



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB3537

Introduced 2/23/2005, by Rep. Angelo Saviano

SYNOPSIS AS INTRODUCED:

225 ILCS 210/2001 from Ch. 96 1/2, par. 1-2001
225 ILCS 227/1
225 ILCS 227/5
225 ILCS 227/10
225 ILCS 227/30
225 ILCS 227/35
225 ILCS 227/50
225 ILCS 227/57 new
225 ILCS 227/65
225 ILCS 227/75
225 ILCS 227/90

Amends the Pyrotechnic Operator Licensing Act by changing the short title to the Pyrotechnic Distributor and Operator Licensing Act and amends the Illinois Explosives Act to reflect that change. Defines "pyrotechnic distributor". Provides for licensure requirements and rules for a pyrotechnic distributor (in addition to a lead pyrotechnic operator). Provides that after January 1, 2006, no person may engage in pyrotechnic distribution and no individual may act as a lead operator in a pyrotechnic display without first applying for and obtaining a license (now, after April 1, 2005, no individual may act as a lead operator in a pyrotechnic display without applying for and obtaining a license). Provides that an applicant for a license as a pyrotechnic distributor shall not be granted a license if the distributor or any of its officers, if applicable, was convicted of a felony in the 5 years preceding the date of the application. Provides that no pyrotechnic distributor shall allow any person in the pyrotechnic distributor's employ to act as a lead pyrotechnic distributor until the person has obtained a lead pyrotechnic operator license from the Office of the State Fire Marshal. Effective immediately.

LRB094 11221 RAS 41943 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT in relation to pyrotechnic displays.

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

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

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

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

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

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

15 (225 ILCS 227/1)

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

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

19 (225 ILCS 227/5)

20 Sec. 5. Definitions. In this Act:

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

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

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

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

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

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

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

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

19 (225 ILCS 227/10)

20 Sec. 10. License; enforcement. No person may act as a
21 pyrotechnic distributor or lead pyrotechnic operator, or
22 advertise or use any title implying that the person is a
23 pyrotechnic distributor or lead pyrotechnic operator, unless
24 licensed by the Office under this Act. An out-of-state person
25 hired for or engaged in a pyrotechnic display must have a
26 pyrotechnic distributor license issued by the Office and a
27 person licensed under this Act as a lead pyrotechnic operator
28 supervising the display. The State Fire Marshal, in the name of
29 the People, through the Attorney General, the State's Attorney
30 of any county, any resident of the State, or any legal entity
31 within the State may apply for injunctive relief in any court
32 to enjoin any person who has not been issued a license or whose
33 license has been suspended, revoked, or not renewed, from
34 practicing a licensed activity. Upon filing a verified petition
35 in court, the court, if satisfied by affidavit, or otherwise,

1 that the person is or has been practicing in violation of this
2 Act, may enter a temporary restraining order or preliminary
3 injunction, without bond, enjoining the defendant from further
4 unlicensed activity. A copy of the verified complaint shall be
5 served upon the defendant and the proceedings are to be
6 conducted as in other civil cases. The court may enter a
7 judgment permanently enjoining a defendant from further
8 unlicensed activity if it is established that the defendant has
9 been or is practicing in violation of this Act. In case of
10 violation of any injunctive order or judgment entered under
11 this Section, the court may summarily try and punish the
12 offender for contempt of court. Injunctive proceedings are in
13 addition to all penalties and other remedies in this Act.

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

15 (225 ILCS 227/30)

16 Sec. 30. Rules. The State Fire Marshal shall adopt all
17 rules necessary to carry out its responsibilities under this
18 Act including rules concerning pyrotechnic distributors and
19 rules requiring the training, examination, and licensing of
20 lead pyrotechnic operators engaging in or responsible for the
21 handling and use of Division 1.3G (Class B) and 1.4 (Class C)
22 explosives. The pyrotechnic distributor's training program
23 ~~test~~ shall incorporate the rules of the State Fire Marshal,
24 which shall be based upon nationally recognized standards such
25 as those of the National Fire Protection Association (NFPA)
26 1123 guidelines for outdoor displays and NFPA 1126 for indoor
27 displays. The Fire Marshal shall adopt rules as required for
28 the licensing of all pyrotechnic distributors and a lead
29 pyrotechnic operators ~~operator~~ involved in an outdoor or indoor
30 pyrotechnic display.

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

32 (225 ILCS 227/35)

33 Sec. 35. Licensure requirements and fees.

34 (a) Each application for a license to practice under this

1 Act shall be in writing and signed by the applicant on forms
2 provided by the Office. The Office shall have the testing
3 procedures for licensing as a lead pyrotechnic operator
4 developed by October 1, 2004.

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

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

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

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

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

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

20 (5) A license fee of \$5,000 for the issuance of a
21 pyrotechnic distributor's license.

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

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

26 (c-2) An applicant for a license as a pyrotechnic
27 distributor shall not be granted a license if the distributor
28 or any of its officers, if applicable, was convicted of a
29 felony in the 5 years preceding the date of the application.

30 (c-5) After January 1, 2006, no individual may act as a
31 lead operator in a pyrotechnic display without first applying
32 for and obtaining a lead pyrotechnic operator's license from
33 the Office. The Office shall establish separate licenses for
34 lead pyrotechnic operators for indoor and outdoor pyrotechnic
35 displays. Applicants for a license must:

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

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

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

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

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

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

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

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

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

19 (6) Has not been convicted in any jurisdiction of any
20 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 the
23 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 this
26 Act.

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

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

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

35 (6) Is not a fugitive from justice.

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

1 (225 ILCS 227/50)

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

3 (a) The Office, upon the applicant's satisfactory
4 completion of the requirements imposed under this Act and upon
5 receipt of the requisite fees, shall issue the appropriate
6 license showing the name, address, and photograph of the
7 licensee and the dates of issuance and expiration. The license
8 shall include the name of the pyrotechnic distributor employing
9 the lead pyrotechnic operator. A lead pyrotechnic operator is
10 required to have a separate license for each pyrotechnic
11 distributor who employs the lead pyrotechnic operator.

12 (b) Each licensee may apply for renewal of his or her
13 license upon payment of the applicable fees. The expiration
14 date and renewal period for each license issued under this Act
15 shall be set by rule. Failure to renew within 60 days of the
16 expiration date results in lapse of the license. A lapsed
17 license may not be reinstated until a written application is
18 filed, the renewal fee is paid, and the reinstatement fee
19 established by the Office is paid. Renewal and reinstatement
20 fees shall be waived for persons who did not renew while on
21 active duty in the military and who file for renewal or
22 restoration within one year after discharge from the service. A
23 lapsed license may not be reinstated after 5 years have elapsed
24 except upon passing an examination to determine fitness to have
25 the license restored and by paying the required fees.

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

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

28 (225 ILCS 227/57 new)

29 Sec. 57. Training; additional lead pyrotechnic operators.
30 No pyrotechnic distributor shall allow any person in the
31 pyrotechnic distributor's employ to act as a lead pyrotechnic
32 operator until the person has obtained a lead pyrotechnic
33 operator's license from the Office.

1 (225 ILCS 227/65)

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

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

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

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

22 (4) Performing any service in a grossly negligent
23 manner or permitting any lead pyrotechnic operator
24 ~~licensed employee~~ to perform a service in a grossly
25 negligent manner, regardless of whether actual damage or
26 damage to the public is established.

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

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

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

35 (8) Making differential treatment against any person
36 to his or her detriment because of race, color, creed, sex,

1 religion, or national origin.

2 (9) Engaging in unprofessional conduct.

3 (10) Engaging in false or misleading advertising.

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

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

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

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

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

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

18 (225 ILCS 227/75)

19 Sec. 75. Formal charges; hearing.

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

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

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

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

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

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

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

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

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

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

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

35 (e) The Office, following the time allowed for filing a
36 motion for rehearing, shall review the hearing officer's

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

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

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

13 (225 ILCS 227/90)

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

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

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

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

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

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

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

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