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REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS, SEPTEMBER 10, 2018

AN ACT

Amending Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, providing for fireworks; imposing penalties; and making a related repeal.

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

Section 1. Part II heading of Title 3 of the Pennsylvania Consolidated Statutes is amended to read:

PART II

PRODUCTS IN GENERAL

[(Reserved)]

Section 2. Title 3 is amended by adding a chapter to read:

CHAPTER 11

FIREWORKS

Sec.

1101. Definitions.

1102. Bond requirement.
§ 1101. Definitions.

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

"Aerial devices." The term includes aerial shell kits, aerial spinners, bottle rockets, mine devices, missile-type rockets, roman candles and shell devices.

"Aerial shell." A cylindrical or spherical cartridge containing lift charge and burst charge effect composition which meets the following criteria:

(1) The aerial shell is most likely to be two inches to six inches in diameter and designed to be fired from metal, high-density polyethylene, fiberglass or heavy cardboard tubes.

(2) Upon firing, the lift charge is consumed and the cartridge is expelled into the air.

(3) A pyrotechnic effect is produced near the apex of flight.

(4) The burst charge used in the aerial shell only contains black powder or similar pyrotechnic composition.

(5) The aerial shell is contained in a launch tube or is
a part of an aerial shell kit.

"Aerial shell kit." A package or kit containing a cardboard, high-density polyethylene or equivalent launching tube capable of firing twice the number of aerial shells in the kit without failure of the launching tube and not more than 12 small aerial shells which meet the following criteria:

(1) Each aerial shell does not exceed 60 grams of total chemical composition, including lift charge, burst charge and visible and audible effect composition.

(2) The maximum diameter of each aerial shell does not exceed 1.75 inches.

(3) The maximum quantity of lift charge of each aerial shell does not exceed 20 grams.

(4) The maximum quantity of burst charge in each aerial shell does not exceed 25% of the total weight of chemical composition in the aerial shell.

(5) The total chemical composition of all the aerial shells, including lift charge, does not exceed 400 grams.

(6) The package of aerial shells complies with all warning label requirements of CPSC.

"Aerial spinner." A tube which meets the following criteria:

(1) The tube does not exceed 20 grams of chemical composition.

(2) The tube has a propeller or blade attached.

(3) Upon ignition, a rapidly spinning device rises into the air.

(4) A visible or audible effect may be produced at or near the height of flight.

"Audible ground device." The term includes firecrackers and chasers.
"Black powder." A combination of potassium nitrate, sulfur and charcoal or similar pyrotechnic composition.

"Bottle rocket." A cylindrical tube containing not more than 20 grams of chemical composition with a wooden stick attached for guidance and stability which meets the following criteria:

(1) Upon ignition, a rocket rises into the air.

(2) A burst of color or sound may be produced at or near the height of flight.

"Burst charge." Chemical composition used to break open a fireworks device after it has been propelled into the air, producing a secondary effect such as a shower of stars. The term may be referred to as expelling charge or break charge. The following apply:

(1) A burst charge containing metallic powder, such as magnalium or aluminum, less than 100 mesh in particle size, shall be considered to be intended to produce an audible effect, and is limited to 130 milligrams in 1.4G fireworks devices.

(2) A burst charge consisting of black powder shall not be considered to be intended to produce an audible effect when it is used to expel and ignite a secondary effect in a fireworks device.

(3) A burst charge for use in 1.3G fireworks shall be limited to black powder.

"Chaser." A paper or cardboard tube venting out the fuse end of the tube containing not more than 20 grams of chemical composition which meets the following criteria:

(1) The device travels along the ground upon ignition.

(2) A whistling effect or other noise is often produced.

(3) Explosive composition may be included for the
purpose of producing a report, but is not more than 50 milligrams.

"Chemical composition." All pyrotechnic composition and explosive composition contained in a fireworks device. The term does not include inert materials, such as clay used for plugs, or organic matter such as rice hulls used for density control.

"Cone fountain." A cardboard or heavy paper cone containing not more than 50 grams of pyrotechnic composition which meets the following criteria:

   (1) The effect is the same as that of a cylindrical fountain.

   (2) When more than one cone is mounted on a common base, total pyrotechnic composition does not exceed 200 grams.

"Consumer fireworks." As follows:

   (1) The term includes all of the following:

      (i) Any combustible or explosive composition or any substance or combination of substances intended to produce visible or audible effects by combustion and which is suitable for use by the public in accordance with the construction, performance, composition and labeling requirements promulgated by the CPSC in 16 CFR (relating to commercial practices) or any successor regulation.

      (ii) Aerial devices and audible ground devices.

   (2) The term does not include ground and handheld sparkling devices, novelties and toy caps, which may be sold, possessed and used at all times in this Commonwealth.


"Cylindrical fountain." A cylindrical tube containing not
more than 75 grams of pyrotechnic composition which meets the following criteria:

(1) Upon ignition, a shower of colored sparks and at times a whistling effect or smoke is produced.

(2) The tube may be provided with a spike for insertion into the ground, a wood or plastic base for placing on the ground or a wood or cardboard handle to be handheld.

(3) When more than one tube is mounted on a common base, total pyrotechnic composition does not exceed 200 grams.

"Display fireworks." Large fireworks designed primarily to produce visible or audible effects by combustion, deflagration or detonation. The term includes, but is not limited to, all of the following:

(1) Salutes containing more than two grains, equivalent to 130 milligrams, of explosive materials.

(2) Aerial shells containing more than 40 grams of pyrotechnic composition and other display pieces which exceed the limits of explosive materials for consumer fireworks.

(3) Fireworks that are classified as UN0333, UN0334 or UN0335 by the United States Department of Transportation under 49 CFR 172.101 (relating to purpose and use of hazardous materials table).

(4) Fused setpieces containing components which together exceed 50 milligrams of flash powder.

"Explosive composition." Any chemical compound or mixture, the primary purpose of which is to function by explosion, producing an audible effect or report in a fireworks device.

"Firecracker." A small, paper-wrapped or cardboard tube
containing not more than 50 milligrams of explosive composition which meets the following criteria:

(1) If used in aerial devices, the tube does not exceed 130 milligrams of explosive composition per report.

(2) Upon ignition, noise and a flash of light are produced.

"Flash powder." An explosive material intended to produce an audible report and a flash of light when ignited which includes, but is not limited to, all of the following:

(1) Oxidizers, such as potassium chlorate or potassium perchlorate.
(2) Fuels, such as sulfur or aluminum powder.

"Flitter sparkler." A narrow paper tube attached to a stick or wire and filled with not more than five grams of pyrotechnic composition which meets the following criteria:

(1) Upon ignition, the tube produces color and sparks.
(2) The paper at one end of the tube is ignited to make the device function.

"Ground and handheld sparkling device." As follows:

(1) A device which meets the following criteria:

   (i) The device is ground based or handheld and produces a shower of white, gold or colored sparks as the device's primary pyrotechnic effect. Additional effects may include a colored flame, an audible crackling effect, an audible whistle effect and smoke.

   (ii) The device does not rise into the air, fire inserts or projectiles into the air or explode or produce a report. A mild audible crackling-type effect shall not be considered to be a report under this paragraph.

(2) The term includes all of the following:
(i) A ground-based or handheld device which produces a cloud of smoke as the device's sole pyrotechnic effect.

(ii) A cylindrical fountain, cone fountain, illuminating torch, wheel, ground spinner or flitter sparkler.

"Ground spinner." A small device containing not more than 20 grams of pyrotechnic composition which meets the following criteria:

1. The device vents out of an orifice usually on the side of the tube.
2. The device is similar in operation to a wheel and intended to be placed flat on the ground and ignited.
3. A shower of sparks and color is produced by the rapid spinning of the device.

"Illuminating torch." A cylindrical tube containing not more than 100 grams of pyrotechnic composition which meets the following criteria:

1. The tube produces a colored flame upon ignition.
2. The tube may be a spike, base or handheld.
3. If more than one tube is mounted on a common base, the total pyrotechnic composition does not exceed 200 grams.

"Lift charge." Pyrotechnic composition used to propel a component of a mine device or shell device into the air and is limited to black powder.

"Mine device." A heavy cardboard or paper tube usually attached to a wooden or plastic base and containing not more than 60 grams of total chemical composition, including lift charge, burst charge and visible and audible effect composition, which meets the following criteria:

1. Upon ignition, stars, components producing reports
containing up to 130 milligrams of explosive composition per
report or other devices are propelled into the air.

(2) The device has no internal components containing a
burst charge.

(3) The device may contain more than one tube if the
tubes fire in sequence upon ignition of one external fuse.

(4) If the device is a multiple tube device, the total
chemical composition, including lift charges of the multiple
tube device, does not exceed 200 grams.

(5) The maximum quantity of lift charge in a tube of the
device does not exceed 20 grams.

(6) The maximum quantity of burst charge in a component
does not exceed 25% of the total weight of chemical
composition in the component.

(7) If the tubes of the device are securely attached to
a wood or plastic base and the tubes are separated from each
other on the base by a distance of at least one-half inch, a
maximum total weight of 500 grams of pyrotechnic composition
shall be permitted for approval as 1.4G fireworks.

"Missile-type rocket." A device similar to a bottle rocket
in size, composition and effect which uses fins rather than a
stick for guidance and stability and contains not more than 20
grams of total chemical composition.

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

"Novelties." The term includes party poppers, snappers, toy
smoke devices, snakes and sparklers.

"Party popper." A small device with a paper or plastic
exterior which is actuated by means of friction and meets the
following criteria:
1. A string or trigger is typically pulled to actuate the device.

2. The device frequently resembles a champagne bottle or toy pistol in shape.

3. Upon activation, the device expels flame-resistant paper streamers, confetti or other novelties and produces a small report.

4. The device does not contain more than 16 milligrams or 0.25 grains of explosive composition and shall be limited to potassium chlorate and red phosphorus.

5. The device is packaged in an inner packaging which contains a maximum of 72 devices.

"Pyrotechnic composition." A chemical mixture which upon burning and without explosion produces visible or brilliant displays or bright lights or whistles or motion.

"Roman candle." A heavy paper or cardboard tube containing not more than 20 grams of chemical composition and upon ignition, stars are individually expelled which produce a visible display of color and light upon burning in the air, and at times, crackling or similar audible effect.

"Shell device." A mine device which propels a component that subsequently bursts open in the air.

"Snake." A pressed pellet of pyrotechnic composition which contains two grams or less of composition per article and meets the following criteria:

   (1) Upon burning, it produces a snake-like ash that expands in length as the pellet burns.

   (2) Chemical compositions typically contain ammonium perchlorate, nitrated pitch, asphaltum and similar carbonaceous materials.
(3) It comes in a package of not more than 25 pellets per inner package in order to be transported as an unregulated device.

"Snapper." A small, paper-wrapped device containing not more than one milligram of silver fulminate coated on small bits of sand or gravel, which meets the following criteria:

(1) When dropped, the device explodes, producing a small report.

(2) The device is placed in an inner package which shall not include more than 50 devices and the inner package contains sawdust or a similar, impact-absorbing material.

"Sparkler." A device which consists of a metal wire or wood dowel that has been coated with pyrotechnic composition and meets the following criteria:

(1) Upon ignition of the tip of the device, a shower of sparks is produced.

(2) The device contains not more than 100 grams of pyrotechnic composition per item.

(3) The device typically uses barium nitrate as the oxidizer with aluminum and dextrine as fuels.

(4) Iron filings produce the spark effect.

(5) If the device produces colorful sparks, the device uses potassium perchlorate as an oxidizer.

(6) If the device contains a chlorate or perchlorate oxidizer, the device is limited to a maximum of five grams of composition per article.

(7) The device is placed in an inner package which contains not more than eight devices to be transported as unregulated devices.

"Star." A pressed or consolidated pellet of pyrotechnic
composition which is usually cylindrical, spherical or rectangular in shape and meets the following criteria:

1. The pellet is fired from a launch tube by means of a propelling charge of black powder in roman candles and mine devices or a component of an insert which is fired into the air in an aerial shell.

2. The composition produces a visible display of color and light as it burns in the air, and at times, a crackling or similar audible effect.

"Toy caps." Toy plastic or paper caps for toy pistols in sheets, strips, rolls or individual caps and containing not more than an average of 0.25 grains or 16 milligrams of explosive composition per cap.

"Toy smoke device." A small device consisting of cork-like spheres or cardboard or plastic tubes, containing not more than five grams of pyrotechnic composition which produces a small cloud of smoke after activation and meets the following criteria:

1. The device is typically ignited by means of a safety fuse.

2. The outer configuration of the device is typically a sphere or smoke ball, cylindrical tube or paper cone.

3. The chemical composition for white smoke consists of potassium nitrate and sulfur.

4. The chemical composition of colored smokes are produced by mixtures consisting of potassium chlorate, sulfur or sugar and a sublimable organic dye.

5. Mixtures containing potassium chlorate contain a neutralizer/coolant such as sodium bicarbonate.

6. To be eligible for unregulated status, the device
must produce smoke as the device's sole pyrotechnic effect
after ignition and must be packaged in inner units containing
not more than 72 devices.
"Wheel." A device intended to be attached to a post or tree
by means of a nail or string and meets the following criteria:
   (1) The device may have one or more drivers, each of
which contains not more than 60 grams of pyrotechnic
composition.
   (2) The device may not contain more than 200 grams of
total pyrotechnic composition.
   (3) Upon ignition, the device revolves and produces a
shower of color and sparks, and at times, a whistling effect.
§ 1102. Bond requirement.
   The governing body of a municipality shall require a bond
from a person who holds a permit to use consumer fireworks or
display fireworks in a sum not less than $500 conditioned for
the payment of all damages which may be caused to a person or
property by reason of the fireworks display and arising from any
acts of the permittee or the permittee's agents, employees or
subcontractors.
§ 1103. Permit extension.
The following apply:
   (1) If unfavorable weather causes a fireworks display
for which a permit has been granted not to take place at the
time authorized, the person who holds a permit for the
display may within 24 hours apply to the governing body of a
municipality which granted the permit for an extension of the
permit.
   (2) The application under paragraph (1) shall attest
that the fireworks display did not occur, provide the reasons
why the display did not occur and request a continuance of
the permit for a day designated in the permit no later than
one week after the day fixed originally in the permit.

(3) Upon receiving an application under paragraph (1),
if the governing body of the municipality concludes that the
facts in the application are true, the governing body of the
municipality shall extend the provisions of the permit to the
day designated in the application. The extension of time
shall be granted without the payment of an additional fee and
without requiring a bond other than the bond under section
1102 (relating to bond requirement). The bond under section
1102 shall extend to and cover all damages which may be
carried by reason of the fireworks display taking place at the
extended date in the same manner and to the same extent as if
the display had taken place at the date originally fixed in
the permit.

§ 1104. Consumer fireworks and display fireworks.

(a) Construction.--Nothing in this chapter shall be
construed to prohibit a facility licensed under this chapter
from selling consumer fireworks, including the year-round sale
of consumer fireworks, to an out-of-State resident whose status
is verified to the licensee if the licensee retains proof of the
verified status, produces proof of the verified status for
review upon request by the department and the consumer fireworks
are transported directly out of State by the seller or
purchaser.

(b) Authorization.--Consumer fireworks and display fireworks
may be purchased and possessed by a person holding a permit from
a municipality for use in any of the following circumstances, as
authorized in such permit:
(1) At a fireworks display.
(2) Agricultural purposes in connection with the raising of crops and the protection of crops from bird and animal damage.
(3) By railroads or other transportation agencies for signal purposes or illumination.
(4) In quarrying or for blasting or other industrial use.
(5) Blank cartridges for a show or theater, including the sale of blank cartridges, for a show or theater.
(6) Signal or ceremonial purposes in athletics or sports.
(7) By military organizations or organizations composed of veterans of the United States Armed Forces.

(c) Prohibition.--A permit for use of consumer fireworks and display fireworks may not be issued to an individual under 18 years of age.

§ 1105. Agricultural and display permits.

(a) Agricultural permits.--The following apply:

(1) The governing body of a municipality may, in accordance with the reasonable rules or regulations adopted by the governing body of the municipality, grant permits for the use of suitable fireworks for agricultural purposes in connection with the raising of crops and the protection of crops from bird and animal damage.

(2) A permit granted under this subsection shall be valid for the calendar year when the permit was issued.

(3) After a permit is granted under this subsection, the sale, possession and use of fireworks of the type and for the purpose mentioned in the permit shall be lawful for that
(b) Display permits.--The following apply:

(1) The governing body of a municipality may, in accordance with the reasonable rules or regulations adopted by the governing body of the municipality, grant permits for displays of consumer fireworks and display fireworks.

(2) A fireworks display under this subsection shall be handled by a competent operator.

(3) In the determination of the chief of the fire department or other officer as may be designated by the governing body of the municipality and after proper inspection, a fireworks display under this subsection shall be located, discharged or fired as not to be hazardous to a property or endanger a person.

(4) After a permit is granted under this subsection, the purchase, possession and use of consumer fireworks and display fireworks for the fireworks display shall be lawful for that purpose only. The permit shall not be transferable.

§ 1106. Consumer fireworks sales.

Consumer fireworks shall be sold only from a facility which is licensed by the department and meets the following criteria:

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

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

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

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

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

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

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

§ 1107. Applications for licenses to sell consumer fireworks.

(a) Applications.--An application for a license to sell consumer fireworks must be submitted to the department on forms prescribed and provided by the department. The application shall be accompanied by an annual license fee of $5,000 per location.

(b) Inspection.--The following apply:

(1) A facility in existence on the effective date of this section and a new facility shall be inspected by the department within 30 days of receipt of a complete application for a license. The department shall issue a license or deny a license within 14 days of completing the inspection.

(2) A license shall be effective for one year from the date the license is issued and renewal of a license shall be automatic upon payment of the license fee.

(3) Each licensed facility shall be subject to an annual inspection by the department and at other times in the discretion of the department during normal business hours.

(c) Prohibition.--No license for the sale of consumer fireworks shall be issued to a convicted felon or to an entity where a convicted felon owns any percentage of the equity interest in the entity.
§ 1108. Licensed facility operations.

(a) Operations.--A facility licensed under section 1107 (relating to applications for licenses to sell consumer fireworks) shall be exclusively dedicated to the storage and sale of consumer fireworks and related items and the licensed facility shall operate in accordance with the following:

(1) There shall be security personnel on the premises of the licensed facility from June 28 through July 4 of each year and from December 30 through January 2 of each year.

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

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

(4) No individual under 18 years of age shall be permitted in the licensed facility unless accompanied by an adult and an individual under 18 years of age shall stay with an adult in the licensed facility.

(5) The licensed facility shall carry at least $2,000,000 in public and product liability insurance.

(6) No display fireworks shall be stored or located at a licensed facility.

(7) No individual who appears to be under the influence of intoxicating liquor or drugs shall be admitted to the licensed facility and no liquor, beer or wine shall be permitted in the licensed facility.

(8) No consumer fireworks or display fireworks shall be ignited within 300 feet of the licensed facility.

(9) Emergency evacuation plans shall be conspicuously posted in appropriate locations within the licensed facility.
(b) Training.--A licensee shall provide the licensee's employees with documented training in the area of operational safety of a facility. The licensee shall provide written documentation to the department showing that each employee has received training under this subsection.

§ 1109. Registration with Attorney General.

An entity which performs, provides or supervises fireworks displays or exhibitions for profit shall register annually with the Attorney General in accordance with 37 Pa. Code Ch. 711 (relating to registration for fireworks displays).

§ 1110. Penalties.

(a) Use of consumer fireworks.--A person who uses consumer fireworks in violation of the provisions of this chapter commits a summary offense and, upon conviction, shall be sentenced to pay a fine of not more than $100.

(b) Sale of consumer fireworks.--A person who sells consumer fireworks in violation of the provisions of this chapter commits a misdemeanor of the second degree.

(c) Sale of display fireworks.--A person who sells display fireworks in violation of the provisions of this chapter commits a felony of the third degree.

(d) Sale of illegal explosives.---A person commits a felony of the third degree if the person sells any of the following:

(1) Illegal explosives as specified in 49 CFR 173.54 (relating to forbidden explosives).

(2) Illegal explosives in violation of any Federal law.

(3) Any explosive devices which have not been tested, approved and labeled by the United States Department of Transportation, including, but not limited to, those devices commonly referred to as "M-80," "M-100," "blockbuster,"
"cherry bomb," "quarter stick" or "half stick."

§ 1111. Removal of illegal fireworks.

The Pennsylvania State Police, an individual employed as a municipal officer as defined in 42 Pa.C.S. § 8951 (relating to definitions) who holds a current certificate under 53 Pa.C.S. Ch. 21 Subch. D (relating to municipal police education and training), a sheriff or a deputy sheriff shall take, remove or cause to be removed at the expense of the owner all stocks of consumer fireworks or display fireworks or combustibles offered or exposed for sale, stored or held in violation of this chapter. The owner shall be responsible for the storage and, if deemed necessary, the destruction of the illegal fireworks.

Section 3. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the addition of 3 Pa.C.S. Ch. 11.


Section 4. This act shall take effect in 60 days.