

House File 614 - Introduced

HOUSE FILE 614

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HSB 161)

A BILL FOR

1 An Act relating to the possession, sale, transfer, purchase,
2 and use of fireworks and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 100.1, subsection 4, paragraph b, Code
2 2015, is amended to read as follows:

3 b. The storage, transportation, handling, and use of
4 flammable liquids, combustibles, fireworks, and explosives;

5 Sec. 2. Section 100.1, Code 2015, is amended by adding the
6 following new subsection:

7 NEW SUBSECTION. 8. To order the suspension of the use
8 of consumer fireworks, display fireworks, or novelties, as
9 described in section 727.2, if the fire marshal determines that
10 the use of such devices would constitute a threat to public
11 safety.

12 Sec. 3. NEW SECTION. 100.19 Consumer fireworks seller
13 licensing — penalty.

14 1. As used in this section:

15 a. "APA 87-1" means the American pyrotechnics association
16 standard 87-1, as published in December 2001.

17 b. "Community group" means a nonprofit entity that is open
18 for membership to the general public which is exempt from
19 federal income taxation pursuant to section 501(c)(3) of the
20 Internal Revenue Code or a fraternal benefit society, as that
21 term is defined in section 512B.3.

22 c. "First-class consumer fireworks" means the following
23 consumer fireworks, as described in APA 87-1, chapter 3:

24 (1) Aerial shell kits and reloadable tubes.

25 (2) Chasers.

26 (3) Helicopter and aerial spinners.

27 (4) Firecrackers.

28 (5) Mine and shell devices.

29 (6) Missile-type rockets.

30 (7) Roman candles.

31 (8) Sky rockets and bottle rockets.

32 (9) Multiple tube devices under this paragraph "c" that are
33 manufactured in accordance with APA 87-1, section 3.5.

34 d. "Retailer" means as defined in section 423.1.

35 e. "Second-class consumer fireworks" means the following

1 consumer fireworks, as described in APA 87-1, chapter 3:

- 2 (1) Cone fountains.
- 3 (2) Cylindrical fountains.
- 4 (3) Flitter sparklers.
- 5 (4) Ground and hand-held sparkling devices, including
- 6 multiple tube ground and hand-held sparkling devices that are
- 7 manufactured in accordance with APA 87-1, section 3.5.
- 8 (5) Ground spinners.
- 9 (6) Illuminating torches.
- 10 (7) Toy smoke devices.
- 11 (8) Wheels.
- 12 (9) Wire or dipped sparklers.

13 2. a. The state fire marshal shall establish a consumer
14 fireworks seller license. An application for a consumer
15 fireworks seller license shall be made on a form provided
16 by the state fire marshal. The state fire marshal shall
17 adopt rules consistent with this section establishing minimum
18 requirements for a retailer or community group to be issued a
19 consumer fireworks seller license.

20 b. A person shall possess a consumer fireworks seller
21 license under this section in order to sell consumer fireworks.

22 3. a. The state fire marshal shall establish a fee schedule
23 for consumer fireworks seller licenses as follows:

24 (1) For a retailer who devotes fifty percent or more of
25 the retailer's retail floor space to the sale or display of
26 first-class consumer fireworks, an annual fee of four hundred
27 dollars.

28 (2) For a retailer who devotes less than fifty percent of
29 the retailer's retail floor space to the sale or display of
30 first-class consumer fireworks, an annual fee of two hundred
31 dollars.

32 (3) For a community group that offers for sale, exposes for
33 sale, or sells first-class consumer fireworks, an annual fee
34 of two hundred dollars.

35 (4) For a retailer or community group that offers for sale,

1 exposes for sale, or sells second-class consumer fireworks,
2 but not first-class consumer fireworks, an annual fee of
3 twenty-five dollars.

4 *b.* A license issued to a retailer or community group
5 pursuant to paragraph "a", subparagraph (1), (2), or (3), shall
6 allow the licensee to sell both first-class consumer fireworks
7 and second-class consumer fireworks.

8 4. The state fire marshal shall adopt rules to:

9 *a.* Require that any retailer or community group offering
10 for sale at retail any consumer fireworks, as described in APA
11 87-1, chapter 3, shall do so in accordance with the national
12 fire protection association standard 1124, published in the
13 code for the manufacture, transportation, storage, and retail
14 sales of fireworks and pyrotechnic articles, 2006 edition.

15 *b.* Require that a retailer or community group to be issued a
16 license pursuant to this section provide proof of and maintain
17 public liability insurance and product liability insurance
18 with minimum per occurrence coverage of at least five million
19 dollars.

20 *c.* Permit a retailer or community group issued a license
21 pursuant to this section to sell consumer fireworks, as
22 described in APA 87-1, chapter 3, at the following locations
23 as specified:

24 (1) At a permanent building that meets the requirements of
25 paragraph "a", year-round.

26 (2) At a temporary structure that meets the requirements of
27 paragraph "a" between June 13 and July 11 each year.

28 *d.* A retailer or community group shall not transfer consumer
29 fireworks, as described in APA 87-1, chapter 3, to a person who
30 is under eighteen years of age.

31 5. *a.* The state fire marshal shall adopt rules to provide
32 that a person's consumer fireworks seller license may be
33 revoked for the intentional violation of this section. The
34 proceedings for revocation shall be held before the division
35 of the state fire marshal, which may revoke the license or

1 licenses involved as provided in paragraph "b".

2 *b.* (1) If, upon the hearing of the order to show cause,
3 the division of the state fire marshal finds that the licensee
4 intentionally violated this section, then the license or
5 licenses under which the licensed retailer or community group
6 sells first-class consumer fireworks or second-class consumer
7 fireworks, shall be revoked.

8 (2) Judicial review of actions of the division of the
9 state fire marshal may be sought in accordance with the terms
10 of the Iowa administrative procedure Act, chapter 17A. If
11 the licensee has not filed a petition for judicial review in
12 district court, revocation shall date from the thirty-first
13 day following the date of the order of the division of the
14 state fire marshal. If the licensee has filed a petition for
15 judicial review, revocation shall date from the thirty-first
16 day following entry of the order of the district court, if
17 action by the district court is adverse to the licensee.

18 (3) A new license shall not be issued to a person whose
19 license has been revoked, or to the business in control of the
20 premises on which the violation occurred if it is established
21 that the owner of the business had actual knowledge of the
22 violation resulting in the license revocation, for the period
23 of one year following the date of revocation.

24 6. *a.* A consumer fireworks seller license fee fund is
25 created in the state treasury under the control of the state
26 fire marshal. Notwithstanding section 12C.7, interest or
27 earnings on moneys in the consumer fireworks seller license fee
28 fund shall be credited to the consumer fireworks seller license
29 fee fund. Moneys in the fund are appropriated to the state
30 fire marshal to be used to fulfill the responsibilities of
31 the state fire marshal for the administration and enforcement
32 of this section and to provide grants pursuant to paragraph
33 "b". The fund shall include the fees collected by the state
34 fire marshal under the fee schedule established pursuant to
35 subsection 3.

1 **b.** The state fire marshal shall establish a local fire
 2 protection and emergency medical service providers grant
 3 program to provide grants to local fire protection service
 4 providers and local emergency medical service providers to
 5 establish or provide fireworks safety education programming
 6 to members of the public. The state fire marshal may also
 7 provide grants to local fire protection service providers and
 8 local emergency medical service providers for the purchase
 9 of necessary enforcement, protection, or emergency response
 10 equipment related to the sale and use of consumer fireworks in
 11 this state.

12 **7.** The state fire marshal shall adopt rules for the
 13 administration of this section.

14 **8.** A person who violates a provision of this section or a
 15 rule adopted pursuant to this section is guilty of a simple
 16 misdemeanor.

17 **Sec. 4.** Section 101A.1, subsection 3, Code 2015, is amended
 18 to read as follows:

19 **3.** "*Explosive*" means any chemical compound, mixture
 20 or device, the primary or common purpose of which is to
 21 function by explosion with substantially instantaneous
 22 release of gas and heat, unless such compound, mixture, or
 23 device is otherwise specifically classified by the United
 24 States department of transportation. The term "*explosive*"
 25 includes all materials which are classified as a class 1,
 26 division 1.1, 1.2, 1.3, or 1.4 explosive by the United States
 27 department of transportation, under 49 C.F.R. §173.50, and all
 28 materials classified as explosive materials under 18 U.S.C.
 29 §841, and includes, but is not limited to, dynamite, black
 30 powder, pellet powders, initiating explosives, blasting caps,
 31 electric blasting caps, safety fuse, fuse lighters, fuse
 32 igniters, squibs, cordeau detonative fuse, instantaneous fuse,
 33 igniter cord, igniters, smokeless propellant, cartridges for
 34 propellant-actuated power devices, cartridges for industrial
 35 guns, and overpressure devices, but does not include "~~fireworks~~"

1 as "consumer fireworks", "display fireworks", or "novelties" as
2 those terms are defined in section 727.2 or ammunition or small
3 arms primers manufactured for use in shotguns, rifles, and
4 pistols. Commercial explosives are those explosives which are
5 intended to be used in commercial or industrial operations.

6 Sec. 5. Section 331.301, Code 2015, is amended by adding the
7 following new subsection:

8 NEW SUBSECTION. 17. The board of supervisors may by
9 resolution suspend the use of display fireworks, as described
10 in section 727.2, if the board determines that the use of such
11 devices would constitute a threat to public safety.

12 Sec. 6. Section 331.304, subsection 9, Code 2015, is amended
13 to read as follows:

14 9. The board, upon application, may grant permits for the
15 display use of display fireworks as provided in section 727.2.

16 Sec. 7. Section 364.2, Code 2015, is amended by adding the
17 following new subsection:

18 NEW SUBSECTION. 6. A city council may by resolution suspend
19 or limit the use of consumer fireworks, display fireworks, or
20 novelties, as described in section 727.2, if the city council
21 determines that the use of such devices would constitute a
22 threat to public safety.

23 Sec. 8. Section 461A.42, subsection 2, Code 2015, is amended
24 to read as follows:

25 2. The use of consumer fireworks or display fireworks,
26 as defined in section 727.2, in state parks and preserves is
27 prohibited except as authorized by a permit issued by the
28 department. The commission shall establish, by rule adopted
29 pursuant to chapter 17A, a fireworks permit system which
30 authorizes the issuance of a limited number of permits to
31 qualified persons to use or display fireworks in selected state
32 parks and preserves.

33 Sec. 9. Section 727.2, Code 2015, is amended to read as
34 follows:

35 **727.2 Fireworks.**

1 1. Definitions. For purposes of this section:

2 a. "Consumer fireworks" includes first-class consumer
3 fireworks and second-class consumer fireworks as those terms
4 are defined in section 100.19, subsection 1.

5 b. The term "~~fireworks~~" "Display fireworks" includes any
6 explosive composition, or combination of explosive substances,
7 or article prepared for the purpose of producing a visible
8 or audible effect by combustion, explosion, deflagration,
9 or detonation, and includes ~~blank cartridges, firecrackers,~~
10 ~~torpedoes, skyrockets, roman candles, or other fireworks of~~
11 ~~like construction and fireworks containing any explosive or~~
12 flammable compound, or other device containing any explosive
13 substance. The term "~~fireworks~~" "Display fireworks" does not
14 include ~~goldstar-producing sparklers on wires which contain~~
15 ~~no magnesium or chlorate or perchlorate, flitter sparklers~~
16 ~~in paper tubes that do not exceed one-eighth of an inch in~~
17 ~~diameter, toy snakes which contain no mercury, or caps used~~
18 ~~in cap pistols~~ novelties or consumer fireworks enumerated in
19 chapter 3 of the American pyrotechnics association's standard
20 87-1.

21 c. "Novelties" includes all novelties enumerated in chapter
22 3 of the American pyrotechnics association's standard 87-1, and
23 that comply with the labeling regulations promulgated by the
24 United States consumer product safety commission.

25 2. Display fireworks.

26 a. A person, firm, partnership, or corporation who offers
27 for sale, exposes for sale, sells at retail, or uses or
28 explodes any display fireworks, commits a simple misdemeanor.
29 ~~In addition to any other penalties, the punishment imposed~~
30 ~~for a violation of this section shall include assessment~~
31 ~~of, punishable by~~ a fine of not less than two hundred fifty
32 dollars. However, ~~the~~ a city council of a city or a county
33 board of supervisors may, upon application in writing, grant a
34 permit for the display of display fireworks by municipalities,
35 fair associations, amusement parks, and other organizations

1 or groups of individuals approved by the city or the county
2 board of supervisors when the display fireworks ~~display~~ will
3 be handled by a competent operator, but no such permit shall
4 be required for the display of display fireworks at the Iowa
5 state fairgrounds by the Iowa state fair board, at incorporated
6 county fairs, or at district fairs receiving state aid. Sales
7 of display fireworks for such display may be made for that
8 purpose only.

9 b. (1) A person who uses or explodes display fireworks
10 while the use of such devices is suspended by a resolution
11 adopted by the county or city in which the firework is used
12 commits a simple misdemeanor, punishable by a fine of not less
13 than two hundred fifty dollars.

14 (2) A person who uses or explodes display fireworks while
15 the use of such devices is suspended by an order of the state
16 fire marshal commits a simple misdemeanor, punishable by a fine
17 of not less than two hundred fifty dollars.

18 3. Consumer fireworks and novelties.

19 a. A person or a firm, partnership, or corporation may
20 possess, use, or explode consumer fireworks in accordance with
21 this subsection and subsection 4.

22 b. A person, firm, partnership, or corporation who sells
23 consumer fireworks to a person who is less than eighteen years
24 of age commits a simple misdemeanor, punishable by a fine of
25 not less than two hundred fifty dollars. A person who is less
26 than eighteen years of age who purchases consumer fireworks
27 commits a simple misdemeanor, punishable by a fine of not less
28 than two hundred fifty dollars.

29 c. (1) A person who uses or explodes consumer fireworks
30 or novelties while the use of such devices is suspended by a
31 resolution adopted by the city in which the fireworks are used
32 commits a simple misdemeanor, punishable by a fine of not less
33 than two hundred fifty dollars.

34 (2) A person who uses or explodes consumer fireworks or
35 novelties while the use of such devices is suspended by an

1 order of the state fire marshal commits a simple misdemeanor,
2 punishable by a fine of not less than two hundred fifty
3 dollars.

4 4. Limitations.

5 a. A person shall not use or explode consumer fireworks at
6 times other than between the hours of 9:00 a.m. and 10:00 p.m.,
7 except that on the following dates consumer fireworks shall not
8 be used at times other than between the hours of 9:00 a.m. and
9 12:30 a.m. on the immediately following day:

10 (1) Memorial Day and the Saturday and Sunday immediately
11 preceding that day.

12 (2) July 4 and the Saturdays and Sundays immediately
13 preceding and following July 4.

14 (3) Labor Day and the Saturday and Sunday immediately
15 preceding that day.

16 (4) December 31 and the Saturdays and Sundays immediately
17 preceding and following December 31.

18 b. A person shall not use consumer fireworks on real
19 property other than that person's real property or on the real
20 property of a person who has consented to the use of consumer
21 fireworks on that property.

22 c. A person who violates this subsection commits a simple
23 misdemeanor punishable by a fine of not less than fifty dollars
24 and not more than five hundred dollars.

25 3- 5. Applicability.

26 a. This section does not prohibit the sale by a resident,
27 dealer, manufacturer, or jobber of such fireworks as are
28 not prohibited by this section, or the sale of any kind of
29 fireworks if they are to be shipped out of the state, or the
30 sale or use of blank cartridges for a show or the theater,
31 or for signal purposes in athletic sports or by railroads
32 or trucks, for signal purposes, or by a recognized military
33 organization.

34 b. This section does not apply to any substance or
35 composition prepared and sold for medicinal or fumigation

1 purposes.

2 c. Unless specifically provided otherwise, this section does
3 not apply to novelties.

4 Sec. 10. EFFECTIVE DATE. This Act takes effect June 1,
5 2015.

6 EXPLANATION

7 The inclusion of this explanation does not constitute agreement with
8 the explanation's substance by the members of the general assembly.

9 This bill provides for the legal sale and use of novelties
10 and consumer fireworks within the state.

11 The bill provides that the state fire marshal has the duty to
12 enforce all laws, and rules of the department of public safety
13 concerned with the storage, transportation, handling, and use
14 of fireworks.

15 Current law provides that a person, firm, partnership, or
16 corporation who offers for sale, exposes for sale, sells at
17 retail, or uses or explodes any fireworks, commits a simple
18 misdemeanor. Current law, however, also provides that a county
19 board of supervisors or the department of natural resources may
20 grant a permit for the display of fireworks if the fireworks
21 display will be handled by a competent operator. Current
22 law further provides that the term "fireworks" includes any
23 explosive composition, or combination of explosive substances,
24 or article prepared for the purpose of producing a visible
25 or audible effect by combustion, explosion, deflagration,
26 or detonation, including blank cartridges, firecrackers,
27 torpedoes, skyrockets, roman candles, or other fireworks of
28 like construction and fireworks containing any explosive or
29 flammable compound, or other device containing any explosive
30 substance with limited exceptions.

31 The bill maintains these restrictions for display fireworks
32 and provides that the term "display fireworks" shall not
33 include novelties or consumer fireworks. The bill provides
34 definitions for the terms "novelties" and "consumer fireworks".

35 The bill requires that the state fire marshal establish

1 a consumer fireworks seller license, and requires possession
2 of such a license to legally sell consumer fireworks in this
3 state. The state fire marshal is required to establish a fee
4 schedule for consumer fireworks seller licenses. The bill
5 establishes two classes of consumer fireworks and requires
6 a \$400 annual licensing fee for a retailer who devotes 50
7 percent or more of the retailer's retail floor space to the
8 sale or display of first-class consumer fireworks. Retailers
9 who devote less than 50 percent of the retailer's retail
10 floor space to the sale or display of first-class consumer
11 fireworks are required to pay an annual licensing fee of \$200.
12 A community group that sells first-class consumer fireworks
13 is required to pay an annual licensing fee of \$200. The
14 bill requires an annual licensing fee of \$25 for retailers
15 or community groups that sell only second-class consumer
16 fireworks.

17 The bill requires that the state fire marshal adopt rules
18 to require that licensed retailers and community groups only
19 offer consumer fireworks for sale in accordance with specified
20 industry standards. The bill also requires that retailers and
21 community groups provide proof of and maintain public liability
22 and product liability insurance. Under the bill, the state
23 fire marshal is required to adopt rules to permit licensed
24 retailers and community groups to sell consumer fireworks at
25 conforming permanent buildings on a year-round basis and at
26 conforming temporary structures from June 13 to July 11 each
27 year.

28 The bill also provides for the revocation of a consumer
29 fireworks seller license for the intentional violation of
30 licensing requirements. The bill establishes procedures
31 for the revocation of such licenses and procedures for
32 review for such revocations. The bill also establishes a
33 consumer fireworks seller license fee fund under the control
34 of the state fire marshal. The fund shall consist of the
35 fees collected for the licensing of retailers and community

1 groups. The fund is required to be used for administration
2 and enforcement of the state fire marshal's consumer fireworks
3 related duties and to provide grants to local fire protection
4 and emergency medical service providers.

5 Under the bill, a violation of a licensing provision
6 established in Code or by rule is considered a simple
7 misdemeanor. A simple misdemeanor is punishable by confinement
8 for no more than 30 days or a fine of at least \$65 but not more
9 than \$625, or by both.

10 The bill provides that a person or a firm, partnership, or
11 corporation may possess consumer fireworks as provided in the
12 bill. The bill provides that a person, firm, partnership, or
13 corporation who sells any consumer firework to a person who
14 is less than 18 years of age commits a simple misdemeanor.
15 A person who is less than 18 years of age who purchases any
16 consumer fireworks commits a simple misdemeanor. A simple
17 misdemeanor is generally punishable by confinement for no more
18 than 30 days or a fine of at least \$65 but not more than \$625 or
19 by both, but the bill provides for a fine of at least \$250.

20 The bill provides that the state fire marshal may order the
21 suspension of the use of consumer fireworks, display fireworks,
22 or novelties if the fire marshal determines that the use of
23 such devices would constitute a threat to public safety. The
24 bill also provides that a county board of supervisors may adopt
25 a resolution to suspend the use of display fireworks upon
26 such a determination. The bill further provides that a city
27 council may by resolution suspend or limit the use of consumer
28 fireworks, display fireworks, or novelties if the council
29 determines that the use of such devices would constitute a
30 threat to public safety. The bill provides that a person who
31 violates such an order by the state fire marshal or resolution
32 of a county board of supervisors or a city council commits
33 a simple misdemeanor, punishable by a fine of at least \$250.
34 The bill also makes conforming charges related to the use of
35 fireworks in state parks and preserves.

1 The bill also provides certain restrictions on the use
2 or explosion of consumer fireworks. The bill prohibits the
3 use or explosion of consumer fireworks at a time other than
4 between the hours of 9:00 a.m. and 10:00 p.m., except on
5 Memorial Day, the 4th of July, Labor Day, and New Year's Eve,
6 and weekend days near such holidays. On specified days, the
7 use or explosion of consumer fireworks is prohibited except
8 between the hours of 9:00 a.m. and 12:30 a.m. on the following
9 day. The bill further prohibits the use of fireworks by a
10 person on the real property of another person unless the owner
11 of the real property has consented to such use. Under the
12 bill, a violation of these restrictions is considered a simple
13 misdemeanor punishable by a fine of not less than \$50 and not
14 more than \$500.

15 The bill will take effect June 1, 2015.