



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Andrew Little

Am. H.B. 226

132nd General Assembly
(As Passed by the House)

Reps. Seitz and Sweeney, Becker, Thompson, Goodman, Stein, Reineke, Blessing, Koehler, Brenner, Celebrezze, Cera, Cupp, Faber, Ginter, Green, Greenspan, Hagan, Henne, Holmes, Householder, Johnson, Kick, Lang, Lepore-Hagan, Lipps, Manning, O'Brien, Retherford, Roegner, Strahorn, Wiggam, Young

BILL SUMMARY

Normal effective date:

- Establishes a Fireworks Study Group to review any sections of the Fireworks Law and make recommendations to the General Assembly.
- Extends until July 1, 2020, a general moratorium on the issuance of a license as a fireworks manufacturer or a fireworks wholesaler.

Effective July 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 while in possession of or control of, or under the influence of, any intoxicating liquor, beer, or controlled substance or 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.

Effective January 1, 2021:

- Imposes a fee on the retail sale of consumer grade fireworks in Ohio.
- Credits revenue from the new fee to fund firefighter training programs and the State Fire Marshal's regulation and enforcement of the fireworks industry.
- Eliminates, beginning on January 1, 2021, the moratorium on geographic transfer of a license as a fireworks manufacturer or license as a fireworks wholesaler.

CONTENT AND OPERATION

Fireworks Study Group

The bill creates a Fireworks Study Group to review any sections of the Fireworks Law and make a recommendation to the legislature. At a minimum, the Fireworks Study Group must make a recommendation to the General Assembly 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 Fireworks Study Group must meet periodically, with the first meeting not later than September 30, 2017 (see **COMMENT 1**). It must submit its report and recommendations to the General Assembly by July 1, 2019, and periodic reports as appropriate.



The Fireworks Study Group is to be made up of the following individuals:

(1) Four members of the General Assembly; two state representatives and two senators, one each from the majority and minority parties, appointed by the Speaker of the House of Representatives and Senate President, respectively;

(2) The State Fire Marshal, or the State Fire Marshal's designee;

(3) Two local fire chiefs appointed by the Ohio Fire Chiefs' Association, or appointed by the association's designee;

(4) A local police chief appointed by the Attorney General, or the Attorney General's designee;

(5) 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;

(6) One member of Prevent Blindness Ohio, or the organization's designee;

(7) One member of the Ohio Optometric Association or the association's designee;

(8) One member of the Ohio Pyrotechnic Arts Guild or the organization's designee;

(9) 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 July 1, 2020, 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 September 15, 2018.

Beginning January 1, 2021, the bill also ends a moratorium on the geographic transfer of a fireworks manufacturer or wholesaler license to any location other than the

¹ R.C. 3743.67.



location for which the license was issued immediately prior to June 29, 2001. (See "**Geographic transfer of fireworks license**," below.)²

Delayed effective date and intent

The preceding provisions have a normal, 90-day effective date, while the remainder of the bill, discussed below, is subject to a delayed effective date of July 1, 2020. Additionally, a fee on consumer fireworks contained in the provisions with a delayed effective date (see "**Fireworks fee**," below) does not apply until January 1, 2021, though the pertinent code sections take effect on July 1, 2020.

The bill states that it is the intent of the General Assembly that the parts of the bill with a delayed effective date, described below, are to take effect July 1, 2020, unless by that date the General Assembly has enacted other legislation based on recommendations of the Fireworks Study Group.³

Consumer 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.⁴ The bill continues to allow Ohio residents to possess consumer fireworks but eliminates, beginning July 1, 2020, the requirement that an Ohio resident who purchases these fireworks must transport the fireworks out of Ohio within 48 hours after the purchase.⁵ Under continuing law, a purchaser may only obtain possession of consumer fireworks from a manufacturer or wholesaler licensed under the Fireworks Law.⁶

Out-of-state residents: purchase and possession

The bill eliminates, beginning July 1, 2020, the current law requirement that an out-of-state resident purchasing consumer fireworks must transport them directly out of Ohio within 48 hours.⁷

² R.C. 3743.75(A).

³ Sections 3 and 4.

⁴ R.C. 3743.01, not in the bill.

⁵ R.C. 3743.45(A) and 3743.63(C) and (D).

⁶ R.C. 3743.45 and 3743.63(D).

⁷ R.C. 3743.44(A) and (B), 3743.63(A), and Section 3 (see **COMMENT 2**).



Use

Beginning July 1, 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.⁸ 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.⁹

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.¹⁰

Safety glasses and pamphlets required

Beginning July 1, 2020, any licensed manufacturer or licensed wholesaler selling consumer 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 July 1, 2020, to prepare a pamphlet that explains how to use consumer fireworks safely and to distribute that pamphlet to licensed manufacturers and wholesalers who sell consumer fireworks. A licensed manufacturer or wholesaler who sells consumer fireworks to a consumer must provide a copy of the State Fire Marshal's pamphlet to each purchaser of consumer fireworks who is not a licensed manufacturer, wholesaler, or exhibitor. A licensed manufacturer or wholesaler who knowingly fails to comply with the bill's pamphlet or safety glasses requirement is guilty of a second degree misdemeanor.¹¹

⁸ R.C. 3743.45(C), and Section 3, with conforming changes in R.C. 3743.04, 3743.17, 3743.63, and 3743.65.

⁹ R.C. 3743.45(C) and (D) and Section 3, and R.C. 3743.54, not in the bill.

¹⁰ R.C. 3743.45(E) and (F).

¹¹ 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 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.¹² The bill eliminates, beginning July 1, 2020, the requirement that a nonresident may possess display fireworks in Ohio only while directly transporting the fireworks out of Ohio. However, under continuing law a nonresident still must transport any display fireworks purchased in Ohio out of Ohio within 48 hours after purchase. Also, under continuing law, failure to transport the display fireworks out of Ohio within 72 hours is a first degree misdemeanor (see **COMMENT 2**).¹³

Prohibitions

The bill prohibits, beginning July 1, 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 July 1, 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.¹⁴

Fireworks fee

The bill imposes a fee on the retail sale of consumer grade fireworks sold on and after January 1, 2021. The fee equals 4% of the fireworks' purchase price and is due at the time of purchase, payable by the purchaser to the vendor selling the fireworks – i.e., the licensed fireworks manufacturer or wholesaler.¹⁵ Collected fees are first credited to the new Fireworks Fee Receipts Fund, and from there, after accounting for refunds, to the State Fire Marshal's Fund. Seven-eighths of the revenue must be used to fund

¹² R.C. 3743.01, not in the bill.

¹³ R.C. 3743.44, 3743.63(A) and (B), and 3743.99(C).

¹⁴ R.C. 3743.65(G) and (H) and 3743.99(F) and (H).

¹⁵ R.C. 3737.04, 3737.05, and 3737.08.



firefighter training programs and the remainder must fund the State Fire Marshal's activities related to the enforcement and regulation of the fireworks industry.¹⁶

Reporting and payment

Similar to the sales tax levied under continuing law, the fireworks fee is collected by fireworks vendors acting as trustees for the state.¹⁷ After collecting the fee, the bill requires a fireworks vendor to file a return and remit the fees the vendor collected in the preceding month. The bill does not state a due date for monthly returns, but most provisions regarding collection of sales tax also apply to collection of the fireworks fee, and sales tax returns are due by the 23rd day of each month. The Tax Commissioner may also allow a fireworks vendor to file returns and remit the fee on less frequent intervals.¹⁸ If a fireworks vendor refunds any part of the fireworks' purchase price, the vendor must also refund to the consumer a proportionate amount of the fireworks fee that the consumer paid.¹⁹

Administration

Generally, the fireworks fee is administered in a similar manner to the sales tax.²⁰ The bill prescribes provisions related to the administration and enforcement of the new fee that are substantially the same as similar provisions under the sales tax:

- Provisions for issuing assessments to collect unpaid tax, penalty, or interest;²¹
- Penalties for failing to report or remit the fee as required by law;²²
- Interest on unpaid fees and on refund payments;²³

¹⁶ R.C. 3737.05, 3737.11(C), 3737.51, and 3737.71.

¹⁷ R.C. 3737.08(A).

¹⁸ R.C. 3737.09 and 3739.06, and R.C. 5739.12, not in the bill.

¹⁹ R.C. 3737.08(B).

²⁰ R.C. 3737.06.

²¹ R.C. 3737.10.

²² R.C. 3737.09(B) and 3737.10(B).

²³ R.C. 3737.09(C), 3737.10(D), and 3737.11(A).



- Provisions for obtaining refunds of fee overpayments;²⁴
- Provisions prescribing the liability of consumers and fireworks vendors and of individuals responsible for remitting fireworks fees;²⁵
- Provisions requiring fireworks vendors to retain records for four years after the return was filed or due whichever is later;²⁶
- Procedures for auditing the records of a fireworks vendor;²⁷
- Authority for the Commissioner to adopt necessary administrative rules;²⁸
- Prohibition on failing to file a return or filing a false return;²⁹
- Criminal penalties for knowingly failing to remit collected fireworks fees (fourth degree felony) and for knowingly violating any other fireworks fee requirement (first degree misdemeanor on a first offense, fourth degree felony on subsequent offenses).³⁰

The fireworks fee is administered and enforced by the Tax Commissioner, so the bill provides that sections of the Revised Code that apply generally to taxes and fees administered by the Commissioner also applies to the fireworks fee.³¹

Geographic transfer of fireworks license

Under the bill, not later than January 1, 2021, the State Fire Marshal must adopt rules, in consultation with the fireworks industry and other interested parties, that allow a licensed manufacturer or wholesaler a period of not less than two years 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

²⁴ R.C. 3737.11, 5703.052, 5703.70, and 5703.77.

²⁵ R.C. 3737.10(A) and (F), with conforming change in R.C. 1705.48.

²⁶ R.C. 3737.09(E).

²⁷ R.C. 3737.10(A) and 5703.19.

²⁸ R.C. 3737.06.

²⁹ R.C. 3737.12.

³⁰ R.C. 3737.06, 3737.08(C), 3737.09(G), 3737.10(G)(2) and (I), 3737.12, and 3737.99.

³¹ R.C. 3737.07, 5703.052, 5703.053, 5703.19, 5703.70, and 5703.77.



transferred. Under the 90-day provisions of the bill, the current moratorium on geographic transfer expires January 1, 2021.

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.³²

COMMENT

1. The bill requires the Fireworks Study Group to hold its first meeting by September 30, 2017.³³ That date has passed.

2. The bill appears to maintain a current-law conflict related to the time within which an out-of-state resident must transport fireworks out of the state of Ohio. Under current law R.C. 3743.44(A) and (B), an out-of-state resident that purchases fireworks in Ohio, regardless of the type of firework, must transport those fireworks out of the state within 48 hours. The current law version of R.C. 3743.63(A) prohibits an out-of-state resident from possessing fireworks purchased in Ohio unless the person complies with R.C. 3743.44, which would include the 48-hour transportation requirement. However, the current law version of R.C. 3743.63(B) also requires out-of-state residents to transport display fireworks out of the state within 72 hours. Under current law, it is possible that R.C. 3743.63(B) acts as an exception to R.C. 3743.44(A) and (B) and 3743.63(A), making those divisions apply only to consumer fireworks.³⁴ The bill amends R.C. 3743.44 so that it pertains to only display fireworks, putting it into more direct conflict with R.C. 3743.63(B).

It is unclear which deadline would prevail, as there do not appear to be any court cases deciding the matter. However, the rules of construction pertaining to statutes stipulate that Revised Code provisions creating a criminal offense are to be construed "against the state and liberally construed in favor of the accused."³⁵

³² R.C. 3743.17(F), 3743.591, and 3743.75(B).

³³ R.C. 3743.67(B).

³⁴ See R.C. 1.12, not in the bill.

³⁵ R.C. 2901.04.



HISTORY

ACTION	DATE
Introduced	05-16-17
Reported, H. Gov't Accountability & Oversight	09-13-17
Passed House (83-14)	10-11-17

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