

An Initiative Petition for a Law Relative to the Regulation and Sale of Consumer Fireworks.

THE REGULATION AND SALE OF CONSUMER FIREWORKS ACT

SECTION 1. This act may be known as “The Regulation and Sale of Consumer Fireworks Act.”

SECTION 2. Chapter 10 of the General Laws is hereby amended by inserting after section 148A the following sections:

Section 148B. Consumer Fireworks Regulation Commission; members; appointment; terms; chairperson

(a) There shall be a commission known as the consumer fireworks regulation commission to have general supervision and sole regulatory authority over the conduct of the business of consumer fireworks establishments as defined in chapter 94J of the General Laws. The commission shall consist of 1 commissioner and 2 associate commissioners appointed by the Governor. Not more than 2 members of the commission shall be of the same political party. The commissioner and associate commissioners shall serve a term of 4 years. Any vacancy occurring for any reason other than the expiration of a term shall be filled for the unexpired term in the same manner as the original appointment.

(b) The governor shall appoint commissioners based on their experience or expertise in public health, law enforcement, fire safety, social justice and equality, and the regulation and business of consumer commodities and the production and distribution of consumer fireworks products.

(c) The commissioner shall serve as chair and shall preside over all official activities of the commission.

(d) The governor may remove any member for neglect of duty, misconduct or malfeasance in office, after providing the member with a written statement of the charges and an opportunity to be heard.

(e) Two members shall constitute a quorum for conducting the business of the commission. A vacancy shall not impair the right of the remaining members to exercise the powers of the commission.

(f) The commission may expend subject to appropriation for such investigators and clerical and other assistants as may be necessary for the performance of its duties. The commissioner may appoint a chief investigator and other investigators, who shall be exempt from chapter 31 of the General Laws, to enforce or cause to be enforced the penalties provided by law against a consumer fireworks establishment that violates chapter 94J of the General Laws and shall make all necessary and appropriate investigations for that enforcement.

(g) All records of the commission shall be considered public records within the meaning of chapter 66 of the General Laws.

Section 148C. Consumer Fireworks Advisory Board (a) there shall be a consumer fireworks advisory board to study and make recommendations on the regulation of consumer fireworks products. The board shall consist of 11 members appointed by the governor and shall consist of: 1 expert in consumer fireworks safety, 1 expert in consumer fireworks retailing, 1 expert in consumer fireworks product manufacturing, 1 expert in consumer fireworks testing, 1 individual who represents consumer fireworks retail consumers, 1 expert in public health, 1 expert in law enforcement, 1 expert in fire safety, 1 expert in social welfare or social justice, and 2 attorneys with experience providing legal services to consumer fireworks businesses, or consumer fireworks consumers.

Members of the board shall serve terms of 2 years. Members of the board shall serve without compensation but shall be reimbursed for their expenses actually and necessarily incurred in the discharge of their official duties. Members of the board shall not be state employees for purposes of chapter 268A of the General Laws by virtue of their service on the advisory board. The board shall meet at the discretion of the commission. A majority of the members of the board present and voting shall constitute a quorum. (b) The consumer fireworks advisory board shall: (1) advise the commission on consumer fireworks safety, processing, manufacture, transport, distribution, testing and sale; (2) consider all matters submitted to it by the commission; (3) on its own initiative, recommend to the commission guidelines, rules and regulations and any changes to guidelines, rules and regulations that the board considers important or necessary; and (4) advise on the preparation of regulations under chapters 64H and 94J. (c) All records of the consumer fireworks advisory board shall be public records under chapter 66 of the General Laws.

SECTION 3. A sales tax shall be imposed upon the sale of property or services as provided in section 2 of chapter 64H of the General Laws and shall be paid by a consumer fireworks retailer at the time provided for filing the return required by section 16 of chapter 62C of the General Laws.

SECTION 4. The General Laws are hereby amended by inserting after chapter 94I the following chapter:

CHAPTER 94J

REGULATION OF THE USE AND DISTRIBUTION OF CONSUMER FIREWORKS

Section 1. Definitions for Fireworks Regulations

As used in this chapter, the following words shall have the following meanings:

(a) "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.

(b) "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.

(c) "Commission", the consumer fireworks regulation commission.

(d) "Consumer", a person who is at least 21 years of age.

(e) "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.

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

(g) "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.

(h) "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.

(i) "ICC", the International Code Council, Inc.

(j) "IFC", the International Fire Code.

(k) "Marshal", the State Fire Marshal or their designee.

(l) "NAFAA", the North American Fire Arts Association.

(m) "NFPA", National Fire Protection Association.

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

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

(p) “Secretary”, the Secretary of Public Safety and Security, or their designee.

(q) “Unreasonably impracticable”, that the measures necessary to comply with the regulations, ordinances or by-laws adopted pursuant to this chapter subject licensees to unreasonable risk or require such a high investment of risk, money, time or any other resource or asset that a reasonably prudent businessperson would not operate a consumer fireworks establishment.

Section 2. Limitations

(a) Legalization of only consumer fireworks. This chapter does not amend existing penalties for the sale or use of any items other than consumer fireworks.

(b) Transfer to or possession by a person under 21 years of age. This chapter shall not be construed to permit the knowing transfer of consumer fireworks, with or without remuneration, to a person under 21 years of age or to allow a person under 21 years of age to possess, use, purchase, obtain, deliver or sell or otherwise transfer consumer fireworks.

(c) Consumer fireworks legalized by this act shall not include any device such as M-80s or other such devices which are illegal under federal law.

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

(e) Property. This chapter shall not be construed to:

(1) Prevent a person from prohibiting or otherwise regulating the possession, use, or sale of consumer fireworks on or in property the person owns, occupies or manages;

(2) prevent the commonwealth, a subdivision thereof or local government agency from prohibiting or otherwise regulating the possession, sale, or use of consumer fireworks within a building or land owned, leased or occupied by the commonwealth, a political subdivision of the commonwealth or an agency of the commonwealth or a political subdivision of the commonwealth; or

(3) authorize the possession, use, or sale of fireworks on the grounds of or within a public or private school where children attend classes in preschool programs, kindergarten programs or grades 1 to 12, inclusive, or on the grounds of or within any correctional facility.

Section 3. The Consumer Fireworks Regulation Commission

(a) The commission shall, in consultation with the consumer fireworks advisory board and in accordance with chapter 30A of the General Laws, adopt regulations consistent with this chapter for the administration, clarification and enforcement of laws regulating and licensing consumer fireworks establishments. The regulations shall include but be not limited to:

(1) procedures for the issuance and renewal of licenses to operate consumer fireworks establishments;

(2) a schedule of application, license and renewal fees in an amount necessary to pay for all regulation and enforcement costs of the commission; provided however that fees may be relative to the volume of business conducted or to be conducted by the consumer fireworks establishment and shall not exceed:

(i) For an initial application, \$1,000;

(ii) For a license for a retail consumer fireworks store, \$3,000;

(3) qualifications for licensure;

(4) requirements for the safety and security of consumer fireworks establishments, including security, lighting, fire suppression systems, video and alarm requirements and requirements for the secure transportation and storage of consumer fireworks;

(5) requirements to prevent the sale of consumer fireworks to persons under 21 years of age;

(6) procedures and requirements to enable the transfer of a license for a consumer fireworks establishment to another qualified person or to another suitable location;

(7) provisions for: enforcing this chapter, including penalties for civil violations for the failure to comply with any regulation made pursuant to this section or for any violation of selling consumer fireworks to persons under 21 years of age; collecting fees and penalties imposed; suspending the license of a consumer fireworks establishment; terminating the license of a licensee; and appealing civil penalties or licensing actions.

(b) Regulations made pursuant to this section shall not:

(1) prohibit the operation of a consumer fireworks establishment either expressly or through regulations that make operation of a consumer fireworks establishment unreasonably impracticable;

(2) require a customer to provide a consumer fireworks establishment with identifying information other than identification to determine the customer's age and shall not require the retailer to acquire or record personal information about customers other than information typically required in a retail transaction.

(c) The commission shall administer the laws and regulations relating to licensing in this chapter.

(d) The commission may suspend or revoke the license of a licensee under regulations made pursuant to this chapter upon written notice of a violation and, if applicable, an opportunity to cure any violation within 30 days of such notice. All licensees shall be entitled to an adjudicatory

hearing pursuant to chapter 30A of the General Laws prior to suspension of a license for longer than 5 days or the revocation of a license.

(e) The commission shall hold a public hearing before the adoption, amendment or repeal of any regulation. Adjudicatory proceedings shall be conducted pursuant to chapter 30A of the General Laws and to standard rules of adjudicatory procedure established pursuant to section 9 of chapter 30A of the General Laws.

(f) The commission shall annually publish a full report of its action during each year containing a comprehensive description of its activities and including the number of licenses of each class issued, and a statement of revenue and expenses of the commission.

(g) The commission shall deposit all license, registration and monetary penalties collected pursuant to this chapter in the General Fund.

Section 4. Licensing of consumer fireworks establishments

(a) Upon receipt of a complete consumer fireworks establishment license application and the application fee, the commission shall forward a copy of the application to the city or town in which the consumer fireworks establishment is to be located, determine whether the applicant and the premises qualify for the license and has complied with this chapter and shall, within 90 days:

(1) issue the appropriate license; or

(2) send to the applicant a notice of rejection setting forth specific reasons why the commission did not approve the license application.

(b) Except as provided in subsection (c) of this section, the commission shall approve a consumer fireworks establishment license application and issue a license if:

(1) the prospective consumer fireworks establishment has submitted an application in compliance with regulations made by the commission, the applicant satisfies the requirements established by the commission, the applicant is in compliance with this chapter and the regulations made by the commission and the applicant has paid the required fee;

(2) the property where the proposed consumer fireworks establishment is to be located, at the time the license application is received by the commission, is not located within 500 feet of a pre-existing, of five years, public or private school providing education in kindergarten or any of grades 1 through 12, unless a city or town adopts an ordinance or by-law that reduces the distance requirement.

Section 5. Expiration and renewal

(a) License term. Unless the commission authorizes the renewal of a license for a longer period, all licenses under this chapter shall be effective for 1 year from the date of issuance.

(b) Renewal. The commission shall issue a renewal license within 30 days of receipt of a renewal application and renewal license fee from a fireworks establishment to licensees in good standing and who have filed any tax returns required pursuant to chapter 64N of the General Laws.

Section 6. Personal use of consumer fireworks

(a) The commission shall, in consultation with the consumer fireworks advisory board and in accordance with chapter 30A of the General Laws, adopt regulations consistent with this chapter to allow for the personal use of consumer fireworks by consumers 21 years of age or older. The regulations shall include:

(1) allowing the use of consumer fireworks between the hours of 12:00 p.m. and 11:00 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.

(2) a person 21 years of age or older shall not be arrested, prosecuted, penalized, sanctioned or disqualified under the laws of the commonwealth in any manner, or denied any right or privilege and shall not be subject to seizure or forfeiture of assets for: possessing, purchasing, or using consumer fireworks on that person's property or on the property of a person who has consented to the use of consumer fireworks on that property.

Section 7. Penalties for improper use of consumer fireworks

(a) The commission shall, in consultation with the consumer fireworks advisory board and in accordance with chapter 30A of the General Laws, adopt regulations consistent with this chapter to establish penalties for the improper use of consumer fireworks. The regulations shall include:

(1) Penalties for the sale of consumer fireworks to persons under the age of 21.

(2) Penalties for those who use consumer fireworks outside of hours established in this chapter.

(3) Penalties for those who use consumer fireworks on property they do not own or control or without the permission of the person who owns or control said property.

SECTION 6. If the consumer fireworks regulation commission fails to adopt regulations necessary for the implementation of this chapter on or before January 1, 2024, a person 21 years of age or older shall not be arrested, prosecuted, penalized, sanctioned or disqualified under the laws of the commonwealth in any manner, or denied any right or privilege and shall not be subject to seizure or forfeiture of assets for: possessing, purchasing, or use of consumer fireworks.

SECTION 5. The governor shall make the initial appointments to the consumer fireworks regulation commission under section 76 of chapter 10 of the General Laws by March 1, 2023. The initial appointments shall include 1 member who shall serve an initial term of 2 years.

SECTION 6. The governor shall make the initial appointments to the consumer fireworks advisory board under section 77 of chapter 10 of the General Laws by February 1, 2023. Seven of the initial appointees, as determined by the governor, shall serve for a term of 1 year.

SECTION 7. The consumer fireworks regulation commission shall promulgate the initial regulations under section 4 and section 6 of chapter 94J of the General Laws not later than September 15, 2023.

SECTION 8. This act shall take effect on December 15, 2022.

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