

1 **H. B. 4102**

2
3 (By Delegates Morgan, Stephens, Hall, Hatfield,
4 Hartman, Howell, Nelson, Snuffer, Staggers
5 and Swartzmiller)

6 [Introduced January 17, 2012; referred to the
7 Committee on Government Organization then the Judiciary.]

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9
10 A BILL to repeal §11-12-86 of the Code of West Virginia, 1931, as
11 amended; to repeal §29-3-23, §29-3-24, §29-3-25 and §29-3-26
12 of said code; to amend said code by adding thereto a new
13 article, designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4,
14 §29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8, §29-3E-9, §29-3E-10,
15 §29-3E-11, §29-3E-12 and §29-3E-13; to amend and reenact
16 §61-3E-1 and §61-3E-11 of said code, all relating to the
17 regulation of fireworks; defining terms; setting forth the
18 State Fire Marshal's authority; requiring a registration,
19 certification or permit; establishing the requirements for a
20 registration, certification and permit; establishing a special
21 revenue account; setting forth the State Fire Marshal's
22 rule-making authority; providing authority to investigate
23 complaints; providing administrative fines; and providing
24 criminal penalties.

25 *Be it enacted by the Legislature of West Virginia:*

1 That §11-12-86 of the Code of West Virginia, 1931, as amended,
2 be repealed; that §29-3-23, §29-3-24, §29-3-25 and §29-3-26 of said
3 code be repealed; that said code be amended by adding thereto a new
4 article, designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4,
5 §29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8, §29-3E-9, §29-3E-10,
6 §29-3E-11, §29-3E-12 and §29-3E-13; that §61-3E-1 and §61-3E-11 of
7 said code be amended and reenacted, all to read as follows:

8 **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

9 **ARTICLE 3E. FIREWORKS SAFETY.**

10 **§29-3E-1. Unlawful Acts.**

11 It is unlawful for a person to manufacture, wholesale,
12 distribute, import, sell or store consumer fireworks, sparkling
13 devices, novelties or toy caps without a license, registration,
14 certificate or permit from the State Fire Marshal.

15 **§29-3E-2. Definitions.**

16 As used in this article:

17 (1) "Agricultural and wildlife fireworks" means fireworks
18 devices distributed to farmers, ranchers, and growers through a
19 wildlife management program administered by the United States
20 Department of the Interior or the Department of Natural Resources
21 of this state.

22 (2) "APA Standard 87-1" means the APA Standard 87-1 published
23 by the American Pyrotechnics Association of Bethesda, Maryland, as

1 amended, and incorporated by reference into Title 49 of the Code of
2 Federal Regulations.

3 (3) "Articles pyrotechnic" means pyrotechnic devices for
4 professional use that are similar to consumer fireworks in chemical
5 composition and construction but not intended for consumer use,
6 that meet the weight limits for consumer fireworks but are not
7 labeled as such, and that are classified as UN0431 or UN0432 under
8 49 C.F.R. 172.101.

9 (4) "Consumer fireworks" means small fireworks devices that
10 are designed to produce visible effects by combustion and that are
11 required to comply with the construction, chemical composition and
12 labeling regulations promulgated by the United States Consumer
13 Product Safety Commission under 16 C.F.R. Parts 1500 and 1507, and
14 that are listed in APA Standard 87-1. Consumer fireworks do not
15 include sparkling devices, novelties and toy caps.

16 (5) "Consumer fireworks certificate" is a certificate issued
17 under section five of this article.

18 (6) "Display fireworks" means large fireworks to be used
19 solely by professional pyrotechnicians licensed by the State Fire
20 Marshal and designed primarily to produce visible or audible
21 effects by combustion, deflagration or detonation and includes, but
22 is not limited to, salutes containing more than two grains (one
23 hundred thirty milligrams) of explosive materials, aerial shells
24 containing more than forty grams of pyrotechnic compositions and

1 other display pieces that exceed the limits of explosive materials
2 for classification as consumer fireworks and are classified as
3 fireworks UN0333, UN0334, or UN0335 under 49 C.F.R. §172.101.

4 (7) "Distributor" means a person who sells fireworks to
5 wholesalers and retailers for resale.

6 (8) "Division 1.3 explosive" means that term as defined in 49
7 C.F.R. §173.50.

8 (9) "Division 1.4 explosive" means that term as defined in 49
9 C.F.R. §173.50.

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

13 (11) "Fire Marshal" means the State Fire Marshal.

14 (12) "Firework" or "fireworks" means any composition or device
15 designed for the purpose of producing a visible or audible effect
16 by combustion, deflagration or detonation. Fireworks include
17 consumer fireworks, display fireworks and special effects.
18 Fireworks does not include sparkling devices, novelties and toy
19 caps.

20 (13) "Interstate wholesaler" means a person who is engaged in
21 interstate commerce selling fireworks.

22 (14) "New explosive" means that term as defined in 49 C.F.R.
23 §173.56.

24 (15) "Novelties" as defined under APA standard 87-1 3.2.

1 (16) "Person" means an individual, or the responsible person
2 for an association, an organization, a partnership, a limited
3 partnership, a limited liability company, a corporation, or any
4 other group or combination acting as a unit.

5 (17) "Pyrotechnic composition" means a mixture of chemicals
6 that produces a visible or audible effect by combustion rather than
7 deflagration or detonation. A pyrotechnic composition will not
8 explode upon ignition unless severely confined.

9 (18) "Retailer" means a person who purchases consumer
10 fireworks for resale to consumers.

11 (19) "Sparkling devices" means "ground or handheld sparkling
12 devices" as that phrase is defined under APA 87-1, 3.1.1 and 3.5.

13 (20) "Special effects" means a combination of chemical
14 elements or chemical compounds capable of burning independently of
15 the oxygen of the atmosphere and designed and intended to produce
16 an audible, visual, mechanical, or thermal effect as an integral
17 part of a motion picture, radio, television, theatrical, or opera
18 production or live entertainment.

19 (21) "Toy Caps" means as defined under APA 87-1 3.3.

20 (22) "Wholesaler" means any person who sells consumer
21 fireworks to a retailer or any other person for resale and any
22 person who sells articles of pyrotechnics, display fireworks, and
23 special effects to a person licensed to possess and use those
24 devices.

1 **§29-3E-3. Production or transportation of fireworks.**

2 A person may produce or transport a firework that is a new
3 explosive and that is either a division 1.3 or division 1.4
4 explosive if the person first meets the requirements of 49 C.F.R.
5 §173.56(2)(j).

6 **§29-3E-4. Sparkling Devices, novelties and toy caps registration**
7 **required.**

8 (a) A retailer may not sell sparkling devices, novelties or
9 toy caps without being registered with the State Fire Marshal.

10 (b) To be registered with the State Fire Marshal, the retailer
11 shall:

12 (1) Submit an application to the State Fire Marshal;

13 (2) Provide a copy of his or her current business registration
14 certificate;

15 (3) Pay the required fee; and

16 (4) Provide other information as the Fire Marshal may require
17 by legislative rule.

18 © A registration is valid for the calendar year or any
19 fraction thereof and expires on December 31 of each year.

20 (d) A registration is not transferable.

21 (e) A retailer shall post the registration at a conspicuous
22 place at the location of the business.

23 (f) A separate registration is required for each location.

24 (g) The requirements of NFPA 1124 do not apply to a retailer

1 only selling sparkling devices, novelties or toy caps.

2 **§29-3E-5. Consumer fireworks certificate required.**

3 (a) A retailer may not sell consumer fireworks unless the
4 retailer is certified under this article:

5 (b) To be certified to sell consumer fireworks a retailer
6 shall:

7 (1) Submit an application to the State Fire Marshal;

8 (2) Provide a copy of his or her current business registration
9 certificate;

10 (3) Provide the required fee; and

11 (4) Provide other information as the Fire Marshal may require
12 by legislative rule.

13 © A consumer fireworks certificate is valid from October 1
14 through September 30 of each year or any fraction thereof and
15 expires on September 30 of each year.

16 (d) A consumer fireworks certificate is not transferable.

17 (e) A retailer shall post the certificate at a conspicuous
18 place at the location of the business.

19 (f) A separate certificate is required for each location.

20 (g) A certificate holder may also sell sparklers and novelties
21 at the same location without obtaining an additional sparklers and
22 novelties certificate.

23 (h) A retailer who sells consumer fireworks shall comply with
24 the regulations provided in NFPA 1124. The State Fire Marshal may,

1 by legislative rule, add to the regulations established in NFPA
2 1124.

3 **§29-3E-6. Required permit for public fireworks display.**

4 (a) A municipality, county, fair association, amusement park,
5 and other organizations shall have a permit to present a supervised
6 display of fireworks from the State Fire Marshal.

7 (b) To receive a permit, a municipality, fair association,
8 amusement park, and other organizations shall:

9 (1) Submit an application to the State Fire Marshal;

10 (2) Pay the required fee;

11 (3) Furnish proof of financial responsibility to satisfy
12 claims for damages to property or personal injuries arising out of
13 any act or omission on the part of the person or an employee
14 thereof, in the amount, character and form as State Fire Marshal
15 determines to be necessary for the protection of the public; and

16 (4) Provide other information as the Fire Marshal may require
17 by legislative rule.

18 © The State Fire Marshal may require approval of the local
19 police and fire authorities of the community where the display is
20 proposed to be held.

21 (d) A permit is not transferable.

22 (e) The display shall be handled by a competent operator
23 licensed or certified as to competency by the State Fire Marshal
24 and shall be of such composition, character, and so located,

1 discharged or fired so as to be safe in the opinion of the chief of
2 the fire department.

3 (f) The permittee shall require a bond from the licensee in a
4 sum not less than \$1,000 conditioned on compliance with the
5 provisions of this article and the rules of the State Fire Marshal
6 except where the licensee is a municipality.

7 **§29-3E-7. Fireworks safety fee imposed.**

8 (a) A user fee of six cents on the dollar of sales, known as
9 the fireworks safety fee, is levied on retail sales in this state
10 of consumer fireworks. The fee computation under shall be carried
11 to the third decimal place, and the tax rounded up to the next
12 whole cent whenever the third decimal place is greater than four
13 and rounded down to the lower whole cent whenever the third decimal
14 place is four or less.

15 (b) A person who acquires consumer fireworks in a retail
16 transaction is liable for the fireworks safety fee on the
17 transaction and, except as otherwise provided in this article,
18 shall pay the fireworks safety fee to the retailer as a separate
19 added amount to the consideration in the transaction:

20 © The retailer shall collect the fireworks safety fee as an
21 agent for the state and pay it over to the State Treasurer.

22 (d) The fireworks safety fee shall be deposited in the State
23 Fire Commission's special account established in subsection ©,
24 section twelve-b, article three of this chapter.

1 **§29-3E-8. Rule-making Authority.**

2 (a) The State Fire Marshal shall propose rules for legislative
3 approval, in accordance with the provisions of article three,
4 chapter twenty-nine-a of this code, to implement the provisions of
5 this article, including:

6 (1) Adopting by reference the most recent edition of APA
7 Standard 87-1;

8 (2) Adopting by reference the most recent edition of NFPA
9 1123, code for fireworks display;

10 (3) Adopting by reference the most recent edition of NFPA
11 1124, code for the manufacture, transportation, storage and retail
12 sales of fireworks and pyrotechnic articles;

13 (4) Adopting by reference the most recent edition of NFPA
14 1126, standard for the use of pyrotechnics before a proximate
15 audience, as promulgated by the State Fire Commission;

16 (5) Procedures for the issuance and renewal of a registration,
17 certificate and permit;

18 (6) A fee schedule;

19 (7) Establishing insurance or bond requirements

20 (8) Establishing additional criteria for the granting of a
21 registration, certificate, or permit under this article; and

22 (9) Registering manufacturers, wholesalers and distributors;

23 **§29-3E-9. Exemptions from article.**

24 This article does not prohibit any of the following:

1 (1) The use of fireworks by railroads or other transportation
2 agencies for signal purposes or illumination;

3 (2) The use of agricultural or wildlife fireworks;

4 (3) The sale or use of blank cartridges for a theatrical
5 performance, use by military organizations or signal or ceremonial
6 purposes in athletics or sports; or

7 (4) The possession, sale, or disposal of fireworks incidental
8 to the public display of fireworks by wholesalers or other persons
9 who have a permit to possess, store, and sell explosives from the
10 Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United
11 States Department of Justice and the State Fire Marshal.

12 **§29-3E-10. Local municipalities' regulation of consumer fireworks.**

13 This article does not affect the right of the governing body
14 of a municipality to prohibit the use of consumer fireworks within
15 its boundaries.

16 **§29-3E-11. Violations of this article.**

17 (a) A person may not ignite, discharge or use consumer
18 fireworks sparking devices, novelties or toy caps on public or
19 private property without the express permission of the owner to do
20 so.

21 (b) A person may not ignite or discharge any fireworks,
22 sparking devices, novelties or toy caps within or throw the same
23 from a motor vehicle.

24 © A person may not ignite or discharge any fireworks, sparking

1 devices, novelties or toy caps into or at a motor vehicle, or at or
2 near any person or group of people.

3 (d) A person who is less than sixteen years of age may not
4 purchase, nor offer for sale, consumer fireworks.

5 **§29-3E-12. Administrative fines; criminal penalties.**

6 Any person who violates this article or any rules promulgated
7 pursuant to section eight of this article is guilty of a
8 misdemeanor and, upon conviction thereof, shall be fined not more
9 than one \$1,000 or confined in the regional jail not more than
10 ninety days, or both.

11 **§29-3E-13. Seizures by State Fire Marshal; enforcement of law.**

12 (a) The State Fire Marshal shall seize, take, remove and
13 dispose of at public auction or destroy, or cause to be seized,
14 taken or removed and disposed of at public auction, or destroyed at
15 the expense of the owner, all stocks of fireworks or combustibles
16 offered or exposed for sale, stored or held in violation of this
17 article or legislative rule.

18 (b) The West Virginia State Police, sheriffs, municipal
19 policemen and other law-enforcement officers shall assist in the
20 enforcement of this article.

21 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

22 **ARTICLE 3E. OFFENSES INVOLVING EXPLOSIVES.**

23 **§61-3E-1. Definitions.**

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

3 (a) "Destructive device" means any bomb, grenade, mine,
4 rocket, missile, pipebomb or similar device containing an
5 explosive, incendiary, explosive gas or expanding gas which is
6 designed or so constructed as to explode by such filler and is
7 capable of causing bodily harm or property damage; any combination
8 of parts, either designed or intended for use in converting any
9 device into a destructive device and from which a destructive
10 device may be readily assembled.

11 "Destructive device" does not include a firearm as such is
12 defined in section two, article seven of this chapter, model
13 rockets and their components as defined in this section,
14 ~~twenty-three, article three, chapter twenty-nine of this code, or~~
15 fireworks or high power rockets and their components as defined in
16 this section.

17 (b) "Explosive material" means any chemical compound,
18 mechanical mixture or device that is commonly used or can be used
19 for the purpose of producing an explosion and which contains any
20 oxidizing and combustive units or other ingredients in such
21 proportions, quantities or packaging that an ignition by fire, by
22 friction, by concussion, by percussion, by detonator or by any part
23 of the compound or mixture may cause a sudden generation of highly
24 heated gases. These materials include, but are not limited to,

1 powders for blasting, high or low explosives, blasting materials,
2 blasting agents, blasting emulsions, blasting fuses other than
3 electric circuit breakers, detonators, blasting caps and other
4 detonating agents and black or smokeless powders not manufactured
5 or used for lawful sporting purposes. ~~or fireworks defined in~~
6 ~~section twenty-three, article three, chapter twenty-nine of this~~
7 ~~code which are not used in violation of this article.~~ Also
8 included are all explosive materials listed annually by the office
9 of the state Fire Marshal and published in the State Register, said
10 publication being hereby mandated.

11 © "High Power Rocket" is defined as in National Fire
12 Protection Association Standard 1127, "Code for High Power
13 Rocketry."

14 (d) "Hoax bomb" means any device or object that by its design,
15 construction, content or characteristics appears to be, or is
16 represented to be or to contain a destructive device, explosive
17 material or incendiary device as defined in this section, but is,
18 in fact, an inoperative facsimile or imitation of such a
19 destructive device, explosive material or incendiary device.

20 (e) "Incendiary device" means a container containing gasoline,
21 kerosene, fuel oil, or derivative thereof, or other flammable or
22 combustible material, having a wick or other substance or device
23 which, if set or ignited, is capable of igniting such gasoline,
24 kerosene, fuel oil, or derivative thereof, or other flammable or

1 combustible material: *Provided*, That no similar device
2 commercially manufactured and used solely for the purpose of
3 illumination shall be deemed to be an incendiary device.

4 (f) "Legal authority" means that right as expressly stated by
5 statute or law.

6 (g) "Model rocket" is defined as in National Fire Protection
7 Association Standard 1122, "Code for Model Rocketry."

8 (h) "Person" ~~shall mean~~ means an individual, corporation,
9 company, association, firm, partnership, society or joint stock
10 company.

11 (I) "Storage magazine" is defined to mean any building or
12 structure, other than an explosives manufacturing building,
13 approved by the State Fire Marshal for the storage of explosive
14 materials.

15 **§61-3E-11. Exemptions.**

16 (a) Unless specifically prohibited by any provision of this
17 code or the laws of the United States, nothing in this article
18 ~~shall prohibit~~ prohibits the authorized manufacture, sale,
19 transportation, distribution, use or possession of any explosive
20 material by any person holding a permit for such issued by the
21 Office of the State Fire Marshal. Any person performing a lawful
22 activity pursuant to or regulated by the terms of a permit issued
23 by the Division of Environmental Protection, or any office thereof,
24 ~~shall be~~ is exempt from the provisions of this article.

1 (b) Unless specifically prohibited by any other provision of
2 this code or the laws of the United States, nothing in this section
3 ~~shall prohibit~~ prohibits the authorized manufacture,
4 transportation, distribution, use or possession of any explosive,
5 destructive device or incendiary device by a member of the Armed
6 Forces or law-enforcement officers whenever such persons are acting
7 lawfully and in the line of duty; nor shall it prohibit the
8 manufacture, transportation, distribution, use or possession of any
9 explosive material, destructive device or incendiary device to be
10 used solely for lawful scientific research or lawful educational
11 purposes. Any person engaged in otherwise lawful blasting
12 activities failing to obtain a permit or in possession of an
13 expired permit issued by the office of the State Fire Marshal ~~shall~~
14 ~~not be construed to be~~ is not in violation of the article.

15 © Nothing contained in this article applies to the sale,
16 purchase, possession, use, transportation or storage of fireworks
17 as regulated in article three-e, chapter twenty-nine of this code.

NOTE: The purpose of this bill is to revise, consolidate and codify laws relating to the purchase, possession, sale and use of fireworks in this state. The bill defines terms. The bill sets forth the State Fire Marshal's authority. The bill requires a registration, certification or permit for fireworks. The bill establishes the requirements for a registration, certification and permit. The bill also establishes a special revenue account. The bill further sets forth the State Fire Marshal's rule-making authority. The bill provides authority to investigate complaints, administrative fines and criminal penalties.

§29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8, §29-3E-9, §29-3E-10, §29-3E-11, §29-3E-12 and §29-3E-13 are new; therefore, they been completely underscored.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.