

SENATE BILL 195

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MICHAEL S. SANCHEZ

AN ACT

RELATING TO FIREWORKS; LIMITING THE SALE OR USE OF FIREWORKS
UNDER CERTAIN CIRCUMSTANCES; BANNING THE SALE OR USE OF BOTTLE
ROCKETS; CHANGING DUTIES PERTAINING TO RECORDS; DECLARING AN
EMERGENCY.

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

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

"60-2C-1. SHORT TITLE. -- ~~[Sections 1 through 11 of this
act]~~ Chapter 60, Article 2C NMSA 1978 may be cited as the
"Fireworks Licensing and Safety Act". "

Section 2. 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:

1 ~~[A. "aerial device" means a fireworks device that~~
2 ~~upon ignition propels itself or an insert a significant distance~~
3 ~~into the air, but does not include a firework that produces a~~
4 ~~shower of sparks;]~~

5 A. "bottle rocket" means a cylindrical tube with a
6 casing size of less than one-half of an inch for the outside
7 diameter and less than three and one-half inches in casing
8 length containing no more than twenty grams of chemical
9 composition with a wooden stick attached for guidance and
10 stability that rises into the air upon ignition and produces a
11 burst of color or sound at or near the height of flight;

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

18 ~~[B.-]~~ C. "chemical composition" includes all
19 pyrotechnic and explosive composition contained in a fireworks
20 device, but does not include inert materials such as clay used
21 for plugs or organic matter such as rice hulls used for density
22 control;

23 ~~[C. "common fireworks" means any fireworks device~~
24 ~~suitable for use by the public that complies with the~~
25 ~~construction, performance, composition and labeling requirements~~

1 promulgated by the United States consumer product safety
2 commission in Title 16, C.F.R. and that is classified as a class
3 C explosive by the United States department of transportation;]

4 D. "cone fountain" means a cardboard or heavy paper
5 cone containing no more than fifty grams of pyrotechnic
6 composition that has the same effect as a cylindrical fountain;
7 and when more than one cone is mounted on a common base, total
8 pyrotechnic composition shall not exceed two hundred grams;

9 E. "crackling device" means a sphere or paper tube
10 that contains no more than twenty grams of pyrotechnic
11 composition that produces a flash of light and a mild, audible
12 crackling effect upon ignition, which effect is not considered
13 to be an explosion; crackling devices are not subject to the
14 fifty-milligram limit of firecrackers;

15 F. "cylindrical fountain" means a cylindrical tube
16 containing not more than seventy-five grams of pyrotechnic
17 composition that produces a shower of colored sparks and
18 sometimes a whistling effect or smoke; the device may be
19 provided with a spike for insertion into the ground or a wood or
20 cardboard handle to be hand held; and when more than one tube is
21 mounted on a common base, total pyrotechnic composition shall
22 not exceed two hundred grams;

23 [~~D.~~] G. "display distributor" means any person, firm
24 or corporation selling [special] display fireworks;

25 H. "display fireworks" means devices primarily

1 intended for commercial displays that are designed to produce
2 visible or audible effects by combustion, deflagration or
3 detonation, including salutes containing more than one hundred
4 thirty milligrams of explosive composition; aerial shells
5 containing more than forty grams of chemical composition
6 exclusive of lift charge; and other exhibition display items
7 that exceed the limits for permissible fireworks;

8 [E.] L. "distributor" means any person, firm or
9 corporation selling fireworks to wholesalers and retailers for
10 resale;

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

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

20 [G. "firework"] L. "fireworks" means [~~any~~
21 ~~composition or device for the purpose of producing~~] devices
22 intended to produce a visible or audible effect by combustion,
23 deflagration or detonation [~~Fireworks are further classified in~~
24 ~~the Fireworks Licensing and Safety Act as common fireworks and~~
25 ~~special fireworks, as defined by the United States department of~~

1 ~~transportation, C.F.R. Title 49, transportation, parts 173.88(d)~~
2 ~~and 173.00(r)]~~ and are categorized as "permissible fireworks" or
3 "display fireworks";

4 ~~[H. "ground audible device" means a fireworks device~~
5 ~~intended to function on the ground that produces an audible~~
6 ~~effect;]~~

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

12 N. "ground spinner" means a small, rapidly spinning
13 device containing no more than twenty grams of pyrotechnic
14 composition venting out an orifice usually on the side of the
15 tube that when ignited produces a shower of sparks and color;

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

21 P. "illuminating torch" means a cylindrical tube
22 containing no more than one hundred grams of pyrotechnic
23 composition that produces a colored flame upon ignition and may
24 be spiked, based or hand held; and when more than one tube is
25 mounted on a common base, total pyrotechnic composition shall

1 not exceed two hundred grams:

2 [H.] Q. "manufacturer" means any person, firm or
3 corporation engaged in the manufacture of fireworks;

4 R. "mine" or "shell" means a heavy cardboard or
5 paper tube usually attached to a wooden or plastic base and
6 containing no more than forty grams of chemical composition plus
7 not more than twenty grams of lift charge that produces a star
8 effect and that contains components producing reports containing
9 a maximum one hundred thirty milligrams of explosive composition
10 per report; a mine may contain more than one tube, but the tubes
11 must fire in sequence upon ignition of one external fuse and the
12 total chemical composition, including lift charges, of a
13 multiple tube device shall not exceed two hundred grams;

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

18 [J.] T. "permissible fireworks" means fireworks
19 legal for sale to and use in New Mexico [~~under the provisions of~~
20 ~~the Fireworks Licensing and Safety Act~~] by the general public
21 that contain no more than two hundred grams of total chemical
22 composition;

23 [K.] U. "pyrotechnic composition" means a chemical
24 mixture [~~which~~] that on burning and without explosion produces
25 visible or brilliant displays or bright lights or whistles or

1 motion;

2 [~~E.~~] V. "retailer" means any person, firm or
3 corporation purchasing fireworks for resale to consumers;

4 [~~M.~~] ~~"special fireworks" means fireworks devices~~
5 ~~primarily intended for commercial displays which are designed to~~
6 ~~produce visible or audible effects by combustion, deflagration~~
7 ~~or detonation, including salutes containing more than one~~
8 ~~hundred thirty milligrams (two grains) of explosive composition,~~
9 ~~aerial shells containing more than forty grams of chemical~~
10 ~~composition exclusive of lift charge and other exhibition~~
11 ~~display items that exceed the limits contained in the Fireworks~~
12 ~~Licensing and Safety Act for common fireworks;]~~

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

18 [~~N.~~] X. "specialty retailer" means any person, firm
19 or corporation purchasing permissible fireworks for year-round
20 resale in permanent retail stores whose primary business is
21 tourism, [~~and~~]

22 Y. "stick-type rocket" means a cylindrical tube with
23 a minimum casing size of one-half of an inch for the outside
24 diameter and a minimum casing length of three and one-half
25 inches containing no more than twenty grams of chemical

1 composition with a wooden stick attached for guidance and
2 stability that rises into the air upon ignition and produces a
3 burst of color or sound at or near the height of flight;

4 Z. "toy smoke device" means a small plastic or paper
5 item containing no more than one hundred grams of pyrotechnic
6 composition that produces white or colored smoke as the primary
7 effect;

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

15 [Ø-] BB. "wholesaler" means any person, firm or
16 corporation purchasing fireworks for resale to retailers."

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

19 "60-2C-3. LICENSE OR PERMIT REQUIRED FOR SALE OF
20 FIREWORKS-- ADMINISTRATION- PERMITS AND LICENSES. --

21 A. No person may sell, hold for sale, import,
22 distribute or offer for sale, as manufacturer, distributor,
23 wholesaler or retailer, any fireworks in this state unless such
24 person has first obtained the appropriate license or permit.

25 B. The state fire marshal shall enforce the

1 Fireworks Licensing and Safety Act. All license applications
2 shall be submitted to the office of the state fire marshal. All
3 retailers shall be required to purchase a retail fireworks
4 permit for each retail location. The retail permit may be
5 purchased from any licensed manufacturer, distributor or or
6 wholesaler or from the state fire marshal's office. [~~These~~]
7 Retail permits may be purchased at any time by the licensed
8 manufacturer, distributor or wholesaler in books of [~~twenty~~] ten
9 permits per book from the state fire marshal. Permits shall be
10 numbered, and it shall be the responsibility of the licensed
11 manufacturer, distributor or wholesaler to keep records of the
12 purchases of these permits and to [~~submit these records to the~~
13 ~~state fire marshal semi-annually on January 31 and July 31 of~~
14 ~~each year. Each semi-annual report is to cover the preceding~~
15 ~~six-month period~~] return books containing duplicate copies of
16 each issued permit to the state fire marshal's office within a
17 week of the time the last permit in each book was issued. The
18 returned copies of each book shall be the official record of
19 retail permits sold. Retail permits [~~which~~] that are unsold may
20 be exchanged for new permits.

21 C. The state fire marshal shall appoint the deputies
22 and employees required to carry out the provisions of the
23 Fireworks Licensing and Safety Act. The state fire marshal may
24 also appoint any commissioned law enforcement officer or duly
25 appointed fire chief or his [~~designate~~] designee with approval

1 from the local governing body required to carry out the
2 provisions of that act.

3 D. The state fire board shall formulate, adopt,
4 promulgate and amend or revise rules and regulations for the
5 safe handling of fireworks."

6 Section 4. 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 fire
11 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. 1,000;
17 (5) specialty retailer license . . . 750; or
18 (6) retailer permit. 100.

19 B. All licenses and permits shall be issued for one
20 year beginning on February 1 of each year. All licenses and
21 permits shall be issued within thirty days from the date of
22 receipt of application, except that no application shall be
23 processed by the state fire marshal's office from ~~[May 10]~~ June
24 10 through July 10 of each year.

25 C. Licenses issued under the Fireworks Licensing and

1 Safety Act shall not be restricted in number or limited to any
2 person without cause. Municipalities and counties may require
3 licenses or permits and reasonable fees, not to exceed fifty
4 dollars (\$50.00), for the sale of fireworks.

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

10 Section 5. Section 60-2C-7 NMSA 1978 (being Laws 1989,
11 Chapter 346, Section 7, as amended) is amended to read:

12 "60-2C-7. PERMISSIBLE FIREWORKS. --

13 A. Permissible fireworks ~~[for sale to the general~~
14 ~~public as that term is used in the Fireworks Licensing and~~
15 ~~Safety Act shall be understood to mean common fireworks except~~
16 ~~stick-type rockets having a tube less than one-quarter inch~~
17 ~~inside diameter]~~ are:

18 (1) ground and hand-held sparkling and smoke
19 devices;

20 (a) cone fountains;

21 (b) crackling devices;

22 (c) cylindrical fountains;

23 (d) flitter sparklers;

24 (e) ground spinners;

25 (f) illuminating torches;

1 (g) toy smoke devices; and

2 (h) wheels;

3 (2) aerial devices:

4 (a) aerial spinners;

5 (b) helicopters;

6 (c) mines;

7 (d) missile-type rockets; and

8 (e) roman candles;

9 (f) shells; and

10 (g) stick-type rockets;

11 (3) ground audible devices:

12 (a) chasers; and

13 (b) firecrackers.

14 B. Bottle rockets are not permissible fireworks.

15 C. A municipality or county shall not by ordinance
16 regulate and prohibit the sale or use of any permissible
17 firework except aerial devices and ground audible devices."

18 Section 6. Section 60-2C-8 NMSA 1978 (being Laws 1989,
19 Chapter 346, Section 8, as amended) is amended to read:

20 "60-2C-8. RETAIL SALES OR STORAGE OF FIREWORKS--REGULATED
21 ACTIVITIES.--

22 A. No fireworks may be sold at retail without a
23 retail permit. The permit shall be at the location where the
24 retail sale takes place.

25 B. It is unlawful to offer for sale or to sell any

1 fireworks to children under the age of [~~twelve~~] sixteen years or
2 to any intoxicated person.

3 C. At all places where fireworks are stored, sold or
4 displayed, the words "NO SMOKING" shall be posted in letters at
5 least four inches in height. Smoking, open flames and any
6 ignition source are prohibited within twenty-five feet of any
7 fireworks stock.

8 D. No fireworks shall be stored, kept, sold or
9 discharged within fifty feet of any gasoline pump or gasoline
10 bulk station or any building in which gasoline or volatile
11 liquids are sold in quantities in excess of one gallon, except
12 in stores where cleaners, paints and oils are handled in sealed
13 containers only.

14 E. All fireworks permittees and licensees shall keep
15 and maintain upon the premises a fire extinguisher bearing an
16 underwriters laboratories [~~inc.~~] incorporated rated capacity of
17 at least [~~5-lb.~~] five-pound ABC per five hundred square feet of
18 space used for fireworks sales or storage.

19 F. A sales clerk who is at least sixteen years of
20 age shall be on duty to serve consumers at the time of purchase
21 or delivery. [~~All fireworks sold and shipped to consumers~~
22 ~~within New Mexico shall be sold and shipped only by an~~
23 ~~individual firm, partnership or corporation holding the proper~~
24 ~~New Mexico fireworks license or permit.~~] Permissible fireworks
25 may be offered for sale only at state-permitted or state-

1 licensed retail locations.

2 G. No fireworks shall be discharged within one
3 hundred fifty feet of any fireworks retail sales location.

4 H. No fireworks shall be sold or used on state
5 forest land.

6 [~~H.~~] I. No person shall ignite any fireworks within
7 a motor vehicle or throw fireworks from a motor vehicle, nor
8 shall any person place or throw any ignited article of fireworks
9 into or at a motor vehicle or at or near any person or group of
10 people.

11 [~~H.~~] I. Any fireworks devices that are readily
12 accessible to handling by consumers or purchasers in a retail
13 sales location shall have their exposed fuses protected in a
14 manner to protect against accidental ignition of an item by a
15 spark, cigarette ash or other ignition source. If the fuse is a
16 thread-wrapped safety fuse which has been coated with a
17 nonflammable coating, only the outside end of the safety fuse
18 shall be covered. If the fuse is not a safety fuse, then the
19 entire fuse shall be covered.

20 [~~J.~~] K. Permissible fireworks may be sold at retail
21 between June 20 and July 6 of each year and [~~three~~] six days
22 preceding and including new year's day and three days preceding
23 and including Chinese new year and Cinco de Mayo of each year,
24 except that permissible fireworks may be sold all year in
25 permanent retail stores whose primary business is tourism

1 L. All retail mail order sales of permissible
2 fireworks are prohibited."

3 Section 7. Section 60-2C-9 NMSA 1978 (being Laws 1989,
4 Chapter 346, Section 9, as amended) is amended to read:

5 "60-2C-9. [PUBLIC] DISPLAY [OF] FIREWORKS. -- Nothing in the
6 Fireworks Licensing and Safety Act shall prohibit the [public]
7 display of display fireworks, except that any individual,
8 association, partnership, corporation, organization, county or
9 municipality shall secure a written permit from the governing
10 body of the county or municipality where the [public] display is
11 to be fired and the display fireworks shall be purchased from a
12 distributor or display distributor licensed by the state fire
13 marshal and the bureau of alcohol, tobacco and firearms at the
14 United States department of the treasury."

15 Section 8. A new section of the Fireworks Licensing and
16 Safety Act is enacted to read:

17 "[NEW MATERIAL] NOVELTIES NOT FIREWORKS. -- Novelties are
18 not fireworks and are not subject to the provisions of the
19 Fireworks Licensing and Safety Act. For the purposes of this
20 section, "novelties" means devices containing small amounts of
21 pyrotechnic or explosive composition that produce limited
22 visible or audible effects, including party poppers, snappers,
23 snakes, glowworms, sparklers or toy caps and devices intended to
24 produce unique visual or audible effects that contain sixteen
25 milligrams or less of explosive composition and limited amounts

1 of other pyrotechnic composition, including cigarette loads,
2 trick matches, explosive auto alarms and other trick
3 noisemakers. "

4 Section 9. A new section of the Fireworks Licensing and
5 Safety Act is enacted to read:

6 "[NEW MATERIAL] EXTREME DROUGHT CONDI TI ONS- - RESTRI CTED SALE
7 AND USE. - -

8 A. The state fire board may hold a hearing to
9 determine if fireworks restrictions should be imposed in all or
10 a portion of the state affected by extreme drought conditions.
11 The findings of the state fire board shall be based on current
12 drought indices published by the national weather service.

13 B. The state fire board may issue a proclamation
14 declaring an extreme drought condition in all or a portion of
15 the state. The state fire board's proclamation:

16 (1) shall ban the sale and use of missile-type
17 rockets, helicopters, aerial spinners, stick-type rockets and
18 ground audible devices within the affected drought area;

19 (2) shall give local governments the power to:

20 (a) limit the use within their
21 jurisdictions of any fireworks not listed in Paragraph (1) of
22 this subsection to areas that are paved or barren or that have a
23 readily accessible source of water for use by the homeowner or
24 the general public; and

25 (b) ban or restrict the sale or use of

1 display fireworks; and

2 (3) may ban or restrict the use of any type of
3 fireworks on state lands within the affected drought area.

4 C. The state fire board's proclamation declaring an
5 extreme drought condition shall be issued before:

6 (1) June 15 for the July 4 fireworks season; or

7 (2) five days prior to any other holiday
8 selling period.

9 D. Except as otherwise provided in this subsection,
10 a proclamation shall be effective for thirty days, and the state
11 fire board may issue succeeding proclamations if extreme drought
12 conditions warrant. A proclamation may be modified or rescinded
13 within its thirty-day period if weather conditions improve
14 sufficiently to alleviate fire dangers."

15 Section 10. EMERGENCY.--It is necessary for the public
16 peace, health and safety that this act take effect immediately.

1 **FORTY-THIRD LEGISLATURE**

2 **FIRST SESSION, 1997**

SB 195/ a

3
4
5 February 7, 1997

6
7 Mr. President:

8
9 Your **PUBLIC AFFAIRS COMMITTEE**, to whom has been
10 referred

11
12 **SENATE BILL 195**

13
14 has had it under consideration and reports same with
15 recommendation that it **DO PASS**, amended as follows:

16
17 1. On page 14, line 23, after the first occurrence of "year"
18 insert ", the sixteenth of September",

19
20 and thence referred to the **JUDICIARY COMMITTEE**.

21
22 Respectfully submitted,
23
24
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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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Shannon Robinson, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Ingle, Smith

Absent: None

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State of New Mexico

House of Representatives

FORTY-THIRD LEGISLATURE

FIRST SESSION, 1997

March 6, 1997

Mr. Speaker:

Your **BUSINESS AND INDUSTRY COMMITTEE**, to whom has
been referred

SENATE BILL 195, as amended

has had it under consideration and reports same with
recommendation that it **DO PASS**.

Respectfully submitted,

Fred Luna, Chairman

Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HBI C/ SB 195

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Getty, Gubbels, Kissner, Olguin, J. G. Taylor

Absent: None

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Underscored material = new
[bracketed material] = delete