

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

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HOUSE BILL 652

Short Title: NC Consumer Fireworks Safety Act. (Public)

Sponsors: Representatives Szoka, Bell, Hardister, and Brody (Primary Sponsors).  
*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Insurance, if favorable, Finance, if favorable, Rules, Calendar, and Operations of  
the House

April 26, 2021

A BILL TO BE ENTITLED  
AN ACT TO PERMIT THE SALE, POSSESSION, AND USE OF CERTAIN CONSUMER  
FIREWORKS AND TO LEVY AN EXCISE TAX ON THE SALES OF CONSUMER  
FIREWORKS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 14-410 reads as rewritten:

**"§ 14-410. Manufacture, sale and use of pyrotechnics prohibited; exceptions; license  
required; sale to persons under the age of ~~16~~18 prohibited.**

(a) Except as otherwise provided in this section, it shall be unlawful for any individual,  
firm, partnership or corporation to manufacture, purchase, sell, deal in, transport, possess,  
receive, advertise, use, handle, exhibit, or discharge any pyrotechnics of any description  
whatsoever within the State of North Carolina.

...

(a5) It shall be permissible for pyrotechnics to be exhibited, used, handled, manufactured,  
or discharged within the State for pyrotechnic or proximate audience display instruction  
consisting of classroom and practical skills training approved by the Office of State Fire Marshal.

(a6) It shall be permissible for pyrotechnics that are consumer fireworks to be possessed,  
advertised, sold, used, transported, handled, or discharged within the State, provided the  
possession, advertising, sale, use, transportation, handling, or discharge complies with Part 2 of  
Article 82A of Chapter 58 of the General Statutes.

(b) Notwithstanding the provisions of G.S. 14-414, it shall be unlawful for any  
individual, firm, partnership, or corporation to sell consumer fireworks as defined in this section  
or pyrotechnics as defined in G.S. 14-414(2), (3), (4)c., (5), or (6) to persons under the age of  
~~16~~18.

(c) The following definitions apply in this Article:

(1) Concert or public exhibition. – A fair, carnival, show of any description, or  
public celebration.

(1a) Consumer fireworks. – Defined in G.S. 58-82A-80.

(2) Display operator. – An individual issued a display operator license under  
G.S. 58-82A-3.

(3) State Fire Marshal. – Defined in G.S. 58-80-1."

**SECTION 2.** G.S. 14-415 reads as rewritten:

**"§ 14-415. Violation made misdemeanor.**



Any person violating any of the provisions of this Article, except as otherwise specified in said Article, shall be guilty of a Class 2 misdemeanor, except that it is a Class 1 misdemeanor if the sale is in violation of G.S. 14-410(b) or if the exhibition is indoors."

**SECTION 3.** G.S. 58-82A-1 through G.S. 58-82A-55 are recodified as Part 1 of Article 82A of Chapter 58 of the General Statutes, to be entitled:

"Part 1. Display Pyrotechnics Training and Permitting."

**SECTION 4.** Article 82A of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 2. Consumer Fireworks.

**"§ 58-82A-75. Purpose.**

The sale, use, transport, possession, handling, or discharge of consumer fireworks shall be permitted only in compliance with the provisions of this Part.

**"§ 58-82A-80. Definitions.**

The following definitions apply in this Part:

- (1) Consumer fireworks. – Any small fireworks device designed primarily to produce visible effects by combustion or deflagration that (i) is categorized as a 1.4G firework device under Standard 87-1 of the American Pyrotechnics Association and (ii) complies with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission, as set forth in the Code of Federal Regulations, volumes 16 and 49.
- (2) Consumer fireworks distributor. – A person owning or otherwise controlling a facility where consumer fireworks are stored or otherwise maintained for distribution to fireworks retailers permitted under this Part.
- (3) Consumer fireworks permanent retailer. – A person that sells only "consumer fireworks," "sparkling devices," "novelties," and related items from a consumer fireworks retail establishment.
- (4) Consumer fireworks retail establishment. – A structure that is designed, planned, and constructed to remain in one location that is operated by a consumer fireworks permanent retailer as a retail facility.
- (5) Consumer fireworks temporary retailer. – A person that sells only "consumer fireworks," "sparkling devices," "novelties," and related items from a fireworks retail stand or a fireworks tent.
- (6) Fireworks retail stand. – A building or structure with a floor area not greater than 800 square feet, other than a fireworks tent. Stands may include buildings, manufactured buildings, trailers, shipping containers, and temporary structures constructed from plywood, sheet metal, or similar materials.
- (7) Fireworks retailer. – A consumer fireworks permanent retailer, consumer fireworks temporary retailer, or an incidental sparkling device retailer permitted under this Part.
- (8) Fireworks safety and education trainer. – A person who has completed training on the function, safe handling, and best practices for the safe use of all categories of consumer fireworks under G.S. 58-82A-130 and annually registers with the Department.
- (9) Fireworks tent. – A tent, canopy, or membrane structure with a floor area not greater than 1,500 square feet that is not permanently installed.
- (10) Incidental sparkling device retailer. – A person selling only sparkling devices and novelties that is not a consumer fireworks permanent retailer or consumer fireworks temporary retailer as defined by this section.

- (11) NFPA standards. – Standard 1124 of the National Fire Protection Association, 2017 edition, as it applies to the retail sale or distribution of consumer fireworks, except as otherwise specified by this Part.
- (12) Novelties. – Snaps, party poppers, snakes, glow worms, toy smoke devices, and certain wire sparklers and dipped sticks containing 5 grams or less of pyrotechnic composition. The specification of novelties under this subdivision shall substantially follow the definition of these devices under Standard 87-1 of the American Pyrotechnics Association.
- (13) Public space. – Any building or area open to the public, whether privately or publicly owned. Public space includes restaurants, theaters, stadiums, arenas, retail establishments, and shopping malls.
- (14) Sparkling devices. – Consumer fireworks and novelties that do not rise into the air, do not fire inserts or projectiles into the air, and do not explode or produce a report. The specification of sparkling devices under this subdivision shall substantially follow the definition of "ground and handheld sparkling devices" under Standard 87-1 of the American Pyrotechnics Association.

**"§ 58-82A-85. Possession and use of consumer fireworks.**

- (a) The possession of consumer fireworks is allowed in this State, subject to the following requirements and conditions.
- (b) The use and sale of consumer fireworks is prohibited within a county or city unless that county or city has adopted an ordinance to allow the use and sale of consumer fireworks in accordance with G.S. 153A-130.1 and G.S. 160A-190.1.
- (c) The possession and use of consumer fireworks is subject to the following conditions:
- (1) The person possessing or using the consumer fireworks must be at least 18 years old.
- (2) The use of consumer fireworks may occur only between the hours of 10:00 A.M. and 10:00 P.M., with the following exceptions:
- a. On July 4, use is permitted until 12:00 A.M.
- b. On December 31 and the following January 1, use is permitted from 8:00 A.M. on December 31 until 12:30 A.M. on January 1.
- (3) The use of consumer fireworks is prohibited in the following locations:
- a. In or on the premises of a public or private primary or secondary school, unless the person has written authorization from the school.
- b. On the campus of a college or university, unless the person has received written authorization from the college or university.
- c. Within 1,500 feet of a hospital, veterinary hospital, animal care facility, licensed child care facility, fireworks retailer, fireworks distributor, gas station, or bulk storage facility for petroleum products or other explosive or flammable substances.
- (4) The possession or use of consumer fireworks is prohibited in or on the premises of any public park or public space, except as otherwise permitted by the person, State agency, or unit of local government owning or otherwise controlling the public park, property, or public space.
- (d) No county or city may restrict or exclude the transportation of consumer fireworks across or through the county or city. Nothing in this subsection is intended to prevent reasonable transportation-related restrictions applicable to all vehicles or a class of vehicles regardless of cargo, such as vehicle weight limits or truck route restrictions in accordance with U.S. Department of Transportation regulations.

**"§ 58-82A-90. Sale of consumer fireworks; permit required.**

- (a) No person shall sell consumer fireworks, sparkling devices, or novelties in this State unless the person holds a permit issued under this Part from the Commissioner. The

Commissioner shall issue rules to implement this section. Permits of a fireworks retailer shall be posted in a location visible to members of the public visiting the retailer. The Commissioner shall issue a permit to a person who meets the following conditions:

- (1) Is 21 years of age or older.
- (2) Complies with all the requirements of this Part.
- (3) Has not been convicted of a felony and has not received a pardon.
- (4) Has not been convicted of an offense for a violation of State or federal law, or been found in violation of any municipal ordinance, involving fireworks or explosives within five years prior to the date of the application for the permit.
- (5) Maintains at all times public liability and product liability insurance with minimum coverage limits of five million dollars (\$5,000,000) to cover losses, damages, or injury that might occur as a result of the person selling consumer fireworks. The Commissioner, by rule, may increase the amount of liability insurance required to be maintained by a fireworks retailer. In determining whether to increase the amount of required liability insurance, the Commissioner shall consider the maximum amount of inventory the fireworks retailer will have on hand at a given time, any property located within 1,000 feet of the property wherein the fireworks will be stored or sold, and any other factors the Commissioner deems important.
- (6) Submits the application for a permit no less than 120 days prior to the date the applicant proposes to begin sales of consumer fireworks under this Part.
- (7) Provides a lease or evidence of ownership of the site of the proposed fireworks retailer for no less than the duration of the permit. A consumer fireworks temporary retailer or incidental sparkling device retailer operating out of a fireworks retail stand or fireworks tent located at a site not owned by the retailer may comply with this subdivision by providing the required authorization under G.S. 58-82A-122.

(b) A person issued a permit under this Part shall comply with the following requirements:

- (1) Standards. – The permittee must comply with (i) NFPA standards and (ii) applicable local zoning and land-use rules.
- (2) Employees. – All employees of the permittee engaged in the sale of fireworks or sparkling devices must be at least 18 years of age.
- (3) Fire suppression devices. – The permittee must maintain on the premises a minimum of two portable fire extinguishers with a 2A rating. The fire extinguishers shall be in two different locations within the premises of the retailer, and at least one of the extinguishers shall be of the pressurized water type, subject to additional provisions in NFPA standards.
- (4) Required signs. – The permittee shall post signs prohibiting smoking on the premises and discharge of fireworks and sparkling devices within 1,500 feet of the premises in a manner specified by the Commissioner.

(c) In addition to the requirements set forth in subsections (a) and (b) of this section, a permit issued for a consumer fireworks permanent retailer or consumer fireworks temporary retailer shall comply with the following requirements:

- (1) Setbacks. – Areas within 20 feet of the retailer's premises shall be kept free of dry vegetation and other combustible debris. The retailer may not be located within 300 feet of the following:
  - a. Retail establishments dispensing flammable or combustible liquids, flammable gas, or flammable liquefied gas.
  - b. Above-ground storage tanks storing flammable or combustible liquids, flammable gas, or flammable liquefied gas.

c. Propane dispensing stations.

(2) Smoking prohibited. – Smoking shall not be permitted inside the retailer's premises, subject to the retailer's building location, layout, and restrictions.

(3) Egress requirements. – Means of egress, including aisles, doors, and exit discharge, shall be clear at all times when the retailer is open to the public, and aisles must be at least 48 inches in width.

(4) Fire safety. – The retailer shall create and maintain a fire safety and evacuation plan in a form specified and approved by the Commissioner.

(5) Training. – No less than two management or supervisory employees of each permittee subject to this subsection shall be Fireworks Safety and Education Trainers. Fireworks Safety and Education Trainers shall be responsible for the annual training of all employees on the function, safe handling, and best practices regarding the safe use of all categories of consumer fireworks. Such training shall be documented on forms approved by the Commissioner and be readily available at the request of the Commissioner.

(d) A permit issued to an incidental sparkling device retailer shall allow the sale of sparkling devices and novelties only and shall require compliance with NFPA standards applicable to sales of ground and handheld sparkling devices and novelties.

(e) Nothing in this section is meant to override any fire code applicable to a structure regulated by this Part. If the fire code imposes a more stringent requirement, the fire code requirement will apply instead of the standards imposed by this section.

**"§ 58-82A-95. Permit fees.**

The Commissioner may charge an applicant for a permit under G.S. 58-82A-90 the following annual fees:

(1) One hundred dollars (\$100.00) for an incidental sparkling device retailer permit.

(2) Twenty-five dollars (\$25.00) for the renewal of an incidental sparkling device retailer permit.

(3) Five thousand dollars (\$5,000) for a consumer fireworks permanent retailer permit, a consumer fireworks temporary retailer permit, or a consumer fireworks distributor permit.

(4) Two thousand five hundred dollars (\$2,500) for the renewal of a consumer fireworks permanent retailer permit, a consumer fireworks temporary retailer permit, or a consumer fireworks distributor permit.

**"§ 58-82A-100. Power of Commissioner to exclude certain categories of pyrotechnics from definition of consumer fireworks.**

The Commissioner, through the Office of State Fire Marshal and in consultation with the State Fire and Rescue Commission, may by rule exclude certain types or categories of pyrotechnics otherwise meeting the definition of "consumer fireworks" or "sparkling devices" from the provisions of this Part upon a finding that the type or category of pyrotechnic presents a significant and widespread risk of death, serious bodily injury, or substantial damage to public or private property. Exclusion of any type or category of pyrotechnics pursuant to this section must be evidence-based.

**"§ 58-82A-105. Prohibition of consumer fireworks.**

During periods of declared hazardous forest fire conditions, as referenced in G.S. 106-946, the Commissioner, in consultation with the North Carolina Forest Service, is authorized to prohibit all use of consumer fireworks otherwise permitted by this Part in all or part of the State. The Commissioner shall issue a press release containing relevant details of the prohibition to news media serving the area affected.

**"§ 58-82A-110. Civil and criminal penalties for violations.**

(a) Except as provided in this section, G.S. 14-415 and G.S. 58-2-70 shall apply to any person violating any of the provisions of this Part.

(b) The Commissioner, a State law enforcement officer, a municipal law enforcement officer, a code enforcement officer, or a fire safety official may petition the district court to seize or remove, at the expense of the permit holder, fireworks sold, offered for sale, stored, possessed, or used in violation of this Part.

(c) The Commissioner may order the payment of a civil penalty in addition to, or instead of, suspending a permit, as set forth in G.S. 58-82A-115.

(d) Any person violating G.S. 58-82A-120 is guilty of a Class 1 misdemeanor.

**"§ 58-82A-115. Prohibited activities.**

(a) The Commissioner may suspend the permit of a person authorized to sell consumer fireworks or sparkling devices, order the payment of a civil penalty, or both for engaging in any of the following prohibited activities:

(1) Selling fireworks or explosives not authorized under this Part.

(2) Selling consumer fireworks or sparkling devices within the State without a valid permit.

(3) Selling consumer fireworks or sparkling devices to a person who appears to be under the influence of alcohol or drugs.

(4) Knowingly aiding or assisting in procuring, furnishing, giving, selling, or delivering consumer fireworks or sparkling devices to a person under the age of 18. It is an affirmative defense to any disciplinary action taken pursuant to this subdivision that the permit holder procured, furnished, gave, sold, or delivered consumer fireworks or sparkling devices to a person under the age of 18 in reasonable reliance upon fraudulent proof of age presented to the permit holder.

(5) Selling consumer fireworks or sparkling devices at a fireworks retail stand or fireworks tent in violation of G.S. 58-82A-120.

(b) If the Commissioner orders the payment of a civil penalty pursuant to subsection (a) of this section, the penalty shall not be less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000). In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. The clear proceeds of the penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State.

(c) A person whose permit has been suspended or has been issued a civil penalty under this section shall receive a hearing before the Commissioner within 10 days of the decision. If the decision is upheld, the person may seek judicial review in superior court.

**"§ 58-82A-120. Prohibition on certain retail stand and tent sales.**

Except as provided in G.S. 58-82A-122, it shall be unlawful to sell, transfer, or distribute consumer fireworks, sparkling devices, or novelties at a fireworks retail stand or a fireworks tent.

**"§ 58-82A-122. Certain retail stand and tent sales permitted.**

In addition to the requirements provided in this Part, a person may only sell, transfer, or distribute consumer fireworks, sparkling devices, or novelties at a fireworks retail stand or a fireworks tent if the following conditions are met:

(1) If the fireworks retailer does not own the property wherein the fireworks retail stand or fireworks tent is located, the owner or custodian of said property shall provide written confirmation that the fireworks retailer is authorized to conduct business on the premises.

(2) There is adequate parking to accommodate customers of the fireworks retailer and, if applicable, any other businesses that are on the premises.

**"§ 58-82A-125. Labeling and safety requirements.**

(a) Any consumer fireworks, sparkling devices, or novelties authorized to be sold under this Part shall have a safety label affixed to the packaging of the firework in accordance with 16 C.F.R. § 1500.14(b)(7) prior to being sold in this State.

(b) When selling fireworks in this State, a fireworks retailer shall provide a safety pamphlet created by the Office of State Fire Marshal to the purchaser of the firework with each purchase. The pamphlet shall outline safe handling and best practices for the safe use of a firework.

**"§ 58-82A-130. Fireworks safety and education trainer.**

The Commissioner shall create a training course, or identify existing training courses, to train individuals on the function, safe handling, and best practices for the safe use of all categories of consumer fireworks. The Commissioner shall also create and maintain a listing of persons that have completed a training course created or identified by the Commissioner under this section. The Department may issue rules to implement this section, including reasonable requirements for verification or certification that persons have met the training requirements of this section. The Department may also charge a fee to cover the costs of implementing this section."

**SECTION 5.(a)** Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read:

**"§ 153A-130.1. Use and sales of consumer fireworks.**

Notwithstanding G.S. 153A-128, a county may, by ordinance, regulate the use and sales of consumer fireworks, sparkling devices, and novelties to the public pursuant to Part 2 of Article 82A of Chapter 58 of the General Statutes. An ordinance adopted pursuant to this section shall be effective on October 1 following the adoption of the ordinance. The ordinance shall remain in effect until the ordinance is repealed. If the ordinance is repealed, the repeal shall be effective on October 1 following the repeal of the ordinance."

**SECTION 5.(b)** Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

**"§ 160A-190.1. Use and sales of consumer fireworks.**

Notwithstanding G.S. 160A-183, a city may, by ordinance, regulate the use and sales of consumer fireworks, sparkling devices, and novelties to the public pursuant to Part 2 of Article 82A of Chapter 58 of the General Statutes. An ordinance adopted pursuant to this section shall be effective on October 1 following the adoption of the ordinance. The ordinance shall remain in effect until the ordinance is repealed. If the ordinance is repealed, the repeal shall be effective on October 1 following the repeal of the ordinance."

**SECTION 5.(c)** A county or city may adopt an ordinance pursuant to this section any time after this act becomes law. For ordinances adopted pursuant to this section prior to December 1, 2021, the ordinance shall be effective December 1, 2021.

**SECTION 6.** Subchapter I of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 2E.

"Tax on Consumer Fireworks.

**"§ 105-113.125. Tax on consumer fireworks.**

(a) Tax on Consumer Fireworks. – An excise tax is levied on consumer fireworks at the rate of five percent (5%) of the cost price. A person who sells consumer fireworks at retail is subject to and liable for the tax imposed by this section.

(b) Definitions. – The following definitions apply in this Article:

(1) Consumer fireworks. – Defined in G.S. 58-82A-80.

(2) Cost price. – The price a person liable for the tax on consumer fireworks imposed by this Article paid for the products, before any discount, rebate, or allowance.

(3) Fireworks retailer. – Defined in G.S. 58-82A-80.

(c) Monthly Report. – The taxes levied by this Article are payable when a report is required to be filed. A report is due on a monthly basis. A monthly report covers sales and other activities occurring in a calendar month and is due within 20 days after the end of the month covered by the report. A report shall be filed on a form provided by the Secretary and shall contain the information required by the Secretary.

(d) Discount. – A person who is liable for the excise taxes imposed by this Article, who files a timely report under this section, and who sends a timely payment may deduct from the amount due with the report a discount of two percent (2%). This discount covers expenses incurred in preparing the records and reports required by this Article.

(e) Refund. – A person liable for the excise taxes imposed by this Article and in possession of unsalable consumer fireworks upon which the tax has been paid may return the consumer fireworks to the manufacturer and apply to the Secretary for refund of the tax. The application shall be in the form prescribed by the Secretary and shall be accompanied by a written certificate signed under penalty of perjury or an affidavit from the manufacturer listing the consumer fireworks returned to the manufacturer by the applicant. The Secretary shall refund the tax paid, less the discount allowed, on the listed products.

(f) Records. – Every person liable for the excise taxes imposed by this Article shall keep accurate records of the purchases, inventories, and sales of consumer fireworks. These records shall be open at all times for inspection by the Secretary or an authorized representative of the Secretary.

(g) Use. – The Secretary must credit the net proceeds of the tax collected under this Article as follows:

(1) An amount equal to twenty-five percent (25%) to the Firefighters' Education Fund established under G.S. 58-85B-1.

(2) The remainder to the General Fund.

**"§ 105-113.126. Bond or irrevocable letter of credit.**

(a) Bond. – The Secretary may require a fireworks retailer to furnish a bond in an amount that adequately protects the State from loss if the fireworks retailer fails to pay taxes due under this Article. A bond must be conditioned on compliance with this Article, payable to the State, and in the form required by the Secretary. The amount of the bond is two times the distributor's average expected monthly tax liability under this Article, as determined by the Secretary, provided the amount of the bond may not be less than one thousand dollars (\$1,000) and may not be more than fifty thousand dollars (\$50,000). The Secretary should periodically review the sufficiency of bonds required of the fireworks retailer and increase the required bond amount if the amount no longer covers the anticipated tax liability of the fireworks retailer and decrease the amount if the Secretary finds that a lower bond amount will protect the State adequately from loss.

(b) Letter of Credit. – For purposes of this section, a fireworks retailer may substitute an irrevocable letter of credit for the secured bond required by this section. The letter of credit must be issued by a commercial bank acceptable to the Secretary and available to the State as a beneficiary. The letter of credit must be in a form acceptable to the Secretary, conditioned upon compliance with this Article, and in the amounts stipulated in this section."

**SECTION 7.** Chapter 58 of the General Statutes is amended by adding a new Article to read:

"Article 85B.

"Firefighters' Education Fund.

**"§ 58-85B-1. Fund established.**

1       The "Firefighters' Education Fund" is created and established within the Department of  
2 Insurance. It consists of the revenue credited to the Fund under G.S. 105-113.125 and shall be  
3 used for the purposes set forth in this Article. The Office of State Fire Marshal shall administer  
4 the Fund.

5 **"§ 58-85B-2. Use of funds.**

6       The Office of State Fire Marshal may deduct and retain from the Firefighters' Education Fund  
7 only amounts necessary for its administrative expenses. The remaining revenues credited to the  
8 Firefighters' Education Fund shall be used to provide education and training to firefighters in  
9 North Carolina. The term "firefighter" has the same meaning as G.S. 58-84-5."

10       **SECTION 8.** Section 6 becomes effective December 1, 2021, and applies to the cost  
11 price paid for fireworks on or after that date. Section 5 is effective when this act becomes law.  
12 The remainder of this act becomes effective December 1, 2021, and applies to offenses  
13 committed on or after that date. Prosecutions for offenses committed before the effective date of  
14 this act are not abated or affected by this act, and the statutes that would be applicable but for  
15 this act remain applicable to those prosecutions.