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HOUSE BILL 791

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Rhonda King

AN ACT

RELATING TO FIREWORKS LICENSING AND SAFETY; ALLOWING HEARINGS
IN CASE OF SEVERE DROUGHT CONDITIONS; AMENDING A SECTION OF
THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1. Section 60-2C-8.1 NMSA 1978 (being Laws 1997,
Chapter 17, Section 9) is amended to read:

"60-2C-8.1. EXTREME DROUGHT CONDITIONS--RESTRICTED SALE
AND USE. --

A. The [~~state fire board~~] public regulation
commission may hold a hearing to determine if fireworks
restrictions should be imposed in all or a portion of the
state affected by extreme or severe drought conditions. The
findings of the [~~state fire board~~] public regulation
commission shall be based on current drought indices published

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1 by the national weather service [~~and any other relevant~~
2 ~~information supplied by the U.S. forest service and the U.S.~~
3 ~~department of agriculture~~].

4 B. Pursuant to any hearing under [~~paragraph~~]
5 Subsection A of this section, the [~~state fire board~~] public
6 regulation commission shall issue a proclamation declaring an
7 extreme or severe drought condition in all or a portion of the
8 state if the [~~board~~] commission determines such conditions
9 exist. The [~~state fire board's~~] public regulation
10 commission's proclamation:

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

15 (2) shall give local governments the power
16 to:

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

22 (b) ban or restrict the sale or use of
23 display fireworks; and

24 (3) may ban or restrict the use of any type
25 of fireworks on state lands within the affected drought area.

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C. The [~~state fire board's~~] public regulation commission's proclamation declaring an extreme or severe drought condition shall be issued [~~before~~] no less than twenty days prior to [~~any~~] a holiday for which fireworks may be sold.

D. [~~Except as otherwise provided in this subsection~~] A proclamation shall be effective for thirty days, and the [~~state fire board~~] public regulation commission may issue succeeding proclamations if extreme or severe drought conditions warrant. A proclamation may be modified or rescinded within its thirty-day period by the [~~state fire board~~] public regulation commission upon conducting an emergency hearing to determine if weather conditions [~~improve sufficiently to alleviate fire dangers~~] have improved."

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

1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 March 9, 1999
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8 Mr. Speaker:
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10 Your GOVERNMENT AND URBAN AFFAIRS COMMITTEE, to
11 whom has been referred
12

13 HOUSE BILL 791
14

15 has had it under consideration and reports same with
16 recommendation that it DO NOT PASS, but that

17 HOUSE GOVERNMENT AND URBAN AFFAIRS COMMITTEE
18 SUBSTITUTE FOR HOUSE BILL 791
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20 DO PASS.
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HGUAC/HB 791

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Respectfully submitted,

James G. Taylor, Chairman

Adopted _____

(Chief Clerk)

Not Adopted _____

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

Excused: None

Absent: None

J:\99Bill\SWP\H0791

1 HOUSE GOVERNMENT AND URBAN AFFAIRS COMMITTEE SUBSTITUTE
2 FOR HOUSE BILL 791
3 **44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

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8 AN ACT

9 RELATING TO FIREWORKS SAFETY; PROVIDING PROCEDURES FOR
10 DETERMINING IF EXTREME OR SEVERE DROUGHT CONDITIONS EXIST;
11 REDUCING THE AMOUNT OF THE LICENSE OR PERMIT FEE THAT MAY BE
12 CHARGED BY MUNICIPALITIES OR COUNTIES; DECLARING AN EMERGENCY.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

17 "60-2C-2. DEFINITIONS. --As used in the Fireworks
18 Licensing and Safety Act:

19 A. "chaser" means a paper or cardboard tube
20 venting out the fuse end of the tube that contains no more
21 than twenty grams of chemical composition and travels along
22 the ground, often producing a whistling effect or other noise;
23 an explosive composition not to exceed fifty milligrams may be
24 included to produce a report;

25 B. "chemical composition" includes all pyrotechnic
and explosive composition contained in a fireworks device, but

does not include inert materials such as clay used for plugs or organic matter such as rice hulls used for density control;

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

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

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

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F. "display distributor" means any person, firm or corporation selling display fireworks;

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G. "display fireworks" means devices primarily intended for commercial displays that are designed to produce visible or audible effects by combustion, deflagration or detonation, including salutes containing more than one hundred thirty milligrams of explosive composition; aerial shells containing more than forty grams of chemical composition exclusive of lift charge; and other exhibition display items

1 that exceed the limits for permissible fireworks;

2 H. "distributor" means any person, firm or
3 corporation selling fireworks to wholesalers and retailers for
4 resale;

5 I. "explosive composition" means any chemical
6 compound or mixture, the primary purpose of which is to
7 function by explosion, producing an audible effect in a
8 fireworks device;

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

15 K. "fireworks" means devices intended to produce a
16 visible or audible effect by combustion, deflagration or
17 detonation and are categorized as "permissible fireworks" or
18 "display fireworks";

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

24 M. "ground spinner" means a small, rapidly
25 spinning device containing no more than twenty grams of
26 pyrotechnic composition venting out an orifice usually on the
27 side of the tube that when ignited produces a shower of sparks
28 and color. "Ground spinner" is similar in operation to a

1 wheel, but is intended to be placed flat on the ground and
 2 ignited;

3 N. "helicopter" or "aerial spinner" means a tube
 4 containing no more than twenty grams of chemical composition
 5 with a propeller or blade attached that spins rapidly as it
 6 rises into the air with a visible or audible effect sometimes
 7 produced at or near the height of flight;

8 O. "illuminating torch" means a cylindrical tube
 9 containing no more than one hundred grams of pyrotechnic
 10 composition that produces a colored flame upon ignition and
 11 may be spiked, based or hand held [~~and~~]. When more than one
 12 tube is mounted on a common base, total pyrotechnic
 13 composition shall not exceed two hundred grams;

14 P. "manufacturer" means any person, firm or
 15 corporation engaged in the manufacture of fireworks;

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

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underscored material = new
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1 R. "missile-type rocket" means a device similar to
2 a stick-type rocket in size, composition and effect that uses
3 fins rather than a stick for guidance and stability and that
4 contains no more than twenty grams of chemical composition;

5 S. "permissible fireworks" means fireworks legal
6 for sale to and use in New Mexico by the general public;

7 T. "pyrotechnic composition" means a chemical
8 mixture that on burning and without explosion produces visible
9 or brilliant displays or bright lights or whistles or motion;

10 U. "retailer" means any person, firm or
11 corporation purchasing fireworks for resale to consumers;

12 V. "roman candle" means a heavy paper or cardboard
13 tube containing no more than twenty grams of chemical
14 composition that individually expels pellets of pressed
15 pyrotechnic composition that burn with bright color in a star
16 effect;

17 W. "specialty retailer" means any person, firm or
18 corporation purchasing permissible fireworks for year-round
19 resale in permanent retail stores whose primary business is
20 tourism;

21 X. "stick-type rocket" means a cylindrical tube
22 containing no more than twenty grams of chemical composition
23 with a wooden stick attached for guidance and stability that
24 rises into the air upon ignition and produces a burst of color
25 or sound at or near the height of flight;

 Y. "toy smoke device" means a small plastic or
paper item containing no more than one hundred grams of
pyrotechnic composition that produces white or colored smoke

1 as the primary effect;

2 Z. "wheel" means a pyrotechnic device that is made
3 to attach to a post or other surface and that revolves,
4 producing a shower of color and sparks and sometimes a
5 whistling effect, and that may have one or more drivers, each
6 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; [~~and~~]

9 AA. "wholesaler" means any person, firm or
10 corporation purchasing fireworks for resale to retailers; and

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

13 Section 2. Section 60-2C-4 NMSA 1978 (being Laws 1989,
14 Chapter 346, Section 4, as amended) is amended to read:

15 "60-2C-4. LICENSE AND PERMIT FEES. --

16 A. An applicant for a license or permit under the
17 Fireworks Licensing and Safety Act shall pay to the state fire
18 marshal's office the following fees, which shall not be
19 refundable:

- 20 (1) manufacturer license \$1,500;
- 21 (2) distributor license. 2,000;
- 22 (3) wholesaler license 1,000;
- 23 (4) display distributor license. . . 1,000;
- 24 (5) specialty retailer license . . . 750;

25 or

- 26 (6) retailer permit. 100.

27 B. All licenses and permits shall be issued for
28 one year beginning on February 1 of each year. All licenses

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1 and permits shall be issued within thirty days from the date
2 of receipt of application, except that no application shall be
3 processed during [~~each~~] any holiday selling period in which
4 permissible fireworks may be sold.

5 C. Licenses issued [~~under~~] pursuant to provisions
6 of the Fireworks Licensing and Safety Act shall not be
7 restricted in number or limited to any person without cause.
8 Municipalities and counties may require licenses or permits
9 and reasonable fees, not to exceed [~~fifty dollars (\$50.00)~~]
twenty-five dollars (\$25.00), for the sale of fireworks.

10 D. Permit and license fees paid to the state fire
11 marshal's office shall be deposited in the fire protection
12 fund to be used by the state fire marshal to enforce and carry
13 out the provisions and purposes of the Fireworks Licensing and
14 Safety Act. "

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

17 "60-2C-8.1. EXTREME OR SEVERE DROUGHT CONDITIONS--
18 RESTRICTED SALE AND USE.--

19 A. The [~~state fire board~~] governing body of a
20 municipality may hold a hearing to determine if fireworks
21 restrictions should be imposed [~~in all or a portion of the~~
22 ~~state~~] within the boundaries of the incorporated municipality
23 affected by extreme or severe drought conditions. The
24 findings of the [~~state fire board~~] governing body shall be
25 based on current drought indices published by the national
weather service and any other relevant information supplied by
the [~~U.S.~~] United States forest service [~~and the U.S.~~

1 ~~department of agriculture~~].

2 B. Pursuant to any hearing under [~~paragraph~~
 3 Subsection A of this section, the [~~state fire board~~] governing
 4 body of a municipality shall issue a proclamation declaring
 5 [~~an extreme drought condition in all or a portion of the state~~
 6 ~~if the board~~] extreme or severe drought conditions within the
 7 boundaries of the incorporated municipality if the governing
 8 body determines such conditions exist. The [~~state fire~~
 9 board's] governing body's proclamation:

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

14 (2) shall give [~~local governments~~] the
 15 governing body the power to:

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

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

24 [(b)] (c) ban or restrict the sale or
 25 use of display fireworks [~~and~~

26 (3) ~~may ban or restrict the use of any type of~~
 27 ~~fireworks on state lands within the affected drought area~~].

28 C. The [~~state fire board's~~] municipal governing

underscored material = new
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1 body's proclamation declaring an extreme or severe drought
2 condition shall be issued [~~before~~] no less than twenty days
3 prior to [~~any~~] a holiday for which fireworks may be sold. The
4 proclamation shall explain restrictions on the sale or use of
5 fireworks and permitted sales or uses of fireworks.

6 D. [~~Except as otherwise provided in this~~
7 ~~subsection~~] A municipal governing body's proclamation shall be
8 effective for thirty days and the [~~state fire board~~] governing
9 body may issue succeeding proclamations if extreme or severe
10 drought conditions warrant. A proclamation may be modified or
11 rescinded within its thirty-day period by the [~~state fire~~
12 ~~board~~] governing body upon conducting an emergency hearing to
13 determine if weather conditions [~~improve sufficiently to~~
14 ~~alleviate fire dangers~~] have improved.

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

23 F. Pursuant to any hearing under Subsection E of
24 this section, the governing body of a county shall issue a
25 proclamation declaring extreme or severe drought conditions
within the unincorporated portions of the county if the
governing body determines such conditions exist. The
governing body's proclamation:

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

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

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

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

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

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

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

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1 emergency hearing to determine if weather conditions have
2 improved. "

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

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