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H.B. 172
134th General Assembly

Final Analysis

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Primary Sponsors: Reps. Baldrige and O'Brien

Effective date: Emergency: certain provisions effective November 4, 2021; other provisions effective February 7, 2022, or July 1, 2022

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SUMMARY

Effective November 4, 2021

- Extends a general moratorium on the issuance of new, and geographic transfer of existing, fireworks manufacturer or wholesaler licenses from December 31, 2021, to December 31, 2022.
- Establishes a one-time license application and issuance date, outside of the normal fireworks manufacturer and wholesaler licensing timeline, at the end of the new license moratorium.

Effective February 7, 2022

- Establishes the Ohio Fire Code Rule Recommendation Committee to review the Fireworks Law and make recommendations to the State Fire Marshal.
- 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 May 18, 2022.
- Credits revenue from the new fee to fund firefighter training programs and the State Fire Marshal's administration of the Fireworks Law.
- Creates a new license allowing retailers to sell ground-based or hand-held sparklers called "fountain devices."
- Requires the State Fire Marshal to enforce the new provisions for fountain device retailers and to adopt related rules.

- Increases from 5,000 to 7,500 square feet the maximum floor area of a retail sales showroom, to which the public has access, that a licensed fireworks manufacturer or wholesaler uses to sell consumer grade fireworks, but requires expanded showrooms to be equipped with sprinkler systems meeting a specific standard.
- Establishes that the “state militia” for purposes of an existing exemption from the Fireworks Law is the state militia as recognized by the Adjutant General of Ohio.

Effective July 1, 2022

- 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 any person authorized to possess consumer grade fireworks to discharge them on their own property or on another person’s property with permission on the following days:
 - New Year’s Day;
 - Chinese New Year;
 - Cinco de Mayo;
 - Memorial Day weekend;
 - Juneteenth;
 - July 3, 4, and 5, and the Fridays, Saturdays, and Sundays preceding and following;
 - Labor Day weekend;
 - Diwali;
 - New Year’s Eve.
- Permits local governments to restrict the dates and times that individuals may discharge consumer-grade fireworks or to impose a complete ban on the use of consumer-grade fireworks.
- Requires licensed retailers, manufacturers, and wholesalers selling consumer grade fireworks to the general public to offer safety glasses at the point of sale, for free or a nominal charge.
- Requires licensed retailers, manufacturers, and wholesalers selling consumer grade fireworks to the general public to also provide purchasers with a safety pamphlet that contains, at a minimum, specified information.
- 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.
- Allows the State Fire Marshal to suspend a fireworks manufacturer or wholesaler license if the licensee has violated the Fireworks Law or the State Fire Marshal’s rules.

- Prohibits the State Fire Marshal from unreasonably withholding a variance that would allow hobbyists to manufacture, possess, and use individual display-grade and consumer-grade fireworks and requires cause for revocation of a hobbyist variance.
- Requires hobbyists seeking variances to demonstrate that they can engage in the hobby safely and legally, and limits hobbyists to possession of five pounds of raw materials and finished fireworks produced through the hobby.

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DETAILED ANALYSIS

Effective November 4, 2021, due to emergency clause

The act includes an emergency clause for provisions extending a moratorium on the issuance of new fireworks manufacturer and wholesaler licenses and the geographic transfer of existing licenses. Due to the emergency clause, those provisions took effect November 4, 2021.¹

Geographic transfer moratorium

The act extends for one year the moratorium on the geographic transfer of fireworks manufacturer and wholesaler licenses, which was scheduled to expire on December 31, 2021. Under the act, this moratorium is set to expire on December 31, 2022.²

Fireworks license moratorium and one-time license period

The act also extends the general moratorium on the issuance of new fireworks manufacturer and wholesaler licenses for a particular plant or location. Under prior law, the moratorium applied to all persons except those who already possessed a license for that plant or location immediately prior to June 29, 2001, and would have expired on December 31, 2021. The act extends the moratorium until December 31, 2022, and allows renewal of licenses that were geographically transferred under exceptions to the transfer moratorium created by the 2021 Transportation Budget, [H.B. 74](#) of the 134th General Assembly.

To coincide with the planned end of the new-license moratorium, the act establishes a one-time license period for new fireworks manufacturers and wholesalers. Any person who does not hold a fireworks manufacturer license that will run through January 1, 2023, may submit an application for one by November 1, 2022. If the application meets the requirements for licensure, the State Fire Marshal must issue a license on January 1, 2023.

Licenses issued at the end of the moratorium will run through November 30, 2023. The issuance date and license period are a departure from continuing law's usual requirements, which only allow fireworks manufacturer and wholesaler licenses to be issued on the first day of December, with a one-year duration.

Under the act, 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.³

¹ Sections 3 and 5.

² R.C. 3743.75(A)(2).

³ R.C. 3743.021, 3743.041, 3743.151, 3743.171, and 3743.75(A), (D), and (E).

Effective February 7, 2022

Several of the act's provisions take effect on February 7, 2022.⁴ Those provisions are discussed in this section.

Fire Code Rule Recommendation Committee

The act 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:

- Fireworks wholesaler and manufacturer licensing and operations;
- Consumer-grade fireworks purchases;
- The moratorium on licenses described above;
- Building code requirements for 1.3G display-grade fireworks manufacturing facilities; and
- A licensing program for fireworks wholesalers and manufacturers.

The Committee must meet periodically, with a first meeting by February 17, 2022. It must submit its report and recommendations to the State Fire Marshal by May 18, 2022.

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.⁵

⁴ Sections 3 and 5.

⁵ R.C. 3743.67.

Rules for consumer-grade fireworks use

The act requires the State Fire Marshal to adopt rules regulating the time, manner, and location of consumer grade fireworks use (see “**Consumer grade fireworks**,” below). The rules must permit adults to safely and responsibly use consumer grade fireworks on private property with the owner’s consent, and are not to be construed as a de facto ban on that use. The rules may, however, include provisions requiring that all fireworks be used in accordance with manufacturer’s instructions and provisions for 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 use 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; and
- Any other similar matters.

The State Fire Marshal must file those rules with the Joint Committee on Agency Rule Review by August 8, 2022. If filed on that date, the earliest possible effective date for the rules would be October 23, 2022, though the State Fire Marshal may file the rules before August 8, 2022 (but not before February 7, 2022) for the rules to take effect earlier.⁶

Consumer-grade fireworks fee

To provide revenue for training programs and regulation of the fireworks industry, the act imposes a fee on licensed sellers of consumer-grade fireworks. The fee is 4% of each licensed retailer’s, manufacturer’s, and wholesaler’s gross receipts from the retail sale of consumer-grade fireworks beginning May 18, 2022. The act excludes sales tax the retailer, manufacturer, or wholesaler collects on behalf of the state or local governments from “gross receipts.”

Licensed retailers (see “**Fountain device retailer licenses**,” below), manufacturers, and wholesalers may separately or proportionally bill the fee to others, but must themselves report and remit it to the State Fire Marshal annually, no later than October 23.

The fee’s proceeds are to be credited to the Fireworks Fee Receipts Fund, which the act creates. The State Fire Marshal must use $\frac{7}{8}$ (87.5%) of the money in the fund for firefighter

⁶ R.C. 3743.451 and Section 3; R.C. 3743.54, not in the act; *Filing Date Calculator*, Joint Committee on Agency Rule Review, available at <https://www.jcarr.state.oh.us/filers/date-calculators>.

training programs. The remaining $\frac{1}{8}$ must be used to pay the State Fire Marshal's expenses in administering the Fireworks Law.⁷

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

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

The State Fire Marshal is also permitted to adopt rules necessary to administer and enforce the fee.⁸

Fountain device retailer licenses

The act creates a new license for retailers who wish to sell what are called fountain devices. Under the act, a “**fountain device**” is defined as a specific type of 1.4G consumer grade firework that is all of the following:

- Nonaerial and nonreport producing;
- Recognized and manufactured in accordance with sections 3.1.1 and 3.5 of APA standard 87-1 (2001 edition);
- A ground-based or hand-held sparkler with one or more tubes containing a nonexplosive pyrotechnic mixture that produces a shower of sparks, with or without additional effects that may include a colored flame, audible crackling effect, audible whistle effect, or smoke; and
- Containing no more than 75 grams of the pyrotechnic mixture in any individual tube and no more than 500 total grams of the mixture total in the case of multiple tubes.⁹

General licensing process

Generally, the act requires prospective fountain device retailers to apply to the State Fire Marshal by September 30 in any given year. An application must be submitted for each location at which the person wishes to sell fountain devices, and 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

⁷ R.C. 3743.22(A) to (C).

⁸ R.C. 3743.08, 3743.21, and 3743.22(D) and (E), conforming changes in R.C. 3743.57 and 5703.21.

⁹ R.C. 3743.01(H) and Section 4.

Edition)” (NFPA 1124) or that they will be in compliance before engaging in the storage and sale of fountain devices; and

- Proof of insurance in an amount and type specified in rules by the State Fire Marshal.

The act requires the State Fire Marshal to review timely submitted applications and determine if they comply with its requirements. If an application is compliant, the State Fire Marshal must issue a license. Licenses are effective for one year, beginning December 1. The State Fire Marshal must send licensees a written notice of expiration by September 1, annually, and licensees must apply for renewal by October 1 of the year the license expires.¹⁰

Special licensing circumstances

The act establishes two special licensing circumstances for fountain device retailers. The first is a one-time license that starts October 25, 2022. Any person wishing to be licensed as a retailer of fountain devices on that date must submit an application by August 16, 2022. If an application is received by the deadline, and if the State Fire Marshal determines that it meets the act’s licensing requirements, the State Fire Marshal must issue a license on October 25, 2022. Licenses issued that day will be effective through November 30, 2023.

The second special licensing circumstance for fountain device retailers applies to retailers that open for business after the annual application deadline in a given year. Those retailers may apply for a license any time between the date they open for business and the subsequent annual deadline. If an application is received under this provision between October 1 and November 30, and meets the act’s requirements for fountain device retailers, the State Fire Marshal must issue a license no earlier than December 1 and no later than two months after the application is received. If a compliant application is received at any other time pursuant to the provision, the State Fire Marshal must issue the license no later than two months after the application is received. These licenses are effective through the last day of the following November.¹¹

Licensed fountain device retailer operations

Licensed fountain device retailers are authorized to possess fountain devices and sell them at retail. Possession and storage of the devices, though, must comply with NFPA 1124 and several other requirements. Those are:

- Sales displays are limited to 300 square feet, total, with no display larger than 150 square feet, and all displays at least 25 feet from other highly flammable materials.
- Retailers may only possess and sell fountain devices as packaged merchandise with covered fuses.

¹⁰ R.C. 3743.26(A) and (B).

¹¹ R.C. 3743.26(C) and (D).

- Fountain devices displayed for sale must be under visual supervision of an employee or other responsible party whenever the retailer is open to the public.
- The possession, storage, *and sale* of the devices must also comply with any rules adopted by the State Fire Marshal pursuant to the act (see “**Rules for fountain device retailers**,” below).
- Sales to minors are prohibited.
- Sales to individuals who are obviously drunk or under the influence of a drug of abuse are prohibited.
- 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.
- Retailers must prohibit smoking in the licensed location.
- Purchasers must be provided with the pamphlet and the opportunity to obtain safety glasses that the act requires for other consumer-grade fireworks sales. (See “**Safety glasses and pamphlets required**,” below.)¹²

Rules for fountain device retailers

The act requires the State Fire Marshal to adopt rules for fountain device retailers under the Administrative Procedure Act. The rules must be designed to promote the safety and security of employees, the public, and the premises from which fountain devices are sold, be consistent with the Revised Code and NFPA 1124, and, at a minimum, 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; and
- Insurance.

The State Fire Marshal must file the rules with the Joint Committee on Agency Rule Review by August 8, 2022. If filed on that date, the earliest possible effective date for the rules

¹² R.C. 3743.27 and 3743.99(G), with conforming change in R.C. 3743.45.

will be October 23, 2022, though the State Fire Marshal may file the rules before August 8, 2022 (but not before February 7, 2022).¹³

Enforcement authority

The act 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; and
- 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.¹⁴

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. Under prior law, if a retail sales showroom was used (and first began to operate on or after June 30, 1997), the showroom structure to which the public had access for retail purposes was limited to 5,000 square feet. The act increases the limit to 7,500 square feet. The act also expands application of the size limit to fireworks showrooms that resume operations at any time after a one-year or greater period of inactive licensure status, even if they were in operation prior to June 30, 1997.

Showrooms that expand beyond 5,000 square feet, to which the public has access, pursuant to the act's increased limit, must be equipped with a sprinkler system meeting the standard for "extra hazard (group 2) occupancies" under "NFPA 13, Standard for the Installation of Sprinkler Systems (2019 Edition). Variances may be granted to the standard's requirement, however, if the State Fire Marshal finds that a proposed sprinkler system matches or exceeds the degree of safety provided by a compliant system.¹⁵

¹³ R.C. 3743.28; *Filing Date Calculator*, Joint Committee on Agency Rule Review, available at <https://www.jcarr.state.oh.us/filers/date-calculators>.

¹⁴ R.C. 3743.29.

¹⁵ R.C. 3743.25(C)(2) and 3743.17.

Militia exemption

Under continuing law, the U.S. military and the militia of Ohio are exempt from the Fireworks Law's provisions regarding the manufacture, transportation, storage, and possession of pyrotechnic devices. The act establishes the state militia covered by the exemption is the militia of the state that is recognized by the Adjutant General of Ohio.¹⁶

Effective July 1, 2022

The remainder of the act's provisions take effect July 1, 2022.¹⁷ Those provisions are discussed here.

Consumer-grade fireworks

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.¹⁸ The act continues to allow individuals to possess consumer fireworks but eliminates, beginning July 1, 2022, the requirement that individuals transport consumer grade fireworks out of the state within 48 hours of their purchase.¹⁹

Use and regulation

Beginning July 1, 2022, any person who is authorized to possess consumer grade fireworks under the act may set those fireworks off, either on the person's own property or on another person's property with permission, on specific days. Those days are:

- New Year's Day;
- Chinese New Year;
- Cinco de Mayo;
- Memorial Day weekend;
- Juneteenth;
- July 3, 4, and 5, and the Fridays, Saturdays, and Sundays preceding and following;
- Labor Day weekend;
- Diwali;
- New Year's Eve.

¹⁶ R.C. 3743.80.

¹⁷ Section 3.

¹⁸ R.C. 3743.01.

¹⁹ R.C. 3743.44(A) and (B), 3743.45, and 3743.63.

Consumer grade fireworks set off in accordance with this authorization are not considered a “public exhibition” and are therefore not subject to additional state regulations for public exhibitions.²⁰ Consumer discharge is, however, subject to local regulation, as the act specifically permits a county (with respect to its unincorporated territory), township (with respect to its unincorporated territory), or municipal corporation to restrict the dates and times that a person may discharge consumer fireworks, or impose a complete ban. Additionally, the act’s consumer fireworks changes do not limit the enforcement of an ordinance, resolution, or statute that regulates noise, disturbance of the peace, or disorderly conduct.²¹

Safety glasses and pamphlets required

Beginning July 1, 2022, 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 retailer, manufacturer, or wholesaler must also provide purchasers with a safety pamphlet that contains certain minimum information detailed in the act.

A licensed retailer, manufacturer, or wholesaler who negligently fails to comply with the pamphlet or safety glasses requirement is guilty of a second degree misdemeanor.²²

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.²³ The act eliminates, beginning July 1, 2022, 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 act 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 act 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.²⁴

New prohibitions

The act prohibits, beginning July 1, 2022, any person from negligently using fireworks while in possession or control of, or under the influence of, any intoxicating liquor, beer, or

²⁰ R.C. 3743.45(B) and (C), with conforming changes in R.C. 3743.04, 3743.17, 3743.63, and 3743.65, and R.C. 1.14, not in the act.

²¹ R.C. 3743.45(D) and (E).

²² R.C. 3743.27(B) and (C), 3743.47, 3743.60(K) and (L), 3743.61(K) and (L), and 3743.99(G).

²³ R.C. 3743.01.

²⁴ R.C. 3743.44, 3743.63(A) and (B), and 3743.99(C), conforming change in R.C. 3743.45(B).

controlled substance. A person who violates this prohibition is guilty of a first degree misdemeanor. The act 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.

Additionally, the act prohibits, beginning on the same date, 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.²⁵

Licensee discipline

Continuing law allows the State Fire Marshal to revoke, or deny renewal of, a fireworks manufacturer or fireworks wholesaler license if the licensee has violated the Fireworks Law or the State Fire Marshal's rules. The act adds provisions allowing suspension of a license, but leaves the State Fire Marshal's ability to revoke, or deny renewal of, a license in place.²⁶

Exemptions to the Fireworks Law

Licensing variances

Prior law allowed the State Fire Marshal to grant variances to the Fireworks Law's prohibitions against the possession and use of pyrotechnic compounds to a person who possesses those compounds for personal and noncommercial use as a hobby. The act amends the variance authority by defining "hobbyist activities," limiting the amount of materials a variance allows, adding requirements for variance applications, and limiting the State Fire Marshal's ability to deny and revoke variances.

The act defines "**hobbyist activities**" as the manufacture, possession, and use of individual items, each of which meets the definition of either a 1.3G display firework or 1.4G consumer firework. It also limits a variance holder to possession of five pounds, in total, of explosives, pyrotechnics, or similar raw materials for, and finished 1.3G and 1.4G fireworks manufactured during, hobbyist activities.

A person seeking a variance under the new provisions must do the following:

- Demonstrate that they have the experience, education, and training necessary to protect public safety when engaging in hobbyist activities;
- Demonstrate that they have a safe and legal way to acquire, store, and use explosives, pyrotechnics, and similar raw materials for the manufacture of fireworks; and
- Provide any other information or records the State Fire Marshal considers necessary to protect public safety during a person's hobbyist activities.

²⁵ R.C. 3743.65(G) and (H) and 3743.99(F) and (H).

²⁶ R.C. 3743.08, 3743.21, 3743.60, and 3743.61.

Finally, the act prohibits the State Fire Marshal from unreasonably withholding a variance. It also changes the State Fire Marshal's authority to revoke a variance, which is discretionary under prior law, by requiring cause for revocation.²⁷

HISTORY

Action	Date
Introduced	03-03-21
Reported, H. Commerce & Labor	04-22-21
Passed House (73-24)	05-06-21
Reported, S. Veterans & Public Safety	10-27-21
Passed Senate (26-5)	10-27-21
House concurred in Senate amendments (72-24)	10-27-21

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²⁷ R.C. 3743.59(D).