

UNOFFICIAL COPY: FIREWORKS AND EXPLOSIVES

The following is an unofficial copy of 35 P.S. Chapter 13A, "Fireworks and Explosives," as it was amended by Act 204 of 2004 (Senate Bill No. 856, P.N. 1951). Act 204 of 2004 was approved by the Governor on November 30, 2004, and was immediately effective upon approval.

The document is "unofficial" because it has been retyped. Any discrepancies between this document and the official statute shall be resolved in favor of the official statute.

Section numbers refer to the corresponding section in Title 35 of Purdon's Statutes. For example: "Section 1271" refers to 35 P.S. § 1271.

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 providing penalties.

§ 1271. Sale and use of fireworks; definitions

The term "consumer fireworks" shall mean and include:

(1) Any combustible or explosive composition or any substance or combination of substances intended to produce visible 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.

§ 1272. (Repealed.)

§ 1273. Licensee's bond

The governing body of the municipality shall require a bond deemed adequate by it from the licensee in a sum not less than five hundred dollars (\$500) conditioned for the payment of all damages which may be caused either to a person or persons, or to property by reason of the licensed display and arising from any acts of the licensee, his agents, employes or subcontractors.

§ 1274. Extension of permit when display prevented by unfavorable weather

If by reason of unfavorable weather the display for which a permit has been granted does not take place at the time so authorized, the person to whom such permit was issued may within twenty-four hours apply to the authority having granted the same, setting forth under oath the fact that such display was not made, giving the reason therefor, and requesting a continuance of such permit for a day designated therein, not later than one week after the day fixed originally in said permit. Upon receiving such application for a continuance the said authority, if it believes the facts stated therein are true, shall extend the provisions of said permit to the day fixed in said application, not later than one week after the original day designated in the permit, and such extension of time shall be granted without the payment of any additional fee and without requiring any bond other than the one given for the original permit, the provisions of which shall extend to and cover all damages which may be caused by reason of the said display taking place at such extended date in the same manner and to the same extent as if such display had taken place at the date originally fixed in the permit.

§ 1275. Sale, possession and use of fireworks

Nothing in this act shall be construed to prohibit any 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 transported directly out of state by the seller or purchaser. 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 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.

§ 1275.1. Local permits for use of fireworks for agricultural purposes

The governing body of any city, borough, town or township shall have the power, under reasonable rules and regulations adopted by it, to grant permits for the use of suitable fireworks for agricultural purposes in connection with the raising of crops and the protection of crops from bird and animal damage. Such permits shall be good for the calendar year in which issued. After such permit has been granted, sales, possession and use of fireworks of the type and for the purpose mentioned in the permit shall be lawful for that purpose only.

§ 1275.2. Supervised public displays permitted; permits

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.

§ 1275.3. Consumer fireworks facilities; criteria for licensure

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 person 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.

§ 1275.4. Consumer fireworks facilities; applications for licensure; inspections; renewals

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.

§ 1275.5. Operation of consumer fireworks facilities

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 employees 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 employee 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.

§ 1276. (Repealed.)

§ 1276.1. (Repealed.)

§ 1276.2. Registration of fireworks displays or exhibitions

- (a) Any business entity which performs, provides or supervises fireworks displays or exhibitions for profit shall register annually with the Attorney General.
- (b) The Attorney General shall promulgate rules to implement this section.

§ 1277. Penalty for violation

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.

§ 1278. Confiscation

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.

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