

Senate Bill 229

By: Senators Mullis of the 53rd, Staton of the 18th, Harper of the 7th, Hufstetler of the 52nd, Murphy of the 27th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 16-7-80 of the Official Code of Georgia Annotated, relating to
2 definitions applicable to bombs, explosives, and chemical and biological weapons, and
3 Chapter 10 of Title 25 of the Official Code of Georgia Annotated, relating to the regulation
4 of fireworks, so as to authorize the possession and transportation of consumer fireworks and
5 to authorize the sale of consumer fireworks under certain circumstances as determined by the
6 local governing authority of municipalities and counties; to amend Title 48 of the Official
7 Code of Georgia Annotated, relating to revenue and taxation, so as to provide for an excise
8 tax on the sale of consumer fireworks to be dedicated equally to the Georgia Trauma Care
9 Network Commission and the Georgia Firefighter Standards and Training Council; to
10 provide for related matters; to provide for a contingent effective date and applicability; to
11 provide for automatic repeal under certain conditions; to repeal conflicting laws; and for
12 other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

15 Code Section 16-7-80 of the Official Code of Georgia Annotated, relating to definitions
16 applicable to bombs, explosives, and chemical and biological weapons, is amended by
17 revising paragraph (8) to read as follows:

18 "16-7-80.

19 (8) 'Explosive' means any chemical compound or other substance or mechanical system
20 intended for the purpose of producing an explosion capable of causing injury to persons
21 or damage to property or containing oxidizing and combustible units or other ingredients
22 in such proportions or quantities that ignition, fire, friction, concussion, percussion, or
23 detonator may produce an explosion capable of causing injury to persons or damage to
24 property, including but not limited to the substances designated in Code Section 16-7-81;
25 provided, however, that the term explosive shall not include ~~common fireworks~~ consumer
26 fireworks as defined by Code Section 25-10-1, model rockets and model rocket engines
27 designed, sold, and used for the purpose of propelling recoverable aero models, or toy

28 pistol paper caps in which the explosive content does not average more than 0.25 grains
 29 of explosive mixture per paper cap for toy pistols, toy cannons, toy canes, toy guns, or
 30 other devices using such paper caps unless such devices are used as a component of a
 31 destructive device."

32 SECTION 2.

33 Chapter 10 of Title 25 of the Official Code of Georgia Annotated, relating to regulation of
 34 fireworks, is amended by revising Code Section 25-10-1, relating to definitions, as follows:
 35 "25-10-1.

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

37 (1) 'Consumer fireworks' means fireworks that have been approved by the United States
 38 Consumer Product Safety Commission as being legally available for sale to and personal
 39 use by consumers.

40 ~~(1)~~(2) 'Fireworks' means any combustible or explosive composition or any substance or
 41 combination of substances or article prepared for the purpose of producing a visible or
 42 audible effect by combustion, explosion, deflagration, or detonation, including blank
 43 cartridges, balloons requiring fire underneath to propel them, firecrackers, torpedoes,
 44 skyrockets, Roman candles, bombs, sparklers, and other combustibles and explosives of
 45 like construction, as well as articles containing any explosive or flammable compound
 46 and tablets and other devices containing an explosive substance.

47 ~~(2)~~(3) 'Proximate audience' means an audience closer to pyrotechnic devices than
 48 permitted by the National Fire Protection Association Standard 1123, *Code for Fireworks*
 49 *Display*, as adopted by the Safety Fire Commissioner.

50 ~~(3)~~(4) 'Pyrotechnics' means fireworks.

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

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

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

63

SECTION 3.

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

66 "25-10-2.

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

70 (b)(1) Notwithstanding any provision of this chapter to the contrary, it shall be unlawful
71 for any person, firm, corporation, association, or partnership to sell to any person under
72 ~~18~~ 21 years of age any items defined in paragraph (2) of subsection (b) of Code Section
73 25-10-1 or any consumer fireworks.

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

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

85

SECTION 4.

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

87 "25-10-10.

88 (a) Any provision of law to the contrary notwithstanding, the governing authority of a
89 county, municipality, or consolidated government is authorized to adopt a local ordinance
90 authorizing the sale and use of consumer fireworks for areas within such governing
91 authority's respective jurisdictional boundaries as provided in this Code section. Such
92 respective governing authority may act at any time by a majority vote adopting an
93 ordinance or resolution, as appropriate for the governmental entity.

94 (b) Each such governing authority is further authorized to designate reasonable areas
95 within such jurisdictional area where consumer fireworks may be sold and to further
96 determine whether to permit the sale of consumer fireworks by seasonal retailers, to limit
97 the sale of consumer fireworks only to retailers at a permanent location, or to allow any
98 combination of such retailers. Notwithstanding such authority, if a retailer has been issued

99 a permit to sell consumer fireworks at a permanent location, the governing authority shall
100 not rescind the authorization to sell consumer fireworks.

101 (c) No permit shall be issued by the state fire marshal to a retailer until the state fire
102 marshal inspects and approves the location for such sales and storage of consumer
103 fireworks.

104 (d) Each jurisdiction that authorizes the sale of consumer fireworks shall forward the
105 ordinance or resolution authorizing such sale to the state fire marshal. Each such
106 jurisdiction shall, in the ordinance or resolution, create an application process, including
107 a reasonable application fee which shall not exceed actual administrative costs, and further
108 establish procedures for the issuance of the permit through the state fire marshal's office,
109 in accordance with rules established by the state fire marshal, following an inspection of
110 the location for the permit.

111 (e) The state fire marshal or his or her designee shall inspect the location for each permit
112 before a permit is issued to determine if the location meets the requirements of this chapter
113 and reasonable safety standards for the storage and sale of fireworks. Inspection shall not
114 be required for renewal of permits at the same location to be operated by the same owner,
115 unless substantial structural use changes have occurred at such location.

116 (f) If a governing authority authorizes the sale of consumer fireworks, then such governing
117 authority shall not prohibit the use of consumer fireworks within such jurisdiction.

118 (g) It shall be unlawful to ship into any municipality or county of this state for purposes
119 of sale at retail any consumer fireworks where such governing authority has not authorized
120 the sale of such fireworks within the jurisdiction.

121 (h) It shall be unlawful to sell consumer fireworks in any county or municipality where
122 such governing authority has not authorized the sale of such fireworks within the
123 jurisdiction.

124 (i) It shall be unlawful to sell at retail any consumer fireworks without a permit.

125 (j) The state fire marshal is authorized, in accordance with Chapter 13 of Title 50, the
126 'Georgia Administrative Procedure Act,' to revoke any permit or prohibit the sale by any
127 person where such person has violated any provisions of this chapter.

128 (k) Any violation of the provisions of this Code section shall be punishable as for a
129 misdemeanor.

130 (l) Any provision of law to the contrary notwithstanding, it shall be lawful to possess and
131 transport consumer fireworks within this state."

132 **SECTION 5.**

133 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
134 amended by adding a new chapter to read as follows:

"CHAPTER 18

135

136 48-18-1.137 As used in this chapter, the term:

138 (1) 'Consumer fireworks' means fireworks that have been approved by the United States
 139 Consumer Product Safety Commission as being legally available for sale to and personal
 140 use by consumers.

141 (2) 'Consumer fireworks distributor' means any person, whether located within or outside
 142 the borders of this state, other than a consumer fireworks dealer, who sells or distributes
 143 consumer fireworks within or into the boundaries of this state and who:

144 (A) Maintains a warehouse, warehouse personnel, and salespersons who regularly
 145 contact and call on consumer fireworks retailers; and

146 (B) Is engaged in the business of:

147 (i) Importing consumer fireworks into this state or purchasing consumer fireworks
 148 from other consumer fireworks manufacturers or consumer fireworks distributors; and

149 (ii) Selling the consumer fireworks to consumer fireworks retailers in this state for
 150 resale but is not in the business of selling the consumer fireworks directly to the
 151 ultimate consumer of the consumer fireworks.

152 (3) 'Consumer fireworks retailer' or 'retailer' means any person located within the borders
 153 of this state who conducts retail sales of consumer fireworks to consumers in this state.

154 (4) 'Sale' means any sale, transfer, exchange, theft, barter, gift, or offer for sale and
 155 distribution in any manner or by any means whatever.

156 48-18-2.

157 (a) An excise tax, in addition to all other taxes of every kind imposed by law, is imposed
 158 upon the sale of consumer fireworks in this state at a rate of 10 percent per item sold.

159 (b) The taxes imposed by this chapter are levied with respect to the purchase of consumer
 160 fireworks.

161 (c) The taxes imposed by this chapter shall be advanced and paid by the consumer
 162 fireworks distributor to the commissioner for deposit and distribution as provided in this
 163 Code section upon the first taxable transaction within the state, whether or not the
 164 transaction involves the ultimate purchaser or consumer. The consumer fireworks
 165 distributor shall collect the tax from the consumer fireworks retailer or consumer and the
 166 consumer fireworks retailer or consumer shall pay the tax to the consumer fireworks
 167 distributor. The consumer fireworks distributor shall be responsible for the collection of
 168 the tax and the payment of the tax to the commissioner. Whenever consumer fireworks are
 169 shipped from outside the state to anyone other than a distributor, the person receiving the

170 consumer fireworks shall be deemed to be a distributor and shall be responsible for the tax
171 on the consumer fireworks and the payment of the tax to the commissioner.
172 (d) The amount of taxes advanced and paid to the state as provided in this Code section
173 shall be added to and collected as a part of the sales price of the consumer fireworks sold
174 or distributed. The amount of the tax shall be stated separately from the price of the
175 consumer fireworks.
176 (e) The consumer fireworks tax imposed shall be collected only once upon the same
177 firework.
178 (f) All revenues collected pursuant to this Code section shall be paid to the Georgia
179 Trauma Care Network Commission and the Georgia Firefighter Standards and Training
180 Council in equal amounts. Such moneys shall be remitted equally by the commissioner to
181 the Georgia Trauma Care Network Commission and the Georgia Firefighter Standards and
182 Training Council twice annually not later than the first day of November and the first day
183 of June.
184 (g) The department is authorized to adopt rules and regulations necessary for the
185 enforcement and implementation of the provisions of this Code section."

186 **SECTION 6.**

187 This Act shall become effective on January 1, 2015, and shall apply to sales conducted on
188 or after such date only if there is ratified at the November, 2014, general election a
189 constitutional amendment authorizing the General Assembly to dedicate revenues for the
190 funding of trauma care and firefighter services in Georgia. If such an amendment to the
191 Constitution of Georgia is not so ratified, then this Act shall not become effective and shall
192 stand repealed by operation of law.

193 **SECTION 7.**

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