

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 844

By: Anderson and Barrington of
the Senate

6 and

7 Armes of the House

8
9 COMMITTEE SUBSTITUTE

10 An Act relating to fireworks displays; stating
11 purpose; defining terms; requiring licensing for
12 certain persons or entities; providing licensing
13 procedures; providing licensing specifications;
14 requiring State Fire Marshal to maintain list of
15 licensed operators; mandating the list be posted on
16 website of State Fire Marshal; providing renewal
17 procedures; authorizing the State Fire Marshal to
18 refuse, suspend or revoke any license; prohibiting
19 performances; prohibiting certain application under
20 certain circumstances; directing the State Fire
21 Marshal to establish certification program to include
22 certain criteria; making certain conduct unlawful;
23 stating penalty; providing certain exemption;
24 providing certain storage standards; requiring
enforcement by the State Fire Marshal and authorizing
assistance; authorizing development of rules;
amending 68 O.S. 2001, Section 1625, as amended by
Section 4, Chapter 408, O.S.L. 2010 (68 O.S. Supp.
2010, Section 1625), which relates to fireworks
license fees; updating due date for payment of fees;
modifying recipient of fees; authorizing payment of
certain fee under certain circumstances; providing
for codification; and providing an effective date.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 1635 of Title 68, unless there
4 is created a duplication in numbering, reads as follows:

5 A. The purpose of this act is to enact a licensing program for
6 outdoor display fireworks, pyrotechnic exhibitors and a
7 certification program for individuals conducting outdoor fireworks
8 displays in this state. The purpose of these programs is to ensure
9 a level of competence that promotes safety for the public, fire
10 service personnel, and fireworks display operators and their
11 employees and service personnel. It is not the purpose of this act
12 to regulate United States Department of Transportation Division 1.4
13 common fireworks or consumer fireworks as defined by NFPA standards
14 or paragraph 2 of Section 1622 of Title 68 of the Oklahoma Statutes.

15 B. As used in this act:

16 1. "Licensed outdoor display operator" means an individual who
17 by experience, training, and examination recognized and approved by
18 the State Fire Marshal has demonstrated the necessary knowledge and
19 ability to safely assemble, discharge and supervise outdoor display
20 fireworks in accordance with NFPA 1123;

21 2. "Operator" shall have the same meaning as "licensed outdoor
22 display operator", as defined in paragraph 1 of this subsection;

23 3. "Display fireworks" means fireworks devices that are
24 primarily intended for commercial displays which are designed to

1 produce visible and/or audible effects by combustion, deflagration
2 or detonation. Display fireworks include, but are not limited to,
3 salutes containing more than two grains (130mg) of explosive
4 composition, aerial shells containing more than forty (40) grams of
5 pyrotechnic compositions and other exhibition display items that
6 exceed the limits for consumer fireworks according to the United
7 States Department of Transportation (DOT);

8 4. "Event" means any function or gathering at which there will
9 be a fireworks display. If a function or gathering lasts more than
10 one (1) day, each day is a separate event. Event does not include
11 any function or gathering at which only consumer fireworks, as
12 defined in paragraph 2 of Section 1622 of Title 68 of the Oklahoma
13 Statutes, will be used exclusively;

14 5. "Distributor" means any person engaged in the business of
15 making sales of display fireworks as defined in paragraph 3 of
16 Section 1622 of Title 68 of the Oklahoma Statutes or materials to
17 Oklahoma-licensed or -permitted entities for the purpose of
18 providing fireworks, pyrotechnic or flame effect display services in
19 this state. A distributor may sell display fireworks only to
20 holders of an Oklahoma exhibitor's permit. An out-of-state
21 distributor shall not be required to obtain an Oklahoma license when
22 selling exclusively to a holder of an Oklahoma manufacturer,
23 distributor, or wholesaler license;

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1 6. "Licensed exhibitor" means a sole proprietor, partnership,
2 corporation, company, firm or other entity licensed under this act
3 to conduct outdoor fireworks displays or provide fireworks or
4 pyrotechnic materials for outdoor fireworks displays;

5 7. "NFPA" means the National Fire Protection Association;

6 8. "NFPA 1123" means the NFPA publication entitled "NFPA 1123:
7 Code for Fireworks Display", 2010 Edition or any subsequent edition
8 that has been adopted by the State Fire Marshal by rule;

9 9. "NFPA 1124" means the NFPA publication entitled "NFPA 1124:
10 Code for Manufacture, Transportation, Storage, and Retail Sale of
11 Fireworks and Pyrotechnic Articles", 2006 Edition or any subsequent
12 edition that has been adopted by the State Fire Marshal by rule;

13 10. "NFPA 1126" means the NFPA publication entitled "NFPA 1126:
14 Standards for the Use of Pyrotechnics Before a Proximate Audience",
15 2011 Edition or any subsequent edition that has been adopted by the
16 State Fire Marshal by rule;

17 11. "Outdoor fireworks display" means a presentation of display
18 fireworks for a public or private gathering as defined by NFPA 1123;

19 12. "Proximate pyrotechnics" means pyrotechnic devices for
20 professional use only, used outdoors or indoors, that are similar to
21 consumer fireworks in chemical composition but that are not intended
22 for consumer use, and that are defined by NFPA 1126 as 1.4G or 1.4S
23 fireworks or pyrotechnics;

1 13. "Proximate pyrotechnic display" means the use of
2 pyrotechnic devices and materials, 1.4G or 1.4S fireworks or
3 pyrotechnics when any portion of the audience is closer than
4 permitted by NFPA 1123, and subject to NFPA 1126 requirements; and

5 14. "Sponsor" means any person or organization which contracts
6 with a licensed entity, licensed distributor or licensed outdoor
7 display operator to conduct a fireworks display.

8 SECTION 2. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1636 of Title 68, unless there
10 is created a duplication in numbering, reads as follows:

11 A. An individual or entity shall have the appropriate Oklahoma
12 license and/or permit to conduct an outdoor fireworks display.

13 B. To receive a licensed outdoor display operator license, an
14 applicant shall make application to the State Fire Marshal on a form
15 prescribed by the State Fire Marshal. An individual seeking a
16 license as a sole proprietor or on behalf of a business entity must
17 be at least twenty-one (21) years of age and not have been convicted
18 of or pled guilty or nolo contendere to any state or federal felony.
19 In the case of a business seeking a license, no officer or member of
20 its governing board may have been convicted of or pled guilty or
21 nolo contendere to any state or federal felony.

22 Nothing in this act shall be construed as applying to shipping,
23 sale, possession or use of display fireworks when displayed by
24 holders of a permit for a public display to be conducted in

1 accordance with the rules and regulations of the State Fire Marshal
2 Commission.

3 Applications for permits for display fireworks shall be
4 submitted in writing prior to the date of display to the Authority
5 Having Jurisdiction (AHJ) as defined by the NFPA 1123 where the
6 display is to occur. If the display is in an area outside the
7 jurisdiction of a municipality, application for the permit shall be
8 submitted in writing to the Office of the State Fire Marshal ten
9 (10) days prior to the date of the display. Every display shall be
10 under the direction of a competent, responsible, licensed outdoor
11 display operator, of legal age, and be conducted under the code of
12 regulations as adopted by the State Fire Marshal Commission. Before
13 a permit is granted, a local fire inspector or an agent of the State
14 Fire Marshal shall inspect and approve or reject the site of the
15 display. No permit so granted shall be transferable.

16 SECTION 3. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1637 of Title 68, unless there
18 is created a duplication in numbering, reads as follows:

19 If an applicant for an outdoor display operator license complies
20 with the requirements of this act and the rules of the State Fire
21 Marshal, the State Fire Marshal shall issue the license within sixty
22 (60) days of receiving the application. The term of the license is
23 three (3) years from the date of issuance. Each license issued
24 shall contain a distinct number assigned to the particular operator.

1 The State Fire Marshal shall maintain a list of all licensed
2 operators. In this list, next to the operator's name, the State
3 Fire Marshal shall insert the period of licensure and the operator's
4 license number. The list of licensed operators shall be posted on
5 the State Fire Marshal's website.

6 SECTION 4. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1638 of Title 68, unless there
8 is created a duplication in numbering, reads as follows:

9 A holder of an operator's license with an unexpired license may
10 apply for a new license at any time before the license expires.

11 SECTION 5. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1639 of Title 68, unless there
13 is created a duplication in numbering, reads as follows:

14 A. The State Fire Marshal may refuse to grant, or may suspend,
15 revoke, or refuse to renew, any license or certification held under
16 the provisions of this act. The provisions of the Administrative
17 Procedures Act shall govern all matters and procedures respective to
18 hearings and judicial review of any contested case arising under
19 this act.

20 B. If an operator's license is suspended or revoked, the
21 operator shall cease conducting displays and distributing display
22 fireworks immediately. If an operator's license is revoked for any
23 reason, the operator is prohibited from applying for a new license
24 for one (1) year from the date of revocation. Upon a finding that

1 the operator's federal license, if applicable, has been revoked, the
2 State Fire Marshal shall revoke the operator's state license.

3 SECTION 6. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1640 of Title 68, unless there
5 is created a duplication in numbering, reads as follows:

6 A. The State Fire Marshal shall establish a program for
7 certification or licensure for outdoor display operators. To
8 receive certification or licensure, an individual shall apply for
9 certification or licensure to the State Fire Marshal on a form to be
10 prescribed by the State Fire Marshal, must be at least twenty-one
11 (21) years of age and not have been convicted of or pled guilty or
12 nolo contendere to any state or federal felony, and must show that
13 the applicant has worked under complete supervision on at least
14 three (3) displays in the three (3) years immediately preceding the
15 application.

16 B. The State Fire Marshal shall establish the scope and type of
17 curriculum and examinations required by this section, and may
18 require applicants to take a test created by a nationally recognized
19 pyrotechnic association.

20 SECTION 7. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1641 of Title 68, unless there
22 is created a duplication in numbering, reads as follows:

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1 A. It is unlawful for anyone other than a certified outdoor
2 display operator to conduct an outdoor display using only display
3 fireworks.

4 B. It is unlawful for any licensed outdoor display operator to
5 conduct an outdoor fireworks display except in accordance with NFPA
6 1123.

7 C. It is allowable for a licensed outdoor display operator to
8 use 1.4G or 1.4S fireworks in outdoor displays.

9 D. A violation of subsection A or B of this section shall be a
10 misdemeanor.

11 E. Notwithstanding any provision of the law to the contrary,
12 any municipality may adopt the provisions of subsections A and B of
13 this section by reference or substantial duplication as an ordinance
14 violation.

15 F. The provisions of subsection A or B of this section do not
16 apply to individuals or organizations employing consumer fireworks
17 for their personal or display use.

18 SECTION 8. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1642 of Title 68, unless there
20 is created a duplication in numbering, reads as follows:

21 Any person or entity that stores fireworks or pyrotechnic
22 materials, or both, that are defined as consumer fireworks 1.4G,
23 display fireworks 1.3G, Articles, Pyrotechnic 1.4G or 1.4S as
24 defined by the United States Department of Transportation (DOT) in

1 Title 49 of the Code of Federal Regulations, shall store them in
2 accordance with current NFPA standards, including NFPA 1124, and any
3 applicable federal, state, and local laws or ordinances. Violations
4 of this section shall be a misdemeanor.

5 SECTION 9. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1643 of Title 68, unless there
7 is created a duplication in numbering, reads as follows:

8 The State Fire Marshal shall administer and enforce the
9 provisions of this act and may call upon any federal, state, county,
10 or municipal officer or employee for assistance. The State Fire
11 Marshal may promulgate rules to carry out the responsibilities under
12 this act, including rules relative to:

- 13 1. Certification of or licensing of outdoor display operators;
- 14 2. Training;
- 15 3. Examinations;
- 16 4. The responsible handling of display fireworks; and
- 17 5. Any other reasonable rules the State Fire Marshal deems
18 necessary to implement this act.

19 SECTION 10. AMENDATORY 68 O.S. 2001, Section 1625, as
20 amended by Section 4, Chapter 408, O.S.L. 2010 (68 O.S. Supp. 2010,
21 Section 1625), is amended to read as follows:

22 Section 1625. The following license fees shall be due and
23 payable on or before March 1 of each ~~and every~~ year ~~beginning March~~
24 ~~1, 1981, to the Oklahoma Tax Commission except upon passage of this~~

1 ~~act, for a period of sixty (60) days after passage, any to the~~
2 Office of the State Fire Marshal. Any licensed manufacturer,
3 distributor or wholesaler permitted to sell fireworks at wholesale
4 or retail, pursuant to Section 1623 of this title, may apply for a
5 license.

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

- 10 a. proof of inspection by the State Fire Marshal pursuant
11 to Section 1633 of this title, and
12 b. proof of workers' compensation coverage pursuant to
13 the provisions of Title 85 of the Oklahoma Statutes.

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

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

20 4. Any person operating a retail location where fireworks are
21 sold directly to the consumer shall be required to purchase a retail
22 fireworks license. The retail license fee shall be Ten Dollars
23 (\$10.00) annually and may be purchased from any licensed wholesaler,
24 manufacturer or distributor. These serially numbered licenses shall

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

15 Any person engaged in more than one of the licensed activities
16 provided in this section shall only pay one fee to be based on the
17 classification requiring the higher fee.

18 SECTION 11. This act shall become effective May 1, 2012.

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