

1 SB289  
2 199056-1  
3 By Senators Melson and Allen  
4 RFD: Fiscal Responsibility and Economic Development  
5 First Read: 16-APR-19

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: Under existing law, the State Fire Marshal  
9 collects certain fees for issuing permits in the  
10 regulation of the manufacturing, sale, and display  
11 of fireworks, including those defined as common  
12 fireworks, and for the use of pyrotechnics before a  
13 proximate audience, all fees so collected are paid  
14 into the State Fire Marshal's Fund for the  
15 enforcement of those laws, and these fees are  
16 subject to being increased according to changes in  
17 the Consumer Price Index pursuant to Section  
18 41-1-11, Code of Alabama 1975.

19 This bill would redesignate common fireworks  
20 as consumer fireworks and would provide for a  
21 specific designation of non-aerial ground devices  
22 and novelties as defined under federal law. The  
23 bill would specify that a city and county ordinance  
24 could not conflict with this act for these items.

25 This bill would increase the fees collected  
26 by the State Fire Marshal for issuing permits in  
27 the regulation of the manufacturing, sale, and

1 display of fireworks and for the use of  
2 pyrotechnics before a proximate audience.

3 This bill would also provide for a  
4 semi-annual transfer of five percent of the permit  
5 fees collected by the State Fire Marshal in the  
6 regulation of fireworks and pyrotechnics to the  
7 Alabama Firefighters Annuity and Benefit Fund.

8 This bill would also specify that the fees  
9 may be increased at certain intervals according to  
10 increases in the Consumer Price Index.

11  
12 A BILL  
13 TO BE ENTITLED  
14 AN ACT  
15

16 Relating to fireworks and pyrotechnics to amend  
17 Sections 8-17-210, 8-17-211, 8-17-216.1, 8-17-217, 8-17-218,  
18 8-17-219, 8-17-220, 8-17-225, 8-17-226, 8-17-255, and  
19 34-33-11, Code of Alabama 1975; to redesignate common  
20 fireworks as consumer fireworks and to provide for the  
21 regulation of consumer fireworks; to specify that city and  
22 county ordinances may not conflict with the regulation of  
23 certain non-aerial ground devices and novelty fireworks as  
24 defined in this act; to increase the fees collected by the  
25 State Fire Marshal for issuing permits in the regulation of  
26 the manufacturing, sale and display of fireworks and for the  
27 use of pyrotechnics before a proximate audience; to provide

1 for a transfer of five percent of the permit fees collected by  
2 the State Fire Marshal in the regulation of fireworks and  
3 pyrotechnics to the Alabama Firefighters Annuity and Benefit  
4 Fund; and to specify that the fees may be increased at certain  
5 intervals according to increases in the Consumer Price Index.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Sections 8-17-210, 8-17-211, 8-17-216.1,  
8 8-17-217, 8-17-218, 8-17-219, 8-17-220, 8-17-225, 8-17-226,  
9 8-17-255, and 34-33-11, Code of Alabama 1975, are amended to  
10 read as follows:

11 "§8-17-210.

12 "As used in this article, the following terms shall  
13 have the meanings ascribed to them in this section, unless  
14 clearly indicated otherwise:

15 "(1) AERIAL DEVICES. Any type of D.O.T. Class C  
16 Consumer Fireworks listed in the APA 87-1, Sections 3.1.2 and  
17 3.5.

18 "(2) ANNUAL RETAILER. Any person engaged in the  
19 business of making sales of fireworks to consumers within this  
20 state throughout the entire calendar year from January 1  
21 through December 31.

22 "(3) APA 87-1. The 2001 American Pyrotechnics  
23 Standard for Construction and Approval for Transportation of  
24 Fireworks, Novelties, and Theatrical Pyrotechnics.

25 "(4) AUDIBLE GROUND DEVICES. Any type of D.O.T.  
26 Class C Consumer Firework listed in APA 87-1, Section 3.1.3.

1           "~~(1)~~(5) DISTRIBUTOR. Any person engaged in the  
2 business of making sales of fireworks for resale to all  
3 holders of the required Alabama permits who in turn shall  
4 resell to any permit holder; or any person who receives,  
5 brings, or imports any fireworks of any kind into the State of  
6 Alabama, except to a holder of an Alabama manufacturer's or  
7 distributor's permit.

8           "~~(2)~~(6) D.O.T. CLASS C ~~COMMON~~ CONSUMER FIREWORKS.  
9 All articles of fireworks as are now or hereafter classified  
10 as D.O.T. Class C ~~common~~ 1.4G Consumer fireworks in the  
11 regulations of the U.S. Department of Transportation for the  
12 transportation of explosive and other dangerous articles,  
13 including aerial devices, audible ground devices, non-aerial  
14 ground devices, and novelties.

15           "~~(3)~~(7) MANUFACTURER. Any person engaged in the  
16 making, manufacture, or construction of fireworks of any kind  
17 within the State of Alabama.

18           "(8) NFPA 1123. The National Fire Protection  
19 Association Code for Fireworks Display, as adopted by the  
20 State Fire Marshal.

21           "(9) NFPA 1124. The National Fire Protection  
22 Association Code for the Manufacture, Transportation, Storage,  
23 and Retail Sales of Fireworks and Pyrotechnic Articles, as  
24 adopted in 2006.

25           "(10) NON-AERIAL GROUND DEVICES. Any type of D.O.T.  
26 Class C Consumer Firework that is a ground-based or handheld

1 sparkling device, including items listed in APA 87-1, Sections  
2 3.1.1 and 3.5.

3 "(11) NOVELTIES. Any device listed in APA 87-1,  
4 Section 3.2, including, without limitation, the following:

5 "a. Party poppers.

6 "b. Snappers.

7 "c. Toy smoke devices.

8 "d. Snake, glow worms.

9 "e. Wire sparklers, dipped sticks.

10 "(4)(12) PERMIT. The written authority of the State  
11 Fire Marshal issued under the authority of this article.

12 "(5)(13) PERSON. Includes any corporation,  
13 association, copartnership or one or more individuals.

14 ~~"(6) RETAILER. Any person engaged in the business of~~  
15 ~~making sales of fireworks to consumers within the State of~~  
16 ~~Alabama during a calendar year from January 1 through December~~  
17 ~~31.~~

18 "(7)(14) SALE. An exchange of articles or fireworks  
19 for money, including barter, exchange, gift, or offer thereof,  
20 and each such transaction made by any person, whether as  
21 principal proprietor, salesman, agent, association,  
22 copartnership, or one or more individuals.

23 "(8)(15) FIREWORKS SEASONS. The dates of June 20  
24 through July 10 and December 15 through January 2 of each year  
25 shall be the only periods when seasonal retailers may sell  
26 fireworks.

1           "~~(9)~~(16) SEASONAL RETAILER. Any person engaged in  
2 the business of making sales of fireworks to consumers within  
3 the State of Alabama during the fireworks season(s) only, from  
4 permanent buildings or temporary or moveable stands.

5           "~~(10)~~(17) SPECIAL FIREWORKS. All articles of  
6 fireworks that are classified as Class B ~~explosives~~ 1.3G  
7 fireworks in the regulations of the U.S. Department of  
8 Transportation, including all articles classified as fireworks  
9 other than those classified as Class C.

10           "~~(11)~~(18) WHOLESALER. Any person engaged in the  
11 business of making sales of fireworks to any other person  
12 engaged in the business of making sales at seasonal retail.

13           "§8-17-211.

14           "(a) It shall be unlawful for any person to  
15 manufacture, sell, offer for sale, or ship or cause to be  
16 shipped into or within the State of Alabama, except as herein  
17 provided, any item of fireworks or pyrotechnics for use before  
18 a proximate audience, without first having secured the  
19 required applicable permit, as a manufacturer, distributor,  
20 wholesaler, annual retailer, or seasonal retailer, from the  
21 State Fire Marshal. Possession of a permit is a condition  
22 prerequisite to manufacturing, selling, or offering for sale,  
23 or shipping or causing to be shipped any fireworks or  
24 pyrotechnics for use before a proximate audience into or  
25 within the State of Alabama, except as herein provided. This  
26 provision applies to nonresidents as well as residents of the  
27 State of Alabama. Mail orders where consumers purchase any

1 fireworks or pyrotechnics for use before a proximate audience  
2 through the mail or receive any fireworks or pyrotechnics for  
3 use before a proximate audience in Alabama by mail, parcel  
4 service, or other carrier are prohibited. A sales clerk must  
5 be on duty to serve consumers at the time of purchase or  
6 delivery. All fireworks or pyrotechnics for use before a  
7 proximate audience sold and delivered to consumers within the  
8 State of Alabama must take place within the State of Alabama  
9 and be sold and delivered only by an individual, firm,  
10 partnership, or corporation holding the proper Alabama permit  
11 and all fireworks or pyrotechnics for use before a proximate  
12 audience coming into the state, manufactured, sold, or stored  
13 within the state shall be under the supervision of the State  
14 Fire Marshal as provided for in this article.

15 "(b) Prior to engaging in the manufacture or sale  
16 within the State of Alabama, or shipment into the State of  
17 Alabama, of any fireworks or pyrotechnics for use before a  
18 proximate audience, each person making shipment or delivery or  
19 receiving any fireworks or pyrotechnics for use before a  
20 proximate audience into or within the State of Alabama, must  
21 make application on forms secured from the State Fire Marshal  
22 for a permit or permits required under this article for each  
23 location at which fireworks or pyrotechnics for use before a  
24 proximate audience are to be offered for sale.

25 "(c) A manufacturer's permit issued under this  
26 article shall be subject to rules and regulations promulgated  
27 by the State Fire Marshal to govern the manufacture of



1 fireworks or pyrotechnics for use before a proximate audience  
2 as in the judgment of the State Fire Marshal the public  
3 welfare may require.

4 "(d) The decision of the State Fire Marshal as to  
5 what type of permit or permits shall be required of each  
6 person shall be final. The State Fire Marshal may deny a  
7 permit to an applicant or revoke a permit if the State Fire  
8 Marshal has knowledge or reason to believe the safety  
9 standards and conditions of this article are not or cannot be  
10 met by the applicant. No permit shall be issued to a person  
11 under the age of 18 years. All permits shall be for the  
12 calendar year or any fraction thereof and shall expire on  
13 December 31 of each year, two days of grace shall be allowed  
14 holders of permits after expiration thereof. Only one seasonal  
15 retailer permit shall be required for a full calendar year and  
16 it shall be valid for both fireworks seasons, provided that  
17 the building is not moved from the location where it was  
18 originally permitted and no substantial structural or  
19 environmental changes have occurred. A seasonal retailer  
20 permit may be issued after July tenth for the remaining  
21 fireworks season of that calendar year. All permits issued  
22 must be displayed in their place of business. No permit  
23 provided for herein shall be transferable nor shall a person  
24 be permitted to operate under a permit issued to any other  
25 person or under a permit issued for another location, unless  
26 transfer shall have been approved by the State Fire Marshal.

1 The holder of an annual retailer permit shall not be required  
2 to obtain a seasonal retailer permit.

3 "(e) The State Fire Marshal shall charge for permits  
4 issued as follows:

5 "(1) Manufacturer, ~~two thousand dollars (\$2,000)~~ two  
6 thousand seven hundred dollars (\$2,700).

7 "(2) Distributor, two thousand seven hundred dollars  
8 ~~(\$2,000)~~ (\$2,700).

9 "(3) Wholesaler, ~~seven hundred~~ one thousand dollars  
10 ~~(\$700)~~ (\$1,000).

11 "(4) Annual Retailer, ~~two hundred dollars (\$200).~~∴

12 "a. Of aerial devices, non-aerial ground devices,  
13 audible ground devices, and novelties, two hundred fifty  
14 dollars (\$250) per location.

15 "b. Of non-aerial ground devices and novelties, one  
16 hundred dollars (\$100) per location.

17 "c. Of novelties, twenty-five dollars (\$25) per  
18 location.

19 "(5) Seasonal Retailer, ~~two hundred dollars (\$200).~~∴

20 "a. Of aerial devices, non-aerial devices, audible  
21 ground devices, and novelties, two hundred dollars (\$200) per  
22 location.

23 "b. Of non-aerial devices and novelties, fifty  
24 dollars (\$50) per location.

25 "(6) Seasonal Retailer after July 10, ~~one hundred~~  
26 ~~dollars (\$100)~~ one-half the permit fee indicated in  
27 subdivision (5).

1           "(7) Display, ~~fifty dollars (\$50)~~ application filed  
2 at least 10 business days before display date, seventy dollars  
3 (\$70).

4           "(8) Display, application filed less than 10  
5 business days before display date, one hundred forty dollars  
6 (\$140).

7           "(f) Only holders of ~~a~~ an annual retailer or  
8 seasonal retailer permit may engage in the retail sale of  
9 ~~permitted items as defined in Section 8-17-217~~ aerial devices,  
10 non-aerial ground devices, audible ground devices, and  
11 novelties, in any quantity, to consumers.

12           "(g) A holder of a manufacturer's permit is not  
13 required to have any additional permit or permits in order to  
14 sell to distributors, wholesalers, retailers, or seasonal  
15 retailers.

16           "(h) A record of all sales by manufacturers,  
17 distributors, or wholesalers must be kept showing the names  
18 and addresses of purchasers. All fees collected for the  
19 permits shall be paid into the State Fire Marshal ~~Marshal's~~  
20 ~~Revolving~~ Fund for the enforcement of this article. The State  
21 Fire Marshal may designate a deputy fire marshal as the  
22 "fireworks enforcement officer" who shall have the  
23 responsibility of directing enforcement of the state fireworks  
24 laws.

25           "(i) The State Fire Marshal is charged with the  
26 enforcement of this article and may call upon any state or  
27 county or city peace officer for assistance in the enforcement

1 of this article. The fire marshal is not authorized to  
2 promulgate rules or regulations in conflict with or that go  
3 beyond the scope or intent of this article.

4 "(j) Every five years, the State Fire Marshal may  
5 increase the fees by the percentage increase in the Consumer  
6 Price Index for all urban consumers as published by the U.S.  
7 Department of Labor, Bureau of Labor Statistics from the end  
8 of December 2019, to the end of the month preceding the month  
9 in which the fee increase is to be effective, rounded down to  
10 the nearest dollar. The increase may not exceed two percent  
11 per year.

12 "§8-17-216.1.

13 "(a) The use of pyrotechnics before a proximate  
14 audience shall comply with the requirements set out in the  
15 latest edition of the National Fire Protection Association's  
16 Standard for the Use of Pyrotechnics Before a Proximate  
17 Audience (NFPA 1126) as shall be adopted by the State Fire  
18 Marshal. For purposes of this article, the term "proximate  
19 audience" shall mean an indoor audience closer to pyrotechnic  
20 devices than permitted by the National Fire Protection  
21 Association's Code for Fireworks Display (NFPA 1123).

22 "(b) No person shall use pyrotechnics before a  
23 proximate audience without first obtaining a permit therefor  
24 from the State Fire Marshal. An application for a permit for  
25 the use of pyrotechnics at an event with a proximate audience  
26 shall be filed with the State Fire Marshal not less than 10  
27 days prior to the planned date of the event. The State Fire

1 Marshal may accept an application for a permit under this  
2 section less than 10 days before the planned date of the event  
3 if accompanied by a fee of double the amount otherwise  
4 required.

5 "(c) The request for a permit under subsection (b)  
6 shall be in the form and manner prescribed by the State Fire  
7 Marshal. The permit shall be in addition to any locally  
8 required permit or approval.

9 "(d) A fee of one hundred fifty dollars ~~(\$100)~~  
10 (\$150) per event shall be submitted with each application.

11 "(e) Where more than one event is to take place at  
12 the same location during the same calendar date, a separate  
13 application shall be filed for each event. The application fee  
14 for the second and subsequent events on the same calendar date  
15 shall be ~~fifty~~ seventy-five dollars ~~(\$50)~~ (\$75) per event.

16 "(f) The State Fire Marshal may prescribe such other  
17 and additional requirements associated with the use of  
18 pyrotechnics before a proximate audience as are deemed  
19 necessary for the safety of property and persons present at  
20 the proximate event location.

21 "(g) All pyrotechnics found at an event with a  
22 proximate audience which does not have a permit shall be  
23 confiscated and destroyed by the State Fire Marshal or his or  
24 her designee.

25 "(h) All fees collected pursuant to this section  
26 shall be paid into the State Fire Marshal ~~Marshal's~~ Revolving  
27 Fund for the enforcement of this article.

1           "(i) Every five years, the State Fire Marshal may  
2           increase the fees by the percentage increase in the Consumer  
3           Price Index for all urban consumers as published by the U.S.  
4           Department of Labor, Bureau of Labor Statistics from the end  
5           of December 2019, to the end of the month preceding the month  
6           in which the fee increase is to be effective, rounded down to  
7           the nearest dollar. The increase may not exceed two percent  
8           per year.

9           "§8-17-217.

10           "(a) It shall be unlawful for an individual, firm,  
11           partnership, or corporation to possess, sell, or use within  
12           the State of Alabama, or ship into the State of Alabama,  
13           except as provided in Section 8-17-216, any pyrotechnics  
14           commonly known as "fireworks" other than items now or  
15           hereafter classified as Class C ~~common~~ consumer fireworks by  
16           the United States Department of Transportation, including, but  
17           not limited to, aerial devices, audible ground devices,  
18           non-aerial ground devices, and novelties and/or those items  
19           that comply with the construction, chemical composition, and  
20           labeling regulations promulgated by the United States Consumer  
21           Product Safety Commission and permitted for use by the general  
22           public under their regulations.

23           "(b) Permitted items designed to produce an audible  
24           effect are confined to small ground items which include  
25           firecrackers containing not over 50 milligrams of explosive  
26           composition and aerial devices containing not over 130  
27           milligrams of explosive composition. Propelling or expelling

1 charge consisting of a mixture of charcoal, sulfur and  
2 potassium nitrate are not considered as designed to produce an  
3 audible effect.

4 "(c) Items permitted and for which a permit is  
5 required shall include related items not classified by the  
6 United States Department of Transportation as ~~common~~ consumer  
7 fireworks, but identified under their regulations as trick  
8 noisemakers, toy novelties, toy smoke devices and sparklers  
9 and shall include toy snakes, snappers, auto burglar alarms,  
10 smoke balls, smoke novelty items, and wire sparklers  
11 containing not over 100 grams of composition per item.  
12 Sparklers containing any chlorate or perchlorate salts may not  
13 exceed five grams of composition per item.

14 "§8-17-218.

15 "All items of fireworks which exceed the two grain  
16 limit of D.O.T. Class C ~~common~~ consumer fireworks as to  
17 explosive composition, such items being commonly referred to  
18 as "illegal ground salutes" designed to produce an audible  
19 effect, are expressly prohibited from shipment into,  
20 manufacture, possession, sale, and use within the State of  
21 Alabama for any purpose. This ~~subsection~~ section shall not  
22 affect display fireworks authorized by this article~~7~~.

23 "§8-17-219.

24 "No permissible article of fireworks or related  
25 items defined in Section 8-17-217 shall be sold, offered for  
26 sale or possessed within the state or used within the state,  
27 except as provided in Section 8-17-216 unless it shall be

1 properly named to conform to the nomenclature of Section  
2 8-17-217. Items must be identified on the shipping cases and  
3 by imprinting on the article or retail sales container or unit  
4 "D.O.T. Class C ~~Common~~ Consumer Fireworks" or other  
5 appropriate classification or identification as may be  
6 applicable or required by any federal agency having  
7 jurisdiction over fireworks on related items; such imprint to  
8 be of sufficient size and so positioned as to be readily  
9 recognized by law enforcement authorities and the general  
10 public.

11 "§8-17-220.

12 "Permissible items of fireworks, defined in Section  
13 8-17-217, may be sold at retail to residents of the State of  
14 Alabama. The term "fireworks" shall not include toy paper  
15 pistol caps which contain less than twenty-five hundredths  
16 grains of explosive compounds, model rockets, emergency signal  
17 flares, matches, ~~cone, bottle, tube, and other type serpentine~~  
18 ~~pop-off novelties,~~ trick matches and cigarette loads, the sale  
19 and use of which shall be permitted at all times without a  
20 special fireworks permit.

21 "§8-17-225.

22 "The State Fire Marshal shall seize as contraband  
23 any fireworks other than the permitted "Class C ~~Common~~  
24 Consumer Fireworks" and related items defined in Section  
25 8-17-217 or "special fireworks" for public displays as  
26 provided in Section 8-17-216, which are sold, displayed, used,  
27 or possessed in violation of this article. The ~~fire marshall~~



1 State Fire Marshal ~~is authorized to~~ may destroy any illegal  
2 fireworks so seized.

3 "§8-17-226.

4 "(a) This article shall in no wise affect the  
5 validity of any city ordinance further restricting the sale or  
6 use of ~~fireworks~~ aerial devices and audible ground devices,  
7 including the authority to adopt ordinances related to aerial  
8 devices and audible ground devices in accordance with Section  
9 11-45-9.1.

10 "(b) After the effective date of the act amending  
11 this section, no city or county ordinance or local law shall  
12 conflict with this chapter related to the transportation,  
13 storage, retail sale, possession, or use of non-aerial ground  
14 devices or novelties.

15 "(c) Nothing in this section shall be construed to  
16 limit or restrict a municipality from including the revenue  
17 derived from the devices listed above from the gross receipts  
18 calculation used as the basis for a retailer's existing  
19 business license as provided in Section 11-51-90.

20 "§8-17-255.

21 "All sums received through the payment of fees, the  
22 recovery of civil penalties, grants, and appropriations by the  
23 Legislature shall be deposited in the State Treasury and  
24 credited to the State Fire Marshal's Fund. This fund shall be  
25 available to the State Fire Marshal for expenditure in the  
26 administration and enforcement of ~~this article~~ Article 8,  
27 Article 8A, Article 9, and Article 10, training, and research

1 programs, and to support fire safety and prevention programs.  
2 Provided, however, that no funds shall be withdrawn or  
3 expended except as budgeted and allocated according to  
4 Sections 41-4-80 to 41-4-96 and Sections 41-19-1 to 41-19-12,  
5 inclusive, and only in amounts as stipulated in the general  
6 appropriations bills or other appropriations bills. Any  
7 unencumbered and any unexpended balance of this fund remaining  
8 at the end of any fiscal year shall not lapse or revert to the  
9 General Fund, but shall be carried forward for the purposes of  
10 this article until expended.

11 "§34-33-11.

12 "All funds collected pursuant to this chapter shall  
13 be deposited in the State Treasury to the credit of the State  
14 Fire Marshal's Fund authorized by ~~Section 24-5-10~~ 8-17-255.  
15 The State Fire Marshal shall be authorized to expend moneys  
16 from the State Fire Marshal's Fund for the administration and  
17 enforcement of this chapter. The State Fire Marshal shall be  
18 allowed to receive grants and donations from associations,  
19 firms, or individuals who are interested in the upgrading and  
20 quality of fire protection sprinkler systems."

21 Section 2. On a semiannual basis, the State Fire  
22 Marshal shall transfer from the State Fire Marshal's Fund to  
23 the Alabama Firefighters Annuity and Benefit Fund established  
24 pursuant to Section 36-21-185, Code of Alabama 1975, an amount  
25 equal to five percent of the fees collected by the State Fire  
26 Marshal during the previous six months pursuant to Sections

1 8-17-211 and 8-17-216.1, Code of Alabama 1975, as currently  
2 provided or as those fees may be hereafter adjusted.

3 Section 3. This act shall become effective November  
4 1, 2019, upon its passage and approval by the Governor, or its  
5 otherwise becoming law.