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FREE CONFERENCE COMMITTEE REPORT ADOPTED -- NOT PRINTED

March 25, 2010

S. 454

Introduced by Senators Peeler and Ford

S. Printed 2/3/10--S.

Read the first time February 19, 2009.

A BILL

TO AMEND CHAPTER 56, TITLE 40, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE STATE BOARD OF PYROTECHNIC REGULATIONS, SO AS TO REVISE THE CHAPTER TITLE, TO PROVIDE STATE POLICY CONCERNING PYROTECHNICS, TO INCREASE THE STATE BOARD OF PYROTECHNIC SAFETY FROM SIX TO SEVEN MEMBERS, TO DEFINE TERMS, TO REQUIRE LICENSURE FOR THE MANUFACTURING, SALE, OR STORAGE OF FIREWORKS, TO AUTHORIZE THE DEPARTMENT OF LABOR, LICENSING AND REGULATION, FIRE CHIEFS, AND LAW ENFORCEMENT OFFICERS TO INVESTIGATE COMPLAINTS, TO PROVIDE GROUNDS FOR DISCIPLINARY ACTION, TO REQUIRE LIABILITY INSURANCE, TO REQUIRE REPORTING OF FIRES AND EXPLOSIONS, TO PROVIDE CRIMINAL AND CIVIL PENALTIES FOR VIOLATIONS, AND TO FURTHER PROVIDE FOR THE LICENSURE AND REGULATION OF PERSONS HANDLING FIREWORKS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 56, Title 40 of the 1976 Code is amended to read:

"CHAPTER 56

State Board of Pyrotechnic ~~Regulations~~ Safety

Section 40-56-1. It is the policy of this State, and the purpose of this chapter, to promote the safety of the public and the environment by effective regulation of pyrotechnics. Public safety requires that persons who handle pyrotechnics have demonstrated their qualifications, that they adhere to reliable safety standards, and that the sites where pyrotechnics are manufactured, stored, and sold adhere to reliable safety standards. It is neither the policy of this State nor the purpose of this chapter to place undue restrictions upon entry into the business of handling pyrotechnics.

Section 40-56-5. Unless otherwise provided for in this chapter, Chapter 1, Title 40 applies to the Board of Pyrotechnic Safety and licensees regulated under this chapter. If there is a conflict between this chapter and Chapter 1, the provisions of this chapter control.

Section 40-56-10. ~~(A) There is created~~ The State Board of Pyrotechnic Safety ~~to be~~ is composed of ~~six~~ seven members appointed by the Governor. ~~One of the appointees~~ appointee must be a ~~fireman~~ fireman ~~employed by a local fire authority~~, one must be a pyrotechnics retailer, ~~one must be a~~ pyrotechnics wholesaler, one must be a law enforcement representative, and three must be members of

the public who shall not possess any pecuniary interest in any entity engaged in a business directly involving the sale of pyrotechnics. ~~The board shall elect from its members a chairman, vice-chairman, and such other officers as it may consider necessary to serve for terms of one year and until their successors are elected and qualify. A seat on the board that remains vacant for sixty days must be filled through an appointment by the chairman of the House Labor, Commerce and Industry Committee, and the chairman of the Senate Labor, Commerce and Industry Committee.~~

(B) ~~The~~ The terms of office for members are for ~~two~~ four years and until their successors are appointed and ~~qualify~~ qualified. Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term.

(C) The board shall meet at least annually and not more than once per month. All meetings must be scheduled at the call of the chairman. ~~The board shall elect from its members a chairman, vice chairman, and other officers as it considers necessary to serve for terms of one year and until their successors are elected and qualified.~~ All members shall receive mileage, per diem, and subsistence as provided by law for members of state boards, committees, and commissions for days on which they are transacting official business, to be paid ~~from the general fund of the state by the board.~~ ~~The Director of the Department of Labor, Licensing, and Regulation, pursuant to Section 40-73-15, shall employ such personnel as necessary to carry out the duties of the board.~~

(D) The Department's Office of State Fire Marshal shall provide administrative support as required by the board to perform its prescribed functions. The State Fire Marshal is an official consultant and is authorized to attend all meetings.

Section 40-56-20. As used in this chapter:

(1) 'APA' means the American Pyrotechnics Association.

(2) 'Board' means the State Board of Pyrotechnic Safety.

(3) 'Consumer fireworks' means any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the U.S. Consumer Product Safety Commission, as set forth in Title 16, Code of Federal Regulations, parts 1500 and 1507 and APA Standard 87-1. Some small devices designed to produce audible effects are consumer fireworks, including, but not limited to, whistling devices, ground devices containing 50 mg or less of explosive materials, and aerial devices containing 130 mg or less of explosive materials. Consumer fireworks are classified as fireworks UN0336, and UN0337 by the U.S. Department of Transportation at 49 C.F.R. 172.101. This term does not include fused setpieces containing components which together exceed 50 mg of salute powder. Consumer fireworks are further defined as those classified by the U.S. Department of Transportation hazard classification 1.4G. These fireworks were formerly known as 'Class C Fireworks'.

(4) 'CPSC' means The U.S. Consumer Product Safety Commission.

(5) 'Department' means the Department of Labor, Licensing and Regulation.

(6) 'Display fireworks' means large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. This term includes, but is not limited to, salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as 'consumer fireworks'. Display fireworks are classified as fireworks UN0333, UN0334, or UN0335 by the U.S. Department of Transportation at 49 C.F.R. 172.101. This term also includes fused setpieces containing components which together exceed 50 mg of salute powder. Display fireworks are further defined as those classified by the U.S. Department of Transportation as hazard

classification 1.3G. These fireworks were formerly known as 'Class B Fireworks'.

(7) 'DOT' means the U.S. Department of Transportation.

(8) 'Fireworks' means any composition or device designed to produce a visible or an audible effect by combustion, deflagration, or detonation, and which meets the definition of 'consumer fireworks' or 'display fireworks' as defined by this section.

(9) 'Licensee' means a person, firm, or entity that has been issued a license by the board under the provisions of this chapter to manufacture, sell, or store fireworks.

(10) 'NFPA' means National Fire Protection Association.

(11) 'Pyrotechnics' means any composition or device designed to produce visible or audible effects for entertainment purposes by combustion, deflagration, or detonation.

(12) 'Small bottle rocket' is a consumer firework with a motor less than one-half inch in diameter and three inches in length, a stabilizing stick less than fifteen inches in length, and a total pyrotechnic composition not exceeding twenty grams in weight.

Section 40-56-30. It is unlawful for a person to engage in the manufacturing, storage, or sale of pyrotechnics unless in compliance with this chapter.

Section 40-56-35. (A) Except as otherwise provided for in this section, a person, firm, or entity that manufactures, sells, or stores fireworks shall obtain a license issued by the board pursuant to this chapter. General license requirements are as follows:

(1) A license may not be issued to anyone under the age of eighteen.

(2) An application for licensure must be submitted on forms prescribed by the board accompanied by applicable fees.

(3) A license is required for each physical address or site at which fireworks are manufactured, sold, or stored.

(4) A copy of the appropriate license issued by the South Carolina Department of Revenue for retail sales of fireworks must accompany each application for a retail fireworks sales license.

(5) Initial license applications and applications for license renewal may be approved only after an authorized agent of the board inspects the buildings and facilities where fireworks are to be manufactured, sold, or stored for compliance with the current codes and standards.

(6) All licenses and permits may only be issued for one calendar year.

(7) Licenses must be prominently displayed at the licensee's place of business approved for the manufacture, sales, or storage of fireworks.

(8) Licenses issued by the board are nontransferable.

(B) A license is not required for the:

(1) manufacture, sale, storage, transportation, handling, or a combination of these, including, but not limited to, railroad torpedoes, automotive, aeronautical, and marine flares and smoke signals;

(2) transportation, storage, handling, or use of fireworks, or a combination of these, by the Armed Forces of the United States;

(3) transportation, handling, or use of fireworks, or a combination of these, by the State Fire Marshal, his employees, or a commissioned law enforcement officer acting within his official capacity; or

(4) fireworks deregulated by the U.S. Department of Transportation.

Section 40-56-50. The Department of Labor, Licensing and Regulation shall provide all administrative, fiscal, investigative, inspection, clerical, secretarial, and license renewal operations and activities of the board pursuant to Chapter 1.

Section 40-56-70. (A) It shall be is the duty and responsibility of the board created in Section 40-56-10 to promulgate, pursuant to the Administrative Procedures Act, regulations relating to the sale of pyrotechnics in this State, including the manufacture, sales, storage, and fire safety of such these products. These regulations must be adjusted using the procedures in Chapter 34, Title 1.

(B) The board may conduct hearings on alleged violations by licensees of this chapter or regulations promulgated pursuant to this chapter and may discipline these licensees.

(C) The board also shall also recommend to the General Assembly legislation it deems considers necessary for the safety and control of the sale of pyrotechnics.

Section 40-56-80. (A) The Department of Labor, Licensing and Regulation shall investigate complaints and violations of this chapter as provided for in Chapter 1.

(B) During reasonable business hours, the department or its authorized agent may enter the premises or vehicle of a person engaged in the manufacture, sale, or storage of pyrotechnics to inspect, investigate, or examine the property or installation it considers necessary. When an emergency exists, as declared by the department, the inspector may enter the premises of a person and take necessary action for public safety including, but not limited to, the evacuation of the area where the emergency exists.

(C) A fire chief and his inspector, a sheriff and his deputy, a chief of police and his officer, and an agent of SLED may inspect a building, facility, or vehicle where fireworks may be manufactured, stored, or sold and a records of manufacturing, storage, sales, and purchases that must be maintained.

(D) An official named in this section who has the authority to inspect may confiscate illegal fireworks being manufactured, offered for sale, stored, or possessed.

(E) The board may compel the attendance of witnesses to testify in relation to a matter within its jurisdiction.

Section 40-56-100. In addition to other remedies provided for in this chapter, the board pursuant to Chapter 1 may issue a cease and desist order or may petition the Administrative Law Court for a temporary restraining order or other equitable relief to enjoin a violation of this chapter or a regulation promulgated pursuant to this chapter.

Section 40-56-115. The board has jurisdiction over the actions of licensees and former licensees as provided for in Chapter 1.

Section 40-56-120. (A) Upon a determination by the board that grounds for discipline exist, the board is authorized to:

(1) issue a public reprimand;

(2) impose a civil penalty not to exceed two thousand five hundred dollars;

(3) place a licensee on probation or restrict or suspend a license for a definite or indefinite time period and prescribe conditions to be met during this period including, but not limited to, satisfactory completion of additional education, or a supervisory period; or

(4) revoke the license.

(B) The board may take disciplinary action against a person for:

(1) the grounds stated in Chapter 1; or

(2) a condition found as a result of an inspection, examination, or investigation provided for in Section 40-56-80 that is hazardous to public safety.

Section 40-56-130. The board may deny licensure to an applicant based on the same grounds for which the board may take disciplinary action against a licensee.

Section 40-56-140. A license may be denied based on a person's prior criminal record only as provided for in Chapter 1.

Section 40-56-150. A licensee under investigation for a violation of this chapter or a regulation promulgated pursuant to this chapter may voluntarily surrender the license pursuant to Chapter 1.

Section 40-56-160. A person aggrieved by a final action of the board may seek review of the decision pursuant to Chapter 1.

Section 40-56-170. A person found in violation of this chapter or a regulation promulgated pursuant to this chapter may be required to pay costs associated with the investigation and prosecution of the case pursuant to Chapter 1.

Section 40-56-180. All costs and fines imposed pursuant to this chapter must be paid in accordance with, and are subject to, the collection and enforcement provisions of Chapter 1.

Section 40-56-190. Investigations and proceedings conducted under the provisions of this chapter are confidential, and all communications are privileged as provided for in Chapter 1.

Section 40-56-200. (A) A person required by this chapter to obtain a license to do business in this State, who has not obtained a license or who operates while his license is suspended or revoked or who violates a provision of this chapter or a regulation promulgated pursuant to this chapter, is guilty of a misdemeanor and, upon conviction, must be fined not less than one thousand dollars and not more than two thousand dollars or imprisoned for not less than ninety days and not more than one year.

(B) This chapter does not repeal, amend, or otherwise affect fire codes and regulations adopted by the State Fire Marshal.

Section 40-56-210. In addition to initiating a criminal proceeding for a violation of this chapter, the board may seek civil penalties and injunctive relief as provided for in Chapter 1.

Section 40-56-220. (A) All facilities for the manufacturing, sales, or storage of fireworks must comply with regulations established by the board.

(B) All consumer fireworks must comply with standards set by the U.S. Department of Transportation and the CPSC for consumer fireworks. The board may request fireworks be tested by a CPSC certified testing group to see that these standards are met.

(C) Retail sale and use of small bottle rockets are not legal within South Carolina.

(D) Fireworks may not be sold to anyone under the age of sixteen.

Section 40-56-230. (A) An application for a retail fireworks sales license must be accompanied by evidence that the applicant holds a policy that:

(1) provides public liability insurance coverage for retail sales activities at the location for the permitted sale period;

(2) is issued by an insurance company authorized to do business in this State; and

(3) provides coverage in the following minimum amounts:

- (a) one million dollars for injuries or damage to any one person in one accident or occurrence;
- (b) one million dollars for injuries to two or more persons in any accident or occurrence; and
- (c) one million dollars combined single-limit coverage for any one accident or occurrence.

(B) A policy, except those policies issued for fewer than ninety days' use for seasonal permits, by its original term or an endorsement, must obligate the insurer to not cancel, suspend, or nonrenew the policy without thirty days' written notice of the proposed cancellation, suspension, or nonrenewal being given to the board. The insured immediately shall give notice to the board if liability insurance is canceled, suspended, or nonrenewed.

Section 40-56-240. (A) A person may not store display fireworks in this State unless the person has obtained a wholesale license from the board.

(B) Only licensed wholesalers shall sell or provide fireworks for displays.

(C) All buildings and structures used to store display fireworks must meet regulations established by the board.

(D) These license holders also must comply with U.S. Bureau of Alcohol, Tobacco, and Firearms regulations.

Section 40-56-250. (A) If the board or its designee finds a condition as a result of an inspection, that is hazardous to the public safety or a violation of this chapter or regulations promulgated pursuant to this chapter, the board shall issue an order in writing to remove or correct the condition. If a person fails to comply with the terms of the order, the board may issue administrative citations and may assess administrative penalties against any licensee.

(B) Administrative penalties authorized under this section are separate from and in addition to all other remedies, either civil or criminal.

(C) Administrative penalties assessed pursuant to this section may not exceed two thousand five hundred dollars for each violation.

(D) An entity or individual assessed administrative penalties by citation under this section may appeal the citation to the Board of Pyrotechnic Safety within fifteen days of receipt of the citation. The appeal must be filed in writing. If an appeal is filed, the board shall schedule a hearing, which shall make a determination in the matter. If no appeal is filed, the citation is deemed a final order, and the administrative penalties must be paid within thirty days of receipt of the citation.

Section 40-56-260. An owner, manager, or operator of any location regulated by this chapter shall report to the board within twenty-four hours of any fire or explosion of which the person has knowledge, with as complete detail as possible, together with evidence as he has obtained after investigation of the fire or explosion. No reports filed pursuant to this section may be disclosed unless disclosure is in compliance with the requirements of Chapter 4 of Title 30 of the South Carolina Code.

Section 40-56-270. If a provision of this chapter or the application of a provision to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter, which can be given effect without the invalid provisions, or application, and to this end the provisions of this chapter are severable."

SECTION 2. The following sections of the 1976 Code are repealed: 23-35-10, 23-35-20, 23-35-30, 23-35-40, 23-35-50, 23-35-60, 23-35-70, 23-35-80, 23-35-90, 23-35-100, 23-35-110, 23-35-120, 23-36-140, and 23-35-160.

SECTION 3. This act takes effect upon approval by the Governor.

/s/Sen. Harvey S. Peeler /s/Rep. William E. Sandifer

Sen. Kevin L. Bryant /s/Rep. Jackie E. Hayes

/s/Sen. Floyd Nicholson Rep. Chip Huggins

On Part of the Senate.

On Part of the House.

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