

## OCCUPATIONS CODE

### CHAPTER 2154. REGULATION OF FIREWORKS AND FIREWORKS DISPLAYS

#### SUBCHAPTER A. GENERAL PROVISIONS

§ 2154.001. DEFINITIONS. In this chapter:

- (1) "Commissioner" means the commissioner of insurance of Texas.
- (2) "Department" means the United States Department of Transportation.
- (3) "Distributor" means a person who:
  - (A) imports fireworks into this state; or
  - (B) sells fireworks to:
    - (i) a jobber, retailer, or other distributor for resale; or
    - (ii) a holder of a single public display permit, a multiple public display permit, or another fireworks permit.
- (4) "Fire prevention officer" means a chief of a fire department, a fire marshal, a county fire marshal, a sheriff, a constable, another local enforcement officer primarily responsible for fire prevention, or, if there is no local fire authority, the state fire marshal.
- (5) "Fireworks" means a composition or device:
  - (A) designed for entertainment to produce a visible or audible effect by combustion, explosion, deflagration, or detonation; and
  - (B) defined by 49 C.F.R. Section 173.56(j) (1996).
- (6) "Fireworks 1.3G" means a large fireworks device:
  - (A) primarily designed to produce visible or audible effects by combustion, deflagration, or detonation; and
  - (B) classified as a 1.3G explosive by the department in 49 C.F.R. Part 173 (1996).
- (7) "Fireworks 1.4G" means a small fireworks device:
  - (A) primarily designed to produce visible or audible effects by combustion, deflagration, or detonation;
  - (B) that complies with the construction, labeling, and chemical composition requirements of the United States Consumer Product Safety Commission in 16 C.F.R. Part 1507 (1996), or the most recently adopted version of that rule; and
  - (C) that is classified by the department in 49 C.F.R. Part 173 (1996).
- (8) "Illegal fireworks" means a fireworks device manufactured, distributed, or sold in violation of this chapter.
- (9) "Indoor or proximate display" means a pyrotechnic display involving the ignition of Fireworks 1.3G or Fireworks 1.4G for public amusement where an audience is closer to the pyrotechnic devices than permitted by NFPA 1123 Code of Fireworks Display. The term does not include the use of Fireworks 1.4G by a retail consumer for private or personal amusement.
- (10) "Insurance agent" means:
  - (A) a person, firm, or corporation licensed under Subchapter B, C, D, or E, Chapter 4051, or Chapter 981, Insurance Code;
  - (B) a salaried, state, or special agent; and
  - (C) a person authorized to represent an insurance fund or pool created by a city, county, or other political subdivision of the state under Chapter 791, Government Code.
- (11) "Jobber" means a person who purchases fireworks only for resale to retailers.

(12) "Manufacturer" means a person, firm, corporation, or association who makes fireworks.

(13) "Person" means an individual or entity, including an owner, manager, officer, employee, or occupant.

(14) "Public display" means the igniting of Fireworks 1.3G for public or private amusement.

(15) "Pyrotechnic operator" means an individual who, by experience, training, and examination, has demonstrated the necessary skill and ability for safely assembling, discharging, and supervising public displays of Fireworks 1.3G or Fireworks 1.4G.

(16) "Pyrotechnic special effects operator" means an individual who, by experience, training, and examination, has demonstrated the necessary skill and ability for safely assembling, discharging, and supervising proximate displays of Fireworks 1.3G or Fireworks 1.4G.

(17) "Retailer" means a person who purchases fireworks for resale only to the general public.

(18) "Sale" means selling or offering for sale merchandise, equipment, or service, at wholesale or retail, to the public or to any person, for an agreed sum of money or other consideration.

(19) "State fire marshal" means the chief law enforcement officer of the state charged with the responsibility of fire prevention.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, § 10A.549, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 728, § 11.154, eff. Sept. 1, 2005.

**§ 2154.002. EXEMPTIONS. This chapter does not apply to:**

(1) a toy pistol, toy cane, toy gun, or other device that uses paper or plastic caps in sheets, strips, rolls, or individual caps that contain not more than an average of 25 hundredths of a grain of explosive composition per cap and that is packed and shipped under 49 C.F.R. Part 173 (1996);

(2) a model rocket or model rocket motor designed, sold, and used to propel recoverable aero models;

(3) a propelling or expelling charge consisting of a mixture of sulfur, charcoal, and potassium nitrate;

(4) novelties or trick noisemakers;

(5) the sale, at wholesale, of any type of fireworks by a resident manufacturer, distributor, importer, or jobber if the fireworks are intended for shipment directly out of state under department regulations;

(6) the sale or use of, in emergency situations, pyrotechnic signaling devices or distress signals for marine, aviation, or highway use;

(7) the use of a fusee or a railway torpedo by a railroad;

(8) the sale of blank cartridges for:

(A) use in a radio, television, film, or theater production;

(B) a signal or ceremonial purpose in an athletic event; or

(C) an industrial purpose; or

(9) the use of a pyrotechnic device by a military organization.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

TAX CODE

CHAPTER 161. FIREWORKS TAX

§ 161.001. DEFINITION. In this chapter, "fireworks" means any composition or device that is designed to produce a visible or audible effect by combustion, explosion, deflagration, or detonation that is classified as Division 1.4G explosives by the United States Department of Transportation in 49 C.F.R. Part 173 as of September 1, 1999.

Added by Acts 2001, 77th Leg., ch. 1363, § 2, eff. Oct. 1, 2001.

§ 161.002. FIREWORKS SALES TAX. (a) A tax is imposed on each sale at retail of fireworks.

(b) The tax rate is two percent of the sale price of the fireworks.

(c) The tax imposed under this chapter is in addition to the tax imposed under Chapter 151. The tax imposed by this chapter does not apply to a sale unless the tax imposed under Chapter 151 applies to the sale.

Added by Acts 2001, 77th Leg., ch. 1363, § 2, eff. Oct. 1, 2001.

§ 161.003. EXCEPTIONS TO APPLICABILITY OF CHAPTER. This chapter does not apply to:

(1) a toy pistol, toy cane, toy gun, or other device that uses a paper or plastic cap;

(2) a model rocket or model rocket motor designed, sold, and used for the purpose of propelling a recoverable aero model;

(3) a propelling or expelling charge consisting of a mixture of sulfur, charcoal, and potassium nitrate;

(4) a novelty or trick noisemaker;

(5) a pyrotechnic signaling device or distress signal for marine, aviation, or highway use in an emergency situation;

(6) a fusee or railway torpedo for use by a railroad;

(7) the sale of a blank cartridge for use in a radio, television, film, or theater production, for signal or ceremonial purposes in athletic events, or for industrial purposes; or

(8) a pyrotechnic device for use by a military organization.

Added by Acts 2001, 77th Leg., ch. 1363, § 2, eff. Oct. 1, 2001.

§ 161.004. APPLICATION OF OTHER PROVISIONS OF CODE.

(a) Except as provided by this chapter:

(1) the tax imposed by this chapter is administered, imposed, collected, and enforced in the same manner as the tax under Chapter 151 is administered, imposed, collected, and enforced; and

(2) the provisions of Chapter 151 applicable to the sales tax imposed under Subchapter C, Chapter 151, apply to the tax imposed by this chapter.

(b) A change in the law relating to the taxation of the sale of fireworks under Chapter 151 also applies to the tax imposed by this chapter.

Added by Acts 2001, 77th Leg., ch. 1363, § 2, eff. Oct. 1, 2001.

§ 161.005. ALLOCATION OF TAX. The comptroller shall allocate the revenue from taxes imposed by this chapter, other than penalties and interest, to the rural volunteer fire department insurance fund established by Section 614.075, Government Code.

Added by Acts 2001, 77th Leg., ch. 1363, § 2, eff. Oct. 1, 2001.