

LEGISLATIVE BILL 152

Approved by the Governor May 5, 2021

Introduced by Slama, 1; Wayne, 13.

A BILL FOR AN ACT relating to fireworks; to amend sections 28-1241 and 28-1243, Reissue Revised Statutes of Nebraska; to change provisions relating to classifications of fireworks and the sale and possession of fireworks; to adopt certain provisions of federal law; to define and redefine terms; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. 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, unless the context otherwise requires:

(1) 1.3G explosives, also known as display fireworks or Class B fireworks or by United Nations shipping classification number UN0335, means any items classified as 1.3G explosives by the United States Department of Transportation in Title 49 of the Code of Federal Regulations, as such regulations existed on January 1, 2021;

(2) 1.4G explosives, also known as consumer fireworks or Class C fireworks or by United Nations shipping classification number UN0336, means any items classified as 1.4G explosives by the United States Department of Transportation in Title 49 of the Code of Federal Regulations, as such regulations existed on January 1, 2021;

(3) ~~(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;

(4) ~~(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;

(5) ~~(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;

(6) ~~(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;

(7) ~~(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 consumer or special fireworks set forth by the United States Department of Transportation in Title 49 of the Code of Federal Regulations;

(8)(a) ~~(6)(a)~~ Consumer fireworks means any device of the following devices that (i) meets meet the requirements set forth in 16 C.F.R. parts 1500 and 1507, as such regulations existed on January 1, 2021 2010, and (ii) is 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 1.4G explosives 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;~~

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

~~(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~~

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

(9) ~~(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 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,~~ 1.3G explosives 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. 2. Section 28-1243, Reissue Revised Statutes of Nebraska, is amended to read:

28-1243 (1) If the State Fire Marshal deems any fireworks item to be unsafe pursuant to subdivision ~~(8)(c)(ii)~~ ~~(6)(e)(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 ~~(8)(c)(ii)~~ ~~(6)(e)(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. 3. Original sections 28-1241 and 28-1243, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 4. Since an emergency exists, this act takes effect when passed and approved according to law.