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May 20, 2013

Representative Hugh Crawford
Chairman, Regulatory Reform Committee
887 House Office Building
P.O. Box 30014
Lansing, MI 48909

Re: HB 4743 and HB 4744 testimony to the Regulatory Reform Committee

Dear Representative Crawford:

I'm writing to support with stipulations some of the changes to 2011 PA 256, to not support other changes, and to request a modification to 2011 PA 256 regarding the insurance requirements. I'm working from the 02258'13 draft of HB 4743 and the 02259'13 draft of HB 4744, as that is what is available on the Legislature web site.

I agree in principle with the effort to allow local jurisdictions to limit consumer fireworks use to reasonable hours. I take issue with a midnight limit, in that midnight is when many consumers will use their fireworks on New Year's Eve. Additionally, due to Michigan's geographic location, it isn't sufficiently dark to really enjoy fireworks colors until 10:15 to 10:30 in the summer due to Daylight Savings Time. Professional displays don't usually start until this time, and consumers will often use their fireworks upon returning home from a professional display. As a result, I request that local jurisdictions not be able to limit use until at least 12:30 AM for the allowed days of use. A time of 1:00 AM would be even better.

I support the changes allowing the Bureau of Fire Services to delegate inspection responsibility for consumer fireworks retail locations to local jurisdictions. This was our original intent as we worked on this statute.

I do not support the changes requiring safety fees to be remitted by 20 days after the end of each preceding month. For temporary sales locations, this will add many months of zero sales that require submission of unnecessary paperwork. This will cause an unnecessary burden on retailers and upon the Department. Remission of fees is appropriate at the same time as sales taxes are remitted for a business. If the business currently qualifies for quarterly or annual sales tax payment, then fireworks safety fee collection and payment should correspond to that payment schedule. This allows businesses to do their accounting and pay their safety fees at the same time they are paying their sales tax, and streamlines collection efforts.

I support the changes to disbursement of safety fee funds by the Department.

Lastly, I'd like to address the need for a change to MCL 28.455 Sec. 5 (3). The requirement for \$10,000,000.00 insurance is burdensome on small business, and the current language of the statute is neither clear nor consistent with common insurance industry practice. The fireworks insurance



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policies that are being accepted by the Department do not comply with the language of the current statute. The insurance industry simply does not write \$10 million per occurrence policies. There is always an aggregate limit.

I have been in business for eleven years, and currently carry a \$2,000,000 liability insurance policy. I was able to obtain an additional insured certificate from a wholesaler to cover a retail tent stand in 2012, in addition to the normal insurance I carry. This year, my insurance agent has informed me that the underwriter for my policy will not cover retail fireworks sales if I am going to obtain coverage from a wholesaler for tent sales. It is not a normal insurance practice to obtain additional insured status for a company such as mine that already carries insurance.

Additional insured status does not sufficiently provide me with the coverage I need, as the risk is pooled with all of the other additional insured companies the wholesaler may choose to provide this status to. There are other problems with this scenario, in that in order to have coverage supplied from a wholesaler, I'm limited to selling only the product I purchase from that wholesaler. This limits customer choice and drives up my cost, which I must pass on to the consumer.

Large wholesalers are charging a fee for providing additional insured status to their retailers. I don't believe this is an acceptable practice, as fireworks wholesalers are not insurance companies, and are not regulated as such. This puts not only the public at risk, but also the retailers who think they are sufficiently covered by a wholesaler's policy.

I'm proposing a suggested fix for this flawed insurance language, as well as estimates of the cost for \$1 million, \$2 million, and \$10 million insurance policies. I've worked with fireworks insurance agents to fix this language, and to obtain the cost estimates.

Suggested language to fix the technical issues in the insurance language of MCL 28.455 Sec. 5 (3):

(3) During periods when consumer fireworks are sold, each retail business ~~location~~ selling consumer fireworks ~~either~~ shall obtain and keep in force an annual general ~~be added as an additional insured, or public liability and product liability insurance policy coverage shall be obtained and maintained,~~ in an amount not less than \$1,000,000.00 general aggregate limit, including products and completed operations at the same \$1,000,000.00 aggregate limit. ~~per occurrence.~~ A person that knows, or should know, that he or she is required to comply with this subsection and who fails or neglects to do so is liable for a civil fine of not more than \$5,000.00.

Below is an estimate for various insurance policy costs, supplied by my insurance agent:

A small stand of \$50,000 in sales ---

\$1M limit - \$1,000-\$1,500 premium

\$2M limit - \$4,000- \$5,000 premium



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\$10M limit - \$15,000- \$17,000 premium

A larger store with \$500,000 in sales ---

\$1M limit - \$6,000-\$8,000 premium

\$2M limit - \$9,000- \$11,000 premium

\$10M limit - \$21,000-\$25,000 premium

One can see that the cost of a \$10 million policy for a store with \$50k in annual sales is nearly as much as for a store with \$500k in annual sales. In other words, \$10 million in insurance coverage costs 40 percent of revenue for a small stand, and 5 percent for a large business. It is grossly unfair to smaller businesses and to the public to require such a high insurance limit for a product that is accepted as safe to use by the Consumer Product Safety Commission.

I believe that proper insurance coverage is a complicated issue, but that this suggested language will allow all consumer fireworks retailers in Michigan to obtain sufficient coverage to best protect the public. The current statute language does not do that. I'm available to work with committee members and their staff to better provide for Michigan residents and small businesses.

Sincerely,

A handwritten signature in black ink that reads 'Andrew Webb'. The signature is written in a cursive style with a large initial 'A'.

Andrew Webb
President

cc: Representative Genetski

