

AN ACT in relation to fireworks.

Be it enacted by the People of the State of Illinois,
represented in the General Assembly:

Section 1. Short title. This Act may be cited as the
Pyrotechnic Operator Licensing Act.

Section 5. Definitions. In this Act:

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

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

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

"Office" means Office of the State Fire Marshal.

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

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

Section 10. License; enforcement. No person may act as a
lead pyrotechnic operator, or advertise or use any title

implying that the person is a lead pyrotechnic operator, unless licensed by the Office under this Act. An out-of-state person hired for or engaged in a pyrotechnic display must have a person licensed under this Act as a lead pyrotechnic operator supervising the display. The State Fire Marshal, in the name of the People, through the Attorney General, the State's Attorney of any county, any resident of the State, or any legal entity within the State may apply for injunctive relief in any court to enjoin any person who has not been issued a license or whose license has been suspended, revoked, or not renewed, from practicing a licensed activity. Upon filing a verified petition in court, the court, if satisfied by affidavit, or otherwise, that the person is or has been practicing in violation of this Act, may enter a temporary restraining order or preliminary injunction, without bond, enjoining the defendant from further unlicensed activity. A copy of the verified complaint shall be served upon the defendant and the proceedings are to be conducted as in other civil cases. The court may enter a judgment permanently enjoining a defendant from further unlicensed activity if it is established that the defendant has been or is practicing in violation of this Act. In case of violation of any injunctive order or judgment entered under this Section, the court may summarily try and punish the offender for contempt of court. Injunctive proceedings are in addition to all penalties and other remedies in this Act.

Section 15. Deposit of fees. All fees collected under this Act shall be deposited into the Fire Prevention Fund.

Section 30. Rules. The State Fire Marshal shall adopt all rules necessary to carry out its responsibilities under this Act including rules requiring the training, examination, and licensing of lead pyrotechnic operators engaging in or

responsible for the handling and use of Division 1.3G (Class B) and 1.4 (Class C) explosives. The test shall incorporate the rules of the State Fire Marshal, which shall be based upon nationally recognized standards such as those of the National Fire Protection Association (NFPA) 1123 guidelines for outdoor displays and NFPA 1126 for indoor displays. The Fire Marshal shall adopt rules as required for the licensing of a lead pyrotechnic operator involved in an outdoor or indoor pyrotechnic display.

Section 35. Licensure requirements and fees.

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

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

(c) After April 1, 2005, no individual may act as a lead operator in a pyrotechnic display without first applying for and obtaining a lead pyrotechnic operator's license from the Office. The Office shall establish separate licenses for lead pyrotechnic operators for indoor and outdoor pyrotechnic displays. Applicants for a license must:

(1) Pay the fees set by the Office.

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

(3) Pass the examination presented by the Office.

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

(1) Is at least 21 years of age.

(2) Has not willfully violated any provisions of

this Act.

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

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

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

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

(7) Is not a fugitive from justice.

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

(1) Is at least 18 years of age.

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

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

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

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

(6) Is not a fugitive from justice.

Section 40. Fingerprint card; fees. The Office may require each applicant to file with his or her application a fingerprint card in the form and manner required by the Department of State Police to enable the Department of State

Police to conduct a criminal history check on the applicant.

The Office may require each applicant to submit, in addition to the license fee, a fee specified by the Department of State Police for processing fingerprint cards, which may be made payable to the State Police Services Fund and shall be remitted to the Department of State Police for deposit into that Fund.

Section 45. Investigation. Upon receipt of an application, the Office shall investigate the eligibility of the applicant. The Office has authority to request and receive from any federal, state or local governmental agency such information and assistance as will enable it to carry out its powers and duties under this Act. The Department of State Police shall cause the fingerprints of each applicant to be compared with fingerprints of criminals filed with the Department of State Police or with federal law enforcement agencies maintaining official fingerprint files.

Section 50. Issuance of license; renewal; fees nonrefundable.

(a) The Office, upon the applicant's satisfactory completion of the requirements imposed under this Act and upon receipt of the requisite fees, shall issue the appropriate license showing the name, address, and photograph of the licensee and the dates of issuance and expiration.

(b) Each licensee may apply for renewal of his or her license upon payment of the applicable fees. The expiration date and renewal period for each license issued under this Act shall be set by rule. Failure to renew within 60 days of the expiration date results in lapse of the license. A lapsed license may not be reinstated until a written application is filed, the renewal fee is paid, and the reinstatement fee established by the Office is paid. Renewal and reinstatement

fees shall be waived for persons who did not renew while on active duty in the military and who file for renewal or restoration within one year after discharge from the service. A lapsed license may not be reinstated after 5 years have elapsed except upon passing an examination to determine fitness to have the license restored and by paying the required fees.

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

Section 55. Insufficient funds checks. Any person who on 2 occasions issues or delivers a check or other order to the Office that is not honored by the financial institution upon which it is drawn because of insufficient funds on account shall pay to the Office, in addition to the amount owing upon the check or other order, a fee of \$50. If the check or other order was issued or delivered in payment of a renewal fee and the licensee whose license has lapsed continues to practice without paying the renewal fee and the \$50 fee required under this Section, an additional fee of \$100 is imposed for practicing without a current license. The Office may revoke or refuse to issue the license or licenses of any person who fails to pay the requisite fees.

Section 60. Conditions of renewal; change of address; duplicate license; inspection.

(a) As a condition of renewal of a license, the Office may require the licensee to report information pertaining to the person's practice in relation to this Act that the Office determines to be in the interest of public safety.

(b) A licensee shall report a change in home or office address within 10 days of the change.

(c) The licensee shall carry his or her license at all times when engaging in pyrotechnic display activity.

(d) If a license or certificate is lost, a duplicate

shall be issued upon payment of the required fee to be established by the Office. If a licensee wishes to change his or her name, the Office shall issue a license in the new name upon satisfactory proof that the change of name was done in accordance with law and upon payment of the required fee.

(e) Each licensee shall permit his or her facilities to be inspected by representatives of the Office for the purpose of administering this Act.

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

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

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

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

(4) Performing any service in a grossly negligent manner or permitting any licensed employee to perform a service in a grossly negligent manner, regardless of whether actual damage or damage to the public is established.

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

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

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

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

(9) Engaging in unprofessional conduct.

(10) Engaging in false or misleading advertising.

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

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

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

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

(15) Conducting business regulated by this Act without a currently valid license.

Section 75. Formal charges; hearing.

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

(b) Each licensee whose conduct is the subject of a formal charge that seeks to impose disciplinary action

against the licensee shall be served notice of the formal charge at least 30 days before the date of the hearing. The hearing shall be presided over by the Office or a hearing officer authorized by the Office in compliance with the Illinois Administrative Procedure Act. Service shall be considered to have been given if the notice was personally received by the licensee or if the notice was mailed certified, return requested, to the licensee at the licensee's last known address as listed with the Office.

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

(1) The time and date of the hearing.

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

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

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

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

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

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

(d) The Office or the hearing officer authorized by the

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

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

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

Section 80. Sanctions.

(a) The Office shall impose any of the following sanctions, singularly or in combination, when it finds that a licensee or applicant is guilty of any offense described in this Act:

- (1) revocation;

- (2) suspension for any period of time;
- (3) reprimand or censure;
- (4) place on probationary status and require the submission of any of the following:

- (i) report regularly to the Office upon matters that are the basis of the probation;

- (ii) continue or renew professional education until a satisfactory degree of skill has been attained in those areas that are the basis of the probation; or

- (iii) such other reasonable requirements or restrictions as are proper;

- (5) refuse to issue, renew, or restore; or

- (6) revoke probation that has been granted and impose any other discipline in this subsection (a) when the requirements of probation have not been fulfilled or have been violated.

(b) The State Fire Marshal may summarily suspend a license under this Act, without a hearing, simultaneously with the filing of a formal complaint and notice for a hearing provided under this Section if the State Fire Marshal finds that the continued operations of the individual would constitute an immediate danger to the public. In the event the State Fire Marshal suspends a license under this subsection, a hearing by the hearing officer designated by the State Fire Marshal shall begin within 20 days after the suspension begins, unless continued at the request of the licensee.

(c) Disposition may be made of any formal complaint by consent order between the State Fire Marshal and the licensee, but the Office must be apprised of the full consent order in a timely way.

(d) The Office shall reinstate any license to good standing under this Act, upon recommendation to the Office,

after a hearing before the hearing officer authorized by the Office. The Office shall be satisfied that the applicant's renewed practice is not contrary to the public interest.

(e) The Office may conduct hearings and issue cease and desist orders to persons who engage in activities prohibited by this Act without having a valid license, certificate, or registration. Any person in violation of a cease and desist order entered by the Office is subject to all of the remedies provided by law, and in addition, is subject to a civil penalty payable to the party injured by the violation.

Section 85. Subpoena; production of evidence; records; administrative review; license suspension; revocation.

(a) The Office has the power to subpoena and bring before it any person in this State and to take testimony either orally or by deposition, or both, with the same fees and mileage and in the same manner as is prescribed by law for judicial proceedings in civil cases. The State Fire Marshal, the Office, and the hearing officer approved by the Office, have the power to administer oaths at any hearing that the Office is authorized to conduct.

(b) Any circuit court, upon the application of the licensee, the Office, or the State Fire Marshal, may order the attendance of witnesses and the production of relevant books and papers in any hearing under this Act. The court may compel obedience to its order by proceedings for contempt.

(c) The Office of the State Fire Marshal, at its expense, shall provide a stenographer or a mechanical recording device to record the testimony and preserve a record of all proceedings at the hearing of any case in which a license may be revoked, suspended, placed on probationary status, or other disciplinary action taken with regard to the license. The notice of hearing, complaint, and all other documents in the nature of pleadings and written motions

filed in the proceedings, the transcript of testimony, the report of the hearing officer and the orders of the State Fire Marshal shall constitute the record of the proceedings. The Office shall furnish a transcript of the record to any interested person upon payment of the costs of copying and transmitting the record.

(d) All final administrative decisions of the Office are subject to judicial review under the Administrative Review Law and the rules adopted under that Law. Proceedings for judicial review shall be commenced in the circuit court of the county in which the party applying for review resides; but if the party is not a resident of Illinois, the venue is in Sangamon County. The State Fire Marshal is not required to certify any record to the court or file any answer in court or otherwise appear in any court in a judicial review proceeding, unless there is filed in the court with the complaint a receipt from the Office acknowledging payment of the costs of furnishing and certifying the record. Those costs shall be computed at the cost of preparing the record. Exhibits shall be certified without cost. Failure on the part of the licensee to file the receipt in court is a ground for dismissal of the action. During all judicial proceedings incident to a disciplinary action, the sanctions imposed upon the accused by the Office remain in effect, unless the court feels justice requires a stay of the order.

(e) An order of revocation, suspension, placing the license on probationary status, or other formal disciplinary action as the State Fire Marshal may consider proper, or a certified copy of the order over the seal of the Office and purporting to be signed by the State Fire Marshal, is prima facie proof that:

(1) the signature is that of the State Fire Marshal;

(2) the State Fire Marshal is qualified to Act; and

(3) the hearing officer is qualified to Act on behalf of the Office.

The proof specified in paragraphs (1), (2), and (3) may be rebutted.

(f) Upon the suspension or revocation of a license issued under this Act, a licensee shall surrender the license to the Office and upon failure to do so, the Office shall seize the license.

(g) The Office, upon request, shall publish a list of the names and addresses of all licensees under the provisions of this Act. The Office shall publish a list of all persons whose licenses have been disciplined within the past year, together with such other information as it may consider of interest to the public.

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

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

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

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

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

Section 905. The Illinois Explosives Act is amended by changing Section 2001 as follows:

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

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

(Source: P.A. 86-364.)

Section 910. The Fireworks Use Act is amended by changing Section 2 as follows:

(425 ILCS 35/2) (from Ch. 127 1/2, par. 128)

Sec. 2. Except as hereinafter provided it shall be unlawful for any person, firm, co-partnership, or corporation to knowingly possess, offer for sale, expose for sale, sell at retail, or use or explode any fireworks; provided that city councils in cities, the president and board of trustees in villages and incorporated towns, and outside the corporate limits of cities, villages and incorporated towns, the county board, shall have power to adopt reasonable rules and regulations for the granting of permits for supervised public displays of fireworks. Every such display shall be handled by a competent individual who is licensed as a lead pyrotechnic operator designated-by-the-local-authorities-herein-specified and--shall--be-of-such-a-character-and-so-located,-discharged

~~er-fired, as not to be hazardous to property or endanger any~~
~~person or persons.~~ Application for permits shall be made in writing at least 15 days in advance of the date of the display and action shall be taken on such application within 48 hours after such application is made. After such privilege shall have been granted, sales, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

Permits may be granted hereunder to any groups of 3 or more adult individuals applying therefor. No permit shall be required, under the provisions of this Act, for supervised public displays by State or County fair associations.

The governing body shall require proof of insurance a bond from the permit applicant licensee in a sum not less than \$1,000,000 \$1,000 conditioned on compliance with the provisions of this law and the regulations of the State Fire Marshal adopted hereunder, except that no municipality shall be required to provide evidence of insurance file-sueh-bond.

Such permit shall be issued only after inspection of the display site by the issuing officer, to determine that such display shall be in full compliance with the rules of the State Fire Marshal, which shall be based upon nationally recognized standards such as those of the National Fire Protection Association (NFPA) 1123 guidelines for outdoor displays and NFPA 1126 guidelines for indoor displays and shall not be hazardous to property or endanger any person or persons. Nothing in this Section shall prohibit the issuer of the permit from adopting more stringent rules.

All indoor pyrotechnic displays shall be conducted in buildings protected by automatic sprinkler systems.

The chief of the fire department providing fire protection coverage to the area of display, or his or her designee, shall sign the permit. Forms-for--sueh--applicatien

~~and--permit-may-be-obtained-from-the-Office-of-the-State-Fire
Marshal.--One-copy-of-such-permit-shall-be-on-file--with--the
issuing--officer,--and-one-copy-forwarded-to-the-Office-of-the
State-Fire-Marshal.~~

Possession by any party holding a certificate of registration under "The Fireworks Regulation Act of Illinois", filed July 20, 1935, or by any employee or agent of such party or by any person transporting fireworks for such party, shall not be a violation, provided such possession is within the scope of business of the fireworks plant registered under that Act.

(Source: P.A. 86-1028.)

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