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Indicates New Matter

AMENDED

January 28, 2010

**S. 454**

Introduced by Senators Peeler and Ford

S. Printed 1/28/10--H.

Read the first time May 21, 2009.

**A** **BILL**

TO AMEND CHAPTER 56, TITLE 40, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE STATE BOARD OF PYROTECHNIC REGULATIONS, SO AS TO REVISE THE CHAPTER TITLE, TO PROVIDE STATE POLICY CONCERNING PYROTECHNICS, TO INCREASE THE STATE BOARD OF PYROTECHNIC SAFETY FROM SIX TO SEVEN MEMBERS, TO DEFINE TERMS, TO REQUIRE LICENSURE FOR THE MANUFACTURING, SALE, OR STORAGE OF FIREWORKS, TO AUTHORIZE THE DEPARTMENT OF LABOR, LICENSING AND REGULATION, FIRE CHIEFS, AND LAW ENFORCEMENT OFFICERS TO INVESTIGATE COMPLAINTS, TO PROVIDE GROUNDS FOR DISCIPLINARY ACTION, TO REQUIRE LIABILITY INSURANCE, TO REQUIRE REPORTING OF FIRES AND EXPLOSIONS, TO PROVIDE CRIMINAL AND CIVIL PENALTIES FOR VIOLATIONS, AND TO FURTHER PROVIDE FOR THE LICENSURE AND REGULATION OF PERSONS HANDLING FIREWORKS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 56, Title 40 of the 1976 Code is amended to read:

“CHAPTER 56

State Board of Pyrotechnic ~~Regulations~~ Safety

~~Section 40‑56‑10.~~ ~~There is created the State Board of Pyrotechnic Safety to be composed of six members appointed by the Governor. One of the appointees must be a fireman, one must be a pyrotechnics retailer, one must be a law enforcement representative, and three must be members of the public who shall not possess any pecuniary interest in any entity engaged in a business directly involving the sale of pyrotechnics. The board shall elect from its members a chairman, vice‑chairman, and such other officers as it may consider necessary to serve for terms of one year and until their successors are elected and qualify. Terms of office for members are for two years and until their successors are appointed and qualify. Vacancies must be filled in the manner of original appointment for the unexpired term. The board shall meet at least annually and not more than once per month. All meetings must be scheduled at the call of the chairman. All members shall receive mileage, per diem, and subsistence as provided by law for members of boards, committees, and commissions for days on which they are transacting official business, to be paid from the general fund of the state. The Director of the Department of Labor, Licensing, and Regulation, pursuant to Section 40‑73‑15, shall employ such personnel as necessary to carry out the duties of the board.~~

~~Section 40‑56‑20.~~ ~~It shall be the duty and responsibility of the board created in Section 40‑56‑10 to promulgate regulations relating to the sale of pyrotechnics in this State including the storage and fire safety of such products. The board shall also recommend to the General Assembly legislation it deems necessary for the safety and control of the sale of pyrotechnics.~~

Section 40‑56‑1. It is the policy of this State and the purpose of this chapter to promote the safety of the public and the environment by effective regulation of pyrotechnics. Public safety requires people who handle pyrotechnics to have demonstrated their qualifications, that they adhere to reliable safety standards, and that sites where pyrotechnics are manufactured, stored, and sold adhere to reliable safety standards. It is neither the policy of this State nor the purpose of this chapter to place undue restrictions upon entry into the business of handling pyrotechnics.

Section 40‑56‑5. Unless otherwise provided for in this chapter, Chapter 1, Title 40 applies to the Board of Pyrotechnic Safety and licensees regulated under this chapter. The provisions of this chapter control if a conflict between this chapter and Chapter 1 exists.

Section 40‑56‑10. (A) The State Board of Pyrotechnic Safetyis composed ofseven members appointed by the Governor. One of the appointees must beemployed by a local fire authority, one must be a pyrotechnics wholesaler, one must be a law enforcement representative, one must be a fireworks retailer, andthree must be members of the public whodo not possess any pecuniary interest in any entity engaged in a business directly involving the sale of pyrotechnics. A seat on the board that remains vacant for sixty days must be filled through an appointment by majority vote of the chairman of the House Labor, Commerce and Industry Committee, the Senate Labor, Commerce and Industry Committee, and the State Fire Marshall.

(B) The terms of office for members are forfour years and until their successors are appointed andqualified. Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term.

(C) The board shall meet at least annually and not more than once a month. All meetings must be scheduled at the call of the chairman. The board shall elect from its members a chairman, vice chairman, and other officers as it considers necessary, and these officers shall serve for terms of one year and until their successors are elected and qualified. A member shall receive mileage, per diem, and subsistence as provided by law for members of state boards, committees, and commissions for days on which he is transacting official business, to be paid from the general fund of the State.

(D) The Department’s Office of State Fire Marshal shall provide administrative support as required by the board to perform its prescribed functions. The State Fire Marshal is an official consultant and is authorized to attend all meetings.

Section 40‑56‑20. As used in this chapter:

(1) ‘APA’ means the American Pyrotechnics Association.

(2) ‘Board’ means the State Board of Pyrotechnic Safety.

(3) ‘Consumer fireworks’ means any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the U.S. Consumer Product Safety Commission, as set forth in Title 16, Code of Federal Regulations, parts 1500 and 1507 and APA Standard 87‑1. Some small devices designed to produce audible effects are consumer fireworks, including, but not limited to, whistling devices, ground devices containing 50 mg or less of explosive materials, and aerial devices containing 130 mg or less of explosive materials. Consumer fireworks are classified as fireworks UN0336, and UN0337 by the U.S. Department of Transportation at 49 C.F.R. 172.101. This term does not include fused setpieces containing components which together exceed 50 mg of salute powder. Consumer fireworks are further defined as those classified by the U.S. Department of Transportation hazard classification 1.4G. These fireworks were formerly known as ‘Class C Fireworks’.

(4) ‘CPSC’ means The U.S. Consumer Product Safety Commission.

(5) ‘Department’ means the Department of Labor, Licensing and Regulation.

(6) ‘Display fireworks’ means large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. This term includes, but is not limited to, salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as ‘consumer fireworks’. Display fireworks are classified as fireworks UN0333, UN0334, or UN0335 by the U.S. Department of Transportation at 49 C.F.R. 172.101. This term also includes fused setpieces containing components which together exceed 50 mg of salute powder. Display fireworks are further defined as those classified by the U.S. Department of Transportation as hazard classification 1.3G. These fireworks were formerly known as ‘Class B Fireworks’.

(7) ‘DOT’ means the U.S. Department of Transportation.

(8) ‘Fireworks’ means a composition or device designed to produce a visible or an audible effect by combustion, deflagration, or detonation, and which meets the definition of ‘consumer fireworks’ or ‘display fireworks’ as defined by this section.

(9) ‘Licensee’ means a person, firm, or entity that has been issued a license by the board under the provisions of this chapter to manufacture, sell, or store fireworks.

(10) ‘NFPA’ means the National Fire Protection Association.

(11) ‘Pyrotechnics’ means a composition or device designed to produce visible or audible effects for entertainment purposes by combustion, deflagration, or detonation.

(12) ‘Small bottle rocket’ is a consumer firework with a motor less than one‑half inch in diameter and three inches in length, a stabilizing stick less than fifteen inches in length, and a total pyrotechnic composition not exceeding twenty grams in weight.

Section 40‑56‑30. It is unlawful for a person to engage in the manufacturing, storage, or sale of pyrotechnics unless in compliance with this chapter.

Section 40‑56‑35. (A) Except as otherwise provided for in this section, a person, firm, or entity that manufactures, sells, or stores fireworks shall obtain a license issued by the board pursuant to this chapter. General license requirements are as follows:

(1) An application for licensure must be submitted on forms prescribed by the board accompanied by applicable fees.

(2) A license is required for each physical address or site at which fireworks are manufactured, sold, or stored.

(3) A copy of the appropriate license issued by the South Carolina Department of Revenue for retail sales of fireworks must accompany each application for a retail fireworks sales license.

(4) Initial license applications and applications for license renewal may be approved only after an authorized agent of the board inspects the buildings and facilities where fireworks are to be manufactured, sold, or stored for compliance with the current codes and standards.

(5) A licenses and permit only may be issued for one calendar year.

(6) A license must be prominently displayed at the licensee’s place of business approved for the manufacture, sale, or storage of fireworks.

(7) A license issued by the board is not transferable.

(8) The board shall set fees for licenses and other incurred administrative costs.

(B) A license is not required for the:

(1) manufacture, sale, storage, transportation, handling, or a combination of these, including, but not limited to, railroad torpedoes, automotive, aeronautical, and marine flares and smoke signals;

(2) transportation, storage, handling, or use of fireworks, or a combination of these, by the Armed Forces of the United States;

(3) transportation, handling, or use of fireworks, or a combination of these, by the State Fire Marshal, his employees, or a commissioned law enforcement officer acting within his official capacity; or

(4) fireworks deregulated by the U.S. Department of Transportation.

Section 40‑56‑50. The Department of Labor, Licensing and Regulation shall provide all administrative, fiscal, investigative, inspection, clerical, secretarial, and license renewal operations and activities of the board pursuant to Chapter 1.

Section 40‑56‑70. (A) It is the duty and responsibility of the boardto promulgate, pursuant to the Administrative Procedures Act, regulations relating topyrotechnics in this State, including the manufacture, sales, storage, and fire safety of these products. These regulations must be adjusted using the procedures in Chapter 34, Title 1.

(B) The board may conduct hearings on alleged violations by licensees of this chapter or regulations promulgated pursuant to this chapter and may discipline these licensees.

(C) The board also shall recommend to the General Assembly legislation it considers necessary for the safety and control of the sale of pyrotechnics.

Section 40‑56‑80. (A) The Department of Labor, Licensing and Regulation shall investigate complaints and violations of this chapter as provided for in Chapter 1.

(B) During reasonable business hours, the department or its authorized agent may enter the premises or vehicle of a person engaged in the manufacture, sale, or storage of pyrotechnics to inspect, investigate, or examine the property or installation it considers necessary. When an emergency exists, as declared by the department, the inspector may enter the premises of a person and take necessary action for public safety including, but not limited to, the evacuation of the area where the emergency exists.

(C) A fire chief and his inspector, a sheriff and his deputy, a chief of police and his officer, and an agent of SLED may inspect a building, facility, or vehicle where fireworks may be manufactured, stored, or sold and a records of manufacturing, storage, sales, and purchases that must be maintained.

(D) An official named in this section who has the authority to inspect may confiscate illegal fireworks being manufactured, offered for sale, stored, or possessed.

(E) The board may compel the attendance of witnesses to testify in relation to a matter within its jurisdiction.

Section 40‑56‑100. In addition to other remedies provided for in this chapter, the board pursuant to Chapter 1 may issue a cease and desist order or may petition the Administrative Law Court for a temporary restraining order or other equitable relief to enjoin a violation of this chapter or a regulation promulgated pursuant to this chapter.

Section 40‑56‑115. The board has jurisdiction over the actions of licensees and former licensees as provided for in Chapter 1.

Section 40‑56‑120. (A) Upon a determination by the board that grounds for discipline exist, the board may:

(1) issue a public reprimand;

(2) impose a civil penalty not to exceed two thousand five hundred dollars;

(3) place a licensee on probation or restrict or suspend a license for a definite or indefinite time period and prescribe conditions to be met during this period including, but not limited to, satisfactory completion of additional education, or a supervisory period; or

(4) revoke the license.

(B) The board may take disciplinary action against a person for:

(1) the grounds stated in Chapter 1; or

(2) a condition found as a result of an inspection, examination, or investigation provided for in Section 40‑56‑80 that is hazardous to public safety.

Section 40‑56‑130. The board may deny licensure to an applicant based on the same grounds for which the board may take disciplinary action against a licensee.

Section 40‑56‑140. A license only may be denied based on an applicant’s prior criminal record as provided in Chapter 1.

Section 40‑56‑150. A licensee under investigation for a violation of this chapter or a regulation promulgated pursuant to this chapter may voluntarily surrender the license pursuant to Chapter 1.

Section 40‑56‑160. A person aggrieved by a final action of the board may seek review of the decision pursuant Chapter 1.

Section 40‑56‑170. A person found in violation of this chapter or a regulation promulgated pursuant this chapter may be required to pay costs associated with the investigation and prosecution of the case pursuant to Chapter 1.

Section 40‑56‑180. A costs or fine imposed pursuant to this chapter must be paid in accordance with, and are subject to, the collection and enforcement provisions of Chapter 1.

Section 40‑56‑190. An investigation or proceeding conducted under a provision of this chapter is confidential and related communications are privileged as provided for in Chapter 1.

Section 40‑56‑200. (A) A person required by this chapter to obtain a license to do business in this State and who has not obtained a license, who operates while his license is suspended or revoked, or who violates a provision of this chapter or a regulation promulgated pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not less than one thousand dollars and not more than two thousand dollars or imprisoned for not less than ninety days and not more than one year.

(B) This chapter does not repeal, amend, or otherwise affect fire codes and regulations adopted by the State Fire Marshal.

Section 40‑56‑210. In addition to initiating a criminal proceeding for a violation of this chapter, the board may seek civil penalties and injunctive relief as provided for in Chapter 1.

Section 40‑56‑220. (A) A facility for the manufacture, sale, or storage of fireworks must comply with regulations established by the board.

(B) Consumer fireworks must comply with standards set by the U.S. Department of Transportation and the CPSC for consumer fireworks. The board may request fireworks be tested by a CPSC certified testing group to see that these standards are met.

(C) The retail sale and use of a small bottle rocket is legal in this State.

(D) Fireworks may not be sold to a person under the age of sixteen.

Section 40‑56‑230. (A) An application for a retail fireworks sales license must be accompanied by evidence that the applicant holds a policy that:

(1) provides public liability insurance coverage for retail sales activities at the location for the permitted sale period,

(2) is issued by an insurance company authorized to do business in this State, and

(3) provides coverage in the following minimum amounts:

(a) one million dollars for injuries or damage to any one person in one accident or occurrence;

(b) one million dollars for injuries to two or more persons in any accident or occurrence; and

(c) one million dollars combined single‑limit coverage for any one accident or occurrence.

(B) A policy, except those policies issued for fewer than ninety days’ use for seasonal permits, by its original term or an endorsement, must obligate the insurer to not cancel, suspend, or nonrenew the policy without thirty days’ written notice of the proposed cancellation, suspension, or nonrenewal being given to the board. The insured immediately shall give notice to the board if liability insurance is canceled, suspended, or nonrenewed.

Section 40‑56‑240. (A) A person may not store display fireworks in this State unless he has obtained a wholesale license from the board.

(B) Only a licensed wholesaler may sell or provide fireworks for displays.

(C) A building or structure used to store display fireworks must meet regulations established by the board.

(D) These license holders also must comply with U.S. Bureau of Alcohol, Tobacco, and Firearms regulations.

Section 40‑56‑250. (A) If as a result of an inspection the board or its designee finds a condition that is hazardous to public safety or violates this chapter or a regulation promulgated pursuant to this chapter, the board shall issue a written order to remove or correct the condition. The board may issue administrative citations and assess administrative penalties against a licensee who fails to comply with the terms of this order.

(B) An administrative penalty authorized under this section is separate from and in addition to another civil or criminal remedy.

(C) An administrative penalty assessed pursuant to this section may not exceed two thousand five hundred dollars for a violation.

(D) An entity or individual assessed an administrative penalty by citation under this section may appeal the citation to the Board of Pyrotechnic Safety within fifteen days of receipt of the citation. The appeal must be filed in writing. If an appeal is filed, the board shall schedule a hearing during which it shall make a determination in the matter. If no appeal is timely filed, the citation is considered a final order and the administrative penalty must be paid within thirty days of receipt of the citation.

Section 40‑56‑260. An owner, manager, or operator of a location regulated by this chapter shall report to the board within twenty‑four hours of a fire or explosion of which the person has knowledge, with as complete detail as possible, together with evidence as he has obtained after investigation of the fire or explosion. A report filed pursuant to this section is confidential and for the use of the board only pending investigation completion.

Section 40‑56‑270. If a provision of this chapter or the application of a provision to a person or circumstance is held invalid, this invalidity does not affect other provisions or applications of this chapter, which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.”

SECTION 2. This act takes effect upon approval by the Governor.”

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