

Senate Bill No. 392

(By Senators D. Hall, Green and McCabe)

[Introduced February 27, 2013; referred to the Committee on the
Judiciary.]

10 A BILL to repeal §11-12-86 of the Code of West Virginia, 1931, as
11 amended; to repeal §29-3-23, §29-3-24, §29-3-25 and §29-3-26
12 of said code; to amend said code by adding thereto a new
13 article, designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4,
14 §29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8, §29-3E-9, §29-3E-10,
15 §29-3E-11, §29-3E-12 and §29-3E-13; and to amend and reenact
16 §61-3E-1 and §61-3E-11 of said code, all relating to the
17 regulation of fireworks; defining terms; setting forth the
18 State Fire Marshal's authority; requiring a registration,
19 certification or permit; establishing the requirements for a
20 registration, certification and permit; establishing a special
21 revenue account; setting forth the State Fire Marshal's
22 rule-making authority; providing authority to investigate
23 complaints; and providing criminal penalties.

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

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2 be repealed; that §29-3-23, §29-3-24, §29-3-25 and §29-3-26 of said
3 code be repealed; that said code be amended by adding thereto a new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

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

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

10 **§29-3E-1. Unlawful Acts.**

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

16 **§29-3E-2. Definitions.**

17 As used in this article:

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

23 (2) "APA Standard 87-1" means the APA Standard 87-1 published

1 by the American Pyrotechnics Association of Bethesda, Maryland, as
2 amended, and incorporated by reference into Title 49 of the Code of
3 Federal Regulations;

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

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

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

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

1 containing more than forty grams of pyrotechnic compositions and
2 other display pieces that exceed the limits of explosive materials
3 for classification as consumer fireworks and are classified as
4 fireworks UN0333, UN0334, or UN0335 under 49 C.F.R. §172.101;

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

7 (8) "Division 1.3 explosive" means that term as defined in 49
8 C.F.R. §173.50;

9 (9) "Division 1.4 explosive" means that term as defined in 49
10 C.F.R. §173.50;

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

14 (11) "Fire Marshal" means the State Fire Marshal;

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

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

23 (14) "New explosive" means that term as defined in 49 C.F.R.
24 §173.56;

1 (15) "Novelties" as defined under APA standard 87-1 3.2;

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

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

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

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

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

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

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

1 devices.

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

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

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

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

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

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

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

16 (3) Pay the required fee; and

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

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

21 (d) A registration is not transferable.

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

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

1 (g) The requirements of NFPA 1124 do not apply to a retailer
2 only selling sparkling devices, novelties or toy caps.

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

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

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

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

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

11 (3) Provide the required fee; and

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

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

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

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

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

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

24 (h) A retailer who sells consumer fireworks shall comply with

1 the regulations provided in NFPA 1124. The State Fire Marshal may,
2 by legislative rule, add to the regulations established in NFPA
3 1124.

4 **§29-3E-6. Required permit for public fireworks display.**

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

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

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

11 (2) Pay the required fee;

12 (3) 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 State Fire Marshal
16 determines to be necessary for the protection of the public; and

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

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

22 (d) A permit is not transferable.

23 (e) The display shall be handled by a competent operator
24 licensed or certified as to competency by the State Fire Marshal

1 and shall be of such composition, character, and so located,
2 discharged or fired so as to be safe in the opinion of the chief of
3 the fire department.

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

8 **§29-3E-7. Fireworks safety fee imposed.**

9 (a) In addition to the sales tax, a user fee of six cents on
10 the dollar of sales, known as the fireworks safety fee, is levied
11 on retail sales of consumer fireworks in this state. The fee shall
12 be distributed pursuant to the provisions of this section. The fee
13 computation under this section shall be carried to the third
14 decimal place, and the tax rounded up to the next whole cent
15 whenever the third decimal place is greater than four and rounded
16 down to the lower whole cent whenever the third decimal place is
17 four or less.

18 (b) A person who acquires consumer fireworks in a retail
19 transaction is liable for the fireworks safety fee on the
20 transaction and, except as otherwise provided in this article,
21 shall pay the fireworks safety fee to the retailer as a separate
22 added amount to the consideration in the transaction.

23 (c) The retailer shall collect the fireworks safety fee as an
24 agent for the state and pay it over to the State Treasurer.

1 (d) The fireworks safety fee shall be deposited in the State
2 Fire Commission's special account established in subsection (c),
3 section twelve-b, article three of this chapter to be distributed
4 for the administration of this article.

5 **§29-3E-8. Rule-making Authority.**

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

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

12 (2) Adopting by reference the most recent edition of NFPA
13 1123, code for fireworks display;

14 (3) Adopting by reference the most recent edition of NFPA
15 1124, code for the manufacture, transportation, storage and retail
16 sales of fireworks and pyrotechnic articles;

17 (4) Adopting by reference the most recent edition of NFPA
18 1126, standard for the use of pyrotechnics before a proximate
19 audience, as promulgated by the State Fire Commission;

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

22 (6) A fee schedule;

23 (7) Establishing insurance or bond requirements

24 (8) Establishing additional criteria for the granting of a

1 registration, certificate, or permit under this article; and

2 (9) Registering manufacturers, wholesalers and distributors;

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

4 This article does not prohibit any of the following:

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

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

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

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

16 **§29-3E-10. Local municipalities' regulation of consumer fireworks.**

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

20 **§29-3E-11. Violations of this article.**

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

24 (b) A person may not ignite or discharge any consumer

1 fireworks or sparkling devices within or throw the same from a
2 motor vehicle or building.

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

6 (d) A person may not ignite or discharge any consumer
7 fireworks or sparkling devices while the person:

8 (1) Is under the influence of alcohol;

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

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

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

13 (5) Has an alcohol concentration in his or her blood of eight
14 hundredths of one percent or more by weight.

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

17 **§29-3E-12. Criminal penalties.**

18 Any person who violates this article or any rules promulgated
19 pursuant to section eight of this article is guilty of a
20 misdemeanor and, upon conviction thereof, shall be fined not more
21 than \$100 or confined in the regional jail not more than ninety
22 days, or both.

23 **§29-3E-13. Seizures by State Fire Marshal; enforcement of law.**

24 (a) The State Fire Marshal shall seize, take, remove and

1 dispose of at public auction or destroy, or cause to be seized,
2 taken or removed and disposed of at public auction, or destroyed at
3 the expense of the owner, all stocks of fireworks or combustibles
4 offered or exposed for sale, stored or held in violation of this
5 article or legislative rule.

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

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

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

11 **§61-3E-1. Definitions.**

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

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

22 "Destructive device" does not include a firearm as such is
23 defined in section two, article seven of this chapter or model
24 rockets and their components as defined in this section

1 ~~twenty-three, article three, chapter twenty-nine of this code or~~
2 fireworks as defined in section two, article three-e, chapter
3 twenty-nine of this code, or high power rockets and their
4 components as defined in this section.

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

23 (c) "High power rocket" is defined as in National Fire
24 Protection Association Standard 1127, "Code for High Power

1 Rocketry."

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

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

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

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

23 ~~(g)~~ (i) "Storage magazine" is defined to mean any building or
24 structure, other than an explosives manufacturing building,

1 approved by the legal authority for the storage of explosive
2 materials.

3 **§61-3E-11. Exemptions.**

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

13 (b) Unless specifically prohibited by any other provision of
14 this code or the laws of the United States, nothing in this section
15 ~~shall prohibit~~ prohibits the authorized manufacture,
16 transportation, distribution, use or possession of any explosive,
17 destructive device or incendiary device by a member of the Armed
18 Forces or law-enforcement officers whenever such persons are acting
19 lawfully and in the line of duty; nor shall it prohibit the
20 manufacture, transportation, distribution, use or possession of any
21 explosive material, destructive device or incendiary device to be
22 used solely for lawful scientific research or lawful educational
23 purposes. Any person engaged in otherwise lawful blasting
24 activities failing to obtain a permit or in possession of an

1 expired permit issued by the office of the State Fire Marshal ~~shall~~
2 ~~not be construed to be~~ is not in violation of the article.

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

NOTE: The purpose of this bill is to revise, consolidate and codify laws relating to the purchase, possession, sale and use of fireworks in this state. The bill defines terms. The bill sets forth the State Fire Marshal's authority. The bill requires a registration, certification or permit for fireworks. The bill establishes the requirements for a registration, certification and permit. The bill also establishes a special revenue account. The bill further sets forth the State Fire Marshal's rule-making authority. The bill provides authority to investigate complaints, administrative fines and criminal penalties.

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

§29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8. §29-3E-9, §29-3E-10, §29-3E-11, §29-3E-12 and §29-3E-13 are new; therefore, strike-throughs and underscoring have been omitted.