

House Bill 110 (COMMITTEE SUBSTITUTE) (AM)

By: Representatives Roberts of the 155th, Turner of the 21st, McCall of the 33rd, Fleming of the 121st, and LaRiccia of the 169th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 10 of Title 25 of the Official Code of Georgia Annotated, relating to
2 regulation of fireworks, so as to provide for the sale of consumer fireworks; to provide for
3 definitions; to provide for licensing; to revise penalties; to provide for enforcement of said
4 chapter; to render certain devices unlawful that require a flame for propulsion or lighting; to
5 amend Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to
6 provisions applicable to counties and municipal corporations, so as to allow for local
7 governments to further regulate or prohibit the sale of consumer fireworks from a temporary
8 consumer fireworks retail sales stand; to amend Chapter 13 of Title 48 of the Official Code
9 of Georgia Annotated, relating to specific, business, and occupation taxes, so as to provide
10 for an excise tax on the sale of consumer fireworks; to provide for criminal penalties; to
11 provide for related matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 Chapter 10 of Title 25 of the Official Code of Georgia Annotated, relating to regulation of
15 fireworks, is amended by revising Code Section 25-10-1, relating to definitions, as follows:

16 "25-10-1.

17 (a) As used in this chapter, the term:

18 (1) 'Consumer fireworks' means any small fireworks devices containing restricted
19 amounts of pyrotechnic composition, designed primarily to produce visible or audible
20 effects by combustion, that comply with the construction, chemical composition, and
21 labeling regulations of the United States Consumer Product Safety Commission as
22 provided for in Parts 1500 and 1507 of Title 16 of the Code of Federal Regulations, the
23 United States Department of Transportation as provided for in Part 172 of Title 49 of the
24 Code of Federal Regulations, and the American Pyrotechnics Association as provided for
25 in the 2001 American Pyrotechnics Association Standard 87-1.

26 (2) 'Consumer fireworks retail sales facility' shall have the same meaning as provided for
 27 by NFPA 1124.

28 ~~(1)~~(3) 'Fireworks' means any combustible or explosive composition or any substance or
 29 combination of substances or article prepared for the purpose of producing a visible or
 30 audible effect by combustion, explosion, deflagration, or detonation, including blank
 31 cartridges, ~~balloons requiring fire underneath to propel them~~, firecrackers, torpedos,
 32 skyrockets, Roman candles, bombs, sparklers, and other combustibles and explosives of
 33 like construction, as well as articles containing any explosive or flammable compound
 34 and tablets and other devices containing an explosive substance.

35 (4) 'NFPA 1124' means the National Fire Protection Association Standard 1124, *Code*
 36 *for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and*
 37 *Pyrotechnic Articles, 2006 Edition.*

38 (5) 'Nonprofit group' means any entity exempt from taxation under Section 501(c)(3) of
 39 the Internal Revenue Code of 1986.

40 (6) 'Permanent building' shall have the same meaning as provided for by NFPA 1124.

41 ~~(2)~~(7) 'Proximate audience' means an audience closer to pyrotechnic devices than
 42 permitted by the National Fire Protection Association Standard 1123, *Code for Fireworks*
 43 *Display*, as adopted by the Safety Fire Commissioner.

44 ~~(3)~~(8) 'Pyrotechnics' means fireworks.

45 (9) 'Store' shall have the same meaning as provided for by NFPA 1124.

46 (10) 'Consumer fireworks retail sales stand' shall have the same meaning as provided for
 47 by NFPA 1124.

48 (b) As used in this chapter, the term 'consumer fireworks' or 'fireworks' shall not include:

49 (1) Model rockets and model rocket engines designed, sold, and used for the purpose of
 50 propelling recoverable aero models, toy pistol paper caps in which the explosive content
 51 averages 0.25 grains or less of explosive mixture per paper cap or toy pistols, toy
 52 cannons, toy canes, toy guns, or other devices using such paper caps; nor shall the term
 53 'consumer fireworks' or 'fireworks' include ammunition consumed by weapons used for
 54 sporting and hunting purposes; and

55 (2) Wire or wood sparklers of 100 grams or less of mixture per item; other sparkling
 56 items which are nonexplosive and nonaerial and contain 75 grams or less of chemical
 57 compound per tube or a total of ~~200~~ 500 grams or less for multiple tubes; snake and glow
 58 worms; smoke devices; or trick noise makers which include paper streamers, party
 59 poppers, string poppers, snappers, and drop pops each consisting of 0.25 grains or less
 60 of explosive mixture."

SECTION 2.

61
62 Said chapter is further amended by revising Code Section 25-10-2, relating to prohibited
63 fireworks activities, as follows:

64 "25-10-2.

65 (a) It shall be unlawful for any person, firm, corporation, association, or partnership to
66 offer for sale at retail or wholesale, to use or explode or cause to be exploded, or to possess,
67 manufacture, transport, or store any consumer fireworks or fireworks, except as otherwise
68 provided in this chapter.

69 (b)(1) Notwithstanding any provision of this chapter to the contrary, it shall be unlawful
70 for any person, firm, corporation, association, or partnership to sell ~~to any person under~~
71 ~~18 years of age~~ consumer fireworks or any items defined in paragraph (2) of subsection
72 (b) of Code Section 25-10-1 to any person under 18 years of age.

73 (2) It shall be unlawful to sell consumer fireworks or any items defined in paragraph (2)
74 of subsection (b) of Code Section 25-10-1 to any person by any means other than an
75 in-person, face-to-face sale. Such person shall provide proper identification to the seller
76 at the time of such purchase. For purposes of this paragraph, the term 'proper
77 identification' means any document issued by a governmental agency containing a
78 description of the person; or such person's photograph, or both, and giving such person's
79 date of birth and includes without being limited to; a passport, military identification card,
80 driver's license, or ~~an~~ identification card authorized under Code Sections 40-5-100
81 through 40-5-104.

82 (3) It shall be unlawful to use consumer fireworks or any items defined in paragraph (2)
83 of subsection (b) of Code Section 25-10-1 indoors.

84 (4)(A) It shall be lawful for any person 18 years of age or older to use or explode or
85 cause to be exploded or to possess, manufacture, transport, or store consumer fireworks.

86 (B) It shall be lawful for any person who is 16 or 17 years of age to possess consumer
87 fireworks, provided that such person is serving as an assistant to a licensee licensed
88 under subsection (e) of Code Section 25-10-5.1 or the nonprofit group of which such
89 licensee is acting as an agent or bona fide representative.

90 (5)(A) It shall be lawful for any person 18 years of age or older to sell or to offer for
91 sale at retail or wholesale any consumer fireworks, provided that such person first
92 obtains a license from the Safety Fire Commissioner as provided for in Code Section
93 25-10-5.1.

94 (B) It shall be lawful for any person who is 16 or 17 years of age to sell or to offer for
95 sale at retail or wholesale any consumer fireworks, provided that such person is serving
96 as an assistant to a licensee licensed under subsection (e) of Code Section 25-10-5.1 or

97 the nonprofit group of which such licensee is acting as an agent or bona fide
 98 representative.

99 (6) It shall be lawful to sell consumer fireworks from a permanent building, store, or
 100 temporary consumer fireworks retail sales stand if such permanent building, store, or
 101 temporary consumer fireworks retail sales stand is in compliance with the requirements
 102 for such a permanent building, store, or temporary consumer fireworks retail sales stand
 103 in the selling of consumer fireworks as provided for in NFPA 1124. It shall be unlawful
 104 to sell consumer fireworks from any tent, canopy, membrane structure, or motor vehicle
 105 or from a trailer towed by a motor vehicle.

106 (7)(A) It shall be unlawful for any person to offer for sale any consumer fireworks
 107 from a temporary consumer fireworks retail sales stand unless such person in so doing
 108 is acting as an agent or bona fide representative of a nonprofit group or as an assistant
 109 to such agent or bona fide representative.

110 (B) It shall be unlawful for a nonprofit group or any agent or bona fide representative
 111 of a nonprofit group to lend the name of the nonprofit group or allow the identity of the
 112 nonprofit group to be used in the operation or advertising of a temporary consumer
 113 fireworks retail sales stand for which such nonprofit group is not directly participating
 114 in operating.

115 (C) It shall be unlawful for any person other than a nonprofit group to benefit
 116 financially from the sales of consumer fireworks in a temporary consumer fireworks
 117 retail sales stand. No profits, revenues, or other financial benefits shall accrue to any
 118 person other than a nonprofit group from the sales of consumer fireworks in any
 119 temporary consumer fireworks retail sales stand."

120 **SECTION 3.**

121 Said chapter is further amended by adding a new Code section to read as follows:

122 "25-10-5.1.

123 (a) The Safety Fire Commissioner shall only issue a license to sell consumer fireworks to
 124 an applicant who:

125 (1) Complies with all the requirements of this chapter;

126 (2) Has not been convicted of a violation of a felony involving consumer fireworks,
 127 fireworks, or explosives or has not been assessed a civil penalty pursuant to Code Section
 128 48-13-132 within the five years preceding the date of his or her application; and

129 (3) Maintains at all times public liability and product liability insurance with minimum
 130 coverage limits of \$2 million to cover the losses, damages, or injuries that might ensue
 131 to persons or property as a result of the licensee selling consumer fireworks.

132 (b) The initial license fee for any person offering consumer fireworks for sale on behalf
133 of himself or herself or a firm, corporation, association, or partnership from a permanent
134 consumer fireworks retail sales facility shall be \$5,000.00 per year and location, payable
135 to the Safety Fire Commissioner. Such initial license shall accrue to the benefit of the
136 person offering consumer fireworks for sale at the permanent consumer fireworks retail
137 sales facility location provided for by the license or, if on behalf of a firm, corporation,
138 association, or partnership, to the benefit of such firm, corporation, association, or
139 partnership at the permanent consumer fireworks retail sales facility location provided for
140 by the license. Such initial license shall expire on January 31 of the year after such initial
141 license was issued. After such initial license, such person on behalf of himself or herself
142 or the firm, corporation, association, or partnership on whose behalf the initial license was
143 issued, or another person on behalf of such firm, corporation, association, or partnership,
144 may annually renew such initial license for \$1,000.00 per year, payable to the Safety Fire
145 Commissioner. Such annual license shall expire on January 31 of each year.

146 (c) The license fee for a person offering consumer fireworks for sale from a temporary
147 consumer fireworks retail sales stand as an agent or bona fide representative of a nonprofit
148 group shall be \$200.00 per location, payable to the Safety Fire Commissioner, and shall
149 expire 90 days after the issuance of such license. Such license shall accrue to the benefit
150 of such nonprofit group offering consumer fireworks for sale at the temporary consumer
151 fireworks retail sales stand location provided for by the license. The Safety Fire
152 Commissioner shall issue no more than two licenses per county per calendar year for the
153 sale of consumer fireworks from a temporary consumer fireworks retail sales stand. No
154 license for the sale of consumer fireworks from a temporary consumer fireworks retail sales
155 stand shall be issued for a location if such location is within a county or municipal
156 corporation that has prohibited sales from temporary consumer fireworks retail sales stands
157 pursuant to Code Section 36-60-24.

158 (d) The annual license fee for any person offering consumer fireworks for sale on behalf
159 of himself or herself or a firm, corporation, association, or partnership from a store shall
160 be \$100.00 per year and location, payable to the Safety Fire Commissioner. Such annual
161 license shall accrue to the benefit of the person offering consumer fireworks for sale at the
162 store location provided for by the license or, if on behalf of a firm, corporation, association,
163 or partnership, to the benefit of such firm, corporation, association, or partnership at the
164 store location provided for by the license. Such annual license shall expire on January 31
165 of each year.

166 (e) Any person issued a license under this Code section, whether on behalf of himself or
167 herself or a firm, corporation, association, or partnership, may have assistants under his or

168 her control conducting the sale of consumer fireworks, provided that such assistants are 16
 169 years of age or older as provided for in Code Section 25-10-2."

170 **SECTION 4.**

171 Said chapter is further amended by revising Code Section 25-10-6, relating to fireworks
 172 manufactured, sold, or stored in violation of this chapter declared contraband and seizure and
 173 disposition, as follows:

174 "25-10-6.

175 The state fire marshal shall enforce the provisions of this chapter. All fireworks
 176 manufactured, offered for sale, exposed for sale, or stored in violation of this chapter are
 177 declared to be contraband and may be seized, taken, and removed, or caused to be removed
 178 and destroyed at the expense of the owner thereof by the state fire marshal, ~~the Georgia~~
 179 ~~State Patrol, or any sheriff or local police official."~~

180 **SECTION 5.**

181 Said chapter is further amended by revising Code Section 25-10-9, relating to penalty for
 182 illegal sale of sparklers or other devices, as follows:

183 "25-10-9.

184 Notwithstanding any provision of this chapter to the contrary, any person, firm,
 185 corporation, association, or partnership ~~who or which~~ that knowingly violates ~~subsection~~
 186 ~~(b) of Code Section 25-10-2~~ this chapter may be punished by a fine not to exceed \$100.00
 187 \$2,500.00. Each sales transaction in violation of ~~subsection (b) of Code Section 25-10-2~~
 188 this chapter shall be a separate offense."

189 **SECTION 6.**

190 Said chapter is further amended by adding a new Code section to read as follows:

191 "25-10-10.

192 It shall be unlawful for any person, firm, corporation, association, or partnership to release
 193 or cause to be released any balloon, bag, parachute, or other similar device which requires
 194 fire underneath for propulsion or to release or cause to be released any floating water
 195 lantern or wish lantern which uses a flame to create a lighting effect in any public
 196 waterway, lake, pond, stream, or river."

197 **SECTION 6A.**

198 Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to provisions
 199 applicable to counties and municipal corporations, is amended by adding a new subsection

200 and revising subsection (c) of Code Section 36-60-24, relating to the sale of products or
 201 services, as follows:

202 "(c) Notwithstanding subsections (a) and (b) of this Code section, the governing authority
 203 of a county or municipal corporation may further regulate or prohibit the sale of consumer
 204 fireworks from a temporary consumer fireworks retail sales stand. For purposes of this
 205 subsection, the terms 'consumer fireworks' and 'consumer fireworks retail sales stand' shall
 206 have the same meanings as provided in Code Section 25-10-1.

207 ~~(c)~~(d) Any ordinance enacted before, on, or after July 1, 2006, by a county or municipal
 208 corporation in violation of this Code section is void."

209 **SECTION 7.**

210 Chapter 13 of Title 48 of the Official Code of Georgia Annotated, relating to specific,
 211 business, and occupation taxes, is amended by adding a new article to read as follows:

212 "ARTICLE 7

213 48-13-130.

214 As used in this article, the term:

215 (1) 'Consumer fireworks' shall have the same meaning as provided for in Code Section
 216 25-10-1.

217 (2) 'Seller' means the person who is issued a license pursuant to Code Section 25-10-5.1.

218 48-13-131.

219 (a) An excise tax, in addition to all other taxes of every kind imposed by law, is imposed
 220 upon the sale of consumer fireworks and any items provided for in paragraph (2) of
 221 subsection (b) of Code Section 25-10-1 in this state at a rate of 5 percent per item sold.

222 (b) The excise tax imposed by this article shall be paid by the seller and due and payable
 223 in the same manner as would be otherwise required under Article 1 of Chapter 8 of this
 224 title.

225 48-13-132.

226 A seller who knowingly and willfully violates the requirements of this article shall be
 227 assessed a civil penalty of not more than \$10,000.00 in addition to the amount of tax due.

228 48-13-133.

229 The department is authorized to adopt rules and regulations necessary for the enforcement
 230 and implementation of the provisions of this Code section."

231

SECTION 8.

232 All laws and parts of laws in conflict with this Act are repealed.