

Initiative Petition for a Law Relative to Establishing the Sales and Use of Consumer Fireworks in the Commonwealth

Be it enacted by the People, and by their authority, as follows:

SECTION 1. This Act consists of twenty sections which together shall be known as “An Act Establishing Sales and Use of Consumer Fireworks.”

SECTION 2. Chapter 148 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by adding the following section:-

Section 61. Definitions for Fireworks Regulations

"Aerial device", a cake that is a collection of mine/shell tubes that has a single covered fuse which is used to light several tubes in sequence. A cake may also be defined as an aerial repeater or multi-shot aerial and does not exceed more than 500 grams of pyrotechnic composition.

“APA 87-1”, Means 2001 APA Standard 87-1, *Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics*, published by the American Pyrotechnics Association of Bethesda, Maryland.

“Consumer Fireworks”, any fireworks device in a finished state, exclusive of mere ornamentation, suitable for use by the public that complies with the construction, performance, composition and labeling requirements as set out in Title 16 of the Code of Federal Regulations (CPSC) and as set out in Title 49 of the Code of Federal Regulations (Transportation), in addition to any limits and other requirements of APA 87-1.

“Consumer Fireworks Retail Sales (CFRS) Facility”, a permanent building or structure that is used primarily for the retail display and sale of consumer fireworks devices to the public.

“Fire Safety Official”, a state or municipal official who has authority to enforce life and fire safety laws, statutes, ordinances, rules or regulations.

“Fireworks”, any device, other than a novelty or theatrical pyrotechnic article, intended to produce visible or audible effects by combustion, deflagration, or detonation. Fireworks are further described as Fireworks UN0336 (formerly Common Fireworks now referred to as 1.4G Consumer Fireworks) or Fireworks UN0335 (Formerly Special Fireworks and now referred to as 1.3G Display Fireworks). Fireworks may also be described as Fireworks UN0337 if examination and testing in accordance with Title 49 CFR, § 173.56 is performed that warrants that classification.

(a) The term “fireworks” as used herein shall not include novelties, toy pistols, toy canes, toy guns or other devices in which paper caps or plastic caps twenty-five hundredths grains or less of explosive compound are used if they are constructed so that the hand cannot come in contact with the cap when in place for the explosion, toy pistol paper caps or plastic caps that contain less than twenty hundredths grains of explosive mixture, sparklers that do not contain magnesium chlorates or perchlorates or signal, antique or replica cannons if no projectile is fired, or wood stick or wire sparklers of not more than 100 grams of pyrotechnic mixture per item, other hand held or ground based sparkling devices which are non-explosive and non-aerial, sometimes produce a crackling or whistling effect, and contain 75 grams or less of pyrotechnic composition per tube or a total of 500 grams or less for multiple tubes, snake and glow worms, smoke devices, or trick noisemakers which include party poppers, snappers and drop pops, each consisting of twenty-five hundredths grains or less of explosive mixture, the sale and use of which shall be permitted at all times

(b) This section shall not apply (1) to the sale of any fireworks to be shipped directly out of the Commonwealth, or (2) to the sale of flares, lanterns or fireworks for the use of, and their use by, railroads, railways, boats, motor vehicles or other transportation agencies, or other activity, lawfully permitted or required to use any or all of such articles for signal purposes, illumination or otherwise, or (3) to the sale or use of blank cartridges for a duly licensed show or theatre or for signal or ceremonial purposes in athletics or sports, or to the sale of special blank cartridges and their use in the proper operation of industrial tools and equipment only, or (4) to experiments at a factory for explosives, or (5) to the sale of blank cartridges for the use of, or their use by, the militia or any organization of war veterans or other organizations authorized by law to parade in public, a color guard armed with firearms, or (6) in teaching the use of firearms by experts, or (7) to the sale of shells for firearms, cartridges, gunpowder, and for the purpose of using, and their use, or in connection with the hunting of game or in target practice with firearms, or (8) to farmers and fruit growers who, having obtained a permit under section thirteen of chapter forty-eight, use firecrackers for the control of damage to their crops by birds.

“Ground and Hand-held Sparkling Devices”, ground-based or hand-held sparkling-devices that produce a shower of white, gold, or colored sparks as their primary pyrotechnic effect. Additional effects may include a colored flame, an audible crackling effect, an audible whistle effect, and smoke. These devices do not rise into the air, do not fire inserts or projectiles into the air, and do not explode or produce a report (a mild audible crackling-type effect is not considered to be a report.) Ground-based or hand-held devices that produce a cloud of smoke as their sole pyrotechnic effect are also included in this category.

"ICC", the International Code Council, Inc.

"IFC", the International Fire Code.

"Marshal", the State Fire Marshal or their designee.

"NAFAA", the North American Fire Arts Association.

"NFPA", National Fire Protection Association.

"NFPA 1124", National Fire Protection Association Standard 1124, *Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles*, 2006 Edition.

"Novelties", as defined in the APA Standard 87-1 (incorporated by reference in 49 CFR), novelties are not considered to be consumer fireworks and as such are not subject to the regulations hereof. Novelties include: wire or wooden stick sparklers, snaps, party poppers, snakes and glow worms, and toy smoke devices containing five grams or less of pyrotechnic composition.

"Permanent structure", a non-movable building, securely attached to a foundation, housing a business.

"Secretary", the Secretary of Public Safety and Security, or their designee.

SECTION 3. Chapter 148 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by adding the following section:-

Section 62. Sales

(a) A person may sell, possess with the intent to sell or offer for sale consumer fireworks in compliance with applicable state law. A person may not sell consumer fireworks unless that person is 21 years of age or older and possesses:(1) a federal fireworks license under 18 United States Code, Section 843; and (2) a state fireworks license; and, (3) a municipal permit, if and as required by such municipality where the sales facility is located.

(b) A municipality may require that a person obtain a municipal permit for selling consumer fireworks within the municipality. A municipality that chooses to issue municipal permits under this subsection shall notify the Marshal at least 60 days prior to the initiation of its permitting program for the sale of consumer fireworks. A municipal permit may not be issued unless, (1) the applicant is 21 years of age or older, (2)The applicant applies for a permit under this subsection on a form prescribed by the Marshal, (3) the applicant possesses the federal permit required hereunder, and (4) the applicant complies with the provisions hereunder regarding storage and handling of consumer fireworks.

(c) Any municipality that requires a permit for the sale of consumer fireworks and/or ground and hand-held sparkling devices may not charge more than one thousand dollars annually for the permit.

(d) A person who violates the provisions of this section is liable in a civil action for damages for bodily injury or property damage resulting from said violation, and the defense based on assumption of risk may not be used by the person.

(e) A person authorized to sell consumer fireworks shall provide to the purchaser at the point of sale written guidelines describing the safe and proper use of consumer fireworks. The guidelines must also include the following statements in a conspicuous location: "STATE LAW EXPRESSLY PROHIBITS PERSONS UNDER 18 YEARS OF AGE FROM PURCHASING, POSSESSING OR USING CONSUMER FIREWORKS" and "FURNISHING CONSUMER FIREWORKS TO PERSONS UNDER 18 YEARS OF AGE IS A CRIMINAL OFFENSE IN THE COMMONWEALTH OF MASSACHUSETTS". Such guidelines shall be published or approved by the Secretary or their designee prior to distribution.

(f) "No Smoking" signs shall be conspicuously posted at all sales and storage locations.

SECTION 4. Chapter 148 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by adding the following section:-

Section 63. Licensing

(a) The Marshal shall issue a license to sell consumer fireworks and/or ground and hand-held sparkling devices to an applicant who. (1) is 21 years of age or older, (2) possesses the required federal permits, (3) Complies with all of the requirements of this act, (4) has not been convicted of a felony, (5) has not been convicted of an offense for a violation of state, federal or municipal law, rule or regulation involving fireworks or explosives within the five years prior to date of the application, and (6) maintains at all times public liability and product liability insurance with minimum coverage limits of five million dollars 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 Secretary shall charge a fee of five thousand dollars for an initial consumer fireworks license issued to an applicant, and two thousand dollars for each annual consumer fireworks license renewal. The term of a consumer fireworks license is one year from the date of issuance. A separate license is required for each location at which an applicant seeks to sell consumer fireworks. Fees collected under this section may be deposited into a non-lapsing account of the Office of the Secretary of Public Safety and Security to be used for the purpose of enforcing this section.

SECTION 5. Chapter 148 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by adding the following section:-

Section 64. Storage and Handling

(a) The Office of the Secretary of Public Safety and Security shall make rules and regulations for the safe storage and handling provided in part that (1) A person authorized to sell consumer fireworks under this act may store and sell the consumer fireworks only in a permanent CFRS facility, in accordance with all of the rules and regulations of this act, (2) all CFRS facilities must be constructed, maintained and operated, and all consumer fireworks and ground and hand-held sparkling devices must be stored and offered for sale in full compliance with the requirements of NFPA 1124, relevant local and state building codes, zoning ordinances and other municipal ordinances, (3) all CFRS facilities may not be less than 60 feet from another permanent building or structure and may not be less than 300 feet from a structure at which gasoline, propane or other flammable material is sold or dispensed., (4) no person shall smoke or shall carry a pipe, cigarette, cigar, match, lighter, or other flame-producing item or open flame on their person, or shall carry a concealed source of ignition into the premises of any CFRS facility, (5) a person under 18 years of age may not be admitted into any CFRS facility unless accompanied by a parent, guardian or responsible adult, and (6) a person under 18 years of age shall not be permitted to work in any CFRS facility.

SECTION 6. Chapter 148 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by adding the following section:-

Section 65. Prohibited Acts

(a) No person shall sell consumer fireworks within the Commonwealth unless that person holds a valid license or is an employee or agent of a person or entity that holds a valid license.

(b) A person licensed to sell consumer fireworks under this chapter may not sell consumer fireworks to a person who appears to be under the influence of alcohol or drugs.

(c) No person shall knowingly procure, or in any way aid or assist in procuring, furnish, give, sell or deliver consumer fireworks for or to a person less than 18 years of age; or allow an individual less than 18 years of age under that person's control or in a place under that person's control to possess or use consumer fireworks.

(d) No person under 18 years of age may purchase, use or possess consumer fireworks within the Commonwealth or present to a person licensed to sell consumer fireworks

any evidence of age that is false, fraudulent or not actually the person's own for the purpose of purchasing consumer fireworks.

(e) Only consumer fireworks as defined in APA 87-1 shall be permitted to be sold or stored in a CFRS facility. Prima Facie evidence of consumer fireworks being defined in APA 87-1 shall be the issuance of an EX number by the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration or a competent authority approved by the USDOT, PHMSA.

(f) It is an affirmative defense to prosecution for a violation of Subsection (c) of Section 65 of Chapter 148 of the General Laws that the licensee sold consumer fireworks to a person less than 18 years of age in reasonable reliance upon fraudulent proof of age presented by the purchaser.

SECTION 7. Chapter 148 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by adding the following section:-

Section 66. Violations

(a) A person who violates Subsection (a), (b), or (c) of Section 65, of Chapter 148 of the General Laws, by furnishing consumer fireworks to a minor, shall be subject to a fine of not less than one thousand dollars or by imprisonment for not more than one year or both.

(b) If a person violates Subsection (a), (b), or (c) of Section 65, of Chapter 148 of the General Laws, by furnishing for fireworks to a minor after having been convicted of violating the same paragraph one or more times within the previous 6 year period, shall be subject to a fine of not less than two thousand and five hundred dollars or by imprisonment for not more than two years or both.

(c) A person who violates Subsection (d) of Section 65, of Chapter 148 of the General Laws, commits a civil violation for which a fine of not less than five hundred dollars and not more than seven-hundred and fifty dollars may be imposed.

(d) Fines collected under Section 66 may be deposited in a non-lapsing account of the Secretary of Public Safety and Security to be used for the purpose of enforcing this act.

SECTION 8. Chapter 148 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by adding the following section:-

Section 67. Enforcement Against Licensees

(a) The Secretary, Marshal, head of the fire department, a state law enforcement officer, a municipal law enforcement officer, a code enforcement officer or a fire safety official may petition the Superior Court or District Court to seize or remove at the expense of a licensee consumer fireworks sold, offered for sale, stored, possessed or used in violation of this act. The Marshall may suspend a license granted under Section 63 for repeated violations of this Act. A person whose license is suspended under this section shall receive a hearing before the Secretary of Public Safety and Security, or their designee that is not the Marshall, within 10 days of the suspension, at which the suspension of the license shall be reviewed if requested by the licensee. The Secretary may uphold or overturn the suspension of the Marshall. A person whose license is suspended under this section may not receive a license under Section 63 for a period of at least two (2) years from the date of suspension.

(b) A person who violates Subsection (e) of Section 65, of Chapter 148 of the General Laws shall be fined not less than five thousand dollars or more than ten thousand dollars and shall not be eligible to apply for a state fireworks license or work in a consumer fireworks retail sales facility in the state.

SECTION 9. Chapter 148 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by adding the following section:-

Section 68. Consumer Fireworks Use

(a) Consumer fireworks may only be used between the hours of 12:00 p.m. and 10:00 p.m., except whereby they may be used between the hours of 12:00 p.m. and 12:30 a.m. of the following days; the fourth of July, the thirty-first of December, the weekends immediately before and after the fourth of July in any given year.

(b) A person may use consumer fireworks only on that person's property or on the property of a person who has consented to the use of consumer fireworks on that property.

(c) A person who violates this subsection commits a civil violation for which a fine of not less than one hundred dollars and not more than five hundred dollars, plus court costs, may be adjudged for any one offense.

SECTION 10. Chapter 148 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by adding the following section:-

Section 69. Adoption of Rules

The Secretary of Public Safety and Security may adopt rules for the purpose of enforcing and guaranteeing the provisions set forth in this act.

SECTION 11. Chapter 148 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended in section 9 by striking out the following words:—"fireworks, firecrackers,".

SECTION 12. Chapter 148 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out section 12 in its entirety.

SECTION 13. Chapter 148 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out section 39 in its entirety.

SECTION 14. Chapter 148 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out section 39A in its entirety.

SECTION 15. Chapter 148 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out section 40 in its entirety.

SECTION 16. Chapter 148 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out section 42 in its entirety.

SECTION 17. Chapter 148 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out section 44 in its entirety.

SECTION 18. Chapter 262 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended in section 34 by striking out clause 16 in its entirety.

SECTION 19. Chapter 266 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out the following words:—"Pyrotechnic", any commercially manufactured combustible or explosive composition or manufactured article designed and prepared for the purpose of producing an audible effect or a visible display and regulated by chapter 148 including, but not limited to: (i) fireworks, firecrackers; (ii) flares, fuses and torpedoes, so-called, and similar signaling devices."

SECTION 20. The provisions of this law are severable, and if any clause, sentence, paragraph or section of this measure, or an application thereof, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or application adjudged invalid. This act shall take effect on January 1, 2017.

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