



H.B. 161

124th General Assembly
(As Introduced)

Reps. Flowers, DeWine, Ford, Damschroder, Goodman, Fessler, Schaffer, Schmidt, Carey, Seitz, Raga, Coates, Widowfield, Wolpert, Clancy, Carmichael

BILL SUMMARY

- Makes changes in the Fireworks Law relating to investigating fireworks incidents and securing fireworks incident sites.
- Reenacts the amendments and enactments to the Fireworks Law made by Am. Sub. H.B. 215 of the 122nd General Assembly to protect the sections involved against a challenge that the amendments or enactments violated the one-subject rule of the Ohio Constitution.

CONTENT AND OPERATION

Securing and investigating a fireworks incident site¹

Current law

Under current law, no person may knowingly, or may knowingly permit 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 that 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 (sec. 3743.64(H)(2)). A violation of this prohibition is a felony of the third degree (sec. 3743.99(A)). It is an affirmative defense to a charge of a violation of this prohibition 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,

¹ All provisions of law discussed under this heading are found in Section 3 of the bill (pages 68-87).

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)).

Current law defines an "accident" for purposes of the prohibition 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 or any applicable rule adopted under the Fireworks Law. An "accident site" is a discharge site or other location at a fireworks exhibition where an accident occurs, or an injury or death associated with an accident occurs, or evidence of an accident or injury or death associated with an accident is found. A "discharge site" is the area immediately surrounding the mortars used to fire aerial shells. (Sec. 3743.64(H)(1).)

Changes proposed by the bill

Definitions. The bill retains the substance of the definitions of an "accident" and "accident site" found in current law, but changes the terms to "fireworks *incident*" and "fireworks *incident* site" and relocates the definitions of those terms and the definition of a "discharge site" to the general definitional section of the Fireworks Law. A minor change is that the definition of a fireworks incident refers to "the results of the handling or other use" of fireworks or associated equipment or other materials, as well as to their handling or other use. (Secs. 3743.01(DD) and (FF) and 3743.64(H)(1).)

Investigations. The bill enacts new provisions governing the role of law enforcement officers in investigating fireworks incidents and securing fireworks incident sites. Under the bill, the appropriate state or local law enforcement authority with jurisdiction over a fireworks incident site must immediately notify the State Fire Marshal, the State Fire Marshal's designee, or a member of the State Fire Marshal's staff regarding the occurrence of the fireworks incident and the location of the fireworks incident site (sec. 3743.541(A)).

At any time after a fireworks incident occurs, unless the Fire Marshal otherwise delegates the Fire Marshal's authority to the appropriate state or local law enforcement authority with jurisdiction over the fireworks incident site, the Fire Marshal, the Fire Marshal's designee, or a member of the Fire Marshal's staff must supervise and coordinate the investigation of the fireworks incident and supervise any dismantling, repositioning, or other disturbance of fireworks, associated equipment or other materials, or items within the fireworks incident site or of any evidence related to the fireworks incident (sec. 3743.541(B)).

A state or local law enforcement officer, prior to the arrival of the Fire Marshal, the Fire Marshal's designee, or a member of the Fire Marshal's staff at a fireworks incident site, may dismantle, reposition, or move any fireworks, any associated equipment or other materials, or any other items found within the site or any evidence related to the fireworks incident only as necessary to prevent an imminent fire, imminent explosion, or similar threat of additional injury or death to any member of the public at the site (sec. 3743.541(C)).

Site tampering. The bill also changes the prohibition relating to tampering with a fireworks incident site. Under the bill, except under the conditions described in the immediately preceding paragraph, no person may knowingly, or may knowingly permit another person to, dismantle, reposition, or otherwise disturb any fireworks, associated equipment or materials, or other items within a fireworks incident site, or any evidence related to a fireworks incident, at any time after that person has reason to believe that a fireworks incident has occurred, before the State Fire Marshal, the State Fire Marshal's designee, a member of the State Fire Marshal's staff, or other appropriate state or local law enforcement authorities permit the dismantling, repositioning, or other disturbance of the fireworks, equipment, materials, or items within the fireworks incident site or of any evidence related to the fireworks incident (sec. 3743.64(H)). The bill further eliminates the affirmative defense to a charge of a violation of the generally similar prohibition of current law (sec. 3743.64(H)(3)).

Violation of fireworks exhibition statutory provisions and rules²

Current law

Current law requires the State Fire Marshal (1) to generally suspend for a period of five years a person's license as a fireworks exhibitor or as an assistant fireworks exhibitor if the person is convicted of failing to observe those provisions of the Fireworks Law, or rules adopted under that Law, that govern fireworks exhibitions and (2) to revoke the person's license upon such a conviction if the violation results in a "serious accident." If the license is revoked, the person is ineligible to be licensed again in Ohio as an exhibitor or assistant exhibitor of fireworks. (Secs. 3743.64(C) and 3743.99(D).)

Changes proposed by the bill

The bill instead requires revocation of an exhibitor's or assistant exhibitor's license if the violation results in *serious physical harm to persons* or *serious*

² All provisions of law discussed under this heading are found in Section 3 of the bill (pages 68-87).

physical harm to property, as those terms are defined for criminal offenses in the Revised Code and for other statutory purposes (sec. 2901.01, not in the bill). The bill also provides (1) that a person whose exhibitor's or assistant exhibitor's license is *suspended* is ineligible to apply for a license during the five-year suspension period and (2) that a person whose license of either type is revoked, in addition to being ineligible for subsequent licensure in Ohio, is ineligible to *apply for* subsequent licensure. (Sec. 3743.99(D).) The bill also clarifies the applicability of these license revocation provisions in other provisions of the Fireworks Law (sec. 3743.52(A)).

Elimination of the criminal penalty applicable to fire protection officers³

Current law requires the State Fire Marshal to adopt rules that establish a detailed checklist that a fire chief or fire prevention officer, in consultation with a police chief, must complete, while conducting the required inspection at the premises at which a fireworks exhibition will take place, to ensure that the exhibition will comply with all applicable requirements of the Fireworks Law, and all rules adopted under that Law, that regulate the conduct of a fireworks exhibition (sec. 3743.53(E)(1)(b)). The fire chief or fire prevention officer, in consultation with the police chief, must conduct the inspection, complete the checklist while conducting the inspection, and provide a copy of the completed checklist to the State Fire Marshal (sec. 3743.53(F)).

Current law further prohibits the fire chief or fire prevention officer, in consultation with the police chief, from failing to perform the acts described in the immediately preceding paragraph and makes a violation punishable as a misdemeanor of the first degree. The bill removes this criminal prohibition and penalty, *but not the requirement for these officers to perform these acts*. (Secs. 3743.64(I) and 3743.99(C).)

Miscellaneous

Changes in references to "police chief" in the Fireworks Law

Current law requires (1) the State Fire Marshal to notify police chiefs regarding the revocation of fireworks exhibitors' licenses and (2) police chiefs to consult with, or act together with, fire chiefs or fire prevention officers in carrying out various duties relating to the issuing or revoking of permits for fireworks exhibitions and to the conduct of inspections at fireworks exhibition sites (secs. 3743.52(B), 3743.53(E)(1)(b) and (F), 3743.54(B) to (E), and 3743.64(D)).

³ All provisions of law discussed under this heading are found in Section 3 of the bill (pages 68-87).

The bill adds to all of these references to "police chiefs" references to *other similar chief law enforcement officers* of a municipal corporation, township, or township police district. The bill also adds to the references to "police chiefs," in the provisions of current law that govern the issuance and revocation of fireworks exhibition permits and the inspection of fireworks exhibition sites, references to *designees of the police chief or other similar chief law enforcement officer*. The bill specifies that a designee, if any, designated by a police chief or other similar chief law enforcement officer must be a law enforcement officer serving in the same law enforcement agency as the police chief or other similar chief law enforcement officer. (Secs. 3743.52(B), 3743.53(E)(1)(b), (F), and (G), 3743.54(B) to (E), and 3743.64(D).)

State Fire Marshal rules

Current law requires the State Fire Marshal to adopt rules under the Administrative Procedure Act and in a specified manner that establish uniform standards for the *stability* of fireworks storage racks used at a fireworks exhibition. The bill continues this requirement but also requires the uniform standards to cover the *securing* of those storage racks. (Sec. 3743.53(B)(2) and (E)(1)(a).)

Reenactment of provisions of Am. Sub. H.B. 215 of the 122nd General Assembly

Am. Sub. H.B. 215's provisions

Am. Sub. H.B. 215 of the 122nd General Assembly, the biennial state operating budget act for fiscal years 1998 and 1999, enacted various provisions in the Fireworks Law. These provisions did all of the following:

- Tightened safety requirements relating to sales, storage, and exhibitions of fireworks.
- Prohibited the issuance of a license or permit under the Fireworks Law to certain convicted felons and required completion of a criminal records check for license applicants.
- Increased license fees and the minimum amount of liability coverage under the Fireworks Law.
- Required the State Fire Marshal's classification of fireworks to be consistent with the classification of fireworks by regulation of the United States Department of Transportation.
- Abolished the term "Class C fireworks" and established a type of definition for "1.3G fireworks" and "1.4G fireworks."

- Allowed the transfer of location of a fireworks wholesaler license under specified conditions from one location to another within the same municipal corporation or within the unincorporated area of the same township.
- Created additional penalties for certain violations of the Fireworks Law.
- Required licensed fireworks exhibitors to register all employees who assist the exhibitor in conducting fireworks exhibitions.
- Eliminated the State Fire Marshal's authority to issue a temporary exhibitor's license to conduct an exhibition on only one date.
- Required specified fire safety officials to be present before, during, and after exhibitions and to inspect the premises of exhibitions to determine compliance with the Fireworks Law.
- Required licensed fireworks manufacturers, wholesalers, and exhibitors to complete continuing education and provide in-service training on a periodic basis.
- Authorized the State Fire Marshal to grant variances from the Fireworks Law to certain persons for educational or hobby purposes.
- Exempted specified show-teams from the Fireworks Law.
- Made other changes in the Fireworks Law.

H.B. 161's identical provisions

The bill *reenacts in its Section 1* all of the provisions of the Fireworks Law that result from amendments or enactments made by Am. Sub. H.B. 215 and that are described in the immediately preceding dot points. The bill states that the General Assembly's intent in doing so is to protect those provisions against a challenge that the amendments or enactments were invalid because they violated the prohibition contained in Section 15 of Article II of the Constitution of Ohio *against a bill containing more than one subject*. All references in the reenacted provisions to "the effective date of this section" or to "the effective date of this amendment" must be construed to mean the effective date of a section or of an amendment to a section by Am. Sub. H.B. 215. (Section 5(A) of the bill.)

The bill further states that the General Assembly's intent in the provisions of *Section 3 of the bill* previously discussed in this analysis is to do both of the following: (1) recognize the versions of the involved Fireworks Law sections that

resulted from Am. Sub. H.B. 215 and Sub. H.B. 405 of the 123rd General Assembly (an act passed in 2000 that dealt with fireworks exhibitions) and (2) further amend those sections and enact a new section to make changes relating to fireworks incidents and their investigation (Section 5(B) of the bill).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-14-01	p. 233

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