

1 SENATE BILL 458

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Phil A. Griego

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10 AN ACT

11 RELATING TO PUBLIC SAFETY; AMENDING THE FIREWORKS LICENSING AND
12 SAFETY ACT TO ADD FIREWORKS THAT MAY BE BANNED; DECLARING AN
13 EMERGENCY.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

18 "60-2C-2. DEFINITIONS.--As used in the Fireworks
19 Licensing and Safety Act:

20 A. "aerial device" means aerial shell
21 kit-reloadable tubes, aerial spinners, helicopters, mines,
22 missile-type rockets, multiple tube devices, roman candles,
23 shells, stick-type rockets and similar devices;

24 B. "aerial shell" means a cylindrical or spherical
25 cartridge containing a lift charge, burst charge and effect

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1 composition. Upon firing from a reloadable tube, the lift
2 charge is consumed and the cartridge is expelled into the air;

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

10 ~~[G-]~~ D. "bosque" means a cottonwood corridor
11 adjacent to a river;

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

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

23 ~~[F-]~~ G. "cone fountain" means a cardboard or heavy
24 paper cone containing no more than fifty grams of pyrotechnic
25 composition that has the same effect as a cylindrical fountain.

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1 When more than one cone is mounted on a common base, total
2 pyrotechnic composition shall not exceed two hundred grams;

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

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

18 ~~[I.]~~ J. "display distributor" means a person, firm
19 or corporation selling display fireworks;

20 ~~[J.]~~ K. "display fireworks" means devices primarily
21 intended for commercial displays that are designed to produce
22 visible or audible effects by combustion, deflagration or
23 detonation, including salutes containing more than one hundred
24 thirty milligrams of explosive composition; aerial shells
25 containing more than forty grams of chemical composition

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1 exclusive of lift charge; and other exhibition display items
2 that exceed the limits for permissible fireworks;

3 ~~[K-]~~ L. "distributor" means a person, firm or
4 corporation selling fireworks to wholesalers and retailers for
5 resale;

6 ~~[H-]~~ M. "explosive composition" means a chemical
7 compound or mixture, the primary purpose of which is to
8 function by explosion, producing an audible effect in a
9 fireworks device;

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

16 ~~[N-]~~ O. "fireworks" means devices intended to
17 produce a visible or audible effect by combustion, deflagration
18 or detonation and are categorized as "permissible fireworks" or
19 "display fireworks", but does not include novelties or
20 theatrical pyrotechnics articles;

21 ~~[O-]~~ P. "flitter sparkler" means a narrow paper
22 tube attached to a stick or wire and filled with no more than
23 five grams of pyrotechnic composition that produces color and
24 sparks upon ignition and the paper at one end of the tube is
25 ignited to make the device function;

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

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

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

19 [S-] T. "manufacturer" means a person, firm or
20 corporation engaged in the manufacture of fireworks;

21 [F-] U. "mine" or "shell" means a heavy cardboard
22 or paper tube usually attached to a wooden or plastic base and
23 containing no more than sixty grams of total chemical
24 composition, including lift charges, per tube that individually
25 expels pellets of pressed pyrotechnic composition that burn

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1 with bright color in a star effect, or other devices propelled
2 into the air, and that contains components producing reports
3 containing a maximum one hundred thirty milligrams of explosive
4 composition per report. A mine may contain more than one tube,
5 but the tubes must fire in sequence upon ignition of one
6 external fuse, must be a dense-packed collection of mine or
7 shell tubes and the total chemical composition, including lift
8 charges, shall not exceed two hundred grams;

9 [U-] V. "missile-type rocket" means a device
10 similar to a stick-type rocket in size, composition and effect
11 that uses fins rather than a stick for guidance and stability
12 and that contains no more than twenty grams of chemical
13 composition;

14 [V-] W. "multiple tube devices" means a device that
15 contains more than one cardboard tube and the ignition of one
16 external fuse that causes all of the tubes to function in
17 sequence. The tubes are individually attached to a wood or
18 plastic base or are dense-packed and are held together by glue,
19 wire, string or other means that securely hold the tubes
20 together during operation. A maximum total weight of five
21 hundred grams of pyrotechnic composition shall be permitted;
22 provided that the tubes are securely attached to a wood or
23 plastic base and are separated from each other on the base by a
24 distance of at least one-half inch. The connecting fuses on
25 multiple tube devices shall be fused in sequence so that the

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1 tubes fire sequentially rather than all at once;

2 [W.] X. "novelties" means devices containing small
3 amounts of pyrotechnic or explosive composition that produce
4 limited visible or audible effects, including party poppers,
5 snappers, toy smoke devices, snakes, glowworms, sparklers or
6 toy caps, and devices intended to produce unique visual or
7 audible effects that contain sixteen milligrams or less of
8 explosive composition and limited amounts of other pyrotechnic
9 composition, including cigarette loads, trick matches,
10 explosive auto alarms and other trick noisemakers;

11 [X.] Y. "permissible fireworks" or "consumer
12 fireworks" means fireworks legal for sale to and use in New
13 Mexico by the general public that comply with the latest
14 construction, performance, composition and labeling
15 requirements established by the United States consumer product
16 safety commission and the United States department of
17 transportation;

18 [Y.] Z. "pyrotechnic composition" means a chemical
19 mixture that on burning and without explosion produces visible
20 or brilliant displays or bright lights or whistles or motion;

21 [Z.] AA. "retailer" means a person, firm or
22 corporation purchasing fireworks for resale to consumers;

23 [AA.] BB. "roman candle" means a heavy paper or
24 cardboard tube containing no more than twenty grams of chemical
25 composition that individually expels pellets of pressed

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1 pyrotechnic composition that burn with bright color in a star
2 effect;

3 ~~[BB.]~~ CC. "specialty retailer" means a person, firm
4 or corporation purchasing permissible fireworks for year-round
5 resale in permanent retail stores whose primary business is
6 tourism;

7 ~~[GG.]~~ DD. "stick-type rocket" means a cylindrical
8 tube containing no more than twenty grams of chemical
9 composition with a wooden stick attached for guidance and
10 stability that rises into the air upon ignition and produces a
11 burst of color or sound at or near the height of flight;

12 ~~[DD.]~~ EE. "theatrical pyrotechnics articles" means
13 a pyrotechnic device for professional use in the entertainment
14 industry similar to permissible fireworks or consumer fireworks
15 in chemical composition and construction but not intended and
16 labeled for consumer use;

17 ~~[EE.]~~ FF. "toy smoke device" means a small plastic
18 or paper item containing no more than one hundred grams of
19 pyrotechnic composition that produces white or colored smoke as
20 the primary effect;

21 ~~[FF.]~~ GG. "wheel" means a pyrotechnic device that
22 is made to attach to a post or other surface and that revolves,
23 producing a shower of color and sparks and sometimes a
24 whistling effect, and that may have one or more drivers, each
25 of which contains no more than sixty grams of pyrotechnic

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1 composition and the total wheel contains no more than two
2 hundred grams total pyrotechnic composition;

3 [GG.] HH. "wholesaler" means a person, firm or
4 corporation purchasing fireworks for resale to retailers; and

5 [HH.] II. "wildlands" means lands owned by the
6 governing body of a county or municipality that are designated
7 for public recreational purposes and that are covered wholly or
8 in part by timber, brush or native grass."

9 SECTION 2. Section 60-2C-8.1 NMSA 1978 (being Laws 1997,
10 Chapter 17, Section 9, as amended) is amended to read:

11 "60-2C-8.1. EXCEPTIONAL, EXTREME OR SEVERE DROUGHT
12 CONDITIONS--RESTRICTED SALE AND USE.--

13 A. The governing body of a municipality may hold a
14 hearing to determine if fireworks restrictions should be
15 imposed within the boundaries of the incorporated municipality
16 affected by exceptional, extreme or severe drought conditions.
17 The findings of the governing body shall be based on current
18 drought indices published by the [~~national weather service~~]
19 United States drought monitor and any other relevant
20 information supplied by the [~~United States forest service~~]
21 southwest coordination center.

22 B. Pursuant to any hearing under Subsection A of
23 this section, the governing body of a municipality shall issue
24 a proclamation declaring exceptional, extreme or severe drought
25 conditions within the boundaries of the incorporated

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1 municipality if the governing body determines such conditions
2 exist. The governing body's proclamation shall:

3 (1) [~~shall~~] ban the sale and use of
4 [~~missile-type rockets, helicopters, aerial spinners, stick-type~~
5 ~~rockets~~] aerial devices and ground-audible devices within the
6 affected drought area; and

7 (2) [~~shall~~] give the governing body the power
8 to:

9 (a) limit the use within its
10 jurisdiction of any fireworks not listed in Paragraph (1) of
11 this subsection to areas that are paved or barren or that have
12 a readily accessible source of water for use by the homeowner
13 or the general public;

14 (b) ban the use of all fireworks within
15 wildlands in its jurisdiction, after consultation with the
16 state forester; and

17 (c) ban or restrict the sale or use of
18 display fireworks.

19 C. The municipal governing body's proclamation
20 declaring an exceptional, extreme or severe drought condition
21 shall be issued no less than twenty days prior to a holiday for
22 which fireworks may be sold. The proclamation shall explain
23 restrictions on the sale or use of fireworks and permitted
24 sales or uses of fireworks.

25 D. A municipal governing body's proclamation shall

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1 be effective for thirty days and the governing body may issue
2 succeeding proclamations if exceptional, extreme or severe
3 drought conditions warrant. A proclamation may be modified or
4 rescinded within its thirty-day period by the governing body
5 upon conducting an emergency hearing to determine if weather
6 conditions have improved.

7 E. The governing body of a county may hold a
8 hearing to determine if fireworks restrictions should be
9 imposed within the unincorporated portions of the county
10 affected by exceptional, extreme or severe drought conditions.
11 The findings of the governing body shall be based on current
12 drought indices published by the [~~national weather service~~]
13 United States drought monitor and any other relevant
14 information supplied by the [~~United States forest service~~]
15 southwest coordination center.

16 F. Pursuant to any hearing under Subsection E of
17 this section, the governing body of a county shall issue a
18 proclamation declaring exceptional, extreme or severe drought
19 conditions within the unincorporated portions of the county if
20 the governing body determines such conditions exist. The
21 governing body's proclamation shall:

22 (1) [~~shall~~] ban the sale and use of
23 [~~missile-type rockets, helicopters, aerial spinners, stick-type~~
24 ~~rockets~~] aerial devices and ground-audible devices within the
25 affected drought area; and

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1 (2) [~~shall~~] give the governing body the power
2 to:

3 (a) limit the use within its
4 jurisdiction of any fireworks not listed in Paragraph (1) of
5 this subsection to areas that are paved or barren or that have
6 a readily accessible source of water for use by the homeowner
7 or the general public;

8 (b) ban the use of all fireworks within
9 wildlands in its jurisdiction, after consultation with the
10 state forester; and

11 (c) ban or restrict the sale or use of
12 display fireworks.

13 G. The county governing body's proclamation
14 declaring an exceptional, extreme or severe drought condition
15 shall be issued no less than twenty days prior to a holiday for
16 which fireworks may be sold. The proclamation shall explain
17 restrictions on the sale or use of fireworks and permitted
18 sales or uses of fireworks.

19 H. Except as otherwise provided in this subsection,
20 a proclamation shall be effective for thirty days, and the
21 county governing body may issue succeeding proclamations if
22 exceptional, extreme or severe drought conditions warrant. A
23 proclamation may be modified or rescinded within its thirty-day
24 period by the governing body upon conducting an emergency
25 hearing to determine if weather conditions have improved.

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1 I. Upon request of a governing body of a
2 municipality or county, the forestry division of the energy,
3 minerals and natural resources department is authorized to
4 adopt and enforce emergency rules within the municipality or
5 county that completely ban or partially ban or restrict the
6 sale or use of all fireworks within the municipality or county
7 requesting the emergency rules if extreme fire danger exists
8 within the municipality or county, or in a portion of the
9 municipality or county.

10 J. In adopting emergency rules, the forestry
11 division shall:

12 (1) use the southwest coordination center as
13 the source of information for the national fire danger rating
14 system;

15 (2) provide that the rules shall be in effect
16 for no longer than thirty days and be automatically repealed at
17 the end of this time period;

18 (3) modify or rescind the rules by emergency
19 rulemaking within twenty-four hours while the rules are in
20 effect if the conditions warranting the rules no longer exist;
21 and

22 (4) request that any adjacent Indian nations,
23 tribes or pueblos consider imposing the same or similar
24 emergency rules for areas within their jurisdiction.

25 K. The forestry division may reissue and enforce an

1 emergency rule after the expiration of the initial thirty days
2 if conditions pursuant to Subsection I of this section continue
3 within the municipality or county requesting the emergency
4 rule."

5 SECTION 3. EMERGENCY.--It is necessary for the public
6 peace, health and safety that this act take effect immediately.

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