

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1055 Session of 2015

INTRODUCED BY WHITE, VOGEL, YAW, BAKER, BARTOLOTTA, FOLMER, WAGNER, STEFANO, SCARNATI, BREWSTER, VULAKOVICH, ALLOWAY, WARD, HUGHES AND WOZNIAK, NOVEMBER 10, 2015

REFERRED TO AGRICULTURE AND RURAL AFFAIRS, NOVEMBER 10, 2015

AN ACT

1 Amending the act of May 15, 1939 (P.L.134, No.65), entitled, as
 2 amended, "An act relating to fireworks; defining fireworks;
 3 prohibiting the sale, regulating the sale, offering or
 4 exposing for sale and use of fireworks, except in certain
 5 cases; authorizing cities, boroughs, towns and townships to
 6 issue permits for fireworks displays, and to regulate the
 7 same; imposing duties on the Pennsylvania State Police,
 8 sheriffs and police officers; and providing penalties,"
 9 extensively revising provisions relating to definitions, bond
 10 required, continuance of permits, sale and use of fireworks,
 11 permits, department licenses, applications for licenses,
 12 safety requirements for facilities, annual registration,
 13 penalties and confiscation; and imposing an excise tax.

14 The General Assembly of the Commonwealth of Pennsylvania
 15 hereby enacts as follows:

16 Section 1. Sections 1, 3, 3.1, 4, 4.1, 4.2, 4.3, 4.4, 4.5,
 17 5.2, 6, 7, 7.1 and 8 of the act of May 15, 1939 (P.L.134,
 18 No.65), referred to as the Fireworks Law, are repealed:

19 [Section 1. The term "consumer fireworks" shall mean and
 20 include:

21 (1) Any combustible or explosive composition or any
 22 substance or combination of substances intended to produce
 23 visible and/or audible effects by combustion and which is

1 suitable for use by the public that complies with the
2 construction, performance, composition and labeling requirements
3 promulgated by the Consumer Products Safety Commission in 16 CFR
4 (relating to commercial practices) or any successor regulation
5 and which complies with the provisions for "consumer fireworks"
6 as defined in the American Pyrotechnics Association (APA)
7 Standard 87-1, or any successor standard.

8 (2) The term does not include devices as "ground and hand-
9 held sparkling devices," "novelties" and "toy caps" in APA
10 Standard 87-1, the sale, possession and use of which shall be
11 permitted at all times throughout this Commonwealth.

12 The term "display fireworks" shall be defined as provided in
13 27 CFR § 555.11 (relating to meaning of terms).

14 The term "municipalities" shall include cities, boroughs,
15 incorporated towns and townships.

16 Section 3. The governing body of the municipality shall
17 require a bond deemed adequate by it from the licensee in a sum
18 not less than five hundred dollars (\$500) conditioned for the
19 payment of all damages which may be caused either to a person or
20 persons, or to property by reason of the licensed display and
21 arising from any acts of the licensee, his agents, employes or
22 subcontractors.

23 Section 3.1. If by reason of unfavorable weather the display
24 for which a permit has been granted does not take place at the
25 time so authorized, the person to whom such permit was issued
26 may within twenty-four hours apply to the authority having
27 granted the same, setting forth under oath the fact that such
28 display was not made, giving the reason therefor, and requesting
29 a continuance of such permit for a day designated therein, not
30 later than one week after the day fixed originally in said

1 permit. Upon receiving such application for a continuance the
2 said authority, if it believes the facts stated therein are
3 true, shall extend the provisions of said permit to the day
4 fixed in said application, not later than one week after the
5 original day designated in the permit, and such extension of
6 time shall be granted without the payment of any additional fee
7 and without requiring any bond other than the one given for the
8 original permit, the provisions of which shall extend to and
9 cover all damages which may be caused by reason of the said
10 display taking place at such extended date in the same manner
11 and to the same extent as if such display had taken place at the
12 date originally fixed in the permit.

13 Section 4. Nothing in this act shall be construed to
14 prohibit any licensed facility from selling any consumer
15 fireworks or the year-round sale of any kind of consumer
16 fireworks to out-of-State residents whose status is verified to
17 the licensee, provided the licensee retains proof of such status
18 and produces it for review upon request of the Department of
19 Agriculture and provided the same are to be transported directly
20 out of state by the seller or purchaser. Consumer fireworks and
21 display fireworks may be possessed and used by a person holding
22 a permit from any municipality at the display covered by such
23 permit, or when used as authorized by a permit for agricultural
24 purposes in connection with the raising of crops and the
25 protection of crops from bird and animal damage, or the use by
26 railroads or other transportation agencies for signal purposes
27 or illumination, or when used in quarrying or for blasting or
28 other industrial use, or the sale or use of blank cartridges for
29 a show or theatre, or for signal or ceremonial purposes in
30 athletics or sports, or for use by military organizations or

1 organizations composed of veterans of the United States Army or
2 Navy. No such permit shall be issued to a person younger than
3 eighteen (18) years of age.

4 Section 4.1. The governing body of any city, borough, town,
5 or township shall have the power, under reasonable rules and
6 regulations adopted by it, to grant permits for the use of
7 suitable fireworks for agricultural purposes in connection with
8 the raising of crops and the protection of crops from bird and
9 animal damage. Such permits shall be good for the calendar year
10 in which issued. After such permit has been granted, sales,
11 possession and use of fireworks of the type and for the purpose
12 mentioned in the permit shall be lawful for that purpose only.

13 Section 4.2. Permission shall be given by the governing body
14 of any city, borough, town or township under reasonable rules
15 and regulations for displays of consumer fireworks and display
16 fireworks to be held therein. Every such display shall be
17 handled by a competent operator and shall be of such a character
18 and so located, discharged or fired as, in the opinion of the
19 chief of the fire department or other such officer as may be
20 designated by the governing body of the municipality, after
21 proper inspection, to not be hazardous to property or endanger
22 any person or persons. After such privilege shall have been
23 granted, possession and use of consumer fireworks and display
24 fireworks for such display shall be lawful for that purpose
25 only. No permit shall be transferable.

26 Section 4.3. Consumer fireworks shall be sold only from
27 facilities that are licensed by the Department of Agriculture
28 and that meet the following criteria:

29 (1) The facility shall comply with the provisions of the act
30 of November 10, 1999 (P.L.491, No.45), known as the

1 "Pennsylvania Construction Code Act."

2 (2) The facility shall be in a stand-alone building and
3 shall be no larger than twelve thousand (12,000) square feet.

4 (3) Storage areas shall be separated from wholesale or
5 retail sales areas to which a purchaser may be admitted by
6 appropriately rated fire separation.

7 (4) The facility shall be located no closer than two hundred
8 fifty (250) feet from any facility selling or dispensing
9 gasoline, propane or other such flammable products.

10 (5) The facility shall be located at least two hundred fifty
11 (250) feet from any other facility licensed to sell consumer
12 fireworks.

13 (6) The facility shall have a monitored burglar and fire
14 alarm system.

15 (7) Quarterly fire drills and preplanning meetings shall be
16 conducted as required by the primary fire department.

17 Section 4.4. Applications for licenses to sell consumer
18 fireworks shall be submitted to the Department of Agriculture on
19 forms prescribed and provided by the department. The license
20 application shall be accompanied by an annual license fee of
21 five thousand dollars (\$5,000) per location. Facilities in
22 existence on the effective date of this section and new
23 facilities shall be inspected by the Department of Agriculture
24 within thirty (30) days of receipt of a complete application for
25 a license. The Department of Agriculture shall issue a license,
26 or deny a license, within fourteen (14) days of completing the
27 inspection. A license shall be effective for one year from the
28 date the license is issued, and renewal of a license shall be
29 automatic upon payment of the license fee, but each facility is
30 subject to annual inspection by the Department of Agriculture,

1 and at other times at its discretion, during normal business
2 hours. No license shall be issued to any convicted felons or to
3 any entities where a convicted felon owns any percentage of the
4 equity interest in such entity.

5 Section 4.5. A facility licensed by the Department of
6 Agriculture shall be exclusively dedicated to the storage and
7 sale of consumer fireworks and related items, and the facility
8 shall operate in accordance with the following rules:

9 (1) There shall be security personnel on the premises for
10 the seven (7) days preceding and including July 4 and for the
11 three (3) days preceding and including January 2.

12 (2) No smoking shall be permitted in the facility.

13 (3) No cigarettes or tobacco products, matches, lighters, or
14 any other flame-producing devices shall be permitted to be taken
15 into the facility.

16 (4) No minors shall be permitted in the facility unless
17 accompanied by an adult, and each minor shall stay with the
18 adult in the facility.

19 (5) All facilities shall carry at least two million dollars
20 (\$2,000,000) in public and product liability insurance.

21 (6) A licensee shall provide its employes with documented
22 training in the area of operational safety of a facility. The
23 licensee shall provide to the Department of Agriculture written
24 documentation that each employe has received such training.

25 (7) No display fireworks shall be stored or located at a
26 facility.

27 (8) No person who appears to be under the influence of
28 intoxicating liquor or drugs shall be admitted to the facility,
29 and no liquor, beer, or wine shall be permitted in the facility.

30 (9) No consumer fireworks or display fireworks shall be

1 ignited within three hundred (300) feet of a facility.

2 (10) Emergency evacuation plans shall be conspicuously
3 posted in appropriate locations within the facility.

4 Section 5.2. (a) Any business entity which performs,
5 provides or supervises fireworks displays or exhibitions for
6 profit shall register annually with the Attorney General.

7 (b) The Attorney General shall promulgate rules to implement
8 this section.

9 Section 6. The following shall apply:

10 (1) Any person, copartnership, association or corporation
11 using consumer fireworks in violation of the provisions of this
12 act commits a summary offense and, upon conviction, shall be
13 punished by a fine of not more than one hundred (\$100) dollars.

14 (2) Any person, copartnership, association or corporation
15 selling consumer fireworks in violation of the provisions of
16 this act commits a misdemeanor of the second degree.

17 (3) Any person, copartnership, association or corporation
18 selling display fireworks in violation of the provisions of this
19 act commits a felony of the third degree.

20 (4) Any person, copartnership, association or corporation
21 selling federally illegal explosives such as devices as
22 described in 49 CFR 173.54 (relating to forbidden explosives) or
23 those devices that have not been tested, approved and labeled by
24 the Federal Department of Transportation, including, but not
25 limited to, those devices commonly referred to as "M-80," "M-
26 100," "blockbuster," "cherry bomb" or "quarter or half stick"
27 explosive devices, in violation of the provisions of this act
28 commits a felony of the third degree.

29 Section 7. All acts and parts of acts inconsistent herewith
30 are hereby repealed.

1 Section 7.1. The Pennsylvania State Police, any sheriff or
2 police officer shall take, remove or cause to be removed at the
3 expense of the owner all stocks of consumer fireworks or display
4 fireworks or combustibles offered or exposed for sale, stored or
5 held in violation of this act. The owner shall also be
6 responsible for the storage and, if deemed necessary, the
7 destruction of these fireworks.

8 Section 8. This act shall become effective immediately upon
9 its final enactment.]

10 Section 2. The act is amended by adding chapters to read:

11 CHAPTER 1

12 PRELIMINARY PROVISIONS

13 Section 101. Short title.

14 This act shall be known and may be cited as the Fireworks
15 Law.

16 Section 102. Definitions.

17 The following words and phrases when used in this act shall
18 have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 "APA 87-1." The American Pyrotechnic Association Standard
21 87-1: Standard for Construction and Approval for Transportation
22 of Fireworks, Novelties and Theatrical Pyrotechnics, 2001
23 edition, or any subsequent edition.

24 "Consumer fireworks." A combustible or explosive composition
25 or a substance or combination of substances that meets all of
26 the following requirements:

27 (1) Is intended to produce visible or audible effects by
28 combustion.

29 (2) Is suitable for use by the public.

30 (3) Complies with all of the following:

1 (i) The construction, performance, composition and
2 labeling requirements promulgated by the Consumer
3 Products Safety Commission in 16 CFR (relating to
4 commercial practices), or any successor regulation.

5 (ii) The provisions for "consumer fireworks" as
6 defined in APA 87-1.

7 (iii) The following provisions of the United Nations
8 explosive shipping classification system, if examination
9 and testing in accordance with 49 CFR § 173.56 (relating
10 to new explosives-definition and procedures for
11 classification and approval), warrants the
12 classification:

13 (A) UN0335 Fireworks.

14 (B) UN0336 Fireworks.

15 (C) UN0337 Fireworks.

16 The term does not include devices defined as "ground and hand-
17 held sparkling devices," "novelties" or "toy caps" in APA 87-1.

18 "Consumer fireworks retail sales facility." A building or
19 permanent structure that meets all of the following
20 requirements:

21 (1) Is affixed to a foundation on a site.

22 (2) Has fixed utility connections.

23 (3) Is intended to permanently remain on the site.

24 (4) Primarily sells consumer fireworks classified by the
25 United Nations as 1.4G and related items.

26 "Department." The Department of Agriculture of the
27 Commonwealth.

28 "Display fireworks." The term as defined in 27 CFR § 555.11
29 (relating to meaning of terms).

30 "Municipality." A city, borough, incorporated town or

1 township in this Commonwealth.

2 "NFPA 1124." The National Fire Protection Association
3 Standard 1124, Code for the Manufacture, Transportation, Storage
4 and Retail Sales of Fireworks and Pyrotechnic Articles, 2006
5 Edition, or any subsequent edition.

6 CHAPTER 3

7 CONSUMER FIREWORKS

8 SUBCHAPTER A

9 RETAIL SALES FACILITIES

10 Section 301. Department licenses.

11 Consumer fireworks shall be sold only from facilities that
12 are licensed by the department and that meet the following
13 criteria:

14 (1) The facility shall comply with the provisions of the
15 act of November 10, 1999 (P.L.491, No.45), known as the
16 Pennsylvania Construction Code Act.

17 (2) The facility shall be in a stand-alone building.

18 (3) Storage areas shall be separated from wholesale or
19 retail sales areas to which a purchaser may be admitted by
20 appropriately rated fire separation.

21 (4) The facility shall be located at least 250 feet from
22 any facility selling or dispensing gasoline, propane or other
23 flammable products.

24 (5) The facility shall be located at least 250 feet from
25 any other facility licensed to sell consumer fireworks.

26 (6) The facility shall have a monitored burglar and fire
27 alarm system.

28 (7) Quarterly fire drills and preplanning meetings shall
29 be conducted as required by the primary fire department.

30 (8) The facility shall fully comply with all regulations

1 in NFPA 1124.

2 Section 302. Applications for licenses.

3 (a) General rule.--An application for a license to sell
4 consumer fireworks shall be submitted to the department on forms
5 prescribed and provided by the department. The license
6 application shall be accompanied by an annual license fee as
7 follows:

8 (1) For a location of up to 12,000 square feet, a fee of
9 \$7,500 per location.

10 (2) For a location of between 12,001 square feet and
11 15,000 square feet, a fee of \$10,000 per location.

12 (3) For a location of 15,001 or more square feet, a fee
13 of \$20,000 per location.

14 (b) Inspections.--A new facility shall be inspected by the
15 department within 30 days of receipt of a complete application
16 for a license.

17 (c) Issuance and term of license.--The department shall
18 issue or deny a license within 14 days of completing the
19 inspection. A license shall be effective for one year from the
20 date the license is issued, and renewal of a license shall be
21 automatic upon payment of the license fee. A facility is subject
22 to annual inspection by the department and at other times, at
23 its discretion, during normal business hours.

24 (d) Persons not to be licensed.--No license may be issued to
25 a convicted felon or to an entity where a convicted felon owns
26 any percentage of the equity interest in the entity.

27 Section 303. Safety requirements for facilities.

28 A facility licensed by the department shall be exclusively
29 dedicated to the storage and sale of consumer fireworks,
30 novelties and related items, and the facility shall operate in

1 accordance with the following rules:

2 (1) There shall be security personnel on the premises
3 for the seven days preceding and including July 4 and for the
4 three days preceding and including January 2.

5 (2) No smoking may be permitted in the facility.

6 (3) No cigarettes or tobacco products, matches, lighters
7 or any other flame-producing devices may be permitted to be
8 taken into the facility.

9 (4) No minor may be permitted in the facility unless
10 accompanied by an adult. A minor shall stay with the adult in
11 the facility.

12 (5) All facilities shall carry at least \$2,000,000 in
13 public and product liability insurance.

14 (6) A licensee shall provide its employees with
15 documented training in the area of operational safety of a
16 facility. The licensee shall provide to the department
17 written documentation that each employee has received such
18 training.

19 (7) No display fireworks may be stored or located at a
20 facility.

21 (8) No person who appears to be under the influence of
22 intoxicating liquor or drugs may be admitted to the facility.
23 No liquor, beer or wine shall be permitted in the facility.

24 (9) No consumer fireworks or display fireworks may be
25 ignited within 500 feet of a facility.

26 (10) Emergency evacuation plans shall be conspicuously
27 posted in appropriate locations within the facility.

28 Section 304. Penalties.

29 The following shall apply:

30 (1) A person selling consumer fireworks in violation of

1 the provisions of this subchapter commits a misdemeanor of
2 the second degree and shall, upon conviction, be sentenced to
3 pay a fine not to exceed \$10,000. A second or subsequent
4 violation may result in the applicant being ineligible to
5 reapply or renew a license to sell consumer fireworks in this
6 Commonwealth.

7 (2) A person selling federally illegal explosives such
8 as devices described in 49 CFR 173.54 (relating to forbidden
9 explosives) or those devices that have not been tested,
10 approved and labeled by the Federal Department of
11 Transportation, including, but not limited to, those devices
12 commonly referred to as "M-80," "M-100," "blockbuster,"
13 "cherry bomb" or "quarter or half stick" explosive devices,
14 in violation of the provisions of this act commits a felony
15 of the third degree and shall be ineligible to reapply or
16 renew a license to sell consumer fireworks in this
17 Commonwealth.

18 Section 305. Confiscation.

19 The Pennsylvania State Police, a sheriff or police officer,
20 the department or the Attorney General shall take, remove or
21 cause to be removed at the expense of the owner all stocks of
22 consumer fireworks or combustibles offered or exposed for sale,
23 stored or held in violation of this act. The owner shall also be
24 responsible for the storage and, if deemed necessary, the
25 destruction of these fireworks.

26 SUBCHAPTER B

27 SALE, POSSESSION AND USE OF CONSUMER FIREWORKS

28 Section 321. Time for using and exploding.

29 (a) General rule.--Except as otherwise provided in
30 subsection (b), an entity or individual who is at least 18 years

1 of age may use or explode or cause to be exploded consumer
2 fireworks on any day between the hours of 10 a.m. and 12
3 midnight.

4 (b) Holidays.--In addition to the time period specified in
5 subsection (a), an entity or individual who is at least 18 years
6 of age may use or explode or cause to be exploded consumer
7 fireworks on January 1, July 3 and 4 and December 31 of each
8 year between the hours of 10 a.m. and 2 a.m. on the following
9 day.

10 Section 322. Additional uses.

11 In addition to the uses permitted under section 321, consumer
12 fireworks may be used for any of the following:

13 (1) For agricultural purposes in connection with the
14 raising of crops and the protection of crops from bird and
15 animal damage.

16 (2) By railroads or other transportation agencies for
17 signal purposes or illumination.

18 (3) In quarrying or for blasting or other industrial
19 use.

20 (4) In the sale or use of blank cartridges for a show or
21 theatre.

22 (5) For signal or ceremonial purposes in athletics or
23 sports.

24 (6) For use by military organizations or organizations
25 composed of veterans of the United States Army or Navy.

26 Section 323. Municipalities to grant permits.

27 The governing body of a municipality shall have the power,
28 under reasonable rules and regulations adopted by it, to grant a
29 permit for the use of suitable fireworks for agricultural
30 purposes in connection with the raising of crops and the

1 protection of crops from bird and animal damage. A permit shall
2 be effective for the calendar year in which it is issued. After
3 a permit has been granted, sales, possession and use of
4 fireworks of the type and for the purpose mentioned in the
5 permit shall be lawful for that purpose only.

6 Section 324. Penalties.

7 A person using consumer fireworks in violation of the
8 provisions of this subchapter commits a summary offense and,
9 upon conviction, shall be punished by a fine of not more than
10 \$100.

11 Section 325. Confiscation.

12 The Pennsylvania State Police, a sheriff or police officer,
13 the department or the Attorney General shall take, remove or
14 cause to be removed at the expense of the owner all stocks of
15 consumer fireworks or combustibles stored or held in violation
16 of this act. The owner shall also be responsible for the storage
17 and, if deemed necessary, the destruction of these fireworks.

18 Section 326. Excise tax.

19 (a) General rule.--In addition to any other applicable tax
20 imposed by law, an excise tax shall be imposed upon the sale of
21 consumer fireworks at the rate of 10% of the sale price per item
22 sold.

23 (b) Collection.--The excise tax imposed under this section
24 shall be collected in the same manner as the tax imposed under
25 Article II of the act of March 4, 1971 (P.L.6, No.2), known as
26 the Tax Reform Code of 1971.

27 (c) Deposit.--The excise tax imposed under this section
28 shall be disbursed in accordance with law for the purposes of
29 developing, delivering and sustaining training programs for
30 first responders.

1 continuance of the permit for a date designated in the
2 application, not later than one week after the date in the
3 original permit.

4 (b) Extension of time.--Upon receiving the application for a
5 continuance, the authority, if it believes the facts stated in
6 the application are true, shall extend the provisions of the
7 permit to the date in the application, not later than one week
8 after the date in the original permit. The extension of time
9 shall be granted without the payment of an additional fee and
10 without requiring a bond other than the one given for the
11 original permit. The provisions of the original permit shall
12 extend to and cover all damages that may be caused by reason of
13 the display taking place at the extended date in the same manner
14 and to the same extent as if the display had taken place at the
15 date in the original permit.

16 Section 504. Bond required.

17 The governing body of a municipality shall require a bond it
18 deems adequate from the permittee in a sum not less than \$500
19 conditioned for the payment of all damages that may be caused
20 either to a person or to property by reason of the permitted
21 display and arising from any acts of the permittee, his agents,
22 employees or subcontractors.

23 Section 505. Annual registration.

24 (a) Duty to register.--A business entity that performs,
25 provides or supervises fireworks displays or exhibitions for
26 profit shall register annually with the Attorney General.

27 (b) Regulations.--The Attorney General shall promulgate
28 rules and regulations necessary to implement this section.

29 Section 506. Penalties.

30 A person selling display fireworks in violation of the

1 provisions of this chapter commits a felony of the third degree
2 and shall be ineligible to reapply or renew a license to sell
3 display fireworks in this Commonwealth.

4 Section 507. Confiscation.

5 The Pennsylvania State Police, a sheriff or police officer,
6 the department or the Attorney General shall take, remove or
7 cause to be removed at the expense of the owner all stocks of
8 display fireworks or combustibles offered or exposed for sale,
9 stored or held in violation of this act. The owner shall also be
10 responsible for the storage and, if deemed necessary, the
11 destruction of these fireworks.

12 Section 3. All licenses, permits and registrations issued
13 under the act and that are in effect on the effective date of
14 this section shall continue and remain in full force and effect
15 until expired, revoked or modified under Chapter 3 or 5 of the
16 act.

17 Section 4. All acts and parts of acts are repealed insofar
18 as they are inconsistent with this act.

19 Section 5. This act shall take effect in 60 days.