

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 881

Introduced by Rogert, 16.

Read first time January 11, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the State Fire Marshal; to amend sections
2 28-1213, 28-1241, 28-1242, 28-1244, 28-1248, 28-1249,
3 and 28-1250, Reissue Revised Statutes of Nebraska; to
4 change and eliminate provisions relating to fireworks;
5 to harmonize provisions; to provide an operative date;
6 to repeal the original sections; and to outright repeal
7 section 28-1247, Reissue Revised Statutes of Nebraska.

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

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

3 28-1213 For purposes of sections 28-1213 to 28-1239,
4 unless the context otherwise requires:

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

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

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

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

24 (5) Blasting agent means any material or mixture,
25 intended for blasting which meets the requirements of 49 C.F.R.

1 part 173, subpart C, as such subpart existed on March 7, 2006;

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

11 (7)(a) Destructive devices means:

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

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

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

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

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

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

23 Sec. 2. Section 28-1241, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 28-1241 As used in sections 28-1239.01 and 28-1241 to

1 28-1252, unless the context otherwise requires:

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

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

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

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

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

21 ~~(6) Common~~ (6)(a) Consumer fireworks means any of the
22 following devices that (i) meet the requirements set forth in
23 16 C.F.R. parts 1500 and 1507, as such regulations existed on
24 January 1, 2010, and (ii) are tested and approved by a nationally
25 recognized testing facility or by the State Fire Marshal:

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

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

8 (C) Any ground devices device containing fifty milligrams
9 or less of explosive composition; or, and

10 (D) Any aerial devices and firecrackers device or
11 firecracker containing one hundred thirty milligrams or less of
12 explosive composition.

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

16 (c) Consumer fireworks do not include:

17 (i) Fireworks that are meant to be shot into the air
18 and return to the ground with a temperature high enough to cause
19 auto-ignition;

20 (ii) Firecrackers that are greater than one inch in
21 length with water-resistant safety fuses;

22 (iii) Firecrackers that contain more than fifty
23 milligrams of explosive composition;

24 (iv) Fireworks that are meant to be used as nighttime
25 parachutes;

1 (v) Fireworks that are of the lantern type or other
2 similar type that carry flames into the air for propulsion;

3 (vi) Wire sparklers, except that silver and gold wire
4 sparklers are deemed to be consumer fireworks until January 1,
5 2014;

6 (vii) Fireworks that are rockets mounted on a stick
7 or wire and project into the air when ignited, with or without
8 reports; and

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

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

20 ~~(8) (7) Display fireworks means those materials~~
21 ~~manufactured exclusively for use in public exhibitions or displays~~
22 ~~of fireworks designed to produce visible or audible effects~~
23 ~~by combustion, deflagration, or detonation. Display fireworks~~
24 ~~includes, but is not limited to, firecrackers containing more than~~
25 ~~one hundred thirty milligrams of explosive composition, aerial~~

1 shells containing more than forty grams of explosive composition,
2 and other display pieces which exceed the limits for classification
3 as ~~common~~ consumer fireworks. Class B explosives as classified by
4 the United States Department of Transportation shall be considered
5 display fireworks. Display fireworks shall be considered an
6 explosive as defined in section 28-1213 and shall be subject to
7 sections 28-1213 to 28-1239, except that display fireworks may be
8 purchased, received, and discharged by the holder of an approved
9 display permit issued pursuant to section 28-1239.01.

10 Sec. 3. Section 28-1242, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 28-1242 ~~(1)~~ A person commits the offense of unlawful
13 throwing of fireworks if he or she throws any firework, or any
14 object which explodes upon contact with another object: ~~(a)~~ (1)
15 From or into a motor vehicle; ~~(b)~~ (2) onto any street, highway, or
16 sidewalk; ~~(c)~~ (3) at or near any person; ~~(d)~~ (4) into any building;
17 or ~~(e)~~ (5) into or at any group of persons.

18 ~~(2) Unlawful throwing of fireworks is a Class III~~
19 ~~misdemeanor.~~

20 Sec. 4. Section 28-1244, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 28-1244 Except as provided in section 28-1245, it shall
23 be unlawful for any person to possess, sell, offer for sale, bring
24 into this state, or discharge any fireworks other than ~~permissible~~
25 consumer fireworks.

1 Sec. 5. Section 28-1248, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-1248 (1) It shall be unlawful for any person not
4 licensed as a distributor or as a jobber under ~~the provisions of~~
5 sections 28-1241 to 28-1252 to bring any fireworks into this state.

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

10 (3) Any person licensed under ~~the provisions of~~ sections
11 28-1241 to 28-1252 shall keep, available for inspection by the
12 State Fire Marshal or his or her agents, a copy of each invoice
13 for fireworks purchased as long as any fireworks included on such
14 invoice are held in his or her possession. ~~The which~~ invoice shall
15 show the license number of the distributor or jobber from ~~which~~
16 whom the purchase was made.

17 Sec. 6. Section 28-1249, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 28-1249 It shall be unlawful to sell any ~~permissible~~
20 consumer fireworks at retail within this state, outside the limits
21 of any incorporated city or village. ~~Permissible~~ Consumer fireworks
22 may be sold at retail only between June 24 and July 5 of each year.

23 Sec. 7. Section 28-1250, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 28-1250 (1) Any person who violates any of the provisions

1 of sections ~~28-1244~~ 28-1242 to 28-1249 commits a Class III
2 misdemeanor. If such person is a licensed distributor or jobber he
3 or she shall be subject to the revocation of his or her license for
4 a period of at least one year but not to exceed three years.

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

18 Sec. 8. This act becomes operative on October 1, 2010.

19 Sec. 9. Original sections 28-1213, 28-1241, 28-1242,
20 28-1244, 28-1248, 28-1249, and 28-1250, Reissue Revised Statutes of
21 Nebraska, are repealed.

22 Sec. 10. The following section is outright repealed:
23 Section 28-1247, Reissue Revised Statutes of Nebraska.