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## SENATE BILL NO. 173

Offered January 10, 2018

Prefiled December 28, 2017

A BILL to amend and reenact §§ 27-95, 27-96.1, 27-97, and 27-97.2 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 27-106, 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 regulation of the sale and use of consumer fireworks; criminal and civil penalties.

Patron—Stanley

Referred to Committee on General Laws and Technology

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 27-95, 27-96.1, 27-97, and 27-97.2 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 27-106, 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:

**§ 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:

"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 the same as that term is defined in § 27-102.

"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, 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 or consumer 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 explode, rise into the air, 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 consistent with the provisions of Chapter 10 (§ 27-102 et seq.); (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 consistent

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59 *with the provisions of § 27-104; or (iii) when such permissible or consumer fireworks are being*  
60 *transported from a locality where they were legally obtained to a locality where they are legally*  
61 *permitted.*

62 **§ 27-97. Adoption of Fire Prevention Code.**

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

77 The Fire Prevention Code shall prohibit any person, firm, or corporation from *manufacturing any*  
78 *fireworks and any person, firm, or corporation from* transporting, ~~manufacturing~~, storing, selling,  
79 offering for sale, exposing for sale, or buying, using, igniting, or exploding any fireworks *other than*  
80 *permissible or consumer fireworks* except for those persons, firms, or corporations that manufacture,  
81 store, market, and distribute fireworks for the sole purpose of fireworks displays permitted by an  
82 enforcement agency or by any locality. *The storage, sale, purchase, and use of permissible and*  
83 *consumer fireworks shall be governed by the provisions of Chapter 10 (§ 27-102 et seq.).*

84 The Fire Prevention Code shall supersede fire prevention regulations heretofore adopted by local  
85 governments or other political subdivisions. Local governments are hereby empowered to adopt fire  
86 prevention regulations that are more restrictive or more extensive in scope than the Fire Prevention Code  
87 provided such regulations do not affect the manner of construction, or materials to be used in the  
88 erection, alteration, repair, or use of a building or structure, including the voluntary installation of smoke  
89 alarms and regulation and inspections thereof in commercial buildings where such smoke alarms are not  
90 required under the provisions of the Code. The Fire Prevention Code shall prohibit any person not  
91 certified by the State Fire Marshal's Office as a fireworks operator or pyrotechnician ~~to design, set up,~~  
92 ~~or conduct or supervise~~ *from designing, setting up, or conducting or supervising* the design, setup, or  
93 conducting of any fireworks display, either inside a building or structure or outdoors, and shall require  
94 that at least one person holding a valid certification is present at the site where the fireworks display is  
95 being conducted *unless such display is conducted using permissible or consumer fireworks on residential*  
96 *or agricultural property in accordance with § 27-104.* Certification shall not be required for the design,  
97 ~~storage, sale, use, conduct, transportation, and set up~~ *setup* of permissible or consumer fireworks or the  
98 supervision thereof or in connection with any fireworks display conducted by a volunteer fire  
99 department, provided *that* one member of the volunteer fire department holds a valid certification.

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

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

117 **§ 27-97.2. Issuance of permit; background investigations.**

118 A. The State Fire Marshal or other issuing authority shall consider all permit applications for *the*  
119 *manufacturing, storage, handling, use, or sales* ~~sale~~ of fireworks or explosives and applications for  
120 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 *or in Chapter 10 (§ 27-102 et seq.), as applicable.* 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 *fireworks or 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, *or 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 (a) to the manufacturing, storage, handling, use, or ~~sales sale~~ of permissible fireworks; (b) to the handling or use of consumer fireworks; or (c) 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.

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.

#### 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, fixed, stand-alone building or structure that is used primarily for the storage and retail display and sale of consumer fireworks, permissible fireworks, or both, to the public.

"Department" means the Department of Fire Programs.

"Permissible fireworks" means the same as that term is defined in § 27-95.

"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 under the Uniform Statewide Building Code that contains a variety of merchandise and that is not used primarily for the storage and retail display and sale of consumer fireworks.

"Temporary consumer fireworks retail sales facility" means a tent, stand, canopy, or membrane structure used primarily for the retail display and sale of permissible fireworks.

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

A. 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. The Board shall establish requirements and a process for the issuance and renewal of permits for the sale of consumer fireworks. At a 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 (i) consumer fireworks retail sales facility or (ii) 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 potential losses, damages, or injuries to persons or property as a result of the sale of consumer fireworks;

5. That each applicant for a permit and any employee or agent of such applicant (i) be at least 18 years of age and (ii) not have been convicted of (a) any state, local, or federal offense involving fireworks within the five-year period prior to the date of the application or (b) any felony. Conviction of a felony by an applicant or by any employee or agent of such applicant shall result in denial of an application for a permit or immediate termination of a permit if such conviction occurs after a permit is issued; and

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

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 by the Board of Housing and Community Development under § 27-97 and applicable fire and building codes.

2. A permittee may sell permissible fireworks from a (i) temporary consumer fireworks retail sales facility; (ii) consumer fireworks retail sales facility; or (iii) store.

3. A federal permit to sell fireworks issued under 18 U.S.C. § 843 shall not be required for a permittee selling consumer fireworks in a store.

4. No person shall smoke or 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, onto 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 or permissible fireworks 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 or permissible fireworks for or to an individual under 18 years of age; or

b. Allow an individual (i) under that person's control or (ii) in a place under that person's control to possess or use consumer or permissible fireworks if that individual is under 18 years of age;

4. Purchase, possess, or use consumer or permissible fireworks if the individual is under 18 years of age.

5. 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 or permissible fireworks if the individual is under 18 years of age; or

6. Sell or store in a permitted facility any fireworks other than permissible or consumer fireworks. The issuance of an EX number by the U.S. Department of Transportation's Pipeline and Hazardous Material Safety Administration (PHMSA) or a competent authority approved by the PHMSA shall be prima facie evidence of fireworks being consumer fireworks as 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 Marshall, 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 permissible fireworks to an individual under 18 years of age in reasonable reliance upon fraudulent proof of age presented by the purchaser.

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

A. Unless prohibited by local ordinance, a person over the age of 18 may possess, use, ignite, or explode consumer and permissible fireworks on residential or agricultural property, provided that:

1. Consumer and permissible fireworks may be used only between the hours of 12:00 p.m. and 10:00 p.m., except that on July 4, December 31, and the weekends immediately before and after July 4 consumer and permissible fireworks may be used between the hours of 12:00 p.m. and 12:30 a.m.; and

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

B. Any person violating any provision of this section shall be assessed a civil penalty by the Board in an amount not to exceed \$150 per violation. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be paid into the Literary Fund. An order of the Board assessing a civil penalty may be appealed in accordance with provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

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

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

**§ 27-106. 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. The Fund shall consist of any revenue transferred pursuant to Article 11 (§ 58.1-1743 et seq.) of Chapter 17 of Title 58.1. 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. All amounts credited to the Fund shall be distributed evenly among all of the localities in which consumer fireworks are sold. Each locality shall use the distribution to supplement the salaries paid to deputy sheriffs. The moneys received by a locality from the Fund shall not be used to reduce the amount of other revenues provided by the locality to supplement the salaries of deputy sheriffs below the amount provided in fiscal year 2018. Expenditures and disbursements from the Fund shall be made quarterly by the Commonwealth to the treasurer of such locality.

**Article 11.**

**Consumer Fireworks Tax; Local Consumer Fireworks.**

**§ 58.1-1743. Tax on consumer fireworks purchases.**

There is hereby imposed a tax equal to seven 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 § 27-102.

**§ 58.1-1744. Collection.**

The tax imposed by this article shall be imposed monthly by the Department 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 tax imposed by § 58.1-1743 are recovered by the Department, the remaining revenues shall be deposited into the Local Consumer Fireworks Fund established under § 27-106.