

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JULY 10, 2010 AGENDA

Subject:	Type:	Submitted By:
DISCUSSION - FIREWORKS SALES	RESOLUTION ORDINANCE ◆ RECEIVE/FILE	BRENDA S. GUNN CITY ADMINISTRATOR PAM BUETHE CITY CLERK

SYNOPSIS

A discussion has been scheduled regarding Fireworks Sales.

FISCAL IMPACT

N/A.

RECOMMENDATION

Discussion only.

BACKGROUND

Following Council discussion at the March 16, 2010 meeting an ordinance was prepared for the April 6, 2010 meeting and passed to amend Section 117.17 (A) of the municipal code to remove the words "however the number shall not in any event exceed six". At that time there was discussion as to whether a limit should be set and if so what should the limit be.

This item was placed on the agenda to give Council an opportunity to review the current rules and regulations, and consider possible changes.

Additionally the Nebraska Legislature passed LB 880 in the 2010 legislative session which makes changes to the types of fireworks allowed and also allows an additional time period within the year for retailers to sell fireworks. The current period is June 24 to July 5 and the additional time period is December 28 to January 1.

FIREWORKS

§ 111.15 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

FIREWORKS. Any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration or detonation and which meets the definition of common or special fireworks set forth by the United States Department of Transportation in Title 49, Code of Federal Regulations.

PERMISSIBLE FIREWORKS. Sparklers, vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charge for the purpose of making a noise, color wheels and lady fingers not exceeding seven-eighths inch in length or one-eighth inch in diameter and which do not contain more than 50 milligrams each in weight of explosive material. The provisions of this section shall not apply to any fireworks to be used for purpose of public exhibitions or display under authorization of the city or to fireworks furnished for agricultural purposes pursuant to written authorization from the State Fire Marshal.
(Neb. RS 28-1241) ('79 Code, § 10-312) (Ord. 75, passed - -; Am. Ord. 470, passed 10-18-88)

§ 111.16 SALE AND DISCHARGE OF NONPERMISSIBLE FIREWORKS PROHIBITED.

It shall be unlawful for any person to sell, hold for sale or offer for sale, ignite or cause to be exploded within the corporate limits of the city any fireworks or any other dangerous or combustible substance; provided, however, permissible fireworks may be sold and discharged in accordance with the following sections of this subchapter; and provided further that the City Council may authorize fireworks displays at special public gatherings under such circumstances that they will do no damage to person or property upon issuance of a display permit.
('79 Code, § 10-312) (Ord. 75, passed - -) Penalty, see § 10.99

Statutory reference:

Statutory provisions, see Neb. RS 28-1237, 28-1239.01, 28-1241, 28-1244, 28-1245, and 28-1249

§ 111.17 SALE OF PERMISSIBLE FIREWORKS; PERMIT REQUIRED; APPLICATION; PERMIT FEE.

(A) It shall be unlawful for any person to sell, hold for sale or offer for sale any permissible fireworks within the corporate limits of the city unless such person has first obtained a permit from the City Council to do so.

(B) Application for said permit shall be made in the following manner:

(1) Application for said permit shall be made on such form as shall be prescribed by the City Council and shall be filed with the City Clerk.

(2) Only nonprofit organizations and associations using volunteer sales persons and which will use the net proceeds from the sale of fireworks for community betterment purposes within the city shall be eligible for a permit.

(3) If the applicant organization has held a permit in any of the three preceding years, it must file with its application a written statement of the income and expenses from the sale of its fireworks within the city for each of such years, together with a statement of its community betterment type expenditures made from the net proceeds from the sale of fireworks in each said year. The application organization must identify the proposed location for retail fireworks sales in the permit application.

(4) The applicant shall state the nature of the community betterment purpose for which the net proceeds from the current year's sale of fireworks will be utilized if the permit be granted.

(5) Each year the City Council shall, by resolution, establish the maximum number of permits to be issued. All applications for permit must be approved by the City Council. In granting permits, the City Council shall give first preference to those eligible organizations, the community betterment acquisitions, services or programs of which will benefit the city as a whole. Those benefitting only particular areas or neighborhoods of the city shall have second preference.

(6) Application for a permit must be filed with the City Clerk by January 15 of the year for which the permit is sought.

(7) As used herein, the following terms have the following meaning:

(a) **COMMUNITY BETTERMENT** shall mean that which generally betters or enhances the community of the city, such as:

1. The acquisition, improvement and maintenance of parks and recreational facilities, public equipment and other items for community use and enjoyment or to be used by the city in service to the community;

2. The recruitment and attraction of new businesses and jobs to the city community;

3. Athletic programs for the community; and

4. Other acquisitions, services or programs of general benefit to the city community.

(b) **NET PROCEEDS** shall mean gross sales less the cost of fireworks, permit fee, rental or lease expense, advertising and similar costs of operation of the fireworks stand. Volunteer salespersons shall be used and any remuneration paid or given to persons performing services in connection with the sale of fireworks shall not be deemed a cost of operation.

(8) A permit fee to sell, hold for sale or offer for sale permissible fireworks in such amount as set from time to time by the Mayor and City Council and a current record of which shall be maintained by the City Clerk, shall be collected by the city. A deposit of \$500 must accompany the permit application; and, if a permit is issued, the remaining balance shall be due and payable no later than the third of July of the year for which the permit has been issued. If the permit is denied, \$450 of the deposit will be refunded.

(9) Prior to issuance of the permit, applicant shall supply to the city a copy of a certificate of insurance issued by an insurance company in good standing, authorized to do business in Nebraska, providing combined liability coverage for bodily injury and property damage in a minimum amount of \$300,000 per occurrence and \$1,000,000 in aggregate coverage and naming the City of La Vista as an additional insured.

(‘79 Code, § 10-313) (Ord. 75, passed - -; Am. Ord. 721, passed 3-17-98; Am. Ord. 777, passed 5-18-99; Am. Ord. 792, passed 10-19-99; Am. Ord. 885, passed 11-19-02) Penalty, see § 10.99

§ 111.18 SALE OF PERMISSIBLE FIREWORKS REGULATED.

Persons holding a permit to sell permissible fireworks:

(A) May only sell the same beginning 12:01 a.m. June 25 and ending midnight on July 4 of the year for which the permit is issued. Within this period, permissible fireworks may be sold only between the hours of 8:00 a.m. and 11:00 p.m.

(B) Shall at no time sell within the city limits any fireworks or other pyrotechnics other than permissible fireworks.

(C) Shall during such times as fireworks are being sold have an adult in charge of his or her stand or retail outlet and shall display therein the required permit in a conspicuous manner and place.

(D) Shall at all times comply with all regulations passed by the City Council pertaining to the permissible size, location, equipping and operation of fireworks stands and retail outlets.

(E) Shall at no time sell any fireworks or other pyrotechnics to any person under 12 years of age.

(‘79 Code, § 10-314) (Am. Ord. 792, passed 10-19-99) Penalty, see § 10.99

§ 111.19 DISCHARGE OF PERMISSIBLE FIREWORKS REGULATED.

(A) *Prohibition as to time of discharge.* Except as may be otherwise provided herein or authorized by special permit approved by the City Council, no person shall ignite or discharge any permissible fireworks except between the hours of 7:00 a.m. to 10:00 p.m. from June 25 through July 3 inclusive and between the hours of 7:00 a.m. and midnight on July 4 of each year.

(B) *Dangerous environmental conditions.* In the event that in the determination of the Fire Chief, general weather or ground cover conditions are such as create an unacceptable risk of fire should there be discharge of fireworks, including permissible fireworks, within the city limits, then in such event the Fire Chief shall advise the City Administrator and Mayor of such determination and shall communicate a recommendation to them for any preventative action or measures the Fire Chief deems necessary, including what limitations should be placed upon the time period for discharge of fireworks or the extent to which the discharge of fireworks should be prohibited. The Mayor, with the advice of the Council President, the City Administrator, the Fire Chief, and the Chief of Police, or such of them as may be readily available, shall order such action, if any, the Mayor shall deem necessary or appropriate in the situation, including partial or total bans on discharge of fireworks on such dates and during such times as the Mayor may determine necessary or appropriate. Should the Mayor determine that prohibitive or preventative action is required, the Mayor shall issue a proclamation to that effect and shall advise the City Administrator, who shall advise the members of the City Council, the Fire Chief, the Chief of Police, and the media of the Mayor's proclamation and shall cause same to be conspicuously posted throughout the city. Discharge of fireworks in violation of such proclamation shall constitute a violation of this section and shall be punishable as such. As used herein, references to the Mayor and other officials shall, in the case of their absence or inability to act, include persons empowered to act in their stead.

(C) *Prohibition as to manner and place of discharge.* In no event shall any person ignite or discharge any fireworks, even though same be permissible fireworks:

- (1) In or from any motor vehicle;
- (2) On any street, highway, or sidewalk;
- (3) Near any person or group of persons;

- (4) In any building;
- (5) In any public park, except as may be authorized by special permit;
- (6) In any public building;
- (7) In any school or on any school grounds; and
- (8) In any other manner or place that is likely to inflict or increase the risk of property damage or bodily harm to any person or persons or place any of them in danger of bodily harm.

(D) Special permit for community fireworks show.

(1) The City Clerk may authorize the issuance of special permits for fireworks displays to be conducted by or under the auspices of the city or by or under the auspices of a nonprofit organization, organized for purposes of service to or betterment of the city, its businesses, or residents, for the purpose of putting on an admission-free public fireworks display for the benefit of the residents of the city at such place, during such times and under such terms, conditions, and security measures as the City Clerk may prescribe for such display.

(2) The permit holder shall obtain the required approval of the State Fire Marshal. By way of specification and not of limitation, as a condition of any permit hereunder, the permit holder shall obtain and maintain in effect, for the maximum limitations and repose periods under any and all products liability or tort laws in the State of Nebraska, insurance for any and all liabilities arising out of or resulting from any permitted fireworks or fireworks display, written by an insurer authorized to do business in the state, in such amount and upon such other terms as satisfactory to the city in its sole discretion. The city shall be an additional named insured on each such policy provided.

(‘79 Code, § 10-315) (Ord. 75, passed - - ; Am. Ord. 340, passed 6-21-83; Am. Ord. 571, passed 8-17-93 Am. Ord. 792, passed 10-19-99; Am. Ord. 813, passed 7-18-00) Penalty, see § 10.99

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 880

FINAL READING

Introduced by Rogert, 16; Stuthman, 22; Gloor, 35; Gay, 14.

Read first time January 11, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections
2 28-1213, 28-1239.01, 28-1241, 28-1244, 28-1246, 28-1248,
3 28-1249, 28-1250, and 28-1252, Reissue Revised Statutes
4 of Nebraska; to provide and change testing requirements
5 relating to the sale of consumer fireworks; to change
6 license application provisions; to provide powers for
7 the State Fire Marshal relating to licensure; to define
8 and redefine terms; to eliminate provisions relating
9 to common and permissible fireworks; to harmonize
10 provisions; to provide an operative date; to repeal
11 the original sections; and to outright repeal section
12 28-1247, Reissue Revised Statutes of Nebraska.
13 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, Definitions, Classification and Packaging for
2 Class I, as such subpart existed on March 7, 2006; January 1, 2010;

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

12 (7) (a) Destructive devices means:

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

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

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1 destructive device may be readily assembled.

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

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

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

23 (10) Smokeless propellants means solid propellants
24 commonly called smokeless powders in the trade and used in small
25 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

1 in the business of making sales at retail;

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

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

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

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

25 (7) Permissible (6)(a) Consumer fireworks means only

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1 sparklers, vesuvius fountains, spray fountains, torches, color fire
2 cones, star and comet type color aerial shells without explosive
3 charge for the purpose of making a noise, lady fingers, not to
4 exceed seven-eighths of an inch in length or one-eighth inch
5 in diameter, total explosive composition not to exceed fifty
6 milligrams in weight, color wheels, and any other fireworks
7 approved under section 28-1247, and any of the following devices
8 that (i) meet the requirements set forth in 16 C.F.R. parts 1500
9 and 1507, as such regulations existed on January 1, 2010, and (ii)
10 are tested and approved by a nationally recognized testing facility
11 or by the State Fire Marshal:

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

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

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

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

23 (b) Class C explosives as classified by the United
24 States Department of Transportation shall be considered consumer
25 fireworks.

1 Transportation in 49 C.F.R. 172.101, as such regulation existed on
2 January 1, 2010, shall be considered display fireworks. Display
3 fireworks shall be considered an explosive as defined in section
4 28-1213 and shall be subject to sections 28-1213 to 28-1239, except
5 that display fireworks may be purchased, received, and discharged
6 by the holder of an approved display permit issued pursuant to
7 section 28-1239.01.

8 Sec. 4. (1) If the State Fire Marshal deems any fireworks
9 item to be unsafe pursuant to subdivision (6)(c)(vi) of section
10 28-1241, such fireworks item shall be quarantined from other
11 fireworks. Any licensed distributor, jobber, or retailer may
12 request, at the distributor's, jobber's, or retailer's expense,
13 that such fireworks item be tested by an independent, nationally
14 recognized testing facility to determine if such fireworks item
15 meets the requirements set forth by the United States Consumer
16 Product Safety Commission for consumer fireworks, also known as
17 1.4G explosives, as classified by the United States Department of
18 Transportation in 49 C.F.R. 172.101, as such regulation existed on
19 January 1, 2010. A copy of the results of all testing done pursuant
20 to this section shall be provided to the State Fire Marshal.

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

1 (3) If such fireworks item is in compliance with such
2 requirements but is otherwise not deemed consumer fireworks, such
3 fireworks item shall not be sold at retail or distributed to
4 retailers for sale in this state, but a distributor, jobber, or
5 retailer may sell such fireworks item to another distributor or
6 retailer in a state that permits the sale of such fireworks item.

7 (4) If such fireworks item is not in compliance with
8 such requirements, then the distributor, jobber, or retailer shall
9 destroy such fireworks item under the supervision of the State
10 Fire Marshal. If such fireworks item is not destroyed under the
11 supervision of the State Fire Marshal, notarized documentation
12 shall be provided to the State Fire Marshal detailing and
13 confirming the fireworks item's destruction.

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

16 28-1244 Except as provided in section 28-1245, it shall
17 be unlawful for any person to possess, sell, offer for sale, bring
18 into this state, or discharge any fireworks other than permissible
19 consumer fireworks.

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

22 28-1246 (1) It shall be unlawful for any person to
23 sell, hold for sale, or offer for sale as a distributor, jobber,
24 or retailer any fireworks in this state unless such person has
25 first obtained a license as a distributor, jobber, or retailer.

1 Application for each such license shall be made to the State
2 Fire Marshal on forms prescribed by him or her. If the applicant
3 is an individual, each application shall include the applicant's
4 social security number. Each application shall be accompanied by
5 the required fee, which shall be five hundred dollars for a
6 distributor's license, two hundred dollars for a jobber's license,
7 and twenty-five dollars for a retailer's license. Each application
8 for a license as a retailer postmarked after June 10 shall be
9 accompanied by an additional fee of fifty dollars. All licenses
10 Each application for a retailer's license shall be received by the
11 State Fire Marshal at least ten business days prior to the sales
12 period, as set forth in section 28-1249, in which the retailer
13 wishes to sell consumer fireworks. A retailer's license shall be
14 good only for the specific sales period listed on the application
15 and within the calendar year in which issued. The retailer's
16 license and shall at all times be displayed at the place of
17 business of the holder thereof.

18 (2) The funds received pursuant to this section shall
19 be remitted to the State Treasurer for credit to the State Fire
20 Marshal Cash Fund.

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

23 28-1248 (1) It shall be unlawful for any person not
24 licensed as a distributor or as a jobber under the provisions of
25 sections 28-1241 to 28-1252 and section 4 of this act to bring any

1 fireworks into this state.

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

6 (3) Any person licensed under the provisions of sections
7 28-1239.01 and 28-1241 to 28-1252 and section 4 of this act shall
8 keep, available for inspection by the State Fire Marshal or his
9 or her agents, a copy of each inveiice packing list for fireworks
10 purchased as long as any fireworks included on such inveiice packing
11 list are held in his or her possession. The packing list which
12 inveiice shall show the license number of the distributor or jobber
13 from which the purchase was made.

14 Sec. 8. Section 28-1249, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 28-1249 It shall be unlawful to sell any permissible
17 consumer fireworks at retail within this state, outside the limits
18 of any incorporated city or village. Permissible Consumer fireworks
19 may be sold at retail only between June 24 and July 5 and between
20 December 28 and January 1 of each year.

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

23 28-1250 (1) Any person who violates any of the provisions
24 of sections 28-1244 to 28-1249 commits a Class III misdemeanor. If
25 such person is a licensed distributor or jobber, the State Fire

1 Marshal may suspend, cancel, or revoke the license for up to three
2 years. The suspension, cancellation, or revocation shall become
3 effective upon the failure to timely appeal the decision under the
4 Administrative Procedure Act or upon an order of the Nebraska Fire
5 Safety Appeals Board upholding the decision pursuant to a hearing
6 under the Administrative Procedure Act. he or she shall be subject
7 to the revocation of his or her license for a period of one year.

8 (2) It shall be unlawful for any person, association,
9 partnership, limited liability company, or corporation to have in
10 his, her, or its possession any fireworks in violation of any
11 of the provisions of such sections 28-1244 to 28-1249. If any
12 person shall have in his, her, or its possession any fireworks
13 in violation of such sections, a warrant may be issued for the
14 seizure of such fireworks and when the warrant is executed by the
15 seizure of such fireworks, such fireworks shall be safely kept
16 by the magistrate to be used as evidence. Upon conviction of the
17 offender, the fireworks shall be destroyed, but if the offender is
18 discharged, the fireworks shall be returned to the person in whose
19 possession they were found. Nothing in such sections shall apply to
20 the transportation of fireworks by regulated carriers.

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

23 28-1252 The State Fire Marshal shall adopt and promulgate
24 reasonable rules and regulations for the enforcement of sections
25 28-1239.01 and 28-1241 to 28-1252 and section 4 of this act and,

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1 together with all peace officers of the state and its political
2 subdivisions, shall be charged with the enforcement of sections
3 28-1239.01 and 28-1244 to 28-1249. 28-1252 and section 4 of this
4 act.

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

6 Sec. 12. Original sections 28-1213, 28-1239.01, 28-1241,
7 28-1244, 28-1246, 28-1248, 28-1249, 28-1250, and 28-1252, Reissue
8 Revised Statutes of Nebraska, are repealed.

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

LEGISLATIVE BILL 880

Approved by the Governor April 7, 2010

Introduced by Rogert, 16; Stuthman, 22; Gloor, 35; Gay, 14.

FOR AN ACT relating to crimes and offenses; to amend sections 28-1213, 28-1239.01, 28-1241, 28-1244, 28-1246, 28-1248, 28-1249, 28-1250, and 28-1252, Reissue Revised Statutes of Nebraska; to provide and change testing requirements relating to the sale of consumer fireworks; to change license application provisions; to provide powers for the State Fire Marshal relating to licensure; to define and redefine terms; to eliminate provisions relating to common and permissible fireworks; to harmonize provisions; to provide an operative date; to repeal the original sections; and to outright repeal section 28-1247, Reissue Revised Statutes of Nebraska.

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

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

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

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

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

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

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

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

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

(7) (a) Destructive devices means:

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

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

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

an antique, or (v) any other device possessed under circumstances negating an intent that the device be used as a weapon against any person or property;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Permissible (6)(a) Consumer fireworks means only sparklers, vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charge for the purpose of making a noise, lady fingers, not to exceed seven-eighths of an inch in length or one-eighth inch in diameter, total explosive composition not to exceed fifty milligrams in weight, color wheels, and any other fireworks approved under section 28-1247, and any of the following devices that (i) meet the requirements set forth in 16 C.F.R. parts 1500 and 1507, as such regulations existed on January 1, 2010, and (ii) are tested and approved by a nationally recognized testing facility or by the State Fire Marshal:

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

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

(C) Any ground device or firecracker containing fifty milligrams or

less of explosive composition; or
(D) Any aerial device containing one hundred thirty milligrams or
less of explosive composition.
(b) Class C explosives as classified by the United States Department
of Transportation shall be considered consumer fireworks.
(c) Consumer fireworks does not include:
(i) Rockets that are mounted on a stick or wire and project into the
air when ignited, with or without report;
(ii) Wire sparklers, except that silver and gold sparklers are
deemed to be consumer fireworks until January 1, 2014;
(iii) Nighttime parachutes;
(iv) Fireworks that are shot into the air and after coming to the
ground cause automatic ignition due to sufficient temperature;
(v) Firecrackers that contain more than fifty milligrams of
explosive composition; and
(vi) Fireworks that have been tested by the State Fire Marshal as a
response to complaints and have been deemed to be unsafe; and
(8) (7) Display fireworks means those materials manufactured
exclusively for use in public exhibitions or displays of fireworks designed to
produce visible or audible effects by combustion, deflagration, or detonation.
Display fireworks includes, but is not limited to, firecrackers containing
more than one hundred thirty milligrams of explosive composition, aerial
shells containing more than forty grams of explosive composition, and other
display pieces which exceed the limits for classification as ~~common~~ consumer
fireworks. Class B explosives, also known as 1.3G explosives, as classified by
the United States Department of Transportation in 49 C.F.R. 172.101, as such
regulation existed on January 1, 2010, shall be considered display fireworks.
Display fireworks shall be considered an explosive as defined in section
28-1213 and shall be subject to sections 28-1213 to 28-1239, except that
display fireworks may be purchased, received, and discharged by the holder of
an approved display permit issued pursuant to section 28-1239.01.

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

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

(3) If such fireworks item is in compliance with such requirements but is otherwise not deemed consumer fireworks, such fireworks 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 fireworks item.

(4) If such fireworks item is not in compliance with such requirements, then the distributor, jobber, or retailer shall destroy such fireworks item under the supervision of the State Fire Marshal. If such fireworks item is not destroyed under the supervision of the State Fire Marshal, notarized documentation shall be provided to the State Fire Marshal detailing and confirming the fireworks item's destruction.

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

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

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

28-1246 (1) It shall be unlawful for any person to sell, hold for sale, or offer for sale as a distributor, jobber, or retailer any fireworks in this state unless such person has first obtained a license as a distributor, jobber, or retailer. Application for each such license shall be made to the State Fire Marshal on forms prescribed by him or her. If the applicant is an individual, each application shall include the applicant's social security

number. Each application shall be accompanied by the required fee, which shall be five hundred dollars for a distributor's license, two hundred dollars for a jobber's license, and twenty-five dollars for a retailer's license. Each application for a license as a retailer postmarked after June 10 shall be accompanied by an additional fee of fifty dollars. All licenses Each application for a retailer's license shall be received by the State Fire Marshal at least ten business days prior to the sales period, as set forth in section 28-1249, in which the retailer wishes to sell consumer fireworks. A retailer's license shall be good only for the specific sales period listed on the application and within the calendar year in which issued. The retailer's license and shall at all times be displayed at the place of business of the holder thereof.

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

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

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

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

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

Sec. 8. Section 28-1249, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

(2) It shall be unlawful for any person, association, partnership, limited liability company, or corporation to have in his, her, or its possession any fireworks in violation of any of the provisions of such sections 28-1244 to 28-1249. If any person shall have in his, her, or its possession any fireworks in violation of such sections, a warrant may be issued for the seizure of such fireworks and when the warrant is executed by the seizure of such fireworks, such fireworks shall be safely kept by the magistrate to be used as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the fireworks shall be returned to the person in whose possession they were found. Nothing in such sections shall apply to the transportation of fireworks by regulated carriers.

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

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

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

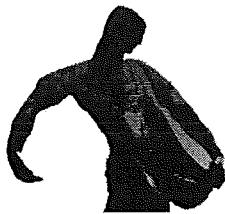
Sec. 12. Original sections 28-1213, 28-1239.01, 28-1241, 28-1244, 28-1246, 28-1248, 28-1249, 28-1250, and 28-1252, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 13. The following section is outright repealed: Section

LB 880

LB 880

28-1247, Reissue Revised Statutes of Nebraska.



**One Hundred First Legislature - Second Session - 2010
Introducer's Statement of Intent
LB 880**

Chairperson: **Brad Ashford**
Committee: **Judiciary**
Date of Hearing: **February 8, 2010**

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 880 eliminates a duplication requirement that the Nebraska State Fire Marshall test fireworks that are currently being tested and approved nationally for safety standards. It allows retailers to sell fireworks during an additional time period within the year. The current time period is June 24 to July 5 and the additional time period is December 28 to January 1.

It makes it permissible for a person who has obtained a display permit to purchase fireworks from a distributor or jobber outside the expected time period. The display permit carries a fee of \$25. Any private or public events would be subject to local ordinance or resolution.

LB 880 establishes an application deadline and raises the fee for display permits. It raises the application fee for a distributor license, a jobber license and a retailer license between June 24 and July 5. It establishes an application fee for a retailer license between December 28 and January 1.

This legislation includes an enumerated list of fireworks that are not permissible in Nebraska and broadens the license revocation duration period as penalty for a violation.

Principal Introducer:

Senator Kent Rogert

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

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)

Opponents:
Amy Prenda

Representing:
Shelton Wholesale, Inc.

Neutral:

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

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 distributor's license from \$500 to \$700;
2. Increase a jobber's 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 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