

E AND R AMENDMENTS TO LB 880

Introduced by Enrollment and Review Committee: Nordquist, 7,  
Chairperson

1           1. Strike the original sections and all amendments  
2 thereto and insert the following new sections:

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

5           28-1213 For purposes of sections 28-1213 to 28-1239,  
6 unless the context otherwise requires:

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

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

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

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

1 naphtha, turpentine, benzine, acetone, ethyl ether, benzol, fixed  
2 ammunition and primers for small arms, safety fuses, or matches;

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

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

16 (7) (a) Destructive devices means:

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

27 (ii) Any combination of parts either designed or intended

1 for use in converting any device into a destructive device as  
2 defined in subdivision (7)(a)(i) of this section from which a  
3 destructive device may be readily assembled.

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

16 (8) Federal permittee means any lawful user of explosive  
17 materials who has obtained a federal user permit under 18 U.S.C.  
18 chapter 40, as such chapter existed on ~~March 7, 2006~~, January 1,  
19 2010;

20 (9) Federal licensee means any importer, manufacturer,  
21 or dealer in explosive materials who has obtained a federal  
22 importers', manufacturers', or dealers' license under 18 U.S.C.  
23 chapter 40, as such chapter existed on ~~March 7, 2006~~, January 1,  
24 2010; and

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

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

3           28-1239.01 (1) No person shall conduct a public  
4 exhibition or display of display fireworks without first procuring  
5 a display permit from the State Fire Marshal. If the applicant is  
6 an individual, the application for a display permit shall include  
7 the applicant's social security number. Such application for a  
8 display permit shall be accompanied by a fee of ten dollars to be  
9 deposited in the State Fire Marshal Cash Fund.

10           (2) No display fireworks shall be sold or delivered by  
11 a licensed distributor to any person who is not in possession of  
12 an approved display permit. Sales of display fireworks to persons  
13 without an approved display permit shall be subject to sections  
14 28-1213 to 28-1239.

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

17           28-1241 As used in sections 28-1239.01 and 28-1241 to  
18 28-1252 and section 4 of this act, unless the context otherwise  
19 requires:

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

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

27           (3) Retailer means any person engaged in the business of

1 making sales of fireworks at retail to consumers or to persons  
2 other than distributors or jobbers;

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

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

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

23 ~~(7) Permissible (6)(a) Consumer fireworks means only~~  
24 ~~sparklers, vesuvius fountains, spray fountains, torches, color fire~~  
25 ~~cones, star and comet type color aerial shells without explosive~~  
26 ~~charge for the purpose of making a noise, lady fingers, not to~~  
27 ~~exceed seven-eighths of an inch in length or one-eighth inch~~

1 ~~in diameter,~~ ~~total explosive composition not to exceed fifty~~  
2 ~~milligrams in weight,~~ ~~color wheels,~~ ~~and any other fireworks~~  
3 ~~approved under section 28-1247,~~ ~~and any of the following devices~~  
4 ~~that (i) meet the requirements set forth in 16 C.F.R. parts 1500~~  
5 ~~and 1507, as such regulations existed on January 1, 2010, and (ii)~~  
6 ~~are tested and approved by a nationally recognized testing facility~~  
7 ~~or by the State Fire Marshal:~~

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

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

15 (C) Any ground device or firecracker containing fifty  
16 milligrams or less of explosive composition; or

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

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

22 (c) Consumer fireworks does not include:

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

25 (ii) Wire sparklers, except that silver and gold  
26 sparklers are deemed to be consumer fireworks until January 1,  
27 2014;

1           (iii) Nighttime parachutes;

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

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

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

10           ~~(8)~~ (7) Display fireworks means those materials  
11 manufactured exclusively for use in public exhibitions or displays  
12 of fireworks designed to produce visible or audible effects  
13 by combustion, deflagration, or detonation. Display fireworks  
14 includes, but is not limited to, firecrackers containing more than  
15 one hundred thirty milligrams of explosive composition, aerial  
16 shells containing more than forty grams of explosive composition,  
17 and other display pieces which exceed the limits for classification  
18 as ~~common~~ consumer fireworks. Class B explosives, also known as  
19 1.3G explosives, as classified by the United States Department of  
20 Transportation in 49 C.F.R. 172.101, as such regulation existed on  
21 January 1, 2010, shall be considered display fireworks. Display  
22 fireworks shall be considered an explosive as defined in section  
23 28-1213 and shall be subject to sections 28-1213 to 28-1239, except  
24 that display fireworks may be purchased, received, and discharged  
25 by the holder of an approved display permit issued pursuant to  
26 section 28-1239.01.

27           Sec. 4. (1) If the State Fire Marshal deems any fireworks

1 item to be unsafe pursuant to subdivision (6)(c)(vi) of section  
2 28-1241, such fireworks item shall be quarantined from other  
3 fireworks. Any licensed distributor, jobber, or retailer may  
4 request, at the distributor's, jobber's, or retailer's expense,  
5 that such fireworks item be tested by an independent, nationally  
6 recognized testing facility to determine if such fireworks item  
7 meets the requirements set forth by the United States Consumer  
8 Product Safety Commission for consumer fireworks, also known as  
9 1.4G explosives, as classified by the United States Department of  
10 Transportation in 49 C.F.R. 172.101, as such regulation existed on  
11 January 1, 2010. A copy of the results of all testing done pursuant  
12 to this section shall be provided to the State Fire Marshal.

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

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

24 (4) If such fireworks item is not in compliance with  
25 such requirements, then the distributor, jobber, or retailer shall  
26 destroy such fireworks item under the supervision of the State  
27 Fire Marshal. If such fireworks item is not destroyed under the



1 supervision of the State Fire Marshal, notarized documentation  
2 shall be provided to the State Fire Marshal detailing and  
3 confirming the fireworks item's destruction.

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

6           28-1244 Except as provided in section 28-1245, it shall  
7 be unlawful for any person to possess, sell, offer for sale, bring  
8 into this state, or discharge any fireworks other than ~~permissible~~  
9 consumer fireworks.

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

12           28-1246 (1) It shall be unlawful for any person to  
13 sell, hold for sale, or offer for sale as a distributor, jobber,  
14 or retailer any fireworks in this state unless such person has  
15 first obtained a license as a distributor, jobber, or retailer.  
16 Application for each such license shall be made to the State  
17 Fire Marshal on forms prescribed by him or her. If the applicant  
18 is an individual, each application shall include the applicant's  
19 social security number. Each application shall be accompanied by  
20 the required fee, which shall be five hundred dollars for a  
21 distributor's license, two hundred dollars for a jobber's license,  
22 and twenty-five dollars for a retailer's license. ~~Each application~~  
23 ~~for a license as a retailer postmarked after June 10 shall be~~  
24 ~~accompanied by an additional fee of fifty dollars. All licenses~~  
25 Each application for a retailer's license shall be received by the  
26 State Fire Marshal at least ten business days prior to the sales  
27 period, as set forth in section 28-1249, in which the retailer

1 wishes to sell consumer fireworks. A retailer's license shall be  
2 good only for the specific sales period listed on the application  
3 and within the calendar year in which issued. The retailer's  
4 license and shall at all times be displayed at the place of  
5 business of the holder thereof.

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

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

11 28-1248 (1) It shall be unlawful for any person not  
12 licensed as a distributor or as a jobber under ~~the provisions of~~  
13 sections 28-1241 to 28-1252 and section 4 of this act to bring any  
14 fireworks into this state.

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

19 (3) Any person licensed under ~~the provisions of~~ sections  
20 28-1239.01 and 28-1241 to 28-1252 and section 4 of this act shall  
21 keep, available for inspection by the State Fire Marshal or his  
22 or her agents, a copy of each ~~invoice~~ packing list for fireworks  
23 purchased as long as any fireworks included on such ~~invoice~~ packing  
24 list are held in his or her possession. The packing list which  
25 ~~invoice~~ shall show the license number of the distributor or jobber  
26 from which the purchase was made.

27 Sec. 8. Section 28-1249, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           28-1249 It shall be unlawful to sell any ~~permissible~~  
3 consumer fireworks at retail within this state, outside the limits  
4 of any incorporated city or village. ~~Permissible~~ Consumer fireworks  
5 may be sold at retail only between June 24 and July 5 and between  
6 December 28 and January 1 of each year.

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

9           28-1250 (1) Any person who violates any of the provisions  
10 of sections 28-1244 to 28-1249 commits a Class III misdemeanor. If  
11 such person is a licensed distributor or jobber, the State Fire  
12 Marshal may suspend, cancel, or revoke the license for up to three  
13 years. The suspension, cancellation, or revocation shall become  
14 effective upon the failure to timely appeal the decision under the  
15 Administrative Procedure Act or upon an order of the Nebraska Fire  
16 Safety Appeals Board upholding the decision pursuant to a hearing  
17 under the Administrative Procedure Act. ~~he or she~~ shall be subject  
18 to the revocation of his or her license for a period of one year.

19           (2) It shall be unlawful for any person, association,  
20 partnership, limited liability company, or corporation to have in  
21 his, her, or its possession any fireworks in violation of any  
22 of the provisions of ~~such~~ sections 28-1244 to 28-1249. If any  
23 person shall have in his, her, or its possession any fireworks  
24 in violation of such sections, a warrant may be issued for the  
25 seizure of such fireworks and when the warrant is executed by the  
26 seizure of such fireworks, such fireworks shall be safely kept  
27 by the magistrate to be used as evidence. Upon conviction of the

1 offender, the fireworks shall be destroyed, but if the offender is  
2 discharged, the fireworks shall be returned to the person in whose  
3 possession they were found. Nothing in such sections shall apply to  
4 the transportation of fireworks by regulated carriers.

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

7 28-1252 The State Fire Marshal shall adopt and promulgate  
8 reasonable rules and regulations for the enforcement of sections  
9 28-1239.01 and 28-1241 to 28-1252 and section 4 of this act and,  
10 together with all peace officers of the state and its political  
11 subdivisions, shall be charged with the enforcement of sections  
12 28-1239.01 and 28-1244 to ~~28-1249~~, 28-1252 and section 4 of this  
13 act.

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

15 Sec. 12. Original sections 28-1213, 28-1239.01, 28-1241,  
16 28-1244, 28-1246, 28-1248, 28-1249, 28-1250, and 28-1252, Reissue  
17 Revised Statutes of Nebraska, are repealed.

18 Sec. 13. The following section is outright repealed:  
19 Section 28-1247, Reissue Revised Statutes of Nebraska.

20 2. On page 1, strike beginning with "28-1247" in line 2  
21 through line 6 and insert "28-1248, 28-1249, 28-1250, and 28-1252,  
22 Reissue Revised Statutes of Nebraska; to provide and change testing  
23 requirements relating to the sale of consumer fireworks; to change  
24 license application provisions; to provide powers for the State  
25 Fire Marshal relating to licensure; to define and redefine terms;  
26 to eliminate the requirement of submission of fireworks samples to  
27 the State Fire Marshal for testing; to harmonize provisions; to

ER8198  
LB880  
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ER8198  
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KLM-03/15/2010

- 1 provide an operative date; to repeal the original sections; and
- 2 to outright repeal section 28-1247, Reissue Revised Statutes of
- 3 Nebraska.".