HOUSE DOCKET, NO. 1293 FILED ON: 2/18/2011

HOUSE . . . . . No. 3372

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:

An Act relative to the sale and use of fireworks.

PETITION OF:

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

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HOUSE . . . . . No. 3372

By Mr. Bastien of Gardner, a petition (accompanied by bill, House, No. 3372) of Richard Bastien and others relative to the sale and use of fireworks. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

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:

SECTION 1. Chapter 90 of the General Laws is hereby amended by inserting after section 2BBBB the following section:-

Section 2CCCC. There shall be established and set upon the books of the commonwealth a separate fund to be known as the State Fire Marshal Fireworks Fund, hereinafter referred to as "the fund". All monies credited to such fund generated from fees, fines, leases, gifts, grants, interest earned on any monies within this fund or any other revenue sources. The fee for a firework permit shall not exceed $25 as set forth in paragraph (b) of section 60 of chapter l48. Revenues credited to the fund shall be used, not subject to appropriation, for operating costs, capital improvements, equipment and maintenance, including the costs of personnel, but no expenditure shall be made from the fund that shall cause the fund to be in deficit at the close of a fiscal year.

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

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

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

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

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

33 The term "fireworks" as used herein shall not include toy pistols, toy canes, toy guns or
34 other devices in which paper caps or plastic caps containing twenty-five hundredths grains or
35 less of explosive compound are used, if they are so constructed that the hand cannot come in
36 contact with the cap when in place for the explosion, or toy pistol paper caps or plastic caps
37 which contain less than twenty hundredths grains of explosive mixture, the sale and use of which
38 shall be permitted at all times; and provided, further, that this section shall not apply (1) to the
39 sale of any fireworks to be shipped directly out of the commonwealth, or (2) to the sale of any
40 such article for the use of, and its use by, persons having obtained a permit for a supervised
41 display of such fireworks from the marshal or some officer designated by him therefore, under
42 any provision of section thirty-nine A, or (3) to the sale of flares, lanterns or fireworks for the use
43 of, 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
57 section 4 of chapter 4.

58 (b) The legislative body of a city or town, upon application in writing, on forms provided
59 by the division as defined in section 39, may authorize the head of a fire department of a city or
60 town to grant a permit for the use of fireworks otherwise prohibited by the general laws within

61 the city or town for display by individuals approved by the city or town; provided, however that
62 no permit shall be required for the display of either sparklers under 3 feet in length or novelty
63 poppers. The permits shall be on forms provided by the division. After a permit has been
64 granted, use of fireworks for the purposes described in the permit only may be made. A permit
65 granted under this subsection is not transferable and shall not be issued to a person under the age
66 of 18 years. The fee for such permit shall not exceed $25 which shall be credited to the State
67 Fire Marshal Fireworks Fund, established by section 2CCCC of chapter 90. Also, the state fire
68 marshal may direct municipal fire departments to include safety materials, developed and
69 provided by the 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
71 license, 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
76 hand for 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
81 allows an entity to sell fireworks within the municipality, the municipality must authorize the
82 head of its fire department to grant permits for the use of fireworks within the municipality as
83 described in this section. Also, if a municipality authorizes its fire department to grant such
84 fireworks use permits, then the municipality must also have in place the procedure for licensing
85 fireworks 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
87 purposes of this section. Such regulations shall include the storage requirements for licensed
88 sellers.

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

95 Notice of such seizure of the fireworks shall immediately be sent to the state fire marshal
96 by the officer making the seizure, and the fireworks seized shall be held and securely stored by

97 that department until the fire marshal or his authorized representative takes them into his
98 possession for disposal.

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

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