

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2684 Session of
2018

INTRODUCED BY JOZWIAK, STEPHENS, COX, RYAN, DAVIS, MURT, BRIGGS,
DRISCOLL, READSHAW, JAMES, J. McNEILL, STAATS, HILL-EVANS,
MENTZER, DeLUCA, D. COSTA, PETRARCA, ROE, RADER, SCHWEYER,
HENNESSEY AND GILLESPIE, OCTOBER 1, 2018

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
OCTOBER 1, 2018

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in firearms and other dangerous
3 articles, defining the offense of unauthorized sale or use of
4 consumer fireworks; imposing penalties; and making related
5 repeals.

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

8 Section 1. Title 18 of the Pennsylvania Consolidated
9 Statutes is amended by adding a section to read:

10 § 6163. Unauthorized sale or use of consumer fireworks.

11 (a) Unauthorized use.--A person commits a summary offense if
12 the person intentionally:

13 (1) Ignites or discharges consumer fireworks:

14 (i) on public or private property without the
15 express permission of the owner;

16 (ii) within 150 feet of an occupied structure; or

17 (iii) before 9 a.m. or after 11 p.m. of any day

18 except a legal holiday and, for any day which is a legal

1 holiday, before 9 a.m. or after 1 a.m. of the following
2 day.

3 (2) Ignites or discharges consumer fireworks or
4 sparkling devices:

5 (i) within a motor vehicle or building; or
6 (ii) while the person is under the influence of
7 alcohol, a controlled substance or another drug.

8 (3) Discharges or throws consumer fireworks or sparkling
9 devices:

10 (i) from, into or at a motor vehicle or building; or
11 (ii) at another person.

12 (b) Minors.--It shall be unlawful for a minor to purchase,
13 possess or use consumer fireworks. A violation of this
14 subsection is a summary offense.

15 (c) Temporary structures.--A person who sells consumer
16 fireworks from a temporary structure commits a misdemeanor of
17 the second degree if the person does any of the following:

18 (1) Fails to obtain a license from the Department of
19 Agriculture in accordance with Article XXIV of the act of
20 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
21 1971.

22 (2) Locates the temporary structure closer than 250 feet
23 from a facility storing, selling or dispensing gasoline,
24 propane or other flammable products.

25 (3) Fails to post an evacuation plan in a conspicuous
26 location in accordance with NFPA 1124.

27 (4) Fails to separate an outdoor storage unit from the
28 wholesale or retail sales area such that a purchaser may be
29 admitted by appropriately rated fire separation.

30 (5) Fails to comply with NFPA 1124 as it relates to

1 retail sales of consumer fireworks in temporary structures.

2 (6) Prior to January 1, 2023, locates the temporary
3 structure less than five miles from a permanent facility
4 licensed as of October 30, 2017, to sell consumer fireworks
5 under the former act of May 15, 1939 (P.L.134, No.65),
6 referred to as the Fireworks Law.

7 (7) Beginning January 1, 2023, locates the temporary
8 structure less than two miles from a permanent facility
9 licensed as of October 30, 2017, to sell consumer fireworks
10 under the former Fireworks Law.

11 (8) Maintains a temporary structure that exceeds 2,500
12 square feet.

13 (9) Fails to secure the temporary structure at all times
14 during which consumer fireworks are displayed within the
15 structure.

16 (10) Maintains less than \$2,000,000 in public and
17 product liability insurance on the temporary structure.

18 (11) Sells consumer fireworks from a temporary structure
19 outside the periods of June 15 through July 8 and December 21
20 through January 2 of each year.

21 (12) Fails to store consumer fireworks not on display
22 for retail sale in an outdoor storage unit.

23 (13) Sells consumer fireworks other than:

24 (i) Helicopter, Aerial Spinner (APA 87-1, 3.1.2.3).

25 (ii) Roman Candle (APA 87-1, 3.1.2.4).

26 (iii) Mine and shell devices not exceeding 500
27 grams.

28 (14) Fails to provide security personnel on the premises
29 for the seven days preceding and including July 4 and for the
30 three days preceding and including January 2.

1 (15) Permits any of the following in the temporary
2 structure:

3 (i) Smoking.

4 (ii) Cigarettes or tobacco products, matches,
5 lighters or any other flame-producing devices.

6 (iii) Liquor, beer or wine.

7 (iv) A person who appears to be under the influence
8 of intoxicating liquor or drugs.

9 (v) A minor unaccompanied by an adult.

10 (16) Fails to provide employees with documented training
11 in the area of operational safety.

12 (17) Stores or locates display fireworks in the
13 temporary structure.

14 (d) Removal, storage and destruction.--The Pennsylvania
15 State Police or police officer shall take, remove or cause to be
16 removed at the expense of the owner all stocks of consumer
17 fireworks or display fireworks or combustibles offered or
18 exposed for sale, stored or held in violation of this section.
19 The owner shall also be responsible for the storage and, if
20 deemed necessary, the destruction of the fireworks.

21 (e) Construction.--Nothing in this section shall be
22 construed to apply to display fireworks lawfully possessed or
23 used in accordance with Article XXIV of the Tax Reform Code of
24 1971.

25 (f) Definitions.--As used in this section, the following
26 words and phrases shall have the meanings given to them in this
27 subsection unless the context clearly indicates otherwise:

28 "APA 87-1." The American Pyrotechnics Association Standard
29 87-1: Standard for Construction and Approval for Transportation
30 of Fireworks, Novelties, and Theatrical Pyrotechnics, 2001

1 edition, or any subsequent edition.

2 "Consumer fireworks." As follows:

3 (1) The term includes any combustible or explosive
4 composition or any substance or combination of substances
5 which:

6 (i) is intended to produce visible or audible
7 effects by combustion;

8 (ii) is suitable for use by the public;

9 (iii) complies with the construction, performance,
10 composition and labeling requirements promulgated by the
11 Consumer Products Safety Commission in 16 CFR (relating
12 to commercial practices) or any successor regulation; and

13 (iv) complies with the provisions for "consumer
14 fireworks" as defined in APA 87-1 or any successor
15 standard.

16 (2) The term does not include display fireworks or
17 devices such as "ground and hand-held sparkling devices,"
18 "novelties" or "toy caps" in APA 87-1 or any successor
19 standard.

20 "Display fireworks." Large fireworks to be used solely by
21 professional pyrotechnicians and designed primarily to produce
22 visible or audible effects by combustion, deflagration or
23 detonation. The term includes, but is not limited to:

24 (1) salutes that contain more than two grains or 130
25 milligrams of explosive materials;

26 (2) aerial shells containing more than 60 grams of
27 pyrotechnic compositions; and

28 (3) other display pieces that exceed the limits of
29 explosive materials for classification as consumer fireworks
30 and are classified as fireworks UN0333, UN0334 or UN0335

under 49 CFR 172.101 (relating to purpose and use of hazardous materials table).

"Minor." An individual under 18 years of age.

"NFPA 1124." The National Fire Protection Association Standard 1124, Code for the Manufacture, Transportation, and Storage of Fireworks and Pyrotechnic Articles, 2006 edition, or any subsequent edition.

"Occupied structure." A structure, vehicle or place adapted for overnight accommodation of persons or for conducting business whether or not a person is actually present.

"Outdoor storage unit." A consumer fireworks building, trailer, semitrailer, metal shipping container or magazine meeting the specifications of NFPA 1124.

"Temporary structure." A structure, other than a permanent facility with fixed utility connections, which is dedicated to the storage and sale of consumer fireworks and related items. The term includes temporary retail sales stands, tents, canopies and membrane structures.

Section 2. Repeals are as follows:

(1) The General Assembly declares that the repeals under paragraph (2) are necessary to effectuate the addition of 18 Pa.C.S. § 6163.

(2) Sections 2404(b) and 2414(1) and (2) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, are repealed.

Section 3. This act shall take effect in 60 days.