

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2356

By: Dunegan

COMMITTEE SUBSTITUTE

An Act relating to the State Fire Marshal; amending 68 O.S. 2001, Sections 1623, 1624, 1628 and 1629, which relate to fireworks; prohibiting sale to nonresident at certain times; prohibiting possession of fireworks at certain times; providing exception; modifying term; specifying storage standards for seized fireworks; modifying time period for permit application; providing exception; modifying minimum liability coverage amount; amending 74 O.S. 2001, Sections 324.2, 324.11 and 324.20b, which relate to the State Fire Marshal Commission and duties; modifying quorum for commission meetings; specifying building codes to be used for certain purposes; requiring approval of state fire marshal for construction or major alteration of correctional facilities; modifying amount of monies which may be in the State Fire Marshal Revolving Fund; amending 74 O.S. 2001, Section 840-5.5 (Section 10, Chapter 414, O.S.L. 2001), which relates to the unclassified service; adding position of fire protection engineer; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 2001, Section 1623, is amended to read as follows:

Section 1623. Class "C" Common Fireworks may be legally stored, sold and used in this state with the exceptions and conditions specified under the provisions of this act.

(a) All fireworks storage and sales areas shall be conspicuously posted with signs reading "FIREWORKS-NO SMOKING".

(b) Fireworks offered for retail sale must be protected from direct contact and handling by the public at all times. Self-serve or marketing where retail customers are allowed to move among stocks of fireworks or serve themselves from fireworks stocks or displays

is strictly prohibited. Mail-order sales to consumers are prohibited through any medium of either interstate or intrastate commerce. Sales of fireworks may only be made at properly licensed retail locations within the State of Oklahoma. A sales clerk must be on duty to serve the consumer at the time of purchase.

(c) Fireworks shall not be sold or displayed to the public within any building or portion thereof or any vehicle which allows entry by any persons other than employees within such building or vehicle unless the fireworks are kept where they cannot be reached or handled by those persons. An enclosed building used for sale of fireworks to the public shall have adequate exits as determined by the State Fire Marshal. The use of tents or other nonrigid shelters for the sale or storage of fireworks where the public may move about under or within the confines of a shelter is prohibited.

(d) The retail license holder shall be responsible for the safe operation of retail sales to the public. The retail license holder shall be at least sixteen (16) years of age.

(e) No person shall offer fireworks for sale at retail within the State of Oklahoma to residents or nonresidents of the State of Oklahoma at retail before the 15th day of June or after the 6th day of July and before the 15th day of December or after the 2nd day of January in each year.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 1624, is amended to read as follows:

Section 1624. (a) From and after July 5, 1981, the sale, gift, distribution or use, or possession ,except possession by manufacturers, distributors, and wholesalers of skyrockets with sticks as defined by the United States Department of Transportation is hereby prohibited within the State of Oklahoma. This prohibition shall include, but is not limited to, explosive devices commonly known as "bottlerockets" or "stickrockets". Distribution, gift or

sale from Oklahoma to a person outside the State of Oklahoma shall not be considered as occurring within the State of Oklahoma.

(b) Any and all items of Class "C" ~~Common~~ 1.4G Consumer Fireworks not properly labeled according to the United States Consumer Product Safety Commission and identified with the "DOT Class 'C' ~~Common~~ Consumer Fireworks" marking on each retail sale unit is prohibited under the provisions of this act.

SECTION 3. AMENDATORY 68 O.S. 2001, Section 1628, is amended to read as follows:

Section 1628. Violation of any provision of this act is a misdemeanor punishable as follows:

(a) Discharging fireworks in violation of this act shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00).

(b) Illegal sale, violation of licensing provision, false labeling, or any other violation of this act shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), ninety (90) days' imprisonment in the county jail, or both. In the event of a second conviction the license shall be revoked for a period of eighteen (18) months. Each violation of this act shall constitute a separate offense. No other person shall be granted a license to operate in the same location during the period of a revoked license.

(c) The State Fire Marshal, his deputies, or any authorized police or peace officer of this state shall seize as contraband any illegal fireworks as defined under the terms of this act. Fireworks seized in the enforcement of this act shall be held in custody of the county sheriff in which county such fireworks were seized by local law enforcement authorities, the county sheriff or the State Fire Marshal. Consumer fireworks are required to be stored in compliance with state and local adopted codes and standards and Display Fireworks are required to be stored in an explosive magazine approved by the Bureau of Alcohol, Tobacco and Firearms and in compliance with state and local adopted codes and standards. The

party surrendering the fireworks, if aggrieved by the action, may file an appeal in writing to the district court in the county where fireworks were seized. Upon hearing the appeal, the district court may authorize the return of part or all of the confiscated fireworks; otherwise, the court shall authorize and direct that such contraband fireworks be destroyed.

(d) The provisions of this act shall be enforced by the State Fire Marshal and local fire marshals, the sheriff, the police or any peace officer licensed or authorized by this state or by their respective deputies.

SECTION 4. AMENDATORY 68 O.S. 2001, Section 1629, is amended to read as follows:

Section 1629. Nothing in this act shall be construed as applying to shipping, sale, possession or use of fireworks for Class B Display by holders of a permit for a public display to be conducted in accordance with the rules and regulations of the State Fire Marshal Commission.

Applications for permits for Class B Displays must be submitted in writing ~~five (5)~~ fifteen (15) days prior to date of display to the clerk of the city or town where display is to occur. If the display is in an area outside the jurisdiction of a city or town, application for permit shall be made to the State Fire Marshal. In the event the display is conducted at a site previously inspected by the State Fire Marshal, and all conditions as prescribed by the State Fire Marshal remain the same, then the application for permit shall be submitted in writing five (5) days prior to the date of the display to the State Fire Marshal. In the event a display fireworks show is postponed due to weather or other unforeseen cause, the permit may apply to the date the show is rescheduled, providing all conditions as prescribed by the State Fire Marshal remain the same and notice in writing is made to the Office of the State Fire Marshal of the reschedule date prior to the show being conducted.

Every display shall be under the direction of a competent, responsible operator of legal age and the person or organization making application for permit must show financial liability coverage in minimum amounts of ~~Five Thousand Dollars (\$5,000.00) per person, Ten Thousand Dollars (\$10,000.00)~~ One Million Dollars (\$1,000,000.00) personal injuries from any single accident, and ~~Five Thousand Dollars (\$5,000.00)~~ property damage, or in the amount set forth by ordinance. Before a permit is granted, a local fire inspector or an agent of the State Fire Marshal shall inspect and approve or reject the site of the display. No permit so granted shall be transferable.

SECTION 5. AMENDATORY 74 O.S. 2001, Section 324.2, is amended to read as follows:

Section 324.2 The Commission shall select a ~~chairman~~ chair and is hereby authorized to adopt rules for conducting its proceedings. Any ~~three~~ four members shall constitute a quorum. The Commission shall meet monthly on such date as it may designate and may meet at such other times as it may deem necessary, or when called by the ~~chairman~~ chair or by any three members. Complete minutes of each meeting shall be kept and filed in the office of the State Fire Marshal and shall be available for public inspection during reasonable office hours. The Commission shall report annually to the Governor and to the Speaker of the House of Representatives and the President Pro Tempore of the Senate of the affairs of the Commission and the office of the State Fire Marshal.

SECTION 6. AMENDATORY 74 O.S. 2001, Section 324.11, is amended to read as follows:

Section 324.11 A. No person, firm, corporation, partnership, organization, city, town, school district, county or other subdivision of government shall commence the construction or major alteration of any building or structure to be used as a school, hospital, church, asylum, theater, meeting hall, hotel, motel,

apartment house, rooming house, rest home, nursing home, day nursery, convalescent home, orphanage, auditorium, or install original equipment for the operation or maintenance thereof without obtaining a permit. Said permit, for which a charge may be made in conformity with the local ordinance, except as limited herein as to governmental agencies, shall be obtained from the city, town or county in whose jurisdiction the construction or alteration is planned.

B. All such construction or alteration so planned shall conform to the applicable provisions of the ~~BOCA National Building Code, as last revised, the Southern Standard Building Code Congress International (SBCCI), the Uniform Building Code (ICBO), or the International Building Code~~ building codes adopted by the State Fire Marshal Commission, except that in the event any city, town or county having jurisdiction to issue such permit has adopted by ordinance one of the other building codes designated in Section 324.8 of this title, then such construction or alteration shall conform to such other code so adopted.

C. Application for such building permit shall be made to, and such building permit shall be issued by, any city, town or county in whose jurisdiction the construction or alteration is planned. The city, town or county may require the submission of plans and specifications covering the proposed construction or alteration and may refuse to issue such permit unless the work so planned is in accordance with the applicable provisions of the city, town or county's building code. In all geographical areas wherein no such permit is required by local authorities such permit must be obtained from the State Fire Marshal, who may require the submission of plans and specifications covering the proposed construction or alteration, and shall refuse to issue such permit unless the work so planned is in accordance with the applicable provisions of ~~said BOCA National Building Code, as last revised, the Southern Standard Building Code~~

~~Congress International (SBCCI), the Uniform Building Code (ICBO), or the International Building Code~~ the building codes adopted by the State Fire Marshal Commission.

D. Nothing in this act shall be construed as repealing any ordinance of any city, town or county requiring the submission to the local authorities of plans and specifications and the obtaining of permits, but the power or authority of any such city, town or county to levy or assess any charge for such permit or to make and enforce requirements prerequisite to the issuance of such permit, other than requiring compliance with such building code, shall, as to governmental agencies, be limited as hereinafter set forth.

E. No city, town or county requested to issue any such permit to any city, town, school district, county or other subdivision of government shall charge, assess or collect any fee or other charge for such permit except the regular and customary inspection fees fixed by ordinance for inspection of the work to be done under such permit, and no other charge, fee or other conditions of any kind under the authority of this title shall be made a condition of or prerequisite to the obtaining of such permit by any such governmental agency.

F. No bids may be let for the construction or major alteration of any correctional facility as defined by Section 317 of this title until plans and specifications for such construction or alteration have been submitted to and approved by the State Fire Marshal ~~for approval~~. The State Fire Marshal shall approve said plans and specifications if the work so planned conforms with the applicable provisions of the ~~BOCA National Building Code, as last revised, the Southern Standard Building Code Congress International (SBCCI), the Uniform Building Code (ICBO), or the International Building Code~~ building codes adopted by the State Fire Marshal Commission.

SECTION 7. AMENDATORY 74 O.S. 2001, Section 324.20b, is amended to read as follows:

Section 324.20b There is hereby created in the State Treasury a revolving fund for the State Fire Marshal to be designated the "State Fire Marshal Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of monies received from the sale of surplus property, fees and receipts collected pursuant to the Oklahoma Open Records Act, fines, forfeitures, fees, charges, receipts, donations, gifts, bequests, contributions, devises, interagency reimbursements, federal funds unless otherwise provided by federal law or regulation, or any other source. The fund shall consist of no more than ~~Three Hundred Thousand Dollars (\$300,000.00)~~ One Million Dollars (\$1,000,000.00). All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the State Fire Marshal for authorized purposes. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 8. AMENDATORY 74 O.S. 2001, Section 840-5.5 (Section 10, Chapter 414, O.S.L. 2001), is amended to read as follows:

Section 840-5.5 A. The following offices, positions, and personnel shall be in the unclassified service and shall not be placed under the classified service:

1. Persons chosen by popular vote or appointment to fill an elective office, and their employees, except the employees of the Corporation Commission, the State Department of Education and the Department of Labor;

2. Members of boards and commissions, and heads of agencies; also one principal assistant or deputy and one executive secretary for each state agency;

3. All judges, elected or appointed, and their employees;

4. Persons employed with one-time, limited duration, federal or other grant funding that is not continuing or indefinitely renewable. The length of the unclassified employment shall not exceed the period of time for which that specific federal funding is provided;

5. All officers and employees of The Oklahoma State System of Higher Education, State Board of Education and State Department of Vocational and Technical Education;

6. Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation, or examination on behalf of the Legislature or a committee thereof or by authority of the Governor. These appointments and authorizations shall terminate on the first day of the regular legislative session immediately following the appointment, if not terminated earlier. However, nothing in this paragraph shall prevent the reauthorization and reappointment of any such person. Any such appointment shall be funded from the budget of the appointing authority;

7. Election officials and employees;

8. Temporary employees employed to work less than one thousand (1,000) hours in any twelve-month period and seasonal employees employed pursuant to Section 1806.1 of this title who work less than one thousand two hundred (1,200) hours in any twelve-month period. This category of employees may include persons employed on an intermittent, provisional, seasonal, temporary or emergency basis;

9. Department of Public Safety employees occupying the following offices or positions:

- a. two administrative aides to the Commissioner,
- b. the Governor's representative of the Oklahoma Highway Safety Office who shall be appointed by the Governor, and
- c. a maximum of seven positions for the purpose of administering the Oklahoma Police Corps Program,

within full-time employee limitations of the Department, employed with federal funding that is continuing or indefinitely renewable. The authorization for such positions shall be terminated if the federal funding for positions is discontinued;

10. Professional trainees only during the prescribed length of their course of training or extension study;

11. Students who are employed on a part-time basis, which shall be seventy-five percent (75%) of a normal forty-hour work week or thirty (30) hours per week, or less, or on a full-time basis if the employment is pursuant to a cooperative education program such as that provided for under Title I IV-D of the Higher Education Act of 1965 (20 U.S.C. 1087a-1087c), as amended, and who are regularly enrolled in:

- a. an institution of higher learning within The Oklahoma State System of Higher Education,
- b. an institution of higher learning qualified to become coordinated with The Oklahoma State System of Higher Education. For purposes of this section, a student shall be considered a regularly enrolled student if the student is enrolled in a minimum of five (5) hours of accredited graduate courses or a minimum of ten (10) hours of accredited undergraduate courses, provided, however, the student shall only be required to be enrolled in a minimum of six (6) hours of accredited undergraduate courses during the summer, or
- c. high school students regularly enrolled in a high school in Oklahoma and regularly attending classes during such time of enrollment;

12. The spouses of personnel who are employed on a part-time basis to assist or work as a relief for their spouses in the Oklahoma Tourism and Recreation Department;

13. Service substitute attendants who are needed to replace museum and site attendants who are unavoidably absent. Service substitutes may work as part-time or full-time relief for absentees for a period of not more than four (4) weeks per year in the Oklahoma Historical Society sites and museums; such substitutes will not count towards the agency's full-time-equivalent (FTE) employee limit;

14. Employees of the House of Representatives, the State Senate, or the Legislative Service Bureau;

15. Corporation Commission personnel occupying the following offices and positions:

- a. Administrative aides, and executive secretaries to the Commissioners,
- b. Directors of all the divisions, personnel managers and comptrollers,
- c. General Counsel,
- d. Public Utility Division Chief Engineer,
- e. Public Utility Division Chief Accountant,
- f. Public Utility Division Chief Economist,
- g. Public Utility Division Deputy Director,
- h. Secretary of the Commission,
- i. Deputy Conservation Director,
- j. Manager of Pollution Abatement,
- k. Manager of Field Operations,
- l. Manager of Technical Services,
- m. Public Utility Division Chief of Telecommunications,
and
- n. Director of Information Services;

16. At the option of the employing agency, the Supervisor, Director, or Educational Coordinator in any other state agency having a primary responsibility to coordinate educational programs operated for children in state institutions;

17. Bill Willis Community Mental Health and Substance Abuse Center personnel occupying the following offices and positions:

- a. Director of Facility,
- b. Deputy Director for Administration,
- c. Clinical Services Director,
- d. Executive Secretary to Director, and
- e. Directors or Heads of Departments or Services;

18. Office of State Finance personnel occupying the following offices and positions:

- a. State Comptroller,
- b. Information Services Division Manager,
- c. Network Manager,
- d. Network Technician,
- e. Employees of the Budget Division, and
- f. Employees of the Research Division;

19. Employees of the Oklahoma Development Finance Authority;

20. Those positions so specified in the annual business plan of the Oklahoma Department of Commerce;

21. Those positions so specified in the annual business plan of the Oklahoma Center for the Advancement of Science and Technology;

22. The following positions and employees of the Oklahoma School of Science and Mathematics:

- a. positions for which the annual salary is Twenty-four Thousand One Hundred Ninety-three Dollars (\$24,193.00) or more, as determined by the Office of Personnel Management, provided no position shall become unclassified because of any change in salary or grade while it is occupied by a classified employee,
- b. positions requiring certification by the State Department of Education, and

- c. positions and employees authorized to be in the unclassified service of the state elsewhere in this section or in subsection B of this section;

23. Office of Personnel Management employees occupying the following positions:

- a. the Carl Albert Internship Program Coordinator, and
- b. one Administrative Assistant;

24. Department of Labor personnel occupying the following offices and positions:

- a. two Deputy Commissioners,
- b. Executive Secretary to the Commissioner,
- c. Chief of Staff, and
- d. two Administrative Assistants;

25. The State Bond Advisor and his or her employees;

26. The Oklahoma Employment Security Commission employees occupying the following positions:

- a. Associate Director,
- b. Secretary to the Associate Director, and
- c. Assistant to the Executive Director;

27. Oklahoma Human Rights Commission personnel occupying the position of Administrative Assistant;

28. The officers and employees of the State Banking Department;

29. Officers and employees of the University Hospitals Authority except personnel in the state classified service pursuant to Section 3211 of Title 63 of the Oklahoma Statutes and members of the University Hospitals Authority Model Personnel System created pursuant to subsection E of Section 3211 of Title 63 of the Oklahoma Statutes or as otherwise provided for in Section 3213.2 of Title 63 of the Oklahoma Statutes;

30. Alcoholic Beverage Laws Enforcement Commission employees occupying the following positions:

- a. three Administrative Service Assistant positions, and

- b. the Deputy Director position in addition to the one authorized by paragraph 2 of this subsection;

31. The Oklahoma State Bureau of Investigation employees occupying the following positions:

- a. two special investigators,
- b. one information representative,
- c. one federally funded physical evidence technician,
- d. four federally funded laboratory analysts,
- e. one Data Base Administrator,
- f. two Data Processing Branch Managers,
- g. four Senior Data Processing Applications Specialists,
- h. a total of three positions from the following classes:
Senior Data Processing Systems Specialists, Data Processing Applications Specialists, or Data Processing Systems Specialists,
- i. one Senior Computer Services Technician, or Computer Services Technician,
- j. one Senior Computer Services Coordinator, or Computer Services Coordinator, and
- k. one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection;

32. The Department of Transportation, the following positions:

- a. Director of the Oklahoma Aeronautics and Space Commission,
- b. four Department of Transportation Assistant Director positions,
- c. eight field division engineer positions, and
- d. one pilot position;

33. Commissioners of the Land Office employees occupying the following positions:

- a. Director of the Investments Division,
- b. Assistant Director of the Investments Division, and

c. one Administrative Assistant;

34. Within the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control Commission, the following positions:

a. two Narcotics Agent positions, provided, authorization for such positions shall be terminated when federal support for the positions by the Gang Intelligence/Enforcement Program is discontinued,

b. one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection, and

c. one fiscal officer;

35. The Oklahoma Military Department of the State of Oklahoma is authorized such unclassified employees within full-time employee limitations to work in any of the Department of Defense directed youth programs, the State of Oklahoma Juvenile Justice youth programs, those persons reimbursed from Armory Board or Billeting Fund accounts, and skilled trade positions;

36. Within the Oklahoma Commission on Children and Youth the following unclassified positions:

a. one Oversight Specialist and one Community Development Planner,

b. one State Plan Grant Coordinator, provided authorization for the position shall be terminated when federal support for the position by the United States Department of Education Early Intervention Program is discontinued, and

c. one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection;

37. The following positions and employees of the Department of Central Services:

- a. one Executive Secretary in addition to the Executive Secretary authorized by paragraph 2 of this subsection,
- b. the Director of Central Purchasing,
- c. one Alternate Fuels Administrator,
- d. one Director of Special Projects,
- e. three postauditors,
- f. four high-technology contracting officers,
- g. one Executive Assistant to the Purchasing Director,
- h. one Contracts Manager,
- i. one Associate Director, and
- j. one specialized HiTech/Food Contracting Officer;

38. Four Water Quality Specialists, and four Water Resources Division Chiefs within the Oklahoma Water Resources Board;

39. J.D. McCarty Center for Children with Developmental Disabilities personnel occupying the following offices and positions:

- a. Physical Therapists,
- b. Physical Therapist Assistants,
- c. Occupational Therapists,
- d. Certified Occupational Therapist Aides, and
- e. Speech Pathologists;

40. The Development Officer and the Director of the State Museum of History within the Oklahoma Historical Society;

41. State Department of Agriculture personnel occupying the following positions:

- a. one Executive Secretary in addition to the Executive Secretary authorized by paragraph 2 of this subsection,
- b. Agricultural Marketing Coordinator III,
- c. temporary fire suppression personnel, regardless of the number of hours worked, who are employed by the

State Department of Agriculture during the period of October 1 through May 31 in any fiscal year; provided, however, notwithstanding the provisions of any other section of law, the hours worked by such employees shall not entitle such employees to any benefits received by full-time employees,

- d. one Administrator for Human Resources,
- e. one Director of Administrative Services,
- f. one Water Quality Consumer Complaint Coordinator,
- g. one hydrologist position,
- h. Public Information Office Director,
- i. Market Development Services Director,
- j. Legal Services Director,
- k. Animal Industry Services Director,
- l. Water Quality Services Director,
- m. Forestry Services Director,
- n. Plant Industry and Consumer Services Director,
- o. one Grants Administrator position, and
- p. Director of Laboratory Services;

42. The Contracts Administrator within the Oklahoma State Employees Benefits Council;

43. The Development Officer within the Oklahoma Department of Libraries;

44. Oklahoma Real Estate Commission personnel occupying the following offices and positions:

- a. Educational Program Director, and
- b. Data Processing Manager;

45. A Chief Consumer Credit Examiner for the Department of Consumer Credit; ~~and~~

46. All officers and employees of the Oklahoma Capitol Complex and Centennial Commemoration Commission; and

47. One Fire Protection Engineer within the Office of the State Fire Marshal.

B. If an agency has the authority to employ personnel in the following offices and positions, the appointing authority shall have the discretion to appoint personnel to the unclassified service:

1. Licensed medical doctors, osteopathic physicians, dentists, and psychologists;
2. Certified public accountants;
3. Licensed attorneys;
4. Licensed veterinarians; and
5. Licensed pharmacists.

C. Effective July 1, 1996, authorization for unclassified offices, positions, or personnel contained in a bill or joint resolution shall terminate June 30 of the ensuing fiscal year after the authorization unless the authorization is codified in the Oklahoma Statutes or the termination is otherwise provided in the legislation.

SECTION 9. This act shall become effective July 1, 2002.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

48-2-8659 LAC 6/12/15