

FIREWORKS AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronda Rudd Menlove

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Utah Fire Prevention and Safety Act in the Public Safety Code to regulate flame effects operators and require them to obtain a license.

Highlighted Provisions:

This bill:

- ▶ requires special effects operators and flame effects operators who create the combustion of flammable materials before an audience to obtain a license from the State Fire Marshal Division;
- ▶ requires a special effects operator and a flame effects operator to obtain a permit from the municipality or county where the operator is working;
- ▶ requires the Utah Fire Prevention Board to define methods of establishing proof of the competence of an operator to use special effects fireworks and flame effects;
- ▶ provides the duties of the division in issuing a license to flame effects operators;
- ▶ authorizes individuals licensed by the division to purchase, possess, or discharge class C dangerous explosives;
- ▶ authorizes the division to stop the improper or dangerous use of flame effects;
- ▶ exempts individuals licensed by the division from penalties for possession of explosive, chemical, or incendiary devices as authorized by their license; and
- ▶ provides definitions.

Monies Appropriated in this Bill:

None

Other Special Clauses:

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **11-3-3.5**, as last amended by Laws of Utah 1993, Chapter 234

34 **53-7-202**, as last amended by Laws of Utah 2009, Chapter 339

35 **53-7-204**, as last amended by Laws of Utah 2009, Chapter 339

36 **53-7-222**, as last amended by Laws of Utah 1997, Chapter 82

37 **53-7-223**, as last amended by Laws of Utah 2007, Chapter 253

38 **76-10-306**, as last amended by Laws of Utah 2008, Chapter 3

39

40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section **11-3-3.5** is amended to read:

42 **11-3-3.5. Licensing of retail sellers of fireworks -- Permit required -- Fee,**
43 **insurance, or bond.**

44 (1) (a) A municipality or county may require a retail seller to obtain a license and pay a
45 reasonable fee before selling class C common state-approved explosives within the jurisdiction
46 of that municipality or county.

47 (b) A municipality or county may not restrict the number of licenses to be issued under
48 this section.

49 (2) (a) A municipality or county shall require:

50 (i) a permit to discharge all display fireworks, special effects, and flame effects
51 performances; and

52 (ii) evidence that the display operator, special effects operator, or flame effects operator
53 who will set up and discharge the display [~~fireworks~~] has received a [~~display operator's~~] license
54 from the State Fire Marshal Division, Department of Public Safety.

55 (b) A municipality or county may require a fee, insurance, or a bond before issuing a
56 permit under this Subsection (2).

57 Section 2. Section **53-7-202** is amended to read:

58 **53-7-202. Definitions.**

59 As used in this part:

60 (1) "Agricultural and wildlife fireworks" means a class C dangerous explosive that:

61 (a) uses sound or light when deployed; and

62 (b) is designated to prevent crop damage or unwanted animals from entering a
63 specified area.

64 (2) "Board" means the Utah Fire Prevention Board created in Section 53-7-203.

65 (3) "Class A explosive" means a division 1.1 or 1.2 explosive as defined by the U.S.
66 Department of Transportation in Part 173, Title 49, Code of Federal Regulations.

67 (4) "Class B explosive" means a division 1.2 or 1.3G explosive as defined by the U.S.
68 Department of Transportation in Part 173, Title 49, Code of Federal Regulations.

69 (5) "Class C explosive" means a division 1.4G explosive as defined by the U.S.
70 Department of Transportation in Part 173, Title 49, Code of Federal Regulations.

71 (6) (a) "Class C common state-approved explosive" means a class C explosive that is:

72 (i) a cardboard or heavy paper cylindrical tube or cone that:

73 (A) produces a shower of color and sparks that reach a maximum height of 15 feet;

74 (B) may whistle or pop; and

75 (C) is not designed to explode or leave the ground;

76 (ii) a pyrotechnic wheel device that:

77 (A) may be attached to a post or tree; and

78 (B) contains up to six "driver" units or tubes;

79 (iii) any device that:

80 (A) spins, jumps, or emits popping sounds when placed on the ground;

81 (B) does not exceed a height of 15 feet when discharged; and

82 (C) does not travel laterally more than 10 feet on a smooth surface when discharged;

83 (iv) a morning glory, suzuki, or flitter sparkler; and

84 (v) a single tube day-type parachute that does not carry any flare or flame upon descent.

85 (b) "Class C common state-approved explosive" does not mean:

- 86 (i) class C dangerous explosives; or
87 (ii) exempt explosives.
88 (7) (a) "Class C dangerous explosive" means a class C explosive that is:
89 (i) a firecracker, cannon cracker, salute, cherry bomb, or other similar explosive;
90 (ii) a skyrocket or any device other than a model rocket that uses combustible or
91 explosive material and rises more than 15 feet when discharged;
92 (iii) a roman candle or other device that discharges balls of fire over 15 feet in height;
93 (iv) a tube or cone aerial firework that propels comets, shells, salutes, flash shells, or
94 similar devices more than 15 feet into the air; and
95 (v) a chaser, whistler, or other device that darts or travels more than 10 feet laterally on
96 a smooth surface or exceeds 15 feet in height when discharged.
97 (b) A "class C dangerous explosive" does not mean:
98 (i) class C common state-approved explosives; or
99 (ii) exempt explosives.
100 ~~[(8) "Display fireworks" means an aerial shell, salute, flash shell, comet, sky battle,~~
101 ~~mine, and any similar class C explosive or class B explosive.]~~
102 (8) (a) "Display fireworks" means large firework devices that consist of explosive
103 materials that are intended for use in outdoor aerial fireworks displays to produce visible or
104 audible effects by combustion, deflagration, or detonation.
105 (b) "Display fireworks" includes aerial shells, salutes, roman candles, flash shells,
106 comets, mines, and other similar explosives.
107 ~~[(9) (a) "Display operator" means the person who purchases and is responsible for~~
108 ~~setting up, and discharging display fireworks.]~~
109 (9) (a) "Display operator" means a person licensed under Section 53-7-223 and who is
110 responsible for site selection, setting up, permits, overseeing assistants and support personnel,
111 and discharging display fireworks outdoors in situations where the audience maintains a
112 specific distance separating it from the display fireworks being discharged.
113 (b) "Display operator" does not mean a fire department.

114 (10) "Exempt explosive" means a model rocket, toy pistol cap, emergency signal flare,
115 snake or glow worm, party popper, trick noisemaker, match, and wire sparkler under 12 inches
116 in length.

117 (11) (a) "Fireworks" means:

118 (i) class C explosives;

119 (ii) class C dangerous explosives; and

120 (iii) class C common state-approved explosives.

121 (b) "Fireworks" does not mean:

122 (i) exempt explosives;

123 (ii) class A explosives; ~~and~~ or

124 (iii) class B explosives.

125 (12) "Flame effects" means the combustion of flammable solids, liquids, or gases to
126 produce thermal, physical, visual, or audible phenomena before an audience.

127 (13) (a) "Flame effects operator" means a person licensed under Section 53-7-223 who,
128 regarding flame effects, is responsible for:

129 (i) storage, setup, operations, teardown, devices, equipment, overseeing assistants and
130 support personnel, and preventing accidental discharge; and

131 (ii) completion of the sequence of control system functions that release the fuel for
132 ignition to cause combustion and create the flame effects.

133 (b) (i) "Flame effects operator" does not include a person who participates in a
134 meeting, as limited under Subsection (13)(b)(ii), with other persons solely to receive training,
135 to practice, or provide instruction regarding flame effects performance.

136 (ii) A meeting under Subsection (13)(b)(i) may include a nonpaying and unsolicited
137 audience of not more than 25 persons.

138 ~~(12)~~ (14) "Importer" means a person who brings class B or class C explosives into
139 Utah for the general purpose of resale within the state or exportation to other states.

140 ~~(13)~~ (15) (a) "Pyrotechnic" means any composition or device manufactured or used to
141 produce a visible or audible effect by combustion, deflagration, or detonation.

142 (b) "Pyrotechnic" does not mean exempt explosives.

143 ~~[(14)]~~ (16) "Retail seller" means a person who sells class C common state-approved
144 explosives to the public during the period authorized under Section 53-7-225.

145 (17) "Special effects" means a visual or audible effect caused by chemical mixtures
146 that produce a controlled, self-sustaining, and self-controlled exothermic chemical reaction that
147 results in heat, gas, sound, or light and may also create an illusion.

148 (18) "Special effects operator" means a person licensed under Section 53-7-223 who is
149 responsible for setting up, permits, overseeing assistants and support personnel, analyzing
150 potential hazards, setting clearances, and discharging pyrotechnic devices, either indoor or
151 outdoor, where the audience is allowed to be in closer proximity to the pyrotechnic devices
152 than the audience separation distance generally required for display fireworks.

153 ~~[(15)]~~ (19) "State fire code" means a nationally recognized fire code administered by
154 the Utah Fire Prevention Board pursuant to Section 53-7-204.

155 ~~[(16)]~~ (20) "Trick noisemaker" includes a:

156 (a) tube or sphere containing pyrotechnic composition that produces a white or colored
157 smoke as its primary effect when ignited; and

158 (b) device that produces a small report intended to surprise the user, including a:

159 (i) "booby trap," which is a small tube with a string protruding from both ends that
160 ignites the friction sensitive composition in the tube when the string is pulled;

161 (ii) "snapper," which is a small paper-wrapped device containing a minute quantity of
162 explosive composition coated on bits of sand that explodes producing a small report;

163 (iii) "trick match," which is a kitchen or book match coated with a small quantity of
164 explosive or pyrotechnic composition that produces a small shower of sparks when ignited;

165 (iv) "cigarette load," which is a small wooden peg coated with a small quantity of
166 explosive composition that produces a small report when ~~[the cigarette is]~~ ignited; and

167 (v) "auto burglar alarm," which is a tube that:

168 (A) contains pyrotechnic composition that produces a loud whistle and smoke when
169 ignited;

170 (B) may contain a small quantity of explosive to produce a small explosive noise; and

171 (C) is ignited by a squib.

172 [(17)] (21) "Unclassified fireworks" means [any of the following]:

173 (a) a pyrotechnic device that is used, given away, or offered for sale, that has not been
174 tested, approved, and classified by the U.S. Department of Transportation;

175 (b) an approved device that has been altered or redesigned since obtaining approval by
176 the U.S. Department of Transportation; and

177 (c) a pyrotechnic device that is being tested by a manufacturer, importer, or wholesaler
178 before receiving approval by the U.S. Department of Transportation.

179 [(18)] (22) "Wholesaler" means [any of the following]:

180 (a) a person who sells class C common state-approved explosives to a retailer; [and] or

181 (b) a person who sells class B explosives or class C dangerous explosives for display
182 use.

183 Section 3. Section 53-7-204 is amended to read:

184 **53-7-204. Duties of Utah Fire Prevention Board -- Local administrative duties.**

185 (1) The board shall:

186 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
187 Rulemaking Act:

188 (i) [administer] administering a nationally recognized fire code and the specific edition
189 of that fire code as the state fire code to be used as the standard;

190 (ii) establishing minimum standards for the prevention of fire and for the protection of
191 life and property against fire and panic in any:

192 (A) publicly owned building, including all public and private schools, colleges, and
193 university buildings;

194 (B) building or structure used or intended for use as an asylum, a mental hospital, a
195 hospital, a sanitarium, a home for the [aged] elderly, an assisted living facility, a children's
196 home or day care center, or any [similar institutional type occupancy of any capacity; and]
197 building or structure used for a similar purpose; or

198 (C) place of assemblage where 50 or more persons may gather together in a building,
199 structure, tent, or room for the purpose of amusement, entertainment, instruction, or education;
200 (iii) establishing safety and other requirements for placement and discharge of display
201 fireworks based upon:

202 (A) the specific edition of the nationally recognized fire code adopted by the
203 Legislature under Section 58-56-4; and

204 (B) relevant publications of the National Fire Protection Association;

205 (iv) establishing minimum safety standards for retail storage, handling, and sale of
206 class C common state-approved explosives;

207 (v) defining methods to establish proof of competence to place and discharge display
208 fireworks, special effects fireworks, and flame effects;

209 (vi) ~~for~~ deputizing qualified persons to act as deputy fire marshals, and to secure
210 special services in emergencies;

211 (vii) implementing Sections 53-7-106 and 53-7-205;

212 (viii) setting guidelines for use of funding;

213 (ix) establishing criteria for training and safety equipment grants for fire departments
214 enrolled in firefighter certification; and

215 (x) establishing minimum ongoing training standards for hazardous materials
216 emergency response agencies;

217 (b) recommend to the commissioner a state fire marshal;

218 (c) develop policies under which the state fire marshal and the state fire marshal's
219 authorized representatives will perform;

220 (d) provide for the employment of field assistants and other salaried personnel as
221 required;

222 (e) prescribe the duties of the state fire marshal and the state fire marshal's authorized
223 representatives;

224 (f) establish a statewide fire prevention, fire education, and fire service training
225 program in cooperation with the Board of Regents;

226 (g) establish a statewide fire statistics program for the purpose of gathering fire data
227 from all political subdivisions of the state;

228 (h) establish a fire academy in accordance with Section 53-7-204.2;

229 (i) coordinate the efforts of all people engaged in fire suppression in the state;

230 (j) work aggressively with the local political subdivisions to reduce fire losses;

231 (k) regulate the sale and servicing of portable fire extinguishers and automatic fire
232 suppression systems in the interest of safeguarding lives and property;

233 (l) establish a certification program for persons who inspect and test automatic fire
234 sprinkler systems;

235 (m) establish a certification program for persons who inspect and test fire alarm
236 systems;

237 (n) establish a certification for persons who provide response services regarding
238 hazardous materials emergencies; and

239 (o) in accordance with Section 58-56-4, make a report to the Business and Labor
240 Interim Committee by:

241 (i) no later than November 30 of each year recommending any amendments to the
242 currently adopted fire code; and

243 (ii) no later than November 30 in a year of a regularly scheduled update cycle of a
244 nationally promulgated fire code recommending the adoption of, amendment to, or repeal of
245 the updated nationally promulgated fire code.

246 (2) The board may incorporate in its rules by reference, in whole or in part, nationally
247 recognized and readily available standards and codes adopted by the Legislature pertaining to
248 the protection of life and property from fire, explosion, or panic.

249 (3) (a) The board shall recommend to the Legislature in accordance with Subsection
250 (1)(o) amendments to the state fire code adopted by the Legislature in accordance with Section
251 58-56-7.

252 (b) The amendments, as adopted by the Legislature, may be applicable to the entire
253 state or within a city, county, or fire protection district.

254 (4) The following functions shall be administered locally by a city, county, or fire
255 protection district:

256 (a) issuing permits, including open burning permits pursuant to Sections 11-7-1 and
257 19-2-114;

258 (b) creating a local board of appeals in accordance with the state fire code; and

259 (c) establishing, modifying, or deleting fire flow and water supply requirements.

260 Section 4. Section **53-7-222** is amended to read:

261 **53-7-222. Restrictions on the sale or use of fireworks.**

262 (1) (a) The division shall test and approve a representative sample of each class C
263 common state-approved explosive before the explosive may be sold to the public.

264 (b) The division shall publish a list of all class C explosives that are approved for sale
265 to the public each year.

266 (2) (a) Except as provided in Subsection (2)(b), class C dangerous explosives may not
267 be possessed, discharged, sold, or offered for retail sale.

268 (b) (i) The following persons may purchase, possess, or discharge class C dangerous
269 explosives:

270 (A) display operators and special effects operators who receive a license from the
271 division in accordance with Section 53-7-223 and approval from their local licensing authority
272 in accordance with Section 11-3-3.5; and

273 (B) operators approved by the Division of Wildlife Resources or Department of
274 Agriculture and Food to discharge agricultural and wildlife fireworks.

275 (ii) Importers and wholesalers licensed under Section 53-7-224 may possess, sell, and
276 offer to sell class C dangerous explosives.

277 (3) Unclassified fireworks may not be sold, or offered for sale.

278 Section 5. Section **53-7-223** is amended to read:

279 **53-7-223. State license for display operators, special effects operators, and flame**
280 **effects operators -- Permit -- Fee -- Division duties -- Revocation.**

281 (1) (a) A person may not purchase[;] or possess[; ~~or discharge~~] display [~~or~~] fireworks,

282 special effects fireworks, or flame effects, or discharge any of them in public unless the person
283 has obtained [~~a display or special effects operator~~] the appropriate license from the division[-],
284 except under Subsection (1)(b).

285 (b) (i) Subsection (1)(a) does not apply to any person who participates in a meeting, as
286 limited under Subsection (1)(b)(ii), with other persons solely to receive training, to practice, or
287 provide instruction regarding flame effects performance.

288 (ii) A meeting under Subsection (1)(b)(i) may include a nonpaying and unsolicited
289 audience of not more than 25 persons.

290 (2) The division shall:

291 (a) issue an annual license to any display [~~or~~] operator, special effects operator, or
292 flame effects operator who:

293 (i) applies for the permit;

294 (ii) pays a \$40 fee;

295 (iii) demonstrates proof of competence; and

296 (iv) certifies that [~~he~~] the operator will comply with [~~the~~] board rules governing
297 placement and discharge of fireworks [~~established by the board~~] or flame effects;

298 (b) provide the licensee with a copy of the rules governing placement and discharge of
299 fireworks or flame effects made under Section 53-7-204; and

300 (c) together with county and municipal officers enforce Sections 53-7-220 through
301 53-7-225.

302 (3) The division may:

303 (a) revoke a license issued under this section for cause;

304 (b) seize display and special effects fireworks, fireworks, and unclassified fireworks
305 that are offered for sale, sold, or in the possession of an individual in violation of Sections
306 53-7-220 through 53-7-225; [~~and~~]

307 (c) prevent or stop the use of flame effects that is unlawful or that is endangering
308 persons or property; and

309 [~~(c)~~] (d) create application and certification forms.

310 Section 6. Section **76-10-306** is amended to read:

311 **76-10-306. Explosive, chemical, or incendiary device and parts -- Definitions --**

312 **Persons exempted -- Penalties.**

313 (1) As used in this section:

314 (a) "Explosive, chemical, or incendiary device" means:

315 (i) dynamite and all other forms of high explosives, including water gel, slurry, military
316 C-4 (plastic explosives), blasting agents to include nitro-carbon-nitrate, ammonium nitrate, fuel
317 oil mixtures, cast primers and boosters, R.D.X., P.E.T.N., electric and nonelectric blasting
318 caps, exploding cords commonly called detonating cord, detcord, or primacord, picric acid
319 explosives, T.N.T. and T.N.T. mixtures, nitroglycerin and nitroglycerin mixtures, or any other
320 chemical mixture intended to explode with fire or force;

321 (ii) any explosive bomb, grenade, missile, or similar device; and

322 (iii) any incendiary bomb, grenade, fire bomb, chemical bomb, or similar device,
323 including any device, except kerosene lamps, if criminal intent has not been established, which
324 consists of or includes a breakable container including a flammable liquid or compound and a
325 wick composed of any material which, when ignited, is capable of igniting the flammable
326 liquid or compound or any breakable container which consists of, or includes a chemical
327 mixture that explodes with fire or force and can be carried, thrown, or placed.

328 (b) "Explosive, chemical, or incendiary device" does not include rifle, pistol, or
329 shotgun ammunition, reloading components, or muzzleloading equipment.

330 (c) "Explosive, chemical, or incendiary parts" means any substances or materials or
331 combinations which have been prepared or altered for use in the creation of an explosive,
332 chemical, or incendiary device. These substances or materials include:

333 (i) timing device, clock, or watch which has been altered in such a manner as to be
334 used as the arming device in an explosive;

335 (ii) pipe, end caps, or metal tubing which has been prepared for a pipe bomb; and

336 (iii) mechanical timers, mechanical triggers, chemical time delays, electronic time
337 delays, or commercially made or improvised items which, when used singly or in combination,

338 may be used in the construction of a timing delay mechanism, booby trap, or activating
339 mechanism for any explosive, chemical, or incendiary device.

340 (d) "Explosive, chemical, or incendiary parts" does not include rifle, pistol, or shotgun
341 ammunition, or any signaling device customarily used in operation of railroad equipment.

342 (2) The provisions in Subsections (3) and (6) do not apply to:

343 (a) any public safety officer while acting in [~~his~~] an official capacity transporting or
344 otherwise handling explosives, chemical, or incendiary devices;

345 (b) any member of the armed forces of the United States or Utah National Guard while
346 acting in [~~his~~] an official capacity;

347 (c) any person possessing a valid permit issued under the provisions of Uniform Fire
348 Code, Article 77, or any employee of the permittee acting within the scope of [~~his~~]
349 employment;

350 (d) any person possessing a valid license as an importer, wholesaler, [~~or~~] display
351 operator, special effects operator, or flame effects operator under the provisions of Sections
352 11-3-3.5 and 53-7-223; and

353 (e) any person or entity possessing or controlling an explosive, chemical, or incendiary
354 device as part of its lawful business operations.

355 (3) Any person is guilty of a second degree felony who, under circumstances not
356 amounting to a violation of Title 76, Chapter 10, Part 4, Weapons of Mass Destruction,
357 knowingly, intentionally, or recklessly possesses or controls an explosive, chemical, or
358 incendiary device.

359 (4) Any person is guilty of a first degree felony who, under circumstances not
360 amounting to a violation of Title 76, Chapter 10, Part 4, Weapons of Mass Destruction,
361 knowingly or intentionally:

362 (a) uses or causes to be used an explosive, chemical, or incendiary device in the
363 commission of or an attempt to commit a felony;

364 (b) injures another or attempts to injure another [~~in his~~] person or another person's
365 property through the use of an explosive, chemical, or incendiary device; or

366 (c) transports, possesses, distributes, or sells any explosive, chemical, or incendiary
367 device in a secure area established pursuant to Section 76-8-311.1, 76-8-311.3, 76-10-529, or
368 78A-2-203.

369 (5) Any person who, under circumstances not amounting to a violation of Title 76,
370 Chapter 10, Part 4, Weapons of Mass Destruction, knowingly, intentionally, or recklessly
371 removes or causes to be removed or carries away any explosive, chemical, or incendiary device
372 from the premises where the explosive, chemical, or incendiary device is kept by the lawful
373 user, vendor, transporter, or manufacturer without the consent or direction of the lawful
374 possessor is guilty of a second degree felony.

375 (6) Any person who, under circumstances not amounting to a violation of Title 76,
376 Chapter 10, Part 4, Weapons of Mass Destruction, knowingly, intentionally, or recklessly
377 possesses any explosive, chemical, or incendiary parts is guilty of a third degree felony [~~of the~~
378 ~~third degree~~].