

House Bill 727 (COMMITTEE SUBSTITUTE)

By: Representatives Battles of the 15th, Turner of the 21st, Parsons of the 44th, LaRiccia of the 169th, and Kaiser of the 59th

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 10 of Title 25 of the Official Code of Georgia Annotated, relating to
 2 regulation of fireworks, so as to revise provisions relating to the sale, use, or explosion
 3 thereof; to provide for definitions; to distinguish between consumer fireworks retail sales
 4 facilities and consumer fireworks retail sales stands; to revise the days, times, and locations
 5 in which consumer fireworks may be lawfully used or exploded; to revise the days, times,
 6 places, situations, and circumstances within this state where the use or explosion of
 7 consumer fireworks may be prohibited or subject to further regulation; to create a criminal
 8 offense relating to the use or explosion of consumer fireworks while under the influence; to
 9 provide for criminal penalties; to provide for the sale of consumer fireworks from temporary
 10 consumer fireworks retail sales facilities; to provide for licensing for a distributor selling
 11 consumer fireworks from a temporary consumer fireworks retail sales facility; to amend
 12 Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to general
 13 provisions regarding local government provisions applicable to counties and municipal
 14 corporations, so as to provide for certain further regulations by counties, municipal
 15 corporations, and consolidated governments; to amend Article 7 of Chapter 13 of Title 48
 16 of the Official Code of Georgia Annotated, relating to taxation of consumer fireworks, so as
 17 to provide for local excise taxation of consumer fireworks and the collection of such excise
 18 tax; to provide for related matters; to provide for effective dates; to repeal conflicting laws;
 19 and for other purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

21 **SECTION 1.**

22 Chapter 10 of Title 25 of the Official Code of Georgia Annotated, relating to regulation of
 23 fireworks, is amended in subsection (a) of Code Section 25-10-1, relating to definitions, by
 24 revising paragraph (2) and adding four new paragraphs to read as follows:

25 "(2) 'Consumer fireworks retail sales facility' shall have the same meaning as provided
 26 for by NFPA 1124; provided, however, that such term shall not include consumer

27 fireworks retail sales stands, and provided, further, that such term in reference to a
 28 temporary building or structure shall include a tent, canopy, or membrane structure."

29 "(4.1) 'Electric plant' shall have the same meaning as provided for in Code
 30 Section 46-3A-1."

31 "(8.1) 'Public gathering' means any mass congregated gathering of persons, including,
 32 but not limited to, athletic or sporting events, church assemblies, and political rallies and
 33 functions."

34 "(12) 'Wastewater treatment plant' shall have the same meaning as provided for in Code
 35 Section 43-51-2.

36 (13) 'Water treatment plant' shall have the same meaning as provided for in Code
 37 Section 43-51-2."

38 SECTION 2.

39 Said chapter is further amended by revising paragraphs (3) and (6) of subsection (b) of Code
 40 Section 25-10-2, relating to prohibited fireworks activities, as follows:

41 "(3)(A) It shall be unlawful to use or explode or cause to be exploded fireworks,
 42 consumer fireworks, or any items defined in paragraph (2) of subsection (b) of Code
 43 Section 25-10-1 indoors, within five yards of a vertical or overhead obstruction, or
 44 across, into, or within the right of way of a public road, street, highway, or railroad of
 45 this state.

46 (B) Except as provided for in ~~subparagraph (D)~~ subparagraphs (D) through (F) of this
 47 paragraph and subject to paragraph (4) of this subsection and Code Section 25-10-2.1,
 48 it shall be lawful for any person, firm, corporation, association, or partnership to use or
 49 explode or cause to be exploded any consumer fireworks on:

50 (i) January 1 of each year between the times of 12:00 Midnight and 1:00 A.M. and
 51 10:00 A.M. and 11:59 P.M.;

52 (ii) July 3, July 4, and December 31 of each year between the times of 10:00 A.M.
 53 and 11:59 P.M.; and

54 (iii) Any any day, other than those provided for in divisions (i) and (ii) of this
 55 subparagraph, between the hours times of 10:00 A.M. and 12:00 Midnight only;
 56 provided, however, that it shall be lawful for any person, firm, corporation,
 57 association, or partnership to use or explode or cause to be exploded any consumer
 58 fireworks on January 1, July 3, July 4, and December 31 of each year between the
 59 hours of 12:00 Midnight and 2:00 A.M. 10:00 P.M. if such use or explosion is lawful
 60 pursuant to any noise ordinance of the county, municipal corporation, or consolidated
 61 government of the location in which such use or explosion occurs.

62 (C) Subject to subparagraphs (D) through (F) of this paragraph, paragraph (4) of this
 63 subsection, and Code Section 25-10-2.1, it shall be lawful for any person, firm,
 64 corporation, association, or partnership to use or explode or cause to be exploded any
 65 consumer fireworks anywhere in this state except:

66 (i) As provided for under subparagraph (A) of this paragraph and Code
 67 Section 25-10-2.1;

68 (ii) In any location where such person, firm, corporation, association, or partnership
 69 is not lawfully present or is not otherwise lawfully permitted to use or explode or
 70 cause to be exploded any consumer fireworks; ~~or~~

71 (iii) Within 100 yards of ~~a nuclear power facility or an electric plant; water treatment~~
 72 plant; wastewater treatment plant; a facility engaged in the retail sale of gasoline or
 73 other flammable or combustible liquids or gases where the volume stored is in excess
 74 of 500 gallons or in containers of 500 water gallons; a facility engaged in the
 75 production, refining, processing, or blending of gasoline any flammable or
 76 combustible liquids or gases for such retail purposes; any public or private electric
 77 substation; or a jail or prison;

78 (iv) Within 100 yards of a hospital, nursing home, or other health care facility
 79 regulated under Chapter 7 of Title 31; provided, however, that an owner or operator
 80 of such facility may use or explode or cause to be exploded consumer fireworks on
 81 the property of such facility;

82 (v) Upon any property owned or operated by, for, or under the custody and control
 83 of a governing authority of a county, municipal corporation, or consolidated
 84 government; provided, however, that such governing authority may use or explode
 85 or cause to be exploded consumer fireworks on such property;

86 (vi) At a public gathering where, in the discretion of a law enforcement agency, local
 87 fire department, or employees of the state fire marshal's office having operational
 88 jurisdiction within the location of such use or explosion of consumer fireworks, such
 89 use or explosion of consumer fireworks is determined to not be reasonable in the
 90 interest of public safety; provided, however, that such law enforcement agency, local
 91 fire department, or employees of the state fire marshal's office provide notice of such
 92 determination or direct such person, firm, corporation, association, or partnership to
 93 cease such use or explosion of consumer fireworks;

94 (vii) While under the influence of alcohol or any drug or any combination of alcohol
 95 and any drug to the extent that it is less safe or unlawful for such person to use or
 96 explode or cause to be exploded consumer fireworks as provided for in Code
 97 Section 25-10-2.1; or

98 (viii) For the purpose of deliberately or intentionally harassing, intimidating, or
 99 causing harm to others or where a law enforcement officer has probable cause to
 100 believe that such use or explosion is for the purpose of deliberately or intentionally
 101 harassing, intimidating, or causing harm to others.

102 (D) Any person, firm, corporation, association, or partnership may use or explode or
 103 cause to be exploded any consumer fireworks on any day at a time not provided for
 104 under subparagraph (B) of this paragraph if such person, firm, corporation, association,
 105 or partnership is issued a special use permit pursuant to the law of a governing authority
 106 of a county or municipal corporation for the use or explosion of consumer fireworks in
 107 a location within such county or municipality at a time not provided for under
 108 subparagraph (B) of this paragraph. Such special use permit shall designate the time
 109 or times and location that such person, firm, corporation, association, or partnership
 110 may use or explode or cause to be exploded such consumer fireworks. A fee assessed
 111 by a county or municipal corporation for the issuance of a special use permit pursuant
 112 to this subparagraph shall not exceed \$100.00. No governing authority or official of a
 113 county, municipality, or other political subdivision shall bear liability for any decisions
 114 made pursuant to this Code section.

115 (E) Nothing in this chapter shall be construed to prevent the governing authority of a
 116 county, municipal corporation, or consolidated government from enforcing any public
 117 health or safety law, including, but not limited to, noise and littering ordinances and
 118 regulations, in regard to consumer fireworks to the extent permitted under this chapter;
 119 provided, however, that no further regulation or restriction by any county, municipal
 120 corporation, or consolidated government shall be effective pursuant to this
 121 subparagraph on January 1, July 3, July 4, or December 31 of any year.

122 (F) Whenever the Governor or the director of the Environmental Protection Division
 123 of the Department of Natural Resources issues a declaration of drought, the governing
 124 authority of any county, municipal corporation, or consolidated government within the
 125 boundaries of the area covered by such declaration may enact further regulations and
 126 restrictions concerning consumer fireworks than provided for under this chapter,
 127 including, but not limited to, a prohibition on the use or explosion of consumer
 128 fireworks for the duration of time that such declaration is in effect."

129 "(6)(A) It shall be lawful to sell consumer fireworks from a permanent consumer
 130 fireworks retail sales facility or store only if such permanent consumer fireworks retail
 131 sales facility or store is:

132 (i) In compliance with the requirements for such a permanent consumer fireworks
 133 retail sales facility or store in the selling of consumer fireworks as provided for in
 134 NFPA 1124; and

135 (ii) Selling consumer fireworks of a distributor licensed pursuant to subsection (b)
 136 or (d) of Code Section 25-10-5.1.

137 (B) It shall be lawful to sell consumer fireworks from a temporary consumer fireworks
 138 retail sales stand only if such temporary consumer fireworks retail sales stand is:

139 (i) In compliance with the requirements for such a temporary consumer fireworks
 140 retail sales stand in the selling of consumer fireworks as provided for in NFPA 1124;

141 (ii) Within 1,000 feet of a fire hydrant of a county, municipality, or other political
 142 subdivision or a fire department connection of a building affiliated with such
 143 consumer fireworks retail sales stand, unless the chief administrative officer of the
 144 fire department of a county, municipality, or other political subdivision or chartered
 145 fire department legally organized to operate in this state pursuant to Chapter 3 of this
 146 title and having operational authority over such location of the temporary consumer
 147 fireworks retail sales stand provides in writing that such temporary consumer
 148 fireworks retail sales stand may operate in excess of 1,000 feet from such fire hydrant
 149 or fire department connection; and

150 (iii) Selling consumer fireworks of a distributor licensed pursuant to subsection (c)
 151 of Code Section 25-10-5.1.

152 No distributor licensed pursuant to subsection (c) of Code Section 25-10-5.1 shall at
 153 any one time operate more than two temporary consumer fireworks retail sales stands
 154 for each license issued to such distributor under subsection (b) or (d) of Code
 155 Section 25-10-5.1, except that a distributor which is a retail chain and which is licensed
 156 pursuant to subsection (d) of Code Section 25-10-5.1 shall not at any one time operate
 157 more than two temporary consumer fireworks retail sales stands for each store of such
 158 retail chain. Such temporary consumer fireworks retail sales stands shall be located
 159 within the same county as the location of such permanent consumer fireworks retail
 160 sales facility or store provided for under subsection (b) or (d) of Code
 161 Section 25-10-5.1; provided, however, that if a county does not have a distributor
 162 licensed pursuant to subsection (b) or (d) of Code Section 25-10-5.1 offering consumer
 163 fireworks for sale from a permanent consumer fireworks retail sales facility or store
 164 within its boundaries, then a distributor licensed pursuant to subsection (b) or (d) of
 165 Code Section 25-10-5.1 offering consumer fireworks for sale from a permanent
 166 consumer fireworks retail sales facility or store within 75 miles of the perimeter of the
 167 boundaries of such county may locate one of the two temporary consumer fireworks
 168 retail sales stands in the unserved county.

169 (C) It shall be lawful to sell consumer fireworks from a temporary consumer fireworks
 170 retail sales facility only if such temporary consumer fireworks retail sales facility is:

171 (i) In compliance with the requirements for such temporary consumer fireworks retail
 172 sales facility in the selling of consumer fireworks as provided for in NFPA 1124;
 173 (ii) Within 1,000 feet of a fire hydrant of a county, municipality, or other political
 174 subdivision or a fire department connection of a building affiliated with such
 175 temporary consumer fireworks retail sales facility, unless the chief administrative
 176 officer of the fire department of a county, municipality, or other political subdivision
 177 or chartered fire department legally organized to operate in this state pursuant to
 178 Chapter 3 of this title and having operational authority over such location of the
 179 temporary consumer fireworks retail sales facility provides in writing that such
 180 temporary consumer fireworks retail sales facility may operate in excess of 1,000 feet
 181 from such fire hydrant or fire department connection; and
 182 (iii) Selling consumer fireworks from a distributor licensed pursuant to subsection (e)
 183 of Code Section 25-10-5.1.
 184 ~~(C)~~(D) It shall be unlawful to sell consumer fireworks from any motor vehicle or from
 185 a trailer towed by a motor vehicle."

186 **SECTION 3.**

187 Said chapter is further amended by adding a new Code section to read as follows:

188 "25-10-2.1

189 (a) It shall be unlawful for any person to use or explode or cause to be exploded fireworks
 190 or consumer fireworks while:

191 (1) Under the influence of alcohol or any drug or any combination of alcohol and any
 192 drug to the extent that it is unsafe for such person to use or explode or cause to be
 193 exploded consumer fireworks or fireworks;

194 (2) Such person's alcohol concentration is 0.08 grams or more; or

195 (3) Subject to the provisions of subsection (b) of this Code section, there is any amount
 196 of marijuana or a controlled substance, as defined in Code Section 16-13-21, present in
 197 such person's blood or urine, or both, including the metabolites and derivatives of each
 198 or both, without regard to whether or not any alcohol is present in such person's breath
 199 or blood.

200 (b) The fact that any person charged with violating this Code section is or has been legally
 201 entitled to use a drug shall not constitute a defense against any charge of violating this
 202 Code section; provided, however, that such person shall not be in violation of this Code
 203 section unless such person is rendered incapable of using or exploding or causing to be
 204 exploded consumer fireworks or fireworks safely as a result of using a drug other than
 205 alcohol which such person is legally entitled to use.

206 (c) Any person convicted of violating subsection (a) of this Code section shall be guilty
 207 of a misdemeanor."

208 **SECTION 4.**

209 Said chapter is further amended in Code Section 25-10-5.1, relating to requirements for
 210 issuance of license to distribute consumer fireworks, by adding a new subsection to read as
 211 follows:

212 "(e)(1) The license fee for a distributor selling consumer fireworks from a temporary
 213 consumer fireworks retail sales facility shall be \$750.00 per location, payable to the
 214 governing authority of the county, municipality, or other political subdivision of this state
 215 in whose boundaries such temporary consumer fireworks retail sales facility shall be
 216 located or is proposed to be located. Upon finding that a distributor has met the
 217 requirements of paragraph (4) of this subsection, paragraph (1) of subsection (a) of this
 218 Code section, and subparagraph (b)(6)(C) of Code Section 25-10-2 and upon payment of
 219 such license fee, such license shall be issued by the fire department of the county,
 220 municipality, or other political subdivision or the chartered fire department legally
 221 organized to operate in this state pursuant to Chapter 3 of this title and having operational
 222 authority of the area in which such temporary consumer fireworks retail sales facility
 223 shall be located or is proposed to be located. Such license shall identify the temporary
 224 consumer fireworks retail sales facility applicable to such license. Such license may be
 225 valid for only the dates of June 18 through July 6 of each year and December 20 of each
 226 year through January 1 of the following year; provided, however, that no such license
 227 shall be issued no more than 90 days prior to each period.

228 (2) A determination by a fire department as provided for under paragraph (1) of this
 229 subsection of whether a distributor has met the requirements for the issuance of a license
 230 pursuant to this subsection shall be made within 15 days of the submission of an
 231 application for any such license. Such application shall be in writing and, if such fire
 232 department provides for a written form for the application for a license pursuant to this
 233 Code section, upon such form as may be provided by such fire department. If a
 234 determination has not been made within the time provided for by this paragraph, or for
 235 an appeal of a determination by such fire department, a distributor may seek review from
 236 the judge of the probate court of the county of the location or proposed location of the
 237 temporary consumer fireworks retail sales facility. Such judge may provide for the
 238 issuance or nonissuance of a license and for the payment of license fees in such manner
 239 as is consistent with the provisions of this subsection.

240 (3) The governing authority of a county, municipality, or other political subdivision
 241 receiving fees pursuant to this Code section shall expend such fees for public safety
 242 purposes.

243 (4)(A) No license shall be issued pursuant to this subsection unless the application for
 244 such license is accompanied by a letter from the office of the state revenue
 245 commissioner stating, if true, that the distributor making such application maintains a
 246 tax identification number with the Department of Revenue and is in good standing in
 247 the performance of filing and remittance of taxes to such department.

248 (B) Pursuant to Code Section 48-2-12, the state revenue commissioner shall
 249 promulgate rules and regulations for the issuance of letters as provided for under this
 250 paragraph."

251 **SECTION 5.**

252 Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to general
 253 provisions regarding local government provisions applicable to counties and municipal
 254 corporations, is amended by revising Code Section 36-60-24, relating to sale or use or
 255 explosion of consumer fireworks products, as follows:

256 "36-60-24.

257 (a) The governing authority of a county, ~~or~~ municipal corporation, or consolidated
 258 government shall not prohibit the sale or use or explosion of consumer fireworks or other
 259 products or services which are lawful under subsection (b) of Code Section 25-10-1
 260 Chapter 10 of Title 25, unless such prohibition is expressly authorized by general law.

261 (b) If the sale of a product or service is regulated by Chapter 10 of Title 25, the governing
 262 authority of a county, ~~or~~ municipal corporation, or consolidated government shall not enact
 263 additional regulation of the sale or use or explosion of such product or service, unless such
 264 additional regulation is expressly authorized by general law.

265 (c) Notwithstanding subsections (a) and (b) of this Code section, the governing authority
 266 of a county, ~~or~~ municipal corporation, or consolidated government may provide for permits
 267 or licenses for the sale or use of consumer fireworks as provided for under ~~subsection~~
 268 subsections (c) and (e) of Code Section 25-10-5.1.

269 (d) Notwithstanding subsections (a) and (b) of this Code section, the governing authority
 270 of a county, municipal corporation, or consolidated government may further regulate the
 271 sale of consumer fireworks from temporary consumer fireworks retail sales stands.

272 (e) The governing authority of a county, municipal corporation, or consolidated
 273 government shall not unreasonably delay or deny an application for a temporary consumer
 274 fireworks retail sales stand or a temporary consumer fireworks retail sales facility.

275 (f) For purposes of this subsection, the terms 'consumer fireworks' fireworks, 'consumer
276 fireworks retail sales facility, and 'consumer fireworks retail sales stand' shall have the
277 same meanings as provided in Code Section 25-10-1.

278 (g) Any ordinance enacted before, on, or after July 1, 2006, by a county or municipal
279 corporation in violation of this Code section is void."

280 **SECTION 6.**

281 Article 7 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, relating to
282 taxation of consumer fireworks, is amended by revising Code Section 48-13-131, relating to
283 excise tax imposed, rate of taxation, and payment, as follows:

284 "48-13-131.

285 (a)(1) A state ~~An~~ excise tax, in addition to all other taxes of every kind imposed by law,
286 is imposed upon the sale of consumer fireworks and any items provided for in paragraph
287 (2) of subsection (b) of Code Section 25-10-1 in this state at a rate of 5 4 percent per item
288 sold.

289 ~~(b)(2)~~ The state excise tax imposed by this article pursuant to this subsection shall be
290 paid by the seller and due and payable in the same manner as would be otherwise
291 required under Article 1 of Chapter 8 of this title.

292 (b)(1) A local excise tax, in addition to all other taxes of every kind imposed by law, is
293 imposed upon the sale of consumer fireworks and any items provided for in paragraph
294 (2) of subsection (b) of Code Section 25-10-1 in this state at a rate of 1 percent per item
295 sold.

296 (2) The local excise tax imposed pursuant to this subsection shall be paid by the seller
297 and due and payable to the local governing authorities imposing such tax for such sales
298 occurring within their jurisdiction."

299 **SECTION 7.**

300 (a) Except as provided in subsection (b) of this section, this Act shall become effective upon
301 its approval by the Governor or upon its becoming law without such approval.

302 (b) Section 6 of this Act shall become effective on January 1, 2017.

303 **SECTION 8.**

304 All laws and parts of laws in conflict with this Act are repealed.