

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1019

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AN ACT to amend the Indiana Code concerning labor and industrial safety.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 22-11-14-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. As used in this chapter **and IC 22-11-14.5:**

"Auto burglar alarm" means a tube that contains pyrotechnic composition that produces a loud whistle or smoke when ignited. A small quantity of explosive, not exceeding fifty (50) milligrams, may also be used to produce a small report. A squib is used to ignite the device.

"Booby trap" means a small tube with string protruding from both ends, similar to a party popper in design. The ends of the string are pulled to ignite the friction sensitive composition, producing a small report.

"Chaser" means a device, containing fifty (50) milligrams or less of explosive composition, that consists of a small paper or cardboard tube that travels along the ground upon ignition. A whistling effect is often produced, and a small noise may be produced.

"Cigarette load" means a small wooden peg that has been coated with a small quantity of explosive composition. Upon ignition of a cigarette containing one of the pegs, a small report is produced.

"Common firework" means a small firework that is designed primarily to produce visible effects by combustion, and that is required

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to comply with the construction, chemical composition, and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 CFR 1507. The term also includes some small devices designed to produce an audible effect, such as whistling devices, ground devices containing fifty (50) milligrams or less of explosive composition, and aerial devices containing one hundred thirty (130) milligrams or less of explosive composition. Propelling or expelling charges consisting of a mixture of charcoal, sulfur, and potassium nitrate are not considered as designed to produce an audible effect. Common fireworks:

(1) include:

(A) ground and hand-held sparkling devices, which include dipped stick, certain wire sparklers, cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners, and flitter sparklers;

(B) aerial devices, which include sky rockets, missile-type rockets, helicopter or aerial spinners, roman candles, mines, and shells;

(C) ground audible devices, which include firecrackers, salutes, and chasers; and

(D) firework devices containing combinations of two (2) or more of the effects described in the preceding three (3) clauses; and

(2) do not include the following novelties and trick noisemakers:

(A) Snakes or glow worms.

(B) Smoke devices.

(C) Wire sparklers which contain no magnesium and which contain less than one hundred (100) grams of composition per item.

(D) Trick noisemakers, which include party poppers, booby traps, snappers, trick matches, cigarette loads, and auto burglar alarms.

"Cone fountain" means a cardboard or heavy paper cone which contains up to fifty (50) grams of pyrotechnic composition, and which produces the same effect as a cylindrical fountain.

"Cylindrical fountain" means a cylindrical tube not exceeding three-quarters (3/4) inch in inside diameter and containing up to seventy-five (75) grams of pyrotechnic composition. Fountains produce a shower of color and sparks upon ignition, and sometimes a whistling effect. Cylindrical fountains may contain a spike to be inserted in the ground (spike fountain), a wooden or plastic base to be placed on the

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ground (base fountain), or a wooden handle or cardboard handle for items designed to be hand-held (handle fountain).

"Dipped stick" or "wire sparkler" means a common firework that consists of a stick or wire coated with pyrotechnic composition that produces a shower of sparks upon ignition. Total pyrotechnic composition does not exceed one hundred (100) grams per item. Those devices containing chlorate or perchlorate salts do not exceed five (5) grams in total composition per item. Wire sparklers ~~which that~~ contain no magnesium and ~~which that~~ contain less than one hundred (100) grams of composition per item are not included in the category of common fireworks.

"Distributor" means a person who sells fireworks to wholesalers and retailers for resale.

"Explosive composition" means a chemical or mixture of chemicals that produces an audible effect by deflagration or detonation when ignited.

"Firecracker" or "salute" is a device that consists of a small paper-wrapped or cardboard tube containing not more than fifty (50) milligrams of pyrotechnic composition and that produces, upon ignition, noise, accompanied by a flash of light.

"Firework" means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of common fireworks and special fireworks. The following items are excluded from the definition of fireworks:

- (1) Model rockets.
- (2) Toy pistol caps.
- (3) Emergency signal flares.
- (4) Matches.
- (5) Fixed ammunition for firearms.
- (6) Ammunition components intended for use in firearms, muzzle loading cannons, or small arms.
- (7) Shells, cartridges, and primers for use in firearms, muzzle loading cannons, or small arms.
- (8) Indoor pyrotechnics special effects material.

"Flitter sparkler" means a narrow paper tube filled with pyrotechnic composition that produces color and sparks upon ignition. These devices do not use a fuse for ignition, but rather are ignited by igniting the paper at one (1) end of the tube.

"Ground spinner" means a small spinning device ~~which that~~ is similar to wheels in design and effect when placed on the ground and

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ignited, and ~~which~~ **that** produces a shower of sparks and color when spinning.

"Helicopter" or "aerial spinner" is a spinning device:

- (1) that consists of a tube up to one-half (1/2) inch in inside diameter and that contains up to twenty (20) grams of pyrotechnic composition;
- (2) to which some type of propeller or blade device is attached; and
- (3) that lifts into the air upon ignition, producing a visible or audible effect at the height of flight.

"Illuminating torch" means a cylindrical tube that:

- (1) contains up to one hundred (100) grams of pyrotechnic composition;
- (2) produces, upon ignition, a colored fire; and
- (3) is either a spike, base, or handle-type device.

"Importer" means:

- (1) a person who imports fireworks from a foreign country; or
- (2) a person who brings or causes fireworks to be brought within this state for subsequent sale.

"Indoor pyrotechnics special effects material" means a chemical material that is clearly labeled by the manufacturer as suitable for indoor use (as provided in National Fire Protection Association Standard 1126 ~~(1992 edition)~~: **(2001 edition)**).

"Interstate wholesaler" means a person who is engaged in interstate commerce selling fireworks not approved for sale in Indiana.

"Manufacturer" means a person engaged in the manufacture of fireworks.

"Mine" or "shell" means a device that:

- (1) consists of a heavy cardboard or paper tube up to two and one-half (2 1/2) inches in inside diameter, to which a wooden or plastic base is attached;
- (2) contains up to forty (40) grams of pyrotechnic composition; and
- (3) propels, upon ignition, stars (pellets of pressed pyrotechnic composition that burn with bright color), whistles, parachutes, or combinations thereof, with the tube remaining on the ground.

"Missile-type rocket" means a device that is similar to a sky rocket in size, composition, and effect, and that uses fins rather than a stick for guidance and stability.

"Party popper" means a small plastic or paper item containing not more than sixteen (16) milligrams of explosive composition that is

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friction sensitive. A string protruding from the device is pulled to ignite it, expelling paper streamers and producing a small report.

"Person" means an individual, an association, an organization, a limited liability company, or a corporation.

"Pyrotechnic composition" means a mixture of chemicals that produces a visible or audible effect by combustion rather than deflagration or detonation. Pyrotechnic compositions will not explode upon ignition unless severely confined.

"Retail sales stand" means a temporary business site or location where goods are to be sold.

"Retailer" means a person who purchases fireworks for resale to consumers.

"Roman candle" means a device that consists of a heavy paper or cardboard tube not exceeding three-eighths (3/8) inch in inside diameter and that contains up to twenty (20) grams of pyrotechnic composition. Upon ignition, up to ten (10) stars (pellets of pressed pyrotechnic composition that burn with bright color) are individually expelled at several-second intervals.

"Sky rocket" means a device that:

- (1) consists of a tube that does not exceed one-half (1/2) inch in inside diameter and that contains up to twenty (20) grams of pyrotechnic composition;
- (2) contains a wooden stick for guidance and stability; and
- (3) rises into the air upon ignition, producing a burst of color or noise at the height of flight.

"Smoke device" means a tube or sphere containing pyrotechnic composition that produces white or colored smoke upon ignition as the primary effect.

"Snake" or "glow worm" means a pressed pellet of pyrotechnic composition that produces a large, snake-like ash upon burning. The ash expands in length as the pellet burns. These devices do not contain mercuric thiocyanate.

"Snapper" means a small, paper-wrapped item containing a minute quantity of explosive composition coated on small bits of sand. When dropped, the device explodes, producing a small report.

"Special fireworks" means fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation, including firecrackers containing more than one hundred thirty (130) milligrams of explosive composition, aerial shells containing more than forty (40) grams of pyrotechnic composition, and other exhibition display items that exceed the limits for classification as common

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fireworks.

"Trick match" means a kitchen or book match that has been coated with a small quantity of explosive or pyrotechnic composition. Upon ignition of the match, a small report or a shower of sparks is produced.

"Trick noisemaker" means an item that produces a small report intended to surprise the user.

"Wheel" means a pyrotechnic device that:

- (1) is attached to a post or tree by means of a nail or string;
- (2) contains up to six (6) driver units (tubes not exceeding one-half (1/2) inch in inside diameter) containing up to sixty (60) grams of composition per driver unit; and
- (3) revolves, upon ignition, producing a shower of color and sparks and sometimes a whistling effect.

"Wholesaler" means a person who purchases fireworks for resale to retailers.

SECTION 2. IC 22-11-14-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The fire prevention and building safety commission may:

(1) adopt rules **under IC 4-22-2** for the granting of permits for supervised public displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals; ~~The fire prevention and building safety commission created under IC 22-12-2 shall and~~

(2) establish by rule the fee for the permit, ~~A fee collected for a permit which~~ shall be paid into the fire and building services fund created under IC 22-12-6-1.

(b) The application for ~~any~~ a permit **required under subsection (a)** must:

- (1) name a competent operator who is to officiate at the display; ~~together with~~
- (2) **set forth** a brief resume of the operator's experience;
- (3) **be made in writing; and**
- (4) **be received with the applicable fee by the office of the state fire marshal at least five (5) business days before the display.**

No operator who has a prior conviction for violating this chapter may operate any display for one (1) year after the conviction.

(c) Every display shall be handled by a qualified operator ~~to be~~ approved by the chief of the fire department of the municipality in which the display is to be held. ~~and~~ **A display** shall be so located, discharged, or fired as, in the opinion of:

- (1) the chief of the fire department **of the city or town in which**

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**the display is to be held; or**

**(2) the township fire chief or the fire chief of the municipality nearest the site proposed, in the case the exhibit or of a display is sought to be held outside of the corporate limits of any city or town;**

after proper inspection, is not hazardous to property or person. Applications for permits must be made in writing at least fifteen (15) days in advance of the date of display:

**(d) A permit granted under this section is not transferable.**

**(b) A municipality may adopt an ordinance concerning the conducting and display of indoor pyrotechnics. However, an ordinance adopted under this subsection may not be more lenient than a rule adopted by a state agency.**

**(c) A municipality or an organization that obtains a permit for an indoor pyrotechnics display from a local governmental entity is not required to obtain a permit approved by the state fire marshal.**

**(e) A denial of a permit by a municipality shall be issued in writing before the date of the display.**

**(f) A person who possesses, transports, or delivers fireworks, except as authorized under this section, commits a Class A misdemeanor.**

SECTION 3. IC 22-11-14.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

**Chapter 14.5. Indoor Pyrotechnics**

**Sec. 1. As used in this chapter, "indoor pyrotechnics" means controlled exothermic chemical reactions that are timed to create the effects of heat, gas, sound, dispersion of aerosols, emission of visible electromagnetic radiation, or a combination of these effects to provide the maximum effect from the least volume (as provided in National Fire Protection Association Standard 1126 (2001 edition)). The term does not include the following novelties and trick noisemakers:**

- (1) Snakes or glow worms.**
- (2) Smoke devices.**
- (3) Wire sparklers that do not contain magnesium and that contain less than one hundred (100) grams of composition per item.**
- (4) Trick noisemakers, which include party poppers, booby traps, snappers, trick matches, cigarette loads, and auto burglar alarms.**

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**Sec. 2. As used in this chapter, "responding fire department" means the paid fire department or volunteer fire department that renders fire protection services to a political subdivision.**

**Sec. 3. The fire prevention and building safety commission shall adopt rules under IC 4-22-2 and IC 22-13-2.5 to implement a statewide code concerning displays of indoor pyrotechnics. The rules:**

- (1) must require that a certificate of insurance be issued that provides general liability coverage of at least five hundred thousand dollars (\$500,000) for the injury or death of any number of persons in any one (1) occurrence and five hundred thousand dollars (\$500,000) for property damage in any one (1) occurrence by an intended display of indoor pyrotechnics arising from any acts of the operator of the display or the operator's agents, employees, or subcontractors;**
- (2) must require the person intending to present the display, to give, at least twenty four (24) hours before the time of the display, written notice of the intended display to the chief of the responding fire department of the location proposed for the display of the indoor pyrotechnics and to include with the written notice a certification from the person intending to display the indoor pyrotechnics that the display will be made in accordance with:
 
  - (A) the rules adopted under this section; and**
  - (B) any ordinance or resolution adopted under section 4 of this chapter;****
- (3) must include and adopt NFPA 1126, Standard for the Use of Pyrotechnics before a Proximate Audience, 2001 Edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 12269;**
- (4) must be amended to adopt any subsequent edition of NFPA Standard 1126, including addenda, within eighteen (18) months after the effective date of the subsequent edition; and**
- (5) may provide for amendments to NFPA Standard 1126 as a condition of the adoption under subdivisions (3) and (4).**

**Sec. 4. A city, town, or county may adopt an ordinance or a township may adopt a resolution that:**

- (1) establishes requirements for displays of indoor pyrotechnics more stringent or detailed than the requirements established under this chapter; or**
- (2) bans the display of indoor pyrotechnics.**

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**Sec. 5. Except as provided in section 4 of this chapter, the rules adopted under section 3 of this chapter take precedence over:**

- (1) an ordinance adopted by a city, town, or county; or**
- (2) a resolution adopted by a township;**

**that covers the same subject matter as the commission's rules concerning indoor pyrotechnics.**

**Sec. 6. A person who violates a rule adopted under this chapter commits a Class C infraction.**

**Sec. 7. A person who knowingly allows an individual to commit a violation of a rule adopted under this chapter commits a Class C infraction if the violation is committed on property under the person's control.**

**Sec. 8. Each day that an infraction under this chapter occurs constitutes a separate infraction.**

**Sec. 9. A person who causes serious bodily injury to a person as a result of a reckless violation of a rule adopted under this chapter commits a Class A misdemeanor.**

**Sec. 10. A person who causes serious bodily injury to a person as a result of a knowing or an intentional violation of a rule adopted under this chapter commits a Class D felony.**

**Sec. 11. A person who causes the death of a person as a result of a reckless violation of a rule adopted under this chapter commits a Class D felony.**

**Sec. 12. A person who causes the death of a person as a result of a knowing or an intentional violation of a rule adopted under this chapter commits a Class C felony.**

**SECTION 4. IC 22-12-1-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3.5. (a) "Bull ride simulator" means a device designed to simulate:**

- (1) a rodeo bull ride; or**
- (2) a similarly challenging ride upon another type of animal; by subjecting the rider to a wide range of abrupt motion produced by mechanical, electrical, or hydraulic means.**

**(b) The term does not include devices that:**

- (1) resemble animals; and**
- (2) are designed:**
  - (A) as an entertainment device;**
  - (B) to operate rhythmically within a restricted range of motion; and**
  - (C) for use by children.**

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SECTION 5. IC 22-12-1-19.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19.1. (a) "Regulated amusement device" means a device designed to carry or convey one (1) or more persons in one (1) or more planes or degrees of motion for the purpose of amusement, recreation, or entertainment.

(b) The term includes the following:

- (1) An amusement ride.
- (2) A ski lift.
- (3) A passenger tramway.
- (4) An aerial tramway or lift.
- (5) A surface lift or tow.

**(6) A bull ride simulator.**

(c) The term does not include a passenger operated device or an inflatable amusement chamber.

SECTION 6. IC 35-47.5-4-4.5, AS ADDED BY HEA 1072-2004, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4.5. (a) This section does not apply to a person who is regulated under IC 14-34.

(b) The commission shall adopt rules under IC 4-22-2 to:

- (1) govern the use of a regulated explosive; and
- (2) establish requirements for the issuance of a license for the use of a regulated explosive.

(c) The commission shall include the following requirements in the rules adopted under subsection (b):

- (1) Relicensure every three (3) years after the initial issuance of a license.
- (2) Continuing education as a condition of relicensure.
- (3) An application for licensure or relicensure must be submitted to the office on forms approved by the commission.
- (4) A fee for licensure and relicensure.
- (5) Reciprocal recognition of a license for the use of a regulated explosive issued by another state if the licensure requirements of the other state are substantially similar to the licensure requirements established by the commission.

(d) A person may not use a regulated explosive unless the person has a license issued under this section for the use of a regulated explosive.

(e) The office shall carry out the licensing and relicensing program under the rules adopted by the commission.

(f) As used in this section, "regulated explosive" does not include either of the following:

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(1) ~~Consumer~~ Fireworks (as defined in ~~27 CFR 55.11~~): **27 CFR 555.11**).

(2) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices.

SECTION 7. [EFFECTIVE UPON PASSAGE] **(a) For purposes of this SECTION, "bull ride simulator" has the meaning set forth in IC 22-12-1-3.5, as added by this act.**

**(b) Notwithstanding IC 22-12-1-19.1, as amended by this act, and IC 22-15-7, a bull ride simulator may be operated without a valid regulated amusement device permit through July 1, 2005, under subsection (c).**

**(c) To operate a bull ride simulator as described in subsection (b), the owner of the bull ride simulator must:**

**(1) register the bull ride simulator with the office of the state building commissioner not later than July 1, 2004, by providing the information required by the office for such a registration on a form approved by the office; and**

**(2) demonstrate compliance with all of the insurance requirements for regulated amusement devices under IC 22-15-7-2.5 to the office of the state building commissioner not later than July 1, 2004.**

**(d) If the regulated amusement device safety board established under IC 22-12-4.5-2 determines that additional safety standards specific to bull ride simulators are appropriate or needed, subject to the approval of the fire prevention and building safety commission, the regulated amusement device safety board shall adopt rules under IC 4-22-2 to establish equipment laws containing these additional safety standards for bull ride simulators not later than July 1, 2005.**

**(e) This SECTION expires July 1, 2005.**

SECTION 8. [EFFECTIVE UPON PASSAGE] **(a) It is the intent of the general assembly that a standard known as NFPA 1126, Standard for the Use of Pyrotechnics before a Proximate Audience, 2001 Edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 12269, be incorporated into the Indiana Administrative Code, as required by IC 22-11-14.5-3, as added by this act.**

**(b) 675 IAC 22-2.2-25(b)(1), with respect to NFPA 1126, is void. The publisher of the Indiana Administrative Code and the Indiana**

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**Register shall remove the reference to NFPA 1126 in 675 IAC 22-2.2-25(b)(1) from the Indiana Administrative Code.**

**(c) The fire prevention and building safety commission shall carry out the duties imposed upon it under IC 22-11-14.5, as added by this act, under interim guidelines approved by the executive director of the fire and building services department.**

**(d) This SECTION expires on the earlier of the following:**

**(1) The date rules are adopted under IC 22-11-14.5-3, as added by this act.**

**(2) December 31, 2005.**

**SECTION 9. An emergency is declared for this act.**

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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

Approved: \_\_\_\_\_

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Governor of the State of Indiana

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