

**Senate Bill No. 75**

(By Senators Yost, D. Hall, Miller, Facemire and Romano)

\_\_\_\_\_

[Introduced January 14, 2015; referred to the Committee on Military; and then to the Committee  
on 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 sale and use of fireworks; creating the West Virginia Veterans Program Fund; imposing ten-percent fee for sale of fireworks; and using 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.**

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



1 a stamp or language added to the business registration certificate or by embossing or writing  
2 imprinted on the business registration certificate.

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

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

5 **§29-3-23. "Fireworks" defined; labels required.**

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

9 (1) The term "fireworks" means and includes any ~~combustible or explosive composition, or~~  
10 ~~any substance or combination of substances, or article prepared for the purpose of producing a~~  
11 ~~visible or an audible effect by combustion, explosion, deflagration or detonation and shall include~~  
12 ~~blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, the~~  
13 ~~type of unmanned balloons which require fire underneath to propel the same, firecrackers, torpedoes,~~  
14 ~~skyrockets, roman candles, daygo bombs or other fireworks of like construction and any fireworks~~  
15 ~~containing any explosive or flammable compound or any tablets or other device containing any~~  
16 ~~explosive substance, except that the term "fireworks" shall not include: device, other than a novelty~~  
17 ~~of theatrical pyrotechnic article, intended to produce visible or audible effects, or both, by~~  
18 ~~combustion, deflagration or detonation.~~

19 (2) The term "consumer fireworks" means any fireworks device in a finished state, exclusive  
20 of mere ornamentation, suitable for use by the public that complies with the construction,  
21 performance, composition and labeling requirements established by the United States Consumer  
22 Products Safety Commission (CPSC) in Title 16 C.F.R. parts 1500 and 1507 and any other limits

1 and requirements that the CPSC may impose. Consumer fireworks are classified under the standards  
2 of the United Nations as UN0336 and as Fireworks 1.4G. Consumer fireworks include, but are not  
3 limited to, firecrackers, skyrockets, roman candles, mines, shells, and multiple-tube items.

4 (3) The term “display fireworks” means fireworks devices in a finished state, exclusive of  
5 mere ornamentation, primarily intended for commercial displays that are designed to produce visible  
6 and/or audible effects by combustion, deflagration or detonation, including, but not limited to,  
7 exhibition display items that exceed the limits contained in the CPSC standards for consumer  
8 fireworks. Display fireworks are classified under United Nations standards as UN0335 and  
9 Fireworks 1.3G.

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

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

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

19 (3) Emergency signal flares.

20 (4) Matches.

21 (5) Fixed ammunition for firearms.

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

1 arms.

2 (7) Shells, cartridges and primers for use in firearms, muzzle loading cannons and small

3 arms.

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

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

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

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

13 ~~(4)~~(3) Trick noisemakers which produce a small report designed to surprise the user and  
14 which include:

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

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

21 (C) A snapper ~~or drop pop~~, which is a small paper wrapped item containing no more than  
22 twenty-five hundredths of a grain of explosive mixture coated on small bits of sand. When dropped,

1 the device produces a small report.

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

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

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

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

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

16 (D) Wheel. Pyrotechnic device intended to be attached to a post or tree by means of a nail or  
17 string. These may have one or more drivers. Upon ignition, the wheel revolves and produces a  
18 shower of color and sparks and, sometimes, a whistling effect.

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

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

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

6 **§29-3-24. Sale, possession or use of fireworks; permit for public display.**

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

10 (a) Consumer fireworks may be legally sold, bought, possessed and used. A fireworks safety  
11 brochure shall be included with each retail sale of consumer fireworks. A person at least sixteen  
12 years old may set off fireworks under competent adult supervision. Eye protection is required of  
13 anyone under the age of eighteen who ignites consumer fireworks.

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

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

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

1           (e) The State Fire Marshal may ~~adopt~~ propose reasonable rules ~~and regulations~~ for legislative  
 2 approval for the granting of permits for the supervised public displays of fireworks by municipalities,  
 3 fair associations, amusement parks and other organizations or groups of individuals. The State Fire  
 4 Marshal ~~shall have~~ has the authority to charge a fee of ~~ten dollars~~ \$20 to each applicant requesting  
 5 a license to be a pyrotechnic operator as set forth in this article. The State Fire Marshal shall charge  
 6 a scaled fee for all applications requesting permits to establish a pyrotechnics display as provided  
 7 in this section. All fees required to be paid by the provisions of this section shall be paid to the State  
 8 Fire Marshal and ~~thereafter~~ deposited ~~by him~~ into a special account for the operation of the State Fire  
 9 Commission. ~~Such~~ The permits may be granted upon application to ~~said~~ the State Fire Marshal and  
 10 after approval of the local police and fire authorities of the community ~~wherein~~ where the display  
 11 is proposed to be held as provided ~~herein~~ in this section and the filing of a bond by the applicant as  
 12 provided ~~hereinafter~~ in this section.

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

20           (g) (1) The governing body or chief executive authority of the municipality shall require a  
 21 bond from the licensee in a sum not less than \$1,000 conditioned on compliance with the provisions  
 22 of this article and the ~~regulations~~ rules of the State Fire Commission. ~~Provided, That~~ No



1 municipality ~~shall be~~ is required to file such bond.

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

## 7                   **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### 8 **ARTICLE 3E. OFFENSES INVOLVING EXPLOSIVES.**

#### 9 **§61-3E-1. Definitions.**

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

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

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

19       (b) "Explosive material" means any chemical compound, mechanical mixture or device that  
20 is commonly used or can be used for the purpose of producing an explosion and which contains any  
21 oxidizing and combustive units or other ingredients in such proportions, quantities or packaging that  
22 an ignition by fire, by friction, by concussion, by percussion, by detonator or by any part of the

1 compound or mixture may cause a sudden generation of highly heated gases. These materials  
2 include, but are not limited to, powders for blasting, high or low explosives, blasting materials,  
3 blasting agents, blasting emulsions, blasting fuses other than electric circuit breakers, detonators,  
4 blasting caps and other detonating agents and black or smokeless powders not manufactured or used  
5 for lawful sporting purposes or fireworks defined in section twenty-three, article three, chapter  
6 twenty-nine of this code which are not used in violation of this article. Also included are all  
7 explosive materials listed annually by the office of the state fire marshal and published in the state  
8 register, said publication being hereby mandated.

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

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

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

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

22 (g) "Storage magazine" is defined to mean any building or structure, other than an explosives

1 manufacturing building, approved by the legal authority for the storage of explosive 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 those proceeds for the Veterans Program Fund.

§9A-1-11b and §11-12-87 are new; therefore, strike-throughs and underscoring have been omitted.

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