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SENATE BILL NO. 980

Offered January 11, 2017

Prefiled January 3, 2017

A *BILL to amend and reenact §§ 18.2-85, 27-34.4, 27-95, 27-96.1, and 27-97 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 27-6.03 and by adding in Chapter 17 of Title 58.1 an article numbered 11, consisting of sections numbered 58.1-1743, 58.1-1744, and 58.1-1745, relating to the Statewide Fire Prevention Code; State Fire Marshal; consumer fireworks; penalties.*

Patron—Stanley

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-85, 27-34.4, 27-95, 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 a section numbered 27-6.03 and by adding in Chapter 17 of Title 58.1 an article numbered 11, consisting of sections numbered 58.1-1743, 58.1-1744, and 58.1-1745, as follows:

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

A. 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~~ does not include fireworks as defined in § 27-95, *provided that such fireworks are in their original packaging and are used in accordance with the manufacturer's instructions.*

"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 combusive 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~~ *that* 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.

B. 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~~ *is* 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~~ *is* guilty of a Class 6 felony.

C. Any person who (i) causes damage to property or (ii) causes injury to another person due to the use of fireworks as defined in § 27-95 shall be subject to prosecution under existing applicable criminal statutes.

D. 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~~ *Armed Forces* of the United States, ~~fire fighters~~ *firefighters*, 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 other lawful purpose, subject to the provisions of §§ 27-97 and 27-97.2.

§ 27-6.03. Local Consumer Fireworks Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Local Consumer Fireworks Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys required to be deposited into the Fund pursuant to this

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chapter shall be paid into the state treasury and credited to the Fund. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Expenditures from the Fund shall be made from the tax established pursuant to § 58.1-1743 and payments shall be made to the locality in which the tax was collected to support fire and rescue services. Such payment shall be paid quarterly by the Commonwealth to the treasurer of such locality.

§ 27-34.4. Inspection and review of plans of buildings under construction.

Inspection of buildings other than state-owned buildings under construction and the review and approval of building plans for these structures for enforcement of the Uniform Statewide Building Code shall be the sole responsibility of the appropriate local building inspectors. Upon completion of such structures, responsibility for fire safety protection, including provisions relating to the handling, storage, and use of fireworks, shall pass to the local fire marshal or official designated by the locality to enforce the Statewide Fire Prevention Code (§ 27-94 et seq.) in those localities which that enforce the Statewide Fire Prevention Code.

§ 27-95. Definitions.

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

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

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

"Consumer fireworks" means small fireworks devices containing restricted amounts of pyrotechnic composition designed primarily to produce visible or audible effects by combustion. Such fireworks are classified and labeled as 1.4G explosives as set forth in 49 C.F.R. Parts 100 through 180 and meet the composition and labeling regulations of the U.S. Consumer Product Safety Commission as set forth in 16 C.F.R. Parts 1500 and 1507. "Consumer fireworks" does not include permissible fireworks.

"Display fireworks" means large fireworks devices that are explosive materials intended for use in fireworks displays and designed to produce audible or visible effects by combustion, deflagration, or detonation. Such fireworks are classified and labeled as 1.3G explosives as set forth in 49 C.F.R. Parts 100 through 180 and include firecrackers containing more than 130 milligrams (two grains) of explosive composition, aerial shells containing more than 60 grams of pyrotechnic composition, and other display devices that exceed the limits for classification as 1.4G fireworks.

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

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

"Fire prevention regulation" means any law, rule, resolution, regulation, ordinance or code, general or 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 as, or commonly known as, fireworks, and which explodes, rises into the air or travels laterally, or fires projectiles into the air.

"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 ground-based or handheld devices containing limited pyrotechnic composition designed primarily to produce visible or audible effects by combustion but that do not rise in the air, explode, or travel horizontally and are commonly known as sparklers, fountains, Pharaoh's serpents, caps for pistols, or pinwheels commonly known as whirligigs or 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 (i) to the sale of ~~or~~ permissible or consumer fireworks; (ii) to any person using, igniting, or

exploding permissible or consumer fireworks on private residential or agricultural property with the consent of the owner of such property; or (iii) when such permissible or consumer 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 any person younger than 18 years of age from purchasing fireworks and shall prohibit any person younger than 18 years of age from possessing or using fireworks without adult supervision.

For the purposes of the Fire Prevention Code adopted pursuant to this section and the Uniform Statewide Building Code adopted pursuant to § 36-99, the storage and transportation of consumer fireworks shall be considered the same hazard class as the storage and transportation of 1.4G explosives.

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 permissible or 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~~ setup of permissible or 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.

Article 11.

Consumer Fireworks Tax; Local Consumer Fireworks.

§ 58.1-1743. Tax on consumer fireworks purchases.

There is hereby imposed a tax equal to 12 percent of the price of all consumer fireworks purchases. As used in this section, "consumer fireworks" means the same as that term is defined in § 27-95.

§ 58.1-1744. Collection.

The tax imposed by this article shall be collected monthly by the Department of Taxation in the same manner as the sales and use tax imposed under Chapter 6 (§ 58.1-600 et seq.), as provided by rules and regulations promulgated by the Tax Commissioner.

§ 58.1-1745. Disposition of proceeds.

After the administrative costs for collecting the fees are recovered by the Department of Taxation, the remaining revenues shall be deposited into the Local Consumer Fireworks Fund established under § 27-6.03.

2. That the provisions of this act shall become effective on January 1, 2018.

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.