

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SENATE BILL 992
RATIFIED BILL**

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 the 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, or assistant display operator 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. – 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. – 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. – 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. – All fireworks not exempted by G.S. 14-414 and that are used for professional outdoor displays and classified as fireworks by UN0333 (1.1G), UN0334 (1.2G), UN0335 (1.3G), or UN0336 (1.4G) by the United States Department of Transportation under 49 C.F.R. § 172.101.
- (5) Pyrotechnics display operator. – An individual who is responsible for the safety, setup, and discharge of the pyrotechnic display, who is responsible for the supervision of personnel at the pyrotechnic display, and who is licensed under this Article.
- (6) Proximate audience display. – A display of pyrotechnics that occurs within a building or structure or that occurs outside before an audience within 75 feet of the pyrotechnics in accordance with NFPA 1126.
- (7) Proximate audience display operator. – An individual who is responsible for the safety, setup, and discharge of the proximate audience display and who is licensed under this Article.
- (8) Supervision. – The direction and management of the activities of personnel in the safety, setup, handling, and display of an outdoor pyrotechnic display, a proximate audience display, or a flame effect display."



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

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

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

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

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

"§ 58-82A-2A. Require licenses.

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

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

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

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

"§ 58-82A-2B. Terms of licenses.

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

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

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

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

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

- (1) The individual is at least 21 years of age.
- (2) The individual has assisted a display operator as an assistant display operator ~~in~~with the exhibition, use, or display of pyrotechnics at a concert or public exhibition, as allowed under Article 54 of Chapter 14 of the General

Statutes, on at least three occasions, or is a proximate audience display operator.

- (3) The individual successfully completes the minimum training requirements established by the State Fire Marshal.
- (4) The individual successfully passes an examination approved by the State Fire Marshal that demonstrates the individual has the knowledge to safely handle, store, and exhibit Class 1.3g and 1.4g, 1.3g, 1.2g, and 1.1g pyrotechnics or provides satisfactory evidence of current certification by a third party acceptable to the State Fire Marshal.
- (5) The individual pays an application fee not to exceed one hundred dollars (\$100.00) and the cost of the examination.
- (6) The individual has no violations of any provision of this Article or of any similar provision of any other state and submits an "Employer Possessor Letter of Clearance" issued to the individual by the Bureau of Alcohol, Tobacco and Firearms pursuant to 18 U.S.C. Chapter 40 or, if the Bureau of Alcohol, Tobacco and Firearms has not issued a Letter of Clearance to the individual, the individual signs a statement provided by the Commissioner affirming that the individual has not been convicted of violating 18 U.S.C. Chapter 40, Section 842(i).

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

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

- (1) The display operator violates any provision of this Article.
- (2) The display operator violates any requirement of a permit issued under G.S. 14-413.
- (3) The display operator fails to provide direct supervision and control over individuals who assist the permit operator in handling, using, exhibiting, or displaying pyrotechnics.
- (4) The display operator is convicted of a crime under Article 54 of Chapter 14 of the General Statutes.
- (5) Another state revokes the permit or certification issued to that display operator by that state."

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

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

A proximate audience display operator license issued by the Commissioner is required for an individual to obtain the necessary authorization under Article 54 of Chapter 14 of the General Statutes to exhibit, use, handle, manufacture, or discharge pyrotechnics at a concert or public exhibition with a proximate audience display of pyrotechnics in this State. The Commissioner may issue a proximate audience display operator license to an individual who meets all of the following requirements:

- (1) Is at least 21 years of age at the time of application.
- (2) Completes the training program approved by the Commissioner for pyrotechnic proximate audience display operators or another program which the Commissioner determines to be substantially equivalent.
- (3) Successfully passes the written examination provided by the Commissioner.
- (4) Submits evidence of active participation as a display operator in the safe performance of at least three displays or as an assistant display operator in the safe performance of at least three displays under the direct supervision of a display operator.
- (5) Has no violations of any provision of this Article or of any similar provision of any other state and submits an "Employer Possessor Letter of Clearance" issued to the individual by the Bureau of Alcohol, Tobacco and Firearms pursuant to 18 U.S.C. Chapter 40 or, if the Bureau of Alcohol, Tobacco and Firearms has not issued a Letter of Clearance to the individual, the individual signs a statement provided by the Commissioner affirming that

the individual has not been convicted of violating 18 U.S.C. Chapter 40, Section 842(i).

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

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

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

- (1) Is at least 18 years of age.
- (2) Signs a statement provided by the Commissioner affirming that the individual has read and understands the pyrotechnics safety guidelines established by the Office of the State Fire Marshal.
- (3) Successfully passes the written examination provided by the Commissioner.
- (4) Has no violations of any provision of this Article or of any similar provision of any other state and submits an "Employer Possessor Letter of Clearance" issued to the individual by the Bureau of Alcohol, Tobacco and Firearms pursuant to 18 U.S.C. Chapter 40 or, if the Bureau of Alcohol, Tobacco and Firearms has not issued a Letter of Clearance to the individual, the individual signs a statement provided by the Commissioner affirming that the individual has not been convicted of violating 18 U.S.C. Chapter 40 Section 842(i).

"§ 58-82A-6. License fees.

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

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

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

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

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

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

"§ 58-82A-8. Examination fees.

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

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

"§ 58-82A-9. Renewal fees.

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

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

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

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

"§ 58-82A-10. Dual license holding.

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

"§ 58-82A-11. Reciprocity.

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

"§ 58-82A-12. Discipline.

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

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

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

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

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

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

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

- (1) The exhibition, use, or discharge is at a concert or public exhibition.
- (2) All individuals who exhibit, use, handle, or discharge pyrotechnics in connection with a concert or public exhibition have completed the training and licensing required under ~~G.S. 58-82A-2~~ and ~~are under the direct supervision and control of a display operator who holds a display operator permit issued by the State Fire Marshal under G.S. 58-82A-3.~~ Article 82A of Chapter 58 of the General Statutes. The display operator or proximate audience display operator, as required under Article 82A of Chapter 58 of the General Statutes, must be present at the concert or public exhibition and must personally direct all aspects of exhibiting, using, handling, or discharging the pyrotechnics.
- (3) The display operator has secured written authority under G.S. 14-413 from the board of county commissioners of the county, or the city if authorized under G.S. 14-413(a1), in which the pyrotechnics are to be exhibited, used or discharged. Written authority from the board of commissioners or city is not required under this subdivision for a concert or public exhibition provided the display operator has secured written authority from The University of North Carolina or the University of North Carolina at Chapel Hill under G.S. 14-413, and pyrotechnics are exhibited on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel Hill."

SECTION 9.(a) The Commissioner of Insurance may issue a temporary display operator's license to any individual who meets the following qualifications:

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

SECTION 9.(b) A temporary display operator's license issued pursuant to this section shall be issued to a person only one time and shall be valid for 30 days after issuance. A person issued a temporary license shall take the written exam required by Article 82A of Chapter 58 of the General Statutes and complete the training program approved by the Commissioner for pyrotechnic displays, or another program the Commissioner determines to be substantially equivalent, no later than the earlier of September 30, 2010, or 60 days after the effective date of this act. Any person not in compliance with this section shall not be allowed to apply for a license until after September 30, 2011. In no event shall a temporary license be issued after July 31, 2010.

SECTION 9.(c) The fee for a temporary display operator's license is twenty-five dollars (\$25.00) for each license issued.

SECTION 10. The Rules Review Commission shall not disapprove any rule adopted by the Commissioner of Insurance that requires successful passage of an examination for pyrotechnics operator under this act.

SECTION 11. Article 87 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-87-7. Oversight and accountability of grant awards.

To increase accountability and to expedite receipt of certain grant awards, notwithstanding any other provision, the Office of the State Fire Marshal and other employees of the Department of Insurance may in their discretion conduct on-site examinations of fire, rescue, and EMS equipment and supplies purchased with funds awarded from either the Volunteer Fire Department Fund or the Volunteer Rescue/EMS Fund. The on-site examinations may include the inspection of equipment purchased from prior grants and may be conducted prior to or simultaneous with the delivery of the grant awards. The on-site examination shall document what equipment and supplies have been purchased by the volunteer fire department or volunteer rescue/EMS department and whether those items were received by the department and visually reviewed by the on-site examiner. Items that have already been distributed or put in the field shall be noted by the on-site examiner. The Office of the State Fire Marshal shall maintain records of on-site inspections and provide them, or a summary thereof, in reports to the State Auditor or the Office of State Budget and Management."

SECTION 12. Sections 9, 10, and 12 of this act are effective when they become law. Section 11 becomes effective July 1, 2010. The remainder of this act becomes effective October 1, 2010.

In the General Assembly read three times and ratified this the 23rd day of June, 2010.

Walter H. Dalton
President of the Senate

Joe Hackney
Speaker of the House of Representatives

Beverly E. Perdue
Governor

Approved _____ .m. this _____ day of _____, 2010