

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 856 Session of
2003

INTRODUCED BY MADIGAN, WOZNIAK, PILEGGI, TARTAGLIONE, RAFFERTY,
STOUT, LEMMOND, COSTA, EARLL, KITCHEN, THOMPSON, PUNT,
KASUNIC AND WENGER, JULY 7, 2003

AS REPORTED FROM COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
HOUSE OF REPRESENTATIVES, AS AMENDED, NOVEMBER 16, 2004

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, offering or exposing for sale and use
4 of fireworks, except in certain cases; authorizing cities,
5 boroughs, towns and townships to issue permits for fireworks
6 displays, and to regulate the same; imposing duties on the
7 Pennsylvania State Police, sheriffs, police officers and
8 constables; and providing penalties," regulating sale and use
9 of fireworks.

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

12 Section 1. The title of the act of May 15, 1939 (P.L.134,
13 No.65), referred to as the Fireworks Law, amended March 22, 1951
14 (P.L.57, No.14), is amended to read:

15 AN ACT

16 Relating to fireworks; defining fireworks; prohibiting the sale,
17 regulating the sale, offering or exposing for sale and use of
18 fireworks, except in certain cases; authorizing cities,
19 boroughs, towns and townships to issue permits for fireworks
20 displays, and to regulate the same; imposing duties on the

1 Pennsylvania State Police, sheriffs[,] and police officers
2 [and constables]; and providing penalties.

3 Section 2. Section 1 of the act, amended November 9, 1973
4 (P.L.335, No.112), is amended to read:

5 Section 1. The term "consumer fireworks" shall mean and
6 ~~include any combustible or explosive composition or any~~ INCLUDE: <—

7 (1) ANY COMBUSTIBLE OR EXPLOSIVE COMPOSITION OR ANY
8 substance or combination of substances [or, except as
9 hereinafter provided, any article prepared for the purpose of
10 producing a visible or an audible effect by combustion,
11 explosion, deflagration or detonation, and shall include blank
12 cartridges and toy cannons in which explosives are used, the
13 type of balloons which require fire underneath to propel the
14 same, firecrackers, torpedoes, skyrockets, Roman candles, aerial
15 fireworks, or other fireworks of like construction, and any
16 fireworks containing any explosive or flammable compound or any
17 tablets or other device containing an explosive substance.

18 The term "fireworks" shall not include sparklers, toy
19 pistols, toy canes, toy guns, or other devices in which paper
20 caps containing twenty-five hundredths grains or less of
21 explosive compound are used, providing they are so constructed
22 that the hand cannot come in contact with the cap when in place
23 for the explosion, and toy pistol paper caps which contain less
24 than twenty hundredths grains of explosive mixture, the sale and
25 use of which shall be permitted at all times, nor shall the term
26 "fireworks" include toy cannons which operate on the principle
27 of mixing calcium carbide, weighing less than one tenth of an
28 ounce, and water in the reservoir of the cannon and in which
29 ignition results upon the creation of a spark.] intended to
30 produce visible and/or audible effects by combustion, <—

1 ~~deflagration or detonation. Fireworks, novelties, and theatrical~~
2 ~~pyrotechnics as described and defined in the American~~
3 ~~Pyrotechnics Association Standard 87-1 as referenced in 49 CFR~~
4 ~~173.56 (j)(1) (relating to new explosives definition and~~
5 ~~procedures for classification and approval). The term "consumer~~
6 ~~fireworks" shall not include handheld or ground based sparklers.~~
7 ~~Also, the term "consumer fireworks" shall not include novelties~~
8 ~~further described as devices containing small amounts of~~
9 ~~pyrotechnic and/or explosive composition but not described as~~
10 ~~consumer fireworks in 27 CFR (relating to alcohol, tobacco~~
11 ~~products and firearms) and in 49 CFR (relating to~~
12 ~~transportation). Such devices produce limited visible or audible~~
13 ~~effects. These items shall be classified as "1.4G" unless~~
14 ~~classified as "1.4S" or deregulated as a hazardous material by~~
15 ~~the United States Department of Transportation on the basis of~~
16 ~~examination and testing as specified in 49 CFR § 173.56. The~~
17 ~~items listed in this definition, not defined as "consumer~~
18 ~~fireworks," shall be allowed at all times throughout this~~
19 ~~Commonwealth.~~

20 ~~The term "consumer fireworks" shall be defined as provided in~~
21 ~~27 CFR § 55.11 (relating to meaning of terms). COMBUSTION AND~~ <—
22 ~~WHICH IS SUITABLE FOR USE BY THE PUBLIC THAT COMPLIES WITH THE~~
23 ~~CONSTRUCTION, PERFORMANCE, COMPOSITION AND LABELING REQUIREMENTS~~
24 ~~PROMULGATED BY THE CONSUMER PRODUCTS SAFETY COMMISSION IN 16 CFR~~
25 ~~(RELATING TO COMMERCIAL PRACTICES) OR ANY SUCCESSOR REGULATION~~
26 ~~AND WHICH COMPLIES WITH THE PROVISIONS FOR "CONSUMER FIREWORKS"~~
27 ~~AS DEFINED IN THE AMERICAN PYROTECHNICS ASSOCIATION (APA)~~
28 ~~STANDARD 87-1, OR ANY SUCCESSOR STANDARD.~~

29 ~~(2) THE TERM DOES NOT INCLUDE DEVICES AS "GROUND AND HAND-~~
30 ~~HELD SPARKLING DEVICES," "NOVELTIES" AND "TOY CAPS" IN APA~~

1 STANDARD 87-1, THE SALE, POSSESSION AND USE OF WHICH SHALL BE
2 PERMITTED AT ALL TIMES THROUGHOUT THIS COMMONWEALTH.

3 The term "display fireworks" shall be defined as provided in
4 27 CFR § ~~55.11~~ 555.11 (relating to meaning of terms). <—

5 The term "municipalities" shall include cities, boroughs,
6 incorporated towns and townships.

7 Section 3. Section 2 of the act is repealed.

8 Section 4. Section 4 of the act, amended February 10, 1956
9 (1955 P.L.1033, No.325), is amended to read:

10 Section 4. Nothing in this act shall be construed to
11 prohibit any [resident wholesaler, dealer or jobber to sell at
12 wholesale such fireworks as are not herein prohibited,] licensed
13 facility from selling any consumer fireworks or the year-round
14 sale of any kind of consumer fireworks to out-of-State residents
15 whose status is verified[,] TO THE LICENSEE, PROVIDED THE <—
16 LICENSEE RETAINS PROOF OF SUCH STATUS AND PRODUCES IT FOR REVIEW
17 UPON REQUEST OF THE DEPARTMENT OF AGRICULTURE, AND provided the
18 same are to be [shipped] transported directly out of state[, or
19 are to] by the seller or purchaser. Fireworks may be [BE] <—

20 CONSUMER FIREWORKS AND DISPLAY FIREWORKS MAY BE POSSESSED AND
21 used by a person holding a permit from any municipality at the
22 display covered by such permit, or when used as authorized by a
23 permit for agricultural purposes in connection with the raising
24 of crops and the protection of crops from bird and animal
25 damage, or the use [of fireworks] by railroads or other <—
26 transportation agencies for signal purposes or illumination, or
27 when used in quarrying or for blasting or other industrial use,
28 or the sale or use of blank cartridges for a show or theatre, or
29 for signal or ceremonial purposes in athletics or sports, or for
30 use by military organizations or organizations composed of

veterans of the United States Army or Navy. NO SUCH PERMIT SHALL
BE ISSUED TO A PERSON YOUNGER THAN EIGHTEEN (18) YEARS OF AGE.

Section 5. The act is amended by adding sections to read:

Section 4.2. Permission ~~must~~ SHALL be given by the governing
body of any city, borough, town or township under reasonable
rules and regulations for displays of CONSUMER FIREWORKS AND
DISPLAY fireworks to be held therein ~~by municipalities, fair~~
~~associations, amusement parks and other organizations or groups~~
~~of individuals.~~ Every such display shall be handled by a
competent operator and shall be of such a character and so
located, discharged or fired, as in the opinion of the chief of
the fire department or other such officer as may be designated
by the governing body of the municipality, after proper
inspection, to not be hazardous to property or endanger any
person or persons. After such privilege shall have been granted,
~~sales, possession, use and distribution~~ POSSESSION AND USE OF
CONSUMER FIREWORKS AND DISPLAY FIREWORKS for such display shall
be lawful for that purpose only. No permit shall be
transferable.

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

~~(1) The facility shall be limited in size to eight thousand~~
~~(8,000) square feet of selling area to which a purchaser may be~~
~~admitted.~~

~~(2) Aisles in the facility shall be a minimum of four (4)~~
~~feet wide, and they shall be kept free and unobstructed at all~~
~~times.~~

~~(3) There must be one exit door for every two thousand~~
~~(2,000) square feet of selling space to which a purchaser may be~~

~~admitted, with a minimum of one (1) emergency exit door for every two thousand (2,000) square feet of space in the facility.~~

~~(4) The exit doors shall be metal and shall be equipped with push panic locks.~~

~~(5) Exit doors shall be clearly marked with lighted exit signs with battery backups.~~

~~(6) The facilities must be in a stand alone building.~~

~~(7) The facilities shall be equipped with an adequate number of smoke detectors in both the retail and storage areas which smoke detectors shall be inspected and tested annually prior to the opening of the facility. Fire extinguishers shall be located so there is a maximum of seventy five (75) feet of distance between the extinguishers.~~

~~(8) Storage areas shall be separated from areas to which a purchaser may be admitted by appropriately rated fire separation.~~

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

~~(10) No consumer fireworks facility shall be located within two hundred fifty (250) feet of another consumer fireworks sales facility.~~

~~(11) The facility shall have a monitored burglar and fire alarm system.~~

~~(12) A maximum occupancy permit must be posted in the facility.~~

~~(13) Quarterly fire drills and preplanning meetings must be conducted as required by the primary fire department.~~

~~(1) THE FACILITY SHALL COMPLY WITH THE PROVISIONS OF THE ACT 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 by <—
19 January 15 of each year on forms prescribed and provided by the
20 department. Licenses shall be issued no later than March 1 of <—
21 each year. The license application shall be accompanied by an
22 annual license fee of five thousand dollars (\$5,000) per
23 location. FACILITIES IN EXISTENCE ON THE EFFECTIVE DATE OF THIS <—
24 SECTION AND NEW FACILITIES SHALL BE INSPECTED BY THE DEPARTMENT
25 OF AGRICULTURE WITHIN THIRTY (30) DAYS OF RECEIPT OF A COMPLETE
26 APPLICATION FOR A LICENSE. THE DEPARTMENT OF AGRICULTURE SHALL
27 ISSUE A LICENSE, OR DENY A LICENSE, WITHIN FOURTEEN (14) DAYS OF
28 COMPLETING THE INSPECTION. A LICENSE SHALL BE EFFECTIVE FOR ONE
29 YEAR FROM THE DATE THE LICENSE IS ISSUED AND RENEWAL OF A
30 LICENSE SHALL BE AUTOMATIC UPON PAYMENT OF THE LICENSE FEE, BUT

1 EACH FACILITY IS SUBJECT TO ANNUAL INSPECTION BY THE DEPARTMENT
2 OF AGRICULTURE AND AT OTHER TIMES AT ITS DISCRETION, DURING
3 NORMAL BUSINESS HOURS. No license shall be issued to any
4 convicted felons or to any entities where a convicted felon owns
5 ~~five percent (5%) or more~~ ANY PERCENTAGE of the equity interest <—
6 in such entity.

7 Section 4.5. ~~The consumer fireworks sales facility A~~ <—
8 FACILITY LICENSED BY THE DEPARTMENT OF AGRICULTURE shall be
9 exclusively dedicated to the STORAGE AND sale of consumer <—
10 fireworks and related items, and the facility shall operate in
11 accordance with the following rules:

12 (1) There ~~must~~ SHALL be security personnel on the premises <—
13 for the seven (7) days preceding and including July 4 and for
14 the three (3) days preceding and including January 2.

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

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

19 (4) No minors shall be permitted in the facility unless
20 accompanied by an adult, and each minor ~~must~~ SHALL stay with the <—
21 adult in the facility.

22 ~~(5) All consumer fireworks sold in the facility must comply~~ <—
23 ~~with the United States Consumer Product Safety Commission~~
24 ~~manufacturing and performance standards.~~

25 ~~(6)~~ (5) All facilities ~~must~~ SHALL carry at least two million <—
26 dollars (\$2,000,000) in public and product liability insurance.

27 ~~(7) All of the licensee's employees must be given documented~~ <—
28 ~~training in the area of operational safety of a consumer~~
29 ~~fireworks sales facility. The storage of 1.3G display fireworks~~
30 ~~must comply with the Bureau of Alcohol, Tobacco and Firearms~~

1 regulations.

2 (6) A LICENSEE SHALL PROVIDE ITS EMPLOYEES WITH DOCUMENTED <—
3 TRAINING IN THE AREA OF OPERATIONAL SAFETY OF A FACILITY. THE
4 LICENSEE SHALL PROVIDE TO THE DEPARTMENT OF AGRICULTURE WRITTEN
5 DOCUMENTATION THAT EACH EMPLOYEE HAS RECEIVED SUCH TRAINING.

6 ~~(8) No 1.3G~~ (7) NO display fireworks shall be stored or <—
7 located at a consumer fireworks sales facility. <—

8 ~~(9) No person~~ (8) NO PERSON WHO APPEARS TO BE under the <—
9 influence of intoxicating liquor or drugs shall be admitted to
10 the facility, and no liquor, beer, or wine shall be permitted in
11 the facility.

12 ~~(10) No fireworks~~ (9) NO CONSUMER FIREWORKS OR DISPLAY <—
13 FIREWORKS shall be ignited within three hundred (300) feet of a
14 licensed consumer fireworks sales facility. <—

15 ~~(11)~~ (10) Emergency evacuation plans must SHALL be <—
16 conspicuously posted in appropriate locations within the
17 facility.

18 Section 6. Sections 5 and 5.1 of the act are repealed.

19 Section 7. Section 6 of the act is amended to read:

20 Section 6. [Any person, copartnership, association or
21 corporation violating the provisions of this act shall be guilty
22 of a misdemeanor, and upon conviction thereof, shall be punished
23 by a fine not exceeding one hundred dollars (\$100) or in the
24 case of individuals, the members of a partnership and the
25 responsible officers and agents of an association or
26 corporation, by imprisonment in the county jail not exceeding
27 ~~ninety (90) days or by both such fine and imprisonment.] Any~~ <—
28 NINETY (90) DAYS OR BY BOTH SUCH FINE AND IMPRISONMENT.] THE <—
29 FOLLOWING SHALL APPLY:

30 (1) ANY person, copartnership, association, or corporation

1 using consumer fireworks in violation of the provisions of this
2 act commits a ~~misdemeanor~~ SUMMARY OFFENSE, and, upon conviction, <—
3 shall be punished by a fine of not more than one hundred (\$100) <—
4 dollars. Any BY A FINE OF NOT MORE THAN ONE HUNDRED (\$100) <—
5 DOLLARS.

6 (2) ANY person, copartnership, association, or corporation
7 selling consumer fireworks in violation of the provisions of
8 this act commits a misdemeanor of the third degree, and, upon <—
9 conviction, shall be punished by a fine of not more than five
10 thousand (\$5,000) dollars. Any person, copartnership,
11 association, or SECOND DEGREE. <—

12 (3) ANY PERSON, COPARTNERSHIP, ASSOCIATION, OR corporation
13 selling display fireworks in violation of the provisions of this
14 act, commits a felony of the third degree. and, upon conviction, <—
15 shall be punished by a fine of not more than ten thousand
16 (\$10,000) dollars or to imprisonment of not more than ten (10)
17 years, or both. Any person, copartnership,

18 (4) ANY PERSON, COPARTNERSHIP, association, or corporation <—
19 selling federally illegal explosives such as devices as
20 described in 49 CFR 173.54 (relating to forbidden explosives) or
21 those devices that have not been tested, approved and labeled by
22 the Federal Department of Transportation, including, but not
23 limited to, those devices commonly referred to as "M-80," "M-
24 100," "blockbuster," "cherry bomb" or "quarter or half stick"
25 explosive devices, in violation of the provisions of this act,
26 commits a felony of the third degree. and, upon conviction, <—
27 shall be punished by a fine of not more than ten thousand
28 (\$10,000) dollars or to imprisonment of not more than ten (10)
29 years, or both.

30 Section 8. The act is amended by adding sections A SECTION <—

1 to read:

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

9 ~~Section 7.2. The Pennsylvania State Police shall conduct~~ <—
10 ~~background checks of all persons who are owners, operators,~~
11 ~~supervisors and all full time employes of a "consumer fireworks"~~
12 ~~facility within ninety (90) days after date of employment or~~
13 ~~affiliation.~~

14 Section 9. This act shall take effect immediately.