

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 839

Introduced by Pedersen, 39.

Read first time January 10, 2008

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections
2 28-1247 and 28-1250, Reissue Revised Statutes of
3 Nebraska, and section 28-1241, Revised Statutes
4 Cumulative Supplement, 2006; to change provisions
5 relating to the approval of fireworks and the license
6 revocation period for violators of fireworks provisions;
7 to define and redefine terms; to provide powers and
8 duties to the State Fire Marshal; and to repeal the
9 original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1241, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 28-1241 As used in sections 28-1239.01 and 28-1241 to
4 28-1252, unless the context otherwise requires:

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

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

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

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

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

24 (6) Common fireworks means any small firework device
25 designed to produce visible effects by combustion and which is

1 required to comply with the construction, chemical composition,
2 and labeling regulations of the United States Consumer Product
3 Safety Commission set forth in 16 C.F.R., small devices designed to
4 produce audible effects such as whistling devices, ground devices
5 containing fifty milligrams or less of explosive composition,
6 and aerial devices and firecrackers containing one hundred thirty
7 milligrams or less of explosive composition. Class C explosives as
8 classified by the United States Department of Transportation shall
9 be considered common fireworks;

10 (7) Permissible fireworks means ~~only sparklers, vesuvius~~
11 ~~fountains, spray fountains, torches, color fire cones, star and~~
12 ~~comet type color aerial shells without explosive charge for~~
13 ~~the purpose of making a noise, lady fingers, not to exceed~~
14 ~~seven-eighths of an inch in length or one-eighth inch in diameter,~~
15 ~~total explosive composition not to exceed fifty milligrams in~~
16 ~~weight, color wheels, and any other fireworks approved under listed~~
17 ~~as permissible by the State Fire Marshal pursuant to section~~
18 ~~28-1247; and~~

19 ~~(8) Nonpermissible fireworks means any fireworks listed~~
20 ~~as nonpermissible by the State Fire Marshal pursuant to section~~
21 ~~28-1247; and~~

22 ~~(8)~~ (9) Display fireworks means those materials
23 manufactured exclusively for use in public exhibitions or displays
24 of fireworks designed to produce visible or audible effects
25 by combustion, deflagration, or detonation. Display fireworks

1 includes, but is not limited to, firecrackers containing more than
2 one hundred thirty milligrams of explosive composition, aerial
3 shells containing more than forty grams of explosive composition,
4 and other display pieces which exceed the limits for classification
5 as common fireworks. Class B explosives as classified by the United
6 States Department of Transportation shall be considered display
7 fireworks. Display fireworks shall be considered an explosive
8 as defined in section 28-1213 and shall be subject to sections
9 28-1213 to 28-1239, except that display fireworks may be purchased,
10 received, and discharged by the holder of an approved display
11 permit issued pursuant to section 28-1239.01.

12 Sec. 2. Section 28-1247, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 28-1247 ~~Before any permissible fireworks~~ Fireworks may be
15 sold, held for sale, or offered for sale in this state, ~~they shall~~
16 ~~first be submitted to the State Fire Marshal for examination to~~
17 ~~determine their compliance with subdivision (7) of section 28-1241~~
18 ~~and their safety for general use. Fireworks not specifically listed~~
19 ~~in subdivision (7) of section 28-1241 may be added to the list~~
20 ~~of permissible fireworks by the State Fire Marshal, by rule or~~
21 ~~regulation, after having been submitted to him or her and tested~~
22 ~~to determine their safety for general use. if, at the discretion~~
23 ~~of the State Fire Marshal, the fireworks (1) have been tested and~~
24 ~~approved by a nationally recognized testing facility or (2) have~~
25 ~~been tested and approved by the State Fire Marshal. Such fireworks~~

1 may be added to the list of permissible fireworks by the State
2 Fire Marshal. The State Fire Marshal may also develop a list of
3 nonpermissible fireworks.

4 Sec. 3. Section 28-1250, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 28-1250 (1) Any person who violates any of the provisions
7 of sections 28-1244 to 28-1249 commits a Class III misdemeanor. If
8 such person is a licensed distributor or jobber he or she shall be
9 subject to the revocation of his or her license for a period of ~~one~~
10 year. three years.

11 (2) It shall be unlawful for any person, association,
12 partnership, limited liability company, or corporation to have in
13 his, her, or its possession any fireworks in violation of any of
14 the provisions of such sections. If any person shall have in his,
15 her, or its possession any fireworks in violation of such sections,
16 a warrant may be issued for the seizure of such fireworks and when
17 the warrant is executed by the seizure of such fireworks, such
18 fireworks shall be safely kept by the magistrate to be used as
19 evidence. Upon conviction of the offender, the fireworks shall be
20 destroyed, but if the offender is discharged, the fireworks shall
21 be returned to the person in whose possession they were found.
22 Nothing in such sections shall apply to the transportation of
23 fireworks by regulated carriers.

24 Sec. 4. Original sections 28-1247 and 28-1250, Reissue
25 Revised Statutes of Nebraska, and section 28-1241, Revised Statutes

LB 839

LB 839

1 Cumulative Supplement, 2006, are repealed.