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SENATE BILL NO. 202

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 9, 2000)

(Patron Prior to Substitute—Senator Mims)

A BILL to amend and reenact §§ 18.2-85 and 27-97 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 27-97.2, relating to the issuance of permits for the use of explosives; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-85 and 27-97 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 27-97.2 as follows:

§ 18.2-85. Manufacture, possession, use, etc., of fire bombs or explosive materials or devices; penalties.

For the purpose of this section:

"Fire bomb" means any container of a flammable material such as gasoline, kerosene, fuel oil, or other chemical compound, having a wick or other substance or device which, if set or ignited, is capable of igniting such flammable material or chemical compound but does not include a similar device commercially manufactured and used solely for the purpose of illumination or cooking.

"Explosive material" means any chemical compound, mechanical mixture or device that is commonly used or can be used for the purpose of producing an explosion and which contains any oxidizing and combustive agents or other ingredients in such proportions, quantities or packaging that an ignition by fire, friction, concussion, percussion, detonation or by any part of the compound or mixture may cause a sudden generation of highly heated gases. These materials include, but are not limited to, gunpowder, powders for blasting, high explosives, blasting materials, fuses (other than electric circuit breakers), detonators, and other detonating agents and smokeless powder.

"Device" means any instrument, apparatus or contrivance, including its component parts, that is capable of producing or intended to produce an explosion but shall not include fireworks as defined in § 59.1-142.

"Hoax explosive device" means any device which by its design, construction, content or characteristics appears to be or to contain a bomb or other destructive device or explosive but which is, in fact, an imitation of any such device or explosive.

Any person who (i) possesses materials with which fire bombs or explosive materials or devices can be made with the intent to manufacture fire bombs or explosive materials or devices or, (ii) manufactures, transports, distributes, possesses or uses a fire bomb or explosive materials or devices shall be guilty of a Class 5 felony. Any person who constructs, uses, places, sends, or causes to be sent any hoax explosive device so as to intentionally cause another person to believe that such device is a bomb or explosive shall be guilty of a Class 6 felony.

Nothing in this section shall prohibit the authorized manufacture, transportation, distribution, use or possession of any material, substance, or device by a member of the armed forces of the United States, fire fighters or law-enforcement officers, nor shall it prohibit the manufacture, transportation, distribution, use or possession of any material, substance or device to be used solely for scientific research, educational purposes or for any lawful purpose, *subject to the provisions of §§ 27-97 and 27-97.2.*

§ 27-97. Adoption of Fire Prevention Code.

The Board of Housing and Community Development is hereby empowered to adopt and promulgate a Statewide Fire Prevention Code which shall be cooperatively developed with the Fire Services Board pursuant to procedures agreed to by the two Boards. The Fire Prevention Code shall prescribe regulations to be complied with for the protection of life and property from the hazards of fire or explosion and for the handling, storage and use of explosives or blasting agents, and shall provide for the administration and enforcement of such regulations. The Fire Prevention Code shall require manufacturers of explosives, as defined in the Code, to register and report information concerning their manufacturing facilities and methods of operation within ~~this~~the Commonwealth in accordance with regulations adopted by the Board. ~~The~~ In addition to conducting criminal background checks pursuant to § 27-97.2, the Board shall also establish regulations for obtaining permits for the manufacturing, storage, handling, use, or sales of explosives. In the enforcement of such regulations, the enforcing agency may issue annual permits for such activities to any state regulated public utility. Such permits shall not apply to the storage, handling, or use of explosives or blasting agents pursuant to the provisions of Title 45.1.

The Fire Prevention Code shall supersede fire prevention regulations heretofore adopted by local

60 governments or other political subdivisions. Local governments are hereby empowered to adopt fire
61 prevention regulations that are more restrictive or more extensive in scope than the Fire Prevention Code
62 provided such regulations do not affect the manner of construction, or materials to be used in the
63 erection, alteration, repair, or use of a building or structure, including the voluntary installation of smoke
64 alarms and regulation and inspections thereof in commercial buildings where such smoke alarms are not
65 required under the provisions of the Code.

66 In formulating the Fire Prevention Code, the Board shall have due regard for generally accepted
67 standards as recommended by nationally recognized organizations including, but not limited to, standards
68 of the Southern Building Code Congress, the Building Officials and Code Administrators International,
69 Inc., the National Fire Protection Association, and recognized organizations issuing standards for the
70 protection of the public from the hazards of explosives and blasting agents. Such standards shall be
71 based on the companion document to the model building code referenced by the Uniform Statewide
72 Building Code.

73 The Fire Prevention Code shall require that buildings constructed prior to 1973 be maintained in
74 accordance with state fire and public building regulations in effect prior to March 31, 1986, and that any
75 building which is (i) more than seventy-five feet or more than six stories high and (ii) used, in whole or
76 in part, as a dormitory to house students by any public or private institution of higher education shall be
77 required to comply with the provisions of § 36-99.3. The Fire Prevention Code shall also require annual
78 fire drills in all buildings having floors used for human occupancy located more than seventy-five feet
79 above the lowest level of fire department vehicle access. The drills shall be conducted by building staff
80 personnel or the owner of the building in accordance with a plan approved by the appropriate fire
81 official and shall not affect other current occupants. The Board may modify, amend or repeal any Code
82 provisions as the public interest requires. Any such Code changes shall be developed in cooperation with
83 the Fire Services Board pursuant to procedures agreed to by the two Boards.

84 § 27-97.2. *Issuance of permit; background investigations.*

85 A. *The Board shall consider all permit applications for manufacturing, storage, handling, use or*
86 *sales of explosives and applications for certification as a blaster, and may grant a valid permit or*
87 *certification to applicants who meet the criteria established in the regulations of the Board. The Board*
88 *shall require a background investigation, to include a criminal history record information check, of all*
89 *individual applicants and all designated persons representing an applicant that is not an individual, for*
90 *a permit to manufacture, store, handle, use or sell explosives, and for any applicant for certification as*
91 *a blaster. Such applicants shall provide personal descriptive information to be forwarded to the*
92 *National Instant Check System for the purpose of obtaining criminal history record information. Any*
93 *firm or company manufacturing, storing, using, or selling explosives shall provide to the enforcement*
94 *agency the name of a representative responsible for (i) ensuring compliance with state law and*
95 *regulations relating to blasting agents and explosives and (ii) applying for permits. The Board shall*
96 *deny any application for a permit if the applicant or designated person representing an applicant has*
97 *been convicted of any felony, whether such conviction occurred under the laws of the Commonwealth, or*
98 *any other state, the District of Columbia, the United States or any territory thereof, unless his civil*
99 *rights have been restored by the Governor or other appropriate authority.*

100 B. *No permit under this section shall be required of any person holding a certification or permit*
101 *issued pursuant to the provisions of Title 45.1.*

102 **2. That the Department of Mines, Minerals and Energy shall study the potential application of the**
103 **provisions of this act to the coal and mineral mining industries in Virginia and report its findings**
104 **to the General Assembly on or before December 1, 2000.**