

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1736

By: Gilbert

AS INTRODUCED

An Act relating to fireworks; amending 68 O.S. 2001, Sections 1622, 1623, 1624, 1625, 1627 and 1629, which relate to fireworks sales; modifying definition; restricting sales of certain fireworks; modifying certain unlawful act; adding Class C fireworks to certain permit application process; 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 1622, is amended to read as follows:

Section 1622. As used in this act, the following terms shall have the meanings specified below:

(a) The term "fireworks" shall mean and include any composition or device for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and which is defined as common or special fireworks by the United States Department of Transportation (DOT). Fireworks are further classified in this law as Class C or Class B. The term "fireworks" shall not include toy cap pistols and caps, blank cartridges, railroad flares and model rockets.

1. Class C Fireworks (DOT Common Fireworks) shall mean any devices ~~suitable for use by the public~~ that conform with the requirements of the United States Consumer Products Safety Commission (CPSC) and are designed primarily to produce visible effects by combustion, and some small devices designed to produce an audible effect.

2. Class B Display Fireworks (DOT Special Fireworks) shall mean all articles of larger fireworks designed primarily to produce visible or audible effects by combustion or explosion. Class B fireworks include, but are not limited to, firecrackers and salutes containing more than two grains (130mg) of explosive composition and other exhibition display items that exceed the limits for Classification as Class C Fireworks according to the Department of Transportation.

(b) The term "manufacturer" shall mean any person engaged in the making or constructing of fireworks.

(c) The term "distributor" shall mean any person who sells fireworks to other distributors, wholesalers or retailers for resale.

(d) The term "wholesaler" shall mean any person who purchases fireworks for resale only to retailers and consumers.

(e) The term "retailer" shall mean any person who purchases fireworks for resale to consumers only. A retailer who sells to the consumer buys only an Oklahoma Retail License and may purchase merchandise in or out of the state as long as the retailer buys from a person that has a legal license to do business in the State of Oklahoma.

(f) The term "person" shall include any corporation, association, partnership or one or more individuals.

SECTION 2. 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 for only those persons holding a public display permit pursuant to Section 1629 of this title 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 to those holding a public display permit 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 that holds a public display permit 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 display permit holders. The retail license holder shall be at least sixteen (16) years of age.

(e) No person shall offer fireworks for sale to residents 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 3. 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 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 Fireworks not properly labeled according to the United States Consumer Product Safety Commission and identified with the "DOT Class 'C' Common Fireworks" marking on each retail sale unit is prohibited under the provisions of this act.

(c) Beginning on July 1, 2005, any and all items of Class "C" Common Fireworks shall not be available to public for retail sale. Class "C" fireworks shall only be available for those persons holding a public display permit pursuant to Section 1629 of this title.

SECTION 4. AMENDATORY 68 O.S. 2001, Section 1625, is amended to read as follows:

Section 1625. The following license fees shall be due and payable on or before March 1 of each and every year beginning March 1, 1981, to the Oklahoma Tax Commission.

(a) A license fee of One Thousand Dollars (\$1,000.00) annually shall be charged for the license to do business within this state as a manufacturer. Provided no manufacturer's license shall be issued without: (1) proof of inspection by the State Fire Marshal pursuant to Section 1633 of this title; and (2) without proof of workers' compensation coverage pursuant to the provisions of Title 85 of the Oklahoma Statutes.

(b) A license fee of One Thousand Dollars (\$1,000.00) annually shall be charged for the license to do business within this state as a distributor.

(c) A license fee of Five Hundred Dollars (\$500.00) annually shall be charged for the license to do business within this state as a wholesaler.

(d) Any person operating a retail location where fireworks are sold directly to ~~the consumer~~ persons holding a public display permit pursuant to Section 1629 of this title shall be required to purchase a retail fireworks license. The retail license fee shall be Ten Dollars (\$10.00) annually and may be purchased from any licensed wholesaler, manufacturer or distributor. These serially numbered licenses shall be made available at any time to the licensed wholesalers, manufacturers or distributors in books of twenty (20) licenses to a book. Retail licenses which are unsold may be exchanged for new licenses. Any person purchasing a retail fireworks license pursuant to this paragraph shall, at the time of purchasing such license, sign an affidavit attesting to the fact that the name, mailing address and telephone number of the purchaser as it appears on such license is correct and that the purchaser operates a retail location where fireworks are sold directly to ~~the consumer~~ public display permit holders. ~~Said~~ The affidavit shall be an integral but easily detachable part of the application form for a retail fireworks license. Any person who signs said affidavit as required by this paragraph when such person knows that it is not true, upon conviction, shall be guilty of the felony of perjury and shall be punished as provided for by law.

SECTION 5. AMENDATORY 68 O.S. 2001, Section 1627, is amended to read as follows:

Section 1627. (a) No person shall knowingly sell, purchase or deliver, or cause to be sold, purchased or delivered, fireworks for resale to any other person who does not possess a valid license under this act. It shall be unlawful for a distributor, wholesaler or retailer, licensed under this act, to purchase fireworks from any person, unless the distributor, wholesaler or retailer determines that the person holds a valid distributor's, wholesaler's or manufacturer's license under this act. All retail sales outlets shall have a current retail license. The license shall be

conspicuously posted in the immediate vicinity of the sales operation and shall be immediately available for examination by the public or any enforcement officer. No license provided for herein shall be transferable nor shall any person be permitted to operate under a license granted to another person.

(b) It shall be unlawful to offer for retail sale or to sell any fireworks to ~~children under the age of twelve (12) years, unless accompanied by an adult, or to any intoxicated or irresponsible person~~ any member of the public that does not properly hold the appropriate license or permit to make such purchases.

(c) It shall be unlawful to explode or ignite fireworks within five hundred (500) feet of any church, hospital, asylum, unharvested, flammable agricultural crop, public school or where fireworks are stored, sold or offered for sale. No person shall ignite or discharge any permissible articles of fireworks within or throw the same from a motor vehicle; nor shall any person place or throw any ignited article of fireworks into or at such a motor vehicle or at or near any group of people.

SECTION 6. 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 or Class C 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 or C Displays must be submitted in writing five (5) 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. 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) 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 7. This act shall become effective July 1, 2005.

SECTION 8. 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.

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