

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 267

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

James G. Taylor

AN ACT

RELATING TO FIREWORKS; DEFINING PERMISSIBLE FIREWORKS;
PROVIDING THAT CERTAIN STICK-TYPE ROCKETS ARE NOT PERMISSIBLE
FIREWORKS; REMOVING TOY SMOKE DEVICES FROM REGULATION PURSUANT
TO THE FIREWORKS LICENSING AND SAFETY ACT; REQUIRING THE STATE
FIRE MARSHAL TO MAINTAIN A LIST OF PERMISSIBLE FIREWORKS FOR
SALE IN THE STATE; REQUIRING COMPLIANCE WITH NATIONAL SAFETY
STANDARDS FOR CERTAIN FIREWORKS AND PYROTECHNIC ARTICLES;
AMENDING, REPEALING AND ENACTING SECTIONS OF THE FIREWORKS
LICENSING AND SAFETY ACT; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 60-2C-2 NMSA 1978 (being Laws 1989,
Chapter 346, Section 2, as amended) is amended to read:

"60-2C-2. DEFINITIONS. --As used in the Fireworks
Licensing and Safety Act:

. 163302. 2

underscored material = new
[bracketed material] = delete

1 A. "aerial shell" means a cylindrical or spherical
2 cartridge containing a lift charge, burst charge and effect
3 composition. Upon firing from a reloadable tube, the lift
4 charge is consumed and the cartridge is expelled into the air;

5 B. "aerial shell kit-reloadable tube" means a
6 package or kit containing a cardboard, high-density
7 polyethylene or equivalent launching tube and not more than
8 twelve small aerial shells. Each aerial shell is limited to a
9 maximum of sixty grams of total chemical composition,
10 including lift charges, and the maximum diameter of each shell
11 shall not exceed one and three-fourths inches;

12 C. "bosque" means a cottonwood corridor adjacent
13 to a river;

14 ~~[A.]~~ D. "chaser" means a paper or cardboard tube
15 venting out the fuse end of the tube that contains no more
16 than twenty grams of chemical composition and travels along
17 the ground, often producing a whistling effect or other noise;
18 an explosive composition not to exceed fifty milligrams may be
19 included to produce a report;

20 ~~[B.]~~ E. "chemical composition" includes all
21 pyrotechnic and explosive composition contained in a fireworks
22 device, but does not include inert materials such as clay used
23 for plugs or organic matter such as rice hulls used for
24 density control;

25 ~~[C.]~~ F. "cone fountain" means a cardboard or heavy

underscored material = new
[bracketed material] = delete

1 paper cone containing no more than fifty grams of pyrotechnic
2 composition that has the same effect as a cylindrical
3 fountain. When more than one cone is mounted on a common
4 base, total pyrotechnic composition shall not exceed two
5 hundred grams;

6 [D-] G. "crackling device" means a sphere or paper
7 tube that contains no more than twenty grams of pyrotechnic
8 composition that produces a flash of light and a mild, audible
9 crackling effect upon ignition, which effect is not considered
10 to be an explosion. Crackling devices are not subject to the
11 fifty-milligram limit of firecrackers;

12 [E-] H. "cylindrical fountain" means a cylindrical
13 tube containing not more than seventy-five grams of
14 pyrotechnic composition that produces a shower of colored
15 sparks and sometimes a whistling effect or smoke. The device
16 may be provided with a spike for insertion into the ground or
17 a wood or plastic base for placing on the ground or a wood or
18 cardboard handle to be hand held. When more than one tube is
19 mounted on a common base, total pyrotechnic composition shall
20 not exceed two hundred grams;

21 [F-] I. "display distributor" means [~~any~~] a
22 person, firm or corporation selling display fireworks;

23 [G-] J. "display fireworks" means devices
24 primarily intended for commercial displays that are designed
25 to produce visible or audible effects by combustion,

underscored material = new
[bracketed material] = delete

1 deflagration or detonation, including salutes containing more
2 than one hundred thirty milligrams of explosive composition;
3 aerial shells containing more than forty grams of chemical
4 composition exclusive of lift charge; and other exhibition
5 display items that exceed the limits for permissible
6 fireworks;

7 ~~[H.]~~ K. "distributor" means ~~[any]~~ a person, firm
8 or corporation selling fireworks to wholesalers and retailers
9 for resale;

10 ~~[I.]~~ L. "explosive composition" means ~~[any]~~ a
11 chemical compound or mixture, the primary purpose of which is
12 to function by explosion, producing an audible effect in a
13 fireworks device;

14 ~~[J.]~~ M. "firecracker" means a small, paper-wrapped
15 or cardboard tube containing no more than fifty milligrams of
16 explosive composition that produces noise and a flash of
17 light; provided that firecrackers used in aerial devices may
18 contain up to one hundred thirty milligrams of explosive
19 composition per report;

20 ~~[K.]~~ N. "fireworks" means devices intended to
21 produce a visible or audible effect by combustion,
22 deflagration or detonation and are categorized as "permissible
23 fireworks" or "display fireworks", but does not include
24 novelties or theatrical pyrotechnics articles;

25 ~~[L.]~~ O. "flitter sparkler" means a narrow paper

underscored material = new
[bracketed material] = delete

1 tube attached to a stick or wire and filled with no more than
2 five grams of pyrotechnic composition that produces color and
3 sparks upon ignition and the paper at one end of the tube is
4 ignited to make the device function;

5 [M-] P. "ground spinner" means a small, rapidly
6 spinning device containing no more than twenty grams of
7 pyrotechnic composition venting out an orifice usually on the
8 side of the tube that when ignited produces a shower of sparks
9 and color. "Ground spinner" is similar in operation to a
10 wheel, but is intended to be placed flat on the ground and
11 ignited;

12 [N-] Q. "helicopter" or "aerial spinner" means a
13 tube containing no more than twenty grams of chemical
14 composition with a propeller or blade attached that spins
15 rapidly as it rises into the air with a visible or audible
16 effect sometimes produced at or near the height of flight;

17 [O-] R. "illuminating torch" means a cylindrical
18 tube containing no more than one hundred grams of pyrotechnic
19 composition that produces a colored flame upon ignition and
20 may be spiked, based or hand held. When more than one tube is
21 mounted on a common base, total pyrotechnic composition shall
22 not exceed two hundred grams;

23 [P-] S. "manufacturer" means [~~any~~] a person, firm
24 or corporation engaged in the manufacture of fireworks;

25 [Q-] T. "mine" or "shell" means a heavy cardboard

underscored material = new
[bracketed material] = delete

1 or paper tube usually attached to a wooden or plastic base and
2 containing no more than ~~[forty]~~ sixty grams of total chemical
3 composition ~~[plus not more than twenty grams of lift charge]~~,
4 including lift charges, per tube that individually expels
5 pellets of pressed pyrotechnic composition that burn with
6 bright color in a star effect, or other devices propelled into
7 the air, and that contains components producing reports
8 containing a maximum one hundred thirty milligrams of
9 explosive composition per report. A mine may contain more
10 than one tube, but the tubes must fire in sequence upon
11 ignition of one external fuse, must be a dense-packed
12 collection of mine or shell tubes and the total chemical
13 composition, including lift charges, ~~[of a multiple tube~~
14 ~~device]~~ shall not exceed two hundred grams;

15 ~~[R.]~~ U. "missile-type rocket" means a device
16 similar to a stick-type rocket in size, composition and effect
17 that uses fins rather than a stick for guidance and stability
18 and that contains no more than twenty grams of chemical
19 composition;

20 V. "multiple tube devices" means a device that
21 contains more than one cardboard tube and the ignition of one
22 external fuse that causes all of the tubes to function in
23 sequence. The tubes are individually attached to a wood or
24 plastic base or are dense-packed and are held together by
25 glue, wire, string or other means that securely hold the tubes

underscored material = new
[bracketed material] = delete

1 together during operation. A maximum total weight of five
2 hundred grams of pyrotechnic composition shall be permitted;
3 provided that the tubes are securely attached to a wood or
4 plastic base and are separated from each other on the base by
5 a distance of at least one-half inch. The connecting fuses on
6 multiple tube devices shall be fused in sequence so that the
7 tubes fire sequentially rather than all at once;

8 W. "novelties" means devices containing small
9 amounts of pyrotechnic or explosive composition that produce
10 limited visible or audible effects, including party poppers,
11 snappers, toy smoke devices, snakes, glowworms, sparklers or
12 toy caps, and devices intended to produce unique visual or
13 audible effects that contain sixteen milligrams or less of
14 explosive composition and limited amounts of other pyrotechnic
15 composition, including cigarette loads, trick matches,
16 explosive auto alarms and other trick noisemakers;

17 ~~[S.]~~ X. "permissible fireworks" or "consumer
18 fireworks" means fireworks legal for sale to and use in New
19 Mexico by the general public that comply with the latest
20 construction, performance, composition and labeling
21 requirements established by the United States consumer product
22 safety commission and the United States department of
23 transportation;

24 ~~[T.]~~ Y. "pyrotechnic composition" means a chemical
25 mixture that on burning and without explosion produces visible

underscored material = new
[bracketed material] = delete

1 or brilliant displays or bright lights or whistles or motion;

2 [U-] Z. "retailer" means [~~any~~] a person, firm or
3 corporation purchasing fireworks for resale to consumers;

4 [V-] AA. "roman candle" means a heavy paper or
5 cardboard tube containing no more than twenty grams of
6 chemical composition that individually expels pellets of
7 pressed pyrotechnic composition that burn with bright color in
8 a star effect;

9 [W-] BB. "specialty retailer" means [~~any~~] a
10 person, firm or corporation purchasing permissible fireworks
11 for year-round resale in permanent retail stores whose primary
12 business is tourism;

13 [X-] CC. "stick-type rocket" means a cylindrical
14 tube containing no more than twenty grams of chemical
15 composition with a wooden stick attached for guidance and
16 stability that rises into the air upon ignition and produces a
17 burst of color or sound at or near the height of flight;

18 DD. "theatrical pyrotechnics articles" means a
19 pyrotechnic device for professional use in the entertainment
20 industry similar to permissible fireworks or consumer
21 fireworks in chemical composition and construction but not
22 intended and labeled for consumer use;

23 [Y-] EE. "toy smoke device" means a small plastic
24 or paper item containing no more than one hundred grams of
25 pyrotechnic composition that produces white or colored smoke

underscored material = new
[bracketed material] = delete

1 as the primary effect;

2 [Z-] FF. "wheel" means a pyrotechnic device that
3 is made to attach to a post or other surface and that
4 revolves, producing a shower of color and sparks and sometimes
5 a whistling effect, and that may have one or more drivers,
6 each of which contains no more than sixty grams of pyrotechnic
7 composition and the total wheel contains no more than two
8 hundred grams total pyrotechnic composition;

9 [AA-] GG. "wholesaler" means [any] a person, firm
10 or corporation purchasing fireworks for resale to retailers;
11 and

12 [BB-] HH. "wildlands" means [any] lands covered
13 wholly or in part by timber, brush or native grass."

14 Section 2. A new section of the Fireworks Licensing and
15 Safety Act is enacted to read:

16 "[NEW MATERIAL] PERMISSIBLE FIREWORKS FOR SALE IN THE
17 STATE--LIST.--

18 A. The state fire marshal shall compile and
19 maintain a current list of permissible fireworks held for sale
20 in the state by each licensed wholesaler.

21 B. Annually, on or before January 1, the state
22 fire marshal shall transmit a preliminary list to each
23 licensed wholesaler. Annually, on or before May 15, a
24 licensed wholesaler shall review the preliminary list, update
25 the list according to the permissible fireworks the wholesaler

. 163302. 2

underscored material = new
[bracketed material] = delete

1 currently holds for sale in the state and certify the list to
2 the state fire marshal.

3 C. Annually, on or before June 15, the state fire
4 marshal shall transmit the completed list to all local fire
5 chiefs and fire marshals in the state.

6 D. The state fire marshal shall prescribe any
7 rules, forms and instructions necessary to implement the
8 requirements of this section."

9 Section 3. Section 60-2C-7 NMSA 1978 (being Laws 1989,
10 Chapter 346, Section 7, as amended) is amended to read:

11 "60-2C-7. PERMISSIBLE FIREWORKS. --

12 A. Permissible fireworks are:

13 (1) ground and hand-held sparkling [~~and~~
14 ~~smoke~~] devices:

15 (a) cone fountains;

16 (b) crackling devices;

17 (c) cylindrical fountains;

18 (d) flitter sparklers;

19 (e) ground spinners;

20 (f) illuminating torches; and

21 [~~(g) toy smoke devices; and~~

22 ~~(h)~~] (g) wheels;

23 (2) aerial devices:

24 (a) aerial shell kit-reloadable tubes;

25 [~~(a)~~] (b) aerial spinners;

underscored material = new
[bracketed material] = delete

1 [~~(b)~~] (c) helicopters;
2 [~~(c)~~] (d) mines;
3 [~~(d)~~] (e) missile-type rockets; [~~and~~]
4 (f) multiple tube devices;
5 [~~(e)~~] (g) roman candles;
6 [~~(f)~~] (h) shells; and
7 [~~(g)~~] (i) stick-type rockets, except as
8 provided in Subsection B of this section; and

9 (3) ground audible devices:
10 (a) chasers; and
11 (b) firecrackers.

12 B. The following types of fireworks are not
13 permissible fireworks:

14 (1) stick-type rockets having a tube less
15 than [~~a one-quarter-inch inside diameter~~] five-eighths inch
16 outside diameter and less than three and one-half inches in
17 length are not permissible fireworks; and

18 (2) fireworks intended for sale to the public
19 that produce an audible effect, other than a whistle, by a
20 charge of more than one hundred thirty milligrams of explosive
21 composition per report.

22 C. A municipality or county shall not by ordinance
23 regulate and prohibit the sale or use of any permissible
24 firework except aerial devices and ground audible devices. "

25 Section 4. Section 60-2C-8 NMSA 1978 (being Laws 1989,
 . 163302. 2

underscored material = new
[bracketed material] = delete

1 Chapter 346, Section 8, as amended) is amended to read:

2 "60-2C-8. RETAIL SALES OR STORAGE OF FIREWORKS--
3 REGULATED ACTIVITIES. --

4 A. [~~No~~] Fireworks may not be sold at retail
5 without a retail permit. The permit shall be at the location
6 where the retail sale takes place.

7 B. All places where fireworks are stored, sold or
8 displayed shall be in compliance with the code of safety
9 standards published by the national fire protection
10 association for the manufacture, transportation, storage and
11 retail sales of fireworks and pyrotechnics articles.

12 [~~B.-~~] C. It is unlawful to offer for sale or to
13 sell [~~any~~] fireworks to children under the age of sixteen
14 years or to [~~any~~] an intoxicated person.

15 [~~C.-~~] D. At all places where fireworks are stored,
16 sold or displayed, the words "NO SMOKING" shall be posted in
17 letters at least four inches in height. Smoking, open flames
18 and any ignition source are prohibited within twenty-five feet
19 of [~~any~~] fireworks stock.

20 [~~D.—No~~] E. Fireworks shall not be stored, kept,
21 sold or discharged within fifty feet of [~~any~~] a gasoline pump
22 or gasoline bulk station or [~~any~~] a building in which gasoline
23 or volatile liquids are sold in quantities in excess of one
24 gallon, except in stores where cleaners, paints and oils are
25 handled in sealed containers only.

underscored material = new
[bracketed material] = delete

1 ~~[E.]~~ F. All fireworks permittees and licensees
2 shall keep and maintain upon the premises a fire extinguisher
3 bearing an underwriters laboratories incorporated rated
4 capacity of at least five-pound ABC per five hundred square
5 feet of space used for fireworks sales or storage.

6 ~~[F.]~~ G. Sales clerks and ancillary personnel
7 employed at retail locations where fireworks are sold shall be
8 at least sixteen years of age. A sales clerk [~~who is at least~~
9 ~~sixteen years of age~~] shall be on duty to serve consumers at
10 the time of purchase or delivery. Permissible fireworks may
11 be offered for sale only at state-permitted or state-licensed
12 retail locations.

13 ~~[G.—No]~~ H. Fireworks shall not be discharged
14 within one hundred fifty feet of [~~any~~] a fireworks retail
15 sales location.

16 ~~[H.—No]~~ I. Fireworks shall not be sold or used on
17 state forest land, wildlands or a bosque.

18 ~~[I.—No]~~ J. A person shall not ignite [~~any~~]
19 fireworks within a motor vehicle or throw fireworks from a
20 motor vehicle, nor shall [~~any~~] a person place or throw [~~any~~]
21 ignited [~~article of~~] fireworks into or at a motor vehicle or
22 at or near [~~any~~] a person or group of people.

23 ~~[J.—Any]~~ K. Fireworks devices that are readily
24 accessible to handling by consumers or purchasers in a retail
25 sales location shall have their exposed fuses protected in a

underscored material = new
[bracketed material] = delete

1 manner to protect against accidental ignition of an item by a
2 spark, cigarette ash or other ignition source. If the fuse is
3 a thread-wrapped safety fuse [~~which~~] that has been coated with
4 a nonflammable coating, only the outside end of the safety
5 fuse shall be covered. If the fuse is not a safety fuse,
6 [~~then~~] the entire fuse shall be covered.

7 [~~K-~~] L. Permissible fireworks may be sold at
8 retail between June 20 and July 6 of each year, [~~and~~] six days
9 preceding and including new year's day, [~~and~~] three days
10 preceding and including Chinese new year, the sixteenth of
11 September and cinco de Mayo of each year, except that
12 permissible fireworks may be sold all year in permanent retail
13 stores whose primary business is tourism."

14 Section 5. A new section of the Fireworks Licensing and
15 Safety Act is enacted to read:

16 "[NEW MATERIAL] THEATRICAL PYROTECHNICS ARTICLES--
17 COMPLIANCE WITH NATIONAL FIRE PROTECTION ASSOCIATION STANDARDS
18 REQUIRED.--All places where theatrical pyrotechnics articles
19 are manufactured, stored, sold or displayed shall be in
20 compliance with the code of safety standards published by the
21 national fire protection association for the use of
22 pyrotechnics before a proximate audience."

23 Section 6. REPEAL.--Section 60-2C-2.1 NMSA 1978 (being
24 Laws 1997, Chapter 17, Section 8) is repealed.

25 Section 7. EMERGENCY.--It is necessary for the public

underscored material = new
~~[bracketed material] = delete~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

peace, health and safety that this act take effect
immediately.

- 15 -