

H. B. 4267

(By Delegates Iaquina, Boggs, Fleischauer
and Longstreth, D. Poling, Moore, Williams,
Azinger, Rowan, Ferro and R. Phillips)

(By request of the Department of Veterans Assistance)
[Introduced January 23, 2014; referred to the

Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

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

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 9A. VETERANS' AFFAIRS.

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

2 **§9A-1-11b. Establishment of West Virginia Veterans Program Fund.**

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

16 **CHAPTER 11. TAXATION.**

17 **ARTICLE 12. BUSINESS REGISTRATION TAX.**

18 **§11-12-87. Fireworks registration fee.**

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

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

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

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

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

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

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

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

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

22 (3) The term "display fireworks" means fireworks devices in a
23 finished state, exclusive of mere ornamentation, primarily intended
24 for commercial displays that are designed to produce visible and/or

1 audible effects by combustion, deflagration or detonation,
2 including, but not limited to, exhibition display items that exceed
3 the limits contained in the CPSC standards for consumer fireworks.
4 Display fireworks are classified under United Nations standards as
5 UN0335 and Fireworks 1.3G.

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

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

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

18 (3) Emergency signal flares.

19 (4) Matches.

20 (5) Fixed ammunition for firearms.

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

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

1 (c) The following ~~sparklers and novelties shall not be~~
2 ~~considered~~ are not fireworks. ~~and~~ They require a business
3 registration fee be paid to be authorized to sell, as provided ~~for~~
4 in section eighty-six, article twelve, chapter eleven of this code:

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

8 ~~(2)~~(1) Snake and glow worms composed of pressed pellets of a
9 pyrotechnic mixture that produce a large snake-like ash when
10 burning.

11 ~~(3)~~(2) ~~Smoke~~ Toy smoke devices consisting of a tube, cone or
12 sphere containing a pyrotechnic mixture that produces white or
13 colored smoke.

14 ~~(4)~~(3) Trick noisemakers which produce a small report designed
15 to surprise the user and which include:

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

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

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

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

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

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

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

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

24 (D) Wheel. Pyrotechnic device intended to be attached to a

1 post or tree by means of a nail or string. These may have one or
2 more drivers. Upon ignition, the wheel revolves and produces a
3 shower of color and sparks and, sometimes, a whistling effect.

4 (E) Ground Spinner. This is a small device with pyrotechnic
5 composition, venting out an orifice, usually on the side of the
6 tube. This is similar in operation to a wheel but intended to be
7 placed flat on the ground and ignited. A shower of sparks and color
8 is produced by the rapidly spinning device.

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

13 (d) Sparklers and ~~sparkler~~ sparkling devices as provided for
14 ~~herein shall~~ in subdivisions (4) and (5), subsection (c) of this
15 section may not be sold to anyone below the age of sixteen years
16 old.

17 **§29-3-24. Sale, possession or use of fireworks; permit for public**
18 **display.**

19 ~~Except as hereinafter provided, no person, firm,~~
20 ~~co-partnership or corporation shall offer for sale, possess, expose~~
21 ~~for sale, sell at retail, keep with intent to sell at retail, or~~
22 ~~use or explode any fireworks: *Provided, That*~~

23 (a) Consumer fireworks may be legally sold, bought, possessed

1 and used. A fireworks safety brochure shall be included with each
2 retail sale of consumer fireworks. A person at least sixteen years
3 old may set off fireworks under competent adult supervision. Eye
4 protection is required of anyone under the age of eighteen who
5 ignites consumer fireworks.

6 (b) The State Fire Marshal may propose reasonable rules for
7 legislative approval for the granting of permits for the wholesale
8 and retail sale and storage of fireworks.

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

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

20 (e) The State Fire Marshal may ~~adopt~~ propose reasonable rules
21 ~~and regulations~~ for legislative approval for the granting of
22 permits for the supervised public displays of fireworks by
23 municipalities, fair associations, amusement parks and other
24 organizations or groups of individuals. The State Fire Marshal

1 ~~shall have~~ has the authority to charge a fee of ~~ten~~ twenty dollars
2 to each applicant requesting a license to be a pyrotechnic operator
3 as set forth in this article. The State Fire Marshal shall charge
4 a scaled fee for all applications requesting permits to establish
5 a pyrotechnics display as provided in this section. All fees
6 required to be paid by the provisions of this section shall be paid
7 to the State Fire Marshal and ~~thereafter~~ deposited ~~by him~~ into a
8 special account for the operation of the State Fire Commission.
9 ~~Such~~ The permits may be granted upon application to ~~said~~ the State
10 Fire Marshal and after approval of the local police and fire
11 authorities of the community ~~wherein~~ where the display is proposed
12 to be held as provided ~~herein~~ in this section and the filing of a
13 bond by the applicant as provided ~~hereinafter~~ in this section.

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

24 (g) (1) The governing body or chief executive authority of the

1 municipality shall require a bond from the licensee in a sum not
2 less than \$1,000 conditioned on compliance with the provisions of
3 this article and the ~~regulations~~ rules of the State Fire
4 Commission. ~~Provided, That~~ No municipality ~~shall be~~ is required to
5 file such bond.

6 (2) Before any permit for a pyrotechnic display ~~shall be~~ is
7 issued, the person, firm or corporation making the application
8 ~~therefor~~ shall furnish proof of financial responsibility to satisfy
9 claims for damages to property or personal injuries arising out of
10 any act or omission on the part of ~~such~~ the person, firm or
11 corporation or any agent or employee thereof, in ~~such~~ an amount,
12 character and form as the State Fire Marshall determines to be
13 necessary for the protection of the public.

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

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

16 **§61-3E-1. Definitions.**

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

19 (a) "Destructive device" means any bomb, grenade, mine,
20 rocket, missile, pipebomb or similar device containing an
21 explosive, incendiary, explosive gas or expanding gas which is
22 designed or so constructed as to explode by such filler and is
23 capable of causing bodily harm or property damage; any combination

1 of parts, either designed or intended for use in converting any
2 device into a destructive device and from which a destructive
3 device may be readily assembled.

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

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

1 publication being hereby mandated.

2 (c) "Hoax bomb" means any device or object that by its design,
3 construction, content or characteristics appears to be, or is
4 represented to be or to contain a destructive device, explosive
5 material or incendiary device as defined in this section, but is,
6 in fact, an inoperative facsimile or imitation of such a
7 destructive device, explosive material or incendiary device.

8 (d) "Incendiary device" means a container containing gasoline,
9 kerosene, fuel oil, or derivative thereof, or other flammable or
10 combustible material, having a wick or other substance or device
11 which, if set or ignited, is capable of igniting such gasoline,
12 kerosene, fuel oil, or derivative thereof, or other flammable or
13 combustible material: *Provided*, That no similar device
14 commercially manufactured and used solely for the purpose of
15 illumination shall be deemed to be an incendiary device.

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

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

20 (g) "Storage magazine" is defined to mean any building or
21 structure, other than an explosives manufacturing building,
22 approved by the legal authority for the storage of explosive
23 materials.

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

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

§9A-1-11b and §11-12-87 are new; therefore, they have been completely underscored.