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HOUSE BILL NO. 1162

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on March 3, 2010)

(Patron Prior to Substitute—Delegate Cosgrove)

A BILL to amend and reenact §§ 27-95, 27-97, and 27-97.2 of the Code of Virginia, relating to the Statewide Fire Prevention Code; certification of fireworks operators and pyrotechnicians.

Be it enacted by the General Assembly of Virginia:

1. That §§ 27-95, 27-97, and 27-97.2 of the Code of Virginia are amended and reenacted 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.

"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 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.

"State Fire Marshal" means the State Fire Marshal as provided for by § 36-139.2.

§ 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, 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

60 exploding any fireworks except for those persons, firms, or corporations that manufacture, store, market
61 and distribute fireworks for the sole purpose of fireworks displays permitted by an enforcement agency
62 or by any locality.

63 The Fire Prevention Code shall supersede fire prevention regulations heretofore adopted by local
64 governments or other political subdivisions. Local governments are hereby empowered to adopt fire
65 prevention regulations that are more restrictive or more extensive in scope than the Fire Prevention Code
66 provided such regulations do not affect the manner of construction, or materials to be used in the
67 erection, alteration, repair, or use of a building or structure, including the voluntary installation of smoke
68 alarms and regulation and inspections thereof in commercial buildings where such smoke alarms are not
69 required under the provisions of the Code. *The Fire Prevention Code shall prohibit any person not*
70 *certified by the State Fire Marshal's Office as a fireworks operator or pyrotechnician to design, set up,*
71 *or conduct or supervise the design, setup, or conducting of any fireworks display, either inside a*
72 *building or structure or outdoors and shall require that at least one person holding a valid certification*
73 *is present at the site where the fireworks display is being conducted. Certification shall not be required*
74 *for the design, storage, sale, use, conduct, transportation, and set up of permissible fireworks or the*
75 *supervision thereof or in connection with any fireworks display conducted by a volunteer fire department*
76 *provided one member of the volunteer fire department holds a valid certification.*

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

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

94 § 27-97.2. Issuance of permit; background investigations.

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

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