

ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010
COMMITTEE STATEMENT
LB880

Hearing Date: Wednesday February 10, 2010
Committee On: Judiciary
Introducer: Rogert
One Liner: Change provisions relating to fireworks

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Ashford, Christensen, Council, Coash, Lathrop, Lautenbaugh, McGill, Rogert

Nay:

Absent:

Present Not Voting:

Proponents:

Sen. Kent Rogert
Craig Hamre
Clark Schnase
Curtis Schnase
Kirk Myers

Patrick Sullivan

Eric Sanders

Opponents:

Amy Prenda

Neutral:

Representing:

Introducer

Self

Nebraska Fireworks Retailers Association; self
Nebraska Fireworks Retailers Association; self
Kracklin Kirks Fireworks; NFRA (Nebraska Fireworks Retailers Association)

Nebraska Fireworks Retailers Association; Bellino Fireworks, Inc.

NFRA (Nebraska Fireworks Retailers Association)

Representing:

Shelton Wholesale, Inc.

Representing:

Summary of purpose and/or changes:

LB 880 would make the following changes to Nebraska Statutes:

Section 1. Would amend 28-1213 (Explosives, destructive devices, other terms; defined) by:

- Would change the current reference of "common fireworks" to "Consumer Fireworks";
- Would update the definition for blasting agent, to mean the definition that is used in the Code of Federal Regulations (C.F.R.) part 173, subpart C, Definitions, Classifications and packaging for Class I as such section existed on January 1, 2010; and
- Finally would update the definitions for Federal Licensee and Federal Permittee to mean those individuals who obtained such a license or permit for fireworks under 18 U.S.C chapter 40 as that chapter existed on Jan 1, 2010.

Section 2. Would amend 28-1239.01(Fireworks display; permit required; fee; sale of display fireworks; regulation) by:

- Changing the fee required for obtaining a fireworks display permit from \$10 to \$25 and,
 - Requiring that an application for obtaining a fireworks display permit must be received no later than ten business days
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before the date of the fireworks display or if the application is received late, the application fee shall be double the amount required than if the application had arrived on time. (\$50 under this bill)

Section 3. Would amend 28-1241(Fireworks; definitions):

- Under 28-1241(6) would change the current reference of "common fireworks" to "Consumer Fireworks"; Would amend the definition for consumer fireworks by adding the words deflagration or detonation to the current term of combustion in defining the construction, chemical composition and labeling requirements found in chapter 16 of the Code of Federal Regulations (C.F.R.) as such existed on Jan 1, 2010.

- Under 28-1241(7) would change the definition of "permissible fireworks under this section to include those allowed to be manufactured or imported into the U.S. and meet the following criteria:

1. Are allowed by the Consumer Product Safety Commission;
2. Have been tested and approved by a recognized testing facility;
3. Have been approved by the State Fire Marshall.

- This section would provide that permissible fireworks would not include:

1. Rockets which have a stick or wire externally attached;
2. Wire Sparklers;
3. Night Time Parachutes;
4. Lantern type fireworks or similar types that carry a flame into the air;
5. Fireworks shot in the air and cause automatic ignition after hitting the ground;
6. Firecrackers with more than 50 milligrams of explosive in them.
7. Fireworks tested and deemed unsafe by State Fire Marshall under 28-1247.

- Under 28-1241(8) would add a definition for display fireworks to include those currently listed in (8) but also those as defined in chapter 49 C.F.R. 172.101 as the regulation existed on 1/1/2010.

Section 4. Would amend 28-1244 (Fireworks; unlawful acts) by changing the term "permissible fireworks" to "permissible consumer fireworks".

Section 5. Would amend 28-1246 (Fireworks; sale; license required; fees) in the following ways:

1. Increase the fee for a distributors license from \$500 to \$700;
2. Increase a jobbers license from \$200 to \$400; and
3. Increase a retailer's license from \$25 to \$35 for June 24 thru July 5 of each year and \$15 for the period from December 28 thru January 1 of each year.
4. Would finally provide that the application fee for a particular license shall be received no later than 20 days before the first sale of fireworks and that the late fee for a late application shall be double the application fee for an on time application.

Section 6. Would amend 28-1247 (Fireworks; submission of samples to determine safety; duties of State Fire Marshal) by allowing single item or fireworks type to be disallowed by the State Fire Marshall if they are shown to pose a threat or cause bodily injury or property damage. State Fire Marshall may disallow a product after twenty samples of the item to be disallowed is tested and out of the 20 samples 10% (2 items) have been found to be unsafe.

Section 7. Would amend 28-1249 (Sale of permissible fireworks; limitations) by changing the reference of "permissible fireworks" to "permissible consumer fireworks" and add the new period for lawful sales of fireworks from December 28 thru January 1.

This section would also provide that during the time period that fireworks are not allowed to be sold, that a permit to purchase fireworks permissible fireworks from a licensed distributor or jobber may be obtained if a person has a display permit.

A permit to purchase may be obtained from the State Fire Marshall for a fee of \$25 and entitle the holder to purchase fireworks needed for a single display either private or public.

Section 8. Would amend 28-1250 (Fireworks; prohibited acts; violations; penalties) by changing the length of license revocation allowed under this section from "one year", to "up to three years."

Explanation of amendments:

AM 2015 makes the following changes to LB 880:

Section 2 Strikes the late application provision from this section that required that the fee for processing a late application for a display fireworks permit be double the amount of the initial fee for such permit.

Section 3 Strikes the definition provided in (6) which defined common fireworks. Redefines "permissible fireworks" to mean the following:

- Devices that meet the requirements of chapter 16 of the Code of Federal Regulations as such code existed on January 1, 2010 and are tested and approved by a nationally recognized testing facility or by the State Fire Marshal;

1. Any small firework device designed to combust and produce visible effects that comply with construction, chemical composition and labeling of the US Consumer Product Safety Commission as defined in Ch 16 of the C.F.R. as such regulation existed on 1/1/2010.

2. Any small device designed to produce audible effects;

3. Any ground device or firecracker containing 50 milligrams of or less of explosives;

4. Any aerial device containing 130 milligrams or less of explosives;

- Class C explosives as defined by the United States Department of Transportation.

- Provides that Consumer fireworks does not include (Therefore Not Allowed) the following:

1. Rockets that are mounted on a stick or wire and project into the air when ignited (bottle rockets);

2. Wire sparklers, except that silver and gold sparklers are deemed to be consumer fireworks until January 1, 2014;

3. Night time parachutes;

4. fireworks that are shot into the air and after returning to the ground cause automatic ignition due to temperature;

5. Firecrackers that contain more than 50 milligrams of explosive; and

6. Fireworks tested by State Fire Marshal as a response to complaints and deemed unsafe. (Please note that lantern type of devices have been removed from the prohibited list.)

Section 4 Creates a "Retailer Protection Clause" which provides the following:

- If Fire Marshal deems a firework unsafe it must be quarantined from other fireworks. Any licensed distributor, jobber, or retailer may request at their expense that such firework be tested by an independent, nationally recognized testing facility to determine if the firework meets the standards set forth by the US Consumer Product Safety Commission for "consumer fireworks" as such term existed on 1/1/2010. A copy of the results of all testing done pursuant to this section shall be presented to the State Fire Marshal.

- If such firework item is deemed in compliance with such requirements and otherwise permitted under section 28-1241, such firework item will be deemed a "consumer firework" and be permitted for sale at retail or distribution.

- If such firework is in compliance with the federal regulation but does not otherwise comply with 28-1241, such 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 item.

- In the event that such firework is not in compliance with state or federal requirements, then the fireworks shall be destroyed either under the supervision of the State Fire Marshal or destroyed accompanied by notarized documentation provided to the State Fire Marshal detailing and conforming the fireworks destruction.

Section 5 Amends 28-1244 to provide that it shall be unlawful for any person to possess, sell, offer for sale, bring into the state, or discharge any fireworks other than "consumer fireworks". This change would allow a person to purchase "consumer Fireworks" in Missouri and transport them into Nebraska as long as the purchaser was going to use the fireworks themselves and not sell or transfer them to another person without proper licensing.

Section 6 Amends 28-1246 to provide that all applications for a retailer's license shall be received by the State Fire Marshal at least ten business days prior to the sales period (as provided in 28-1249) in which the retailer wishes to sell "consumer fireworks"

Section 7 Amends 28-1248 to include section 4 of this act to this section of statute and changes the reference from invoice to "packing list" when found in this section.

Section 8 Amends 28-1249 to provide that consumer fireworks may be sold in this state between June 24 and July 5 and between December 28 and January 1 of each year.

Section 9 Amends 28-1250 to provide that a violation of sections 28-1244 to 28-1249 in addition to the violation being a Class III misdemeanor, (which it currently is), may also carry with it the suspension, cancellation, or revocation of the license for up to three years. The suspension, cancellation, or revocation is effective upon the failure to timely appeal the decision of the State Fire Marshall under the APA or upon an order of the Nebraska Fire Safety Appeals Board upholding the decision pursuant to a hearing under the APA.

Section 10 Amends 28-1252 to include by reference section 4 of this act to this section.

Section 11 Provides an operative date for this act of October 1, 2010.

Brad Ashford, Chairperson