

**H. B. 2936**

(By Delegates Hunt, (By Request) Staggers, Skaff, Sobonya,  
Manchin, Sponaugle, Moye, Walters, Marcum,  
R. Phillips and E. Nelson)

[Introduced March 14, 2013; referred to the  
Committee on Government Organization then the Judiciary.]

A BILL to repeal §11-12-86 of the Code of West Virginia, 1931, as amended; to repeal §29-3-23, §29-3-24, §29-3-25 and §29-3-26 of said code; to amend said code by adding thereto a new article, designated §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; and to amend and reenact §61-3E-1 and §61-3E-11 of said code, all relating to the regulation of fireworks; defining terms; setting forth the State Fire Marshal's authority; requiring a registration, certification or permit; establishing the requirements for a registration, certification and permit; establishing a special revenue account; setting forth the State Fire Marshal's rule-making authority; providing authority to investigate complaints; and providing criminal penalties.

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

That §11-12-86 of the Code of West Virginia, 1931, as amended, be repealed; that §29-3-23, §29-3-24, §29-3-25 and §29-3-26 of said

1 code be repealed; that said code be amended by adding thereto a new  
2 article, designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-  
3 5, §29-3E-6, §29-3E-7, §29-3E-8, §29-3E-9, §29-3E-10, §29-3E-11,  
4 §29-3E-12 and §29-3E-13; and that §61-3E-1 and §61-3E-11 of said  
5 code be amended and reenacted, all to read as follows:

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

7 **ARTICLE 3E. FIREWORKS SAFETY.**

8 **§29-3E-1. Unlawful Acts.**

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

14 **§29-3E-2. Definitions.**

15 As used in this article:

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

21 (2) "APA Standard 87-1" means the APA Standard 87-1 published  
22 by the American Pyrotechnics Association of Bethesda, Maryland, as  
23 amended, and incorporated by reference into Title 49 of the Code of

1 Federal Regulations;

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

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

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

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

1 for classification as consumer fireworks and are classified as  
2 fireworks UN0333, UN0334, or UN0335 under 49 C.F.R. §172.101;

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

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

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

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

12 (11) "Fire Marshal" means the State Fire Marshal;

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

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

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

23 (15) "Novelties" as defined under APA standard 87-1 3.2;

24 (16) "Person" means an individual, or the responsible person

1 for an association, an organization, a partnership, a limited  
2 partnership, a limited liability company, a corporation, or any  
3 other group or combination acting as a unit;

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

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

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

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

18 (21) "Toy Caps" means as defined under APA 87-1 3.3; and

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

24 **§29-3E-3. Production or transportation of fireworks.**

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

5 **§29-3E-4. Sparkling devices, novelties and toy caps registration**  
6 **required.**

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

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

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

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

14 (3) Pay the required fee; and

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

17 (c) A registration is valid for the calendar year or any  
18 fraction thereof and expires on December 31 of each year.

19 (d) A registration is not transferable.

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

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

23 (g) The requirements of NFPA 1124 do not apply to a retailer  
24 only selling sparkling devices, novelties or toy caps.

1 **§29-3E-5. Consumer fireworks certificate required.**

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

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

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

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

9 (3) Provide the required fee; and

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

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

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

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

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

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

22 (h) A retailer who sells consumer fireworks shall comply with  
23 the regulations provided in NFPA 1124. The State Fire Marshal may,  
24 by legislative rule, add to the regulations established in NFPA

1 1124.

2 **§29-3E-6. Required permit for public fireworks display.**

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

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

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

9 (2) Pay the required fee;

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

15 (4) Provide other information as the fire marshal may require  
16 by legislative rule.

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

20 (d) A permit is not transferable.

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

1 the fire department.

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

6 **§29-3E-7. Fireworks safety fee imposed.**

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

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

21 (c) The retailer shall collect the fireworks safety fee as an  
22 agent for the state and pay it over to the State Treasurer.

23 (d) The fireworks safety fee shall be deposited in the State  
24 Fire Commission's special account established in subsection (c),

1 section twelve-b, article three of this chapter to be distributed  
2 for the administration of this article.

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

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

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

10 (2) Adopting by reference the most recent edition of NFPA  
11 1123, code for fireworks display;

12 (3) Adopting by reference the most recent edition of NFPA  
13 1124, code for the manufacture, transportation, storage and retail  
14 sales of fireworks and pyrotechnic articles;

15 (4) Adopting by reference the most recent edition of NFPA  
16 1126, standard for the use of pyrotechnics before a proximate  
17 audience, as promulgated by the State Fire Commission;

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

20 (6) A fee schedule;

21 (7) Establishing insurance or bond requirements;

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

24 (9) Registering manufacturers, wholesalers and distributors.

1 **§29-3E-9. Exemptions from article.**

2 This article does not prohibit any of the following:

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

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

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

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

14 **§29-3E-10. Local municipalities' regulation of consumer fireworks.**

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

18 **§29-3E-11. Violations of this article.**

19 (a) A person may not ignite, discharge or use consumer  
20 fireworks on public property or private property without the  
21 express permission of the owner to do so.

22 (b) A person may not ignite or discharge any consumer  
23 fireworks or sparkling devices within or throw the same from a  
24 motor vehicle or building.

1 (c) A person may not ignite or discharge any consumer  
2 fireworks or sparkling devices into or at a motor vehicle or  
3 building, or at any person or group of people.

4 (d) A person may not ignite or discharge any consumer  
5 fireworks or sparkling devices while the person:

6 (1) Is under the influence of alcohol;

7 (2) Is under the influence of any controlled substance;

8 (3) Is under the influence of any other drug;

9 (4) Is under the combined influence of alcohol and any  
10 controlled substance or any other drug; or

11 (5) Has an alcohol concentration in his or her blood of eight  
12 hundredths of one percent or more by weight.

13 (e) A person who is less than sixteen years of age may not  
14 purchase, nor offer for sale, consumer fireworks.

15 **§29-3E-12. Criminal penalties.**

16 Any person who violates this article or any rules promulgated  
17 pursuant to section eight of this article is guilty of a  
18 misdemeanor and, upon conviction thereof, shall be fined not more  
19 than \$100 or confined in jail not more than ninety days, or both.

20 **§29-3E-13. Seizures by State Fire Marshal; enforcement of law.**

21 (a) The State Fire Marshal shall seize, take, remove and  
22 dispose of at public auction or destroy, or cause to be seized,  
23 taken or removed and disposed of at public auction, or destroyed at  
24 the expense of the owner, all stocks of fireworks or combustibles

1 offered or exposed for sale, stored or held in violation of this  
2 article or legislative rule.

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

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

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

8 **§61-3E-1. Definitions.**

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

11 (a) "Destructive device" means any bomb, grenade, mine,  
12 rocket, missile, pipebomb or similar device containing an  
13 explosive, incendiary, explosive gas or expanding gas which is  
14 designed or so constructed as to explode by such filler and is  
15 capable of causing bodily harm or property damage; any combination  
16 of parts, either designed or intended for use in converting any  
17 device into a destructive device and from which a destructive  
18 device may be readily assembled.

19 "Destructive device" does not include a firearm as such is  
20 defined in section two, article seven of this chapter or model  
21 rockets and their components as defined in this section ~~twenty-~~  
22 ~~three, article three, chapter twenty-nine of this code~~ or fireworks  
23 as defined in section two, article three-e, chapter twenty-nine of  
24 this code, or high power rockets and their components as defined in

1 this section.

2 (b) "Explosive material" means any chemical compound,  
3 mechanical mixture or device that is commonly used or can be used  
4 for the purpose of producing an explosion and which contains any  
5 oxidizing and combustive units or other ingredients in such  
6 proportions, quantities or packaging that an ignition by fire, by  
7 friction, by concussion, by percussion, by detonator or by any part  
8 of the compound or mixture may cause a sudden generation of highly  
9 heated gases. These materials include, but are not limited to,  
10 powders for blasting, high or low explosives, blasting materials,  
11 blasting agents, blasting emulsions, blasting fuses other than  
12 electric circuit breakers, detonators, blasting caps and other  
13 detonating agents and black or smokeless powders not manufactured  
14 or used for lawful sporting purposes ~~or fireworks defined in~~  
15 ~~section twenty-three, article three, chapter twenty-nine of this~~  
16 ~~code which are not used in violation of this article.~~ Also  
17 included are all explosive materials listed annually by the office  
18 of the State Fire Marshal and published in the State Register, said  
19 publication being hereby mandated.

20 (c) "High power rocket" is defined as in National Fire  
21 Protection Association Standard 1127, "Code for High Power  
22 Rocketry."

23 (d) "Hoax bomb" means any device or object that by its design,  
24 construction, content or characteristics appears to be, or is

1 represented to be or to contain a destructive device, explosive  
2 material or incendiary device as defined in this section, but is,  
3 in fact, an inoperative facsimile or imitation of such a  
4 destructive device, explosive material or incendiary device.

5 ~~(d)~~ (e) "Incendiary device" means a container containing  
6 gasoline, kerosene, fuel oil, or derivative thereof, or other  
7 flammable or combustible material, having a wick or other substance  
8 or device which, if set or ignited, is capable of igniting such  
9 gasoline, kerosene, fuel oil, or derivative thereof, or other  
10 flammable or combustible material: *Provided*, That no similar  
11 device commercially manufactured and used solely for the purpose of  
12 illumination shall be deemed to be an incendiary device.

13 ~~(e)~~ (f) "Legal authority" means that right as expressly stated  
14 by statute or law.

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

17 ~~(f)~~ (h) "Person" ~~shall mean~~ means an individual, corporation,  
18 company, association, firm, partnership, society or joint stock  
19 company.

20 ~~(g)~~ (i) "Storage magazine" is defined to mean any building or  
21 structure, other than an explosives manufacturing building,  
22 approved by the legal authority for the storage of explosive  
23 materials.

24 **§61-3E-11. Exemptions.**

1 (a) Unless specifically prohibited by any provision of this  
2 code or the laws of the United States, nothing in this article  
3 ~~shall prohibit~~ prohibits the authorized manufacture, sale,  
4 transportation, distribution, use or possession of any explosive  
5 material by any person holding a permit for such issued by the  
6 office of the State Fire Marshal. Any person performing a lawful  
7 activity pursuant to or regulated by the terms of a permit issued  
8 by the Division of Environmental Protection, or any office thereof,  
9 ~~shall be~~ is exempt from the provisions of this article.

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

24 (c) Nothing contained in this article applies to the sale,

1 purchase, possession, use, transportation or storage of fireworks  
2 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.

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

§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 have been completely underscored.