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BILL ANALYSIS



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Senate Bill 193 (Substitute S-2)
Sponsor: Senator Rick Jones
Committee: Regulatory Reform

Date Completed: 6-5-12

CONTENT

The bill would amend the Michigan Fireworks Safety Act to do the following:

- **Revise the sanctions for sale of consumer fireworks without a license, and add graduated fines for subsequent violations.**
- **Revise sanctions for failure to collect or remit a fireworks safety fee, and add graduated fines for subsequent violations.**
- **Require a fine for selling fireworks to a minor; add a graduated fine for a second or subsequent violation; and require a 90-day suspension of a person's consumer fireworks certificate after a civil fine was ordered for selling fireworks to a minor.**
- **Make it a State civil infraction for a minor to possess consumer fireworks, and prescribe a civil fine for the infraction.**
- **Require the State Fire Marshal to issue a citation to a person if the Fire Marshal believed, as a result of an inspection or investigation, that a person had violated the Act.**
- **Allow the Fire Marshal to suspend the consumer fireworks certificate of a person to whom a citation was issued.**
- **Require a civil fine of up to \$1,000 for each violation for a person who received a citation for a serious violation, an order issued under the Act, or a rule promulgated under the Act.**
- **Allow a civil fine of up to \$500 for a person who received a citation for a violation of the Act that was not a serious violation.**
- **Require all civil fines for citations to be paid to the Department of Licensing and Regulatory Affairs (LARA) within 15 working days and be credited to the Fireworks Safety Fund.**
- **Allow the Fire Marshal to request a warrant for the prosecution of a person who committed a criminal violation of the Act.**
- **Prohibit LARA from issuing a consumer fireworks certificate, and make a person ineligible for a certificate, if the person had certain felony convictions.**
- **Specify periods during which a person would be ineligible for a fireworks safety certificate for certain violations of the Act.**

Sale of Consumer Fireworks

The Act prohibits a person from selling consumer fireworks unless he or she annually obtains a consumer fireworks certificate from LARA. A person who knows, or should know, that he or she is required to comply with this requirement and fails or neglects to do so is guilty of a misdemeanor punishable by up to two years' imprisonment and/or a maximum fine of \$5,000 for each day the person is in violation.

The bill would prohibit the sale of consumer fireworks unless the person annually obtained *and maintained* a certificate. Also, under the bill, the maximum fine for a first violation would be \$5,000; the maximum fine for a second violation would be \$20,000; and the maximum fine for a third or subsequent violation would be \$40,000.

The Act prohibits LARA from issuing an original or renewal consumer fireworks certificate to an applicant until the Department of Treasury has confirmed to LARA that each sales tax license submitted by the applicant is current and valid. The bill also would require the Department of Treasury to confirm to LARA that the applicant was otherwise eligible to obtain a consumer fireworks certificate under the Act.

("Consumer fireworks" means fireworks devices that are designed to produce visible effects by combustion, that are required to comply with the construction, chemical composition, and labeling regulations promulgated by the U.S. Consumer Product Safety Commission, and that are listed in certain American Pyrotechnics Association (APA) standards. The term does not include "low-impact fireworks", which are ground and handheld sparkling devices as defined under APA standards.)

Fireworks Safety Fee

The Act imposes a user fee, known as the fireworks safety fee, on retail transactions made in Michigan for consumer fireworks and low-impact fireworks. A person who acquires consumer fireworks or low-impact fireworks in a retail transaction is liable for the fee on the transaction and, except as otherwise provided in the Act, must pay the fee to the retailer as a separate added amount to the consideration in the transaction. The retailer must collect the fee as an agent for the State.

A person who knows or should know that he or she is required to comply with the fee requirement but fails to collect or remit the fee is guilty of a misdemeanor punishable by a fine of up to \$10,000 and is ineligible to obtain a fireworks certificate for one year after conviction. Under the bill, instead, the misdemeanor would be punishable by a fine of up to \$10,000 for a first violation; up to \$20,000 for a second violation; and up to \$40,000 for a third or subsequent violation.

Sale to & Possession by a Minor

Under the Act, consumer fireworks may not be sold to a minor (a person under 18 years of age). A person who violates that prohibition is responsible for a State civil infraction and may be ordered to pay a civil fine of not more than \$500. Under the bill, a person responsible for that infraction would have to be ordered to pay a civil fine of up to \$500 or, for a second or subsequent violation, up to \$1,000. In addition, the bill would require the person's consumer fireworks certificate to be suspended for 90 days after the civil fine was ordered.

The bill also would prohibit a minor from possessing consumer fireworks. A minor who violated that prohibition would be responsible for a State civil infraction and could be ordered to pay a civil fine of not more than \$500.

Fire Marshal Citation

Under the bill, if the State Fire Marshal or his or her designee believed, as a result of an inspection or investigation, that a person had violated the Act, an order issued under the Act, or a rule promulgated under the Act, the Fire Marshal or designee would have to issue a citation to the person within 90 days after completing a physical inspection or investigation.

Except as otherwise provided in the Act, upon issuance of a citation, the Fire Marshal immediately could suspend the consumer fireworks certificate of the person to whom a citation was issued. In addition, upon a proper petition, a court could enjoin a violation of the Act.

A citation issued by the Fire Marshal or designee would have to be in writing and state on its face that it was an allegation of a violation of the Act. The citation would have to describe with particularity the nature of the violation and include a reference to the provision, rule, or order alleged to have been violated. A citation would have to include all of the following:

- The date of the citation.
- The name and title of the individual who issued the citation.
- The name and address of the person to whom the citation was issued.
- The actions necessary to bring the person into compliance, including the payment of a fine.
- A space for the signature of the person that he or she had received the citation.
- A space where the person could accept the citation and agree to comply or, in the alternative, could indicate his or her intent to contest the citation.
- A notice that the person would have to accept or reject the terms of the citation within 15 days of the date of the citation.
- A brief description of the administrative hearing process and the process for settlement as provided for by rule.

A citation could be either mailed to the person to whom it was issued, by certified mail, return receipt requested, or delivered in person by the State Fire Marshal or the Fire Marshal's designee who issued the citation.

A person who received a citation for a "serious violation", an order issued under the Act, or a rule promulgated under the Act, would have to be assessed a civil fine of not more than \$1,000 for each violation. A person who received a citation for a violation of the Act that was not a serious violation could be assessed a civil fine of up to \$500 for each violation. These fine provisions would not apply to violations for which a specific civil fine is provided in the Act.

The bill would define "serious violation" as a violation of the Act, an order issued under the Act, or a rule promulgated or adopted by reference under the Act for which there is a substantial probability that death or serious impairment of a body function to a person other than the violator may result, unless the violator did not and could not, with the exercise of reasonable diligence, know of the presence of the violation.

All civil fines collected for citations would have to be paid to LARA within 15 working days after the date the penalty was ordered, would not be subject to further review, and would have to be credited to the Fireworks Safety Fund. (The Act created that Fund within the Department of Treasury and requires LARA to spend money deposited into the Fund to carry out the purposes of the Act, the Fire Prevention Code, and the Firefighters Training Council created under the Firefighters Training Council Act. Of the first \$1.0 million collected in the Fireworks Safety Fund in each fiscal year, LARA may spend up to that amount in discretionary grants to local units of government to defray inspection costs associated with the enforcement of the Michigan Fireworks Safety Act.)

The Department of Treasury would have to institute proceedings to collect any civil fines ordered but not paid under the Act.

The State Fire Marshal could request that the prosecuting attorney for the county in which a violation of the Act occurred issue a complaint and request a warrant for the prosecution of a person who committed a criminal violation of the Act.

Ineligibility for Fireworks Certificate

The bill would prohibit LARA from issuing, and specifies that a person would be ineligible to be issued, a consumer fireworks certificate if either of the following applied:

- The person was sentenced for a felony conviction with the preceding five years.
- The person had ever been convicted of a felony involving theft, fraud, or arson.

(The Department currently is prohibited from issuing a certificate to a person who has been convicted of a felony involving theft, fraud, or arson.)

If a person were convicted of a crime that would make him or her ineligible to be issued a certificate on April 30 of the following year, the person's certificate would have to be revoked for the balance of the year for which a current certificate was issued.

A person who was convicted of certain offenses would be ineligible to obtain a "fireworks safety certificate" for certain periods, as shown in Table 1. ("Fireworks safety certificate" is not defined in the bill or the Act.)

Table 1

<u>Offense</u>	<u>Ineligibility Period</u>
Sale of consumer fireworks without certificate (second violation)	5 years
Sale of consumer fireworks without certificate (third or subsequent violation)	10 years
Failure to collect or remit fireworks safety fee	1 year
Failure to collect or remit fireworks safety fee (second violation)	5 years
Failure to collect or remit fireworks safety fee (third or subsequent violation)	10 years
Violation of Act causing damage to another person's property	1 year
Violation of Act causing serious impairment of a body function of another person	Permanent
Violation of Act causing the death of another person	Permanent

A sanction of ineligibility for those periods would have to be imposed in addition to any other penalty or sanction for a violation of the Act.

MCL 28.452 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate but positive impact on State and local government. There are no data to indicate how many individuals would be affected by the increased fines proposed under the bill. The fines would range from \$500 for a minor illegally possessing fireworks up to \$40,000 for a third or subsequent offense of selling fireworks without a license. The revenue from these fines would be directed to the Fireworks Safety Fund, which helps pay for fire safety associated with the Act, including up to \$1.0 million that may be granted to local units to defray inspection costs.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.