



Kristin Moore

*Final Analysis*  
*Legislative Service Commission*

## **Sub. H.B. 405**

123rd General Assembly  
(As Passed by the General Assembly)

**Reps.** Trakas, Amstutz, Goodman, Verich, Sullivan, Perry, Barnes, Tiberi, Redfern, Bender, Buehrer, Calvert, Hartnett, Evans, Flannery, Carey, Jones, D. Miller, Harris, Logan, Schuring, Schuler, Metzger, Ferderber, Stevens, Robinson, Grendell, Cates, Boyd, Distel, Clancy, Winkler, Smith, Womer Benjamin, Terwilleger, James, Pringle

**Sens.** Schafrath, Spada, Watts, Gardner, Latell, Drake

**Effective date:** \*

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### **ACT SUMMARY**

- Requires the suspension or revocation of the fireworks exhibitor license of a person who is convicted of violating fireworks exhibition safety standards.
- Requires a fire chief or fire prevention officer, in consultation with a police chief, to complete a detailed checklist while inspecting premises before a fireworks exhibition to ensure compliance with all statutory and rule requirements.
- Requires the State Fire Marshal to adopt uniform standards for the stability of fireworks storage racks used at a fireworks exhibition.
- Generally prohibits dismantling, repositioning, or otherwise disturbing materials within an accident site of a fireworks exhibition or evidence related to the accident without permission of law enforcement authorities.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

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## CONTENT AND OPERATION

### Rules governing fireworks exhibitions and related provisions

#### Background law

Continuing law requires the State Fire Marshal to adopt rules in accordance with the Administrative Procedure Act that (1) govern the nature and conduct of fireworks exhibitions by licensed fireworks exhibitors and (2) are designed to promote the safety and security of (a) persons viewing a fireworks exhibition, (b) persons who, although not viewing an exhibition, could be affected by fireworks used at it, and (c) fireworks exhibitors and their assistants. These rules formerly had to be, and under the act generally must be, substantially equivalent to the most recent versions of Chapters 1123, 1124, and 1126 of the most recent National Fire Protection Association Standards. Under continuing law, these rules must be consistent with the fireworks exhibition-related provisions of the Fireworks Law and must address specified subject matters, including the *storage* and supervision of fireworks pending their use in, and during the course of, a fireworks exhibition, and inspections by fireworks exhibitors of fireworks to be used in an exhibition prior to their use. Under continuing law, the storage aspect of these rules must regulate, in particular, fireworks storage in ways that will effectively eliminate or reduce the likelihood of fireworks becoming wet or being exposed to flame, and appropriate distances between storage sites and the sites at which fireworks will be discharged. (Sec. 3743.53(B).)

#### Changes made by the act

**New rules.** The act requires the State Fire Marshal to additionally adopt rules in accordance with the Administrative Procedure Act that establish both of the following: (1) uniform standards for the *stability* of fireworks *storage racks* used at a fireworks exhibition and (2) a *detailed checklist* that a fire chief or fire prevention officer, in consultation with a police chief, must complete, while conducting the *inspection* of the premises where a fireworks exhibition will take place that is required under continuing law, to ensure that the exhibition will comply with all applicable requirements of the Fireworks Law, and the rules adopted under it, that regulate the conduct of a fireworks exhibition. Each licensed fireworks exhibitor must comply with the rules pertaining to the stability of fireworks storage racks that the Fire Marshal adopts, and a fire chief or fire prevention officer, in consultation with a police chief, must conduct the required inspection of fireworks exhibition premises, complete the checklist mentioned above while conducting that inspection, and provide a copy of the completed checklist to the Fire Marshal. (Sec. 3743.53(A), (B)(2), (E)(1) and (2), and (F).)

**Related prohibition.** The act prohibits any fire chief or fire prevention officer, in consultation with a police chief, from failing to conduct the required inspection of fireworks exhibition premises, failing to complete the requisite checklist while conducting the inspection, or failing to provide a copy of the completed checklist to the

State Fire Marshal. A violation of this prohibition is punishable as a misdemeanor of the first degree. (Secs. 3743.64(I) and 3743.99(C).)

**Related assistance committee.** Prior to the State Fire Marshal's adoption of the new rules mentioned above, the Director of Commerce must appoint a committee consisting of the Fire Marshal, three representatives of the fireworks industry, and three representatives of the fire service industry to assist the Fire Marshal in adopting those rules. The Fire Marshal must adopt the initial new rules by not later than May 1, 2001. (Sec. 3743.53(E)(3).)

**Related inspection of fireworks exhibition premises changes.** Former law required that, before a fireworks exhibition *permit* was signed and issued to a licensed fireworks exhibitor, (1) the fire chief or fire prevention officer having jurisdiction over the exhibition premises *and* (2) *the police chief* having jurisdiction over the exhibition premises had to *inspect* the premises and determine that, in fact, the applicant for the permit was a licensed fireworks exhibitor. The act changes this requirement so that the fire chief or fire prevention officer, *in consultation with the police chief*, must inspect the premises and make the determination. However, the fireworks exhibition permit itself must be signed, as was the case prior to the act, by the fire chief or fire prevention officer and by the police chief after the premises are inspected and the determination is made in the latter manner. (Sec. 3743.54(B) and (C).)

**Prohibition against disturbing an accident site**

The act prohibits any person from knowingly, or from knowingly permitting another person to, dismantle, reposition, or otherwise disturb any equipment, fireworks, or other materials within an "accident site" of a fireworks exhibition, or any evidence related to an "accident," at any time after that person has reason to believe an accident has occurred, before the appropriate law enforcement authorities permit the dismantling, repositioning, or other disturbance of the materials within the "accident site" or of any evidence related to the accident. The act defines an "accident" as any action or omission that occurs at a fireworks exhibition, that results in injury or death, or a substantial risk of injury or death, to any person, and that involves either of the following: (1) the handling or other use of fireworks or associated equipment or other materials or (2) the failure of any person to comply with any applicable requirement imposed by the Fireworks Law or any applicable rule adopted under it. The act relatedly defines a "discharge site" as the area immediately surrounding the mortars used to fire aerial shells and an "accident site" as a discharge site or other location at a fireworks exhibition where an accident occurs, an injury or death associated with an accident occurs, or evidence of an accident or an injury or death associated with an accident is found. (Sec. 3743.64(H)(1) and (2).) A violation of this prohibition will be a felony of the third degree (sec. 3743.99(A)).

The act provides the following *affirmative defense* to a charge of committing such a violation: that, in order to secure an accident site of a fireworks exhibition or any evidence related to an accident, the person dismantled, repositioned, or otherwise

disturbed materials within the accident site, or evidence related to the accident, which, at the time of the dismantling, repositioning, or other disturbance, still presented a danger of causing an explosion, fire, or similar threat of additional injury or death to members of the public (sec. 3743.64(H)(3)).

**Suspension or revocation of an exhibitor's license under certain conditions**

**Background law**

Continuing law prohibits a licensed fireworks exhibitor from failing to comply with (1) the rules that the State Fire Marshal adopts governing fireworks exhibitions and (2) requirements (a) that all mortars used in a fireworks exhibition that are greater than or equal to eight inches in diameter be equipped with electronic ignition equipment in accordance with Chapter 1123 of the most recent edition of the National Fire Protection Association Standards and (b) that only persons who are employees of licensed fireworks exhibitors and registered with the Fire Marshal under the Fireworks Law be permitted within the discharge perimeter of an exhibition (sec. 3743.64(C) and related sec. 3743.53(B), (C), and (D)).

**Changes made by the act**

The act expands this prohibition by additionally including a failure to comply with the rules pertaining to the stability of fireworks storage racks. Violations of the expanded prohibition continue to be punishable, as was the case prior to the act, as a misdemeanor of the first degree, but the act also provides that, in addition to any other penalties that may be imposed on a licensed fireworks exhibitor and except as described below, the person's license as a fireworks exhibitor or as an assistant fireworks exhibitor must be *suspended* for a period of five years. If the violation results in a serious "accident," as defined in the act, the person's license as a fireworks exhibitor or as an assistant fireworks exhibitor instead must be *revoked*, and that person is not again eligible to be licensed in Ohio as a fireworks exhibitor or as an assistant fireworks exhibitor. (Secs. 3743.64(C) and 3743.99(C) and (D).)<sup>1</sup>

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	06-30-99	p. 1163

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<sup>1</sup> Because continuing law requires the licensing of only fireworks exhibitors, and not assistant fireworks exhibitors, it is not clear what these provisions require. Perhaps the reference is intended to cover "employees" who assist fireworks exhibitors and who must be registered with the State Fire Marshal, although these employees do not receive a license and continuing law does not provide for the suspension or revocation of their registration. (Sec. 3743.53(A) and (D); sec. 3743.56, not in the act.)

Reported, H. State Gov't	02-17-00	p.	1624
Passed House (92-0)	03-21-00	pp.	1693-1694
Reported, S. State & Local Gov't & Veterans Affairs	05-16-00	p.	1699
Passed Senate (33-0)	05-16-00	pp.	1706-1707

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