

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 367

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

Sponsors: Representatives Brody, Bumgardner, Hager, and Waddell (Primary Sponsors).  
*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Regulatory Reform, if favorable, Finance.

March 30, 2015

1 A BILL TO BE ENTITLED  
2 AN ACT TO PERMIT THE SALE, POSSESSION, AND DISCHARGE OF CERTAIN  
3 CONSUMER FIREWORKS.

4 The General Assembly of North Carolina enacts:

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

6 "§ 14-410. **Manufacture, sale and use of pyrotechnics prohibited; exceptions; license**  
7 **required; sale to persons under the age of 16 prohibited.**

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

12 (a1) It shall be permissible for pyrotechnics to be exhibited, used, handled,  
13 manufactured, or discharged within the State, provided all of the following apply:

14 (1) The exhibition, use, or discharge is at a concert or public exhibition.

15 (2) All individuals who exhibit, use, handle, or discharge pyrotechnics in  
16 connection with a concert or public exhibition have completed the training  
17 and licensing required under Article 82A of Chapter 58 of the General  
18 Statutes. The display operator or proximate audience display operator, as  
19 required under Article 82A of Chapter 58 of the General Statutes, must be  
20 present at the concert or public exhibition and must personally direct all  
21 aspects of exhibiting, using, handling, or discharging the pyrotechnics.  
22 Notwithstanding this subdivision, the display operator for the University of  
23 North Carolina School of the Arts may appoint an on-site representative to  
24 supervise any performances that include a proximate audience display  
25 subsequent to the opening performance, provided that the representative (i)  
26 is a minimum of 21 years of age and (ii) is properly trained in the safe  
27 discharge of proximate audience displays.

28 (3) The display operator has secured written authority under G.S. 14-413 from  
29 the board of county commissioners of the county, or the city if authorized  
30 under G.S. 14-413(a1), in which the pyrotechnics are to be exhibited, used or  
31 discharged. Written authority from the board of commissioners or city is not  
32 required under this subdivision for a concert or public exhibition provided  
33 the display operator has secured written authority from (i) The University of  
34 North Carolina or the University of North Carolina at Chapel Hill under  
35 G.S. 14-413, and pyrotechnics are exhibited on lands or buildings in Orange



1 County owned by The University of North Carolina or the University of  
2 North Carolina at Chapel Hill or (ii) the University of North Carolina School  
3 of the Arts and pyrotechnics are exhibited on lands or in buildings owned by  
4 the State and used by the University of North Carolina School of the Arts.

5 (a2) Notwithstanding any provision of this section, it shall not be unlawful for a common  
6 carrier to receive, transport, and deliver pyrotechnics in the regular course of its business.

7 (a3) The requirements of this section apply to G.S. 14-413(b) and G.S. 14-413(c).

8 (a4) It shall be permissible for pyrotechnics to be exhibited, used, handled,  
9 manufactured, or discharged within the State as a special effect by a production company, as  
10 defined in G.S. 105-164.3(30), for a motion picture production, if the motion picture set is  
11 closed to the public or is separated from the public by a minimum distance of 500 feet.

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

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

20 (b) Notwithstanding the provisions of G.S. 14-414, it shall be unlawful for any  
21 individual, firm, partnership, or corporation to sell pyrotechnics as defined in G.S. 14-414(2),  
22 (3), (4)c., (5), or (6) to persons under the age of 16.

23 (c) The following definitions apply in this Article:

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

26 (1a) Consumer fireworks. – Any small fireworks device designed primarily to  
27 produce visible effects by combustion or deflagration that (i) is categorized  
28 as a 1.4G firework device under Standard 87.1 of the American Pyrotechnics  
29 Association; and (ii) complies with the construction, chemical composition,  
30 and labeling regulations of the United States Consumer Product Safety  
31 Commission, as set forth in Volume 16, parts 1500 and 1507 of the Code of  
32 Federal Regulations.

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

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

36 **SECTION 2.** G.S. 58-82A-1 through G.S. 58-82A-55 are recodified as Part 1 of  
37 Article 82A of Chapter 58 of the General Statutes, to be entitled:

38 "Part 1.

39 "Display Pyrotechnics Training and Permitting.

40 **SECTION 3.** Article 82A of Chapter 58 of the General Statutes is amended by  
41 adding a new Part to read:

42 "Part 2.

43 "Consumer Fireworks.

44 "**§ 58-82A-75. Purpose.**

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

47 "**§ 58-82A-80. Definitions.**

48 The following definitions apply in this Part:

49 (1) Consumer fireworks. – Defined in G.S. 14-410(c), unless otherwise  
50 excluded by the Commissioner under the authority granted in  
51 G.S. 58-82A-105.

- 1           (2)    Consumer fireworks permanent retailer. – A retail establishment open  
2           throughout the year, where the portion of the establishment's retail sales  
3           floor devoted to displays of consumer fireworks is greater than twenty-five  
4           percent (25%) of the total retail sales area, or 600 square feet, whichever is  
5           less.
- 6           (3)    Consumer fireworks retail stand. – A temporary or permanent building or  
7           structure with a floor area not greater than 800 square feet, other than tents,  
8           canopies, or membrane structures, that is used primarily for the temporary  
9           retail display and sale of consumer fireworks to the public. Stands may  
10          include, but are not limited to, small buildings, temporary structures  
11          constructed from plywood, sheet metal, or similar materials, manufactured  
12          buildings, trailers, and shipping containers.
- 13          (4)    Consumer fireworks temporary retailer. – A consumer fireworks retail stand  
14          or a consumer fireworks tent.
- 15          (5)    Consumer fireworks tent. – A tent, canopy, or membrane structure with a  
16          floor area not greater than 1,500 square feet that is not permanently installed,  
17          and that is used primarily for the temporary retail display and sale of  
18          consumer fireworks to the public.
- 19          (6)    Consumer fireworks distributor. – A person owning or otherwise controlling  
20          a facility where consumer fireworks are stored or otherwise maintained for  
21          distribution to fireworks retailers permitted under this Part.
- 22          (7)    Fireworks retailer. – A consumer fireworks permanent retailer, a consumer  
23          fireworks temporary retailer, or an incidental consumer fireworks retailer  
24          permitted under this Part.
- 25          (8)    Incidental consumer fireworks retailer. – A retail establishment selling  
26          consumer fireworks that is not a consumer fireworks permanent retailer as  
27          defined by this section.
- 28          (9)    NFPA standards. – Standard 1124 of the National Fire Protection  
29          Association, 2013 edition, as it applies to the retail sale or distribution of  
30          consumer fireworks, except as otherwise specified by this Part.
- 31          (10)   Permitting authority. – A county or municipality operating a consumer  
32          fireworks sales permitting program approved by the Commissioner under  
33          G.S. 58-82A-90.
- 34          (11)   Public space. – Any building or area open to the public, whether privately or  
35          publicly owned. Public space includes, but is not limited to, bars, restaurants,  
36          theaters, stadiums, arenas, retail establishments, and shopping malls.
- 37          (12)   Safe and sane consumer fireworks. – Consumer fireworks that do not  
38          explode or become airborne, as the Commissioner, through the Office of the  
39          State Fire Marshal, in consultation with the State Fire and Rescue  
40          Commission may specify by rule.

41    **"§ 58-82A-85. Possession and use of consumer fireworks.**

42          (a)    General Allowance. – Except as provided in subsection (b) of this section, the  
43          possession and use of consumer fireworks is allowed in the State, subject to the following  
44          conditions:

- 45               (1)    The person possessing or using the consumer fireworks must be at least 18  
46               years old.
- 47               (2)    The use of consumer fireworks may occur only between the hours of 10  
48               A.M. and 10:00 P.M., with the following exceptions:
- 49                   a.    On July 4th, use is permitted until 12:00 A.M.
- 50                   b.    On December 31st and the following January 1st, use is permitted  
51                   from 8:00 A.M. on December 31st until 12:30 A.M. on January 1st.

1           (3)   The discharge of consumer fireworks is prohibited in the following  
2           locations:

3           a.       In or on the premises of a public or private primary or secondary  
4           school.

5           b.       On the campus of a college or university, unless the person has  
6           received written authorization from the college or university.

7           c.       Within 500 feet of a hospital, veterinary hospital, licensed child care  
8           center, fireworks retailer, fireworks distributor, gas station, or bulk  
9           storage facility for petroleum products or other explosive or  
10           flammable substances.

11          (4)   The possession or discharge of consumer fireworks is prohibited in or on the  
12          premises of any public park or public space, except as otherwise permitted  
13          by the person, State agency or unit of local government owning or otherwise  
14          controlling the park, property, or space.

15          (b)   Opt-Out. – A county or city may by ordinance prohibit the possession or use of  
16          consumer fireworks.

17          **"§ 58-82A-90. Sale of consumer fireworks; permit required.**

18          (a)   Permit Requirement. – No person shall sell consumer fireworks in this State unless  
19          the person holds a permit issued under this Part from a county or city authorized by the  
20          Commissioner to issue retail fireworks permits. The Commissioner shall issue rules to  
21          implement this section, including rules for the approval of local consumer fireworks sales  
22          permitting programs funded and operated by counties or municipalities within their jurisdiction.  
23          Nothing in this section is intended to require a county or municipality to issue consumer  
24          fireworks permits. Permits for operation of a fireworks retailer shall be posted in a location  
25          visible to members of the general public visiting the retailer.

26          (b)   No Transportation Exclusions. – No county or municipality may restrict or exclude  
27          the transportation of consumer fireworks across or through the county or municipality when the  
28          transportation is solely for the purpose of supplying consumer fireworks retailers permitted  
29          under this section. Nothing in this subsection is intended to prevent reasonable  
30          transportation-related restrictions applicable to all vehicles or a class of vehicles regardless of  
31          cargo, such as vehicle weight limits or truck route restrictions.

32          (c)   Requirements for All Fireworks Retailers. – Any permit issued for a fireworks  
33          retailer or consumer fireworks distributor shall contain, at a minimum, the following  
34          conditions:

35               (1)   Standards. – The permittee must comply with (i) NFPA standards; and (ii)  
36               applicable local zoning and land use rules.

37               (2)   Employees. – All employees of the permittee engaged in the sale of  
38               fireworks must be at least 18 years of age.

39               (3)   Fire suppression devices. – The permittee must maintain on the premises a  
40               minimum of two portable fire extinguishers with a 2A rating. The fire  
41               extinguishers shall be located in two different locations within the premises  
42               of the retailer, and at least one of the extinguishers shall be of the  
43               pressurized water type.

44               (4)   Required signs. – The permittee shall post signs prohibiting smoking on the  
45               premises and discharge of fireworks within 300 feet of the premises in a  
46               manner specified by the Commissioner.

47          (d)   Consumer Fireworks Temporary Retailer. – In addition to the requirements set forth  
48          in subsection (a) of this section, a permit issued for a consumer fireworks temporary retailer  
49          shall contain, at a minimum, the following conditions:

1           (1)    Duration of operation. – The retailer may sell consumer fireworks from June  
2                    20th through July 5th and from December 20th through January 2nd of the  
3                    following year.

4           (2)    Setbacks. – The retailer may not be located closer than 100 feet from any  
5                    permanent structure. A retailer that is a consumer fireworks tent shall not  
6                    allow parking of any vehicles within 20 feet of the tent.

7           (3)    Smoking prohibited. –No smoking shall be allowed on the premises of the  
8                    retailer.

9           (e)    Consumer Fireworks Permanent Retailer. – In addition to the requirements set forth  
10                   in subsection (a) of this section, a permit issued for a consumer fireworks permanent retailer  
11                   shall contain, at a minimum, the following conditions:

12           (1)    Setbacks. – Areas within 20 feet of the retailer's premises shall be kept free  
13                    of dry vegetation and other combustible debris. The retailer may not be  
14                    located within 50 feet of the following:

15                   a.    Retail establishments dispensing flammable or combustible liquids,  
16                    flammable gas, or flammable liquefied gas.

17                   b.    Above ground storage tanks storing flammable or combustible  
18                    liquids, flammable gas, or flammable liquefied gas.

19                   c.    Propane dispensing stations.

20           (2)    Smoking prohibited. – Smoking shall not be permitted inside or within 75  
21                    feet of the retailer's premises.

22           (3)    Egress requirements. – Means of egress, including, but not limited to, aisles,  
23                    doors, and exit discharge shall be clear at all times when the retailer is open  
24                    to the public, and aisles must be at least 48 inches in width.

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

27           (f)    Incidental Consumer Fireworks Retailer. – A permit issued to an incidental  
28                    consumer fireworks retailer shall allow the sale of safe and sane consumer fireworks only.

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

32    **"§ 58-82A-95. Permit fees.**

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

35           (1)    One hundred dollars (\$100.00) for a consumer fireworks temporary retailer  
36                    or a consumer fireworks incidental retailer.

37           (2)    One thousand dollars (\$1,000) for a consumer fireworks permanent retailer.

38           (3)    One thousand five hundred dollars (\$1,500) for a consumer fireworks  
39                    distributor.

40    **"§ 58-82A-100. Financial responsibility.**

41           The permitting authority shall require a permit applicant or permit holder to demonstrate  
42                    proof of financial responsibility in the form of bonds, policies of insurance, or qualification as a  
43                    self insurer, with minimum levels of financial responsibility determined by the permitting  
44                    authority.

45    **"§ 58-82A-105. Power of Commissioner to exclude certain categories of pyrotechnics**  
46                    **from definition of consumer fireworks.**

47           The Commissioner, through the Office of State Fire Marshall and in consultation with the  
48                    State Fire and Rescue Commission, may by rule exclude certain types or categories of  
49                    pyrotechnics otherwise meeting the definition of "consumer fireworks" from the provisions of  
50                    this Part upon a finding that the type or category of pyrotechnic presents a significant and

1 widespread risk of death, serious bodily injury, or substantial damage to public or private  
2 property.

3 **"§ 58-82A-110. Prohibition of consumer fireworks.**

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

8 **"§ 58-82A-115. Civil and criminal penalties for violations.**

9 (a) G.S. 14-415 and G.S. 58-2-70 shall apply to any person violating any of the  
10 provisions of this Part."

11 **SECTION 4.(a)** Article 6 of Chapter 153A of the General Statutes is amended by  
12 adding new section to read:

13 **"§ 153A-130.1 Possession, use, and sales of consumer fireworks.**

14 A county may by ordinance regulate the possession, use, and sales of consumer fireworks to  
15 the public pursuant to Part 2 of Article 82A of Chapter 58 of the General Statutes."

16 **SECTION 4.(b)** Article 8 of Chapter 160A of the General Statutes is amended by  
17 adding new section to read:

18 **"§ 160A-190.1 Possession, use, and sales of consumer fireworks.**

19 A city may by ordinance regulate the possession, use, and sales of consumer fireworks to  
20 the public pursuant to Part 2 of Article 82A of Chapter 58 of the General Statutes."

21 **SECTION 5.** This act becomes effective July 1, 2015.