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S.B. 72
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Burke

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 December 31, 2019, 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 90 days after the bill's effective date.
- 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.

Effective January 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.
- Requires the State Fire Marshal to adopt rules regulating the time, manner, and location of consumer fireworks use.
- 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.

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.

The Committee must meet periodically, with the first meeting not later than July 1, 2019. It must submit its report and recommendations to the State Fire Marshal by September 30, 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 organization's designee;
8. One representative of the Ohio chapter of the American Academy of Pediatrics, appointed by the president of the Ohio chapter.¹

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 15, 2019.²

Geographic transfer of fireworks license

Under the bill, not later than December 31, 2019, the State Fire Marshal must adopt 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. If the State Fire Marshal determines that the application complies with those rules, the license may be transferred. Also under the bill, the current moratorium on geographic transfer, which is scheduled to expire on December 31, 2019, will instead expire 90 days after the bill's effective date, which will be about 180 days after the bill passes.

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.³

¹ R.C. 3743.67.

² R.C. 3743.75(A)(1).

³ R.C. 3743.17(F), 3743.591, and 3743.75(A)(2) and (B). In a drafting error, this provision does not take effect until January 2020 (Section 3).

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.⁴

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.⁵ The bill continues to allow Ohio residents to possess consumer fireworks but eliminates, beginning in 2020, the requirement that an Ohio resident who purchases these fireworks must transport the fireworks out of Ohio within 48 hours after the purchase.⁶ Under continuing law, a purchaser may only obtain possession of consumer fireworks from a manufacturer or wholesaler licensed under the Fireworks Law.⁷

Out-of-state residents: purchase and possession

The bill eliminates, beginning in 2020, the current law requirement that an out-of-state resident purchasing consumer fireworks must transport them directly out of Ohio within 48 hours.⁸

Use and regulation

Beginning in 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.⁹ 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.

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

⁴ R.C. 3743.25(C)(2).

⁵ R.C. 3743.01, not in the bill.

⁶ R.C. 3743.45(A) and 3743.63(C) and (D).

⁷ R.C. 3743.45 and 3743.63(D).

⁸ R.C. 3743.44(A) and (B), 3743.63(A), and Section 3.

⁹ R.C. 3743.45(C), and Section 3, with conforming changes in R.C. 3743.04, 3743.17, 3743.63, and 3743.65.

rules may also include provisions requiring that all fireworks be used only in accordance with manufacturer's instructions and provisions for all of the following:¹⁰

- 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 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 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.¹¹

Safety glasses and pamphlets required

Beginning in 2020, any 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 2020, to design a pamphlet that explains how to use consumer grade fireworks safely and to distribute the design to licensed manufacturers and wholesalers who sell consumer grade fireworks. A licensed 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 manufacturer, wholesaler, or exhibitor.

A licensed manufacturer or wholesaler who fails to comply with the bill's pamphlet or safety glasses requirement is guilty of a second degree misdemeanor.¹²

¹⁰ R.C. 3743.45(C) and (D), Section 3, and R.C. 3743.54, not in the bill.

¹¹ R.C. 3743.45(E), (F), and (G).

¹² R.C. 3743.45(B), 3743.47, 3743.60(K) and (L), 3743.61(K) and (L), and 3743.99(G) and Section 3.

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.¹³ The bill eliminates, beginning in 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.¹⁴ (See **COMMENT.**)

New prohibitions

The bill prohibits, beginning in 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 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.¹⁵

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 manufacturers and licensed wholesalers selling consumer-grade fireworks. The fee is set at 4% of each licensed 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 manufacturer or wholesaler collects on behalf of the state or local governments.

The bill requires 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. “**Fee period**” has a different definition depending on whether a manufacturer or wholesaler is a new licensee:

¹³ R.C. 3743.01, not in the bill.

¹⁴ R.C. 3743.44, 3743.63(A) and (B), and 3743.99(C), conforming change in R.C. 3743.45(B).

¹⁵ R.C. 3743.65(G) and (H) and 3743.99(F) and (H).

- For new licensees (licensees who were not licensed on November 30 during the preceding year), the fee period is the following December 1 through the following September 30.
- For other licensees, the fee period is October 1 through September 30.

While the bill requires licensed 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.¹⁶

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 application for a new license for two years.

The State Fire Marshal is also permitted to adopt rules necessary to administer and enforce the fee.¹⁷

COMMENT

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).

¹⁶ R.C. 3743.22(A) to (C).

¹⁷ R.C. 3743.08(B) and (D), 3743.21(D), and 3743.22(D) and (E), conforming changes in R.C. 3743.57 and 5703.21.

HISTORY

| Action | Date |
|------------|----------|
| Introduced | 03-05-19 |
