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SENATE BILL NO. 1433

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 23, 2017)

(Patron Prior to Substitute—Senator Reeves)

A BILL to amend and reenact §§ 27-96.1 and 27-97 of the Code of Virginia and to amend the Code of Virginia by adding in Title 27 a chapter numbered 10, consisting of sections numbered 27-102 through 27-105, relating to consumer fireworks; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 27-96.1 and 27-97 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 27 a chapter numbered 10, consisting of sections numbered 27-102 through 27-105, as follows:

§ 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 on ~~private residential or agricultural~~ property with the consent of the owner of such property *consistent with the provisions of Chapter 10 (§ 27-102 et seq.).*

§ 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 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. Certification shall not be required for the design, ~~storage, sale,~~ use, conduct, transportation, and set up of ~~permissible consumer~~ fireworks or the supervision thereof or in connection with any fireworks display conducted by a volunteer fire department, provided *that* 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.

CHAPTER 10.

CONSUMER FIREWORKS.

§ 27-102. Definitions.

As used in this chapter, unless the context requires a different meaning:

"APA 87-1" means 2001 APA Standard 87-1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, published by the American Pyrotechnics Association of Bethesda, Maryland.

"Board" means the Virginia Fire Services Board.

"Consumer fireworks" means any fireworks device in a finished state, exclusive of mere ornamentation, suitable for use by the public, that complies with the construction, performance, composition, and labeling requirements as set out in 16 C.F.R. (Commercial Practices) and as set out in 49 C.F.R. (Transportation), in addition to any limits and other requirements of APA 87-1.

"Consumer fireworks retail sales facility" means a permanent building or structure that is used primarily for the retail display and sale of consumer fireworks, ground and hand-held sparkling devices, or both, to the public.

"Department" means the Department of Fire Programs.

"Ground and hand-held sparkling devices" means devices that are ground-based or hand-held devices that produce a shower of white, gold, or colored sparks as their primary pyrotechnic effect and with additional effects that may include a colored flame, an audible crackling effect, and audible whistle effect, and smoke. "Ground and hand-held sparkling devices" shall not rise into the air, explode, or produce a mild audible crackling effect that is not considered to be a report.

"Permittee" means a person to whom the Board has issued a valid permit to sell consumer fireworks pursuant to § 27-103.

"Store" means a building classified as mercantile occupancy that contains a variety of merchandise and that is not used primarily for the retail sale of consumer fireworks.

"Temporary consumer fireworks retail sales facility" means a tent, stand, canopy, or membrane structure used primarily for the retail sale of ground and hand-held sparkling devices.

§ 27-103. Sale of consumer fireworks; permitting; prohibited conduct; injunctions; penalty.

A. Notwithstanding the provisions of § 27-97 or 27-97.2, a person may sell consumer fireworks if he possesses:

1. A federal permit to sell fireworks issued under 18 U.S.C. § 843, except as provided in subdivision C 3;

2. A permit issued under subsection B; and

3. A local permit, if and as required by the locality where the sales facility is located.

B. Notwithstanding the provisions of § 27-97 or 27-97.2, the Board shall establish requirements and establish a process for the issuance and renewal of permits for the sale of consumer fireworks. Every application for a permit shall be on a form provided by the Board. At minimum, the Board shall require:

1. A separate permit for each location at which an applicant seeks to sell consumer fireworks;

2. That the sale of consumer fireworks be conducted only in a permanent, fixed, stand-alone building that is solely dedicated to the storage and sale of fireworks or a store;

3. Compliance with all regulations and rules adopted under § 27-97 that pertain to the handling and storage of fireworks;

4. Each permittee to carry, with respect to each permitted facility, public liability and product liability insurance with minimum limits of \$5 million to cover the losses, damages, or injuries that might ensue to persons or property as a result of the sale of consumer fireworks;

5. That no permittee or any shareholder, partner, member, or employee of a permittee have been convicted of a felony or any state, local, or federal offense involving fireworks within the five-year period prior to the date of the application;

6. The submission of an application for a fireworks permit no later than October 1 of each year with the approved permits issued no later than the following December 1; and

7. That each applicant for a permit and any shareholder, partner, member, or employee of such applicant be at least 18 years of age and not have been convicted of any felony. Conviction of a felony

by a licensee or anyone owning five percent or more of a permittee shall result in denial of an application for a license or immediate termination of the license if the felony occurs after the permit is issued;

C. Permitted consumer fireworks retail sales facilities shall be operated pursuant to the following requirements:

1. A permittee may store and sell the consumer fireworks only in a consumer fireworks retail sales facility or store, in accordance with all of the rules and regulations adopted by the Board under this chapter and § 27-97 and applicable fire and building codes.

2. A permittee may sell ground and hand-held sparkling devices from a temporary consumer fireworks retail sales facility or store.

3. A federal permit to sell fireworks issued under 18 U.S.C. § 843 shall not be required for a permittee (i) selling consumer fireworks in a store or (ii) selling exclusively ground and hand-held sparkling devices.

4. No person shall smoke or shall carry a pipe, cigarette, cigar, match, lighter, or other flame-producing item or open flame on his person, or carry a concealed source of ignition, into the premises of any consumer fireworks retail sales facility.

5. An individual under 18 years of age shall not be admitted into any consumer fireworks retail sales facility unless accompanied by a parent, guardian, or responsible adult.

6. An individual under 18 years of age shall not be permitted to work in any consumer fireworks retail sales facility.

7. Each permittee shall provide to the purchaser of consumer fireworks at the point of sale written guidelines describing the safe and proper use of the purchased consumer fireworks, which guidelines shall include the following statements in a conspicuous location: "VIRGINIA LAW EXPRESSLY PROHIBITS PERSONS UNDER 18 YEARS OF AGE FROM PURCHASING, POSSESSING, OR USING CONSUMER FIREWORKS" and "FURNISHING CONSUMER FIREWORKS TO PERSONS UNDER 18 YEARS OF AGE IS A CRIMINAL OFFENSE IN VIRGINIA." Such guidelines shall be published or approved by the Board prior to distribution.

D. No person shall:

1. Sell consumer fireworks within the Commonwealth:

a. Other than from a consumer fireworks retail sales facility or store; and

b. Unless the person is a permittee or is an employee or agent of a permittee;

2. Sell consumer fireworks or ground and hand-held sparkling devices to an individual who appears to be under the influence of alcohol or drugs;

3. Knowingly:

a. Procure, aid or assist in procuring, furnish, give, sell, or deliver consumer fireworks or ground and hand-held sparkling devices for or to an individual under 18 years of age; or

b. Allow an individual under that person's control or in a place under that person's control to possess or use consumer fireworks or ground and hand-held sparkling devices if that individual is under 18 years of age;

4. Purchase, use, or possess consumer fireworks or ground and hand-held sparkling devices within the Commonwealth if the individual is under 18 years of age or use or attempt to use any (i) altered, fictitious, facsimile, or simulated license to operate a motor vehicle; (ii) altered, fictitious, facsimile, or simulated document, including a birth certificate or student identification card; or (iii) motor vehicle operator's license, birth certificate, or student identification card of another person in order to establish a false identification or false age for himself to purchase, use, or possess, or attempt to purchase, use, or possess, consumer fireworks if the individual is under 18 years of age; or

5. Sell or store in a permitted facility any fireworks that are not consumer fireworks as defined in APA 87-1. The issuance of an EX number by the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) or a competent authority approved by the PHMSA shall be prima facie evidence of consumer fireworks being defined in APA 87-1.

E. Every court having jurisdiction under applicable law is empowered to and, upon the application of the Department, local enforcing agency, or State Fire Marshal, shall issue a mandatory injunction in aid of the enforcement of, or in prevention of the violation of, any of the provisions of this chapter or any valid rule or regulation adopted under this chapter. The procedure for obtaining any such injunction shall be in accordance with the laws then current governing injunctions generally, except that the enforcing agency shall not be required to give bond as a condition precedent to obtaining an injunction.

F. Any violation of subsection C or D is punishable as a Class 1 misdemeanor. It shall be an affirmative defense to prosecution of a person for a violation of subdivision D 3 that the person sold consumer fireworks or ground and hand-held sparkling devices to an individual under 18 years of age in reasonable reliance upon fraudulent proof of age presented by the purchaser.

183 ***§ 27-104. Possession and use of consumer fireworks; civil penalties.***

184 *Unless prohibited by local ordinance and notwithstanding the provisions of § 27-97, a person over*
185 *the age of 18 may possess, use, ignite, or explode consumer fireworks or ground and hand-held*
186 *sparkling devices on private property with the consent of the owner of such property, provided that:*

187 1. *Consumer fireworks or ground and hand-held sparkling devices may be used only between the*
188 *hours of 12:00 p.m. and 10:00 p.m., except that on July 4, December 31, and the weekends immediately*
189 *before and after July 4 consumer fireworks may be used between the hours of 12:00 p.m. and 12:30*
190 *a.m.; and*

191 2. *A person may use consumer fireworks only on that person's property or on the property of a*
192 *person who has consented to the use of consumer fireworks on that property.*

193 ***§ 27-105. Local government restrictions.***

194 *Notwithstanding any other provision of law, a locality may enact an ordinance restricting or*
195 *prohibiting the sale, use, or storage of consumer fireworks, provided that any such ordinance is more*
196 *restrictive than the provisions of this chapter.*