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S.B. 113
134th General Assembly

Final Analysis

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Version: As Passed by the General Assembly

Primary Sponsors: Sens. Rulli and Johnson

Effective date: Vetoed

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Governor DeWine vetoed S.B. 113 on July 9, 2021. Had it become law, its provisions would have taken effect, been implemented, or required things to be done at different times, generally in reference to its effective date. In Ohio, laws normally take effect on the 91st day after they are signed by the Governor and filed with the Secretary of State.¹ To make this analysis more comprehensible, the analysis uses July 9, the date S.B. 113 was vetoed, to calculate what the dates in the act *would have been* if the Governor had instead signed the act into law and filed it with the Secretary of State on that day. In that case:

- The act's effective date (the 91st day) would have been October 8, 2021.
- 10 days after the act's effective date would have been October 18, 2021.
- 100 days after the act's effective date would have been January 16, 2022.
- 180 days after the act's effective date would have been April 6, 2022.
- 260 days after the act's effective date would have been June 25, 2022.

SUMMARY

Effective October 8, 2021 (if the act had been signed and filed on the date it was vetoed), would have:

- Established the Ohio Fire Code Rule Recommendation Committee to review the Fireworks Law and make recommendations to the State Fire Marshal.

¹ Ohio Constitution, Article II, Section 1c.

- Extended a general moratorium on the issuance of new, and geographic transfer of existing, fireworks manufacturer or wholesaler licenses from December 31, 2021, to January 1, 2023.
- Established a one-time license issuance date, outside of the normal fireworks manufacturer and wholesaler licensing timeline, at the end of the new license moratorium on January 1, 2023.
- Increased 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, but required expanded showrooms to be equipped with approved sprinkler systems.
- Required the State Fire Marshal to adopt rules regulating the time, manner, and location of consumer fireworks use.
- Created a new license allowing retailers to sell ground-based or hand-held sparklers called “fountain devices.”
- Required the State Fire Marshal to adopt rules for and enforce the new provisions for fountain device retailers.

Effective January 16, 2022, would have:

- Imposed a 4% fee on the retail sale of consumer grade fireworks.
- Credited revenue from the new fee to fund firefighter training programs and the State Fire Marshal’s regulation and enforcement of the fireworks industry.

Effective June 25, 2022, would have:

- Allowed individuals to possess consumer-grade fireworks in Ohio, and eliminated a requirement that purchasers transport consumer-grade fireworks out of the state within 48 hours of purchase.
- Allowed any person authorized to possess consumer grade fireworks to discharge them on:
 - 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;

- Any other legal holiday.
- Permitted local governments to restrict the dates and times that individuals could discharge consumer-grade fireworks or to ban them altogether.
- Prohibited discharging fireworks (1) while in possession of, or under the influence of, alcohol or a controlled substance, or (2) on another person’s property without permission.
- Prohibited the State Fire Marshal from unreasonably withholding a variance to allow hobbyists to manufacture, possess, and use individual display-grade and consumer-grade fireworks.
- Required cause for revocation of a hobbyist variance.
- Required hobbyists seeking variances to demonstrate that they could engage in the hobby safely and legally.
- Limited hobbyists to possession of five pounds of raw materials and finished fireworks produced through the hobby.
- Required a licensed wholesaler, manufacturer, or retailer selling consumer grade fireworks to have safety glasses available for free or at a nominal charge.
- Required licensed fireworks wholesalers, manufacturers, and retailers to distribute a safety pamphlet with certain minimum information to each consumer purchaser of fireworks.

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DETAILED ANALYSIS

Fire Code Rule Recommendation Committee

The act would have created 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 would have been required to 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; and
- Development of a licensing program for fireworks wholesalers and manufacturers.

The Committee was to meet periodically, with the first meeting not later than October 18, 2021, and submit its report and recommendations to the State Fire Marshal not later than January 16, 2022.

The Committee was 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, including a licensed wholesaler, a licensed exhibitor, and 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.²

Fountain device retailer licenses

The act would have created a new license for retailers who wish to sell what are called fountain devices and permitted the State Fire Marshall to begin issuing those licenses in 2022. Under the act, a “**fountain device**” would have been defined as a specific type of 1.4G consumer grade firework that met all of the following criteria:

- It is nonaerial and nonreport producing.
- It is recognized and manufactured in accordance with sections 3.1.1 and 3.5 of APA standard 87-1 (2001 edition).
- It is 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.
- It contains 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.³

General licensing process

Generally, the act would have required prospective fountain device retailers to apply to the State Fire Marshal by September 30, in any given year. An application would have been required for each location at which the person wished to sell fountain devices, and would have included:

- A license fee, to be set by the State Fire Marshal at \$25 or less;
- An affidavit affirming that the applicant was 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 would be in compliance before engaging in the storage and sale of fountain devices;
- Proof of insurance in an amount and type specified in rules by the State Fire Marshal.

The State Fire Marshal would have been required to review timely submitted applications and issue a license in response to each compliant applicant.

² R.C. 3743.67.

³ R.C. 3743.01(H) and Section 4 and a conforming change in R.C. 3743.65(A).

The act also would have established several general standards for licenses. First, licenses were to be effective for one year, beginning on December 1. Second, licenses could only be issued on that date. Third, the State Fire Marshal would have been required to send licensees a written notice of expiration by September 1, annually. Fourth, the deadline to apply for renewal would have been October 1.⁴

Special licensing circumstances

The act would have established two special licensing circumstances for fountain device retailers. The first was a one-time license that would have been issued June 25, 2022, had the act become law. Those licenses would have been effective through November 30, 2023.

The act's second special licensing circumstance for fountain device retailers would have applied to retailers that opened for business after the annual application deadline in any given year. The act would have allowed those retailers to apply for a license any time between the date they opened for business and the subsequent annual deadline. Licenses issued to those retailers would have lasted a variable amount of time depending on when in the calendar year they were issued.⁵

Licensed fountain device retailer operations

Licensed fountain device retailers would have been authorized, under the act, to possess fountain devices and sell them at retail in compliance with NFPA 1124 and several other requirements. Specifically:

- Sales displays were to be limited to 300 square feet in total, with no display larger than 150 square feet, and all displays at least 25 feet from other highly flammable materials.
- Retailers could only possess and sell fountain devices as packaged merchandise with covered fuses.
- Fountain devices displayed for sale were to be under visual supervision of an employee or other responsible party during business hours.
- The possession, storage, *and sale* of the devices would have been subject to any rules adopted by the State Fire Marshal pursuant to the act (see "**Rules for fountain device retailers,**" below).
- Sales to children, and to individuals who were obviously drunk or under the influence of a drug of abuse, would have been prohibited.
- Sales from any structure or device outside of a licensed building, such as a tent or trailer, would have been prohibited.
- Retailers would have been required to prohibit smoking in licensed locations.

⁴ R.C. 3743.26(A) and (B).

⁵ R.C. 3743.26(C) and (D).

- Retailers would have been required to provide purchasers the pamphlet and the opportunity to obtain safety glasses that the act required for other consumer-grade fireworks sales. (See “**Safety glasses and pamphlets required,**” below.)⁶

Rules for fountain device retailers

The act would have required the State Fire Marshal to adopt rules for fountain device retailers under the Administrative Procedure Act. The rules were to be designed to promote the safety and security of employees, the public, and the sales premises, be consistent with the Revised Code and NFPA 1124, and, at a minimum, were to 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.

The State Fire Marshal would have been required to file the rules with the Joint Committee on Agency Rule Review no later than April 6, 2022.⁷

Enforcement authority

The act would have granted 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 were to reveal noncompliance, the State Fire Marshal would have had 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; or
- Revoke, or deny the renewal of, a license pursuant to the Administrative Procedure Act.⁸

⁶ R.C. 3743.27 and 3743.99(G).

⁷ R.C. 3743.28.

⁸ R.C. 3743.29.

Geographic transfer moratorium

The act would have extended until January 1, 2023, continuing law's moratorium on the geographic transfer of existing fireworks manufacturer and wholesaler licenses. The moratorium is scheduled to expire on December 31, 2021.⁹

Fireworks license moratorium and one-time license period

The act would have extended until January 1, 2023, the general moratorium on the issuance of fireworks manufacturer and wholesaler licenses for a particular plant or location. The moratorium applies to all persons except those who possessed a license for that plant or location immediately prior to June 29, 2001, and is set to expire on December 31, 2021.

The act also included a one-time license period for new fireworks manufacturers and wholesalers to coincide with the end of the moratorium. Under the act, any person, not already licensed, would have been able to submit an application by November 1, 2022, and receive a license on January 1, 2023. A license issued at the end of the moratorium would have been valid through November 30, 2023.¹⁰

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. A retail sales showroom that first began to operate on or after June 30, 1997, must comply with specified safety requirements, including a size limitation for the floor area to which the public has access for retail purposes. The act would have increased the size limit from 5,000 square feet to 10,000 square feet.

Fireworks showrooms that expanded beyond 5,000 square feet under the act would have been required to implement a sprinkler system meeting a particular technical standard. That is the standard for "extra hazard occupancies" under "NFPA 13, Standard for the Installation of Sprinkler Systems (2019 Edition)."¹¹

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 included provisions that would have allowed suspension of a license, as well.¹²

⁹ R.C. 3743.75(A)(2).

¹⁰ R.C. 3743.021, 3743.041, 3743.151, 3743.171, and 3743.75(A) and (E).

¹¹ R.C. 3743.25(C)(2)(a) and (b) and 3743.17.

¹² R.C. 3743.08, 3743.21, 3743.60, and 3743.61.

Exemptions to the fireworks law

Licensing variances

Continuing law allows 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 would have amended the variance provisions by:

- Defining “**hobbyist activities**” as the manufacture, possession, and use of individual items, each of which meets the definition of either a 1.3G firework or 1.4G firework;
- Limiting 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;
- Establishing criteria for the issuance of a variance; and
- Prohibiting the State Fire Marshal from unreasonably withholding a variance or revoking a variance without cause.¹³

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 would have established that the state militia covered by the exemption is the militia of the state that is recognized by the Adjutant General of Ohio.¹⁴

Consumer-grade fireworks

Ohio 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.¹⁵ The act would have eliminated, beginning June 25, 2022, the requirement that an Ohio resident who purchases 1.4G fireworks in Ohio must transport them out of the state within 48 hours. Under continuing law, a purchaser may only obtain possession of consumer fireworks from a manufacturer or wholesaler licensed under the Fireworks Law. The act would have added licensed fountain device retailers to the list of approved sellers.¹⁶

¹³ R.C. 3743.59.

¹⁴ R.C. 3743.80.

¹⁵ R.C. 3743.01.

¹⁶ R.C. 3743.45 and 3743.63(C) and (D).

Out-of-state residents: purchase and possession

The act would have eliminated, beginning June 25, 2022, the requirement that an out-of-state resident purchasing consumer fireworks transport them directly out of Ohio within 48 hours.¹⁷

Use and regulation

Beginning June 25, 2022, the act would have allowed any person authorized to possess consumer fireworks (both Ohio residents and nonresidents) to set those fireworks off in Ohio, either on the person's own property or on another person's property with permission, on specific 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;
- Any other legal holiday, as defined in continuing law.

Consumer fireworks set off in accordance with the act's authorization would not be considered a "public exhibition" and therefore not subject to additional state regulations for public exhibitions, had the act become law.¹⁸

The act also would have required the State Fire Marshal to adopt rules regulating the time, manner, and location of the use of consumer grade fireworks. The rules could not ban discharge of consumer fireworks or be construed as a de facto ban. The rules could, however, require that all fireworks be used in accordance with manufacturer's instructions and provisions for all of the following:

- The use of aerial fireworks;

¹⁷ R.C. 3743.44(A) and (B), 3743.63(A), and Section 3.

¹⁸ 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, and R.C. 1.14, not in the act.

- 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 act would have required the State Fire Marshal to file those rules with the Joint Committee on Agency Rule Review by April 6, 2022.¹⁹

While the act would have prohibited the State Fire Marshal's rules from banning the discharge of consumer grade fireworks, it would have permitted 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 could discharge consumer fireworks, or could impose a complete ban. Similarly, the act would not have prohibited the enforcement of laws and ordinances regulating noise, disturbing the peace, and disorderly conduct.²⁰

Safety glasses and pamphlets required

Under the act, beginning June 25, 2022, any licensed retailer, licensed manufacturer, or licensed wholesaler selling consumer grade fireworks, other than to a licensed manufacturer, wholesaler, or exhibitor, would have been required to 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 also would have been required to provide purchasers with a safety pamphlet with certain minimum information detailed in the act. Failure to do so would have been a second degree misdemeanor.²¹

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.²² The act would have eliminated, beginning June 25, 2022, the requirement that a nonresident may possess display fireworks in Ohio only while directly transporting them out of Ohio, and that the nonresident do so within 48 hours of purchase. The act would have maintained, however, a criminal

¹⁹ R.C. 3743.451 and Section 3; and R.C. 3743.54, not in the act.

²⁰ R.C. 3743.45(D) and (E) and 3743.45(B)(1).

²¹ 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.

²² R.C. 3743.01.

prohibition on a nonresident's failure to transport display fireworks out of Ohio within 72 hours, a first degree misdemeanor.

The act also would have maintained 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.²³

New prohibitions

The act would have prohibited, beginning June 25, 2022, 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 violation would have been a first degree misdemeanor.

Additionally, the act would have prohibited, beginning June 25, 2022, any person from negligently discharging, igniting, or exploding fireworks on another person's property without that person's permission. A violation would have been a minor misdemeanor.²⁴

Consumer-grade fireworks fee

For the purpose of providing revenue to fund training programs and the enforcement and regulation of the fireworks industry, the act would have imposed a fee on licensed retailers, licensed manufacturers, and licensed wholesalers selling consumer-grade fireworks. The fee would have been 4% of each licensed retailer's, manufacturer's, and wholesaler's gross receipts from the retail sale of consumer-grade fireworks beginning January 16, 2022. (The act excluded from "gross receipts" sales tax the retailer, manufacturer, or wholesaler collects on behalf of the state or local governments.)

While the act would have required licensed retailers, manufacturers, and wholesalers to remit the fee to the State Fire Marshal, it also allowed them to separately or proportionately bill or invoice the fee to others.

The fee's proceeds were to be credited to the Fireworks Fee Receipts Fund. The State Fire Marshal would have been required to use $\frac{7}{8}$ of the money in the fund for firefighter training programs, with the remainder directed to administrative expenses related to the Fireworks Law.²⁵

The act also granted the State Fire Marshal fee-related enforcement authority. Under the act, if the State Fire Marshal determined that a licensee had failed to timely report and remit the fee due, the State Fire Marshal could either:

- Order the licensee to report and remit the fee within a specified timeframe; or

²³ R.C. 3743.44, 3743.63(A) and (B), and 3743.99(C), conforming change in R.C. 3743.45(B).

²⁴ R.C. 3743.65(G) and (H) and 3743.99(F) and (H).

²⁵ R.C. 3743.22(A) to (C).

- Revoke or deny renewal of the license, which would require the licensee to immediately cease operations and prohibit the licensee from applying for new licenses for two years.

The State Fire Marshal also would have been permitted to adopt rules necessary to administer and enforce the fee.²⁶

HISTORY

Action	Date
Introduced	03-02-21
Reported, S. Veterans & Public Safety	06-02-21
Passed Senate (26-7)	06-02-21
Reported, H. Commerce & Labor	06-24-21
Passed House (67-27)	06-24-21
Senate concurred in House amendments (24-8)	06-24-21
Vetoed	07-09-21

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²⁶ R.C. 3743.08, 3743.21, and 3743.22(D) and (E), conforming changes in R.C. 3743.57 and 5703.21.