

ORIGINAL

IN THE SUPREME COURT OF OHIO

NATIONWIDE MUTUAL)	Case No. 10-0114
INSURANCE COMPANY)	
)	On Appeal from the Stark
Appellant)	County Court of Appeals,
)	Fifth Appellate District
vs.)	
)	Court of Appeals
COREY M. BRIGGS)	Case No. 2009 CA 00108
)	
Appellee)	

**MERIT BRIEF OF APPELLANT,
NATIONWIDE MUTUAL INSURANCE COMPANY**

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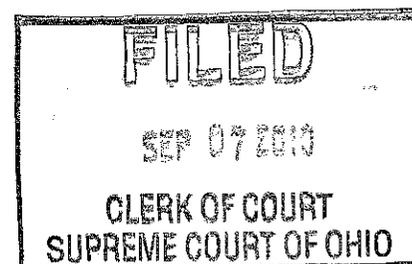


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I. STATEMENT OF THE CASE AND FACTS

A. Statement of the Case.

This declaratory judgment case arises out of an incident wherein Appellee, Cory M. Briggs (“Briggs”), discharged fireworks which resulted in a fire and significant property damage to multiple parties and personal injury to at least one other individual (“the incident”).

In the trial court, Appellant, Nationwide Mutual Insurance Company (“Nationwide”), sued Appellee, and other parties/individuals who sustained property damage and/or personal injury as a result of the incident, seeking relief in the form of a declaratory judgment that liability/homeowner’s insurance coverage was not available for the incident. Nationwide filed a Motion for Summary Judgment on the issue of coverage. The Motion for Summary Judgment was denied. (App. p. 14.) Briggs did not file a cross Motion for Summary Judgment. Rather, Briggs only filed a motion in opposition to Nationwide’s Motion for Summary Judgment. In its opinion, wherein the denial of the Motion for Summary Judgment was announced, the trial court further indicated that Nationwide owed coverage for the incident.

Nationwide, in a timely fashion, filed a Notice of Appeal to the Fifth District Court of Appeals, Stark County. The case was briefed by Nationwide and Briggs and oral argument was conducted. The Court of Appeals affirmed the trial court’s decision. (App. p. 9.)

Nationwide filed a Motion to Certify Conflict with the Fifth District Court of Appeals, Stark County. Said Motion to Certify Conflict was overruled.

Nationwide then filed a Notice of Appeal to this Court (App. p. 1.), with an accompanying Memorandum in Support of Jurisdiction. Briggs filed a Memorandum in Opposition to Jurisdiction. In an entry/order dated April 14, 2010, this Court declined to accept jurisdiction.

Nationwide then filed a Motion for Reconsideration on the subject of jurisdiction. This Court granted said Motion for Reconsideration and accepted the within appeal in an order dated June 9, 2010. (App. p. 10.)

B. Statement of Facts

The incident which underlies this declaratory judgment case occurred on or about July 3, 2007 in Massillon, Ohio. Briggs discharged fireworks which resulted in a fire and significant property damage and personal injury to multiple parties/ individuals.

As a result of the incident, Cory Briggs was charged with violation of the following criminal offenses prohibited by City of Massillon ordinances:

- possession of fireworks; and
- discharge of fireworks

The pertinent City of Massillon ordinances, 1519.04(a) and (b) (App. pp. 16-17), state as follows:

1519.04 Possession, Sale or Discharge Prohibited; Exceptions

(a) No person shall possess fireworks in this Municipality or shall possess for sale or sell fireworks in this Municipality, except a licensed manufacturer of fireworks as authorized by Ohio R.C. 3743.02 to 3743.08, a licensed wholesale of fireworks as authorized by Ohio R.C. 3743.15 to 3743.21, a shipping permit holder as

authorized by Ohio R.C. 2742.40, an out-of-state resident as authorized by Ohio R.C. 3743.44, a resident of this State as authorized by Ohio R. C. 3743.50 to 3743.55 and Section 1519.02 and except as provided in Section 1519.05.

(b) Except as provided in Section 1519.05 and except for licensed exhibitors of fireworks authorized to conduct a fireworks exhibition pursuant to Ohio R.C. 3743.50 to 3743.55 and Section 1519.02, no person shall discharge, ignite or explode any fireworks in this Municipality.

(c) No person shall use a theater or public hall, what is technically known as fireworks showers, or a mixture containing potassium chlorate and sulphur.

(d) No person shall sell fireworks of any kind to a person under eighteen years of age.

(e) No person shall advertise 1.4 G fireworks for sale. A sign located on a seller's premises identifying the seller as a seller of fireworks is not the advertising of fireworks for sale.

(f) No person, other than a licensed manufacturer, licensed wholesaler, licensed exhibitor, or shipping permit holder, shall possess 1.3 G fireworks.

(ORC 3743.65) (App. pp. 18-81.)

Cory Briggs pled no contest to the charges and was found guilty by Judge Keller of the Massillon Municipal Court.

At the time of the incident there was a Nationwide homeowner's policy of insurance ("the policy"), in full force and effect, wherein the named insureds were Kenneth and Peggy Briggs. Kenneth and Peggy Briggs have been married since 1982 and are the parents of Cory Briggs.

In mid-June of 2007, Briggs purchased fireworks, in the form of bottle rockets, smoke grenades, "and stuff like that." (Supp. p. 50.) The amount of fireworks Briggs purchased was "probably \$120 worth." (Supp. p. 50.)

On the day/evening of the incident, July 3, 2007, Briggs got home (to his Cook Court address) at about 9:30 p.m. or 10:00 p.m. (Supp. p. 52.) He was not too experienced with fireworks. (Supp. p. 52) Adjacent to Briggs' home was a field where a school used to be located, a parking lot and at least two other houses. (Supp. p. 54.) There were neighborhood kids in this area. (Supp. p. 54.) Briggs grabbed some of his fireworks, went to the middle of the above-mentioned field and shot off "these bigger sized bottle rockets." (Supp. pp. 56 and 57.) He was only twenty to thirty yards from his home when he discharged the fireworks. (Supp. p. 58.) Briggs stuck the bottle rocket in the ground, lit it and it went up in the air about 15-20 yards and took a 90° degree angle and went into the garage of one of the adjacent houses. (Supp. p. 58.) After that occurred, Briggs took the remainder of his fireworks back to his house. (Supp. p. 59.) When Briggs came back out he saw a flame in the back of the garage where the firework had gone. (Supp. p. 60.) Briggs used a hose to try and put out the flame/fire "but it just got bigger." (Supp. p. 60.) As a result of the discharge of the fireworks by Briggs, a garage and two houses caught fire. (Supp. p. 60.) The damage as a result of the incident was estimated by Captain Jerry Layne of the Massillon Fire Department to be \$175,000. (Supp. p. 82.)

Nationwide has accepted, and has not disputed, that Briggs met the definition of an "insured" under the policy.

The issue in the case is whether Briggs is entitled to homeowner's insurance under the policy for the incident. The pertinent policy language is as follows:

Section II – Liability Coverages
Coverage E – Personal Liability

We will pay damages an **insured** is legally obligated to pay due to an **occurrence** resulting from negligent personal acts or negligence arising out of the ownership, maintenance or use of real or personal property.

The term “occurrence” is defined at page G1 of the policy as follows:

Occurrence means **bodily injury or property damage** resulting from an accident, including continuous or repeated exposure to the same general condition. The **occurrence** must be during the policy period.

The term “bodily injury” is defined in the definitions section, at page G1 of the policy as follows:

“Bodily injury” means bodily harm, including resulting care, sickness or disease, loss of services or death. **Bodily injury** does not include emotional distress, mental anguish, humiliation, mental distress or injury, or any similar injury unless the direct result of bodily harm.

The term “property damage” is defined in the definitions section, at page G1 of the policy as follows:

“Property damage” means physical injury to or destruction of tangible property. This includes its resulting loss of use.

The following exclusions, in pertinent part, are included in Section II – Liability

Exclusion at page H1 of the policy:

1. Coverage E - Personal Liability, and Coverage F – Medical Payments to others do not apply to **bodily injury** or **property damage**:
 - a. caused intentionally, by or at direction of an **insured**, including willful acts, the result of which he insured knows or ought to know will follow from the **insured's** conduct. . .
 - b. caused by or resulting from an act or omission which is criminal in nature and committed by an **insured**.

This exclusion 1.b. applied regardless of whether the **insured** is actually charged with, or convicted of a crime.

II. LAW AND ARGUMENT

Proposition of Law No. 1:

The doctrine of inferred intent applies to an intentional act exclusion in a liability insurance policy beyond instances of sexual molestation or homicide where undisputed facts objectively establish harm was substantially certain to occur as a result of the insured's conduct.

The Nationwide policy language states as follows:

Coverage E - Personal Liability, and Coverage F – Medical Payments to others do not apply to **bodily injury** or **property damage**:

* * * * *

1. Coverage E - Personal Liability, and Coverage F – Medical Payments to others do not apply to **bodily injury** or **property damage**:

- a. caused intentionally, by or at direction of an **insured**, including willful acts, the result of which he insured knows or ought to know will follow from the **insured's** conduct. . .
- b. caused by or resulting from an act or omission which is criminal in nature and committed by an **insured**.

This exclusion 1.b. applied regardless of whether the **insured** is actually charged with, or convicted of a crime.

In the case of *Gearing v. Nationwide Insurance Company*, 76 OS3d 34 (1996), this Court adopted the doctrine of "inferred intent" for incidents of intentional acts of sexual molestation of a minor. More specifically, it was held that intent to injure or harm could be inferred as a matter of law for deliberate acts of sexual molestation on a minor. In *Gearing*, this Court noted that when determining if an intentional act is substantially certain to result in injury, "determination of an insured's subjective intent, or lack of subjective intent, is not conclusive of the issue of coverage ." 76 Ohio St.3d at 39. As has been noted by multiple Ohio appellate courts, an insured's self-serving statements denying intent to injure, are of negligible value in determining intent or expectation because it is always in the interest of the insured to establish coverage and avoid policy exclusions. *Nationwide Mut. Ins. Co. v. Irish*, 167 Ohio App.3d 762, 2006 Ohio 3227 (2006).

Additionally, it is for that reason in analyzing the applicability of the Nationwide intentional act exclusion, an objective standard of what Briggs "knows and

ought to know will follow from [his] conduct” should be utilized because such an approach is consistent with the plain and ordinary meaning of the policy’s exclusionary language. Conversely, use of a subjective standard would all but render an intentional acts exclusion entirely meaningless since all an insured would need to do is state he/she did not intend any injury/harm from even the most obvious and egregious conduct such as intentionally shooting a person with a gun. Such an approach makes no sense from both a legal and logical sense.

Following *Gearing*, this Court examined the issue of whether an intentional act exclusion precluded coverage for torts caused by conduct substantially certain to cause injury in the case of *Penn Traffic Co. v. AIU Ins. Co.*, 99 OS3d 227 (2003). In *Penn Traffic* this Court stated:

Where substantial certainty exists, intent to harm will be inferred as a matter of law. *Buckeye Union Ins. Co. v. New England Ins. Co.* (1999) 87 OS3d 280, 289, 1999 Ohio 57, 720 N.E.2d 495 (Cook, J., concurring in judgment only).

Id. at 99 OS3d 228.

The doctrine of inferred intent has been recognized in a number of Ohio appellate cases where criminal acts committed by an insured resulted in the unavailability and/or elimination of insurance coverage. In *Baker v. White*, 12th Dist. No. CA2002-08-065, 2003 Ohio 1614, an intentional act exclusion was found to be enforceable where an insured rammed his vehicle into another one. The insured’s act of ramming his vehicle into another would, minimally, be expected to cause injury. Where an insured drove his vehicle into a building, intent to injure/harm was inferred as a

matter of law because damage/harm to the structure was substantially certain to occur. Consequently, an insurable “occurrence” had not occurred to mandate coverage being available.

Where an insured intended to strike another person in the face, the court concluded that “injuries were expected without question” thereby upholding the enforceability of an intentional act exclusion. *Hoh v. Sublett*, 1st Dist. No. C-930473, 1994 Ohio App. LEXIS 3452.

In *Torres v. Gentry*, 5th Dist. No. 06 COA 038, 2007 Ohio 4781, 2007 Ohio App. LEXIS 4294, an insured modified shotgun shells by removing the pellets and replacing them with fertilizer. He heard a noise outside and fired the modified shells in the area of the noise, striking another person. Intent to cause injury was inferred from the intentional act of shooting the firearm thereby resulting in the elimination of coverage upon the basis of an intentional act exclusion.

In *Ash v. Grange*, 5th Dist. No. 2005 COA 0014 and 0015, 2006 Ohio 5221, 2006 Ohio App. LEXIS 5199, an insured intentionally set his home on fire in an attempt to commit suicide. Intent to cause injury/harm was inferred as a matter of law since by setting the house on fire damage to the home was substantially certain to occur. The insurer’s intentional act exclusion was enforceable to exclude coverage.

Finally, in *Nationwide Mut. Ins. Co. v. Finkley*, 112 Ohio App.3d 712 (1996) an insured’s voluntary and willful act of fleeing from police in an automobile chase through the urban streets of Akron was substantially certain to cause injury thereby resulting in inferring intent to cause an intentional acts exclusion to operate to eliminate

coverage.

Some courts have reached the conclusion that, where intent is inferred from an intentional act, coverage is not available not only upon the applicability of an intentional act exclusion but also upon the basis that an insurable “occurrence” has not occurred. *State Auto Mut. Ins. Co. v. Steuerding*, 200 Ohio App. LEXIS 2342. Regardless of whether the analysis is based upon whether an insurable “occurrence” is present and/or whether an intentional act exclusion is applicable, the conclusion is the same – coverage is not available where inferred intent is present.

In the instant case the Nationwide intentional act exclusion excludes coverage for bodily injury or property damage “caused intentionally, by or at direction of an insured, including willful acts, the result of which the insured knows or ought to know will follow from the insured’s conduct.” There can be no doubt that Briggs’ act in discharging the fireworks constituted an intentional act. Furthermore, intent to cause bodily injury or property damage can be inferred from Briggs’ act of discharging the fireworks. By discharging the fireworks, Briggs committed a crime for which he was subsequently convicted. He was not very experienced with fireworks in the first place. He chose to discharge the fireworks in a residential area, adjacent to a former school, where there were many homes and buildings which were susceptible to catching fire and neighborhood kids were congregating. Briggs was only 20 to 30 yards away from his home when he discharged the fireworks. The inevitable occurred thereby resulting in, at least, \$175,000 worth of property damage.

There is a reason discharging fireworks is a crime. ORC §3743.65 places

restrictions on the sale, possession and use of fireworks throughout the State of Ohio, not just the City of Massillon.

(A) No person shall possess **fireworks** in this state or shall possess for sale or sell **fireworks** in this state, except a licensed manufacturer of **fireworks** as authorized by sections 3743.02 to 3743.08 of the Revised Code, a licensed wholesaler of **fireworks** as authorized by sections 3743.15 to 3743.21 of the Revised Code, a shipping permit holder as authorized by section 3743.40 of the Revised Code, an out-of-state resident as authorized by section 3743.44 of the Revised Code, a resident of this state as authorized by section 3743.45 of the Revised Code, or a licensed exhibitor of **fireworks** as authorized by sections 3743.50 to 3743.55 of the Revised Code, and except as provided in section 3743.80 of the Revised Code.

(B) Except as provided in section 3743.80 of the Revised Code and except for licensed exhibitors of **fireworks** authorized to conduct a **fireworks** exhibition pursuant to sections 3743.50 to 3743.55 of the Revised Code, no person shall discharge, ignite, or explode any **fireworks** in this state.

It is a crime to discharge fireworks because, unless a person is qualified and knowledgeable in the care and handling of the fireworks, fireworks are known to be dangerous. This is not a situation where a person was doing an otherwise legal activity, did it negligently and that negligence caused the activity to be a violation of a statutory duty, this is a situation where Briggs caused harm while doing an activity that was inherently illegal.

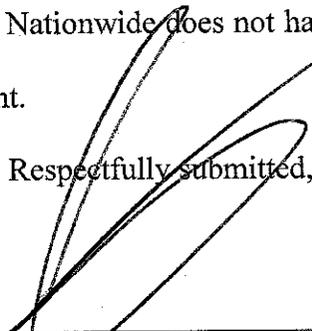
Briggs knew, or ought to have known, given all of the above circumstances that it was substantially certain, property damage and/or bodily injury would result from his intentional act of discharging the fireworks from either a subjective or objective

standpoint. It is for these reasons that coverage should not be available under the Nationwide policy to Briggs – regardless of whether the availability of coverage is analyzed from the standpoint of the intentional acts exclusion and/or whether an insurable occurrence has occurred.

CONCLUSION

Appellant respectfully requests that the Court of Appeals' judgment entered in favor of Appellee Briggs be reversed and that judgment be entered in favor of Appellant Nationwide thereby ordering that Appellant Nationwide does not have a duty to defend or indemnify Appellee Briggs for the incident.

Respectfully submitted,



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A copy of the foregoing has been sent postage prepaid via regular U.S. Mail to the following on this 7th day of September, 2010:

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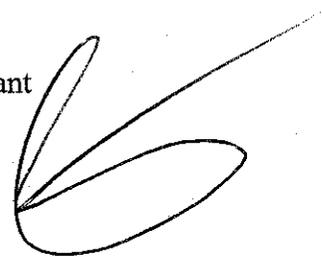
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ORIGINAL

IN THE SUPREME COURT OF OHIO

NATIONWIDE MUTUAL
INSURANCE COMPANY

Appellant

vs.

COREY M. BRIGGS

Appellee

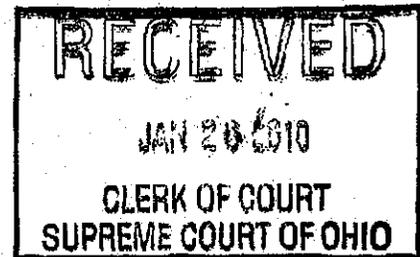
Case No. 10-0114

On Appeal from the Stark
County Court of Appeals
Fifth Appellate District

Court of Appeals
Case No. 2009 CA 00108

**NOTICE OF APPEAL OF APPELLANT,
NATIONWIDE MUTUAL INSURANCE COMPANY**

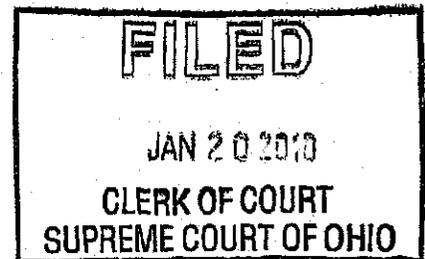
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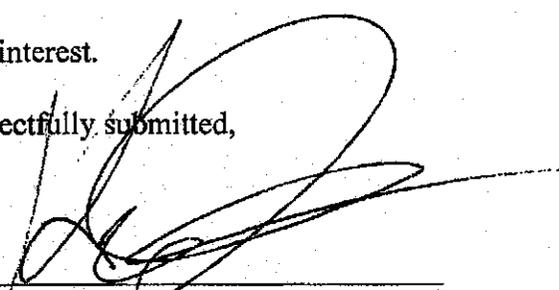
ATTORNEY FOR APPELLEE, COREY M. BRIGGS



Appellant, Nationwide Mutual Insurance Company, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Stark County Court of Appeals, Fifth Appellate District, entered in Court of Appeals Case No. 2009 CA 00108 on December 7, 2009.

This case is one of public or great general interest.

Respectfully submitted,



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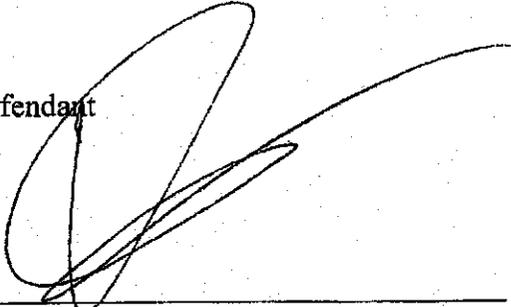
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STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

NANCY S. REINHOLD
CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO

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NATIONWIDE MUTUAL INSURANCE
COMPANY

Appellant

-vs-

CORY M. BRIGGS

Appellee

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. William B. Hoffman, J.

Hon. John W. Wise, J.

Case No. 2009 CA 00108

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Case No. 2008 CV 01747

JUDGMENT:

Affirmed

Haas

DATE OF JUDGMENT ENTRY:

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For Appellee

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A TRUE COPY TESTE:
NANCY S. REINHOLD, CLERK
By *J. F. ...* Deputy
Date *12/10/09*

6

Hoffman, J.

{11} Plaintiff-appellant Nationwide Mutual Insurance Company ("Nationwide") appeals the April 9, 2009 Judgment Entry entered by the Stark County Court of Common Pleas, overruling its motion for summary judgment and finding defendant-appellee Cory M. Briggs entitled to coverage by Nationwide.

STATEMENT OF THE FACTS AND CASE

{12} Sometime in mid-June, 2007, Appellee purchased approximately \$170 worth of fireworks, including bottle rockets and smoke grenades. At approximately 9:30 or 10:00pm on July 3, 2007, Appellee and his friend, Quinton Paulik, were watching television and playing video games. Sometime after 10:00pm, Appellee and Paulik went outside and observed some neighborhood children shooting off little firecrackers in a nearby field. A middle school formerly occupied the space.

{13} Appellee went inside and retrieved some of the fireworks he had previously purchased. Appellee positioned himself in the middle of the field to shoot off some of the larger sized bottle rockets. The first bottle rocket went up in to the air about twenty yards, made a ninety degree angle, and flew into the garage of a nearby house. In his deposition, Appellee stated his intention was for the bottle rocket to travel straight into the air. Five or six of the children who had been outside shooting off firecrackers ran over to the garage. Appellee grabbed the remainder of his fireworks and returned them to the house. When he came back inside, he observed a small flame at the back of the garage. Appellee started running toward the garage, screaming for someone to dial 911. Appellee also yelled for the occupants of the house to get out. Attempts to squelch the fire with a garden hose were unsuccessful.

{14} Appellee was subsequently charged with possession of fireworks, and discharge of fireworks, in violation of City of Massillon Ordinances 1519.04(a) and (b). Appellee entered pleas of no contest to the charges and was found guilty.

{15} At the time of the incident, Kenneth and Peggy Briggs, Appellee's parents, were the named insureds in a Nationwide homeowner's policy, which was in full force and effect at the time of the incident. Nationwide does not dispute Appellee falls within the definition of "insured" under the policy. Nationwide does, however, dispute whether Appellee is entitled to coverage. Accordingly, on April 8, 2008, Nationwide filed a Complaint for Declaratory Judgment. Appellee filed an Answer and Counterclaim for Declaratory Judgment. On January 26, 2009, Nationwide filed a Motion for Summary Judgment. Appellee filed a motion in opposition thereto. Via Judgment Entry filed April 9, 2009, the trial court overruled Nationwide's motion for summary judgment, finding Appellee was entitled to coverage.

{16} It is from this judgment entry Nationwide appeals, raising the following assignment of error:

{17} "I. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR SUMMARY JUDGMENT BECAUSE APPELLANT HAS NEITHER A DUTY TO DEFEND NOR A DUTY TO INDEMNIFY APPELLEE, CORY M. BRIGGS, FOR THE INCIDENT WHICH IS THE SUBJECT OF THE INSTANT CASE."

{18} In its sole assignment of error, Nationwide contends the trial court erred in denying its motion for summary judgment as it had neither a duty to defend nor a duty to indemnify Appellee under the provisions of the insurance policy. Specifically,

Nationwide argues, because Appellee's possession and discharge of the fireworks was criminal in nature, coverage under the policy for the incident is excluded. We disagree.

{¶19} Section II – Liability exclusions of the Policy provides, in pertinent part:

{¶110} "1. Coverage E – Personal Liability, and Coverage F – Medical Payments to others do not apply to bodily injury or property damage:

{¶111} "a) caused intentionally, by or at direction of an insured, including willful acts, the result of which the insured knows or ought to know will flow from the insured's conduct

{¶112} "b) caused by or resulting from an act or omission which is criminal in nature and committed by an insured.

{¶113} "This exclusion 1.b. applies regardless of whether the insured is actually charged with, or convicted of a crime."

{¶114} Nationwide submits Ohio courts have found "criminal acts exclusions to be valid and enforceable, and not violative of public policy. Nationwide cites *American Family Mut. Ins. Co. v. Annette Scott*, 2nd Dist. App. No. 07CA28, 2008 Ohio 1865; and *Allstate Ins. Co. v. Cartwright*, 2nd Dist. App. No. 15472 and 154783, unreported.

{¶115} As noted by the trial court, criminal acts exclusions have long been accepted based upon the rationale providing insurance coverage for criminal acts would encourage anti-social behavior by shifting the financial burden away from the wrongdoer. However, the trial court found and we agree, the policy language at issue herein is overly broad as applied to Appellee. The language of the exclusion found in Section II, Subsection 1(b) does not differentiate between damages or injuries intended or reasonably expected to result and those damages or injuries which are accidental or

result from mere negligent conduct. The cases relied upon by Nationwide involve situations in which the criminal acts exclusion contains language the wrongdoer knew or ought to have known damage or injury would result from his or her act.

{¶16} Based upon the foregoing, we find the trial court appropriately denied Nationwide's motion for summary judgment, finding the criminal acts exclusion as applied to Appellee was overly broad as applied to Appellee in this case.

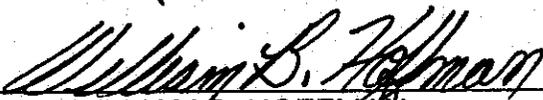
{¶17} Nationwide's sole assignment of error is overruled.

{¶18} The judgment of the Stark County Court of Common Pleas is affirmed.

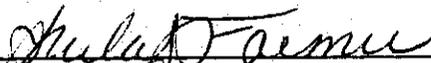
By: Hoffman, J.

Farmer, P.J. and

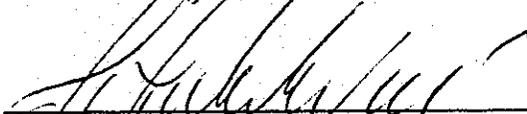
Wise, J. concur



HON. WILLIAM B. HOFFMAN



HON. SHEILA G. FARMER



HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR STARK COUNTY
FIFTH APPELLATE DISTRICT

NANCY S. REINGOLD
CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO

09 DEC -7 PM 2:46

NATIONWIDE MUTUAL INSURANCE
COMPANY

Appellant

-vs-

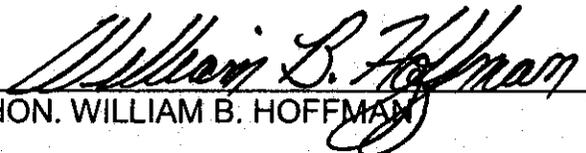
CORY M. BRIGGS

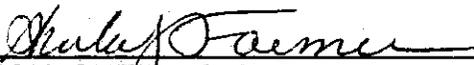
Appellee

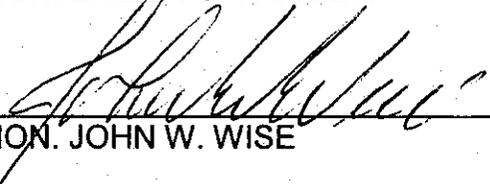
JUDGMENT ENTRY

Case No. 2009 CA 00108

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Stark County Court of Common Pleas is affirmed. Costs assessed to Appellant.


HON. WILLIAM B. HOFFMAN


HON. SHEILA G. FARMER


HON. JOHN W. WISE

07-417818

FILED

JUN 14 2010

The Supreme Court of Ohio

JUN 03 2010

CLERK OF COURT
SUPREME COURT OF OHIO

Nationwide Mutual Insurance Company

Case No. 2010-0114

v.

RECONSIDERATION ENTRY

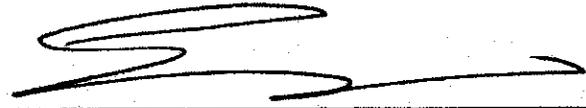
Cory M. Briggs

Stark County

It is ordered by the Court that the motion for reconsideration in this case is granted and the Court accepts the appeal.

The Clerk shall issue an order for the transmittal of the record from the Court of Appeals for Stark County, and the parties shall brief this case in accordance with the Rules of Practice of the Supreme Court of Ohio.

(Stark County Court of Appeals; No. 2009CA00108)



ERIC BROWN
Chief Justice

Pertinent Policy Language

The pertinent policy language is as follows:

Section II - Liability Coverages Coverage E - Personal Liability

We will pay damages an **insured** is legally obligated to pay due to an **occurrence** resulting from negligent personal acts or negligence arising out of the ownership, maintenance or use of real or personal property.

The term "occurrence" is defined at page G1 of the policy as follows:

Occurrence means **bodily injury or property damage** resulting from an accident, including continuous or repeated exposure to the same general condition. The **occurrence** must be during the policy period.

The following exclusions, in pertinent part, are included in Section II --
Liability Exclusion at page H1 of the policy.

1. Coverage E - Personal Liability, and Coverage F -- Medical Payments to others do not apply to **bodily injury** or **property damage**:
 - a. caused intentionally, by or at direction of an **insured**, including willful acts, the result of which the insured knows or ought to know will follow from the **insured's** conduct. . .
 - b. caused by or resulting from an act or omission which is criminal in nature and committed by an **insured**.

This exclusion 1. b. applied regardless of whether the insured is actually charged with, or convicted of a crime.

Criminal acts exclusions bar recovery for any injury resulting from a criminal act or omission regardless of whether the insured is convicted or charged of a criminal offense. "Such exclusions have long been supported in that

providing insurance coverage for criminal acts would encourage anti-social behavior by shifting the financial burden away from the wrongdoer.”¹

Upon review, the Court finds that the criminal acts exclusion, as applied in the case at bar, is overly broad. The cases cited by Plaintiff in support of its position reflect an intentional act on the part of the insured or contained policy language that the injuries had to be reasonably expected.

For instance, in *Allstate Insurance Company v. Wolff*,² the Court held that the criminal act exclusion was enforceable when the insured committed a crime and that harm was reasonably expected to result from the crime. However, in *Wolff*, the exclusion contained the language that Allstate does not cover bodily injury “which may be reasonably expected to result from the intentional or criminal acts of an insured person or which are in fact intended by an insured person.”³ The court cautioned that while it is true that public policy disfavors insuring for certain injuries stemming from certain criminal acts, it surely does not prohibit coverage for all injuries resulting from any criminal act. Of course, public policy does not, for example, prohibit insurance coverage for unexpected injuries stemming from minor traffic offenses or crimes based upon only negligent acts.

There is no strong public policy justification for applying the criminal acts exclusion in the Nationwide policy to the acts giving rise to the instant action. The exclusion is not restricted to injuries or damage that are reasonably expected but encompass accidents resulting from negligent conduct. “If the maxim, that

¹ See, *Allstate Insurance company v. Miranda Ray* (1998), 7th Dist. Case No. 96CA20, citing *Harasyn v. Normandy Metals, Inc.* (1990), 49 Ohio St.3d 173, 176.

² (June 27, 1997), 2nd Dist. No. 15472.

³ *Id.*

no man shall profit from his own wrong [or criminal act], be applied liberally, then the slightest negligence [or most minor offence] * * * would bar recovery. Such a result would be recognized generally as impractical and unjust.”⁴

Here, the conduct of Corey Briggs that resulted in the property damage was not intentional but negligent. Mr. Briggs took the necessary precautions when discharging the fireworks by going to an open field, where a school once sat, and a parking lot was located adjacent to the field. He stuck a bottle rocket into the ground, he lit it, and it went up in the air about 15-20 yards and took a 90-degree angle. Mr. Briggs immediately stopped discharging the fireworks, and put the remainder of the fireworks inside the premises. When he went back outside, he saw a flame in the back of a garage of an adjacent house. He then used a hose in an attempt to extinguish the fire. There is not doubt that the negligent actions of Corey Briggs were the proximate cause of the damage that occurred. However, to preclude coverage for this negligent act would be unjust.

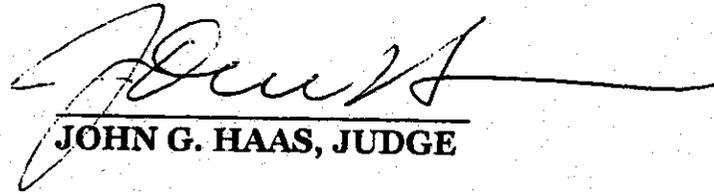
Upon review of the Motion for Summary Judgment and the record, and construing the pleadings in a light most favorable to the non-moving party, this Court finds that Plaintiff is not entitled to judgment as a matter of law.

In light of the foregoing, it is hereby

ORDERED, ADJUDGED, and DECREED that Plaintiff's Motion Summary Judgment is **OVERRULED**. Nationwide Mutual Insurance Company owes a defense to Corey M. Briggs with respect to this incident and owes indemnification to Corey M. Briggs.

⁴ *Id.* citing, *Three Sons, Inc. V Phoenix Ins. Co.* (1970), 257 N.E. 2d 774, quoting *Minasian v. Aetna Life Ins. Co.* (1936), 3 N.E. 2d 17.

IT IS SO ORDERED.



JOHN G. HAAS, JUDGE

To: Atty. Stephen A. Ginella
Atty. Kirk E. Roman
Atty. Mark R. Percival
Atty. R. Emmet Moran

- (2) The Fire Chief, Fire Prevention Officer and Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, shall keep a record of issued permits for fireworks exhibitions. In this list, the Fire Chief, Fire Prevention Officer, Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, shall list the name of the exhibitor, the exhibitor's license number, the premises on which the exhibition will be conducted, the date and time of the exhibition and the number of the permit issued to the exhibitor for the exhibition.

(e) The governing authority having jurisdiction in the location where an exhibition is to take place shall require that a certified Fire Safety Inspector, Fire Chief, or Fire Prevention Officer be present before, during, and after the exhibition, and shall require the certified Fire Safety Inspector, Fire Chief, or Fire Prevention Officer to inspect the premises where the exhibition is to take place and determine whether the exhibition is in compliance with this chapter and Ohio R.C. Chapter 3743. (ORC 3743.54)

1519.03 UNLAWFUL CONDUCT BY EXHIBITOR.

- (a) No licensed exhibitor of fireworks shall fail to comply with the applicable requirements of the rules adopted by the Fire Marshal pursuant to Ohio R.C. 3743.53(B) and (E) or to comply with Divisions (C) and (D) of that section.
- (b) No licensed exhibitor of fireworks shall conduct a fireworks exhibition unless a permit has been secured for the exhibition pursuant to Section 1519.02 or if a permit so secured is revoked by the Fire Chief or Fire Prevention Officer in consultation with the Police Chief or other similar chief law enforcement official or a designee of such Police Chief or other similar law enforcement official pursuant to that section.
- (c) No licensed exhibitor of fireworks shall acquire fireworks for use at a fireworks exhibition other than in accordance with Ohio R.C. 3743.54 and 3743.55.
- (d) No licensed exhibitor of fireworks or other person associated with the conduct of a fireworks exhibition shall have possession or control of, or be under the influence of, any intoxicating liquor, beer or controlled substance while on the premises on which the exhibition is being conducted.
- (e) No licensed exhibitor of fireworks shall permit an employee to assist the licensed exhibitor in conducting fireworks exhibitions unless the employee is registered with the Fire Marshal under Ohio R.C. 3743.56. (ORC 3743.64)

1519.04 POSSESSION, SALE OR DISCHARGE PROHIBITED; EXCEPTIONS.

- (a) No person shall possess fireworks in this Municipality or shall possess for sale or sell fireworks in this Municipality, except a licensed manufacturer of fireworks as authorized by Ohio R.C. 3743.02 to 3743.08, a licensed wholesaler of fireworks as authorized by Ohio R.C. 3743.15 to 3743.21, a shipping permit holder as authorized by Ohio R.C. 3743.40, an out-of-state resident as authorized by Ohio R.C. 3743.44, a resident of this State as authorized by Ohio R.C. 3743.45, or a licensed exhibitor of fireworks as authorized by Ohio R.C. 3743.50 to 3743.55 and Section 1519.02 and except as provided in Section 1519.05.

- (b) Except as provided in Section 1519.05 and except for licensed exhibitors of fireworks authorized to conduct a fireworks exhibition pursuant to Ohio R.C. 3743.50 to 3743.55 and Section 1519.02, no person shall discharge, ignite or explode any fireworks in this Municipality.
- (c) No person shall use in a theater or public hall, what is technically known as fireworks showers, or a mixture containing potassium chlorate and sulphur.
- (d) No person shall sell fireworks of any kind to a person under eighteen years of age.
- (e) No person shall advertise 1.4 G fireworks for sale. A sign located on a seller's premises identifying the seller as a seller of fireworks is not the advertising of fireworks for sale.
- (f) No person, other than a licensed manufacturer, licensed wholesaler, licensed exhibitor, or shipping permit holder, shall possess 1.3 G fireworks.
(ORC 3743.65)

1519.05 APPLICATION.

This chapter does not prohibit or apply to the following:

- (a) The manufacture, sale, possession, transportation, storage or use in emergency situations, of pyrotechnic signaling devices and distress signals for marine, aviation or highway use;
- (b) The manufacture, sale, possession, transportation, storage or use of fuses, torpedoes or other signals necessary for the safe operation of railroads;
- (c) The manufacture, sale, possession, transportation, storage or use of blank cartridges in connection with theaters or shows, or in connection with athletics as signals or for ceremonial purposes;
- (d) The manufacture for, the transportation, storage, possession or use by, or sale to the Armed Forces of the United States and the militia of this State of pyrotechnic devices;
- (e) The manufacture, sale, possession, transportation, storage or use of toy pistols, toy canes, toy guns or other devices in which paper or plastic caps containing twenty-five hundredths grains or less of explosive material are used, provided that they are constructed so that a hand cannot come into contact with a cap when it is in place for explosion, or apply to the manufacture, sale, possession, transportation, storage or use of those caps;
- (f) The manufacture, sale, possession, transportation, storage or use of novelties and trick noisemakers, auto burglar alarms or model rockets and model rocket motors designed, sold and used for the purpose of propelling recoverable aero models;
- (g) The manufacture, sale, possession, transportation, storage or use of wire sparklers.
- (h) The conduct of radio-controlled special effect exhibitions that use an explosive black powder charge of not more than one-quarter pound per charge, and that are not connected in any manner to propellant charges, provided that the exhibition complies with all of following:
- (1) No explosive aerial display is conducted in the exhibition;
 - (2) The exhibition is separated from spectators by not less than two hundred feet;

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ORC Ann. 3743.02

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*** CURRENT THROUGH LEGISLATION PASSED BY THE
128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE
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*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 37. HEALTH -- SAFETY -- MORALS
CHAPTER 3743. FIREWORKS

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ORC Ann. 3743.02 (2010)

§ 3743.02. Application for license to manufacture fireworks

(A) Any person who wishes to manufacture fireworks in this state shall submit to the fire marshal an application for licensure as a manufacturer of fireworks before the first day of October of each year. The application shall be submitted prior to the operation of a fireworks plant, shall be on a form prescribed by the fire marshal, and shall be accompanied by the license fee, fingerprints, and proof of insurance coverage described in division (B) of this section.

The fire marshal shall prescribe a form for applications for licensure as a manufacturer of fireworks and make a copy of the form available, upon request, to persons who seek that licensure.

(B) An applicant for licensure as a manufacturer of fireworks shall submit with the application all of the following:

(1) A license fee of two thousand seven hundred fifty dollars, which the fire marshal shall use to pay for fireworks safety education, training programs, and inspections. If the applicant has any storage locations approved in accordance with division (I) of [section 3743.04 of the Revised Code](#), the applicant also shall submit a fee of one hundred dollars per storage

location for the inspection of each storage location.

(2) Proof of comprehensive general liability insurance coverage, specifically including fire and smoke casualty on premises and products, in an amount not less than one million dollars for each occurrence for bodily injury liability and wrongful death liability at the fireworks plant. All applicants shall submit evidence of comprehensive general liability insurance coverage verified by the insurer and certified as to its provision of the minimum coverage required under this division.

(3) One set of the applicant's fingerprints or similar identifying information and a set of fingerprints or similar identifying information of any individual holding, owning, or controlling a five per cent or greater beneficial or equity interest in the applicant for the license. The fire marshal may adopt rules in accordance with Chapter 119. of the Revised Code specifying the method to be used by the applicant to provide the fingerprint or similar identifying information, fees to be assessed by the fire marshal to conduct such background checks, and the procedures to be used by the fire marshal to verify compliance with this section. Such rules may include provisions establishing the frequency that license renewal applicants must update background check information filed by the applicant with previous license applications and provisions describing alternative forms of background check information that may be accepted by the fire marshal to verify compliance with this section.

(C) A separate application for licensure as a manufacturer of fireworks shall be submitted for each fireworks plant that a person wishes to operate in this state.

(D) If an applicant intends to include the processing of fireworks as any part of its proposed manufacturing of fireworks, a statement indicating that intent shall be included in its application for licensure.

History:

141 v S 61 (Eff 5-30-86); 144 v H 508 (Eff 12-14-92); 147 v H 215 (Eff 6-30-97); 149 v H 161. Eff 6-29-2001; 151 v H 66, § 101.01, eff. 9-29-05; 152 v H 562, § 101.01, eff. 9-23-08.

Section Notes:

The effective date is set by § 812.10 of 152 v H 562.

The effective date is set by § 612.03 of 151 v H 66.

Somewhat analogous to former RC § 3743.02 (GC § 5903-2; 108 v PtI, 334, § 2; Bureau of Code Revision, 10-1-53; 130 v 863; 135 v S 1), repealed 137 v H 590, § 2, eff 7-1-79.

See provisions, § 6(A) of HB 161 (149 v --) following RC § 3743.01.

EFFECT OF AMENDMENTS

152 v H 562, effective September 23, 2008, rewrote (B)(3).

151 v H 66, effective September 29, 2005, added the last sentence to (B)(1).

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ORC Ann. 3743.03

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*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 37. HEALTH -- SAFETY -- MORALS
CHAPTER 3743. FIREWORKS

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ORC Ann. 3743.03 (2010)

§ 3743.03. Review of application; issuance; list; change to wholesaler; investigation

(A) If a person submits an application for licensure as a manufacturer of fireworks, together with the license fee, fingerprints, and proof of the insurance coverage, as required by section 3743.02 of the Revised Code, the fire marshal shall review the application and accompanying matter, request the criminal records check described in division (E) of this section, inspect the premises of the fireworks plant described in the application, and determine whether the applicant will be issued the license. In determining whether to issue the license, the fire marshal shall consider the results of the criminal records check and the inspection, and the information set forth in the application, and shall decide whether the applicant and the fireworks plant described in the application conform to sections 3743.02 to 3743.08 of the Revised Code and the rules adopted by the fire marshal pursuant to section 3743.05 of the Revised Code, and are in full compliance with Chapters 3781. and 3791. of the Revised Code, and any applicable building or zoning regulations.

(B) Subject to section 3743.70 of the Revised Code, the fire marshal shall issue a license in accordance with Chapter 119. of the Revised Code to an applicant for licensure as a manufacturer of fireworks only if the applicant and the fireworks plant described in the application conform to sections 3743.02 to 3743.08 of the Revised Code and the rules adopted by the fire marshal pursuant to section 3743.05 of the Revised Code, only if the

fireworks plant described in the application complies with the Ohio building code adopted under Chapter 3781. of the Revised Code, if that fireworks plant was constructed after May 30, 1986, and only if the fire marshal is satisfied that the application and accompanying matter are complete and in conformity with section 3743.02 of the Revised Code. The requirements of this chapter and of the rules adopted under this chapter as applicable to the structure of a building do not apply to a building in a fireworks plant if the building was inspected and approved by the department of industrial relations or by any building department certified pursuant to division (E) of section 3781.10 of the Revised Code prior to May 30, 1986.

(C) Each license issued pursuant to this section shall contain a distinct number assigned to the licensed manufacturer and, if the licensed manufacturer will engage in the processing of fireworks as any part of its manufacturing of fireworks at the fireworks plants, a notation indicating that fact. The fire marshal shall maintain a list of all licensed manufacturers of fireworks. In the list next to each manufacturer's name, the fire marshal shall insert the period of licensure, the license number of the manufacturer, and, if applicable, a notation that the manufacturer will engage in the processing of fireworks as part of its manufacturing of fireworks.

(D) The holder of a license issued pursuant to this section may request the fire marshal to cancel that license and issue in its place a license to sell fireworks at wholesale under section 3743.16 of the Revised Code. Upon receipt of such a request, the fire marshal shall cancel the license issued under this section and issue a license under section 3743.16 of the Revised Code if the applicant meets the requirements of that section.

(E) Upon receipt of an application and the required accompanying matter under section 3743.02 of the Revised Code, the fire marshal shall forward to the superintendent of the bureau of criminal identification and investigation a request that the bureau conduct an investigation of the applicant and, if applicable, additional individuals who hold, own, or control a five per cent or greater beneficial or equity interest in the applicant, to determine whether the applicant or the additional associated individuals have been convicted of or pled guilty to a felony under the laws of this state, another state, or the United States.

If the applicant for initial licensure has resided in this state for less than five continuous years immediately prior to the date the applicant submits an initial application, the superintendent also shall request that the federal bureau of investigation conduct an investigation of the applicant and, if applicable, additional individuals who hold, own, or control a five per cent or greater beneficial or equity interest in the applicant, to determine whether the applicant or the additional associated individuals have been convicted of or pled guilty to a felony under the laws of this state, another state, or the United States.

The superintendent shall forward the results of an investigation conducted pursuant to this division to the fire marshal and may charge a reasonable fee for providing the results. The fire marshal shall assess any fee charged by the superintendent for the results to the applicant.

History:

141 v S 61 (Eff 5-30-86); 142 v H 708 (Eff 4-19-88); 146 v S 162 (Eff 10-29-95); 146 v S 293 (Eff 9-26-96); 147 v H 215 (Eff 6-30-97); 149 v H 161. Eff 6-29-2001.

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ORC Ann. 3743.04

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TITLE 37. HEALTH -- SAFETY -- MORALS
CHAPTER 3743. FIREWORKS

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ORC Ann. 3743.04 (2010)

§ 3743.04. Renewal; changes in manufacturing or alteration of premises; safety requirements; authorized activities; posting; transfer of license; continuing education; liability insurance; expansion or contraction of premises; storage location

(A) The license of a manufacturer of fireworks is effective for one year beginning on the first day of December. The state fire marshal shall issue or renew a license only on that date and at no other time. If a manufacturer of fireworks wishes to continue manufacturing fireworks at the designated fireworks plant after its then effective license expires, it shall apply no later than the first day of October for a new license pursuant to section 3743.02 of the Revised Code. The state fire marshal shall send a written notice of the expiration of its license to a licensed manufacturer at least three months before the expiration date.

(B) If, during the effective period of its licensure, a licensed manufacturer of fireworks wishes to construct, locate, or relocate any buildings or other structures on the premises of its fireworks plant, to make any structural change or renovation in any building or other structure on the premises of its fireworks plant, or to change the nature of its manufacturing of fireworks so as to include the processing of fireworks, the manufacturer shall notify the state fire marshal in writing. The state fire marshal may require a licensed manufacturer also to submit documentation, including, but not limited to, plans covering the proposed

construction, location, relocation, structural change or renovation, or change in manufacturing of fireworks, if the state fire marshal determines the documentation is necessary for evaluation purposes in light of the proposed construction, location, relocation, structural change or renovation, or change in manufacturing of fireworks.

Upon receipt of the notification and additional documentation required by the state fire marshal, the state fire marshal shall inspect the premises of the fireworks plant to determine if the proposed construction, location, relocation, structural change or renovation, or change in manufacturing of fireworks conforms to sections 3743.02 to 3743.08 of the Revised Code and the rules adopted by the state fire marshal pursuant to section 3743.05 of the Revised Code. The state fire marshal shall issue a written authorization to the manufacturer for the construction, location, relocation, structural change or renovation, or change in manufacturing of fireworks if the state fire marshal determines, upon the inspection and a review of submitted documentation, that the construction, location, relocation, structural change or renovation, or change in manufacturing of fireworks conforms to those sections and rules. Upon authorizing a change in manufacturing of fireworks to include the processing of fireworks, the state fire marshal shall make notations on the manufacturer's license and in the list of licensed manufacturers in accordance with section 3743.03 of the Revised Code.

On or before June 1, 1998, a licensed manufacturer shall install, in every licensed building in which fireworks are manufactured, stored, or displayed and to which the public has access, interlinked fire detection, smoke exhaust, and smoke evacuation systems that are approved by the superintendent of labor, and shall comply with floor plans showing occupancy load limits and internal circulation and egress patterns that are approved by the state fire marshal and superintendent, and that are submitted under seal as required by section 3791.04 of the Revised Code. Notwithstanding section 3743.59 of the Revised Code, the construction and safety requirements established in this division are not subject to any variance, waiver, or exclusion.

(C) The license of a manufacturer of fireworks authorizes the manufacturer to engage only in the following activities:

(1) The manufacturing of fireworks on the premises of the fireworks plant as described in the application for licensure or in the notification submitted under division (B) of this section, except that a licensed manufacturer shall not engage in the processing of fireworks unless authorized to do so by its license.

(2) To possess for sale at wholesale and sell at wholesale the fireworks manufactured by the manufacturer, to persons who are licensed wholesalers of fireworks, to out-of-state residents in accordance with section 3743.44 of the Revised Code, to residents of this state in accordance with section 3743.45 of the Revised Code, or to persons located in another state provided the fireworks are shipped directly out of this state to them by the manufacturer. A person who is licensed as a manufacturer of fireworks on June 14, 1988, also may possess for sale and sell pursuant to division (C)(2) of this section fireworks other than those the person manufactures. The possession for sale shall be on the premises of the fireworks plant described in the application for licensure or in the notification submitted under division (B) of this section, and the sale shall be from the inside of a licensed building and from no other structure or device outside a licensed building. At no time shall a licensed manufacturer sell any class of fireworks outside a licensed building.

(3) Possess for sale at retail and sell at retail the fireworks manufactured by the manufacturer, other than 1.4G fireworks as designated by the state fire marshal in rules adopted pursuant to division (A) of section 3743.05 of the Revised Code, to licensed exhibitors in accordance with sections 3743.50 to 3743.55 of the Revised Code, and possess for sale at retail and sell at retail the fireworks manufactured by the manufacturer, including 1.4G fireworks, to out-of-state residents in accordance with section 3743.44 of the Revised

Code, to residents of this state in accordance with section 3743.45 of the Revised Code, or to persons located in another state provided the fireworks are shipped directly out of this state to them by the manufacturer. A person who is licensed as a manufacturer of fireworks on June 14, 1988, may also possess for sale and sell pursuant to division (C)(3) of this section fireworks other than those the person manufactures. The possession for sale shall be on the premises of the fireworks plant described in the application for licensure or in the notification submitted under division (B) of this section, and the sale shall be from the inside of a licensed building and from no other structure or device outside a licensed building. At no time shall a licensed manufacturer sell any class of fireworks outside a licensed building.

A licensed manufacturer of fireworks shall sell under division (C) of this section only fireworks that meet the standards set by the consumer product safety commission or by the American fireworks standard laboratories or that have received an EX number from the United States department of transportation.

(D) The license of a manufacturer of fireworks shall be protected under glass and posted in a conspicuous place on the premises of the fireworks plant. Except as otherwise provided in this division, the license is not transferable or assignable. A license may be transferred to another person for the same fireworks plant for which the license was issued if the assets of the plant are transferred to that person by inheritance or by a sale approved by the state fire marshal. The license is subject to revocation in accordance with section 3743.08 of the Revised Code.

(E) The state fire marshal shall not place the license of a manufacturer of fireworks in a temporarily inactive status while the holder of the license is attempting to qualify to retain the license.

(F) Each licensed manufacturer of fireworks that possesses fireworks for sale and sells fireworks under division (C) of section 3743.04 of the Revised Code, or a designee of the manufacturer, whose identity is provided to the state fire marshal by the manufacturer, annually shall attend a continuing education program. The state fire marshal shall develop the program and the state fire marshal or a person or public agency approved by the state fire marshal shall conduct it. A licensed manufacturer or the manufacturer's designee who attends a program as required under this division, within one year after attending the program, shall conduct in-service training as approved by the state fire marshal for other employees of the licensed manufacturer regarding the information obtained in the program. A licensed manufacturer shall provide the state fire marshal with notice of the date, time, and place of all in-service training. For any program conducted under this division, the state fire marshal shall, in accordance with rules adopted by the state fire marshal under Chapter 119. of the Revised Code, establish the subjects to be taught, the length of classes, the standards for approval, and time periods for notification by the licensee to the state fire marshal of any in-service training.

(G) A licensed manufacturer shall maintain comprehensive general liability insurance coverage in the amount and type specified under division (B)(2) of section 3743.02 of the Revised Code at all times. Each policy of insurance required under this division shall contain a provision requiring the insurer to give not less than fifteen days' prior written notice to the state fire marshal before termination, lapse, or cancellation of the policy, or any change in the policy that reduces the coverage below the minimum required under this division. Prior to canceling or reducing the amount of coverage of any comprehensive general liability insurance coverage required under this division, a licensed manufacturer shall secure supplemental insurance in an amount and type that satisfies the requirements of this division so that no lapse in coverage occurs at any time. A licensed manufacturer who secures supplemental insurance shall file evidence of the supplemental insurance with the state fire marshal prior to canceling or reducing the amount of coverage of any comprehensive general liability insurance coverage required under this division.

(H) The state fire marshal shall adopt rules for the expansion or contraction of a licensed premises and for approval of such expansions or contractions. The boundaries of a licensed premises, including any geographic expansion or contraction of those boundaries, shall be approved by the state fire marshal in accordance with rules the state fire marshal adopts. If the licensed premises consists of more than one parcel of real estate, those parcels shall be contiguous unless an exception is allowed pursuant to division (I) of this section.

(I) (1) A licensed manufacturer may expand its licensed premises within this state to include not more than two storage locations that are located upon one or more real estate parcels that are noncontiguous to the licensed premises as that licensed premises exists on the date a licensee submits an application as described below, if all of the following apply:

(a) The licensee submits an application to the state fire marshal and an application fee of one hundred dollars per storage location for which the licensee is requesting approval.

(b) The identity of the holder of the license remains the same at the storage location.

(c) The storage location has received a valid certificate of zoning compliance as applicable and a valid certificate of occupancy for each building or structure at the storage location issued by the authority having jurisdiction to issue the certificate for the storage location, and those certificates permit the distribution and storage of fireworks regulated under this chapter at the storage location and in the buildings or structures. The storage location shall be in compliance with all other applicable federal, state, and local laws and regulations.

(d) Every building or structure located upon the storage location is separated from occupied residential and nonresidential buildings or structures, railroads, highways, or any other buildings or structures on the licensed premises in accordance with the distances specified in the rules adopted by the state fire marshal pursuant to section 3743.05 of the Revised Code.

(e) Neither the licensee nor any person holding, owning, or controlling a five per cent or greater beneficial or equity interest in the licensee has been convicted of or pleaded guilty to a felony under the laws of this state, any other state, or the United States, after September 29, 2005.

(f) The state fire marshal approves the application for expansion.

(2) The state fire marshal shall approve an application for expansion requested under division (I)(1) of this section if the state fire marshal receives the application fee and proof that the requirements of divisions (I)(1)(b) to (e) of this section are satisfied. The storage location shall be considered part of the original licensed premises and shall use the same distinct number assigned to the original licensed premises with any additional designations as the state fire marshal deems necessary in accordance with section 3743.03 of the Revised Code.

(J) (1) A licensee who obtains approval for the use of a storage location in accordance with division (I) of this section shall use the storage location exclusively for the following activities, in accordance with division (C) of this section:

(a) The packaging, assembling, or storing of fireworks, which shall only occur in buildings or structures approved for such hazardous uses by the building code official having jurisdiction for the storage location or, for 1.4G fireworks, in containers or trailers approved for such hazardous uses by the state fire marshal if such containers or trailers are not subject to regulation by the building code adopted in accordance with Chapter 3781. of the Revised

Code. All such storage shall be in accordance with the rules adopted by the state fire marshal under division (G) of section 3743.05 of the Revised Code for the packaging, assembling, and storage of fireworks.

(b) Distributing fireworks to other parcels of real estate located on the manufacturer's licensed premises, to licensed wholesalers or other licensed manufacturers in this state or to similarly licensed persons located in another state or country;

(c) Distributing fireworks to a licensed exhibitor of fireworks pursuant to a properly issued permit in accordance with section 3743.54 of the Revised Code.

(2) A licensed manufacturer shall not engage in any sales activity, including the retail sale of fireworks otherwise permitted under division (C)(2) or (C)(3) of this section, or pursuant to section 3743.44 or 3743.45 of the Revised Code, at the storage location approved under this section.

(3) A storage location may not be relocated for a minimum period of five years after the storage location is approved by the state fire marshal in accordance with division (I) of this section.

(K) The licensee shall prohibit public access to the storage location. The state fire marshal shall adopt rules to describe the acceptable measures a manufacturer shall use to prohibit access to the storage site.

History:

141 v S 61 (Eff 5-30-86); 142 v H 436 (Eff 6-14-88); 147 v H 215 (Eff 6-30-97); 149 v H 161, Eff 6-29-2001; 151 v H 66, § 101.01, eff. 9-29-05; 152 v H 562, § 101.01, eff. 9-23-08; 153 v H 1, § 101.01, eff. 10-16-09.

Section Notes:

The effective date is set by § 812.10 of 153 v H 1.

The effective date is set by § 812.10 of 152 v H 562.

The effective date is set by § 612.03 of 151 v H 66.

Not analogous to former RC § 3743.04 (GC § 5903-4; 108 v PtI, 334, § 4; Bureau of Code Revision, 10-1-53), repealed 137 v H 590, § 2, eff 7-1-79.

See provisions, § 6(A) of HB 161 (149 v --) following RC § 3743.01.

EFFECT OF AMENDMENTS

153 v H 1, effective October 16, 2009, inserted "state" throughout the section; and substituted "superintendent of labor" for "superintendent of the division of industrial compliance" in the first sentence of the last paragraph of (B).

152 v H 562, effective September 23, 2008, in (F), deleted "consisting of not less than eight hours of instruction" from the end of the first sentence and "not less than thirty days prior to an in-service training event" from the end of the fourth sentence, inserted "as approved by the fire marshal", and added the last sentence; in (I)(1)(e), substituted "September 29,

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ORC Ann. 3743.05

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ORC Ann. 3743.05 (2010)

§ 3743.05. Rules governing classification, manufacturing, packaging and storage; required distances; storage locations

The fire marshal shall adopt rules in accordance with Chapter 119. of the Revised Code governing the classification of fireworks that are consistent with the classification of fireworks by the United States department of transportation as set forth in Title 49, Code of Federal Regulations, and the manufacture of fireworks and the storage of manufactured fireworks by licensed manufacturers of fireworks. The rules shall be designed to promote the safety and security of employees of manufacturers, members of the public, and the fireworks plant.

The rules shall be consistent with sections 3743.02 to 3743.08 of the Revised Code, shall be substantially equivalent to the most recent versions of chapters 1123, 1124, and 1126 of the most recent national fire protection association standards, and shall apply to, but not be limited to, the following subject matters:

(A) A classification of fireworks by number and letter designation, including, specifically, a 1.4G designation of fireworks. The classes of fireworks established by the fire marshal shall be substantially equivalent to those defined by the United States department of transportation by regulation, except that, if the fire marshal determines that a type of fireworks designated as common fireworks by the United States department of transportation

meets the criteria of any class of fireworks, other than 1.4G fireworks, as adopted by the fire marshal pursuant to this section, the fire marshal may include the type of fireworks in the other class instead of 1.4G.

(B) Appropriate standards for the manufacturing of types of fireworks that are consistent with standards adopted by the United States department of transportation and the consumer product safety commission, including, but not limited to, the following:

- (1) Permissible amounts of pyrotechnic or explosive composition;
- (2) Interior and exterior dimensions;
- (3) Structural specifications.

(C) Cleanliness and orderliness in, the heating, lighting, and use of stoves and flame-producing items in, smoking in, the prevention of fire and explosion in, the availability of fire extinguishers or other fire-fighting equipment and their use in, and emergency procedures relative to the buildings and other structures located on the premises of a fireworks plant.

(D) Appropriate uniforms to be worn by employees of manufacturers in the course of the manufacturing, handling, and storing of fireworks, and the use of protective clothing and equipment by the employees.

(E) The manner in which fireworks are to be packed, packaged, and stored.

(F) Required distances between buildings or structures used in the manufacturing, storage, or sale of fireworks and occupied residential and nonresidential buildings or structures, railroads, highways, or any additional buildings or structures located on the licensed premises. The rules adopted pursuant to this division do not apply to factory buildings in fireworks plants that were erected on or before May 30, 1986, and that were legally being used for fireworks activities under authority of a valid license issued by the fire marshal as of December 1, 1990, pursuant to sections 3743.03 and 3743.04 of the Revised Code.

(G) Requirements for the operation of storage locations, including packaging, assembling, and storage of fireworks.

History:

141 v S 61 (Eff 5-30-86); 141 v H 428 (Eff 12-23-86); 147 v H 215 (Eff 6-30-97); 149 v H 161. Eff 6-29-2001; 151 v H 66, § 101.01, eff. 9-29-05.

Section Notes:

The effective date is set by § 612.03 of 151 v H 66.

Not analogous to former RC § 3743.05 (GC § 5903-5; 108 v PtI, 334, § 5; Bureau of Code Revision, 10-1-53), repealed 137 v H 590, § 2, eff 7-1-79.

See provisions, § 6(A) of HB 161 (149 v --) following RC § 3743.01.

EFFECT OF AMENDMENTS

151 v H 66, effective September 29, 2005, added (F) and (G).

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ORC Ann. 3743.06 (2010)

§ 3743.06. Additional fireworks plant provisions; safety officer; sale, storage, transportation provisions

In addition to conforming to the rules of the fire marshal adopted pursuant to section 3743.05 of the Revised Code, licensed manufacturers of fireworks shall operate their fireworks plants in accordance with the following:

(A) Signs indicating that smoking is generally forbidden and trespassing is prohibited on the premises of a fireworks plant shall be posted on the premises in a manner determined by the fire marshal.

(B) Reasonable precautions shall be taken to protect the premises of a fireworks plant from trespass, loss, theft, or destruction. Only persons employed by the manufacturer, authorized governmental personnel, and persons who have obtained permission from a member of the manufacturer's office to be on the premises, are to be allowed to enter and remain on the premises.

(C) Smoking or the carrying of pipes, cigarettes, or cigars, matches, lighters, other flame-producing items, or open flame on, or the carrying of a concealed source of ignition into, the premises of a fireworks plant is prohibited, except that a manufacturer may permit smoking

in specified lunchrooms or restrooms in buildings or other structures in which no manufacturing, handling, sales, or storage of fireworks takes place. "NO SMOKING" signs shall be posted on the premises as required by the fire marshal.

(D) Fire and explosion prevention and other reasonable safety measures and precautions shall be implemented by a manufacturer.

(E) Persons shall not be permitted to have in their possession or under their control, while they are on the premises of the fireworks plant, any intoxicating liquor, beer, or controlled substance, and they shall not be permitted to enter or remain on the premises if they are found to be under the influence of any intoxicating liquor, beer, or controlled substance.

(F) A manufacturer shall conform to all building, safety, and zoning statutes, ordinances, rules, or other enactments that apply to the premises of its fireworks plant.

(G) Each fireworks plant shall have at least one class 1 magazine that is approved by the bureau of alcohol, tobacco, and firearms of the United States department of the treasury and that is otherwise in conformity with federal law. This division does not apply to fireworks plants existing on or before August 3, 1931.

(H) Awnings, tents, and canopies shall not be used as facilities for the sale or storage of fireworks. This division does not prohibit the use of an awning or canopy attached to a public access showroom for storing nonflammable shopping convenience items such as shopping carts or baskets or providing a shaded area for patrons waiting to enter the public sales area.

(I) Fireworks may be stored in trailers if the trailers are properly enclosed, secured, and grounded and are separated from any structure to which the public is admitted by a distance that will, in the fire marshal's judgment, allow fire-fighting equipment to have full access to the structures on the licensed premises. Such trailers may be moved into closer proximity to any structure only to accept or discharge cargo for a period not to exceed forty-eight hours. Only two such trailers may be placed in such closer proximity at any one time. At no time may trailers be used for conducting sales of any class of fireworks, nor may members of the public have access to the trailers.

Storage areas for fireworks that are in the same building where fireworks are displayed and sold to the public shall be separated from the areas to which the public has access by an appropriately rated fire wall.

(J) A fire suppression system as defined in section 3781.108 [3781.10.8] of the Revised Code may be turned off only for repair, drainage of the system to prevent damage by freezing during the period of time, approved by the fire marshal, that the facility is closed to all public access during winter months, or maintenance of the system. If any repair or maintenance is necessary during times when the facility is open for public access and business as approved by the fire marshal, the licensed manufacturer shall notify in advance the appropriate insurance company and fire chief or fire prevention officer regarding the nature of the maintenance or repair and the time when it will be performed.

(K) If any fireworks item is removed from its original package or is manufactured with any fuse other than a safety fuse approved by the consumer product safety commission, then the item shall be covered completely by repackaging or bagging or it shall otherwise be covered so as to prevent ignition prior to sale.

(L) A safety officer shall be present during regular business hours at a building open to the public during the period commencing fourteen days before, and ending two days after, each fourth day of July. The officer shall be highly visible, enforce this chapter and any applicable building codes to the extent the officer is authorized by law, and be one of the following:

(1) A deputy sheriff;

(2) A law enforcement officer of a municipal corporation, township, or township or joint township police district;

(3) A private uniformed security guard registered under section 4749.06 of the Revised Code.

(M) All doors of all buildings on the licensed premises shall swing outward.

(N) All wholesale and commercial sales of fireworks shall be packaged, shipped, placarded, and transported in accordance with United States department of transportation regulations applicable to the transportation, and the offering for transportation, of hazardous materials. For purposes of this division, "wholesale and commercial sales" includes all sales for resale and any nonretail sale made in furtherance of a commercial enterprise. For purposes of enforcement of these regulations under section 4905.83 of the Revised Code, any sales transaction exceeding one thousand pounds shall be rebuttably presumed to be a wholesale or commercial sale.

History:

141 v S 61 (Eff 5-30-86); 143 v H 664 (Eff 1-9-91); 144 v H 508 (Eff 12-14-92); 147 v H 215 (Eff 6-30-97); 149 v H 161. Eff 6-29-2001; 151 v H 66, § 101.01, eff. 9-29-05.

Section Notes:

The effective date is set by § 612.03 of 151 v H 66.

Not analogous to former RC § 3743.06 (GC § 5903-6; 108 v PtI, 334, § 6; Bureau of Code Revision, 10-1-53), repealed 137 v H 590, § 2, eff 7-1-79.

See provisions, § 6(A) of HB 161 (149 v --) following RC § 3743.01.

EFFECT OF AMENDMENTS

151 v H 66, effective September 29, 2005, deleted (G), providing restrictions on the location of a building used in the manufacture, storage, or sale of fireworks, and redesignated the remaining subsections accordingly.

Related Statutes & Rules:

Cross-Reference to Related Statutes:

Renewal of license, RC § 3743.04.

Requirements for license, RC § 3743.03.

Restrictions, RC § 3743.60.

Restrictions on possession; sale and use; disabling fire suppression system, RC § 3743.65.

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ORC Ann. 3743.07

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ORC Ann. 3743.07 (2010)

§ 3743.07. Records of inventory and sales; purchaser to complete form

(A) Licensed manufacturers of fireworks shall keep complete records of all fireworks in their inventory.

(B) Licensed manufacturers of fireworks shall keep the following records with respect to fireworks sold at wholesale or retail for a period of three years after the date of their sale:

(1) In the case of a wholesale sale, the name and address of the purchaser; the destination to which the fireworks will be transported; if applicable, the number of the purchaser's wholesale license; the date of purchase; when the fireworks are to be shipped directly out of this state by a manufacturer to a purchaser, the manner in which the fireworks were shipped to the purchaser; and such other information as the fire marshal may require.

(2) In the case of a retail sale, the name and address of the purchaser; the destination to which the fireworks will be transported; if applicable, the number of the purchaser's exhibitor's license and the number and political subdivision designation of the purchaser's permit for a fireworks exhibition; the date of purchase; when the fireworks are shipped directly out of this state by a manufacturer to a purchaser, the manner in which the fireworks were shipped to the purchaser; and such other information as the fire marshal may require.

(C) The seller shall require each purchaser described in division (B) of this section to complete a purchaser's form, which shall be prescribed by the fire marshal and furnished by the seller. On this form the purchaser shall include the information described in division (B) of this section and the purchaser's signature. Each purchaser's form shall contain a statement printed in bold letters indicating that knowingly making a false statement on the form is falsification under section 2921.13 of the Revised Code and is a misdemeanor of the first degree. Each seller shall keep each purchaser's form for a period of three years after the date of the purchase, and such forms shall be open to inspection by the fire marshal or the fire marshal's designated authority.

(D) A licensed manufacturer of fireworks shall keep its wholesale sale and retail sale records in separate books. These records and the inventory records shall be open to inspection by the fire marshal or the fire marshal's designated authority.

History:

141 v S 61 (Eff 5-30-86); 146 v S 2 (Eff 7-1-96); 147 v H 215 (Eff 6-30-97); 149 v H 161. Eff 6-29-2001.

Section Notes:

Not analogous to former RC § 3743.07 (GC § 5903-7; 108 v PtI, 334, § 7; Bureau of Code Revision, 10-1-53), repealed 137 v H 590, § 2, eff 7-1-79.

See provisions, § 6(A) of HB 161 (149 v --) following RC § 3743.01.

Related Statutes & Rules:

Cross-Reference to Related Statutes:

Falsification, RC § 2921.13.

Prohibitions, RC §§ 3743.60, 3743.65.

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ORC Ann. 3743.08 (2010)

§ 3743.08. Inspection of premises and records; actions to remedy noncompliance

(A) The fire marshal may inspect the premises of a fireworks plant, and the inventory, wholesale sale, and retail sale records, of a licensed manufacturer of fireworks during the manufacturer's period of licensure to determine whether the manufacturer is in compliance with Chapter 3743. of the Revised Code and the rules adopted by the fire marshal pursuant to section 3743.05 of the Revised Code.

(B) If the fire marshal determines during an inspection conducted pursuant to division (A) of this section that a manufacturer is not in compliance with Chapter 3743. of the Revised Code or the rules adopted by the fire marshal pursuant to section 3743.05 of the Revised Code, the fire marshal may take one or more of the following actions, whichever the fire marshal considers appropriate under the circumstances:

(1) Order, in writing, the manufacturer to eliminate, correct, or otherwise remedy the nonconformities within a specified period of time;

(2) Order, in writing, the manufacturer to immediately cease its operations, if a fire or explosion hazard exists that reasonably can be regarded as posing an imminent danger of death or serious physical harm to persons. The order shall be effective until the

nonconformities are eliminated, corrected, or otherwise remedied or for a period of seventy-two hours from the time of issuance, whichever first occurs. During the seventy-two hour period, the fire marshal may obtain from the court of common pleas of Franklin county or of the county in which the fireworks plant is located an injunction restraining the manufacturer from continuing its operations after the seventy-two hour period expires until the nonconformities are eliminated, corrected, or otherwise remedied.

(3) Revoke or deny renewal of the license of the manufacturer in accordance with Chapter 119. of the Revised Code;

(4) Take action as authorized by section 3743.68 of the Revised Code.

(C) This section does not affect the authority conferred by Chapters 3781. and 3791. of the Revised Code to conduct inspections to determine conformity with those chapters or the rules adopted pursuant to them.

(D) If the license of a manufacturer of fireworks is revoked or renewal is denied pursuant to division (B)(3) of this section or section 3743.70 of the Revised Code, the manufacturer shall cease its operations immediately. The manufacturer may not reapply for licensure as a manufacturer of fireworks until two years expire from the date of revocation.

The fire marshal shall remove from the list of licensed manufacturers the name of a manufacturer whose license has been revoked, and shall notify the law enforcement authorities for the political subdivision in which the manufacturer's fireworks plant is located, of the revocation or denial of renewal.

History:

141 v S 61 (Eff 5-30-86); 147 v H 215 (Eff 6-30-97); 149 v H 161. Eff 6-29-2001.

Section Notes:

Not analogous to former RC § 3743.08 (GC § 5903-8; 108 v PtI, 334, § 8; Bureau of Code Revision, 10-1-53; 129 v 226), repealed 137 v H 590, § 2, eff 7-1-79.

See provisions, § 6(A) of HB 161 (149 v --) following RC § 3743.01.

Related Statutes & Rules:

Cross-Reference to Related Statutes:

Changes in manufacturing or alteration of premises, RC § 3743.04.

Prohibitions, RC §§ 3743.60, 3743.65.

Ohio Rules:

Injunctions, CivR 65.

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ORC Ann. 3743.15

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*** CURRENT THROUGH LEGISLATION PASSED BY THE
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*** ANNOTATIONS CURRENT THROUGH JULY 1, 2010 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

TITLE 37. HEALTH -- SAFETY -- MORALS
 CHAPTER 3743. FIREWORKS

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ORC Ann. 3743.15 (2010)

§ 3743.15. Application for wholesaler's license

(A) Except as provided in division (C) of this section, any person who wishes to be a wholesaler of fireworks in this state shall submit to the fire marshal an application for licensure as a wholesaler of fireworks before the first day of October of each year. The application shall be submitted prior to commencement of business operations, shall be on a form prescribed by the fire marshal, shall contain all information requested by the fire marshal, and shall be accompanied by the license fee, fingerprints, and proof of insurance coverage described in division (B) of this section.

The fire marshal shall prescribe a form for applications for licensure as a wholesaler of fireworks and make a copy of the form available, upon request, to persons who seek that licensure.

(B) An applicant for licensure as a wholesaler of fireworks shall submit with the application all of the following:

(1) A license fee of two thousand seven hundred fifty dollars, which the fire marshal shall use to pay for fireworks safety education, training programs, and inspections. If the applicant has any storage locations approved in accordance with division (G) of [section 3743.17](#) of the

Revised Code, the applicant also shall submit a fee of one hundred dollars per storage location for the inspection of each storage location.

(2) Proof of comprehensive general liability insurance coverage, specifically including fire and smoke casualty on premises, in an amount not less than one million dollars for each occurrence for bodily injury liability and wrongful death liability at its business location. Proof of such insurance coverage shall be submitted together with proof of coverage for products liability on all inventory located at the business location. All applicants shall submit evidence of comprehensive general liability insurance coverage verified by the insurer and certified as to its provision of the minimum coverage required under this division.

(3) One set of the applicant's fingerprints or similar identifying information and a set of fingerprints or similar identifying information of any individual holding, owning, or controlling a five per cent or greater beneficial or equity interest in the applicant for the license. The fire marshal may adopt rules in accordance with Chapter 119. of the Revised Code specifying the method to be used by the applicant to provide the fingerprint or similar identifying information, fees to be assessed by the fire marshal to conduct such background checks, and the procedures to be used by the fire marshal to verify compliance with this section. Such rules may include provisions establishing the frequency that license renewal applicants must update background check information filed by the applicant with previous license applications and provisions describing alternative forms of background check information that may be accepted by the fire marshal to verify compliance with this section.

(C) A licensed manufacturer of fireworks is not required to apply for and obtain a wholesaler of fireworks license in order to engage in the wholesale sale of fireworks as authorized by division (C)(2) of section 3743.04 of the Revised Code. A business which is not a licensed manufacturer of fireworks may engage in the wholesale and retail sale of fireworks in the same manner as a licensed manufacturer of fireworks is authorized to do under this chapter without the necessity of applying for and obtaining a license pursuant to this section, but only if the business sells the fireworks on the premises of a fireworks plant covered by a license issued under section 3743.03 of the Revised Code and the holder of that license owns at least a majority interest in that business. However, if a licensed manufacturer of fireworks wishes to engage in the wholesale sale of fireworks in this state at a location other than the premises of the fireworks plant described in its application for licensure as a manufacturer or in a notification submitted under division (B) of section 3743.04 of the Revised Code, the manufacturer shall first apply for and obtain a wholesaler of fireworks license before engaging in wholesale sales of fireworks at the other location.

(D) A separate application for licensure as a wholesaler of fireworks shall be submitted for each location at which a person wishes to engage in wholesale sales of fireworks.

History:

141 v S 61 (Eff 5-30-86); 144 v H 508 (Eff 12-14-92); 147 v H 215 (Eff 6-30-97); 149 v H 161. Eff 6-29-2001; 151 v H 66, § 101.01, eff. 9-29-05; 152 v H 562, § 101.01, eff. 9-23-08.

Section Notes:

The effective date is set by § 812.10 of 152 v H 562.

The effective date is set by § 612.03 of 151 v H 66.

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ORC Ann. 3743.16

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CHAPTER 3743. FIREWORKS

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ORC Ann. 3743.16 (2010)

§ 3743.16. Review of application; issuance; list; investigation

(A) If a person submits an application for licensure as a wholesaler of fireworks, together with the license fee, fingerprints, and proof of the insurance coverage, as required by [section 3743.15](#) of the Revised Code, the fire marshal shall review the application and accompanying matter, request the criminal records check described in division (D) of this section, inspect the premises on which the fireworks would be sold, and determine whether the applicant will be issued the license. In determining whether to issue the license, the fire marshal shall consider the results of the criminal records check and the inspection, and the information set forth in the application, and shall decide whether the applicant and the premises on which the fireworks will be sold conform to [sections 3743.15 to 3743.21](#) of the Revised Code and the rules adopted by the fire marshal pursuant to [section 3743.18](#) of the Revised Code, and are in full compliance with Chapters 3781. and 3791. of the Revised Code, and any applicable building or zoning regulations.

(B) Subject to [section 3743.70](#) of the Revised Code, the fire marshal shall issue a license in accordance with Chapter 119. of the Revised Code to the applicant for licensure as a wholesaler of fireworks only if the applicant and the premises on which the fireworks will be sold conform to [sections 3743.15 to 3743.21](#) of the Revised Code and the rules adopted by the fire marshal pursuant to [section 3743.18](#) of the Revised Code, only if the premises on

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which the fireworks will be sold complies with the Ohio building code adopted under Chapter 3781. of the Revised Code, if that premises was constructed after May 30, 1986, and only if the fire marshal is satisfied that the application and accompanying matter are complete and in conformity with section 3743.15 of the Revised Code. The requirements of this chapter and of the rules adopted under this chapter as applicable to the structure of a building do not apply to a building used by a wholesaler if the building was inspected and approved by the department of industrial relations or by any building department certified pursuant to division (E) of section 3781.10 of the Revised Code prior to May 30, 1986.

(C) Each license issued pursuant to this section shall contain a distinct number assigned to the particular wholesaler. The fire marshal shall maintain a list of all licensed wholesalers of fireworks. In this list next to each wholesaler's name, the fire marshal shall insert the period of licensure and the license number of the particular wholesaler.

(D) Upon receipt of an application and the required accompanying matter under section 3743.15 of the Revised Code, the fire marshal shall forward to the superintendent of the bureau of criminal identification and investigation a request that the bureau conduct an investigation of the applicant and, if applicable, additional individuals who hold, own, or control a five per cent or greater beneficial or equity interest in the applicant, to determine whether the applicant or the additional associated individuals have been convicted of or pled guilty to a felony under the laws of this state, another state, or the United States.

If the applicant for initial licensure has resided in this state for less than five continuous years immediately prior to the date the applicant submits an initial application, the superintendent also shall request that the federal bureau of investigation conduct an investigation of the applicant and, if applicable, additional individuals who hold, own, or control a five per cent or greater beneficial or equity interest in the applicant, to determine whether the applicant or the additional associated individuals have been convicted of or pled guilty to a felony under the laws of this state, another state, or the United States.

The superintendent shall forward the results of an investigation conducted pursuant to this division to the fire marshal and may charge a reasonable fee for providing the results. The fire marshal shall assess any fee charged by the superintendent for the results to the applicant.

History:

141 v S 61 (Eff 5-30-86); 146 v S 162 (Eff 10-29-95); 146 v S 293 (Eff 9-26-96); 147 v H 215 (Eff 6-30-97); 149 v H 161. Eff 6-29-2001.

Section Notes:

Not analogous to former RC § 3743.16 (GC § 5903-15; 108 v PtI, 334, § 15; Bureau of Code Revision, 10-1-53), repealed 137 v H 590, § 2, eff 7-1-79.

See provisions, § 6(A) of HB 161 (149 v --) following RC § 3743.01.

See provisions, § 167 of HB 215 (147 v --) following RC § 3743.70.

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ORC Ann. 3743.17

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ORC Ann. 3743.17 (2010)

§ 3743.17. Renewal; alteration of premises; authorized activities; posting; transfer of license; continuing education; liability insurance; expansion or contraction of premises; storage locations

(A) The license of a wholesaler of fireworks is effective for one year beginning on the first day of December. The fire marshal shall issue or renew a license only on that date and at no other time. If a wholesaler of fireworks wishes to continue engaging in the wholesale sale of fireworks at the particular location after its then effective license expires, it shall apply not later than the first day of October for a new license pursuant to section 3743.15 of the Revised Code. The fire marshal shall send a written notice of the expiration of its license to a licensed wholesaler at least three months before the expiration date.

(B) If, during the effective period of its licensure, a licensed wholesaler of fireworks wishes to perform any construction, or make any structural change or renovation, on the premises on which the fireworks are sold, the wholesaler shall notify the fire marshal in writing. The fire marshal may require a licensed wholesaler also to submit documentation, including, but not limited to, plans covering the proposed construction or structural change or renovation, if the fire marshal determines the documentation is necessary for evaluation purposes in light of the proposed construction or structural change or renovation.

Upon receipt of the notification and additional documentation required by the fire marshal, the fire marshal shall inspect the premises on which the fireworks are sold to determine if the proposed construction or structural change or renovation conforms to sections 3743.15 to 3743.21 of the Revised Code and the rules adopted by the fire marshal pursuant to section 3743.18 of the Revised Code. The fire marshal shall issue a written authorization to the wholesaler for the construction or structural change or renovation if the fire marshal determines, upon the inspection and a review of submitted documentation, that the construction or structural change or renovation conforms to those sections and rules.

(C) The license of a wholesaler of fireworks authorizes the wholesaler to engage only in the following activities:

(1) Possess for sale at wholesale and sell at wholesale fireworks to persons who are licensed wholesalers of fireworks, to out-of-state residents in accordance with section 3743.44 of the Revised Code, to residents of this state in accordance with section 3743.45 of the Revised Code, or to persons located in another state provided the fireworks are shipped directly out of this state to them by the wholesaler. The possession for sale shall be at the location described in the application for licensure or in the notification submitted under division (B) of this section, and the sale shall be from the inside of a licensed building and from no structure or device outside a licensed building. At no time shall a licensed wholesaler sell any class of fireworks outside a licensed building.

(2) Possess for sale at retail and sell at retail fireworks, other than 1.4G fireworks as designated by the fire marshal in rules adopted pursuant to division (A) of section 3743.05 of the Revised Code, to licensed exhibitors in accordance with sections 3743.50 to 3743.55 of the Revised Code, and possess for sale at retail and sell at retail fireworks, including 1.4G fireworks, to out-of-state residents in accordance with section 3743.44 of the Revised Code, to residents of this state in accordance with section 3743.45 of the Revised Code, or to persons located in another state provided the fireworks are shipped directly out of this state to them by the wholesaler. The possession for sale shall be at the location described in the application for licensure or in the notification submitted under division (B) of this section, and the sale shall be from the inside of the licensed building and from no other structure or device outside this licensed building. At no time shall a licensed wholesaler sell any class of fireworks outside a licensed building.

A licensed wholesaler of fireworks shall sell under division (C) of this section only fireworks that meet the standards set by the consumer product safety commission or by the American fireworks standard laboratories or that have received an EX number from the United States department of transportation.

(D) The license of a wholesaler of fireworks shall be protected under glass and posted in a conspicuous place at the location described in the application for licensure or in the notification submitted under division (B) of this section. Except as otherwise provided in this section, the license is not transferable or assignable. A license may be transferred to another person for the same location for which the license was issued if the assets of the wholesaler are transferred to that person by inheritance or by a sale approved by the fire marshal. The license is subject to revocation in accordance with section 3743.21 of the Revised Code.

(E) The fire marshal shall adopt rules for the expansion or contraction of a licensed premises and for the approval of an expansion or contraction. The boundaries of a licensed premises, including any geographic expansion or contraction of those boundaries, shall be approved by the fire marshal in accordance with rules the fire marshal adopts. If the licensed premises of a licensed wholesaler from which the wholesaler operates consists of more than one parcel of real estate, those parcels must be contiguous, unless an exception is allowed pursuant to division (G) of this section.

(F) (1) Upon application by a licensed wholesaler of fireworks, a wholesaler license may be transferred from one geographic location to another within the same municipal corporation or within the unincorporated area of the same township, but only if all of the following apply:

(a) The identity of the holder of the license remains the same in the new location.

(b) The former location is closed prior to the opening of the new location and no fireworks business of any kind is conducted at the former location after the transfer of the license.

(c) The new location has received a local certificate of zoning compliance and a local certificate of occupancy, and otherwise is in compliance with all local building regulations.

(d) Every building or structure at the new location is separated from occupied residential and nonresidential buildings or structures, railroads, highways, or any other buildings or structures located on the licensed premises in accordance with the distances specified in the rules adopted by the fire marshal pursuant to section 3743.18 of the Revised Code. If the licensee fails to comply with the requirements of division (F)(1)(d) of this section by the licensee's own act, the license at the new location is forfeited.

(e) Neither the licensee nor any person holding, owning, or controlling a five per cent or greater beneficial or equity interest in the licensee has been convicted of or has pleaded guilty to a felony under the laws of this state, any other state, or the United States after June 30, 1997.

(f) The fire marshal approves the request for the transfer.

(2) The new location shall comply with the requirements specified in divisions (C)(1) and (2) of section 3743.25 of the Revised Code whether or not the fireworks showroom at the new location is constructed, expanded, or first begins operating on and after June 30, 1997.

(G) (1) A licensed wholesaler may expand its licensed premises within this state to include not more than two storage locations that are located upon one or more real estate parcels that are noncontiguous to the licensed premises as that licensed premises exists on the date a licensee submits an application as described below, if all of the following apply:

(a) The licensee submits an application to the fire marshal requesting the expansion and an application fee of one hundred dollars per storage location for which the licensee is requesting approval.

(b) The identity of the holder of the license remains the same at the storage location.

(c) The storage location has received a valid certificate of zoning compliance, as applicable, and a valid certificate of occupancy for each building or structure at the storage location issued by the authority having jurisdiction to issue the certificate for the storage location, and those certificates permit the distribution and storage of fireworks regulated under this chapter at the storage location and in the buildings or structures. The storage location shall be in compliance with all other applicable federal, state, and local laws and regulations.

(d) Every building or structure located upon the storage location is separated from occupied residential and nonresidential buildings or structures, railroads, highways, and any other buildings or structures on the licensed premises in accordance with the distances specified in the rules adopted by the fire marshal pursuant to section 3743.18 of the Revised Code.

(e) Neither the licensee nor any person holding, owning, or controlling a five per cent or greater beneficial or equity interest in the licensee has been convicted of or pleaded guilty to a felony under the laws of this state, any other state, or the United States, after September 29, 2005.

(f) The fire marshal approves the application for expansion.

(2) The fire marshal shall approve an application for expansion requested under division (G)(1) of this section if the fire marshal receives the application fee and proof that the requirements of divisions (G)(1)(b) to (e) of this section are satisfied. The storage location shall be considered part of the original licensed premises and shall use the same distinct number assigned to the original licensed premises with any additional designations as the fire marshal deems necessary in accordance with section 3743.16 of the Revised Code.

(H) (1) A licensee who obtains approval for use of a storage location in accordance with division (G) of this section shall use the site exclusively for the following activities, in accordance with division (C)(1) of this section:

(a) Packaging, assembling, or storing fireworks, which shall occur only in buildings or structures approved for such hazardous uses by the building code official having jurisdiction for the storage location or, for 1.4G fireworks, in containers or trailers approved for such hazardous uses by the fire marshal if such containers or trailers are not subject to regulation by the building code adopted in accordance with Chapter 3781. of the Revised Code. All such storage shall be in accordance with the rules adopted by the fire marshal under division (B) (4) of section 3743.18 of the Revised Code for the packaging, assembling, and storage of fireworks.

(b) Distributing fireworks to other parcels of real estate located on the wholesaler's licensed premises, to licensed manufacturers or other licensed wholesalers in this state or to similarly licensed persons located in another state or country;

(c) Distributing fireworks to a licensed exhibitor of fireworks pursuant to a properly issued permit in accordance with section 3743.54 of the Revised Code.

(2) A licensed wholesaler shall not engage in any sales activity, including the retail sale of fireworks otherwise permitted under division (C)(2) of this section or pursuant to section 3743.44 or 3743.45 of the Revised Code, at a storage location approved under this section.

(3) A storage location may not be relocated for a minimum period of five years after the storage location is approved by the fire marshal in accordance with division (G) of this section.

(I) A licensee shall prohibit public access to all storage locations it uses. The fire marshal shall adopt rules establishing acceptable measures a wholesaler shall use to prohibit access to storage sites.

(J) The fire marshal shall not place the license of a wholesaler of fireworks in temporarily inactive status while the holder of the license is attempting to qualify to retain the license.

(K) Each licensed wholesaler of fireworks or a designee of the wholesaler, whose identity is provided to the fire marshal by the wholesaler, annually shall attend a continuing education program. The fire marshal shall develop the program and the fire marshal or a person or public agency approved by the fire marshal shall conduct it. A licensed wholesaler or the wholesaler's designee who attends a program as required under this division, within one year after attending the program, shall conduct in-service training as approved by the fire marshal for other employees of the licensed wholesaler regarding the information obtained in the

program. A licensed wholesaler shall provide the fire marshal with notice of the date, time, and place of all in-service training. For any program conducted under this division, the fire marshal shall, in accordance with rules adopted by the fire marshal under Chapter 119. of the Revised Code, establish the subjects to be taught, the length of classes, the standards for approval, and time periods for notification by the licensee to the state fire marshal of any in-service training.

(L) A licensed wholesaler shall maintain comprehensive general liability insurance coverage in the amount and type specified under division (B)(2) of section 3743.15 of the Revised Code at all times. Each policy of insurance required under this division shall contain a provision requiring the insurer to give not less than fifteen days' prior written notice to the fire marshal before termination, lapse, or cancellation of the policy, or any change in the policy that reduces the coverage below the minimum required under this division. Prior to canceling or reducing the amount of coverage of any comprehensive general liability insurance coverage required under this division, a licensed wholesaler shall secure supplemental insurance in an amount and type that satisfies the requirements of this division so that no lapse in coverage occurs at any time. A licensed wholesaler who secures supplemental insurance shall file evidence of the supplemental insurance with the fire marshal prior to canceling or reducing the amount of coverage of any comprehensive general liability insurance coverage required under this division.

History:

141 v S 61 (Eff 5-30-86); 142 v H 436 (Eff 6-14-88); 147 v H 215 (Eff 6-30-97); 149 v H 161. Eff 6-29-2001; 151 v H 66, § 101.01, eff. 9-29-05; 152 v H 562, § 101.01, eff. 9-23-08.

Section Notes:

The effective date is set by § 812.10 of 152 v H 562.

The effective date is set by § 612.03 of 151 v H 66.

Not analogous to former RC § 3743.17 (GC § 5903-16; 108 v PtI, 334(344), § 16; Bureau of Code Revision, 10-1-53), repealed 137 v H 590, § 2, eff 7-1-79.

See provisions, § 6(A) of HB 161 (149 v --) following RC § 3743.01.

EFFECT OF AMENDMENTS

152 v H 562, effective September 23, 2008, deleted (F)(1)(d), pertaining to the transfer of licenses due to an immediate hazard to the public, and redesignated the remaining subdivisions accordingly; in (G)(1)(e), substituted "September 29, 2005" for "the effective date of this amendment"; in (H)(1)(a), inserted "or structures" and "or, for 1.4G fireworks ... All such storage"; added (H)(3); in (K), deleted "consisting of not less than eight hours of instruction" from the end of the first sentence and "not less than thirty days prior to an in-service training event" from the end of the fourth sentence, inserted "as approved by the fire marshal, and added the last sentence; and corrected internal references and made minor stylistic changes.

151 v H 66, effective September 29, 2005, redesignated (D)(2) as (E) and redesignated the remaining subsections accordingly; in (D), substituted "section" for "division"; rewrote present (F)(1)(e); in present (F)(1)(f) and (F)(2), substituted "June 30, 1997" for "the

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ORC Ann. 3743.18 (2010)

§ 3743.18. Rules governing storage and business operations; required distances

(A) The fire marshal shall adopt rules pursuant to Chapter 119. of the Revised Code governing the storage of fireworks by and the business operations of licensed wholesalers of fireworks. These rules shall be designed to promote the safety and security of employees of wholesalers, members of the public, and the premises upon which fireworks are sold.

(B) The rules shall be consistent with sections 3743.15 to 3743.21 of the Revised Code, shall be substantially equivalent to the most recent versions of chapters 1123, 1124, and 1126 of the most recent national fire protection association standards, and shall apply to, but not be limited to, the following subject matters:

(1) Cleanliness and orderliness in, the heating, lighting, and use of stoves and flame-producing items in, smoking in, the prevention of fire and explosion in, the availability of fire extinguishers or other fire-fighting equipment and their use in, and emergency procedures relative to the buildings and other structures on a wholesaler's premises;

(2) Appropriate uniforms to be worn by employees of wholesalers in the course of handling and storing of fireworks, and the use of protective clothing and equipment by the employees;

(3) The manner in which fireworks are to be stored;

(4) Required distances between buildings or structures used in the manufacturing, storage, or sale of fireworks and occupied residential and nonresidential buildings or structures, railroads, highways, or any additional buildings or structures on a licensed premises.

(5) Requirements for the operation of storage locations, including packaging, assembling, and storage of fireworks.

(C) Rules adopted pursuant to division (B)(4) of this section do not apply to buildings that were erected on or before May 30, 1986, and that were legally being used for fireworks activities under authority of a valid license issued by the fire marshal as of December 1, 1990, pursuant to sections 3743.16 and 3743.17 of the Revised Code.

🔍 History:

141 v S 61 (Eff 5-30-86); 147 v H 215 (Eff 6-30-97); 149 v H 161. Eff 6-29-2001; 151 v H 66, § 101.01, eff. 9-29-05.

🔍 Section Notes:

The effective date is set by § 612.03 of 151 v H 66.

Not analogous to former RC § 3743.18 (GC § 5903-17; 108 v PtI, 334(344), § 17; Bureau of Code Revision, 10-1-53), repealed 137 v H 590, § 2, eff 7-1-79.

See provisions, § 6(A) of HB 161 (149 v --) following RC § 3743.01.

EFFECT OF AMENDMENTS

151 v H 66, effective September 29, 2005, designated the former provisions as (A) and the introductory language of (B) and (B)(1) through (3); and added (B)(4) and (5) and (C).

🔍 Related Statutes & Rules:

Cross-Reference to Related Statutes:

Additional rules for business operations, RC § 3743.19.

Authorized activities, RC § 3743.17.

Inspection by fire marshal, RC § 3743.21.

Prohibitions, RC §§ 3743.61, 3743.65.

Requirements for license, RC § 3743.16.

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ORC Ann. 3743.19 (2010)

§ 3743.19. Additional requirements; safety officer; sale and transportation provisions

In addition to conforming to the rules of the fire marshal adopted pursuant to section 3743.18 of the Revised Code, licensed wholesalers of fireworks shall conduct their business operations in accordance with the following:

(A) A wholesaler shall conduct its business operations from the location described in its application for licensure or in a notification submitted under division (B) of section 3743.17 of the Revised Code.

(B) Signs indicating that smoking is generally forbidden and trespassing is prohibited on the premises of a wholesaler shall be posted on the premises as determined by the fire marshal.

(C) Reasonable precautions shall be taken to protect the premises of a wholesaler from trespass, loss, theft, or destruction.

(D) Smoking or the carrying of pipes, cigarettes, or cigars, matches, lighters, other flame-producing items, or open flame on, or the carrying of a concealed source of ignition into, the premises of a wholesaler is prohibited, except that a wholesaler may permit smoking in

specified lunchrooms or restrooms in buildings or other structures in which no sales, handling, or storage of fireworks takes place. "NO SMOKING" signs shall be posted on the premises as required by the fire marshal.

(E) Fire and explosion prevention and other reasonable safety measures and precautions shall be implemented by a wholesaler.

(F) Persons shall not be permitted to have in their possession or under their control, while they are on the premises of a wholesaler, any intoxicating liquor, beer, or controlled substance, and they shall not be permitted to enter or remain on the premises if they are found to be under the influence of any intoxicating liquor, beer, or controlled substance.

(G) A wholesaler shall conform to all building, safety, and zoning statutes, ordinances, rules, or other enactments that apply to its premises.

(H) Each building used in the sale of fireworks shall be kept open to the public for at least four hours each day between the hours of eight a.m. and five p.m., five days of each week, every week of the year. Upon application from a licensed wholesaler, the fire marshal may waive any of the requirements of this division.

(I) Awnings, tents, or canopies shall not be used as facilities for the storage or sale of fireworks. This division does not prohibit the use of an awning or canopy attached to a public access showroom for storing nonflammable shopping convenience items such as shopping carts or baskets or providing a shaded area for patrons waiting to enter the public sales area.

(J) 1.4G fireworks may be stored in trailers if the trailers are properly enclosed, secured, and grounded and are separated from any structure to which the public is admitted by a distance that will, in the fire marshal's judgment, allow fire-fighting equipment to have full access to the structures on the licensed premises. Such trailers may be moved into closer proximity to any structure only to accept or discharge cargo for a period not to exceed forty-eight hours. Only two such trailers may be placed in such closer proximity at any one time. At no time may trailers be used for conducting sales of any class of fireworks nor may members of the public have access to the trailers.

Storage areas for fireworks that are in the same building where fireworks are displayed and sold to the public shall be separated from the areas to which the public has access by an appropriately rated fire wall. If the licensee installs and properly maintains an early suppression fast response sprinkler system or equivalent fire suppression system as described in the fire code adopted by the fire marshal in accordance with section 3737.82 of the Revised Code throughout the structure, a fire barrier wall may be substituted for a fire wall between the areas to which the public has access and the storage portions of the structure.

(K) A fire suppression system as defined in section 3781.108 [3781.10.8] of the Revised Code may be turned off only for repair, drainage of the system to prevent damage by freezing during the period of time, approved by the fire marshal under division (I) of this section, that the facility is closed to public access during winter months, or maintenance of the system. If any repair or maintenance is necessary during times when the facility is open for public access and business, the licensed wholesaler shall notify in advance the appropriate insurance company and fire chief or fire prevention officer regarding the nature of the maintenance or repair and the time when it will be performed.

(L) If any fireworks item is removed from its original package or is manufactured with any fuse other than a fuse approved by the consumer product safety commission, then the item shall be covered completely by repackaging or bagging or it shall otherwise be covered so as to prevent ignition prior to sale.

(M) A safety officer shall be present during regular business hours at a building open to the public during the period commencing fourteen days before, and ending two days after, each fourth day of July. The officer shall be highly visible, enforce this chapter and any applicable building codes to the extent the officer is authorized by law, and be one of the following:

(1) A deputy sheriff;

(2) A law enforcement officer of a municipal corporation, township, or township or joint township police district;

(3) A private uniformed security guard registered under section 4749.06 of the Revised Code.

(N) All doors of all buildings on the licensed premises shall swing outward.

(O) All wholesale and commercial sales of fireworks shall be packaged, shipped, placarded, and transported in accordance with United States department of transportation regulations applicable to the transportation, and the offering for transportation, of hazardous materials. For purposes of this division, "wholesale and commercial sales" includes all sales for resale and any nonretail sale made in furtherance of a commercial enterprise. For purposes of enforcement of these regulations under section 4905.83 of the Revised Code, any sales transaction exceeding one thousand pounds shall be rebuttably presumed to be a wholesale or commercial sale.

History:

141 v S 61 (Eff 5-30-86); 143 v H 664 (Eff 1-9-91); 144 v H 508 (Eff 12-14-92); 147 v H 215 (Eff 6-30-97); 149 v H 161. Eff 6-29-2001; 151 v H 66, § 101.01, eff. 9-29-05; 152 v H 562, § 101.01, eff. 9-23-08.

Section Notes:

The effective date is set by § 812.10 of 152 v H 562.

The effective date is set by § 612.03 of 151 v H 66.

Not analogous to former RC § 3743.19 (GC § 5903-18; 108 v PtI, 334(344), § 18; Bureau of Code Revision, 10-1-53), repealed 137 v H 590, § 2, eff 7-1-79.

See provisions, § 6(A) of HB 161 (149 v --) following RC § 3743.01.

EFFECT OF AMENDMENTS

152 v H 562, effective September 23, 2008, in (J), added "1.4G" to the beginning of the first paragraph, and added the last sentence to the end of the second paragraph.

151 v H 66, effective September 29, 2005, deleted (H), providing restrictions on the location of a building used in the storage or sale of fireworks, and redesignated the remaining subsections accordingly.

The amendment of RC § 3743.19 by 152 v H 119 was disapproved by the Governor.

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ORC Ann. 3743.20

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ORC Ann. 3743.20 (2010)

§ 3743.20. Records of inventory and sales; purchaser to complete form

(A) Licensed wholesalers of fireworks shall keep complete records of all fireworks in their inventory.

(B) Licensed wholesalers of fireworks shall keep the following records with respect to fireworks sold at wholesale or retail for a period of three years after the date of their sale:

(1) In the case of a wholesale sale, the name and address of the purchaser; the destination to which the fireworks will be transported; if applicable, the number of the purchaser's wholesale license; the date of the purchase; when the fireworks are to be shipped directly out of this state by a wholesaler to a purchaser, the manner in which the fireworks were shipped to the purchaser; and such other information as the fire marshal may require;

(2) In the case of a retail sale, the name and address of the purchaser; the destination to which the fireworks will be transported; if applicable, the number of the purchaser's exhibitor's license and the number and political subdivision designation of the purchaser's permit for a fireworks exhibition; the date of purchase; when the fireworks are shipped directly out of this state by a wholesaler to a purchaser, the manner in which the fireworks were shipped to the purchaser; and such other information as the fire marshal may require.

(C) The seller shall require each purchaser described in division (B) of this section to complete a purchaser's form, which shall be prescribed by the fire marshal and furnished by the seller. On this form the purchaser shall include the information described in division (B) of this section and the purchaser's signature. Each purchaser's form shall contain a statement printed in bold letters indicating that knowingly making a false statement on the form is falsification under section 2921.13 of the Revised Code and is a misdemeanor of the first degree. Each seller shall keep each purchaser's form for a period of three years after the date of the purchase, and such forms shall be open to inspection by the fire marshal or the fire marshal's designated authority.

(D) A licensed wholesaler of fireworks shall keep its wholesale sale and retail sale records in separate books. These records and the inventory records shall be open to inspection by the fire marshal or the fire marshal's designated authority.

History:

141 v S 61 (Eff 5-30-86); 146 v S 2 (Eff 7-1-96); 147 v H 215 (Eff 6-30-97); 149 v H 161. Eff 6-29-2001.

Section Notes:

Not analogous to former RC § 3743.20 (GC § 5903-20; 108 v PtI, 334(345), § 20; Bureau of Code Revision, 10-1-53), repealed 137 v H 590, § 2, eff 7-1-79.

See provisions, § 6(A) of HB 161 (149 v --) following RC § 3743.01.

Related Statutes & Rules:

Cross-Reference to Related Statutes:

Falsification, RC § 2921.13.

Prohibitions, RC §§ 3743.61, 3743.65.

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ORC Ann. 3743.21 (2010)

§ 3743.21. Inspection of premises and records; actions to remedy noncompliance

(A) The fire marshal may inspect the premises, and the inventory, wholesale sale, and retail sale records, of a licensed wholesaler of fireworks during the wholesaler's period of licensure to determine whether the wholesaler is in compliance with Chapter 3743. of the Revised Code and the rules adopted by the fire marshal pursuant to section 3743.18 of the Revised Code.

(B) If the fire marshal determines during an inspection conducted pursuant to division (A) of this section that a wholesaler is not in compliance with Chapter 3743. of the Revised Code or the rules adopted by the fire marshal pursuant to section 3743.18 of the Revised Code, the fire marshal may take one or more of the following actions, whichever the fire marshal considers appropriate under the circumstances:

(1) Order, in writing, the wholesaler to eliminate, correct, or otherwise remedy the nonconformities within a specified period of time;

(2) Order, in writing, the wholesaler to immediately cease its operations, if a fire or explosion hazard exists that reasonably can be regarded as posing an imminent danger of death or serious physical harm to persons. The order shall be effective until the

nonconformities are eliminated, corrected, or otherwise remedied or for a period of seventy-two hours from the time of issuance, whichever first occurs. During the seventy-two hour period, the fire marshal may obtain from the court of common pleas of Franklin county or of the county in which the premises of the wholesaler are located an injunction restraining the wholesaler from continuing its operations after the seventy-two hour period expires until the nonconformities are eliminated, corrected, or otherwise remedied.

(3) Revoke, or deny renewal of, the license of the wholesaler in accordance with Chapter 119. of the Revised Code;

(4) Take action as authorized by section 3743.68 of the Revised Code.

(C) This section does not affect the authority conferred by Chapters 3781. and 3791. of the Revised Code to conduct inspections to determine conformity with those chapters or the rules adopted pursuant to them.

(D) If the license of a wholesaler of fireworks is revoked or renewal is denied pursuant to division (B)(3) of this section or section 3743.70 of the Revised Code, the wholesaler shall cease its operations immediately. The wholesaler may not reapply for licensure as a wholesaler of fireworks until two years expire from the date of revocation.

The fire marshal shall remove from the list of licensed wholesalers the name of a wholesaler whose license has been revoked, and shall notify the law enforcement authorities for the political subdivision in which the wholesaler's premises are located, of the revocation or denial of renewal.

History:

141 v S 61 (Eff 5-30-86); 147 v H 215 (Eff 6-30-97); 149 v H 161. Eff 6-29-2001.

Section Notes:

Not analogous to former RC § 3743.21 (GC § 5903-21; 108 v PtI, 334(345), § 21; Bureau of Code Revision, 10-1-53), repealed 137 v H 590, § 2, eff 7-1-79.

See provisions, § 6(A) of HB 161 (149 v --) following RC § 3743.01.

Related Statutes & Rules:

Cross-Reference to Related Statutes:

Prohibitions, RC §§ 3743.61, 3743.65.

Renewal; alteration of premises; authorized activities; posting; transfer of license; continuing education; liability insurance, RC § 3743.17.

Review of application; issuance; list; investigation, RC § 3743.16.

Rules governing storage and business operations, RC § 3743.18.

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ORC Ann. 3743.40

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ORC Ann. 3743.40 (2010)

§ 3743.40. Application for shipping permit by nonresident

(A) Any person who resides in another state and who intends to ship fireworks into this state shall submit to the fire marshal an application for a shipping permit. As used in this section, "fireworks" includes only 1.3G and 1.4G fireworks. The application shall be submitted prior to shipping fireworks into this state, shall be on a form prescribed by the fire marshal, shall contain the information required by division (B) of this section and all information requested by the fire marshal, and shall be accompanied by the fee and the documentation described in division (C) of this section.

The fire marshal shall prescribe a form for applications for shipping permits and make a copy of the form available, upon request, to persons who seek such a permit.

(B) In an application for a shipping permit, the applicant shall specify the types of fireworks to be shipped into this state.

(C) An application for a shipping permit shall be accompanied by a fee of two thousand seven hundred fifty dollars.

An application for a shipping permit shall be accompanied by a certified copy or other copy

acceptable to the fire marshal of the applicant's license or permit issued in the applicant's state of residence and authorizing the applicant to engage in the manufacture, wholesale sale, or transportation of fireworks in that state, if that state issues such a license or permit, and by a statement by the applicant that the applicant understands and will abide by rules adopted by the fire marshal pursuant to section 3743.58 of the Revised Code for transporting fireworks.

(D) Except as otherwise provided in this division, and subject to section 3743.70 of the Revised Code, the fire marshal shall issue a shipping permit to an applicant only if the fire marshal determines that the applicant is a resident of another state and is the holder of a license or permit issued by that state authorizing it to engage in the manufacture, wholesale sale, or transportation of fireworks in that state, and the fire marshal is satisfied that the application and documentation are complete and in conformity with this section and that the applicant will transport fireworks into this state in accordance with rules adopted by the fire marshal pursuant to section 3743.58 of the Revised Code. The fire marshal shall issue a shipping permit to an applicant if the applicant meets all of the requirements of this section for the issuance of a shipping permit except that the applicant does not hold a license or permit issued by the state of residence authorizing the applicant to engage in the manufacture, wholesale sale, or transportation of fireworks in that state because that state does not issue such a license or permit.

(E) Each permit issued pursuant to this section shall contain a distinct number assigned to the particular permit holder, and contain the information described in division (B) of this section.

The fire marshal shall maintain a list of all persons issued shipping permits. In this list next to each person's name, the fire marshal shall insert the date upon which the permit was issued and the information described in division (B) of this section.

(F) A shipping permit is valid for one year from the date of issuance by the fire marshal and only if the permit holder ships the fireworks directly into this state to the holder of a license issued under section 3743.03 or 3743.16 of the Revised Code or a license holder under section 3743.51 of the Revised Code who possesses a valid exhibition permit issued in accordance with section 3743.54 of the Revised Code and the fireworks shipped are to be used at the specifically permitted exhibition. The permit authorizes the permit holder to ship fireworks, as described in rules adopted by the fire marshal under Chapter 119. of the Revised Code, directly to the holder of a license issued under section 3743.03 or 3743.16 of the Revised Code, and to possess the fireworks in this state while the permit holder is in the course of shipping them directly into this state.

The holder of a shipping permit shall have the permit in the holder's possession in this state at all times while in the course of shipping the fireworks directly into this state. A shipping permit is not transferable or assignable.

History:

141 v S 61 (Eff 5-30-86); 144 v H 508 (Eff 12-14-92); 147 v H 215 (Eff 6-30-97); 149 v H 161. Eff 6-29-2001; 152 v H 562, § 101.01, eff. 9-23-08.

Section Notes:

The effective date is set by § 812.10 of 152 v H 562.



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ORC Ann. 3743.43 (2010)

§ 3743.43. Repealed

Repealed, 141 v S 61, § 2 [GC § 5904-17; 114 v 229; Bureau of Code Revision, 10-1-53].
Eff 5-30-86.

Section Notes:

This section concerned prohibition against violation.

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ORC Ann. 3743.44 (2010)

§ 3743.44. Sales to nonresidents; purchaser's form

(A) Any person who resides in another state and who intends to obtain possession in this state of fireworks purchased in this state shall obtain possession of the fireworks only from a licensed manufacturer or licensed wholesaler and only possess the fireworks in this state while in the course of directly transporting them out of this state. No licensed manufacturer or licensed wholesaler shall sell 1.3G fireworks to a person who resides in another state unless that person has been issued a license or permit in the state of the person's residence that authorizes the person to engage in the manufacture, wholesale sale, or retail sale of 1.3G fireworks or that authorizes the person to conduct 1.3G fireworks exhibitions in that state and that person presents a certified copy of the license. No licensed manufacturer or licensed wholesaler shall sell fireworks to a person who resides in another state unless that person has been issued a license or permit in the state of the person's residence that authorizes the person to engage in the manufacture, wholesale sale, or retail sale of fireworks in that state or that authorizes the person to conduct fireworks exhibitions in that state and that person presents a certified copy of the license, or, if that person does not possess a license or permit of that nature, only if the person presents a current valid motor vehicle operator's license issued to the person in the person's state of residence, or, if that person does not possess a motor vehicle operator's license issued in that state, an identification card issued to the person by a governmental agency in the person's state of

residence indicating that the person is a resident of that state. If a person who is required to present a motor vehicle operator's license or other identification card intends to transport the fireworks purchased directly out of this state by a motor vehicle and the person will not also be the operator of that motor vehicle while so transporting the fireworks, the operator of the motor vehicle also shall present the operator's motor vehicle operator's license.

(B) A licensed manufacturer or licensed wholesaler selling fireworks under this section shall require the purchaser to complete a purchaser's form. The fire marshal shall prescribe the form, and the licensed manufacturer or licensed wholesaler shall furnish the form. On this form the purchaser shall include the purchaser's name and address; the date of the purchase; a statement that the purchaser acknowledges that the purchaser is responsible for any illegal use of the fireworks, including any damages caused by improper use; the number of the purchaser's license or permit authorizing the purchaser to manufacture, sell at wholesale, or sell at retail fireworks or to conduct fireworks exhibitions, or the number of the purchaser's motor vehicle operator's license or other identification card, as applicable; such other information as the fire marshal may require; and the purchaser's signature. Each purchaser's form shall contain a statement printed in bold letters indicating that knowingly making a false statement on the form is falsification under section 2921.13 of the Revised Code and is a misdemeanor of the first degree.

Each licensed manufacturer and licensed wholesaler shall keep each purchaser's form for a period of three years after the date of the purchase, and such forms shall be open to inspection by the fire marshal or the fire marshal's designated authority.

(C) Each purchaser of fireworks under this section shall transport the fireworks so purchased directly out of this state within forty-eight hours after the time of their purchase.

This section regulates wholesale sales and retail sales of fireworks in this state only insofar as purchasers of fireworks are residents of other states and will be obtaining possession in this state of purchased fireworks. This section does not prohibit licensed manufacturers or wholesalers from selling fireworks, in accordance with section 3743.04 or sections 3743.17 and 3743.25 of the Revised Code, to a resident of another state and from shipping the purchased fireworks directly out of this state to the purchaser.

History:

141 v S 61 (Eff 5-30-86); 141 v H 428 (Eff 12-23-86); 143 v H 111 (Eff 7-1-89); 146 v S 2 (Eff 7-1-96); 147 v H 215 (Eff 6-30-97); 149 v H 161. Eff 6-29-2001; 152 v H 562, § 101.01, eff. 9-23-08.

Section Notes:

The effective date is set by § 812.10 of 152 v H 562.

Not analogous to former RC § 3743.44 (GC § 844-6; 123 v 851; Bureau of Code Revision, 10-1-53; 126 v 392), repealed 137 v H 590, § 2, eff 7-1-79.

See provisions, § 6(A) of HB 161 (149 v --) following RC § 3743.01.

EFFECT OF AMENDMENTS

152 v H 562, effective September 23, 2008, in the first paragraph of (B), substituted "a statement that the purchaser ... caused by improper use" for "the destination to which the

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ORC Ann. 3743.45 (2010)

§ 3743.45. Sales of 1.4G fireworks to residents; transportation out of state

(A) Any person who resides in this state and who intends to obtain possession in this state of 1.4G fireworks purchased in this state shall obtain possession of the 1.4G fireworks only from a licensed manufacturer or licensed wholesaler.

A licensed manufacturer or licensed wholesaler selling 1.4G fireworks under this division shall require the purchaser to complete a purchaser's form, which shall be prescribed by the state fire marshal and furnished by the licensed manufacturer or licensed wholesaler. On this form the purchaser shall include the purchaser's name and address; the date of the purchase; a statement that the purchaser acknowledges that the purchaser is responsible for any illegal use of the fireworks, including any damages caused by improper use; such other information as the fire marshal may require; and the purchaser's signature. Each purchaser's form shall contain a statement printed in bold letters indicating that knowingly making a false statement on the form is falsification under section 2921.13 of the Revised Code and is a misdemeanor of the first degree.

Each licensed manufacturer and licensed wholesaler shall keep each purchaser's form for a period of three years after the date of the purchase, and such forms shall be open to inspection by the fire marshal or the fire marshal's designated authority.

Each purchaser of 1.4G fireworks under this division shall transport the fireworks so purchased directly out of this state within forty-eight hours after the time of their purchase.

This division does not apply to a person who resides in this state and who is also a licensed manufacturer, licensed wholesaler, or licensed exhibitor of fireworks in this state.

(B) No licensed manufacturer or licensed wholesaler shall sell 1.3G fireworks to a person who resides in this state unless that person is a licensed manufacturer, licensed wholesaler, or licensed exhibitor of fireworks in this state.

History:

141 v S 61 (Eff 5-30-86); 141 v H 428 (Eff 12-23-86); 143 v H 111 (Eff 7-1-89); 146 v S 2 (Eff 7-1-96); 147 v H 215 (Eff 6-30-97); 149 v H 161. Eff 6-29-2001; 152 v H 562, § 101.01, eff. 9-23-08.

Section Notes:

The effective date is set by § 812.10 of 152 v H 562.

Not analogous to former RC § 3743.45 (GC § 844-7; 123 v 851; Bureau of Code Revision, 10-1-53), repealed 137 v H 590, § 2, eff 7-1-79.

See provisions, § 6(A) of HB 161 (149 v --) following RC § 3743.01.

EFFECT OF AMENDMENTS

152 v H 562, effective September 23, 2008, in the second paragraph of (A), substituted "a statement that the ... caused by improper use" for "the destination to which the fireworks will be transported".

Related Statutes & Rules:

Cross-Reference to Related Statutes:

Falsification, RC § 2921.13.

Fireworks manufacturing license, RC § 3743.04.

Fireworks wholesalers license, RC § 3743.17.

Restrictions, RC §§ 3743.63, 3743.65.

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ORC Ann. 3743.46 (2010)

§ 3743.46. Repealed

Repealed, 137 v H 590, § 2 [GC §§ 844-8, 844-9; 123 v 851; Bureau of Code Revision, 10-1-53; 126 v 392]. Eff 7-1-79.

Section Notes:

This section concerned powers of enforcement officers.

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ORC Ann. 3743.47 (2010)

§ 3743.47. Repealed

Repealed, 137 v H 590, § 2 [GC §§ 844-8, 844-9; 123 v 851; Bureau of Code Revision, 10-1-53; 126 v 392]. Eff 7-1-79.

Section Notes:

This section concerned refusal to comply with order of fire marshal.

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ORC Ann. 3743.48 (2010)

§ 3743.48. Repealed

Repealed, 137 v H 590, § 2 [RS § 4379-4; 90 v 25; 90 v 201; 92 v 78, § 4; GC §§ 6317, 6318; Bureau of Code Revision, 10-1-53; 126 v 42; 130 v 864]. Eff 7-1-79.

Section Notes:

This section set guidelines for use of flambeau lights.

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ORC Ann. 3743.49 (2010)

§ 3743.49. Repealed

Repealed, 137 v H 590, § 2 [RS § 4379-4; 90 v 25; 90 v 201; 92 v 78, § 4; GC §§ 6317, 6318; Bureau of Code Revision, 10-1-53; 126 v 42; 130 v 864]. Eff 7-1-79.

Section Notes:

This section set guidelines for records of storage and sales of any explosive.

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ORC Ann. 3743.50 (2010)

§ 3743.50. Application for exhibitor's license

Any person who wishes to be an exhibitor of fireworks in this state shall submit to the fire marshal an application for licensure as an exhibitor of fireworks. The application shall be on a form prescribed by the fire marshal, contain all information requested by the fire marshal, and be accompanied by a fee of fifty dollars. The fire marshal shall prescribe a form for applications for licensure as an exhibitor of fireworks and make a copy of the form available, upon request, to persons who seek that licensure. An applicant for licensure as an exhibitor of fireworks shall be at least twenty-one years of age and be in compliance with Chapter 4123. of the Revised Code.

 History:

141 v S 61 (Eff 12-1-86); [147v H 215](#) (Eff 6-30-97); [149 v H 161](#), §§ 1, 3. Eff 6-29-2001.

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ORC Ann. 3743.51 (2010)

§ 3743.51. Requirements for exhibitor's license; number; list

(A) If a person submits an application for licensure as an exhibitor of fireworks, together with the fee, as required by section 3743.50 of the Revised Code, the fire marshal shall review the application and determine whether the applicant satisfies sections 3743.50 to 3743.55 of the Revised Code and the rules adopted by the fire marshal pursuant to division (A) of section 3743.53 of the Revised Code.

(B) Subject to section 3743.70 of the Revised Code, the fire marshal shall issue a license in accordance with Chapter 119. of the Revised Code to the applicant for licensure as an exhibitor of fireworks only if the applicant satisfies sections 3743.50 to 3743.55 of the Revised Code and the rules adopted by the fire marshal pursuant to division (A) of section 3743.53 of the Revised Code, and only if the fire marshal is satisfied that the application is complete and in conformity with section 3743.50 of the Revised Code.

(C) Each license issued pursuant to this section shall contain a distinct number assigned to the particular exhibitor. The fire marshal shall maintain a list of all licensed exhibitors of fireworks. In this list next to each exhibitor's name, the fire marshal shall insert the period of licensure and the license number of the particular exhibitor.

History:

141 v S 61 (Eff 12-1-86); 147 v H 215 (Eff 6-30-97); 149 v H 161. Eff 6-29-2001.

Section Notes:

Not analogous to former RC § 3743.51 (130 v 865), repealed 137 v H 590, § 2, eff 7-1-79.

See provisions, § 6(A) of HB 161 (149 v --) following RC § 3743.01.

Related Statutes & Rules:

Cross-Reference to Related Statutes:

Prohibitions, RC §§ 3743.65, 3743.66.

Registration of exhibitor's employees, RC § 3743.56.

Use of firearms or fireworks in state parks, RC § 1541.19.

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ORC Ann. 3743.52 (2010)

§ 3743.52. Renewal; authorized activities; revocation; continuing education

(A) The license of an exhibitor of fireworks is effective for one year from the date of its issuance by the fire marshal. If an exhibitor of fireworks wishes to continue as an exhibitor after its then effective license expires, it shall apply for a new license pursuant to section 3743.50 of the Revised Code. The fire marshal shall send a written notice of the expiration of its license to a licensed exhibitor at least two months before the expiration date.

(B) The license of an exhibitor of fireworks authorizes the exhibitor to conduct public fireworks exhibitions in this state if it complies with sections 3743.50 to 3743.55 of the Revised Code and with the rules adopted by the fire marshal pursuant to section 3743.53 of the Revised Code.

The license is not transferable or assignable, and is subject to revocation as provided in section 3743.70 or division (D) of section 3743.99 of the Revised Code or pursuant to Chapter 119. of the Revised Code if the exhibitor fails to comply with sections 3743.50 to 3743.55 of the Revised Code or the rules adopted by the fire marshal pursuant to section 3743.53 of the Revised Code.

If the license of an exhibitor is revoked, the exhibitor shall cease conducting public fireworks

exhibitions immediately. Subject to division (D) of section 3743.99 of the Revised Code, the exhibitor may not reapply for licensure as an exhibitor of fireworks until two years expire from the date of revocation. The fire marshal shall remove from the list of licensed exhibitors the exhibitor's name, and shall notify fire chiefs, fire prevention officers, and police chiefs or other similar chief law enforcement officers of municipal corporations, townships, or township police districts in this state of the revocation.

(C) Each licensed exhibitor of fireworks or a designee of the exhibitor, whose identity is provided to the fire marshal by the exhibitor, shall attend a continuing education program consisting of not less than six hours of instruction once every three years. The fire marshal shall develop the program, and the fire marshal or a person or public agency approved by the fire marshal shall conduct it. A licensed exhibitor or the exhibitor's designee who attends a program as required under this division, within one year after attending the program, and on an annual basis during the following two years, shall conduct in-service training for other employees of the licensee regarding the information obtained in the program. A licensed exhibitor shall provide the fire marshal with certified proof of full compliance with all applicable annual training requirements of the United States department of transportation and of the occupational safety and health administration. A licensed exhibitor shall provide the fire marshal with notice of the date, time, and place of all in-service training not less than thirty days prior to an in-service training event. An individual exhibitor who has no employees shall not fulfill continuing education requirements through a designee.

History:

141 v S 61 (Eff 12-1-86); 147 v H 215 (Eff 6-30-97); 149 v H 161, §§ 1, 3. Eff 6-29-2001.

Section Notes:

Not analogous to former RC § 3743.52 (133 v S 333), repealed 137 v H 590, § 2, eff 7-1-79.

See provisions, § 6(A), (B) of HB 161 (149 v --) following RC § 3743.01.

Related Statutes & Rules:

Cross-Reference to Related Statutes:

Authorized activities, RC § 3743.04.

Fireworks wholesalers license, RC § 3743.17.

Prohibitions, RC § 3743.65.

Use of firearms or fireworks in state parks, RC § 1541.19.

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ORC Ann. 3743.53 (2010)

§ 3743.53. Rules for qualifying as exhibitor and for exhibitions; persons within discharge perimeter

(A) The fire marshal shall adopt rules in accordance with Chapter 119. of the Revised Code that establish qualifications that all applicants for licensure as an exhibitor of fireworks shall satisfy. These rules shall be designed to provide a reasonable degree of assurance that individuals conducting public fireworks exhibitions in this state are proficient in handling and discharging fireworks, are capable of handling the responsibilities associated with exhibitions as prescribed by rule of the fire marshal pursuant to divisions (B) and (E) of this section or as prescribed by sections 3743.50 to 3743.55 of the Revised Code, and will conduct fireworks exhibitions in a manner that emphasizes the safety and security of the public. The rules shall be consistent with sections 3743.50 to 3743.55 of the Revised Code and may include, in addition to other requirements prescribed by the fire marshal, a requirement that the applicant for licensure successfully complete a written examination or otherwise successfully demonstrate its proficiency in the handling and discharging of fireworks in a safe manner and its ability to handle the responsibilities associated with exhibitions.

(B) The fire marshal shall adopt rules in accordance with Chapter 119. of the Revised Code that govern the nature and conduct of public fireworks exhibitions by licensed exhibitors of fireworks. These rules shall be designed to promote the safety and security of persons

viewing a fireworks exhibition, to promote the safety of persons who, although not viewing an exhibition, could be affected by fireworks used at it, and to promote the safety and security of exhibitors and their assistants.

The rules shall be consistent with sections 3743.50 to 3743.55 of the Revised Code; except as otherwise provided in this section, shall be substantially equivalent to the most recent versions of chapters 1123, 1124, and 1126 of the most recent national fire protection association standards; and shall apply to, but not be limited to, the following subject matters:

(1) The construction of shells used in a fireworks exhibition;

(2) Except as the storage and securing of fireworks is addressed by the rules adopted under division (E) of this section, the storage, securing, and supervision of fireworks pending their use in, and during the course of, a fireworks exhibition, and inspections by exhibitors of fireworks to be used in an exhibition prior to their use. These rules shall regulate, among other relevant matters, the storage of fireworks in manners that will effectively eliminate or reduce the likelihood of the fireworks becoming wet or being exposed to flame, and appropriate distances between storage sites and the sites at which fireworks will be discharged.

(3) The installation and nature of mortars used in a fireworks exhibition, and inspections by exhibitors of mortars prior to their use;

(4) Minimum distances between storage sites, discharge sites, spectator viewing sites, parking areas, and potential landing areas of fireworks, and minimum distances between discharge sites, potential landing areas, and residential or other types of buildings or structures;

(5) The nature of discharge sites and potential landing sites;

(6) Fire protection, the use and location of monitors for crowd control, the use of fences and rope barriers for crowd control, illumination, smoking and the use of open flame, and posting of warning signs concerning smoking or the use of open flame in connection with fireworks exhibitions. These rules may provide some authority to local officials in determining adequate fire protection, and numbers and locations of monitors.

(7) Procedures to be followed in the discharging of fireworks;

(8) Weather and crowd-related conditions under which fireworks may and may not be discharged, including circumstances under which exhibitions should be postponed;

(9) Inspections of premises following a fireworks exhibition for purposes of locating and disposing of defective or unexploded fireworks. Inspections shall be required immediately following an exhibition, and, if an exhibition is conducted at night, also at sunrise the following morning.

(C) All mortars used in a fireworks exhibition that are greater than or equal to eight inches in diameter shall be equipped with electronic ignition equipment in accordance with chapter 1123 of the most recent edition of the national fire protection association standards.

(D) Only persons who are employees of licensed exhibitors of fireworks and who are registered with the fire marshal under section 3743.56 of the Revised Code shall be permitted within the discharge perimeter of an exhibition.

(E) (1) The fire marshal shall adopt rules in accordance with Chapter 119. of the Revised

Code and consistent with division (E)(3) of this section that establish both of the following:

(a) Uniform standards for the stability and securing of fireworks storage racks used at a fireworks exhibition;

(b) A detailed checklist that a fire chief or fire prevention officer, in consultation with a police chief or other similar chief law enforcement officer of a municipal corporation, township, or township police district or with a designee of such a police chief or other similar chief law enforcement officer, shall complete, while conducting the inspection required under division (C) of section 3743.54 of the Revised Code at the premises at which a fireworks exhibition will take place, to ensure that the exhibition will comply with all applicable requirements of this chapter, and all applicable rules adopted under this chapter, that regulate the conduct of a fireworks exhibition.

(2) Each licensed exhibitor of fireworks shall comply with the rules that the fire marshal adopts under division (E)(1)(a) of this section.

(3) Prior to the fire marshal's adoption of the rules referred to in divisions (E)(1)(a) and (b) of this section, the director of commerce shall 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 shall adopt initial rules under those divisions by not later than May 1, 2001.

(F) A fire chief or fire prevention officer, in consultation with a police chief or other similar chief law enforcement officer of a municipal corporation, township, or township police district or with a designee of such a police chief or other similar chief law enforcement officer, shall conduct the inspection referred to in division (E)(1)(b) of this section, complete the checklist referred to in division (E)(1)(b) of this section while conducting the inspection, and provide a copy of the completed checklist to the fire marshal.

(G) A designee, if any, designated by a police chief or other similar chief law enforcement officer under this section or section 3743.54 of the Revised Code shall be a law enforcement officer serving in the same law enforcement agency as the police chief or other similar chief law enforcement officer.

History:

141 v S 61 (Eff 12-1-86); 147 v H 215 (Eff 6-30-97); 148 v H 405 (Eff 10-19-2000); 149 v H 161, §§ 1, 3. Eff 6-29-2001.

Section Notes:

See provisions, § 6(A), (B) of HB 161 (149 v --) following RC § 3743.01.

Related Statutes & Rules:

Cross-Reference to Related Statutes:

Activity authorized, RC §§ 3743.04, 3743.52.

Fireworks wholesalers license, RC § 3743.17.

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ORC Ann. 3743.54 (2010)

§ 3743.54. Public fireworks exhibitions; licenses and permits for indoor use of fireworks and other uses of pyrotechnics

(A) A licensed exhibitor of fireworks may acquire fireworks for use at a public fireworks exhibition only from a licensed manufacturer of fireworks or licensed wholesaler of fireworks, and only in accordance with the procedures specified in this section and [section 3743.55 of the Revised Code](#).

(B) (1) A licensed exhibitor of fireworks who wishes to conduct a public fireworks exhibition shall apply for approval to conduct the exhibition to whichever of the following persons is appropriate under the circumstances:

(a) Unless division (B)(1)(c) or (d) of this section applies, if the exhibition will take place in a municipal corporation, the approval shall be obtained from the fire chief, and from the police chief or other similar chief law enforcement officer, or the designee of the police chief or similar chief law enforcement officer, of the particular municipal corporation.

(b) Unless division (B)(1)(c) or (d) of this section applies, if the exhibition will take place in an unincorporated area, the approval shall be obtained from the fire chief of the particular township or township fire district, and from the police chief or other similar chief law

enforcement officer, or the designee of the police chief or similar chief law enforcement officer, of the particular township or township police district.

(c) If fire protection services for the premises on which the exhibition will take place are provided in accordance with a contract between political subdivisions, the approval shall be obtained from the fire chief of the political subdivision providing the fire protection services and from the police chief or other similar chief law enforcement officer, or the designee of the police chief or similar chief law enforcement officer, of the political subdivision in which the premises on which the exhibition will take place are located. If police services for the premises on which the exhibition will take place are provided in accordance with a contract between political subdivisions, the approval shall be obtained from the police chief or other similar chief law enforcement officer, or the designee of the police chief or similar chief law enforcement officer, of the political subdivision providing the police services and from the fire chief of the political subdivision in which the premises on which the exhibition will take place are located. If both fire and police protection services for the premises on which the exhibition will take place are provided in accordance with a contract between political subdivisions, the approval shall be obtained from the fire chief, and from the police chief or other similar chief law enforcement officer, or the designee of the police chief or similar chief law enforcement officer, of the political subdivisions providing the police and fire protection services.

(d) If there is no municipal corporation, township, or township fire district fire department, no municipal corporation, township, or township police district police department, and no contract for police or fire protection services between political subdivisions covering the premises on which the exhibition will take place, the approval shall be obtained from the fire prevention officer, and from the police chief or other similar chief law enforcement officer, or the designee of the police chief or other similar chief law enforcement officer, having jurisdiction over the premises.

(2) The approval required by division (B)(1) of this section shall be evidenced by the fire chief or fire prevention officer and by the police chief or other similar chief law enforcement officer, or the designee of the police chief or other similar chief law enforcement officer, signing a permit for the exhibition. The fire marshal shall prescribe the form of exhibition permits and distribute copies of the form to fire chiefs, to fire prevention officers, and to police chiefs or other similar chief law enforcement officers of municipal corporations, townships, or township police districts, or their designees, in this state. Any exhibitor of fireworks who wishes to conduct a public fireworks exhibition may obtain a copy of the form from the fire marshal or, if it is available, from a fire chief, a fire prevention officer, a police chief or other similar chief law enforcement officer of a municipal corporation, township, or township police district, or a designee of such a police chief or other similar chief law enforcement officer.

(C) Before a permit is signed and issued to a licensed exhibitor of fireworks, the fire chief or fire prevention officer, in consultation with the police chief or other similar chief law enforcement officer or with the designee of the police chief or other similar chief law enforcement officer, shall inspect the premises on which the exhibition will take place and shall determine that, in fact, the applicant for the permit is a licensed exhibitor of fireworks. Each applicant shall show the applicant's license as an exhibitor of fireworks to the fire chief or fire prevention officer.

The fire chief or fire prevention officer, and the police chief or other similar chief law enforcement officer, or the designee of the police chief or other similar chief law enforcement officer, shall give approval to conduct a public fireworks exhibition only if satisfied, based on the inspection, that the premises on which the exhibition will be conducted allow the exhibitor to comply with the rules adopted by the fire marshal pursuant to divisions (B) and (E) of section 3743.53 of the Revised Code and that the applicant is, in fact, a licensed

exhibitor of fireworks. The fire chief or fire prevention officer, in consultation with the police chief or other similar chief law enforcement officer or with the designee of the police chief or other similar chief law enforcement officer, may inspect the premises immediately prior to the exhibition to determine if the exhibitor has complied with the rules, and may revoke a permit for noncompliance with the rules.

(D) If the legislative authorities of their political subdivisions have prescribed a fee for the issuance of a permit for a public fireworks exhibition, fire chiefs or fire prevention officers, and police chiefs, other similar chief law enforcement officers, or their designee, shall not issue a permit until the exhibitor pays the requisite fee.

Each exhibitor shall provide an indemnity bond in the amount of at least one million dollars, with surety satisfactory to the fire chief or fire prevention officer and to the police chief or other similar chief law enforcement officer, or the designee of the police chief or other similar chief law enforcement officer, conditioned for the payment of all final judgments that may be rendered against the exhibitor on account of injury, death, or loss to persons or property emanating from the fireworks exhibition, or proof of insurance coverage of at least one million dollars for liability arising from injury, death, or loss to persons or property emanating from the fireworks exhibition. The legislative authority of a political subdivision in which a public fireworks exhibition will take place may require the exhibitor to provide an indemnity bond or proof of insurance coverage in amounts greater than those required by this division. Fire chiefs or fire prevention officers, and police chiefs, other similar chief law enforcement officers, or their designee, shall not issue a permit until the exhibitor provides the bond or proof of the insurance coverage required by this division or by the political subdivision in which the fireworks exhibition will take place.

(E) (1) Each permit for a fireworks exhibition issued by a fire chief or fire prevention officer, and by the police chief or other similar chief law enforcement officer, or the designee of the police chief or other similar chief law enforcement officer, shall contain a distinct number, designate the municipal corporation, township, or township fire or police district of the fire chief, fire prevention officer, police chief or other similar chief law enforcement officer, or designee of the police chief or other similar chief law enforcement officer, and identify the certified fire safety inspector, fire chief, or fire prevention officer who will be present before, during, and after the exhibition, where appropriate. A copy of each permit issued shall be forwarded by the fire chief or fire prevention officer, and by the police chief or other similar chief law enforcement officer, or the designee of the police chief or other similar chief law enforcement officer, issuing it to the fire marshal, who shall keep a record of the permits received. A permit is not transferable or assignable.

(2) Each fire chief, fire prevention officer, police chief or other similar chief law enforcement officer, and designee of a police chief or other similar chief law enforcement officer shall keep a record of issued permits for fireworks exhibitions. In this list, the fire chief, fire prevention officer, police chief or other similar chief law enforcement officer, and designee of a police chief or other similar chief law enforcement officer shall list the name of the exhibitor, the exhibitor's license number, the premises on which the exhibition will be conducted, the date and time of the exhibition, and the number and political subdivision designation of the permit issued to the exhibitor for the exhibition.

(F) The governing authority having jurisdiction in the location where an exhibition is to take place shall require that a certified fire safety inspector, fire chief, or fire prevention officer be present before, during, and after the exhibition, and shall require the certified fire safety inspector, fire chief, or fire prevention officer to inspect the premises where the exhibition is to take place and determine whether the exhibition is in compliance with this chapter.

(G) Notwithstanding any provision of the Revised Code to the contrary, the state fire marshal is hereby authorized to create additional license categories for fireworks exhibitors and to

create additional permit requirements for fireworks exhibitions for the indoor use of fireworks and other uses of pyrotechnics, including the use of pyrotechnic materials that do not meet the definition of fireworks as described in section 3743.01 of the Revised Code. Such licenses and permits and the fees for such licenses and permits shall be described in rules adopted by the fire marshal under Chapter 119. of the Revised Code. Such rules may provide for different standards for exhibitor licensure and the permitting and conducting of a fireworks exhibition than the requirements of this chapter.

Prior to the state fire marshal's adoption of the rules described in this division, the director of commerce shall appoint a committee consisting of the state fire marshal or the marshal's designee, three representatives of the fireworks industry, and three representatives of the fire service to assist the state fire marshal in adopting these rules. Unless an extension is granted by the director of commerce, the state fire marshal shall adopt initial rules under this section not later than July 1, 2010.

History:

141 v S 61 (Eff 12-1-86); 147 v H 215 (Eff 6-30-97); 148 v H 405 (Eff 10-19-2000); 149 v H 161, §§ 1, 3. Eff 6-29-2001; 152 v H 562, § 101.01, eff. 9-23-08.

Section Notes:

The effective date is set by § 812.10 of 152 v H 562.

See provisions, § 6(A), (B) of HB 161 (149 v --) following RC § 3743.01.

EFFECT OF AMENDMENTS

152 v H 562, effective September 23, 2008, in (A), deleted the last sentence, pertaining to the acquisition of 1.4G fireworks; and added (G).

Related Statutes & Rules:

Cross-Reference to Related Statutes:

Authorized activities, RC § 3743.04.

Exhibitor to display license to seller, RC § 3743.55.

Prohibitions, RC §§ 3743.64, 3743.65.

Rules for qualifying as exhibitor and for exhibitions, RC § 3743.53.

Use of firearms or fireworks in state parks, RC § 1541.19.

ALR

Liability, on theory of nuisance, of private promoter or operator of public fireworks exhibition or display for personal injury, death, or property damage. 81 ALR2d 1207.

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§ 3743.55. Exhibitor to display license to seller

A licensed exhibitor of fireworks who has acquired a permit for a public fireworks exhibition pursuant to [section 3743.54 of the Revised Code](#) may acquire fireworks for use in the particular fireworks exhibition only if, prior to purchasing the fireworks, the exhibitor shows to the licensed manufacturer or wholesaler his license as an exhibitor of fireworks and the permit issued pursuant to [section 3743.54 of the Revised Code](#). The manufacturer or wholesaler shall record the exhibitor's license number and the permit number and political subdivision designation in its retail sales record.

History:

141 v S 61. Eff 12-1-86.

Section Notes:

The effective date is set by section 8 of SB 61.

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TITLE 37. HEALTH -- SAFETY -- MORALS
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ORC Ann. 3743.65 (2010)

§ 3743.65. Restrictions on possession, sale and use; persons under age 18; ejection of disruptive persons; disabling fire suppression system

(A) No person shall possess fireworks in this state or shall possess for sale or sell fireworks in this state, except a licensed manufacturer of fireworks as authorized by [sections 3743.02 to 3743.08 of the Revised Code](#), a licensed wholesaler of fireworks as authorized by [sections 3743.15 to 3743.21 of the Revised Code](#), a shipping permit holder as authorized by [section 3743.40 of the Revised Code](#), an out-of-state resident as authorized by [section 3743.44 of the Revised Code](#), a resident of this state as authorized by [section 3743.45 of the Revised Code](#), or a licensed exhibitor of fireworks as authorized by [sections 3743.50 to 3743.55 of the Revised Code](#), and except as provided in [section 3743.80 of the Revised Code](#).

(B) Except as provided in [section 3743.80 of the Revised Code](#) and except for licensed exhibitors of fireworks authorized to conduct a fireworks exhibition pursuant to [sections 3743.50 to 3743.55 of the Revised Code](#), no person shall discharge, ignite, or explode any fireworks in this state.

(C) No person shall use in a theater or public hall, what is technically known as fireworks showers, or a mixture containing potassium chlorate and sulphur.

(D) No person shall sell fireworks of any kind to a person under eighteen years of age. No person under eighteen years of age shall enter a fireworks sales showroom unless that person is accompanied by a parent, legal guardian, or other responsible adult. No person under eighteen years of age shall touch or possess fireworks on a licensed premises without the consent of the licensee. A licensee may eject any person from a licensed premises that is in any way disruptive to the safe operation of the premises.

(E) No person, other than a licensed manufacturer, licensed wholesaler, licensed exhibitor, or shipping permit holder, shall possess 1.3G fireworks in this state.

(F) Except as otherwise provided in division (J) of section 3743.06 and division (K) of section 3743.19 of the Revised Code, no person shall knowingly disable a fire suppression system as defined in section 3781.108 [3781.10.8] of the Revised Code on the premises of a fireworks plant of a licensed manufacturer of fireworks or on the premises of the business operations of a licensed wholesaler of fireworks.

History:

141 v S 61 (Eff 5-30-86); 142 v H 436 (Eff 6-14-88); 143 v H 111 (Eff 7-1-89); 146 v S 2 (Eff 7-1-96); 147 v H 215 (Eff 6-30-97); 149 v H 161. Eff 6-29-2001; 151 v H 66, § 101.01, eff. 9-29-05; 152 v H 562, § 101.01, eff. 9-23-08.

Section Notes:

The effective date is set by § 812.10 of 152 v H 562.

The effective date is set by § 612.03 of 151 v H 66.

See provisions, § 6(A) of HB 161 (149 v --) following RC § 3743.01.

EFFECT OF AMENDMENTS

152 v H 562, effective September 23, 2008, in (D), added the last three sentences; and deleted (E), pertaining to the advertisement of 1.4G fireworks for sale, and redesignated the remaining subsections accordingly.

151 v H 66, effective September 29, 2005, corrected internal references in (G).

Related Statutes & Rules:

Cross-Reference to Related Statutes:

Penalties, RC § 3743.99.

Arrest of violators, RC § 3743.68.

Comparative Legislation:

SALE OF FIREWORKS: CA--Cal Health & Saf Code § 12500 et seq

FL--Fla. Stat. §§ 791.02, 791.04

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ORC Ann. 3743.80 (2010)

§ 3743.80. Exemptions from provisions

This chapter does not prohibit or apply to the following:

(A) The manufacture, sale, possession, transportation, storage, or use in emergency situations, of pyrotechnic signaling devices and distress signals for marine, aviation, or highway use;

(B) The manufacture, sale, possession, transportation, storage, or use of fuses, torpedoes, or other signals necessary for the safe operation of railroads;

(C) The manufacture, sale, possession, transportation, storage, or use of blank cartridges in connection with theaters or shows, or in connection with athletics as signals or for ceremonial purposes;

(D) The manufacture for, the transportation, storage, possession, or use by, or sale to the armed forces of the United States and the militia of this state of pyrotechnic devices;

(E) The manufacture, sale, possession, transportation, storage, or use of toy pistols, toy canes, toy guns, or other devices in which paper or plastic caps containing twenty-five

hundredths grains or less of explosive material are used, provided that they are constructed so that a hand cannot come into contact with a cap when it is in place for explosion, or apply to the manufacture, sale, possession, transportation, storage, or use of those caps;

(F) The manufacture, sale, possession, transportation, storage, or use of novelties and trick noisemakers, auto burglar alarms, or model rockets and model rocket motors designed, sold, and used for the purpose of propelling recoverable aero models;

(G) The manufacture, sale, possession, transportation, storage, or use of wire sparklers.

(H) The conduct of radio-controlled special effect exhibitions that use an explosive black powder charge of not more than one-quarter pound per charge, and that are not connected in any manner to propellant charges, provided that the exhibition complies with all of following:

(1) No explosive aerial display is conducted in the exhibition;

(2) The exhibition is separated from spectators by not less than two hundred feet;

(3) The person conducting the exhibition complies with regulations of the bureau of alcohol, tobacco, and firearms of the United States department of the treasury and the United States department of transportation with respect to the storage and transport of the explosive black powder used in the exhibition.

History:

141 v S 61 (Eff 5-30-86); 147 v H 215 (Eff 6-30-97); 149 v H 161. Eff 6-29-2001.

Section Notes:

See provisions, § 6(A) of HB 161 (149 v --) following RC § 3743.01.

Related Statutes & Rules:

Cross-Reference to Related Statutes:

Fireworks defined, RC § 3743.01.

Restrictions, RC § 3743.65.

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