

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 328**

BY SENATORS GAUNCH, ASHLEY, CARMICHAEL,  
FACEMIRE, KARNES, KIRKENDOLL, LEONHARDT,  
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[Originating in the Committee on the Judiciary;  
reported on February 11, 2016.]

1 A BILL to repeal §11-12-86 of the Code of West Virginia, 1931, as amended; to repeal §29-3-23,  
2 §29-3-24, §29-3-25 and §29-3-26 of said code; to amend said code by adding thereto a  
3 new section, designated §9A-1-11b; to amend said code by adding thereto a new article,  
4 designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-7,  
5 §29-3E-8, §29-3E-9, §29-3E-10, §29-3E-11, §29-3E-12, §29-3E-13 and §29-3E-14; and  
6 to amend and reenact §61-3E-1 and §61-3E-11 of said code, all relating to the regulation  
7 of fireworks generally; relocating certain existing provisions relating to sparkling devices,  
8 novelties and toy guns including penalties for certain violations, in a new article; raising  
9 funds for veterans' facilities and volunteer fire departments; creating West Virginia  
10 Veterans Program Fund; authorizing sale of consumer fireworks on and after June 1,  
11 2016; defining "consumer fireworks"; establishing regulatory framework for sale of  
12 fireworks; defining terms; requiring certificate; establishing fees; requiring permit;  
13 dedicating certain fees to Veterans Program Fund and Fire Protection Fund; establishing  
14 rule-making authority; creating criminal violations related to fireworks; penalties;  
15 enforcement; defining terms; exemptions; reporting requirements; and establishing  
16 internal effective dates for certain provisions.

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

1 That §11-12-86 of the Code of West Virginia, 1931, as amended, be repealed; that §29-  
2 3-23, §29-3-24, §29-3-25 and §29-3-26 of said code be repealed; that said code be amended by  
3 adding thereto a new section, designated §9A-1-11b; that said code be amended by adding a  
4 new article, designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-  
5 7, §29-3E-8, §29-3E-9, §29-3E-10, §29-3E-11, §29-3E-12, §29-3E-13 and §29-3E-14; and that  
6 §61-3E-1 and §61-3E-11 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 9A. VETERANS' AFFAIRS.**

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

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

1           There is hereby created in the state treasury a special revenue fund to be designated and  
2 known as the West Virginia Veterans Program Fund, which shall consist of revenues derived from  
3 the assessment of the fireworks safety fee, as provided in section seven, article three-e, chapter  
4 twenty-nine of this code, to be administered by the Department of Veterans' Assistance and used  
5 for funding veterans' programs. Funds may also be derived from any gift, grant, bequest,  
6 endowed fund or donation which may be received by any veterans' program created by statute  
7 or from any governmental entity or unit or any person, firm, foundation or corporation.  
8 Expenditures from the fund shall be for the purposes set forth in this article and are not authorized  
9 from collections but are to be made only in accordance with appropriation by the Legislature and  
10 in accordance with the provisions of article three, chapter twelve of this code and upon the  
11 fulfillment of the provisions set forth in article two, chapter eleven-b of this code: *Provided, That*  
12 for the fiscal year ending June 30, 2017, expenditures are authorized from collections rather than  
13 pursuant to an explicit appropriation by the Legislature. Any balance remaining in the fund at the  
14 end of any fiscal year shall be reappropriated the next fiscal year.

15

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

**ARTICLE 3E. FIREWORKS SAFETY.**

**§29-3E-1. Unlawful acts.**

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

**§29-3E-2. Definitions.**

1           As used in this article:

2           (1) "Agricultural and wildlife fireworks" means fireworks devices distributed to farmers.

3 ranchers and growers through a wildlife management program administered by the United States  
4 Department of the Interior or the Division of Natural Resources of this state;

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

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

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

17 (5) “Consumer fireworks certificate” means a certificate issued under section five of this  
18 article;

19 (6) “Display fireworks” means large fireworks to be used solely by professional  
20 pyrotechnicians licensed by the State Fire Marshal and designed primarily to produce visible or  
21 audible effects by combustion, deflagration or detonation and includes, but is not limited to,  
22 salutes containing more than two grains (one hundred thirty milligrams) of explosive materials,  
23 aerial shells containing more than forty grams of pyrotechnic compositions and other display  
24 pieces that exceed the limits of explosive materials for classification as consumer fireworks and  
25 are classified as fireworks UN0333, UN0334, or UN0335 under 49 C. F. R. §172.101 (2014);

26 (7) “Distributor” means a person who sells fireworks to wholesalers and retailers for resale;

27 (8) “Division 1.3 explosive” means that term as defined in 49 C. F. R. §173.50 (2014);

28 (9) “Division 1.4 explosive” means that term as defined in 49 C. F. R. §173.50 (2014);

29 (10) “Explosive composition” means a chemical or mixture of chemicals that produces an  
30 audible effect by deflagration or detonation when ignited;

31 (11) “Fire Marshal” means the State Fire Marshal;

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

36 (13) “Interstate wholesaler” means a person who is engaged in interstate commerce  
37 selling fireworks;

38 (14) “Model rocket” means that term as defined in National Fire Protection Association  
39 Standard 1122, Code for Model Rocketry;

40 (15) “New explosive” means that term as defined in 49 C. F. R. §173.56 (2014);

41 (16) “NFPA 1123” means National Fire Protection Association Standard 1123, Code for  
42 Fireworks Display.

43 (17) “NFPA 1124” means National Fire Protection Association Standard 1124, Code for  
44 the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles,  
45 2006 Edition.

46 (18) “NFPA 1126” means that term as defined in National Fire Protection Association  
47 Standard 1126, Standard for the Use of Pyrotechnics Before a Proximate Audience.

48 (19) “Novelties” means that term as defined under APA standard 87-1, Section 3.2; but  
49 shall not include toy pistols, toy caps, toy canes, toy guns or other similar devices;

50 (20) “Permanent” means that term as defined in NFPA 1124;

51 (21) “Person” means an individual or the responsible person for an association, an  
52 organization, a partnership, a limited partnership, a limited liability company, a corporation or any  
53 other group or combination acting as a unit;

54 (22) “Pyrotechnic composition” means a mixture of chemicals that produces a visible or

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

57 (23) "Retailer" means a person who purchases consumer fireworks for resale to  
58 consumers;

59 (24) "Sparkling devices" means ground or handheld sparkling devices as that phrase is  
60 defined under APA 87-1, Sections 3.1.1 and 3.5;

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

65 (26) "Temporary" means that term as defined in NFPA 1124;

66 (27) "Toy caps" means that term as defined under APA 87-1, Section 3.3; and

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

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

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

**§29-3E-4. Sparkling devices and novelties registration required.**

1 (a) A person may not sell sparkling devices or novelties without being registered with the  
2 State Fire Marshal.

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

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

5 (2) Provide a copy of his or her current business registration certificate or his or her  
6 certificate to sell sparklers and novelties issued by the state Tax Commissioner;

7 (3) Pay the required fee; and

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

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

11 (d) A registration is not transferable.

12 (e) A person shall post the registration in a conspicuous place at the location of the  
13 business.

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

15 (g) The fee required in subdivision (3), subsection (b) of this section shall be \$15 per retail  
16 location.

17 (h) The fee assessed by this section shall be retained by the State Fire Marshal and  
18 expended to offset costs incurred in performing the duties imposed by the provisions of this code.

19 (i) The requirements of NFPA 1124 do not apply to a person only selling sparkling devices,  
20 novelties or toy caps.

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

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

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

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

5 (2) Submit with the application a copy of his or her current business registration certificate;

6 (3) Pay a fee that shall not exceed \$500 for each temporary retail sales location and \$1000  
7 for each permanent retail sales location to the State Fire Marshal;

8 (4) Provide the State Fire Marshal proof that the retailer maintains at all times public liability  
9 and product liability insurance with minimum coverage limits of \$1 million to cover losses,  
10 damages or injuries that might result from selling consumer fireworks; and

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

12 (c) A consumer fireworks certificate is valid through December 31 of each year or any  
13 fraction thereof.

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

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

17 (f) A separate certificate is required for each location of the business.

18 (g) A certificate holder may also sell sparkling devices and novelties at the same location  
19 without additionally obtaining a sparkling devices and novelties registration.

20 (h) A retailer who sells consumer fireworks shall comply with the regulations provided in  
21 NFPA 1124.

22 (i) Notwithstanding any provision of this article to the contrary, no retailer may offer  
23 consumer fireworks for sale before June 1, 2016.

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

1 (a) Any municipality, county, fair association, amusement park or other organization shall  
2 have 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 organization shall:

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

6 (2) Pay the required fee;

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

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

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



14 (d) A permit is not transferable.

15 (e) The display shall be operated 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 serving the  
18 community or area where such display is being held.

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

**§29-3E-7. Fireworks safety fee; administration; tax crimes; collections; remittances;**  
**deposits; distributions; rules.**

1 (a) In addition to the sales tax, a fireworks safety fee of twelve percent of all sales is levied  
2 on retail sales of consumer fireworks in this state. The fee shall be distributed pursuant to the  
3 provisions of this subsection. The fee computation under this subsection shall be carried to the  
4 third decimal place, and the fee rounded up to the next whole cent whenever the third decimal  
5 place is greater than four, and rounded down to the lower whole cent whenever the third decimal  
6 place is four or less.

7 (A) The State Tax Commissioner shall disburse all proceeds of the fireworks safety fee  
8 into the state treasury each month in the following manner:

9 (1) Five-sixths shall be deposited in the West Virginia Veterans' Program Fund established  
10 by the provisions of section eleven-b, article one, chapter nine-a of this code for expenditure  
11 pursuant to the provisions of this article.

12 (2) One-sixth shall be deposited in the Fire Protection Fund established in section thirty-  
13 three, article three, chapter thirty-three of this code and distributed in accordance with that section  
14 to each volunteer fire company or department on an equal share basis by the State Treasurer.

15 (b) A person who purchases consumer fireworks in a retail transaction shall pay to the  
16 retailer the amount of the fee levied by this section, which fee is added to and constitutes a part

17 of the sale price, and is collectible by the retailer who shall account to the state for all fees paid  
18 by a purchaser. If the retailer fails to collect the fee, or fails to account to the state for the fees  
19 paid by a purchaser, then the retailer is liable for the payment of the fee to the state.

20 (c) A retailer shall remit to the State Tax Commissioner no later than thirty days after the  
21 end of each preceding month all moneys collected for such preceding month, pursuant to the  
22 requirements of this section, and shall report such collections on forms and in the manner  
23 prescribed by the State Tax Commissioner.

24 (d) All moneys so remitted, net of refunds and adjustments, shall be paid by the State Tax  
25 Commissioner into the state General Revenue Fund, and the amount thereof shall be distributed  
26 and paid quarterly, by the State Treasurer, into the funds and to the distributees specified in this  
27 subsection.

28 (e) Each and every provision of the West Virginia Tax Procedure and Administration Act  
29 set forth in article ten, chapter eleven of this code, applies to the fees imposed pursuant to this  
30 article, with like effect as if that act were applicable only to the fees imposed by this article and  
31 were set forth in extenso in this article.

32 (f) Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth  
33 in article nine, chapter eleven of this code, applies to the fees imposed pursuant to this article,  
34 with like effect as if that act were applicable only to the fees imposed by this article and were set  
35 forth in extenso in this article.

1 (g) The State Tax Commissioner shall propose legislative rules and may promulgate such  
2 emergency rules as are necessary to implement the provisions of this article.

3 (h) Notwithstanding any other provision of this code to the contrary, the State Tax  
4 Commissioner may deduct and retain one percent from each payment into the General Revenue  
5 Fund, as provided in this section, for the benefit of his or her office for general tax administration,  
6 from which expenditures are permitted from collections without appropriation by the Legislature.

**§29-3E-8. State Fire Marshal's rule-making authority.**

1 (a) The State Fire Marshal may promulgate emergency rules and shall propose legislative  
2 rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of  
3 this code, to implement the 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  
6 Display;

7 (3) Adopting by reference NFPA 1124, Code for the Manufacture, Transportation, Storage  
8 and Retail Sales of Fireworks and Pyrotechnic Articles;

9 (4) Adopting by reference the most recent edition of NFPA 1126, Standard for the Use of  
10 Pyrotechnics Before a Proximate Audience;

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

12 (6) A fee schedule;

13 (7) Establishing insurance or bond requirements;

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

16 (9) Registration of manufacturers, wholesalers and distributors.

**§29-3E-9. Exemptions.**

1 This article does not prohibit any of the following:

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

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

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

7 (4) The possession, sale or disposal of fireworks incidental to the public display of  
8 fireworks by wholesalers or other persons who have a permit to possess, store and sell explosives  
9 from the Bureau of Alcohol, Tobacco, Firearms and Explosives of the United States Department

10 of Justice and the State Fire Marshal.

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

1 This article does not affect the authority of the governing body of a municipality to prohibit  
2 or regulate the possession, sale or use of consumer fireworks within its boundaries.

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

1 (a) Any person who intentionally ignites or discharges a consumer firework on public  
2 property or private property without the express permission of the owner or governing authority is  
3 guilty of a misdemeanor.

4 (b) Any person who intentionally ignites or discharges a consumer firework or sparkling  
5 device in a motor vehicle or within the confines of a residential or commercial structure is guilty of  
6 a misdemeanor.

7 (c) Any person who intentionally ignites a consumer firework or sparkling device and  
8 places the consumer firework or sparkling device inside the confines of a residential or  
9 commercial structure is guilty of a misdemeanor.

10 (d) Any person who intentionally ignites or discharges a consumer firework while under  
11 the influence of alcohol, a controlled substance or other drug, or a combination of alcohol, a  
12 controlled substance or drug is guilty of a misdemeanor.

13 (e) Any person under eighteen years of age who sells or offers for sale or purchases  
14 consumer fireworks shall be guilty of a misdemeanor as shall any person selling consumer  
15 fireworks to a person under eighteen years of age.

16 (f) Any person violating the provisions of subsection (a), (b), (c) or (d) of this section shall,  
17 upon conviction, be confined in jail for not more than thirty days, fined not more than \$500, or both  
18 fined and confined.

19 (g) The provisions of this section shall be effective June 1, 2016.

**§29-3E-12. Miscellaneous offenses; penalties.**

1 Any person who violates a provision of this article for which a penalty is not expressly set

2 forth is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100  
3 nor more than \$500. The provisions of this section shall be effective June 1, 2016.

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

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

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

**§29-3E-14. Reporting requirements; Duration of reporting requirements.**

1 Annually, on or before the fifteenth day of January 2017, 2018 and 2019:

2 (1) The State Treasurer shall submit to the President of the Senate and the Speaker of  
3 the House of Delegates a report detailing the amount of revenue received and deposited from the  
4 Fireworks Safety Fee into the Fire Safety Fund authorized by section seven of this article and the  
5 distribution of said funds;

6 (2) The Secretary of Veterans' Assistance shall supply the President of the Senate and  
7 Speaker of the House of Delegates with a report detailing the revenue received from the Fireworks  
8 Safety Fee and deposited in the West Virginia Veterans' Program Fund and the purposes for  
9 which the money was expended;

10 (3) The State Tax Commissioner shall provide to the President of the Senate and Speaker  
11 of the House of Delegates a report detailing the revenue received from the sales tax received  
12 from the sale of fireworks authorized by the provisions of the article and revenue received from  
13 the Fireworks Safety Fee authorized by section seven of this article; and

14 (4) The State Fire Marshal shall submit to the President of the Senate and Speaker of the  
15 House of Delegates a report detailing the amounts of revenue received from the registration fees  
16 imposed pursuant to the provisions of section five of this article, the purposes for which the fees

17 were expended and the adequacy of the fees received in relation to the duties required of the  
18 office.

## CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

### ARTICLE 3E. OFFENSES INVOLVING EXPLOSIVES.

#### §61-3E-1. Definitions.

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

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

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

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

21 ~~three, article three, chapter twenty-nine of this code which are not used in violation of this article.~~

22 Also included are all explosive materials listed annually by the office of the State Fire Marshal and  
23 published in the State Register, said publication being hereby mandated.

24 (c) "High power rocket" means the term as defined in National Fire Protection Association  
25 Standard 1127, Code for High Power Rocketry.

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

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

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

37 (g) "Model rocket" means the term as defined in National Fire Protection Association  
38 Standard 1122, Code for Model Rocketry.

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

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

**§61-3E-11. Exemptions.**

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

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

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

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