

IDAHO

39-2601. Short title.

This act shall be known and may be cited as the "Fireworks Act of 1997."

39-2602. Definitions.

As used in this chapter, these terms shall have the following meanings:

(1) "Authority having jurisdiction" means a city fire department if the area is within a city, or a fire protection district formed pursuant to provisions of the Idaho Code if the area is within a fire protection district, or the county commission if the area is not within a city or fire protection district.

(2) "Department" means the department of insurance, division of the state fire marshal.

(3) "Fireworks" means any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation. Fireworks include items classified as common or special fireworks by the United States bureau of explosives or contained in the regulations of the United States department of transportation and designated as UN 0335 1.3G or UN 0336 1.4G. The term "fireworks" shall not include any automotive safety flares, toy guns, toy cannons, caps or other items designed for use with toy guns or toy cannons, party poppers, pop-its or other devices which contain twenty-five hundredths (.25) of a grain or less of explosive substance.

(4) "Importer" means any person who, for any purpose other than personal use, or a use associated with a specific public display or other event permit, is the first receiver of any fireworks in this state.

(5) "License" means a nontransferable, formal authorization, issued by the department to engage in the acts of importing fireworks into this state or operating a wholesale fireworks business within this state.

(6) "Nonaerial common fireworks" means any fireworks such as ground spinners, fountains, sparklers, smoke devices or snakes designed to remain on or near the ground and not to travel outside a fifteen (15) foot diameter circle or emit sparks or other burning material which land outside a twenty (20) foot diameter circle or above a height of twenty (20) feet. Nonaerial common fireworks do not include firecrackers, jumping jacks, or similar products.

(7) "Permit" means an authorization given by the authority having jurisdiction pursuant to section 39-2604 or 39-2605, Idaho Code.

(8) "Special fireworks" means any fireworks designed primarily for display and classified as special fireworks by the United States bureau of explosives or designated as UN 0335 1.3G.

(9) "Wholesale" means sale of fireworks to a retailer or wholesaler.

39-2603. Wholesale and import license required.

(1) A license shall be required for any person to import fireworks into this state or to operate a wholesale fireworks business in this state.

(2) Fireworks shall only be delivered in this state by a person with a valid wholesale or import license under the following circumstances:

(a) (i) To a person with a valid sales tax seller's permit issued pursuant to section 63-3620, Idaho Code; and

(ii) During a period beginning sixty (60) days prior to a date on which the retail sale or use of nonaerial common fireworks is authorized under this chapter; or

(b) To a person with a valid permit issued pursuant to section 39-2605, Idaho Code, within a reasonable time period before the display or event.

(3) Possession of a wholesale or import license does not authorize the holder of the license to sell nonaerial common fireworks at retail, but a wholesaler or importer may also hold a retail permit in compliance with the provisions of this chapter.

(4) Wholesale or import licenses shall be issued for a twelve (12) month period beginning on March 31 each year and shall be nontransferable. The license shall be issued if the application is complete and in compliance with applicable law.

(5) Wholesale or import license applications shall be on a form approved by the department and shall include the name and address of the applicant (or the names of all partners, if a partnership, the name of the corporation and the corporate officers if a corporation, or the name of the limited liability company and all of its members, if a limited liability company) the primary location of the business, each location at which fireworks are to be stored and the applicant's Idaho sales tax seller's permit number, if applicable.

(6) A bond or valid certificate of public liability and property-casualty insurance providing coverage of at least one hundred thousand dollars (\$100,000) for personal injury and property damage shall be presented at the time of application.

(7) The department may impose a fee for issuing a license under this section which shall not exceed one hundred dollars (\$100).

(8) The license required under this section may be revoked if the licensee violates any provisions of this chapter. A license revocation proceeding shall comply with the provisions of chapter 52, title 67, Idaho Code.

(9) The license shall be displayed in public view at each location listed on the license.

(10) An importer or wholesaler shall keep a record of all wholesale transactions showing the name, address, sales tax seller's permit number, if applicable, and type and quantity of items sold.

39-2604. Permit required for retail sales.

(1) The local authority having jurisdiction may require a permit for the retail sale of nonaerial common fireworks.

(2) If a permit is required the applications shall be on a form approved by the authority having jurisdiction and shall include the name and address of the applicant (or the names of all partners, if a partnership, the name of the corporation and the corporate officers if a corporation, or the name of the limited liability company and all of its members, if a limited liability company) the primary location of the business, each location at which fireworks are to be stored and the applicant's Idaho sales tax seller's permit number, if applicable.

(3) A bond or valid certificate of public liability and property-casualty insurance providing coverage of up to one hundred thousand dollars (\$100,000) for personal injury and property damage may be required at the time of application.

(4) The authority having jurisdiction may assess a fee for issuing a permit under this section which shall not exceed twenty-five dollars (\$25.00).

(5) The permit shall be issued if the application is complete and in compliance with applicable law, shall be valid for twelve (12) months from the date of issuance and shall be nontransferable.

(6) The permit required under this section may be revoked if the permittee violates any provisions of this chapter. A permit revocation proceeding shall comply with the provisions of chapter 52, title 67, Idaho Code.

(7) The permit shall be displayed in public view at the location listed on the permit.

39-2606. Authorized dates for the sale and use of fireworks.

(1) Nonaerial common fireworks may be sold at retail and used beginning at midnight June 23, and ending at midnight July 5 and beginning at midnight December 26 and ending at midnight January 1. The authority having jurisdiction may at its discretion extend each period of sales by not more than five (5) days.

(2) Fireworks may be sold and used at any time in compliance with permits issued under the provisions of section 39-2605, Idaho Code.

39-2607. Temporary fireworks stands.

Retail sales of nonaerial common fireworks shall be allowed only from within a temporary fireworks stand unless the authority having jurisdiction finds appropriate circumstances justifying reasonable variance from strict compliance with this section. An existing permanent building which was used for the retail sale of fireworks in 1996 may continue to be used for that purpose if the building meets or exceeds the standards for temporary buildings established by this section and is operated, insofar as it is applicable, as provided by this section. Temporary fireworks stands shall be subject to the following provisions:

(1) A stand shall not be located within twenty-five (25) feet of any building or within one hundred (100) feet of the nearest fuel dispensing device.

(2) A stand shall meet the minimum structural stability requirements for temporary buildings as required by applicable local building codes. If no local building codes have been adopted, applicable state codes may be used.

(3) A stand shall meet the minimum requirements for temporary buildings for all lighting circuits or other electrical equipment used in conjunction with the operation of the stand as required by applicable local building codes or, if no local building codes have been adopted, by applicable state codes.

(4) A stand shall have two (2) exits, each a minimum of thirty (30) inches wide at each end of the stand or as near the ends as is practical in a mobile home conversion. One (1) additional door is required for each thirty-two (32) feet of rear wall in excess of thirty-two (32) feet. All doors shall open outward from the stand and shall be kept unlocked and unlatched during the hours of operation and free and clear of supplies and materials at all times.

(5) A stand shall have at least two (2) fire extinguishers with a 2A minimum rating, in good working order, with a current inspection tag in place, placed near the exits in a visible and readily accessible manner.

(6) "No smoking within 25 feet" signs shall be prominently displayed on all four (4) sides of the stand. Smoking shall not be permitted inside the stand.

(7) A stand shall not be erected before May 5 nor remain up after July 20 for the first sales period; nor shall it be erected before December 7 or remain up after January 16 for the second sales period. The premises on which the stand is erected shall be cleared of all structures and debris no later than July 20 or January 16, respectively.

(8) The fireworks stand operator shall not permit the discharge of fireworks within twenty-five (25) feet of the stand.

(9) The stand operator shall not allow any rubbish to accumulate in or around the stand causing a fire nuisance.

(10) Only noncombustible waste containers shall be permitted within the stand.

(11) Fireworks shall not be left in the stand when it is not open for business unless the stand is locked or secured. If fireworks are not stored in the stand they shall be stored in compliance with section 39-2608, Idaho Code.

(12) Notice as provided by the authority having jurisdiction cautioning each person purchasing fireworks of the prohibitions, liabilities and penalties incorporated in this chapter shall be posted at all retail locations.

(13) The authority having jurisdiction may charge a one (1) time inspection fee of twenty-five dollars (\$25.00) for inspection of a temporary fireworks stand.

39-2608. Short-term storage.

(1) A short-term storage facility may be used for the storage of nonaerial common fireworks for a period of sixty (60) days prior to, and fifteen (15) days after, any authorized retail sales date. The authority having jurisdiction shall be notified of the address or location of all short-term storage facilities when fireworks will not be stored in a temporary fireworks stand. If the short-term storage facility is not within the boundaries of the jurisdiction having issued the retail sales permit the permittee shall notify the authority having jurisdiction where the storage is to take place.

(2) Short-term storage is allowed in any of the following, provided it is locked or otherwise secured: a temporary fireworks stand, truck, trailer, or other vehicle. A truck, trailer or other vehicle used for short-term storage must remain at least twenty-five (25) feet from the stand during any time the stand is open for business, but may abut the stand when it is closed. A truck, trailer or vehicle used for short-term storage must be at least twenty-five (25) feet from any other inhabited building. Short-term storage may occur in a locked or secured shed, garage, barn or other building or storage container which is detached from an inhabited building and contains no open flames, including heating and lighting sources. The authority having jurisdiction may, in its discretion, allow short-term storage to occur in an attached garage with a one (1) hour fire wall separating the garage from any inhabited area.

39-2609. General prohibitions.

It shall be unlawful for any person, except in compliance with this chapter, to:

- (1) Alter any fireworks;
- (2) Throw any fireworks from, into, or at a moving vehicle or at any person;
- (3) Sell or use any fireworks at any time not permitted under this chapter;
- (4) Use fireworks in any area that constitutes a severe fire threat based on the vegetative conditions during the current fire season as determined by the county commission or authority having jurisdiction, provided that notice of such areas is given in advance.

39-2610. Exceptions.

The provisions of this chapter do not apply to and shall not prohibit:

- (1) The use of flares, noisemakers or signals designed and used for the purpose of protecting the public;
- (2) The use of blank cartridges;
- (3) The use of flares or noisemakers designed and labeled specifically for pest control purposes and approved by the Idaho department of fish and game;
- (4) The continued use of existing facilities for long-term storage of fireworks by wholesalers;
- (5) Manufacturing of fireworks in this state; and
- (6) The importation, storage and sale of fireworks for export from this state, or interstate commerce in fireworks.

39-2611. Liability of parents or guardians.

The parents, guardians or other persons having custody or control of a minor shall be liable for damage caused by the use of fireworks by the minor.

39-2612. Enforcement.

This chapter shall be enforced by the department, cities, counties, fire protection districts or other law enforcement agencies of the state.

39-2613. Penalties -- Injunctions.

Any person violating the provisions of this chapter or any rules issued hereunder is guilty of a misdemeanor. Notwithstanding the existence or use of any other penalty or remedy, any person who violates the provisions of this chapter or any of the rules promulgated pursuant to this chapter may, upon application to or with written consent of the authority having jurisdiction, be enjoined in the manner provided by law from continuing the violation. Fireworks being used in violation of this chapter may be confiscated by the authority having jurisdiction.

39-2614. Rules.

The department may adopt any rules necessary to carry out the provisions of this chapter which are consistent with the provisions of this chapter and which are necessary to carry out its duties under the provisions of this chapter.