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HOUSE BILL NO. 1813

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact §§ 18.2-85, 27-95, 27-96.1, and 27-97 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 6 of Title 58.1 a section numbered 58.1-639.1, relating to fireworks; sale, use, and taxation.

Patron—March

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-85, 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 in Chapter 6 of Title 58.1 a section numbered 58.1-639.1 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 consumer, display, or permissible 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~~ that contains any oxidizing and combustible 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~~ that, 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~~ that 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. 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 lawful purpose, subject to the provisions of §§ 27-97 and 27-97.2.

§ 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.

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59 *"Display fireworks" means large fireworks devices that are explosive materials intended for use in*
60 *fireworks displays and designed to produce audible or visible effects by combustion, deflagration, or*
61 *detonation. Such fireworks are classified and labeled as 1.3G explosives as set forth in 49 C.F.R. Parts*
62 *100 through 180 and include firecrackers containing more than 130 milligrams (two grains) of explosive*
63 *composition, aerial shells containing more than 60 grams of pyrotechnic composition, and other display*
64 *devices that exceed the limits for classification as 1.4G explosives.*

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

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

68 "Fire prevention regulation" means any law, rule, resolution, regulation, ordinance, or code, general
69 or special, or compilation thereof to safeguard life and property from the hazards of fire or explosion
70 arising from the improper maintenance of life safety and fire prevention and protection materials,
71 devices, systems, and structures, and the unsafe storage, handling, and use of substances, materials, and
72 devices, including explosives and blasting agents, wherever located, heretofore or hereafter enacted or
73 adopted by the Commonwealth or any county or municipality, including departments, boards, bureaus,
74 commissions, or other agencies.

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

76 "Fireworks" means any firecracker, torpedo, skyrocket, or other substance or object, of whatever
77 form or construction, that contains any explosive or inflammable compound or substance, and is
78 intended, or commonly known as fireworks, and ~~which~~ *that* explodes, rises into the air or travels
79 laterally, or fires projectiles into the air.

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

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

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

89 "Permissible fireworks" means any fountains that do not emit sparks or other burning effects to a
90 distance greater than five meters (16.4 feet); wheels that do not emit a flame radius greater than one
91 meter (39 inches); crackling devices and flashers or strobes that do not emit sparks or other burning
92 effects to a distance greater than two meters (78.74 inches); and sparkling devices or other fireworks
93 devices that (i) do not explode or produce a report, (ii) do not travel horizontally or vertically under
94 their own power, (iii) do not emit or function as a projectile, (iv) do not produce a continuous flame
95 longer than 20 inches, (v) are not capable of being reloaded, and (vi) if designed to be ignited by a
96 fuse, have a fuse that is protected to resist side ignition and a burning time of not less than four seconds
97 and not more than eight seconds.

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

99 **§ 27-96.1. Chapter inapplicable to certain fireworks.**

100 ~~Unless prohibited by a local ordinance, the~~ *The* provisions of this chapter pertaining to fireworks
101 shall not apply (i) to the sale of ~~or permissible or consumer fireworks~~; (ii) to any person using, igniting,
102 or exploding permissible ~~or consumer fireworks on private residential or agricultural property with the~~
103 consent of the owner of such property; ~~or (iii) when such permissible or consumer fireworks are being~~
104 ~~transported from a locality where they were legally obtained to a locality where they are legally~~
105 ~~permitted.~~

106 **§ 27-97. Adoption of Fire Prevention Code.**

107 The Board of Housing and Community Development is hereby empowered to adopt and promulgate
108 a Statewide Fire Prevention Code ~~which that~~ shall be cooperatively developed with the Fire Services
109 Board pursuant to procedures agreed to by the two Boards. The Fire Prevention Code shall prescribe
110 regulations to be complied with for the protection of life and property from the hazards of fire or
111 explosion and for the handling, storage, sale, and use of fireworks, explosives, or blasting agents, and
112 shall provide for the administration and enforcement of such regulations. The Fire Prevention Code shall
113 require manufacturers of fireworks or explosives, as defined in the Code, to register and report
114 information concerning their manufacturing facilities and methods of operation within the
115 Commonwealth in accordance with regulations adopted by the Board. In addition to conducting criminal
116 background checks pursuant to § 27-97.2, the Board shall also establish regulations for obtaining permits
117 for the manufacturing, storage, handling, use, or sales of fireworks or explosives. In the enforcement of
118 such regulations, the enforcing agency may issue annual permits for such activities to any state regulated
119 public utility. Such permits shall not apply to the storage, handling, or use of explosives or blasting
120 agents pursuant to the provisions of Title 45.2.

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 *that* 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~~ *that* 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.

§ 58.1-639.1. Fireworks sales and use tax; Law Enforcement Support Fund.

A. In addition to all other taxes levied under this chapter, there is hereby imposed a retail sales and use tax on the sale or use of consumer, display, or permissible fireworks, as those terms are defined in § 27-95, at the rate of 12 percent. No discount under § 58.1-622 shall be allowed for the tax imposed under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax under § 58.1-603.

B. The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller in the Law Enforcement Support Fund established pursuant to subsection C.

C. There is hereby created in the state treasury a special nonreverting fund to be known as the Law Enforcement Support Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All funds appropriated for such purpose and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. 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. Moneys in the Fund shall be used solely for the purposes of providing compensation to law-enforcement officers in the Commonwealth, in a manner prescribed in the appropriation act. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Secretary of Public Safety and Homeland Security.