

H. B. 2531

(By Delegates Morgan, Stephens, Martin and Swartzmiller)
[Introduced January 18, 2011; referred to the
Committee on Government Organization then the Judiciary.]

A BILL to repeal §11-12-86 of the Code of West Virginia, 1931, as amended; to repeal §29-3-23, §29-3-24, §29-3-25 and §29-3-26 of said code; to amend said code by adding thereto a new article, designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8, §29-3E-9, §29-3E-10, §29-3E-11, §29-3E-12 and §29-3E-13, and to amend and reenact §61-3E-1 and §61-3E-11 of said code, all relating to the regulation of fireworks; defining terms; setting forth the State Fire Marshal's authority; requiring a registration, certification or permit; establishing the requirements for a registration, certification and permit; establishing a special revenue account; setting forth the State Fire Marshal's rule-making authority; providing authority to investigate complaints; providing administrative fines; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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 2 be repealed; that §29-3-23, §29-3-24, §29-3-25 and §29-3-26 of said
 3 code be repealed; that said code be amended by adding thereto a new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

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

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

10 **§29-3E-1. Unlawful Acts.**

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

15 **§29-3E-2. Definitions.**

16 As used in this article:

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

22 (2) "APA Standard 87-1" means the 2001 APA Standard 87-1
 23 published by the American Pyrotechnics Association of Bethesda,
 24 Maryland, as amended, and incorporated by reference into Title 49

1 of the Code of Federal Regulations.

2 (3) "Articles pyrotechnic" means pyrotechnic devices for
3 professional use that are similar to consumer fireworks in chemical
4 composition and construction but not intended for consumer use,
5 that meet the weight limits for consumer fireworks but are not
6 labeled as such, and that are classified as UN0431 or UN0432 under
7 49 C.F.R. 172.101, as in effect January 1, 2010.

8 (4) "Consumer fireworks" means small fireworks devices that
9 are designed to produce visible effects by combustion and that are
10 required to comply with the construction, chemical composition and
11 labeling regulations promulgated by the United States Consumer
12 Product Safety Commission under 16 C.F.R. Parts 1500 and 1507, in
13 effect on January 1, 2010, and that are listed in APA Standard
14 87-1. Consumer fireworks do not include sparkling devices,
15 novelties and toy caps.

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

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

1 for classification as consumer fireworks and are classified as
2 fireworks UN0333, UN0334, or UN0335 under 49 C.F.R. §172.101, in
3 effect on January 1, 2010.

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

6 (8) "Division 1.3 explosive" means that term as defined in 49
7 C.F.R. §173.50, in effect on January 1, 2010.

8 (9) "Division 1.4 explosive" means that term as defined in 49
9 C.F.R. §173.50, in effect on January 1, 2010.

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

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

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

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

22 (14) "New explosive" means that term as defined in 49 C.F.R.
23 §173.56, in effect on January 1, 2010.

24 (15) "Novelties" as defined under APA standard 87-1 3.2, in
25 effect on January 1, 2010.

1 (16) "Person" means an individual, an association, an
2 organization, a partnership, a limited partnership, a limited
3 liability company, a corporation, or any other group of combination
4 acting as a unit.

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

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

11 (19) "Sparkling devices" means "ground or handheld sparkling
12 devices" as that phrase is defined under APA 87-1, 3.1.1 and 3.5 in
13 effect on January 1, 2010.

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

20 (21) "Toy Caps" means as defined under APA 87-1 3.3, in effect
21 on January 1, 2010.

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

1 devices.

2 **§29-3E-3. Production or transportation of fireworks.**

3 A person may produce or transport a firework that is a new
4 explosive and that is either a division 1.3 or division 1.4
5 explosive if the person first meets the requirements of 49 C.F.R.
6 §173.56(2)(j), in effect on January 1, 2010.

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

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

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

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

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

16 (3) Pay the required fee; and

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

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

21 (d) A registration is not transferable.

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

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

25 (g) The requirements of NFPA 1124 do not apply to a retailer

1 only selling sparkling devices, novelties or toy caps.

2 **§29-3E-5. Consumer fireworks certificate required.**

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

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

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

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

10 (3) Provide the required fee; and

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

13 (c) A consumer fireworks certificate is valid for the calendar
14 year or any fraction thereof and expires on December 31 of each
15 year.

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

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

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

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

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

1 1124.

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

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

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

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

9 (2) Pay the required fee;

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

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

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

20 (d) A permit is not transferable.

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

1 to not be hazardous to property or endanger any person.

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

6 **§29-3E-7. Fireworks Safety Fund.**

7 (a) All moneys collected shall be deposited in a special
8 account in the State Treasury to be known as the "Fireworks Safety
9 Fund". Expenditures from the fund are set forth in this article
10 and rule and are not authorized from collections but are to be made
11 only in accordance with appropriation by the Legislature and in
12 accordance with the provisions of article three, chapter twelve of
13 this code and upon fulfillment of the provisions of article two,
14 chapter eleven-b of this code: *Provided, That for fiscal year*
15 ending the June 30, 2012, expenditures are authorized from
16 collections.

17 (b) Any amount received as fines, imposed pursuant to this
18 article, shall be deposited into the General Revenue Fund of the
19 State Treasury.

20 **§29-3E-8. Rulemaking Authority.**

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

25 (1) Adopting by reference APA Standard 87-1;

1 (2) Adopting by reference NFPA 1123, 2010 Edition, code for
2 fireworks display;

3 (3) Adopting by reference NFPA 1124, 2006 Edition, code for
4 the manufacture, transportation, storage and retail sales of
5 fireworks and pyrotechnic articles;

6 (4) Adopting by reference NFPA 1126, 2011 Edition, standard
7 for the use of pyrotechnics before a proximate audience, as
8 promulgated by the State Fire Commission;

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

11 (6) A fee schedule;

12 (7) Establishing the criteria to be used by local units of
13 government and fire chiefs in deciding whether to grant or deny;

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

16 (9) Registering manufacturers, wholesalers and distributors;

17 (b) The State Fire Marshal may promulgate, the rules required
18 by this section, as emergency rules, pursuant to section fifteen,
19 article three, chapter twenty-nine-a of this code.

20 **§29-3E-9. Exemptions from article.**

21 This article does not prohibit any of the following:

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

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

25 (3) The sale or use of blank cartridges for a show or play,

1 use by military organizations or signal or ceremonial purposes in
2 athletics or sports; or

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

8 **§29-3E-10. Local municipalities' regulation of consumer fireworks.**

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

12 **§29-3E-11. Violations of this article.**

13 (a) A person may not ignite, discharge or use consumer
14 fireworks sparking devices, novelties or toy caps on public or
15 private property without the express permission of the owner to do
16 so.

17 (b) A person may not ignite or discharge any fireworks,
18 sparking devices, novelties or toy caps within or throw the same
19 from a motor vehicle.

20 (c) A person may not ignite or discharge any fireworks,
21 sparking devices, novelties or toy caps into or at such a motor
22 vehicle, or at or near any person or group of people.

23 (d) A person who is less than sixteen years of age may not
24 purchase, nor offer for sale, consumer fireworks.

25 **§29-3E-12. Administrative fines; criminal penalties.**

1 (a) A person who violates this article shall pay to the State
2 Fire Marshal an administrative fine of not more than \$1,000 per
3 violation.

4 (b) A person who violates this article is guilty of a
5 misdemeanor, and upon conviction thereof shall be fined not less
6 than \$1,000 or confined in jail for not more than six months, or
7 both fined and confined.

8 **§29-3E-13. Seizures by State Fire Marshal; enforcement of law.**

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

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

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

19 **Article 3E. OFFENSES INVOLVING EXPLOSIVES.**

20 **§61-3E-1. Definitions.**

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

23 (a) "Destructive device" means any bomb, grenade, mine,
24 rocket, missile, pipebomb or similar device containing an

1 explosive, incendiary, explosive gas or expanding gas which is
2 designed or so constructed as to explode by such filler and is
3 capable of causing bodily harm or property damage; any combination
4 of parts, either designed or intended for use in converting any
5 device into a destructive device and from which a destructive
6 device may be readily assembled.

7 "Destructive device" does not include a firearm as such is
8 defined in section two, article seven of this chapter, model
9 rockets and their components as defined in this section,
10 ~~twenty-three, article three, chapter twenty-nine of this code, or~~
11 fireworks or high power rockets and their components as defined in
12 this section.

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

1 ~~section twenty-three, article three, chapter twenty-nine of this~~
2 ~~code which are not used in violation of this article.~~ Also
3 included are all explosive materials listed annually by the office
4 of the state Fire Marshal and published in the state register, said
5 publication being hereby mandated.

6 (c) "High Power Rocket" is defined as in National Fire
7 Protection Association Standard 1127, "Code for High Power
8 Rocketry."

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

15 (e) "Incendiary device" means a container containing gasoline,
16 kerosene, fuel oil, or derivative thereof, or other flammable or
17 combustible material, having a wick or other substance or device
18 which, if set or ignited, is capable of igniting such gasoline,
19 kerosene, fuel oil, or derivative thereof, or other flammable or
20 combustible material: *Provided*, That no similar device
21 commercially manufactured and used solely for the purpose of
22 illumination shall be deemed to be an incendiary device.

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

25 (g) "Model rocket" is defined as in National Fire Protection

1 Association Standard 1122, "Code for Model Rocketry."

2 (h) "Person" shall mean an individual, corporation, company,
3 association, firm, partnership, society or joint stock company.

4 (i) "Storage magazine" is defined to mean any building or
5 structure, other than an explosives manufacturing building,
6 approved by the State Fire Marshal for the storage of explosive
7 materials.

8 **§61-3E-11. Exemptions.**

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

18 (b) Unless specifically prohibited by any other provision of
19 this code or the laws of the United States, nothing in this section
20 shall prohibit the authorized manufacture, transportation,
21 distribution, use or possession of any explosive, destructive
22 device or incendiary device by a member of the Armed Forces or
23 law-enforcement officers whenever such persons are acting lawfully
24 and in the line of duty; nor shall it prohibit the manufacture,
25 transportation, distribution, use or possession of any explosive

1 material, destructive device or incendiary device to be used solely
2 for lawful scientific research or lawful educational purposes. Any
3 person engaged in otherwise lawful blasting activities failing to
4 obtain a permit or in possession of an expired permit issued by the
5 office of the state Fire Marshal shall not be construed to be in
6 violation of the article.

7 (c) Nothing contained in this chapter shall apply to the sale,
8 purchase, possession, use, transportation or storage of fireworks
9 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.

§29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8, §29-3E-9, §29-3E-10, §29-3E-11, §29-3E-12 and §29-3E-13 are new; therefore, they been completely underscored.

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