obtains a retailer of fireworks license from the director of the DIVISION OF FIRE SAFETY WITHIN THE department of public safety and the permit, if any, required by section 12-28-103 (1). Such retailer's license shall be good only for the calendar year in which it is issued, shall apply to only one retail location, and shall at all times be displayed at the place of business of such licensed retailer.

(2) No person shall sell, deliver, consign, give, or furnish fireworks to ~~any~~ A person authorized by section 12-28-103 to discharge fireworks in Colorado until that person first obtains a display retailer of fireworks license from the director of the DIVISION OF FIRE SAFETY WITHIN THE department of public safety and the permit, if any, required by section 12-28-103 (1).

(3) No person shall sell, deliver, consign, give, or furnish permissible fireworks to a retailer for resale in Colorado until that person first obtains a wholesaler of fireworks license from the director of the DIVISION OF FIRE SAFETY WITHIN THE department of public safety and the permit, if any, required by section 12-28-103 (1).

(4) No person shall sell, deliver, consign, give, or furnish fireworks for export outside of Colorado until that person first obtains an exporter of fireworks license from the director of the DIVISION OF FIRE SAFETY WITHIN THE department of public safety and the permit, if any, required by section 12-28-103 (1).

(5) Applications for each display, retail, wholesale, and export license shall be filed with the director of the DIVISION OF FIRE SAFETY WITHIN THE department of public safety at least thirty days before the start of activities for which the license is required. Each such license shall be valid through September 1 of the year following the date on which the license was issued.

(6) (a) All fees pursuant to this article shall be collected by the director of the DIVISION OF FIRE SAFETY WITHIN THE department of public safety.

~~(b) All fees collected pursuant to paragraph (a) of this subsection (6) shall be transmitted to the state treasurer who shall credit the same to the fireworks licensing cash fund, which fund is hereby created in the state treasury. The general assembly shall appropriate the moneys in the fund to the department of public safety for payment of salaries and expenses necessary for the administration of this article~~ ALL MONEYS RECEIVED BY THE DIRECTOR PURSUANT TO THE ADMINISTRATION OF THIS ARTICLE AND ALL INTEREST EARNED ON THE MONEYS SHALL BE DEPOSITED IN THE STATE TREASURY IN THE FIREWORKS LICENSING CASH FUND, WHICH FUND IS HEREBY CREATED, AND THE MONEYS SHALL BE USED, SUBJECT TO ANNUAL APPROPRIATIONS BY THE GENERAL ASSEMBLY, FOR THE PURPOSES SET FORTH IN THIS ARTICLE, AND SHALL NOT BE DEPOSITED IN OR TRANSFERRED TO THE GENERAL FUND OF THE STATE OF COLORADO OR ANY OTHER FUND.

(c) (I) The EXECUTIVE director of the department of public safety shall set fees

pursuant to this article at such rates as are necessary to provide for the direct and indirect costs and expenses of the department of public safety in the administration of this article; except that the fee for a:

(A) Retailer of fireworks license shall not exceed twenty-five dollars; ~~and the fee for a~~

(B) Display retailer of fireworks license a wholesaler of fireworks license, or an exporter of fireworks license shall not exceed seven hundred fifty dollars; AND

(II) Such rates shall be reviewed annually by the EXECUTIVE director of the department of public safety.

(7) The EXECUTIVE director of the department of public safety shall promulgate rules ~~and regulations~~ to implement the provisions of this article. Such rules ~~and regulations~~ may include requirements ~~which~~ FOR THE CERTIFICATION OF FIREWORKS DISPLAY OPERATORS AND PYROTECHNIC OPERATORS, AND ANY OTHER REQUIREMENTS THAT are reasonably necessary for the safety of workers and the public and the protection of property. The procedure for the promulgation of such rules ~~and regulations~~ shall be in accordance with the provisions of section 24-4-103, C.R.S.

SECTION 4. 12-28-105 (3), Colorado Revised Statutes, is amended to read:

12-28-105. Importation of fireworks - duties of licensees - retention of invoices for inspection. (3) It shall be unlawful for ~~any~~ A person to conduct any fireworks display OR PYROTECHNIC SPECIAL EFFECTS PERFORMANCE using fireworks ~~which~~ THAT have not been purchased from a display retailer licensed under the provisions of section 12-28-104.

SECTION 5. 30-15-401 (1)(n.5), Colorado Revised Statutes, is amended to read:

30-15-401. General regulations. (1) In addition to those powers granted by sections 30-11-101 and 30-11-107 and by parts 1, 2, and 3 of this article, the board of county commissioners has the power to adopt ordinances for control or licensing of those matters of purely local concern which are described in the following enumerated powers:

(n.5) To ban open fires to a degree and in a manner that the board of county commissioners deems necessary to reduce the danger of wildfires within those portions of the unincorporated areas of the county where the danger of forest or grass fires is found to be high, based on competent evidence. The ban on open fires in accordance with the requirements of this paragraph (n.5) may include a prohibition on the sale of fireworks ONLY within those portions of the unincorporated areas of the county where the danger of forest or grass fires has been found to be high based on competent evidence. FOR PURPOSES OF THIS PARAGRAPH (n.5), "COMPETENT EVIDENCE" MAY INCLUDE, BUT IS NOT LIMITED TO, THE USE OF THE NATIONAL FIRE DANGER RATING SYSTEM AND ANY OTHER SIMILAR INDICES OR INFORMATION.

SECTION 6. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum

petition pursuant to article V, section 1 (3) of the state constitution (August 4, 2004, if adjournment sine die is on May 5, 2004); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to permits issued to persons licensed pursuant to article 28 of title 12, Colorado Revised Statutes, on or after the applicable effective date of this act and open fire bans imposed on or after said date.

Approved: June 4, 2004