WEST VIRGINIA CODE CHAPTER 29 ARTICLE 3E

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§29-3E-1. Unlawful acts.

It is unlawful for a person to manufacture, wholesale, distribute, import, sell or store for the purpose of resale, consumer fireworks, sparkling devices, novelties or toy caps without a license, registration, certificate or permit from the State Fire Marshal.

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§29-3E-2. Definitions.

As used in this article:

(1) "Agricultural and wildlife fireworks" means fireworks devices distributed to farmers, ranchers and growers through a wildlife management program administered by the United States Department of the Interior or the Division of Natural Resources of this state;

(2) “Amusement park” means any person or organization which holds a permit for the operation of an amusement ride or amusement attraction under article ten, chapter twenty-one of this code;

(3) "APA Standard 87-1" means the APA Standard 87-1 published by the American Pyrotechnics Association, as amended, and incorporated by reference into Title 49 of the Code of Federal Regulations;

(4) "Articles pyrotechnic" means pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but not intended for consumer use, that meet the weight limits for consumer fireworks but are not labeled as such, and that are classified as UN0431 or UN0432 under 49 C.F.R. §172.101 (2014);

(5) "Consumer fireworks" means small fireworks devices that are designed to produce visible effects by combustion that are required to comply with the construction, chemical composition and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 C.F.R. Parts 1500 and 1507 (2014), and that are listed in APA Standard 87-1. Consumer fireworks do not include sparkling devices, novelties, toy caps or model rockets;

(6) "Consumer fireworks certificate" means a certificate issued under section five of this article;

(7) "Display fireworks" means large fireworks to be used solely by professional pyrotechnicians licensed by the State Fire Marshal and designed primarily to produce visible or audible effects by combustion, deflagration or detonation and includes, but is not limited to, salutes containing more than two grains (one hundred thirty milligrams) of explosive materials, aerial shells containing more than forty grams of pyrotechnic compositions and other display pieces that exceed the limits of explosive materials for classification as consumer fireworks and are classified as fireworks UN0333, UN0334, or UN0335 under 49 C.F.R. §172.101 (2014);

(8) "Distributor" means a person who sells fireworks to wholesalers and retailers for resale;

(9) "Division 1.3 explosive" means that term as defined in 49 C.F.R. §173.50 (2014);

(10) "Division 1.4 explosive" means that term as defined in 49 C.F.R. §173.50 (2014);

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(11) "Explosive composition" means a chemical or mixture of chemicals that produces an audible effect by deflagration or detonation when ignited;

(12) "Fire Marshal" means the State Fire Marshal;

(13) "Firework" or "fireworks" means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration or detonation. Fireworks include consumer fireworks, display fireworks and special effects. Fireworks does not include sparkling devices, novelties, toy caps or model rockets;

(14) "Interstate wholesaler" means a person who is engaged in interstate commerce selling fireworks;

(15) “Model rocket” means that term as defined in National Fire Protection Association Standard 1122, “Code for Model Rocketry”;

(16) "New explosive" means that term as defined in 49 C.F.R. §173.56 (2014);

(17) "NFPA 1123" means National Fire Protection Association Standard 1123, "Code for Fireworks Display;"

(18) "NFPA 1124" means National Fire Protection Association Standard 1124, "Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles,” 2006 Edition;

(19) "NFPA 1126" means National Fire Protection Association Standard 1126, "Standard for the Use of Pyrotechnics Before a Proximate Audience;"

(20) "Novelties" means that term as defined under APA standard 87-1, section 3.2; but shall not include toy pistols, toy caps, toy canes, toy guns or other similar devices;

(21) “Permanent” means that term as defined in NFPA 1124;

(22) "Person" means an individual or the responsible person for an association, an organization, a partnership, a limited partnership, a limited liability company, a corporation or any other group or combination acting as a unit;

(23) “Public display of fireworks” means a public entertainment feature that is advertised to the general public or is on public property that includes the display or discharge of fireworks;

(24) "Pyrotechnic composition" means a mixture of chemicals that produces a visible or audible effect by combustion rather than deflagration or detonation. A pyrotechnic composition will not explode upon ignition unless severely confined;

(25) "Retailer" means a person who purchases consumer fireworks for resale to consumers;

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(26) "Sparkling devices" means "ground or handheld sparkling devices" as that phrase is defined under APA 87-1, sections 3.1.1 and 3.5;

(27) "Special effects" means a combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere and designed and intended to produce an audible, visual, mechanical or thermal effect as an integral part of a motion picture, radio, television, theatrical or opera production or live entertainment;

(28) “Temporary” means that term as defined in NFPA 1124;

(29) "Toy caps" means that term as defined under APA 87-1, section 3.3; and

(30) "Wholesaler" means any person who sells consumer fireworks to a retailer or any other person for resale and any person who sells articles of pyrotechnics, display fireworks, and special effects to a person licensed to possess and use those devices.

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§29-3E-3. Production or transportation of fireworks.

A person may produce or transport a firework that is a new explosive and that is either a division 1.3 explosive or division 1.4 explosive if the person first meets the requirements of 49 C.F.R. §173.56(2)(j) (2014).

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§29-3E-4. Sparkling devices and novelties registration required.

(a) A person may not sell sparkling devices or novelties without being registered with the State Fire Marshal.

(b) To be registered with the State Fire Marshal, the person shall:

(1) Submit an application to the State Fire Marshal;

(2) Provide a copy of his or her current business registration certificate or his or her certificate to sell sparklers and novelties issued by the State Tax Commissioner;

(3) Pay the required fee; and

(4) Provide other information as the State Fire Marshal may require by legislative rule.

(c) A registration is valid for the calendar year or any fraction thereof and expires on December 31 of each year.

(d) A registration is not transferable.

(e) A person shall post the registration in a conspicuous place at the location of the business.

(f) A separate registration is required for each location.

(g) The fee required in subdivision (3), subsection (b) of this section shall be $15.00 per retail location.

(h) The fee assessed by this section shall be retained by the State Fire Marshal and expended to offset costs incurred in performing the duties imposed by the provisions of this code.

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§29-3E-5. Consumer fireworks certificate required.

(a) A retailer may not sell consumer fireworks unless the retailer is certified under this article.

(b) To be certified to sell consumer fireworks a retailer shall:

(1) Submit an application to the State Fire Marshal;

(2) Submit with the application a copy of his or her current business registration certificate;

(3) Pay a fee of $500 for each temporary retail sales location and $1000 for each permanent retail sales location to the State Fire Marshal;

(4) Provide the State Fire Marshal proof that the retailer maintains at all times public liability and product liability insurance with minimum coverage limits of $1 million to cover losses, damages or injuries that might result from selling consumer fireworks; and

(5) Provide other information as the State Fire Marshal may require by legislative rule.

(c) A consumer fireworks certificate is valid from April 1 through March 31 of the next calendar year.

(d) A consumer fireworks certificate is not transferable.

(e) A retailer shall post the certificate in a conspicuous place at the location of the business.

(f) A separate certificate is required for each location of the business.

(g) A certificate holder may also sell sparkling devices and novelties at the same location without additionally obtaining a sparkling devices and novelties registration.

(h) A retailer who sells consumer fireworks shall comply with the regulations provided in NFPA 1124.

(i) A retailer who sells consumer fireworks shall comply with all regulations provided in NFPA 1124. The State Fire Marshal may by legislative rule, promulgate rules to supplement those rules established in NFPA 1124.

(j) A retailer shall sell the consumer fireworks only from a permanent building or structure that meets the specifications in NFPA 1124 or a temporary facility or structure that meets the specifications of NFPA 1124.7.3.5.

(k) Any fees collected pursuant to this section shall be deposited in the State Fire Marshal Fees Fund established by the provisions of §29-3-12b of this code.

(l) Notwithstanding any provision of this article to the contrary, no retailer may offer

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consumer fireworks for sale before June 1, 2016.

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§29-3E-6. Required permit for public fireworks display.

(a) Any municipality, county, fair association, amusement park or other organization shall have a permit to present a public display of fireworks from the State Fire Marshal.

(b) To receive a permit, a municipality, fair association, amusement park, or other organization shall:

(1) Submit an application to the State Fire Marshal;

(2) Pay the required fee not to exceed $50.00;

(3) Furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of the person or an employee thereof, in the amount, character and form as the State Fire Marshal determines to be necessary for the protection of the public; and

(4) Provide any other information as the State Fire Marshal may require by legislative rule.

(c) The State Fire Marshal shall require the municipality, county, fair association, amusement park and other organizations to give written notice to the local police and fire authorities at least five days prior to the display for which the permit is sought.

(d) A permit is not transferable.

(e) The display shall be operated by a competent operator licensed or certified as to competency by the State Fire Marshal and shall be of such composition, character, and so located, discharged or fired so as to be safe in the opinion of the chief of the fire department serving the community or area where such display is being held.

(f) The permittee shall require a bond from the licensee in a sum not less than $1,000 conditioned on compliance with the provisions of this article and the rules of the State Fire Marshal except where the licensee is an insured government entity.

(g) Any fees collected pursuant to this section shall be deposited in the State Fire Marshal Fees Fund established by the provisions of section twelve-b, article three, chapter twenty-nine of this code.

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§29-3E-7. Fireworks safety fee; administration; tax crimes; collections; remittances; deposits; distributions; rules.

(a) In addition to the sales tax, a fireworks safety fee of twelve percent of all sales is levied on retail sales of consumer fireworks in this state. The fee shall be distributed pursuant to the provisions of this subsection. The fee computation under this subsection shall be carried to the third decimal place, and the fee rounded up to the next whole cent whenever the third decimal place is greater than four, and rounded down to the lower whole cent whenever the third decimal place is four or less.

The State Tax Commissioner shall disburse all proceeds of the fireworks safety fee into the state treasury each month in the following manner:

(1) Seventy-five percent shall be deposited into a special account in the State Treasury, designated the Veterans' Facility Support Fund established by the provisions of section eleven, article one, chapter nine-a for expenditure on veterans' programs.

(2) Twenty-five percent shall be deposited into a special account in the State Treasury, designated the Fire Protection Fund established in section thirty-three, article three, chapter thirty-three of this code and distributed in accordance with that section to each volunteer fire company or department on an equal share basis by the State Treasurer.

(b) A person who purchases consumer fireworks in a retail transaction shall pay to the retailer the amount of the fee levied by this section, which fee is added to and constitutes a part of the sale price, and is collectible by the retailer who shall account to the state for all fees paid by a purchaser. If the retailer fails to collect the fee, or fails to account to the state for the fees paid by a purchaser, then the retailer is liable for the payment of the fee to the state.

(c) A retailer shall remit to the State Tax Commissioner no later than thirty days after the end of each preceding month all moneys collected for such preceding month, pursuant to the requirements of this section, and shall report such collections on forms and in the manner prescribed by the State Tax Commissioner.

(d) All moneys so remitted, net of refunds and adjustments, shall be paid by the State Tax Commissioner into the funds specified in this section.

(e) Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in article nine, chapter eleven of this code applies to the fees imposed pursuant to this article, with like effect as if that act were applicable only to the fees imposed by this article and were set forth in extenso in this article.

(f) The State Tax Commissioner shall propose legislative rules and may promulgate such emergency rules as are necessary to implement the provisions of this article.

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§29-3E-8. State Fire Marshal's Rule-making Authority.

The State Fire Marshal may promulgate emergency rules and shall propose legislative rules for promulgation, in accordance with §29A-3-1 et seq. of this code, to implement this article, including:

(1) Adopting by reference the most recent edition of APA Standard 87-1;

(2) Adopting by reference the most recent edition of NFPA 1123, Code for Fireworks Display;

(3) Adopting by reference NFPA 1124, code for the manufacture, transportation, storage and retail sales of fireworks and pyrotechnic articles;

(4) Adopting by reference the most recent edition of NFPA 1126, standard for the use of pyrotechnics before a proximate audience;

(5) Procedures for the issuance and renewal of a registration, certificate and permit;

(6) A fee schedule;

(7) Establishing insurance or bond requirements;

(8) Establishing additional criteria for the granting of a registration, certificate, or permit under this article;

(9) Registration of manufacturers, wholesalers and distributors; and

(10) Establishing a procedure that allows a retailer to combine and pay all applicable fees in a single payment.

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§29-3E-9. Exemptions.

This article does not prohibit any of the following:

(1) The use of fireworks by railroads or other transportation agencies for signaling purposes or illumination;

(2) The use of agricultural and wildlife fireworks;

(3) The sale or use of blank cartridges for a theatrical performance, use by military organizations or signal or ceremonial purposes in athletics or sports; or

(4) The possession, sale or disposal of fireworks incidental to the public display of fireworks by wholesalers or other persons who have a permit to possess, store and sell explosives from the Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United States Department of Justice and the State Fire Marshal.

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§29-3E-10. Local municipalities' regulation of consumer fireworks.

This article does not affect the authority of the governing body of a municipality to prohibit or regulate the use of consumer fireworks within its boundaries.

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§29-3E-11. Violations of this article; penalties.

(a) A person may not intentionally ignite, discharge or use consumer fireworks on public or private property without the express permission of the owner to do so.

(b) A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices within or throw the same from a motor vehicle or building.

(c) A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices into or at a motor vehicle or building, or at any person or group of people.

(d) A person may not intentionally ignite or discharge any consumer fireworks or sparkling device while the person:

(1) Is under the influence of alcohol;

(2) Is under the influence of any controlled substance;

(3) Is under the influence of any other drug; or

(4) Is under the combined influence of alcohol and any controlled substance or any other drug.

(e) A person who is less than eighteen years of age may not purchase, nor offer for sale, consumer fireworks.

(f) The provisions of this section shall be effective June 1, 2016.

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§29-3E-12. Miscellaneous offenses; penalties.

Any person who violates a provision of this article for which a penalty is not expressly set forth is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100.00 nor more than $500.00. The provisions of this section shall be effective June 1, 2016.

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§29-3E-13. Seizures by the State Fire Marshal; enforcement of law.

(a) The State Fire Marshal shall seize, take, remove and dispose of at public auction or destroy, or cause to be seized, taken or removed and disposed of at public auction, or destroyed at the expense of the owner, all stocks of fireworks or combustibles offered for sale, stored or held in violation of this article or an emergency or legislative rule promulgated hereunder.

(b) The West Virginia State Police, deputy sheriffs, municipal police officers and other law-enforcement officers shall assist in the enforcement of this article.

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§29-3E-14. Reporting requirements; duration of reporting requirements.

Annually, on or before January 15, 2017, 2018 and 2019:

(1) The State Treasurer shall submit to the President of the Senate and the Speaker of the House of Delegates a report detailing the amount of revenue received and deposited from the Fireworks Safety Fee into the Fire Safety Fund authorized by section seven of this article and the distribution of said funds;

(2) The Secretary of Veterans' Assistance shall supply the President of the Senate and Speaker of the House of Delegates with a report detailing the revenue received from the Fireworks Safety Fee and deposited in the Veterans' Facility Support Fund and the purposes for which the money was expended;

(3) The State Tax Commissioner shall provide to the President of the Senate and Speaker of the House of Delegates a report detailing the revenue received from the sales tax received from the sale of fireworks authorized by the provisions of the article and revenue received from the Fireworks Safety Fee authorized by section seven of this article; and

(4) The State Fire Marshal shall submit to the President of the Senate and Speaker of the House of Delegates a report detailing the amounts of revenue received from the registration fees imposed pursuant to the provisions of section five of this article, the purposes for which the fees were expended and the adequacy of the fees received in relation to the duties required of the office.

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