

TENNESSEE

68-104-101. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Distributor" means any person engaged in the business of making sales of fireworks to any other person engaged in the business of reselling fireworks either as a retailer, wholesaler, or seasonal retailer, or any person who receives, brings or imports any fireworks of any kind, in any manner into this state, except to a holder of a Tennessee manufacturer's, distributor's, or wholesaler's permit. Any sale of fireworks to a retailer shall only be accomplished by a manufacturer or distributor possessing the required applicable permit issued by the state of Tennessee. "Distributor" also includes any person engaged in the business of making sales of display fireworks, as defined in § 68-104-202, or proximate pyrotechnics or flame effect materials to licensed exhibitors for the purpose of providing fireworks, pyrotechnic or flame effect display services in this state. A distributor may sell display fireworks, proximate pyrotechnics or flame effect materials only to holders of a Tennessee exhibitor's permit. An out-of-state distributor shall not be required to obtain a Tennessee permit when selling exclusively to a holder of a Tennessee manufacturer's, distributor's, wholesaler's or exhibitor's permit;

(2) "D.O.T. Class C common fireworks" means all articles of fireworks as are now or hereafter classified as D.O.T. Class C common fireworks in the regulations of the United States department of transportation for transportation of explosive and other dangerous articles;

(3) "Manufacturer" means any person engaged in the making, manufacture or construction of fireworks of any kind within this state;

(4) "Permit" means the written authority of the state fire marshal issued under the authority of this chapter;

(5) "Person" means any individual, firm, partnership or corporation;

(6) "Retailer" means any person engaged in the business of making retail sales of fireworks at any time during the year;

(7) "Sale" means an exchange of articles of fireworks for money and also includes barter, exchange, gift or offer thereof, and each such transaction made by any person, whether as principal, proprietor, salesperson, agent, association, copartnership, or one (1) or more individuals;

(8) "Seasonal retailer" means any person engaged in the business of making retail sales of fireworks within this state from June 20 through July 5 and December 10 through January 2 of each year;

(9) "Special fireworks" means:

(A) All articles of fireworks that are classified as Class B explosives in the regulations of the United States department of transportation;

(B) All articles of fireworks other than those classified as Class C; and

(C) Unmanned free-floating devices capable of producing an open flame such as, but not limited to, sky lanterns; and

(10) "Wholesaler" means any person engaged in the business of making sales of fireworks to a seasonal retailer. A wholesaler shall not be permitted to make a sale to a retailer.

68-104-102. Permits and fees.

(a) It is unlawful for any person to manufacture, sell, offer for sale, ship or cause to be shipped or received into or within this state, except as provided in this chapter, any item of fireworks, without first having secured the required applicable permit, as a manufacturer, distributor, wholesaler, retailer or seasonal retailer, from the state fire marshal. This provision applies to nonresidents as well as residents of this state. No permit shall be required of a consumer to purchase from a dealer holding a required Tennessee permit for purchases within this state. Mail orders where consumers purchase any fireworks through the mail or receive any fireworks in Tennessee by mail, parcel service, or other carrier are prohibited. A sales clerk must be on duty to serve consumers at the time of purchase or delivery. It is the legislative intent that all fireworks sold and delivered to consumers within this state must take place within this state and be sold and delivered only by a Tennessee dealer holding a Tennessee fireworks permit, and that all fireworks coming into the state and sold within the state be under the supervision of the state fire marshal as provided in this chapter.

(b) A manufacturer's permit issued under this chapter shall be subject to rules and regulations promulgated by the state fire marshal to govern the manufacture of fireworks as in the state fire marshal's judgment the public welfare may require.

(c) The decision of the state fire marshal as to what type of permit or permits shall be required of each person under this chapter shall be final. No permit shall be issued to a person under eighteen (18) years of age. All permits shall be for the calendar year or any fraction of the year and shall expire on December 31. A grace period of

two (2) days shall be allowed each holder of a permit. Permits issued to retailers and seasonal retailers must be displayed. No permit provided for in this section is transferable to another person or location, unless such transfer has been approved by the state fire marshal.

(d)(1) The state fire marshal shall charge the following fees for permits:

- (A) Manufacturer.....\$1,000
- (B) Distributor.....\$1,000
- (C) Retailer.....\$1,000
- (D) Wholesaler\$1,000
- (E) Seasonal retailer.....\$100
- (F) Exhibitor.....\$1,000

(2) A person engaged in more than one (1) of the activities in subdivision (d)(1) shall pay only one (1) fee based upon the classification requiring the higher fee.

(e) The holder of a retailer's permit will be authorized to engage in the retail sale of fireworks in any quantity during the life of the permit.

(f) A holder of a manufacturer's permit will not be required to have any additional permit or permits, in order to sell to distributors, wholesalers, retailers or seasonal retailers.

(g) All fees collected for permits shall constitute expendable receipts of the fire prevention division. The state fire marshal may designate a deputy fire marshal as the fireworks enforcement officer. The state fire marshal is charged with the enforcement of this chapter and may call upon any state, county, municipal or other peace officer for assistance in the enforcement of this chapter.

68-104-103. Permits numbered-Orders and invoices must carry number.

The state fire marshal shall assign a number to each permit issued and each holder of a permit of any of the classes shall imprint or affix the permit number to all orders and invoices issued or used by each manufacturer, distributor or wholesaler.

68-104-104. Consignee required to hold permit before shipping or delivering fireworks-Purchase only from seller holding permit-Record of sale.

No person shall deliver, sell or ship fireworks into or within this state, unless the consignee produces the required permit or evidence that the consignee holds such permit. No person shall purchase fireworks from another person without first requiring proof that the proper permit required of the seller has been obtained and is current and valid. Each holder of a permit under this chapter shall keep an accurate record of each shipment received. Each holder of a permit as distributor, manufacturer or wholesaler shall keep a record of each sale, delivery or out shipment of fireworks. The records shall be clear, legible and accurate, showing the name and address of the seller or purchaser, item and quantity received or sold. The records are to be kept at each place of business and shall be subject to examination by the state fire marshal or the state fire marshal's designated representative, who shall have the authority during regular business hours to require any manufacturer, distributor, wholesaler, retailer or seasonal retailer to produce records for the current year and the preceding full calendar year.

68-104-105. Permit for new location-Illegal acts-Inspections-Revocation of permits.

(a) Any request for the issuance of a retailer's or seasonal retailer's fireworks permit for a new location shall be accompanied by a statement that the sale of fireworks in the county or municipality, respectively, is permissible. The statement shall be signed by the chief executive officer of the county or municipality in which fireworks are to be sold or by a person appointed or designated by the chief executive officer of the county or municipal government having responsibility for compliance with this section within the county or municipality. For purposes of this section, "new location" means any location where fireworks were not sold at retail as of May 2, 1983. "New location" does not include any location in which the lawful sale of fireworks has transpired for the immediate two (2) years prior to May 2, 1983.

(b)(1) All fireworks held for sale at retail within local jurisdictions where the sale or use of fireworks is prohibited are declared contraband and subject to confiscation.

(2) It is declared illegal to ship into any municipality or county of this state for purposes of possession for sale at retail or to sell any fireworks where such municipality or county has declared that the sale or possession of such fireworks is an illegal act by the appropriate ordinance or law; provided, that in counties with a population of not less than fifty-eight thousand seventy-five (58,075) nor more than fifty-eight thousand one hundred seventy-five (58,175), according to the 1980 federal census or any subsequent federal census, the sale and possession of fireworks in accordance with this chapter is lawful within such county and any incorporated municipality within that

county unless either the governing body of the county, for the unincorporated areas of the county, or the governing bodies of the respective municipalities within such county, for the areas under their jurisdiction, act by a majority vote of the respective bodies to prohibit such sales and possession; and provided further, that the respective governing bodies may act, or may rescind their previous actions, at any time by a majority vote. The state fire marshal or the fire marshal's designated representatives may inspect the location for each permit before a permit is issued to determine if the location meets the requirements of this chapter and reasonable safety standards for the storage and sale of fireworks. The exact mailing address and exact address where fireworks are to be sold must be stated on each application and permit. Inspection is not required for renewal of permits at the same location to be operated by the same owner, unless there has occurred substantial structural use or environmental changes.

(c)(1) The state fire marshal may, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, revoke any permit issued under this chapter upon evidence that the holder has violated any provisions of this chapter. Before any permit is revoked, the state fire marshal shall give notice of the state fire marshal's intention to do so, by registered mail, or personal service to the holder of such permit. The notice shall inform the permit holder of the holder's right to a hearing. The state fire marshal shall conduct an appropriate contested case hearing concerning the action regarding permit revocation, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(2) If the permit revoked is for a business located in this state, notice of the revocation order must be supplied to the county clerk of the county in which the permit holder's business is located.

(d) The state fire marshal, in the fire marshal's discretion, may refuse to issue another permit to the holder of a permit that has been cancelled or revoked for cause for a period not to exceed three (3) years.

68-104-106. Privilege licenses not replaced by permit-Issuance requirements.

The issuance of the permits required in this chapter does not replace or relieve any person of state, county or municipal privilege licenses as provided by law. Before the issuance of any state and county licenses, the county clerk shall require each applicant for a fireworks license to exhibit a permit or furnish other definite and satisfactory evidence that a proper permit has been issued to the applicant by the state fire marshal and that the permit is current and valid.

68-104-108. Permissible fireworks.

It is unlawful for any individual, firm, partnership or corporation to possess, sell or use within this state, or ship into this state, except as provided in this chapter, any pyrotechnics commonly known as fireworks, other than the following permissible items:

- (1) Those items classified as D.O.T. Class C common fireworks; or
- (2) Those items that comply with the construction, chemical composition and labeling regulations promulgated by the United States consumer product safety commission and permitted for use by the general public under its regulations.

68-104-109. Conditions for sale and use of permissible articles.

No permissible articles of common fireworks defined in § 68-104-108 shall be sold, offered for sale, or possessed within this state, or used, in this state, except as provided in § 68-104-211, unless it is properly named to conform to the nomenclature of § 68-104-108, and unless it is certified as common fireworks on all shipping cases and by imprinting on the article or retail container, "D.O.T. Class C common fireworks," such imprint to be of sufficient size and so positioned as to be readily recognized by law enforcement authorities and the general public.

68-104-110. Retail sale of permissible items-Exception to definition of "fireworks."

Permissible items of fireworks, as provided for in § 68-104-108, may be sold by a retailer or a seasonal retailer, except that fireworks does not include toy pistols, toy canes, toy guns, or other devices in which paper caps containing twenty-five one-hundredths (0.25) grains or less of explosive compounds are used; provided, they are so constructed that the hand cannot come in contact with the cap when in place for exploding, and toy paper pistol caps which contain less than twenty-five one-hundredths (0.25) grains of explosive compounds, cone, bottle, tube, and other type serpentine pop-off novelties, model rockets, wire sparklers containing not over one hundred (100) grams of composition per item (sparklers containing any chlorate or perchlorate salts may not exceed five (5) grams of composition per item), emergency flares, matches, trick matches and cigarette loads, the sale and use of which shall be permitted at all times.

68-104-111. Storage, location and display of fireworks-Protection of fuses.

(a) Placing, storing, locating or displaying of fireworks in any window where the sun may shine through glass onto the fireworks so displayed or to permit the presence of lighted cigars, cigarettes, or pipes, within ten feet (10') of where the fireworks are offered for sale is declared unlawful and prohibited. At all places where fireworks are stored or sold, there must be posted signs with the words "Fireworks -- No smoking" in letters not less than four inches (4") high. No fireworks shall be sold at retail at any location where paints, oils or varnishes are for sale or use, unless such paints, oils or varnishes are kept in their original consumer containers, nor where resin, turpentine, gasoline or any other flammable substance is stored or sold, if the storage creates an undue hazard to any person or property.

(b) All firework devices that are readily accessible to handling by consumers or purchasers shall have their fuses protected in such a manner as to protect against accidental ignition of an item by spark, cigarette ash or other ignition source. Safety-type thread-wrapped and coated fuses shall be exempt from this provision.

68-104-112. Unlawful acts in the sale and handling of fireworks.

(a)(1) To purchase any Class C common fireworks, a person must be at least sixteen (16) years of age. Any person sixteen (16) or seventeen (17) years of age who wishes to purchase Class C common fireworks must provide proof of age to the retailer or seasonal retailer by presenting a state-issued photo identification or be accompanied by an adult. It is unlawful to offer for retail sale or to sell any Class C common fireworks to any person under sixteen (16) years of age or to any intoxicated or irresponsible person.

(2) It is unlawful to explode or ignite fireworks within six hundred feet (600') of any church, hospital, asylum, public school or within two hundred feet (200') of where fireworks are stored, sold or offered for sale.

(3) No person shall ignite or discharge any permissible articles of fireworks within or throw any permissible articles of fireworks from a motor vehicle while within, nor shall any person place or throw any ignited article of fireworks into or at a motor vehicle, or at or near any person or group of people.

(4) (A) It is unlawful for any individual, firm, partnership or corporation to sell at retail any Class C common fireworks within any county of this state having a population greater than two hundred thousand (200,000), according to the 1980 federal census or any subsequent federal census, except in municipalities within such counties with a population of not less than six hundred (600) nor more than six hundred twenty (620), according to such census, that permitted the sale of such fireworks before 1984; provided, that it is not unlawful for Class C common fireworks to continue to be sold by a person on a parcel of land that contains a fireworks stand, if:

(i) The parcel of property upon which such fireworks are sold is either partially located in a county having a population in excess of two hundred thousand (200,000) or more, according to the 1990 federal census or any subsequent federal census, or there is disagreement concerning whether such property is wholly contained within a county having a population in excess of two hundred thousand (200,000) or more, according to the 1990 federal census or any subsequent federal census; and

(ii) Fireworks have been sold annually at such stand for a period of at least forty-five (45) years.

(B) If, on April 7, 1999, a retailer, as defined by § 68-104-101(6), is located in a county that has a population of less than two hundred thousand (200,000), and if such county subsequently increases in population to the extent that a federal census establishes that it has a population of more than two hundred thousand (200,000), then such retailer or its assignees and successors may continue to sell D.O.T. Class C common fireworks at retail at the location specified in the retailer's permit. If, according to the 1990 federal census, a seasonal retailer as defined by § 68-104-101, is located in a county that has a population of less than two hundred thousand (200,000), and if such county subsequently increases in population to more than two hundred thousand (200,000), according to a subsequent federal census, then such seasonal retailers or their respective assignees and successors may continue to sell DOT Class C common fireworks at retail.

(b)(1) All items of fireworks that exceed the limits of D.O.T. Class C common fireworks as to explosive composition, such items being commonly referred to as "illegal ground salutes" designed to produce an audible effect, are expressly prohibited from shipment into, manufacture, possession, sale or use within this state for any purpose. This subdivision (b)(1) shall not affect display fireworks authorized by this chapter.

(2) A violation of subdivision (b)(1) for a second or subsequent offense is a Class E felony.

(c) Notwithstanding any other provision of law to the contrary, it shall be lawful for any individual, firm, partnership or corporation to sell at retail any D.O.T. Class C common fireworks, as defined in § 68-104-101, within the city of East Ridge. This part shall apply to the sale of fireworks in such city.

68-104-113. Exceptions to application.

Nothing in this chapter shall be construed as applying to the manufacture, storage, sale or use of signals necessary for the safe operation of railroads or other classes of public or private transportation or of illuminating devices for photographic use, nor as applying to the military or naval forces of the United States, or of this state or to peace officers, nor as prohibiting the sale or use of blank cartridges for ceremonial, theatrical, or athletic events, nor as applying to the transportation, sale or use of fireworks solely for agricultural purposes; provided, that the purchaser first secures a written permit to purchase and use fireworks for agricultural purposes only from the state fire marshal, after approval of the county agricultural agent of the county in which the fireworks are to be used, and the fireworks must at all times be kept in possession of the farmer to whom the permit is issued. Such permits and fireworks shall not be transferable. Items sold for agricultural purposes shall be limited to those items that are legal for retail sale and use within this state.

68-104-114. Penalties.

(a) Except as otherwise provided, a violation of this chapter is a Class C misdemeanor.

(b) Notwithstanding subsection (a), a violation of § 68-104-112(a)(1) is a Class C misdemeanor punishable by a fine to the retailer or seasonal retailer of up to one hundred dollars (\$100) for the first offense, a fine of up to two hundred fifty dollars (\$250) for the second offense, and a fine of up to five hundred dollars (\$500) for subsequent offenses. Any municipality may adopt § 68-104-112(a)(1) by reference or substantial duplication as an ordinance violation.

68-104-115. Seizure and destruction of fireworks.

(a) The state fire marshal shall seize as contraband any fireworks, other than Class C common fireworks defined in § 68-104-108, or special fireworks for public displays as provided in § 68-104-211, that are sold, displayed, used or possessed in violation of this chapter. The fire marshal is authorized to destroy fireworks so seized.

(b) Before any seized fireworks may be destroyed:

(1) If the owner of the seized fireworks is known, the state fire marshal shall give notice by registered mail or personal service to the owner of the state fire marshal's intention to destroy the seized materials. The notice shall inform the owner of the owner's right to a hearing. The state fire marshal shall conduct an appropriate contested case hearing concerning the destruction of fireworks in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(2) If the identity of the owner of any seized fireworks is not known to the state fire marshal, the fire marshal shall cause to be published, in a newspaper of general circulation in the county in which the seizure was made, notice of the seizure, and of the state fire marshal's intention to destroy the fireworks. The notice shall be published once each week for three (3) consecutive weeks. If no person claims ownership of the fireworks within ten (10) days of the date of the last publication, the state fire marshal may proceed to destroy the fireworks. If the owner does claim the fireworks within the time above specified, a hearing as set out in subdivision (b)(1) shall be held.

68-104-116. Private acts and municipal ordinances unaffected.

This chapter shall not affect the validity of any private act, nor any city ordinance further prohibiting or restricting the sale or use of fireworks; provided, that in counties with a population of not less than fifty-eight thousand seventy-five (58,075) nor more than fifty-eight thousand one hundred seventy-five (58,175), according to the 1980 federal census or any subsequent federal census, § 68-104-105 shall control.