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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
and Drafting

Legislative Budget
Office

H.B. 253*
133rd 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

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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.¹

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.

¹ 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, 2020.²

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.³

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, 2020.⁴

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

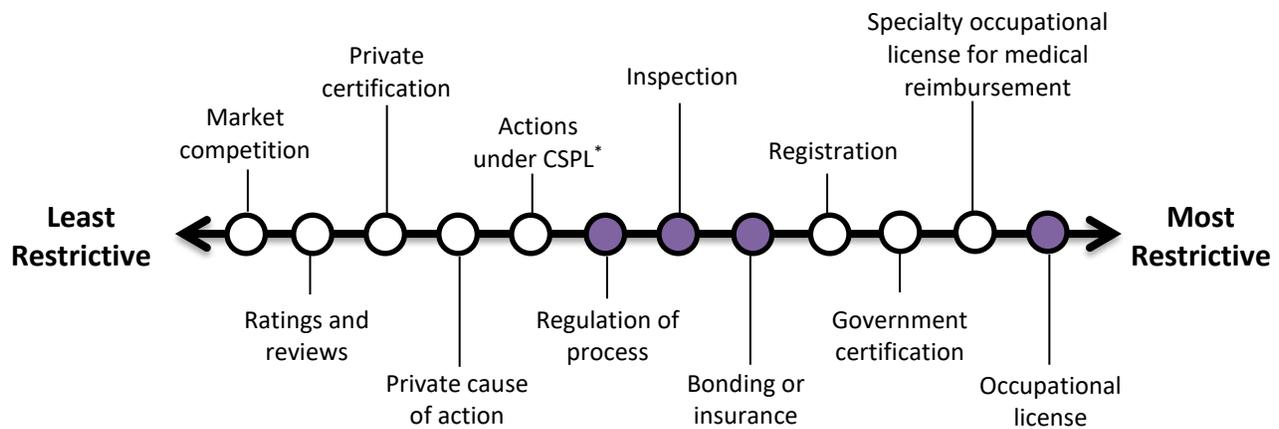
² R.C. 3743.67 and 3743.75(A)(1) and (D). The version of R.C. 3743.765 in the bill does not reflect the amendment of that section by H.B. 166 of the 133rd General Assembly.

³ 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.

⁴ 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.”⁵

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.⁶

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.⁷

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

⁵ R.C. 4798.01 and 4798.02, neither in the bill.

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

⁷ 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.⁸

The manufacture, storage, sale, and discharge of fireworks is regulated within all 50 states and by the federal government to varying degrees.⁹ 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.¹⁰ NFPA 1124 is widely adopted among U.S. states including all of Ohio's surrounding states.¹¹

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, 2001.¹² 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.¹³ The bill requires prospective fountain device retailers, when submitting a license application, to include proof of insurance in an amount and type

⁸ R.C. 4798.02, not in the bill.

⁹ 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](#).

¹⁰ 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.

¹¹ 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).

¹² R.C. 3743.75.

¹³ R.C. 4798.02(B)(3), not in the bill.

specified by the State Fire Marshal by rule.¹⁴ 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."¹⁵ 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.¹⁶ 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."¹⁷

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.

¹⁴ R.C. 3743.26(A)(2).

¹⁵ R.C. 4798.02(B)(2), not in the bill.

¹⁶ R.C. 3743.29(A).

¹⁷ 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 ¹⁸	Kentucky ¹⁹	Michigan ²⁰	Pennsylvania ²¹	West Virginia ²²
Authorization required	A <i>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> . A <i>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.	A <i>sparkling devices and novelties registration</i> is required to sell such items at retail. A <i>consumer fireworks certificate</i> is required to sell other consumer grade fireworks.

¹⁸ 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](#).

¹⁹ Ky. Rev. Stat. §§ 227.700, 702, 704, 710, and 715.

²⁰ Mich. Comp. Laws §§ 28.452, *et. seq.*

²¹ 72 Pa. Stat. Ann. §§ 9401, 9408, and 9409.

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

Fireworks Retailer Requirements					
	Indiana ¹⁸	Kentucky ¹⁹	Michigan ²⁰	Pennsylvania ²¹	West Virginia ²²
Administrator	State Fire Marshal.	State Fire Marshal.	Department of Licensing and Regulatory Affairs and the Bureau of Fire Services.	Department of Agriculture.	State Fire Marshal.
Fee	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 ¹⁸	Kentucky ¹⁹	Michigan ²⁰	Pennsylvania ²¹	West Virginia ²²
Renewal period	One year.	One year.	One year.	One year.	One year.
Inspection and insurance requirements	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.