

1 SENATE BILL 196

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Pete Campos

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10 AN ACT

11 RELATING TO FIREWORKS; AMENDING THE FIREWORKS LICENSING AND
12 SAFETY ACT TO ALLOW THE GOVERNOR, OR IN CERTAIN CIRCUMSTANCES A
13 MAYOR OR BOARD OF COUNTY COMMISSIONERS, TO TEMPORARILY BAN THE
14 SALE OR USE OF FIREWORKS WHEN THE ENERGY RELEASE COMPONENT IS
15 AT OR ABOVE THE NINETIETH PERCENTILE; DECLARING AN EMERGENCY.

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

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

20 "60-2C-2. DEFINITIONS.--As used in the Fireworks
21 Licensing and Safety Act:

22 A. "aerial shell" means a cylindrical or spherical
23 cartridge containing a lift charge, burst charge and effect
24 composition. Upon firing from a reloadable tube, the lift
25 charge is consumed and the cartridge is expelled into the air;

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

8 C. "bosque" means a cottonwood corridor adjacent to
9 a river;

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

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

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

25 G. "crackling device" means a sphere or paper tube

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1 that contains no more than twenty grams of pyrotechnic
2 composition that produces a flash of light and a mild, audible
3 crackling effect upon ignition, which effect is not considered
4 to be an explosion. Crackling devices are not subject to the
5 fifty-milligram limit of firecrackers;

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

15 I. "display distributor" means a person, firm or
16 corporation selling display fireworks;

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

25 K. "distributor" means a person, firm or

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1 corporation selling fireworks to wholesalers and retailers for
2 resale;

3 L. "energy release component" means the calculated
4 output of the national fire danger rating system. "Energy
5 release component" is a composite fuel moisture index related
6 to the available fire energy in an area and reflects the
7 contribution of all live and dead fuels to a potential fire
8 intensity;

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

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

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

24 ~~[O.]~~ P. "flitter sparkler" means a narrow paper
25 tube attached to a stick or wire and filled with no more than

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1 five grams of pyrotechnic composition that produces color and
2 sparks upon ignition and the paper at one end of the tube is
3 ignited to make the device function;

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

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

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

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

24 [T-] U. "mine" or "shell" means a heavy cardboard
25 or paper tube usually attached to a wooden or plastic base and

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

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

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

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1 plastic base and are separated from each other on the base by a
2 distance of at least one-half inch. The connecting fuses on
3 multiple tube devices shall be fused in sequence so that the
4 tubes fire sequentially rather than all at once;

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

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

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

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

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

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

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

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

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

24 ~~[FF-]~~ GG. "wheel" means a pyrotechnic device that
25 is made to attach to a post or other surface and that revolves,

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1 producing a shower of color and sparks and sometimes a
2 whistling effect, and that may have one or more drivers, each
3 of which contains no more than sixty grams of pyrotechnic
4 composition and the total wheel contains no more than two
5 hundred grams total pyrotechnic composition;

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

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

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

14 "60-2C-3. LICENSE OR PERMIT REQUIRED FOR SALE OF
15 FIREWORKS--ADMINISTRATION--PERMITS AND LICENSES.--

16 A. No person may sell, hold for sale, import,
17 distribute or offer for sale, as manufacturer, distributor,
18 wholesaler or retailer, any fireworks in this state unless
19 [~~such~~] the person has first obtained the appropriate license or
20 permit.

21 B. The state fire marshal shall enforce the
22 Fireworks Licensing and Safety Act. All license applications
23 shall be submitted to the office of the state fire marshal.
24 All retailers shall be required to purchase a retail fireworks
25 permit for each retail location. The retail permit may be

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1 purchased from ~~[any]~~ a licensed manufacturer, distributor or
2 wholesaler or from the state fire marshal's office. Retail
3 permits may be purchased at any time by the licensed
4 manufacturer, distributor or wholesaler in books of twenty
5 permits per book from the state fire marshal. Permits shall be
6 numbered, and it ~~[shall be]~~ is the responsibility of the
7 licensed manufacturer, distributor or wholesaler to keep
8 records of the purchases of these permits and to submit these
9 records to the state fire marshal semiannually on January 31
10 and July 31 of each year. Each semiannual report is to cover
11 the preceding six-month period. Retail permits that are unsold
12 may be exchanged for new permits.

13 C. All license applications shall require the
14 applicant to swear in writing not to sell or use fireworks if
15 the governor or a municipality or county issues a proclamation
16 temporarily banning the sale or use of fireworks pursuant to
17 Section 60-2C-8.1 NMSA 1978. All permit sales shall require
18 the buyer to swear in writing not to sell or use fireworks if
19 the governor or a municipality or county issues a proclamation
20 temporarily banning the sale or use of fireworks pursuant to
21 Section 60-2C-8.1 NMSA 1978.

22 ~~[C.]~~ D. The state fire marshal shall appoint the
23 deputies and employees required to carry out the provisions of
24 the Fireworks Licensing and Safety Act. The state fire marshal
25 may also appoint ~~[any]~~ a commissioned law enforcement officer

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1 or duly appointed fire chief or [~~his~~] the law enforcement
2 officer's or fire chief's designee with approval from the local
3 governing body required to carry out the provisions of that
4 act.

5 [~~D.~~] E. The state fire [~~board~~] marshal shall
6 formulate, adopt, promulgate and amend or revise rules and
7 regulations for the safe handling of fireworks."

8 **SECTION 3.** Section 60-2C-8 NMSA 1978 (being Laws 1989,
9 Chapter 346, Section 8, as amended) is amended to read:

10 "60-2C-8. RETAIL SALES OR STORAGE OF FIREWORKS--REGULATED
11 ACTIVITIES.--

12 A. Fireworks may not be sold at retail without a
13 retail permit. The permit shall be at the location where the
14 retail sale takes place.

15 B. All places where fireworks are stored, sold or
16 displayed shall be in compliance with the code of safety
17 standards published by the national fire protection association
18 for the manufacture, transportation, storage and retail sales
19 of fireworks and pyrotechnics articles.

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

23 D. 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
2 fireworks stock.

3 E. Fireworks shall not be stored, kept, sold or
4 discharged within fifty feet of a gasoline pump or gasoline
5 bulk station or a building in which gasoline or volatile
6 liquids are sold in quantities in excess of one gallon, except
7 in stores where cleaners, paints and oils are handled in sealed
8 containers only.

9 F. 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 G. Sales clerks and ancillary personnel employed or
15 volunteering at temporary retail locations where fireworks are
16 sold shall be at least sixteen years of age. A sales clerk
17 shall be on duty to serve consumers at the time of purchase or
18 delivery. Permissible fireworks may be offered for sale only
19 at state-permitted or state-licensed retail locations.

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

22 I. Fireworks shall not be sold or used on state
23 [~~forest land, wildlands or a bosque~~] -owned or -managed lands.

24 J. A person shall not ignite fireworks within a
25 motor vehicle or throw fireworks from a motor vehicle, nor

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1 shall a person place or throw ignited fireworks into or at a
2 motor vehicle or at or near a person or group of people.

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

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

19 SECTION 4. Section 60-2C-8.1 NMSA 1978 (being Laws 1997,
20 Chapter 17, Section 9, as amended) is repealed and a new
21 Section 60-2C-8.1 NMSA 1978 is enacted to read:

22 "60-2C-8.1. [NEW MATERIAL] EXTREME OR SEVERE DROUGHT
23 CONDITIONS--RESTRICTED SALE AND USE.--

24 A. The governor may, via a proclamation,
25 temporarily ban or restrict the sale or use of fireworks in a

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1 county if the energy release component is at or above the
2 ninetieth percentile in the county.

3 B. A proclamation issued pursuant to Subsection A
4 of this section shall be effective for thirty days, and the
5 governor may issue succeeding proclamations if drought
6 conditions warrant. The proclamation shall explain
7 restrictions on the sale or use of fireworks and permitted
8 sales or uses of fireworks, if any. The governor may modify or
9 rescind a proclamation within its thirty-day period if the
10 energy release component is less than the ninetieth percentile
11 in those drought-affected counties.

12 C. A municipality or county may in writing petition
13 the governor to issue a proclamation pursuant to Subsection A
14 of this section if the energy release component is at or above
15 the ninetieth percentile in the municipality or county. If the
16 governor fails to take any action after seventy-two hours from
17 receipt of the petition, the mayor of a municipality or the
18 board of county commissioners of a county may exercise the same
19 authority as found in Subsection A of this section. A
20 proclamation shall be effective for thirty days, and the
21 municipality or county may issue succeeding proclamations if
22 drought conditions warrant. The proclamation shall explain
23 restrictions on the sale or use of fireworks and permitted
24 sales or uses of fireworks, if any. A mayor or board of county
25 commissioners may modify or rescind a proclamation within its

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1 thirty-day period if the energy release component is less than
2 the ninetieth percentile in the municipality or county."

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

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