An Act

ENROLLED SENATE
BILL NO. 844

By: Anderson and Barrington of the Senate

and

Armes, Shelton and Roan of the House

An Act relating to fireworks displays; stating purpose; defining terms; requiring licensing for certain persons or entities; providing licensing procedures; requiring certain insurance coverage; providing licensing specifications; requiring State Fire Marshal to maintain list of licensed operators; mandating the list be posted on website of State Fire Marshal; providing renewal procedures; authorizing the State Fire Marshal to refuse, suspend or revoke any license; directing the State Fire Marshal to establish licensing program to include certain criteria; requiring applicants to meet certain requirements; establishing a fee; providing for deposit of fee; providing for expiration and renewal of licenses; making certain conduct unlawful; stating penalty; authorizing certain municipal ordinances; providing certain exemption; providing certain storage standards; requiring enforcement by the State Fire Marshal and authorizing assistance; authorizing development of rules; amending 68 O.S. 2001, Section 1625, as amended by Section 4, Chapter 408, O.S.L. 2010 (68 O.S. Supp. 2010, Section 1625), which relates to fireworks license fees; updating due date for payment of fees; modifying recipient of fees; authorizing payment of certain fee under certain circumstances; providing for codification; and providing an effective date.

SUBJECT: Fireworks

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

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

A. The purpose of this act is to enact a licensing program for outdoor display fireworks for Oklahoma entities and a licensing program for individuals conducting outdoor fireworks displays in this state. The purpose of these programs is to ensure a level of competence that promotes safety for the public, fire service personnel, and fireworks display operators and their employees and service personnel. It is not the purpose of this act to regulate United States Department of Transportation Division 1.4G consumer fireworks as defined by NFPA standards or paragraph 2 of Section 1622 of Title 68 of the Oklahoma Statutes.

B. As used in this act:

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

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

3. "Display fireworks" means fireworks devices that are primarily intended for commercial displays which are designed to produce visible and/or audible effects by combustion, deflagration or detonation. Display fireworks include, but are not limited to, salutes containing more than two grains (130mg) of explosive composition, aerial shells containing more than forty (40) grams of pyrotechnic compositions and other exhibition display items that

exceed the limits for consumer fireworks according to the United States Department of Transportation (DOT);

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

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

6. "NFPA" means the National Fire Protection Association;

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

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

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

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

11. "Proximate pyrotechnics" means pyrotechnic devices for professional use only, used outdoors or indoors, that are similar to

consumer fireworks in chemical composition but that are not intended for consumer use, and that are defined by NFPA 1126 as 1.4G or 1.4S fireworks or pyrotechnics;

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

13. "Sponsor" means any person or organization which contracts with a licensed entity, licensed distributor or licensed outdoor display operator to conduct a fireworks display.

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

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

B. To receive a manufacturer, distributor or wholesaler license, an applicant shall make application to the State Fire Marshal on a form prescribed by the State Fire Marshal. The application shall be accompanied by the required fee. An individual seeking a license as a sole proprietor or on behalf of a business entity shall be at least twenty-one (21) years of age and shall not have been convicted of or pled guilty or nolo contendere to any state or federal felony. In the case of a business seeking a license, no officer or member of its governing board shall have been convicted of or pled guilty or nolo contendere to any state or federal felony.

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

Applications for permits for display fireworks shall be submitted in writing prior to the date of display to the Authority Having Jurisdiction (AHJ) as defined by the NFPA 1123 where the display is to occur. If the display is in an area outside the

jurisdiction of a municipality, application for the permit shall be submitted in writing to the Office of the State Fire Marshal ten (10) days prior to the date of the display. Every display shall be under the direction of a competent, responsible, licensed outdoor display operator, of legal age, and shall be conducted under the code of regulations as adopted by the State Fire Marshal Commission. The individual or organization applying for a permit shall submit to the AHJ evidence of a general liability insurance policy in an amount of not less than One Million Dollars ($1,000,000.00) or the amount set forth by the local governing authority. Before a permit is granted, a local fire inspector or an agent of the State Fire Marshal shall inspect and approve or reject the site of the display. No permit so granted shall be transferable.

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

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

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

A holder of an operator's license with an unexpired license may apply for a new license at any time before the license expires.

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

The State Fire Marshal may refuse to grant, or may suspend, revoke, or refuse to renew, any license or certification held under the provisions of this act. The provisions of the Administrative Procedures Act shall govern all matters and procedures respective to hearings and judicial review of any contested case arising under this act.

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

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

1. Complete eight (8) hours of classroom and hands-on training;

2. Take and pass a written examination approved by and conducted under the auspices of the State Fire Marshal that tests outdoor operator knowledge; and

3. Pay a license fee not to exceed Seventy-five Dollars ($75.00), to be deposited in the State Fire Marshal Revolving Fund.

B. The State Fire Marshal shall establish the scope and type of curriculum and examinations required by subsection A of this section, and may require applicants to take a test created by a nationally recognized pyrotechnic association. The State Fire Marshal may administer the examination or may enter into an agreement with a testing service or organization. The tests may be administered at a specific location or time. The State Fire Marshal may set by rule and collect a reasonable fee calculated to cover the costs of classroom instruction and administering the test. Written tests may be supplemented by practical tests or demonstrations

deemed necessary to determine the skill and ability of the applicant. The content, type, frequency, and location of the training and testing shall be designated by the State Fire Marshal.

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

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

A. It is unlawful for anyone other than a licensed outdoor display operator to conduct an outdoor display using only display fireworks.

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

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

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

E. Any municipality may adopt the provisions of subsections A and B of this section by reference or substantial duplication as an ordinance violation.

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

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

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

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

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

1. Certification of or licensing of outdoor display operators;

2. Training;

3. Examinations;

4. The responsible handling of display fireworks; and

5. Any other reasonable rules the State Fire Marshal deems necessary to implement this act.

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

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

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

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

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

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

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

4. Any person operating a retail location where fireworks are sold directly to the consumer shall be required to purchase a retail fireworks license. The retail license fee shall be Ten Dollars ($10.00) annually and may be purchased from any licensed wholesaler, manufacturer or distributor. These serially numbered licenses shall be made available at any time to the licensed wholesalers, manufacturers or distributors in books of twenty ~~(20)~~ licenses to a book. Retail licenses which are unsold may be exchanged for new licenses. Any person purchasing a retail fireworks license pursuant to this paragraph shall, at the time of purchasing such license, sign an affidavit attesting to the fact that the name, mailing address and telephone number of the purchaser as it appears on such license is correct and that the purchaser operates a retail location where fireworks are sold directly to the consumer. Said affidavit shall be an integral but easily detachable part of the application form for a retail fireworks license. Any person who signs said affidavit as required by this paragraph when such person knows that it is not true, upon conviction, shall be guilty of the felony of perjury and shall be punished as provided for by law.

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

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

Passed the Senate the 5th day of May, 2011.

Presiding Officer of the Senate

Passed the House of Representatives the 20th day of April, 2011.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 9th

day of May, **20** 11,

at 3:32 **o'clock** P **M.**

By: Jennie R Byers

Approved by the Governor of the State of Oklahoma the 13th **day of**

May, **20** 11, **at** 11:04 **o'clock** AM

Mary Fallin

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

13th **day of** May, **20** 11,

at 1:45 **o'clock** P **M.**

By: Michelle R Day