

1 AN ACT

2 RELATING TO FIREWORKS; DEFINING PERMISSIBLE FIREWORKS;  
3 PROVIDING THAT CERTAIN STICK-TYPE ROCKETS ARE NOT PERMISSIBLE  
4 FIREWORKS; REMOVING TOY SMOKE DEVICES FROM REGULATION  
5 PURSUANT TO THE FIREWORKS LICENSING AND SAFETY ACT; REQUIRING  
6 COMPLIANCE WITH NATIONAL SAFETY STANDARDS FOR CERTAIN  
7 FIREWORKS AND PYROTECHNIC ARTICLES; ALLOWING FOR A  
8 REPLACEMENT PERMIT FEE; AMENDING, REPEALING AND ENACTING  
9 SECTIONS OF THE FIREWORKS LICENSING AND SAFETY ACT; DECLARING  
10 AN EMERGENCY.

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

15 "60-2C-2. DEFINITIONS.--As used in the Fireworks  
16 Licensing and Safety Act:

17 A. "aerial shell" means a cylindrical or spherical  
18 cartridge containing a lift charge, burst charge and effect  
19 composition. Upon firing from a reloadable tube, the lift  
20 charge is consumed and the cartridge is expelled into the  
21 air;

22 B. "aerial shell kit-reloadable tube" means a  
23 package or kit containing a cardboard, high-density  
24 polyethylene or equivalent launching tube and not more than  
25 twelve small aerial shells. Each aerial shell is limited to

1 a maximum of sixty grams of total chemical composition,  
2 including lift charges, and the maximum diameter of each  
3 shell shall not exceed one and three-fourths inches;

4 C. "bosque" means a cottonwood corridor adjacent  
5 to a river;

6 D. "chaser" means a paper or cardboard tube  
7 venting out the fuse end of the tube that contains no more  
8 than twenty grams of chemical composition and travels along  
9 the ground, often producing a whistling effect or other  
10 noise; an explosive composition not to exceed fifty  
11 milligrams may be included to produce a report;

12 E. "chemical composition" includes all pyrotechnic  
13 and explosive composition contained in a fireworks device,  
14 but does not include inert materials such as clay used for  
15 plugs or organic matter such as rice hulls used for density  
16 control;

17 F. "cone fountain" means a cardboard or heavy  
18 paper cone containing no more than fifty grams of pyrotechnic  
19 composition that has the same effect as a cylindrical  
20 fountain. When more than one cone is mounted on a common  
21 base, total pyrotechnic composition shall not exceed two  
22 hundred grams;

23 G. "crackling device" means a sphere or paper tube  
24 that contains no more than twenty grams of pyrotechnic  
25 composition that produces a flash of light and a mild,

1 audible crackling effect upon ignition, which effect is not  
2 considered to be an explosion. Crackling devices are not  
3 subject to the fifty-milligram limit of firecrackers;

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

13 I. "display distributor" means a person, firm or  
14 corporation selling display fireworks;

15 J. "display fireworks" means devices primarily  
16 intended for commercial displays that are designed to produce  
17 visible or audible effects by combustion, deflagration or  
18 detonation, including salutes containing more than one  
19 hundred thirty milligrams of explosive composition; aerial  
20 shells containing more than forty grams of chemical  
21 composition exclusive of lift charge; and other exhibition  
22 display items that exceed the limits for permissible  
23 fireworks;

24 K. "distributor" means a person, firm or  
25 corporation selling fireworks to wholesalers and retailers

1 for resale;

2 L. "explosive composition" means a chemical  
3 compound or mixture, the primary purpose of which is to  
4 function by explosion, producing an audible effect in a  
5 fireworks device;

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

12 N. "fireworks" means devices intended to produce a  
13 visible or audible effect by combustion, deflagration or  
14 detonation and are categorized as "permissible fireworks" or  
15 "display fireworks", but does not include novelties or  
16 theatrical pyrotechnics articles;

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

22 P. "ground spinner" means a small, rapidly  
23 spinning device containing no more than twenty grams of  
24 pyrotechnic composition venting out an orifice usually on the  
25 side of the tube that when ignited produces a shower of

1 sparks and color. "Ground spinner" is similar in operation  
2 to a wheel, but is intended to be placed flat on the ground  
3 and ignited;

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

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

15 S. "manufacturer" means a person, firm or  
16 corporation engaged in the manufacture of fireworks;

17 T. "mine" or "shell" means a heavy cardboard or  
18 paper tube usually attached to a wooden or plastic base and  
19 containing no more than sixty grams of total chemical  
20 composition, including lift charges, per tube that  
21 individually expels pellets of pressed pyrotechnic  
22 composition that burn with bright color in a star effect, or  
23 other devices propelled into the air, and that contains  
24 components producing reports containing a maximum one hundred  
25 thirty milligrams of explosive composition per report. A

1 mine may contain more than one tube, but the tubes must fire  
2 in sequence upon ignition of one external fuse, must be a  
3 dense-packed collection of mine or shell tubes and the total  
4 chemical composition, including lift charges, shall not  
5 exceed two hundred grams;

6 U. "missile-type rocket" means a device similar to  
7 a stick-type rocket in size, composition and effect that uses  
8 fins rather than a stick for guidance and stability and that  
9 contains no more than twenty grams of chemical composition;

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

23 W. "novelties" means devices containing small  
24 amounts of pyrotechnic or explosive composition that produce  
25 limited visible or audible effects, including party poppers,

1 snappers, toy smoke devices, snakes, glowworms, sparklers or  
2 toy caps, and devices intended to produce unique visual or  
3 audible effects that contain sixteen milligrams or less of  
4 explosive composition and limited amounts of other  
5 pyrotechnic composition, including cigarette loads, trick  
6 matches, explosive auto alarms and other trick noisemakers;

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

14 Y. "pyrotechnic composition" means a chemical  
15 mixture that on burning and without explosion produces  
16 visible or brilliant displays or bright lights or whistles or  
17 motion;

18 Z. "retailer" means a person, firm or corporation  
19 purchasing fireworks for resale to consumers;

20 AA. "roman candle" means a heavy paper or  
21 cardboard tube containing no more than twenty grams of  
22 chemical composition that individually expels pellets of  
23 pressed pyrotechnic composition that burn with bright color  
24 in a star effect;

25 BB. "specialty retailer" means a person, firm or

1 corporation purchasing permissible fireworks for year-round  
2 resale in permanent retail stores whose primary business is  
3 tourism;

4 CC. "stick-type rocket" means a cylindrical tube  
5 containing no more than twenty grams of chemical composition  
6 with a wooden stick attached for guidance and stability that  
7 rises into the air upon ignition and produces a burst of  
8 color or sound at or near the height of flight;

9 DD. "theatrical pyrotechnics articles" means a  
10 pyrotechnic device for professional use in the entertainment  
11 industry similar to permissible fireworks or consumer  
12 fireworks in chemical composition and construction but not  
13 intended and labeled for consumer use;

14 EE. "toy smoke device" means a small plastic or  
15 paper item containing no more than one hundred grams of  
16 pyrotechnic composition that produces white or colored smoke  
17 as the primary effect;

18 FF. "wheel" means a pyrotechnic device that is  
19 made to attach to a post or other surface and that revolves,  
20 producing a shower of color and sparks and sometimes a  
21 whistling effect, and that may have one or more drivers, each  
22 of which contains no more than sixty grams of pyrotechnic  
23 composition and the total wheel contains no more than two  
24 hundred grams total pyrotechnic composition;

25 GG. "wholesaler" means a person, firm or



1 corporation purchasing fireworks for resale to retailers; and

2 HH. "wildlands" means lands owned by the governing  
3 body of a county or municipality that are designated for  
4 public recreational purposes and that are covered wholly or  
5 in part by timber, brush or native grass."

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

8 "60-2C-4. LICENSE AND PERMIT FEES.--

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

- 13 (1) manufacturer license . . . . . \$1,500;
- 14 (2) distributor license. . . . . 2,000;
- 15 (3) wholesaler license . . . . . 1,000;
- 16 (4) display distributor license. . . 1,000;
- 17 (5) specialty retailer license . . . 750;
- 18 (6) retailer permit. . . . . 100; or
- 19 (7) replacement permit . . . . . 20.

20 B. All licenses and permits shall be issued for  
21 one year beginning on February 1 of each year. All licenses  
22 and permits shall be issued within thirty days from the date  
23 of receipt of application, except that no application shall  
24 be processed during any holiday selling period in which  
25 permissible fireworks may be sold.

1 C. Licenses issued pursuant to provisions of the  
2 Fireworks Licensing and Safety Act shall not be restricted in  
3 number or limited to any person without cause.  
4 Municipalities and counties may require licenses or permits  
5 and reasonable fees, not to exceed twenty-five dollars  
6 (\$25.00), for the sale of fireworks.

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

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

14 "60-2C-7. PERMISSIBLE FIREWORKS.--

15 A. Permissible fireworks are:

16 (1) ground and hand-held sparkling devices:

- 17 (a) cone fountains;
- 18 (b) crackling devices;
- 19 (c) cylindrical fountains;
- 20 (d) flitter sparklers;
- 21 (e) ground spinners;
- 22 (f) illuminating torches; and
- 23 (g) wheels;

24 (2) aerial devices:

- 25 (a) aerial shell kit-reloadable tubes;

- 1 (b) aerial spinners;
- 2 (c) helicopters;
- 3 (d) mines;
- 4 (e) missile-type rockets;
- 5 (f) multiple tube devices;
- 6 (g) roman candles;
- 7 (h) shells; and
- 8 (i) stick-type rockets, except as

9 provided in Subsection B of this section; and

10 (3) ground audible devices:

- 11 (a) chasers; and
- 12 (b) firecrackers.

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

15 (1) stick-type rockets having a tube less  
16 than five-eighths inch outside diameter and less than three  
17 and one-half inches in length; and

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

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. Fireworks may not be sold at retail without a  
5 retail permit. The permit shall be at the location where the  
6 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 C. It is unlawful to offer for sale or to sell  
13 fireworks to children under the age of sixteen years or to an  
14 intoxicated person.

15 D. At all places where fireworks are stored, sold  
16 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  
19 feet of fireworks stock.

20 E. Fireworks shall not be stored, kept, sold or  
21 discharged within fifty feet of a gasoline pump or gasoline  
22 bulk station or a building in which gasoline or volatile  
23 liquids are sold in quantities in excess of one gallon,  
24 except in stores where cleaners, paints and oils are handled  
25 in sealed containers only.

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

13 H. Fireworks shall not be discharged within one  
14 hundred fifty feet of a fireworks retail sales location.

15 I. Fireworks shall not be sold or used on state  
16 forest land, wildlands or a bosque.

17 J. A person shall not ignite fireworks within a  
18 motor vehicle or throw fireworks from a motor vehicle, nor  
19 shall a person place or throw ignited fireworks into or at a  
20 motor vehicle or at or near a person or group of people.

21 K. Fireworks devices that are readily accessible  
22 to handling by consumers or purchasers in a retail sales  
23 location shall have their exposed fuses protected in a manner  
24 to protect against accidental ignition of an item by a spark,  
25 cigarette ash or other ignition source. If the fuse is a

1 thread-wrapped safety fuse that has been coated with a  
2 nonflammable coating, only the outside end of the safety fuse  
3 shall be covered. If the fuse is not a safety fuse, the  
4 entire fuse shall be covered.

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

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

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

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

23 Section 7. EMERGENCY.--It is necessary for the public  
24 peace, health and safety that this act take effect  
25 immediately.

---