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3 CONFERENCE COMMITTEE SUBSTITUTE FOR SB55
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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to fireworks and pyrotechnics; to amend
14 Sections 8-17-210, 8-17-211, 8-17-216.1, 8-17-217, 8-17-218,
15 8-17-219, 8-17-220, 8-17-225, 8-17-226, 8-17-237, 8-17-255,
16 34-33-11, 34-33A-12, and 36-19-29, Code of Alabama 1975; and
17 to add Section 36-19-31 to the Code of Alabama 1975; to
18 redesignate common fireworks as consumer fireworks and to
19 provide for the regulation of consumer fireworks; to increase
20 the fees collected by the State Fire Marshal for issuing
21 permits in the regulation of the manufacturing, sale, and
22 display of fireworks and for the use of pyrotechnics before a
23 proximate audience; to further provide for the operation of
24 the State Fire Marshal's Fund and to provide retroactive
25 effect; to provide for a transfer of five percent of the
26 permit fees collected by the State Fire Marshal in the
27 regulation of fireworks and pyrotechnics to the Alabama

1 Firefighters Annuity and Benefit Fund; and to specify that the
2 fees may be increased at certain intervals according to
3 increases in the Consumer Price Index.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 8-17-210, 8-17-211, 8-17-216.1,
6 8-17-217, 8-17-218, 8-17-219, 8-17-220, 8-17-225, 8-17-226,
7 8-17-237, 8-17-255, 34-33-11, 34-33A-12, and 36-19-29, Code of
8 Alabama 1975, are amended to read as follows:

9 "§8-17-210.

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

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

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

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

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

25 "~~(1)~~ (5) DISTRIBUTOR. Any person engaged in the
26 business of making sales of fireworks for resale to all
27 holders of the required Alabama permits who in turn shall

1 resell to any permit holder; or any person who receives,
2 brings, or imports any fireworks of any kind into the State of
3 Alabama, except to a holder of an Alabama manufacturer's or
4 distributor's permit.

5 ~~"(2)(6)~~ D.O.T. CLASS C ~~COMMON~~ CONSUMER FIREWORKS.

6 All articles of fireworks as are now or hereafter classified
7 as D.O.T. Class C ~~common~~ 1.4G Consumer fireworks in the
8 regulations of the U.S. Department of Transportation for the
9 transportation of explosive and other dangerous articles,
10 including aerial devices and audible ground devices.

11 ~~"(8)(7)~~ FIREWORKS SEASONS. The dates of June 20
12 through July 10 and December 15 through January 2 of each year
13 shall be the only periods when seasonal retailers may sell
14 fireworks.

15 ~~"(3)(8)~~ MANUFACTURER. Any person engaged in the
16 making, manufacture, or construction of fireworks of any kind
17 within the State of Alabama.

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

21 "(10) NOVELTIES. Any device listed in APA 87-1,
22 Section 3.2, including, without limitation, the following:

23 "a. Party poppers.

24 "b. Snappers.

25 "c. Toy smoke devices.

26 "d. Snake, glow worms.

27 "e. Wire sparklers, dipped sticks.

1 "~~(4)~~(11) PERMIT. The written authority of the State
2 Fire Marshal issued under the authority of this article.

3 "~~(5)~~(12) PERSON. Includes any corporation,
4 association, copartnership or one or more individuals.

5 "~~(6)~~ RETAILER. ~~Any person engaged in the business of~~
6 ~~making sales of fireworks to consumers within the State of~~
7 ~~Alabama during a calendar year from January 1 through December~~
8 ~~31.~~

9 "~~(7)~~(13) SALE. An exchange of articles or fireworks
10 for money, including barter, exchange, gift, or offer thereof,
11 and each such transaction made by any person, whether as
12 principal proprietor, salesman, agent, association,
13 copartnership, or one or more individuals.

14 "~~(9)~~(14) SEASONAL RETAILER. Any person engaged in
15 the business of making sales of fireworks to consumers within
16 the State of Alabama during the fireworks season(s) only, from
17 permanent buildings or temporary or moveable stands.

18 "(15) SPARKLING DEVICES. Handheld or ground based
19 sparkling devices that are non-explosive and non-aerial and
20 contain 75 grams or less of chemical compound per tube or a
21 total of 500 grams or less for multiple tubes and other
22 sparkling devices which emit showers of sparks and sometimes a
23 whistling, spinning, or crackling effect when burning, but
24 does not include aerial devices, audible ground devices, or
25 anything that will detonate or explode.

26 "~~(10)~~(16) SPECIAL FIREWORKS. All articles of
27 fireworks that are classified as Class B ~~explosives~~ 1.3G

1 fireworks in the regulations of the U.S. Department of
2 Transportation, including all articles classified as fireworks
3 other than those classified as Class C.

4 "~~(11)~~(17) WHOLESALER. Any person engaged in the
5 business of making sales of fireworks to any other person
6 engaged in the business of making sales at seasonal retail.

7 "§8-17-211.

8 "(a) It shall be unlawful for any person to
9 manufacture, sell, offer for sale, or ship or cause to be
10 shipped into or within the State of Alabama, except as herein
11 provided, any item of fireworks or pyrotechnics for use before
12 a proximate audience, without first having secured the
13 required applicable permit, as a manufacturer, distributor,
14 wholesaler, annual retailer, or seasonal retailer, from the
15 State Fire Marshal. Possession of a permit is a condition
16 prerequisite to manufacturing, selling, or offering for sale,
17 or shipping or causing to be shipped any fireworks or
18 pyrotechnics for use before a proximate audience into or
19 within the State of Alabama, except as herein provided. This
20 provision applies to nonresidents as well as residents of the
21 State of Alabama. Mail orders where consumers purchase any
22 fireworks or pyrotechnics for use before a proximate audience
23 through the mail or receive any fireworks or pyrotechnics for
24 use before a proximate audience in Alabama by mail, parcel
25 service, or other carrier are prohibited. A sales clerk must
26 be on duty to serve consumers at the time of purchase or
27 delivery. All fireworks or pyrotechnics for use before a

1 proximate audience sold and delivered to consumers within the
2 State of Alabama must take place within the State of Alabama
3 and be sold and delivered only by an individual, firm,
4 partnership, or corporation holding the proper Alabama permit
5 and all fireworks or pyrotechnics for use before a proximate
6 audience coming into the state, manufactured, sold, or stored
7 within the state shall be under the supervision of the State
8 Fire Marshal as provided for in this article.

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

19 "(c) A manufacturer's permit issued under this
20 article shall be subject to rules and regulations promulgated
21 by the State Fire Marshal to govern the manufacture of
22 fireworks or pyrotechnics for use before a proximate audience
23 as in the judgment of the State Fire Marshal the public
24 welfare may require.

25 "(d) The decision of the State Fire Marshal as to
26 what type of permit or permits shall be required of each
27 person shall be final. The State Fire Marshal may deny a

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

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

25 "(1) Manufacturer, ~~two~~ three thousand dollars
26 ~~(\$2,000)~~ (\$3,000).

1 "(2) Distributor, ~~two~~ three thousand dollars
2 ~~(\$2,000)~~ (\$3,000).

3 "(3) Wholesaler, ~~seven hundred~~ one thousand dollars
4 ~~(\$700)~~ (\$1,000).

5 "(4) ~~Retailer, two hundred dollars (\$200)~~. Annual
6 Retailer:

7 "a. Of aerial devices, sparkling devices, audible
8 ground devices, and novelties, three hundred dollars (\$300)
9 per location.

10 "b. Of only sparkling devices and novelties, one
11 hundred fifty dollars (\$150) per location.

12 "c. Of only novelties, fifty dollars (\$50) per
13 location.

14 "(5) Seasonal Retailer, ~~two three hundred dollars~~
15 ~~(\$200)~~.:

16 a. Of aerial devices, sparkling devices, audible
17 ground devices, and novelties, three hundred dollars (\$300)
18 per location.

19 b. Of only sparkling devices and novelties, one
20 hundred fifty dollars (\$150) per location.

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

24 "(7) Display, ~~fifty dollars (\$50)~~ application filed
25 at least 10 business days before display date, seventy-five
26 dollars (\$75).

1 "(8) Display, application filed less than 10
2 business days before display date, one hundred fifty dollars
3 (\$150).

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

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

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

22 "(i) The State Fire Marshal is charged with the
23 enforcement of this article and may call upon any state or
24 county or city peace officer for assistance in the enforcement
25 of this article. The fire marshal is not authorized to
26 promulgate rules or regulations in conflict with or that go
27 beyond the scope or intent of this article.

1 "(j) 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 2020, 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 "§8-17-216.1.

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

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

1 if accompanied by a fee of double the amount otherwise
2 required.

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

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

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

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

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

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

26 "(i) Every five years, the State Fire Marshal may
27 increase the fees by the percentage increase in the Consumer

1 Price Index for all urban consumers as published by the U.S.
2 Department of Labor, Bureau of Labor Statistics from the end
3 of December 2020, to the end of the month preceding the month
4 in which the fee increase is to be effective, rounded down to
5 the nearest dollar. The increase may not exceed two percent
6 per year.

7 "§8-17-217.

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

21 "(b) Permitted items designed to produce an audible
22 effect are confined to small ground items which include
23 firecrackers containing not over 50 milligrams of explosive
24 composition and aerial devices containing not over 130
25 milligrams of explosive composition. Propelling or expelling
26 charge consisting of a mixture of charcoal, sulfur and

1 potassium nitrate are not considered as designed to produce an
2 audible effect.

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

13 "§8-17-218.

14 "All items of fireworks which exceed the two grain
15 limit of D.O.T. Class C ~~common~~ consumer fireworks as to
16 explosive composition, such items being commonly referred to
17 as "illegal ground salutes" designed to produce an audible
18 effect, are expressly prohibited from shipment into,
19 manufacture, possession, sale, and use within the State of
20 Alabama for any purpose. This ~~subsection~~ section shall not
21 affect display fireworks authorized by this article⁷.

22 "§8-17-219.

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

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

10 §8-17-220.

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

20 §8-17-225.

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

1 ~~is authorized to~~ State Fire Marshal 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, sparkling devices, and audible ground devices in
9 accordance with Section 11-45-9.1.

10 "(b) A municipality may enact an ordinance further
11 restricting the sale or use of sparkling devices or novelties.
12 The State Fire Marshall shall keep a current listing of those
13 municipalities that have enacted an ordinance further
14 restricting the sale or use of sparkling 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 "§8-17-237.

21 "(a) A pyrotechnics display operator license or
22 pyrotechnic special effects operator license issued under this
23 article authorizes the holder to act pursuant to that license
24 until the license is suspended, revoked, or not renewed. Upon
25 the suspension or revocation of a license, or the failure to
26 renew a license, the licensee shall return the license to the

1 State Fire Marshal. Each license is valid for two years,
2 unless suspended or revoked.

3 "(b) All fees collected pursuant to this article
4 shall be deposited in the State Treasury to the credit of the
5 State Fire Marshal's Fund authorized in Section ~~24-5-10~~
6 36-19-31. The State Fire Marshal may expend monies from the
7 State Fire Marshal's Fund for the administration and
8 enforcement of this article.

9 "§8-17-255.

10 "All sums received through the payment of fees, the
11 recovery of civil penalties, grants, and appropriations by the
12 Legislature shall be deposited in the State Treasury and
13 credited to the State Fire Marshal's Fund authorized by
14 Section 36-19-31. This fund shall be available to the State
15 Fire Marshal for the operation of the State Fire Marshal's
16 Offices, including expenditure in the administration and
17 enforcement of this article, Article 8, Article 8A, and
18 Article 10, training, ~~and~~ research programs, and to support
19 fire safety and prevention programs. Provided, however, that
20 no funds shall be withdrawn or expended except as budgeted and
21 allocated according to Sections 41-4-80 to 41-4-96 and
22 Sections 41-19-1 to 41-19-12, inclusive, and only in amounts
23 as stipulated in the general appropriations bills or other
24 appropriations bills. Any unencumbered and any unexpended
25 balance of this fund remaining at the end of any fiscal year
26 shall not lapse or revert to the General Fund, but shall be

1 carried forward for the purposes of this article until
2 expended.

3 "§34-33-11.

4 "All funds collected pursuant to this chapter shall
5 be deposited in the State Treasury to the credit of the State
6 Fire Marshal's Fund authorized by Section ~~24-5-10~~ 36-19-31.
7 The State Fire Marshal shall be authorized to expend moneys
8 from the State Fire Marshal's Fund for the administration and
9 enforcement of this chapter. The State Fire Marshal shall be
10 allowed to receive grants and donations from associations,
11 firms, or individuals who are interested in the upgrading and
12 quality of fire protection sprinkler systems.

13 "§34-33A-12.

14 "All funds collected pursuant to this chapter shall
15 be deposited in the State Treasury to the credit of the State
16 Fire Marshal's Fund authorized in Section ~~24-5-10~~ 36-19-31.
17 The State Fire Marshal may expend moneys from the State Fire
18 Marshal's Fund for the administration and enforcement of this
19 chapter. The State Fire Marshal may receive grants and
20 donations from associations, firms, or individuals who are
21 interested in the upgrading and quality of fire alarm systems
22 in compliance with Alabama state ethics laws.

23 "§36-19-29.

24 "All penalties, ~~fees~~ or forfeitures collected under
25 the provisions of this article, unless otherwise provided,
26 shall be placed in the General Fund of the State."

1 Section 2. Section 36-19-31 is added to the Code of
2 Alabama 1975, to read as follows:

3 §36-19-31.

4 (a) There is established in the State Treasury a
5 special fund to be known as the State Fire Marshal's Fund. All
6 sums received by the State Fire Marshal's Office through the
7 payment of fees, the recovery of civil penalties, grants, and
8 appropriations by the Legislature, including funds received
9 pursuant to Article 8, Article 8A, Article 9, and Article 10
10 of Chapter 17 of Title 8, and pursuant to Chapter 33 and
11 Chapter 33A of Title 34, shall be deposited in the State Fire
12 Marshal's Fund.

13 (b) The State Fire Marshal's Fund shall be expended
14 for the operation of the State Fire Marshal's Office,
15 including the administration and enforcement of Article 8,
16 Article 8A, Article 9, and Article 10 of Chapter 17 of Title
17 8, and of Chapter 33 and Chapter 33A of Title 34, for training
18 and research programs, and to support fire safety and
19 prevention programs.

20 (c) No funds shall be withdrawn or expended from the
21 State Fire Marshal's Fund except as budgeted and allotted
22 according to Sections 41-4-80 to 41-4-96, inclusive, and
23 41-19-1 to 41-19-12, inclusive, and only in amounts as
24 stipulated in the general appropriations act, or other
25 appropriations act. Any unencumbered and unexpended balance of
26 the fund remaining at the end of any fiscal year shall not

1 lapse or revert to the General Fund but shall be carried
2 forward to the next fiscal year.

3 Section 3. On a semiannual basis, the State Fire
4 Marshal shall transfer from the State Fire Marshal's Fund to
5 the Alabama Firefighters Annuity and Benefit Fund established
6 pursuant to Section 36-21-185, Code of Alabama 1975, an amount
7 equal to five percent of the fees collected by the State Fire
8 Marshal during the previous six months pursuant to Sections
9 8-17-211 and 8-17-216.1, Code of Alabama 1975, as currently
10 provided or as those fees may be hereafter adjusted.

11 Section 4. The deposit of any funds in the State
12 Fire Marshal's Fund and the expenditure of any funds from the
13 State Fire Marshal's Fund prior to the effective date of this
14 act are ratified and confirmed.

15 Section 5. This act shall become effective 60 days
16 following its passage and approval by the Governor, or its
17 otherwise becoming law.