

REFERENCE TITLE: consumer fireworks; novelties; sales

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2258

Introduced by
Representatives Biggs: Ableser, Quelland

AN ACT

AMENDING SECTIONS 36-1601, 36-1602, 36-1605 AND 36-1606, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 13, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 36-1609 AND 36-1610; AMENDING SECTION 41-2163, ARIZONA REVISED STATUTES; RELATING TO THE SALE OF CONSUMER FIREWORKS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-1601, Arizona Revised Statutes, is amended to
3 read:

4 36-1601. Definitions

5 In this article, unless the context otherwise requires:

6 1. "CONSUMER FIREWORKS" MEANS SMALL FIREWORK DEVICES THAT CONTAIN
7 RESTRICTED AMOUNTS OF PYROTECHNIC COMPOSITION DESIGNED PRIMARILY TO PRODUCE
8 VISIBLE OR AUDIBLE EFFECT BY COMBUSTION AND THAT COMPLY WITH THE
9 CONSTRUCTION, CHEMICAL COMPOSITION AND LABELING REGULATIONS PRESCRIBED IN 49
10 CODE OF FEDERAL REGULATIONS PART 172 AND REGULATIONS OF THE UNITED STATES
11 CONSUMER PRODUCT SAFETY COMMISSION AS PRESCRIBED IN 16 CODE OF FEDERAL
12 REGULATIONS PARTS 1500 AND 1507.

13 ~~1.~~ 2. "Fireworks":

14 (a) Means any combustible or explosive composition, substance or
15 combination of substances, or any article prepared for the purpose of
16 producing a visible or audible effect by combustion, explosion, deflagration
17 or detonation, and toy cannons in which explosives are used, the type of
18 balloon ~~which~~ THAT requires fire underneath to propel it, firecrackers,
19 torpedoes, skyrockets, roman candles, daygo bombs, sparklers or other
20 fireworks of like construction, fireworks containing any explosive or
21 combustible compound, and any tablet or other device containing an explosive
22 substance.

23 (b) Does not include:

24 (i) Toy pistols, toy canes, toy guns or other devices in which paper
25 caps containing not more than twenty-five hundredths grains of explosive
26 compound are used if constructed so that the hand cannot come in contact with
27 the cap when in place for the explosion.

28 (ii) Toy pistol paper caps that contain less than twenty-hundredths
29 grains of explosive mixture, or fixed ammunition or primers therefor.

30 (iii) Federally deregulated novelty items THAT ARE known as snappers,
31 snap caps, party poppers or glow worms AND that contain less than twenty-five
32 hundredths grains of explosive compound.

33 (iv) CONSUMER FIREWORKS.

34 (v) NOVELTIES.

35 ~~2.~~ 3. "Governing body" means THE board of supervisors of a county as
36 to the area within the county but without the corporate limits of an
37 incorporated city or town, ~~and~~ and means THE governing body of an incorporated
38 city or town as to the area within its corporate limits.

39 4. "NOVELTIES" MEANS SMALL DEVICES THAT CONTAIN LIMITED AMOUNTS OF
40 PYROTECHNIC OR EXPLOSIVE COMPOSITION THAT PRODUCE A VISIBLE OR AUDIBLE EFFECT
41 AND THAT ARE NOT CLASSIFIED AS CONSUMER FIREWORKS.

42 ~~3.~~ 5. "Person" includes AN individual, partnership, firm or
43 corporation.

1 Sec. 5. Title 36, chapter 13, article 1, Arizona Revised Statutes, is
2 amended by adding sections 36-1609 and 36-1610, to read:

3 36-1609. Regulation of the sale of consumer fireworks and
4 novelties; license; fee; rules; licensee
5 requirements; suspension or revocation of license

6 A. A PERSON SHALL OBTAIN A CONSUMER FIREWORKS LICENSE FROM THE STATE
7 FIRE MARSHAL IN ORDER TO SELL, OFFER TO SELL OR EXPOSE FOR SALE A CONSUMER
8 FIREWORK OR NOVELTY.

9 B. THE STATE FIRE MARSHAL SHALL ISSUE THE FOLLOWING TYPES OF CONSUMER
10 FIREWORKS LICENSES:

- 11 1. A DISTRIBUTOR'S LICENSE.
- 12 2. A JOBBER'S LICENSE.
- 13 3. A RETAILER'S LICENSE.

14 C. THE FEE FOR EACH TYPE OF LICENSE IS AS FOLLOWS:

- 15 1. FIVE HUNDRED DOLLARS FOR A DISTRIBUTOR'S LICENSE.
- 16 2. TWO HUNDRED DOLLARS FOR A JOBBER'S LICENSE.
- 17 3. TWENTY-FIVE DOLLARS FOR A RETAILER'S LICENSE.

18 D. THE STATE FIRE MARSHAL SHALL ISSUE A CONSUMER FIREWORKS LICENSE AT
19 ANY TIME OF THE YEAR TO A PERSON WHO PROPERLY COMPLETES AN APPLICATION FOR A
20 CONSUMER FIREWORKS LICENSE AND WHO PAYS THE PRESCRIBED FEE. A CONSUMER
21 FIREWORKS LICENSE IS VALID ONLY FOR THE CALENDAR YEAR IN WHICH IT IS ISSUED.
22 IF THE APPLICATION IS FOR A RETAILER'S LICENSE, THE PERSON SHALL DESCRIBE THE
23 LOCATION OF THE RETAIL ESTABLISHMENT WITH REASONABLE SPECIFICITY, INCLUDING A
24 STREET ADDRESS. THE STATE FIRE MARSHAL MAY DENY AN APPLICATION FOR A
25 CONSUMER FIREWORKS LICENSE IF A PERSON HAS PREVIOUSLY FAILED TO COMPLY WITH A
26 FEDERAL OR STATE STATUTE REGULATING FIREWORKS, CONSUMER FIREWORKS OR
27 NOVELTIES OR A RULE THAT IS ADOPTED BY THE STATE FIRE MARSHAL OR HAS HAD A
28 PREVIOUSLY OBTAINED CONSUMER FIREWORKS LICENSE SUSPENDED OR REVOKED.

29 E. THE STATE FIRE MARSHAL SHALL ADOPT RULES PURSUANT TO TITLE 41,
30 CHAPTER 6 TO CARRY OUT THIS ARTICLE, INCLUDING A RULE TO ADOPT A CODE FOR THE
31 MANUFACTURE, TRANSPORTATION AND STORAGE OF FIREWORKS THAT IS SIMILAR TO A
32 CODE THAT IS ISSUED BY A NATIONALLY RECOGNIZED ORGANIZATION SUCH AS THE
33 NATIONAL FIRE PROTECTION ASSOCIATION. A CONSUMER FIREWORKS LICENSEE SHALL
34 COMPLY WITH THE ADOPTED CODE.

35 F. A CONSUMER FIREWORKS LICENSEE SHALL DISPLAY AT ALL TIMES THE
36 LICENSE IN A CONSPICUOUS PLACE AT THE PLACE OF BUSINESS. A CONSUMER
37 FIREWORKS LICENSEE SHALL MAKE AVAILABLE FOR INSPECTION ALL INVOICES FOR THE
38 SALE OR PURCHASE OF CONSUMER FIREWORKS OR NOVELTIES. EACH INVOICE MUST BEAR
39 THE IDENTIFYING NUMBER THAT IS ISSUED BY THE STATE FIRE MARSHAL. IF THE
40 LICENSEE PURCHASED THE CONSUMER FIREWORK OR NOVELTY FROM A PERSON WHO IS NOT
41 DOMICILED IN THIS STATE, THE INVOICE MUST INDICATE THE POINT OF ORIGIN OF THE
42 CONSUMER FIREWORK OR NOVELTY THAT IS IN THE POSSESSION OF THE LICENSEE.

43 G. A CONSUMER FIREWORKS LICENSEE WHO HOLDS A RETAILER'S LICENSE MUST
44 HAVE A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE PRESENT AT THE RETAIL

1 ESTABLISHMENT TO SUPERVISE THE ESTABLISHMENT. THE STATE FIRE MARSHAL MAY
2 IMMEDIATELY REVOKE THE LICENSE OF A LICENSEE WHO VIOLATES THIS SUBSECTION.

3 H. A CONSUMER FIREWORKS LICENSEE WHO HOLDS A RETAILER'S LICENSE MAY
4 RELOCATE THE RETAIL ESTABLISHMENT ONCE IN A CALENDAR YEAR IF THE RELOCATED
5 RETAIL ESTABLISHMENT IS IN THE INCORPORATED CITY OR TOWN OF THE ORIGINAL
6 RETAIL ESTABLISHMENT. A PERSON SHALL OBTAIN A NEW RETAIL LICENSE FOR ALL
7 OTHER RELOCATIONS OF THE RETAIL ESTABLISHMENT, WHICH MUST BE OBTAINED BEFORE
8 THE RELOCATION OCCURS. THE CONSUMER FIREWORKS LICENSEE SHALL IMMEDIATELY
9 NOTIFY THE STATE FIRE MARSHAL IF THERE IS ANY CHANGE IN THE PLACE OF BUSINESS
10 USED FOR THE SALE OF CONSUMER FIREWORKS OR NOVELTIES THAT IS DIFFERENT THAN
11 THE LOCATION GIVEN ON THE APPLICATION. A LICENSEE MAY NOTIFY THE STATE FIRE
12 MARSHAL OF A CHANGE OF BUSINESS LOCATION PERSONALLY, BY REGULAR MAIL OR BY
13 FAX TRANSMISSION.

14 I. THE STATE FIRE MARSHAL SHALL SUSPEND OR REVOKE A LICENSE IF THE
15 LICENSEE FAILS TO COMPLY WITH THIS ARTICLE AND ANY RULE ADOPTED BY THE STATE
16 FIRE MARSHAL. PROCEEDINGS TO SUSPEND OR REVOKE A LICENSE SHALL BE HELD
17 PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10. THE STATE FIRE MARSHAL SHALL
18 IMMEDIATELY REVOKE A LICENSE IF THE STATE FIRE MARSHAL DISCOVERS THE LICENSEE
19 IS SELLING NONPERMISSIBLE FIREWORKS. THE STATE FIRE MARSHAL SHALL CONFISCATE
20 THE NONPERMISSIBLE FIREWORKS AS EVIDENCE AND MAY SELL OR DISPOSE OF THESE
21 FIREARMS PURSUANT TO A RULE THAT IS ADOPTED BY THE STATE FIRE MARSHAL. IF A
22 LICENSEE'S LICENSE IS REVOKED FOR SELLING NONPERMISSIBLE FIREWORKS, THE
23 PERSON IS NOT ELIGIBLE TO OBTAIN A CONSUMER FIREWORKS LICENSE FOR A FIVE YEAR
24 PERIOD.

25 J. THE STATE FIRE MARSHAL SHALL OBTAIN A CEASE AND DESIST ORDER
26 AGAINST ANY PERSON WHO SELLS PERMISSIBLE FIREWORKS WITHOUT A CONSUMER
27 FIREWORKS LICENSE. THE STATE FIRE MARSHAL SHALL CONFISCATE THE FIREWORKS AS
28 EVIDENCE AND MAY SELL OR DISPOSE OF THOSE FIREWORKS PURSUANT TO A RULE THAT
29 IS ADOPTED BY THE STATE FIRE MARSHAL. A PERSON WHO IS SUBJECT TO A CEASE AND
30 DESIST ORDER PURSUANT TO THIS SUBSECTION IS NOT ELIGIBLE TO OBTAIN A CONSUMER
31 FIREWORKS LICENSE FOR A TWO YEAR PERIOD.

32 K. THE STATE FIRE MARSHAL SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146
33 AND 35-147, ALL FEES COLLECTED FOR THE ISSUANCE OF CONSUMER FIREWORKS
34 LICENSES IN THE CONSUMER FIREWORKS AND NOVELTIES FUND ESTABLISHED BY SECTION
35 36-1610.

36 36-1610. Consumer fireworks and novelties fund; purpose

37 A. THE CONSUMER FIREWORKS AND NOVELTIES FUND IS ESTABLISHED CONSISTING
38 OF MONIES DEPOSITED PURSUANT TO SECTION 36-1609. THE STATE FIRE MARSHAL
39 SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE SUBJECT TO LEGISLATIVE
40 APPROPRIATION. THE STATE FIRE MARSHAL SHALL USE MONIES IN THE FUND TO
41 ADMINISTER SECTION 36-1609 AND TO ENFORCE THE REGULATION OF THE SALE OF
42 CONSUMER FIREWORKS AND NOVELTIES PURSUANT TO SECTION 36-1609.

43 B. ON NOTICE FROM THE STATE FIRE MARSHAL, THE STATE TREASURER SHALL
44 INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND
45 MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND.

1 Sec. 6. Section 41-2163, Arizona Revised Statutes, is amended to read:
2 41-2163. Powers and duties: arson investigators

3 A. The state fire marshal shall, under the authority and direction of
4 the director:

5 1. Assist in the enforcement of state laws and ordinances of cities
6 and counties relating to fire prevention and fire protection.

7 2. Enforce compliance with the fire code adopted by the state fire
8 safety committee throughout the state except in any city having a population
9 of one hundred thousand persons or more ~~which~~ THAT has in effect a nationally
10 recognized fire code, whether modified or unmodified, and ~~which~~ THAT has
11 enacted an ordinance to assume such jurisdiction from the state fire safety
12 committee. Such cities do not have authority that supersedes and are not
13 exempt from the state fire safety committee's established fire code in state
14 or county owned buildings and public schools wherever located throughout the
15 state.

16 3. Cooperate and coordinate with other state agencies in the
17 administration of the state fire code.

18 4. Establish a regularly scheduled fire safety inspection program for
19 all state and county owned public buildings and all public and private school
20 buildings wherever located throughout the state, except for private school
21 buildings in cities with a population of one hundred thousand or more persons
22 ~~according to the last decennial census.~~

23 5. Inspect as necessary all other occupancies located throughout this
24 state, except family dwellings having fewer than five residential dwelling
25 units and occupancies located in cities with a population of one hundred
26 thousand or more persons ~~according to the last decennial census.~~

27 6. At the written request of county or municipal authorities, make and
28 provide to them a written report of the examination made by the state fire
29 marshal of any fire within their jurisdiction.

30 7. Compile, update as necessary and make available to the public a
31 fully indexed and cross-referenced list of all rules adopted by state
32 agencies and departments and agencies and departments of political
33 subdivisions of this state relating to the control of all hazardous materials
34 as defined in section 28-5201 and all federal regulations relating to the
35 control of hazardous materials as defined in section 28-5201 for which there
36 is no state regulation.

37 8. Establish and maintain a library of all rules and regulations
38 identified in the index required by paragraph 7 of this subsection and
39 support the regulated industry's request for information through research or
40 referral to the agency adopting the specific rule for technical information
41 or other assistance as circumstances dictate.

42 9. Administer the arson detection reward fund established by section
43 41-2167.

44 10. REGULATE THE SALE OF CONSUMER FIREWORKS AND NOVELTIES PURSUANT TO
45 TITLE 36, CHAPTER 13, ARTICLE 1.

1 B. The state fire marshal and this state are not liable for damages
2 caused by information ~~which~~ THAT is omitted from the rules and federal
3 regulations compiled pursuant to subsection A, paragraph 7 of this section.

4 C. All plans and specifications for new construction, remodeling,
5 alterations and additions for state, county and public school buildings and
6 grounds shall be submitted to the director for review and approval by the
7 state fire marshal ~~prior to~~ BEFORE construction. The plans and
8 specifications shall be reviewed and approved or disapproved within sixty
9 days of submission. No construction shall commence until the plans have been
10 approved and a permit has been issued.

11 D. The state fire marshal may, under the authority and direction of
12 the director:

13 1. Conduct or participate in investigations of causes, origins and
14 circumstances of fires, including cases of possible arson.

15 2. Prescribe a uniform system of reporting fires and their causes and
16 effects.

17 3. Provide and coordinate training in ~~fire-fighting~~ FIREFIGHTING and
18 fire prevention and cooperate with educational institutions to provide and
19 further such training.

20 4. Impound necessary evidence in conjunction with investigations of
21 causes, origins and circumstances of fires, in the event that such evidence
22 might be lost, destroyed or otherwise altered if not so impounded.

23 5. Employ specialized testing services to evaluate evidence and
24 conditions involved in fire investigations.

25 6. Designate certain members of the state fire marshal's staff as
26 arson investigators.

27 E. The primary duty of investigators designated pursuant to subsection
28 D, paragraph 6 of this section is the investigation, detection and
29 apprehension of persons who have violated or are suspected of violating any
30 provision of title 13, chapter 17. A person designated as an arson
31 investigator, while engaged in arson investigation in this state, possesses
32 and may exercise law enforcement powers of peace officers of this state.
33 This subsection does not grant any powers of peace officers of this state to
34 arson investigators other than those necessary for the investigation,
35 detection and apprehension authority granted by this subsection. Any
36 individual designated as an arson investigator shall have law enforcement
37 training under section 41-1822.

38 Sec. 7. Requirements for enactment; two-thirds vote

39 Pursuant to article IX, section 22, Constitution of Arizona, this act
40 is effective only on the affirmative vote of at least two-thirds of the
41 members of each house of the legislature and is effective immediately on the
42 signature of the governor or, if the governor vetoes this act, on the
43 subsequent affirmative vote of at least three-fourths of the members of each
44 house of the legislature.