Bill Analysis

Legislative Service Commission

Sub. H.B. 161*

124th General Assembly
(As Passed by the House)

Reps. Flowers, DeWine, Ford, Damschroder, Goodman, Fessler, Schaffer, Schmidt, Carey, Seitz, Raga, Coates, Widowfield, Wolpert, Clancy, Carmichael, Trakas, Patton, Oakar, Latell, Peterson, Buehrer, Young

BILL SUMMARY

- Makes changes in the Fireworks Law pertaining to investigating fireworks incidents and securing fireworks incident sites, to the fees charged for fireworks exhibitor licenses, to the authority of fireworks exhibitor assistants to work for any fireworks exhibitor, to the maximum balance allowed in the Fire Marshal's Training and Education Fund, and to the extension until December 15, 2005, of the general moratorium on the issuance of new licenses to manufacturers and wholesalers of fireworks and on approvals of the transfer of their licenses to other locations.

- 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.

- Declares an emergency.

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* *This analysis was prepared before the entry of the passage of the bill by the House of Representatives appeared in the House Journal. Note that the list of co-sponsors and legislative history may be incomplete.*

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CONTENT AND OPERATION

Securing and investigating a fireworks incident site[1]

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.*

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), (EE), 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 certified fire safety inspector, fire chief, or fire prevention officer or 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, certified fire safety inspector, fire chief, or fire prevention officer, or any person authorized and supervised by a state or local law enforcement officer, certified fire safety inspector, fire chief, or fire prevention 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 also eliminates the affirmative defense to a charge of a violation of the similar prohibition of current law (sec. 3743.64(H)(3)).

Violation of fireworks exhibition statutory provisions and rules[2]

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).)

[2] *All provisions of law discussed under this heading are found in Section 3 of the bill.*

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 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 officers[3]

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 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 retains the requirement for these officers to perform these acts. (Secs. 3743.64(I) and 3743.99(C).)

[3] *All provisions of law discussed under this heading are found in Section 3 of the bill.*

Extension of the moratorium on the issuance of, and the transfer of, fireworks manufacturer and wholesaler licenses[4]

Current law

Current "uncodified" law prohibits the State Fire Marshal from doing any of the following until December 15, 2002: (1) issuing a license as a manufacturer of fireworks to a person for a particular fireworks plant unless that person possessed such a license for that fireworks plant immediately prior to June 30, 1997, (2) issuing a license as a wholesaler of fireworks to a person for a particular location unless that person possessed such a license for that location immediately prior to June 30, 1997, or (3) approving the transfer of a license as a manufacturer or wholesaler of fireworks to any location other than a location for which a license was issued immediately prior to June 30, 1997, subject to one exception provided in current "statutory" law that allows a wholesaler license to be transferred to another location within the same municipal corporation or within the unincorporated area of the same township if the holder of the license remains the same and certain other conditions are met (Section 165 of Am. Sub. H.B. 215 of the 122nd G.A., as amended by Sub. H.B. 204 of the 123rd G.A.).

Changes proposed by the bill

The bill repeals the uncodified law containing these moratorium provisions, but reenacts them in "codified" law, with a few changes. It changes the ending date of the moratorium from December 15, 2002 to December 15, 2005. It also changes the date before which a person must possess a manufacturer or wholesaler license for a particular fireworks plant or location, or before which a manufacturer or wholesaler license must have been issued for a particular fireworks plant or location, from June 30, 1997, to the bill's effective date. (Sec. 3743.75(A) and (B) and Section 5 of the bill.)

The bill requires the Department of Commerce and the Division of State Fire Marshal to (1) devise, by December 15, 2005, a proposal to provide for the issuance of manufacturer and wholesaler fireworks licenses that is based upon demographics and designed to ensure the safety of the public and (2) send a copy of the proposal to the President of the Senate and Speaker of the House of Representatives (sec. 3743.75(C)). In addition, the bill specifies that its moratorium provisions are not subject to the provision of current law that authorizes the State Fire Marshal to grant a variance from a requirement of the Fireworks Law or associated rules, if the Fire Marshal determines that a literal

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[4] *The provisions of law discussed under this heading are found in Sections 3 and 5 of the bill.*

enforcement of the requirement will result in unnecessary hardship and that the variance will not be contrary to the public health, safety, or welfare (sec. 3743.75(B)).

Fireworks exhibitor license fees[5]

Current law requires that the application for a fireworks exhibitor license be accompanied by a fee of $150, except when an application is made by an applicant employed by a licensed manufacturer or wholesaler of fireworks. In that case, the fee is $50. The bill reduces to $50 the fee for all applicants for a fireworks exhibitor license. (Sec. 3743.50.)

Maximum balance in the Fire Marshal's Training and Education Fund[6]

Current law

Current law establishes the Fire Marshal's Training and Education Fund, which is funded by assessments paid by licensed fireworks manufacturers and wholesalers. The Fire Marshal must impose an initial assessment upon each licensed manufacturer and wholesaler to establish a fund balance of $10,000. The fund balance must at no time exceed $10,000, and the Fire Marshal must impose no further assessments unless the fund balance is reduced to $5,000 or less. If the fund balance is so reduced, the Fire Marshal must impose an additional assessment upon each licensed fireworks manufacturer or wholesaler to increase the fund balance to $10,000. (Sec. 3743.57(B).)

Changes proposed by the bill

The bill increases the maximum fund balance to $15,000. As a result of this change, the Fire Marshal must impose an initial assessment upon each licensed manufacturer or wholesaler to establish a fund balance in that amount. The fund balance must at no time exceed $15,000, and the Fire Marshal must impose no further assessments unless the fund balance is reduced to $5,000 or less. If the fund balance is so reduced, the Fire Marshal must impose an additional assessment upon each licensed fireworks manufacturer or wholesaler to increase the fund balance again to $15,000. (Sec. 3743.57(B).)

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[5] *All provisions of law discussed under this heading are found in Section 3 of the bill*

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Multiple employment of employees who assist licensed fireworks exhibitors[7]

Registration

Current law requires a licensed fireworks exhibitor to register with the State Fire Marshal all employees who assist the exhibitor in conducting fireworks exhibitions. This registration must occur not later than seven days after a new employee is hired. (Sec. 3743.56.)

Under the bill, each licensed exhibitor must register those employees *annually*, and, once they are so registered, the employees may be employed by any other licensed exhibitor, without the need for that other licensed exhibitor to register them with the Fire Marshal. In addition to that annual registration, the bill also requires a licensed exhibitor to register a new employee not later than seven days after the employee is hired unless the employee is already registered as describe above. (Sec. 3743.56.)

Rules

Current law requires the Fire Marshal to adopt rules that establish appropriate fees for the registration of employees who assist licensed exhibitors in conducting fireworks exhibitions. The bill instead requires the Fire Marshal to adopt rules under the Administrative Procedure Act to establish these fees and generally to implement the bill's registration provisions. (Sec. 3743.56.)

Miscellaneous[8]

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)).

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

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[7] *All provisions of law discussed under this heading are found in Section 3 of the bill.*

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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.

Sub. 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 6(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 from 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, amend other sections of the Fireworks Law, and enact new sections in the Fireworks Law to make changes pertaining to fireworks incidents and their investigation, to the fees charged for fireworks exhibitor

licenses, to the authority of fireworks exhibitor assistants to work for any fireworks exhibitor, to the maximum balance allowed in the Fire Marshal's Training and Education Fund, and to the extension until December 15, 2005, of the general moratorium on the issuance of new licenses to manufacturers and wholesalers of fireworks and on approvals of the transfer of their licenses to other locations (Section 6(B) of the bill).

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	03-14-01	p.	236
Reported, H. State Government	05-09-01	p.	411
Passed House ( )	05-15-01		---

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