

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4267**

4 (By Delegates Iaquina, Boggs, Fleischauer  
5 and Longstreth, D. Poling, Moore, Williams,  
6 Azinger, Rowan, Ferro and R. Phillips)

7 (Originating in the Committee on Finance)

8 [February 21, 2014]

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 section, designated §9A-1-11b; to amend said code by adding  
14 thereto a new article, designated §29-3E-1, §29-3E-2,  
15 §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-7,  
16 §29-3E-8, §29-3E-9, §29-3E-10, §29-3E-11, §29-3E-12 and  
17 §29-3E-13; and to amend and reenact §61-3E-1 and §61-3E-11 of  
18 said code, all relating to legalizing and regulating the sale  
19 and use of fireworks; creating the West Virginia Veterans  
20 Program Fund; imposing a twenty percent fee for the sale of  
21 fireworks and providing for the deposit of the fee collections  
22 into to fund the Veterans Program Fund, the Fire Protection  
23 Fund and the State Fire Commission's special revenue account  
24 for the use of the State Fire Marshal; and criminal penalties.

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

26 That §11-12-86 of the Code of West Virginia, 1931, as amended,  
27 be repealed; that §29-3-23, §29-3-24, §29-3-25 and §29-3-26 of said  
28 code be repealed; that said code be amended by adding thereto a new  
29 section, designated §9A-1-11b; that said code be amended by adding

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

6 **CHAPTER 9A. VETERANS' AFFAIRS.**

7 **ARTICLE 1. DEPARTMENT OF VETERANS' AFFAIRS.**

8 **§9A-1-11b. Establishment of West Virginia Veterans Program Fund.**

9 There is hereby created in the State Treasury a special  
10 revenue fund to be designated and known as the "West Virginia  
11 Veterans Program Fund," which shall consist of revenues derived  
12 from the assessment of the Fireworks Safety Fee, as provided in  
13 section seven, article three-e, chapter twenty-nine of this code,  
14 to be administered by the Department of Veterans' Affairs and used  
15 for funding veterans' programs. Funds may also be derived from any  
16 gift, grant, bequest, endowed fund or donation which may be  
17 received by any veterans program created by statute or from any  
18 governmental entity or unit or any person, firm, foundation or  
19 corporation. Expenditures from the fund shall be for the purposes  
20 set forth in this article and are not authorized from collections  
21 but are to be made only in accordance with appropriation by the  
22 Legislature and in accordance with the provisions of article three,  
23 chapter twelve of this code and upon the fulfillment of the  
24 provisions set forth in article two, chapter eleven-b of this code:  
25 Provided, That for the fiscal year ending June 30, 2015,  
26 expenditures are authorized from collections rather than pursuant  
27 to an explicit appropriation by the Legislature. Any balance  
28 remaining in the fund at the end of any fiscal year shall be

1 reappropriated to the next fiscal year.

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

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

4 **§29-3E-1. Unlawful acts.**

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

10 **§29-3E-2. Definitions.**

11 As used in this article:

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

17 (2) "APA Standard 87-1" means the APA Standard 87-1 published  
18 by the American Pyrotechnics Association of Bethesda, Maryland, as  
19 amended, and incorporated by reference into Title 49 of the Code of  
20 Federal Regulations;

21 (3) "Articles pyrotechnic" means pyrotechnic devices for  
22 professional use that are similar to consumer fireworks in chemical  
23 composition and construction but not intended for consumer use,  
24 that meet the weight limits for consumer fireworks but are not  
25 labeled as such, and that are classified as UN0431 or UN0432 under  
26 49 C.F.R. 172.101;

27 (4) "Consumer fireworks" means small fireworks devices that  
28 are designed to produce visible effects by combustion and that are

1 required to comply with the construction, chemical composition and  
2 labeling regulations promulgated by the United States Consumer  
3 Product Safety Commission under 16 C.F.R. Parts 1500 and 1507, and  
4 that are listed in APA Standard 87-1. Consumer fireworks do not  
5 include sparkling devices, novelties and toy caps;

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

8 (6) "Display fireworks" means large fireworks to be used  
9 solely by professional pyrotechnicians licensed by the State Fire  
10 Marshal and designed primarily to produce visible or audible  
11 effects by combustion, deflagration or detonation and includes, but  
12 is not limited to, salutes containing more than two grains (one  
13 hundred thirty milligrams) of explosive materials, aerial shells  
14 containing more than forty grams of pyrotechnic compositions and  
15 other display pieces that exceed the limits of explosive materials  
16 for classification as consumer fireworks and are classified as  
17 fireworks UN0333, UN0334, or UN0335 under 49 C.F.R. §172.101;

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

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

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

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

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

28 (12) "Firework" or "fireworks" means any composition or device

1 designed for the purpose of producing a visible or audible effect  
2 by combustion, deflagration or detonation. Fireworks include  
3 consumer fireworks, display fireworks and special effects.  
4 Fireworks does not include sparkling devices, novelties and toy  
5 caps;

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

8 (14) "New explosive" means that term as defined in 49 C.F.R.  
9 §173.56;

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

11 (16) "Person" means an individual, or the responsible person  
12 for an association, an organization, a partnership, a limited  
13 partnership, a limited liability company, a corporation, or any  
14 other group or combination acting as a unit;

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

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

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

23 (20) "Special effects" means a combination of chemical  
24 elements or chemical compounds capable of burning independently of  
25 the oxygen of the atmosphere and designed and intended to produce  
26 an audible, visual, mechanical, or thermal effect as an integral  
27 part of a motion picture, radio, television, theatrical, or opera  
28 production or live entertainment;

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

2 (22) "Wholesaler" means any person who sells consumer  
3 fireworks to a retailer or any other person for resale and any  
4 person who sells articles of pyrotechnics, display fireworks, and  
5 special effects to a person licensed to possess and use those  
6 devices.

7 **§29-3E-3. Production or transportation of fireworks.**

8 A person may produce or transport a firework that is a new  
9 explosive and that is either a division 1.3 or division 1.4  
10 explosive if the person first meets the requirements of 49 C.F.R.  
11 §173.56(2) (j).

12 **§29-3E-4. Sparkling devices, novelties and toy caps registration**  
13 **required.**

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

16 (b) To be registered with the State Fire Marshal, the retailer  
17 shall:

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

19 (2) Provide a copy of his or her current business registration  
20 certificate;

21 (3) Pay the required fee; and

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

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

26 (d) A registration is not transferable.

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

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

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

4 **§29-3E-5. Consumer fireworks certificate required.**

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

7 (b) To be certified to sell consumer fireworks a retailer  
8 shall:

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

10 (2) Provide a copy of his or her current business registration  
11 certificate;

12 (3) Provide the required fee; and

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

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

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

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

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

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

25 (h) A retailer who sells consumer fireworks shall comply with  
26 the regulations provided in NFPA 1124. The State Fire Marshal may,  
27 by legislative rule, add to the regulations established in NFPA  
28 1124.

1 **§29-3E-6. Required permit for public fireworks display.**

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

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

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

8 (2) Pay the required fee;

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

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

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

19 (d) A permit is not transferable.

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

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



1 **§29-3E-7. Fireworks safety fee imposed; other fees.**

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

11 (b) A person who acquires consumer fireworks in a retail  
12 transaction is liable for the fireworks safety fee on the  
13 transaction and, except as otherwise provided in this article,  
14 shall pay the fireworks safety fee to the retailer as a separate  
15 added amount to the consideration in the transaction.

16 (c) The retailer shall collect the fireworks safety fee as an  
17 agent for the state and pay it over to the State Treasurer in the  
18 manner prescribed for the payment of other moneys received by him.

19 (d) Ten cents of the fireworks safety fee shall be deposited  
20 in the West Virginia Veterans Program Fund established in section  
21 eleven-b, article one, chapter nine-a of this code for expenditure  
22 pursuant to the provisions of that section.

23 (e) Five cents of the fireworks safety fee shall be deposited  
24 into the Fire Protection Fund established in section thirty-three,  
25 article three, chapter thirty-three of this code and distributed in  
26 accordance with that section to each volunteer fire company or  
27 department on an equal share basis by the State Treasurer.

28 (f) Five cents of the fireworks safety fee shall be deposited

1 in the Fire Marshal Fees Fund established in subsection (c),  
2 section twelve-b, article three of this chapter for expenditure  
3 pursuant to the provisions of that subsection.

4 (g) The proceeds of the fee collected pursuant to this section  
5 shall be deposited by the State Treasurer into these special  
6 revenue accounts, at least monthly.

7 (h) All other fees required to be paid by the provisions of  
8 this section shall be paid to the State Fire Marshal and shall be  
9 deposited in the Fire Marshal Fees Fund established in subsection  
10 (c), section twelve-b, article three of this chapter for  
11 expenditure pursuant to the provisions of that subsection.

12 **§29-3E-8. Rule-making Authority.**

13 (a) The State Fire Marshal shall propose emergency and  
14 legislative rules for promulgation, in accordance with the  
15 provisions of article three, chapter twenty-nine-a of this code, to  
16 implement the provisions of this article, including:

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

19 (2) Adopting by reference the most recent edition of NFPA  
20 1123, code for fireworks display;

21 (3) Adopting by reference the most recent edition of NFPA  
22 1124, code for the manufacture, transportation, storage and retail  
23 sales of fireworks and pyrotechnic articles;

24 (4) Adopting by reference the most recent edition of NFPA  
25 1126, standard for the use of pyrotechnics before a proximate  
26 audience, as promulgated by the State Fire Commission;

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

- 1       (6) A fee schedule;  
2       (7) Establishing insurance or bond requirements  
3       (8) Establishing additional criteria for the granting of a  
4 registration, certificate, or permit under this article; and  
5       (9) Registering manufacturers, wholesalers and distributors;

6 **§29-3E-9. Exemptions from article.**

7       This article does not prohibit any of the following:

- 8       (1) The use of fireworks by railroads or other transportation  
9 agencies for signal purposes or illumination;  
10       (2) The use of agricultural or wildlife fireworks;  
11       (3) The sale or use of blank cartridges for a theatrical  
12 performance, use by military organizations or signal or ceremonial  
13 purposes in athletics or sports; or  
14       (4) The possession, sale, or disposal of fireworks incidental  
15 to the public display of fireworks by wholesalers or other persons  
16 who have a permit to possess, store, and sell explosives from the  
17 Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United  
18 States Department of Justice and the State Fire Marshal.

19 **§29-3E-10. Local municipalities' regulation of consumer fireworks.**

20       This article does not affect the right of the governing body  
21 of a municipality to prohibit the use of consumer fireworks within  
22 its boundaries.

23 **§29-3E-11. Violations of this article.**

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

27       (b) A person may not intentionally ignite or discharge any  
28 consumer fireworks or sparkling devices within or throw the same

1 from a motor vehicle or building.

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

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

7 (1) Is under the influence of alcohol;

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

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

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

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

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

16 **§29-3E-12. Criminal penalties.**

17 Any person who violates this article or any rules promulgated  
18 pursuant to section eight of this article is guilty of a  
19 misdemeanor and, upon conviction thereof, shall be fined not less  
20 than \$100 nor more than \$500.

21 **§29-3E-13. Seizures by State Fire Marshal; enforcement of law.**

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

28 (b) The West Virginia State Police, sheriffs, municipal police

1 officers and other law-enforcement officers shall assist in the  
2 enforcement of this article.

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

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

5 **§61-3E-1. Definitions.**

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

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

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

23 (b) "Explosive material" means any chemical compound,  
24 mechanical mixture or device that is commonly used or can be used  
25 for the purpose of producing an explosion and which contains any  
26 oxidizing and combustive units or other ingredients in such  
27 proportions, quantities or packaging that an ignition by fire, by  
28 friction, by concussion, by percussion, by detonator or by any part

1 of the compound or mixture may cause a sudden generation of highly  
2 heated gases. These materials include, but are not limited to,  
3 powders for blasting, high or low explosives, blasting materials,  
4 blasting agents, blasting emulsions, blasting fuses other than  
5 electric circuit breakers, detonators, blasting caps and other  
6 detonating agents and black or smokeless powders not manufactured  
7 or used for lawful sporting purposes. ~~or fireworks defined in~~  
8 ~~section twenty three, article three, chapter twenty nine of this~~  
9 ~~code which are not used in violation of this article.~~ Also included  
10 are all explosive materials listed annually by the office of the  
11 State Fire Marshal and published in the State Register, said  
12 publication being hereby mandated.

13 (c) "High power rocket" is defined as in National Fire  
14 Protection Association Standard 1127, "Code for High Power  
15 Rocketry."

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

22 ~~(d)~~(e) "Incendiary device" means a container containing  
23 gasoline, kerosene, fuel oil, or derivative thereof, or other  
24 flammable or combustible material, having a wick or other substance  
25 or device which, if set or ignited, is capable of igniting such  
26 gasoline, kerosene, fuel oil, or derivative thereof, or other  
27 flammable or combustible material: *Provided*, That no similar device  
28 commercially manufactured and used solely for the purpose of

1 illumination shall be deemed to be an incendiary device.

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

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

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

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

### 13 **§61-3E-11. Exemptions.**

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

23 (b) Unless specifically prohibited by any other provision of  
24 this code or the laws of the United States, nothing in this  
25 section ~~shall prohibit~~ prohibits the authorized manufacture,  
26 transportation, distribution, use or possession of any explosive,  
27 destructive device or incendiary device by a member of the Armed  
28 Forces or law-enforcement officers whenever such persons are acting

1 lawfully and in the line of duty; nor shall it prohibit the  
2 manufacture, transportation, distribution, use or possession of any  
3 explosive material, destructive device or incendiary device to be  
4 used solely for lawful scientific research or lawful educational  
5 purposes. Any person engaged in otherwise lawful blasting  
6 activities failing to obtain a permit or in possession of an  
7 expired permit issued by the office of the State Fire Marshal ~~shall~~  
8 ~~not be construed to be~~ is not in violation of the article.

9 (c) Nothing contained in this article applies to the sale,  
10 purchase, possession, use, transportation or storage of fireworks  
11 as regulated in article three-e, chapter twenty-nine of this code.