

AN ACT

RELATING TO FIREWORKS SAFETY; PROVIDING PROCEDURES FOR DETERMINING IF EXTREME OR SEVERE DROUGHT CONDITIONS EXIST; REDUCING THE AMOUNT OF THE LICENSE OR PERMIT FEE THAT MAY BE CHARGED BY MUNICIPALITIES OR COUNTIES; 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. "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 explosive composition not to exceed fifty milligrams may be included to produce a report;

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;

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

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;

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

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

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 that exceed the limits for permissible fireworks;

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

I. "explosive composition" means any chemical compound or mixture, the primary purpose of which is to

function by explosion, producing an audible effect in a fireworks device;

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

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

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

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

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

O. "illuminating torch" means a cylindrical tube

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

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

Q. "mine" or "shell" means a heavy cardboard or paper tube usually attached to a wooden or plastic base and containing no more than forty grams of chemical composition plus not more than twenty grams of lift charge per tube that individually expels pellets of pressed pyrotechnic composition that burn with bright color in a star effect, or other devices propelled into the air, and that contains components producing reports containing a maximum one hundred thirty milligrams of explosive composition per report. A mine may contain more 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;

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

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

T. "pyrotechnic composition" means a chemical mixture that on burning and without explosion produces

visible or brilliant displays or bright lights or whistles or motion;

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

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

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

X. "stick-type rocket" means a cylindrical tube containing no more than twenty grams of chemical composition with a wooden stick attached for guidance and stability that rises into the air upon ignition and produces a burst of color 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 as the primary effect;

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

AA. "wholesaler" means any person, firm or

corporation purchasing fireworks for resale to retailers;
and

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

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

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

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

- (1) manufacturer license
\$1,500;
- (2) distributor license.
2,000;
- (3) wholesaler license
1,000;
- (4) display distributor license. . .
1,000;
- (5) specialty retailer license . . .
750; or
- (6) retailer permit.
100.

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

C. Licenses issued pursuant to provisions of the

Fireworks Licensing and Safety Act shall not be restricted in number or limited to any person without cause. Municipalities and counties may require licenses or permits and reasonable fees, not to exceed twenty-five dollars (\$25.00), for the sale of fireworks.

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

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

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

A. The governing body of a municipality may hold a hearing to determine if fireworks restrictions should be imposed within the boundaries of the incorporated municipality affected by extreme or severe drought conditions. The findings of the governing body shall be based on current drought indices published by the national weather service and any other relevant information supplied by the United States forest service.

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

(1) shall ban the sale and use of missile-type rockets, helicopters, aerial spinners,

stick-type rockets and ground audible devices within the affected drought area; and

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

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

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

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

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

D. A municipal governing body's proclamation shall be effective for thirty days and the 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 emergency hearing to determine if weather conditions have improved.

E. The governing body of a county may hold a hearing to determine if fireworks restrictions should be imposed within the unincorporated portions of the county

affected by extreme or severe drought conditions. The findings of the governing body shall be based on current drought indices published by the national weather service and any other relevant information supplied by the United States forest service.

F. Pursuant to any hearing under Subsection E of this section, the governing body of a county shall issue a 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) shall ban the sale and use of missile-type rockets, helicopters, aerial spinners, stick-type rockets and ground audible devices within the affected drought area; and

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

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

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

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

G. The county governing body's proclamation declaring an extreme or severe drought condition shall be issued no less than twenty days prior to a holiday for which

fireworks may be sold. The proclamation shall explain restrictions on the sale or use of fireworks and permitted sales or uses of fireworks.

H. Except as otherwise provided in this subsection, a proclamation shall be effective for thirty days, 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 emergency hearing to determine if weather conditions have improved."

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

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