

Senate Bill No. 389

(By Senators Yost, Kirkendoll, Wells, Snyder, Beach and D. Hall)

[Introduced January 21, 2014; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §9A-1-11b; to amend
said code by adding thereto a new section, designated
§11-12-87; to amend and reenact §29-3-23 and §29-3-24 of said
code; and to amend and reenact §61-3E-1 of said code, all
relating to legalizing and regulating the sale and use of
fireworks; creating the West Virginia Veterans Program Fund;
imposing a ten-percent fee for the sale of fireworks; and
using the proceeds of that fee to fund the Veterans Program
Fund.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §9A-1-11b; that said
code be amended by adding thereto a new section, designated
§11-12-87; that §29-3-23 and §29-3-24 of said code be amended and
reenacted; and that §61-3E-1 of said code be amended and reenacted,
all to read as follows:

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

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

3 **§9A-1-11b. Establishment of West Virginia Veterans Program Fund.**

4 There is hereby created in the State Treasury a special
5 revenue fund to be designated and known as the West Virginia
6 Veterans Program Fund, to be administered by the Department of
7 Veterans' Affairs, which shall consist of revenues derived from the
8 assessment of the Fireworks Safety Fee, as provided in section
9 twenty-four, article three, chapter 29 of this code. Funds may also
10 be derived from any gift, grant, bequest, endowed fund or donation
11 which may be received by any veterans program created by statute
12 from any governmental entity or unit or any person, firm,
13 foundation or corporation. Any balance, including accrued interest
14 or other earning, in this special fund at the end of any fiscal
15 year shall not revert to the General Revenue Fund but shall remain
16 in the fund.

17 **CHAPTER 11. TAXATION.**

18 **ARTICLE 12. BUSINESS REGISTRATION TAX.**

19 **§11-12-87. Fireworks registration fee.**

20 The Tax Commissioner shall establish a "Fireworks Registration
21 Fee" to be charged to all West Virginia licensed businesses
22 desiring to sell fireworks authorized for sale in section
23 twenty-three, article three, chapter twenty-nine of this code.
24 This fee shall run concurrent with the business registration

1 certificate set forth in section five of this article, and not be
2 prorated. A business shall pay twenty dollars for each
3 registration and shall be issued a sticker or card by the Tax
4 Commissioner to be posted in a conspicuous position at the location
5 of the business paying the registration fee. This fee shall be
6 collected for each separate location where fireworks are sold. The
7 Tax Commissioner may, at his or her discretion, require a separate
8 certificate which shall be posted as set forth in this section, or
9 provide that the evidence of compliance with this section may be by
10 a stamp or language added to the business registration certificate
11 or by embossing or writing imprinted on the business registration
12 certificate.

13 CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

14 **ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.**

15 **§29-3-23. "Fireworks" defined; labels required.**

16 (a) The following items are considered fireworks and require
17 a business registration fee be paid in order to be offered for
18 sale, as provided in section eighty-seven, article twelve, chapter
19 eleven of this code:

20 (1) The term "fireworks" means and includes any combustible or
21 explosive composition, or any substance or combination of
22 substances, or article prepared for the purpose of producing a
23 visible or an audible effect by combustion, explosion, deflagration
24 or detonation and shall include blank cartridges, toy pistols, toy
25 cannons, toy canes or toy guns in which explosives are used, the

1 ~~type of unmanned balloons which require fire underneath to propel~~
2 ~~the same, firecrackers, torpedoes, skyrockets, roman candles, daygo~~
3 ~~bombs or other fireworks of like construction and any fireworks~~
4 ~~containing any explosive or flammable compound or any tablets or~~
5 ~~other device containing any explosive substance, except that the~~
6 ~~term "fireworks" shall not include: device, other than a novelty of~~
7 ~~theatrical pyrotechnic article, intended to produce visible or~~
8 ~~audible effects, or both, by combustion, deflagration or~~
9 ~~detonation.~~

10 (2) The term "consumer fireworks" means any fireworks device
11 in a finished state, exclusive of mere ornamentation, suitable for
12 use by the public that complies with the construction, performance,
13 composition and labeling requirements established by the United
14 States Consumer Products Safety Commission (CPSC) in Title 16
15 C.F.R. parts 1500 and 1507 and any other limits and requirements
16 that the CPSC may impose. Consumer fireworks are classified under
17 the standards of the United Nations as UN0336 and as Fireworks
18 1.4G. Consumer fireworks include, but are not limited to,
19 firecrackers, skyrockets, roman candles, mines, shells, and
20 multiple-tube items.

21 (3) The term "display fireworks" means fireworks devices in a
22 finished state, exclusive of mere ornamentation, primarily intended
23 for commercial displays that are designed to produce visible and/or
24 audible effects by combustion, deflagration or detonation,
25 including, but not limited to, exhibition display items that exceed

1 the limits contained in the CPSC standards for consumer fireworks.
2 Display fireworks are classified under United Nations standards as
3 UN0335 and Fireworks 1.3G.

4 (b) The term "fireworks" does not include:

5 (1) Model rockets and model rocket engines, designed, sold and
6 used for the purpose of propelling recoverable ~~aero~~ aero models.
7 and shall not include toy

8 (2) Toy pistols, toy canes, toy guns or other devices in which
9 paper or plastic caps manufactured in accordance with the United
10 States Department of Transportation regulations for packing and
11 shipping of toy paper or plastic caps are used and toy paper or
12 plastic caps manufactured as provided therein, the sale and use of
13 which ~~shall be~~ is permitted at all times. Each package containing
14 toy paper or plastic caps offered for retail sale shall be labeled
15 to indicate the maximum explosive content per cap.

16 (3) Emergency signal flares.

17 (4) Matches.

18 (5) Fixed ammunition for firearms.

19 (6) Ammunition components intended for use in firearms, muzzle
20 loading cannons and small arms.

21 (7) Shells, cartridges and primers for use in firearms, muzzle
22 loading cannons and small arms.

23 (c) The following ~~sparklers~~ and novelties ~~shall not be~~
24 considered are not fireworks. ~~and~~ They require a business
25 registration fee be paid to be authorized to sell, as provided ~~for~~

1 in section eighty-six, article twelve, chapter eleven of this code:

2 ~~(1) Explosive caps designed to be fired in toy pistols,~~
3 ~~provided that the explosive mixture of the caps shall does not~~
4 ~~exceed twenty-five hundredths of a grain for each cap.~~

5 ~~(2)~~(1) Snake and glow worms composed of pressed pellets of a
6 pyrotechnic mixture that produce a large snake-like ash when
7 burning.

8 ~~(3)~~(2) ~~Smoke~~ Toy smoke devices consisting of a tube, cone or
9 sphere containing a pyrotechnic mixture that produces white or
10 colored smoke.

11 ~~(4)~~(3) Trick noisemakers which produce a small report designed
12 to surprise the user and which include:

13 (A) A party popper, which is a small plastic or paper item
14 containing not in excess of twenty-five hundredths of a grain of
15 explosive mixture. A string protruding from the device is pulled
16 to activate the device, expelling paper streamers and producing a
17 small report.

18 (B) A string popper which is a small tube containing not in
19 excess of twenty-five hundredths of a grain of explosive mixture
20 with string protruding from both ends. The strings are pulled to
21 activate the friction-sensitive mixture, producing a small report.

22 (C) A snapper ~~or drop pop~~, which is a small paper wrapped item
23 containing no more than twenty-five hundredths of a grain of
24 explosive mixture coated on small bits of sand. When dropped, the
25 device produces a small report.

1 ~~(5) Wire sparklers~~ (4) Sparklers consisting of a metal wire or
2 wood stick or dowel coated with nonexplosive pyrotechnic mixture
3 that produces a shower of sparks upon ignition. ~~These items must~~
4 ~~may not exceed one hundred grams of mixture per item.~~

5 ~~(6)~~ (5) Other sparkling devices which emit showers of sparks
6 and sometimes a whistling or crackling effect when burning, do not
7 detonate or explode, are hand-held or ground-based and cannot
8 propel themselves through the air. ~~and contain not more than~~
9 ~~seventy-five grams of chemical compound per tube or not more than~~
10 ~~a total of two hundred grams if multiple tubes are used. Provided,~~
11 ~~That~~ These devices include:

12 (A) Cylindrical Fountain. This is comprised of a cylindrical
13 tube with pyrotechnic composition producing a shower of colored
14 sparks and/or a whistling effect and/or smoke.

15 (B) Cone Fountain. This is a cardboard or heavy paper cone
16 containing pyrotechnic composition. The effect is the same as that
17 of a cylindrical fountain.

18 (C) Illuminating Torch. Cylindrical tube that produces a
19 colored flame upon ignition. These may be spike, base or hand held.

20 (D) Wheel. Pyrotechnic device intended to be attached to a
21 post or tree by means of a nail or string. These may have one or
22 more drivers. Upon ignition, the wheel revolves and produces a
23 shower of color and sparks and, sometimes, a whistling effect.

24 (E) Ground Spinner. This is a small devices with pyrotechnic
25 composition, venting out an orifice, usually on the side of the

1 tube. This is similar in operation to a wheel but intended to be
2 placed flat on the ground and ignited. A shower of sparks and color
3 is produced by the rapidly spinning device.

4 (F) Flitter Sparkler. This is a narrow paper tube attached to
5 a stick or wire and is filled with pyrotechnic composition that
6 produces color and sparks upon ignition. The paper at one end of
7 the tube is ignited to make the device function.

8 (d) Sparklers and ~~sparkler~~ sparkling devices as provided for
9 herein shall in subdivisions four and five, subsection (c) of this
10 section may not be sold to anyone below the age of sixteen years
11 old.

12 **§29-3-24. Sale, possession or use of fireworks; permit for public**
13 **display.**

14 ~~Except as hereinafter provided, no person, firm,~~
15 ~~co-partnership or corporation shall offer for sale, possess, expose~~
16 ~~for sale, sell at retail, keep with intent to sell at retail, or~~
17 ~~use or explode any fireworks: Provided, That~~

18 (a) Consumer fireworks may be legally sold, bought, possessed
19 and used. A fireworks safety brochure shall be included with each
20 retail sale of consumer fireworks. A person at least sixteen years
21 old may set off fireworks under competent adult supervision. Eye
22 protection is required of anyone under the age of eighteen who
23 ignites consumer fireworks.

24 (b) The State Fire Marshal may propose reasonable rules for
25 legislative approval for the granting of permits for the wholesale

1 and retail sale and storage of fireworks.

2 (c) In addition to the state consumer sales tax, a ten percent
3 Fireworks Safety Fee shall be added to retail sales of consumer
4 fireworks and those items identified in subsections (b), (c) and
5 (d), section twenty-three of this article. The Tax Commissioner
6 shall establish the appropriate amount to be collected for
7 fractional dollar sales.

8 (d) The proceeds of the fee collected pursuant to this section
9 shall be deposited by the Tax Commissioner, at least monthly, in a
10 special revenue account designated as the West Virginia Veterans
11 Program Fund as established by section eleven-b, article one,
12 chapter nine-a of this code.

13 (e) The State Fire Marshal may ~~adopt~~ propose reasonable rules
14 ~~and regulations~~ for legislative approval for the granting of
15 permits for the supervised public displays of fireworks by
16 municipalities, fair associations, amusement parks and other
17 organizations or groups of individuals. The State Fire Marshal
18 ~~shall have~~ has the authority to charge a fee of ~~ten~~ twenty dollars
19 to each applicant requesting a license to be a pyrotechnic operator
20 as set forth in this article. The State Fire Marshal shall charge
21 a scaled fee for all applications requesting permits to establish
22 a pyrotechnics display as provided in this section. All fees
23 required to be paid by the provisions of this section shall be paid
24 to the State Fire Marshal and ~~thereafter~~ deposited by him into a
25 special account for the operation of the State Fire Commission.

1 ~~Such~~ The permits may be granted upon application to ~~said~~ the State
2 Fire Marshal and after approval of the local police and fire
3 authorities of the community ~~wherein~~ where the display is proposed
4 to be held as provided ~~herein~~ in this section and the filing of a
5 bond by the applicant as provided ~~hereinafter~~ in this section.

6 (f) ~~Every such~~ A fireworks display shall be handled by a
7 competent operator licensed or certified ~~as to competency~~ by the
8 State Fire Marshall and shall be of such composition, character,
9 and so located, discharged or fired as in the opinion of the chief
10 of the fire department, after proper inspection, and of the chief
11 of police as to not be hazardous to property or endanger any person
12 or persons. After ~~such~~ the privilege ~~shall have~~ has been granted,
13 the sale, possession, use and distribution of fireworks for ~~such~~
14 the display shall be lawful for that purpose only. No permit
15 granted ~~hereunder shall be~~ under this section is transferable.

16 (g) (1) The governing body or chief executive authority of the
17 municipality shall require a bond from the licensee in a sum not
18 less than \$1,000 conditioned on compliance with the provisions of
19 this article and the ~~regulations~~ rules of the State Fire
20 Commission. ~~Provided, That~~ No municipality ~~shall be~~ is required to
21 file such bond.

22 (2) Before any permit for a pyrotechnic display ~~shall be~~ is
23 issued, the person, firm or corporation making the application
24 ~~therefor~~ shall furnish proof of financial responsibility to satisfy
25 claims for damages to property or personal injuries arising out of

1 any act or omission on the part of ~~such~~ the person, firm or
2 corporation or any agent or employee thereof, in ~~such~~ an amount,
3 character and form as the State Fire Marshall determines to be
4 necessary for the protection of the public.

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

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

7 **§61-3E-1. Definitions.**

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

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

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

22 (b) "Explosive material" means any chemical compound,
23 mechanical mixture or device that is commonly used or can be used
24 for the purpose of producing an explosion and which contains any
25 oxidizing and combustive units or other ingredients in such

1 proportions, quantities or packaging that an ignition by fire, by
2 friction, by concussion, by percussion, by detonator or by any part
3 of the compound or mixture may cause a sudden generation of highly
4 heated gases. These materials include, but are not limited to,
5 powders for blasting, high or low explosives, blasting materials,
6 blasting agents, blasting emulsions, blasting fuses other than
7 electric circuit breakers, detonators, blasting caps and other
8 detonating agents and black or smokeless powders not manufactured
9 or used for lawful sporting purposes or fireworks defined in
10 section twenty-three, article three, chapter twenty-nine of this
11 code which are not used in violation of this article. Also
12 included are all explosive materials listed annually by the office
13 of the state fire marshal and published in the state register, said
14 publication being hereby mandated.

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

21 (d) "Incendiary device" means a container containing gasoline,
22 kerosene, fuel oil, or derivative thereof, or other flammable or
23 combustible material, having a wick or other substance or device
24 which, if set or ignited, is capable of igniting such gasoline,
25 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 (e) "Legal authority" means that right as expressly stated by
5 statute or law.

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

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

NOTE: The purpose of this bill is to legalize and regulate the
selling of fireworks; to create the West Virginia Veterans Program
Fund; to impose a special ten percent fee on the sale of fireworks;
and to use those proceeds for the Veterans Program Fund.

§9A-1-11b and §11-12-87 are new; therefore, strike-throughs
and underscoring have been omitted.

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