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 BILL ANALYSIS

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House Bill 4293 (as enacted)
Senate Bill 194 (as enacted)
Sponsor: Representative Harold L. Haugh (H.B. 4293)
Senator Rick Jones (S.B. 194)
House Committee: Regulatory Reform
Senate Committee: Regulatory Reform

PUBLIC ACT 256 of 2011
PUBLIC ACT 257 of 2011

Date Completed: 1-12-12

CONTENT

House Bill 4293 repealed Chapter 34 (Fireworks) of the Michigan Penal Code, and created the "Michigan Fireworks Safety Act" to do the following:

- Prohibit a person from selling consumer fireworks without obtaining an annual consumer fireworks certificate from the Department of Licensing and Regulatory Affairs (LARA).
- Prescribe certificate application fees.
- Impose a fireworks safety fee on retail transactions for the sale of consumer fireworks and low-impact fireworks (**Table 1**).
- Create the "Fireworks Safety Fund" and require certificate application fees and fireworks safety fees to be deposited in it.
- Allow up to \$1.0 million from the Fund to be used each fiscal year for grants to local units of government to defray inspection costs associated with enforcing the Act.
- Prescribe requirements for the sale of consumer fireworks from a retail location.
- Prohibit a person from selling low-impact fireworks without registering online, and require LARA to create an online registry.
- Prohibit a person from using consumer fireworks or low-impact fireworks while under the influence of alcohol or drugs.

- Prohibit the use of consumer fireworks on another person's property without permission.
- Prohibit the sale of consumer fireworks to a minor.
- Prescribe civil and criminal penalties for violations of the Act (**Tables 2 and 3**).
- Require LARA or a law enforcement agency to investigate alleged violations, and provide for the seizure of fireworks.
- Allow a city, village, or township to grant a permit for the use or display of fireworks, and to charge and retain a permit fee.
- Require the State Fire Marshal to report to the Legislature by October 1, 2013.

Senate Bill 194 amended the Code of Criminal Procedure to include in the sentencing guidelines certain violations of the Michigan Fireworks Safety Act (Table 4**).**

Senate Bill 194 was tie-barred to House Bill 4293 and took effect on December 14, 2011.

House Bill 4293 took effect on January 1, 2012. The bill is described in detail below.

Fireworks Definitions

The Act defines "firework" or "fireworks" as any composition or device, except for a starting pistol, flare gun, or flare, designed

to produce a visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of consumer fireworks, low-impact fireworks, articles pyrotechnic, display fireworks, and special effects.

"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 requirements promulgated by the U.S. Consumer Product Safety Commission, and that are listed in a specified American Pyrotechnic Association (APA) standard. Consumer fireworks do not include low-impact fireworks.

"Low-impact fireworks" means ground and handheld sparkling devices as that phrase is defined under a specified APA standard.

"Articles pyrotechnic" means pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but not intended for consumer use, that meet weight limits for consumer fireworks but are not labeled as such, and that are classified under Federal regulations specified in the Act.

"Display fireworks" means large fireworks devices that are explosive materials intended for use in fireworks displays and designed to produce visible or audible effects by combustion, deflagration, or detonation, as provided in Federal regulations and an APA standard.

"Special effects" means a combination of chemical elements or chemical compounds capable of burning independently of the oxygen in the atmosphere and designed and intended to produce an audible, visual, mechanical, or thermal effect as an integral part of a motion picture, radio, television, theatrical, or opera production or live entertainment.

Consumer Fireworks Certificate

The Act prohibits a person from selling consumer fireworks unless the person annually obtains a consumer fireworks certificate from the Department of Licensing and Regulatory Affairs. If a person knows, or should know, that he or she is required to comply with this requirement and fails or neglects to do so, the person will be guilty of

a misdemeanor punishable by imprisonment for up to two years or a maximum fine of \$5,000 for each day the person is in violation, or both.

An application for a consumer fireworks certificate must be submitted by April 1 of the year in which the consumer fireworks are to be sold. The application must list the name and address of each retail location from which consumer fireworks are to be sold.

Until January 1, 2014, the application must be accompanied by a fee of \$1,000 for a certificate for each retail location that is a permanent building or structure, or \$600 for each retail location that is not a permanent building or structure. (As described below, the Act states a legislative intent that the fee be based on the costs of inspecting retail locations, beginning January 1, 2014.) Certificate fees must be deposited in the Fireworks Safety Fund.

The application also must be accompanied by a copy of the applicant's current sales tax license issued by the Department of Treasury for each retail location where the applicant will sell consumer fireworks.

A certificate will be valid from the date of issue until April 30 of the year after it is issued. A person may renew a certificate for a retail location by applying in the same manner as described above. Unless LARA determines that the applicant properly remitted all of the fireworks safety fees required to be paid in the preceding year, the Department may not issue a renewal certificate.

The Act requires LARA to give the Department of Treasury the sales tax license information received from the applicant and any additional information necessary to allow that Department to confirm that each sales tax license submitted by the applicant is current and valid. Also, LARA must enter into an agreement with the Department of Treasury allowing that Department to provide the information to LARA. Until the Treasury Department has confirmed to LARA that each sales tax license submitted by the applicant is current and valid, LARA may not issue an original or renewal consumer fireworks certificate to an applicant.

Within 30 days after an application is submitted, LARA must issue or deny issuance of a certificate and, if issuance is denied, indicate to the applicant the reason. If LARA denies issuance, the applicant may cure any defect of the application within 45 days without paying an additional fee. The Department may not unreasonably delay or deny an application.

A certificate may be transferred upon LARA's approval and payment of a \$25 transfer fee. The Department may not approve a transfer unless the transferee satisfies eligibility criteria for an original certificate.

The Department may not issue a certificate to a person who knowingly fails to collect or remit a fireworks safety fee, or to an individual who has been convicted of a felony involving theft, fraud, or arson.

A certificate holder must display the certificate prominently in the appropriate retail location. A person who violates this requirement will be responsible for a civil fine of \$100. Each day that the certificate is not displayed will be a separate violation.

Sale of Consumer Fireworks

Consumer fireworks may be sold from a retail location only if all of the following applicable conditions are met:

- The retail location satisfies the applicable requirements of National Fire Prevention Association (NFPA) codes not in conflict with the Act.
- Beginning January 1, 2013, a permanent building or structure is equipped with a fire suppression system in compliance with NFPA 1124.
- The retailer at that location is licensed under the General Sales Tax Act.
- The retailer has a valid Federal taxpayer ID number issued by the Internal Revenue Service (unless the retailer is a sole proprietorship).

("NFPA 1124" is the NFPA Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Sales.

The Act defines "retailer" as a person who sells consumer fireworks or low-impact fireworks for resale to an individual for

ultimate use. "Retail location" means a facility listed under a section of NFPA 1124.)

A person who knows or should know that he or she is required to comply with these requirements, and fails or neglects to do, will be responsible for a civil fine of \$2,500 for each violation. Each day of noncompliance will constitute a separate violation.

During periods when consumer fireworks are sold, each retail location selling them must be added as an additional insured, or public liability and product liability insurance coverage must be obtained and maintained, in an amount not less than \$10.0 million per occurrence. A person who knows or should know that he or she is subject to this requirement and fails or neglects to comply, will be liable for a maximum civil fine of \$5,000.

Fireworks Safety Fee

Retail transactions made in Michigan for consumer fireworks and low-impact fireworks are subject to a user fee, known as the fireworks safety fee. A person who acquires consumer or low-impact fireworks in a retail transaction is liable for the fee and, except as otherwise provided, must pay it 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. The fee must be deposited in the Fireworks Safety Fund.

Except as otherwise provided, the fee is to be determined by the gross retail income from consumer and low-impact fireworks received by a retail merchant in a retail unitary transaction of fireworks, and must be imposed before any taxes are applied, as shown in Table 1.

**Table 1
Fireworks Safety Fee**

Gross Retail Income from the Retail Unitary Transaction	Fee
Less than \$0.08	\$0
\$0.08-\$0.23	\$0.01
\$0.24-\$0.39	\$0.02
\$0.40-\$0.55	\$0.03
\$0.56-\$0.71	\$0.04
\$0.72-\$0.87	\$0.05
\$0.88-\$1.03	\$0.06

On a transaction in which the gross retail income is \$1.04 or more, the fee is 6% of that income as determined before any taxes are applied.

A retailer whose retail location is a permanent building or structure may retain 1% of the fireworks safety fees that it collects as a collection allowance.

A retailer must remit the fee to LARA, and hold the fees collected in trust for the State until remitted. The retailer is personally liable for the payment of the fee money.

A person who knows or should know that he or she is required to collect and remit a fireworks safety fee, and fails to do so, will be guilty of a misdemeanor punishable by a fine of up to \$10,000. In addition, the person will be ineligible to obtain a fireworks certificate for one year after conviction.

Fireworks Safety Fund

The Act creates the Fund within the Department of Treasury. The State Treasurer may receive money or other assets from any source for deposit into the Fund. The State Treasurer must direct the Fund's investment, and credit to it any interest and earnings. Money in the Fund at the close of the fiscal year is to remain in the Fund and not lapse to the General Fund.

The Department of Licensing and Regulatory Affairs must spend money from the Fund to carry out the purposes of the Act, the Fire Prevention Code, and the Firefighters Training Council. Of the first \$1.0 million collected in the Fund each fiscal year, LARA may spend up to that amount in discretionary grants to local units of government (cities, villages, and townships) to defray inspection costs associated with enforcing the Act.

Restrictions on Possession & Use

A person may not ignite, discharge, or use consumer fireworks on public property, school property, church property, or another person's property without that organization's or person's express permission to do so. A violator will be responsible for a State civil infraction and may be ordered to pay a civil fine of up to \$500.

Consumer fireworks may not be sold to a minor (an individual under 18 years old). A

person who violates this prohibition will be responsible for a State civil infraction and may be ordered to pay a civil fine of up to \$500.

An individual may not use consumer fireworks or low-impact fireworks while under the influence of alcoholic liquor and/or a controlled substance.

A person who violates the smoking prohibition under a section of NFPA 1124 will be guilty of a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$1,000.

Penalties for Other Violations

Unless otherwise provided in the Act, a person who knowingly, intentionally, or recklessly violates the Act will be guilty of a crime as follows:

- A misdemeanor punishable by imprisonment for up to 30 days and/or a maximum fine of \$1,000, except as provided below.
- If the violation damages another person's property, a misdemeanor punishable by imprisonment for up to 90 days and/or a maximum fine of \$5,000.
- If the violation causes serious impairment of a body function of another person, a felony punishable by imprisonment for up to five years and/or a maximum fine of \$5,000.
- If the violation causes another person's death, a felony punishable by imprisonment for up to 15 years and/or a maximum fine of \$10,000.

In addition to any other penalty imposed under the Act, a person who is found guilty must reimburse the appropriate governmental agency for the costs of storing seized fireworks that the agency confiscates for a violation.

Fireworks Wholesaler

A wholesaler must maintain a resident agent who resides in Michigan and has a physical address in Michigan. A post office box is not a physical address for this purpose.

"Wholesaler" means a person who sells consumer fireworks or low-impact fireworks to a retailer or any other person for resale.

The term does not include a person who sells only display fireworks or special effects.

Website; Low-Impact Retail Registry

The Act requires LARA to establish and maintain an internet website to protect Michigan residents who purchase, use, or transport fireworks. The website must list every person and entity that is issued a consumer fireworks certificate.

The website also must include a low-impact fireworks retail registry, subject to all of the following:

- It must be maintained and operated at no cost to a user.
- The cost of its maintenance and operation must be paid with money in the Fireworks Safety Fund.
- It must provide for instant registry without condition.

Beginning February 1, 2012, a person may not sell low-impact fireworks unless he or she registers at least 10 days before selling the fireworks in each calendar year.

Permitted Activity or Use

The Act does not prohibit a wholesaler, retailer, commercial manufacturer, or importer from selling, storing, using, transporting, or distributing consumer fireworks or low-impact fireworks. The Act also does not prohibit any of the following:

- The use of fireworks by railroads or other transportation agencies or law enforcement agencies for signal purposes or illumination.
- The use of agricultural or wildlife fireworks.
- The possession, sale, or disposal of fireworks incidental to the public display of fireworks by wholesalers or other people who have a permit to possess, store, and sell explosives from the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives.

The Act does not prohibit the sale or use of blank cartridges for any of the following:

- A show or play.
- Signal or ceremonial purposes in athletics or sports.
- Use by military organizations.

- Use by law enforcement agencies.

Also, the Act does not prohibit interstate wholesalers from selling, storing, using, transporting, or distributing fireworks.

(Agricultural and wildlife fireworks are fireworks devices distributed to farmers, ranchers, and growers through a wildlife management program administered by the U.S. Department of the Interior or the Michigan Department of Natural Resources.)

Local Regulation

Except as otherwise provided, a local unit of government may not enact or enforce an ordinance, code, or regulation pertaining to or in any manner regulating the sale, display, storage, transportation, or distribution of fireworks regulated under the Act.

A local unit may enact an ordinance regulating the ignition, discharge, and use of consumer fireworks, but the ordinance may not regulate the use of consumer fireworks on the day before, the day of, or the day after a national holiday.

Local Permit

The legislative body of a local unit of government, upon application and payment of a fee set by the legislative body, if any, may grant a permit for the use of agricultural or wildlife fireworks, articles pyrotechnic, display fireworks, or special effects manufactured for outdoor pest control or agricultural purposes, or for public or private display within the city, village, or township by municipalities, fair associations, amusement parks, or other organizations or individuals approved by the city, village, or township authority, if the applicable provisions of the Act are complied with. After a permit has been granted, sales, possession, or transportation of fireworks may be made only for the purposes described in the permit. A permit is not transferable and may not be issued to a minor.

Before a permit for articles pyrotechnic or a display fireworks ignition is issued, the applicant must furnish proof of financial responsibility by a bond or insurance in an amount, character, and form considered necessary by the local governing authority

to satisfy claims for property damage or personal injury arising out of an act or omission of the person or the person's agent or employee, and to protect the public.

A permit may not be issued to a nonresident person for ignition of articles pyrotechnic or display fireworks in the State until the person has appointed a resident member of the State Bar or a resident agent to be the legal representative upon whom all process in an action or proceeding against the person may be served.

Before granting permits, the local governing authority must rule on the competency and qualifications of articles pyrotechnic and display fireworks operators as required under NFPA 1123 (the Code for Fireworks Display), and on the time, place, and safety aspects of the display of articles pyrotechnic or display fireworks.

Investigation; Seizure of Fireworks

A governmental or law enforcement agency that identifies a firework that is in violation of the Act must secure the firework and immediately notify LARA of the alleged violation. The law enforcement agency or LARA must investigate the alleged violation within a reasonable time.

If the law enforcement agency or LARA determines that there has been a violation (except the sale of low-impact fireworks by an unregistered person), the agency or LARA may seize the firework as evidence of the violation. The evidence must be stored pending disposition of any criminal or civil proceedings arising from a violation of the Act, at the person's expense if he or she is found guilty, responsible, or liable for the violation.

Fireworks seized for an alleged violation must be stored in compliance with the Act and rules promulgated under it. Following final disposition of a conviction for a violation, the seizing agency may dispose of or destroy fireworks retained as evidence in that prosecution. The Department of State Police and LARA may use the fireworks for training purposes.

The person from whom fireworks are seized must pay the actual costs of storage and disposal.

Rules

The Department of Licensing and Regulatory Affairs must promulgate rules to administer the Act, including rules for the following:

- Uniform applications and other forms for dissemination to and use by local units of government.
- Procedures for the collection of application fees and fireworks safety fees.
- Enforcement of regulatory duties.
- Enforcement of age limitations.

The rules must conform to specific codes developed by the NFPA, except for any code provision that conflicts with the Act.

The rules promulgated under Chapter 34 of the Michigan Penal Code pertaining to the display of articles pyrotechnic and display fireworks that were in effect on the Act's effective date, will remain in effect until rescinded or otherwise changed according to law.

Delegation

The Department may delegate authority and responsibility to carry out inspections and other duties under the Act.

Report to the Legislature

By October 1, 2013, the State Fire Marshal must give the Legislature a report that details the costs associated with the inspection of retail locations under the Act. The Act states, "It is the intent of the legislature that the information described in this subdivision be used to determine the consumer fireworks certification fee for each retail location...beginning January 1, 2014."

The report also must detail the types and numbers of violations of the Act.

**Table 2
Civil Penalties**

Violation	Fine
Failure to Display Certificate	\$100 per day
Noncompliance with Retail Sale Conditions	\$2,500 per day
Noncompliance with Insurance Requirement	\$5,000 maximum
Sale to a Minor	\$500 maximum
Use on Property without Permission	\$500 maximum

**Table 3
Criminal Penalties**

Violation	Maximum Fine	Maximum Term
Noncompliance with Certificate Requirement	\$5,000 per day	2 years
Failure to Collect & Remit Safety Fee	\$10,000	N/A
Violation of Smoking Prohibition	\$1,000	1 year
Other Violation (except as provided below)	\$1,000	30 days
Other Violation - Property Damage	\$5,000	90 days
Other Violation - Serious Impairment of Body Function	\$5,000	5 years
Other Violation - Death	\$10,000	1 year

**Table 4
Sentencing Guidelines**

Violation	Category	Class	Statutory Maximum
Consumer fireworks certificate violation	Public safety	G	Two years
Violation causing serious impairment of a body function	Public safety	E	Five years
Violation causing death	Public safety	C	15 years

MCL 28.451-28.471 (H.B. 4293)
777.11b (S.B. 194)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

House Bill 4293 will likely have a positive effect on State revenue. The bill will generate new revenue from an annual \$1,000 fireworks certificate fee imposed on permanent retail sales facilities. A \$600 annual fee will be placed on nonpermanent structures. The bill also establishes a fireworks safety fee of 6% of the retail price of fireworks sold in the State. These new fees will generate an unknown amount of revenue to be deposited in the Fireworks Safety Fund, which the bill creates.

In addition, the new civil and criminal penalties, and sentencing guidelines, will have an indeterminate fiscal impact on State

and local government. There are no data to indicate how many individuals will be convicted of or found responsible for violations. An offender convicted of the Class G offense will receive a sentencing guidelines minimum sentence range of 0-3 months to 7-23 months. An offender convicted of the Class E offense will receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months. An offender convicted of the Class C offense will receive a sentencing guidelines minimum sentence range of 0-11 months to 62-114 months. Local governments will incur the costs of incarceration in local facilities, which vary by county. The State will incur the cost of felony probation at an annual average cost of \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$34,000.

Additional revenue from civil infraction fines and penal fines will benefit public libraries.

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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.