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Bill Analysis

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Primary Sponsors: Reps. D. Manning and O'Brien

Andrew Little, Attorney

SUMMARY

Normal effective date:

- Establishes the Ohio Fire Code Rule Recommendation Committee to review the Fireworks Law and make recommendations to the State Fire Marshal.
- Extends, until December 15, 2021, a general moratorium on the issuance of a new fireworks manufacturer license or fireworks wholesaler license.
- Requires the State Fire Marshal to adopt rules no later than March 17, 2020, that allow licensed fireworks manufacturers or wholesalers to transfer their licenses to new locations.
- Changes the expiration date of a general moratorium on the geographic transfer of fireworks manufacturer or wholesaler licenses from December 31, 2019, to June 1, 2020.
- Increases from 5,000 to 10,000 square feet the maximum floor area of a retail sales showroom that a licensed fireworks manufacturer or wholesaler uses to sell consumer grade fireworks.
- Requires the State Fire Marshal to adopt rules regulating the time, manner, and location of consumer fireworks use.
- Creates a new license allowing retailers to sell ground-based or hand-held sparklers called "fountain devices."
- Requires the State Fire Marshal to adopt rules for and enforce the new provisions for fountain device retailers.

Effective June 1, 2020:

- Eliminates the requirement that purchasers of consumer grade fireworks must transport those fireworks out of Ohio within 48 hours of purchase and allows those purchasers to possess those fireworks within Ohio.
- Allows any person authorized to possess consumer grade fireworks to discharge, ignite, or explode those fireworks on the person’s own property or with the property owner’s permission.
- Permits local governments to restrict the dates and times that a person may discharge, ignite, or explode consumer fireworks or ban the discharge, ignition, or explosion of those fireworks.
- Prohibits discharging, igniting, or exploding fireworks (1) while in possession of, or under the influence of, alcohol or a controlled substance or (2) on the property of another without the owner’s permission.
- Requires a licensed manufacturer or licensed wholesaler who is selling consumer grade fireworks to have safety glasses available for free or at a nominal charge.
- Requires the State Fire Marshal to prepare a pamphlet that explains how to use consumer grade fireworks safely and to distribute the pamphlet to licensed wholesalers and manufacturers and requires wholesalers and manufacturers to distribute a copy to each consumer purchaser.
- Imposes a fee on the retail sale of consumer grade fireworks.
- Credits revenue from the new fee to fund firefighter training programs and the State Fire Marshal’s regulation and enforcement of the fireworks industry.

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DETAILED ANALYSIS

Fire Code Rule Recommendation Committee

The bill creates the Ohio Fire Code Rule Recommendation Committee to review any sections of the Fireworks Law and make a recommendation to the State Fire Marshal. At a minimum, the Committee must make a recommendation relating to all of the following:

- Licensure to manufacture fireworks, the operation of fireworks plants, licensure of fireworks wholesalers, and the operations of fireworks wholesalers;
- The purchase of 1.4G consumer fireworks;
- The moratorium on licenses described in “**Fireworks license moratorium,**” below;
- State Fire Marshal rulemaking of building code requirements for 1.3G display fireworks manufacturing facilities;
- Development of a licensing program for fireworks wholesalers and manufacturers.

The Committee must meet periodically, with the first meeting not later than September 30, 2019. It must submit its report and recommendations to the State Fire Marshal by December 31, 2019.

The Committee is to be made up of the following individuals:

1. The State Fire Marshal, or the State Fire Marshal’s designee;
2. Four local fire chiefs appointed by the Ohio Fire Chiefs’ Association, or appointed by the Association’s designee;
3. A local police chief appointed by the Attorney General, or the Attorney General’s designee;
4. Five members of the Ohio State Pyrotechnics Association, appointed by the president of the Association, one of whom must be a licensed wholesaler, one of whom must be a licensed exhibitor, and one of whom must be a licensed manufacturer;
5. One member of Prevent Blindness Ohio, or the Organization’s designee;
6. One member of the Ohio Optometric Association or the Association’s designee;
7. One member of the Ohio Pyrotechnic Arts Guild or the Guild’s designee;

8. One representative of the Ohio Chapter of the American Academy of Pediatrics, appointed by the president of the Ohio Chapter;
9. One member of the Ohio Council of Retail Merchants or the Council's designee.¹

Fountain device retailer licenses

The bill creates a new license for retailers who wish to sell what are called fountain devices. Under the bill, a “**fountain device**” is defined as a specific type of 1.4G consumer grade firework, a ground-based or hand-held sparkler with one or more tubes containing a nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition and that contains no more than 75 grams of the mixture in any individual tube and no more than 500 grams of the mixture in total.²

Licensing process

The bill requires persons who wish to be licensed as fountain device retailers to apply to the State Fire Marshal before October 1 of any given year. An application must be submitted for each location at which the person wishes to sell fountain devices, and each application must include:

- A license fee, to be set by the State Fire Marshal at \$25 or less;
- An affidavit affirming that the applicant is in compliance with the National Fire Protection Association's standard “NFPA 1124, Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles (2006 Edition)” (**NFPA 1124**) or that they will be in compliance before engaging in the storage and sale of fountain devices;
- Proof of insurance in an amount and type specified by the State Fire Marshal in rules.

The bill requires the State Fire Marshal to review timely submitted applications and determine if they comply with its requirements. If they do, the State Fire Marshal must issue a fountain device retailer license.³

The bill establishes several general standards with respect to licenses. First, licenses are effective for one year beginning on December 1. Second, licenses can only be issued on that date. Third, the State Fire Marshal must send licensees a written notice of expiration three months before expiration. (See **COMMENT 1**) Fourth, licensees must apply for renewal licenses by October 1 of the year the license expires. Outside of the general rules, the bill provides one-time licensing procedures for the first year of the program's operation.

¹ R.C. 3743.67.

² R.C. 3743.01(H); Section 3. While the bill explicitly states an effective date of October 2, 2019, for these provisions, that date has passed.

³ R.C. 3743.26(A) and (B).

Any person wishing to be licensed as a retailer of fountain devices on June 1, 2020, shall submit an application by April 1, 2020. If an application is received by that date, and if the State Fire Marshal determines that it meets the bill's licensing requirements, the Fire Marshal must issue a license on June 1, 2020. Any license issued on that date is effective through November 30, 2021.⁴

Licensed fountain device retailer operations

Licensed fountain device retailers are authorized, under the bill, to possess fountain devices and sell them at retail. Possession and storage of the devices, though, must comply with NFPA 1124. The possession, storage, *and sale* of the devices must also comply with any rules adopted by the State Fire Marshal pursuant to the bill (see "**Rules for fountain device retailers**," below) and sales are restricted to purchasers who are at least 18 years old. All sales must be conducted from the licensed location and be made inside of a licensed building. Sales from any structure or device outside of a licensed building, such as a tent or trailer, are prohibited.

Additionally, purchasers must be provided with the pamphlet and opportunity to obtain safety glasses that the bill requires for other consumer-grade fireworks sales. (See "**Safety glasses and pamphlets required**," below.) A licensee that negligently fails to provide the pamphlet or opportunity to obtain safety glasses is guilty of a second degree misdemeanor.⁵

Rules for fountain device retailers

The bill requires the State Fire Marshal to adopt rules under the Administrative Procedure Act. The bill requires that the rules be designed to promote the safety and security of employees, the public, and the premises from which fountain devices are sold. They must be consistent with the Revised Code as it pertains to fountain device retailers, and NFPA 1124. At a minimum, the rules must address the following:

- With respect to buildings and other structures on a retailer's premises:
 - Cleanliness and orderliness;
 - Heating, lighting, and use of stoves and flame-producing items;
 - The availability of fire extinguishers or other fire-fighting equipment and their use;
 - Emergency procedures.
- Storage of fountain devices;
- Insurance.

⁴ R.C. 3743.26(C) through (E).

⁵ R.C. 3743.27 and 3743.99(G).

The bill requires the State Fire Marshal to file the rules with the Joint Committee on Agency Rule Review no later than March 17, 2020. Filing by that date will allow the rules to go into effect, at the earliest, on June 1, 2020.⁶

Enforcement authority

The bill grants the State Fire Marshal authority to inspect a fountain device retailer's premises, inventory, and retail sale records to ensure compliance with the Fireworks Law and the State Fire Marshal's rules. If an inspection reveals noncompliance, the State Fire Marshal has discretion to do one or more of the following:

- Order the retailer, in writing, to eliminate, correct, or otherwise remedy the issues by a certain date;
- Order the retailer, in writing, to immediately cease the storage and sale of fountain devices.
- Revoke, or deny the renewal of a license pursuant to the Administrative Procedure Act. If a license is revoked, the State Fire Marshal must remove the retailer's name from the list of licensed retailers and must notify local law enforcement of a revocation or refusal to renew.⁷

Fireworks license moratorium

The bill extends until December 15, 2021, a general moratorium on the issuance by the State Fire Marshal of a license as a fireworks manufacturer to a person for a particular fireworks plant or a license as a fireworks wholesaler to a person for a particular location unless the person possessed such a license for that plant or location immediately prior to June 29, 2001. Under current law, this moratorium ends December 31, 2020.

The bill also specifically states that after December 15, 2021, the State Fire Marshal may issue new fireworks manufacturer and wholesaler licenses, but those licenses shall not be approved in a manner that unduly burdens the State Fire Marshal's ability to ensure public safety.⁸

Geographic transfer of fireworks license

Under the bill, the State Fire Marshal must develop rules, in consultation with the fireworks industry and other interested parties, that allow a licensed manufacturer or wholesaler to transfer their license from one geographic location to another. The bill requires the State Fire Marshal to file those rules with the Joint Committee on Agency Rule Review no

⁶ R.C. 3743.28; Joint Committee on Agency Rule Review, Filing-Date Calculator, *available at* <http://www.jcarr.state.oh.us/filers/date-calculators> (accessed September 6, 2019).

⁷ R.C. 3743.29.

⁸ R.C. 3743.75(A)(1) and (D). The version of R.C. 3743.75 in the bill does not reflect the amendment of that section by H.B. 166 of the 133rd General Assembly.

later than March 17, 2020. If the rules are filed by that date, the earliest they may take effect is June 1, 2020.

If the State Fire Marshal determines that an application for the geographic transfer of a license complies with the new rules, the license may be transferred. The bill also extends the current moratorium on geographic transfers, which is scheduled to expire on December 31, 2020, until on June 1, 2020.

Wholesaler licenses, which may be transferred within the same municipal corporation or the unincorporated area of the same township under continuing law variance procedures, continue to be able to transfer the license under those procedures.⁹

Showroom size

Under continuing law, a licensed manufacturer or wholesaler may sell consumer grade fireworks only from a representative sample showroom or a retail sales showroom. If a retail sales showroom is used (and first began to operate on or after June 30, 1997), the showroom structures must comply with specified safety requirements, including a size limitation for the floor area to which the public has access for retail purposes. The bill increases the size limit from 5,000 square feet to 10,000 square feet in floor area.¹⁰

Consumer-grade fireworks

State residents: purchase and possession

Under continuing law, “1.4G fireworks” are consumer grade fireworks designated under division 1.4 of the U.S. Department of Transportation’s regulations.¹¹ The bill continues to allow Ohio residents to possess consumer fireworks but eliminates, beginning in June 2020, the requirement that an Ohio resident who purchases these fireworks must transport the fireworks out of Ohio within 48 hours after the purchase.¹² Under current law, a purchaser may only obtain possession of consumer fireworks from a manufacturer or wholesaler licensed under the Fireworks Law. The bill adds licensed fountain device retailers to that list.¹³

Out-of-state residents: purchase and possession

The bill eliminates, beginning in June 2020, the current law requirement that an out-of-state resident purchasing consumer fireworks must transport them directly out of Ohio within 48 hours.¹⁴

⁹ R.C. 3743.17(F), 3743.591, and 3743.75(A)(2) and (B); Joint Committee on Agency Rule Review, *Date Calculator* available at www.jcarr.state.oh.us under the “For Rule Filers” tab (accessed July 17, 2019).

¹⁰ R.C. 3743.25(C)(2).

¹¹ R.C. 3743.01.

¹² R.C. 3743.45(A) and 3743.63(C) and (D).

¹³ R.C. 3743.45 and 3743.63(D).

¹⁴ R.C. 3743.44(A) and (B), 3743.63(A), and Section 3.

Use and regulation

Beginning in June 2020, any person who is authorized to possess consumer fireworks under the bill (both Ohio residents and nonresidents) may discharge, ignite, or explode those fireworks in Ohio on the person's own property or on another person's property with permission. Consumer fireworks discharged, ignited, or exploded in accordance with this authorization are not considered a "public exhibition" and are therefore not subject to additional state regulations pertaining to public exhibitions.¹⁵

The bill does, however, require the State Fire Marshal to adopt rules regulating the time, manner, and location of consumer grade fireworks discharged under this authorization. The rules must permit adult consumers to safely and responsibly use consumer grade fireworks on their own property or on property where they have the owner's express permission, and are not to be construed as a de facto ban on such discharge. The rules may, however, include provisions requiring that all fireworks be used only in accordance with manufacturer's instructions and provisions for all of the following:

- The use of aerial fireworks;
- Separation distances between fireworks discharges, ignitions, or explosions and adjacent structures, railroads, roadways, airports, publicly owned or controlled places, and places where hazardous materials are manufactured, used, or stored;
- Fireworks usage on common areas of multi-tenant properties;
- The suspension of fireworks discharges, ignitions, or explosions during times of drought or similar conditions;
- The proximity of fireworks discharges, ignitions, or explosions to children;
- Any other similar matters.

The bill requires the State Fire Marshal to file those rules with the Joint Committee on Agency Rule Review no later than March 17, 2020. If the rules are filed by that date, the earliest they may take effect is June 1, 2020.¹⁶

While the bill prohibits the State Fire Marshal's rules from banning the discharge of consumer grade fireworks, it specifically permits a county (with respect to its unincorporated portions), township (with respect to its unincorporated parts), or municipal corporation to restrict the dates and times that a person may discharge, ignite, or explode consumer fireworks or ban the discharge, ignition, or explosion of those fireworks. The bill also specifies that a

¹⁵ R.C. 3743.45(B) and (C), and Section 3, with conforming changes in R.C. 3743.04, 3743.17, 3743.63, and 3743.65.

¹⁶ R.C. 3743.451 and Section 3; and R.C. 3743.54, not in the bill; Joint Committee on Agency Rule Review, *Date Calculator* available at www.jcarr.state.oh.us under the "For Rule Filers" tab (accessed July 17, 2019).

resolution to this effect adopted by a board of township trustees prevails over a conflicting resolution adopted by the board of county commissioners in the county within which the township is located. The consumer fireworks changes in the bill do not limit the enforcement of an ordinance, resolution, or statute that regulates noise, disturbance of the peace, or disorderly conduct.¹⁷

Safety glasses and pamphlets required

Beginning in June 2020, any licensed retailer, licensed manufacturer, or licensed wholesaler selling consumer grade fireworks other than to a licensed manufacturer, wholesaler, or exhibitor must offer safety glasses for free at the point of sale or make them available to the purchaser for a nominal charge. The bill also requires the State Fire Marshal, beginning in June 2020, to design a pamphlet that explains how to use consumer grade fireworks safely and to distribute the design to licensed retailers, manufacturers, and wholesalers who sell consumer grade fireworks. A licensed retailer, manufacturer, or wholesaler who sells consumer grade fireworks to a consumer must provide a copy of the State Fire Marshal's pamphlet to each purchaser of consumer grade fireworks who is not a licensed retailer, manufacturer, wholesaler, or exhibitor.

A licensed retailer, manufacturer, or wholesaler who fails to comply with the bill's pamphlet or safety glasses requirement is guilty of a second degree misdemeanor.¹⁸

Display-grade fireworks

Under continuing law, "1.3G fireworks" are display grade fireworks designated under division 1.3 of the U.S. Department of Transportation's regulations.¹⁹ The bill eliminates, beginning in June 2020, the requirement that a nonresident may possess display fireworks in Ohio only while directly transporting the fireworks out of Ohio, and that the nonresident do so within 48 hours of purchase. The bill maintains, however, a criminal prohibition on a nonresident's failure to transport display fireworks out of Ohio within 72 hours, a first degree misdemeanor.

The bill also maintains requirements that individuals purchasing display-grade fireworks do so only from licensed fireworks manufacturers and wholesalers and that manufacturers and wholesalers only sell display fireworks to persons who have an appropriate license.²⁰ (See **COMMENT 2.**)

¹⁷ R.C. 3743.45(D) and (E).

¹⁸ R.C. 3743.27(B) and (C), 3743.47, 3743.60(K) and (L), 3743.61(K) and (L), and 3743.99(G) and Section 3.

¹⁹ R.C. 3743.01.

²⁰ R.C. 3743.44, 3743.63(A) and (B), and 3743.99(C), conforming change in R.C. 3743.45(B).

New prohibitions

The bill prohibits, beginning in June 2020, any person from negligently discharging, igniting, or exploding fireworks while in possession or control of, or under the influence of, any intoxicating liquor, beer, or controlled substance. A person who violates this prohibition is guilty of a first degree misdemeanor. The bill also specifies that, regardless of any other law that specifies otherwise, a person may be convicted of both that violation and a disorderly conduct violation for the same underlying conduct.

The bill also prohibits, beginning in June 2020, any person from negligently discharging, igniting, or exploding fireworks on the property of another person without that person's permission. A person who violates this prohibition is guilty of a minor misdemeanor.²¹

Consumer-grade fireworks fee

For the purpose of providing revenue to fund training programs and the enforcement and regulation of the fireworks industry, the bill imposes a fee on licensed retailers, licensed manufacturers, and licensed wholesalers selling consumer-grade fireworks. The fee is set at 4% of each licensed retailer's, manufacturer's, and wholesaler's gross receipts from the retail sale of consumer-grade fireworks beginning in 2020. The bill excludes from "gross receipts" sales tax the retailer, manufacturer, or wholesaler collects on behalf of the state or local governments.

The bill requires retailers, manufacturers, and wholesalers to report and remit the fee to the State Fire Marshal no later than the 23rd day after the end of each "**fee period**," set by the bill as October 1 through September 30, annually.

While the bill requires licensed retailers, manufacturers, and wholesalers to remit the fee to the State Fire Marshal, it also specifies that they may separately or proportionately bill or invoice the fee to others.

The fee's proceeds are to be credited to the Fireworks Fee Receipts Fund, which the bill creates. The State Fire Marshal is required to use $\frac{7}{8}$ of the money in the fund for firefighter training programs. The remaining $\frac{1}{8}$ is to be used to pay the State Fire Marshal's expenses in administering the Fireworks Law.²²

In the event the State Fire Marshal determines that a licensee has failed to timely report and remit the fee due, the State Fire Marshal may either:

- Order the licensee to report and remit the fee within a specified timeframe;
- Revoke or deny renewal of the license, which requires the licensee to immediately cease operations and prohibits, for two years, licensed manufacturers and licensed wholesalers from applying for new licenses.

²¹ R.C. 3743.65(G) and (H) and 3743.99(F) and (H).

²² R.C. 3743.22(A) to (C).

The State Fire Marshal is also permitted to adopt rules necessary to administer and enforce the fee.²³

COMMENT

1. The bill's current wording, establishing that fountain device retailer licenses are effective for one year beginning on December 1, and that a notice must be sent no more than three months before a license expires presents an interesting interaction of several provisions in Ohio law. First, the law states that "year" means 12 consecutive months (R.C. 1.44). The law also, provides that if a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of the month (R.C. 1.45).

Because a license is effective for one year, stated otherwise as 12 full months, beginning on December 1, the last day it is effective is November 30 of the following year. That leaves a question though, as to whether the expiration date is November 30, the last day the license is effective, or December 1, the first day the license is not effective. *Black's Law Dictionary's* entry for "expiration date" provides support for either reading: "The date after which something cannot or should not be used; esp., the date on which an offer, option, or the like ceases to exist." The definition's reference to "the date after which something cannot be used" supports a conclusion that the expiration date is November 30, in which case the notice must be sent on August 31. That being said, a technical amendment is suggested remove the ambiguity by setting a date certain for notice.

2. Continuing law prohibits fireworks manufacturers and wholesalers from selling fireworks to an out-of-state resident unless (1) the person possesses (and presents) a fireworks manufacturer's, seller's, or exhibitor's license or permit from their home state or (2) the person presents a driver's license or state identification card issued by their home state.

In existing law, these requirements are stated in R.C. 3743.44, which deals with fireworks sales to nonresidents, whether consumer grade or display grade. The bill moves them to a new section, R.C. 3743.46, as a result of the bill's new organization that addresses display-grade fireworks in R.C. 3743.44 and consumer-grade fireworks in R.C. 3743.45, regardless of the purchaser's residency.

The new section adds a preface to the requirements, stating that they apply "except" as otherwise provided in R.C. 3743.44 and R.C. 3743.45. It is unclear, however, to what the exception stated in R.C. 3743.46 refers. A similar exception, and ambiguity, is stated in continuing law under R.C. 3743.65(E).

²³ R.C. 3743.08, 3743.21, and 3743.22(D) and (E), conforming changes in R.C. 3743.57 and 5703.21.

HISTORY

Action	Date
Introduced	05-21-19
