

HOUSE No. 03372

The Commonwealth of Massachusetts

PRESENTED BY:

Richard Bastien

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the sale and use of fireworks.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Richard Bastien</i>	<i>2nd Worcester</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>
<i>Steven L. Levy</i>	<i>4th Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Demetrius J. Atsalis</i>	<i>2nd Barnstable</i>

HOUSE No. 03372

By Mr. Bastien of Gardner, a petition (accompanied by bill, House, No. [BILL NUMBER]) of Richard Bastien and others relative to the sale and use of fireworks. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to the sale and use of fireworks.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 AN ACT RELATIVE TO THE SALE AND USE OF FIREWORKS.
- 2 SECTION 1. Chapter 90 of the General Laws is hereby amended by inserting after section
- 3 2BBBB the following section:-
- 4 Section 2CCCC. There shall be established and set upon the books of the commonwealth
- 5 a separate fund to be known as the State Fire Marshal Fireworks Fund, hereinafter referred to as
- 6 “the fund”. All monies credited to such fund generated from fees, fines, leases, gifts, grants,
- 7 interest earned on any monies within this fund or any other revenue sources. The fee for a
- 8 firework permit shall not exceed \$25 as set forth in paragraph (b) of section 60 of chapter 148.
- 9 Revenues credited to the fund shall be used, not subject to appropriation, for operating costs,
- 10 capital improvements, equipment and maintenance, including the costs of personnel, but no

11 expenditure shall be made from the fund that shall cause the fund to be in deficit at the close of a
12 fiscal year.

13 SECTION 2. Chapter 148 of the General Laws is hereby amended by striking out section
14 39, as appearing in the 2008 Official Edition, and inserting in place thereof the following
15 section:-

16 Section 39. No person shall use, or explode, or cause to explode, any combustible or explosive
17 composition or substance, or any combination of such compositions or substances, or any other
18 article, which was prepared for the purpose of producing a visible or audible effect by
19 combustion, explosion, deflagration, or detonation.

20 For the purposes of this section the word “fireworks” shall include materials classified as 1.4G in
21 the U.S. Department of Transportation’s Hazardous Materials Table and shall also include blank
22 cartridges or toy cannons in which explosives are used, the type of toy balloon which requires
23 fire underneath to propel the same, or any tablets or other device containing any explosive
24 substance.

25 Whoever shall use any fireworks in violation of this section shall be punished by a fine of five
26 hundred dollars for a first offense and one thousand dollars for each subsequent offense. Any
27 officer qualified to serve criminal process shall seize all of the fireworks mentioned herein
28 without a warrant, and the fireworks seized shall, upon conviction of such violation, be forfeited
29 to the commonwealth.

30 Notice of such seizure of the fireworks shall immediately be sent to the marshal by the officer
31 making the seizure, and the fireworks seized shall be held and securely stored by that department
32 until the marshal or his authorized representative takes them into his possession for disposal.

33 The term “fireworks” as used herein shall not include toy pistols, toy canes, toy guns or other
34 devices in which paper caps or plastic caps containing twenty-five hundredths grains or less of
35 explosive compound are used, if they are so constructed that the hand cannot come in contact
36 with the cap when in place for the explosion, or toy pistol paper caps or plastic caps which
37 contain less than twenty hundredths grains of explosive mixture, the sale and use of which shall
38 be permitted at all times; and provided, further, that this section shall not apply (1) to the sale of
39 any fireworks to be shipped directly out of the commonwealth, or (2) to the sale of any such
40 article for the use of, and its use by, persons having obtained a permit for a supervised display of
41 such fireworks from the marshal or some officer designated by him therefore, under any
42 provision of section thirty-nine A, or (3) to the sale of flares, lanterns or fireworks for the use of,
43 and their use by, railroads, railways, boats, motor vehicles or other transportation agencies, or
44 other activity, lawfully permitted or required to use any or all of such articles for signal purposes,
45 illumination or otherwise, or (4) to the sale or use of blank cartridges for a duly licensed show or
46 theatre or for signal or ceremonial purposes in athletics or sports, or to the sale of special blank
47 cartridges and their use in the proper operation of industrial tools and equipment only, or (5) to
48 experiments at a factory for explosives, or (6) to the sale of blank cartridges for the use of, or
49 their use by, the militia or any organization of war veterans or other organizations authorized by
50 law to parade in public, a color guard armed with firearms, or (7) in teaching the use of firearms
51 by experts, or (8) to the sale of shells for firearms, cartridges, gunpowder, and for the purpose of
52 using, and their use, or in connection with the hunting of game or in target practice with firearms,
53 or (9) to farmers and fruit growers who, having obtained a permit under section thirteen of
54 chapter forty-eight, use firecrackers for the control of damage to their crops by birds.
55 Said chapter 148 is hereby further amended by adding the following section:-

56 Section 60. (a) A city or town may accept the provisions of this section pursuant to section 4 of
57 chapter 4.

58 (b) The legislative body of a city or town, upon application in writing, on forms provided by the
59 division as defined in section 39, may authorize the head of a fire department of a city or town to
60 grant a permit for the use of fireworks otherwise prohibited by the general laws within the city or
61 town for display by individuals approved by the city or town; provided, however that no permit
62 shall be required for the display of either sparklers under 3 feet in length or novelty poppers.

63 The permits shall be on forms provided by the division. After a permit has been granted, use of
64 fireworks for the purposes described in the permit only may be made. A permit granted under
65 this subsection is not transferable and shall not be issued to a person under the age of 18 years.

66 The fee for such permit shall not exceed \$25 which shall be credited to the State Fire Marshal
67 Fireworks Fund, established by section 2CCCC of chapter 90. Also, the state fire marshal may
68 direct municipal fire departments to include safety materials, developed and provided by the
69 division, to everyone who receives such a permit.

70 (c) The legislative body of a city or town, upon application in writing, may grant a sales license,
71 on forms provided by the division, to a resident wholesale dealer or retailer to have in his
72 possession within the city or town fireworks otherwise prohibited by this chapter, for sale only to
73 people 18 years of age or older. A license granted under this subsection is not transferable, nor
74 shall a license be issued to a person under the age of 18 years.

75 The storage of fireworks at the site of a wholesaler, dealer, or retailer who has goods on hand for
76 sale to the public in a supervised display area, shall be as follows: (1) in a 1 story,
77 noncombustible building without a basement, which building is weather resistant, well

78 ventilated, and equipped with a strong door kept securely locked except when open for business;
79 and (2) the location of the storage building shall be approved by the department.

80 (d) If a municipality grants a fireworks sales license as described in this section, which allows an
81 entity to sell fireworks within the municipality, the municipality must authorize the head of its
82 fire department to grant permits for the use of fireworks within the municipality as described in
83 this section. Also, if a municipality authorizes its fire department to grant such fireworks use
84 permits, then the municipality must also have in place the procedure for licensing fireworks
85 sales, using the forms provided by the division, as described in this section.

86 (e) The state fire marshal shall promulgate rules and regulations to implement the purposes of
87 this section. Such regulations shall include the storage requirements for licensed sellers.

88 (f) Whoever shall have in his possession or under his control, or whoever shall use or
89 explode or cause to explode any fireworks in violation of this section shall be punished by a fine
90 of five hundred dollars for a first offense and one thousand dollars for each subsequent offense.
91 Any officer qualified to serve criminal process shall seize all of the fireworks mentioned herein
92 without a warrant, and the fireworks seized shall, upon conviction of such violation, be forfeited
93 to the commonwealth.

94 Notice of such seizure of the fireworks shall immediately be sent to the state fire marshal by the
95 officer making the seizure, and the fireworks seized shall be held and securely stored by that
96 department until the fire marshal or his authorized representative takes them into his possession
97 for disposal.

98 (g) The money collected from fines assessed for violations of this section will go to the fund.

99 (h) For the purposes of this section, “fireworks” shall be defined as the materials classified as
100 1.4G in the U.S. Department of Transportation’s Hazardous Materials Table.