House Bill 110 (COMMITTEE SUBSTITUTE) (AM)
By: Representatives Roberts of the 155th, Turner of the 21st, McCall of the 33rd, Fleming of the 121st, and LaRiccia of the 169th

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 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 allow for local governments to further regulate or prohibit the sale of consumer fireworks from a temporary consumer fireworks retail sales stand; 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 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."

H. B. 110 (SUB) - 1 -
(2) 'Consumer fireworks retail sales facility' shall have the same meaning as provided for by NFPA 1124.

(3) '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.


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

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

(7) '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.

(8) 'Pyrotechnics' means fireworks.

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

(10) 'Consumer fireworks retail sales stand' 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 500 grams or less for multiple tubes; snake and glow worms; smoke devices; or trick noise makers which include paper streamers, party poppers, string poppers, 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:

(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.

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

(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) It shall be lawful for any person who is 16 or 17 years of age to possess consumer fireworks, provided that such person is serving as an assistant to a licensee licensed under subsection (e) of Code Section 25-10-5.1 or the nonprofit group of which such licensee is acting as an agent or bona fide representative.

(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, provided that such person first obtains a license from the Safety Fire Commissioner as provided for in Code Section 25-10-5.1.

(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 licensee licensed under subsection (e) of Code Section 25-10-5.1 or
(6) It shall be lawful to sell consumer fireworks from a permanent building, store, or temporary consumer fireworks retail sales stand if such permanent building, store, or temporary consumer fireworks retail sales stand is in compliance with the requirements for such a permanent building, store, or temporary consumer fireworks retail sales stand in the selling of consumer fireworks as provided for in NFPA 1124. It shall be unlawful to sell consumer fireworks from any tent, canopy, membrane structure, or motor vehicle or from a trailer towed by a motor vehicle.

(7)(A) It shall be unlawful for any person to offer for sale any consumer fireworks from a temporary consumer fireworks retail sales stand unless such person in so doing is acting as an agent or bona fide representative of a nonprofit group or as an assistant to such agent or bona fide representative.

(B) It shall be unlawful for a nonprofit group or any agent or bona fide representative of a nonprofit group to lend the name of the nonprofit group or allow the identity of the nonprofit group to be used in the operation or advertising of a temporary consumer fireworks retail sales stand for which such nonprofit group is not directly participating in operating.

(C) It shall be unlawful for any person other than a nonprofit group to benefit financially from the sales of consumer fireworks in a temporary consumer fireworks retail sales stand. No profits, revenues, or other financial benefits shall accrue to any person other than a nonprofit group from the sales of consumer fireworks in any temporary consumer fireworks retail sales stand.”

SECTION 3.

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

“25-10-5.1.

(a) The Safety Fire Commissioner shall only issue a license to sell consumer fireworks to an applicant who:

(1) Complies with all the requirements of this chapter;

(2) Has not been convicted of a violation of a felony involving consumer fireworks, fireworks, or explosives or has not been assessed a civil penalty pursuant to Code Section 48-13-132 within the five years preceding the date of his or her application; and

(3) 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 the licensee selling consumer fireworks.
(b) The initial license fee for any person offering consumer fireworks for sale on behalf of himself or herself or a firm, corporation, association, or partnership from a permanent consumer fireworks retail sales facility shall be $5,000.00 per year and location, payable to the Safety Fire Commissioner. Such initial license shall accrue to the benefit of the person offering consumer fireworks for sale at the permanent consumer fireworks retail sales facility location provided for by the license or, if on behalf of a firm, corporation, association, or partnership, to the benefit of such firm, corporation, association, or partnership at the permanent consumer fireworks retail sales facility location provided for by the license. Such initial license shall expire on January 31 of the year after such initial license was issued. After such initial license, such person on behalf of himself or herself or the firm, corporation, association, or partnership on whose behalf the initial license was issued, or another person on behalf of such firm, corporation, association, or partnership, may annually renew such initial license for $1,000.00 per year, payable to the Safety Fire Commissioner. Such annual license shall expire on January 31 of each year.

(c) The license fee for a person offering consumer fireworks for sale from a temporary consumer fireworks retail sales stand as an agent or bona fide representative of a nonprofit group shall be $200.00 per location, payable to the Safety Fire Commissioner, and shall expire 90 days after the issuance of such license. Such license shall accrue to the benefit of such nonprofit group offering consumer fireworks for sale at the temporary consumer fireworks retail sales stand location provided for by the license. The Safety Fire Commissioner shall issue no more than two licenses per county per calendar year for the sale of consumer fireworks from a temporary consumer fireworks retail sales stand. No license for the sale of consumer fireworks from a temporary consumer fireworks retail sales stand shall be issued for a location if such location is within a county or municipal corporation that has prohibited sales from temporary consumer fireworks retail sales stands pursuant to Code Section 36-60-24.

(d) The annual license fee for any person offering consumer fireworks for sale on behalf of himself or herself or a firm, corporation, association, or partnership from a store shall be $100.00 per year and location, payable to the Safety Fire Commissioner. Such annual license shall accrue to the benefit of the person offering consumer fireworks for sale at the store location provided for by the license or, if on behalf of a firm, corporation, association, or partnership, to the benefit of such firm, corporation, association, or partnership at the store location provided for by the license. Such annual license shall expire on January 31 of each year.

(e) Any person issued a license under this Code section, whether on behalf of himself or herself or a firm, corporation, association, or partnership, may have assistants under his or her license.
her control conducting the sale of consumer fireworks, provided that such assistants are 16 years of age or older as provided for in Code Section 25-10-2."

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. 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 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 6A.

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

"(c) Notwithstanding subsections (a) and (b) of this Code section, the governing authority of a county or municipal corporation may further regulate or prohibit the sale of consumer fireworks from a temporary consumer fireworks retail sales stand. For purposes of this subsection, the terms 'consumer fireworks' and 'consumer fireworks retail sales stand' shall have the same meanings as provided in Code Section 25-10-1."

(d) 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 7.

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.

48-13-133. The department is authorized to adopt rules and regulations necessary for the enforcement and implementation of the provisions of this Code section."
SECTION 8.

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