

SENATE BILL 731

By Watson

AN ACT to amend Tennessee Code Annotated, Title 68,  
Chapter 104, relative to fireworks.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-104-101, is amended by deleting subdivision (2) in its entirety and by substituting instead the following definition:

( ) "Consumer fireworks" means fireworks that have been approved by the U. S. Consumer Product Safety Commission as legally being available for sale to and use by consumers for their personal use;

SECTION 2. Tennessee Code Annotated, Section 68-104-101(9), is amended by deleting the language "Class C" and by substituting instead the language "consumer fireworks".

SECTION 3. Tennessee Code Annotated, Section 68-104-105, is amended by deleting the section in its entirety and by substituting instead the following language:

(a)

(1)

(A) The legislative body of any incorporated municipality by ordinance for the jurisdictional boundaries of the municipality, the legislative body of any county having a metropolitan form of government by resolution for the jurisdictional boundaries of the county, and any other county by resolution for the unincorporated areas of the county, are hereby authorized to permit or prohibit the sale, possession and use of consumer fireworks for areas within their respective jurisdictional boundaries as herein prescribed. Such respective governing bodies may act, or may rescind their previous actions, at any time by a majority vote

by ordinance or resolution, as appropriate for the governmental entity. Each such legislative body is further authorized to designate reasonable areas within such jurisdictional areas where consumer fireworks may be sold and to further determine whether to permit the sale of consumer fireworks by seasonal retailers, to limit the sale of consumer fireworks only to retailers at a permanent location, or any combination of such retailers. Notwithstanding such authority, if a retailer has been issued a permit to sell consumer fireworks at a permanent location on the effective date of this act, any subsequent action of the legislative body of the municipality or county where such retailer is located to prohibit the sale or possession of consumer fireworks within their respective jurisdictional boundaries as provided in subsection (c) shall not apply to nor affect such retailer.

(B) No permit shall be issued by the state fire marshal to a retailer until the state fire marshal inspects and approves the location for such sales and storage of consumer fireworks pursuant to subsection (b).

(2) Each jurisdiction that authorizes the sale of consumer fireworks shall forward the ordinance or resolution authorizing such sale to the state fire marshal. Each such jurisdiction shall, in the ordinance or resolution, create an application process, including a reasonable application fee, and further establish a procedure for the issuance of the permit through the state fire marshal's office, in accordance with rules established by the state fire marshal, following an inspection of the location for the permit in accordance with subsection (b). If a jurisdiction which has previously approved the sale of fireworks rescinds such

authority, such jurisdiction shall likewise forward the ordinance or resolution to the state fire marshal.

(b) 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 substantial structural use or environmental changes have occurred at such location. 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 from the chief executive officer or the appropriate individual of the municipality or county with responsibility for compliance with this section.

(c)

(1) Except as provided in subdivision (a)(1)(A) and subdivision (2) of this subsection, if the legislative body of a municipality or county permits the sale and possession of consumer fireworks within their respective jurisdictional boundaries as prescribed pursuant to subsection (a), then the legislative body may not prohibit the use of consumer fireworks within such jurisdiction during the same time period that the municipality or county permits the sale and possession of consumer fireworks.

(2) If, however, the legislative body of a municipality or county only permits the sale of fireworks by a retailer at a permanent location and at least fifty-five percent (55%) of the sales at such location are to residents of other states or to persons living outside the jurisdiction of the legislative body that has

authorized the sale of such fireworks, such legislative body may prohibit the use of consumer fireworks by citizens living within their respective jurisdictional boundaries.

(d)

(1) All consumer fireworks held for sale at retail within local jurisdictions where the sale or use of consumer fireworks is prohibited are declared contraband and subject to confiscation by local law enforcement officials of the jurisdiction that has prohibited or has not approved the sale or possession of consumer fireworks.

(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 consumer fireworks where such municipality or county has prohibited or has not approved the sale or possession of such fireworks within their jurisdiction in accordance with subsection (a).

(e)

(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 provision 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.

(f) 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.

SECTION 4. Tennessee Code Annotated, Section 68-104-108, is amended by deleting subdivision (1) and by substituting instead the following language:

(1) Those items classified as consumer fireworks; or

SECTION 5. Tennessee Code Annotated, Section 68-104-109, is amended by deleting the language "common fireworks" wherever it appears and by substituting instead the language "consumer fireworks"; by deleting the language "§ 68-104-107 [transferred]" and by substituting instead the language "§ 68-104-211", and by deleting the language "D.O.T. Class C common fireworks" and by substituting instead the language "consumer fireworks".

SECTION 6. Tennessee Code Annotated, Section 68-104-112, is amended by deleting the language "Class C common fireworks" wherever such language appears and by substituting instead the language "consumer fireworks".

SECTION 7. Tennessee Code Annotated, Section 68-104-112(a), is amended by deleting subdivision (4) in its entirety.

SECTION 8. Tennessee Code Annotated, Section 68-104-114(b), is amended by deleting the second sentence in its entirety and by substituting instead the following language:

Any municipality and any county may adopt § 68-104-112(a)(1) by reference or substantial duplication as an ordinance in the case of a municipality or as a resolution in the case of a county.

SECTION 9. Tennessee Code Annotated, Section 68-104-115(a), is amended by deleting the language “Class C common fireworks” and by substituting instead the language “consumer fireworks” and by deleting the language “§ 68-104-107 [transferred]” and by substituting instead the language “§ 68-104-211”.

SECTION 10. Tennessee Code Annotated, Title 68, Chapter 104, Part 1, is amended by adding the following language as a new, appropriately designated section:

Section \_\_\_\_\_. The general assembly intends by this part to occupy and preempt the entire field of legislation concerning the regulation of consumer fireworks by local governments by private act.

SECTION 11. This act shall take effect upon July 1, 2009, the public welfare requiring it.