

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 992
PROPOSED HOUSE COMMITTEE SUBSTITUTE S992-PCS65076-RO-107

Short Title: Pyrotechnics Operator's License.

(Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND AND CLARIFY THE PYROTECHNICS TRAINING AND PERMITTING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G. S. 58-82A-1 reads as rewritten:

"§ 58-82A-1. (Effective February 1, 2010) State Fire Marshal establish pyrotechnic safety guidelines.

(a) Guidelines. – The Commissioner of Insurance through the Office of State Fire Marshal, in consultation with the State Fire and Rescue Commission, must establish guidelines, testing, and training requirements for the following:

(1) Individuals who assist a display operator with the exhibition, use, handling, or discharge of pyrotechnics in connection with a concert or public exhibition authorized under Article 54 of Chapter 14 of the General Statutes.

(2) Individuals seeking to obtain a display operator ~~permit~~ license, proximate audience display operator license, assistant display operator license, or temporary license under this Article.

(b) Definitions. – The definitions in G.S. 14-410 apply in this Article.

(c) Rule making. – The Commissioner may adopt rules to implement this Article."

SECTION 2. Article 82A of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-82A-1A. **Definitions.**

The following definitions apply in this Article:

(1) Assistant display operator – means an individual who, under the supervision of the display operator, assists with the safety, setup and discharge of a pyrotechnic display, and who is licensed pursuant to this Article.

(2) Event employee – means an individual who works under the supervision of the display operator and who assists with the safety, setup and discharge of a pyrotechnic display, but does not handle the pyrotechnic materials.

(3) Outdoor pyrotechnics display – means a pyrotechnic display that is outdoors and uses 1.4g, 1.3g, 1.2g, and 1.1g pyrotechnics and is a minimum of 75 feet from the audience in accordance with NFPA 1123.

(4) Pyrotechnics – means all fireworks not exempted by G.S. 14-414 and that are used for professional outdoor displays and classified as fireworks by



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1 UN033 (1.1G), UN0334 (1.2G), UN0335 (1.3G), or UN0336 (1.4G) by the
2 United States Department of Transportation under 49 C.F.R. 172.101.

3 (5) Pyrotechnics display operator – means an individual who is responsible for
4 the safety, setup and discharge of the pyrotechnic display, who is responsible
5 for the supervision of personnel at the pyrotechnic display, and who is
6 licensed under this Article.

7 (6) Proximate audience display – means a display of pyrotechnics that occurs
8 within a building or structure or that occurs outside before an audience
9 within 75 feet of the pyrotechnics in accordance with NFPA 1126.

10 (7) Proximate audience display operator – means an individual who is
11 responsible for the safety, setup and discharge of the proximate audience
12 display, and who is licensed under this Article.

13 (8) Supervision – means the direction and management of the activities of
14 personnel in the safety, setup, handling and display of an outdoor
15 pyrotechnic display, a proximate audience display, or a flame effect
16 display."

17 **SECTION 3.** Article 82A of Chapter 58 of the General Statutes is amended by
18 adding a new section to read:

19 **"§ 58-82A-1B. Commissioner of Insurance to administer Article; rules; employees;**
20 **evidence of Commissioner's action.**

21 (a) The Commissioner shall have full power and authority to administer the provisions
22 of this Article, which establishes guidelines for the use, handling, exhibiting, or discharge of
23 pyrotechnics in connection with a concert or public exhibition, as allowed under Article 54 of
24 Chapter 14 of the General Statutes, and to license and regulate pyrotechnic operators. The
25 Commissioner shall adopt any rules necessary to enforce the purposes and provisions of this
26 Article.

27 (b) Any written instrument purporting to be a copy of any action, proceeding, or finding
28 of fact by the Commissioner, or any record of the Commissioner authenticated under the head
29 of the Commissioner by the seal the Commissioner's office shall be accepted by all courts of
30 this State as prima facie evidence of the contents thereof."

31 **SECTION 4.** Article 82A of Chapter 58 of the General Statutes is amended by
32 adding a new section to read:

33 **"§ 58-82A-2A. Require licenses.**

34 (a) No person shall obtain a pyrotechnics permit under Article 54 of Chapter 14 of the
35 General Statutes unless the person possesses the appropriate license, as provided by this
36 Article.

37 (b) An applicant for a license authorized by this Article shall apply on forms supplied
38 by the Commissioner. The Commissioner shall inquire as to the applicant's qualifications and
39 other matters relative to the applicant's fitness to be licensed or to continue to be licensed.

40 (c) When a license is issued under this section, the Commissioner shall issue to the
41 licensee an identification card approved by the Commissioner. Each licensee must carry this
42 card at all times when working in the scope of the licensee's employment. A licensee whose
43 license terminates or is terminated shall surrender the identification card to the Commissioner,
44 when requested by the Commissioner. The Commissioner may contract directly with persons
45 for the processing and issuance of identification cards required by this section and may charge
46 a reasonable fee in addition to the license fee in an amount that offsets the cost of the service,
47 including the costs associated with the contract authorized by this subsection. Contracts entered
48 into under this subsection shall not be subject to Article 3 of Chapter 143 of the General
49 Statutes."

50 **SECTION 5.** Article 82A of Chapter 58 of the General Statutes is amended by
51 adding a new section to read:

1 "§ 58-82A-2B. Terms of licenses.

2 A license issued to a pyrotechnics display operator, a proximate audience display operator,
3 or an assistant display operator under this Article authorizes the licensee to act in that capacity
4 until the license is suspended, revoked, or not renewed. Upon the suspension or revocation of a
5 license, or the failure to renew a license, the licensee shall return the license to the
6 Commissioner. A pyrotechnics display operator's license, a proximate audience display
7 operator's license, and an assistant display operator's license may be renewed every three years
8 from the date of issuance upon payment of the applicable renewal fee."

9 **SECTION 6.** G.S. 58-82A-3 reads as rewritten:

10 "§ 58-82A-3. (Effective February 1, 2010) Display operator permit license.

11 (a) Permit License Required. – A display operator ~~permit license~~ issued by the State
12 ~~Fire Marshal Commissioner~~ is required for an individual to obtain the necessary authorization
13 under Article 54 of Chapter 14 of the General Statutes to exhibit, use, handle, manufacture, or
14 discharge pyrotechnics at a concert or public exhibition in this State. A ~~permit license~~ issued
15 under this section is valid for three years unless it is revoked by the ~~State Fire Marshal~~
16 ~~Commissioner~~.

17 (b) Requirements. – The ~~State Fire Marshal Commissioner~~ may issue a display operator
18 ~~permit license~~ to an individual if all of the following conditions are met:

- 19 (1) The individual is at least 21 years of age.
20 (2) The individual has ~~assisted with~~ acted as an operator for the exhibition, use,
21 or display of pyrotechnics at a concert or public exhibition, as allowed under
22 Article 54 of Chapter 14 of the General Statutes, on at least three occasions.
23 (3) The individual successfully completes the minimum training requirements
24 established by the State Fire Marshal.
25 (4) The individual ~~successfully passes~~ achieves a score of at least seventy-five
26 percent (75%) on an examination approved by the State Fire Marshal that
27 demonstrates the individual has the knowledge to safely handle, store, and
28 exhibit Class ~~1.3g and 1.4g~~ 1.4g, 1.3g, 1.2g, and 1.1g pyrotechnics or
29 provides satisfactory evidence of current certification by a third party
30 acceptable to the State Fire Marshal.
31 (5) ~~The individual pays an application fee not to exceed one hundred dollars~~
32 ~~(\$100.00) and the cost of the examination.~~
33 (6) The individual has no violations of any provision of this Article or of any
34 similar provision of any other state and submits an "Employer Possessor
35 Letter of Clearance" issued to the individual by the Bureau of Alcohol,
36 Tobacco and Firearms pursuant to 18 U.S.C. Chapter 40 or, if the Bureau of
37 Alcohol, Tobacco and Firearms has not issued a Letter of Clearance to the
38 individual, the individual signs a statement provided by the Commissioner
39 affirming that the individual has not been convicted of violating 18 U.S.C.
40 Chapter 40 Section 842(i).

41 (c) Reciprocity.— ~~The State Fire Marshal may issue a display operator permit to an~~
42 ~~individual who holds a permit or certification issued by another state, provided the minimum~~
43 ~~requirements of that state are at least equal to the minimum requirements under this section and~~
44 ~~the person pays the application fee required under subsection (b) of this section.~~

45 (d) Refusal and Revocation.— ~~The State Fire Marshal may refuse to issue a permit or~~
46 ~~may revoke a permit issued under this section if any of the following apply:~~

- 47 (1) ~~The display operator violates any provision of this Article.~~
48 (2) ~~The display operator violates any requirement of a permit issued under~~
49 ~~G.S. 14-413.~~

- 1 (3) ~~The display operator fails to provide direct supervision and control over~~
2 ~~individuals who assist the permit operator in handling, using, exhibiting, or~~
3 ~~displaying pyrotechnics.~~
4 (4) ~~The display operator is convicted of a crime under Article 54 of Chapter 14~~
5 ~~of the General Statutes.~~
6 (5) ~~Another state revokes the permit or certification issued to that display~~
7 ~~operator by that state."~~

8 **SECTION 7.** Article 82A of Chapter 58 of the General Statutes is amended by
9 adding the following new sections to read:

10 **"§ 58-82A-4. Proximate audience display operator license.**

11 The Commissioner may issue a proximate audience display operator license to an
12 individual who meets all of the following requirements:

- 13 (1) Is at least 21 years of age at the time of application.
14 (2) Completes the training program approved by the Commissioner for
15 pyrotechnic display operators or another program which the Commissioner
16 determines to be substantially equivalent.
17 (3) Achieves a score of at least seventy-five percent (75%) on the written
18 examination provided by the Commissioner.
19 (4) Submits evidence of active participation as an operator in the safe
20 performance of three proximate audience displays. The applicant shall have
21 performed the duties of a display operator on at least two of these proximate
22 audience displays under the supervision of a display operator.
23 (5) Has not violated any provision of this Article or of any similar provision of
24 any other state.

25 **"§ 58-82A-5. Assistant display operator license.**

26 (a) No person shall assist a pyrotechnics display operator, or a proximate audience
27 display operator with the exhibition, use, handling or discharge of pyrotechnics or pyrotechnic
28 effects in connection with a concert or public exhibition authorized under Article 54 of Chapter
29 14 of the General Statutes without an assistant display operator's license issued by the
30 Commissioner.

31 (b) The Commissioner may issue an assistant display operator license to an individual
32 who meets all of the following requirements:

- 33 (1) Is at least 18 years of age.
34 (2) Signs a statement provided by the Commissioner affirming that the
35 individual has read and understands the pyrotechnics safety guidelines
36 established by the Office of State Fire Marshal.
37 (3) Achieves a score of at least seventy-five percent (75%) on the written
38 examination provided by the Commissioner.
39 (4) Submits an "Employee Possessor Letter of Clearance" issued to the
40 individual by the Bureau of Alcohol, Tobacco and Firearms pursuant to 18
41 U.S.C. Chapter 40, or, if the Bureau of Alcohol, Tobacco and Firearms has
42 not issued a Letter of Clearance to the individual, the individual signs a
43 statement provided by the Commissioner affirming that the individual has
44 not been convicted of violating 18 U.S.C. Chapter 40 Section 842(i).

45 **"§ 58-82A-6. License fees.**

46 (a) A nonrefundable license fee of one hundred dollars (\$100.00) shall be paid by the
47 applicant to the Commissioner at the time of each application for a pyrotechnics display
48 operator license.

49 (b) A nonrefundable license fee of one hundred dollars (\$100.00) shall be paid by the
50 applicant to the Commissioner at the time of each application for a license as a proximate
51 audience display operator license.

1 (c) A nonrefundable license fee of thirty dollars (\$30.00) shall be paid to the
2 Commissioner by the applicant with each application for a license as an assistant display
3 operator.

4 **"§ 58-82A-7. Qualifications for event employees.**

5 (a) Notwithstanding the provisions of this Article, the Commissioner or the fire code
6 official for the jurisdiction issuing the pyrotechnics permit under G.S. 14-413 may certify an
7 individual as an event employee if the individual meets the following requirements:

- 8 (1) Is at least 18 years of age.
- 9 (2) Possesses and provides a valid drivers license or other state-issued
10 identification card.
- 11 (3) Correctly passes an on-site examination administered by the Office of State
12 Fire Marshal or fire code official for the jurisdiction issuing the permit under
13 G.S. 14-413 of five questions to test basic pyrotechnic safety knowledge.
- 14 (4) Provides written confirmation from the licensed display operator that the
15 event employee is working under the supervision of the display operator and
16 that the event employee will not handle the pyrotechnic materials. An event
17 employee certification is valid only for the concert or public exhibition listed
18 on the pyrotechnic permit and cannot be renewed.

19 **"§ 58-82A-8. Examination fees.**

20 (a) Each applicant for a license as a pyrotechnic display operator, a proximate audience
21 display operator, or assistant display operator shall take a written examination approved by the
22 Commissioner. The Commissioner may contract with a person to process, administer, and
23 grade the examination in the same manner as for agent examinations under Article 33 of this
24 Chapter. The Commissioner may charge a fee to offset the costs of the contract for examination
25 services.

26 (b) The fee for the examination is ten dollars (\$10.00). The examination fee is
27 nonrefundable.

28 **"§ 58-82A-9. Renewal fees.**

29 (a) To renew a license as a pyrotechnics display operator, a proximate audience display
30 operator, or an assistant display operator, a licensee shall make application to the
31 Commissioner upon the renewal application form provided by the Commissioner and attest that
32 the statements made in the application are true, correct, and complete to the best of the
33 individual's knowledge and belief. Failure to provide the attestation or providing untrue,
34 incorrect, or incomplete statements shall be grounds for denial, suspension, or revocation of the
35 license.

36 (b) Before approving the application for renewal, the Commissioner shall find that the
37 licensee:

- 38 (1) Has not committed any act which is grounds for denial, suspension,
39 nonrenewal, or revocation under this Article.
- 40 (2) Has not had administrative action taken against a pyrotechnics display
41 operator's license or the equivalent, by this or any other state.
- 42 (3) Has on at least three occasions participated in the use, handling, exhibiting,
43 or discharge of pyrotechnics in connection with a concert or public
44 exhibition pursuant to the terms of the license.
- 45 (4) Has paid the applicable fees set forth in this Article.
- 46 (5) Has completed a minimum of 12 hours of continuing education during the
47 previous three-year period.

48 (c) The renewal fee for a pyrotechnics display operator license and a proximate
49 audience display operator license is sixty dollars (\$60.00). The renewal fee for an assistant
50 display operator license is thirty dollars (\$30.00).

51 **"§ 58-82A-10. Dual license holding.**

1 If any individual holds more than one license issued under this Article simultaneously, they
2 are considered one license for the purpose of disciplinary actions involving suspension,
3 revocation, or nonrenewal under this Article. Separate fees must be paid for each license.

4 **"§ 58-82A-11. Reciprocity.**

5 The Commissioner may issue a display operator license to an individual who holds a valid
6 permit, license, or certification issued by another state, provided the minimum requirements of
7 that state are at least equal to the minimum requirements under this Article and the person pays
8 the application fee required under this Article.

9 **"§ 58-82A-12. Discipline.**

10 The Commissioner may deny, suspend, revoke, or refuse to renew any license under this
11 Article if any of the following apply:

- 12 (1) The licensee violates any provision of this Article.
- 13 (2) The applicant or licensee violates any requirement of a permit issued under
14 G.S. 14-413.
- 15 (3) A licensed display operator fails to provide direct supervision and control
16 over individuals who assist the licensee in handling, using, exhibiting, or
17 displaying pyrotechnics.
- 18 (4) A licensed display operator is convicted of a crime under Article 54 of
19 Chapter 14 of the General Statutes.
- 20 (5) Another state revokes the permit, license, or certification issued to the
21 licensee by that state.
- 22 (6) A material misstatement, misrepresentation, or fraud was committed in
23 obtaining a license under this Article.
- 24 (7) Cheating on an examination required by this Article.
- 25 (8) Knowingly aiding or abetting others to evade or violate the provisions of this
26 Article.
- 27 (9) Any cause for which the issuance of the license could have been denied had
28 it then existed and been known to the Commissioner at the time of issuance.

29 **"§ 58-82A-13. License sanction and denial procedures.**

30 (a) The suspension or revocation of, or refusal to renew, any license under this Article
31 may be contested in accordance with the provisions of Article 3A of Chapter 150B of the
32 General Statutes.

33 (b) Whenever the Commissioner denies an initial application for a license or an
34 application for a reissuance of a license, the Commissioner shall notify the applicant and advise
35 the applicant, in writing, of the reasons for the denial of the license. The application may also
36 be denied for any reason for which a license may be suspended or revoked or not renewed
37 under this Article. In order for an applicant to be entitled to a review of the Commissioner's
38 action, the applicant must make a written demand upon the Commissioner for a review no later
39 than 30 days after the service of the notification upon the applicant. The review shall be
40 completed without undue delay, and the applicant shall be notified promptly in writing of the
41 outcome of the review. In order for an applicant who disagrees with the outcome of the review
42 to be entitled to a hearing under Article 3A of Chapter 150B of the General Statutes, the
43 applicant must make a written demand upon the Commissioner for a hearing no later 30 days
44 after service upon the applicant of the Commissioner's decision."

45 **SECTION 8.** G.S. 14-410(a1) reads as rewritten:

46 "(a1) It shall be permissible for pyrotechnics to be exhibited, used, handled,
47 manufactured, or discharged within the State, provided all of the following apply:

- 48 (1) The exhibition, use, or discharge is at a concert or public exhibition.
- 49 (2) All individuals who exhibit, use, handle, or discharge pyrotechnics in
50 connection with a concert or public exhibition have completed the training
51 required under G.S. 58-82A-2 and are under the direct supervision and

1 control of a display operator who holds a display operator ~~permit~~ license
2 issued by the ~~State Fire Marshal~~ Commissioner of Insurance under
3 G.S. 58-82A-3. An individual who, under the supervision of the display
4 operator, assists with the safety, setup, and discharge of a pyrotechnic
5 display must be licensed in accordance with G.S. 58-82A-5. The display
6 operator must be present at the concert or public exhibition and must
7 personally direct all aspects of exhibiting, using, handling, or discharging the
8 pyrotechnics.

- 9 (3) The display operator has secured written authority under G.S. 14-413 from
10 the board of county commissioners of the county, or the city if authorized
11 under G.S. 14-413(a1), in which the pyrotechnics are to be exhibited, used or
12 discharged. Written authority from the board of commissioners or city is not
13 required under this subdivision for a concert or public exhibition provided
14 the display operator has secured written authority from The University of
15 North Carolina or the University of North Carolina at Chapel Hill under
16 G.S. 14-413, and pyrotechnics are exhibited on lands or buildings in Orange
17 County owned by The University of North Carolina or the University of
18 North Carolina at Chapel Hill."

19 **SECTION 9.** There is appropriated from the General Fund the sum of one hundred
20 sixty thousand dollars (\$160,000) on a recurring basis to the Office of State Fire Marshal for
21 positions for the administration and enforcement of this Article. This amount is to be repaid to
22 the General Fund by the Department of Insurance from the Insurance Regulatory Surcharge
23 Fund.

24 **SECTION 10.(a)** Notwithstanding the provisions of Article 82A of Chapter 58 of
25 the General Statutes, the Commissioner of Insurance may issue a temporary display operator
26 license to any individual who meets the following qualifications:

- 27 (1) Is at least 21 years of age.
28 (2) Provides evidence of completion of a minimum of six North Carolina
29 permitted displays within the past 10 years.

30 **SECTION 10.(b)** A temporary display operator's license issued pursuant to this
31 section shall be issued to a person only one time and shall be valid for 30 days after issuance. A
32 person issued a temporary license shall take the written exam required by Article 82A of
33 Chapter 58 of the General Statutes and complete the training program approved by the
34 Commissioner for pyrotechnic displays, or another program the Commissioner determines to be
35 substantially equivalent, no later than September 30, 2010, or 60 days after the effective date of
36 this act. Any person not in compliance with this subsection shall not be allowed to apply for a
37 license until after September 30, 2011. In no event shall a temporary license be issued after July
38 31, 2010.

39 **SECTION 10.(c)** The fee for a temporary license is twenty-five dollars (\$25.00).

40 **SECTION 11.** This act is effective when it becomes law.