

Senate Bill No. 110

(By Senator D. Hall)

[Introduced January 14, 2015; referred to the Committee on the Judiciary; and then to the
Committee on Finance.]

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 regulation of fireworks; defining terms; setting forth State Fire Marshal’s authority; requiring registration, certification or permit; establishing requirements for registration, certification and permit; establishing special revenue account; setting forth 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That §11-12-86 of the Code of West Virginia, 1931, as amended, be repealed; that §29-3-23, §29-3-24, §29-3-25 and §29-3-26 of said code be repealed; that said code be amended by adding

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

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

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

6 **§29-3E-1. Unlawful acts.**

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

10 **§29-3E-2. Definitions.**

11 As used in this article:

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

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

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

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

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

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

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

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

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

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

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

20 (12) "Firework" or "fireworks" means any composition or device designed for the purpose
21 of producing a visible or audible effect by combustion, deflagration or detonation. Fireworks include

1 consumer fireworks, display fireworks and special effects. Fireworks does not include sparkling
2 devices, novelties and toy caps;

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

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

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

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

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

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

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

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

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

21 (22) "Wholesaler" means any person who sells consumer fireworks to a retailer or any other

1 person for resale and any person who sells articles of pyrotechnics, display fireworks, and special
2 effects to a person licensed to possess and use those devices.

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

4 A person may produce or transport a firework that is a new explosive and that is either a
5 division 1.3 or division 1.4 explosive if the person first meets the requirements of 49 C.F.R.
6 §173.56(2)(j).

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

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

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

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

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

13 (3) Pay the required fee; and

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

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

17 (d) A registration is not transferable.

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

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

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

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

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

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

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

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

6 (3) Provide the required fee; and

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

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

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

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

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

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

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

18 **§29-3E-6. Required permit for public fireworks display.**

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

21 (b) To receive a permit, a municipality, fair association, amusement park, and other

1 organizations shall:

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

3 (2) Pay the required fee;

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

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

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

11 (d) A permit is not transferable.

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

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

18 **§29-3E-7. Fireworks safety fee imposed.**

19 (a) In addition to the sales tax, a user fee of six cents on the dollar of sales, known as the
20 fireworks safety fee, is levied on retail sales of consumer fireworks in this state. The fee shall be
21 distributed pursuant to the provisions of this section. The fee computation under this section shall

1 be carried to the third decimal place, and the tax rounded up to the next whole cent whenever the
2 third decimal place is greater than four and rounded down to the lower whole cent whenever the third
3 decimal place is four or less.

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

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

9 (d) The fireworks safety fee shall be deposited in the State Fire Commission's special account
10 established in subsection (c), section twelve-b, article three of this chapter to be distributed for the
11 administration of this article.

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

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

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

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

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

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

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

2 (6) A fee schedule;

3 (7) Establishing insurance or bond requirements

4 (8) Establishing additional criteria for the granting of a registration, certificate, or permit

5 under this article; and

6 (9) Registering manufacturers, wholesalers and distributors;

7 **§29-3E-9. Exemptions from article.**

8 This article does not prohibit any of the following:

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

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

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

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

18 **§29-3E-10. Local municipalities' regulation of consumer fireworks.**

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

21 **§29-3E-11. Violations of this article.**

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

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

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

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

9 (1) Is under the influence of alcohol;

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

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

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

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

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

18 **§29-3E-12. Criminal penalties.**

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

1 **§29-3E-13. Seizures by State Fire Marshal; enforcement of law.**

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

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

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

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

10 **§61-3E-1. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

12 §61-3E-11. Exemptions.

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

19 (b) Unless specifically prohibited by any other provision of this code or the laws of the
20 United States, nothing in this section ~~shall prohibit~~ prohibits the authorized manufacture,
21 transportation, distribution, use or possession of any explosive, destructive device or incendiary

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

8 (c) Nothing contained in this article applies to the sale, purchase, possession, use,
 9 transportation or storage of fireworks 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, strike-throughs and underscoring have been omitted.