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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 253\*  
133<sup>rd</sup> General Assembly

## Bill Analysis

[Click here for H.B. 253's Fiscal Note](#)

**Version:** As Reported by Senate Transportation, Commerce and Workforce

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

Andrew Little, Attorney

### SUMMARY

#### **Effective immediately (upon filing with Secretary of State):**

- Extends a general moratorium on the geographic transfer of fireworks manufacturer or wholesaler licenses to December 15, 2022.
- Extends a general moratorium on the issuance of a new fireworks manufacturer license or fireworks wholesaler license to December 15, 2022.
- Establishes procedures for application for, and approval of, geographic transfers of fireworks wholesaler and manufacturer licenses.
- Allows geographic transfers for certain licensees, who meet specific criteria, to be approved before the general transfer moratorium expires.
- Provides that certain ownership transfers approved by the State Fire Marshal are not subject to the moratorium on new fireworks manufacturer and wholesaler licenses.
- Declares an emergency.

#### **Effective 90 days after filing with Secretary of State:**

- Establishes the Ohio Fire Code Rule Recommendation Committee to review the Fireworks Law and make recommendations to the State Fire Marshal.
- Establishes a one-time license application and issuance date, outside of the normal fireworks manufacturer and wholesaler licensing timeline, at the end of the license moratorium.

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\* This analysis was prepared before the report of the Senate Transportation, Commerce and Workforce Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

- Requires the State Fire Marshal to adopt rules regulating the time, manner, and location of consumer fireworks use.
- Imposes a 4% fee on the retail sale of consumer grade fireworks, beginning 100 days after the bill's effective date.
- Credits revenue from the new fee to fund firefighter training programs and the State Fire Marshal's regulation and enforcement of the fireworks industry.

### **Effective 350 days after filed with the Secretary of State:**

- Allows individuals to possess consumer-grade fireworks in Ohio, eliminating a requirement that purchasers transport consumer-grade fireworks out of the state within 48 hours of purchase.
- Allows local governments to authorize the discharge of consumer-grade fireworks on July 3, 4, and 5.
- Allows any person authorized to possess consumer grade fireworks to discharge them on their own property or on another person's property with permission, on July 3, 4, and 5, if the local government where the property sits has authorized it.
- Prohibits discharging 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 property owner's permission.
- Requires a licensed wholesaler or manufacturer who is selling consumer grade fireworks to have safety glasses available for free or at a nominal charge.
- Requires licensed fireworks wholesalers and manufacturers to distribute a safety pamphlet with certain minimum information to each consumer purchaser of fireworks.
- Requires those obtaining commercial-grade fireworks for use in Ohio to be a licensed exhibitor and to possess a valid public display exhibition permit.
- Limits possession of commercial-grade fireworks obtained for use in Ohio to the locations and for the time periods specified in the relevant display permit, with an exception for possession while in transit to those locations.

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## **DETAILED ANALYSIS**

### **Fire Code Rule Recommendation Committee**

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

- Fireworks manufacturer licensing and plant operation and fireworks wholesaler licensing and operations;
- The purchase of consumer-grade fireworks;

- The moratorium on licenses described in “**Fireworks license moratorium,**” below;
- The State Fire Marshal’s rulemaking as it pertains to building code requirements for 1.3G display-grade 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 ten days after the bill’s effective date. It must submit its report and recommendations to the State Fire Marshal not later than 100 days after the bill’s effective date.

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 chapter president;
9. One member of the Ohio Council of Retail Merchants or the council’s designee.<sup>1</sup>

## **Geographic transfer moratorium**

The bill extends current law’s moratorium on the geographic transfer of fireworks manufacturer and wholesaler licenses, which is currently scheduled to expire on December 31, 2020. Under the bill, this moratorium will expire on December 15, 2022.

The bill also establishes new procedures for fireworks wholesalers and manufacturers to apply for, and for the State Fire Marshal to approve, the transfer of their licenses to a new location and allows certain transfers, for licenses that meet specific criteria, to be approved before the general moratorium expires. Finally, the bill removes an existing exception to the transfer moratorium for relocations within the same municipal corporation or township.<sup>2</sup>

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<sup>1</sup> R.C. 3743.67.

<sup>2</sup> R.C. 3743.17(F) and 3743.75(A)(2) and (B) and conforming changes in R.C. 3743.04 and 3743.08.

## **Fireworks license moratorium and one-time license period**

The bill extends a general moratorium on the issuance of fireworks manufacturer and wholesaler licenses for a particular plant or location except to persons who possessed a license for that plant or location immediately prior to June 29, 2001. Under current law, this moratorium ends December 31, 2020; the bill extends the moratorium until December 15, 2022. The bill also provides that certain ownership transfers of wholesaler and manufacturer licenses, approved by the State Fire Marshal, are not prohibited by the moratorium during its term.

To coincide with the end of the moratorium, the bill establishes a one-time license period for new fireworks manufacturers and wholesalers. Any person who wishes to be a licensed manufacturer or wholesaler of fireworks when the licensing moratorium ends, and who does not already hold a license that will run through that date, may submit an application no more than six and no less than two months prior. If the application meets the requirements for licensure, the State Fire Marshal must issue a license when the moratorium ends. The licenses will run through the end of November in the subsequent calendar year. The issuance date and license period are a departure from continuing law's normal requirements, which only allow fireworks manufacturer and wholesaler licenses to be issued on the first day of December, with a one-year duration.

Finally, the bill specifically states that after the moratorium expires, the State Fire Marshal may issue new fireworks manufacturer and wholesaler licenses, but those licenses must not be approved in a manner that unduly burdens the State Fire Marshal's ability to ensure public safety.<sup>3</sup>

## **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.<sup>4</sup> The bill continues to allow Ohio residents to possess consumer fireworks but eliminates, beginning 350 days after the bill is signed by the Governor and filed with the Secretary of State, the requirement that an Ohio resident who purchases these fireworks must transport the fireworks out of Ohio within 48 hours after the purchase.<sup>5</sup>

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<sup>3</sup> R.C. 3743.021, 3743.041, 3743.151, 3743.171, and 3743.75(A)(1) and (C).

<sup>4</sup> R.C. 3743.01.

<sup>5</sup> R.C. 3743.45 and 3743.63(C) and (D).

## **Out-of-state residents: purchase and possession**

The bill eliminates, beginning 350 days after it is signed by the Governor and filed with the Secretary of State, the current law requirement that an out-of-state resident purchasing consumer fireworks must transport them directly out of Ohio within 48 hours.<sup>6</sup>

## **Use and regulation**

Beginning 350 days after the bill is signed by the Governor and filed with the Secretary of State, local governments (counties and townships with respect to their unincorporated territory and municipal corporations) may authorize the discharge of consumer-grade fireworks on the third, fourth, and fifth day of July (or any subset of those days). Any person who is authorized to possess consumer fireworks under the bill (both Ohio residents and nonresidents) may set those fireworks off in a locality that has authorized the discharge, at the times authorized, either on the person's own property or on another person's property with permission. Consumer fireworks set off in accordance with this authorization are not considered a "public exhibition" and are therefore not subject to additional state regulations pertaining to public exhibitions.<sup>7</sup>

The bill does, however, require the State Fire Marshal to adopt rules regulating the time, manner, and location of consumer grade fireworks use 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 use. 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.

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<sup>6</sup> R.C. 3743.44(A) and (B), 3743.63(A), and Section 3.

<sup>7</sup> 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.

The bill requires the State Fire Marshal to file those rules with the Joint Committee on Agency Rule Review no later than February 28, 2022.<sup>8</sup>

### **Safety glasses and pamphlets required**

Beginning 350 days after the bill is signed by the Governor and filed with the Secretary of State, 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 manufacturer or wholesaler must also provide purchasers with a safety pamphlet that contains certain minimum information detailed in the bill.

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.<sup>9</sup>

### **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.<sup>10</sup> The bill eliminates, beginning 350 days after it is signed by the Governor and filed with the Secretary of State, 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. Further, if the display-grade fireworks are obtained for use in Ohio, the bill requires the purchaser to be a licensed exhibitor under Ohio law, possess a valid public display exhibition permit, and only possess the fireworks for the time specified in the permit and at the locations specified in the permit, with an exception for possession while in transit to the location.<sup>11</sup> (See **COMMENT.**)

### **New prohibitions**

The bill prohibits, beginning 350 days after it is signed by the Governor and filed with the Secretary of State, any person from negligently using 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.

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<sup>8</sup> R.C. 3743.451 and Section 3; and R.C. 3743.54, not in the bill.

<sup>9</sup> 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.

<sup>10</sup> R.C. 3743.01.

<sup>11</sup> R.C. 3743.44, 3743.63(A) and (B), and 3743.99(C), conforming change in R.C. 3743.45(B).

Additionally, the bill prohibits any person from negligently discharging, igniting, or exploding fireworks on another person's property without that person's permission. A person who violates this prohibition is guilty of a minor misdemeanor.<sup>12</sup>

### **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 retailer's, manufacturer's, and wholesaler's gross receipts from the retail sale of consumer-grade fireworks beginning 190 days after the bill is signed by the Governor and filed with the Secretary of State. 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 annually report and remit the fee to the State Fire Marshal, no later than October 23.

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.<sup>13</sup>

If 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.

The State Fire Marshal is also permitted to adopt rules necessary to administer and enforce the fee.<sup>14</sup>

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## **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

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<sup>12</sup> R.C. 3743.65(G) and (H) and 3743.99(F) and (H).

<sup>13</sup> R.C. 3743.22(A) to (C).

<sup>14</sup> R.C. 3743.08, 3743.21, and 3743.22(D) and (E), conforming changes in R.C. 3743.57 and 5703.21.

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).

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## HISTORY

Action	Date
Introduced	05-21-19
Reported, H. Commerce and Labor	06-04-20
Passed House (78-17)	06-04-20
Reported, S. Transportation, Commerce & Workforce	---

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