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## HB 727 - Regulation of Fireworks

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## FIRE PROTECTION AND SAFETY

***Regulation of Fireworks: Amend Title 25 of the Official Code of Georgia Annotated, Relating to Fire Protection and Safety, so as to Revise Requirements for the Issuance of Certificates of Compliance for Fire Departments; Revise and Provide for Definitions; Expand the Functions and Powers of the Georgia Firefighter Standards and Training Council; Revise Qualifications for Firefighters; Revise the Standard of Compliance from Explosion to Ignition; Provide for Definitions; Provide that Certain Sparkling Items are Consumer Fireworks; Revise Provisions Relating to the Sale, Use, or Ignition of Consumer Fireworks; Revise the Days, Times, Locations, Situations, and Circumstances in Which Consumer Fireworks can be Lawfully Used or Ignited; Revise Places Within this State Where the Use or Ignition of Consumer Fireworks is Prohibited; Create the Criminal Offense of Using or Igniting or Causing to be Ignited Consumer Fireworks While Under the Influence; Provide for Criminal Penalties; Revise the Licensing Standards and Procedures Which Shall be Applied by the Safety Fire Commissioner and the Governing Authorities of Counties and Municipal Corporations Toward Distributors; Revise Licensing Fees and Requirements; Expand Enforcement and Regulatory Mechanisms of the Safety Fire Commissioner Regarding Fireworks and Consumer Fireworks; Provide for the Forfeiture of Fireworks and Consumer Fireworks Contraband; Provide for Criminal Penalties; Provide for Civil Enforcement; Amend Chapter 60 of Title 36 of the Official Code of Georgia Annotated, Relating to General Provisions Regarding Provisions Applicable to Counties and Municipal Corporations, so as to Provide for Further Regulations by Municipal Corporations; Provide for Related Matters; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes***

CODE SECTIONS:                   O.C.G.A.    §§ 25-3-22   (amended);  
  25-4-2, -7, -8 (amended); 25-10-1, -2,  
  -2.1, -3.2, -5.1, -6, -9 (amended);

	25-10-11, -12, (new); 36-60-24 (amended)
BILL NUMBER:	HB 727
ACT NUMBER:	330
GEORGIA LAWS:	2016 Ga. Laws 64
SUMMARY:	HB 727 establishes provisions to allow local governments to restrict the usage of fireworks. It also changes regulations for the following: the sale and use of fireworks, temporary consumer fireworks sales stands, fire department requirements, firefighter qualifications, pyrotechnics exhibits, consumer fireworks distributor licenses, fireworks contraband, limitations on the timing of firework detonations, and illegal sales of fireworks. HB 727 revises provisions regarding the lawful use and ignition of fireworks and prohibits the following: use of fireworks near any public transportation routes, ignition of fireworks under the influence of alcohol or drugs, sale of fireworks to any person under 18 years of age, as well as other prohibitions on usage of fireworks near certain buildings. Finally, HB 727 grants certain powers to the Safety Fire Commissioner.
EFFECTIVE DATE:	April 26, 2016

### *History*

With the passage of House Bill (HB) 110 in 2015, Georgia stopped being “a grumpy old man on the idea of buying fireworks” and became one of the most permissive consumer fireworks states in the

country.<sup>1</sup> Prior to passage of HB 110, led by Representative Jay Roberts (R-155th), Georgia law allowed only for hand-held “baby fireworks” like sparklers, or fireworks that sat close to the ground.<sup>2</sup> Georgia’s restrictions, however, did not prevent bigger fireworks from making their way into the state.<sup>3</sup> Georgia residents would simply take their money to neighboring states with more relaxed fireworks laws and bring their arsenal back into Georgia.<sup>4</sup> In 2015, the Georgia legislature decided to change that.

Last year, the General Assembly passed HB 110, which permitted the sale of aerial fireworks and permitted their use “pretty much anywhere” except nuclear plants, gas stations, or indoors.<sup>5</sup> HB 110 contained a provision that was “unusual if not unheard of in the nation” whereby cities and counties could not ban the sale or use of fireworks in their communities.<sup>6</sup> Even American Pyrotechnics Association (APA) officials and the fireworks industry noted the uniqueness of Georgia’s decision to strip local governments of any regulatory authority.<sup>7</sup> In an interview, Ms. Julie Heckman, a representative for the APA, noted concern about the safety of citizens using bigger fireworks.<sup>8</sup> Although fireworks use is subject to noise ordinances, public nuisance laws, and personal liability laws, the Georgia Municipal Association (GMA) warned state lawmakers that the broadly permissive nature of the legislation still posed notable public safety issues.<sup>9</sup>

These concerns prompted the introduction of HB 727 during Georgia’s 2016 legislative session.<sup>10</sup> Representative Paul Battles (R-15th), the bill’s primary sponsor in the House, defines HB 727 as “a cleanup bill for [various issues arising from] last session’s HB

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1. Matt Kempner, *Georgia’s Fireworks Free-For-All: Fools, Stay Home*, ATLANTA J.-CONST. (June 30, 2015, 2:21 PM), <http://www.myajc.com/news/business/georgia-tries-fireworks-free-for-all-fools-please-/nmpS7/>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Kempner, *supra* note 1 (“Julie Heckman . . . said she’d never heard of a state law banning local governments from outlawing fireworks.”). *Id.*

8. *Id.*

9. *Id.*

10. See Telephone Interview with Rep. Paul Battles (R-15th) (July 29, 2016) [hereinafter Battles Interview].

110.”<sup>11</sup> Last year, HB 110 allowed for use of fireworks “on any day of the week between 10:00 AM and midnight,” as well as “on July 3 and 4, and on December 31 and January 1” until 2:00 AM.<sup>12</sup> However, Representative Atwood (R-179th) said citizens complained of people exploding fireworks “at [three] in the morning,” and he stressed a desire to “have fun” while “keep[ing] it safe.”<sup>13</sup> After the passage of HB 110, state lawmakers received enough complaints to convince them that the law “needed some tweaking.”<sup>14</sup>

Through HB 727, Representatives Battles and Atwood wanted “to keep fireworks legal” and continue to allow people to celebrate holidays, but with “some local control.”<sup>15</sup> Representative Battles stressed that HB 727 aimed to give counties and municipalities the ability to pass ordinances regulating the use and sale of fireworks at the local level without banning them outright at the state level.<sup>16</sup>

Senator Jeff Mullis (R-53rd) sponsored HB 727 in the Senate and reiterated that upon last year’s passage of “the consumer fireworks bill, it quickly became clear that the law needed some clarification.”<sup>17</sup> According to Senator Mullis, the legislature crafted HB 727 as “a follow-up bill” to impose “further regulations on fireworks, including time constraints, restriction during times of drought and grants of enforcement authority to the state fire marshal and other appropriate agencies,” among other things.<sup>18</sup> In an interview, Senator Mullis noted his desire to emphasize the role of local control in

11. Rep. Paul Battles (R-15th), *HB 727, Fireworks: Local Control*, GA. MUN. ASS’N, <http://www.gmanet.com/Legislative-Session/Bill/HB727> (last updated July 28, 2016).

12. Shelby Lin Erdman, *Noise Complaints Prompt Legislation to Restrict Fireworks*, GPB NEWS (Mar. 3, 2016), <http://gpbnews.org/post/noise-complaints-prompt-legislation-restrict-fireworks>.

13. *Id.*

14. *New Fireworks Law Causes Explosion of Complaints*, GA. MUN. ASS’N (Jan. 8, 2016), <http://www.gmanet.com/News-Grant-Opportunities/Breaking-News/New-Fireworks-Law-Causes-Explosion-of-Complaints.aspx>.

15. See Erdman, *supra* note 12; Video Recording of House Proceedings, Feb. 29, 2016 at 15 min., 10 sec. (remarks by Rep. Paul Battles (R-15th)), <http://www.gpb.org/lawmakers/2016/day-30> [hereinafter First House Vote Video].

16. See First House Vote Video, *supra* note 15.

17. Sen. Jeff Mullis (R-53rd), *Sen. Jeff Mullis: Update from the Gold Dome*, NW. GA. NEWS (Feb. 27, 2016, 8:59 AM), [http://www.northwestgeorgianews.com/catwalkchatt/opinion/sen-jeff-mullis-update-from-the-gold-dome/article\\_5147723a-dd5a-11e5-84d6-37dd92b10bb3.html](http://www.northwestgeorgianews.com/catwalkchatt/opinion/sen-jeff-mullis-update-from-the-gold-dome/article_5147723a-dd5a-11e5-84d6-37dd92b10bb3.html).

18. Sen. Jeff Mullis (R-53rd), *Sen. Jeff Mullis: Update from the Gold Dome*, NW. GA. NEWS (Mar. 18, 2016, 9:44 AM), [http://www.northwestgeorgianews.com/catwalkchatt/opinion/columns/jeff-mullis-update-from-the-gold-dome/article\\_071dccc6-ef6b-11e5-a787-6366739e486e.html](http://www.northwestgeorgianews.com/catwalkchatt/opinion/columns/jeff-mullis-update-from-the-gold-dome/article_071dccc6-ef6b-11e5-a787-6366739e486e.html).

fireworks regulation and to use the revenue from fireworks sales in Georgia to provide for public safety and fire services.<sup>19</sup>

*Bill Tracking of HB 727*

*Consideration and Passage by the House*

Representatives Battles (R-15th), Scot Turner (R-21st), Don Parsons (R-44th), Dominic LaRiccia (R-169th), and Margaret Kaiser (D-59th) sponsored HB 727.<sup>20</sup> The House read the bill for the first time on January 12, 2016, and for the second time on January 13, 2016.<sup>21</sup> Speaker of the House David Ralston (R-7th) assigned the bill to the House Committee on Regulated Industries, which favorably reported the bill by substitute on February 24, 2016.<sup>22</sup>

The House Committee substitute offered a few significant changes to HB 727 by inserting two new sections: Sections 3 and 4.<sup>23</sup> First, in Section 3, the Committee substitute stated it would be illegal for a person to use or explode fireworks while under the influence of alcohol or any drug “to the extent that it is unsafe for any such person to use or explode” fireworks, or if their blood alcohol content went over the legal limit of 0.08 grams.<sup>24</sup> Additionally, the Committee substitute stated that any amount of a controlled substance present in a person’s blood or urine while using fireworks would be illegal.<sup>25</sup> One potentially confusing addition to the substitute stated that using *legal* drugs and fireworks in combination would be a crime only if the drug rendered the person “incapable” of using fireworks safely, while also stating that being “legally entitled to use a drug” would not be a defense to any charges under the proposed law.<sup>26</sup> Second, Section 4 would have amended Code section 25-10-5.1 as it

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19. See Interview with Sen. Jeff Mullis (R-53rd) (Mar. 14, 2016) [hereinafter Mullis Interview].

20. Georgia General Assembly, HB 727, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/727>.

21. State of Georgia Final Composite Status Sheet, HB 727, May 5, 2016.

22. *Id.*

23. Compare HB 727, as introduced, 2016 Ga. Gen. Assemb., with HB 727 (HCS), 2016 Ga. Gen. Assemb.

24. HB 727 (HCS), § 3, p. 6, ll. 186–99, 2016 Ga. Gen. Assemb.

25. *Id.*

26. *Id.* § 3, p. 6, ll. 200–05.

pertained to issuing licenses to distribute consumer fireworks from temporary consumer fireworks sales facilities, including tents.<sup>27</sup>

The House read the bill for the third time on February 29, 2016.<sup>28</sup> Section 4 of the Committee substitute, pertaining to sales from temporary consumer fireworks retail facilities, received close scrutiny on the floor, with legislators expressing concerns about safety, fire protection, and local regulation.<sup>29</sup> Representative Battles proposed a floor amendment that aimed to remove Section 4 of HB 727 and disallow sales of fireworks from temporary structures.<sup>30</sup> Representative Tom Taylor (R-79th) stated that the Committee vetted the bill carefully and concluded temporary fireworks sales facilities would be appropriate subject to baseline fire regulations and supplemental local regulations, and he recommended that the House pass the bill without the amendment to avoid “picking winners and losers.”<sup>31</sup> Representative Battles’ floor amendment was defeated by a vote of 51 to 121.<sup>32</sup> The House passed HB 727, by Committee substitute, on February 29, 2016, by a vote of 165 to 8.<sup>33</sup>

### *Consideration and Passage by the Senate*

Senator Mullis, the Senate Rules Committee Chairman, sponsored HB 727 in the Senate.<sup>34</sup> The Senate first read HB 727 on March 2, 2016.<sup>35</sup> Lieutenant Governor Casey Cagle assigned HB 727 to the Senate Public Safety Committee, which made a number of changes.<sup>36</sup>

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27. *Id.* § 4, pp. 7–8, ll. 208–50.

28. State of Georgia Final Composite Status Sheet, HB 727, May 5, 2016.

29. See First House Vote Video, *supra* note 15, at 23 min., 45 sec. (remarks by Rep. Tom Taylor (R-79th)).

30. Failed House Floor Amendment to HB 727, introduced by Rep. Paul Battles (R-15th) and Jay Powell (R-171st), Feb. 29, 2016; see also First House Vote Video, *supra* note 15, at 10 min., 25 sec. (remarks by Rep. Paul Battles (R-15th)).

31. First House Vote Video, *supra* note 15, at 23 min., 56 sec. (remarks by Rep. Tom Taylor (R-79th)).

32. Failed House Floor Amendment to HB 727, introduced by Rep. Paul Battles (R-15th), Feb. 29, 2016; see also Georgia House of Representatives Voting Record, HB 727, Vote #677 (Feb. 29, 2016).

33. Georgia House of Representatives Voting Record, HB 727, Vote #678 (Feb. 29, 2016); see also State of Georgia Final Composite Status Sheet, HB 727, May 5, 2016.

34. Georgia General Assembly, HB 727, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/727>.

35. State of Georgia Final Composite Status Sheet, HB 727, May 5, 2016.

36. *Id. Compare* HB 727 (HCS), 2016 Ga. Gen. Assemb., with HB 727 (SCS), 2016 Ga. Gen. Assemb.

The Committee favorably reported HB 727 by substitute on March 10, 2016.<sup>37</sup> The Senate Public Safety Committee substitute was largely incorporated into the final bill.<sup>38</sup>

In Section 1, the Senate Public Safety Committee altered the House's proposed amendments to Code section 25-10-1.<sup>39</sup> The Committee added subsection (a)(1) to Code section 25-10-1, defining "consumer fireworks" in terms of certain federal regulations and APA standards, and included Roman candles within that definition.<sup>40</sup> The Committee removed "consumer fireworks retail sales stands" from the definition of "consumer fireworks retail sales facility."<sup>41</sup> Instead, the Committee added proposed Code section 25-10-1(a)(3), stating that "'consumer fireworks retail sales stands' shall have the same meaning as provided for by NFPA 1124."<sup>42</sup> The Committee also added Code sections 25-10-1(a)(4–10), providing definitions for "distributors," "fireworks," "NFPA 1124," "nonprofit group[s]," "proximate audience[s]," "pyrotechnics," and "store[s]."<sup>43</sup> Lastly, the Committee added Code section 25-10-1(b), which removed certain types of pyrotechnics from the definition of "consumer fireworks" and "fireworks," such as toy pop guns, flying model rockets, party poppers, and certain types of sparklers.<sup>44</sup>

In Section 2, the Committee proposed numerous alterations to Code section 25-10-2, with a general focus on the minimum ages to sell and transport fireworks, sales of fireworks from tents, and when fireworks may be fired.<sup>45</sup> Specifically, the Committee added proposed Code sections 25-10-2(b)(1) and 25-10-2(b)(2), which forbid sales of fireworks to anyone under eighteen years old, and required face to face sales with proper identification for fireworks.<sup>46</sup> The Committee also proposed changes to Code section

37. State of Georgia Final Composite Status Sheet, HB 727, May 5, 2016.

38. Compare HB 727 (SCS), 2016 Ga. Gen. Assemb., with O.C.G.A. §§ 25-3-22; 25-4-2, -7, -8; 25-10-1, -2, -2.1, -3.2, -5.1, -6, -9, -11, -12; 36-60-24 (2016).

39. Compare HB 727 (HCS), § 1, pp. 1–2, ll. 21–37, 2016 Ga. Gen. Assemb., with HB 727 (SCS), § 1, pp. 1–3, ll. 20–90, 2016 Ga. Gen. Assemb.

40. HB 727 (SCS), § 1, pp. 1–2, ll. 25–33, 2016 Ga. Gen. Assemb.

41. Compare HB 727 (HCS), § 1, pp. 1–2, ll. 25–28, 2016 Ga. Gen. Assemb., with HB 727 (SCS), § 1, p. 2, ll. 34–36, 2016 Ga. Gen. Assemb.

42. HB 727 (SCS), § 1, p. 2, ll. 37–38, 2016 Ga. Gen. Assemb.

43. *Id.* § 1, p. 2, ll. 39–40, 43–59; *id.* § 1, p. 3, ll. 63–73.

44. *See id.* § 1, p. 3, ll. 78–90.

45. *Id.* § 2, p. 38, ll. 92–265.

46. *Id.* § 2, p. 4, ll. 99–111.

25-10-2(b)(3)(A) to forbid the use of fireworks within the right of way of a Georgia public road, street, highway, or railroad.<sup>47</sup>

In proposed Code sections 25-10-2(b)(3)(B)(i–iv), the Committee altered the times when fireworks may be ignited.<sup>48</sup> Specifically, in proposed Code section 25-10-2(b)(3)(B)(i), the Committee suggested allowing the use of fireworks on any day beginning at 10:00 AM and ending at 10:00 PM, and removed the ability for local entities or noise ordinances to alter that period of time.<sup>49</sup> In proposed Code section 25-10-2(b)(3)(B)(ii), the Committee added a provision allowing persons to ignite fireworks until January 31, 2018 after 10 PM and up to 11:59 PM if the ignition is lawful under local law, and subject to any requirements for a special use permit under proposed changes to Code section 25-10-2(b)(3)(D) for fireworks use.<sup>50</sup> In proposed Code sections 25-10-2(b)(3)(B)(iii) and 25-10-2(b)(3)(B)(iv), the Committee allowed for fireworks use on January 1, July 3, July 4, and December 31 from 10:00 PM to 11:59 PM, and on January 1 from 12:00 AM to 1:00 AM.<sup>51</sup>

In proposed Code section 25-10-2(b)(3)(C), the Committee added locations where fireworks may not be ignited.<sup>52</sup> Specifically, in proposed Code sections 25-10-2(b)(3)(C)(iv–vi), the Committee suggested prohibiting the ignition of fireworks within 100 yards of a public use air facility or landing area, or within 100 yards of a hospital or health care facility unless the owner of said facility granted written permission.<sup>53</sup> The proposals also forbid ignition of fireworks within any park, historic site, recreation center, or other property owned by a local government or the State of Georgia.<sup>54</sup>

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47. Compare HB 727 (HCS), § 2, p. 2, ll. 41–45, 2016 Ga. Gen. Assemb., with HB 727 (SCS), § 2, p. 4, ll. 112–14, 2016 Ga. Gen. Assemb.

48. Compare HB 727 (HCS), § 2, p. 2, ll. 46–61, 2016 Ga. Gen. Assemb., with HB 727 (SCS), § 2, p. 4, ll. 115–35, 2016 Ga. Gen. Assemb.

49. Compare HB 727 (HCS), § 2, p. 2, ll. 54–61, 2016 Ga. Gen. Assemb., with HB 727 (SCS), § 2, p. 4, ll. 119–31, 2016 Ga. Gen. Assemb.

50. HB 727 (SCS), § 2, p. 4, ll. 125–31, 2016 Ga. Gen. Assemb.

51. Compare HB 727 (HCS), § 2, p. 2, ll. 50–53, 2016 Ga. Gen. Assemb., with HB 727 (SCS), § 2, p. 4, ll. 132–35, 2016 Ga. Gen. Assemb.

52. Compare HB 727 (HCS), § 2, p. 3, ll. 62–93, 2016 Ga. Gen. Assemb., with HB 727 (SCS), § 2, p. 5, ll. 151–68, 2016 Ga. Gen. Assemb.

53. Compare HB 727 (HCS), § 2, p. 3, ll. 62–93, 2016 Ga. Gen. Assemb., with HB 727 (SCS), § 2, p. 5, ll. 151–68, 2016 Ga. Gen. Assemb.

54. Compare HB 727 (HCS), § 2, p. 3, ll. 62–93, 2016 Ga. Gen. Assemb., with HB 727 (SCS), § 2, p. 5, ll. 151–68, 2016 Ga. Gen. Assemb.

However, proposed Code section 25-10-2(b)(3)(D) sought to allow for special use permits, as well as agency rules and regulations for limited fireworks use.<sup>55</sup>

In Code section 25-10-2(b)(3)(E), the Committee removed “the director of the Environmental Protection Division of the Department of Natural Resources” as a party who could declare a drought, and removed local governments within the area of such droughts from being able to enact regulations concerning the use of consumer fireworks.<sup>56</sup> Instead, within Code section 25-10-2(b)(3)(E), the Committee allowed only the Governor to declare droughts and enact further regulations or restrictions on the ignition of consumer fireworks within areas affected by the declaration of a drought.<sup>57</sup>

In proposed Code section 24-10-2(b)(4)(A), the Committee added language stating “it shall be lawful for any person 18 years of age or older to use or ignite . . . or to possess, manufacture, transport, or store consumer fireworks.”<sup>58</sup> In changes to Code sections 24-10-2(b)(4)(B) and 24-10-2(b)(5)(A–B), the Committee proposed language allowing 16 or 17 year olds to sell, possess or transport consumer fireworks so long as that person serves as an “assistant to a [licensed distributor] . . . or the nonprofit group benefiting from such distributor’s application . . . and is not transporting such consumer fireworks on a [federal] highway . . . .”<sup>59</sup>

In proposed Code section 24-10-2(b)(6)(A)(ii), the Committee added supplemental language allowing sales of consumer fireworks from licensed, permanent consumer fireworks retail sales facilities, “provided, however, that such permanent consumer fireworks retail sales facility . . . shall not be considered an H-3 or hazardous occupancy.”<sup>60</sup> In Code section 24-10-2(b)(6)(B)(iii), the Committee substituted language allowing a distributor licensed pursuant to Code section 25-10-5(c) to “operate no more than two temporary consumer

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55. Compare HB 727 (HCS), § 2, p. 3, ll. 62–93, 2016 Ga. Gen. Assemb., with HB 727 (SCS), § 2, p. 5, ll. 151–68, 2016 Ga. Gen. Assemb.

56. Compare HB 727 (HCS), § 2, p. 4, ll. 122–28, 2016 Ga. Gen. Assemb., with HB 727 (SCS), § 2, p. 6, ll. 188–97, 2016 Ga. Gen. Assemb.

57. Compare HB 727 (HCS), § 2, p. 4, ll. 122–28, 2016 Ga. Gen. Assemb., with HB 727 (SCS), § 2, p. 6, ll. 188–97, 2016 Ga. Gen. Assemb.

58. HB 727 (SCS), § 2, p. 6, ll. 198–200, 2016 Ga. Gen. Assemb.

59. HB 727 (SCS), § 2, pp. 6–7, ll. 201–15, 2016 Ga. Gen. Assemb.

60. Compare HB 727 (HCS), § 2, pp. 4–5, ll. 129–36, 2016 Ga. Gen. Assemb., with HB 727 (SCS), § 2, p. 7, ll. 216–25, 2016 Ga. Gen. Assemb.

fireworks retail sales stands in [Georgia] per location . . . .”<sup>61</sup> Finally, proposed Section 2 concluded by adding language to the end of Code section 24-10-2(b)(6)(C) forbidding the sale of consumer fireworks “from a tent, canopy, or membrane structure.”<sup>62</sup>

In Section 5, the Senate Committee proposed allowing distributors to receive licenses if they maintained \$2 million in product and public liability insurance and complied with all parts of Code section 25-10-5.1.<sup>63</sup> The Committee proposed requiring applicants to have property available for inspection at the time of their application.<sup>64</sup> The Committee also altered the initial license fee, changing the initial license fees from \$750 per consumer fireworks retail sales facility location in the House Committee version of HB 727, to \$2,000 in the Senate Committee version payable to the Safety Fire Commissioner rather than the governing authority of the locality.<sup>65</sup> In contrast to the House Committee’s version of HB 727, the Senate Committee made the Safety Fire Commissioner the person who determined “whether a distributor has met requirements for issuance of a license,” with such determination being made “within 30 days [rather than 15 days] of the submission of an application” for a license.<sup>66</sup>

In Section 6, the Committee proposed revising Code section 25-10-6 to allow the state fire marshal or law enforcement to enforce provisions relating to using or igniting consumer fireworks, and to allow for seizure of illegal fireworks by law enforcement.<sup>67</sup>

In Section 7, the Committee provided for penalties up to \$2,500 for each knowing violation relating to the illegal sales of consumer fireworks, to be imposed by the Safety Fire Commissioner, and penalties up to \$5,000 if any entity knowingly sold consumer fireworks from a tent, canopy, or membrane structure.<sup>68</sup>

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61. Compare HB 727 (HCS), § 2, p. 5, ll. 150–68, 2016 Ga. Gen. Assemb., with HB 727 (SCS), § 2, p. 8, ll. 257–65, 2016 Ga. Gen. Assemb.

62. Compare HB 727 (HCS), § 2, p. 6, ll. 184–85, 2016 Ga. Gen. Assemb., with HB 727 (SCS), § 2, p. 8, ll. 264–65, 2016 Ga. Gen. Assemb.

63. See generally HB 727 (SCS), § 5, pp. 9–13, ll. 296–458, 2016 Ga. Gen. Assemb.

64. HB 727 (SCS), § 5, pp. 9–10, ll. 310–16, 2016 Ga. Gen. Assemb.

65. Compare HB 727 (HCS), § 4, p. 7, ll. 212–27, 2016 Ga. Gen. Assemb., with HB 727 (SCS), § 5, p. 10, ll. 317–37, 2016 Ga. Gen. Assemb.

66. Compare HB 727 (HCS), § 4, p. 7, ll. 228–39, 2016 Ga. Gen. Assemb., with HB 727 (SCS), § 5, p. 10, ll. 338–51, 2016 Ga. Gen. Assemb.

67. HB 727 (SCS), § 6, p. 14, ll. 460–75, 2016 Ga. Gen. Assemb.

68. *Id.* § 7, p. 14, ll. 476–89.

In Section 8 the Committee added Code section 25-10-11 granting the Safety Fire Commissioner authority to issue cease and desist orders if the Commissioner has reason to believe an entity is violating fireworks laws, with the penalty for noncompliance being revocation of all licenses for a period between six months to five years.<sup>69</sup> The Committee also added Code section 25-10-12, allowing for the Safety Fire Commissioner to suspend, refuse, or not renew issued licenses if it is determined that the licensee or applicant failed to comply with all regulations, failed to maintain the minimum insurance coverage, fraudulently obtained a license, or violated other procedures within Georgia's fireworks laws.<sup>70</sup>

In Section 9, the Committee proposed a sunset date of "January 31, 2018," allowing for counties to regulate consumer fireworks stands until that date.<sup>71</sup> Lastly, the Committee's version of HB 727 removed all reference to amendment of Code section 48-13-131, relating to excise taxes imposed, rate of taxation, and payment for sales of consumer fireworks.<sup>72</sup>

The Senate read the bill for the second time on March 11, 2016, and for the third time on March 15, 2016, passing and adopting it by substitute that day.<sup>73</sup> On March 22, 2016, the Senate transmitted the bill to the House.<sup>74</sup> Representative Battles proposed a new amendment, removing any provision for "tents and other temporary facilities that would allow people to sell fireworks," and emphasizing local control.<sup>75</sup> Representative Battles's new amendment added in language relating to licensing, safety factors, and locations "that goes into permitting for sales of fireworks," and moved the times up for when fireworks use must cease on a nightly basis to 10:00 PM, with a provision for local governments to shift the times when fireworks may be used and allowed for noise ordinances.<sup>76</sup> The House agreed to

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69. *Id.* § 8, p. 15, ll. 492–516.

70. *Id.* § 8, pp. 15–16, ll. 517–31.

71. *Id.* § 9, p. 16, ll. 545–47.

72. *Compare* HB 727 (HCS), § 6, p. 9, ll. 280–98, 2016 Ga. Gen. Assemb., *with* HB 727 (SCS), 2016 Ga. Gen. Assemb.

73. State of Georgia Final Composite Status Sheet, HB 727, May 5, 2016.

74. *Id.*

75. Video Recording of House Proceedings, Mar. 22, 2016 at 3 hr. 29 min., 30 sec. (remarks by Rep. Paul Battles (R-15th)), <http://www.gpb.org/lawmakers/2016/day-39> [hereinafter Second House Vote Video].

76. *Id.*

the Senate Substitute of HB 727 bill, as amended by the House, on March 22, 2016, by a vote of 116 to 47.<sup>77</sup> The House then re-transmitted the bill to the Senate, and the Senate agreed to the House's version of the bill, as amended by the Senate, on March 24, 2016, by a vote of 49 to 0.<sup>78</sup>

On March 24, 2016, the House disagreed to the Senate amendment to the House's amendment to the Senate's substitute version of the bill, and the Senate insisted on the Senate amendment to the House's amendment.<sup>79</sup> Representative Battles asked that the House disagree because, procedurally, the House and Senate needed to disagree to get to a Conference Committee for creation of a final version of HB 727.<sup>80</sup> On March 24, 2016, a House Conference Committee was appointed with Representatives Battles, Turner, and Howard Maxwell (R-17th), and a Senate Conference Committee was appointed with Senators Mullis, Ben Watson (R-1st), and Tyler Harper (R-7th).<sup>81</sup>

On March 24, 2016, the last day of the legislative session, the Conference Committee prepared and adopted a report, which ultimately turned into HB 727.<sup>82</sup> On the same day, the House Conference Committee presented the report and the House agreed to the report by a vote of 148 to 17.<sup>83</sup> On March 25, 2016, the Senate Conference Committee presented the report and the Senate agreed to the report by a vote of 49 to 3.<sup>84</sup> On April 4, 2016, the House sent the bill to Governor Nathan Deal (R). The Governor signed the bill into law on April 26, 2016; the bill became effective upon the Governor's signature.<sup>85</sup>

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77. Georgia House of Representatives Voting Record, HB 727, Vote #832 (Mar. 22, 2016).

78. Georgia Senate Voting Record, HB 727, Vote #734 (Mar. 24, 2016).

79. State of Georgia Final Composite Status Sheet, HB 727, May 5, 2016.

80. Video Recording of House Proceedings, Mar. 24, 2016 at 12 min., 10 sec. (remarks by Rep. Paul Battles (R-15th)), <http://www.gpb.org/lawmakers/2016/day-40> [Final House Vote Video].

81. *Id.*

82. State of Georgia Final Composite Status Sheet, HB 727, May 5, 2016.

83. Georgia House of Representatives Voting Record, HB 727, Vote #904 (Mar. 24, 2016).

84. Georgia Senate Voting Record, HB 727, Vote #825 (Mar. 25, 2016).

85. State of Georgia Final Composite Status Sheet, HB 727, May 5, 2016.

*The Act*

In Sections 1, 2, 3, and 4 of the Act, the Conference Committee amended Code sections 25-3-22, 25-4-2, 25-4-7, and 25-4-8, respectively.<sup>86</sup> Section 1 of HB 727 amends requirements for a fire department to be legally organized to operate in Georgia, and mandates the chief administrative officer to notify and submit documentation to the executive director, showing the fire department meets the requirements of Code section 25-3-23 and the Georgia Firefighter Standards and Training Council.<sup>87</sup>

Section 2 of the Act amends Code section 25-4-2(d), adding “recruit” to the definition of firefighter.<sup>88</sup> Section 3 amends Code section 25-4-7 by adding “and other such firefighting service professionals as determined by the council” and “contract” to paragraphs (4) and (9).<sup>89</sup> Finally, Section 4 of the Act amends Code section 25-4-8 relating to qualifications of firefighters by adding “employee, volunteer, or private contractor of a fire department operating in this state” and “as prescribed by this council” to subsection (a), and “or pleaded guilty to” to subsection (a)(2).<sup>90</sup>

In Section 5 of the Act, the Conference Committee amended Code section 25-10-1, relating to definitions for fireworks related activities.<sup>91</sup> The Senate’s version of Code section 25-10-1(a)(2) prevailed, and defined a consumer fireworks retail sales facility as having the same meaning as NFPA 1124, but not including “a tent, canopy, or membrane structure.”<sup>92</sup> All of the Senate’s definitions provided by the Public Safety Committee made it into the Conference Committee Report accepted by the House and Senate.<sup>93</sup>

Section 6 of the Act amends Code section 25-10-2, relating to prohibited fireworks activities, and it contains the largest number of revisions.<sup>94</sup> Specifically, this section amends Code section

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86. 2016 Ga. Laws 64, §§ 1–4, at 65–67.

87. 2016 Ga. Laws 64, § 1, at 65.

88. 2016 Ga. Laws 64, § 2, at 65.

89. 2016 Ga. Laws 64, § 3, at 66.

90. 2016 Ga. Laws 64, § 4, at 66–67.

91. 2016 Ga. Laws 64, § 5, at 67–68.

92. O.C.G.A. § 25-10-1 (2016).

93. *Compare* O.C.G.A. § 25-10-1 (2016), *with* HB 727 (HCS), § 1, 2016 Ga. Gen. Assemb.

94. *See* O.C.G.A. § 25-10-2 (2016).

25-10-2(b)(3)(A) to prohibit igniting fireworks “within the right of way of a public road, street, highway, or railroad of this state.”<sup>95</sup> The new Code section 25-10-2(b)(3) changes the word “explode” fireworks to “ignite,” and adds subparagraph (3)(E) and Code section 25-10-2.1 as additional sources of law to prohibit fireworks “ignition.”<sup>96</sup>

Section 6 of the Act also changes Code section 25-10-2(b)(3)(B)(i) to allow igniting fireworks between the hours of 9:00 AM and 9:00 PM on all days and at all locations.<sup>97</sup> Code section 25-10-2(b)(3)(B)(ii) allows igniting fireworks between 9:00 PM and 11:59 PM as long as it complies with local government ordinances and permit requirements.<sup>98</sup> Code section 25-10-2(b)(3)(B)(iii) now allows shooting fireworks between 9:00 PM and 11:59 PM on December 31, January 1, July 3 and July 4, regardless of local rules.<sup>99</sup> The last time change amends Code section 25-10-2(b)(3)(B)(iv) to allow igniting fireworks on January 1 from 12:00 AM to 1:00 AM, again regardless of local rules.<sup>100</sup>

The new subsection (iii) significantly alters the definitions of prohibited places for igniting fireworks by changing “nuclear power facility” to “an electric plant; water treatment plant; waste–water treatment plant.”<sup>101</sup> The Act further alters subsection (iii) from igniting fireworks at a retail facility selling “gasoline” to any retail facility selling “flammable or combustible liquids where the volume stored is in excess of 500 gallons.”<sup>102</sup> In addition, subsection (iii) now specifies that igniting fireworks is prohibited at any facility that conducts refining, processing or blending of “any flammable or combustible liquids or gases” as opposed to just “gasoline” facilities.<sup>103</sup> Finally, subsection (iii) adds “any public or private

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95. *Id.*

96. *Id.* These changes reoccur throughout the final version of the bill and should be noted throughout. *See generally* 2016 Ga. Laws 64.

97. 2016 Ga. Laws 64, § 6, at 68–72.

98. O.C.G.A. § 25-10-2 (2016).

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *See* O.C.G.A. § 25-10-2 (2016).

electric substation, or a jail or prison” to the list of prohibited places.<sup>104</sup>

The Act further amends Code section 25-10-2(b)(3)(C) by adding several new subsections, each containing new prohibited locations for igniting fireworks.<sup>105</sup> Subsection (iv) prohibits igniting fireworks “[w]ithin 100 yards” of airports and helicopter landings.<sup>106</sup> Subsection (v) prohibits fireworks on any property owned by a county or municipal body, including but not limited to parks, historical sites, and recreation areas without a special permit.<sup>107</sup> Subsection (vi) prohibits igniting fireworks on the same types of property in subsection (v) that are owned by the State of Georgia, unless allowed by rules and regulations of the controlling agency or department.<sup>108</sup> Subsection (vii) prohibits igniting fireworks within one hundred yards of a “hospital, nursing home or other health care facility” unless the owner or operator of the facility grants permission or does it themselves.<sup>109</sup> The last subsection under subparagraph (C), subsection (viii) outlaws igniting fireworks while “under the influence” of drugs or alcohol to the extent that it is “less safe or unlawful” under Code section 25-10-2.1.<sup>110</sup>

The Act changed to subparagraph (D) of Code section 25-10-2(b)(3) by tying special use permits to the specific permissible times listed in (3)(B)(ii) and the permissible locations listed in (3)(C)(v).<sup>111</sup> The Act also adds subparagraph (E), allowing the Governor to issue special regulations for fireworks during a drought declaration.<sup>112</sup> Section 6 substantially alters Code section 25-10-2(b)(6)(B)(ii) by replacing most of its language.<sup>113</sup> The Code section now states that someone with a permanent fireworks distributor license may have up to two temporary stands as long as

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104. *Id.*

105. *Id.*

106. *Id.*

107. *See* O.C.G.A. § 25-10-2 (2016).

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* The Act states that the Governor can issue special regulations when the “Governor” declares a drought; however, making this declaration appears to be within the direct powers of the Director of the Environmental Protection Division and not the Governor. *Id.*; *see also* O.C.G.A. § 12-5-8 (2008); GA. COMP. R. & REGS. 391-3-30-.01 to -.08 (2015).

113. *See* O.C.G.A. § 25-10-2 (2016).

the permanent location existed more than thirty days before July 4 or December 31.<sup>114</sup> Finally, Code section 25-10-2(b)(6)(C) adds tents, canopies, and “membrane structure[s]” to the list of places where a person cannot sell fireworks.<sup>115</sup>

Section 7 of the Act contains one of the more intriguing changes to the law: new Code section 25-10-2.1.<sup>116</sup> The new provision outlaws igniting fireworks while under the influence of alcohol or drugs to the extent that it is “unsafe” to ignite fireworks.<sup>117</sup> The final version does not contain any reference to a specific blood alcohol content.<sup>118</sup> Subsection (b) retains the language that being “legally entitled to use a drug” is not a defense to charges under Code section 25-10-2.1; however, it maintains that someone does not violate Code section 25-10-2.1 unless the person’s legal drug use renders him or her incapable of “igniting consumer fireworks or fireworks safely.”<sup>119</sup> The new Code section 25-10-2.1(c) specifies that anyone violating the new law is guilty of a misdemeanor.<sup>120</sup> Additionally, Section 8 of the Act merely changes Code section 25-10-3.2 to add the word “ignition” to the list of actions prohibited in front of a “proximate audience.”<sup>121</sup>

Section 9 of the Act substantially changes Code section 25-10-5.1.<sup>122</sup> First, new subsection (a)(3) provides that Georgia’s Safety Fire Commissioner must prescribe and promulgate forms for applications to distribute fireworks.<sup>123</sup> Subsection (a)(4) mandates that those applying to distribute fireworks in Georgia have property under their control “ready for inspection” at the time of their application.<sup>124</sup> Subsection (b)(1) changes the initial license fee for permanent stands from \$5,000.00 to \$1,500.00, except for those licensed prior to July 1, 2016.<sup>125</sup> This subsection now specifies that

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114. *See id.*

115. *Id.*

116. 2016 Ga. Laws 64, § 7, at 72–73.

117. O.C.G.A. § 25-10-2.1 (2016).

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. 2016 Ga. Laws 64, § 8, at 73.

123. O.C.G.A. § 25-10-5.1 (2016).

124. *Id.*

125. *Id.*

initial and annual licenses can expire “as otherwise provided for under this subsection.”<sup>126</sup> The subsection changes the requirements a distributor needs to meet for a license from “paragraph (1)” to “subsection (a).”<sup>127</sup> The new language for (b)(1) specifies that initial licenses “shall then become” annual licenses upon renewal.<sup>128</sup> Under the Act, renewals of licenses need to be completed by December 1, the year before the expiration of their license or by the first business day of the next year, only if the initial fireworks distributor license issues after December 1.<sup>129</sup> The Act changes subsection (b)(2) to require the Safety Fire Commissioner to determine a license application within thirty days of the submission of an application, and allows for a license to continue past expiration until the Safety Fire Commissioner makes a determination.<sup>130</sup>

Section 9 also changes Code section 25-10-5.1(c).<sup>131</sup> Subsection (c)(1) changes provisions relevant to temporary retail stands, by removing references to other provisions in the Code and removing restrictions on getting a temporary stand license prior to January 1, 2016.<sup>132</sup> The Act changed the expiration date on temporary licenses from ninety days after granting to January 31 of the next year.<sup>133</sup> Subsection (c)(2) also received a slight modification, requiring fire departments to approve or deny the temporary license within thirty days, as opposed to fifteen.<sup>134</sup> Subsection (c)(3), as modified, now requires a non-profit group to directly participate in operation of at least one of the two allowable temporary fireworks retail locations, and it makes it unlawful for the nonprofit to lend its name or identity while benefiting from operation of the temporary stand.<sup>135</sup> Subsection (c)(5) now requires fireworks distributors to submit lists with information on their other temporary stands thirty days prior to selling fireworks or having a temporary retail location selling

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126. *Id.*

127. *See* O.C.G.A. § 25-10-5.1 (2016).

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *See* O.C.G.A. § 25-10-5.1 (2016).

134. *Id.*

135. *Id.*

fireworks.<sup>136</sup> New subsection (c)(6) provides that suspension or revocation of the distributor's license under subsections (b) or (d) will also suspend or revoke their temporary stand licenses for the same time period.<sup>137</sup>

Finally, the Act makes some changes to Code section 25-10-5.1(d).<sup>138</sup> The Act changes the initial license fee from a flat \$5,000.00 per distributor to \$1,500.00 per distributor, with an additional \$250.00 per location.<sup>139</sup> The Act also makes some changes to old Code section references through subsection (d)(1), deleting old provisions and adding in the necessary references.<sup>140</sup> The Act now provides that the Safety Commissioner shall issue licenses for additional locations to distributors provided that the distributor pays its \$250.00 license fee prior to the expiration of its initial license and that the distributor has been operating more than thirty days prior to July 4 or January 31 of the year it applies.<sup>141</sup> The Act changes the renewal provisions for the annual license of additional locations, adding a fee of \$100.00 per location for renewal provided that the \$250.00 initial fee is paid for each location.<sup>142</sup> Subsection (d)(1) now states that renewal of any additional license issued after December 1 should be applied for on the first business day of the next year.<sup>143</sup> Subsection (d)(2) now specifies that distributors need only submit one application identifying all locations to be approved, rather than separate applications for each retail fireworks location.<sup>144</sup> The Act further amends subsection (d)(2) to apply the same provision above: that a license will not expire until the Safety Fire Commissioner makes the renewal determination, as well as allowing thirty days—instead of fifteen—for an application determination.<sup>145</sup>

Section 10 of the Act makes changes to the state fire marshal's enforcement powers.<sup>146</sup> Code section 25-10-6(a) now allows law

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136. *Id.*

137. *Id.*

138. *Id.*

139. See O.C.G.A. § 25-10-5.1 (2016).

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. See O.C.G.A. § 25-10-5.1 (2016).

146. 2016 Ga. Laws 64, § 10, at 77.

enforcement to enforce the fireworks laws and adds the term “consumer fireworks” to the definition of potential contraband.<sup>147</sup> In addition, subsection (a) adds the language “or disposed of” to the list of actions law enforcement or the fire marshal can perform with contraband fireworks.<sup>148</sup> New subsection (b) states that property declared contraband under this Code section is forfeited under the Georgia Uniform Civil Forfeiture Procedure Act.<sup>149</sup>

Section 11 of the Act amends Code section 25-10-9, allowing the Safety Fire Commissioner to fine anyone up to \$2,500.00 for each violation of these laws, and up to \$5,000.00 for selling fireworks out of a “tent, canopy or membrane structure,” along with license revocation up to two years.<sup>150</sup>

Section 12 adds new Code sections to the law: 25-10-11 and 25-10-12.<sup>151</sup> Code section 25-10-11’s new subsection (a) gives the Safety Fire Commissioner power to issue cease and desist orders to violators.<sup>152</sup> New subsection (b) gives the Commissioner authority to revoke licenses from six months to five years for failure to comply with a cease and desist order or committing violations of this chapter.<sup>153</sup> Under this new subsection, violations or failures to comply can result in revocation of new distributor licenses and operate as grounds for license refusal.<sup>154</sup> Determinations under subsection (b) are appealable.<sup>155</sup> New subsection (c) provides notice and opportunity for hearing, as long as the person subject to the Commissioner’s order asks for a hearing within ten days of receiving the order.<sup>156</sup> This new subsection provides procedures for delivering a cease and desist order as well as specifying that failure to comply is now a criminal misdemeanor.<sup>157</sup> New subsection (d) allows the

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147. O.C.G.A. § 25-10-6 (2016).

148. *Id.*

149. *Id.*

150. 2016 Ga. Laws 64, § 11, at 77.

151. 2016 Ga. Laws 64, § 12, at 77–78.

152. *See* O.C.G.A. § 25-10-11 (2016).

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *See* O.C.G.A. § 25-10-12 (2016).

Safety Fire Commissioner to bring civil action to enjoin those committing violations.<sup>158</sup>

New Code section 25-10-12 allows for revocation, suspension, refusal, or nonrenewal of a distributor license if the applicant does or fails to do certain actions.<sup>159</sup> For example, licenses can be affected under Code section 25-10-12 if the applicant fails to comply with the entire fireworks chapter and all rules and regulations, fails to maintain the required amount of insurance, or makes a material “misstatement or misrepresentation” or “fraud” while obtaining a license.<sup>160</sup> Furthermore, an applicant failing to notify the Commissioner in writing within thirty days of a change in residence, principal business address or name can affect licensure.<sup>161</sup> Finally, new subsection (b) states that the Commissioner “shall not” issue a new license if the suspension or revocation reasons still exist “or are likely to recur.”<sup>162</sup>

Section 13 of the Act makes a few logistical changes to Georgia’s fireworks laws.<sup>163</sup> It provides a new sunset provision for any local governing authority’s regulations on temporary fireworks retail stands as of January 31, 2018.<sup>164</sup> Additionally, municipal corporations are now included as governing authorities that may regulate temporary stands but they may not cause unreasonable delay or deny temporary fireworks stand applications.<sup>165</sup>

Section 14 of the Act made these changes effective on April 26, 2016, the date of Governor Deal’s signature of this law.<sup>166</sup> Lastly, Section 15 of the Act repeals any laws or parts of laws “in conflict” with HB 727.<sup>167</sup>

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158. *Id.*

159. *Id.*

160. *Id.*

161. *See* O.C.G.A. § 25-10-12 (2016).

162. *Id.*

163. 2016 Ga. Laws 64, § 8, at 78–79.

164. O.C.G.A. § 36-60-24(d) (2016).

165. O.C.G.A. § 36-60-24(a), (e) (2016).

166. 2016 Ga. Laws 64, § 140, at 79.

167. 2016 Ga. Laws 64, § 15, at 79.

*Analysis*

Overall, the Act succeeds in giving local governments some control over regulation of fireworks and temporary retail stands.<sup>168</sup> Changes relating to distributor license applications, fees, and permissible hours to shoot fireworks are generally straightforward and easy to understand. However, the Act still leaves much of the decision making in the hands of the Georgia Safety Fire Commissioner and the legislature.<sup>169</sup> Additionally, there are still a number of confusing points throughout the law that need to be addressed.

First, none of the language in Sections 1 through 4 of the Act appears to be derived from either the House or Senate Committee Substitutes.<sup>170</sup> In fact, all of the language comes from another bill considered this session, House Bill 970.<sup>171</sup> The House passed HB 970, but it did not reach a final vote in the Senate prior to the end of session.<sup>172</sup> This language ended up in the Act at the request of Senator Mullis, the Senate sponsor of HB 727, but precisely why is not known.<sup>173</sup>

The most interesting provision in the law is the new “igniting under the influence” crime in Code section 25-10-2.1, which according to Senator Mullis, was prompted by the Georgia Municipal Association’s problems with HB 110.<sup>174</sup> The decision by the legislature to move away from the House Committee substitute and avoid any defined illegal blood alcohol content is confusing.<sup>175</sup> This omission leaves a lot of discretion in the hands of law enforcement and state fire marshal officials to decide at what point using drugs or alcohol in combination with igniting fireworks is “unsafe,” and could

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168. See O.C.G.A. § 30-60-24 (2016).

169. See O.C.G.A. § 25-10-11 (2016); see also O.C.G.A. § 25-10-12 (2016).

170. Compare 2016 Ga. Laws 330, with HB 727 (HCS), 2016 Ga. Gen. Assemb., and HB 727 (SCS), 2016 Ga. Gen. Assemb.

171. See HB 970, 2016 Ga. Gen. Assemb., <http://www.legis.ga.gov/Legislation/20152016/157067.pdf>.

172. See Georgia General Assembly, HB 970, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/970>.

173. See Battles Interview, *supra* note 10.

174. See Mullis Interview, *supra* note 20.

175. Compare O.C.G.A. § 25-10-2.1, with HB 727 (HCS), 2016 Ga. Gen. Assemb.

very easily result in inconsistent application.<sup>176</sup> The law does leave some protection for those who are taking drugs legally, but simultaneously creates a seemingly contradictory standard by stating that using legal drugs shall not be a defense.<sup>177</sup> Notably, however, this language resembles current law regarding the use of legal drugs while operating a motor vehicle.<sup>178</sup> Any difficulties in interpreting Code section 25-10-2.1 and legal drug use should probably draw on existing case law interpreting Code section 40-6-391(b). For example, the Supreme Court of Georgia has previously held that the standards “incapable of driving safely” and “less safe to drive” in Code section 40-6-391(b) “are equivalent.”<sup>179</sup> Since the wording is so similar, the unsafe standard in the new fireworks law will likely be considered the same as the standards already decided by the Supreme Court of Georgia. Although an interview with Justin Kirnon of the Georgia Municipal Association pointed to no current legal challenges pending to the Act, the ambiguity of Code section 25-10-2.1 and the popularity of drinking alcohol while using fireworks could lead to challenges of the law in the future.<sup>180</sup> This is especially true given that the Georgia Municipal Association is highly concerned with citizens “using [fireworks] in the safest way possible.”<sup>181</sup>

Another noteworthy feature of this Act is the change in vocabulary from “explode” to “ignite” throughout various provisions of Georgia’s fireworks laws. Senator Mullis stated that this change accommodates fireworks industry terminology more effectively.<sup>182</sup> This change not only complies with regular fireworks industry terminology, but it also expands the safety net of actions that Georgia’s fireworks laws cover. The dictionary definition of “ignite” means “to begin burning” or “to set something on fire.”<sup>183</sup> Meanwhile, “explode” means “to suddenly break apart in a violent

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176. See O.C.G.A. § 25-10-2.1; see also O.C.G.A. § 25-10-6.

177. See O.C.G.A. § 25-10-2.1.

178. Compare O.C.G.A. § 25-10-2.1, with O.C.G.A. § 40-6-391(b).

179. *State v. Kachwalla*, 274 Ga. 886, 887, 561 S.E.2d 403, 405 (2005).

180. See Telephone Interview with Justin Kirnon, Governmental Relations Associate, Ga. Mun. Ass’n (July 28, 2016).

181. *Id.*

182. See Mullis Interview, *supra* note 20.

183. *Ignite*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/ignite> (last visited June 26, 2016).

2016]

LEGISLATIVE REVIEW

77

way with parts flying outward.”<sup>184</sup> This is an intelligent change because the danger of fireworks use begins with ignition of the fuse, and the explosion is only the byproduct of the initial dangerous ignition. Thus, this change accomplishes the legislative intent to make Georgia’s fireworks laws safer because it now encompasses all stages of fireworks use.

*Tim Henshaw & Max Perwich*

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184. *Explode*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/explode> (last visited June 26, 2016).