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SENATE BILL DRS15089-MHf-3

Short Title: Celebrate America's 250th-Let Freedom Ring!. (Public)

Sponsors: Senators Galey, Britt, and Sawyer (Primary Sponsors).

Referred to:

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. 58-78A-1."

32 SECTION 2. G.S. 14-414 reads as rewritten:

33 "§ 14-414. Pyrotechnics defined; exceptions.

34 For the proper construction of the provisions of this Article, "pyrotechnics," as is herein used,
35 shall be deemed to be and include any and all kinds of fireworks and explosives, which are used
36 for exhibitions or amusement purposes: provided, however, that nothing ~~herein contained in this~~



section shall prevent the manufacture, purchase, sale, transportation, and use of explosives or signaling flares used in the course of ordinary business or industry, or shells or cartridges used as ammunition in firearms. This Article shall not apply to the sale, use, or possession of the following:

- (1) Explosive caps designed to be fired in toy pistols, provided that the explosive mixture of the explosive caps shall not exceed twenty-five hundredths (.25) of a gram for each cap.
- (2) ~~Snake and glow worms composed of pressed pellets of a pyrotechnic mixture that produce a large, snake-like ash when burning.~~
- (3) ~~Smoke devices consisting of a tube or sphere containing a pyrotechnic mixture that produces white or colored smoke.~~
- (4) ~~Trick noisemakers which produce a small report designed to surprise the user and which include:~~
 - a. ~~A party popper, which is a small plastic or paper item containing not in excess of 16 milligrams of explosive mixture. A string protruding from the device is pulled to ignite the device, expelling paper streamers and producing a small report.~~
 - b. ~~A string popper, which is a small tube containing not in excess of 16 milligrams of explosive mixture with string protruding from both ends. The strings are pulled to ignite the friction sensitive mixture, producing a small report.~~
 - c. ~~A snapper or drop pop, which is a small, paper-wrapped item containing no more than 16 milligrams of explosive mixture coated on small bits of sand. When dropped, the device produces a small report.~~
- (5) ~~Wire sparklers consisting of wire or stick coated with nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition. These items must not exceed 100 grams of mixture per item.~~
- (6) ~~Other sparkling devices which emit showers of sparks and sometimes a whistling or crackling effect when burning, do not detonate or explode, do not spin, are hand held or ground based, cannot propel themselves through the air, and contain not more than 75 grams of chemical compound per tube, or not more than a total of 200 grams if multiple tubes are used.~~
- (7) Novelties and sparkling devices, as those terms are defined in G.S. 58-82A-80."

SECTION 3. G.S. 14-415 reads as rewritten:

"§ 14-415. Violation made misdemeanor.

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

SECTION 4. G.S. 58-82A-1 through G.S. 58-82A-55 are recodified as Part 1 of Article 82A of Chapter 58 of the General Statutes, to be entitled:

"Part 1. Display Pyrotechnics Training and Permitting."

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

"Part 2. Consumer Fireworks.

"§ 58-82A-75. Purpose.

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

"§ 58-82A-80. Definitions.

The following definitions apply in this Part:

- (1) APA 87-1. – Standard 87-1 of the American Pyrotechnics Association, December 1, 2001, edition.
- (2) Consumer fireworks. – Any small fireworks device designed primarily to produce visible effects by combustion or deflagration that (i) is categorized as a 1.4G firework device under APA 87-1 and (ii) complies with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission, as set forth in the Code of Federal Regulations, Volumes 16 and 49. The term does not include the following:
- a. Novelties.
- b. Sparkling devices.
- c. Bottle rockets with a motor less than 1/2 inch in diameter and 3 inches in length, a stabilizing stick less than 15 inches in length, and a total pyrotechnic composition not exceeding 20 grams in weight.
- (3) Consumer fireworks distributor. – A person owning or otherwise controlling a facility where consumer fireworks are stored or otherwise maintained for distribution to fireworks retailers permitted under this Part.
- (4) Consumer fireworks permanent retailer. – A person that sells only "consumer fireworks," "sparkling devices," "novelties," and related items from a permanent building that is open to the public more than 60 days in any calendar year.
- (5) Consumer fireworks temporary retailer. – A person that sells only "consumer fireworks," "sparkling devices," "novelties," and related items from a fireworks retail stand for 60 or fewer days in any calendar year.
- (6) Fireworks retail stand. – A building or structure with a floor area not greater than 800 square feet. Stands may include buildings, manufactured buildings, trailers, shipping containers, and temporary structures constructed from plywood, sheet metal, or similar materials.
- (7) Mixed-use fireworks retailer. – A building classified as a mercantile occupancy in which a variety of merchandise is offered for sale to the public and that is not used primarily for the retail sales of consumer fireworks, as defined in section 7.5 of the NFPA standards.
- (8) NFPA standards. – Standard 1124 of the National Fire Protection Association, 2006 edition, as it applies to the retail sale or distribution of consumer fireworks.
- (9) Novelties. – As defined in sections 3.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, and 3.2.5 of APA 87-1.
- (10) Public space. – Any building or area open to the public, whether privately or publicly owned. Public space includes restaurants, theaters, stadiums, arenas, retail establishments, and shopping malls.
- (11) Sparkling devices. – Defined as "ground and handheld sparkling device" in sections 3.1, 3.1.1.1 through 3.1.1.8, and 3.5 of APA 87-1.

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

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

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

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

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

- (2) The use of consumer fireworks may occur only between the hours of 10:00 A.M. and 10:00 P.M., with the following exceptions:
- a. On July 4, use is permitted until 12:00 A.M.
 - b. On December 31 and the following January 1, use is permitted from 8:00 A.M. on December 31 until 12:30 A.M. on January 1.
 - c. During the three days of Diwali, use is permitted until 12:00 A.M.
- (3) The use of consumer fireworks is prohibited in the following locations:
- a. In or on the premises of a public or private primary or secondary school, unless the person has written authorization from the school.
 - b. On the campus of a college or university, unless the person has received written authorization from the college or university.
 - c. Within 500 feet of a hospital, veterinary hospital, animal care facility, licensed child care facility, fireworks retailer, fireworks distributor, gas station, or bulk storage facility for petroleum products or other explosive or flammable substances.
- (4) The possession or use of consumer fireworks is prohibited in or on the premises of any public park or public space, except as otherwise permitted by the person, State agency, or unit of local government owning or otherwise controlling the public park or public space.
- (d) No county or city may restrict or exclude the transportation of consumer fireworks across or through the county or city. Nothing in this subsection is intended to prevent reasonable transportation-related restrictions applicable to all vehicles or a class of vehicles regardless of cargo, such as vehicle weight limits or truck route restrictions in accordance with U.S. Department of Transportation regulations.
- "§ 58-82A-90. Sale of consumer fireworks; permit required.**
- (a) No person shall sell consumer fireworks in this State unless the person holds a permit issued under this Part from the Commissioner. The Commissioner shall issue rules to implement this section. Permits of a fireworks retailer shall be posted in a location visible to members of the public visiting the retailer. The Commissioner shall issue a permit to a person who meets the following conditions:
- (1) Is 21 years of age or older.
 - (2) Complies with all of the requirements of this Part.
 - (3) Has not been convicted of a felony and has not received a pardon.
 - (4) Has not been convicted of an offense for a violation of State or federal law, or been found in violation of any municipal ordinance, involving fireworks or explosives within five years prior to the date of the application for the permit.
 - (5) For a consumer fireworks permanent retailer permit applicant only, holds a federal explosives license issued by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives.
 - (6) Maintains at all times public liability and product liability insurance with minimum coverage limits of five million dollars (\$5,000,000) to cover losses, damages, or injury that might occur as a result of the person selling consumer fireworks.
 - (7) Submits the application for a permit no later than April 1 of the year the applicant proposes to begin sales of consumer fireworks under this Part.
 - (8) Provides a lease or evidence of ownership of the site of the proposed fireworks retailer for no less than the duration of the permit. A consumer fireworks temporary retailer operating out of a fireworks retail stand located at a site not owned by the retailer may comply with this subdivision by providing the required authorization under G.S. 58-82A-115. The requirement of this subdivision shall not apply to mixed-use fireworks retailers.

- 1 **(b)** A person issued a permit under this Part shall comply with the following
2 requirements:
- 3 **(1)** Standards. – The permittee must comply with applicable NFPA standards in
4 addition to those set forth in this subsection.
- 5 **(2)** Employees. – All employees of a permittee that is a permanent or temporary
6 fireworks retailer that are engaged in the sale of fireworks or sparkling devices
7 must be at least 18 years of age. All employees of a permittee that is a
8 mixed-use fireworks retailer that are engaged in the sale of consumer
9 fireworks or sparkling devices must be at least 16 years of age.
- 10 **(3)** Fire suppression devices. – Fire suppression devices must meet the following
11 requirements:
- 12 a. The permittee must maintain on the premises a minimum of two
13 portable fire extinguishers with a 2A rating.
- 14 b. The fire extinguishers shall be in two different locations within the
15 premises of the retailer.
- 16 c. At least one of the extinguishers shall be of the pressurized water type.
- 17 **(4)** Required signs. – The permittee shall post signs prohibiting smoking on the
18 premises and the discharge of fireworks and sparkling devices.
- 19 **(5)** Sales restrictions. – Online and mail order sales of consumer fireworks or
20 sparkling devices by a permittee under this Part are unlawful. All sales must
21 take place on the premises of a consumer fireworks permanent retailer,
22 consumer fireworks temporary retailer, or a mixed-use fireworks retailer.
- 23 **(c)** In addition to the requirements set forth in subsections (a) and (b) of this section, a
24 permit issued for a consumer fireworks permanent retailer or consumer fireworks temporary
25 retailer shall include the following requirements:
- 26 **(1)** Setbacks. – Areas within 20 feet of the retailer's premises shall be kept free of
27 combustible debris. The retailer may not be located within:
- 28 a. One hundred fifty feet of retail establishments dispensing flammable
29 or combustible liquids, flammable gas, or flammable liquefied gas.
- 30 b. Three hundred feet of above-ground storage tanks storing flammable
31 or combustible liquids, flammable gas, or flammable liquefied gas.
- 32 c. Three hundred feet of propane dispensing stations.
- 33 **(2)** Smoking prohibited. – Smoking shall not be permitted inside the retailer's
34 premises, subject to the retailer's building location, layout, and restrictions.
- 35 **(3)** Egress requirements. – Means of egress, including aisles, doors, and exit
36 discharge, shall be clear at all times when the retailer is open to the public,
37 and aisles must be at least 48 inches in width.
- 38 **(4)** Fire safety. – The retailer shall create and maintain a fire safety and evacuation
39 plan in a form specified and approved by the Commissioner.
- 40 **(5)** Training. – No fewer than two management or supervisory employees of each
41 permittee subject to this subsection shall be responsible for the annual training
42 of all employees on the function, safe handling, and best practices regarding
43 the safe use of all categories of consumer fireworks. Such training shall be
44 documented on forms approved by the Commissioner and be readily available
45 at the request of the Commissioner.
- 46 **(6)** Siting for consumer fireworks temporary retailer. – Permits for a consumer
47 fireworks temporary retailer shall be subject to the following siting
48 requirements and limitations:
- 49 a. A consumer fireworks temporary retailer permit applicant who does
50 not hold a consumer fireworks permanent retailer permit may obtain a
51 permit as a consumer fireworks temporary retailer if the proposed

location for the retailer is in or immediately adjacent to the parking lot or other outdoor premises of a mixed-use fireworks retailer with a retail floor space of no less than 17,500 square feet.

b. Consumer fireworks permanent retailer permit holders may obtain up to five consumer fireworks temporary retailer permits for each permitted consumer fireworks permanent retailer location. These locations are not subject to the siting restriction of sub-subdivision a. of this subdivision.

c. The consumer fireworks temporary retailer must be located at least 3,750 feet from any consumer fireworks permanent retailer unless the applicant (i) obtains a written waiver from the consumer fireworks permanent retailer and submits a copy of the waiver to the permitting authority or (ii) demonstrates to the permitting authority that it has previously held a temporary retailer license authorized by this Part at that location for at least the prior two years.

(7) Dates of sales. – The consumer fireworks temporary retailer may operate for no more than 30 days in any calendar year. The permitted dates of operation shall be specified in the permit.

(d) Nothing in this section is meant to override any fire code applicable to a structure regulated by this Part. If the fire code imposes a more stringent requirement, the fire code requirement will apply instead of the standards imposed by this section.

"§ 58-82A-95. Permit fees.

The Commissioner may charge an applicant for a permit under G.S. 58-82A-90 the following annual fees:

(1) Five thousand dollars (\$5,000) for a consumer fireworks permanent retailer permit or a consumer fireworks distributor permit and two thousand five hundred dollars (\$2,500) for each annual renewal.

(2) One thousand dollars (\$1,000) for a consumer fireworks temporary retailer permit and five hundred dollars (\$500.00) for each annual renewal.

(3) Five hundred dollars (\$500.00) for a mixed-use fireworks retailer permit and two hundred fifty dollars (\$250.00) for each annual renewal.

"§ 58-82A-100. Prohibition of consumer fireworks.

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

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

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

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

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

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

"§ 58-82A-110. Prohibited activities.

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

- (1) Selling fireworks or explosives not authorized under this Part.
- (2) Selling consumer fireworks or sparkling devices within the State without a valid permit.
- (3) Selling consumer fireworks or sparkling devices to a person who appears to be under the influence of alcohol or drugs.
- (4) Knowingly aiding or assisting in procuring, furnishing, giving, selling, or delivering consumer fireworks or sparkling devices to a person under the age of 18. It is an affirmative defense to any disciplinary action taken pursuant to this subdivision that the permit holder procured, furnished, gave, sold, or delivered consumer fireworks or sparkling devices to a person under the age of 18 in reasonable reliance upon fraudulent proof of age presented to the permit holder.
- (5) Selling consumer fireworks, sparkling devices, or novelties at a fireworks retail stand in violation of G.S. 58-82A-115.

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

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

"§ 58-82A-115. Certain retail stand sales permitted.

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

- (1) If the fireworks retailer does not own the property wherein the fireworks retail stand is located, the owner or custodian of said property shall provide written confirmation that the fireworks retailer is authorized to conduct business on the premises.
- (2) There is adequate parking to accommodate customers of the fireworks retail stand and, if applicable, any other businesses that are on the premises.

"§ 58-82A-120. Labeling and safety requirements.

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

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

SECTION 5.(b) G.S. 160A-183 reads as rewritten:

"§ 160A-183. Regulation of explosive, corrosive, inflammable, or radioactive substances.substances; consumer fireworks excepted.

A city may by ordinance restrict, regulate or prohibit the sale, possession, storage, use, or conveyance of any explosive, corrosive, inflammable, or radioactive substances, or any weapons or instrumentalities of mass death and destruction within the city-city; provided, however, this

section shall not apply to the use and sale of consumer fireworks as authorized in Part 2 of Article 82A of Chapter 58 of the General Statutes."

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

"§ 160A-183.1. Use of consumer fireworks.

A city may, by ordinance, regulate the use of consumer fireworks to the public pursuant to Part 2 of Article 82A of Chapter 58 of the General Statutes. An ordinance adopted pursuant to this section shall become effective on October 1 following the adoption of the ordinance and shall remain in effect until the ordinance is amended or repealed by the governing body of the city. If the ordinance is amended or repealed, the amended ordinance or the repeal of the ordinance shall become effective on October 1 following the date the ordinance was amended or repealed."

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

"Article 2F.

"Tax on Consumer Fireworks.

"§ 105-113.130. Tax on consumer fireworks.

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

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

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

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

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

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

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

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

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

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

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

(2) The remainder to the General Fund."

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

"Article 85B.

"Firefighters' Education Fund.

"§ 58-85B-1. Fund established.

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

"§ 58-85B-2. Use of funds.

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

SECTION 8. Section 5 of this act is effective when this act becomes law, provided that ordinances adopted prior to January 1, 2026, under the authority granted by G.S. 160A-183.1, as enacted by Section 5(c) of this act, shall become effective no earlier than January 1, 2026. Section 6 of this act becomes effective January 1, 2026, and applies to the cost price paid for fireworks on or after that date. The remainder of this act becomes effective January 1, 2026, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.