



Texas Department of Insurance

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RECENTLY ASKED QUESTION

FWKS 002-2011 Internet Sales of Fireworks 1.4G

QUESTION: I have an indoor retail fireworks store and I would like to sell fireworks through my internet site. Is this permissible?

OPINION: The sale of fireworks over the internet was not contemplated at the time the statute was written. In order to address this question the intent of the statute, in conjunction with the prohibition against restricting advertising, and the state of the industry at the time the law was written were examined.

§ 2154.252. Certain Sales of Fireworks Prohibited

(b) A person may offer for sale to the general public Fireworks 1.4G only at authorized retail locations. All mail order sales of Fireworks 1.4G are prohibited.

§ 2154.053. Rules Restricting Advertising or Competitive Bidding

(a) The commissioner may not adopt rules restricting advertising or competitive bidding by a license or permit holder under this chapter except to prohibit false, misleading, or deceptive practices.

In examining §2154.252 of the law and the state of the industry at the time the statute was written, it appears that the intent of the statute was to preclude shipment of fireworks to consumers through the mail. The law clearly states that fireworks may only be sold to the public at a retail location with a permit. Although internet sales were not anticipated, these sales are substantially the same as mail order sales. Therefore, taking an order for fireworks, accepting payment and then shipping them by any means to the customer is prohibited. The customer must come to the retail location to purchase fireworks.

Currently, many retailers advertise their products and location on-line. It does not appear that it would be a violation if, after the sales season started, the website allowed the customer to pre-order fireworks and then, during the authorized sales season pay for the product and finally, pick them up from the retail location. The sale would not be consummated until the consumer takes possession of the fireworks.

If a retailer who holds a current firework retail sales permit has a website and wants to allow consumers to pre-order fireworks through the website the following conditions must be met:

- 1) The retailer must have a physical location meeting the requirements of Chapter 2154 of the Texas Occupations Code and 28 TAC §§34.800.
- 2) The order, payment and pick up must occur during the selling season.
- 3) The consumer must pick up the fireworks from the retail sales location.

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Notice of Information

This information is an opinion of the Director of Investigations and Licensing. It is NOT the official position nor is it binding on the Texas Department of Insurance or the State Fire Marshal's Office. The above is an abbreviated narrative of the laws. The actual wording of the laws should be consulted prior to use, evaluation or interpretation. It should not be viewed as an approval or acknowledgment of compliance with all the applicable laws. It is the responsibility of the licensee or permittee to comply with all state and federal laws, rules and requirements. All referenced laws, codes, opinions and responses are subject to change without notification. The requestor should note that opinions may be sought directly from other sources such as the NFPA, fire & building code authorities, legal counsel and other professionals.