



Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 386*

130th General Assembly
(As Reported by S. Commerce and Labor)

Sens. Burke, Seitz, Patton, Schiavoni

BILL SUMMARY

- Eliminates, beginning in 2016, 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, beginning in 2016, 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.
- Prohibits discharging, igniting, or exploding fireworks while in possession of or control of, or under the influence of, any intoxicating liquor, beer, or controlled substance or on the property of another without the owner's permission.
- Requires a licensed manufacturer or licensed wholesaler who is selling consumer grade fireworks to have safety glasses available for free or at a nominal charge.
- Requires the State Fire Marshal to prepare a pamphlet that explains how to use consumer grade fireworks safely and to distribute the pamphlet to licensed wholesalers and manufacturers so that they may distribute a copy to each consumer purchaser.
- Imposes a fee on the retail sale of consumer grade fireworks in Ohio on and after January 1, 2016.

* This analysis was prepared before the report of the Senate Commerce and Labor Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Credits revenue from the new fee to fund firefighter training programs and the State Fire Marshal's regulation and enforcement of the fireworks industry.
- Extends until December 15, 2018, a general moratorium on the issuance of a license as a fireworks manufacturer or license as a fireworks wholesaler.
- Eliminates, beginning in 2016, the moratorium on geographic transfer of a license as a fireworks manufacturer or license as a fireworks wholesaler.

CONTENT AND OPERATION

Consumer fireworks

State residents: purchase, possession, and use

The bill allows Ohio residents beginning in 2016 to possess "1.4G fireworks" (commonly referred to as "consumer grade" fireworks) upon complying with continuing law purchase form requirements (see "**Background – purchase form,**" below). Under continuing law, "1.4G fireworks" are consumer fireworks designated under division 1.4 in federal regulations of the U.S. Department of Transportation.¹ The bill also eliminates beginning in 2016 the current law requirement that an Ohio resident who purchases these fireworks must transport the fireworks directly out of the Ohio within 48 hours after the purchase. Under continuing law, a purchaser may only obtain possession of consumer grade fireworks from a manufacturer or wholesaler licensed under the Fireworks Law.

Beginning in 2016, any person who is authorized to possess consumer grade fireworks under the bill may discharge, ignite, or explode those fireworks in Ohio on the person's own property or on another person's property with permission.² 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.³

The bill specifically permits a county (with respect to the unincorporated portions of the county), township (with respect to the unincorporated parts of the township), or municipal corporation to restrict the dates and times that a person may discharge, ignite, or explode consumer grade fireworks or ban the discharge, ignition,

¹ R.C. 3743.01, not in the bill.

² R.C. 3743.45, with conforming changes in R.C. 3743.04, 3743.17, 3743.63, and 3743.65, and Section 3.

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



or explosion of those fireworks. The bill also specifies that a resolution to this effect adopted by a board of township trustees prevails over a conflicting resolution adopted by the board of county commissioners in the county within which the township is located. The consumer grade 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.⁴

Out-of-state residents

The bill eliminates, beginning in 2016, the current law requirement that an out-of-state resident purchasing the consumer grade fireworks must transport them directly out of Ohio within 72 hours.⁵

Safety glasses and pamphlets required

Beginning in 2016, any 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 2016, to prepare a pamphlet that explains how to use consumer grade fireworks safely and to distribute that pamphlet to licensed manufacturers and wholesalers who sell consumer grade fireworks. A licensed manufacturer or wholesaler who sells consumer grade fireworks beginning in 2016 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 manufacturer, wholesaler, or exhibitor.

A licensed manufacturer or wholesaler who fails to comply with the bill's pamphlet or safety glasses requirement is guilty of a second degree misdemeanor.⁶

Display fireworks

Under continuing law, "1.3G fireworks" are display fireworks designated under division 1.3 in federal regulations of the U.S. The bill eliminates, beginning in 2016, the requirement that a nonresident may possess display fireworks in Ohio only while directly transporting the fireworks out of Ohio. However, under continuing law a

⁴ R.C. 3743.45(E) and (F).

⁵ R.C. 3743.63 and Section 3.

⁶ R.C. 3743.45(B), 3743.47, 3743.60(K) and (L), 3743.61(K) and (L), and 3743.99(G) and Section 3.



nonresident must transport any display fireworks purchased in Ohio out of Ohio within 48 hours after purchase.⁷

Prohibitions

The bill prohibits, beginning in 2016, any person from discharging, igniting, or exploding fireworks while in possession or control of, or under the influence of, any intoxicating liquor, beer, or controlled substance. The bill also prohibits, beginning in 2016, any person from discharging, igniting, or exploding fireworks on the property of another person without that person's permission.

A person who violates the bill's prohibition against discharging fireworks while in possession or control of or while under the influence of intoxicating liquor, beer, or controlled substance 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.

A person who violates the bill's prohibition against discharging fireworks on another person's property without permission is guilty of a minor misdemeanor.⁸

Fireworks fee

The bill imposes a fee on purchasers of consumer grade fireworks sold on and after January, 2016. The fee equals 4% of the fireworks' purchase price and is due at the time of purchase, payable to the vendor selling the fireworks – i.e., the licensed fireworks manufacturer or wholesaler.⁹ Seven-eighths of the revenue from the fee, after accounting for refunds, is to fund firefighter training programs and the remainder to fund the State Fire Marshal's activities related to the enforcement and regulation of the fireworks industry.¹⁰

Reporting and payment

Similar to the sales tax levied under continuing law, the fireworks fee is collected by fireworks vendors acting as trustees for the state.¹¹ After collecting the fee, the bill requires a fireworks vendor to file a return and remit the fees the vendor collected in

⁷ R.C. 3743.44(B) and 3743.45.

⁸ R.C. 3743.65(G) and (H) and 3743.99(F) and (H).

⁹ R.C. 3737.04, 3737.05, and 3737.08.

¹⁰ R.C. 3737.05, 3737.51, and 3737.71.

¹¹ R.C. 3737.08(A).



the preceding month by the 23rd day of each month. The Tax Commissioner may allow a fireworks vendor to file returns and remit the fee on less frequent intervals.¹² If a fireworks vendor refunds any part of the fireworks' purchase price, the vendor must also refund to the consumer a proportionate amount of the fireworks fee that the consumer paid.¹³

Administration

Generally, the fireworks fee is administered in a similar manner to the sales tax.¹⁴ The bill prescribes provisions related to the administration and enforcement of the new fee that are substantially the same as similar provisions under the sales tax:

- Provisions for issuing assessments to collect unpaid tax, penalty, or interest;¹⁵
- Penalties for failing to report or remit the fee as required by law;¹⁶
- Interest on unpaid fees and on refund payments;¹⁷
- Provisions for obtaining refunds of fee overpayments;¹⁸
- Provisions prescribing the liability of consumers and fireworks vendors and of individuals responsible for remitting fireworks fees;¹⁹
- Provisions requiring fireworks vendors to retain records for four years;²⁰
- Procedures for auditing the records of a fireworks vendor;²¹

¹² R.C. 3737.09.

¹³ R.C. 3737.08(B).

¹⁴ R.C. 3737.06.

¹⁵ R.C. 3737.10.

¹⁶ R.C. 3737.09(B) and 3737.10(B).

¹⁷ R.C. 3737.09(C), 3737.10(D), and 3737.11(A).

¹⁸ R.C. 3737.11, 5703.052, 5703.70, and 5703.77.

¹⁹ R.C. 3737.10(A) and (F).

²⁰ R.C. 3737.09(E).

²¹ R.C. 3737.10(A) and 5703.19.

- Authority for the Commissioner to adopt necessary administrative rules;²²
- Prohibition on failing to file a return or filing a false return;²³
- Criminal penalties for failing to remit collected fireworks fees (fourth degree felony) and for violating any other fireworks fee requirement (first degree misdemeanor).²⁴

The fireworks fee is administered and enforced by the Tax Commissioner, so the bill provides that sections of the Revised Code that apply generally to taxes and fees administered by the Commissioner also applies to the fireworks fee.²⁵

Fireworks license moratorium

The bill extends until December 15, 2018, 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. The bill also eliminates beginning in 2016, a moratorium on the geographic transfer of a fireworks manufacturer or wholesaler license to any location other than the location for which the license was issued immediately prior to June 29, 2001. Under current law, both of these moratoria end December 15, 2015.²⁶

Geographic transfer of fireworks license

The bill permits a licensed manufacturer or wholesaler to apply to transfer their license from one geographic location to another, beginning January 1, 2016. If the State Fire Marshal determines that the application complies with rules to be adopted by the Fire Marshal under the bill, the license may be transferred.

Wholesaler licenses, which may be transferred within the same municipal corporation or the unincorporated area of the same township under continuing law

²² R.C. 3737.06.

²³ R.C. 3737.12.

²⁴ R.C. 3737.99.

²⁵ R.C. 1705.48, 3737.07, 5703.052, 5703.053, 5703.19, 5703.70, and 5703.77.

²⁶ R.C. 3743.75.



variance procedures, may also utilize the bill's transfer process for transfers within the municipal corporation or township.²⁷

Background – purchaser's form

The purchaser's form required under continuing law must contain the following information:

- The purchaser's name and address;
- The date of the purchase;
- A statement that the purchaser acknowledges that the person is responsible for any illegal use of the fireworks, including damages caused by improper use;
- The number of the purchaser's license or permit authorizing the purchaser to manufacture, wholesale, sell at retail, or conduct fireworks exhibitions; or the number of the person's driver's license or other identification card, as applicable (this is not required for Ohio residents purchasing consumer grade fireworks);
- Any other information as required by the State Fire Marshal;
- The purchaser's signature.

The purchaser's form also must contain a statement printed in bold letters indicating that knowingly making a false statement on the form is falsification and is a first degree misdemeanor.²⁸

HISTORY

ACTION	DATE
Introduced	11-10-14
Reported, S. Commerce & Labor	---

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²⁷ R.C. 3743.17(F) and 3743.591.

²⁸ R.C. 3743.44(B) and 3743.45.

