

1 **SENATE FLOOR VERSION**

2 March 7, 2011

3 As Amended

4 SENATE BILL NO. 844

5 By: Anderson of the Senate

6 and

7 Armes of the House

8 [firework displays - requiring licensing - certain
9 exemption - firework license fees - codification -
10 effective date]

11
12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

16 A. The purpose of this act is to enact a self-funded licensing
17 program for outdoor display fireworks, pyrotechnic exhibitors and a
18 certification program for individuals conducting outdoor fireworks
19 displays in this state. The purpose of these programs is to ensure
20 a level of competence that promotes safety for the public, fire
21 service personnel, and fireworks display operators and their
22 employees and service personnel. It is not the purpose of this act
23 to regulate United States Department of Transportation Division 1.4
24

1 common fireworks or consumer fireworks as defined by NFPA standards
2 or paragraph 2 of Section 1622 of Title 68 of the Oklahoma Statutes.

3 B. As used in this act:

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

9 2. "Operator" shall have the same meaning as "licensed outdoor
10 display operator", as defined in paragraph 1;

11 3. "Display fireworks" means fireworks devices that are
12 primarily intended for commercial displays which are designed to
13 produce visible and/or audible effects by combustion, deflagration
14 or detonation. Display Fireworks include, but are not limited to,
15 salutes containing more than two grains (130mg) of explosive
16 composition, aerial shells containing more than forty (40) grams of
17 pyrotechnic compositions and other exhibition display items that
18 exceed the limits for consumer fireworks according to the United
19 States Department of Transportation (DOT);

20 4. "Event" means any function or gathering at which there will
21 be a fireworks display. If a function or gathering lasts more than
22 one (1) day, each day is a separate event. Event does not include
23 any function or gathering at which only consumer fireworks, as
24

1 defined in paragraph 2 of Section 1622 of Title 68 of the Oklahoma
2 Statutes, will be used exclusively;

3 5. "Distributor" means any person engaged in the business of
4 making sales of display fireworks as defined in paragraph 3 of
5 Section 1622 of Title 68 of the Oklahoma Statutes or materials to
6 Oklahoma licensed or permitted entities for the purpose of providing
7 fireworks, pyrotechnic or flame effect display services in this
8 state. A distributor may sell display fireworks only to holders of
9 an Oklahoma exhibitor's permit. An out-of-state distributor shall
10 not be required to obtain an Oklahoma license when selling
11 exclusively to a holder of an Oklahoma manufacturer, distributor, or
12 wholesaler license;

13 6. "Licensed exhibitor" means a sole proprietor, partnership,
14 corporation, company, firm or other entity licensed under this act
15 to conduct outdoor firework displays or provide fireworks or
16 pyrotechnic materials for outdoor fireworks displays;

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

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

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

1 10. "NFPA 1126" means the NFPA publication entitled "NFPA 1126:
2 Standards for the Use of Pyrotechnics Before a Proximate Audience,"
3 2011 Edition or any subsequent edition that has been adopted by the
4 State Fire Marshal by rule;

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

7 12. "Proximate pyrotechnics" means pyrotechnic devices for
8 professional use only, used outdoors or indoors, that are similar to
9 consumer fireworks in chemical composition but that are not intended
10 for consumer use, and that are defined by NFPA 1126 as 1.4G or 1.4S
11 fireworks or pyrotechnics;

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

16 14. "Sponsor" means any person or organization which contracts
17 with a licensed entity, licensed distributor or licensed outdoor
18 display operator to conduct a firework display.

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

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

24

1 B. To receive a licensed outdoor display operator license, an
2 applicant shall make application to the State Fire Marshal on a form
3 prescribed by the State Fire Marshal. The application must be
4 accompanied by the required fee. An individual seeking a license as
5 a sole proprietor or on behalf of a business entity must be at least
6 twenty-one (21) years of age and not have been convicted of or pled
7 guilty or nolo contendere to any state or federal felony. In the
8 case of a business seeking a license, no officer or member of its
9 governing board may have been convicted of or pled guilty or nolo
10 contendere to any state or federal felony.

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

16 Applications for permits for display fireworks shall be
17 submitted in writing prior to the date of display to the Authority
18 Having Jurisdiction (AHJ) as defined by the NFPA 1123 where the
19 display is to occur. If the display is in an area outside the
20 jurisdiction of a municipality, application for the permit shall be
21 submitted in writing to the Office of the State Fire Marshal ten
22 (10) days prior to the date of the display. Every display shall be
23 under the direction of a competent, responsible, licensed outdoor
24 display operator, of legal age, and be conducted under the code of

1 regulations as adopted by the State Fire Marshal Commission. The
2 person or organization making application for permit shall submit to
3 the authority having jurisdiction evidence of a general liability
4 insurance policy in an amount of not less than One Million Dollars
5 (\$1,000,000.00) or the amount set forth by the local governing
6 authority. Before a permit is granted, a local fire inspector or an
7 agent of the State Fire Marshal shall inspect and approve or reject
8 the site of the display. No permit so granted shall be
9 transferable.

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

13 If an applicant for an outdoor display operator license complies
14 with the requirements of this act and the rules of the State Fire
15 Marshal, the State Fire Marshal shall issue the license within sixty
16 (60) days of receiving the application. The term of the license is
17 three (3) years from the date of issuance. Each license issued
18 shall contain a distinct number assigned to the particular operator.
19 The State Fire Marshal shall maintain a list of all licensed
20 operators. In this list, next to the operator's name, the State
21 Fire Marshal shall insert the period of licensure and the operator's
22 license number. The list of licensed operators shall be posted on
23 the State Fire Marshal's website.

24

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

4 A holder of an operator's license with an unexpired license may
5 apply for a new license at any time before the license expires. An
6 operator whose license has been expired for ninety (90) days or
7 fewer may renew the license and have it retroactive to the date the
8 old license expired by applying and paying a fee equal to one and
9 one-half (1 1/2) times the normal fee.

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

13 A. The State Fire Marshal may refuse to grant, or may suspend,
14 revoke, or refuse to renew, any license or certification held under
15 the provisions of this act, and may asses a civil penalty not to
16 exceed Two Thousand Five Hundred Dollars (\$2,500.00) for a first
17 violation of the provisions of this act and not to exceed Ten
18 Thousand Dollars (\$10,000.00) for a second or subsequent violation
19 of the provisions of this act; provided, however, the State Fire
20 Marshal may asses a civil penalty of up to Ten Thousand Dollars
21 (\$10,000.00) for a first violation of the provisions of this act if
22 the violation is willful and egregious and the State Fire Marshal's
23 discretion warrants such a penalty.

24

1 The provisions of the Administrative Procedures Act shall govern
2 all matters and procedures respective to hearings and judicial
3 review of any contested care arising under this act.

4 B. If an operator's license is suspended or revoked, the
5 operator shall cease conducting displays and distributing display
6 fireworks immediately. If an operator's license is revoked for any
7 reason, the operator is prohibited from applying for a new license
8 for one (1) year from the date of revocation. Upon a finding that
9 the operator's federal license, if applicable, has been revoked, the
10 State Fire Marshal shall revoke the operator's state license. An
11 operator's license that has been revoked solely for failure to have
12 the required insurance may be reinstated upon proof by the operator
13 that the required insurance has been obtained.

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

17 A. The State Fire Marshal shall establish a program for
18 certification or licensure for outdoor display operators. To
19 receive certification or licensure, an individual shall apply for
20 certification or licensure to the State Fire Marshal on a form to be
21 prescribed by the State Fire Marshal, must be at least twenty-one
22 (21) years of age and not have been convicted of or pled guilty or
23 nolo contendere to any state or federal felony, and must show that
24 the applicant has worked under complete supervision on at least

1 three (3) displays in the three (3) years immediately preceding the
2 application. In addition, an applicant shall meet the following
3 requirements for the areas in which the applicant desires
4 certification or license:

5 1. To be certified or licensed as an outdoor fireworks display
6 operator, the applicant shall complete eight (8) hours of classroom
7 and hands-on training; and

8 2. The individual shall pass a written examination that tests
9 outdoor operator knowledge, approved by and conducted under the
10 auspices of the State Fire Marshal, and pay a certification or
11 license fee not to exceed Seventy-five Dollars (\$75.00), to be
12 deposited in the State Fire Marshal Revolving Fund, to be set by
13 rule by the State Fire Marshal.

14 B. The State Fire Marshal shall establish the scope and type of
15 curriculum and examinations required by this section, and may
16 require applicants to take a test created by a nationally recognized
17 pyrotechnic association. The State Fire Marshal may administer the
18 examination or may enter into an agreement with a testing service or
19 organization. The tests may be administered at a specific location
20 or time. The State Fire Marshal may set by rule and collect a
21 reasonable fee calculated to cover the costs of classroom
22 instruction and administering the test. Written tests may be
23 supplemented by practical tests or demonstrations deemed necessary
24 to determine the applicant's skill and ability. The content, type,

1 frequency, and location of the training and testing shall be
2 designated by the State Fire Marshal.

3 C. An operator certification or license or renewal expires
4 three (3) years after the date of the approval or reissuance. To
5 renew the certification, an individual shall show to the
6 satisfaction of the State Fire Marshal that the individual has
7 attended at least six (6) hours of continuing education training to
8 meet the approval of the State Fire Marshal in the areas of
9 certification or licensing desired during the three-year period and
10 pay the applicable fee.

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

14 A. It is unlawful for anyone other than a certified outdoor
15 display operator to conduct an outdoor display using only display
16 fireworks.

17 B. It is unlawful for any licensed outdoor display operator to
18 conduct an outdoor fireworks display except in accordance with NFPA
19 1123.

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

22 D. A violation of subsection A or B of this section shall be a
23 misdemeanor.

24

1 E. Notwithstanding any provision of the law to the contrary,
2 any municipality may adopt the provisions of subsections A and B of
3 this section by reference or substantial duplication as an ordinance
4 violation.

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

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

11 Any person or entity that stores fireworks or pyrotechnic
12 materials, or both, that are defined as consumer fireworks 1.4G,
13 display fireworks 1.3G, Articles, Pyrotechnic 1.4G or 1.4S as
14 defined by the United States Department of Transportation (DOT) in
15 Title 49 of the Code of Federal Regulations, shall store them in
16 accordance with current NFPA standards, including NFPA 1124, and any
17 applicable federal, state, and local laws or ordinances. Violations
18 of this section shall be a misdemeanor.

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

22 The State Fire Marshal shall administer and enforce the
23 provisions of this act and may call upon any federal, state, county,
24 or municipal officer or employee for assistance. The State Fire

1 Marshal may promulgate rules to carry out the responsibilities under
2 this act, including rules relative to:

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

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

12 Section 1625. The following license fees shall be due and
13 payable on or before March 1 of each ~~and every~~ year ~~beginning March~~
14 ~~1, 1981, to the Oklahoma Tax Commission except upon passage of this~~
15 ~~act, for a period of sixty (60) days after passage, any to the~~
16 Office of the State Fire Marshal. Any licensed manufacturer,
17 distributor or wholesaler permitted to sell fireworks at wholesale
18 or retail, pursuant to Section 1623 of this title, may apply for a
19 license.

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

24

- 1 a. proof of inspection by the State Fire Marshal pursuant
2 to Section 1633 of this title, and
3 b. proof of workers' compensation coverage pursuant to
4 the provisions of Title 85 of the Oklahoma Statutes.

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

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

11 4. Any person operating a retail location where fireworks are
12 sold directly to the consumer shall be required to purchase a retail
13 fireworks license. The retail license fee shall be ~~Ten Dollars~~
14 ~~(\$10.00)~~ Twenty Dollars (\$20.00) annually and may be purchased from
15 any licensed wholesaler, manufacturer or distributor. These
16 serially numbered licenses shall be made available at any time to
17 the licensed wholesalers, manufacturers or distributors in books of
18 twenty (20) licenses to a book. Retail licenses which are unsold
19 may be exchanged for new licenses. Any person purchasing a retail
20 fireworks license pursuant to this paragraph shall, at the time of
21 purchasing such license, sign an affidavit attesting to the fact
22 that the name, mailing address and telephone number of the purchaser
23 as it appears on such license is correct and that the purchaser
24 operates a retail location where fireworks are sold directly to the

1 consumer. Said affidavit shall be an integral but easily detachable
2 part of the application form for a retail fireworks license. Any
3 person who signs said affidavit as required by this paragraph when
4 such person knows that it is not true, upon conviction, shall be
5 guilty of the felony of perjury and shall be punished as provided
6 for by law.

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

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

11 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 3-2-11 - DO
12 PASS, As Amended and Coauthored.

13

14

15

16

17

18

19

20

21

22

23

24