

1 STATE OF OKLAHOMA

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

3 SENATE BILL 844

By: Anderson

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5  
6 AS INTRODUCED

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

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

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

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

11       B. As used in this act:

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

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

19       3. "Display fireworks" means fireworks devices that are  
20 primarily intended for commercial displays which are designed to  
21 produce visible and/or audible effects by combustion, deflagration  
22 or detonation. Display Fireworks include, but are not limited to,  
23 salutes containing more than two grains (130mg) of explosive  
24 composition, aerial shells containing more than forty (40) grams of

1 pyrotechnic compositions and other exhibition display items that  
2 exceed the limits for consumer fireworks according to the United  
3 States Department of Transportation (DOT);

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

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

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

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

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

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

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

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

14 12. "Proximate pyrotechnics" means pyrotechnic devices for  
15 professional use only, used outdoors or indoors, that are similar to  
16 consumer fireworks in chemical composition but that are not intended  
17 for consumer use, and that are defined by NFPA 1126 as 1.4G or 1.4S  
18 fireworks or pyrotechnics;

19 13. "Proximate pyrotechnic display" means the use of  
20 pyrotechnic devices and materials, 1.4G or 1.4S fireworks or  
21 pyrotechnics when any portion of the audience is closer than  
22 permitted by NFPA 1123, and subject to NFPA 1126 requirements; and  
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1 14. "Sponsor" means any person or organization which contracts  
2 with a licensed entity, licensed distributor or licensed outdoor  
3 display operator to conduct a firework display.

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

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

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

19 Nothing in this act shall be construed as applying to shipping,  
20 sale, possession or use of display fireworks when displayed by  
21 holders of a permit for a public display to be conducted in  
22 accordance with the rules and regulations of the State Fire Marshal  
23 Commission.

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1 Applications for permits for display fireworks shall be  
2 submitted in writing prior to the date of display to the Authority  
3 Having Jurisdiction (AHJ) as defined by the NFPA 1123 where the  
4 display is to occur. If the display is in an area outside the  
5 jurisdiction of a municipality, application for the permit shall be  
6 submitted in writing to the Office of the State Fire Marshal ten  
7 (10) days prior to the date of the display. Every display shall be  
8 under the direction of a competent, responsible, licensed outdoor  
9 display operator, of legal age, and be conducted under the code of  
10 regulations as adopted by the State Fire Marshal Commission. The  
11 person or organization making application for permit shall submit to  
12 the authority having jurisdiction evidence of a general liability  
13 insurance policy in an amount of not less than One Million Dollars  
14 (\$1,000,000.00) or the amount set forth by the local governing  
15 authority. Before a permit is granted, a local fire inspector or an  
16 agent of the State Fire Marshal shall inspect and approve or reject  
17 the site of the display. No permit so granted shall be  
18 transferable.

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

22 If an applicant for an outdoor display operator license complies  
23 with the requirements of this act and the rules of the State Fire  
24 Marshal, the State Fire Marshal shall issue the license within sixty

1 (60) days of receiving the application. The term of the license is  
2 three (3) years from the date of issuance. Each license issued  
3 shall contain a distinct number assigned to the particular operator.  
4 The State Fire Marshal shall maintain a list of all licensed  
5 operators. In this list, next to the operator's name, the State  
6 Fire Marshal shall insert the period of licensure and the operator's  
7 license number. The list of licensed operators shall be posted on  
8 the State Fire Marshal's website.

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

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

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

21 A. The State Fire Marshal may refuse to grant, or may suspend,  
22 revoke, or refuse to renew, any license or certification held under  
23 the provisions of this act, and may assess a civil penalty not to  
24 exceed Two Thousand Five Hundred Dollars (\$2,500.00) for a first

1 violation of the provisions of this act and not to exceed Ten  
2 Thousand Dollars (\$10,000.00) for a second or subsequent violation  
3 of the provisions of this act; provided, however, the State Fire  
4 Marshal may asses a civil penalty of up to Ten Thousand Dollars  
5 (\$10,000.00) for a first violation of the provisions of this act if  
6 the violation is willful and egregious and the State Fire Marshal's  
7 discretion warrants such a penalty.

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

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

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

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

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

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

22       B. The State Fire Marshal shall establish the scope and type of  
23 curriculum and examinations required by this section, and may  
24 require applicants to take a test created by a nationally recognized

1 pyrotechnic association. The State Fire Marshal may administer the  
2 examination or may enter into an agreement with a testing service or  
3 organization. The tests may be administered at a specific location  
4 or time. The State Fire Marshal may set by rule and collect a  
5 reasonable fee calculated to cover the costs of classroom  
6 instruction and administering the test. Written tests may be  
7 supplemented by practical tests or demonstrations deemed necessary  
8 to determine the applicant's skill and ability. The content, type,  
9 frequency, and location of the training and testing shall be  
10 designated by the State Fire Marshal.

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

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

22 A. It is unlawful for anyone other than a certified outdoor  
23 display operator to conduct an outdoor display using only display  
24 fireworks.

1 B. It is unlawful for any licensed outdoor display operator to  
2 conduct an outdoor fireworks display except in accordance with NFPA  
3 1123.

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

6 D. A violation of subsection A or B of this section shall be a  
7 misdemeanor.

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

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

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

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

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

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

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

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

20 Section 1625. The following license fees shall be due and  
21 payable on or before March 1 of each ~~and every~~ year ~~beginning March~~  
22 ~~1, 1981, to the Oklahoma Tax Commission except upon passage of this~~  
23 ~~act, for a period of sixty (60) days after passage, any to the~~  
24 Office of the State Fire Marshal. Any licensed manufacturer,

1 distributor or wholesaler permitted to sell fireworks at wholesale  
2 or retail, pursuant to Section 1623 of this title, may apply for a  
3 license.

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

8 a. proof of inspection by the State Fire Marshal pursuant  
9 to Section 1633 of this title, and

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

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

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

18 4. Any person operating a retail location where fireworks are  
19 sold directly to the consumer shall be required to purchase a retail  
20 fireworks license. The retail license fee shall be ~~Ten Dollars~~  
21 ~~(\$10.00)~~ Twenty Dollars (\$20.00) annually and may be purchased from  
22 any licensed wholesaler, manufacturer or distributor. These  
23 serially numbered licenses shall be made available at any time to  
24 the licensed wholesalers, manufacturers or distributors in books of

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

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

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

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