

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the First Regular Session of the Seventieth General Assembly of the State of Colorado (2015) ***

TITLE 12. PROFESSIONS AND OCCUPATIONS
GENERAL
ARTICLE 28. FIREWORKS

C.R.S. 12-28-101 (2015)

12-28-101. Definitions

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

(1) "Articles pyrotechnic" means pyrotechnic special effects materials and pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but are intended for theatrical performances and not intended for consumer use. "Articles pyrotechnic" shall also include pyrotechnic devices meeting the weight limits for consumer fireworks but are not labeled as such and are classified as UN0431 or UN0432 pursuant to 49 CFR 172.101, as amended.

(1.5) "Display fireworks" means large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation and includes, but is not limited to, salutes containing more than one hundred thirty milligrams of explosive material, aerial shells containing more than forty grams of pyrotechnic compositions, and other display pieces that exceed the limits of explosive materials for classification as consumer fireworks as defined in 16 CFR 1500.1 to 1500.272 and 16 CFR 1507.1 to 1507.12 and are classified as fireworks UN0333, UN0334, or UN0335 pursuant to 49 CFR 172.101, as amended, and including fused set pieces containing components that exceed fifty milligrams of salute powder.

(1.7) "Display retailer" means a person, including a manufacturer, who is licensed as a display retailer under the provisions of [section 12-28-104](#) and who sells, delivers, consigns, gives, or otherwise furnishes display fireworks or articles pyrotechnic to a person authorized by [section 12-28-103](#) to discharge fireworks in Colorado.

(2) "Exporter" means any person, including a manufacturer, licensed as an exporter under the provisions of [section 12-28-104](#) and who sells, delivers, consigns, gives, or otherwise furnishes fireworks for export outside of the state of Colorado.

(3) (a) "Fireworks" means any composition or device designed to produce a visible or audible effect by combustion, deflagration, or detonation, and that meets the definition of articles pyrotechnic, permissible fireworks, or display fireworks.

(b) "Fireworks" does not include:

(I) Toy caps, party poppers, and items similar to toy caps and party poppers that do not contain more than sixteen milligrams of pyrotechnic composition per item and snappers that do not contain more than one milligram of explosive composition per item;

(II) Highway flares, railroad fusees, ship distress signals, smoke candles, and other emergency signal devices;

(III) Educational **rockets** and toy propellant device type engines used in such **rockets when such rockets** are of nonmetallic construction and utilize replaceable engines or model cartridges containing less than two ounces of propellant and when such engines or model cartridges are designed to be ignited by electrical means;

(IV) Fireworks which are used in testing or research by a licensed explosives laboratory.

(3.5) "Fireworks display operator" includes an individual who, by experience and training, has demonstrated the required skill and ability to safely set up and discharge display fireworks.

(4) "Fund" means the fireworks licensing cash fund created in [section 12-28-104 \(6\) \(b\)](#).

(5) "Governing body" means:

(a) The city council, town council, board of trustees, or other governing body of any city or town, as to the area within the corporate limits of such city or town;

(b) The board of directors of any fire protection district organized pursuant to part 1 of article 1 of title 32, C.R.S., as to the area within the boundaries of such fire protection district; and

(c) The board of county commissioners as to the area within a county outside the corporate limits of any city or town or the boundaries of any fire protection district.

(6) "Local authority" means the duly authorized fire department, police department, or sheriff's department of a local jurisdiction.

(7) "Manufacturer" means any person who manufactures, makes, constructs, or produces fireworks.

(8) (a) "Permissible fireworks" means the following small fireworks devices designed to produce audible or visual effects by combustion, complying with the requirements of the United States consumer product safety commission as set forth in 16 CFR 1500.1 to 1500.272 and 1507.1 to 1507.12, and classified as consumer fireworks UN0336 and UN0337 pursuant to 49 CFR 172.101:

(I) Cylindrical fountains, total pyrotechnic composition not to exceed seventy-five grams each for a single tube or, when more than one tube is mounted on a common base, a total

pyrotechnic composition of no more than two hundred grams;

(II) Cone fountains, total pyrotechnic composition not to exceed fifty grams each for a single cone or, when more than one cone is mounted on a common base, a total pyrotechnic composition of no more than two hundred grams;

(III) Wheels, total pyrotechnic composition not to exceed sixty grams for each driver unit or two hundred grams for each complete wheel;

(IV) Ground spinner, a small device containing not more than twenty grams of pyrotechnic composition venting out of an orifice usually in the side of the tube, similar in operation to a wheel, but intended to be placed flat on the ground;

(V) Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed two hundred grams each;

(VI) Dipped sticks and sparklers, the total pyrotechnic composition of which does not exceed one hundred grams, of which the composition of any chlorate or perchlorate shall not exceed five grams;

(VII) Any of the following that do not contain more than fifty milligrams of explosive composition:

(A) Explosive auto alarms;

(B) Toy propellant devices;

(C) Cigarette loads;

(D) Strike-on-box matches; or

(E) Other trick noise makers;

(VIII) Snake or glow worm pressed pellets of not more than two grams of pyrotechnic composition and packaged in retail packages of not more than twenty-five units;

(IX) Fireworks that are used exclusively for testing or research by a licensed explosives laboratory;

(X) Multiple tube devices with:

(A) Each tube individually attached to a wood or plastic base;

(B) The tubes separated from each other on the base by a distance of at least one-half of one inch;

(C) The effect limited to a shower of sparks to a height of no more than fifteen feet above the ground;

(D) Only one external fuse that causes all of the tubes to function in sequence; and

(E) A total pyrotechnic composition of no more than five hundred grams.

(b) "Permissible fireworks" do not include aerial devices or audible ground devices, including, but not limited to, firecrackers.

(9) "Person" includes an individual, partnership, firm, company, association, corporation, or governmental entity.

(9.5) "Pyrotechnic operator" includes an individual who, by experience and training, has demonstrated the required skill and ability to safely set up and discharge articles of pyrotechnics.

(10) "Retailer" means any person who sells, delivers, consigns, or furnishes permissible fireworks to another person not for resale.

(11) "Storage" means the possession of fireworks for safe custody, where the safekeeping is the principal object of deposit, and not the consumption or sale.

(12) "Wholesaler" means any person, including a manufacturer, who is licensed as a wholesaler under [section 12-28-104](#) and who sells, delivers, consigns, gives, or otherwise furnishes permissible fireworks to a retailer for resale in Colorado.

HISTORY: Source: L. 91: Entire article R&RE, p. 1480, § 1, effective June 4. L. 2004: (1), (3)(a), (3)(b)(I), and (8) amended and (1.5), (1.7), (3.5), and (9.5) added, p. 1961, § 1, effective August 4.

Cross references: For disposition of moneys collected under this title, see § § 24-35-101 and 24-36-103; for practicing a profession or operating a business without a license, see § § 12-51-106 and 16-13-306; for rule-making procedures and license suspension and revocation procedures by state agencies, see article 4 of title 24; for the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of registrations, see § 24-34-102 (7) and (8); for an alternative disciplinary action for persons licensed, registered, or certified pursuant to this title, see § 24-34-106.

Editor's note: This article was numbered as article 5 of chapter 53, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1991, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1991, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Editor's note: This section is similar to former § 12-28-101 as it existed prior to 1991.

ANNOTATION

- I. General Consideration.
- II. Fireworks Defined.
- III. Items Excluded as Fireworks.

I. GENERAL CONSIDERATION.

Law reviews. For article, "A Review of the 1959 Constitutional and Administrative Law Decisions", see 37 Dicta 81 (1960).

The subject is a valid one for legislative action under the police power. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

Therefore, this statute prohibiting the use or sale of fireworks is constitutional and valid. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

This statute is not so vague, indefinite, uncertain and ambiguous as to render it void and unenforceable, thus subjecting violators to deprivation of life, liberty and property without due process of law by reason of its failure to specify with more particularity the forbidden areas. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

Colorado by statute has made illegal the sale of fireworks and therein enumerated the broad categories of prohibited items. *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959).

Because the discernible legislative intent is the protection of life and property from the injury and damage resulting from indiscriminate firing and exploding of fireworks, and the protection as well of the ear drums and nervous systems of the citizenry of Colorado. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

II. FIREWORKS DEFINED.

The selection and use by the general assembly of the term "fireworks" was proper since it has a common and well understood meaning. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959); *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959).

It calls to mind the many products and devices designed for display or celebration purposes and which explode, or burn and explode, and traditionally are used in the celebration of Independence Day or other holidays. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959); *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959).

Fireworks is a device for producing a striking display, as of light, noise, or smoke, by the combustion of explosive or inflammable composition. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

Fireworks include items which produce a visual or auditory sensation by combustion or

explosion. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

Webster's New Collegiate Dictionary defines fireworks as devices for producing a striking display, as of light, noise, or smoke, by the combustion of explosive or inflammable composition. This definition is not unlike the legal one which has been adopted by the general assembly. *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959).

Both are inclusive of items which produce a visual or auditory sensation by combustion or explosion. *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959).

The list of examples contained in this section is by way of illustration and not of limitation and is not to be given a strained construction. *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959); *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

The failure of this section to include firearms, ammunition and dynamite does not render the section vague or unreasonable and therefore invalid, since such items are not commonly used for celebration or amusement purposes. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

The general assembly is not required to legislate completely and exhaustively in the entire field. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

Toy cannons clearly come within the statutory definition of fireworks, and the prohibition of their sale is directly related to the promotion of the health, safety, and general welfare of the public. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

It is a matter of common knowledge that the keeping and storage of gunpowder in a building increases the risk of fire, and if so kept in violation of law and in violation of the terms of an insurance policy, the insurer is not liable under a contract of insurance. *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959).

Where a fire insurance policy provides that coverage thereunder would not be had if loss resulted from illegal trade, and loss resulted from a display of prohibited fireworks, a conclusion of a trial court that the legality or illegality of such display is immaterial and irrelevant is erroneous. *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959).

III. ITEMS EXCLUDED AS FIREWORKS.

There is a reasonable and proper delineation between harmful and nonharmful fireworks. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

In adopting a statute prohibiting the sale of fireworks it is proper for the general assembly to exclude from the category of prohibited items such devices as it deemed not to be dangerous. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

This classification is not ambiguous or indefinite. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

Each item so excluded has a specific and well understood meaning in common usage and no ordinary person could be misled concerning the import of toy pistols, toy guns, sparklers, etc., *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

The list of excluded items are not set forth in this section as examples of a broad class. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959); *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959).

This is a list of items which would normally be embraced within the definition of fireworks. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

The assembly has declared that they are not to be included, and in view of the fact that these sparklers, torches, etc., are listed as exceptions, the list must be construed strictly and cannot be enlarged by construction. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959); *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959).