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SENATE BILL DRS15169-MHxf-86B (03/14)

Short Title: NC Consumer Fireworks Safety Act.

(Public)

Sponsors: Senators Brock and Gunn (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PERMIT THE SALE, POSSESSION, AND DISCHARGE OF CERTAIN
3 CONSUMER FIREWORKS AND TO LEVY AN EXCISE TAX ON THE SALES OF
4 CONSUMER FIREWORKS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 14-410 reads as rewritten:

7 "§ 14-410. **Manufacture, sale and use of pyrotechnics prohibited; exceptions; license**
8 **required; sale to persons under the age of 16-18 prohibited.**

9 (a) Except as otherwise provided in this section, it shall be unlawful for any individual,
10 firm, partnership or corporation to manufacture, purchase, sell, deal in, transport, possess,
11 receive, advertise, use, handle, exhibit, or discharge any pyrotechnics of any description
12 whatsoever within the State of North Carolina.

13 (a1) It shall be permissible for pyrotechnics to be exhibited, used, handled,
14 manufactured, or discharged within the State, provided all of the following apply:

15 (1) The exhibition, use, or discharge is at a concert or public exhibition.

16 (2) All individuals who exhibit, use, handle, or discharge pyrotechnics in
17 connection with a concert or public exhibition have completed the training
18 and licensing required under Article 82A of Chapter 58 of the General
19 Statutes. The display operator or proximate audience display operator, as
20 required under Article 82A of Chapter 58 of the General Statutes, must be
21 present at the concert or public exhibition and must personally direct all
22 aspects of exhibiting, using, handling, or discharging the pyrotechnics.
23 Notwithstanding this subdivision, the display operator for the University of
24 North Carolina School of the Arts may appoint an on-site representative to
25 supervise any performances that include a proximate audience display
26 subsequent to the opening performance, provided that the representative (i)
27 is a minimum of 21 years of age and (ii) is properly trained in the safe
28 discharge of proximate audience displays.

29 (3) The display operator has secured written authority under G.S. 14-413 from
30 the board of county commissioners of the county, or the city if authorized
31 under G.S. 14-413(a1), in which the pyrotechnics are to be exhibited, used or
32 discharged. Written authority from the board of commissioners or city is not
33 required under this subdivision for a concert or public exhibition provided
34 the display operator has secured written authority from (i) The University of
35 North Carolina or the University of North Carolina at Chapel Hill under
36 G.S. 14-413, and pyrotechnics are exhibited on lands or buildings in Orange



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1 County owned by The University of North Carolina or the University of
2 North Carolina at Chapel Hill or (ii) the University of North Carolina School
3 of the Arts and pyrotechnics are exhibited on lands or in buildings owned by
4 the State and used by the University of North Carolina School of the Arts.

5 (a2) Notwithstanding any provision of this section, it shall not be unlawful for a common
6 carrier to receive, transport, and deliver pyrotechnics in the regular course of its business.

7 (a3) The requirements of this section apply to G.S. 14-413(b) and G.S. 14-413(c).

8 (a4) It shall be permissible for pyrotechnics to be exhibited, used, handled,
9 manufactured, or discharged within the State as a special effect by a production company, as
10 defined in G.S. 105-164.3(30), for a motion picture production, if the motion picture set is
11 closed to the public or is separated from the public by a minimum distance of 500 feet.

12 (a5) It shall be permissible for pyrotechnics to be exhibited, used, handled,
13 manufactured, or discharged within the State for pyrotechnic or proximate audience display
14 instruction consisting of classroom and practical skills training approved by the Office of State
15 Fire Marshal.

16 (a6) It shall be permissible for pyrotechnics that are consumer fireworks to be advertised,
17 sold, used, transported, handled, or discharged within the State, provided the advertising, sale,
18 use, transportation, handling, or discharge comply with Part 2 of Article 82A of Chapter 58 of
19 the General Statutes.

20 (b) Notwithstanding the provisions of G.S. 14-414, it shall be unlawful for any
21 individual, firm, partnership, or corporation to sell pyrotechnics as defined in G.S. 14-414(2),
22 (3), (4)c., (5), or (6) to persons under the age of ~~16~~18.

23 (c) The following definitions apply in this Article:

24 (1) Concert or public exhibition. – A fair, carnival, show of any description, or
25 public celebration.

26 (1a) Consumer fireworks. – Defined in G.S. 58-82A-80(1), unless otherwise
27 excluded by the Commissioner under the authority granted in
28 G.S. 58-82A-105.

29 (2) Display operator. – An individual issued a display operator license under
30 G.S. 58-82A-3.

31 (3) State Fire Marshal. – Defined in G.S. 58-80-1."

32 **SECTION 2.** G.S. 58-82A-1 through G.S. 58-82A-55 are recodified as Part 1 of
33 Article 82A of Chapter 58 of the General Statutes, to be entitled:

34 "Part 1.

35 "Display Pyrotechnics Training and Permitting."

36 **SECTION 3.** Article 82A of Chapter 58 of the General Statutes is amended by
37 adding a new Part to read:

38 "Part 2.

39 "Consumer Fireworks.

40 "**§ 58-82A-75. Purpose.**

41 The sale, use, handling, or discharge of consumer fireworks shall be permitted only in
42 compliance with the provisions of this Part.

43 "**§ 58-82A-80. Definitions.**

44 The following definitions apply in this Part:

45 (1) Consumer fireworks. – Any small fireworks device designed primarily to
46 produce visible effects by combustion or deflagration that (i) is categorized
47 as a 1.4G firework device under Standard 87-1 of the American Pyrotechnics
48 Association and (ii) complies with the construction, chemical composition,
49 and labeling regulations of the United States Consumer Product Safety
50 Commission, as set forth in the Code of Federal Regulations, volumes 16
51 and 49.

- 1 (2) Consumer fireworks distributor. – A person or corporation owning or
2 otherwise controlling a facility where consumer fireworks are stored or
3 otherwise maintained for distribution to fireworks retailers permitted under
4 this Part.
- 5 (3) Consumer fireworks permanent retailer. – An individual or corporation that
6 sells only consumer fireworks, ground and handheld sparkling devices and
7 novelties, and related items from a consumer fireworks retail establishment.
- 8 (4) Consumer fireworks retail establishment. – A freestanding retail facility
9 operated by a consumer fireworks permanent retailer.
- 10 (5) Fireworks retailer. – A consumer fireworks permanent retailer, sparkling
11 device temporary retailer, or an incidental sparkling device retailer permitted
12 under this Part.
- 13 (6) Fireworks safety and education trainer. – A person who has completed
14 training on the function, safe handling, and best practices for the safe use of
15 all categories of consumer fireworks and annually registers with the
16 Department. The Commissioner shall (i) create a training course or identify
17 existing training courses that meet the requirements of this subdivision and
18 (ii) create and maintain a listing of persons meeting the requirements of this
19 subdivision. The Department may issue rules to implement this subdivision,
20 including reasonable requirements for verification or certification that
21 persons have met the training requirements of this subdivision. The
22 Department may also charge a fee to cover the costs of implementing this
23 subdivision.
- 24 (7) Ground and handheld sparkling devices and novelties or sparkling devices. –
25 Consumer fireworks that do not rise into the air, do not fire inserts or
26 projectiles into the air, and do not explode or produce a report, as the
27 Commissioner, through the Office of the State Fire Marshall, may specify by
28 rule. The specification of sparkling devices under this subdivision shall
29 substantially follow the definition of these devices under Standard 87-1 of
30 the American Pyrotechnics Association, unless the Commissioner finds there
31 is a substantial threat to public safety that justifies a divergence from that
32 standard.
- 33 (8) Incidental sparkling device retailer. – An individual or corporation selling
34 only ground and handheld sparkling devices and novelties that is not a
35 consumer fireworks permanent retailer or a sparkling device temporary
36 retailer as defined by this section.
- 37 (9) NFPA standards. – Standard 1124 of the National Fire Protection
38 Association, 2006 edition, as it applies to the retail sale or distribution of
39 consumer fireworks, except as otherwise specified by this Part.
- 40 (10) Novelties. – Any wire or wooden stick sparklers, snaps, party poppers,
41 snakes and glow worms, and toy smoke devices containing five grams or
42 less of polytechnic composition.
- 43 (11) Permitting authority. – A county or city operating a consumer fireworks
44 sales permitting program approved by the Commissioner under
45 G.S. 58-82A-90.
- 46 (12) Public space. – Any building or area open to the public, whether privately or
47 publicly owned. Public space includes, but is not limited to, bars, restaurants,
48 theaters, stadiums, arenas, retail establishments, and shopping malls.
- 49 (13) Sparkling device retail stand. – A temporary or permanent building or
50 structure with a floor area not greater than 800 square feet, other than tents,
51 canopies, or membrane structures, that is used for the temporary retail

1 display and sale of ground and handheld sparkling devices and novelties to
2 the public. Stands may include, but are not limited to, buildings, temporary
3 structures constructed from plywood, sheet metal, or similar materials,
4 manufactured buildings, trailers, and shipping containers.

5 (14) Sparkling device temporary retailer. – An individual or corporation that sells
6 ground and handheld sparkling devices and novelties from a sparkling
7 device retail stand or a sparkling device tent.

8 (15) Sparkling device tent. – A tent, canopy, or membrane structure with a floor
9 area not greater than 1,500 square feet that is not permanently installed and
10 that is used for the temporary retail display and sale of ground and handheld
11 sparkling devices and novelties to the public.

12 **"§ 58-82A-85. Possession and use of consumer fireworks.**

13 (a) General Allowance. – Except as provided in subsection (b) of this section, the
14 possession and use of consumer fireworks is allowed in the State, subject to the following
15 conditions:

16 (1) The person possessing or using the consumer fireworks must be at least 18
17 years old.

18 (2) The use of consumer fireworks may occur only between the hours of 10:00
19 A.M. and 10:00 P.M., with the following exceptions:

20 a. On July 4, use is permitted until 12:00 A.M.

21 b. On December 31 and the following January 1, use is permitted from
22 8:00 A.M. on December 31 until 12:30 A.M. on January 1.

23 (3) The discharge of consumer fireworks is prohibited in the following
24 locations:

25 a. In or on the premises of a public or private primary or secondary
26 school, unless the person has written permission from the school.

27 b. On the campus of a college or university, unless the person has
28 received written authorization from the college or university.

29 c. Within 1,500 feet of a hospital, veterinary hospital, licensed child
30 care center, fireworks retailer, fireworks distributor, gas station, or
31 bulk storage facility for petroleum products or other explosive or
32 flammable substances.

33 (4) The possession or discharge of consumer fireworks is prohibited in or on the
34 premises of any public park or public space, except as otherwise permitted
35 by the person, State agency, or unit of local government owning or otherwise
36 controlling the park, property, or space.

37 **"§ 58-82A-90. Sale of consumer fireworks; permit required.**

38 (a) Permit Requirement. – No person shall sell consumer fireworks or ground and
39 handheld sparkling devices and novelties in this State unless the person holds a permit issued
40 under this Part from a county or city authorized by the Commissioner to issue retail fireworks
41 and sparkling device permits. The Commissioner shall issue rules to implement this section,
42 including rules for the approval of local consumer fireworks sales and sparkling device sales
43 permitting programs funded and operated by counties or municipalities within their jurisdiction.
44 Nothing in this section is intended to require a county or city to issue consumer fireworks
45 permits or sparkling device permits. Permits for operation of a fireworks retailer or a sparkling
46 device retailer shall be posted in a location visible to members of the general public visiting the
47 retailer. The permitting authority shall issue a permit to a person who meets the following
48 conditions:

49 (1) Is 21 years of age or older.

50 (2) Complies with all of the requirements of this Part.

51 (3) Has not been convicted of a felony and has not received a pardon.

- 1 (4) Has not been convicted of an offense for a violation of State or federal law
2 or been found in violation of any municipal ordinance involving fireworks or
3 explosives within five years prior to the date of the application for the
4 permit.
- 5 (5) Maintains at all times public liability and product liability insurance with
6 minimum coverage limits of five million dollars (\$5,000,000) to cover
7 losses, damages, or injury that might occur as a result of the person selling
8 consumer fireworks.
- 9 (6) Submits the application for a permit no less than 120 days prior to the date
10 the applicant proposes to begin sales of consumer fireworks under this Part.
- 11 (7) Provides a lease or evidence of ownership of the site of the proposed
12 fireworks retailer for no less than the duration of the permit.
- 13 (b) No Transportation Exclusions. – No county or city may restrict or exclude the
14 transportation of consumer fireworks across or through the county or city. Nothing in this
15 subsection is intended to prevent reasonable transportation-related restrictions applicable to all
16 vehicles or a class of vehicles regardless of cargo, such as vehicle weight limits or truck route
17 restrictions in accordance with U.S. Department of Transportation regulations.
- 18 (c) Requirements for All Fireworks Retailers. – Any permit issued for a fireworks
19 retailer or consumer fireworks distributor shall contain, at a minimum, the following
20 conditions:
- 21 (1) Standards. – The permittee must comply with (i) NFPA standards and (ii)
22 applicable local zoning and land use rules.
- 23 (2) Employees. – All employees of the permittee engaged in the sale of
24 fireworks or sparkling devices must be at least 18 years of age.
- 25 (3) Fire suppression devices. – The permittee must maintain on the premises a
26 minimum of two portable fire extinguishers with a 2A rating. The fire
27 extinguishers shall be located in two different locations within the premises
28 of the retailer, and at least one of the extinguishers shall be of the
29 pressurized water type, subject to additional provisions in NFPA standards.
- 30 (4) Required signs. – The permittee shall post signs prohibiting smoking on the
31 premises and discharge of fireworks and sparkling devices within 1,500 feet
32 of the premises in a manner specified by the Commissioner.
- 33 (d) Consumer Fireworks Permanent Retailer. – In addition to the restrictions set forth in
34 subsection (a) of this section, a permit issued for a consumer fireworks permanent retailer shall
35 contain, at a minimum, the following conditions:
- 36 (1) Setbacks. – Areas within 20 feet of the retailer's premises shall be kept free
37 of dry vegetation and other combustible debris. The retailer may not be
38 located within 300 feet of the following:
- 39 a. Retail establishments dispensing flammable or combustible liquids,
40 flammable gas, or flammable liquefied gas.
- 41 b. Above-ground storage tanks storing flammable or combustible
42 liquids, flammable gas, or flammable liquefied gas.
- 43 c. Propane dispensing stations.
- 44 (2) Smoking prohibited. – Smoking shall not be permitted inside of the retailer's
45 premises, subject to the retailer's building location, layout, and restrictions.
- 46 (3) Egress requirements. – Means of egress, including, but not limited to, aisles,
47 doors, and exit discharge, shall be clear at all times when the retailer is open
48 to the public, and aisles must be at least 48 inches in width.
- 49 (4) Fire safety. – The retailer shall create and maintain a fire safety and
50 evacuation plan in a form specified and approved by the Commissioner.

1 (5) Training. – No less than two management or supervisory employees of each
2 permittee subject to this subsection shall be Fireworks Safety and Education
3 Trainers. Fireworks Safety and Education Trainers shall be responsible for
4 the annual training of all employees on the function, safe handling and best
5 practices regarding the safe use of all categories of consumer fireworks.
6 Such training shall be documented on forms approved by the Commissioner,
7 and be readily available at the request of the Commissioner.

8 (e) Incidental Sparkling Device and Sparkling Device Temporary Retailer. – A permit
9 issued to an incidental sparkling device retailer or a sparkling device temporary retailer shall
10 allow the sale of ground and handheld sparkling devices and novelties only, and shall require
11 compliance with NFPA standards applicable to sales of ground and handheld sparkling devices
12 and novelties.

13 (f) Nothing in this section is meant to override any fire code applicable to a structure
14 regulated by this Part. If the fire code imposes a more stringent requirement, the fire code
15 requirement will apply instead of the standards imposed by this section.

16 **"§ 58-82A-95. Permit fees.**

17 The permitting authority may charge an applicant for a permit under G.S. 58-82A-90 the
18 following annual fees:

- 19 (1) One hundred dollars (\$100.00) for a sparkling device temporary retailer or
20 an incidental sparkling device retailer permit.
21 (2) Five thousand dollars (\$5,000) for a consumer fireworks permanent retailer
22 permit.
23 (3) Five thousand dollars (\$5,000) for a consumer fireworks distributor permit.
24 (4) Twenty-five dollars (\$25.00) for the renewal of a sparkling device temporary
25 retailer or an incidental sparkling device retailer permit.
26 (5) Two thousand five hundred dollars (\$2,500) for the renewal of a consumer
27 fireworks permanent retailer permit or a consumer fireworks distributor
28 permit.

29 **"§ 58-82A-100. Power of Commissioner to exclude certain categories of pyrotechnics**
30 **from definition of consumer fireworks.**

31 The Commissioner, through the Office of State Fire Marshal and in consultation with the
32 State Fire and Rescue Commission, may by rule exclude certain types or categories of
33 pyrotechnics otherwise meeting the definition of "consumer fireworks" from the provisions of
34 this Part upon a finding that the type or category of pyrotechnic presents a significant and
35 widespread risk of death, serious bodily injury, or substantial damage to public or private
36 property. Exclusion of any type or category of pyrotechnics pursuant to this section must be
37 evidence-based.

38 **"§ 58-82A-105. Prohibition of consumer fireworks.**

39 During periods of declared hazardous forest fire conditions as referenced in G.S. 106-946,
40 the Commissioner in consultation with the North Carolina Forest Service is authorized to
41 prohibit all use of consumer fireworks otherwise permitted by this Part in all or part of the
42 State. The Commissioner shall issue a press release containing relevant details of the
43 prohibition to news media serving the area affected.

44 **"§ 58-82A-110. Civil and criminal penalties for violations.**

45 (a) G.S. 14-415 and G.S. 58-2-70 shall apply to any person violating any of the
46 provisions of this Part.

47 (b) The Commissioner, a State law enforcement officer, a municipal law enforcement
48 officer, a code enforcement officer, or a fire safety official may petition the district court to
49 seize or remove, at the expense of the permit holder, fireworks sold, offered for sale, stored,
50 possessed or used in violation of this Part.

1 (c) The Commissioner or a permitting authority may suspend or revoke the license
2 issued under this Part of a permittee found guilty of (i) selling fireworks or explosives not
3 defined in Chapter 3 of Standard 87-1 of the American Pyrotechnics Association or (ii) selling
4 fireworks without a valid permit issued under this Part. In addition to or instead of suspending
5 or revoking the permit, the Commissioner or permitting authority may order the payment of a
6 civil penalty as set forth in subsection (d) of this section.

7 (d) If the Commissioner or a local permitting authority orders the payment of a civil
8 penalty pursuant to subsection (c) of this section, the penalty shall not be less than one
9 thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000). In determining the
10 amount of the penalty, the Commissioner or local permitting authority shall consider the degree
11 and extent of harm caused by the violation, the amount of money that inured to the benefit of
12 the violator as a result of the violation, whether the violation was committed willfully, and the
13 prior record of the violator in complying or failing to comply with laws, rules, or orders
14 applicable to the violator. The clear proceeds of the penalty shall be remitted to the Civil
15 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Payment of the civil penalty
16 under this section shall be in addition to payment of any other penalty for a violation of the
17 criminal laws of this State.

18 **"§ 58-82A-115. Prohibited activities.**

19 (a) The permitting authority, by majority vote, may suspend the permit of a person
20 authorized to sell consumer fireworks or sparkling devices for engaging in any of the following
21 prohibited activities:

22 (1) Selling consumer fireworks or sparkling devices within the State without a
23 valid permit.

24 (2) Selling consumer fireworks or sparkling devices to a person who appears to
25 be under the influence of alcohol or drugs.

26 (3) Knowingly aiding or assisting in procuring, furnishing, giving, selling, or
27 delivering consumer fireworks or sparkling devices to a person under the age
28 of 18. It is an affirmative defense to any disciplinary action taken pursuant to
29 this subdivision that the permit holder procured, furnished, gave, sold, or
30 delivered consumer fireworks or sparkling devices to a person under the age
31 of 18 in reasonable reliance upon fraudulent proof of age presented to the
32 permit holder.

33 A person whose permit has been suspended under this section shall receive a hearing before
34 the applicable body within 10 days of the suspension. If the suspension is upheld, the person
35 may seek judicial review in superior court."

36 **SECTION 4.(a)** Article 6 of Chapter 153A of the General Statutes is amended by
37 adding a new section to read:

38 **"§ 153A-130.1 Use and sales of consumer fireworks.**

39 Notwithstanding G.S. 153A-128, a county may by ordinance regulate the use and sales of
40 consumer fireworks and sparkling devices to the public pursuant to Part 2 of Article 82A of
41 Chapter 58 of the General Statutes, provided that the ordinance shall not apply to a city located
42 within the county that has adopted an ordinance in accordance with G.S. 160A-190.1."

43 **SECTION 4.(b)** Article 8 of Chapter 160A of the General Statutes is amended by
44 adding a new section to read:

45 **"§ 160A-190.1 Use and sales of consumer fireworks.**

46 Notwithstanding G.S. 160A-183, a city may by ordinance regulate the use and sales of
47 consumer fireworks and sparkling devices to the public pursuant to Part 2 of Article 82A of
48 Chapter 58 of the General Statutes."

49 **SECTION 5.** Subchapter I of Chapter 105 of the General Statutes is amended by
50 adding a new Article to read:

51 "Article 2E.

"Tax on Consumer Fireworks."§ 105-113.125. Tax on consumer fireworks.

(a) Tax on Consumer Fireworks. – An excise tax is levied on consumer fireworks at the rate of five percent (5%) of the cost price of the products. A person who sells consumer fireworks at retail is subject to and liable for the tax imposed by this section.

(b) Definitions. – The following definitions apply in this Article:

(1) Consumer fireworks. – Defined in G.S. 58-82A-80.

(2) Cost price. – The price a person liable for the tax on consumer fireworks imposed by this Article paid for the products, before any discount, rebate, or allowance.

(c) Monthly Report. – The taxes levied by this Article are payable when a report is required to be filed. A report is due on a monthly basis. A monthly report covers sales and other activities occurring in a calendar month and is due within 20 days after the end of the month covered by the report. A report shall be filed on a form provided by the Secretary and shall contain the information required by the Secretary.

(d) Discount. – A person who is liable for the excise taxes imposed by this Article, who files a timely report under this section, and who sends a timely payment may deduct from the amount due with the report a discount of two percent (2%). This discount covers expenses incurred in preparing the records and reports required by this Article.

(e) Refund. – A person liable for the excise taxes imposed by this Article and in possession of unsalable consumer fireworks upon which the tax has been paid may return the consumer fireworks to the manufacturer and apply to the Secretary for refund of the tax. The application shall be in the form prescribed by the Secretary and shall be accompanied by a written certificate signed under penalty of perjury or an affidavit from the manufacturer listing the consumer fireworks returned to the manufacturer by the applicant. The Secretary shall refund the tax paid, less the discount allowed, on the listed products.

(f) Records. – Every person liable for the excise taxes imposed by this Article shall keep accurate records of the purchases, inventories, and sales of consumer fireworks. These records shall be open at all times for inspection by the Secretary or an authorized representative of the Secretary.

(g) Use. – The Secretary must credit the net proceeds of the tax collected under this Article to the General Fund."

SECTION 6. This act becomes effective July 1, 2017, and Section 5 applies to the cost price paid for fireworks on or after that date.