



www.lsc.ohio.gov

# OHIO LEGISLATIVE SERVICE COMMISSION

Wendy Zhan, Director

Office of Research  
and Drafting

Legislative Budget  
Office

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

## Occupational Regulation Report

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

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

**Impacted Profession:** Fireworks manufacturers, wholesalers, and retailers

---

Mitchell Smith, Research Analyst

Eric Makela, Economist

LSC is required by law to issue a report for each introduced bill that substantially changes or enacts an occupational regulation. The report must: (1) explain the bill's regulatory framework in the context of Ohio's policy of using the least restrictive regulation necessary to protect consumers, (2) compare the regulatory schemes governing the same occupation in other states, and (3) examine the bill's potential impact on employment, consumer choice, market competition, and cost to government.<sup>1</sup>

---

## SUMMARY OF NEW AND MODIFIED REGULATIONS

This report addresses three provisions of H.B. 253 that might affect individuals seeking work in the fireworks industry. The report covers only the portions of the bill that could be construed as an increase in the restrictiveness of an occupational regulation. It does not analyze provisions of the bill that relax existing regulations – such as by allowing fireworks manufacturers or wholesalers to transfer their licenses to new locations.

For a full summary of the bill, see the [H.B. 253 Bill Analysis](#).

### **Manufacturer and wholesaler license moratorium**

The bill extends an existing moratorium on the issuance of new fireworks manufacturer and wholesaler licenses until December 15, 2021. After that date, new licenses must be approved in a manner that does not unduly burden the State Fire Marshal's ability to ensure

---

\* This report addresses the "As Introduced" version of H.B. 253. It does not account for changes that may have been adopted after the bill's introduction.

<sup>1</sup> R.C. 103.26, not in the bill.

public safety. The bill also creates the Fire Code Rule Recommendation Committee to study the moratorium (among other things) and make recommendations as to the development of a licensing program for fireworks wholesalers and manufacturers. Under current law, the moratorium is set to expire on December 31, 2020.<sup>2</sup>

### **Fountain device retailer license**

The bill creates a new license for retailers who wish to sell “fountain devices”—a consumer grade ground-based or hand-held firework that produces a shower of sparks upon ignition. Under current law, only licensed fireworks manufacturers and wholesalers are permitted to sell fireworks (including fountain devices). Nonlicensed retailers are limited to selling novelty items such as wire sparklers, snappers, snakes, glow worms, and trick matches. The fountain device retailer license creates an alternative pathway for retailers to sell a certain type of firework without seeking a manufacturer or wholesaler license.

A fountain device retailer license would be obtained by applying to the State Fire Marshal before October 1 of any given year. Each application must include: (1) a license fee of \$25 or less (the amount is set by the State Fire Marshal), (2) an affidavit affirming compliance with the National Fire Protection Association’s (NFPA’s) guidelines for the manufacture, transportation, storage, and sale of fireworks, and (3) proof of insurance. Licenses are valid for one year. A retailer must apply for and obtain a separate license for each location at which fountain devices will be sold.

All sales of fountain devices must be conducted from the licensed location to purchasers who are 18 years or older. The State Fire Marshal is required to adopt additional rules to promote the safety and security of employees, the public, and the premises from which fountain devices are sold. Licensed fountain device retailers are subject to periodic inspections to ensure compliance with the law.<sup>3</sup>

### **Safety glasses and pamphlets**

The bill requires all licensed fireworks manufacturers, wholesalers, and fountain device retailers to provide customers with a fireworks safety pamphlet and offer safety glasses for little or no charge at the point of sale, beginning June 1, 2020.<sup>4</sup>

---

## **LEAST RESTRICTIVE REGULATION COMPARISON**

### **Ohio’s general regulatory policy**

The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or

---

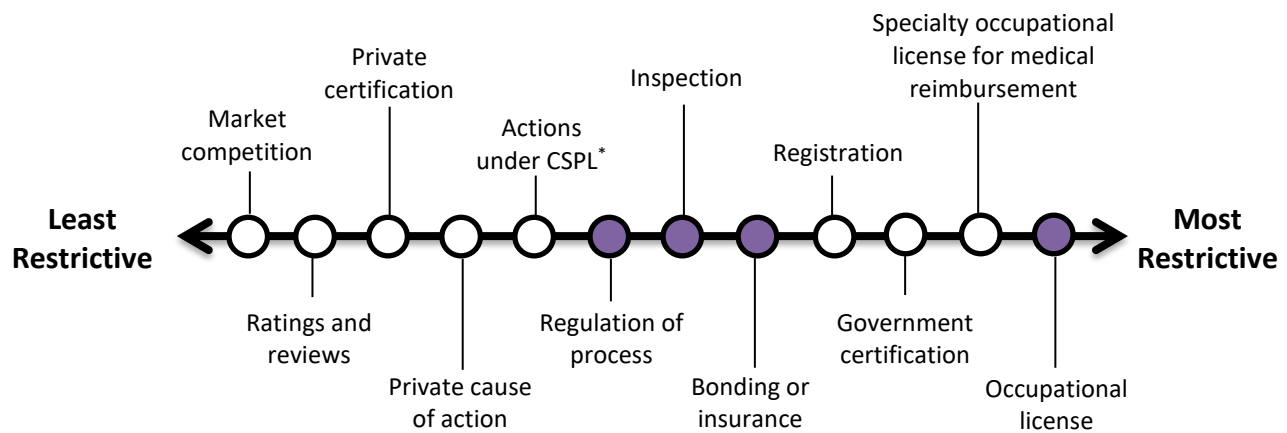
<sup>2</sup> R.C. 3743.67 and 3743.75(A)(1) and (D). The version of R.C. 3743.765 in the bill does not reflect the amendment of that section by H.B. 166 of the 133<sup>rd</sup> General Assembly.

<sup>3</sup> R.C. 3743.01(H), 3743.26, 3743.27, 3743.28, 3743.29, and 3743.99; Section 3 of the bill. While the bill explicitly states an effective date of October 2, 2019, for these provisions, that date has passed.

<sup>4</sup> R.C. 3743.227(B) and (C), 3743.47, 3743.60(K) and (L), and 3743.99(G); Section 3 of the bill.

services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect consumers from “present, significant, and substantiated harms that threaten health, safety, or welfare,” the state’s expressed intent is to enact the “least restrictive regulation that will adequately protect consumers from such harms.”<sup>5</sup>

The degree of “restrictiveness” of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state’s policy by least to most restrictive:



\*CSPL – The Consumer Sales Practices Law

## Necessity and restrictiveness of regulations

Representatives Don Manning and Michael O’Brien, the bill’s sponsors, testified that the purpose of H.B. 253 is to relax Ohio’s “largely ignored” law prohibiting the use of consumer grade fireworks and instead focus the state’s regulatory efforts on educating fireworks purchasers about proper safety practices. The written testimony does not address occupational regulations specifically, but it does suggest that the general purpose of the state’s fireworks law is to prevent firework-related injuries.<sup>6</sup>

According to the *2018 Fireworks Annual Report* prepared by the U.S. Consumer Protection Safety Commission, approximately 9,100 firework-related injuries were treated in U.S. emergency rooms in 2018. There were five nonoccupational firework-related deaths during that time.<sup>7</sup>

### Licensure requirements

Licensure is the most restrictive of all regulatory options identified within the state’s general policy on occupational regulations. Accordingly, the policy prescribes a narrow range of situations in which it is appropriate. Specifically, when all of the following circumstances are

<sup>5</sup> R.C. 4798.01 and 4798.02, neither in the bill.

<sup>6</sup> Representatives Don Manning and Michael O’Brien, *H.B. 253 Sponsor Testimony*, November 20, 2019.

<sup>7</sup> U.S. Consumer Product Safety Commission, *2018 Fireworks Annual Report*, p. 1.

present: (1) the occupation involves providing a service regulated by both state and federal law, (2) the licensing framework allows individuals licensed in other states and territories to practice in Ohio, and (3) the licensing requirement is based on uniform national laws, practices, and examinations that have been adopted by at least 50 U.S. states and territories.<sup>8</sup>

The manufacture, storage, sale, and discharge of fireworks is regulated within all 50 states and by the federal government to varying degrees.<sup>9</sup> The bill does not allow individuals licensed in other states to sell fountain devices or other fireworks in Ohio but none of the surrounding states grant reciprocity to out-of-state licensees either. The NFPA 1124, Code for the Manufacture, Transportation, Storage and Retail Sales of Fireworks and Pyrotechnic Articles, is utilized by the bill and by current law to establish minimum standards for fireworks licensees.<sup>10</sup> NFPA 1124 is widely adopted among U.S. states including all of Ohio's surrounding states.<sup>11</sup>

The bill's extension of the fireworks manufacturer and wholesaler license moratorium and its creation of the fountain device retailer license do not appear to be entirely consistent with the state's general policy due to the lack of a reciprocity provision. However, either or both provisions could have arguably been excluded from this report because it is not clear that the provisions increase the restrictiveness of occupational regulations.

The extension of the moratorium maintains the status quo; new fireworks manufacturer and wholesaler licenses have not been issued in Ohio since June 29, 2001.<sup>12</sup> The new fountain device retailer licenses actually makes it easier to sell fireworks in this state by creating an alternative pathway to engage in an activity that is otherwise illegal under continuing law. Ignoring the moratorium, the license fees and standards that apply to fountain device retailers are less than those that apply to manufacturers and wholesalers. Whether the bill's provisions should be subjected to the same scrutiny as others that clearly increase the restrictiveness of an occupational regulation is a policy decision.

## **Insurance requirement**

The state's policy provides that an insurance requirement is appropriate when the intention of the regulation is to protect against externalities such as damages to third parties that are not the buyer or the seller.<sup>13</sup> The bill requires prospective fountain device retailers, when submitting a license application, to include proof of insurance in an amount and type

---

<sup>8</sup> R.C. 4798.02, not in the bill.

<sup>9</sup> See, e.g., 27 Code of Federal Regulations (C.F.R.) 555, 16 C.F.R. 1500 and 1507, and American Pyrotechnics Association, [2019 State Fireworks Control Laws](#).

<sup>10</sup> See, e.g., R.C. 3726(A)(2)(b), 3743.27(A)(1), and 3743.28(B) of the bill; R.C. 3743.05, 3743.18, 3743.53, and 3743.58 of current law.

<sup>11</sup> See, e.g., Ind. Code § 22-11-14-1, Ky. Rev. Stat. § 227.715, Michigan Department of Licensing and Regulatory Affairs, [Fireworks Program](#), 72 Pa. Stat. Ann. § 9401, W. Va. Code § 29-3E-2(18) and (19).

<sup>12</sup> R.C. 3743.75.

<sup>13</sup> R.C. 4798.02(B)(3), not in the bill.

specified by the State Fire Marshal by rule.<sup>14</sup> This requirement appears to be consistent with the state's policy.

### **Inspection requirement**

The state's policy provides that an inspection requirement is appropriate when the intention of the regulation is to "protect consumers against unsanitary facilities and general health, safety, or welfare concerns."<sup>15</sup> The bill permits the State Fire Marshal to inspect the premises, the inventory, and the retail sale records of a licensed fountain device retailer during the retailer's period of licensure to determine whether the retailer is in compliance with the law.<sup>16</sup> This requirement appears to be consistent with the state's policy.

### **Regulations of process**

The state's policy does not provide specific guidance as to when a regulation of process is the best means of protecting the health, safety, and welfare of consumers. However, the policy as a whole suggests that regulations of process are the most preferred method of regulation when market competition, ratings and reviews, private certifications, private causes of actions, and actions under the state's Consumer Sales Practices Law (CSPL) do not provide sufficient protection.

The sponsors' testimony suggests that the fireworks safety pamphlet and safety glasses requirements are intended to educate and encourage consumers to engage in proper safety practices. Whether the requirements are necessary to protect consumers is a policy judgment, but they appear to be of the type contemplated by the state's general occupational regulation policy.

### **Other regulatory policies**

The bill modifies an established regulatory framework that applies to the manufacture, transportation, storage, sale, and use of fireworks. The law does not contain a general statement explaining the state's intent in regulating fireworks. Some insight as to this intent might be gleaned from the mission statement of the State Fire Marshal, who currently administers licenses for fireworks manufacturers, wholesalers, and exhibitors: "to safeguard the public, its property and the environment from fire and related risks through education, regulation, investigation, and enforcement."<sup>17</sup>

---

## **IMPACT STATEMENT**

### **Opportunities for employment**

The extension of the moratorium on the issuance of new licenses for fireworks manufacturers and wholesalers will limit employment in the industry to current licensees.

---

<sup>14</sup> R.C. 3743.26(A)(2).

<sup>15</sup> R.C. 4798.02(B)(2), not in the bill.

<sup>16</sup> R.C. 3743.29(A).

<sup>17</sup> Ohio Department of Commerce: State Fire Marshal, [About us](#).

There currently are six licensed manufacturers and 44 licensed wholesalers. This restriction is somewhat mitigated by the bill when compared to current law through the bill's provisions to allow more flexibility to current licensees and to create a new license for the sale of fountain devices.

Under current law fountain devices may be sold only by licensed fireworks manufacturers and wholesalers. The bill's creation of a fountain device retailer license opens up opportunities for employment for those able to meet licensure requirements.

### **Market competition**

The extension of the moratorium on the issuance of new licenses for fireworks manufacturers and wholesalers limits competition in the industry to current licensees. However, the bill's creation of a fountain device retailer license may increase competition for the sale of this type of firework compared to the current situation in Ohio.

The bill's requirement on providing fireworks safety pamphlets and safety glasses as well as the bill's imposition of a 4% fee on consumer fireworks purchases affect retailers equally and so should not inhibit market competition.

### **Consumer choice and costs**

Without the bill's extension of the moratorium on new licenses for fireworks manufacturers and wholesaler, it is possible new companies would enter Ohio's market and open more locations that offer more choice and, perhaps, lower costs to consumers. The 4% fee will likely increase consumer prices.

### **Cost to government**

For the costs to government see the [LBO fiscal note](#).

---

---

## **STATE-BY-STATE COMPARISON**

All of the surrounding states have a license, certificate, or registration for retailers of consumer fireworks that is distinct from a fireworks manufacturer or wholesaler license. All but West Virginia allow retailers to sell novelty items like sparklers without prior authorization (at least under certain conditions). However, there is a wide variance among the states in terms of what is considered a novelty item and what is considered a firework, and in terms of the license fees, insurance requirements, and inspection requirements. The table below summarizes the fireworks laws of the surrounding states in greater detail.

Fireworks Retailer Requirements					
	Indiana <sup>18</sup>	Kentucky <sup>19</sup>	Michigan <sup>20</sup>	Pennsylvania <sup>21</sup>	West Virginia <sup>22</sup>
<b>Authorization required</b>	<i>A certificate of compliance</i> is required to sell consumer grade fireworks at retail. Novelty items such as sparklers and smoke devices may be sold from a tent or permanent structure without a certificate. However, a <i>fireworks stand retail sales permit</i> is required to sell novelty items at a temporary location.	A retailer that is open all year may sell hand-held sparkling devices and novelty items <i>without a permit</i> so long as such sales are ancillary to the retailer's primary course of business.  Seasonal retailers, retailers that sell aerial and audible ground devices, and retailers whose primary course of business is the sale of fireworks must register with the State Fire Marshal.	Retailers may sell novelty items like sparklers and toy snakes without authorization.  Retailers may sell ground and hand-held sparkling devices by registering with the <i>low-impact fireworks retail registry</i> .  <i>A consumer fireworks certificate</i> is required to sell other consumer grade fireworks.	Retailers may sell novelty items, toy caps, and ground and hand-held sparkling devices (fountain devices) without prior authorization.  A license is required to sell other consumer fireworks.	<i>A sparkling devices and novelties registration</i> is required to sell such items at retail.  <i>A consumer fireworks certificate</i> is required to sell other consumer grade fireworks.

<sup>18</sup> Ind. Code §§ 22-11-14-1 *et. seq.*; 675 Ind. Admin. Code §§ 12-3-10 and 12-9-7; Indiana Department of Homeland Security, [Fireworks Information](#).

<sup>19</sup> Ky. Rev. Stat. §§ 227.700, 702, 704, 710, and 715.

<sup>20</sup> Mich. Comp. Laws §§ 28.452, *et. seq.*

<sup>21</sup> 72 Pa. Stat. Ann. §§ 9401, 9408, and 9409.

<sup>22</sup> W. Va. Code §§ 29-3E-4 and 5; W. Va. Code R. § 103-4-5.

Fireworks Retailer Requirements					
	Indiana <sup>18</sup>	Kentucky <sup>19</sup>	Michigan <sup>20</sup>	Pennsylvania <sup>21</sup>	West Virginia <sup>22</sup>
<b>Administrator</b>	State Fire Marshal.	State Fire Marshal.	Department of Licensing and Regulatory Affairs and the Bureau of Fire Services.	Department of Agriculture.	State Fire Marshal.
<b>Fee</b>	For a <i>certificate of compliance</i> , \$1,000 for the first location plus additional fees for each additional location (\$500 for a tent and \$200 for a structure). For a <i>fireworks stand retail sales permit</i> , the fee ranges from \$276 for 1-4 stands to \$1,380 for 21-50 stands.	\$25 per location for seasonal retailers or retailers whose primary course of business is the sale of fireworks, if the only fireworks sold are hand-held sparkling devices and novelty items.  \$250 per location for retailers that sell aerial or audible ground devices only between June 10 and July 7, or December 26 and January 4, or both.  \$500 per location for retailers that sell aerial or audible ground devices at any other time of year.	For the <i>low-impact fireworks retail registry</i> , \$50 per location up to a maximum of \$1,000.  For the <i>consumer fireworks certificate</i> , \$1,250 per permanent retail location plus \$1,000 per nonpermanent retail location (e.g., tents). The fee is discounted to \$700 per nonpermanent retail location if there are 10 or more.	Application fee ranges from \$1,000 to \$2,500 depending on the characteristics of the facility at which the fireworks are to be sold. The license fee depends on the size of the facility:  - \$7,500 for up to 10,000 sq. ft. - \$10,000 for 10,000-15,000 sq. ft. - \$20,000 for greater than 15,000 sq. ft.	For the <i>sparkling devices and novelties registration</i> , \$15 per location.  For the <i>consumer fireworks certificate</i> , \$1,000 per permanent sales location.



Fireworks Retailer Requirements					
	Indiana <sup>18</sup>	Kentucky <sup>19</sup>	Michigan <sup>20</sup>	Pennsylvania <sup>21</sup>	West Virginia <sup>22</sup>
<b>Renewal period</b>	One year.	One year.	One year.	One year.	One year.
<b>Inspection and insurance requirements</b>	Inspection required for <i>certificate of compliance</i> only. No statutory reference to insurance requirements.	No statutory reference to such requirements.	Inspection and insurance (\$10 million per occurrence) requirements apply to consumer fireworks retailers.	Inspection and insurance (\$2 million per occurrence) requirements apply.	Inspection and insurance (\$1 million per occurrence) requirements apply to <i>consumer fireworks certificate</i> only.



www.lsc.ohio.gov

# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

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

## Bill Analysis

**Version:** As Introduced

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

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 March 17, 2020, 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 June 1, 2020.
- 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.
- Requires the State Fire Marshal to adopt rules regulating the time, manner, and location of consumer fireworks use.
- Creates a new license allowing retailers to sell ground-based or hand-held sparklers called "fountain devices."
- Requires the State Fire Marshal to adopt rules for and enforce the new provisions for fountain device retailers.

## Effective June 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 (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.

---



---

## TABLE OF CONTENTS

Fire Code Rule Recommendation Committee .....	3
Fountain device retailer licenses .....	4
Licensing process.....	4
Licensed fountain device retailer operations.....	5
Rules for fountain device retailers .....	5
Enforcement authority.....	6
Fireworks license moratorium .....	6
Geographic transfer of fireworks license.....	6
Showroom size .....	7
Consumer-grade fireworks .....	7
State residents: purchase and possession .....	7
Out-of-state residents: purchase and possession.....	7
Use and regulation .....	8

Display-grade fireworks .....	9
New prohibitions.....	10
Consumer-grade fireworks fee .....	10

## 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;
- Development of a licensing program for fireworks wholesalers and manufacturers.

The Committee must meet periodically, with the first meeting not later than September 30, 2019. It must submit its report and recommendations to the State Fire Marshal by December 31, 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 Guild’s designee;

8. One representative of the Ohio Chapter of the American Academy of Pediatrics, appointed by the president of the Ohio Chapter;
9. One member of the Ohio Council of Retail Merchants or the Council's designee.<sup>1</sup>

## Fountain device retailer licenses

The bill creates a new license for retailers who wish to sell what are called fountain devices. Under the bill, a “**fountain device**” is defined as a specific type of 1.4G consumer grade firework, a ground-based or hand-held sparkler with one or more tubes containing a nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition and that contains no more than 75 grams of the mixture in any individual tube and no more than 500 grams of the mixture in total.<sup>2</sup>

### Licensing process

The bill requires persons who wish to be licensed as fountain device retailers to apply to the State Fire Marshal before October 1 of any given year. An application must be submitted for each location at which the person wishes to sell fountain devices, and each application 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 Edition)” (**NFPA 1124**) or that they will be in compliance before engaging in the storage and sale of fountain devices;
- Proof of insurance in an amount and type specified by the State Fire Marshal in rules.

The bill requires the State Fire Marshal to review timely submitted applications and determine if they comply with its requirements. If they do, the State Fire Marshal must issue a fountain device retailer license.<sup>3</sup>

The bill establishes several general standards with respect to licenses. First, licenses are effective for one year beginning on December 1. Second, licenses can only be issued on that date. Third, the State Fire Marshal must send licensees a written notice of expiration three months before expiration. (See **COMMENT 1**) Fourth, licensees must apply for renewal licenses by October 1 of the year the license expires. Outside of the general rules, the bill provides one-time licensing procedures for the first year of the program's operation.

---

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

<sup>2</sup> R.C. 3743.01(H); Section 3. While the bill explicitly states an effective date of October 2, 2019, for these provisions, that date has passed.

<sup>3</sup> R.C. 3743.26(A) and (B).

Any person wishing to be licensed as a retailer of fountain devices on June 1, 2020, shall submit an application by April 1, 2020. If an application is received by that date, and if the State Fire Marshal determines that it meets the bill's licensing requirements, the Fire Marshal must issue a license on June 1, 2020. Any license issued on that date is effective through November 30, 2021.<sup>4</sup>

### **Licensed fountain device retailer operations**

Licensed fountain device retailers are authorized, under the bill, to possess fountain devices and sell them at retail. Possession and storage of the devices, though, must comply with NFPA 1124. The possession, storage, *and sale* of the devices must also comply with any rules adopted by the State Fire Marshal pursuant to the bill (see "**Rules for fountain device retailers**," below) and sales are restricted to purchasers who are at least 18 years old. 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.

Additionally, purchasers must be provided with the pamphlet and opportunity to obtain safety glasses that the bill requires for other consumer-grade fireworks sales. (See "**Safety glasses and pamphlets required**," below.) A licensee that negligently fails to provide the pamphlet or opportunity to obtain safety glasses is guilty of a second degree misdemeanor.<sup>5</sup>

### **Rules for fountain device retailers**

The bill requires the State Fire Marshal to adopt rules under the Administrative Procedure Act. The bill requires that the rules be designed to promote the safety and security of employees, the public, and the premises from which fountain devices are sold. They must be consistent with the Revised Code as it pertains to fountain device retailers, and NFPA 1124. At a minimum, the rules must 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.

---

<sup>4</sup> R.C. 3743.26(C) through (E).

<sup>5</sup> R.C. 3743.27 and 3743.99(G).

The bill requires the State Fire Marshal to file the rules with the Joint Committee on Agency Rule Review no later than March 17, 2020. Filing by that date will allow the rules to go into effect, at the earliest, on June 1, 2020.<sup>6</sup>

### **Enforcement authority**

The bill 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.
- 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.<sup>7</sup>

### **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 31, 2020.

The bill also specifically states that after December 15, 2021, the State Fire Marshal may issue new fireworks manufacturer and wholesaler licenses, but those licenses shall not be approved in a manner that unduly burdens the State Fire Marshal's ability to ensure public safety.<sup>8</sup>

### **Geographic transfer of fireworks license**

Under the bill, the State Fire Marshal must develop 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. The bill requires the State Fire Marshal to file those rules with the Joint Committee on Agency Rule Review no

---

<sup>6</sup> R.C. 3743.28; Joint Committee on Agency Rule Review, Filing-Date Calculator, *available at* <http://www.jcarr.state.oh.us/filers/date-calculators> (accessed September 6, 2019).

<sup>7</sup> R.C. 3743.29.

<sup>8</sup> R.C. 3743.75(A)(1) and (D). The version of R.C. 3743.75 in the bill does not reflect the amendment of that section by H.B. 166 of the 133<sup>rd</sup> General Assembly.

later than March 17, 2020. If the rules are filed by that date, the earliest they may take effect is June 1, 2020.

If the State Fire Marshal determines that an application for the geographic transfer of a license complies with the new rules, the license may be transferred. The bill also extends the current moratorium on geographic transfers, which is scheduled to expire on December 31, 2020, until on June 1, 2020.

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.<sup>9</sup>

### **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.<sup>10</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>11</sup> The bill continues to allow Ohio residents to possess consumer fireworks but eliminates, beginning in June 2020, the requirement that an Ohio resident who purchases these fireworks must transport the fireworks out of Ohio within 48 hours after the purchase.<sup>12</sup> Under current law, a purchaser may only obtain possession of consumer fireworks from a manufacturer or wholesaler licensed under the Fireworks Law. The bill adds licensed fountain device retailers to that list.<sup>13</sup>

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

The bill eliminates, beginning in June 2020, the current law requirement that an out-of-state resident purchasing consumer fireworks must transport them directly out of Ohio within 48 hours.<sup>14</sup>

---

<sup>9</sup> R.C. 3743.17(F), 3743.591, and 3743.75(A)(2) and (B); Joint Committee on Agency Rule Review, *Date Calculator* available at [www.jcarr.state.oh.us](http://www.jcarr.state.oh.us) under the “For Rule Filers” tab (accessed July 17, 2019).

<sup>10</sup> R.C. 3743.25(C)(2).

<sup>11</sup> R.C. 3743.01.

<sup>12</sup> R.C. 3743.45(A) and 3743.63(C) and (D).

<sup>13</sup> R.C. 3743.45 and 3743.63(D).

<sup>14</sup> R.C. 3743.44(A) and (B), 3743.63(A), and Section 3.



## Use and regulation

Beginning in June 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. 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.<sup>15</sup>

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 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 discharge. 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.

The bill requires the State Fire Marshal to file those rules with the Joint Committee on Agency Rule Review no later than March 17, 2020. If the rules are filed by that date, the earliest they may take effect is June 1, 2020.<sup>16</sup>

While the bill prohibits the State Fire Marshal's rules from banning the discharge of consumer grade fireworks, it 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

---

<sup>15</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.

<sup>16</sup> R.C. 3743.451 and Section 3; and R.C. 3743.54, not in the bill; Joint Committee on Agency Rule Review, *Date Calculator* available at [www.jcarr.state.oh.us](http://www.jcarr.state.oh.us) under the "For Rule Filers" tab (accessed July 17, 2019).

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.<sup>17</sup>

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

Beginning in June 2020, 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 bill also requires the State Fire Marshal, beginning in June 2020, to design a pamphlet that explains how to use consumer grade fireworks safely and to distribute the design to licensed retailers, manufacturers, and wholesalers who sell consumer grade fireworks. A licensed retailer, 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 retailer, manufacturer, wholesaler, or exhibitor.

A licensed retailer, manufacturer, or wholesaler who fails to comply with the bill's pamphlet or safety glasses requirement is guilty of a second degree misdemeanor.<sup>18</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>19</sup> The bill eliminates, beginning in June 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.<sup>20</sup> (See **COMMENT 2.**)

---

<sup>17</sup> R.C. 3743.45(D) and (E).

<sup>18</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>19</sup> R.C. 3743.01.

<sup>20</sup> R.C. 3743.44, 3743.63(A) and (B), and 3743.99(C), conforming change in R.C. 3743.45(B).

## New prohibitions

The bill prohibits, beginning in June 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 June 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.<sup>21</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 retailers, 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 in 2020. The bill excludes from "gross receipts" sales tax the retailer, manufacturer, or wholesaler collects on behalf of the state or local governments.

The bill requires retailers, manufacturers, and wholesalers to report and remit the fee to the State Fire Marshal no later than the 23<sup>rd</sup> day after the end of each "**fee period**," set by the bill as October 1 through September 30, annually.

While the bill requires licensed retailers, 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>22</sup>

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, for two years, licensed manufacturers and licensed wholesalers from applying for new licenses.

---

<sup>21</sup> R.C. 3743.65(G) and (H) and 3743.99(F) and (H).

<sup>22</sup> R.C. 3743.22(A) to (C).

The State Fire Marshal is also permitted to adopt rules necessary to administer and enforce the fee.<sup>23</sup>

---

## COMMENT

1. The bill's current wording, establishing that fountain device retailer licenses are effective for one year beginning on December 1, and that a notice must be sent no more than three months before a license expires presents an interesting interaction of several provisions in Ohio law. First, the law states that "year" means 12 consecutive months (R.C. 1.44). The law also, provides that if a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of the month (R.C. 1.45).

Because a license is effective for one year, stated otherwise as 12 full months, beginning on December 1, the last day it is effective is November 30 of the following year. That leaves a question though, as to whether the expiration date is November 30, the last day the license is effective, or December 1, the first day the license is not effective. *Black's Law Dictionary's* entry for "expiration date" provides support for either reading: "The date after which something cannot or should not be used; esp., the date on which an offer, option, or the like ceases to exist." The definition's reference to "the date after which something cannot be used" supports a conclusion that the expiration date is November 30, in which case the notice must be sent on August 31. That being said, a technical amendment is suggested remove the ambiguity by setting a date certain for notice.

2. 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).

---

<sup>23</sup> R.C. 3743.08, 3743.21, and 3743.22(D) and (E), conforming changes in R.C. 3743.57 and 5703.21.

---

## HISTORY

Action	Date
Introduced	05-21-19

---