

VIRGINIA

27-94. Short title.

This chapter may be cited as the "Virginia Statewide Fire Prevention Code Act."

27-95. Definitions.

As used in this chapter, unless the context or subject matter requires otherwise, the following words or terms shall have the meaning herein ascribed to them:

"Board" means the Board of Housing and Community Development.

"Code provisions" means the provisions of the Fire Prevention Code as adopted and promulgated by the Board, and the amendments thereof as adopted and promulgated from time to time by such Board.

"Enforcement agency" means the agency or agencies of any local governing body or the State Fire Marshal charged with the administration or enforcement of the Fire Prevention Code.

"Fire Prevention Code" or "Code" means the Statewide Fire Prevention Code.

"Fire prevention regulation" means any law, rule, resolution, regulation, ordinance or code, general or special, or compilation thereof to safeguard life and property from the hazards of fire or explosion arising from the improper maintenance of life safety and fire prevention and protection materials, devices, systems and structures, and the unsafe storage, handling and use of substances, materials and devices, including explosives and blasting agents, wherever located, heretofore or hereafter enacted or adopted by the Commonwealth or any county or municipality, including departments, boards, bureaus, commissions or other agencies.

"Fire Services Board" means the Virginia Fire Services Board as provided for in § 9.1-202.

"Fireworks" means any firecracker, torpedo, skyrocket, or other substance or object, of whatever form or construction, that contains any explosive or inflammable compound or substance, and is intended, or commonly known as fireworks, and which explodes, rises into the air or travels laterally, or fires projectiles into the air.

"Fireworks operator" or "pyrotechnician" means any person engaged in the design, setup, and firing of any fireworks other than permissible fireworks either inside a building or structure or outdoors.

"Inspection warrant" means an order in writing, made in the name of the Commonwealth, signed by any judge or magistrate whose territorial jurisdiction encompasses the building, structure or premises to be inspected or entered, and directed to a state or local official, commanding him to enter and to conduct any inspection, examination, testing or collection of samples for testing required or authorized by the Virginia Statewide Fire Prevention Code.

"Local government" means the governing body of any city, county or town in this Commonwealth.

"Permissible fireworks" means any sparklers, fountains, Pharaoh's serpents, caps for pistols, or pinwheels commonly known as whirligigs or spinning jennies.

"State Fire Marshal" means the State Fire Marshal as provided for by § 9.1-206.

27-96. Statewide standards.

The purposes of this chapter are to provide for statewide standards for optional local enforcement to safeguard life and property from the hazards of fire or explosion arising from the improper maintenance of life safety and fire prevention and protection materials, devices, systems and structures, and the unsafe storage, handling, and use of substances, materials and devices, including fireworks, explosives and blasting agents, wherever located.

27-96.1. Chapter inapplicable to certain uses of fireworks.

Unless prohibited by a local ordinance, the provisions of this chapter pertaining to fireworks shall not apply to the sale of or to any person using, igniting or exploding permissible fireworks on private property with the consent of the owner of such property.

27-97. Adoption of Fire Prevention Code.

The Board of Housing and Community Development is hereby empowered to adopt and promulgate a Statewide Fire Prevention Code which shall be cooperatively developed with the Fire Services Board pursuant to procedures agreed to by the two Boards. The Fire Prevention Code shall prescribe regulations to be complied with for the protection of life and property from the hazards of fire or explosion and for the handling, storage, sale and use of fireworks, explosives or blasting agents, and shall provide for the administration and enforcement of such regulations. The Fire Prevention Code shall require manufacturers of fireworks or explosives, as defined in the Code, to register and report information concerning their manufacturing facilities and methods of operation within

the Commonwealth in accordance with regulations adopted by the Board. In addition to conducting criminal background checks pursuant to § 27-97.2, the Board shall also establish regulations for obtaining permits for the manufacturing, storage, handling, use, or sales of fireworks or explosives. In the enforcement of such regulations, the enforcing agency may issue annual permits for such activities to any state regulated public utility. Such permits shall not apply to the storage, handling, or use of explosives or blasting agents pursuant to the provisions of Title 45.1.

The Fire Prevention Code shall prohibit any person, firm, or corporation from transporting, manufacturing, storing, selling, offering for sale, exposing for sale, or buying, using, igniting, or exploding any fireworks except for those persons, firms, or corporations that manufacture, store, market and distribute fireworks for the sole purpose of fireworks displays permitted by an enforcement agency or by any locality.

The Fire Prevention Code shall supersede fire prevention regulations heretofore adopted by local governments or other political subdivisions. Local governments are hereby empowered to adopt fire prevention regulations that are more restrictive or more extensive in scope than the Fire Prevention Code provided such regulations do not affect the manner of construction, or materials to be used in the erection, alteration, repair, or use of a building or structure, including the voluntary installation of smoke alarms and regulation and inspections thereof in commercial buildings where such smoke alarms are not required under the provisions of the Code. The Fire Prevention Code shall prohibit any person not certified by the State Fire Marshal's Office as a fireworks operator or pyrotechnician to design, set up, or conduct or supervise the design, setup, or conducting of any fireworks display, either inside a building or structure or outdoors and shall require that at least one person holding a valid certification is present at the site where the fireworks display is being conducted. Certification shall not be required for the design, storage, sale, use, conduct, transportation, and set up of permissible fireworks or the supervision thereof or in connection with any fireworks display conducted by a volunteer fire department provided one member of the volunteer fire department holds a valid certification.

In formulating the Fire Prevention Code, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations including, but not limited to, standards of the International Code Council, the National Fire Protection Association, and recognized organizations issuing standards for the protection of the public from the hazards of explosives and blasting agents. Such standards shall be based on the companion document to the model building code referenced by the Uniform Statewide Building Code.

The Fire Prevention Code shall require that buildings constructed prior to 1973 be maintained in accordance with state fire and public building regulations in effect prior to March 31, 1986, and that any building which is (i) more than 75 feet or more than six stories high and (ii) used, in whole or in part, as a dormitory to house students by any public or private institution of higher education shall be required to comply with the provisions of § 36-99.3. The Fire Prevention Code shall also require annual fire drills in all buildings having floors used for human occupancy located more than 75 feet above the lowest level of fire department vehicle access. The drills shall be conducted by building staff personnel or the owner of the building in accordance with a plan approved by the appropriate fire official and shall not affect other current occupants. The Board may modify, amend or repeal any Code provisions as the public interest requires. Any such Code changes shall be developed in cooperation with the Fire Services Board pursuant to procedures agreed to by the two Boards.

27-97.1. Reports of stolen explosives.

Any person holding a permit for the manufacture, storage, handling, use or sale of explosives issued in accordance with the provisions of the Code shall report to the office of the chief arson investigator for the Commonwealth as well as the chief local law-enforcement official any theft or other unauthorized taking or disappearance of any explosives or blasting devices from their inventory. An initial verbal report shall be made within three days of the discovery of the taking or disappearance. A subsequent written report shall be filed within such time, and in such form, as is specified by the chief arson investigator.

Failure to comply with the provisions of this section shall constitute a Class 1 misdemeanor punishable by the same penalties applicable to violations of the Fire Prevention Code.

27-97.2. Issuance of permit; background investigations.

A. The State Fire Marshal or other issuing authority shall consider all permit applications for manufacturing, storage, handling, use or sales of explosives and applications for certification as a blaster or as a fireworks operator or pyrotechnician, and may grant a valid permit or certification to applicants who meet the criteria established in the Statewide Fire Prevention Code. The State Fire Marshal shall require a background investigation, to include a national criminal history record information check, of all individual applicants and all designated persons representing an applicant that is not an individual, for a permit to manufacture, store, handle, use

or sell explosives, and for any applicant for certification as a blaster or as a fireworks operator or pyrotechnician. Each such applicant shall submit his fingerprints to the State Fire Marshal on a form provided by the State Fire Marshal and provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history record check regarding such applicant. Any firm or company manufacturing, storing, using, or selling explosives shall provide to the enforcement agency, the State Fire Marshal or other issuing authority the name of a representative responsible for (i) ensuring compliance with state law and regulations relating to blasting agents and explosives and (ii) applying for permits. The State Fire Marshal or other issuing authority shall deny any application for a permit or for certification as a blaster or as a fireworks operator or pyrotechnician if the applicant or designated person representing an applicant has been convicted of any felony, whether such conviction occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, unless his civil rights have been restored by the Governor or other appropriate authority. The provisions of this section shall not apply to the manufacturing, storage, handling, use or sales of permissible fireworks or in connection with any fireworks display conducted by a volunteer fire department provided one member of the volunteer fire department holds a valid certification.

B. No permit under this section shall be required of any person holding a certification or permit issued pursuant to the provisions of Title 45.1.

27-98. Enforcement of Fire Prevention Code; appeals from decisions of local enforcing agencies; inspection of buildings.

Any local government may enforce the Fire Prevention Code in its entirety or with respect only to those provisions of the Fire Prevention Code relating to open burning, fire lanes, fireworks, and hazardous materials. If a local governing body elects to enforce only those provisions of the Fire Prevention Code relating to open burning, it may do so in all or in any designated geographic areas of its jurisdiction. The State Fire Marshal shall also have the authority, in cooperation with any local governing body, to enforce the Code. The State Fire Marshal shall also have authority to enforce the Code in those jurisdictions in which the local governments do not enforce the Code and may establish such procedures or requirements as may be necessary for the administration and enforcement of the Code in such jurisdictions. In addition, subject to the approval of the Board of Housing and Community Development, the State Fire Marshal may charge a fee to recover the actual cost of administering and enforcing the Code in jurisdictions for which he serves as the enforcement authority. No fee may be charged for the inspection of any school. The local governing body of any jurisdiction that enforces the Code may establish such procedures or requirements as may be necessary for the administration and enforcement of the Code. Appeals concerning the application of the Code by the local enforcing agency shall first lie to a local board of appeals and then to the State Building Code Technical Review Board. Appeals from the application of the Code by the State Fire Marshal shall be made directly to the State Building Code Technical Review Board as provided in Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals. Any local fire code may provide for an appeal to a local board of appeals. If no local board of appeals exists, the State Building Code Technical Review Board shall hear appeals of any local fire code violation.

27-98.1. Inspections of buildings, structures, properties and premises.

In order to carry out the purposes of the Code and any regulations or standards adopted in pursuance thereof, the local fire official, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized, with the consent of the owner, operator, or agent in charge to enter a building, structure, property or premises for the purpose of conducting an inspection, examination, testing, or collection of samples for testing, during regular working hours and at other reasonable times, and in a reasonable manner, to determine if the building, structures, systems, machines, apparatus, devices, equipment, and materials stored, used or handled, and all pertinent conditions therein, are in compliance with the requirements, regulations or standards set forth in the Code.

27-98.2. Issuance of warrant.

Search warrants for inspections or reinspection of buildings, structures, property, or premises subject to inspections pursuant to the Code, to determine compliance with regulations or standards set forth in the Code, shall be based upon a demonstration of probable cause and supported by affidavit. Such inspection warrants may be issued by any judge or magistrate having authority to issue criminal warrants whose territorial jurisdiction encompasses the building, structure, property or premises to be inspected or entered, if he is satisfied from the affidavit that there is probable cause for the issuance of an inspection warrant. No inspection warrant shall be issued

pursuant to this chapter except upon probable cause, supported by affidavit, particularly describing the place, thing or property to be inspected, examined or tested and the purpose for which the inspection, examination, testing or collection of samples for testing is to be made. Probable cause shall be deemed to exist if such inspection, examination, testing or collection of samples for testing are necessary to ensure compliance with the Fire Prevention Code for the protection of life and property from the hazards of fire or explosion. The supporting affidavit shall contain either a statement that consent to inspect, examine, test or collect samples for testing has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent in order to enforce effectively the fire safety laws, regulations or standards of the Commonwealth which authorize such inspection, examination, testing or collection of samples for testing. In the case of an inspection warrant based upon legislative or administrative standards for selecting buildings, structures, property or premises for inspections, the affidavit shall contain factual allegations sufficient to justify an independent determination by the judge or magistrate that the inspection program is based on reasonable standards and that the standards are being applied to a particular place in a neutral and fair manner. The issuing judge or magistrate may examine the affiant under oath or affirmation to verify the accuracy of any matter in the affidavit.

27-98.3. Duration of warrant.

An inspection warrant shall be effective for the time specified therein, for a period of not more than seven days, unless extended or renewed by the judicial officer who signed and issued the original warrant. The judicial officer may extend or renew the inspection warrant upon application for extension or renewal setting forth the results which have been obtained or a reasonable explanation of the failure to obtain such results. The extension or renewal period of the warrant shall not exceed seven days. The warrant shall be executed and returned to the judicial officer by whom it was issued within the time specified in the warrant or within the extended or renewed time. The return shall list any samples taken pursuant to the warrant. After the expiration of such time, the warrant, unless executed, shall be void.

27-98.4. Conduct of inspections, examinations, testing, or collection of samples.

No warrant shall be executed in the absence of the owner, operator or agent in charge of the particular building, structure, property or premises unless specifically authorized by the issuing judicial officer upon showing that such authority is reasonably necessary to effect the purposes of a statute or regulation being enforced. An entry pursuant to this warrant shall not be made forcibly, except that the issuing officer may expressly authorize a forcible entry (i) where facts are shown sufficient to create a reasonable suspicion of an immediate threat to an occupant of the particular building, structure, property, or premises, or, to the general safety and welfare of the public, or, to adjacent buildings, structures, properties or premises, or (ii) where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful. If forcible entry is authorized, the warrant shall be issued jointly to the fire official and to a law-enforcement officer who shall accompany the fire official during the execution.

27-98.5. Review by courts.

A. No court of the Commonwealth shall have jurisdiction to hear a challenge to the warrant prior to its return to the issuing judge or magistrate except as a defense in a contempt proceeding, unless the owner or custodian of the building, structure, property or premises to be inspected makes by affidavit a substantial preliminary showing accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in his affidavit for the inspection warrant and (ii) the false statement was necessary to the finding of probable cause. The court shall conduct such expeditious in camera view as the court may deem appropriate.

B. After the warrant has been executed and returned to the issuing judge, the validity of the warrant may be reviewed either as a defense to any citation issued by the fire official or otherwise by declaratory judgment action brought in a circuit court. In any such action, the review shall be confined to the face of the warrant and affidavits and supporting materials presented to the issuing judge unless the owner, operator, or agent in charge of whose building, structure, property or premises has been inspected makes a substantial showing by affidavit accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was made in support of the warrant and (ii) the false statement was necessary to the finding of probable cause. The review shall only determine whether there is substantial evidence in the record supporting the decision to issue the warrant.

27-99. State buildings.

The Fire Prevention Code shall be applicable to all state-owned buildings and structures. Every agency, commission or institution, including all institutions of higher education, of the Commonwealth shall permit, at all reasonable hours, a local fire official reasonable access to existing structures or a structure under construction or renovation, for the purposes of performing an informational and advisory fire safety inspection. The local fire official may submit, subsequent to performing such inspection, his findings and recommendations including a list of corrective actions necessary to ensure that such structure is reasonably safe from the hazards of fire to the appropriate official of such agency, commission, or institution and the State Fire Marshal. Such agency, commission or institution shall notify, within 60 days of receipt of such findings and recommendations, the State Fire Marshal and the local fire official of the corrective measures taken to eliminate the hazards reported by the local fire official. The State Fire Marshal shall have the same power in the enforcement of this section as is provided for in § 27-98.

The State Fire Marshal may enter into an agreement as is provided for in § 9.1-207 with any local enforcement agency that enforces the Fire Prevention Code to enforce this section and to take immediate enforcement action upon verification of a complaint of an imminent hazard such as a chained or blocked exit door, improper storage of flammable liquids, use of decorative materials and overcrowding.

27-100. Violation a misdemeanor.

It shall be unlawful for any owner or any other person, firm, or corporation, on or after the effective date of any Code provisions, to violate any provisions of the Fire Prevention Code. Any such violation shall be deemed a Class 1 misdemeanor, and any owner, or any other person, firm, or corporation convicted of such violation shall be punished in accordance with the provisions of § 18.2-11.

27-100.1. Seizure and destruction of certain fireworks.

Any law-enforcement officer arresting any person for a violation of this chapter related to fireworks shall seize any article of fireworks in the possession or under the control of the person so arrested and shall hold the same until final disposition of any criminal proceedings against such person. If a judgment of conviction be entered against such person, the court shall order destruction of such articles upon expiration of the time allowed for appeal of such judgment of conviction.

27-101. Injunction upon application.

Every court having jurisdiction under existing or any future law is empowered to and shall, upon the application of the local enforcing agency or State Fire Marshal, issue either a mandatory or restraining injunction in aid of the enforcement of, or in prevention of the violation of, any of the provisions of this law or any valid rule or regulation made in pursuance thereof. The procedure for obtaining any such injunction shall be in accordance with the laws then current governing injunctions generally except that the enforcing agency shall not be required to give bond as a condition precedent to obtaining an injunction.