

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 696
Judiciary

(Delegate Hornberger)

Public Safety - Consumer and Display Fireworks

This bill makes various changes that generally relate to the sale and use of fireworks in the State. More specifically, the bill (1) generally authorizes a person who is at least age 18 and meets the requirements under Title 10 of the Public Safety Article to purchase, possess, and use “consumer fireworks,” but establishes prohibitions on intentionally igniting or discharging consumer fireworks in specified situations; (2) establishes licensing and other requirements for structures where consumer fireworks may be sold; and (3) alters provisions that relate to the authority of the State Fire Marshal to issue permits for the discharge of fireworks – and the requirement for a person to obtain and possess such a permit – to apply to “display fireworks,” as defined by the bill. Existing penalty provisions apply to the bill’s provisions.

Fiscal Summary

State Effect: The bill is not anticipated to have a material, direct effect on State finances. The Office of the State Fire Marshal advises that it can implement the bill’s requirements using existing resources and that there is no effect on State revenues from existing permit fees. The application of existing penalty provisions to the bill’s provisions is also not anticipated to materially affect State operations or finances.

Local Effect: The bill is not anticipated to have a material, direct effect on local government operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

General Authorization to Purchase, Possess, and Use Consumer Fireworks, with Specified Exceptions

A person who is at least age 18 and meets the requirements of Title 10 of the Public Safety Article is authorized to purchase, possess, and use consumer fireworks. However, a person is prohibited from intentionally igniting or discharging consumer fireworks:

- on public property or on private property without the express permission of the owner;
- within, into, at, or from, a motor vehicle, a watercraft, an aircraft, an unmanned aircraft, or a building;
- at another person;
- while the person is under the influence of alcohol, a controlled substance, or another drug; or
- within 300 feet (ft.) of a structure.

These provisions may not be construed to regulate the sale, possession, or use of any of several specified devices.

Sale of Consumer Fireworks – Licensing and Other Requirements

In general, consumer fireworks may only be sold from a stand-alone permanent structure that (1) is licensed by the State Fire Marshal; (2) has a storage area that is separated from wholesale or retail sales areas to which a purchaser may be admitted by appropriately rated fire separation; (3) is located at least 250 ft. from any facility that stores, sells, or dispenses gasoline, propane, or other flammable products; (4) is located at least 1,500 ft. from any other facility licensed to sell consumer fireworks; (5) has a monitored burglar and fire alarm system; and (6) conducts quarterly fire drills and preplanning meetings as required by the primary fire department in the jurisdiction of the facility.

However, consumer fireworks may be sold from a temporary structure if the temporary structure (1) is licensed by the State Fire Marshal; (2) is located at least 250 ft. from any facility that stores, sells, or dispenses specified flammable products; (3) has an evacuation plan posted in a conspicuous location, as specified; (4) if it has an outdoor storage unit, has the unit separated from the wholesale or retail sales area to which a purchaser may be admitted by appropriately rated fire separation; (5) complies with NFPA 1124, as it relates to retail sales of consumer fireworks in temporary structures; (6) is located at least

two miles from any permanent facility licensed to sell consumer fireworks; (7) does not exceed 2,500 square ft.; (8) is secured at all times during which consumer fireworks are displayed within the structure; (9) has a minimum of \$2.0 million in public and product liability insurance; (10) has a sales period limited to June 15 through July 8 and December 21 through January 2 each year; and (11) stores consumer fireworks not on display for retail sale in an outdoor storage unit. In addition, the sale of consumer fireworks from a temporary structure is limited to specified types of fireworks.

The bill does not establish any new licensing fees for such structures.

Selected Definitions

“Consumer fireworks” means any combustible or explosive composition or any substance or combination of substances that (1) is intended to produce visible or audible effects by combustion; (2) is suitable for use by the public; (3) complies with the construction, performance, composition, and labeling requirements adopted by the Consumer Products Safety Commission, as specified; and (4) complies with the provisions for “consumer fireworks” as defined in APA 87-1 or any successor standard.

“Display fireworks” means large fireworks to be used solely by professional pyrotechnicians and designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. The term includes (1) salutes that contain more than 2 grains or 130 milligrams of explosive materials; (2) aerial shells containing more than 60 grams of pyrotechnic compositions; and (3) other display pieces that exceed the limits of explosive materials for classification as consumer fireworks and are classified as fireworks UN0333, UN0334, or UN0335, under Title 49, § 172.101 of the Code of Federal Regulations, relating to purpose and use of the hazardous materials table.

“Fireworks,” as modified by the bill, includes 1.3 G fireworks, 1.4 G fireworks, consumer fireworks, and display fireworks. The bill also alters the definitions of “1.3 G fireworks” and “1.4 G fireworks.”

Current Law: Title 10 of the Public Safety Article generally regulates the manufacturing, storage, sale, possession, and use of fireworks and sparklers in the State.

Discharge of Fireworks: The State Fire Marshal may issue a permit to authorize the discharge of fireworks in a place where the discharge of fireworks is legal. The State Fire Marshal must issue a permit to discharge fireworks only if the State Fire Marshal determines that the proposed discharge of fireworks will (1) not endanger health or safety or damage property and (2) be supervised by an experienced and qualified person who has previously secured written authority from the State Fire Marshal to discharge fireworks. A permit to discharge fireworks:

- does not authorize the holder of the permit to possess or discharge fireworks in violation of an ordinance or regulation of the political subdivision where the fireworks are to be discharged; and
- does not relieve an applicant for a permit from any requirement to obtain any additional license or authority from the governing body of the political subdivision where the fireworks are to be discharged.

A person must have a permit to discharge fireworks before the person discharges fireworks or possesses fireworks with the intent to discharge fireworks or to allow the discharge of fireworks. An applicant for a permit to discharge fireworks must apply to the State Fire Marshal for the permit at least 10 days before the date of discharge, pay a \$50 permit fee, and post a bond with the State Fire Marshal, as specified. If the State Fire Marshal does not receive the application for a permit at least 10 days before the date of the discharge, the State Fire Marshal must charge the applicant an additional \$50 late fee. The fees do not apply to a volunteer fire department or volunteer ambulance and rescue company.

Unless the person holds a permit, a person may not discharge fireworks or possess fireworks, as specified. A permit to discharge fireworks is nontransferable.

Sale of Fireworks: With specified exceptions, a person may not sell fireworks to another person without a permit. A person licensed by the State Fire Marshal may sell or deliver fireworks to a *bona fide* distributor, jobber, or wholesaler with a principal place of business in a state where the sale or possession of fireworks is allowed. The State Fire Marshal may require a person who is an out-of-state distributor, jobber, or wholesaler to submit a certificate issued by the person's state of operation that demonstrates authority to buy and receive fireworks.

Penalties: A person who possesses or discharges fireworks in violation of these provisions is guilty of a misdemeanor and on conviction subject to maximum fine of \$250 for each offense. A person who sells fireworks in violation of these provisions is guilty of a misdemeanor and on conviction, subject to a maximum fine of \$1,000 for each offense. At the owner's expense, the State Fire Marshal must seize and remove all fireworks possessed or sold in violation of any of these provisions. Any fireworks seized pursuant to this provision must be forfeited and destroyed.

Sale of Sparklers: A person may not sell sparklers or sparkling devices to a person younger than age 16. A violator is guilty of a misdemeanor and on conviction subject to a maximum fine of \$1,000.

Distribution or Wholesale of Sparklers or Sparkling Devices: Generally, a distributor or wholesaler of sparklers or sparkling devices must register annually with the State Fire

Marshal and pay a fee of \$750. A violator is guilty of a misdemeanor and on conviction subject to maximum penalties of imprisonment for one year and/or a \$1,000 fine.

Small Business Effect: By establishing a legal framework for the licensing of structures (*e.g.*, stores) to sell consumer fireworks in the State, and by generally authorizing the purchase, possession, and use of such fireworks in the State, the bill likely has a meaningful positive effect on any small businesses that wish to sell consumer fireworks in Maryland.

Additional Comments: The Judiciary advises that in fiscal 2020, there were 20 violations and no convictions for discharging fireworks without a permit and 15 violations and no convictions for possessing fireworks without a permit.

Additional Information

Prior Introductions: HB 1548 of 2020, a similar bill, received a hearing in the House Economic Matters Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of State Police; Department of Legislative Services

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rh/lgc

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