

HOUSE BILL NO. 484

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on _____)

(Patron Prior to Substitute--Delegate Garrett)

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 sections numbered 15.2-974.1, 27-96.3, and 58.1-638.4, relating to Statewide Fire Prevention Code; State Fire Marshal; consumer fireworks; penalties.

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 sections numbered 15.2-974.1, 27-96.3, and 58.1-638.4 as follows:

§ 15.2-974.1. Permits for sale of consumer fireworks.

Any locality authorizing the sale of consumer fireworks, as defined in § 27-95, shall require an annual permit for any business offering consumer fireworks for retail sale. Such permit shall follow the minimum terms and conditions set forth in the Virginia Statewide Fire Prevention Code (§ 27-94 et seq.) and any additional terms and conditions as may be prescribed by the locality.

§ 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

27 oxidizing and combustive agents or other ingredients in such proportions, quantities, or packaging that an
28 ignition by fire, friction, concussion, percussion, detonation, or by any part of the compound or mixture
29 may cause a sudden generation of highly heated gases. These materials include, ~~but are not limited to,~~
30 gunpowder, powders for blasting, high explosives, blasting materials, fuses (other than electric circuit
31 breakers), detonators, and other detonating agents and smokeless powder.

32 "Fire bomb" means any container of a flammable material such as gasoline, kerosene, fuel oil, or
33 other chemical compound, having a wick composed of any material or a device or other substance which,
34 if set or ignited, is capable of igniting such flammable material or chemical compound but does not include
35 a similar device commercially manufactured and used solely for the purpose of illumination or cooking.

36 "Hoax explosive device" means any device ~~which~~ that by its design, construction, content, or
37 characteristics appears to be or to contain a bomb or other destructive device or explosive but which is an
38 imitation of any such device or explosive.

39 B. Any person who (i) possesses materials with which fire bombs or explosive materials or devices
40 can be made with the intent to manufacture fire bombs or explosive materials or devices or; (ii)
41 manufactures, transports, distributes, possesses, or uses a fire bomb or explosive materials or devices ~~shall~~
42 be is guilty of a Class 5 felony. Any person who constructs, uses, places, sends, or causes to be sent any
43 hoax explosive device so as to intentionally cause another person to believe that such device is a bomb or
44 explosive ~~shall be is~~ guilty of a Class 6 felony.

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

48 D. The governing body of any county, city, or town is authorized to bill any person who (i) causes
49 damage to property or (ii) causes injury to another person due to the use of fireworks as defined in § 27-
50 95 for services rendered by fire departments, emergency medical services, or law enforcement.

51 E. Nothing in this section shall prohibit the authorized manufacture, transportation, distribution,
52 use, or possession of any material, substance, or device by a member of the ~~armed forces~~ Armed Forces
53 of the United States, ~~fire fighters~~ firefighters, or law-enforcement officers, nor shall it prohibit the

54 manufacture, transportation, distribution, use, or possession of any material, substance, or device to be
55 used solely for scientific research, educational purposes, or for any lawful purpose, subject to the
56 provisions of §§ 27-97 and 27-97.2.

57 **§ 27-34.4. Inspection and review of plans of buildings under construction.**

58 Inspection of buildings other than state-owned buildings under construction and the review and
59 approval of building plans for these structures for enforcement of the Uniform Statewide Building Code
60 (§ 36-97 et seq.) shall be the sole responsibility of the appropriate local building inspectors. Upon
61 completion of such structures, responsibility for fire safety protection, including provisions relating to the
62 handling, storage, and use of fireworks, shall pass to the local fire marshal or official designated by the
63 locality to enforce the Statewide Fire Prevention Code (§ 27-94 et seq.) in those localities ~~which~~ that
64 enforce the Statewide Fire Prevention Code.

65 **§ 27-95. Definitions.**

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

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

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

71 "Consumer fireworks" means small fireworks devices containing restricted amounts of
72 pyrotechnic composition designed primarily to produce visible or audible effects by combustion, that
73 comply with the construction, chemical composition, and labeling regulations of the U.S. Consumer
74 Product Safety Commission, as set forth in 16 C.F.R. Parts 1500 and 1507, 49 C.F.R. Part 172, and APA
75 Std. 87-1, Standard for the Construction, Classification, Approval & Transportation of Fireworks,
76 Novelties, and Theatrical Pyrotechnics. Such fireworks are classified and labeled as 1.4G explosives as
77 set forth in 49 C.F.R. Parts 100 through 180.

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

80 "Fire Prevention Code" or "Code" means the Statewide Fire Prevention Code (§ 27-94 et seq.).

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

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

89 "Fireworks" means any firecracker, torpedo, skyrocket, or other substance or object, of whatever
90 form or construction, that contains any explosive or inflammable compound or substance, and is intended,
91 or commonly known as fireworks, and which explodes, rises into the air or travels laterally, or fires
92 projectiles into the air.

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

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

100 "Local government" means the governing body of any city, county or town in this Commonwealth.

101 "Permissible fireworks" means any fountains that do not emit sparks or other burning effects to a
102 distance greater than five meters (16.4 feet); wheels that do not emit a flame radius greater than one meter
103 (39 inches); crackling devices and flashers or strobes that do not emit sparks or other burning effects to a
104 distance greater than two meters (78.74 inches); and sparkling devices or other fireworks devices that (i)
105 do not explode or produce a report, (ii) do not travel horizontally or vertically under their own power, (iii)
106 do not emit or function as a projectile, (iv) do not produce a continuous flame longer than 20 inches, (v)

107 are not capable of being reloaded, and (vi) if designed to be ignited by a fuse, have a fuse that is protected
108 to resist side ignition and a burning time of not less than four seconds and not more than eight seconds.

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

110 **§ 27-96.1. Chapter inapplicable to certain uses of fireworks.**

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

116 **§ 27-96.3. Authority to enforce local ordinances.**

117 If a locality adopts a local ordinance prohibiting the sale, use, or storage of fireworks as that term
118 is defined in § 27-95, the State Fire Marshal, in localities without a local fire marshal, is authorized to
119 enforce such ordinance. Any locality adopting such an ordinance shall notify the State Fire Marshal.

120 **§ 27-97. Adoption of Fire Prevention Code.**

121 The Board of Housing and Community Development is hereby empowered to adopt and
122 promulgate a Statewide Fire Prevention Code which shall be cooperatively developed with the Fire
123 Services Board pursuant to procedures agreed to by the two Boards. The Fire Prevention Code shall
124 prescribe regulations to be complied with for the protection of life and property from the hazards of fire
125 or explosion and for the handling, storage, sale, and use of fireworks, explosives, or blasting agents, and
126 shall provide for the administration and enforcement of such regulations. The Fire Prevention Code shall
127 require manufacturers of fireworks or explosives, as defined in the Code, to register and report information
128 concerning their manufacturing facilities and methods of operation within the Commonwealth in
129 accordance with regulations adopted by the Board. In addition to conducting criminal background checks
130 pursuant to § 27-97.2, the Board shall also establish regulations for obtaining permits for the
131 manufacturing, storage, handling, use, or sales of fireworks or explosives. In the enforcement of such
132 regulations, the enforcing agency may issue annual permits for such activities to any state regulated public

133 utility. Such permits shall not apply to the storage, handling, or use of explosives or blasting agents
134 pursuant to the provisions of Title 45.2.

135 The Fire Prevention Code shall prohibit any person, firm, or corporation from transporting,
136 manufacturing, storing, selling, offering for sale, exposing for sale, or buying, using, igniting, or exploding
137 any fireworks except for those persons, firms, or corporations that manufacture, store, market, and
138 distribute fireworks for the sole purpose of fireworks displays permitted by an enforcement agency or by
139 any locality.

140 The Fire Prevention Code shall prohibit any person younger than 18 years of age from purchasing
141 fireworks and shall prohibit any person younger than 18 years of age from possessing or using fireworks
142 without adult supervision.

143 The Fire Prevention Code shall supersede fire prevention regulations heretofore adopted by local
144 governments or other political subdivisions. Local governments are hereby empowered to adopt fire
145 prevention regulations that are more restrictive or more extensive in scope than the Fire Prevention Code
146 provided such regulations do not affect the manner of construction, or materials to be used in the erection,
147 alteration, repair, or use of a building or structure, including the voluntary installation of smoke alarms
148 and regulation and inspections thereof in commercial buildings where such smoke alarms are not required
149 under the provisions of the Code. The Fire Prevention Code shall prohibit any person not certified by the
150 State Fire Marshal's Office as a fireworks operator or pyrotechnician to design, set up, or conduct or
151 supervise the design, setup, or conducting of any fireworks display, either inside a building or structure or
152 outdoors and shall require that at least one person holding a valid certification is present at the site where
153 the fireworks display is being conducted unless such display is conducted using permissible or consumer
154 fireworks on residential or agricultural property in accordance with § 27-96.1. Certification shall not be
155 required for the design, storage, sale, use, conduct, transportation, and ~~set-up~~ setup of permissible or
156 consumer fireworks or the supervision thereof or in connection with any fireworks display conducted by
157 a volunteer fire department provided that one member of the volunteer fire department holds a valid
158 certification.

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

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

176 **§ 58.1-638.4. Disposition of fireworks tax revenues for first responders.**

177 A. Of the sales and use tax revenue generated by the local sales and use tax imposed by §§ 58.1-
178 605 and 58.1-606 on the sale of consumer or permissible fireworks, 13 percent of such revenues shall be
179 allocated by the governing body of the locality in which the sale of such fireworks occurs to a special
180 fund. Moneys in the special fund shall be used as follows: (i) 10 percent of such revenues shall be used to
181 provide funding for first responders and (ii) three percent of such revenues shall be allocated to the local
182 fire marshal appointed pursuant to § 27-30 or, for a locality that does not appoint a fire marshal, shall be
183 transferred by the locality to the State Fire Marshal employed pursuant to § 9.1-206. Revenues transferred
184 to the State Fire Marshall pursuant to clause (ii) shall be used by the State Fire Marshal solely on behalf

185 of the locality that transferred such funds. For purposes of this section, "first responder" means a law-
186 enforcement officer, firefighter, or emergency medical services technician employed by the locality.

187 B. A dealer shall, as part of his return required by § 58.1-615, provide sufficient information for
188 the Tax Commissioner to determine the amount of local sales and use taxes collected from the sale of
189 consumer or permissible fireworks. The Tax Commissioner shall transmit information regarding such
190 amounts to the locality when making transfers of sales and use tax revenue.

191 **2. That the provisions of this act shall become effective on January 1, 2025.**

192 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**
193 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
194 **appropriation is \$0 for periods of imprisonment in state adult correctional facilities and cannot be**
195 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**

196 #