

H. B. 2852

(By Delegates Hamrick, Trecost, Zatezalo and Howell)

[Introduced February 20, 2015; referred to the

Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

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 and §29-3E-12; and to amend and reenact §61-3E-1 and §61-3E-11 of said code, all relating to legalizing and regulating the sale and use of fireworks; allocating sales tax proceeds to special funds; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §11-12-86 of the Code of West Virginia, 1931, as amended, be repealed; that §29-3-23, §29-3-24, §29-3-25 and §29-3-26 of said code be repealed; that said code be amended by adding thereto a new article, designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8,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

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

1 **ARTICLE 3E. FIREWORKS SAFETY.**

2 **§29-3E-1. Unlawful acts.**

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

6 **§29-3E-2. Definitions.**

7 As used in this article:

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

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

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

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

- 1 (5) "Consumer fireworks certificate" is a certificate issued under section five of this article;
- 2 (6) "Display fireworks" means large fireworks to be used solely by professional
3 pyrotechnicians licensed by the State Fire Marshal and designed primarily to produce visible or
4 audible effects by combustion, deflagration or detonation and includes, but is not limited to, salutes
5 containing more than two grains (one hundred thirty milligrams) of explosive materials, aerial shells
6 containing more than forty grams of pyrotechnic compositions and other display pieces that exceed
7 the limits of explosive materials for classification as consumer fireworks and are classified as
8 fireworks UN0333, UN0334, or UN0335 under 49 C.F.R. §172.101;
- 9 (7) "Distributor" means a person who sells fireworks to wholesalers and retailers for resale;
- 10 (8) "Division 1.3 explosive" means that term as defined in 49 C.F.R. §173.50;
- 11 (9) "Division 1.4 explosive" means that term as defined in 49 C.F.R. §173.50;
- 12 (10) "Explosive composition" means a chemical or mixture of chemicals that produces an
13 audible effect by deflagration or detonation when ignited;
- 14 (11) "Fire Marshal" means the State Fire Marshal;
- 15 (12) "Firework" or "fireworks" means any composition or device designed for the purpose
16 of producing a visible or audible effect by combustion, deflagration or detonation. Fireworks include
17 consumer fireworks, display fireworks and special effects. Fireworks does not include sparkling
18 devices, novelties and toy caps;
- 19 (13) "Interstate wholesaler" means a person who is engaged in interstate commerce selling
20 fireworks;
- 21 (14) "New explosive" means that term as defined in 49 C.F.R. §173.56;
- 22 (15) "Novelties" as defined under APA standard 87-1 3.2;

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

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

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

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

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

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

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

18 **§29-3E-3. Production or transportation of fireworks.**

19 A person may produce or transport a firework that is a new explosive and that is either a
20 division 1.3 or division 1.4 explosive if the person first meets the requirements of 49 C.F.R.
21 §173.56(2)(i).

22 **§29-3E-4. Required permit for public fireworks display.**

1 (a) A municipality, county, fair association, amusement park, and other organizations must
2 obtain a permit to present a supervised display of fireworks from the State Fire Marshal.

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

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

6 (2) Pay the required fee, not to exceed \$50;

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 thereof,
9 in the amount, character and form as State Fire Marshal determines to be necessary for the protection
10 of the public; and

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

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

14 (d) A permit is not transferable.

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

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

21 **§29-3E-5. Consumer fireworks certificate required.**

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

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

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

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

4 (3) Provide the required fee not to exceed \$50; and

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

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

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

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

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

11 (g) A retailer who sells consumer fireworks shall comply with the regulations provided in
12 NFPA 1124. The State Fire Marshal may, by legislative rule, add to the regulations established in
13 NFPA 1124.

14 **§29-3E-6. Fireworks fees imposed.**

15 Fireworks shall be subject to the regular sale tax, imposed by article fifteen, chapter eleven
16 of this code. Percentages of the proceeds of the sale tax for the sale of fireworks, shall be distributed
17 to the following special revenue accounts, as described below, on a quarterly basis:

18 (1) Two percent of the tax collected for the sale of fireworks shall be deposited in the State
19 Road Fund, established by chapter seventeen, article three of this code.

20 (2) Two percent of the tax collected for the sale of fireworks shall be deposited in Veterans
21 Facilities Support Fund, established by article one, chapter nine-a of this code.

22 **§29-3E-7. Rule-making Authority.**

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

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

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

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

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

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

11 (6) A fee schedule;

12 (7) Establishing insurance or bond requirements;

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

15 (9) Registering manufacturers, wholesalers and distributors.

16 **§29-3E-8. Exemptions from article.**

17 This article does not prohibit any of the following:

18 (1) The use of fireworks by railroads, airports or other transportation agencies for signal
19 purposes or illumination;

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

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

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

5 **§29-3E-9. Local municipalities' regulation of consumer fireworks.**

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

8 **§29-3E-10. Violations of this article.**

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

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

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

15 (d) A person may not intentionally ignite or discharge any consumer fireworks or sparkling
16 devices while the person:

17 (1) Is under the influence of alcohol;

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

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

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

22 (5) Has an alcohol concentration in his or her blood of eight hundredths of one percent or

1 more by weight.

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

4 **§29-3E-11. Criminal penalties.**

5 Any person who violates this article or any rules promulgated pursuant to section eight of this
6 article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor
7 more than \$500.

8 **§29-3E-12. Seizures by State Fire Marshal; enforcement of law.**

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

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

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

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

17 **§61-3E-1. Definitions.**

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

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

1 a destructive device and from which a destructive device may be readily assembled.

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

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

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

21 (e)(d) "Hoax bomb" means any device or object that by its design, construction, content or
22 characteristics appears to be, or is represented to be or to contain a destructive device, explosive

1 material or incendiary device as defined in this section, but is, in fact, an inoperative facsimile or
2 imitation of such a destructive device, explosive material or incendiary device.

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

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

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

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

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

17 **§61-3E-11. Exemptions.**

18 (a) Unless specifically prohibited by any provision of this code or the laws of the United
19 States, nothing in this article ~~shall prohibit~~ prohibits the authorized manufacture, sale, transportation,
20 distribution, use or possession of any explosive material by any person holding a permit for such
21 issued by the office of the State Fire Marshal. Any person performing a lawful activity pursuant to
22 or regulated by the terms of a permit issued by the Division of Environmental Protection, or any

1 office thereof, ~~shall be~~ is exempt from the provisions of this article.

2 (b) Unless specifically prohibited by any other provision of this code or the laws of the
3 United States, nothing in this section ~~shall prohibit~~ prohibits the authorized manufacture,
4 transportation, distribution, use or possession of any explosive, destructive device or incendiary
5 device by a member of the Armed Forces or law-enforcement officers whenever such persons are
6 acting lawfully and in the line of duty; nor shall it prohibit the manufacture, transportation,
7 distribution, use or possession of any explosive material, destructive device or incendiary device to
8 be used solely for lawful scientific research or lawful educational purposes. Any person engaged in
9 otherwise lawful blasting activities failing to obtain a permit or in possession of an expired permit
10 issued by the office of the State Fire Marshal ~~shall not be construed to be~~ is not in violation of the
11 article.

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

NOTE: The purpose of this bill is to legalize and regulate the selling of fireworks; to allocate sales tax proceeds to special funds; and to modify criminal penalties.

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

Chapter 29, Article 3E is new; therefore, strike-throughs and underscoring have been omitted.