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House Bill 4293 (Substitute H-8 as passed by the House)
Senate Bill 194 (as introduced 2-22-11)
Sponsor: Representative Harold L. Haugh (H.B. 4293)
Senator Rick Jones (S.B. 194)
House Committee: Regulatory Reform (H.B. 4293)
Senate Committee: Regulatory Reform

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CONTENT

House Bill 4293 (H-8) would repeal Chapter 34 (Fireworks) of the Michigan Penal Code, and create 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 Bureau of Fire Services; and 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 the Bureau 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 the Bureau 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 would amend the Code of Criminal Procedure to include in the sentencing guidelines certain violations of the proposed Michigan Fireworks Safety Act (Table 4).

Senate Bill 194 is tie-barred to Senate Bill 193, which also proposes the Michigan Fireworks Safety Act.

House Bill 4293 (H-8) would take effect on January 1, 2012. The bill is described in detail below.

Fireworks Definitions

"Firework" or "fireworks" would mean 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 would consist of consumer fireworks, low-impact fireworks, articles pyrotechnic, display fireworks, and special effects.

"Consumer fireworks" would mean 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 would not include low-impact fireworks.

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

"Articles pyrotechnic" would mean 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 bill.

"Display fireworks" would mean 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" would mean 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 bill would prohibit a person from selling consumer fireworks unless the person annually obtained a consumer fireworks certificate from the Bureau of Fire Services. If a person knew, or should have known,

that he was required to comply with this requirement and failed or neglected to do so, the person would 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 was in violation, or both.

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

Until January 1, 2014, the application would have to be accompanied by a fee of \$1,000 for a certificate for each retail location that was a permanent building or structure, or \$600 for each retail location that was not a permanent building or structure. (As described below, the bill states a legislative intent that the fee be based on the costs of inspecting retail locations, beginning January 1, 2014.)

Certificate fees would have to be deposited in the proposed Fireworks Safety Fund.

A certificate would be valid from the date of issue until April 30 of the year after it was issued. A person could renew a certificate for a retail location by applying in the same manner as described above. The Bureau, however, could not issue a renewal certificate unless the Department of Treasury confirmed that the applicant properly remitted all of the fireworks safety fees and sales taxes required to be paid in the preceding year.

Within 30 days after an application was submitted, the Bureau would have to issue or deny issuance of a certificate to the applicant and, if issuance were denied, indicate to the applicant the reason. If the Bureau denied issuance, the applicant could cure any defect of the application within 45 days without paying an additional fee. The Bureau could not unreasonably delay or deny an application.

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

The Bureau could not issue a certificate to a person who knowingly failed to collect or remit a fireworks safety fee, or to an individual who had been convicted of a felony involving theft, fraud, or arson.

A certificate holder would have to display the certificate prominently in the appropriate retail location. A person who violated this requirement would be responsible for a civil fine of \$100. Each day that the certificate was not displayed would be a separate violation.

Sale of Consumer Fireworks

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

- The retail location satisfied the applicable requirements of National Fire Prevention Association (NFPA) codes not in conflict with the proposed Act.
- Beginning one year after the Act's effective date, a permanent building or structure would have to be equipped with a fire suppression system in compliance with NFPA 1124.
- The retailer at that location was licensed under the General Sales Tax Act.
- The retailer had a valid Federal taxpayer ID number issued by the Internal Revenue Service (unless the retailer were a sole proprietorship).

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

"Retailer" would mean a person who sells consumer fireworks or low-impact fireworks for resale to an individual for ultimate use. "Retail location" would mean a facility listed under a section of NFPA 1124.)

A person who knew or should have known that he or she was required to comply with these requirements, and failed or neglected to do, would be responsible for a civil fine of \$2,500 for each violation. Each day of noncompliance would constitute a separate violation.

During periods when consumer fireworks were sold, each retail location selling them would have to be added as an additional insured, or public liability and product

liability insurance coverage would have to be obtained and maintained, in an amount not less than \$10.0 million per occurrence. A person who knew or should have known that he or she was subject to this requirement and failed or neglected to comply, would 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 would be subject to a user fee, known as the fireworks safety fee. A person who acquired consumer or low-impact fireworks in a retail transaction would be liable for the fee and, except as otherwise provided, would have to pay it to the retailer as a separate added amount to the consideration in the transaction. The retailer would have to collect the fee as an agent for the State. The fee would have to be deposited in the proposed Fireworks Safety Fund.

Except as otherwise provided, the fee would 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 would be imposed before any taxes were applied, as shown in Table 1.

**Table 1
Proposed 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 was \$1.04 or more, the fee would be 6% of that income as determined before any taxes were applied.

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

A retailer would have to remit the fee to the Department of Treasury, and hold the fees collected in trust for the State until remitted.

The retailer would be personally liable for the payment of the fee money.

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

Fireworks Safety Fund

The Fund would be created within the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund. The State Treasurer would have to direct the Fund's investment, and credit to it any interest and earnings. Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse to the General Fund.

The Bureau would have to spend money from the Fund to carry out the purposes of the proposed Act, the Fire Prevention Code, and the Firefighters Training Council. Of the first \$1.0 million collected in the Fund each fiscal year, the Fire Marshal could 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 proposed Act.

Restrictions on Possession & Use

A person could 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 would be responsible for a State civil infraction and could be ordered to pay a civil fine of up to \$500.

Consumer fireworks could not be sold to a minor (an individual under 18 years old). A person who violated this prohibition would be responsible for a State civil infraction and could be ordered to pay a civil fine of up to \$500.

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

A person who violated the smoking prohibition under a section of NFPA 1124 would 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 proposed Act, a person who knowingly, intentionally, or recklessly violated the Act would 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 damaged 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 caused 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 caused 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 was found guilty would have to reimburse the appropriate governmental agency for the costs of storing seized fireworks that the agency confiscated for a violation.

(Chapter 34 of the Penal Code provides that any person, firm, copartnership, or corporation who commits a fireworks violation is guilty of a misdemeanor.)

Fireworks Wholesaler

A wholesaler would have to maintain a resident agent who resided in Michigan and who had a physical address in Michigan. A post office box would not be a physical address for this purpose.

"Wholesaler" would mean a person who sells consumer fireworks or low-impact fireworks to a retailer or any other person for resale. The term would not include a person who sells only display fireworks or special effects.

Website; Low-Impact Retail Registry

The Bureau would be required to establish and maintain an internet website to protect Michigan residents who purchase, use, or transport fireworks. The website would have to list every person and entity that was issued a consumer fireworks certificate.

The website also would have to include a low-impact fireworks retail registry, which would be subject to all of the following:

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

A person would be prohibited from selling low-impact fireworks unless he or she registered at least 10 days before selling the fireworks in each calendar year.

Permitted Acts

The proposed Act would 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 would 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 had a permit to possess, store, and sell explosives from the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives.

The Act would 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 would not prohibit interstate wholesalers from selling, storing, using, transporting, or distributing fireworks.

(Agricultural and wildlife fireworks would be 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 could 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 proposed Act.

A local unit could enact an ordinance regulating the ignition, discharge, and use of consumer fireworks, but the ordinance could not regulate the use of consumer fireworks on the day before, the day of, or the day after a national or religious 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, could 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 proposed Act were complied with. After a permit had been granted, sales, possession, or transportation of fireworks could be made only for the purposes described in the permit. A permit could not be transferred or issued to a minor.

Before a permit for articles pyrotechnic or a display fireworks ignition was issued, the applicant would have to 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 could not be issued to a nonresident person for ignition of articles pyrotechnic or display fireworks in the State until the person had 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 could be served.

Before granting permits, the local governing authority would have to 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 identified a firework that was in violation of the proposed Act would have to secure the firework and immediately notify the Bureau of the alleged violation. The Bureau or law enforcement agency would have to investigate the alleged violation within a reasonable time.

If the Bureau or law enforcement agency determined that a violation had occurred (except the sale of low-impact fireworks by an unregistered person), the Bureau or agency could seize the firework as evidence of the violation. The evidence would have to 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 were found guilty, responsible, or liable for the violation.

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

The person from whom fireworks were seized would have to pay the actual costs of storage and disposal.

Rules

The Bureau would have to promulgate rules to administer the proposed 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 would have to conform to specific codes developed by the NFPA, except for any code provision that conflicted 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 effective date of the proposed Act, would remain in effect until rescinded or otherwise changed according to law.

Bureau Delegation

The Bureau could delegate authority and responsibility to carry out inspections and other duties under the proposed Act.

Report to the Legislature

By October 1, 2013, the State Fire Marshal would have to give the Legislature a report that detailed the costs associated with the inspection of retail locations under the proposed Act. The bill 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 would have to detail the types and numbers of violations of the Act.

**Table 2
Proposed 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
Proposed 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
Proposed Sentencing Guidelines**

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

MCL 777.11b (S.B. 194)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

House Bill 4293 (H-8) would likely have a positive effect on State revenue. The bill would generate new revenue from an annual \$1,000 fireworks certificate fee imposed on permanent retail sales facilities. A \$600 annual fee would be placed on nonpermanent structures. The bill also would establish a Fireworks Safety Fee of 6% on the retail price of fireworks sold in the State. These new fees would generate an unknown amount of revenue to be

deposited in the Fireworks Safety Fund, which the bill would create.

In addition, the proposed civil and criminal penalties would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many individuals would be convicted of or found responsible for violations. An offender convicted of the Class G offenses under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 7-23 months. An offender convicted of the Class E offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would 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 would 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.