

## WEST VIRGINIA

### 29-3-23. "Fireworks" defined; labels required.

The term "fireworks" means and includes any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation and shall include blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, the type of unmanned balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, roman candles, daygo bombs or other fireworks of like construction and any fireworks containing any explosive or flammable compound or any tablets or other device containing any explosive substance, except that the term "fireworks" shall not include:

Model rockets and model rocket engines, designed, sold and used for the purpose of propelling recoverable acro models and shall not include toy pistols, toy canes, toy guns or other devices in which paper or plastic caps manufactured in accordance with the United States department of transportation regulations for packing and shipping of toy paper or plastic caps are used and toy paper or plastic caps manufactured as provided therein, the sale and use of which shall be permitted at all times. Each package containing toy paper or plastic caps offered for retail sale shall be labeled to indicate the maximum explosive content per cap.

The following sparklers and novelties shall not be considered fireworks and require a business registration fee be paid to be authorized to sell, as provided for in section eighty-six, article twelve, chapter eleven of this code:

(1) Explosive caps designed to be fired in toy pistols, provided that the explosive mixture of the caps shall not exceed twenty-five hundredths of a grain for each cap.

(2) Snake and glow worms composed of pressed pellets of a pyrotechnic mixture that produce a large snake-like ash when burning.

(3) Smoke devices consisting of a tube or sphere containing a pyrotechnic mixture that produces white or colored smoke.

(4) Trick noisemakers which produce a small report designed to surprise the user and which include:

(a) A party popper, which is a small plastic or paper item containing not in excess of twenty-five hundredths of a grain of explosive mixture. A string protruding from the device is pulled to activate the device, expelling paper streamers and producing a small report.

(b) A string popper which is a small tube containing not in excess of twenty-five hundredths of a grain of explosive mixture with string protruding from both ends. The strings are pulled to activate the friction-sensitive mixture, producing a small report.

(c) A snapper or drop pop, which is a small paper wrapped item containing no more than twenty-five hundredths of a grain of explosive mixture coated on small bits of sand. When dropped, the device produces a small report.

(5) Wire sparklers consisting of wire or stick coated with nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition. These items must not exceed one hundred grams of mixture per item.

(6) Other sparkling devices which emit showers of sparks and sometimes a whistling or crackling effect when burning, do not detonate or explode, are hand-held or ground-based, cannot propel themselves through the air and contain not more than seventy-five grams of chemical compound per tube or not more than a total of two hundred grams if multiple tubes are used: Provided, That sparklers and sparkler devices as provided for herein shall not be sold to anyone below the age of sixteen years old.

### 29-3-24. Unlawful sale, possession or use of fireworks; permit for public display.

Except as hereinafter provided, no person, firm, co-partnership or corporation shall offer for sale, possess, expose for sale, sell at retail, keep with intent to sell at retail, or use or explode any fireworks: Provided, That the state fire marshal may adopt reasonable rules and regulations for the granting of permits for the supervised displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals. The state fire marshal shall have the authority to charge a fee of ten dollars to each applicant requesting a license to be a pyrotechnic operator as set forth in this article. The state fire marshal shall charge a scaled fee for all applications requesting permits to establish a pyrotechnics display as provided in this section. All fees required to be paid by the provisions of this section shall be paid to the state fire marshal and thereafter deposited by him into a special account for the operation of the state fire commission. Such permits may be granted upon application to said state fire marshal and after approval of the local police and fire authorities of the community wherein the display is proposed to be held as provided herein and the filing of a bond by the applicant as provided hereinafter. Every such display shall be handled by a competent operator licensed or certified as to competency by the state fire marshal and shall be of such composition, character, and so located, discharged or fired as in the opinion of the chief of the fire

department, after proper inspection, and of the chief of police as to not be hazardous to property or endanger any person or persons. After such privilege shall have been granted, the sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

The governing body or chief executive authority of the municipality shall require a bond from the licensee in a sum not less than one thousand dollars conditioned on compliance with the provisions of this article and the regulations of the state fire commission: Provided, That no municipality shall be required to file such bond.

Before any permit for a pyrotechnic display shall be issued, the person, firm or corporation making application therefor shall furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of such person, firm or corporation or any agent or employee thereof, in such amount, character and form as the state fire marshal determines to be necessary for the protection of the public.

29-3-25. Interstate sale and shipment; permitted uses.

No permit shall be issued under the provisions of this article to a nonresident person, firm or corporation for conduct of a pyrotechnic display in this state until such person, firm or corporation shall have appointed in writing a member of the bar of this state and residing therein to be his attorney upon whom all process in any action or proceeding against him may be served.

Nothing in this article shall be construed to prohibit any resident wholesaler, dealer or jobber to sell at wholesale such fireworks as are not herein prohibited or the sale of any kind of fireworks provided the same are to be shipped directly out of state in accordance with regulations of the United States department of transportation covering the transportation of explosives and other dangerous articles by motor, rail and water, or the use of fireworks by railroads or other transportation agencies for signal purposes or illumination, or the sale or use of blank cartridges for a show or theater, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations, or the use of fireworks for agricultural purposes under conditions approved by the local authority.

29-3-26. Seizures by fire marshal; enforcement of law.

The state fire marshal shall seize, take, remove and destroy, or cause to be seized, taken or removed and destroyed, at the expense of the owner, all stocks of fireworks or combustibles offered or exposed for sale, stored or held in violation of this article. It shall be the duty of the department of public safety, sheriffs, municipal policemen and other law-enforcement officers to assist in the enforcement of this article.

29-3-27. Penalties.

(e) Any person who violates any other provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars or confined in the county or regional jail not more than ninety days, or both.

11-12-86. Sparkler and novelty registration fee.

The Tax Commissioner shall establish a "Sparkler and Novelty Registration Fee" which shall be charged all businesses licensed to do business in the State of West Virginia desiring to sell sparklers and novelties authorized for sale in section twenty-three, article three, chapter twenty-nine of this code. This fee shall run concurrent with the business registration certificate set forth in section five of this article. This fee shall not be prorated. Each business shall pay \$15 for each registration and shall be issued a sticker or card by the Tax Commissioner to be posted in a conspicuous position at the location of the business which has paid the registration fee. This fee shall be collected for each separate location where sparklers and novelties are sold. The Tax Commissioner may, in his or her discretion, require a separate certificate which shall be posted as set forth herein, or provide that the evidence of compliance with this section may be by a stamp or language added to the business registration certificate or by embossing or writing imprinted on the business registration certificate.