

No. 2004-204

AN ACT

SB 856

Amending the act of May 15, 1939 (P.L.134, No.65), entitled, as amended, "An act relating to fireworks; defining fireworks; prohibiting the sale, offering or exposing for sale and use of fireworks, except in certain cases; authorizing cities, boroughs, towns and townships to issue permits for fireworks displays, and to regulate the same; imposing duties on the Pennsylvania State Police, sheriffs, police officers and constables; and providing penalties," regulating sale and use of fireworks.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The title of the act of May 15, 1939 (P.L.134, No.65), referred to as the Fireworks Law, amended March 22, 1951 (P.L.57, No.14), is amended to read:

AN ACT

Relating to fireworks; defining fireworks; prohibiting the sale, *regulating the sale*, offering or exposing for sale and use of fireworks, except in certain cases; authorizing cities, boroughs, towns and townships to issue permits for fireworks displays, and to regulate the same; imposing duties on the Pennsylvania State Police, sheriffs[,] *and* police officers [*and constables*]; and providing penalties.

Section 2. Section 1 of the act, amended November 9, 1973 (P.L.335, No.112), is amended to read:

Section 1. The term "*consumer* fireworks" shall mean and include:

(1) **[any] Any** combustible or explosive composition or any substance or combination of substances **[or, except as hereinafter provided, any article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges and toy cannons in which explosives are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, aerial fireworks, or other fireworks of like construction, and any fireworks containing any explosive or flammable compound or any tablets or other device containing an explosive substance.**

The term "fireworks" shall not include sparklers, toy pistols, toy canes, toy guns, or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for the explosion, and toy pistol paper caps which contain less than twenty hundredths grains of explosive mixture, the sale and use of which shall be permitted at all times, nor shall the term "fireworks" include toy cannons which operate on the principle of

mixing calcium carbide, weighing less than one tenth of an ounce, and water in the reservoir of the cannon and in which ignition results upon the creation of a spark.] *intended to produce visible and/or audible effects by combustion and which is suitable for use by the public that complies with the construction, performance, composition and labeling requirements promulgated by the Consumer Products Safety Commission in 16 CFR (relating to commercial practices) or any successor regulation and which complies with the provisions for "consumer fireworks" as defined in the American Pyrotechnics Association (APA) Standard 87-1, or any successor standard.*

(2) *The term does not include devices as "ground and hand-held sparkling devices," "novelties" and "toy caps" in APA Standard 87-1, the sale, possession and use of which shall be permitted at all times throughout this Commonwealth.*

The term "display fireworks" shall be defined as provided in 27 CFR § 555.11 (relating to meaning of terms).

The term "municipalities" shall include cities, boroughs, incorporated towns and townships.

Section 3. Section 2 of the act is repealed.

Section 4. Section 4 of the act, amended February 10, 1956 (1955 P.L.1033, No.325), is amended to read:

Section 4. Nothing in this act shall be construed to prohibit any **[resident wholesaler, dealer or jobber to sell at wholesale such fireworks as are not herein prohibited,]** *licensed facility from selling any consumer fireworks or the year-round sale of any kind of consumer fireworks to out-of-State residents whose status is verified[,]* *to the licensee, provided the licensee retains proof of such status and produces it for review upon request of the Department of Agriculture and* provided the same are to be **[shipped]** *transported* directly out of state[, or are to] **by the seller or purchaser.** **[be]** *Consumer fireworks and display fireworks may be possessed and* used by a person holding a permit from any municipality at the display covered by such permit, or when used as authorized by a permit for agricultural purposes in connection with the raising of crops and the protection of crops from bird and animal damage, or the use **[of fireworks]** by railroads or other transportation agencies for signal purposes or illumination, or when used in quarrying or for blasting or other industrial use, or the sale or use of blank cartridges for a show or theatre, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations or organizations composed of veterans of the United States Army or Navy. *No such permit shall be issued to a person younger than eighteen (18) years of age.*

Section 5. The act is amended by adding sections to read:

Section 4.2. Permission shall be given by the governing body of any city, borough, town or township under reasonable rules and regulations for displays of consumer fireworks and display fireworks to be held therein.

Every such display shall be handled by a competent operator and shall be of such a character and so located, discharged or fired as, in the opinion of the chief of the fire department or other such officer as may be designated by the governing body of the municipality, after proper inspection, to not be hazardous to property or endanger any person or persons. After such privilege shall have been granted, possession and use of consumer fireworks and display fireworks for such display shall be lawful for that purpose only. No permit shall be transferable.

Section 4.3. *Consumer fireworks shall be sold only from facilities that are licensed by the Department of Agriculture and that meet the following criteria:*

(1) The facility shall comply with the provisions of the act of November 10, 1999 (P.L.491, No.45), known as the "Pennsylvania Construction Code Act."

(2) The facility shall be in a stand-alone building and shall be no larger than twelve thousand (12,000) square feet.

(3) Storage areas shall be separated from wholesale or retail sales areas to which a purchaser may be admitted by appropriately rated fire separation.

(4) The facility shall be located no closer than two hundred fifty (250) feet from any facility selling or dispensing gasoline, propane or other such flammable products.

(5) The facility shall be located at least two hundred fifty (250) feet from any other facility licensed to sell consumer fireworks.

(6) The facility shall have a monitored burglar and fire alarm system.

(7) Quarterly fire drills and preplanning meetings shall be conducted as required by the primary fire department.

Section 4.4. *Applications for licenses to sell consumer fireworks shall be submitted to the Department of Agriculture on forms prescribed and provided by the department. The license application shall be accompanied by an annual license fee of five thousand dollars (\$5,000) per location. Facilities in existence on the effective date of this section and new facilities shall be inspected by the Department of Agriculture within thirty (30) days of receipt of a complete application for a license. The Department of Agriculture shall issue a license, or deny a license, within fourteen (14) days of completing the inspection. A license shall be effective for one year from the date the license is issued, and renewal of a license shall be automatic upon payment of the license fee, but each facility is subject to annual inspection by the Department of Agriculture, and at other times at its discretion, during normal business hours. No license shall be issued to any convicted felons or to any entities where a convicted felon owns any percentage of the equity interest in such entity.*

Section 4.5. *A facility licensed by the Department of Agriculture shall be exclusively dedicated to the storage and sale of consumer fireworks and*

related items, and the facility shall operate in accordance with the following rules:

(1) There shall be security personnel on the premises for the seven (7) days preceding and including July 4 and for the three (3) days preceding and including January 2.

(2) No smoking shall be permitted in the facility.

(3) No cigarettes or tobacco products, matches, lighters, or any other flame-producing devices shall be permitted to be taken into the facility.

(4) No minors shall be permitted in the facility unless accompanied by an adult, and each minor shall stay with the adult in the facility.

(5) All facilities shall carry at least two million dollars (\$2,000,000) in public and product liability insurance.

(6) A licensee shall provide its employes with documented training in the area of operational safety of a facility. The licensee shall provide to the Department of Agriculture written documentation that each employe has received such training.

(7) No display fireworks shall be stored or located at a facility.

(8) No person who appears to be under the influence of intoxicating liquor or drugs shall be admitted to the facility, and no liquor, beer, or wine shall be permitted in the facility.

(9) No consumer fireworks or display fireworks shall be ignited within three hundred (300) feet of a facility.

(10) Emergency evacuation plans shall be conspicuously posted in appropriate locations within the facility.

Section 6. Sections 5 and 5.1 of the act are repealed.

Section 7. Section 6 of the act is amended to read:

Section 6. [Any person, copartnership, association or corporation violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars (\$100) or in the case of individuals, the members of a partnership and the responsible officers and agents of an association or corporation, by imprisonment in the county jail not exceeding ninety (90) days or by both such fine and imprisonment.] *The following shall apply:*

(1) Any person, copartnership, association or corporation using consumer fireworks in violation of the provisions of this act commits a summary offense and, upon conviction, shall be punished by a fine of not more than one hundred (\$100) dollars.

(2) Any person, copartnership, association or corporation selling consumer fireworks in violation of the provisions of this act commits a misdemeanor of the second degree.

(3) Any person, copartnership, association or corporation selling display fireworks in violation of the provisions of this act commits a felony of the third degree.

(4) Any person, copartnership, association or corporation selling federally illegal explosives such as devices as described in 49 CFR 173.54 (relating to forbidden explosives) or those devices that have not been tested, approved and labeled by the Federal Department of Transportation, including, but not limited to, those devices commonly referred to as "M-80," "M-100," "blockbuster," "cherry bomb" or "quarter or half stick" explosive devices, in violation of the provisions of this act commits a felony of the third degree.

Section 8. The act is amended by adding a section to read:

Section 7.1. The Pennsylvania State Police, any sheriff or police officer shall take, remove or cause to be removed at the expense of the owner all stocks of consumer fireworks or display fireworks or combustibles offered or exposed for sale, stored or held in violation of this act. The owner shall also be responsible for the storage and, if deemed necessary, the destruction of these fireworks.

Section 9. This act shall take effect immediately.

APPROVED—The 30th day of November, A.D. 2004.

EDWARD G. RENDELL