

House File 614 - Reprinted

HOUSE FILE 614

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HSB 161)

(As Amended and Passed by the House May 20, 2015)

A BILL FOR

1 An Act relating to the possession, sale, transfer, purchase,
2 and use of fireworks, providing fees and penalties, and
3 including effective date provisions.

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

DIVISION I

FIREWORKS REGULATION

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

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

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

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

14 Sec. 3. NEW SECTION. 100.19 **Consumer fireworks seller**
15 **licensing — penalty.**

16 1. As used in this section:

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

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

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

26 (1) Aerial shell kits and reloadable tubes.

27 (2) Chasers.

28 (3) Helicopter and aerial spinners.

29 (4) Firecrackers.

30 (5) Mine and shell devices.

31 (6) Missile-type rockets.

32 (7) Roman candles.

33 (8) Sky rockets and bottle rockets.

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

1 *d.* "Retailer" means as defined in section 423.1.

2 *e.* "Second-class consumer fireworks" means the following
3 consumer fireworks, as described in APA 87-1, chapter 3:

4 (1) Cone fountains.

5 (2) Cylindrical fountains.

6 (3) Flitter sparklers.

7 (4) Ground and hand-held sparkling devices, including
8 multiple tube ground and hand-held sparkling devices that are
9 manufactured in accordance with APA 87-1, section 3.5.

10 (5) Ground spinners.

11 (6) Illuminating torches.

12 (7) Toy smoke devices.

13 (8) Wheels.

14 (9) Wire or dipped sparklers.

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

22 *b.* A person shall possess a consumer fireworks seller
23 license under this section in order to sell consumer fireworks.

24 3. *a.* The state fire marshal shall establish a fee schedule
25 for consumer fireworks seller licenses as follows:

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

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

34 (3) For a community group that offers for sale, exposes for
35 sale, or sells first-class consumer fireworks, an annual fee

1 of four hundred dollars.

2 (4) For a retailer or community group that offers for sale,
3 exposes for sale, or sells second-class consumer fireworks,
4 but not first-class consumer fireworks, an annual fee of
5 twenty-five dollars.

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

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

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

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

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

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

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

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

33 5. *a.* The state fire marshal shall adopt rules to provide
34 that a person's consumer fireworks seller license may be
35 revoked for the intentional violation of this section. The

1 proceedings for revocation shall be held before the division
2 of the state fire marshal, which may revoke the license or
3 licenses involved as provided in paragraph "b".

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

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

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

26 6. *a.* A consumer fireworks fee fund is created in the
27 state treasury under the control of the state fire marshal.
28 Notwithstanding section 12C.7, interest or earnings on
29 moneys in the consumer fireworks fee fund shall be credited
30 to the consumer fireworks fee fund. Moneys in the fund are
31 appropriated to the state fire marshal to be used to fulfill
32 the responsibilities of the state fire marshal for the
33 administration and enforcement of this section and section
34 100.19A and to provide grants pursuant to paragraph "b". The
35 fund shall include the fees collected by the state fire marshal

1 under the fee schedule established pursuant to subsection 3
2 and the fees collected by the state fire marshal under section
3 100.19A for wholesaler registration.

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

15 7. The state fire marshal shall adopt rules for the
16 administration of this section.

17 8. A person who violates a provision of this section or a
18 rule adopted pursuant to this section is guilty of a simple
19 misdemeanor.

20 Sec. 4. NEW SECTION. 100.19A **Consumer fireworks wholesaler**
21 **— registration — penalty.**

22 1. For purposes of this section:

23 *a.* "*Consumer fireworks*" means first-class consumer fireworks
24 and second-class consumer fireworks, as those terms are defined
25 in section 100.19.

26 *b.* "*Wholesaler*" means a person who engages in the business
27 of selling or distributing consumer fireworks for the purpose
28 of resale in this state.

29 2. The state fire marshal shall adopt rules to require all
30 wholesalers to annually register with the state fire marshal.
31 The state fire marshal may also adopt rules to regulate the
32 storage or transfer of consumer fireworks by wholesalers and to
33 require wholesalers to maintain insurance.

34 3. The state fire marshal shall establish an annual
35 registration fee of one thousand dollars for wholesalers

1 of consumer fireworks within the state. Registration fees
2 collected pursuant to this section shall be deposited in
3 the consumer fireworks fee fund created in section 100.19,
4 subsection 6.

5 4. A person who violates a provision of this section or a
6 rule adopted pursuant to this section is guilty of a simple
7 misdemeanor.

8 Sec. 5. Section 101A.1, subsection 3, Code 2015, is amended
9 to read as follows:

10 3. "*Explosive*" means any chemical compound, mixture
11 or device, the primary or common purpose of which is to
12 function by explosion with substantially instantaneous
13 release of gas and heat, unless such compound, mixture, or
14 device is otherwise specifically classified by the United
15 States department of transportation. The term "*explosive*"
16 includes all materials which are classified as a class 1,
17 division 1.1, 1.2, 1.3, or 1.4 explosive by the United States
18 department of transportation, under 49 C.F.R. §173.50, and all
19 materials classified as explosive materials under 18 U.S.C.
20 §841, and includes, but is not limited to, dynamite, black
21 powder, pellet powders, initiating explosives, blasting caps,
22 electric blasting caps, safety fuse, fuse lighters, fuse
23 igniters, squibs, cordeau detonative fuse, instantaneous fuse,
24 igniter cord, igniters, smokeless propellant, cartridges for
25 propellant-actuated power devices, cartridges for industrial
26 guns, and overpressure devices, but does not include "*fireworks*"
27 as "*consumer fireworks*", "*display fireworks*", or "*novelties*" as
28 those terms are defined in section 727.2 or ammunition or small
29 arms primers manufactured for use in shotguns, rifles, and
30 pistols. Commercial explosives are those explosives which are
31 intended to be used in commercial or industrial operations.

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

34 NEW SUBSECTION. 17. The board of supervisors may by
35 ordinance or resolution limit or restrict the use of consumer

1 fireworks or display fireworks, as described in section 727.2,
2 if the board determines that the use of such devices would
3 constitute a threat to public safety or private property, or
4 if the board determines that the use of such devices would
5 constitute a nuisance to neighboring landowners.

6 Sec. 7. Section 331.304, subsection 9, Code 2015, is amended
7 to read as follows:

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

10 Sec. 8. Section 364.2, Code 2015, is amended by adding the
11 following new subsection:

12 NEW SUBSECTION. 6. A city council may by ordinance or
13 resolution prohibit or limit the use of consumer fireworks,
14 display fireworks, or novelties, as described in section 727.2.

15 Sec. 9. Section 461A.42, subsection 2, Code 2015, is amended
16 to read as follows:

17 2. The use of consumer fireworks or display fireworks,
18 as defined in section 727.2, in state parks and preserves is
19 prohibited except as authorized by a permit issued by the
20 department. The commission shall establish, by rule adopted
21 pursuant to chapter 17A, a fireworks permit system which
22 authorizes the issuance of a limited number of permits to
23 qualified persons to use or display fireworks in selected state
24 parks and preserves.

25 Sec. 10. Section 727.2, Code 2015, is amended to read as
26 follows:

27 **727.2 Fireworks.**

28 1. Definitions. For purposes of this section:

29 a. "Consumer fireworks" includes first-class consumer
30 fireworks and second-class consumer fireworks as those terms
31 are defined in section 100.19, subsection 1.

32 b. The term "fireworks" "Display fireworks" includes any
33 explosive composition, or combination of explosive substances,
34 or article prepared for the purpose of producing a visible
35 or audible effect by combustion, explosion, deflagration,

1 or detonation, and includes ~~blank cartridges, firecrackers,~~
2 ~~torpedoes, skyrockets, roman candles, or other fireworks of~~
3 ~~like construction and fireworks containing any explosive or~~
4 flammable compound, or other device containing any explosive
5 substance. ~~The term "fireworks"~~ "Display fireworks" does not
6 include ~~goldstar-producing sparklers on wires which contain~~
7 ~~no magnesium or chlorate or perchlorate, flitter sparklers~~
8 ~~in paper tubes that do not exceed one-eighth of an inch in~~
9 ~~diameter, toy snakes which contain no mercury, or caps used~~
10 ~~in cap pistols~~ novelties or consumer fireworks enumerated in
11 chapter 3 of the American pyrotechnics association's standard
12 87-1.

13 c. "Novelties" includes all novelties enumerated in chapter
14 3 of the American pyrotechnics association's standard 87-1, and
15 that comply with the labeling regulations promulgated by the
16 United States consumer product safety commission.

17 2. Display fireworks.

18 a. A person, firm, partnership, or corporation who offers
19 for sale, exposes for sale, sells at retail, or uses or
20 explodes any display fireworks, commits a simple misdemeanor.
21 ~~In addition to any other penalties, the punishment imposed~~
22 ~~for a violation of this section shall include assessment~~
23 ~~of, punishable by~~ a fine of not less than two hundred fifty
24 dollars. However, ~~the~~ a city council of a city or a county
25 board of supervisors may, upon application in writing, grant a
26 permit for the display of display fireworks by municipalities,
27 fair associations, amusement parks, and other organizations
28 or groups of individuals approved by the city or the county
29 board of supervisors when the display fireworks ~~display~~ will
30 be handled by a competent operator, but no such permit shall
31 be required for the display of display fireworks at the Iowa
32 state fairgrounds by the Iowa state fair board, at incorporated
33 county fairs, or at district fairs receiving state aid. Sales
34 of display fireworks for such display may be made for that
35 purpose only.

1 b. (1) A person who uses or explodes display fireworks
2 while the use of such devices is prohibited or limited by an
3 ordinance adopted by the county or city in which the firework
4 is used commits a simple misdemeanor, punishable by a fine of
5 not less than two hundred fifty dollars.

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

10 3. Consumer fireworks and novelties.

11 a. A person or a firm, partnership, or corporation may
12 possess, use, or explode consumer fireworks in accordance with
13 this subsection and subsection 4.

14 b. A person, firm, partnership, or corporation who sells
15 consumer fireworks to a person who is less than eighteen years
16 of age commits a simple misdemeanor, punishable by a fine of
17 not less than two hundred fifty dollars. A person who is less
18 than eighteen years of age who purchases consumer fireworks
19 commits a simple misdemeanor, punishable by a fine of not less
20 than two hundred fifty dollars.

21 c. (1) A person who uses or explodes consumer fireworks
22 or novelties while the use of such devices is prohibited or
23 limited by an ordinance adopted by the county or city in which
24 the fireworks are used commits a simple misdemeanor, punishable
25 by a fine of not less than two hundred fifty dollars.

26 (2) A person who uses or explodes consumer fireworks or
27 novelties while the use of such devices is suspended by an
28 order of the state fire marshal commits a simple misdemeanor,
29 punishable by a fine of not less than two hundred fifty
30 dollars.

31 4. Limitations.

32 a. A person shall not use or explode consumer fireworks at
33 times other than between the hours of 9:00 a.m. and 10:00 p.m.,
34 except that on the following dates consumer fireworks shall not
35 be used at times other than between the hours of 9:00 a.m. and

1 12:30 a.m. on the immediately following day:

2 (1) Memorial Day and the Saturday and Sunday immediately
3 preceding that day.

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

6 (3) Labor Day and the Saturday and Sunday immediately
7 preceding that day.

8 (4) December 31 and the Saturdays and Sundays immediately
9 preceding and following December 31.

10 b. A person shall not use consumer fireworks on real
11 property other than that person's real property or on the real
12 property of a person who has consented to the use of consumer
13 fireworks on that property.

14 c. A person who violates this subsection commits a simple
15 misdemeanor. A court shall not order imprisonment for
16 violation of this subsection.

17 ~~3.~~ 5. Applicability.

18 a. This section does not prohibit the sale by a resident,
19 dealer, manufacturer, or jobber of such fireworks as are
20 not prohibited by this section, or the sale of any kind of
21 fireworks if they are to be shipped out of the state, or the
22 sale or use of blank cartridges for a show or the theater,
23 or for signal purposes in athletic sports or by railroads
24 or trucks, for signal purposes, or by a recognized military
25 organization.

26 b. This section does not apply to any substance or
27 composition prepared and sold for medicinal or fumigation
28 purposes.

29 c. Unless specifically provided otherwise, this section does
30 not apply to novelties.

31 Sec. 11. EFFECTIVE DATE. This division of this Act takes
32 effect December 1, 2015.

33 DIVISION II

34 RULEMAKING

35 Sec. 12. EMERGENCY RULES. The state fire marshal shall

1 adopt emergency rules under section 17A.4, subsection 3, and
2 section 17A.5, subsection 2, paragraph "b", to implement
3 the provisions of this Act and the rules shall be effective
4 immediately upon filing unless a later date is specified in the
5 rules. Any rules adopted in accordance with this section shall
6 also be published as a notice of intended action as provided
7 in section 17A.4.

8 Sec. 13. EFFECTIVE UPON ENACTMENT. This division of this
9 Act, being deemed of immediate importance, takes effect upon
10 enactment.