

ENROLLED SENATE
BILL NO. 98

By: Barrington of the Senate

and

Richardson of the House

An Act relating to professions and occupations;
creating the Fire Extinguisher Licensing Act;
providing short title; stating purpose of act;
defining terms; providing exemptions to the act;
stating those persons to which the act applies;
creating the Fire Extinguisher Industry Committee;
providing for membership, appointment and removal
from office; providing for travel reimbursement;
providing for election of chair and vice-chair;
providing time limitation for initial meeting;
providing duties and powers of Committee; prohibiting
certain act without a license; providing an
exception; prohibiting certain acts unless certain
requirements met; providing exceptions; requiring
serviced units be tagged indicating certain
information; providing qualifications for licensees;
providing application requirements; requiring
adoption of certain fees by State Board of Health;
requiring payment of fee by applicant; requiring
issuance and renewal of license under certain
circumstances; providing certain limitations on
license; requiring notification by licensee upon
change of certain circumstances; prohibiting certain
act; stating responsibilities of licensee;
authorizing suspension of license under certain
circumstances; authorizing removal of suspension or
sanction; authorizing the suspension or revocation of
a license, reprimand, or denial of application under
certain circumstances; requiring written notification
and hearing requirement; requiring record of certain

actions taken; requiring notification of suspension or revocation to certain entities; prohibiting reinstatement of revoked license; creating Fire Extinguisher Industry Revolving Fund; specifying distribution of funds; requiring administration costs be paid by certain funds; authorizing the promulgation, adoption, amendment and repeal of rules; prohibiting certain acts; providing penalties; requiring deposit of certain fines into certain revolving fund; amending 59 O.S. 2001, Section 858-624, which relates to the Committee of Home Inspector Examiners; changing certain date; amending 74 O.S. 2001, Section 3908, as last amended by Section 1 of Enrolled House Bill No. 1318 of the 1st Session of the 51st Oklahoma Legislature, which relates to termination of certain statutory entities; adding certain entity to list; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.1 of Title 59, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Fire Extinguisher Licensing Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.2 of Title 59, unless there is created a duplication in numbering, reads as follows:

The purpose of the Fire Extinguisher Licensing Act is to regulate the sale, installation, and servicing of portable fire extinguishers, including both engineered and preengineered systems, in the interest of safeguarding lives and property. The filling or charging of either engineered or preengineered system bottles for portable fire extinguishers, prior to their initial sale by the

manufacturer, shall not be subject to the Fire Extinguisher Licensing Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.3 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in the Fire Extinguisher Licensing Act:

1. "Board" means the State Board of Health;
2. "Commissioner" means the State Commissioner of Health;
3. "Committee" means the Fire Extinguisher Industry Committee;
4. "Fire extinguisher industry" means the sale, installation, maintenance, inspection, certification, alteration, repair, replacement, or service of portable fire extinguishers or fire suppression systems or any combination of the foregoing activities;
5. "Fire suppression systems" and "handheld portable fire extinguisher" means any listed or approved fire extinguisher systems installed in compliance with the installation manuals of the manufacturer or the applicable National Fire Protection Association Standard and its reference as outlined in the rules established by the State Department of Health;
6. "Licensee" means any person licensed pursuant to the Fire Extinguisher Licensing Act; and
7. "Person" means a sole proprietorship, fire partnership, association, corporation, or other similar entity.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.4 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Fire Extinguisher Licensing Act shall not apply to:

1. An officer or employee of this state, the United States, or a political subdivision, while the employee or officer is engaged in the performance of his or her official duties;

2. A person who owns and installs fire extinguishing equipment in his or her own single-family dwelling or, if the person does not charge for the device or its installation, installs the fire extinguishing equipment for the protection of his or her personal property and does not install the fire extinguishing equipment as a normal business practice in a single-family dwelling of another; or

3. The sale of fire extinguishers designed or intended for customer or user installation.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.5 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Fire Extinguisher Licensing Act shall apply to all persons servicing, installing, inspecting, certifying, charging, or testing any portable fire extinguisher or fire suppression system.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.6 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Fire Extinguisher Industry Committee which shall consist of the following seven (7) members:

1. One member shall be the State Commissioner of Health, or a designated representative;

2. One member shall be the State Fire Marshal, or a designated representative;

3. One member shall be the Assistant State Fire Marshal, or a designated representative; and

4. Four members shall be appointed by the State Board of Health. The Board shall appoint the four members within thirty (30) days after the effective date of this act. Three of the appointed members shall have at least five (5) years of experience in the fire extinguisher industry. One of the appointed members shall be a lay member. No member of the Committee shall have any kind of employment relationship with any other member.

B. The term of each appointed member shall be four (4) years. Provided, the terms of the first appointed members of the Committee shall be as follows:

1. One member shall be appointed to a term ending May 31, 2008;
2. One member shall be appointed to a term ending May 31, 2009;
3. One member shall be appointed to a term ending May 31, 2010;
and
4. One member shall be appointed to a term ending May 31, 2011.

Each appointed member shall hold office until his or her successor is appointed and has qualified under the Fire Extinguisher Licensing Act.

C. Appointed members may be removed from office by the Board for cause.

D. Vacancies shall be filled by appointment by the Board for the unexpired term of the vacancy.

E. Members of the Committee shall serve without pay but may be reimbursed for actual expenses pursuant to the provisions of the State Travel Reimbursement Act.

F. The Committee shall elect from among its membership a chair, vice-chair, and secretary to serve terms of not more than two (2) years ending on May 31 of the year designated by the Committee. The chair or vice-chair shall preside at all meetings. The chair, vice-chair, and secretary shall perform such duties as may be decided by the Committee in order to effectively administer the Fire Extinguisher Licensing Act.

G. A majority of Committee members shall constitute a quorum to transact official business.

H. The Committee shall meet within thirty (30) days after the effective date of this act and shall meet thereafter at such times

as the Committee deems necessary to implement the provisions of the Fire Extinguisher Licensing Act.

I. The Committee shall assist and advise the Commissioner on all matters relating to the formulation of rules and standards in accordance with the Fire Extinguisher Licensing Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.7 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Fire Extinguisher Industry Committee shall have the following powers and duties:

1. To assist the State Commissioner of Health in licensing and otherwise regulating persons engaged in a fire extinguisher industry business;

2. To determine qualifications of applicants pursuant to the Fire Extinguisher Licensing Act;

3. To prescribe and adopt forms for license applications and initiate the mailing of the application forms to all persons requesting the applications;

4. To assist the Commissioner in the denial, suspension or revocation of licenses as provided by the Fire Extinguisher Licensing Act;

5. To charge and collect such fees as are prescribed by the Fire Extinguisher Licensing Act;

6. To assist the State Board of Health in establishing and enforcing standards governing the materials, services, and conduct of the licensees and the employees of licensees in regard to the fire extinguisher industry;

7. To assist the State Board of Health in promulgating rules necessary to carry out the administration of the Fire Extinguisher Licensing Act;

8. To investigate alleged violations of the provisions of the Fire Extinguisher Licensing Act and of any rules promulgated by the Board;

9. To assist the Board in establishing categories of licenses for the Fire Extinguisher Licensing Act and application requirements for each category including, but not limited to, individual licenses, experience requirements, fingerprints, photographs, written examinations, and fees;

10. To assist the Commissioner in providing for grievance and appeal procedures pursuant to the Administrative Procedures Act for any person whose license is denied, revoked, or suspended; and

11. To have such other powers and duties as are necessary to implement the Fire Extinguisher Licensing Act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.8 of Title 59, unless there is created a duplication in numbering, reads as follows:

No person shall engage in a fire extinguisher industry business in this state without first having obtained a license pursuant to the provisions of the Fire Extinguisher Licensing Act. Provided, every person engaged in a fire extinguisher industry business in this state on the effective date of the Fire Extinguisher Licensing Act shall have ninety (90) days in which to apply to the State Commissioner of Health for a license. A person applying for a license within this ninety-day period may continue business pending a final determination by the Commissioner of the application. Additional time beyond the ninety-day period may be granted by the Commissioner.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.9 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. No person shall market, distribute, or sell any portable fire extinguisher or fire suppression system in this state unless the following requirements are met:

1. The portable fire extinguisher or fire suppression system complies with standards adopted by the State Board of Health; and

2. The portable fire extinguisher or fire suppression system has been examined by and bears the label of a nationally recognized testing laboratory approved by the Board as qualified to test portable fire extinguishers and fire suppression systems.

B. The Board may grant reasonable exceptions to the provisions of this section when the portable fire extinguisher or fire suppression system is intended for industrial use in places to which the public is not invited or admitted. The provisions of this section apply to the state and any political subdivision thereof.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.10 of Title 59, unless there is created a duplication in numbering, reads as follows:

Any person who services, installs, inspects, certifies, charges or tests any portable fire extinguisher or fire suppression system shall affix a tag to the service unit. The tag shall indicate the date upon which the service work was performed, and it shall bear the legible signature and state license number of the person and other information specified by the State Board of Health.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.11 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Any person applying for a license to engage in a fire extinguisher industry business pursuant to the Fire Extinguisher Licensing Act shall provide evidence to the Fire Extinguisher Industry Committee that the individual within this state having direct supervision over the function and local operations of the fire extinguisher industry business or a branch thereof has the following qualifications:

1. The individual is at least twenty-one (21) years of age;

2. The individual has not been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease;

3. The individual is not a habitual user of intoxicating liquors or habit-forming drugs;

4. The individual has not been discharged from the Armed Services of the United States under other than honorable conditions;

5. The individual is of good moral character; and

6. The individual meets such other standards as may be established by the State Board of Health relating to experience or knowledge of the fire extinguisher industry.

B. The applicant shall advise the Committee and furnish full information on each individual described in subsection A of this section of any conviction of a felony offense or any crime involving moral turpitude for which a full pardon has not been granted. The applicant shall furnish a recent photograph of a type prescribed by the Committee and two classifiable sets of fingerprints of such individual.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.12 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. An application for a license shall include:

1. The address of the principal office of the applicant and the address of each branch office located within this state;

2. The name of each business location under which the applicant intends to do business as a licensee;

3. A statement as to the extent and scope of the fire extinguisher industry business of the applicant and all other businesses in which the applicant is engaged in this state;

4. A recent photograph of the applicant of a type prescribed by the State Board of Health if the applicant is a sole proprietor, or a photograph of each officer and of each partner or shareholder who owns a twenty-five percent (25%) or greater interest in the applicant, if the applicant is an entity; and

5. Such other information, statements, or documents as may be required by the Board.

B. An applicant for an individual license shall provide such documents, statements or other information as may be required by the Board, including two classifiable sets of fingerprints of the applicant. The fingerprints may be used for a national criminal history record check as defined by Section 150.9 of Title 74 of the Oklahoma Statutes.

C. Fees for license and license renewal issued pursuant to the Fire Extinguisher Licensing Act shall be adopted by the Board pursuant to Section 1-106.1 of Title 63 of the Oklahoma Statutes. An applicant shall pay the license fee at the time the applicant makes application.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.13 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Upon making proper application, payment of the proper license fee and certification of approval by the Fire Extinguisher Industry Committee, the State Commissioner of Health shall issue a license to the applicant. The license shall be valid for a one-year term.

B. Renewal of a license shall not prohibit disciplinary proceedings for an act committed prior to the renewal.

C. The State Board of Health may adopt a system under which licenses expire on various dates throughout the year. For any change in such expiration dates, license fees shall be prorated on an appropriate periodic basis.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.14 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A license shall not be altered or assigned.

B. A license shall be posted in a conspicuous place in each fire extinguisher industry business location of the licensee.

C. A licensee shall notify the Fire Extinguisher Industry Committee within fourteen (14) days of any change of information furnished on the application for license or on the license including, but not limited to, change of ownership, address, business activities, or any developments related to the qualifications of the licensee or the individual described in Section 11 of this act. If the licensee for any reason ceases to engage in a fire extinguisher industry business in this state, the licensee shall notify the Committee within fourteen (14) days of such cessation. If the required notice of cessation is not given to the Committee within fourteen (14) days, the license may be suspended or revoked by the State Commissioner of Health on recommendation of the Committee.

D. No person shall represent falsely that he or she is licensed or employed by a licensee.

E. Each licensee shall maintain a record containing such information relative to his or her employees as may be required by the State Board of Health.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.15 of Title 59, unless there is created a duplication in numbering, reads as follows:

The licensee shall be responsible to the Fire Extinguisher Industry Committee in matters of conduct of business activities covered by the Fire Extinguisher Licensing Act. The licensee shall be responsible for the activities on the part of the employees of the licensee. For purposes of the Fire Extinguisher Licensing Act, improper conduct on the part of such employees which occurs within the scope of employment shall be considered by the Committee as acts of the licensee.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.16 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The State Commissioner of Health, on recommendation of the Fire Extinguisher Industry Committee, may suspend any license, upon the conviction of any individual named on the license or on the application for license of a felony, for a period not to exceed thirty (30) days pending a full investigation by the Committee. The investigation shall be initiated within the thirty-day period of suspension. A final determination by the Committee shall result in either removal of the suspension or such sanction as the Commissioner considers appropriate, as provided by the Fire Extinguisher Licensing Act.

B. The Commissioner may revoke or suspend any license, reprimand any licensee or deny any application for license or renewal if, in the judgment of the Committee:

1. The applicant or licensee has violated any provision of the Fire Extinguisher Licensing Act or any rule promulgated under the Fire Extinguisher Licensing Act;

2. The applicant or licensee has practiced fraud, deceit, or misrepresentation;

3. The applicant or licensee has made a material misstatement in any information required by the State Board of Health; or

4. The applicant or licensee has demonstrated incompetence or untrustworthiness in his or her actions.

C. The Committee shall, before final action under subsection B of this section, provide thirty (30) days of written notice to the applicant or licensee involved in the action intended and give sufficient opportunity for the person to request a hearing before the Committee and the Commissioner and to be represented by an attorney. A hearing shall be scheduled by the Committee upon request by the applicant or licensee.

D. In the event the Commissioner denies the application for, or revokes or suspends, any license or imposes any reprimand, a record of such action shall be in writing and officially signed by the Commissioner. The original copy shall be filed with the Board and a copy mailed to the affected applicant or licensee within two (2) days of the final action taken by the Commissioner.

E. Notice of the suspension or revocation of any license by the Commissioner shall be sent by the Committee to law enforcement agencies and fire departments in the principal areas of operation of the licensee.

F. A suspended license shall be subject to expiration and may be renewed as provided by the Fire Extinguisher Licensing Act, regardless of suspension; provided, the renewal shall not remove the suspension.

G. A revoked license terminates on the date of revocation and cannot be reinstated; provided, the Commissioner may reverse the revocation action. Any licensee whose license is revoked shall apply for a new license and meet all requirements for a license as stated in the Fire Extinguisher Licensing Act prior to engaging in any fire extinguisher industry business activities. The Committee and the Commissioner shall take action on the new application and may require additional safeguards against such acts by the applicant as may have been the cause of the revocation of the prior license.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.17 of Title 59, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the State Department of Health, to be designated the "Fire Extinguisher Industry Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Department pursuant to the Fire Extinguisher Licensing Act. All monies accruing to the credit of such fund are hereby appropriated and may be budgeted and expended by the Department for the purpose of implementing the Fire Extinguisher Licensing Act. Expenditures from such 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 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.18 of Title 59, unless there is created a duplication in numbering, reads as follows:

All costs of administration of the Fire Extinguisher Licensing Act shall be paid from fees, monies and other revenue collected pursuant to the provisions of the Fire Extinguisher Licensing Act. At no time shall a claim for payment be submitted to the Director of State Finance if the revenue deposited in the Fire Extinguisher Industry Revolving Fund to the current date does not equal or exceed the total claims for payments made to that date.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.19 of Title 59, unless there is created a duplication in numbering, reads as follows:

The State Board of Health is hereby authorized to promulgate, adopt, amend, and repeal rules consistent with the provisions of the Fire Extinguisher Licensing Act for the purpose of governing the establishment and levying of administrative fines and the examination and licensure of fire extinguisher companies, managers, technicians, and salespersons.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1820.20 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Any individual or person who is found to be in violation of the provisions of the Fire Extinguisher Licensing Act or any rules adopted by the State Board of Health in the administration of the Fire Extinguisher Licensing Act shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for a period of not more than one (1) year, or by the imposition of a fine of not more than Five Hundred Dollars (\$500.00), or by both such imprisonment and fine.

B. 1. In addition to any other penalties provided by law, if after a hearing in accordance with Article II of the Administrative Procedures Act, the State Commissioner of Health finds any person to be in violation of any of the provisions of the Fire Extinguisher Licensing Act or the rules promulgated pursuant thereto, the person may be subject to an administrative fine of not more than Two Hundred Dollars (\$200.00) for each violation. Each day a person is in violation may constitute a separate violation.

2. All administrative fines collected pursuant to the provisions of this subsection shall be deposited in the Fire Extinguisher Industry Revolving Fund.

SECTION 21. AMENDATORY 59 O.S. 2001, Section 858-624, is amended to read as follows:

Section 858-624. A. There is hereby created, to continue until ~~July 1, 2007~~ July 1, 2013, in accordance with the provisions of the Oklahoma Sunset Law, the Committee of Home Inspector Examiners, which shall consist of seven (7) members who have been residents of this state for at least three (3) years prior to their appointment. Each member shall be appointed by the Governor with the advice and consent of the Senate. Appointments shall be made so that not more than two members shall, at the time an appointment is made, be residents of the same congressional district; provided, no member shall be removed from office due solely to a reduction in the number of congressional districts.

B. Of the seven members:

1. Four of the initial appointees shall hold memberships in a state or national housing inspection association or foundation. After expiration of the terms of the initial appointees, four members shall be licensed home inspectors who are active full time in the practice of making home inspections, two or more of whom shall hold membership in an association that certifies home inspectors in this state;

2. One shall be a licensed real estate broker who is active full time in the real estate brokerage business;

3. One shall be a licensed real estate appraiser who is active full time in the real estate appraisal business; and

4. One shall be a lay person who is not involved in the property business, including, but not limited to, the leasing of commercial or residential property, and is not in the real estate business or home inspection business.

C. Initially, three members shall be appointed for a term to expire June 30, 2003; two members shall be appointed for a term to

expire June 30, 2004; and two members shall be appointed for a term to expire June 30, 2005. Thereafter, all terms shall be three-year terms ending June 30.

D. Members shall serve until their successors are appointed and qualified. Vacancies shall be filled for the balance of an unexpired term by appointment of the Governor. Members may be removed by the Governor for good cause.

E. The first meeting of the Committee shall be called by the State Commissioner of Health for election of a chair and vice-chair. Thereafter members shall elect officers annually. The chair, or in the absence of the chair, the vice-chair, shall preside at all meetings of the Committee and shall perform such duties as the Committee shall prescribe. The Committee shall meet at least semiannually, and special meetings may be called by the Commissioner or the designee of the Commissioner. Four members shall constitute a quorum.

F. Members shall serve without compensation but shall be reimbursed from funds available to the State Department of Health in accordance with the State Travel Reimbursement Act.

G. Personnel and administrative support necessary for the Committee to exercise its powers and accomplish its duties shall be provided by the Department.

SECTION 22. AMENDATORY 74 O.S. 2001, Section 3908, as last amended by Section 1 of Enrolled House Bill No. 1318 of the 1st Session of the 51st Oklahoma Legislature, is amended to read as follows:

Section 3908. The following statutory entities and their successors shall be terminated on July 1, 2013, and all powers, duties and functions shall be abolished one (1) year thereafter:

1. State Accrediting Agency as created by Section 241 of Title 72 of the Oklahoma Statutes;

2. Capitol-Medical Center Improvement and Zoning Commission as created by Section 83.1 of Title 73 of the Oklahoma Statutes;

3. Archives and Records Commission as created by Section 305 of Title 67 of the Oklahoma Statutes;

4. Domestic Violence Fatality Review Board as created by Section 1601 of Title 22 of the Oklahoma Statutes;

5. Oklahoma Energy Resources Board as created by Section 288.3 of Title 52 of the Oklahoma Statutes;

6. Advisory Committee on Pedorthics as created by Section 2305 of Title 59 of the Oklahoma Statutes;

7. Advisory Committee on Orthotics and Prosthetics as created by Section 3005 of Title 59 of the Oklahoma Statutes;

8. Sheep and Wool Utilization, Research and Market Development Commission as created by Section 18-181 of Title 2 of the Oklahoma Statutes; ~~and~~

9. Construction Industries Board as created by Section 1000.2 of Title 59 of the Oklahoma Statutes; and

10. Committee of Home Inspector Examiners, as created by Section 858-624 of Title 59 of the Oklahoma Statutes.

SECTION 23. This act shall become effective November 1, 2007.

Passed the Senate the 21st day of May, 2007.

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of May, 2007.

Presiding Officer of the House
of Representatives