

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 77

**FISCAL
NOTE**

BY SENATORS YOST AND MILLER

[Introduced January 13, 2016;

Referred to the Committee on Military; and then to the
Committee on the Judiciary.]

1 A BILL to repeal §11-12-86 of the Code of West Virginia, 1931, as amended; to repeal §29-3-23,
 2 §29-3-24, §29-3-25 and §29-3-26 of said code; to amend said code by adding thereto a
 3 new section, designated §9A-1-11b; to amend said code by adding thereto a new article,
 4 designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-7,
 5 §29-3E-8, §29-3E-9, §29-3E-10, §29-3E-11, §29-3E-12 and §29-3E-13; and to amend
 6 and reenact §61-3E-1 and §61-3E-11 of said code, all relating to legalizing and regulating
 7 the sale and use of fireworks; creating West Virginia Veterans Program Fund; creating
 8 Fireworks Safety Act; defining terms; establishing registration requirements for retailer
 9 selling sparkling devices, novelties or toy caps; establishing certification requirements for
 10 retailer selling consumer fireworks; establishing permit requirements for presenting public
 11 display of fireworks; creating fireworks safety fee of twenty percent of all sales for the
 12 retail sale of consumer fireworks; designating allocation of fee; giving State Fire Marshal
 13 rule-making authority; setting out exemptions; stating unlawful acts; and providing criminal
 14 penalties.

Be it enacted by the Legislature of West Virginia:

1 That §11-12-86 of the Code of West Virginia, 1931, as amended, be repealed; that §29-
 2 3-23, §29-3-24, §29-3-25 and §29-3-26 of said code be repealed; that said code be amended by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

CHAPTER 9A. VETERANS' AFFAIRS.

ARTICLE 1. DEPARTMENT OF VETERANS' AFFAIRS.

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

1 (a) There is hereby created in the State Treasury a special revenue fund to be designated

2 and known as the “West Virginia Veterans Program Fund,” which shall consist of revenues
3 derived from:

4 (1) The assessment of the Fireworks Safety Fee, as provided in section seven, article
5 three-e, chapter twenty-nine of this code; and

6 (2) Any gift, grant, bequest, endowed fund or donation received by a veterans program
7 created by statute, or from any governmental entity or unit or any person, firm, foundation or
8 corporation.

9 (b) The fund is to be administered by the Department of Veterans’ Assistance. The money
10 in the fund derived from the assessment of the Fireworks Safety Fee is to be used for funding
11 veterans’ programs. All other expenditures from the fund shall be for the purposes set forth in
12 this article.

13 (c) Expenditures are not authorized from collections, but are to be made only in
14 accordance with appropriation by the Legislature and in accordance with the provisions of article
15 three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two,
16 chapter eleven-b of this code: *Provided*, That for the fiscal year ending June 30, 2016,
17 expenditures are authorized from collections rather than pursuant to an explicit appropriation by
18 the Legislature.

19 (d) Any balance remaining in the fund at the end of any fiscal year shall be reappropriated
20 to the next fiscal year.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3E. FIREWORKS SAFETY.

§29-3E-1. Unlawful acts.

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

§29-3E-2. Definitions.

1 As used in this article:

2 (1) "Agricultural and wildlife fireworks" means fireworks devices distributed to farmers,
3 ranchers and growers through a wildlife management program administered by the United States
4 Department of the Interior or the West Virginia Division of Natural Resources.

5 (2) "APA Standard 87-1" means the APA Standard 87-1 published by the American
6 Pyrotechnics Association, as amended, and incorporated by reference into Title 49 of the Code
7 of Federal Regulations.

8 (3) "Articles pyrotechnic" means pyrotechnic devices for professional use, that are similar
9 to consumer fireworks in chemical composition and construction but are not intended for
10 consumer use, that meet the weight limits for consumer fireworks but are not labeled as such,
11 and are classified as UN0431 or UN0432 under 49 C.F.R. §172.101 (2014).

12 (4) "Consumer fireworks" means small fireworks devices that are designed to produce
13 visible effects by combustion, are required to comply with the construction, chemical composition
14 and labeling regulations promulgated by the United States Consumer Product Safety Commission
15 under 16 C.F.R. Parts 1500 and 1507 (2014), and are listed in APA Standard 87-1. Consumer
16 fireworks do not include sparkling devices, novelties and toy caps.

17 (5) "Consumer fireworks certificate" means a certificate issued under this article, to a
18 retailer to sell consumer fireworks.

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

26 (2014).

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

28 (8) "Division 1.3 explosive" means the term defined in 49 C.F.R. §173.50 (2014).

29 (9) "Division 1.4 explosive" means the term defined in 49 C.F.R. §173.50 (2014).

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

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

33 (12) "Firework" or "fireworks" means any composition or device designed for the purpose
34 of producing a visible or audible effect by combustion, deflagration or detonation. Fireworks
35 include consumer fireworks, display fireworks and special effects. Fireworks do not include
36 sparkling devices, novelties and toy caps.

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

39 (14) "New explosive" means the term defined in 49 C.F.R. §173.56 (2014).

40 (15) "NFPA 1123" means the term defined in National Fire Protection Association
41 Standard 1123, "Code for Fireworks Display".

42 (16) "NFPA 1124" means the term defined in National Fire Protection Association
43 Standard 1124, "Code for the Manufacture, Transportation, Storage, and Retail Sales of
44 Fireworks and Pyrotechnic Articles".

45 (17) "NFPA 1126" means the term defined in National Fire Protection Association
46 Standard 1126, "Standard for the Use of Pyrotechnics Before a Proximate Audience".

47 (18) "Novelties" means the term defined under APA standard 87-1, section 3.2.

48 (19) "Person" means an individual, or the responsible person for an association, an
49 organization, a partnership, a limited partnership, a limited liability company, a corporation, or any
50 other group or combination acting as a unit.

51 (20) "Pyrotechnic composition" means a mixture of chemicals that produces a visible or

52 audible effect by combustion rather than deflagration or detonation. A pyrotechnic composition
53 will not explode upon ignition unless severely confined.

54 (21) "Retailer" means a person who purchases consumer fireworks for resale to
55 consumers.

56 (22) "Sparkling devices" means "ground or handheld sparkling devices" as that phrase is
57 defined under APA 87-1, sections 3.1.1 and 3.5.

58 (23) "Special effects" means a combination of chemical elements or chemical compounds
59 capable of burning independent of the oxygen of the atmosphere, and designed and intended to
60 produce an audible, visual, mechanical, or thermal effect as an integral part of a motion picture,
61 radio, television, theatrical or opera production, or live entertainment.

62 (24) "Toy Caps" means the term defined under APA 87-1, section 3.3.

63 (25) "Wholesaler" means a person who sells consumer fireworks to a retailer or any other
64 person for resale, and a person who sells articles of pyrotechnics, display fireworks, and special
65 effects to a person licensed to possess and use those devices.

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

1 If a person first meets the requirements of 49 C.F.R. §173.56(2)(j) (2014), then a person
2 may produce or transport a firework that is a new explosive and either a division 1.3 or division
3 1.4 explosive.

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

1 (a) A retailer must be registered with the State Fire Marshal to sell sparkling devices,
2 novelties or toy caps in West Virginia.

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

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

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

6 (3) Pay the required fee; and

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

8 (c) A registration is valid from January 1 through December 31, or any fraction thereof,
9 and expires on December 31 of each year. A registration is not transferable.

10 (d) A retailer shall post the registration at a conspicuous place at the location of the
11 business and a separate registration is required for each business location.

12 (e) The requirements of NFPA 1124 do not apply to a retailer only selling sparkling
13 devices, novelties or toy caps.

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

1 (a) A retailer must be certified by the State Fire Marshal to sell consumer fireworks in West
2 Virginia.

3 (b) To be certified by the State Fire Marshal, the retailer shall:

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

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

6 (3) Pay the required fee; and

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

8 (c) A consumer fireworks certificate is valid from October 1 through September 30, or any
9 fraction thereof, and expires on September 30 of each year. A consumer fireworks certificate is
10 not transferable.

11 (d) A retailer shall post the certificate at a conspicuous place at the location of the business
12 and a separate certificate is required for each business location.

13 (e) A retailer certified under this section may also sell sparklers and novelties at the same
14 location without obtaining an additional sparklers and novelties registration.

15 (f) A retailer who sells consumer fireworks shall comply with the regulations provided in
16 NFPA 1124.

17 (g) The State Fire Marshal may, by legislative rule, add to the regulations established in
18 NFPA 1124.

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

1 (a) A municipality, county, fair association, amusement park or any other organization
2 must have a permit issued by the State Fire Marshal to present a supervised display of fireworks.

3 (b) To receive a permit, a municipality, county, fair association, amusement park or other
4 organization shall:

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

6 (2) Pay the required fee;

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

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

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

14 (d) A permit is only valid for the display of fireworks proposed in the application. A permit
15 is not transferable.

16 (e) The display of fireworks shall be handled by a competent operator licensed or certified
17 as to competency by the State Fire Marshal, and shall be of such composition, character, and so
18 located, discharged or fired as to be safe in the opinion of the chief of the fire department serving
19 the community or area where the display is to be held.

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

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

1 (a) In addition to the sales tax, a fireworks safety fee of twenty percent of all sales is levied
2 on retail sales of consumer fireworks in this state. The fee shall be distributed pursuant to the
3 provisions of this section. The fee computation under this section shall be carried to the third

4 decimal place, and the fee rounded up to the next whole cent whenever the third decimal place
5 is greater than four, and rounded down to the lower whole cent whenever the third decimal place
6 is four or less.

7 (b) A person who purchases consumer fireworks in a retail transaction shall pay to the
8 retailer the amount of the fee levied by this section, which fee is added to and constitutes a part
9 of the sale price, and is collectible by the retailer who shall account to the state for all fees paid
10 by a purchaser. If the retailer fails to collect the fee, or fails to account to the state for the fees
11 paid by a purchaser, then the retailer is personally liable for the payment of the fee to the state.

12 (c) A retailer shall remit to the State Tax Commissioner no later than twenty days after the
13 end of each preceding month on forms and in the manner prescribed by the State Tax
14 Commissioner.

15 (d) Each and every provision of the West Virginia Tax Procedure and Administration Act
16 set forth in article ten, chapter eleven of this code, applies to the fees imposed pursuant to this
17 article, with like effect as if that act were applicable only to the fees imposed by this article and
18 were set forth in full in this article.

19 (e) Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth
20 in article nine, chapter eleven of this code, applies to the fees imposed pursuant to this article,
21 with like effect as if that act were applicable only to the fees imposed by this article and were set
22 forth in full in this article.

23 (f) The State Tax Commissioner shall deposit all proceeds of the fireworks safety fee into
24 the State Treasury each month as follows:

25 (1) Fifty percent of the fireworks safety fee shall be deposited in the West Virginia Veterans
26 Program Fund, established in section eleven-b, article one, chapter nine-a of this code, for
27 expenditure pursuant to the provisions of that section;

28 (2) Twenty-five percent of the fireworks safety fee shall be deposited into the Fire
29 Protection Fund, established in section thirty-three, article three, chapter thirty-three of this code,

30 and distributed in accordance with that section to each volunteer fire company or department on
31 an equal share basis by the State Treasurer; and

32 (3) Twenty-five percent of the fireworks safety fee shall be deposited in the Fire Marshal
33 Fees Fund, established in subsection (c), section twelve-b, article three of this chapter, for
34 expenditure pursuant to the provisions of that subsection.

35 (g) The State Tax Commissioner may make all necessary rules and regulations for the
36 fees to which this article applies as provided in the State Administrative Procedures Act in chapter
37 twenty-nine-a of this code.

38 (h) Notwithstanding any other provision of this code to the contrary, the State Tax
39 Commissioner may deduct one percent, and retain for the benefit of his or her office for
40 expenditure pursuant to appropriation of the Legislature, from each payment into the State
41 Treasury as provided in subsection (f) of this section. The money deducted pursuant to this
42 subsection, shall be deposited by the State Tax Commissioner into the fund described in
43 subsection (d), section two-a, article nine, chapter eleven of this code.

§29-3E-8. Rulemaking authority.

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

4 (1) Adopting by reference the most recent edition of:

5 (A) APA Standard 87-1;

6 (B) NFPA 1123, code for fireworks display;

7 (C) NFPA 1124, code for the manufacture, transportation, storage and retail sales of
8 fireworks and pyrotechnic articles;

9 (D) NFPA 1126, standard for the use of pyrotechnics before a proximate audience, as
10 promulgated by the State Fire Commission;

11 (2) Establishing procedures and criteria for the issuance and renewal of a registration,

12 certificate and permit:

13 (3) Establishing a fee schedule;

14 (4) Establishing insurance or bond requirements;

15 (5) Establishing procedures for registering manufacturers, wholesalers and distributors;

16 and

17 (6) Any other rules necessary to effectuate the provisions of this article.

18 (b) The State Fire Marshal is authorized to file an emergency rule for the implementation
19 of this article.

§29-3E-9. Exemptions.

1 This article does not prohibit any of the following:

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

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

5 (3) The sale or use of blank cartridges by military organizations;

6 (4) The sale or use of blank cartridges for a theatrical performance, signal or ceremonial
7 purpose in athletics or sports; or

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

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

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

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

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

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

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

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

§29-3E-12. Criminal penalties.

1 Any person who violates this article or any rules promulgated hereunder, is guilty of a
2 misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500
3 for each offense.

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

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

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

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3E. OFFENSES INVOLVING EXPLOSIVES.

§61-3E-1. Definitions.

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

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

7 "Destructive device" does not include:

8 (1) A firearm as such is defined in section two, article seven of this chapter; or

9 (2) Model rockets and their components as defined in this section; ~~twenty-three, article~~
10 ~~three, chapter twenty-nine of this code~~

11 (3) Fireworks as defined in section two, article three-e, chapter twenty-nine of this code;

12 or

13 (4) High power rockets and their components as defined in this section.

14 (b) "Explosive material" means any chemical compound, mechanical mixture or device
15 that is commonly used or can be used for the purpose of producing an explosion and which
16 contains any oxidizing and combustive units or other ingredients in such proportions, quantities
17 or packaging that an ignition by fire, by friction, by concussion, by percussion, by detonator or by
18 any part of the compound or mixture may cause a sudden generation of highly heated gases.
19 These materials include, but are not limited to, powders for blasting, high or low explosives,
20 blasting materials, blasting agents, blasting emulsions, blasting fuses other than electric circuit
21 breakers, detonators, blasting caps and other detonating agents and black or smokeless powders
22 not manufactured or used for lawful sporting purposes. ~~or fireworks defined in section twenty-~~

23 ~~three, article three, chapter twenty-nine of this code which are not used in violation of this~~
 24 ~~article~~ Also included are all explosive materials listed annually by the office of the State Fire
 25 Marshal and published in the State Register, said publication being hereby mandated.

26 (c) "High power rocket" means as defined in National Fire Protection Association Standard
 27 1127, "Code for High Power Rocketry".

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

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

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

39 (g) "Model rocket" means as defined in National Fire Protection Association Standard
 40 1122, "Code for Model Rocketry".

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

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

§61-3E-11. Exemptions.

1 (a) Unless specifically prohibited by any provision of this code or the laws of the United
 2 States, nothing in this article ~~shall prohibit~~ prohibits the authorized manufacture, sale,

3 transportation, distribution, use or possession of any explosive material by any person holding a
4 permit for such issued by the office of the State Fire Marshal. Any person performing a lawful
5 activity pursuant to or regulated by the terms of a permit issued by the Division of Environmental
6 Protection, or any office thereof, ~~shall be~~ is exempt from the provisions of this article.

7 (b) Unless specifically prohibited by any other provision of this code or the laws of the
8 United States, nothing in this section ~~shall prohibit~~ prohibits the authorized manufacture,
9 transportation, distribution, use or possession of any explosive, destructive device or incendiary
10 device by a member of the Armed Forces or law-enforcement officers whenever such persons
11 are acting lawfully and in the line of duty. ~~nor shall it prohibit~~

12 (c) Nothing in this section prohibits the manufacture, transportation, distribution, use or
13 possession of any explosive material, destructive device or incendiary device to be used solely
14 for lawful scientific research or lawful educational purposes.

15 (d) Any person engaged in otherwise lawful blasting activities failing to obtain a permit or
16 in possession of an expired permit issued by the office of the State Fire Marshal ~~shall not be~~
17 ~~construed to be~~ is not in violation of ~~the~~ this article.

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

NOTE: The purpose of this bill is to legalize and regulate the selling of fireworks and to impose a special ten percent fee on the sale of fireworks to be used for a newly-created West Virginia Veterans Program Fund..

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