

Senate Bill No. 433

(By Senator McCabe)

[Introduced February 4, 2011; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to repeal §29-3-23, §29-3-24 and §29-3-25 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-12-86 of said code; to amend and reenact §29-3-26 of said code; and 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, §29-3E-13, §29-3E-14, §29-3E-15, §29-3E-16, §29-3E-17 and §29-3E-18, all relating generally to revising, consolidating and codifying the laws relating to fireworks; providing definitions; regulating purchase, possession, transportation, sale and use of fireworks; prohibiting local government regulation over consumer fireworks; requiring certification, registration, bonding and permits; providing for civil monetary penalties, criminal penalties and remedies; establishing Fireworks Safety Fund and safety fee; providing for the dispensation of the fund; prescribing powers and

1 duties of certain state agencies; providing the Fire Marshal
 2 with rule-making and emergency rule-making powers; and
 3 requesting the Fire Marshal create and maintain an internet
 4 website.

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

6 That §29-3-23, §29-3-24 and §29-3-25 of the Code of West
 7 Virginia, 1931, as amended, be repealed; that §11-12-86 of said
 8 code be amended and reenacted; that §29-3-26 of said code be
 9 amended and reenacted; and that said code be amended by adding
 10 thereto a new article, designated §29-3E-1, §29-3E-2, §29-3E-3,
 11 §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8, §29-3E-9, §29-3E-
 12 10, §29-3E-11, §29-3E-12, §29-3E-13, §29-3E-14, §29-3E-15, §29-3E-
 13 16, §29-3E-17 and §29-3E-18, all to read as follows:

14 **CHAPTER 11. TAXATION.**

15 **ARTICLE 12. BUSINESS REGISTRATION TAX.**

16 **§11-12-86. Sparkler and novelty registration fee.**

17 The Tax Commissioner shall establish an annual "Sparkler and
 18 Novelty Registration Fee" which shall be charged all businesses
 19 licensed to do business in the State of West Virginia desiring to
 20 sell sparklers and novelties authorized for sale in section ~~twenty-~~
 21 ~~three~~ six, article ~~three~~ three-c, chapter twenty-nine of this code.
 22 This fee shall run concurrent with the business registration
 23 certificate set forth in section five of this article. This fee
 24 shall not be prorated. Each business shall pay \$15 for each

1 registration and shall be issued a sticker or card by the Tax
2 Commissioner to be posted in a conspicuous position at the location
3 of the business which has paid the registration fee. This fee
4 shall be collected for each separate location where sparklers and
5 novelties are sold. The Tax Commissioner may, in his discretion,
6 require a separate certificate which shall be posted as set forth
7 herein, or provide that the evidence of compliance with this
8 section may be by a stamp or language added to the business
9 registration certificate or by embossing or writing imprinted on
10 the business registration certificate.

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

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

13 **§29-3-26. Seizures by fire marshal; enforcement of law.**

14 The State Fire Marshal shall seize, take, remove and destroy,
15 or cause to be seized, taken or removed and destroyed, at the
16 expense of the owner, all stocks of fireworks or combustibles
17 offered or exposed for sale, stored or held in violation of this
18 article or article three-e of this chapter. It shall be the duty of
19 the department of public safety, sheriffs, municipal policemen and
20 other law-enforcement officers to assist in the enforcement of this
21 article.

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

23 **§29-3E-1. Short title.**

24 This article is known and may be cited as the "West Virginia

1 Fireworks Safety Act".

2 **§29-3E-2. Definitions.**

3 As used in this article:

4 (1) "Agricultural and wildlife fireworks" means fireworks
5 devices distributed to farmers, ranchers, and growers through a
6 wildlife management program administered by the United States
7 Department of the Interior or the Department of Natural Resources
8 of this state.

9 (2) "APA Standard 87-1" means the 2001 APA Standard 87-1
10 published by the American Pyrotechnics Association of Bethesda,
11 Maryland, as amended, and incorporated by reference into Title 49
12 of the Code of Federal Regulations.

13 (3) "Articles pyrotechnic" means pyrotechnic devices for
14 professional use that are similar to consumer fireworks in chemical
15 composition and construction but not intended for consumer use,
16 that meet the weight limits for consumer fireworks but are not
17 labeled as such, and that are classified as UN0431 or UN0432 under
18 49 C.F.R. §172.101, as in effect January 1, 2011.

19 (4) "Consumer fireworks" means small fireworks devices other
20 than low-grade fireworks that are designed to produce visible
21 effects by combustion and that are required to comply with the
22 construction, chemical composition and labeling regulations
23 promulgated by the United States Consumer Product Safety Commission
24 under 16 C.F.R. Parts 1500 and 1507, as in effect on January 1,
25 2011, and that are listed in APA Standard 87-1. Consumer fireworks

1 include devices classified as fireworks UN0336 under 49 C.F.R.
2 §172.101, as in effect on January 1, 2011, except for fused set
3 pieces containing components that together exceed fifty milligrams
4 of salute powder.

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

7 (6) "Consumer fireworks retail sales facility" means a
8 permanent or temporary building or structure, stand, tent, canopy,
9 or membrane that is used primarily for the retail display and sale
10 of consumer fireworks.

11 (7) "Display fireworks" means large fireworks to be used
12 solely by professional pyrotechnicians licensed by the State Fire
13 Marshal and designed primarily to produce visible or audible
14 effects by combustion, deflagration or detonation and includes, but
15 is not limited to, salutes containing more than two grains (one
16 hundred thirty milligrams) of explosive materials, aerial shells
17 containing more than forty grams of pyrotechnic compositions and
18 other display pieces that exceed the limits of explosive materials
19 for classification as consumer fireworks and are classified as
20 fireworks UN0333, UN0334, or UN0335 under 49 C.F.R. §172.101, as in
21 effect on January 1, 2011, and including fused set pieces
22 containing components that exceed fifty milligrams of salute
23 powder.

24 (8) "Distributor" means a person who sells fireworks to
25 wholesalers and retailers for resale.

1 (9) "Explosive composition" means a chemical or mixture of
2 chemicals that produces an audible effect by deflagration or
3 detonation when ignited.

4 (10) "Fire Marshal" means the State Fire Marshal appointed
5 pursuant to article three of this chapter.

6 (11) "Firework" or "fireworks" means any composition or device
7 designed for the purpose of producing a visible or audible effect
8 by combustion, deflagration or detonation. Fireworks consist of
9 consumer fireworks, articles pyrotechnic, display fireworks and
10 special effects but does not include low-grade fireworks.

11 (12) "Interstate wholesaler" means a person who is engaged in
12 interstate commerce selling fireworks.

13 (13) "Local unit of government" means a county commission, as
14 described in article one, chapter seven of this code, a
15 consolidated local government, as defined in article one, chapter
16 seven-a of this code, or a municipal corporation, as defined in
17 article one, chapter eight of this code.

18 (14) "Low-grade fireworks" means one or more of the following:

19 (A) Ground and handheld sparkling devices as that phrase is
20 defined under APA standard 87-1 3.1, as in effect on January 1,
21 2011;

22 (B) Novelties as defined under APA standard 87-1 3.2, as in
23 effect on January 1, 2011; and

24 (C) Toy Caps as defined under APA standard 87-1 3.3, as in
25 effect on January 1, 2011.

1 (15) "Manufacturer" means a person engaged in the manufacture
2 of fireworks.

3 (16) "Permanent building or structure" is a building or
4 structure that is affixed to a foundation on a site and that has
5 fixed utility connections and that is intended to remain on the
6 site for more than one hundred eighty consecutive calendar days.

7 (17) "Person" means an individual, an association, an
8 organization, a partnership, a limited partnership, a limited
9 liability company, a corporation, or any other group of combination
10 acting as a unit.

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

15 (19) "Retailer" means a person who purchases consumer
16 fireworks for resale to consumers.

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

23 (21) "Temporary consumer fireworks retail sales facility"
24 means a building or structure other than a permanent building or
25 structure that has electrical power and wiring for an electrical

1 service in use or in place for a period of ninety consecutive
2 calendar days or less for the retail sale of consumer fireworks.

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

8 **§29-3E-3. Permitted uses of fireworks.**

9 Except as otherwise provided in this article, this article
10 does not prohibit any of the following:

11 (1) A wholesaler, retailer, manufacturer, importer, or
12 distributor from the sale, storage, use, transportation, or
13 distribution of consumer fireworks;

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

16 (3) The use of agricultural or wildlife fireworks;

17 (4) The sale or use of blank cartridges for a show or play,
18 use by military organizations or signal or ceremonial purposes in
19 athletics or sports;

20 (5) The possession, sale, or disposal of fireworks incidental
21 to the public display of fireworks by wholesalers or other persons
22 who have a permit to possess, store, and sell explosives from the
23 Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United
24 States Department of Justice and the State Fire Marshal; or

25 (6) Interstate wholesalers from the sale, storage, use,

1 transportation, or distribution of fireworks.

2 **§29-3E-4. Local governments not to regulate consumer fireworks.**

3 (a) *No local regulation.* -- Notwithstanding any provision of
4 this code to the contrary, a local unit of government may not
5 impose, enact, or enforce an ordinance or regulation pertaining to
6 or in any manner regulating the sale, storage, transportation or
7 distribution of consumer fireworks under this article.

8 (b) *Resolution of conflict.* -- Any municipal ordinance or
9 county order that is in conflict with this article is preempted to
10 the extent it is inconsistent with or in conflict with this
11 article.

12 **§29-3E-5. Consumer fireworks certificate required; registration**
13 **fee; misdemeanor penalty.**

14 (a) *Certificate required.* -- A retailer may not sell consumer
15 fireworks unless the retailer annually obtains and maintains a
16 valid consumer fireworks certificate from the fire marshal for each
17 location from which consumer fireworks are to be sold as provided
18 in this section. A retailer that has a valid consumers fireworks
19 certificate and who has paid the annual sparkler and novelty
20 registration fee imposed by section eighty-six, article twelve,
21 chapter eleven of this code, may sell sparklers and novelties at
22 the same location.

23 (b) *Application for certificate.* -- An application for a
24 consumer fireworks certificate under this section shall meet all of

1 the following requirements:

2 (1) The application shall be submitted no later than March 1
3 of each year in which consumer fireworks are to be sold.

4 (2) The application must list the name and address of each
5 location from which consumer fireworks are to be sold.

6 (3) The applicant shall attach to the application a copy of
7 its business registration certificate issued under article twelve,
8 chapter eleven of this code, for each location from which it
9 intends to sell consumer fireworks.

10 (4) The applicant shall provide all other information or
11 documentation required by application prescribed by the State Fire
12 Marshal.

13 (5) The application shall include a registration fee of \$500
14 for each consumer fireworks retail sales facility location from
15 which consumer fireworks will be sold.

16 (c) *Processing of application.* -- Not more than fifteen
17 business days after an application is received by the fire marshal
18 under this section, the fire marshal shall issue or deny issuance
19 of a consumer fireworks certificate to the retailer and, if denied,
20 shall indicate to the applicant in writing the reason for the
21 denial. The fire marshal may not unreasonably delay or deny an
22 application under this section.

23 (d) *Amended application.* -- If the fire marshal denies
24 issuance of a consumer fireworks certificate under this section,
25 the applicant may cure any defect in the application within twenty

1 days after receipt of the written denial without paying an
2 additional registration fee. An amended or corrected application
3 shall be processed as provided in subsection (c) of this section.

4 (e) *Certificates not transferable.* -- A consumer fireworks
5 certificate is not transferable, except with the written consent of
6 the fire marshal to a subsequent owner or operator of a business at
7 the same location provided the transferee is eligible to hold a
8 certificate under this article.

9 (f) *Prohibition on sales from unauthorized location.* -- A
10 retailer may not sell consumer fireworks at a location for which a
11 consumer fireworks certificate has not been issued to that
12 retailer.

13 (g) *Criminal penalty.* -- A retailer who violates subsection
14 (a) or (f) of this section is guilty of a misdemeanor and, upon
15 conviction thereof, shall be fined not less than \$500 nor more than
16 \$1,000 for each violation.

17 **§29-3E-6. Sales of consumer fireworks or low-grade fireworks.**

18 (a) *Criteria for permanent facilities.* --

19 Consumer fireworks may be sold by retailers only from a
20 permanent consumer fireworks retail sales facility that complies
21 with the following criteria:

22 (1) A consumer fireworks retail sales facility must be
23 dedicated solely to the sale of consumer fireworks and related
24 items.

25 (2) A consumer fireworks retail sales facility must comply

1 with the requirements set out in this article and with the
2 requirements of NFPA 1124, as in effect on January 1, 2010, as such
3 are not in conflict with the provisions of this article.

4 (3) A consumer fireworks retail sales facility may not be less
5 than sixty feet from another permanent building and not less than
6 three hundred feet from a structure selling or dispensing gasoline,
7 propane or other flammable material.

8 (4) A consumer fireworks retail sales facility shall be
9 located a minimum of three hundred feet from another consumer
10 fireworks retail sales facility.

11 (5) A consumer fireworks retail sales facility shall be
12 equipped with monitored fire and intrusion alarm systems in
13 compliance with NFPA 72.

14 (6) The retail sales area of a consumer fireworks retail sales
15 facility to which the public may be admitted is limited to ten
16 thousand square feet and shall be of single-story, noncombustible
17 construction.

18 (7) Any storage area attached to a retail sales area of a
19 consumer fireworks retail sales facility shall be separated from
20 the retail sales area by a two-hour rated fire wall.

21 (8) A consumer fireworks retail sales facility shall be
22 equipped with a fire sprinkler system regardless of the size of the
23 consumer fireworks retail sales facility and installed in
24 compliance with NFPA 13.

25 (9) A consumer fireworks retail sales facility shall be

1 equipped with a smoke ventilation system.

2 (10) Aisles in a consumer fireworks retail sales facility
3 shall have minimum widths of sixty inches.

4 (11) A consumer fireworks retail sales facility shall maintain
5 public liability and product liability insurance with minimum
6 coverage limits of \$2 million.

7 (12) A consumer fireworks retail sales facility shall be
8 equipped with a minimum of three exit doors and shall have one exit
9 door for every twenty-five people permitted in the facility under
10 the occupant load calculation.

11 (13) Minors are not permitted in a consumer fireworks retail
12 sales facility unless accompanied by a parent or guardian.

13 (14) Minors are not permitted to ride in strollers or shopping
14 carts in a consumer fireworks retail sales facility.

15 (15) Interior finish shall be either Class A or Class B as
16 defined by the National Fire Protection Association, Standard 101.

17 (16) All new and altered consumer fireworks retail sales
18 facilities shall submit to the State Fire Marshal for review of all
19 architectural, fire alarm, sprinkler and other related plans prior
20 to occupancy.

21 (b) *Criteria for temporary facilities.* -- Consumer fireworks
22 may be sold from a temporary consumer fireworks retail sales
23 facility or store that complies with the following criteria:

24 (1) A temporary consumer fireworks retail sales facility may
25 not be less than sixty feet from a permanent building or structure,

1 not less than five hundred feet from a permanent building for which
2 a certificate has been issued by the fire marshal to sell consumer
3 fireworks, and not less than five hundred feet from another
4 temporary consumer fireworks retail sales facility.

5 (2) A temporary consumer fireworks retail sales facility may
6 have no vehicle parked closer to it than twenty feet, except when
7 delivering, loading of consumer fireworks or related items used,
8 stored or displayed in the facility.

9 (3) A temporary consumer fireworks retail sales facility may
10 not be less than three hundred feet from a structure selling or
11 dispensing gasoline, propane or other flammable material.

12 (4) If the temporary consumer fireworks retail sales facility
13 is a tent, the tent material shall be made of flame-retardant
14 material.

15 (5) A temporary consumer fireworks retail sales facility is
16 limited to seasonal sales of consumer fireworks for a period of not
17 more than forty-five days in any calendar year.

18 (c) Low-grade fireworks, sparklers and novelties shall not be
19 considered fireworks and require a business registration fee be
20 paid to be authorized to sell, as provided in section eighty-six,
21 article twelve, chapter eleven of this code. Low-grade fireworks
22 include the following:

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

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

4 (3) Smoke devices consisting of a tube or sphere containing a
5 pyrotechnic mixture that produces white or colored smoke.

6 (4) Trick noisemakers which produce a small report designed to
7 surprise the user and which include:

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

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

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

21 (5) Wire sparklers consisting of wire or stick coated with
22 nonexplosive pyrotechnic mixture that produces a shower of sparks
23 upon ignition. These items must not exceed one hundred grams of
24 mixture per item.

25 (6) Other sparkling devices which emit showers of sparks and

1 sometimes a whistling or crackling effect when burning, do not
2 detonate or explode, are hand-held or ground-based, cannot propel
3 themselves through the air and contain not more than seventy-five
4 grams of chemical compound per tube or not more than a total of two
5 hundred grams if multiple tubes are used: *Provided*, That sparklers
6 and sparkler devices as provided for herein may not be sold to
7 anyone below the age of sixteen years old.

8 (d) *Compliance by retailers.* -- Retailers who sell consumer
9 fireworks shall comply with the following criteria:

10 (1) There shall be at least one uniformed security person on
11 duty during business hours at a consumer fireworks retail sales
12 facility and a temporary consumer fireworks retail sales facility
13 for seven days prior to and including July 4, of each year.

14 (2) All consumer fireworks sold in West Virginia must meet the
15 minimum standards of the U.S. Consumer Product Safety Commission
16 and must be certified or tested by a recognized third-party testing
17 agency.

18 (3) No cigarettes, tobacco products, lighters, or other flame
19 producing devices are permitted in a consumer fireworks retail
20 sales facility, temporary consumer fireworks retail sales facility
21 or a store where consumer fireworks are sold. Smoking is not
22 permitted in or within fifty feet of any such sales facility.

23 (4) An individual must be at least eighteen years of age to
24 work in a consumer fireworks retail sales facility or temporary
25 consumer fireworks retail sales facility or to be able to purchase

1 consumer fireworks.

2 (5) No individual who has been convicted of or pled guilty to
3 a felony may hold any interest in or work in any business licensed
4 in this state to sell consumer fireworks.

5 (6) At least one management level employee of a consumer
6 fireworks retail sales facility and a temporary consumer fireworks
7 retail sales facility shall have appropriate and approved training
8 in the handling of consumer fireworks and shall share that training
9 with all other employees of the consumer fireworks retail sales
10 facility and temporary consumer fireworks retail sales facility.

11 (7) All consumer fireworks retail sales facilities and
12 temporary consumer fireworks retail sales facilities shall be
13 inspected by representatives of the fire marshal's office prior to
14 initial certification and thereafter at least annually prior to the
15 prime fireworks sales season.

16 (8) All sales of consumer fireworks shall be accompanied by
17 delivery to the purchaser of a consumer fireworks safety brochure.

18 (9) A minor child under the age of eighteen years shall not be
19 admitted to a consumer fireworks retail sales facility or a
20 temporary consumer fireworks retail sales facility unless
21 accompanied by a parent or guardian.

22 (10) Age requirements shall be verified by a state issued
23 photo driver's license or photo I.D. or by a valid passport, which
24 proof of age document shall be recorded on a statement signed by
25 the purchaser.

1 (e) *Civil monetary penalty.* -- A retailer who violates this
2 section shall pay to the fire marshal a civil money penalty of not
3 less than \$500 nor more than \$2,500 for each violation.

4 **§29-3E-7. Fireworks safety fee imposed.**

5 (a) *Imposition of fee.* -- A user fee, known as the fireworks
6 safety fee, is levied on retail sales in this state of consumer
7 fireworks and is computed as provided in section nine of this
8 article.

9 (b) *Collection of fee.* -- A person who acquires consumer
10 fireworks in a retail transaction is liable for the fireworks
11 safety fee on the transaction and, except as otherwise provided in
12 this article, shall pay the fireworks safety fee to the retailer as
13 a separate added amount to the consideration in the transaction:
14 *Provided,* That the consideration does not include the tax imposed
15 by article fifteen, chapter eleven of this code, a local sales tax
16 imposed pursuant to article thirteen-c, chapter eight of this code,
17 or a district excise tax imposed pursuant to article twenty-two,
18 chapter seven of this code or article thirty-eight, chapter eight
19 of this code. Additionally, the measure of those taxes does not
20 include the fireworks safety fee imposed by this section.

21 (c) *Collected fees held in trust.* -- The retailer shall
22 collect the fireworks safety fee as an agent for the state and pay
23 it over to the State Treasurer as provided in section nine of this
24 article.

1 (d) *Deposit of fees.* -- The fireworks safety fee shall be
2 deposited in the Fireworks Safety Fund created in section ten of
3 this article.

4 **§29-3E-8. Computation of fireworks safety fee.**

5 (a) *General.* -- The fireworks safety fee is measured by the
6 gross retail income from the sale of consumer fireworks received by
7 a retail merchant in a retail unitary transaction of consumer
8 fireworks and imposed at the following rates:

9	Fireworks	Gross Retail
10	Safety Fee	Income
11	0	less than 10¢
12	1¢	at least 10¢ but less than 30¢
13	2¢	at least 30¢ but less than 50¢
14	3¢	at least 50¢ but less than 70¢
15	4¢	at least 70¢ but less than 90¢
16	5¢	at least 90¢ but less than \$1.10

17 (b) *Consideration in excess of one dollar.* -- On a retail
18 unitary transaction in which the gross retail income received by
19 the retail merchant is \$1.10 or more, the fireworks safety fee is
20 five percent of that gross retail income. If the fireworks safety
21 fee computed under this subsection results in a fraction of one-
22 half cent or more, the amount of the fireworks safety fee is
23 rounded to the next additional cent.

24 **§29-3E-9. Duties of fireworks retailers.**

1 (a) *In general.* --

2 (1) A retailer has a duty to remit the fireworks safety fee
3 imposed in section seven of this article and computed as provided
4 in section eight of this article to the State Treasurer on or
5 before the twentieth day of the calendar month after the month in
6 which the fee was collected by the retailer.

7 (2) A retailer has a duty to hold the fireworks safety fees
8 collected in trust for the state until remitted to the State
9 Treasurer.

10 (3) A retailer is personally liable for any failure to timely
11 pay the fireworks safety fee money to the State Treasurer as
12 provided in this section.

13 (4) Fireworks safety fees not remitted to the State Treasurer
14 on or before the due date are delinquent on the twenty-first day
15 and are then collectable by the State Treasurer by any means
16 available to him or her for collection of debts due the state.

17 (b) *Delinquent fees.* -- Delinquent fees shall bear interest,
18 which is computed at an annual rate of six percent from the due
19 date of the payment until the date the delinquent fees are paid to
20 the State Treasurer. A delinquent retailer shall also pay to the
21 State Treasurer a civil money penalty equal to five percent of the
22 fees not timely paid for each month or fraction thereof the fees
23 are not paid.

24 **§29-3E-10. Fireworks Safety Fund established; Fire Marshal**

1 **Fireworks account established; West Virginia State**
2 **Firemen's Association account created; use of**
3 **funds.**

4 (a) *Establishment of Fireworks Safety Fund.* -- The Fireworks
5 Safety Fund is hereby created on behalf of the State Fire
6 Commission created pursuant to section three, article three,
7 chapter twenty-nine of this code, within the State Treasury as an
8 interest bearing, nonexpiring special revenue account to be known
9 as the Fireworks Safety Fund. The Fireworks Safety Fund shall be
10 separate and apart from the General Revenue Fund. Expenditures of
11 the fund are authorized pursuant to collection.

12 (b) *Deposits to Fireworks Safety Fund.* -- All fees and civil
13 money penalties authorized and collected pursuant to this article
14 shall be paid to the State Fire Marshal and deposited into the
15 Fireworks Safety Fund. In addition to all fees and civil money
16 penalties authorized and collected pursuant to this article
17 deposited into the Fireworks Safety Fund, the Fireworks Safety Fund
18 shall consist of income from the investment of moneys held in the
19 fund, such other moneys as the Legislature may appropriate to the
20 fund and all other moneys available for deposit to the fund from
21 any source, public or private.

22 (c) *Expenditure of moneys deposited into Fireworks Safety*
23 *Fund.* -- The first \$300,000 from moneys available in the Fireworks
24 Safety Fund shall be expended by the Fire Marshall for the purposes

1 set forth in this article and article three of this chapter at the
2 sole discretion of the fire marshal. The next \$25,000 of moneys
3 available in the Fireworks Safety Fund shall be transferred to the
4 West Virginia State Firemen's Association for the benefit of and
5 use by the charitable organization for its charitable purpose.
6 However, if the West Virginia State Firemen's Association does not
7 exist, is no longer in good standing with the State of West
8 Virginia or does not maintain its 501(c)(4) status with the
9 Internal Revenue Service, such transfer shall not occur.

10 (d) *Disposition of Fireworks Safety Fund to the Fire*
11 *Protection Fund.* - All moneys remaining in the Fireworks Safety
12 Fund after the transfers set forth in subsection (c) of this
13 section shall be paid into the Fire Protection Fund created in
14 section thirty-three, article three, chapter thirty-three of this
15 code for allocation by the Treasurer to volunteer and part-
16 volunteer fire companies and departments.

17 **§29-3E-11. Rule making and content of rules.**

18 (a) Authorization. -- The fire marshal may adopt procedural
19 and interpretive rules or propose legislative rules for legislative
20 approval, as appropriate under the provisions article three,
21 chapter twenty-nine-a of this code that he or she considers
22 necessary to administer this article. The rules may include, but
23 are not limited to, all of the following:

24 (1) Establishing fees for processing applications for consumer

1 firework certificates and for inspection of premises where consumer
2 fireworks will be sold to determine whether they meet the
3 requirements of this article;

4 (2) Creating uniform applications and other forms for
5 dissemination to and use by local units of government under this
6 article;

7 (3) Establishing the criteria to be used by local units of
8 government and fire chiefs in deciding whether to grant or deny
9 permits under this article;

10 (4) Establishing procedures for the collection of application
11 fees and consumer fireworks safety fees;

12 (5) Providing enforcement of regulatory duties under this
13 article;

14 (6) Providing enforcement of the age limitations in this
15 article;

16 (7) Establishing additional criteria for the granting of
17 permits under section sixteen of this article for supervised public
18 displays of fireworks; and

19 (8) Establishing the fee for a permit issued under section
20 sixteen of this article.

21 (b) *Conformity of rules.* -- Rules adopted or proposed under
22 this section shall conform to the following codes developed by the
23 National Fire Protection Association, except for any code provision
24 that conflicts with this article:

1 (1) NFPA 1123, code for fireworks display, 2006 edition;

2 (2) NFPA 1124, code for the manufacture, transportation,
3 storage and retail sales of fireworks and pyrotechnic articles,
4 2006 edition; and

5 (3) NFPA 1126, standard for the use of pyrotechnics before a
6 proximate audience, 2006 edition.

7 (c) *Emergency rules.* -- The fire marshal may promulgate
8 emergency rules pursuant to the provisions of section fifteen,
9 article three of chapter twenty-nine-a of this code by October 1,
10 2010.

11 **§29-3E-12. Prohibition on officiating a fireworks display.**

12 A person who has one or more convictions for violating this
13 article may not oversee, manage, or officiate, or be granted a
14 permit to oversee, manage or officiate, a public display of
15 fireworks for at least one year after his or her latest conviction
16 for a violation of this article.

17 **§29-3E-13. Production or transportation of fireworks.**

18 (a) *In general.* -- A person may only produce or transport a
19 firework that is a new explosive and that is either a division 1.3
20 or division 1.4 explosive if the person first meets the
21 requirements of 49 C.F.R. §173.56 (2)(j), as in effect on January
22 1, 2011.

23 (b) *Definitions.* -- As used in this section:

24 (1) "Division 1.3 explosive" means that term as defined in 49

1 C.F.R. §173.50, as in effect on January 1, 2011.

2 (2) "Division 1.4 explosive" means that term as defined in 49
3 C.F.R. §173.50, as in effect on January 1, 2011.

4 (3) "New explosive" means that term as defined in 49 C.F.R.
5 §173.56, as in effect on January 1, 2011.

6 **§29-3E-14. Fire Marshal's Internet site.**

7 The fire marshal shall create and maintain, a section of its
8 Internet web site that has as its purpose the protection of the
9 residents of this state who purchase, use or transport fireworks.

10 **§29-3E-15. Civil monetary penalties; criminal penalties.**

11 (a) *No detonation in certain places.* -- A person may not
12 ignite, discharge or use consumer fireworks on public property,
13 school property, church property or the property of another person
14 without that organization's or person's express permission to use
15 those fireworks on those premises. Except as otherwise provided in
16 this subsection, a person who violates this subsection shall pay to
17 the fire marshal a civil money penalty of not less than \$100 nor
18 more than \$500. However, a person who commits a second or
19 subsequent violation of this subsection is guilty of a misdemeanor
20 and, upon conviction thereof, shall be confined in jail for not
21 more than thirty days or fined not less than \$500 nor more than
22 \$1,000, or both confined and fined.

23 (b) *Persons under age eighteen.* -- A person who is less than
24 eighteen years of age may not possess, purchase, or offer for sale

1 consumer fireworks. Except as otherwise provided in this
2 subsection, a person who violates this subsection shall pay to the
3 fire marshal a civil money penalty of not less than \$100 nor more
4 than \$500.

5 (c) *Discharging fireworks during certain hours prohibited.* --
6 Except as otherwise provided in this subsection, a person may not
7 ignite, discharge, or use consumer fireworks before 10 a.m. or
8 after 11 p.m. However, on a legal holiday in this state, a person
9 may not ignite, discharge or use consumer fireworks between 1 a.m.
10 and 9 a.m. of the same day. A person who violates this subsection
11 shall pay to the fire marshal a civil money penalty of not less
12 than \$100 nor more than \$500. However, a person who commits a
13 second or subsequent violation of this subsection is guilty of a
14 misdemeanor and, upon conviction thereof, shall be confined for not
15 more than thirty days or fined not less than \$100 nor more than
16 \$500, or both confined and fined.

17 (d) *Damage to property of another person.* -- If a person
18 violates this article and by that violation causes damage to the
19 property of another person, the person is guilty of a misdemeanor
20 and, upon conviction thereof, shall be confined in jail for not
21 more than thirty days or fined not less than \$500 nor more than
22 \$1,000, or both confined and fined.

23 (e) *Bodily injury.* -- If a person violates this article and by
24 that violation causes injury to another person, the person is
25 guilty of a misdemeanor and, upon conviction thereof, shall be

1 imprisoned in a correctional facility for not more than one year or
2 fined not less than \$50 nor more than \$500, or both imprisoned and
3 fined. However, if a person violates this article and by that
4 violation intentionally causes serious bodily injury to another
5 person, the person is guilty of a felony and, upon conviction
6 thereof, shall be confined in a correctional facility for not more
7 than three years, or fined not less than \$100 nor more than \$2,000,
8 or both imprisoned and fined.

9 (f) *Death of another person.* -- If a person violates this
10 article and by that violation causes the death of another person,
11 the person is guilty of a felony and, upon conviction thereof,
12 shall be imprisoned in a correctional facility for not more than
13 five years or fined not less than \$2,000 nor more than \$5,000, or
14 both imprisoned and fined.

15 (g) *Failure to collect or remit fireworks safety fee.* -- A
16 person who fails to collect or remit a fireworks safety fee as
17 required under section seven of this article is guilty of a
18 misdemeanor and, upon conviction thereof, shall be confined in jail
19 for not more than one year or fined not less than \$1,000 nor more
20 than \$2,000, or both confined and fined.

21 **§29-3E-16. Permit for public fireworks display.**

22 (a) The State Fire Marshal may adopt reasonable rules as
23 provided in section eleven of this article for the granting of
24 permits for the supervised displays of fireworks by municipalities,
25 fair associations, amusement parks, and other organizations or

1 groups of individuals. However, any rule promulgated by the fire
2 marshal under section twenty-four, article three of this chapter
3 and in effect on the day this section is enacted ,shall remain in
4 effect until such time as it is superceded by a rule implemented
5 under this section.

6 (b) *Fee for permit.* -- The fire marshal has the authority to
7 charge a fee of \$10 to each applicant requesting a license to be a
8 pyrotechnic operator as set forth in this article. The fire
9 marshal shall charge a scaled fee for all applications requesting
10 permits to establish a pyrotechnics display as provided in this
11 section.

12 (c) *Deposit of fees.* -- All fees required to be paid by this
13 section shall be paid to the fire marshal and thereafter deposited
14 by him or her into a special account pursuant to section ten of
15 this article.

16 (d) *Approval by local police and fire authorities.* -- These
17 permits may be granted upon application to the fire marshal and
18 after approval of the local police and fire authorities of the
19 community where the display is proposed to be held as provided
20 herein and the filing of a bond by the applicant as provided in
21 subsection (e). The display shall be handled by a competent
22 operator licensed or certified as to competency by the 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(s). After
2 the privilege has been granted, the sale, possession, use and
3 distribution of fireworks for display is lawful for that purpose
4 only. A granted permit is not transferable.

5 (e) *Bond requirement.* -- The governing body, or chief
6 executive authority of the municipality, shall require a bond from
7 the licensee in a sum not less than \$1,000 conditioned on
8 compliance with the provisions of this article and the rules of the
9 fire marshal except where the licensee is a municipality.

10 (f) *Proof of financial responsibility.* -- Before any permit
11 for a pyrotechnic display is issued, the person applying for the
12 permit shall furnish proof of financial responsibility to satisfy
13 claims for damages to property or personal injuries arising out of
14 any act or omission on the part of the person or an employee
15 thereof, in the amount, character and form as the fire marshal
16 determines to be necessary for the protection of the public.

17 **§29-3E-17. Designation of attorney for service of process.**

18 No permit may be issued under the provisions of section
19 sixteen of this article to a nonresident person for conduct of a
20 pyrotechnic display in this state until the person has appointed in
21 writing an attorney, who both resides in and is authorized to
22 practice law in West Virginia, upon whom all process in any action
23 or proceeding against the person may be served.

24 **§29-3E-18. Seizures by fire marshal; enforcement of law.**

1 The fire marshal shall seize, take, remove and destroy, or
2 cause to be seized, taken or removed and destroyed, at the expense
3 of the owner, all stocks of fireworks or combustibles offered or
4 exposed for sale, stored or held in violation of this article. It
5 is the duty of the West Virginia State Police, county sheriffs and
6 their deputies, municipal policemen and other law-enforcement
7 officers to assist in the enforcement of this article.

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 prohibits local government regulation over consumer fireworks. The bill requires certification, registration, bonding and permits. The bill provides for civil monetary penalties, criminal penalties and remedies. The bill establishes a Fireworks Safety Fund and safety fee and providing for the dispensation of the fund. The bill also prescribing powers and duties of certain state agencies. The bill provides the fire marshal with rule-making and emergency rule-making powers. Further, the bill requests the fire marshal create and maintain an Internet website.

Sections 29-3E-1 through 29-3E-18 are new; therefore, strike-throughs and underscoring have been omitted.