

# RESOLUTION

Out of Order  
NO. 2011/05/01

To the HONORABLE MELVILLE BAILEY, Chairman, and Members of the Hawkins County Board of Commissioners in Regular Session, met this 23<sup>rd</sup> day of May, 2011

**RESOLUTION IN REF:**

**TO RATIFY HOUSE BILL 0207 AND SENATE BILL 0697, IDENTIFIED AS PRIVATE ACT NO. 5, FOR HAWKINS COUNTY FOLLOWING THE PASSAGE OF RESOLUTION NO. 2010/10/03 ON OCTOBER 25, 2010 REQUESTING THAT CHAPTER NO.617 OF THE PRIVATE ACTS OF 1947 BE REPEALED**

WHEREAS, Chapter No. 617 of the Private Acts of 1947, made it unlawful for any person, firm or corporation to possess, store, use, manufacture, transport, or sell pyrotechnics (fireworks) in Hawkins County. HB0207/SB0697 will replace the 1947 Private Act; and

WHEREAS, Pursuant to TCA 8-3-201 and 8-3-202, the local legislative body must send notice to the Secretary of State of its action by December 1 of the year of passage by the General Assembly; and

WHEREAS, this act shall have no effect unless it is approved by a two-thirds vote of the legislative body of Hawkins County. Its approval is to be proclaimed by the County Mayor and certified to the Tennessee Secretary of State; and

NOW THEREFORE BE IT RESOLVED that the Board of Commissioners of Hawkins County, Tennessee, assembled in Regular Session on the 23<sup>rd</sup> day of May, 2011 hereby ratify HB0207/SB0697 from the Tennessee General Assembly which repeals Chapter No. 617 of the Private Acts of 1947.

INTRODUCED BY: <u>Shane Bailey</u>	ACTION:	AYE	NAY	PASSED
SECONDED BY: _____	ROLL CALL	_____	_____	_____
DATE SUBMITTED: 05/17/2011	VOICE VOTE	_____	_____	_____
<u>A. Carroll Jenkins</u>	ABSENT	_____	_____	_____
COUNTY CLERK BY: <u>Crystal Price</u>				
COMMITTEE ACTION: _____				

CHAIRMAN: MELVILLE BAILEY

# RESOLUTION

Out of Order  
NO. 2011/05/02

To the HONORABLE MELVILLE BAILEY, Chairman, and Members of the Hawkins County Board of Commissioners in Regular Session, met this 23rd day of May, 2011

RESOLUTION IN REF:                   REGULATIONS REGARDING THE SALE AND/OR USE OF  
FIREWORKS IN HAWKINS COUNTY

WHEREAS, Resolutions No. 2010/10/03 and Out of Order No. 2011/05/01, passed by the Hawkins County Commission, addressed reintroducing the use of fireworks in Hawkins County as passed in Tennessee House Bill 0207 and Senate Bill 0697; and

WHEREAS, fireworks need to be handled responsibly and in accordance with the state laws and regulations of Tennessee; and

WHEREAS, to better protect the citizens of Hawkins County, Hawkins County wishes to adopt regulations governing the purchase and use of fireworks within Hawkins County;

NOW THEREFORE BE IT RESOLVED that the Board of County Commissioners of Hawkins County, Tennessee, assembled in Regular Session this 23<sup>rd</sup> day of May, 2011, hereby adopt the following regulations with regard to the sale and/or use of fireworks in Hawkins County:

1. The retail sale of fireworks shall be allowed from a permanent location and from temporary locations with proper permits and licensing from the State of Tennessee Fire Marshal Office, and through the County Clerk's Office of Hawkins County.
2. A permanent location shall be defined as commercial property with a permanent structure standing year round within Hawkins County indicated solely for the sell of fireworks as approved by the state Fire Marshal. Temporary "seasonal" locations shall be defined as any structure that is strictly for short-term use (tents), with pre established dates and times set forth by the State of Tennessee and meets all criteria set forth by the State of Tennessee and Hawkins County.
3. The EMA/Public Safety Committee of Hawkins County be charged with being the responsible committee in resolving issues or setting provisions regarding the sale, use, manufacture, and display of fireworks whether annual or seasonal, within Hawkins County.

- 4. Hawkins County hereby adopts all state laws, codes and regulations (TCA 68-104-101 thru 68-104-116 and TCA 68-104-210 thru 216) regarding the use and/or sell of fireworks in Hawkins County and hereby makes said laws, codes and regulations part of the Hawkins County Code regarding the use and sale of fireworks.**
- 5. The annual permit fee for each state approved permanent location conducting fireworks sales in Hawkins County shall be set at \$300.00 renewable annually. Seasonal locations shall be required to pay a permit fee of \$300.00 per each state approved location. Seasonal permits shall be issued and expire during the dates prescribed by the State Fire Marshal's Office outlining Seasonal sales dates by Tennessee Code.**
- 6. The regulations established for the sell/use of fireworks in Hawkins County may vary by incorporated municipality. Unauthorized use of fireworks in banned areas can result in a Class C misdemeanor under Tennessee law, for which the defendant will face up to thirty days in jail in extreme cases. All unauthorized or banned fireworks found in possession within banned areas of Hawkins County shall be subject to seizure by local authorities. Any fees incurred by the local authorities, above and beyond the normal course of their duty, during said seizure shall be the responsibility of the violating party if said party is found guilty of any violation of this code.**
- 7. The sale of fireworks within Hawkins County will not be permitted in residential areas or in neighborhoods.**
- 8. The use of fireworks in Hawkins County shall be prohibited between the hours of 10:00 PM. and 10:00 a.m. Monday through Sunday, except when a special event permit has been issued by the Tennessee Department of Commerce and Insurance office. The use of fireworks shall not be permitted between the hours of 12:30 AM and 10:00 AM on July 5 and New Years Day. Any violation of this regulation would result in a fine of up to five hundred dollars (\$500) per occurrence.**
- 9. A retailer's failure to abide by established guidelines can result in forfeiture of local license and can be subject to fines. Said failure can also result in the seizure of all banned, unlicensed fireworks. Any fees incurred by the local authorities, above and beyond the normal course of their duty, during said seizure shall be the responsibility of the violating party if said party is found guilty of any violation of this code.**

**This resolution shall take effect from and after its passage. All resolutions in conflict herewith be and the same rescinded insofar as such conflict exists.**

INTRODUCED BY: Shane Bailey

ACTION:

AYE NAY PASSED

SECONDED BY: \_\_\_\_\_

ROLL CALL

\_\_\_\_\_

DATE SUBMITTED: 05/17/2011

VOICE VOTE

\_\_\_\_\_

A. Carroll Jenkins

COUNTY CLERK

ABSENT

\_\_\_\_\_

BY: Crystal Price

COMMITTEE ACTION: \_\_\_\_\_

CHAIRMAN: MELVILLE BAILEY

## Part 1

### **68-104-101. 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 all articles of fireworks that are classified as Class B explosives in the regulations of the United States department of transportation and includes all articles other than those classified as Class C; 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 the provisions of 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 the provisions of 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 the provisions of 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.

**68-104-107. [Transferred.]**

**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 § 68-104-107 [transferred], 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 (.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 (.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.

**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 § 68-104-107 [transferred], 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, the provisions of § 68-104-105 shall control.

## Tennessee Code Annotated 68-104-201 thru 68-104-216

### PART 2

#### **68-104-201. Purpose of part.**

The purpose of this part is to enact a self-funded licensing program for display fireworks, pyrotechnic, and flame effect exhibitors and a certification program for individuals conducting fireworks displays, proximate pyrotechnic displays, and flame effect displays. The purpose of these programs is to ensure a level of competence that promotes the safety of the viewing public, as well as the safety of fire service personnel, fireworks display operators and proximate pyrotechnic display operators, and employees, performers, and support personnel. It is not the purpose of this part to regulate DOT Class C common fireworks or consumer fireworks as described by NFPA standards.

#### **68-104-202. Part definitions.**

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

- (1) "Certified flame effect operator" means an individual who, by experience, training and examination recognized and approved by the state fire marshal, has demonstrated the necessary knowledge and ability to safely assemble, discharge and supervise flame effects in accordance with this part and NFPA 160;
- (2) "Certified outdoor display operator" means an individual who, by experience, training and examination recognized and approved by the state fire marshal, has demonstrated the necessary knowledge and ability to safely assemble, discharge and supervise outdoor displays of display fireworks in accordance with NFPA 1123;
- (3) "Certified proximate pyrotechnic operator" means an individual who, by experience, training and examination recognized and approved by the state fire marshal, has demonstrated the necessary knowledge and ability to safely assemble, discharge and supervise indoor pyrotechnics, indoor pyrotechnic materials used outdoors or proximate displays of 1.4G or 1.4S fireworks or pyrotechnics in accordance with NFPA 1126;
- (4) "Display fireworks" means those fireworks designed primarily to produce visible or audible effects by combustion, deflagration or detonation and that are classified as 1.3G fireworks or display fireworks in the regulations of the United States department of transportation (DOT) for transportation of explosive and other dangerous articles;

(5) “Event” means any function or gathering at which there will be a fireworks display, a pyrotechnic display, a flame effect display or any combination of these displays. If a function or gathering lasts more than one (1) day, each day is a separate event. “Event” does not include any function or gathering at which DOT Class C common fireworks, also known as 1.4G fireworks, will be used;

(6) “Fire marshal” means the state fire marshal;

(7) “Flame effect” means the combustion of an inflammable solid, liquid or gas to produce thermal, physical, visual or audible phenomena before an audience as defined by NFPA 160;

(8) “Flame effect display” means the use of flame effects before an audience as defined by NFPA 160;

(9) “Licensed exhibitor” means a sole proprietor, partnership, corporation, company, firm or other entity licensed under this part to perform or provide firework or pyrotechnic materials for outdoor fireworks displays, proximate pyrotechnic displays, flame effect displays or any combination of these displays;

(10) “NFPA” means the National Fire Protection Association;

(11) “NFPA 160” means the NFPA publication entitled, “NFPA 160: Standard for the Flame Effects Before an Audience,” 2001 edition or any subsequent edition that has been adopted by the state fire marshal by rule;

(12) “NFPA 1123” means the NFPA publication entitled “NFPA 1123: Code for Fireworks Display,” 2000 edition or any subsequent edition that has been adopted by the state fire marshal by rule;

(13) “NFPA 1124” means the NFPA publication entitled “NFPA 1124: Code for the Manufacture, Transportation, Storage, and Retail Sale of Fireworks and Pyrotechnic Articles,” 2000 edition or any subsequent edition that has been adopted by the state fire marshal by rule;

(14) “NFPA 1126” means the NFPA publication entitled “NFPA 1126: Standards for the Use of Pyrotechnics Before a Proximate Audience,” 2001 edition or a subsequent edition that has been adopted by the state fire marshal by rule;

(15) “Outdoor fireworks display” means a presentation of display fireworks for a public or private gathering as defined by NFPA 1123;

(16) “Proximate pyrotechnic display” means the use of pyrotechnic devices and materials, 1.4G or 1.4S fireworks or pyrotechnics, when any portion of the audience is closer than permitted by NFPA 1123, and subject to NFPA 1126 requirements;

(17) "Proximate pyrotechnics" means pyrotechnic devices for professional use only, used outdoors or indoors, that are similar to consumer fireworks in chemical composition and construction, but that are not intended for consumer use, and that are defined by NFPA 1126 as 1.4G or 1.4S fireworks or pyrotechnics; and

(18) "Sponsor" means any person or organization that contracts with a licensed exhibitor or certified operator to perform a fireworks display, proximate pyrotechnic display, flame effect display or any combination of these displays. With regard to a municipality, county or metropolitan government that sponsors a display, "sponsor" means a governmental entity in compliance with § 68-104-203(b).

**68-104-203. Licensed exhibitor — Application for permits — Requirements.**

(a) An individual or entity, other than a municipality, county, or metropolitan government, must be a licensed exhibitor to perform an outdoor fireworks display, an indoor or outdoor proximate pyrotechnic display or an indoor or outdoor display using flame effects. An individual or entity must be a licensed exhibitor to supply display fireworks, indoor or outdoor proximate pyrotechnics or flame effect materials for display purposes.

(b) A municipality, county or metropolitan government conducting an indoor or outdoor proximate pyrotechnic display or an indoor or outdoor display using flame effects, however, must apply for and obtain the permit required pursuant to § 68-104-212, and:

(1) Have a certified operator on site at the event supervising or discharging the display;

(2) Show proof of insurance in accordance with the limits of liability established in the Tennessee Governmental Tort Liability Act, compiled in title 29, chapter 20, or proof of adequate self-insurance; and

(3) Have the pyrotechnic materials supplied or purchased from a licensed exhibitor.

**68-104-204. Applicant requirements.**

To receive an exhibitor's license, an applicant shall:

(1) Make application to the fire marshal on a form prescribed by the fire marshal. The application must be accompanied by the required fee. An individual seeking a license as a sole proprietor or on behalf of a business entity must be at least twenty-one (21) years of age and not have been convicted of or pleaded guilty or nolo contendere to any state or federal felony. In the case of a business entity seeking a license, no officer or member of its governing board may have been convicted of or pleaded guilty or nolo contendere to any state or federal felony; and

(2) Submit evidence satisfactory to the fire marshal that the applicant has and will

continue in force a general liability insurance policy, on an event, multiple event or continuous basis, to cover its potential liability for bodily injury and property damage in the minimum amount of one million dollars (\$1,000,000) during all fireworks, pyrotechnic and flame effect displays for the use and benefit of any person who may be injured or aggrieved. The certificate of insurance or other evidence must be issued by an insurer authorized to do business in this state. If the insurance policy ceases to be in effect, the exhibitor's license becomes invalid. This subdivision (2) does not require employees or certified operators to maintain this insurance coverage.

**68-104-205. Issuance of license.**

If an applicant complies with the requirements of this part and the rules of the fire marshal, the fire marshal shall issue the license within sixty (60) days of receiving the application. The term of the license is one (1) year from the date of issuance. Each license issued shall contain a distinct number assigned to the particular exhibitor. The fire marshal shall maintain a list of all licensed exhibitors. In this list next to the exhibitor's name, the fire marshal shall insert the period of licensure and the exhibitor's license number. The list of licensed exhibitors shall be posted on the department's web site.

**68-104-206. Renewal of license.**

A license holder with an unexpired license may apply for a new license at any time before the license expires. An exhibitor whose license has been expired for ninety (90) or fewer days may renew the license and have it retroactive to the date the old license expired by applying and paying a fee equal to one and one-half (1½) times the normal fee. This section does not prevent the fire marshal from denying a new license, if the applicant does not comply with this part or rules of the fire marshal.

**68-104-207. Denial, suspension, revocation or refusal to renew license or certification.**

(a) The fire marshal may refuse to grant, or may suspend, revoke or refuse to renew any license or certification held under the provisions of this part, and may assess a civil penalty not exceeding two thousand five hundred dollars (\$2,500) for a first violation of the provisions of this part and not exceeding ten thousand dollars (\$10,000) for a second or subsequent violation of the provisions of this part; provided, however, that the fire marshal may assess a civil penalty up to ten thousand dollars (\$10,000) for a first violation of the provisions of this part that is willful and egregious and in the fire marshal's discretion warrants such a penalty.

(b) The provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, shall govern all matters and procedures respecting the hearing and judicial review of any contested case arising under this part.

(c) If an exhibitor's license is suspended or revoked, then the exhibitor shall cease performing displays and distributing display fireworks immediately. If an exhibitor's license is revoked for any reason, then the exhibitor is prohibited from applying for a new license for one (1) year from the date of revocation. Upon a finding that the exhibitor's federal license, if applicable, has been revoked, the fire marshal shall revoke the exhibitor's state license. An exhibitor's license that has been revoked solely for failure to have the required insurance may be reinstated upon proof by the exhibitor that the required insurance has been obtained.

**68-104-208. Program of certification.**

(a) The fire marshal shall establish a program of certification for outdoor fireworks display operators, proximate pyrotechnic display operators and flame effect display operators. To receive certification, an individual must apply for certification to the fire marshal on a form to be prescribed by the fire marshal, must be at least twenty-one (21) years of age, must not have been convicted of or pleaded guilty or nolo contendere to any state or federal felony, and must show that the applicant has worked under competent supervision on at least three (3) displays in each area in which certification is desired in the three (3) years immediately preceding the application. In addition, an applicant must meet the following requirements for the areas in which the applicant desires certification:

(1) To be certified as an outdoor fireworks display operator, the individual must pass a written examination that tests outdoor display operator knowledge, approved by and conducted under the auspices of the fire marshal, and pay a certification fee not to exceed one hundred fifty dollars (\$150) to be set by rule by the fire marshal;

(2) To be certified as a proximate pyrotechnic display operator, the individual must pass a written examination that tests pyrotechnic special effects operator knowledge, approved by and conducted under the auspices of the fire marshal, and pay a certification fee not to exceed one hundred fifty dollars (\$150) to be set by rule by the fire marshal; and

(3) To be certified as a flame effect display operator, the individual must pass a written examination that tests flame effect operator knowledge, approved by and conducted under the auspices of the fire marshal, and pay a certification fee not to exceed one hundred fifty dollars (\$150) to be set by rule by the fire marshal.

(b) If an applicant applies for more than one certification, the applicant may take the test for any or all certifications and pay a maximum certification fee of three hundred dollars (\$300).

(c) The fire marshal shall establish the scope and type of examinations required by this section, and may require applicants to take a test created by a nationally recognized pyrotechnic association. The fire marshal may administer the examination or may enter into an agreement with a testing service or organization. The tests may be administered at a specific location or time. The fire marshal may set by rule and collect a reasonable nonrefundable fee calculated to cover the costs of administering the test. Written tests may be supplemented by practical tests or demonstrations deemed necessary to determine the applicant's skill and ability. The content, type, frequency, and location of the tests shall be designated by the fire marshal.

(d) (1) An operator certification or renewal expires two (2) years after the date of approval or reissuance. To renew the certification, an individual must show to the satisfaction of the fire marshal that the individual has attended at least six (6) hours of continuing education training meeting the approval of the fire marshal in the areas of certification desired during the two-year certification period and pay the applicable certification fees.

(2) Notwithstanding subdivision (d)(1), in lieu of sitting for continuing education credit, an operator may elect to retake the appropriate examination for the certification desired; provided, however, that the operator must earn a passing score on the appropriate examination for the certification desired. The provisions of subsection (a) requiring the submission of three (3) verification of experience forms shall be waived if the certification is renewed via appropriate re-examination in lieu of continuing education training prior to the expiration date for the certification.

**68-104-209. Operators from other states — Reciprocity.**

The fire marshal, upon application by a certified operator, or equivalent, from another state, may allow the operator to perform displays in this state without submitting to the written examination, if the fire marshal determines that the other state's laws allow certified operators from Tennessee to perform displays in that state and the other state's laws set standards for operators substantially equivalent to those in this state. All other applicable certification provisions apply to the out-of-state operator, and applicants for whom the written examination is waived must comply with all other requirements, including continuing education requirements.

**68-104-210. Unlawful practices — Violations — Adopting section by reference — Exceptions.**

(a) It is unlawful for:

(1) Except with regard to a municipality, county or metropolitan government that conducts a display, so long as the governmental entity is in compliance with § 68-104-203(b), anyone other than a certified operator to perform an outdoor display using display fireworks, indoor display or proximate pyrotechnics display that are defined as 1.4G or 1.4S fireworks or pyrotechnics in the regulations of the United States DOT for transportation of explosive and other dangerous articles, or indoor or outdoor display using flame effects;

(2) Any person or entity to perform an outdoor display using display fireworks, an indoor display or proximate pyrotechnics display using 1.4G or 1.4S fireworks or pyrotechnics, or an indoor or outdoor display using flame effects without an appropriately certified operator on the scene of the display to supervise during the preparation for the display, during the display, and immediately after the display until the site is released;

(3) Any exhibitor or certified operator to conduct or perform an outdoor fireworks display except in accordance with NFPA 1123;

(4) Any exhibitor or certified operator to conduct or perform a proximate pyrotechnic display except in accordance with NFPA 1126; or

(5) Any exhibitor or certified operator to conduct or perform a flame effect display except in accordance with NFPA 160.

(b) A violation of subsection (a) is a Class B misdemeanor.

(c) Notwithstanding any provision of the law to the contrary, any municipality may adopt the provisions of subsection (a) by reference or substantial duplication as an ordinance violation.

(d) The provisions of subsection (a) do not apply to individuals or organizations employing DOT Class C common fireworks for their personal or display use.

**68-104-211. Public displays — Permits — Fire prevention.**

(a) (1) Items of fireworks that are to be used for public display only and that are otherwise prohibited for sale or use within this state include display shells designed to be fired from mortars and display set pieces defined as 1.3G fireworks or display fireworks in the regulations of the United States DOT for transportation of explosive and other dangerous articles.

**(2)** Public displays shall be performed only under competent supervision, and after the persons or organizations making the displays have applied for and received a permit for displays issued by the state fire marshal.

**(3)** Applications for permits for public displays shall be made in writing at least ten (10) days in advance of the proposed display, and the application shall show that the proposed display is to be so located and supervised that it is not hazardous to property and that it shall not endanger human lives; provided, however, that the fire marshal may accept applications and issue permits for public displays within the ten-day window and charge the applicant, in addition to the regular permit fee, an expedited permit fee, to be established by rule but not to exceed twice the amount of the regular permit fee, for the issuance of an expedited public display permit.

**(4)** If the display is to be performed within the limits of a municipality, the application shall so state and shall bear the signed approval of the chief supervisory officials of the fire department of the municipality. At the time the application for a permit is filed for a public display to be held within the limits of a municipality, the permittee shall send a written notification to the chief supervisory official of the police department of the municipality stating the date, time and location of the public display. At the time the application for a permit is filed for a public display to be held within the limits of the county but outside the limits of a municipality, the permittee shall send a written notification to the chief supervisory law enforcement official of the county stating the date, time and location of the public display. If the display is to be performed within the limits of a county, but outside the limits of a municipality, the application shall so state and shall bear the signed approval of the chief supervisory fire department officials of the county, or the officials' designees. The chief supervisory fire department officials of such county, or such officials' designee, shall have the authority to demand all necessary documentation to ensure that the permittee has a fire suppression vehicle or firefighter at the site of the fireworks display as required by this part. Such documentation does not have to be submitted to the department. The applicable fire department official who issues approval of the fireworks display pursuant to this section shall determine how many firefighters are required for such fireworks display.

**(5)** Permits issued shall be limited to the time specified in the permit, and shall not be transferable. Possession of special fireworks for resale to holders of a permit for a public fireworks display shall be confined to holders of a distributors permit only.

**(b)** The permittee conducting an outdoor public display of fireworks shall have at least one (1) fire suppression vehicle with the necessary personnel on site during the outdoor display. The permittee shall be responsible for all costs associated with the fire suppression vehicle.

**(c) (1)** The permittee conducting an indoor public display of fireworks shall have at least one (1) trained firefighter on site during the indoor display. The trained firefighter may be a volunteer firefighter. The permittee shall be responsible for all costs associated with the trained firefighters.

(2) Immediately before the start of the program that includes the use of indoor fireworks, the owner of the building or the authorized representative of the owner, shall orally notify attendees of the location of all exits from the building to be used in the event of a fire or other emergency.

(3) At least two (2) working fire extinguishers shall be in the area where the fireworks are to be employed.

(4) In any building in which indoor fireworks are to be employed, signs designating the location of all emergency exits shall be posted in each restroom that is available to the public

**68-104-212. Permit fee.**

The fire marshal shall collect a permit fee from or on behalf of the sponsor for each event at which there will be a display, which may include all or any of the types of displays regulated by this part, in an amount not to exceed fifty dollars (\$50.00) per permit. As part of the application for a permit, the fire marshal shall verify that the required insurance has been obtained and is in force for the event, and shall deny the application if it is not. A permittee, which may include an exhibitor, sponsor or operator that is conducting multiple displays that are essentially identical at a single location, may be issued a multiple display permit. The fire marshal shall set by rule and collect a multiple display permit fee from or on behalf of the sponsor of an event, not to exceed four hundred dollars (\$400) per location. A multiple display permit expires one (1) year after issuance.

**68-104-213. Storage requirements.**

Any person or entity that stores fireworks or pyrotechnic materials, or both, that are classified as Class B or 1.3 fireworks or pyrotechnic materials in the regulations of the United States DOT for transportation of explosive and other dangerous articles, shall store them in accordance with current NFPA standards, including NFPA 1124, and any applicable federal, state, and local laws or ordinances. Violation of this section is a Class B misdemeanor.

**68-104-214. Rules and regulations.**

The fire marshal shall administer and enforce the provisions of this part and may call upon any state, county, or municipal officer or employee for assistance. The fire marshal may promulgate rules to carry out the fire marshal's responsibilities under this part, including rules relative to:

- (1) Licensing of exhibitors;

- (2) Certification of operators;
- (3) Training;
- (4) Examinations;
- (5) The responsible handling of display fireworks, proximate displays and flame effect displays; and
- (6) Any other reasonable rules the fire marshal deems necessary to implement this part.

**68-104-215. Validity of municipal ordinances.**

This part does not affect the validity of any municipal ordinance further regulating or restricting outdoor displays using display fireworks, indoor or proximate pyrotechnics displays, or indoor or outdoor displays using flame effects.

**68-104-216. Fireworks advisory council.**

A fireworks advisory council consisting of twelve (12) members is created. The fire marshal shall appoint the members of the advisory council within thirty (30) days after July 12, 2006. Members shall be permanent residents of the state of Tennessee and shall serve without compensation. One (1) member shall be a municipal fire chief chosen from a list of nominees submitted by the Tennessee Fire Chiefs Association and one (1) member shall be a local fire marshal. One (1) member shall be from the state fire marshal's office. One (1) member shall be an interested citizen. Six (6) members shall be appointed from the consumer fireworks, display fireworks and proximate pyrotechnics and flame effects industry, one (1) of whom produces twenty (20) or fewer combined fireworks displays, proximate pyrotechnic displays or flame effect displays a year. One (1) member shall be a senior citizen over sixty-five (65) years of age. One (1) member shall be from a racial minority. The term of a member is two (2) years or until the member's successor is appointed and qualified. The council shall meet at least two (2) times each calendar year. Each year the council shall, on its own, elect a chair who will conduct the meetings of the council. Special meetings may be called at any time by the chair or in writing by any three (3) members. The council shall adopt procedures that govern its proceedings. The council shall assist the fire marshal in developing reasonable policies and regulations that will protect the public safety while promoting efficiency and effectiveness. The council may suggest legislative changes for the same purposes. The fire marshal may remove any member of the council for misconduct, incompetence, nonparticipation or willful neglect of duty.