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SENATE BILL DRS35016-MHxf-15

Short Title: NC Consumer Fireworks Safety Act. (Public)

Sponsors: Senators Sawyer and Galey (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PERMIT THE SALE, POSSESSION, AND USE OF CERTAIN CONSUMER
3 FIREWORKS AND TO LEVY AN EXCISE TAX ON THE SALES OF CONSUMER
4 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, manufactured,
14 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) is
27 a minimum of 21 years of age and (ii) is properly trained in the safe discharge
28 of proximate audience displays.

29 (3) The display operator has secured written authority under G.S. 14-413 from the
30 board of county commissioners of the county, or the city if authorized under
31 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 the
34 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



1 County owned by The University of North Carolina or the University of North
2 Carolina at Chapel Hill or (ii) the University of North Carolina School of the
3 Arts and pyrotechnics are exhibited on lands or in buildings owned by the
4 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, manufactured,
9 or discharged within the State as a special effect by a production company, as defined in
10 G.S. 105-164.3(30), for a motion picture production, if the motion picture set is closed to the
11 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, manufactured,
13 or discharged within the State for pyrotechnic or proximate audience display instruction
14 consisting of classroom and practical skills training approved by the Office of State Fire Marshal.

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

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

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

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

30 **SECTION 2.** G.S. 14-415 reads as rewritten:

31 **"§ 14-415. Violation made misdemeanor.**

32 Any person violating any of the provisions of this Article, except as otherwise specified in
33 said Article, shall be guilty of a Class 2 misdemeanor, except that it is a Class 1 misdemeanor if
34 the sale is in violation of G.S. 14-410(b) or if the exhibition is indoors."

35 **SECTION 3.** G.S. 58-82A-1 through G.S. 58-82A-55 are recodified as Part 1 of
36 Article 82A of Chapter 58 of the General Statutes, to be entitled:

37 "Part 1. Display Pyrotechnics Training and Permitting."

38 **SECTION 4.** Article 82A of Chapter 58 of the General Statutes is amended by
39 adding a new Part to read:

40 "Part 2. Consumer Fireworks.

41 **"§ 58-82A-75. Purpose.**

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

44 **"§ 58-82A-80. Definitions.**

45 The following definitions apply in this Part:

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

- 1 Commission, as set forth in the Code of Federal Regulations, volumes 16 and
2 49.
- 3 (2) Consumer fireworks distributor. – A person owning or otherwise controlling
4 a facility where consumer fireworks are stored or otherwise maintained for
5 distribution to fireworks retailers permitted under this Part.
- 6 (3) Consumer fireworks permanent retailer. – A person that sells only "consumer
7 fireworks," "sparkling devices," "novelties," and related items from a
8 consumer fireworks retail establishment.
- 9 (4) Consumer fireworks retail establishment. – A structure that is designed,
10 planned, and constructed to remain in one location that is operated by a
11 consumer fireworks permanent retailer as a retail facility.
- 12 (5) Consumer fireworks temporary retailer. – A person that sells only "consumer
13 fireworks," "sparkling devices," "novelties," and related items from a
14 fireworks retail stand or a fireworks tent.
- 15 (6) Fireworks retail stand. – A building or structure with a floor area not greater
16 than 800 square feet, other than a fireworks tent. Stands may include
17 buildings, manufactured buildings, trailers, shipping containers, and
18 temporary structures constructed from plywood, sheet metal, or similar
19 materials.
- 20 (7) Fireworks retailer. – A consumer fireworks permanent retailer, consumer
21 fireworks temporary retailer, or an incidental sparkling device retailer
22 permitted under this Part.
- 23 (8) Fireworks safety and education trainer. – A person who has completed
24 training on the function, safe handling, and best practices for the safe use of
25 all categories of consumer fireworks under G.S. 58-82A-130 and annually
26 registers with the Department.
- 27 (9) Fireworks tent. – A tent, canopy, or membrane structure with a floor area not
28 greater than 1,500 square feet that is not permanently installed.
- 29 (10) Incidental sparkling device retailer. – A person selling only sparkling devices
30 and novelties that is not a consumer fireworks permanent retailer or consumer
31 fireworks temporary retailer as defined by this section.
- 32 (11) NFPA standards. – Standard 1124 of the National Fire Protection Association,
33 2017 edition, as it applies to the retail sale or distribution of consumer
34 fireworks, except as otherwise specified by this Part.
- 35 (12) Novelties. – Snaps, party poppers, snakes, glow worms, toy smoke devices,
36 and certain wire sparklers and dipped sticks containing 5 grams or less of
37 pyrotechnic composition. The specification of novelties under this subdivision
38 shall substantially follow the definition of these devices under Standard 87-1
39 of the American Pyrotechnics Association.
- 40 (13) Public space. – Any building or area open to the public, whether privately or
41 publicly owned. Public space includes restaurants, theaters, stadiums, arenas,
42 retail establishments, and shopping malls.
- 43 (14) Sparkling devices. – Consumer fireworks and novelties that do not rise into
44 the air, do not fire inserts or projectiles into the air, and do not explode or
45 produce a report. The specification of sparkling devices under this subdivision
46 shall substantially follow the definition of "ground and handheld sparkling
47 devices" under Standard 87-1 of the American Pyrotechnics Association.

48 **"§ 58-82A-85. Possession and use of consumer fireworks.**

- 49 (a) The possession of consumer fireworks is allowed in this State, subject to the following
50 requirements and conditions.

1 **(b)** The use and sale of consumer fireworks is prohibited within a county or city unless
2 that county or city has adopted an ordinance to allow the use and sale of consumer fireworks in
3 accordance with G.S. 153A-130.1 and G.S. 160A-190.1.

4 **(c)** The possession and use of consumer fireworks is subject to the following conditions:

5 **(1)** The person possessing or using the consumer fireworks must be at least 18
6 years old.

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

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

10 **b.** On December 31 and the following January 1, use is permitted from
11 8:00 A.M. on December 31 until 12:30 A.M. on January 1.

12 **(3)** The use of consumer fireworks is prohibited in the following locations:

13 **a.** In or on the premises of a public or private primary or secondary
14 school, unless the person has written authorization from the school.

15 **b.** On the campus of a college or university, unless the person has
16 received written authorization from the college or university.

17 **c.** Within 1,500 feet of a hospital, veterinary hospital, animal care
18 facility, licensed child care facility, fireworks retailer, fireworks
19 distributor, gas station, or bulk storage facility for petroleum products
20 or other explosive or flammable substances.

21 **(4)** The possession or use of consumer fireworks is prohibited in or on the
22 premises of any public park or public space, except as otherwise permitted by
23 the person, State agency, or unit of local government owning or otherwise
24 controlling the public park, property, or public space.

25 **(d)** No county or city may restrict or exclude the transportation of consumer fireworks
26 across or through the county or city. Nothing in this subsection is intended to prevent reasonable
27 transportation-related restrictions applicable to all vehicles or a class of vehicles regardless of
28 cargo, such as vehicle weight limits or truck route restrictions in accordance with U.S.
29 Department of Transportation regulations.

30 **"§ 58-82A-90. Sale of consumer fireworks; permit required.**

31 **(a)** No person shall sell consumer fireworks, sparkling devices, or novelties in this State
32 unless the person holds a permit issued under this Part from the Commissioner. The
33 Commissioner shall issue rules to implement this section. Permits of a fireworks retailer shall be
34 posted in a location visible to members of the public visiting the retailer. The Commissioner shall
35 issue a permit to a person who meets the following conditions:

36 **(1)** Is 21 years of age or older.

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

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

39 **(4)** Has not been convicted of an offense for a violation of State or federal law, or
40 been found in violation of any municipal ordinance, involving fireworks or
41 explosives within five years prior to the date of the application for the permit.

42 **(5)** Maintains at all times public liability and product liability insurance with
43 minimum coverage limits of five million dollars (\$5,000,000) to cover losses,
44 damages, or injury that might occur as a result of the person selling consumer
45 fireworks. The Commissioner, by rule, may increase the amount of liability
46 insurance required to be maintained by a fireworks retailer. In determining
47 whether to increase the amount of required liability insurance, the
48 Commissioner shall consider the maximum amount of inventory the fireworks
49 retailer will have on hand at a given time, any property located within 1,000
50 feet of the property wherein the fireworks will be stored or sold, and any other
51 factors the Commissioner deems important.

- 1 (6) Submits the application for a permit no less than 120 days prior to the date the
2 applicant proposes to begin sales of consumer fireworks under this Part.
- 3 (7) Provides a lease or evidence of ownership of the site of the proposed fireworks
4 retailer for no less than the duration of the permit. A consumer fireworks
5 temporary retailer or incidental sparkling device retailer operating out of a
6 fireworks retail stand or fireworks tent located at a site not owned by the
7 retailer may comply with this subdivision by providing the required
8 authorization under G.S. 58-82A-122.
- 9 (b) A person issued a permit under this Part shall comply with the following
10 requirements:
- 11 (1) Standards. – The permittee must comply with (i) NFPA standards and (ii)
12 applicable local zoning and land-use rules.
- 13 (2) Employees. – All employees of the permittee engaged in the sale of fireworks
14 or sparkling devices must be at least 18 years of age.
- 15 (3) Fire suppression devices. – The permittee must maintain on the premises a
16 minimum of two portable fire extinguishers with a 2A rating. The fire
17 extinguishers shall be in two different locations within the premises of the
18 retailer, and at least one of the extinguishers shall be of the pressurized water
19 type, subject to additional provisions in NFPA standards.
- 20 (4) Required signs. – The permittee shall post signs prohibiting smoking on the
21 premises and discharge of fireworks and sparkling devices within 1,500 feet
22 of the premises in a manner specified by the Commissioner.
- 23 (c) In addition to the requirements set forth in subsections (a) and (b) of this section, a
24 permit issued for a consumer fireworks permanent retailer or consumer fireworks temporary
25 retailer shall comply with the following requirements:
- 26 (1) Setbacks. – Areas within 20 feet of the retailer's premises shall be kept free of
27 dry vegetation and other combustible debris. The retailer may not be located
28 within 300 feet of the following:
- 29 a. Retail establishments dispensing flammable or combustible liquids,
30 flammable gas, or flammable liquefied gas.
- 31 b. Above-ground storage tanks storing flammable or combustible liquids,
32 flammable gas, or flammable liquefied gas.
- 33 c. Propane dispensing stations.
- 34 (2) Smoking prohibited. – Smoking shall not be permitted inside the retailer's
35 premises, subject to the retailer's building location, layout, and restrictions.
- 36 (3) Egress requirements. – Means of egress, including aisles, doors, and exit
37 discharge, shall be clear at all times when the retailer is open to the public,
38 and aisles must be at least 48 inches in width.
- 39 (4) Fire safety. – The retailer shall create and maintain a fire safety and evacuation
40 plan in a form specified and approved by the Commissioner.
- 41 (5) Training. – No less than two management or supervisory employees of each
42 permittee subject to this subsection shall be Fireworks Safety and Education
43 Trainers. Fireworks Safety and Education Trainers shall be responsible for the
44 annual training of all employees on the function, safe handling, and best
45 practices regarding the safe use of all categories of consumer fireworks. Such
46 training shall be documented on forms approved by the Commissioner and be
47 readily available at the request of the Commissioner.
- 48 (d) A permit issued to an incidental sparkling device retailer shall allow the sale of
49 sparkling devices and novelties only and shall require compliance with NFPA standards
50 applicable to sales of ground and handheld sparkling devices and novelties.

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

4 **"§ 58-82A-95. Permit fees.**

5 The Commissioner may charge an applicant for a permit under G.S. 58-82A-90 the following
6 annual fees:

- 7 (1) One hundred dollars (\$100.00) for an incidental sparkling device retailer
8 permit.
- 9 (2) Twenty-five dollars (\$25.00) for the renewal of an incidental sparkling device
10 retailer permit.
- 11 (3) Five thousand dollars (\$5,000) for a consumer fireworks permanent retailer
12 permit, a consumer fireworks temporary retailer permit, or a consumer
13 fireworks distributor permit.
- 14 (4) Two thousand five hundred dollars (\$2,500) for the renewal of a consumer
15 fireworks permanent retailer permit, a consumer fireworks temporary retailer
16 permit, or a consumer fireworks distributor permit.

17 **"§ 58-82A-100. Power of Commissioner to exclude certain categories of pyrotechnics from**
18 **definition of consumer fireworks.**

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

26 **"§ 58-82A-105. Prohibition of consumer fireworks.**

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

32 **"§ 58-82A-110. Civil and criminal penalties for violations.**

33 (a) Except as provided in this section, G.S. 14-415 and G.S. 58-2-70 shall apply to any
34 person violating any of the provisions of this Part.

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

39 (c) The Commissioner may order the payment of a civil penalty in addition to, or instead
40 of, suspending a permit, as set forth in G.S. 58-82A-115.

41 (d) Any person violating G.S. 58-82A-120 is guilty of a Class 1 misdemeanor.

42 **"§ 58-82A-115. Prohibited activities.**

43 (a) The Commissioner may suspend the permit of a person authorized to sell consumer
44 fireworks or sparkling devices, order the payment of a civil penalty, or both, for engaging in any
45 of the following prohibited activities:

- 46 (1) Selling fireworks or explosives not authorized under this Part.
- 47 (2) Selling consumer fireworks or sparkling devices within the State without a
48 valid permit.
- 49 (3) Selling consumer fireworks or sparkling devices to a person who appears to
50 be under the influence of alcohol or drugs.

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

8 (5) Selling consumer fireworks or sparkling devices at a fireworks retail stand or
9 fireworks tent in violation of G.S. 58-82A-120.

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

20 (c) A person whose permit has been suspended or has been issued a civil penalty under
21 this section shall receive a hearing before the Commissioner within 10 days of the decision. If
22 the decision is upheld, the person may seek judicial review in superior court.

23 **"§ 58-82A-120. Prohibition on certain retail stand and tent sales.**

24 Except as provided in G.S. 58-82A-122, it shall be unlawful to sell, transfer, or distribute
25 consumer fireworks, sparkling devices, or novelties at a fireworks retail stand or a fireworks tent.

26 **"§ 58-82A-122. Certain retail stand and tent sales permitted.**

27 In addition to the requirements provided in this Part, a person may only sell, transfer, or
28 distribute consumer fireworks, sparkling devices, or novelties at a fireworks retail stand or a
29 fireworks tent if the following conditions are met:

30 (1) If the fireworks retailer does not own the property wherein the fireworks retail
31 stand or fireworks tent is located, the owner or custodian of said property shall
32 provide written confirmation that the fireworks retailer is authorized to
33 conduct business on the premises.

34 (2) There is adequate parking to accommodate customers of the fireworks retailer
35 and, if applicable, any other businesses that are on the premises.

36 **"§ 58-82A-125. Labeling and safety requirements.**

37 (a) Any consumer fireworks, sparkling devices, or novelties authorized to be sold under
38 this Part shall have a safety label affixed to the packaging of the firework in accordance with 16
39 C.F.R. § 1500.14(b)(7) prior to being sold in this State.

40 (b) When selling fireworks in this State, a fireworks retailer shall provide a safety
41 pamphlet created by the Office of State Fire Marshal to the purchaser of the firework with each
42 purchase. The pamphlet shall outline safe handling and best practices for the safe use of a
43 firework.

44 **"§ 58-82A-130. Fireworks safety and education trainer.**

45 The Commissioner shall create a training course, or identify existing training courses, to train
46 individuals on the function, safe handling, and best practices for the safe use of all categories of
47 consumer fireworks. The Commissioner shall also create and maintain a listing of persons that
48 have completed a training course created or identified by the Commissioner under this section.
49 The Department may issue rules to implement this section, including reasonable requirements
50 for verification or certification that persons have met the training requirements of this section.
51 The Department may also charge a fee to cover the costs of implementing this section."

