

The House Committee on Regulated Industries offers the following substitute to HB 1095:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 10 of Title 25 of the Official Code of Georgia Annotated, relating to
2 regulation of fireworks, so as to establish permanent consumer fireworks sales facilities; to
3 establish temporary consumer fireworks sales facilities; to increase the number of temporary
4 consumer retail fireworks sales facilities a distributor may operate; to provide for definitions;
5 to revise penalties for violations of such chapter; to amend Chapter 60 of Title 36 of the
6 Official Code of Georgia Annotated, relating to general provisions applicable to counties and
7 municipal corporations, so as to make conforming changes; to provide for related matters;
8 to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Chapter 10 of Title 25 of the Official Code of Georgia Annotated, relating to regulation of
12 fireworks, is amended by revising subsection (a) of Code Section 25-10-1, relating to
13 definitions, as follows:

14 "25-10-1.

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

H. B. 1095 (SUB)

- 1 -

(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, and additionally shall mean Roman candles.

(2) 'Consumer fireworks retail sales facility' shall have the same meaning as provided for by NFPA 1124; ~~provided, however, that such term shall not include a tent, canopy, or membrane structure.~~

(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 consumer fireworks.

(5) 'Electric plant' shall have the same meaning as provided for in Code Section 46-3A-1.

(6) '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, firecrackers, torpedos, skyrockets, 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) 'Fireworks or pyrotechnics exhibition or display before a proximate audience' means any exhibition or display of fireworks, or any use of pyrotechnic special effects, that occurs within a building or structure or before an audience closer to the pyrotechnic devices than permitted by National Fire Protection Association Standard 1123, *Code for*

43 *Fireworks Display*, as adopted by the Safety Fire Commissioner; provided, however, that
44 such term shall not include the use of pyrotechnic special effects in television and motion
45 picture production when no audience is present.

46 (8) 'Flame effect' means the combustion of solids, liquids, or gases utilizing atmospheric
47 oxygen to produce thermal, physical, visual, or audible phenomena before an audience
48 or for use in motion picture and television production.

49 (9) 'NFPA 1124' means the National Fire Protection Association Standard 1124, *Code*
50 *for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and*
51 *Pyrotechnic Articles*, 2006 Edition.

52 (10) ~~'Nonprofit group' means any entity exempt from taxation under Section 501(c)(3)~~
53 ~~of the Internal Revenue Code of 1986, any entity incorporated under Chapter 3 of~~
54 ~~Title 14, the 'Georgia Nonprofit Corporation Code,' or a sponsored organization of a~~
55 ~~public or private elementary or secondary school in this state. 'Permanent consumer~~
56 fireworks retail sales facility' shall have the same meaning as provided for by NFPA
57 1124; provided, however, that such term shall not include a tent, canopy, or membrane
58 structure.

59 (11) 'Personal and private use' means the use of consumer fireworks for any activity
60 other than any activity of a professional or commercial nature or for profit or commercial
61 gain and intended, in particular, for household entertainment or enjoyment for private
62 gatherings.

63 (12) 'Public exhibition or display of fireworks' means the use of pyrotechnics, display
64 fireworks, consumer fireworks, or any combination thereof for any purpose relating to
65 the amusement or entertainment of the public that does not occur within a building or
66 structure or before a proximate audience; provided, however, that such term shall not
67 include the private and personal use of consumer fireworks by the public.

68 (13) 'Pyrotechnics' means fireworks not intended for use by the general public.

(14) 'Special effect' means an audible or visual effect created for motion picture and television production through the use of flammable or combustible liquids, flammable solids, explosives, fireworks, pyrotechnics, flame effects, and any similar materials and devices.

(15) 'Store' shall have the same meaning as provided for by NFPA 1124; provided, however, that such term shall only include such buildings with at least 4,000 square feet of retail display space and wherefrom:

(A) No more than 25 percent of such retail display space is used for consumer fireworks and items or products as provided for under paragraph (2) of subsection (b) of this Code section; and

(B) Other items or products which are not consumer fireworks or items or products as provided for under paragraph (2) of subsection (b) of this Code section are sold; and provided, further, that such term means a person, firm, corporation, association, or partnership with more than one mercantile location, where all such mercantile locations are collectively known to the public by the same name or share central management.

(16) 'Temporary consumer fireworks retail sales facility' shall have the same meaning as provided for by NFPA 1124.

~~(16)~~(17) 'Waste-water treatment plant' shall have the same meaning as provided for in Code Section 43-51-2.

~~(17)~~(18) 'Water treatment plant' shall have the same meaning as provided for in Code Section 43-51-2."

SECTION 2.

Said chapter is further amended in Code Section 25-10-2, relating to prohibited fireworks activities and application of noise ordinance, by revising paragraph (6) of subsection (b) as follows:

94 "(6)(A) It shall be lawful to sell consumer fireworks from a permanent consumer
95 fireworks retail sales facility or store only if such permanent consumer fireworks retail
96 sales facility or store is:

97 (i) In compliance with the requirements for such a permanent consumer fireworks
98 retail sales facility or store in the selling of consumer fireworks as provided for in
99 NFPA 1124; and

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

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

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

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

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

117 (C) It shall be lawful to sell consumer fireworks from a temporary consumer fireworks
118 retail sales facility only if such temporary consumer fireworks retail sales facility is:

(i) In compliance with the requirements for such a temporary consumer fireworks retail sales facility 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 or a fire department connection of a building affiliated with such consumer fireworks retail sales facility, 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 facility provides in writing that such temporary consumer fireworks retail sales facility may operate in excess of 1,000 feet from such fire hydrant or fire department connection; and

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

(D) A distributor licensed pursuant to subsection (c) of Code Section 25-10-5.1 may operate no more than two temporary consumer fireworks retail sales stands in this state per location licensed pursuant to subsection (b) or (d) of Code Section 25-10-5.1; provided, however, that such distributor has been operating and open to the public pursuant to subsection (b) or (d) of Code Section 25-10-5.1 no less than 30 days prior to July 4 or December 31 in the year of an application for a license under subsection (c) of Code Section 25-10-5.1 that is filed within 30 days of July 4 or December 31.

(E) A distributor licensed pursuant to subsection (e) of Code Section 25-10-5.1 may operate up to ten tents that meet the requirements of a temporary consumer fireworks retail sales facility under the NFPA 1124 per location licensed pursuant to subsection (b) of Code Section 25-10-5.1, provided that such distributor operates at least ten locations licensed pursuant to subsection (b) of Code Section 25-10-5.1 and has been operating and open to the public pursuant to subsection (b) ~~or (d)~~ of Code Section

25-10-5.1 no less than 30 days prior to July 4 or December 31 in the year of an application for a license under subsection (e) of Code Section 25-10-5.1 that is filed within 30 days of July 4 or December 31.

~~(C)(F)~~ It shall be unlawful to sell consumer fireworks from any motor vehicle; or from a trailer towed by a motor vehicle, ~~or from a tent, canopy, or membrane structure.~~"

SECTION 3.

Said chapter is further amended in Code Section 25-10-5.1, relating to requirements for issuance of license to distribute consumer fireworks and required signage, by revising subsection (c) and adding a new subsection to read as follows:

"(c)(1) The license fee for a distributor selling consumer fireworks from a temporary consumer fireworks retail sales stand shall be \$500.00 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 subsection (a) of this Code section, has a license pursuant to subsection (b) or (d) of this Code section, has no more than the allowable temporary consumer fireworks retail sales stands pursuant to subparagraph (b)(6)(B) of Code Section 25-10-2, ~~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. Such license shall identify the temporary consumer fireworks retail sales stand applicable to such license and shall expire on the next January 31 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 30 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) For at least one of the temporary consumer fireworks retail sales stands provided for under subparagraph (b)(6)(B) of Code Section 25-10-2, a nonprofit group benefiting from the sale of consumer fireworks from such temporary consumer fireworks retail sales stand shall directly participate in operating such 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, or benefiting from the operation of, such temporary consumer fireworks retail sales stand.~~

~~(4)~~(3) 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.

~~(5)~~(4) 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 not less than 30 days prior to first having a temporary consumer fireworks retail sales ~~stand~~ facility at which such distributor has consumer fireworks offered for sale and not less than 30 days prior to having such distributor's consumer fireworks offered for sale at a location not previously included on such list. The Safety Fire Commissioner shall make such list publicly available for inspection. In making determinations as provided for under this subsection, fire departments shall reference the list provided for by this paragraph.

~~(6)(5)~~ A revocation or suspension of a license provided for under subsection (b) or (d) of this Code section shall operate as a revocation or suspension of a distributor's license under this subsection for the term of such revocation or suspension."

"(f)(1) The license fee for a distributor selling consumer fireworks from a temporary consumer fireworks retail sales facility shall be \$500.00 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 facility shall be located or is proposed to be located. Upon finding that a distributor has:

(A) Met the requirements of subsection (a) of this Code section;

(B) A license pursuant to subsection (b) or (d) of this Code section;

(C) No more than the allowable temporary consumer fireworks retail sales facilities pursuant to subparagraph (b)(6)(B) of Code Section 25-10-2; and

(D) 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 facility shall be located or is proposed to be located. Such license shall identify the temporary consumer fireworks retail sales facility applicable to such license and shall expire on the next January 31 after the issuance of such license.

(2) A determination by a fire department as provided for under paragraph (1) of this subsection regarding whether a distributor has met requirements for the issuance of a license pursuant to this subsection shall be made within 30 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 on an application for licensure pursuant to this subsection or on an appeal of a determination previously made by such fire department has not been made within the time provided for by this paragraph, 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 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."

SECTION 4.

Said chapter is further amended in Code Section 25-10-9, relating to monetary penalties for violation of chapter, as follows:

"25-10-9.

Notwithstanding any provision of this chapter to the contrary, the Safety Fire Commissioner shall have the authority to subject any person, firm, corporation, association, or partnership that violates this chapter to a monetary penalty of up to \$2,500.00 for each ~~and every~~ act in violation of this chapter; ~~provided, however, that the Safety Fire Commissioner shall have the authority to subject any person, firm, corporation, association, or partnership that knowingly sells consumer fireworks from a tent, canopy, or membrane structure to a monetary penalty of up to \$5,000.00 and, if any such person, firm, corporation, association, or partnership is a distributor, then a license revocation for not~~

250 ~~more than two years.~~ Each sales transaction in violation of this chapter shall be a separate
251 offense."

252 **SECTION 5.**

253 Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to general
254 provisions applicable to counties and municipal corporations, is amended by revising
255 subsection (e) of Code Section 36-60-24, relating to sale or use or ignition of consumer
256 fireworks products, as follows:

257 "(e) The governing authority of a county or municipal corporation shall not unreasonably
258 delay or deny an application for a ~~temporary~~ consumer fireworks retail sales stand."

259 **SECTION 6.**

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