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SENATE BILL 173

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Dede Feldman

AN ACT

RELATING TO FIREWORKS; LIMITING THE SALE AND USE OF FIREWORKS  
DURING PERIODS OF EXTREME OR SEVERE DROUGHT; 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:

A. "bosque" means a cottonwood corridor adjacent to  
a river;

~~[A.]~~ B. "chaser" means a paper or cardboard tube  
venting out the fuse end of the tube that contains no more than  
twenty grams of chemical composition and travels along the  
ground, often producing a whistling effect or other noise; an

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1 explosive composition not to exceed fifty milligrams may be  
2 included to produce a report;

3 ~~[B.]~~ C. "chemical composition" includes all  
4 pyrotechnic and explosive composition contained in a fireworks  
5 device, but does not include inert materials such as clay used  
6 for plugs or organic matter such as rice hulls used for density  
7 control;

8 ~~[C.]~~ D. "cone fountain" means a cardboard or heavy  
9 paper cone containing no more than fifty grams of pyrotechnic  
10 composition that has the same effect as a cylindrical fountain.  
11 When more than one cone is mounted on a common base, total  
12 pyrotechnic composition shall not exceed two hundred grams;

13 ~~[D.]~~ E. "crackling device" means a sphere or paper  
14 tube that contains no more than twenty grams of pyrotechnic  
15 composition that produces a flash of light and a mild, audible  
16 crackling effect upon ignition, which effect is not considered  
17 to be an explosion. Crackling devices are not subject to the  
18 fifty-milligram limit of firecrackers;

19 ~~[E.]~~ F. "cylindrical fountain" means a cylindrical  
20 tube containing not more than seventy-five grams of pyrotechnic  
21 composition that produces a shower of colored sparks and  
22 sometimes a whistling effect or smoke. The device may be  
23 provided with a spike for insertion into the ground or a wood  
24 or plastic base for placing on the ground or a wood or  
25 cardboard handle to be hand-held. When more than one tube is

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1 mounted on a common base, total pyrotechnic composition shall  
2 not exceed two hundred grams;

3 ~~[F.]~~ G. "display distributor" means ~~[any]~~ a person,  
4 firm or corporation selling display fireworks;

5 ~~[G.]~~ H. "display fireworks" means devices primarily  
6 intended for commercial displays that are designed to produce  
7 visible or audible effects by combustion, deflagration or  
8 detonation, including salutes containing more than one hundred  
9 thirty milligrams of explosive composition; aerial shells  
10 containing more than forty grams of chemical composition  
11 exclusive of lift charge; and other exhibition display items  
12 that exceed the limits for permissible fireworks;

13 ~~[H.]~~ I. "distributor" means ~~[any]~~ a person, firm or  
14 corporation selling fireworks to wholesalers and retailers for  
15 resale;

16 J. "energy release component" means an index based  
17 on the estimated potential available energy released per unit-  
18 area in the flaming front of a fire;

19 ~~[I.]~~ K. "explosive composition" means ~~[any]~~ a  
20 chemical compound or mixture, the primary purpose of which is  
21 to function by explosion, producing an audible effect in a  
22 fireworks device;

23 ~~[J.]~~ L. "firecracker" means a small, paper-wrapped  
24 or cardboard tube containing no more than fifty milligrams of  
25 explosive composition that produces noise and a flash of light;

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1 provided that firecrackers used in aerial devices may contain  
2 up to one hundred thirty milligrams of explosive composition  
3 per report;

4 [K-] M. "fireworks" means devices intended to  
5 produce a visible or audible effect by combustion, deflagration  
6 or detonation and are categorized as "permissible fireworks" or  
7 "display fireworks";

8 [L-] N. "flitter sparkler" means a narrow paper  
9 tube attached to a stick or wire and filled with no more than  
10 five grams of pyrotechnic composition that produces color and  
11 sparks upon ignition and the paper at one end of the tube is  
12 ignited to make the device function;

13 [M-] O. "ground spinner" means a small, rapidly  
14 spinning device containing no more than twenty grams of  
15 pyrotechnic composition venting out an orifice usually on the  
16 side of the tube that when ignited produces a shower of sparks  
17 and color. "Ground spinner" is similar in operation to a  
18 wheel, but is intended to be placed flat on the ground and  
19 ignited;

20 [N-] P. "helicopter" or "aerial spinner" means a  
21 tube containing no more than twenty grams of chemical  
22 composition with a propeller or blade attached that spins  
23 rapidly as it rises into the air with a visible or audible  
24 effect sometimes produced at or near the height of flight;

25 [O-] Q. "illuminating torch" means a cylindrical

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1 tube containing no more than one hundred grams of pyrotechnic  
2 composition that produces a colored flame upon ignition and may  
3 be spiked, based or hand-held. When more than one tube is  
4 mounted on a common base, total pyrotechnic composition shall  
5 not exceed two hundred grams;

6 [P.-] R. "manufacturer" means [~~any~~] a person, firm  
7 or corporation engaged in the manufacture of fireworks;

8 [Q.-] S. "mine" or "shell" means a heavy cardboard  
9 or paper tube usually attached to a wooden or plastic base and  
10 containing no more than forty grams of chemical composition  
11 plus not more than twenty grams of lift charge per tube that  
12 individually expels pellets of pressed pyrotechnic composition  
13 that burn with bright color in a star effect, or other devices  
14 propelled into the air, and that contains components producing  
15 reports containing a maximum one hundred thirty milligrams of  
16 explosive composition per report. A mine may contain more than  
17 one tube, but the tubes must fire in sequence upon ignition of  
18 one external fuse, and the total chemical composition,  
19 including lift charges, of a multiple tube device shall not  
20 exceed two hundred grams;

21 [R.-] T. "missile-type rocket" means a device  
22 similar to a stick-type rocket in size, composition and effect  
23 that uses fins rather than a stick for guidance and stability  
24 and that contains no more than twenty grams of chemical  
25 composition;

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1           ~~[S.]~~ U. "permissible fireworks" means fireworks  
2 legal for sale to and use in New Mexico by the general public;

3           ~~[T.]~~ V. "pyrotechnic composition" means a chemical  
4 mixture that on burning and without explosion produces visible  
5 or brilliant displays or bright lights or whistles or motion;

6           ~~[U.]~~ W. "retailer" means ~~[any]~~ a person, firm or  
7 corporation purchasing fireworks for resale to consumers;

8           ~~[V.]~~ X. "roman candle" means a heavy paper or  
9 cardboard tube containing no more than twenty grams of chemical  
10 composition that individually expels pellets of pressed  
11 pyrotechnic composition that burn with bright color in a star  
12 effect;

13           ~~[W.]~~ Y. "specialty retailer" means ~~[any]~~ a person,  
14 firm or corporation purchasing permissible fireworks for year-  
15 round resale in permanent retail stores whose primary business  
16 is tourism;

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

22           ~~[Y.]~~ AA. "toy smoke device" means a small plastic  
23 or paper item containing no more than one hundred grams of  
24 pyrotechnic composition that produces white or colored smoke as  
25 the primary effect;

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

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

11           ~~[BB.]~~ DD. "wildlands" means ~~[any]~~ lands covered  
12 wholly or in part by timber, brush or native grass. "

13           Section 2. Section 60-2C-8 NMSA 1978 (being Laws 1989,  
14 Chapter 346, Section 8, as amended) is amended to read:

15           "60-2C-8. RETAIL SALES OR STORAGE OF FIREWORKS--REGULATED  
16 ACTIVITIES.--

17           A. No fireworks may be sold at retail without a  
18 retail permit. The permit shall be at the location where the  
19 retail sale takes place.

20           B. It is unlawful to offer for sale or to sell  
21 ~~[any]~~ fireworks to children under the age of sixteen years or  
22 to ~~[any]~~ an intoxicated person.

23           C. At all places where fireworks are stored, sold  
24 or displayed, the words "NO SMOKING" shall be posted in letters  
25 at least four inches in height. Smoking, open flames and any

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1 ignition source are prohibited within twenty-five feet of [~~any~~]  
2 fireworks stock.

3 D. No fireworks shall be stored, kept, sold or  
4 discharged within fifty feet of [~~any~~] a gasoline pump or  
5 gasoline bulk station or [~~any~~] a building in which gasoline or  
6 volatile liquids are sold in quantities in excess of one  
7 gallon, except in stores where cleaners, paints and oils are  
8 handled in sealed containers only.

9 E. All fireworks permittees and licensees shall  
10 keep and maintain upon the premises a fire extinguisher bearing  
11 an underwriters laboratories incorporated rated capacity of at  
12 least five-pound ABC per five hundred square feet of space used  
13 for fireworks sales or storage.

14 F. A sales clerk who is at least sixteen years of  
15 age shall be on duty to serve consumers at the time of purchase  
16 or delivery. Permissible fireworks may be offered for sale  
17 only at state-permitted or state-licensed retail locations.

18 G. No fireworks shall be discharged within one  
19 hundred fifty feet of [~~any~~] a fireworks retail sales location.

20 H. No fireworks shall be sold or used on state  
21 forest land, wildlands or bosque.

22 I. No person shall ignite [~~any~~] fireworks within a  
23 motor vehicle or throw fireworks from a motor vehicle, nor  
24 shall any person place or throw [~~any~~] ignited [~~article of~~]  
25 fireworks into or at a motor vehicle or at or near [~~any~~] a

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1 person or group of people.

2 J. ~~[Any]~~ Fireworks devices that are readily  
3 accessible to handling by consumers or purchasers in a retail  
4 sales location shall have their exposed fuses protected in a  
5 manner to protect against accidental ignition of an item by a  
6 spark, cigarette ash or other ignition source. If the fuse is  
7 a thread-wrapped safety fuse ~~[which]~~ that has been coated with  
8 a nonflammable coating, only the outside end of the safety fuse  
9 shall be covered. If the fuse is not a safety fuse, then the  
10 entire fuse shall be covered.

11 K. Permissible fireworks may be sold at retail  
12 between June ~~[20]~~ 24 and July ~~[6]~~ 5 of each year, ~~[and]~~ six  
13 days preceding and including new year's day, ~~[and]~~ three days  
14 preceding and including Chinese new year, the sixteenth of  
15 September and cinco de Mayo of each year, except that  
16 permissible fireworks may be sold all year in permanent retail  
17 stores whose primary business is tourism "

18 Section 3. Section 60-2C-8.1 NMSA 1978 (being Laws 1997,  
19 Chapter 17, Section 9, as amended) is amended to read:

20 "60-2C-8.1. EXTREME OR SEVERE DROUGHT CONDITIONS--  
21 RESTRICTED SALE AND USE. --

22 ~~[A. The governing body of a municipality may hold a~~  
23 ~~hearing to determine if fireworks restrictions should be~~  
24 ~~imposed within the boundaries of the incorporated municipality~~  
25 ~~affected by extreme or severe drought conditions. The findings~~

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1 ~~of the governing body shall be based on current drought indices~~  
2 ~~published by the national weather service and any other~~  
3 ~~relevant information supplied by the United States forest~~  
4 ~~service.~~

5 ~~B. Pursuant to any hearing under Subsection A of~~  
6 ~~this section, the governing body of a municipality shall issue~~  
7 ~~a proclamation declaring extreme or severe drought conditions~~  
8 ~~within the boundaries of the incorporated municipality if the~~  
9 ~~governing body determines such conditions exist. The governing~~  
10 ~~body's proclamation:~~

11 ~~(1) shall ban the sale and use of missile-type~~  
12 ~~rockets, helicopters, aerial spinners, stick-type rockets and~~  
13 ~~ground audible devices within the affected drought area; and~~

14 ~~(2) shall give the governing body the power~~  
15 ~~to:~~

16 ~~(a) limit the use within its~~  
17 ~~jurisdiction of any fireworks not listed in Paragraph (1) of~~  
18 ~~this subsection to areas that are paved or barren or that have~~  
19 ~~a readily accessible source of water for use by the homeowner~~  
20 ~~or the general public;~~

21 ~~(b) ban the use of all fireworks within~~  
22 ~~wildlands in its jurisdiction, after consultation with the~~  
23 ~~state forester; and~~

24 ~~(c) ban or restrict the sale or use of~~  
25 ~~display fireworks.~~

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1                   C. ~~The municipal governing body's proclamation~~  
2 ~~declaring an extreme or severe drought condition shall be~~  
3 ~~issued no less than twenty days prior to a holiday for which~~  
4 ~~fireworks may be sold. The proclamation shall explain~~  
5 ~~restrictions on the sale or use of fireworks and permitted~~  
6 ~~sales or uses of fireworks.~~

7                   D. ~~A municipal governing body's proclamation shall~~  
8 ~~be effective for thirty days and the governing body may issue~~  
9 ~~succeeding proclamations if extreme or severe drought~~  
10 ~~conditions warrant. A proclamation may be modified or~~  
11 ~~rescinded within its thirty-day period by the governing body~~  
12 ~~upon conducting an emergency hearing to determine if weather~~  
13 ~~conditions have improved.~~

14                   E. ~~The governing body of a county may hold a~~  
15 ~~hearing to determine if fireworks restrictions should be~~  
16 ~~imposed within the unincorporated portions of the county~~  
17 ~~affected by extreme or severe drought conditions. The findings~~  
18 ~~of the governing body shall be based on current drought indices~~  
19 ~~published by the national weather service and any other~~  
20 ~~relevant information supplied by the United States forest~~  
21 ~~service.~~

22                   F. ~~Pursuant to any hearing under Subsection E of~~  
23 ~~this section, the governing body of a county shall issue a~~  
24 ~~proclamation declaring extreme or severe drought conditions~~  
25 ~~within the unincorporated portions of the county if the~~

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1 ~~governing body determines such conditions exist. The governing~~  
2 ~~body's proclamation:~~

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

6 ~~(2) shall give the governing body the power~~  
7 ~~to:~~

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

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

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

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

24 ~~H. Except as otherwise provided in this subsection,~~  
25 ~~a proclamation shall be effective for thirty days, and the~~

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

6 A. The governor may issue a proclamation  
7 temporarily banning the sale and use of fireworks, imposing any  
8 other open-flame restrictions or bans and stating that drought  
9 conditions exist in counties within the state. The governor  
10 shall base his drought proclamation on the energy release  
11 component of the national fire danger rating system. The  
12 governor may act if the energy release component of the  
13 national fire danger rating system is at the ninety-seventh  
14 percentile or higher in a county.

15 B. A proclamation issued pursuant to Subsection A  
16 of this section shall be effective for thirty days, and the  
17 governor may issue succeeding proclamations if drought  
18 conditions warrant. The proclamation shall explain  
19 restrictions on the sale or use of fireworks and permitted  
20 sales or uses of fireworks. A proclamation may be modified or  
21 rescinded within its thirty-day period in twenty-four hours by  
22 the governor if the energy release component of the national  
23 fire danger rating system is less than the ninety-seventh  
24 percentile in those drought-affected counties.

25 C. As part of the proclamation issued pursuant to

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1 Subsection A of this section, the governor may:

2 (1) restrict the sale of certain types of  
3 fireworks in permanent retail stores whose primary business is  
4 tourism in counties that are experiencing drought conditions;  
5 and

6 (2) impose additional requirements for the  
7 sale of fireworks in permanent retail stores whose primary  
8 business is tourism in counties that are experiencing drought  
9 conditions.

10 D. A municipality or county may in writing petition  
11 the governor to issue a proclamation pursuant to Subsection A  
12 of this section if the energy release component of the national  
13 fire danger rating system is at the ninety-seventh percentile  
14 or higher in the municipality or county. If the governor fails  
15 to take any action after seventy-two hours from receipt of the  
16 petition, the municipality or county may exercise the same  
17 authority as found in Subsection A of this section. A  
18 proclamation shall be effective for thirty days, and the  
19 municipality or county may issue succeeding proclamations if  
20 drought conditions warrant. The proclamation shall explain  
21 restrictions on the sale or use of fireworks and permitted  
22 sales or uses of fireworks. A proclamation may be modified or  
23 rescinded within its thirty-day period in twenty-four hours by  
24 the municipality or county if the energy release component of  
25 the national fire danger rating system is less than the ninety-

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1 seventh percentile in the municipality or county."

2 Section 4. EMERGENCY.--It is necessary for the public  
3 peace, health and safety that this act take effect immediately.

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