

AN ACT concerning regulation.

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

Section 5. 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 Distributor and Operator Licensing Act.

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

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

(225 ILCS 227/1)

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

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

(225 ILCS 227/5)

Sec. 5. Definitions. In this Act:

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

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

"Consumer fireworks" means fireworks that must comply with the construction, chemical composition, and labeling regulations of the U.S. Consumer Products Safety Commission, as

set forth in 16 C.F.R. Parts 1500 and 1507, and classified as fireworks UN0336 or UN0337 by the United States Department of Transportation under 49 C.F.R. 172.101. "Consumer fireworks" does not include a substance or article exempted under the Fireworks Use Act.

"Display fireworks" means ~~any substance or article defined as a Division 1.3G or special effects fireworks 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.~~

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

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

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

"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 or flame effects to produce a visual or audible effect of an exhibitional nature before the public, invitees, or licensees, regardless of

whether admission is charged.

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

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

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

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

(225 ILCS 227/10)

Sec. 10. License; enforcement. No person may act as a pyrotechnic distributor or lead pyrotechnic operator, or advertise or use any title implying that the person is a pyrotechnic distributor or 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 pyrotechnic distributor license issued by the Office. No pyrotechnic display shall be conducted without 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.

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

(225 ILCS 227/30)

Sec. 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 pyrotechnic distributors and 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 proximate audience indoor displays, and NFPA 160 for flame effect displays. The State Fire Marshal shall conduct the training and examination of pyrotechnic operators and pyrotechnic distributors or may delegate the responsibility to train and examine pyrotechnic distributors and operators to the Department of Natural Resources. ~~The Fire Marshal shall adopt rules as required for the licensing of a lead pyrotechnic operator involved in an outdoor or indoor pyrotechnic display.~~

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

(225 ILCS 227/35)

Sec. 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 January 1, 2006 ~~April 1, 2005~~, all pyrotechnic displays, both indoor and outdoor, must comply with the requirements set forth in this Act.

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

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

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

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

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

(5) A license fee set by the Office.

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

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

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

(c-5) After January 1, 2006, 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) (Blank) ~~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.

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

(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.

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

(225 ILCS 227/50)

Sec. 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. The license shall include the name of the pyrotechnic distributor employing the lead pyrotechnic operator. A lead pyrotechnic operator is required to have a separate license for each pyrotechnic distributor who employs the lead pyrotechnic operator.

(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.

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

(225 ILCS 227/57 new)

Sec. 57. Training; additional lead pyrotechnic operators. No pyrotechnic distributor shall allow any person in the pyrotechnic distributor's employ to act as a lead pyrotechnic

operator until the person has obtained a lead pyrotechnic operator's license from the Office. Nothing in this Section shall prevent an assistant from acting as a lead pyrotechnic operator under the direct supervision of a licensed lead pyrotechnic operator for training purposes.

(225 ILCS 227/65)

Sec. 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 lead pyrotechnic operator or assistant ~~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 in those circumstances where a license is required.

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

(225 ILCS 227/75)

Sec. 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 the ~~his or her~~ license.

(5) A statement that rules for the conduct of these hearings exist and that it may be in the licensee's ~~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.

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

(225 ILCS 227/90)

Sec. 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 pyrotechnic distributor or 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.

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

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