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SENATE BILL NO. 343

Offered January 8, 2014

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A *BILL to amend and reenact §§ 18.2-85, 18.2-308.2, 27-95, 27-96.1, 27-97, and 27-97.2 of the Code of Virginia, relating to the Statewide Fire Prevention Code; State Fire Marshal; consumer grade fireworks.*

Patron—Garrett

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-85, 18.2-308.2, 27-95, 27-96.1, 27-97, and 27-97.2 of the Code of Virginia are amended and reenacted as follows:

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

For the purpose of this section:

"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 § 27-95.

"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.

"Fire bomb" means any container of a flammable material such as gasoline, kerosene, fuel oil, or other chemical compound, having a wick composed of any material or a device or other substance 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.

"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 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.

Any person who (i) causes damage to property or (ii) causes injury to another person due to the negligent use of fireworks shall be subject to prosecution under existing applicable criminal statutes.

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.

§ 18.2-308.2. Possession or transportation of firearms, firearms ammunition, stun weapons, explosives or concealed weapons by convicted felons; penalties; petition for permit; when issued.

A. It shall be unlawful for (i) any person who has been convicted of a felony; (ii) any person adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of murder in violation of § 18.2-31 or 18.2-32, kidnapping in violation of § 18.2-47, robbery by the threat or presentation of firearms in violation of § 18.2-58, or rape in violation of § 18.2-61; or (iii) any person under the age of 29 who was adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent act which would be a felony if committed by an adult, other than those felonies set forth in clause (ii), whether such conviction or adjudication occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof,

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SB343

59 to knowingly and intentionally possess or transport any firearm or ammunition for a firearm, any stun
60 weapon as defined by § 18.2-308.1, or any explosive material, or to knowingly and intentionally carry
61 about his person, hidden from common observation, any weapon described in subsection A of
62 § 18.2-308. However, such person may possess in his residence or the curtilage thereof a stun weapon as
63 defined by § 18.2-308.1. Any person who violates this section shall be guilty of a Class 6 felony.
64 However, any person who violates this section by knowingly and intentionally possessing or transporting
65 any firearm and who was previously convicted of a violent felony as defined in § 17.1-805 shall be
66 sentenced to a mandatory minimum term of imprisonment of five years. Any person who violates this
67 section by knowingly and intentionally possessing or transporting any firearm and who was previously
68 convicted of any other felony within the prior 10 years shall be sentenced to a mandatory minimum
69 term of imprisonment of two years. The mandatory minimum terms of imprisonment prescribed for
70 violations of this section shall be served consecutively with any other sentence.

71 B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm,
72 ammunition for a firearm, explosive material or other weapon while carrying out his duties as a member
73 of the Armed Forces of the United States or of the National Guard of Virginia or of any other state, (ii)
74 any law-enforcement officer in the performance of his duties, or (iii) any person who has been pardoned
75 or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution
76 of Virginia provided the Governor, in the document granting the pardon or removing the person's
77 political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship,
78 transport, possess or receive firearms.

79 C. Any person prohibited from possessing, transporting or carrying a firearm or stun weapon under
80 subsection A, may petition the circuit court of the jurisdiction in which he resides for a permit to
81 possess or carry a firearm or stun weapon; however, no person who has been convicted of a felony shall
82 be qualified to petition for such a permit unless his civil rights have been restored by the Governor or
83 other appropriate authority. A copy of the petition shall be mailed or delivered to the attorney for the
84 Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and
85 represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either
86 party. The court may, in its discretion and for good cause shown, grant such petition and issue a permit.
87 The provisions of this section relating to firearms, ammunition for a firearm, and stun weapons shall not
88 apply to any person who has been granted a permit pursuant to this subsection.

89 C1. Any person who was prohibited from possessing, transporting or carrying explosive material
90 under subsection A may possess, transport or carry such explosive material if his right to possess,
91 transport or carry explosive material has been restored pursuant to federal law.

92 D. For the purpose of this section:

93 "Ammunition for a firearm" means the combination of a cartridge, projectile, primer, or propellant
94 designed for use in a firearm other than an antique firearm as defined in § 18.2-308.2:2.

95 "Explosive material" means any chemical compound mixture, or device, the primary or common
96 purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and
97 other high explosives, black powder, pellet powder, smokeless gun powder, detonators, blasting caps and
98 detonating cord but shall not include fireworks or permissible fireworks as defined in § 27-95.

99 **§ 27-95. Definitions.**

100 As used in this chapter, unless the context or subject matter requires otherwise, the following words
101 or terms shall have the meaning herein ascribed to them:

102 "Board" means the Board of Housing and Community Development.

103 "Code provisions" means the provisions of the Fire Prevention Code as adopted and promulgated by
104 the Board, and the amendments thereof as adopted and promulgated from time to time by such Board.

105 "Consumer fireworks" means small fireworks devices containing restricted amounts of pyrotechnic
106 composition designed primarily to produce visible or audible effects by combustion. Such fireworks are
107 classified and labeled as 1.4G explosives as set forth in 49 C.F.R. Parts 100 through 180 and meet the
108 composition and labeling regulations of the U.S. Consumer Product Safety Commission as set forth in
109 16 C.F.R. Parts 1500 and 1507.

110 "Display fireworks" means large fireworks devices, which are explosive materials, intended for use in
111 fireworks displays and designed to produce audible or visible effects by combustion, deflagration, or
112 detonation. Such fireworks are classified and labeled as 1.3G explosives as set forth in 49 C.F.R. Parts
113 100 through 180 and include firecrackers containing more than 130 milligrams (2 grains) of explosive
114 composition, aerial shells containing more than 40 grams of pyrotechnic composition, and other display
115 devices which exceed the limits for classification as 1.4G fireworks.

116 "Enforcement agency" means the agency or agencies of any local governing body or the State Fire
117 Marshal charged with the administration or enforcement of the Fire Prevention Code.

118 "Fire Prevention Code" or "Code" means the Statewide Fire Prevention Code.

119 "Fire prevention regulation" means any law, rule, resolution, regulation, ordinance or code, general or
120 special, or compilation thereof to safeguard life and property from the hazards of fire or explosion

arising from the improper maintenance of life safety and fire prevention and protection materials, devices, systems and structures, and the unsafe storage, handling and use of substances, materials and devices, including explosives and blasting agents, wherever located, heretofore or hereafter enacted or adopted by the Commonwealth or any county or municipality, including departments, boards, bureaus, commissions or other agencies.

"Fire Services Board" means the Virginia Fire Services Board as provided for in § 9.1-202.

"Fireworks" means any firecracker, torpedo, skyrocket, or other substance or object, of whatever form or construction, that contains any explosive or inflammable compound or substance, and is intended, or commonly known, as fireworks, and which explodes, rises into the air or travels laterally, or fires projectiles into the air, *or emits showers of sparks with audible or visual effects and includes all types of fireworks defined in this section.*

"Fireworks operator" or "pyrotechnician" means any person engaged in the design, setup, and firing of any fireworks other than permissible fireworks either inside a building or structure or outdoors.

"Inspection warrant" means an order in writing, made in the name of the Commonwealth, signed by any judge or magistrate whose territorial jurisdiction encompasses the building, structure or premises to be inspected or entered, and directed to a state or local official, commanding him to enter and to conduct any inspection, examination, testing or collection of samples for testing required or authorized by the Virginia Statewide Fire Prevention Code.

"Local government" means the governing body of any city, county or town in this Commonwealth.

"Permissible fireworks" means any sparklers, fountains, Pharaoh's serpents, caps for pistols, or pinwheels commonly known as whirligigs or spinning jennies.

"Restricted consumer fireworks" means those ground based and hand held 1.4G explosives as set forth in 49 C.F.R. Parts 100 through 180 and include fireworks containing limited pyrotechnic composition designed primarily to produce visible or audible effects by combustion but do not rise into the air, explode, or travel horizontally, commonly known as sparklers, fountains, pinwheels, and spinning jennies.

"State Fire Marshal" means the State Fire Marshal as provided for by § 9.1-206.

§ 27-96.1. Chapter inapplicable to certain uses of fireworks.

Unless prohibited by a local ordinance, the provisions of this chapter pertaining to fireworks shall not apply to the sale of or to any person using, igniting or exploding permissible consumer fireworks or restricted consumer fireworks on private residential or agricultural property with the consent of the owner of such property or when such fireworks are being transported from a locality where they were legally obtained to a locality where they are legally permitted.

§ 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, sale and use of fireworks, explosives or blasting agents, and shall provide for the administration and enforcement of such regulations. The Fire Prevention Code shall require manufacturers of fireworks or explosives, as defined in the Code, to register and report information concerning their manufacturing facilities and methods of operation within the Commonwealth in accordance with regulations adopted by the Board. 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 fireworks or 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 prohibit any person, firm, or corporation from transporting, manufacturing, storing, selling, offering for sale, exposing for sale, or buying, using, igniting, or exploding any fireworks except for those persons, firms, or corporations that manufacture, store, market and distribute fireworks for the sole purpose of fireworks displays permitted by an enforcement agency or by any locality.

The Fire Prevention Code shall prohibit anyone younger than the age of 18 years from purchasing fireworks and shall prohibit anyone younger than the age of 18 years from possessing or using fireworks without adult supervision.

The Fire Prevention Code shall prohibit the storage of any fireworks defined in § 27-95 in excess of the limits established by the standards of the International Code Council or other model building and fire code adopted pursuant to § 27-97 or 36-99.

The Fire Prevention Code shall supersede fire prevention regulations heretofore adopted by local governments or other political subdivisions. Local governments are hereby empowered to adopt fire

prevention regulations that are more restrictive or more extensive in scope than the Fire Prevention Code provided such regulations do not affect the manner of construction, or materials to be used in the erection, alteration, repair, or use of a building or structure, including the voluntary installation of smoke alarms and regulation and inspections thereof in commercial buildings where such smoke alarms are not required under the provisions of the Code. The Fire Prevention Code shall prohibit any person not certified by the State Fire Marshal's Office as a fireworks operator or pyrotechnician to design, set up, or conduct or supervise the design, setup, or conducting of any fireworks display, either inside a building or structure or outdoors and shall require that at least one person holding a valid certification is present at the site where the fireworks display is being conducted *unless such display is conducted using consumer fireworks or restricted consumer fireworks on residential or agricultural property in accordance with § 27-96.1*. Certification shall not be required for the design, storage, sale, use, conduct, transportation, and set up of ~~permissible~~ consumer or restricted consumer fireworks or the supervision thereof or in connection with any fireworks display conducted by a volunteer fire department provided one member of the volunteer fire department holds a valid certification.

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

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

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

A. The State Fire Marshal or other issuing authority shall consider all permit applications for manufacturing, storage, handling, use or sales of explosives and applications for certification as a blaster or as a fireworks operator or pyrotechnician, and may grant a valid permit or certification to applicants who meet the criteria established in the Statewide Fire Prevention Code. The State Fire Marshal shall require a background investigation, to include a national criminal history record information check, of all individual applicants and all designated persons representing an applicant that is not an individual, for a permit to manufacture, store, handle, use or sell explosives, and for any applicant for certification as a blaster or as a fireworks operator or pyrotechnician. Each such applicant shall submit his fingerprints to the State Fire Marshal on a form provided by the State Fire Marshal and provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history record check regarding such applicant. Any firm or company manufacturing, storing, using, or selling explosives shall provide to the enforcement agency, the State Fire Marshal or other issuing authority the name of a representative responsible for (i) ensuring compliance with state law and regulations relating to blasting agents and explosives and (ii) applying for permits. The State Fire Marshal or other issuing authority shall deny any application for a permit or for certification as a blaster or as a fireworks operator or pyrotechnician if the applicant or designated person representing an applicant has been convicted of any felony, whether such conviction occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, unless his civil rights have been restored by the Governor or other appropriate authority. The provisions of this section shall not apply to the manufacturing, storage, handling, use or sales of ~~permissible~~ fireworks or in connection with any fireworks display conducted by a volunteer fire department provided one member of the volunteer fire department holds a valid certification.

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

2. That the provisions of this act shall become effective on January 1, 2015.

3. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.