

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10305-BAxf-8

Short Title: NC Consumer Fireworks Safety Act.

(Public)

Sponsors: Representative Szoka.

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 ...

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

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

21 (b) Notwithstanding the provisions of G.S. 14-414, it shall be unlawful for any
22 individual, firm, partnership, or corporation to sell consumer fireworks as defined in this section
23 or pyrotechnics as defined in G.S. 14-414(2), (3), (4)c., (5), or (6) to persons under the age of
24 16-18.

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

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

28 (1a) Consumer fireworks. – Defined in G.S. 58-82A-80.

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. 14-415 reads as rewritten:

33 "§ 14-415. **Violation made misdemeanor.**

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



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1 (12) Novelties. – Snaps, party poppers, snakes, glow worms, toy smoke devices,
2 and certain wire sparklers and dipped sticks containing 5 grams or less of
3 pyrotechnic composition. The specification of novelties under this subdivision
4 shall substantially follow the definition of these devices under Standard 87-1
5 of the American Pyrotechnics Association.

6 (13) Public space. – Any building or area open to the public, whether privately or
7 publicly owned. Public space includes restaurants, theaters, stadiums, arenas,
8 retail establishments, and shopping malls.

9 (14) Sparkling devices. – Consumer fireworks and novelties that do not rise into
10 the air, do not fire inserts or projectiles into the air, and do not explode or
11 produce a report. The specification of sparkling devices under this subdivision
12 shall substantially follow the definition of "ground and handheld sparkling
13 devices" under Standard 87-1 of the American Pyrotechnics Association.

14 **"§ 58-82A-85. Possession and use of consumer fireworks.**

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

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

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

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

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

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

26 b. On December 31 and the following January 1, use is permitted from
27 8:00 A.M. on December 31 until 12:30 A.M. on January 1.

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

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

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

33 c. Within 1,500 feet of a hospital, veterinary hospital, animal care
34 facility, licensed child care facility, fireworks retailer, fireworks
35 distributor, gas station, or bulk storage facility for petroleum products
36 or other explosive or flammable substances.

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

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

46 **"§ 58-82A-90. Sale of consumer fireworks; permit required.**

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

- 1 (1) Is 21 years of age or older.
- 2 (2) Complies with all the requirements of this Part.
- 3 (3) Has not been convicted of a felony and has not received a pardon.
- 4 (4) Has not been convicted of an offense for a violation of State or federal law, or
5 been found in violation of any municipal ordinance, involving fireworks or
6 explosives within five years prior to the date of the application for the permit.
- 7 (5) Maintains at all times public liability and product liability insurance with
8 minimum coverage limits of five million dollars (\$5,000,000) to cover losses,
9 damages, or injury that might occur as a result of the person selling consumer
10 fireworks. The Commissioner, by rule, may increase the amount of liability
11 insurance required to be maintained by a fireworks retailer. In determining
12 whether to increase the amount of required liability insurance, the
13 Commissioner shall consider the maximum amount of inventory the fireworks
14 retailer will have on hand at a given time, any property located within 1,000
15 feet of the property wherein the fireworks will be stored or sold, and any other
16 factors the Commissioner deems important.
- 17 (6) Submits the application for a permit no less than 120 days prior to the date the
18 applicant proposes to begin sales of consumer fireworks under this Part.
- 19 (7) Provides a lease or evidence of ownership of the site of the proposed fireworks
20 retailer for no less than the duration of the permit. A consumer fireworks
21 temporary retailer or incidental sparkling device retailer operating out of a
22 fireworks retail stand or fireworks tent located at a site not owned by the
23 retailer may comply with this subdivision by providing the required
24 authorization under G.S. 58-82A-122.
- 25 (b) A person issued a permit under this Part shall comply with the following
26 requirements:
- 27 (1) Standards. – The permittee must comply with (i) NFPA standards and (ii)
28 applicable local zoning and land-use rules.
- 29 (2) Employees. – All employees of the permittee engaged in the sale of fireworks
30 or sparkling devices must be at least 18 years of age.
- 31 (3) Fire suppression devices. – The permittee must maintain on the premises a
32 minimum of two portable fire extinguishers with a 2A rating. The fire
33 extinguishers shall be in two different locations within the premises of the
34 retailer, and at least one of the extinguishers shall be of the pressurized water
35 type, subject to additional provisions in NFPA standards.
- 36 (4) Required signs. – The permittee shall post signs prohibiting smoking on the
37 premises and discharge of fireworks and sparkling devices within 1,500 feet
38 of the premises in a manner specified by the Commissioner.
- 39 (c) In addition to the requirements set forth in subsections (a) and (b) of this section, a
40 permit issued for a consumer fireworks permanent retailer or consumer fireworks temporary
41 retailer shall comply with the following requirements:
- 42 (1) Setbacks. – Areas within 20 feet of the retailer's premises shall be kept free of
43 dry vegetation and other combustible debris. The retailer may not be located
44 within 300 feet of the following:
- 45 a. Retail establishments dispensing flammable or combustible liquids,
46 flammable gas, or flammable liquefied gas.
- 47 b. Above-ground storage tanks storing flammable or combustible liquids,
48 flammable gas, or flammable liquefied gas.
- 49 c. Propane dispensing stations.
- 50 (2) Smoking prohibited. – Smoking shall not be permitted inside the retailer's
51 premises, subject to the retailer's building location, layout, and restrictions.

1 (3) Egress requirements. – Means of egress, including aisles, doors, and exit
2 discharge, shall be clear at all times when the retailer is open to the public,
3 and aisles must be at least 48 inches in width.

4 (4) Fire safety. – The retailer shall create and maintain a fire safety and evacuation
5 plan in a form specified and approved by the Commissioner.

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

13 (d) A permit issued to an incidental sparkling device retailer shall allow the sale of
14 sparkling devices and novelties only and shall require compliance with NFPA standards
15 applicable to sales of ground and handheld sparkling devices and novelties.

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

19 **"§ 58-82A-95. Permit fees.**

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

22 (1) One hundred dollars (\$100.00) for an incidental sparkling device retailer
23 permit.

24 (2) Twenty-five dollars (\$25.00) for the renewal of an incidental sparkling device
25 retailer permit.

26 (3) Five thousand dollars (\$5,000) for a consumer fireworks permanent retailer
27 permit, a consumer fireworks temporary retailer permit, or a consumer
28 fireworks distributor permit.

29 (4) Two thousand five hundred dollars (\$2,500) for the renewal of a consumer
30 fireworks permanent retailer permit, a consumer fireworks temporary retailer
31 permit, or a consumer fireworks distributor permit.

32 **"§ 58-82A-100. Power of Commissioner to exclude certain categories of pyrotechnics from**
33 **definition of consumer fireworks.**

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

41 **"§ 58-82A-105. Prohibition of consumer fireworks.**

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

47 **"§ 58-82A-110. Civil and criminal penalties for violations.**

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

50 (b) The Commissioner, a State law enforcement officer, a municipal law enforcement
51 officer, a code enforcement officer, or a fire safety official may petition the district court to seize

1 or remove, at the expense of the permit holder, fireworks sold, offered for sale, stored, possessed,
2 or used in violation of this Part.

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

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

6 **"§ 58-82A-115. Prohibited activities.**

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

10 (1) Selling fireworks or explosives not authorized under this Part.

11 (2) Selling consumer fireworks or sparkling devices within the State without a
12 valid permit.

13 (3) Selling consumer fireworks or sparkling devices to a person who appears to
14 be under the influence of alcohol or drugs.

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

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

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

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

37 **"§ 58-82A-120. Prohibition on certain retail stand and tent sales.**

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

40 **"§ 58-82A-122. Certain retail stand and tent sales permitted.**

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

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

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

50 **"§ 58-82A-125. Labeling and safety requirements.**

1 **"§ 58-85B-2. Use of funds.**

2 The Office of State Fire Marshal may deduct and retain from the Firefighters' Education Fund
3 only amounts necessary for its administrative expenses. The remaining revenues credited to the
4 Firefighters' Education Fund shall be used to provide education and training to firefighters in
5 North Carolina. The term "firefighter" has the same meaning as G.S. 58-84-5."

6 **SECTION 8.** Section 6 becomes effective December 1, 2021, and applies to the cost
7 price paid for fireworks on or after that date. Section 5 is effective when this act becomes law.
8 The remainder of this act becomes effective December 1, 2021, and applies to offenses
9 committed on or after that date. Prosecutions for offenses committed before the effective date of
10 this act are not abated or affected by this act, and the statutes that would be applicable but for
11 this act remain applicable to those prosecutions.