

1 AMENDMENT TO HOUSE BILL 1482

2 AMENDMENT NO. _____. Amend House Bill 1482 by replacing
3 everything after the enacting clause with the following:

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

6 Section 5. Definitions. In this Act:

7 "Display fireworks" means any substance or article
8 defined as a Division 1.3G or 1.4 explosive by the United
9 States Department of Transportation under 49 CFR 173.50.

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

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

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

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

22 "Pyrotechnic display" or "display" means the detonation,

1 ignition, or deflagration of display fireworks to produce a
2 visual or audible effect of an exhibitional nature before the
3 public, invitees, or licensees, regardless of whether
4 admission is charged.

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

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

3 Section 30. Rules. The State Fire Marshal shall adopt
4 all rules necessary to carry out its responsibilities under
5 this Act including rules requiring the training, examination,
6 and licensing of lead pyrotechnic operators engaging in or
7 responsible for the handling and use of Division 1.3G (Class
8 B) and 1.4 (Class C) explosives. The test shall incorporate
9 the rules of the State Fire Marshal, which shall be based
10 upon nationally recognized standards such as those of the
11 National Fire Protection Association (NFPA) 1123 guidelines
12 for outdoor displays and NFPA 1126 for indoor displays. The
13 Fire Marshal shall adopt rules as required for the licensing
14 of a lead pyrotechnic operator involved in an outdoor or
15 indoor pyrotechnic display.

16 Section 35. Licensure requirements and fees.

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

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

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

- 31 (1) Pay the fees set by the Office.
- 32 (2) Have the requisite training or continuing

1 education as established in the Office's rules.

2 (3) Pass the examination presented by the Office.

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

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

7 (2) Has not willfully violated any provisions of
8 this Act.

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

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

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

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

21 (7) Is not a fugitive from justice.

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

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

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

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

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

34 (5) Has not been convicted in any jurisdiction of

1 any felony within the prior 5 years.

2 (6) Is not a fugitive from justice.

3 Section 40. Fingerprint card; fees. Each applicant shall
4 file with his or her application a fingerprint card in the
5 form and manner required by the Department of State Police to
6 enable the Department of State Police to conduct a criminal
7 history check on the applicant.

8 Each applicant for a license shall submit, in addition to
9 the license fee, a fee specified by the Department of State
10 Police for processing fingerprint cards, which may be made
11 payable to the State Police Services Fund and shall be
12 remitted to the Department of State Police for deposit into
13 that Fund.

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

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

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

31 (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
3 Act shall be set by rule. Failure to renew within 60 days of
4 the 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.
11 A lapsed license may not be reinstated after 5 years have
12 elapsed except upon passing an examination to determine
13 fitness to have the license restored and by paying the
14 required fees.

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

16 Section 55. Insufficient funds checks. Any person who on
17 2 occasions issues or delivers a check or other order to the
18 Office that is not honored by the financial institution upon
19 which it is drawn because of insufficient funds on account
20 shall pay to the Office, in addition to the amount owing upon
21 the check or other order, a fee of \$50. If the check or other
22 order was issued or delivered in payment of a renewal fee and
23 the licensee whose license has lapsed continues to practice
24 without paying the renewal fee and the \$50 fee required under
25 this Section, an additional fee of \$100 is imposed for
26 practicing without a current license. The Office may revoke
27 or refuse to issue the license or licenses of any person who
28 fails to pay the requisite fees.

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

31 (a) As a condition of renewal of a license, the Office
32 may require the licensee to report information pertaining to

1 the person's practice in relation to this Act that the Office
2 determines to be in the interest of public safety.

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

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

7 (d) If a license or certificate is lost, a duplicate
8 shall be issued upon payment of the required fee to be
9 established by the Office. If a licensee wishes to change his
10 or her name, the Office shall issue a license in the new name
11 upon satisfactory proof that the change of name was done in
12 accordance with law and upon payment of the required fee.

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

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

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

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

28 (3) Conviction of any crime that has a substantial
29 relationship to his or her practice or an essential
30 element of which is misstatement, fraud, dishonesty, or
31 conviction in this or another state of any crime that is
32 a felony under the laws of Illinois or conviction of a
33 felony in a federal court, unless the licensee

1 demonstrates that he or she has been sufficiently
2 rehabilitated to warrant the public trust.

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

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

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

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

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

19 (9) Engaging in unprofessional conduct.

20 (10) Engaging in false or misleading advertising.

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

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

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

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

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

1 Section 75. Formal charges; hearing.

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

6 (b) Each licensee whose conduct is the subject of a
7 formal charge that seeks to impose disciplinary action
8 against the licensee shall be served notice of the formal
9 charge at least 30 days before the date of the hearing. The
10 hearing shall be presided over by the Office or a hearing
11 officer authorized by the Office in compliance with the
12 Illinois Administrative Procedure Act. Service shall be
13 considered to have been given if the notice was personally
14 received by the licensee or if the notice was mailed
15 certified, return requested, to the licensee at the
16 licensee's last known address as listed with the Office.

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

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

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

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

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

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

33 (6) A statement that the hearing officer authorized
34 by the Office shall preside at the hearing and, following

1 the conclusion of the hearing, make findings of fact,
2 conclusions of law, and recommendations, separately
3 stated, to the Office as to what disciplinary action, if
4 any, should be imposed on the licensee.

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

7 (d) The Office or the hearing officer authorized by the
8 Office shall hear evidence produced in support of the formal
9 charges and contrary evidence produced by the licensee, if
10 any. If the hearing is conducted by a hearing officer, at the
11 conclusion of the hearing, the hearing officer shall make
12 findings of fact, conclusions of law, and recommendations,
13 separately stated, and submit them to the Office and to all
14 parties to the proceeding. Submission to the licensee shall
15 be considered as having been made if done in a similar
16 fashion as service of the notice of formal charges. Within 20
17 days after the service, any party to the proceeding may
18 present to the Office a motion, in writing, for a rehearing.
19 The written motion shall specify the particular grounds for
20 the rehearing.

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

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

1 Section 80. Sanctions.

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

6 (1) revocation;

7 (2) suspension for any period of time;

8 (3) reprimand or censure;

9 (4) place on probationary status and require the
10 submission of any of the following:

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

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

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

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

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

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

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

5 (d) The Office shall reinstate any license to good
6 standing under this Act, upon recommendation to the Office,
7 after a hearing before the hearing officer authorized by the
8 Office. The Office shall be satisfied that the applicant's
9 renewed practice is not contrary to the public interest.

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

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

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

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

32 (c) The Office of the State Fire Marshal, at its
33 expense, shall provide a stenographer or a mechanical

1 recording device to record the testimony and preserve a
2 record of all proceedings at the hearing of any case in which
3 a license may be revoked, suspended, placed on probationary
4 status, or other disciplinary action taken with regard to the
5 license. The notice of hearing, complaint, and all other
6 documents in the nature of pleadings and written motions
7 filed in the proceedings, the transcript of testimony, the
8 report of the hearing officer and the orders of the State
9 Fire Marshal shall constitute the record of the proceedings.
10 The Office shall furnish a transcript of the record to any
11 interested person upon payment of the costs of copying and
12 transmitting the record.

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

32 (e) An order of revocation, suspension, placing the
33 license on probationary status, or other formal disciplinary
34 action as the State Fire Marshal may consider proper, or a

1 certified copy of the order over the seal of the Office and
2 purporting to be signed by the State Fire Marshal, is prima
3 facie proof that:

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

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

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

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

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

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

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

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

33 (2) Obtaining or attempting to obtain a license,

1 practice or business, or any other thing of value by
2 fraudulent representation;

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

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

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

15 (225 ILCS 210/2001) (from Ch. 96 1/2, par. 1-2001)

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

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

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

23 (425 ILCS 35/2) (from Ch. 127 1/2, par. 128)

24 Sec. 2. Except as hereinafter provided it shall be
25 unlawful for any person, firm, co-partnership, or corporation
26 to knowingly possess, offer for sale, expose for sale, sell
27 at retail, or use or explode any fireworks; provided that
28 city councils in cities, the president and board of trustees
29 in villages and incorporated towns, and outside the corporate
30 limits of cities, villages and incorporated towns, the county

1 board, shall have power to adopt reasonable rules and
2 regulations for the granting of permits for supervised public
3 displays of fireworks. Every such display shall be handled by
4 a competent individual who is licensed as a lead pyrotechnic
5 operator designated by the local authorities herein specified
6 and shall be of such a character and so located, discharged
7 or fired, as not to be hazardous to property or endanger any
8 person or persons. Application for permits shall be made in
9 writing at least 15 days in advance of the date of the
10 display and action shall be taken on such application within
11 48 hours after such application is made. After such privilege
12 shall have been granted, sales, possession, use and
13 distribution of fireworks for such display shall be lawful
14 for that purpose only. No permit granted hereunder shall be
15 transferable.

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

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

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

1 the permit from adopting more stringent rules.

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

4 The chief of the fire department providing fire
5 protection coverage to the area of display, or his or her
6 designee, shall sign the permit. Forms for such application
7 and permit may be obtained from the Office of the State Fire
8 Marshal. One copy of such permit shall be on file with the
9 issuing officer, and one copy forwarded to the Office of the
10 State Fire Marshal.

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

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

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