

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 470

Short Title: NC Consumer Fireworks Safety Act. (Public)

Sponsors: Senators Galey, Settle, and Hanig (Primary Sponsors).

Referred to: Rules and Operations of the Senate

April 4, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO PERMIT THE SALE, POSSESSION, AND USE OF CERTAIN CONSUMER
3 FIREWORKS AND TO LEVY AN EXCISE TAX ON THE SALES OF CONSUMER
4 FIREWORKS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 14-410 reads as rewritten:

7 "§ 14-410. **Manufacture, sale and use of pyrotechnics prohibited; exceptions; license**
8 **required; sale to persons under the age of ~~16-18~~ prohibited.**

9 (a) Except as otherwise provided in this section, it shall be unlawful for any individual,
10 firm, partnership or corporation to manufacture, purchase, sell, deal in, transport, possess,
11 receive, advertise, use, handle, exhibit, or discharge any pyrotechnics of any description
12 whatsoever within the State of North Carolina.

13 ...

14 (a5) It shall be permissible for pyrotechnics to be exhibited, used, handled, manufactured,
15 or discharged within the State for pyrotechnic or proximate audience display instruction
16 consisting of classroom and practical skills training approved by the Office of State Fire Marshal.

17 (a6) It shall be permissible for pyrotechnics that are consumer fireworks to be possessed,
18 advertised, sold, used, transported, handled, or discharged within the State, provided the
19 possession, advertising, sale, use, transportation, handling, or discharge complies with Part 2 of
20 Article 82A of Chapter 58 of the General Statutes.

21 (b) Notwithstanding the provisions of G.S. 14-414, it shall be unlawful for any
22 individual, firm, partnership, or corporation to sell consumer fireworks as defined in this section
23 or pyrotechnics as defined in G.S. 14-414(2), (3), (4)c., (5), or (6) to persons under the age of
24 ~~16-18.~~

25 (c) The following definitions apply in this Article:

26 (1) Concert or public exhibition. – A fair, carnival, show of any description, or
27 public celebration.

28 (1a) Consumer fireworks. – Defined in G.S. 58-82A-80.

29 (2) Display operator. – An individual issued a display operator license under
30 G.S. 58-82A-3.

31 (3) State Fire Marshal. – Defined in G.S. 58-80-1."

32 SECTION 2. G.S. 14-415 reads as rewritten:

33 "§ 14-415. **Violation made misdemeanor.**

34 Any person violating any of the provisions of this Article, except as otherwise specified in
35 said Article, shall be guilty of a Class 2 misdemeanor, except that it is a Class 1 misdemeanor if
36 the sale is in violation of G.S. 14-410(b) or if the exhibition is indoors."



1 **SECTION 3.** G.S. 58-82A-1 through G.S. 58-82A-55 are recodified as Part 1 of
2 Article 82A of Chapter 58 of the General Statutes, to be entitled:

3 "Part 1. Display Pyrotechnics Training and Permitting."

4 **SECTION 4.** Article 82A of Chapter 58 of the General Statutes is amended by
5 adding a new Part to read:

6 "Part 2. Consumer Fireworks.

7 "§ 58-82A-75. Purpose.

8 The sale, use, transport, possession, handling, or discharge of consumer fireworks shall be
9 permitted only in compliance with the provisions of this Part.

10 "§ 58-82A-80. Definitions.

11 The following definitions apply in this Part:

- 12 (1) Consumer fireworks. – Any small fireworks device designed primarily to
13 produce visible effects by combustion or deflagration that (i) is categorized as
14 a 1.4G firework device under Standard 87-1 of the American Pyrotechnics
15 Association and (ii) complies with the construction, chemical composition,
16 and labeling regulations of the United States Consumer Product Safety
17 Commission, as set forth in the Code of Federal Regulations, Volumes 16 and
18 49. The term does not include the following:
19 a. Novelties.
20 b. Sparkling devices.
21 c. Any rocket or other aerial device that has any of the following
22 characteristics:
23 1. The device is greater than 1/2 inch in diameter.
24 2. The device is greater than 3 inches in length.
25 3. The device includes more than 20 grams of total pyrotechnic
26 composition.
27 4. The device has a stabilizing stick less than 15 inches in length.
28 (2) Consumer fireworks distributor. – A person owning or otherwise controlling
29 a facility where consumer fireworks are stored or otherwise maintained for
30 distribution to fireworks retailers permitted under this Part.
31 (3) Consumer fireworks permanent retailer. – A person that sells only "consumer
32 fireworks," "sparkling devices," "novelties," and related items from a
33 permanent building that is open to the public throughout the year.
34 (4) Consumer fireworks temporary retailer. – A person that sells only "consumer
35 fireworks," "sparkling devices," "novelties," and related items from a
36 fireworks retail stand for no more than 30 days in any 365-day period.
37 (5) Fireworks retail stand. – A building or structure with a floor area not greater
38 than 800 square feet. Stands may include buildings, manufactured buildings,
39 trailers, shipping containers, tents, and temporary structures constructed from
40 plywood, sheet metal, or similar materials.
41 (6) Fireworks safety and education trainer. – A person who has completed
42 training on the function, safe handling, and best practices for the safe use of
43 all categories of consumer fireworks under G.S. 58-82A-130 and annually
44 registers with the Department.
45 (7) Mixed-use fireworks retailer. – A building classified as a mercantile
46 occupancy under local zoning ordinances in which a variety of merchandise
47 is offered for sale to the public and that is not used primarily for the retail sales
48 of consumer fireworks, as defined in section 7.5 of the NFPA standards.
49 (8) NFPA standards. – Standard 1124 of the National Fire Protection Association,
50 2006 edition, as it applies to the retail sale or distribution of consumer
51 fireworks, except as otherwise specified by this Part.

1 (9) Novelties. – Snaps, party poppers, snakes, glow worms, toy smoke devices,
2 and certain wire sparklers and dipped sticks containing 5 grams or less of
3 pyrotechnic composition. The specification of novelties under this subdivision
4 shall substantially follow the definition of these devices under Standard 87-1
5 of the American Pyrotechnics Association, 2001 edition.

6 (10) Public space. – Any building or area open to the public, whether privately or
7 publicly owned. Public space includes restaurants, theaters, stadiums, arenas,
8 retail establishments, and shopping malls.

9 (11) Sparkling devices. – Defined as "ground and handheld sparkling device" in
10 section 3.1.1 of Standard 87-1 of the American Pyrotechnics Association,
11 2001 edition.

12 **"§ 58-82A-85. Possession and use of consumer fireworks.**

13 (a) The possession of consumer fireworks is allowed in this State, subject to the
14 requirements and conditions set forth in this section.

15 (b) A city may adopt an ordinance regulating the use of consumer fireworks in
16 accordance with G.S. 160A-190.1.

17 (c) The possession and use of consumer fireworks is subject to the following conditions:

18 (1) The person possessing or using the consumer fireworks must be at least 18
19 years old.

20 (2) The use of consumer fireworks may occur only between the hours of 10:00
21 A.M. and 10:00 P.M., with the following exceptions:

22 a. On July 4, use is permitted until 12:00 A.M.

23 b. On December 31 and the following January 1, use is permitted from
24 8:00 A.M. on December 31 until 12:30 A.M. on January 1.

25 c. During the three days of Diwali, use is permitted until 12:00 A.M.

26 (3) The use of consumer fireworks is prohibited in the following locations:

27 a. In or on the premises of a public or private primary or secondary
28 school, unless the person has written authorization from the school.

29 b. On the campus of a college or university, unless the person has
30 received written authorization from the college or university.

31 c. Within 500 feet of a hospital, veterinary hospital, animal care facility,
32 licensed child care facility, fireworks retailer, fireworks distributor,
33 gas station, or bulk storage facility for petroleum products or other
34 explosive or flammable substances.

35 (4) The possession or use of consumer fireworks is prohibited in or on the
36 premises of any public park or public space, except as otherwise permitted by
37 the person, State agency, or unit of local government owning or otherwise
38 controlling the public park or public space.

39 (d) No county or city may restrict or exclude the transportation of consumer fireworks
40 across or through the county or city. Nothing in this subsection is intended to prevent reasonable
41 transportation-related restrictions applicable to all vehicles or a class of vehicles regardless of
42 cargo, such as vehicle weight limits or truck route restrictions in accordance with U.S.
43 Department of Transportation regulations.

44 **"§ 58-82A-90. Sale of consumer fireworks; permit required.**

45 (a) No person shall sell consumer fireworks in this State unless the person holds a permit
46 issued under this Part from the Commissioner. The Commissioner shall issue rules to implement
47 this section. Permits of a fireworks retailer shall be posted in a location visible to members of the
48 public visiting the retailer. The Commissioner shall issue a permit to a person who meets the
49 following conditions:

50 (1) Is 21 years of age or older.

51 (2) Complies with all of the requirements of this Part.

- 1 (3) Has not been convicted of a felony and has not received a pardon.
2 (4) Has not been convicted of an offense for a violation of State or federal law, or
3 been found in violation of any municipal ordinance, involving fireworks or
4 explosives within five years prior to the date of the application for the permit.
5 (5) For a consumer fireworks permanent retailer permit applicant only, holds a
6 federal explosives license issued by the U.S. Department of Justice, Bureau of
7 Alcohol, Tobacco, Firearms and Explosives.
8 (6) Maintains at all times public liability and product liability insurance with
9 minimum coverage limits of five million dollars (\$5,000,000) to cover losses,
10 damages, or injury that might occur as a result of the person selling consumer
11 fireworks.
12 (7) Submits the application for a permit no later than April 1 of the year the
13 applicant proposes to begin sales of consumer fireworks under this Part.
14 (8) Provides a lease or evidence of ownership of the site of the proposed fireworks
15 retailer for no less than the duration of the permit. A consumer fireworks
16 temporary retailer operating out of a fireworks retail stand located at a site not
17 owned by the retailer may comply with this subdivision by providing the
18 required authorization under G.S. 58-82A-120.
19 (b) A person issued a permit under this Part shall comply with the following
20 requirements:
21 (1) Standards. – The permittee must comply with (i) any applicable NFPA
22 standards in addition to those set forth in this subsection and (ii) applicable
23 local zoning and land-use rules.
24 (2) Employees. – All employees of a permittee that is a permanent or temporary
25 fireworks retailer that are engaged in the sale of fireworks or sparkling devices
26 must be at least 18 years of age. All employees of a permittee that is a
27 mixed-use fireworks retailer that are engaged in the sale of fireworks or
28 sparkling devices must be at least 16 years of age.
29 (3) Fire suppression devices. – Fire suppression devices must meet the following
30 requirements:
31 a. The permittee must maintain on the premises a minimum of two
32 portable fire extinguishers with a 2A rating.
33 b. The fire extinguishers shall be in two different locations within the
34 premises of the retailer.
35 c. At least one of the extinguishers shall be of the pressurized water type.
36 (4) Required signs. – The permittee shall post signs prohibiting smoking on the
37 premises and discharge of fireworks and sparkling devices.
38 (5) Sales restrictions. – Online and mail order sales of consumer fireworks or
39 sparkling devices by a permittee under this Part are unlawful. All sales must
40 take place on the premises of a consumer fireworks permanent retailer,
41 consumer fireworks temporary retailer, or a mixed-use fireworks retailer.
42 (c) In addition to the requirements set forth in subsections (a) and (b) of this section, a
43 permit issued for a consumer fireworks permanent retailer or consumer fireworks temporary
44 retailer shall include the following requirements:
45 (1) Setbacks. – Areas within 20 feet of the retailer's premises shall be kept free of
46 combustible debris. The retailer may not be located within 300 feet of the
47 following:
48 a. Retail establishments dispensing flammable or combustible liquids,
49 flammable gas, or flammable liquefied gas.
50 b. Above-ground storage tanks storing flammable or combustible liquids,
51 flammable gas, or flammable liquefied gas.

- 1 c. Propane dispensing stations.
2 (2) Smoking prohibited. – Smoking shall not be permitted inside the retailer's
3 premises, subject to the retailer's building location, layout, and restrictions.
4 (3) Egress requirements. – Means of egress, including aisles, doors, and exit
5 discharge, shall be clear at all times when the retailer is open to the public,
6 and aisles must be at least 48 inches in width.
7 (4) Fire safety. – The retailer shall create and maintain a fire safety and evacuation
8 plan in a form specified and approved by the Commissioner.
9 (5) Training. – No less than two management or supervisory employees of each
10 permittee subject to this subsection shall be Fireworks Safety and Education
11 Trainers. Fireworks Safety and Education Trainers shall be responsible for the
12 annual training of all employees on the function, safe handling, and best
13 practices regarding the safe use of all categories of consumer fireworks. Such
14 training shall be documented on forms approved by the Commissioner and be
15 readily available at the request of the Commissioner.
16 (6) Siting for consumer fireworks temporary retailer. – Permits for a consumer
17 fireworks temporary retailer shall be subject to the following siting
18 requirements and limitations:
19 a. A consumer fireworks temporary retailer permit applicant who does
20 not hold a consumer fireworks permanent retailer permit may obtain a
21 permit as a consumer fireworks temporary retailer if the proposed
22 location for the retailer is in or immediately adjacent to the parking lot
23 or other outdoor premises of a mixed-use fireworks retailer with a
24 retail floor space of no less than 25,000 square feet.
25 b. Consumer fireworks permanent retailer permit holders may obtain up
26 to three consumer fireworks temporary retailer permits for each
27 permitted consumer fireworks permanent retailer location. These
28 locations are not subject to the siting restriction of sub-subdivision a.
29 of this subdivision.
30 c. The consumer fireworks temporary retailer must be located at least 2
31 miles from any consumer fireworks permanent retailer unless the
32 applicant obtains a written waiver from the consumer fireworks
33 permanent retailer and submits a copy of the waiver to the permitting
34 authority.
35 (7) Dates of sales. – The consumer fireworks temporary retailer may operate for
36 no more than 30 days in any calendar year. The permitted dates of operation
37 shall be specified in the permit.
38 (d) Nothing in this section is meant to override any fire code applicable to a structure
39 regulated by this Part. If the fire code imposes a more stringent requirement, the fire code
40 requirement will apply instead of the standards imposed by this section.
41 **§ 58-82A-95. Permit fees.**
42 The Commissioner may charge an applicant for a permit under G.S. 58-82A-90 the following
43 annual fees:
44 (1) Five thousand dollars (\$5,000) for a consumer fireworks permanent retailer
45 permit or a consumer fireworks distributor permit and two thousand five
46 hundred dollars (\$2,500) for each annual renewal.
47 (2) One thousand dollars (\$1,000) for a consumer fireworks temporary retailer
48 permit and five hundred dollars (\$500.00) for each annual renewal.
49 (3) Five hundred dollars (\$500.00) for a mixed-use fireworks retailer permit and
50 two hundred fifty dollars (\$250.00) for each annual renewal.
51 **§ 58-82A-100. Prohibition of consumer fireworks.**

1 During periods of declared hazardous forest fire conditions, as referenced in G.S. 106-946,
2 the Commissioner, in consultation with the North Carolina Forest Service, is authorized to
3 prohibit all use of consumer fireworks otherwise permitted by this Part in all or part of the State.
4 The Commissioner shall issue a press release containing relevant details of the prohibition to
5 news media serving the area affected.

6 **"§ 58-82A-105. Civil and criminal penalties for violations.**

7 (a) Except as provided in this section, G.S. 14-415 and G.S. 58-2-70 shall apply to any
8 person violating any of the provisions of this Part.

9 (b) The Commissioner, a State law enforcement officer, a municipal law enforcement
10 officer, a code enforcement officer, or a fire safety official may petition the district court to seize
11 or remove, at the expense of the permit holder, fireworks sold, offered for sale, stored, possessed,
12 or used in violation of this Part.

13 (c) The Commissioner may order the payment of a civil penalty in addition to, or instead
14 of, suspending a permit, as set forth in G.S. 58-82A-110.

15 (d) Any person violating G.S. 58-82A-120 is guilty of a Class 1 misdemeanor.

16 **"§ 58-82A-110. Prohibited activities.**

17 (a) The Commissioner may suspend the permit of a person authorized to sell consumer
18 fireworks or sparkling devices, order the payment of a civil penalty, or both for engaging in any
19 of the following prohibited activities:

20 (1) Selling fireworks or explosives not authorized under this Part.

21 (2) Selling consumer fireworks or sparkling devices within the State without a
22 valid permit.

23 (3) Selling consumer fireworks or sparkling devices to a person who appears to
24 be under the influence of alcohol or drugs.

25 (4) Knowingly aiding or assisting in procuring, furnishing, giving, selling, or
26 delivering consumer fireworks or sparkling devices to a person under the age
27 of 18. It is an affirmative defense to any disciplinary action taken pursuant to
28 this subdivision that the permit holder procured, furnished, gave, sold, or
29 delivered consumer fireworks or sparkling devices to a person under the age
30 of 18 in reasonable reliance upon fraudulent proof of age presented to the
31 permit holder.

32 (5) Selling consumer fireworks, sparkling devices, or novelties at a fireworks
33 retail stand in violation of G.S. 58-82A-115.

34 (b) If the Commissioner orders the payment of a civil penalty pursuant to subsection (a)
35 of this section, the penalty shall not be less than one thousand dollars (\$1,000) nor more than ten
36 thousand dollars (\$10,000). In determining the amount of the penalty, the Commissioner shall
37 consider the degree and extent of harm caused by the violation, the amount of money that inured
38 to the benefit of the violator as a result of the violation, whether the violation was committed
39 willfully, and the prior record of the violator in complying or failing to comply with laws, rules,
40 or orders applicable to the violator. The clear proceeds of the penalty shall be remitted to the
41 Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Payment of the civil
42 penalty under this section shall be in addition to payment of any other penalty for a violation of
43 the criminal laws of this State.

44 (c) A person whose permit has been suspended or has been issued a civil penalty under
45 this section shall receive a hearing before the Commissioner within 10 days of the decision. If
46 the decision is upheld, the person may seek judicial review in superior court.

47 **"§ 58-82A-115. Limitation on retail stand sales.**

48 Except as provided in G.S. 58-82A-120, it shall be unlawful to sell, transfer, or distribute
49 consumer fireworks, sparkling devices, or novelties at a fireworks retail stand.

50 **"§ 58-82A-120. Certain retail stand sales permitted.**

1 In addition to the requirements provided in this Part, a person may only sell, transfer, or
2 distribute consumer fireworks, sparkling devices, or novelties at a fireworks retail stand if the
3 following conditions are met:

4 (1) If the fireworks retailer does not own the property wherein the fireworks retail
5 stand is located, the owner or custodian of said property shall provide written
6 confirmation that the fireworks retailer is authorized to conduct business on
7 the premises.

8 (2) There is adequate parking to accommodate customers of the fireworks retail
9 stand and, if applicable, any other businesses that are on the premises.

10 **"§ 58-82A-125. Labeling and safety requirements.**

11 (a) Any consumer fireworks, sparkling devices, or novelties authorized to be sold under
12 this Part shall have a safety label affixed to the packaging of the firework in accordance with 16
13 C.F.R. § 1500.14(b)(7) prior to being sold in this State.

14 (b) When selling fireworks in this State, a fireworks retailer shall provide a safety
15 pamphlet created by the Office of State Fire Marshal to the purchaser of the firework with each
16 purchase. The pamphlet shall outline safe handling and best practices for the safe use of a
17 firework.

18 **"§ 58-82A-130. Fireworks safety and education trainer.**

19 The Commissioner shall create a training course, or identify existing training courses, to train
20 individuals on the function, safe handling, and best practices for the safe use of all categories of
21 consumer fireworks. The Commissioner shall also create and maintain a listing of persons that
22 have completed a training course created or identified by the Commissioner under this section.
23 The Department may issue rules to implement this section, including reasonable requirements
24 for verification or certification that persons have met the training requirements of this section."

25 **SECTION 5.(a)** Article 8 of Chapter 160A of the General Statutes is amended by
26 adding a new section to read:

27 **"§ 160A-190.1. Use and sales of consumer fireworks.**

28 Notwithstanding G.S. 160A-183, a city may, by ordinance, regulate the use and sales of
29 consumer fireworks to the public pursuant to Part 2 of Article 82A of Chapter 58 of the General
30 Statutes. An ordinance adopted pursuant to this section shall be effective on October 1 following
31 the adoption of the ordinance. The ordinance shall remain in effect until the ordinance is repealed.
32 If the ordinance is repealed, the repeal shall be effective on October 1 following the repeal of the
33 ordinance."

34 **SECTION 5.(b)** A city may adopt an ordinance pursuant to this section any time
35 after this act becomes law. Notwithstanding G.S. 160A-190.1, as enacted by this section,
36 ordinances adopted under this section prior to January 1, 2024, shall be effective January 1, 2024.

37 **SECTION 6.** Subchapter I of Chapter 105 of the General Statutes is amended by
38 adding a new Article to read:

39 "Article 2E.

40 "Tax on Consumer Fireworks.

41 **"§ 105-113.125. Tax on consumer fireworks.**

42 (a) Tax on Consumer Fireworks. – An excise tax is levied on consumer fireworks at the
43 rate of five percent (5%) of the cost price. A person who sells consumer fireworks at retail is
44 subject to and liable for the tax imposed by this section.

45 (b) Definitions. – The following definitions apply in this Article:

46 (1) Consumer fireworks. – Defined in G.S. 58-82A-80.

47 (2) Cost price. – The price a person liable for the tax on consumer fireworks
48 imposed by this Article paid for the products, before any discount, rebate, or
49 allowance.

50 (3) Fireworks retailer. – A person holding any permit under Part 2 of Article 82A
51 of Chapter 58 of the General Statutes.

1 (c) Monthly Report. – The taxes levied by this Article are payable when a report is
2 required to be filed. A report is due on a monthly basis. A monthly report covers sales and other
3 activities occurring in a calendar month and is due within 20 days after the end of the month
4 covered by the report. A report shall be filed on a form provided by the Secretary and shall
5 contain the information required by the Secretary.

6 (d) Discount. – A person who is liable for the excise taxes imposed by this Article, who
7 files a timely report under this section, and who sends a timely payment may deduct from the
8 amount due with the report a discount of two percent (2%). This discount covers expenses
9 incurred in preparing the records and reports required by this Article.

10 (e) Refund. – A person liable for the excise taxes imposed by this Article and in
11 possession of unsalable consumer fireworks upon which the tax has been paid may return the
12 consumer fireworks to the manufacturer and apply to the Secretary for refund of the tax. The
13 application shall be in the form prescribed by the Secretary and shall be accompanied by a written
14 certificate signed under penalty of perjury or an affidavit from the manufacturer listing the
15 consumer fireworks returned to the manufacturer by the applicant. The Secretary shall refund the
16 tax paid, less the discount allowed, on the listed products.

17 (f) Records. – Every person liable for the excise taxes imposed by this Article shall keep
18 accurate records of the purchases, inventories, and sales of consumer fireworks. These records
19 shall be open at all times for inspection by the Secretary or an authorized representative of the
20 Secretary.

21 (g) Use. – The Secretary must credit the net proceeds of the tax collected under this
22 Article as follows:

23 (1) An amount equal to twenty-five percent (25%) to the Firefighters' Education
24 Fund established under G.S. 58-85B-1.

25 (2) The remainder to the General Fund."

26 **SECTION 7.** Chapter 58 of the General Statutes is amended by adding a new Article
27 to read:

28 "Article 85B.

29 "Firefighters' Education Fund.

30 "**§ 58-85B-1. Fund established.**

31 The "Firefighters' Education Fund" is created and established within the Department of
32 Insurance. It consists of the revenue credited to the Fund under G.S. 105-113.125 and shall be
33 used for the purposes set forth in this Article. The Office of the State Fire Marshal shall
34 administer the Fund.

35 "**§ 58-85B-2. Use of funds.**

36 The Office of the State Fire Marshal may deduct and retain from the Firefighters' Education
37 Fund only amounts necessary for its administrative expenses. The remaining revenues credited
38 to the Firefighters' Education Fund shall be used to provide education and training to firefighters
39 in North Carolina. The term "firefighter" has the same meaning as defined in G.S. 58-84-5."

40 **SECTION 8.** Section 6 of this act becomes effective January 1, 2024, and applies to
41 the cost price paid for fireworks on or after that date. Section 5 of this act is effective when this
42 act becomes law. The remainder of this act becomes effective January 1, 2024, and applies to
43 offenses committed on or after that date. Prosecutions for offenses committed before the effective
44 date of this act are not abated or affected by this act, and the statutes that would be applicable but
45 for this act remain applicable to those prosecutions.