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## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Baldrige and O'Brien

Andrew Little, Attorney

### SUMMARY

#### **Normal effective date (91<sup>st</sup> day after filed with Secretary of State):**

- Establishes the Ohio Fire Code Rule Recommendation Committee to review the Fireworks Law and make recommendations to the State Fire Marshal.
- Extends a general moratorium on the geographic transfer of fireworks manufacturer or wholesaler licenses from December 31, 2021, to 260 days after the bill's effective date.
- Establishes exceptions to the current moratorium on the geographic transfer of fireworks manufacturer and wholesaler licenses for licensees that meet specific criteria.
- Establishes application and approval procedures for geographic transfers of fireworks wholesaler and manufacturer licenses, both under the draft bill's new exceptions to the geographic transfer moratorium and for use after the moratorium expires.
- Extends a general moratorium on the issuance of a new fireworks manufacturer license or fireworks wholesaler license until 18 months after the moratorium on geographic transfers expires under the bill.
- Specifies that certain ownership transfers of fireworks manufacturer and wholesaler licenses are not subject to the current moratorium on new licenses if the transfer is through inheritance or a sale approved by the State Fire Marshal.
- Establishes a one-time license application and issuance date, outside of the normal fireworks manufacturer and wholesaler licensing timeline, at the end of the new license moratorium.
- 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,” which the State Fire Marshal may begin to issue in 2022.
- Requires the State Fire Marshal to adopt rules for and enforce the new provisions for fountain device retailers.
- Imposes a 4% fee on the retail sale of consumer grade fireworks, beginning 100 days after the bill’s effective date.
- Credits revenue from the new fee to fund firefighter training programs and the State Fire Marshal’s regulation and enforcement of the fireworks industry.

### **Effective 351 days after filed with Secretary of State:**

- Allows individuals to possess consumer-grade fireworks in Ohio, eliminating a requirement that purchasers transport consumer-grade fireworks out of the state within 48 hours of purchase.
- Allows any person authorized to possess consumer grade fireworks to discharge them on their own property or on another person’s property with permission.
- Permits local governments to restrict the dates and times that individuals may discharge consumer-grade fireworks or to impose a complete ban on the use of consumer-grade fireworks.
- Prohibits discharging fireworks (1) while in possession of, or under the influence of, alcohol or a controlled substance, or (2) on the property of another without the property owner’s permission.
- Prohibits the State Fire Marshal from unreasonably withholding a variance that would allow hobbyists to possess and use pyrotechnic compounds, and requires cause for revocation of such a variance.
- Requires a licensed wholesaler, manufacturer, or retailer who is selling consumer grade fireworks to have safety glasses available for free or at a nominal charge.
- Requires 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 bill creates the Ohio Fire Code Rule Recommendation Committee to review the Fireworks Law and make recommendations to the State Fire Marshal. At a minimum, the Committee must make recommendations relating to 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;
- Development of a licensing program for fireworks wholesalers and manufacturers.

The Committee must meet periodically, with the first meeting not later than ten days after the bill’s effective date. It must submit its report and recommendations to the State Fire Marshal not later than 100 days after the bill’s effective date.

The Committee is to be made up of the following individuals:

1. The State Fire Marshal, or the State Fire Marshal’s designee;
2. Four local fire chiefs appointed by the Ohio Fire Chiefs’ Association, or appointed by the Association’s designee;

3. A local police chief appointed by the Attorney General, or the Attorney General's designee;
4. Five members of the Ohio State Pyrotechnics Association, appointed by the president of the Association, one of whom must be a licensed wholesaler, one of whom must be a licensed exhibitor, and one of whom must be a licensed manufacturer;
5. One member of Prevent Blindness Ohio, or the organization's designee;
6. One member of the Ohio Optometric Association or the association's designee;
7. One member of the Ohio Pyrotechnic Arts Guild or the guild's designee;
8. One representative of the Ohio Chapter of the American Academy of Pediatrics, appointed by the chapter president;
9. One member of the Ohio Council of Retail Merchants or the council's designee.<sup>1</sup>

## Fountain device retailer licenses

The bill creates a new license for retailers who wish to sell what are called fountain devices and permits the State Fire Marshall to begin issuing those licenses in 2022. 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 and that contains no more than 75 grams of the mixture in any individual tube and no more than 500 total grams of the mixture total.<sup>2</sup>

### General licensing process

Generally, the bill requires persons who wish to be licensed as fountain device retailers to apply to the State Fire Marshal by September 30, in any given year. An application must be submitted for each location at which the person wishes to sell fountain devices, and must include:

- A license fee, to be set by the State Fire Marshal at \$25 or less;
- An affidavit affirming that the applicant is in compliance with the National Fire Protection Association's standard “NFPA 1124, Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles (2006 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 in rules by the State Fire Marshal.

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

<sup>2</sup> R.C. 3743.01(H) and Section 4.

The bill requires the State Fire Marshal to review timely submitted applications and determine if they comply with its requirements. If an application is compliant, the State Fire Marshal must issue a license.

The bill also establishes several general standards for 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 by September 1, annually. Fourth, licensees must apply for renewal by October 1 of the year the license expires.<sup>3</sup>

### **Special licensing circumstances**

The bill establishes two special licensing circumstances for fountain device retailers. The first is a one-time license that starts 260 days after the bill's effective date. Any person wishing to be licensed as a retailer of fountain devices on that date must submit an application by the date that is 190 days after the bill's effective date. If an application is received by the deadline, and if the State Fire Marshal determines that it meets the bill's licensing requirements, the Fire Marshal must issue a license 260 days after the bill's effective date.

The effective period of those licenses depends on the date they are ultimately issued. If the 260<sup>th</sup> day after the bill's effective date falls anytime January through May, the licenses will be effective through the end of November during the same calendar year. If it falls June through December, the licenses will be effective through the last day of November in the subsequent calendar year.

The second special licensing circumstance for fountain device retailers under the bill applies to retailers that open for business after the annual application deadline in any given year. The bill allows those retailers to apply for a license any time between the date they open for business and the subsequent annual deadline. If an application is received under this provision between October 1 and November 30, and meets the bill's requirements for fountain device retailers, the State Fire Marshal is required to issue a license no earlier than December 1 and no later than two months after the application is received. If a compliant application is received at any other time pursuant to the provision, the State Fire Marshal is required to issue the license no later than two months after the application is received.<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

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

<sup>4</sup> R.C. 3743.26(C) and (D).

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 the 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 for fountain device retailers under the Administrative Procedure Act. The rules must be designed to promote the safety and security of employees, the public, and the premises from which fountain devices are sold, be consistent with the Revised Code and NFPA 1124, and, at a minimum, address the following:

- With respect to buildings and other structures on a retailer’s premises:
  - Cleanliness and orderliness;
  - Heating, lighting, and use of stoves and flame-producing items;
  - The availability of fire extinguishers or other fire-fighting equipment and their use;
  - Emergency procedures.
- Storage of fountain devices;
- Insurance.

The bill requires the State Fire Marshal to file the rules with the Joint Committee on Agency Rule Review no later than 180 days after its effective date.<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.

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

<sup>6</sup> R.C. 3743.28.

- 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>

## Geographic transfer moratorium

The bill extends current law's moratorium on the geographic transfer of fireworks manufacturer and wholesaler licenses, which is currently scheduled to expire on December 31, 2021. Under the bill, this moratorium will expire 260 days after its effective date.

The bill also establishes exceptions to the geographic transfer moratorium for existing licensees that meet specific criteria listed in the bill. In a related change, the bill removes an existing exception to the transfer moratorium for fireworks wholesalers seeking to change locations within the same municipal corporation or township.

Accompanying the new exceptions to the geographic transfer moratorium, the bill establishes application and approval procedures for geographic transfers. Those procedures apply to existing licensees eligible for geographic transfers under the bill's new exceptions, and will also apply to new licensees who obtain their licenses after the new license moratorium expires (see "**Fireworks license moratorium and one-time license period,**" below).<sup>8</sup>

## Fireworks license moratorium and one-time license period

The bill extends a general moratorium on the issuance of fireworks manufacturer and wholesaler licenses for a particular plant or location except to persons who possessed a license for that plant or location immediately prior to June 29, 2001. Under current law, this moratorium ends December 31, 2021; the bill extends the moratorium until 18 months after the expiration of the geographic transfer moratorium (in other words, 18 months after 260 days after the bill's effective date). The bill also specifies that the moratorium does not apply to a license transfer that occurs through inheritance or a sale approved by the state fire marshal.

To coincide with the end of the moratorium, the bill establishes a one-time license period for new fireworks manufacturers and wholesalers. Any person who wishes to be a licensed manufacturer or wholesaler of fireworks when the licensing moratorium ends, and who does not already hold a license that will run through that date, may submit an application two months prior. If the application meets the requirements for licensure, the State Fire Marshal must issue a license when the moratorium ends.

If the date that is 18 months after the end of the geographic moratorium falls anytime January through May, the licenses issued at the end of the moratorium will run through the end

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

<sup>8</sup> R.C. 3743.17(F) and 3743.75(A)(2) and (B) and conforming changes in R.C. 3743.01(II), 3743.04, 3743.08, and 3743.15.

of November during the same calendar year. If the date falls anytime June through December, the licenses will run through the end of November in the subsequent calendar year. The issuance date and license period are a departure from continuing law's normal requirements, which only allow fireworks manufacturer and wholesaler licenses to be issued on the first day of December, with a one-year duration.

Finally, the bill specifically states that after the moratorium expires, the State Fire Marshal may issue new fireworks manufacturer and wholesaler licenses, but those licenses must not be approved in a manner that unduly burdens the State Fire Marshal's ability to ensure public safety.<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 structure 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>

## **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 bill prohibits the State Fire Marshal from unreasonably withholding such a variance, beginning 260 days after the bill's effective date. It also changes the State Fire Marshal's authority to revoke such a variance, which is discretionary under current law, by requiring cause for revocation.<sup>11</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>12</sup> The bill continues to allow Ohio residents to possess consumer fireworks but eliminates, beginning 260 days after the bill's effective date, the requirement that an Ohio resident who purchases these fireworks must transport the fireworks out of Ohio within 48 hours after the purchase. Under current law, a purchaser may only obtain possession of consumer fireworks from a manufacturer or

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<sup>9</sup> R.C. 3743.021, 3743.041, 3743.151, 3743.171, and 3743.75(A) through (D).

<sup>10</sup> R.C. 3743.25(C)(2) and 3743.17.

<sup>11</sup> R.C. 3743.59(C).

<sup>12</sup> R.C. 3743.01.



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 260 days after its effective date, 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>

### **Use and regulation**

Beginning 260 days after the bill's effective date, any person who is authorized to possess consumer fireworks under the bill (both Ohio residents and nonresidents) may set those fireworks off in Ohio, either on the person's own property or on another person's property with permission. Consumer fireworks set off 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 use 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 use. 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.

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

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

<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.

The bill requires the State Fire Marshal to file those rules with the Joint Committee on Agency Rule Review no later than 180 days after its effective date.<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 territory), township (with respect to its unincorporated territory), or municipal corporation to restrict the dates and times that a person may discharge consumer fireworks or impose a complete ban. 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.<sup>17</sup>

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

Beginning 260 days after the bill's effective date, any licensed retailer, licensed manufacturer, or licensed wholesaler selling consumer grade fireworks, other than to a licensed manufacturer, wholesaler, or exhibitor, must offer safety glasses for free at the point of sale, or make them available to the purchaser for a nominal charge. The retailer, manufacturer, or wholesaler must also provide purchasers with a safety pamphlet that contains certain minimum information detailed in the bill.

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 260 days after its effective date, 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

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<sup>16</sup> R.C. 3743.451 and Section 3; and R.C. 3743.54, not in the bill.

<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.

wholesalers only sell display fireworks to persons who have an appropriate license.<sup>20</sup> (See **COMMENT**.)

## **New prohibitions**

The bill prohibits, beginning 260 days after its effective date, 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 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.

Additionally, the bill prohibits, beginning 260 days after its effective date, any person from negligently discharging, igniting, or exploding fireworks on another person's property without that person's permission. A person who violates this prohibition is guilty of a minor misdemeanor.<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 100 days after the bill's effective date. 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 annually report and remit the fee to the State Fire Marshal, no later than October 23.

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>

If 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;

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

<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).

- 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.

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

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## COMMENT

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).

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## HISTORY

Action	Date
Introduced	03-03-21

H0172-I-134/ar

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<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.