

ESB 2253

THE HOUSE OF REPRESENTATIVES
Monday, April 12, 2010

ENGROSSED
Senate Bill No. 2253
As Amended

ENGROSSED SENATE BILL NO. 2253 - By: BARRINGTON of the Senate and ARMES of the House.

[revenue and taxation; modifying provisions relating to fireworks –
emergency]

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

1 SECTION 1. AMENDATORY 68 O.S. 2001, Section 1622, is amended to read
2 as follows:
3 Section 1622. As used in ~~this act, the following terms shall have the meanings~~
4 ~~specified below~~ Section 1621 et seq. of this title:
5 (a) ~~The term "fireworks" shall mean and include~~ 1. "Fireworks" means any
6 composition or device for the purpose of producing a visible or an audible effect by
7 combustion, explosion, deflagration or detonation, and which ~~is defined~~ are further
8 described as ~~common or special fireworks by the United States Department of~~
9 ~~Transportation (DOT)~~ Consumer Fireworks 1.4G, Display Fireworks 1.3G, Articles,
10 Pyrotechnic 1.4G or 1.4S as defined by the United States Department of Transportation
11 (DOT) Title 49, CFR. ~~Fireworks are further classified in this law as Class C or Class B.~~

1 The term "consumer fireworks" shall not include toy cap pistols and caps, blank
2 cartridges, railroad flares and model rockets or any novelty. This provision shall not
3 impose labeling requirements for any fireworks or novelties other than those required
4 under federal law;

5 ~~1. Class C Fireworks (DOT Common Fireworks) shall mean~~ 2. "Consumer
6 Fireworks" means any devices suitable for use by the public that conform with the
7 requirements of the United States Consumer Products Safety Commission (CPSC) and
8 are designed primarily to produce visible effects by combustion, and some small devices
9 designed to produce an audible effect;

10 ~~2. Class B Display Fireworks (DOT Special Fireworks) shall mean all articles of~~
11 ~~larger~~ 3. "Display Fireworks" means fireworks devices that are primarily intended for
12 commercial displays which are designed primarily to produce visible or and/or audible
13 effects by combustion or explosion, deflagration or detonation. Class B fireworks Display
14 Fireworks include, but are not limited to, ~~firecrackers and~~ salutes containing more than
15 two grains (130mg) of explosive composition, aerial shells containing more than forty (40)
16 grams of pyrotechnic compositions and other exhibition display items that exceed the
17 limits for ~~Classification as Class C Fireworks~~ Consumer Fireworks according to the
18 Department of Transportation (DOT).

19 ~~(b) The term "manufacturer" shall mean~~ 4. "Manufacturer" means any person
20 engaged in the making or constructing of fireworks;

21 ~~(c) The term "distributor" shall mean~~ 5. "Novelty" means a device containing small
22 amounts of pyrotechnic and/or explosive composition. Such devices produce limited

1 visible or audible effects. These items must be approved by the United States
2 Department of Transportation (DOT) or have been deregulated by DOT. Deregulated
3 novelties include, but are not limited to, the following:

- 4 a. party poppers,
- 5 b. snappers,
- 6 c. toy smoke devices,
- 7 d. snakes and glow worms, and
- 8 e. toy caps;

9 6. "Distributor" means any person who sells fireworks to other distributors,
10 wholesalers or retailers for resale or provides them as part of a pyrotechnic display
11 service in the State of Oklahoma;

12 ~~(d) The term "wholesaler" shall mean~~ 7. "Wholesaler" means any person who
13 purchases fireworks for resale only to retailers and consumers;

14 ~~(e) The term "retailer" shall mean~~ 8. "Retailer" means any person who purchases
15 fireworks for resale to consumers only. A retailer who sells to the consumer buys only an
16 Oklahoma Retail License and may purchase merchandise in or out of the state as long as
17 the retailer buys from a person that has a legal license to do business in the State of
18 Oklahoma; and

19 ~~(f) The term "person" shall include~~ 9. "Person" means any corporation, association,
20 partnership or one or more individuals.

21 SECTION 2. AMENDATORY 68 O.S. 2001, Section 1623, is amended to read
22 as follows:

1 Section 1623. ~~Class "C" Common~~ A. Consumer Fireworks may be legally stored,
2 transported, sold and used in this state with the exceptions and conditions specified
3 under the provisions of ~~this act~~ Section 1621 et seq. of this title. Novelties may be legally
4 stored, transported, sold and used in this state.

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

7 (b) C. Fireworks offered for retail sale must be ~~protected from direct contact and~~
8 ~~handling by the public at all times. Self-serve or marketing where retail customers are~~
9 ~~allowed to move among stocks of fireworks or serve themselves from fireworks stocks or~~
10 ~~displays is strictly prohibited~~ sold according to the National Fire Protection Association
11 (NFPA) 1124 Chapter 7, 2006 Edition and International Building Code (IBC) 2006
12 Edition. Any facility licensed to sell consumer fireworks prior to November 15, 2009,
13 shall be exempt from the NFPA regulations listed in this subsection but shall remain
14 under the regulation of the date of licensure. Mail-order sales to consumers are
15 prohibited through any medium of either interstate or intrastate commerce. Sales of
16 fireworks may only be made at properly licensed retail locations within the State of
17 Oklahoma. A sales clerk must be on duty to serve the consumer at the time of purchase.

18 (e) D. Fireworks shall not be sold or displayed to the public within any building or
19 portion thereof or any vehicle which allows entry by any persons other than employees
20 within such building or vehicle unless the fireworks are kept where they cannot be
21 reached or handled by those persons. An enclosed building used for sale of fireworks to
22 the public shall have adequate exits as determined by the codes and Standards adopted

1 by the State Fire Marshal Commission or the Oklahoma Uniform Building Code
2 Commission. The use of tents or other nonrigid shelters for the sale or storage of
3 fireworks where the public may move about under or within the confines of a shelter is
4 prohibited.

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

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

10 SECTION 3. AMENDATORY 68 O.S. 2001, Section 1624, is amended to read
11 as follows:

12 Section 1624. ~~(a)~~ A. From and after July 5, 1981, the sale, gift, distribution or use
13 of skyrockets with sticks as defined by the United States ~~Department of Transportation~~
14 Consumer Product Safety Commission is hereby prohibited within the State of
15 Oklahoma. This prohibition shall include, but is not limited to, explosive devices
16 commonly known as "bottlerockets" or "stickrockets". Distribution, gift or sale from
17 Oklahoma to a person outside the State of Oklahoma shall not be considered as occurring
18 within the State of Oklahoma.

19 ~~(b)~~ B. Any and all items of ~~Class "C" Common~~ Consumer Fireworks not properly
20 labeled according to the United States Consumer Product Safety Commission and
21 identified with the ~~"DOT Class 'C' Common Fireworks"~~ marking on each retail sale unit

1 appropriate United States Department of Transportation markings is prohibited under
2 the provisions of ~~this act~~ Section 1621 et seq. of this title.

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

5 Section 1625. The following license fees shall be due and payable on or before
6 March 1 of each and every year beginning March 1, 1981, to the Oklahoma Tax
7 ~~Commission~~ State Fire Marshal's Office.

8 ~~(a)~~ 1. A license fee of One Thousand Dollars (\$1,000.00) annually shall be charged
9 for the license to do business within this state as a manufacturer. Provided no
10 manufacturer's license shall be issued without: ~~(1)~~

11 a. proof of inspection by the State Fire Marshal pursuant to Section 1633
12 of this title; and ~~(2) without~~

13 b. proof of workers' compensation coverage pursuant to the provisions of
14 Title 85 of the Oklahoma Statutes.

15 ~~(b)~~ 2. A license fee of One Thousand Dollars (\$1,000.00) annually shall be charged
16 for the license to do business within this state as a distributor.

17 ~~(c)~~ 3. A license fee of Five Hundred Dollars (\$500.00) annually shall be charged for
18 the license to do business within this state as a wholesaler.

19 ~~(d)~~ 4. Any person operating a retail location where fireworks are sold directly to the
20 consumer shall be required to purchase a retail fireworks license. The retail license fee
21 shall be Ten Dollars (\$10.00) annually and may be purchased from any licensed
22 wholesaler, manufacturer or distributor. These serially numbered licenses shall be made

1 available at any time to the licensed wholesalers, manufacturers or distributors in books
2 of twenty (20) licenses to a book. Retail licenses which are unsold may be exchanged for
3 new licenses. Any person purchasing a retail fireworks license pursuant to this
4 paragraph shall, at the time of purchasing such license, sign an affidavit attesting to the
5 fact that the name, mailing address and telephone number of the purchaser as it appears
6 on such license is correct and that the purchaser operates a retail location where
7 fireworks are sold directly to the consumer. Said affidavit shall be an integral but easily
8 detachable part of the application form for a retail fireworks license. Any person who
9 signs said affidavit as required by this paragraph when such person knows that it is not
10 true, upon conviction, shall be guilty of the felony of perjury and shall be punished as
11 provided for by law.

12 SECTION 5. AMENDATORY 68 O.S. 2001, Section 1625.1, is amended to read
13 as follows:

14 Section 1625.1. A. Any wholesaler, manufacturer or distributor who sells retail
15 fireworks licenses, pursuant to paragraph ~~(d)~~ 4 of Section 1625 of ~~Title 68 of the~~
16 ~~Oklahoma Statutes~~ this title, shall deliver to the ~~Tax Commission~~ Oklahoma State Fire
17 Marshal's Office on January 31 and July 31 of each calendar year all copies of retail
18 fireworks licenses which such wholesaler, manufacturer or distributor has issued during
19 the preceding six-month period.

20 B. If the license copies are not delivered to the ~~Tax Commission~~ Oklahoma State
21 Fire Marshal's Office on January 31 and July 31 of each calendar year, an additional

1 penalty of Five Dollars (\$5.00) shall accrue for each day thereafter that said license
2 copies are not delivered pursuant to the provisions of this section.

3 SECTION 6. AMENDATORY 68 O.S. 2001, Section 1626, is amended to read
4 as follows:

5 Section 1626. All license fees specified in Section 1625 of this title shall be collected
6 by the Oklahoma ~~Tax Commission~~ State Fire Marshal's Office and shall be paid to the
7 State Treasurer ~~of the State of Oklahoma~~, to be placed to the credit of the ~~General~~
8 ~~Revenue~~ State Fire Marshal Revolving Fund of the State Treasury.

9 SECTION 7. AMENDATORY 68 O.S. 2001, Section 1629, is amended to read
10 as follows:

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

15 Applications for permits for ~~Class B Displays~~ display fireworks must be submitted
16 in writing ~~five (5) days~~ prior to the date of display to the ~~clerk of the city or town~~
17 Authority Having Jurisdiction (AHJ) as defined by the NFPA 1123 where the display is
18 to occur. If the display is in an area outside the jurisdiction of a city or town, application
19 for permit shall be ~~made~~ submitted in writing to the State Fire ~~Marshal~~ Marshal's Office
20 ten (10) days prior to the date of the display. Every display shall be under the direction
21 of a competent, responsible operator of legal age and ~~the~~ be conducted under the code of
22 regulations as adopted by the State Fire Marshal Commission. The person or

1 organization making application for permit must ~~show financial liability coverage in~~
2 ~~minimum amounts of Five Thousand Dollars (\$5,000.00) per person, Ten Thousand~~
3 ~~Dollars (\$10,000.00) personal injuries from any single accident, and Five Thousand~~
4 ~~Dollars (\$5,000.00) property damage, or in the amount set forth by ordinance~~ submit to
5 the authority having jurisdiction evidence of a general liability insurance policy in an
6 amount of not less than One Million Dollars (\$1,000,000.00) or the amount set forth by
7 the local governing authority. Before a permit is granted, a local fire inspector or an
8 agent of the State Fire Marshal shall inspect and approve or reject the site of the display.
9 No permit so granted shall be transferable.

10 SECTION 8. AMENDATORY 68 O.S. 2001, Section 1630, is amended to read
11 as follows:

12 Section 1630. It shall be unlawful for any person to sell display fireworks to any
13 holder of a permit unless the seller possesses a valid manufacturer's, distributor's or
14 wholesaler's license under ~~this act~~ Section 1621 et seq. of this title.

15 ~~Those items that may be used for public display as herein specified shall include~~
16 ~~display shells designed to be fired from mortars and display set pieces of fireworks~~
17 ~~classified by the regulations of the Department of Transportation as "Class A and B~~
18 ~~Display Special Fireworks", and shall not include such items of Class B Commercial~~
19 ~~Fireworks as cherry bombs, tubular salutes, repeating bombs, aerial bombs, M-80's and~~
20 ~~torpedoes. No person shall ship Class B Commercial~~ Display Fireworks into the State of
21 Oklahoma ~~except in the course of continuous interstate transportation~~ under the rules
22 and regulations of the Department of Transportation (DOT). It shall be unlawful for any

1 person to sell or possess ~~Class B Commercial~~ Display Fireworks in the State of
2 Oklahoma unless they are licensed or permitted as noted in this act.

3 SECTION 9. AMENDATORY 68 O.S. 2001, Section 1633, is amended to read
4 as follows:

5 Section 1633. No person shall engage in the business of manufacturing ~~Class B~~
6 Display Fireworks without first requesting the State Fire Marshal to conduct a fire and
7 safety inspection and receiving certification that a satisfactory inspection was conducted.
8 All manufacturers of ~~Class B~~ Display Fireworks shall be required to comply with the
9 standards promulgated by the National Fire Protection Agency, Section 1124-Code for
10 Manufacture, Transportation and Storage of Fireworks.

11 Upon written request of a ~~Class B~~ Display Fireworks manufacturer, the State Fire
12 Marshal shall, within ten (10) days, conduct a fire and safety inspection and shall, upon
13 satisfactory inspection, issue certification of the inspection. Thereafter, the State Fire
14 Marshal shall conduct a fire and safety inspection at least once every six (6) months.

15 Whenever the State Fire Marshal shall find any violation of NFPA-1124 which
16 would endanger persons or property, the State Fire Marshal shall immediately order the
17 manufacturing facility closed until such time as the violations are remedied and a new
18 inspection and certification takes place.

19 Any person engaging in the business of manufacturing ~~Class B~~ Display Fireworks
20 without current certification of a satisfactory fire and safety inspection or any person
21 refusing to comply with the State Fire Marshal's order to close a ~~Class B~~ Display
22 Fireworks manufacturing facility shall, upon conviction, be guilty of a misdemeanor and

1 be punished by imprisonment in the county jail not exceeding one (1) year or by a fine not
2 exceeding Ten Thousand Dollars (\$10,000.00) or both such fine and imprisonment.

3 Any person manufacturing ~~Class B~~ Display Fireworks on the effective date of this
4 act shall, within ninety (90) days, be licensed and inspected pursuant to this act.

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

8 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,
9 dated 04-08-10 - DO PASS, As Amended.