



Rep. Angelo Saviano

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LRB094 03955 RAS 45239 a

1 AMENDMENT TO HOUSE BILL 2848

2 AMENDMENT NO. _____. Amend House Bill 2848 by replacing
3 the title with the following:

4 "AN ACT concerning regulation."; and

5 by replacing everything after the enacting clause with the
6 following:

7 "Section 5. The Illinois Explosives Act is amended by
8 changing Section 2001 as follows:

9 (225 ILCS 210/2001) (from Ch. 96 1/2, par. 1-2001)

10 Sec. 2001. No person shall possess, use, purchase or
11 transfer explosive materials unless licensed by the Department
12 except as otherwise provided by this Act and the Pyrotechnic
13 Distributor and Operator Licensing Act.

14 (Source: P.A. 93-263, eff. 7-22-03.)

15 Section 10. The Pyrotechnic Operator Licensing Act is
16 amended by changing Sections 1, 5, 10, 30, 35, 50, 65, 75, and
17 90 and adding Section 57 as follows:

18 (225 ILCS 227/1)

19 Sec. 1. Short title. This Act may be cited as the
20 Pyrotechnic Distributor and Operator Licensing Act.

21 (Source: P.A. 93-263, eff. 7-22-03.)

1 (225 ILCS 227/5)

2 Sec. 5. Definitions. In this Act:

3 "1.3G fireworks" means large fireworks that are used for
4 professional outdoor displays and classified as fireworks
5 UN0333, UN0334, or UN0335 by the United States Department of
6 Transportation under 49 C.F.R. 172.101.

7 "BATFE" means the federal Bureau of Alcohol, Tobacco and
8 Firearms Enforcement.

9 "Consumer fireworks" means small fireworks that must
10 comply with the construction, chemical composition, and
11 labeling regulations of the U.S. Consumer Products Safety
12 Commission, as set forth in 16 C.F.R. Parts 1500 and 1507, and
13 classified as fireworks UN0336 or UN0337 by the United States
14 Department of Transportation under 49 C.F.R. 172.101.

15 "Consumer fireworks" does not include a substance or article
16 exempted under the Fireworks Use Act.

17 "Display fireworks" means ~~any substance or article defined~~
18 as a Division 1.3G or special effects fireworks ~~1.4 explosive~~
19 by the United States Department of Transportation under 49 CFR
20 173.50, except a substance or article exempted under the
21 Fireworks Use Act.

22 "Facility" means an area being used for the conducting of a
23 pyrotechnic display business, but does not include residential
24 premises except for the portion of any residential premises
25 that is actually used in the conduct of a pyrotechnic display
26 business.

27 "Fireworks" has the meaning given to that term in the
28 Fireworks Use Act.

29 "Flame effect" means the detonation, ignition, or
30 deflagration of flammable gases, liquids, or special materials
31 to produce a thermal, physical, visual, or audible effect
32 before the public, invitees, or licensees, regardless of
33 whether admission is charged in accordance with NFPA 160.

1 "Lead pyrotechnic operator" means the individual with
2 overall responsibility for the safety, setup, discharge, and
3 supervision of a pyrotechnic display.

4 "Office" means Office of the State Fire Marshal.

5 "Person" means an individual, firm, corporation,
6 association, partnership, company, consortium, joint venture,
7 commercial entity, state, municipality, or political
8 subdivision of a state or any agency, department, or
9 instrumentality of the United States and any officer, agent, or
10 employee of these entities.

11 "Pyrotechnic display" or "display" means the detonation,
12 ignition, or deflagration of display fireworks or flame effects
13 to produce a visual or audible effect of an exhibitional nature
14 before the public, invitees, or licensees, regardless of
15 whether admission is charged.

16 "Pyrotechnic distributor" means any person, company,
17 association, group of persons, or corporation who distributes
18 display fireworks for sale in the State of Illinois or provides
19 them as part of a pyrotechnic display service in the State of
20 Illinois or provides only pyrotechnic services.

21 "Special effects fireworks" means pyrotechnic devices used
22 for special effects by professionals in the performing arts in
23 conjunction with theatrical, musical, or other productions
24 that are similar to consumer fireworks in chemical compositions
25 and construction, but are not intended for consumer use and are
26 not labeled as such or identified as "intended for indoor use".
27 "Special effects fireworks" are classified as fireworks UN0431
28 or UN0432 by the United States Department of Transportation
29 under 49 C.F.R. 172.101.

30 (Source: P.A. 93-263, eff. 7-22-03.)

31 (225 ILCS 227/10)

32 Sec. 10. License; enforcement. No person may act as a
33 pyrotechnic distributor or lead pyrotechnic operator, or

1 advertise or use any title implying that the person is a
2 pyrotechnic distributor or lead pyrotechnic operator, unless
3 licensed by the Office under this Act. An out-of-state person
4 hired for or engaged in a pyrotechnic display must have a
5 pyrotechnic distributor license issued by the Office. No
6 pyrotechnic display shall be conducted without a person
7 licensed under this Act as a lead pyrotechnic operator
8 supervising the display. The State Fire Marshal, in the name of
9 the People, through the Attorney General, the State's Attorney
10 of any county, any resident of the State, or any legal entity
11 within the State may apply for injunctive relief in any court
12 to enjoin any person who has not been issued a license or whose
13 license has been suspended, revoked, or not renewed, from
14 practicing a licensed activity. Upon filing a verified petition
15 in court, the court, if satisfied by affidavit, or otherwise,
16 that the person is or has been practicing in violation of this
17 Act, may enter a temporary restraining order or preliminary
18 injunction, without bond, enjoining the defendant from further
19 unlicensed activity. A copy of the verified complaint shall be
20 served upon the defendant and the proceedings are to be
21 conducted as in other civil cases. The court may enter a
22 judgment permanently enjoining a defendant from further
23 unlicensed activity if it is established that the defendant has
24 been or is practicing in violation of this Act. In case of
25 violation of any injunctive order or judgment entered under
26 this Section, the court may summarily try and punish the
27 offender for contempt of court. Injunctive proceedings are in
28 addition to all penalties and other remedies in this Act.

29 (Source: P.A. 93-263, eff. 7-22-03.)

30 (225 ILCS 227/30)

31 Sec. 30. Rules. The State Fire Marshal shall adopt all
32 rules necessary to carry out its responsibilities under this
33 Act including rules requiring the training, examination, and

1 licensing of pyrotechnic distributors and lead pyrotechnic
2 operators ~~engaging in or responsible for the handling and use~~
3 ~~of Division 1.3G (Class B) and 1.4 (Class C) explosives.~~ The
4 ~~test shall incorporate the~~ rules of the State Fire Marshal,
5 ~~which~~ shall be based upon nationally recognized standards such
6 as those of the National Fire Protection Association (NFPA)
7 1123 guidelines for outdoor displays, ~~and~~ NFPA 1126 for
8 proximate audience indoor displays, and NFPA 160 for flame
9 effect displays. The State Fire Marshal shall conduct the
10 training and examination of pyrotechnic operators and
11 pyrotechnic distributors or may delegate the responsibility to
12 train and examine pyrotechnic distributors and operators to the
13 Department of Natural Resources. ~~The Fire Marshal shall adopt~~
14 ~~rules as required for the licensing of a lead pyrotechnic~~
15 ~~operator involved in an outdoor or indoor pyrotechnic display.~~
16 (Source: P.A. 93-263, eff. 7-22-03.)

17 (225 ILCS 227/35)

18 Sec. 35. Licensure requirements and fees.

19 (a) Each application for a license to practice under this
20 Act shall be in writing and signed by the applicant on forms
21 provided by the Office. ~~The Office shall have the testing~~
22 ~~procedures for licensing as a lead pyrotechnic operator~~
23 ~~developed by October 1, 2004.~~

24 (b) After January 1, 2006 ~~April 1, 2005,~~ all pyrotechnic
25 displays, both indoor and outdoor, must comply with the
26 requirements set forth in this Act.

27 (c) After January 1, 2006 ~~April 1, 2005,~~ no person
28 ~~individual~~ may engage in pyrotechnic distribution without
29 first applying for and obtaining a license from the Office.
30 Applicants for a license must submit to the Office the
31 following:

32 (1) A current BATFE license for distribution of display
33 fireworks.

1 (2) Proof of \$1,000,000 in product liability
2 insurance.

3 (3) Proof of \$1,000,000 in general liability
4 insurance.

5 (4) Proof of Illinois Worker's Compensation Insurance.

6 (5) A license fee set by the Office.

7 (6) Proof of a current United States Department of
8 Transportation (DOT) Identification Number.

9 (7) Proof of a current USDOT Hazardous Materials
10 Registration Number.

11 (8) Proof of having the requisite knowledge, either
12 through training, examination, or continuing education, as
13 established by Office rule.

14 (c-5) After January 1, 2006, no individual may act as a
15 lead operator in a pyrotechnic display without first applying
16 for and obtaining a lead pyrotechnic operator's license from
17 the Office. The Office shall establish separate licenses for
18 lead pyrotechnic operators for indoor and outdoor pyrotechnic
19 displays. Applicants for a license must:

20 (1) Pay the fees set by the Office.

21 (2) Have the requisite training or continuing
22 education as established in the Office's rules.

23 (3) (Blank) ~~Pass the examination presented by the~~
24 ~~Office.~~

25 (d) A person is qualified to receive a license under this
26 Act if the person meets all of the following minimum
27 requirements:

28 (1) Is at least 21 years of age.

29 (2) Has not willfully violated any provisions of this
30 Act.

31 (3) Has not made any material misstatement or knowingly
32 withheld information in connection with any original or
33 renewal application.

34 (4) Has not been declared incompetent by any competent

1 court by reasons of mental or physical defect or disease
2 unless a court has since declared the person competent.

3 (5) Does not have an addiction to or dependency on
4 alcohol or drugs that is likely to endanger the public at a
5 pyrotechnic display.

6 (6) Has not been convicted in any jurisdiction of any
7 felony within the prior 5 years.

8 (7) Is not a fugitive from justice.

9 (8) Has, or has applied for, a BATFE explosives license
10 or a Letter of Clearance from the BATFE.

11 (e) A person is qualified to assist a lead operator if the
12 person meets all of the following minimum requirements:

13 (1) Is at least 18 years of age.

14 (2) Has not willfully violated any provision of this
15 Act.

16 (3) Has not been declared incompetent by any competent
17 court by reasons of mental or physical defect or disease
18 unless a court has since declared the person competent.

19 (4) Does not have an addiction to or dependency on
20 alcohol or drugs that is likely to endanger the public at a
21 pyrotechnic display.

22 (5) Has not been convicted in any jurisdiction of any
23 felony within the prior 5 years.

24 (6) Is not a fugitive from justice.

25 (Source: P.A. 93-263, eff. 7-22-03.)

26 (225 ILCS 227/50)

27 Sec. 50. Issuance of license; renewal; fees nonrefundable.

28 (a) The Office, upon the applicant's satisfactory
29 completion of the requirements imposed under this Act and upon
30 receipt of the requisite fees, shall issue the appropriate
31 license showing the name, address, and photograph of the
32 licensee and the dates of issuance and expiration. The license
33 shall include the name of the pyrotechnic distributor employing

1 the lead pyrotechnic operator. A lead pyrotechnic operator is
2 required to have a separate license for each pyrotechnic
3 distributor who employs the lead pyrotechnic operator.

4 (b) Each licensee may apply for renewal of his or her
5 license upon payment of the applicable fees. The expiration
6 date and renewal period for each license issued under this Act
7 shall be set by rule. Failure to renew within 60 days of the
8 expiration date results in lapse of the license. A lapsed
9 license may not be reinstated until a written application is
10 filed, the renewal fee is paid, and the reinstatement fee
11 established by the Office is paid. Renewal and reinstatement
12 fees shall be waived for persons who did not renew while on
13 active duty in the military and who file for renewal or
14 restoration within one year after discharge from the service. A
15 lapsed license may not be reinstated after 5 years have elapsed
16 except upon passing an examination to determine fitness to have
17 the license restored and by paying the required fees.

18 (c) All fees paid under this Act are nonrefundable.

19 (Source: P.A. 93-263, eff. 7-22-03.)

20 (225 ILCS 227/57 new)

21 Sec. 57. Training; additional lead pyrotechnic operators.
22 No pyrotechnic distributor shall allow any person in the
23 pyrotechnic distributor's employ to act as a lead pyrotechnic
24 operator until the person has obtained a lead pyrotechnic
25 operator's license from the Office. Nothing in this Section
26 shall prevent an assistant from acting as a lead pyrotechnic
27 operator under the direct supervision of a licensed lead
28 pyrotechnic operator for training purposes.

29 (225 ILCS 227/65)

30 Sec. 65. Grounds for discipline. Licensees subject to this
31 Act shall conduct their practice in accordance with this Act
32 and the rules promulgated under this Act. A licensee is subject

1 to disciplinary sanctions enumerated in this Act if the State
2 Fire Marshal finds that the licensee is guilty of any of the
3 following:

4 (1) Fraud or material deception in obtaining or
5 renewing a license.

6 (2) Engaging in dishonorable, unethical, or
7 unprofessional conduct of a character likely to deceive,
8 defraud, or harm the public in the course of professional
9 services or activities.

10 (3) Conviction of any crime that has a substantial
11 relationship to his or her practice or an essential element
12 of which is misstatement, fraud, dishonesty, or conviction
13 in this or another state of any crime that is a felony
14 under the laws of Illinois or conviction of a felony in a
15 federal court, unless the licensee demonstrates that he or
16 she has been sufficiently rehabilitated to warrant the
17 public trust.

18 (4) Performing any service in a grossly negligent
19 manner or permitting any lead pyrotechnic operator or
20 assistant ~~licensed employee~~ to perform a service in a
21 grossly negligent manner, regardless of whether actual
22 damage or damage to the public is established.

23 (5) Addiction to or dependency on alcohol or drugs or
24 use of alcohol or drugs that is likely to endanger the
25 public at a pyrotechnic display.

26 (6) Willfully receiving direct or indirect
27 compensation for any professional service not actually
28 rendered.

29 (7) Having disciplinary action taken against his or her
30 license in another state.

31 (8) Making differential treatment against any person
32 to his or her detriment because of race, color, creed, sex,
33 religion, or national origin.

34 (9) Engaging in unprofessional conduct.

1 (10) Engaging in false or misleading advertising.

2 (11) Contracting or assisting an unlicensed person to
3 perform services for which a license is required under this
4 Act.

5 (12) Permitting the use of his or her license to enable
6 an unlicensed person or agency to operate as a licensee.

7 (13) Performing and charging for a service without
8 having the authorization to do so from the member of the
9 public being served.

10 (14) Failure to comply with any provision of this Act
11 or the rules promulgated under this Act.

12 (15) Conducting business regulated by this Act without
13 a currently valid license in those circumstances where a
14 license is required.

15 (Source: P.A. 93-263, eff. 7-22-03.)

16 (225 ILCS 227/75)

17 Sec. 75. Formal charges; hearing.

18 (a) The Office may file formal charges against a licensee.
19 The formal charges, at a minimum, shall inform the licensee of
20 the specific facts that are the basis of the charge to enable
21 the licensee to defend himself or herself.

22 (b) Each licensee whose conduct is the subject of a formal
23 charge that seeks to impose disciplinary action against the
24 licensee shall be served notice of the formal charge at least
25 30 days before the date of the hearing. The hearing shall be
26 presided over by the Office or a hearing officer authorized by
27 the Office in compliance with the Illinois Administrative
28 Procedure Act. Service shall be considered to have been given
29 if the notice was personally received by the licensee or if the
30 notice was mailed certified, return requested, to the licensee
31 at the licensee's last known address as listed with the Office.

32 (c) The notice of a formal charge shall consist, at a
33 minimum, of the following information:

1 (1) The time and date of the hearing.

2 (2) A statement that the licensee may appear personally
3 at the hearing and may be represented by counsel.

4 (3) A statement that the licensee has the right to
5 produce witnesses and evidence in his or her behalf and the
6 right to cross-examine witnesses and evidence produced
7 against him or her.

8 (4) A statement that the hearing can result in
9 disciplinary action being taken against the ~~his or her~~
10 license.

11 (5) A statement that rules for the conduct of these
12 hearings exist and that it may be in the licensee's ~~his or~~
13 ~~her~~ best interest to obtain a copy.

14 (6) A statement that the hearing officer authorized by
15 the Office shall preside at the hearing and, following the
16 conclusion of the hearing, make findings of fact,
17 conclusions of law, and recommendations, separately
18 stated, to the Office as to what disciplinary action, if
19 any, should be imposed on the licensee.

20 (7) A statement that the Office may continue the
21 hearing.

22 (d) The Office or the hearing officer authorized by the
23 Office shall hear evidence produced in support of the formal
24 charges and contrary evidence produced by the licensee, if any.
25 If the hearing is conducted by a hearing officer, at the
26 conclusion of the hearing, the hearing officer shall make
27 findings of fact, conclusions of law, and recommendations,
28 separately stated, and submit them to the Office and to all
29 parties to the proceeding. Submission to the licensee shall be
30 considered as having been made if done in a similar fashion as
31 service of the notice of formal charges. Within 20 days after
32 the service, any party to the proceeding may present to the
33 Office a motion, in writing, for a rehearing. The written
34 motion shall specify the particular grounds for the rehearing.

1 (e) The Office, following the time allowed for filing a
2 motion for rehearing, shall review the hearing officer's
3 findings of fact, conclusions of law, recommendations, and any
4 motions filed subsequent to the hearing. After review of the
5 information the Office may hear oral arguments and thereafter
6 issue an order. The report of findings of fact, conclusions of
7 law, and recommendations of the hearing officer shall be the
8 basis for the Office's order. If the Office finds that
9 substantial justice was not done, it may issue an order in
10 contravention of the hearing officer's findings.

11 (f) All proceedings under this Section are matters of
12 public record and a record of the proceedings shall be
13 preserved.

14 (Source: P.A. 93-263, eff. 7-22-03.)

15 (225 ILCS 227/90)

16 Sec. 90. Penalties. Any natural person who violates any of
17 the following provisions is guilty of a Class A misdemeanor for
18 the first offense and a corporation or other entity that
19 violates any of the following provision commits a business
20 offense punishable by a fine not to exceed \$5,000; a second or
21 subsequent offense in violation of any Section of this Act,
22 including this Section, is a Class 4 felony if committed by a
23 natural person, or a business offense punishable by a fine of
24 up to \$10,000 if committed by a corporation or other business
25 entity:

26 (1) Practicing or attempting to practice as a
27 pyrotechnic distributor or lead pyrotechnic operator
28 without a license;

29 (2) Obtaining or attempting to obtain a license,
30 practice or business, or any other thing of value by
31 fraudulent representation;

32 (3) Permitting, directing, or authorizing any person
33 in one's employ or under one's direction or supervision to

1 work or serve as a licensee if that individual does not
2 possess an appropriate valid license.

3 Whenever any person is punished as a repeat offender under
4 this Section, the Office may proceed to obtain a permanent
5 injunction against the person under Section 10. If any person
6 in making any oath or affidavit required by this Act swears
7 falsely, the person is guilty of perjury and upon conviction
8 may be punished accordingly.

9 (Source: P.A. 93-263, eff. 7-22-03.)

10 Section 99. Effective date. This Act takes effect upon
11 becoming law."