

Senate File 535 - Introduced

SENATE FILE 535
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1035)

A BILL FOR

1 An Act modifying provisions relating to the regulation and
2 sale of certain fireworks, making penalties applicable, and
3 including effective date provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 9C.1, subsection 3, Code 2019, is amended
2 to read as follows:

3 3. The provisions of this chapter shall not be construed
4 to apply to persons selling at wholesale to merchants, nor to
5 transient vendors of drugs, nor to persons running a huckster
6 wagon, or selling or distributing livestock feeds, fresh meats,
7 fish, fruit, or vegetables, nor to persons selling consumer
8 fireworks, display fireworks, or novelties, as those terms are
9 defined in section 727.2, nor to persons selling their own work
10 or production either by themselves or employees.

11 Sec. 2. Section 100.19, Code 2019, is amended by adding the
12 following new subsections:

13 NEW SUBSECTION. 3A. a. The state fire marshal shall
14 approve or deny a completed application for a consumer
15 fireworks seller license, submitted on or before April 30, no
16 later than the following June 1 for an application to sell
17 consumer fireworks at a permanent building, or no later than
18 the following June 13 for an application to sell consumer
19 fireworks at a temporary structure.

20 b. If the state fire marshal fails to act on a completed
21 application for a license within the applicable time frame as
22 specified in paragraph "a", the application shall be deemed
23 approved. This paragraph shall not restrict the authority of
24 the state fire marshal to revoke a license approved pursuant to
25 this paragraph for any intentional violation of this section,
26 in accordance with subsection 6.

27 NEW SUBSECTION. 7A. a. The state fire marshal shall have
28 sole authority to require or authorize inspections relating to
29 consumer fireworks seller licensing pursuant to this section.
30 A city or county shall not have the authority to require or
31 authorize any inspection relating to consumer fireworks seller
32 licensing, provided, however, that the state fire marshal may
33 authorize a city or county employee to conduct an inspection on
34 behalf of the state fire marshal.

35 b. Any inspection required or authorized by the state fire

1 marshal relating to consumer fireworks seller licensing shall
2 be paid from moneys deposited in the consumer fireworks fee
3 fund created in subsection 7, paragraph "a", regardless of
4 whether the inspection is conducted by the state fire marshal
5 or any other person authorized by the state fire marshal.

6 Sec. 3. Section 100.19, subsection 4, paragraph c,
7 subparagraph (2), Code 2019, is amended to read as follows:

8 (2) At a temporary structure that meets the requirements
9 of paragraph "a" between June ~~13~~ 20 and July 8 each year, both
10 dates inclusive.

11 Sec. 4. Section 100.19, subsection 4, Code 2019, is amended
12 by adding the following new paragraph:

13 NEW PARAGRAPH. *d.* Prohibit a retailer or community group
14 issued a license pursuant to this section to sell consumer
15 fireworks, as described in APA 87-1, chapter 3, in any
16 residential zone or district.

17 Sec. 5. NEW SECTION. **100.19B Fireworks regulation —**
18 **uniform application.**

19 1. In order to provide for the uniform application of the
20 provisions of sections 100.19, 100.19A, 727.2, and any other
21 provision relating to the regulation of fireworks within this
22 state, it is intended that the sole and only regulation of
23 fireworks in the state, including consumer fireworks, display
24 fireworks, and novelties, shall be those enacted by the general
25 assembly and attendant rules allowed thereunder by the division
26 of the state fire marshal. Any law, ordinance, or regulation
27 adopted by a municipality, county, or other governmental unit
28 within this state relating to consumer fireworks, display
29 fireworks, or novelties existing on the effective date of this
30 Act shall be or become void, unenforceable, and of no effect.

31 2. A municipality, county, or other governmental unit
32 that adopts or enforces any law, ordinance, or regulation in
33 violation of this section shall be liable for court costs,
34 expenses, and reasonable attorney fees incurred by a prevailing
35 party bringing a claim against the municipality, county, or

1 other governmental unit based on the adoption or enforcement of
2 the law, ordinance, or regulation.

3 3. *a.* Notwithstanding subsection 1, a city or county may
4 prohibit or limit the use of consumer fireworks pursuant to
5 section 331.301, subsection 17, or 364.2, subsection 6, and
6 grant permits for the display of display fireworks pursuant to
7 section 727.2, subsection 2, paragraph "a".

8 *b.* Notwithstanding subsection 1, the department of natural
9 resources may issue permits for the use of consumer fireworks
10 and display fireworks in state parks and preserves pursuant to
11 section 461A.42, subsection 2.

12 4. For purposes of this section, "consumer fireworks",
13 "display fireworks", and "novelties" means the same as those
14 terms are defined in section 727.2.

15 Sec. 6. Section 331.301, subsection 17, Code 2019, is
16 amended to read as follows:

17 17. The board of supervisors may by ordinance or resolution
18 prohibit or limit the use of consumer fireworks ~~or display~~
19 ~~fireworks~~, as described in [section 727.2](#), ~~if the board~~
20 ~~determines that the use of such devices would constitute a~~
21 ~~threat to public safety or private property, or if the board~~
22 ~~determines that the use of such devices would constitute a~~
23 nuisance to neighboring landowners on dates and at times that
24 are more stringent than the limitations described in section
25 727.2, subsection 4.

26 Sec. 7. NEW SECTION. 335.2A Sale of consumer fireworks —
27 limitation.

28 A county shall not adopt or enforce any ordinance under
29 this chapter to regulate, restrict, or prohibit the location
30 of permanent buildings or temporary structures used for the
31 sale of consumer fireworks pursuant to section 100.19, in any
32 location zoned for commercial or industrial purposes.

33 Sec. 8. Section 364.2, subsection 6, Code 2019, is amended
34 to read as follows:

35 6. A city council may by ordinance or resolution prohibit

1 or limit the use of consumer fireworks, ~~display fireworks,~~
2 ~~or novelties,~~ as described in section 727.2, on dates and at
3 times that are more stringent than the limitations described
4 in section 727.2, subsection 4.

5 Sec. 9. Section 414.1, subsection 1, Code 2019, is amended
6 by adding the following new paragraph:

7 NEW PARAGRAPH. *c.* A city shall not adopt or enforce any
8 regulation or restriction under this chapter to regulate,
9 restrict, or prohibit the location of permanent buildings or
10 temporary structures used for the sale of consumer fireworks
11 pursuant to section 100.19, in any location zoned for
12 commercial or industrial purposes.

13 Sec. 10. Section 727.2, subsection 4, paragraph b, Code
14 2019, is amended to read as follows:

15 *b.* A person shall not use or explode consumer fireworks at
16 times other than between the hours of 9:00 a.m. and 10:00 p.m.,
17 except that on the following dates consumer fireworks shall not
18 be used at times other than between the hours specified:

19 (1) Between the hours of 9:00 a.m. and 11:00 p.m. on July 4
20 and the Fridays and Saturdays and ~~Sundays~~ immediately preceding
21 and following July 4.

22 (2) Between the hours of 9:00 a.m. on December 31 and 12:30
23 a.m. on the immediately following day.

24 (3) Between the hours of 9:00 a.m. and 11:00 p.m. on the
25 Fridays and Saturdays and ~~Sundays~~ immediately preceding and
26 following December 31.

27 Sec. 11. Section 727.2, subsection 4, Code 2019, is amended
28 by adding the following new paragraph:

29 NEW PARAGRAPH. *0c.* A city or county may prohibit or limit
30 the use of consumer fireworks on dates and at times that are
31 more stringent than the limitations described in paragraphs "a"
32 and "b" pursuant to section 331.301, subsection 17, or 364.2,
33 subsection 6.

34 Sec. 12. EFFECTIVE DATE. This Act, being deemed of
35 immediate importance, takes effect upon enactment.

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EXPLANATION

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

This bill modifies provisions relating to the regulation and sale of certain fireworks.

Current Code chapter 9C requires persons bringing any goods, wares, or merchandise into Iowa with the intent to sell such goods, wares, or merchandise to obtain a transient merchant license, unless otherwise exempted from licensure. The bill provides that these licensure requirements shall not apply to persons selling consumer fireworks, display fireworks, or novelties, as those terms are defined in Code section 727.2.

Current Code section 100.19 requires the state fire marshal to regulate the sale of consumer fireworks in Iowa by establishing licensure requirements and issuing consumer fireworks seller licenses to retailers and community groups. The bill requires the state fire marshal to approve or deny a completed application for a consumer fireworks seller license, submitted on or before April 30, no later than the following June 1 for an application to sell at a permanent building, or no later than the following June 13 for an application to sell at a temporary structure. If the state fire marshal fails to act on a completed application within the applicable time frame, the application shall be deemed approved. However, the state fire marshal may revoke an approved application for any intentional violation of Code section 100.19 in accordance with that Code section.

The bill limits the sale of consumer fireworks at temporary structures between June 20 and July 8 each year, instead of between June 13 and July 8.

The bill provides that the state fire marshal shall adopt rules to prohibit the sale of consumer fireworks in any residential zone or district.

The bill provides that the state fire marshal shall have the sole authority to require or authorize inspections relating

1 to consumer fireworks seller licensure. A city or county
2 shall not have the authority to require or authorize any such
3 inspection, but the state fire marshal may authorize a city or
4 county employee to conduct an inspection on behalf of the state
5 fire marshal. The bill provides that any inspection required
6 or authorized by the state fire marshal shall be paid from
7 moneys deposited in the consumer fireworks fee fund created in
8 Code section 100.19(7)(a), regardless of whether the state fire
9 marshal or another authorized person conducts the inspection.

10 The bill provides that the sole and only regulation of
11 fireworks in Iowa, including consumer fireworks, display
12 fireworks, and novelties, as those terms are defined in
13 Code section 727.2, shall be those enacted by the general
14 assembly and any rules provided by the division of the state
15 fire marshal. Any law, ordinance, or regulation relating to
16 such fireworks adopted by a municipality, county, or other
17 governmental unit in existence on the effective date of the
18 bill shall become void and unenforceable, except as provided
19 in the bill. If a claim is brought against a municipality,
20 county, or other governmental unit based on the adoption or
21 enforcement of a regulation in violation of the bill, the
22 municipality, county, or other governmental unit shall be
23 liable for court costs, expenses, and reasonable attorney fees
24 incurred by a prevailing party.

25 Current law allows a county to prohibit or limit the use
26 of consumer fireworks or display fireworks under specified
27 circumstances. Current law also allows a city to prohibit or
28 limit the use of consumer fireworks, display fireworks, or
29 novelties. The bill modifies these provisions by providing
30 that a city or county may by ordinance or resolution prohibit
31 or limit the use of consumer fireworks on dates and at times
32 that are more stringent than the limitations described in Code
33 section 727.2(4).

34 The bill provides that a city or county shall not adopt or
35 enforce any zoning regulation under Code chapter 335 or 414

1 to regulate, restrict, or prohibit the location of permanent
2 buildings or temporary structures used for the sale of consumer
3 fireworks pursuant to Code section 100.19, in any location
4 zoned for commercial or industrial purposes.

5 Current Code section 727.2(4) authorizes the use of consumer
6 fireworks on certain days and at certain times, including the
7 Saturdays and Sundays immediately preceding and following
8 July 4 and December 31. The bill replaces "Saturdays and
9 Sundays" with "Fridays and Saturdays". A person who violates
10 Code section 727.2(4) commits a simple misdemeanor. A simple
11 misdemeanor is punishable by confinement for no more than 30
12 days or a fine of at least \$65 but not more than \$625 or by
13 both. However, a court shall not order imprisonment for a
14 violation of Code section 727.2(4).

15 The bill takes effect upon enactment.