WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1976

ENROLLED

SENATE BILL NO. 146

(By Mr. lorentz, introduced)

PASSED June 13, 1976

In Effect July 1, 1976

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 6/1/76
AN ACT to amend and reenact article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the creation of a state fire commission; prescribing a method of appointing members; providing for the election of a chairman and vice-chairman; requiring the commission to meet at least six times a year; quorum required; establishing the duties of the commission to promulgate regulations and adopt a state fire code; creating the office of state fire administrator and providing for his appointment, term of office, salary, qualifications, responsibilities and removal; providing for public hearing; annual reports; removing fire marshal's office from the office of the insurance commissioner; establishing the state fire marshal's office under the state fire commission; changing the appointment, term of office, qualifications, responsibilities and removal of the state fire marshal; providing for the powers and duties of the fire marshal; providing that employees are to be members of the state civil service system; establishing a state master plan for fire service; removing requirement that tax on insurance companies be used for maintenance of state fire marshal's office; prohibiting construction of a fire hazard; authorizing fire marshal to order removal of fire hazard and providing that removal is to be done by the fire marshal at expense of owner upon failure to comply with fire marshal's order; providing other remedies to abate fire hazard; providing for the transfer of certain state employees and the perpetuation of rules and regulations; providing penalties and procedures for appeal; and severability.
Be it enacted by the Legislature of West Virginia:

That article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-1. Short title.

This article shall be known and may be cited as the "Fire Prevention and Control Act.”

§29-3-2. Legislative findings and declaration of policy.

(a) A significant part of the population of this state needs improved fire prevention and control;

(b) The establishment and maintenance of a coordination program for fire prevention and control for the entire state is necessary to promulgate the safety and well-being of the citizens and residents of this state;

(c) Adequate fire prevention and control are not likely to become a reality unless certain administrative functions and procedures are enacted by law; and

(d) Fire prevention and control are a public purpose and a responsibility of government for which public money may be spent.

§29-3-3. State fire commission created; composition; qualifications; appointment; terms of office; removal; vacancies; compensation and expenses.

(a) There is hereby created a state fire commission, which shall consist of eleven members, qualified by experience and training to deal with the matters which are the responsibilities of the commission. The officers of the West Virginia fire chiefs association, the West Virginia firemen’s association, the West Virginia professional fire fighters association, the West Virginia manufacturers association, the West Virginia mutual insurance association and the West Virginia association of independent insurors shall submit a list of names of persons recommended by each of these associations to the governor for consideration in appointing the state fire commission. The
West Virginia professional fire fighters association shall recommend the names of six persons from full-time paid fire departments. The West Virginia fire chiefs association and the West Virginia firemen's association shall each recommend the names of three persons from volunteer fire departments. The West Virginia manufacturers association shall recommend the names of three persons to represent business and industry and the West Virginia association of independent insurors shall recommend the name of one person, and the West Virginia mutual insurance association shall recommend the name of one person, to represent the fire insurance industry. Appointments to the commission shall be made by the governor, by and with the advice and consent of the Senate, from the lists of qualified persons recommended by the organizations. Four members shall be appointed to represent full-time paid fire departments and four members shall be appointed to represent volunteer fire departments. Two members shall be appointed to represent business and industry and one member shall be appointed to represent the fire insurance industry. The term of office of the members shall be staggered five-year terms. The terms of members first appointed shall expire as designated by the governor at the time of appointment, two at the end of one year, two at the end of two years, three at the end of three years, two at the end of four years and two at the end of five years. Vacancies shall be filled in the same manner as the original appointment but only for the remainder of a term. Any member is subject to removal by the governor at any time for neglect of his duties or other conduct unbecoming his office. The governor shall make the appointments within ninety days after this section takes effect.

(b) The members of the state fire commission shall serve without compensation but shall be reimbursed for their reasonable and necessary expenses actually incurred in the performance of their duties.

§29-3-4. Chairman; vice-chairman; meetings; quorum.

(a) The state fire commission shall select a chairman and vice-chairman from among its members and shall
hold regular meetings at least once every two months and special meetings when called by its chairman. In the absence of the chairman, the vice-chairman shall exercise the powers and duties of the chairman.

(b) No business shall be transacted by the state fire commission in the absence of a quorum which shall be six members, one of whom must be the chairman or vice-chairman.

§29-3-5. Promulgation of regulations and state fire code.

(a) The state fire commission shall have the power to promulgate, amend and repeal regulations for the safeguarding of life and property from the hazards of fire and explosion pursuant to the provisions of chapter twenty-nine-a of this code. Such regulations, amendments or repeals thereof shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection and shall have the force and effect of law in the several counties, municipalities and political subdivisions of the state.

(b) Pursuant to the provisions of chapter twenty-nine-a of this code, the state fire commission, by the first day of January, one thousand nine hundred seventy-seven, shall promulgate comprehensive regulations for the safeguarding of life and property from the hazards of fire and explosion to be known as the state fire code. Regulations embodied in the state fire code shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection and shall have the force and effect of law in the several counties, municipalities and political subdivisions of the state.

(c) In interpretation and application, the state fire code shall be held to be the minimum requirements for the safeguarding of life and property from the hazards of fire and explosion. Whenever any other state law, county or municipal ordinance or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the state fire code, the provisions of such state law, county or municipal ordinance
or regulation of any agency thereof shall govern, provided they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices. In any question, the decision of the state fire commission determines the relative priority of any such state law, county or municipal ordinance or regulation of any agency thereof and determines compliance with state fire regulations by officials of the state, counties, municipalities and political subdivisions of the state.

(d) A copy of the state fire code and any amendments thereto, upon promulgation by the state fire commission, shall be filed with the county clerk and shall be made available for public information in each county courthouse in the state.

§29-3-6. Public hearings and notice.

(a) Prior to the promulgation of a state fire code as provided in section five of this article, the state fire commission shall hold at least one public hearing on the proposed regulations contained therein, notice of which shall be the same as the notice for a hearing as provided in the administrative procedure act, chapter twenty-nine-a of this code.

(b) After the adoption of a state fire code, prior to the promulgation of any additional regulation, amendment to or repeal of a current regulation, the state fire commission shall hold at least one hearing on each new regulation, each amendment to and each repeal of a current regulation to be separately submitted, notice of which shall be the same as the notice for a hearing as provided in the administrative procedure act, chapter twenty-nine-a of this code.

§29-3-7. Commission's powers in conduct of public hearing.

For the purposes of any public hearing under this article, the state fire commission is empowered and authorized to issue subpoenas and subpoenas duces tecum, to take testimony and to administer oaths to any witness in any proceeding or examination instituted before it or conducted by it with reference to any matter within its
jurisdiction. In all hearings or proceedings before the state fire commission the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing; and in case of disobedience to a subpoena or other process the state fire commission or any party to the proceedings before the commission may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of papers, books and documents. And such court, in case of refusal to obey the subpoena issued to any person subject to the provisions of this chapter, shall issue an order requiring such person to appear before the state fire commission and produce all books and papers, if so ordered, and give evidence touching the matter in question.

§29-3-8. Office of state fire administrator created; appointment; term of office; removal; compensation.

(a) There is hereby created a state fire administrator who shall be appointed by the governor from a list of names submitted by the state fire commission.

(b) The state fire administrator shall serve for a six-year term after which time reappointment shall be discretionary with the governor. In cases where a reappointment is not made, the governor shall make the appointment from a list of names submitted by the state fire commission. The state fire administrator can be removed by the governor, on recommendation by the state fire commission for neglect of duty or other conduct unbecoming his office. Prior to removal he shall be given timely notice by the commission, along with a statement of the charges against him. He shall be provided an opportunity to appear in person or by counsel for a public hearing thereon.

(c) The annual salary of the state fire administrator shall be twenty thousand dollars. He may employ such technical, clerical, stenographic and other personnel and fix their compensation, and may incur such expenses as may be necessary in the performance of the duties of his office within the appropriation therefor. Employees of the state fire administrator's office shall be members of the
state civil service system, and all appointments of the office shall be a part of the classified service under the civil service system.

(d) The state fire administrator and other personnel of the state fire administrator's office shall be provided with appropriate office space, furniture, equipment, supplies, stationery and printing in the same manner as provided for other state agencies.

§29-3-9. Powers, duties and authority of state fire commissioner and state fire administrator.

(a) The state fire commission is responsible for fire programs within this state, including the state fire administrator, state fire marshal's office, training, uniform standards and certification, finance and planning and fire prevention.

(b) All state and area training and education in fire service shall be coordinated by the state fire commission. The state fire administrator shall insure that these programs are operated throughout the state at a level consistent with needs identified by the commissioner.

(c) The state fire commission shall develop minimum training levels for fire fighters, minimum levels of equipment needed to protect life and property within fire service areas, minimum performance standards the departments must meet in response times, communications, minimum levels of water flow and pressure and other performance measures as deemed necessary to meet the overall goals of improved fire prevention and control.

(d) The formation of any new fire department, including volunteer fire departments, shall require the concurrence of the state fire commission. The state fire commission shall develop a method of certification which can be applied to all fire departments and volunteer fire departments.

(e) The state fire commission shall develop a plan for fire prevention and control which shall include but not be limited to the following areas: Manpower needs; location of training centers; location of fire prevention and control units; communications; fire fighting facili-
ties; water sources; vehicular needs; public education
and information; public participation, standardization in
record keeping; evaluation of personnel; reporting of fire
hazards, programs on mutual aid; location of public
safety agencies; outline of fire prevention programs; and
accessibility of fire prevention information.

(f) The state fire commission shall establish fire pro-
tection areas and at such times as funds are available
shall establish field offices for inspection, planning and
certification.

§29-3-10. State fire marshal's office transferred to state fire
commission; powers and duties of state insurance
commissioner with respect to fire marshal termi-
nated.

1 The state fire marshal and the state fire marshal's
office, heretofore existing in this code, are hereby con-
tinued in all respects except that all powers and duties
exercised by the state insurance commissioner with
respect to the state fire marshal and the state fire
marshal's office are terminated and all such powers
and duties are hereby transferred to and vested in the
state fire commission except as provided otherwise in
this article. Until the adoption of a state fire code by
the state fire commission, the state fire marshal shall
operate under the authority of this article and the
authority of the rules and regulations heretofore promul-
gated by the state fire marshal.

§29-3-11. Appointment of state fire marshal; term of office;
removal; salary; qualifications; responsibilities;
employees; equipment.

1 (a) The state fire commission shall appoint a state
fire marshal in accordance with the qualifications ap-
proved by the state civil service commission as provided
in article six, chapter twenty-nine of this code. He can
be removed by the commission at any time for neglect
of duty or other conduct unbecoming his office as
provided in article six, chapter twenty-nine of this
code.

9 (b) The state fire marshal, within policy established
by the state fire commission, shall have all responsi-
ability for the implementation of fire safety programs in
the state designated to minimize fire hazards and dis-
asters and loss of life and property from these causes.
These responsibilities include, but are not limited to,
the establishment and enforcement of fire safety prac-
tices throughout the state, preventive inspection and
correction activities, coordination of fire safety programs
with volunteer and paid fire departments and critical
analysis and evaluation of West Virginia's fire loss sta-
tistics for determination of problems and solutions.

(c) The state fire marshal may employ such tech-
nical, clerical, stenographic and other personnel and fix
their compensation and may incur such expenses as may
be necessary in the performance of the duties of his
office within the appropriation therefor. Employees of
the fire marshal's office shall be members of the state
civil service system, and all appointments of the office
shall be a part of the classified service under the civil
service system.

(d) The state fire marshal and other personnel of the
state fire marshal's office shall be provided with appro-
priate office space, furniture, equipment, supplies, sta-
tionery and printing in the same manner as provided for
other state agencies.

§29-3-12. Powers and duties of state fire marshal.

(a) Enforcement of laws. The state fire marshal shall
enforce all laws of the state having to do with:

(1) Prevention of fire.

(2) The storage, sale and use of any explosive, com-
bustible or other dangerous article in solid, flammable
liquid or gas form.

(3) The installation and maintenance of equipment of
all sorts intended to extinguish, detect and control
fires.

(4) The means and adequacy of exit, in case of fire,
from buildings and all other places in which persons
work, live or congregate from time to time for any pur-
(5) The suppression of arson.

(b) Assistance upon request. Upon request, the state fire marshal shall immediately assist any chief of any recognized fire company or department.

(c) Enforcement of regulations. The state fire marshal shall enforce the regulations promulgated by the state fire commission as authorized by section three of this article.

(d) Inspections generally. The state fire marshal shall inspect all state, county and municipally owned institutions, all public and private schools, theaters, churches and other places of public assembly as to fire exits and reasonable safety standards and report his findings and recommendations to the proper administrative heads.

(e) Right of entry. The state fire marshal may at all reasonable hours enter any building or premises, except those actually occupied for single family dwelling purposes, for the purpose of making an inspection, which he may deem necessary to be made under the provisions of this article.

(f) Investigations. The state fire marshal may at any time investigate as to the origin or circumstances of any fire or explosion or attempt to cause fire or explosion occurring in the state. The state fire marshal shall have the authority at all times of the day or night, in performance of the duties imposed by the provisions of this article, to investigate where any fires or attempt to cause fires shall have occurred, or which at the time may be burning.

(g) Testimony and arrests. The state fire marshal, in making an inspection or investigation, when in his judgment such proceedings are necessary, may take the testimony under oath of all persons who may be cognizant of any facts, or have any knowledge about the matter to be examined and inquired into, and may have the testimony reduced to writing; and, when in his judgment such examination discloses that the fire or explosion or attempt to cause a fire or explosion was of incendiary
origin, the state fire marshal may arrest the supposed incendiary or have him arrested and charged with the

crime: Provided, That if the state fire marshal suspects that a person is an incendiary, he shall not interrogate the supposed incendiary before the suspect shall have appeared before a magistrate or other judge; and shall transmit a copy of the testimony so taken to the prosecuting attorney for the county wherein the fire or explosion or attempt to cause a fire or explosion occurred.

(h) Witnesses and oaths. The state fire marshal is empowered and authorized to issue subpoenas and subpoenas duces tecum, to compel the attendance of persons before him to testify in relation to any matter which is, by the provision of this article, a subject of inquiry and investigation by the state fire marshal and cause to be produced before him such papers as he may require in making such examination. The state fire marshal is hereby authorized to administer oaths and affirmations to persons appearing as witnesses before him. False swearing in any matter or proceeding aforesaid shall be deemed perjury and shall be punishable as such.

(i) Deputizing members of fire departments in this state. The state fire marshal may deputize a member of any fire department, duly organized and operating in this state, who is approved by the chief of his department and who is properly qualified, to act as his assistants for the purpose of making such inspections and investigations and carrying out such orders as may be prescribed by him, to enforce and make effective the provisions of this article and any and all regulations promulgated by the state fire commission under authority of this article.

(j) Written report of examinations. The state fire marshal shall, at the request of the county commission of any county or the municipal authorities of any incorporated municipality in this state, make to them a written report of the examination made by him regarding any fire happening within their respective jurisdictions.

(k) Report of losses by insurance companies. It shall be the duty of each fire insurance company or association doing business in this state, within ten days after the adjustment of any loss sustained by it that ex-
ceeds fifteen hundred dollars, to report to the state fire
marshal, upon forms furnished by him, such information
regarding the amount of insurance, the value of the
property insured and the amount of claim as adjusted,
as in the judgment of the state fire marshal it is necessary
for him to know. This report is in addition to any such
information required by the state insurance commissioner.

Upon the request of the owner or insurer of any property
destroyed or injured by fire or explosion, or in which an
to cause a fire or explosion may have occurred,
the state fire marshal shall make a written report to the
person requesting the same of the result of the examination
made by him regarding the property.

(1) Issuance of permits and licenses. The state fire
marshal is authorized to issue permits and licenses as
required in this article.

§29-3-13. Annual reports.
1 The state fire commission shall transmit annually to
the governor by October thirty-first of each year, an annual report of its activities for the preceding fiscal year.
The annual reports shall include documents pertaining to
the function and operation of the state fire administrator's
office and the state fire marshal's office for the preceding
fiscal year.

§29-3-14. Maintenance of fire hazard; order for repair or
demolition; order to contain notice to comply and
right to appeal.
(a) No person shall erect, construct, reconstruct, alter,
maintain or use any building, structure or equipment
or use any land in such a way to endanger life or property
from the hazards of fire or explosion, or in violation of
any regulation, or any provision or any change thereof
promulgated by the state fire commission under the au-
thority of this article.
(b) Whenever the state fire marshal determines that
any building or structure has been constructed, altered or
repaired in a manner violating any regulation lawfully
promulgated by the state fire commission prior to the
commencement of such construction, alteration or repairs;
or whenever he may determine that any building or structure constitutes a fire hazard by reason of want of repair, age or dilapidated or abandoned condition, or otherwise, and is so situated as to endanger other buildings and property; or whenever he may find in any building or upon any premises any combustible, flammable or explosive substance or material, or other conditions dangerous to the safety of persons occupying the building or premises and adjacent premises or property, he may make reasonable orders in writing, directed to the owner of such building, structure or premises, for the repair or demolition of such building or structure, or the removal of the combustible, flammable or explosive substance or material, as the case may be, and the remedying of any conditions found to be in violation of a regulation promulgated as aforesaid or to be dangerous to the safety of persons or property.

A true copy of every order of the state fire marshal as provided for in this section shall be filed in the county where the premises are totally or partially located, with the county clerk who shall index and record the order in the general lien book. Upon filing, the order constitutes notice of such proceedings to all persons or parties there- after having dealings involving said property.

A statement of the expenses and administrative charges shall also be filed with the county clerk, recorded and indexed in the general lien book and upon filing, shall become a lien against the property. Thereafter a court supervised sale of the property to enforce the collection of the expenses and administrative charges may be prosecuted at the request of the state fire marshal, state fire commission or the attorney general.

Every order provided for in this section shall contain a notice that compliance therewith shall be required within a period of thirty days from the date of issuance thereof and also that any person desiring to contest the validity of any such order may enter an appeal from such order to the state fire commission and then to the circuit court in the county where the premises are totally or partially located as provided in section eighteen of this article.
§29-3-15. Service of repair or demolition order.

1 The written order of the state fire marshal made pursuant to section fourteen of this article shall be served by delivering a true copy thereof to such owner, or, if the owner is absent from the state or his whereabouts be unknown to the state fire marshal, by mailing a true copy thereof by certified mail to the said owner's last known post-office address, or if no such address be known, then by certified mail to said owner in care of general delivery at the post office serving the community in which said premises lie; the delivering or mailing of such order to be accomplished within five days from the date of the issuance of such order. And in the event it is necessary to mail a copy of such order as aforesaid, the officer mailing the same shall also, within five days from the date of issuance of such order, post a true copy thereof in a conspicuous place on the door or other prominent entrance to said premises.

§29-3-16. Work to be done at expense of owner or occupant upon failure to comply with repair or demolition order; action to recover.

1 In the event any owner of any building or premises served with a copy of an order as provided in sections fourteen and fifteen of this article shall fail substantially to comply with such order within thirty days from the date of issuance thereof, or within thirty days after any appeal from such order has been affirmed by the state fire commission or by the court, the state fire marshal may enter into and upon the premises affected by such order and cause the building, structure or premises to be repaired, torn down, materials removed and all dangerous conditions to be remedied, as the case may be, at the expense of the owner and with any administrative charges as established by the commission also being borne by the owner, and if such person shall fail or neglect to repay the state fire marshal the expense and administrative charge thereby incurred by him, within thirty days after written demand shall have been delivered or mailed to the said owner as provided in section fifteen of this article, the state fire marshal is
hereby authorized to bring an action in the name of
the state to recover such expenses, with interest, and
any administrative charge as established by the commis-
sion, in any court of competent jurisdiction.

§29-3-17. Additional remedies to abate, etc., fire hazards.

In case any building, structure or equipment is or is
proposed to be erected, constructed, reconstructed, al-
tered, maintained or used, or any land is or is proposed
to be used in such a way to endanger life or property
from the hazards of fire or explosion or in violation of
this article or of any regulation or provision of any regu-
lation, or change thereof promulgated by the state fire
commission under the authority granted by this article,
the state fire commission, the state fire marshal or the
attorney general may, in addition to other remedies
provided by law, institute injunction, mandamus, abate-
ment or any other appropriate action or actions, pro-
ceedings to prevent, enjoin, abate, or remove such un-
lawful erection, construction, reconstruction, alteration,
maintenance or use.

§29-3-18. Appellate procedure generally.

(a) Appeals to the state fire commission may be taken
by any person aggrieved by an order or decision of the
state fire marshal based upon or made in the course of
the administration or enforcement of the provisions of
this article. Appeals to the state fire commission may
be taken by any officer, department, board or agency
of the state and political subdivisions thereof adversely
affected by an order or decision of the state fire marshal
in the course of the administration or enforcement of
the provisions of this article.

(b) The time within which such appeal must be
made, and the effect, form or other procedure relating
thereto, including the appointment and function of a
hearing examiner, shall be as specified in regulations
promulgated by the state fire commission in accordance
with provisions of the administrative procedure act,
chapter twenty-nine-a of this code.

(c) Any party aggrieved by a final decision of the
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state fire commission is entitled to judicial review as provided in the administrative procedure act, chapter twenty-nine-a of this code. The state fire marshal is hereby determined to be a party aggrieved as to any decision of the state fire commission reversing or altering the prior order of the state fire marshal and the state fire marshal shall be a necessary party to any judicial review involving a state fire marshal order.

§29-3-19. Establishment of demonstration buildings and equipment for educational instruction in fire prevention and protection; payment therefor.

The state fire marshal is authorized to establish for educational purposes in public and private schools and state educational institutions demonstration buildings and equipment for fire prevention and protection, and such expenditures therefor shall be made from the funds appropriated therefor to the office of the state fire marshal.

§29-3-20. Allowance for reporting fires; when allowance not granted.

There shall be paid to the fire department making the report the sum of ten dollars for each fire reported to, and in compliance with regulations of, the state fire marshal.

All chiefs of fire departments who receive a stated salary or are paid a stated sum for each fire fought, and mayors of municipalities who receive a stated salary exceeding twenty dollars per year, shall be precluded from receiving any extra allowance for the reports mentioned in this section.

§29-3-21. False alarm of fire; penalties.

No person shall make, turn in or telephone, or by use of any means or methods of communication aid or abet in the making or turning in of, any alarm of fire which he knows to be false at the time of making or turning in the alarm.

§29-3-22. Tax on insurance companies.

Every insurance company doing business in this state, except farmers' mutual fire insurance companies, shall pay
to the state insurance commissioner annually on or before
the first day of March, in addition to the taxes now re-
quired by law to be paid by such companies, one half
of one percent of the net direct premium receipts of
such companies on insurance against the hazard of
fire and on that portion of all other net direct premiums
reasonably applicable to insurance against the hazard
of fire which are included in other coverages, and received
by it for insurance on property or risks in this state
during the calendar year next preceding as shown by
their annual statement under oath to the insurance de-
partment. The money so received by the state insurance
commissioner shall be paid by him into the treasury and
credited to the state general revenue fund.

In the event of a controversy as to the proper deter-
mination of the premium base on which this tax is to be
computed, a hearing may be had by the state insurance
commissioner on the application of any interested person,
corporation or association, which hearing shall be held
after reasonable notice. Any party aggrieved by a final
decision of the state insurance commissioner is entitled to
judicial review as provided in the administrative proce-
dure act, chapter twenty-nine-a of this code.

§29-3-23. “Fireworks” defined; labels required.
The term “fireworks” means and includes any com-
bustible or explosive composition, or any substance or
combination of substances, or article prepared for the pur-
pose of producing a visible or an audible effect by com-
bustion, explosion, deflagration or detonation, and shall
include blank cartridges, toy pistols, toy cannons, toy
canes or toy guns in which explosives are used, the type
of unmanned balloons which require fire underneath to
propel the same, firecrackers, torpedoes, skyrockets, ro-
man candles, daygo bombs, sparklers or other fireworks
of like construction and any fireworks containing any
explosive or flammable compound, or any tablets or other
device containing any explosive substance, except that
the term “fireworks” shall not include model rockets and
model rocket engines, designed, sold and used for the
purpose of propelling recoverable aero models and shall
not include toy pistols, toy canes, toy guns or other devices in which paper or plastic caps manufactured in accordance with the United States department of transportation regulations for packing and shipping of toy paper or plastic caps are used and toy paper or plastic caps manufactured as provided therein, the sale and use of which shall be permitted at all times. Each package containing toy paper or plastic caps offered for retail sale shall be labeled to indicate the maximum explosive content per cap.

§29-3-24. Unlawful sale, possession or use of fireworks; permit for public display.

Except as hereinafter provided, no person, firm, corporation shall offer for sale, expose for sale, sell at retail, keep with intent to sell at retail, or use or explode any fireworks, provided that the state fire marshal may adopt reasonable rules and regulations for the granting of permits for supervised displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals. Such permits may be granted upon application to said state fire marshal and after approval of the local police and fire authorities of the community wherein the display is proposed to be held as provided herein and the filing of a bond by the applicant as provided hereinafter. Every such display shall be handled by a competent operator licensed or certificated as to competency by the state fire marshal and shall be of such composition, character, and so located, discharged or fired as in the opinion of the chief of the fire department, after proper inspection, and of the chief of police shall not be hazardous to property or endanger any person or persons. After such privilege shall have been granted, sales, possessions, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

The governing body or chief executive authority of the municipality shall require a bond from the licensee in a sum not less than one thousand dollars conditioned on compliance with the provisions of this article and the
§29-3-24. Regulations and bonds; permits.

19. Regulations of the state fire commission, provided no
20. municipality shall be required to file such bond.
21. Before any permit for a pyrotechnic display shall be
22. issued, the person, firm, or corporation making application
23. therefor shall furnish proof of financial responsibility to
24. satisfy claims for damages to property or personal injuries
25. arising out of any act or omission on the part of such
26. person, firm, or corporation or any agent or employee
27. thereof, in such amount, character, and form as the state
28. fire marshal determines to be necessary for the protection
29. of the public.

§29-3-25. Interstate sale and shipment; permitted uses.

1. No permit shall be issued under the provisions of this
2. article to a nonresident person, firm, or corporation for
3. conduct of a pyrotechnic display in this state until
4. such person, firm, or corporation shall have appointed
5. in writing a member of the bar of this state and re-
6. siding therein to be his attorney upon whom all process
7. in any action or proceeding against him may be served.
8. Nothing in this article shall be construed to prohibit
9. any resident wholesaler, dealer, or jobber to sell at
10. wholesale such fireworks as are not herein prohibited
11. or the sale of any kind of fireworks provided the same
12. are to be shipped directly out of state in accordance
13. with regulations of the United States Department of
14. transportation covering the transportation of explosives
15. and other dangerous articles by motor, rail, and water,
16. or the use of fireworks by railroads or other transporta-
17. tion agencies for signal purposes or illumination, or the
18. sale or use of blank cartridges for a show or theater,
19. or for signal or ceremonial purposes in athletics or
20. sports, or for use by military organizations, or the use
21. of fireworks for agricultural purposes under conditions
22. approved by the local authority.

§29-3-26. Seizures by fire marshal; enforcement of law.

1. The state fire marshal shall seize, take, remove and
2. destroy, or cause to be seized, taken or removed and
3. destroyed, at the expense of the owner, all stocks of
4. fireworks or combustibles offered or exposed for sale,
stored or held in violation of this article. It shall be
the duty of the department of public safety, sheriffs,
municipal policemen and other law-enforcement officers
to assist in the enforcement of this article.

§29-3-27. Penalties.

(a) Any person who violates any regulations pro-
mulgated by the state fire commission as provided in
section five of this article, shall be guilty of a misde-
meanor, and, upon conviction thereof, shall be fined not
more than one hundred dollars or imprisoned in the
county jail not more than ninety days, or both fined and
imprisoned.

Each and every day during which any illegal erection,
construction, reconstruction, alteration, maintenance or
use continues after knowledge or official notice that same
is illegal shall be deemed a separate offense.

(b) Any person who violates the provisions of sec-
tion twenty-one of this article shall be guilty of a mis-
demeanor, and, upon conviction thereof, shall be fined
for a first offense not more than one hundred dollars or
imprisoned in the county jail for not more than thirty
days, or both fined and imprisoned, and for a second
and each subsequent offense fined not less than one
hundred dollars nor more than five hundred dollars or
imprisoned in the county jail for not less than ninety
days nor more than one year, or both fined and impris-
oned.

(c) Any officer who shall fail to perform any duty
required of him by this article or who shall violate any
of its provisions shall be guilty of a misdemeanor, and,
upon conviction thereof, shall be fined not less than
twenty-five dollars nor more than fifty dollars for each
failure or violation.

(d) Any person who violates any other provision of
this article shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not more than one hun-
dred dollars, or imprisoned in the county jail not more
than ninety days, or both fined and imprisoned.
§29-3-28. Transfer of certain state employees; perpetuation of rules, regulations and orders.

(a) All employees, agents or officers of any state agency, department or commission, the functions of which are transferred to the state fire commission by the provisions of this article, and whose employment is covered and protected by the provisions of article six, chapter twenty-nine of this code and the rules and regulations promulgated by the civil service commission, and whose service is classified by such provisions, rules and regulations, shall continue in their employment in all respects and in the same classification, coverage and protection upon the transfer of such functions from the agency, department or commission by which they were employed to the state fire commission.

(b) All rules and regulations promulgated and all orders in effect and all proceedings pending on the effective date of this chapter, which were promulgated or effected or brought under any authority transferred to the state fire commission herein created and, as herein provided, shall remain in full effect unless otherwise provided in this article or until amended, revoked, suspended, modified, repealed or superseded, as the case may be.

§29-3-29. Construction.

Being in the interest of public safety, the provisions of this article shall be liberally construed.

§29-3-30. Severability.

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or invalid, such invalidation shall not affect the validity of the remaining portions of this article, and, to this end, the provisions of this article are hereby declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 1976.

Clerk of the Senate

President of the Senate

Speaker House of Delegates

The within approved this the 31st day of

Governor
PRESENTED TO THE GOVERNOR

Date 3/25/76
Time 2:00 p.m.