The Senate Committee on Public Safety offers the following substitute to HB 110/CSFA:

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 10 of Title 25 of the Official Code of Georgia Annotated, relating to regulation of fireworks, so as to provide for the sale of consumer fireworks; to provide for definitions; to provide for the use or explosion of consumer fireworks during certain times and dates and for exceptions; to provide for licensing; to revise penalties; to provide for enforcement of said chapter; to render certain devices unlawful that require a flame for propulsion or lighting; to amend Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to provisions applicable to counties and municipal corporations, so as to clarify local governments' role in regulating or prohibiting the sale and use of consumer fireworks; to amend Chapter 13 of Title 48 of the Official Code of Georgia Annotated, relating to specific, business, and occupation taxes, so as to provide for an excise tax on the sale of consumer fireworks; to provide for criminal penalties; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

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

(1) 'Consumer fireworks' means any small fireworks devices containing restricted amounts of pyrotechnic composition, designed primarily to produce visible or audible effects by combustion, that comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission as provided for in Parts 1500 and 1507 of Title 16 of the Code of Federal Regulations, the United States Department of Transportation as provided for in Part 172 of Title 49 of the Code of Federal Regulations, and the American Pyrotechnics Association as provided for in the 2001 American Pyrotechnics Association Standard 87-1.
(2) 'Consumer fireworks retail sales facility' shall have the same meaning as provided for by NFPA 1124.

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

(4) 'Distributor' means any person, firm, corporation, association, or partnership which sells at retail or wholesale any consumer fireworks.

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


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

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

(9) 'Proximate audience' means an audience closer to pyrotechnic devices than permitted by the National Fire Protection Association Standard 1123, Code for Fireworks Display, as adopted by the Safety Fire Commissioner.

(10) 'Pyrotechnics' means fireworks.

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

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

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

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

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

25-10-2.

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

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

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

(B) Except as provided for in subparagraph (D) of this paragraph and subject to paragraph (4) of this subsection, it shall be lawful for any person, firm, corporation, association, or partnership to use or explode or cause to be exploded any consumer fireworks on any day between the hours of 10:00 A.M. and 12:00 Midnight only; provided, however, that it shall be lawful for any person, firm, corporation, association, or partnership to use or explode or cause to be exploded any consumer fireworks on January 1, July 3, July 4, and December 31 of each year between the hours of 12:00 Midnight and 2:00 A.M.

(C) Subject to paragraph (4) of this subsection, it shall be lawful for any person, firm, corporation, association, or partnership to use or explode or cause to be exploded any consumer fireworks anywhere in this state except:

(i) As provided for under subparagraph (A) of this paragraph;
(ii) In any location where such person, firm, corporation, association, or partnership
is not lawfully present or is not otherwise lawfully permitted to use or explode or
cause to be exploded any consumer fireworks; or

(iii) Within 100 yards of a nuclear power facility or a facility engaged in the retail
sale of gasoline or the production, refining, processing, or blending of gasoline for
such retail purposes.

(D) Any person, firm, corporation, association, or partnership may use or explode or
cause to be exploded any consumer fireworks on any day at a time not provided for
under subparagraph (B) of this paragraph if such person, firm, corporation, association,
or partnership is issued a special use permit pursuant to the law of a governing authority
of a county or municipal corporation for the use or explosion of consumer fireworks in
a location within such county or municipality at a time not provided for under
subparagraph (B) of this paragraph. Such special use permit shall designate the time
or times and location that such person, firm, corporation, association, or partnership
may use or explode or cause to be exploded such consumer fireworks. A fee assessed
by a county or municipal corporation for the issuance of a special use permit pursuant
to this subparagraph shall not exceed $100.00. No governing authority or official of a
county, municipality, or other political subdivision shall bear liability for any decisions
made pursuant to this Code section.

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

(B) To the extent otherwise permitted by law, it shall be lawful for any person who is
16 or 17 years of age to possess or transport consumer fireworks, provided that such
person is serving as an assistant to a distributor licensed under subsection (c) of Code
Section 25-10-5.1 or the nonprofit group benefiting from such distributor's application
pursuant to subsection (c) of Code Section 25-10-5.1 and is not transporting such
consumer fireworks on a highway which constitutes a part of The Dwight D.
Eisenhower System of Interstate and Defense Highways.

(5)(A) It shall be lawful for any person 18 years of age or older to sell or to offer for
sale at retail or wholesale any consumer fireworks pursuant to the requirements of this
chapter.

(B) It shall be lawful for any person who is 16 or 17 years of age to sell or to offer for
sale at retail or wholesale any consumer fireworks, provided that such person is serving
as an assistant to a distributor licensed under subsection (c) of Code Section 25-10-5.1
or the nonprofit group benefiting from such distributor's application pursuant to
subsection (c) of Code Section 25-10-5.1.
(6)(A) It shall be lawful to sell consumer fireworks from a permanent building or store only if such permanent building or store is:

   (i) In compliance with the requirements for such a permanent building or store in the selling of consumer fireworks as provided for in NFPA 1124; and

   (ii) Selling consumer fireworks of a distributor licensed pursuant to subsection (b) or paragraph (1) of (d) of Code Section 25-10-5.1.

(B) It shall be lawful to sell consumer fireworks from a temporary consumer fireworks retail sales stand only if such temporary consumer fireworks retail sales stand is:

   (i) In compliance with the requirements for such a temporary consumer fireworks retail sales stand in the selling of consumer fireworks as provided for in NFPA 1124;

   (ii) Within 1,000 feet of a fire hydrant of a county, municipality, or other political subdivision, unless the chief administrative officer of the fire department of a county, municipality, or other political subdivision or chartered fire department legally organized to operate in this state pursuant to Chapter 3 of this title and having operational authority over such location of the temporary consumer fireworks retail sales stand provides in writing that such temporary consumer fireworks retail sales stand may operate in excess of 1,000 feet from such fire hydrant; and

   (iii) Selling consumer fireworks of a distributor licensed pursuant to subsection (c) of Code Section 25-10-5.1.

(C) It shall be unlawful to sell consumer fireworks from any motor vehicle or from a trailer towed by a motor vehicle.

SECTION 3.

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

"25-10-5.1.

(a)(1) A license pursuant to this Code section shall only be issued to a distributor that:

   (A) Complies with all the requirements of this chapter; and

   (B) Maintains at all times public liability and product liability insurance with minimum coverage limits of $2 million to cover the losses, damages, or injuries that might ensue to persons or property as a result of selling such distributor's consumer fireworks or items defined in paragraph (2) of subsection (b) of Code Section 25-10-1.

(2) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in an application executed pursuant to this Code section shall be guilty of a violation of Code Section 16-10-20.

(b)(1) The initial license fee for a distributor having consumer fireworks offered for sale from a permanent consumer fireworks retail sales facility shall be $5,000.00 per year and location, payable to the Safety Fire Commissioner. Upon finding that a distributor has
met the requirements of paragraph (1) of subsection (a) of this Code section and upon payment of such license fee, such initial license shall be issued by the Safety Fire Commissioner and shall identify the permanent consumer fireworks retail sales facility applicable to such license. Such initial license shall expire on January 31 of the year after such initial license was issued. After such initial license, such distributor may annually renew such initial license for $1,000.00 per year, payable to the Safety Fire Commissioner. Upon finding that a distributor has met the requirements of paragraph (1) of subsection (a) of this Code section and upon payment of such license fee, such annual license shall be issued by the Safety Fire Commissioner and shall identify the permanent consumer fireworks retail sales facility applicable to such license. Such annual license shall expire on January 31 of each year; provided, however, that a distributor shall not apply for an annual license earlier than 30 days prior to the expiration of an initial license or annual license.

(2) The determination by the Safety Fire Commissioner of whether a distributor has met requirements for the issuance of a license required by this subsection shall be made within 15 days of the submission of an application for any such license. Such application shall be in writing and, if the Safety Fire Commissioner provides for a written form for the application for a license pursuant to this Code section, upon such form as may be provided by the Safety Fire Commissioner. If a determination has not been made within the time provided for by this paragraph, or for an appeal of a determination by the Safety Fire Commissioner, a distributor may seek review from the judge of the probate court of the county of the location or proposed location of the permanent consumer fireworks retail sales facility. Such judge may provide for the issuance or nonissuance of a license and for the payment of license fees in such manner as is consistent with the provisions of this subsection.

(c)(1) The license fee for a distributor having consumer fireworks offered for sale from a temporary consumer fireworks retail sales stand shall be $1,000.00 per location, payable to the governing authority of the county, municipality, or other political subdivision of this state in whose boundaries such temporary consumer fireworks retail sales stand shall be located or is proposed to be located. Upon finding that a distributor has met the requirements of paragraph (1) of subsection (a) of this Code section, has no more than the permitted number of licenses under this subsection, that the sales of consumer fireworks from such temporary consumer fireworks retail sales stand shall accrue to the benefit of a nonprofit group, and upon payment of such license fee, such license shall be issued by the fire department of the county, municipality, or other political subdivision or the chartered fire department legally organized to operate in this state pursuant to Chapter 3 of this title and having operational authority of the area in...
which such temporary consumer fireworks retail sales stand shall be located or is
proposed to be located; provided, however, that no such license shall be issued prior to
January 1, 2016. Such license shall identify the temporary consumer fireworks retail
sales stand applicable to such license and shall expire 90 days after the issuance of such
license.

(2) A determination by a fire department as provided for under paragraph (1) of this
subsection of whether a distributor has met requirements for the issuance of a license
pursuant to this subsection shall be made within 15 days of the submission of an
application for any such license. Such application shall be in writing and, if such fire
department provides for a written form for the application for a license pursuant to this
Code section, upon such form as may be provided by such fire department. If a
determination has not been made within the time provided for by this paragraph, or for
an appeal of a determination by such fire department, a distributor may seek review from
the judge of the probate court of the county of the location or proposed location of the
temporary consumer fireworks retail sales stand. Such judge may provide for the
issuance or nonissuance of a license and for the payment of license fees in such manner
as is consistent with the provisions of this subsection.

(3) At any one time and within each county, a distributor may have up to two licenses
issued pursuant to this subsection for locations within such county; provided, however,
that if a distributor has at least one license issued under subsection (b) or (d) of this Code
section for a location in a county, then for such county a distributor may have up to two
licenses under this subsection for each license that such distributor has under subsection
(b) or (d) of this Code section for locations in such county.

(4) A nonprofit group benefiting from the sale of consumer fireworks pursuant to this
Code section shall directly participate in operating the temporary consumer fireworks
retail sales stand. It shall be unlawful for a nonprofit group or any agent or bona fide
representative of a nonprofit group to knowingly lend the name of the nonprofit group or
allow the identity of the nonprofit group to be used for the license under this subsection
if such nonprofit group is not directly participating in operating such temporary consumer
fireworks retail sales stand.

(5) The governing authority of a county, municipality, or other political subdivision
receiving fees pursuant to this Code section shall expend such fees for public safety
purposes.

(6) A distributor licensed pursuant to this subsection shall submit a list of the names and
addresses, including the counties, of each temporary consumer fireworks retail sales stand
at which such distributor has consumer fireworks offered for sale pursuant to this Code
section to the Safety Fire Commissioner. Such list shall be submitted by January 31 of
(d)(1) The initial license fee for a distributor having consumer fireworks offered for sale from a store shall be $5,000.00 per year and location, payable to the Safety Fire Commissioner. Upon finding that a distributor has met the requirements of subsection (a) of this Code section, such initial license shall be issued by the Safety Fire Commissioner and shall identify the store applicable to such license. Such initial license shall expire on January 31 of the year after such initial license was issued. After such initial license, such distributor may annually renew such initial license for $1,000.00 per year, payable to the Safety Fire Commissioner. Upon finding that a distributor has met the requirements of subsection (a) of this Code section, such annual license shall be issued by the Safety Fire Commissioner and shall identify the store applicable to such license. Such annual license shall expire on January 31 of each year; provided, however, that a distributor shall not apply for an annual license earlier than 30 days prior to the expiration of an initial license or annual license.

(2) The determination by the Safety Fire Commissioner of whether a distributor has met requirements for the issuance of a license required by this subsection shall be made within 15 days of the submission of an application for any such license. Such application shall be in writing and, if the Safety Fire Commissioner provides for a written form for the application for a license pursuant to this Code section, upon such form as may be provided by the Safety Fire Commissioner. If a determination has not been made within the time provided for by this paragraph, or for an appeal of a determination by the Safety Fire Commissioner, a distributor may seek review from the judge of the probate court of the county of the location or proposed location of the store from which consumer fireworks will be sold. Such judge may provide for the issuance or nonissuance of a license and for the payment of license fees in such manner as is consistent with the provisions of this subsection.

SECTION 4.

Said chapter is further amended by revising Code Section 25-10-6, relating to fireworks manufactured, sold, or stored in violation of this chapter declared contraband and seizure and disposition, as follows:
"25-10-6.
The state fire marshal shall enforce the provisions of this chapter. Applicable fire
departments of a county, municipality, or other political subdivision or a chartered fire
department shall refer cases for enforcement under subsection (c) of Code Section
25-10-5.1 to the state fire marshal. All fireworks manufactured, offered for sale, exposed
for sale, or stored in violation of this chapter are declared to be contraband and may be
seized, taken, and removed, or caused to be removed and destroyed at the expense of the
owner thereof by the state fire marshal; the Georgia State Patrol, or any sheriff or local
police official."

SECTION 5.

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

"25-10-9.
Notwithstanding any provision of this chapter to the contrary, any person, firm,
corporation, association, or partnership who or which that knowingly violates subsection
(b) of Code Section 25-10-2 this chapter may be punished by a fine not to exceed $100.00
$2,500.00. Each sales transaction in violation of subsection (b) of Code Section 25-10-2
this chapter shall be a separate offense."

SECTION 6.

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

"25-10-10.
It shall be unlawful for any person, firm, corporation, association, or partnership to release
or cause to be released any balloon, bag, parachute, or other similar device which requires
fire underneath for propulsion or to release or cause to be released any floating water
lantern or wish lantern which uses a flame to create a lighting effect in any public
waterway, lake, pond, stream, or river."

SECTION 7.

Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to provisions
applicable to counties and municipal corporations, is amended by revising Code Section
36-60-24, relating to the sale of products or services, as follows:

"36-60-24.
(a) The governing authority of a county or municipal corporation shall not prohibit the sale
or use or explosion of consumer fireworks or products or services which products or
services are lawful under subsection (b) of Code Section 25-10-1, unless such prohibition is expressly authorized by the general law of the state.

(b) If the sale of a product or service is regulated by subsection (b) of Code Section 25-10-1, the governing authority of a county or municipal corporation shall not enact additional regulation of the sale or use or explosion of such product or service, unless such additional regulation is expressly authorized by general law.

(c) Notwithstanding subsections (a) and (b) of this Code section, the governing authority of a county or municipal corporation may provide for permits or licenses for the sale or use of consumer fireworks as provided for under subsection (c) of Code Section 25-10-5.1.

(d) For purposes of this subsection, the terms 'consumer fireworks' shall have the same meanings as provided in Code Section 25-10-1.

(e) Any ordinance enacted before, on, or after July 1, 2006, by a county or municipal corporation in violation of this Code section is void.

SECTION 8.

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

"ARTICLE 7

48-13-130. As used in this article, the term:

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

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

48-13-131. (a) An excise tax, in addition to all other taxes of every kind imposed by law, is imposed upon the sale of consumer fireworks and any items provided for in paragraph (2) of subsection (b) of Code Section 25-10-1 in this state at a rate of 5 percent per item sold.

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

48-13-132. A seller who knowingly and willfully violates the requirements of this article shall be assessed a civil penalty of not more than $10,000.00 in addition to the amount of tax due.
The department is authorized to adopt rules and regulations necessary for the enforcement and implementation of the provisions of this Code section.

SECTION 9.

This Act shall become effective on July 1, 2015.

SECTION 10.

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