



Sen. Terry Link

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09400SB0926sam001

LRB094 04560 RAS 46555 a

1 AMENDMENT TO SENATE BILL 926

2 AMENDMENT NO. _____. Amend Senate Bill 926 by replacing
3 everything after the enacting clause with the following:

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

6 (225 ILCS 210/2001) (from Ch. 96 1/2, par. 1-2001)

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

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

12 Section 10. The Pyrotechnic Operator Licensing Act is
13 amended by changing Sections 1, 5, 10, 30, 35, 50, 65, 75, and
14 90 and adding Section 57 as follows:

15 (225 ILCS 227/1)

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

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

19 (225 ILCS 227/5)

20 Sec. 5. Definitions. In this Act:

21 "1.3G fireworks" means fireworks that are used for

1 professional outdoor displays and classified as fireworks
2 UN0333, UN0334, or UN0335 by the United States Department of
3 Transportation under 49 C.F.R. 172.101.

4 "BATFE" means the federal Bureau of Alcohol, Tobacco and
5 Firearms Enforcement.

6 "Consumer fireworks" means fireworks that must comply with
7 the construction, chemical composition, and labeling
8 regulations of the U.S. Consumer Products Safety Commission, as
9 set forth in 16 C.F.R. Parts 1500 and 1507, and classified as
10 fireworks UN0336 or UN0337 by the United States Department of
11 Transportation under 49 C.F.R. 172.101. "Consumer fireworks"
12 does not include a substance or article exempted under the
13 Fireworks Use Act.

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

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

24 "Fireworks" has the meaning given to that term in the
25 Fireworks Use Act.

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

31 "Lead pyrotechnic operator" means the individual with
32 overall responsibility for the safety, setup, discharge, and
33 supervision of a pyrotechnic display.

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

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

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

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

17 "Special effects fireworks" means pyrotechnic devices used
18 for special effects by professionals in the performing arts in
19 conjunction with theatrical, musical, or other productions
20 that are similar to consumer fireworks in chemical compositions
21 and construction, but are not intended for consumer use and are
22 not labeled as such or identified as "intended for indoor use".

23 "Special effects fireworks" are classified as fireworks UN0431
24 or UN0432 by the United States Department of Transportation
25 under 49 C.F.R. 172.101.

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

27 (225 ILCS 227/10)

28 Sec. 10. License; enforcement. No person may act as a
29 pyrotechnic distributor or lead pyrotechnic operator, or
30 advertise or use any title implying that the person is a
31 pyrotechnic distributor or lead pyrotechnic operator, unless
32 licensed by the Office under this Act. An out-of-state person
33 hired for or engaged in a pyrotechnic display must have a

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

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

26 (225 ILCS 227/30)

27 Sec. 30. Rules. The State Fire Marshal shall adopt all
28 rules necessary to carry out its responsibilities under this
29 Act including rules requiring the training, examination, and
30 licensing of pyrotechnic distributors and lead pyrotechnic
31 operators ~~engaging in or responsible for the handling and use~~
32 ~~of Division 1.3G (Class B) and 1.4 (Class C) explosives.~~ The
33 ~~test shall incorporate the~~ rules of the State Fire Marshal,

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

13 (225 ILCS 227/35)

14 Sec. 35. Licensure requirements and fees.

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

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

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

28 (1) A current BATFE license for distribution of display
29 fireworks.

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

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

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

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

3 (6) Proof of a current United States Department of
4 Transportation (DOT) Identification Number.

5 (7) Proof of a current USDOT Hazardous Materials
6 Registration Number.

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

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

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

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

19 (3) (Blank) ~~Pass the examination presented by the~~
20 ~~Office.~~

21 (d) A person is qualified to receive a license under this
22 Act if the person meets all of the following minimum
23 requirements:

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

25 (2) Has not willfully violated any provisions of this
26 Act.

27 (3) Has not made any material misstatement or knowingly
28 withheld information in connection with any original or
29 renewal application.

30 (4) Has not been declared incompetent by any competent
31 court by reasons of mental or physical defect or disease
32 unless a court has since declared the person competent.

33 (5) Does not have an addiction to or dependency on
34 alcohol or drugs that is likely to endanger the public at a

1 pyrotechnic display.

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

4 (7) Is not a fugitive from justice.

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

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

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

10 (2) Has not willfully violated any provision of this
11 Act.

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

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

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

20 (6) Is not a fugitive from justice.

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

22 (225 ILCS 227/50)

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

24 (a) The Office, upon the applicant's satisfactory
25 completion of the requirements imposed under this Act and upon
26 receipt of the requisite fees, shall issue the appropriate
27 license showing the name, address, and photograph of the
28 licensee and the dates of issuance and expiration. The license
29 shall include the name of the pyrotechnic distributor employing
30 the lead pyrotechnic operator. A lead pyrotechnic operator is
31 required to have a separate license for each pyrotechnic
32 distributor who employs the lead pyrotechnic operator.

33 (b) Each licensee may apply for renewal of his or her

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

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

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

16 (225 ILCS 227/57 new)

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

25 (225 ILCS 227/65)

26 Sec. 65. Grounds for discipline. Licensees subject to this
27 Act shall conduct their practice in accordance with this Act
28 and the rules promulgated under this Act. A licensee is subject
29 to disciplinary sanctions enumerated in this Act if the State
30 Fire Marshal finds that the licensee is guilty of any of the
31 following:

32 (1) Fraud or material deception in obtaining or

1 renewing a license.

2 (2) Engaging in dishonorable, unethical, or
3 unprofessional conduct of a character likely to deceive,
4 defraud, or harm the public in the course of professional
5 services or activities.

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

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

19 (5) Addiction to or dependency on alcohol or drugs or
20 use of alcohol or drugs that is likely to endanger the
21 public at a pyrotechnic display.

22 (6) Willfully receiving direct or indirect
23 compensation for any professional service not actually
24 rendered.

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

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

30 (9) Engaging in unprofessional conduct.

31 (10) Engaging in false or misleading advertising.

32 (11) Contracting or assisting an unlicensed person to
33 perform services for which a license is required under this
34 Act.

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

3 (13) Performing and charging for a service without
4 having the authorization to do so from the member of the
5 public being served.

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

8 (15) Conducting business regulated by this Act without
9 a currently valid license in those circumstances where a
10 license is required.

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

12 (225 ILCS 227/75)

13 Sec. 75. Formal charges; hearing.

14 (a) The Office may file formal charges against a licensee.
15 The formal charges, at a minimum, shall inform the licensee of
16 the specific facts that are the basis of the charge to enable
17 the licensee to defend himself or herself.

18 (b) Each licensee whose conduct is the subject of a formal
19 charge that seeks to impose disciplinary action against the
20 licensee shall be served notice of the formal charge at least
21 30 days before the date of the hearing. The hearing shall be
22 presided over by the Office or a hearing officer authorized by
23 the Office in compliance with the Illinois Administrative
24 Procedure Act. Service shall be considered to have been given
25 if the notice was personally received by the licensee or if the
26 notice was mailed certified, return requested, to the licensee
27 at the licensee's last known address as listed with the Office.

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

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

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

33 (3) A statement that the licensee has the right to

1 produce witnesses and evidence in his or her behalf and the
2 right to cross-examine witnesses and evidence produced
3 against him or her.

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

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

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

16 (7) A statement that the Office may continue the
17 hearing.

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

31 (e) The Office, following the time allowed for filing a
32 motion for rehearing, shall review the hearing officer's
33 findings of fact, conclusions of law, recommendations, and any
34 motions filed subsequent to the hearing. After review of the

1 information the Office may hear oral arguments and thereafter
2 issue an order. The report of findings of fact, conclusions of
3 law, and recommendations of the hearing officer shall be the
4 basis for the Office's order. If the Office finds that
5 substantial justice was not done, it may issue an order in
6 contravention of the hearing officer's findings.

7 (f) All proceedings under this Section are matters of
8 public record and a record of the proceedings shall be
9 preserved.

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

11 (225 ILCS 227/90)

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

22 (1) Practicing or attempting to practice as a
23 pyrotechnic distributor or lead pyrotechnic operator
24 without a license;

25 (2) Obtaining or attempting to obtain a license,
26 practice or business, or any other thing of value by
27 fraudulent representation;

28 (3) Permitting, directing, or authorizing any person
29 in one's employ or under one's direction or supervision to
30 work or serve as a licensee if that individual does not
31 possess an appropriate valid license.

32 Whenever any person is punished as a repeat offender under
33 this Section, the Office may proceed to obtain a permanent

1 injunction against the person under Section 10. If any person
2 in making any oath or affidavit required by this Act swears
3 falsely, the person is guilty of perjury and upon conviction
4 may be punished accordingly.

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

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.".