

LEGISLATIVE BILL 880

Approved by the Governor April 7, 2010

Introduced by Rogert, 16; Stuthman, 22; Gloor, 35; Gay, 14.

FOR AN ACT relating to crimes and offenses; to amend sections 28-1213, 28-1239.01, 28-1241, 28-1244, 28-1246, 28-1248, 28-1249, 28-1250, and 28-1252, Reissue Revised Statutes of Nebraska; to provide and change testing requirements relating to the sale of consumer fireworks; to change license application provisions; to provide powers for the State Fire Marshal relating to licensure; to define and redefine terms; to eliminate provisions relating to common and permissible fireworks; to harmonize provisions; to provide an operative date; to repeal the original sections; and to outright repeal section 28-1247, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 28-1213, Reissue Revised Statutes of Nebraska, is amended to read:

28-1213 For purposes of sections 28-1213 to 28-1239, unless the context otherwise requires:

(1) Person means any individual, corporation, company, association, firm, partnership, limited liability company, society, or joint-stock company;

(2) Business enterprise means any corporation, partnership, limited liability company, company, or joint-stock company;

(3) Explosive materials means explosives, blasting agents, and detonators;

(4) Explosives means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, including, but not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, ignited cord, igniters, display fireworks as defined in section 28-1241, and firecrackers or devices containing more than one hundred thirty milligrams of explosive composition, but does not include ~~common~~ consumer fireworks as defined in such section, gasoline, kerosene, naphtha, turpentine, benzene, acetone, ethyl ether, benzol, fixed ammunition and primers for small arms, safety fuses, or matches;

(5) Blasting agent means any material or mixture, intended for blasting which meets the requirements of 49 C.F.R. part 173, subpart C, Definitions, Classification and Packaging for Class I, as such subpart existed on ~~March 7, 2006~~ January 1, 2010;

(6) Detonator means any device containing an initiating or primary explosive that is used for initiating detonation. Excluding ignition or delay charges, a detonator shall not contain more than ten grams of explosive material per unit. Detonator includes an electric detonator of instantaneous or delay type, a detonator for use with safety fuses, a detonating cord delay connector, and a nonelectric detonator of instantaneous or delay type which consists of detonating cord, shock tube, or any other replacement for electric leg wires;

(7) (a) Destructive devices means:

(i) Any explosive, incendiary, chemical or biological poison, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, (F) booby trap, (G) Molotov cocktail, (H) bottle bomb, (I) vessel or container intentionally caused to rupture or mechanically explode by expanding pressure from any gas, acid, dry ice, or other chemical mixture, or (J) any similar device, the primary or common purpose of which is to explode and to be used as a weapon against any person or property; or

(ii) Any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subdivision (7) (a) (i) of this section from which a destructive device may be readily assembled.

(b) The term destructive device does not include (i) any device which is neither designed nor redesigned for use as a weapon to be used against person or property, (ii) any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or similar device, (iii) surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to 10 U.S.C. 4684(2), 4685, or 4686, as such sections existed on March 7, 2006, (iv) any other device which the Nebraska State Patrol finds is not likely to be used as a weapon or is

an antique, or (v) any other device possessed under circumstances negating an intent that the device be used as a weapon against any person or property;

(8) Federal permittee means any lawful user of explosive materials who has obtained a federal user permit under 18 U.S.C. chapter 40, as such chapter existed on ~~March 7, 2006~~, January 1, 2010;

(9) Federal licensee means any importer, manufacturer, or dealer in explosive materials who has obtained a federal importers', manufacturers', or dealers' license under 18 U.S.C. chapter 40, as such chapter existed on ~~March 7, 2006~~, January 1, 2010; and

(10) Smokeless propellants means solid propellants commonly called smokeless powders in the trade and used in small arms ammunition.

Sec. 2. Section 28-1239.01, Reissue Revised Statutes of Nebraska, is amended to read:

28-1239.01 (1) No person shall conduct a public exhibition or display of display fireworks without first procuring a display permit from the State Fire Marshal. If the applicant is an individual, the application for a display permit shall include the applicant's social security number. Such application for a display permit shall be accompanied by a fee of ten dollars to be deposited in the State Fire Marshal Cash Fund.

(2) No display fireworks shall be sold or delivered by a licensed distributor to any person who is not in possession of an approved display permit. Sales of display fireworks to persons without an approved display permit shall be subject to sections 28-1213 to 28-1239.

Sec. 3. Section 28-1241, Reissue Revised Statutes of Nebraska, is amended to read:

28-1241 As used in sections 28-1239.01 and 28-1241 to 28-1252 and section 4 of this act, unless the context otherwise requires:

(1) Distributor means any person engaged in the business of making sales of fireworks at wholesale in this state to any person engaged in the business of making sales of fireworks either as a jobber or as a retailer or both;

(2) Jobber means any person engaged in the business of making sales of fireworks at wholesale to any other person engaged in the business of making sales at retail;

(3) Retailer means any person engaged in the business of making sales of fireworks at retail to consumers or to persons other than distributors or jobbers;

(4) Sale includes barter, exchange, or gift or offer therefor and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee;

(5) Fireworks means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation and which meets the definition of ~~common~~ consumer or special fireworks set forth by the United States Department of Transportation in Title 49 of the Code of Federal Regulations;

~~(6) Common fireworks means any small firework device designed to produce visible effects by combustion and which is required to comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission set forth in 16 C.F.R., small devices designed to produce audible effects such as whistling devices, ground devices containing fifty milligrams or less of explosive composition, and aerial devices and firecrackers containing one hundred thirty milligrams or less of explosive composition. Class C explosives as classified by the United States Department of Transportation shall be considered common fireworks;~~

~~(7) Permissible~~ (6)(a) Consumer fireworks means only sparklers, vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charge for the purpose of making a noise, lady fingers, not to exceed seven-eighths of an inch in length or one-eighth inch in diameter, total explosive composition not to exceed fifty milligrams in weight, color wheels, and any other fireworks approved under section 28-1247, and any of the following devices that (i) meet the requirements set forth in 16 C.F.R. parts 1500 and 1507, as such regulations existed on January 1, 2010, and (ii) are tested and approved by a nationally recognized testing facility or by the State Fire Marshal:

(A) Any small firework device designed to produce visible effects by combustion and which is required to comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission set forth in 16 C.F.R., as such regulations existed on January 1, 2010;

(B) Any small device designed to produce audible effects such as a whistling device;

(C) Any ground device or firecracker containing fifty milligrams or

less of explosive composition; or

(D) Any aerial device containing one hundred thirty milligrams or less of explosive composition.

(b) Class C explosives as classified by the United States Department of Transportation shall be considered consumer fireworks.

(c) Consumer fireworks does not include:

(i) Rockets that are mounted on a stick or wire and project into the air when ignited, with or without report;

(ii) Wire sparklers, except that silver and gold sparklers are deemed to be consumer fireworks until January 1, 2014;

(iii) Nighttime parachutes;

(iv) Fireworks that are shot into the air and after coming to the ground cause automatic ignition due to sufficient temperature;

(v) Firecrackers that contain more than fifty milligrams of explosive composition; and

(vi) Fireworks that have been tested by the State Fire Marshal as a response to complaints and have been deemed to be unsafe; and

~~(8)~~ (7) Display fireworks means those materials manufactured exclusively for use in public exhibitions or displays of fireworks designed to produce visible or audible effects by combustion, deflagration, or detonation. Display fireworks includes, but is not limited to, firecrackers containing more than one hundred thirty milligrams of explosive composition, aerial shells containing more than forty grams of explosive composition, and other display pieces which exceed the limits for classification as ~~common~~ consumer fireworks. Class B explosives, also known as 1.3G explosives, as classified by the United States Department of Transportation in 49 C.F.R. 172.101, as such regulation existed on January 1, 2010, shall be considered display fireworks. Display fireworks shall be considered an explosive as defined in section 28-1213 and shall be subject to sections 28-1213 to 28-1239, except that display fireworks may be purchased, received, and discharged by the holder of an approved display permit issued pursuant to section 28-1239.01.

Sec. 4. (1) If the State Fire Marshal deems any fireworks item to be unsafe pursuant to subdivision (6)(c)(vi) of section 28-1241, such fireworks item shall be quarantined from other fireworks. Any licensed distributor, jobber, or retailer may request, at the distributor's, jobber's, or retailer's expense, that such fireworks item be tested by an independent, nationally recognized testing facility to determine if such fireworks item meets the requirements set forth by the United States Consumer Product Safety Commission for consumer fireworks, also known as 1.4G explosives, as classified by the United States Department of Transportation in 49 C.F.R. 172.101, as such regulation existed on January 1, 2010. A copy of the results of all testing done pursuant to this section shall be provided to the State Fire Marshal.

(2) If such fireworks item is in compliance with such requirements and otherwise permitted under section 28-1241, such fireworks item that was determined to be unsafe pursuant to subdivision (6)(c)(vi) of section 28-1241 shall be deemed a consumer firework and be permitted for retail sale or distribution.

(3) If such fireworks item is in compliance with such requirements but is otherwise not deemed consumer fireworks, such fireworks item shall not be sold at retail or distributed to retailers for sale in this state, but a distributor, jobber, or retailer may sell such fireworks item to another distributor or retailer in a state that permits the sale of such fireworks item.

(4) If such fireworks item is not in compliance with such requirements, then the distributor, jobber, or retailer shall destroy such fireworks item under the supervision of the State Fire Marshal. If such fireworks item is not destroyed under the supervision of the State Fire Marshal, notarized documentation shall be provided to the State Fire Marshal detailing and confirming the fireworks item's destruction.

Sec. 5. Section 28-1244, Reissue Revised Statutes of Nebraska, is amended to read:

28-1244 Except as provided in section 28-1245, it shall be unlawful for any person to possess, sell, offer for sale, bring into this state, or discharge any fireworks other than permissible consumer fireworks.

Sec. 6. Section 28-1246, Reissue Revised Statutes of Nebraska, is amended to read:

28-1246 (1) It shall be unlawful for any person to sell, hold for sale, or offer for sale as a distributor, jobber, or retailer any fireworks in this state unless such person has first obtained a license as a distributor, jobber, or retailer. Application for each such license shall be made to the State Fire Marshal on forms prescribed by him or her. If the applicant is an individual, each application shall include the applicant's social security

number. Each application shall be accompanied by the required fee, which shall be five hundred dollars for a distributor's license, two hundred dollars for a jobber's license, and twenty-five dollars for a retailer's license. ~~Each application for a license as a retailer postmarked after June 10 shall be accompanied by an additional fee of fifty dollars. All licenses~~ Each application for a retailer's license shall be received by the State Fire Marshal at least ten business days prior to the sales period, as set forth in section 28-1249, in which the retailer wishes to sell consumer fireworks. A retailer's license shall be good only for the specific sales period listed on the application and within the calendar year in which issued. The retailer's license and shall at all times be displayed at the place of business of the holder thereof.

(2) The funds received pursuant to this section shall be remitted to the State Treasurer for credit to the State Fire Marshal Cash Fund.

Sec. 7. Section 28-1248, Reissue Revised Statutes of Nebraska, is amended to read:

28-1248 (1) It shall be unlawful for any person not licensed as a distributor or as a jobber ~~under the provisions of sections 28-1241 to 28-1252 and section 4 of this act~~ to bring any fireworks into this state.

(2) It shall be unlawful for any retailer or jobber in this state to sell any fireworks in this state which have not been purchased from a distributor licensed ~~under the provisions of sections 28-1241 to 28-1252 and section 4 of this act.~~

(3) Any person licensed ~~under the provisions of sections 28-1239.01 and 28-1241 to 28-1252 and section 4 of this act~~ shall keep, available for inspection by the State Fire Marshal or his or her agents, a copy of each ~~invoice packing list~~ invoice packing list for fireworks purchased as long as any fireworks included on such ~~invoice packing list~~ invoice packing list are held in his or her possession. The packing list which invoice shall show the license number of the distributor or jobber from which the purchase was made.

Sec. 8. Section 28-1249, Reissue Revised Statutes of Nebraska, is amended to read:

28-1249 It shall be unlawful to sell any permissible consumer fireworks at retail within this state, outside the limits of any incorporated city or village. Permissible Consumer fireworks may be sold at retail only between June 24 and July 5 and between December 28 and January 1 of each year.

Sec. 9. Section 28-1250, Reissue Revised Statutes of Nebraska, is amended to read:

28-1250 (1) Any person who violates any of the provisions of sections 28-1244 to 28-1249 commits a Class III misdemeanor. If such person is a licensed distributor or jobber, the State Fire Marshal may suspend, cancel, or revoke the license for up to three years. The suspension, cancellation, or revocation shall become effective upon the failure to timely appeal the decision under the Administrative Procedure Act or upon an order of the Nebraska Fire Safety Appeals Board upholding the decision pursuant to a hearing under the Administrative Procedure Act. he or she shall be subject to the revocation of his or her license for a period of one year.

(2) It shall be unlawful for any person, association, partnership, limited liability company, or corporation to have in his, her, or its possession any fireworks in violation of any of the provisions of ~~such sections 28-1244 to 28-1249.~~ If any person shall have in his, her, or its possession any fireworks in violation of such sections, a warrant may be issued for the seizure of such fireworks and when the warrant is executed by the seizure of such fireworks, such fireworks shall be safely kept by the magistrate to be used as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the fireworks shall be returned to the person in whose possession they were found. Nothing in such sections shall apply to the transportation of fireworks by regulated carriers.

Sec. 10. Section 28-1252, Reissue Revised Statutes of Nebraska, is amended to read:

28-1252 The State Fire Marshal shall adopt and promulgate reasonable rules and regulations for the enforcement of sections 28-1239.01 and 28-1241 to 28-1252 and section 4 of this act and, together with all peace officers of the state and its political subdivisions, shall be charged with the enforcement of sections 28-1239.01 and 28-1244 to ~~28-1249.~~ 28-1252 and section 4 of this act.

Sec. 11. This act becomes operative on October 1, 2010.

Sec. 12. Original sections 28-1213, 28-1239.01, 28-1241, 28-1244, 28-1246, 28-1248, 28-1249, 28-1250, and 28-1252, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 13. The following section is outright repealed: Section

28-1247, Reissue Revised Statutes of Nebraska.