

# Legislative Analysis



## MICHIGAN FIREWORKS SAFETY ACT

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**House Bill 6410**  
**Sponsor: Rep. Tonya Schuitmaker**

**House Bill 6412**  
**Sponsor: Rep. Bruce Caswell**

**House Bill 6411**  
**Sponsor: Rep. Kevin Elsenheimer**

**House Bill 6413**  
**Sponsor: Rep. Rick Shaffer**

**Committee: Government Operations**

**Complete to 9-11-06**

### A SUMMARY OF HOUSE BILLS 6410 - 6413 AS INTRODUCED 9-5-06

House Bill 6410 would establish the "Michigan Fireworks Safety Act," a comprehensive new law to regulate the purchase, possession, sale, and use of fireworks; provide criminal penalties for violations of the act; impose a five percent fee on the retail sale of fireworks; and establish a Fireworks Safety Fund within the Treasury Department.

House Bill 6411 would amend the Michigan Penal Code (MCL 750.411) to require hospitals, pharmacies, physicians, and surgeons to report injuries to persons caused by fireworks or pyrotechnics to appropriate local law enforcement officials in the same way they are currently required to report injuries caused by knives, guns, pistols, and other deadly weapons.

House Bill 6412 would amend the Code of Criminal Procedure (MCL 777.11c) to put new fireworks-related felonies into sentencing guidelines.

House Bill 6413 would repeal Chapter XXXIX of the Michigan Penal Code (MCL 750.243a to 750.243e), which contains the existing Penal Code provisions relating to fireworks.

House Bills 6411-6413 are tie-barred to House Bill 6410. A more complete description of the proposal follows.

#### **House Bill 6410**

Definition of Fireworks. "Firework" or "Fireworks" means "any composition or device designed for the purpose of producing a visible or audible effect of combustion, deflagration, or detonation. Fireworks consist of consumer fireworks, items referenced in section 7(1), and special fireworks." The bill excludes the following items from its definition of fireworks: model rockets; toy pistol caps; emergency signal flares; matches; fixed ammunition for firearms; ammunition components intended for use in firearms,

muzzle loading cannons, or small arms; indoor pyrotechnics special effects material; M-80's, cherry bombs, silver salutes, and any device banned by the federal government.

Categories of fireworks. The bill divides fireworks into the categories of "special fireworks," "consumer fireworks," and Section 7(1) items.

**"Special fireworks"** means "fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation, including firecrackers containing more than 130 milligrams of explosive composition, aerial shells containing more than 40 grams of pyrotechnic composition, and other exhibition display items that exceed the limits for classification as consumer fireworks."

**"Consumer fireworks"** means "a small firework that is designed primarily to produce visible effects by combustion and that is required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States Consumer Products Safety Commission under 16 CFR 1507. Consumer firework also may include small devices designed to produce an audible effect, such as whistling devices, devices containing 50 milligrams or less of explosive composition, and aerial devices containing 130 milligrams or less of explosive composition. Propelling or expelling charges consisting of a mixture of charcoal, sulfur, and potassium nitrate are not considered as designed to produce an audible effect. Consumer fireworks include all of the following:

- (i) Aerial devices, which include sky rockets, missile type rockets, helicopter or aerial spinners, Roman candles, mines, and shells.
- (ii) Ground audible devices, which include firecrackers, salutes, and chasers.
- (iii) Firework devices containing combinations of 2 or more of the effects described in subparagraphs (i) and (ii)."

"Consumer fireworks" does not include Section 7(1) items, discussed next, and "wire sparklers that contain no magnesium and less than 100 grams of composition per item."

**Section 7(1) items** consist of:

- Dipped sticks or wire sparklers. Total pyrotechnic composition may not exceed 100 grams per item. Dipped sticks and wire sparklers containing chlorate or perchlorate salts may not exceed 5 grams in total composition per item.
- Cylindrical fountains.
- Cone Fountains.
- Illuminating torches.
- Wheels.
- Ground spinners.
- Flitter sparklers.
- Snakes or glow worms.
- Smoke devices.
- Trick noisemakers, including party poppers, booby traps, snappers, trick matches, cigarette loads, and auto burglar alarms

Public fireworks display permits. The bill would require a municipality, fair association, amusement park, organization, or group to obtain a permit for a supervised public display of fireworks. Not more than five days before the planned display, the sponsor would be required to submit a permit application on an approved form to the local unit of government closest to the location where the fireworks display is to be held. If a local unit of government denies a permit, it must issue the denial in writing before the planned date of the fireworks display. Fireworks display permits are not transferable.

The application must include the appropriate fee as determined by the Bureau of Fire Safety and the following information in writing:

- The name of a competent operator who is to operate the fireworks display.
- A brief resume of the operator who is to officiate at the display.
- Proof that the fire chief of the municipality where the display is to be held has approved the qualified operator, in the manner and form required by the Bureau of Fire Safety.

A person with a prior conviction under a Michigan fireworks law would be barred from operating a public fireworks display for at least one year after the conviction.

The display would be required to be located and operated in a manner approved by the local fire chief, after property inspection, as not hazardous to persons or property.

Special fireworks. The possession, transportation, or delivery of special fireworks without a permit would be a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$5,000, or both.

Non-prohibited fireworks sales and uses. The bill expressly does not prohibit any of the following:

- A resident wholesaler, manufacturer, importer, or distributor from (1) selling at wholesale, fireworks not prohibited by the bill; or (2) selling consumer fireworks to consumers for use on the purchaser's property, or on the property of another person who has given permission, or at a special discharge location.
- The use of fireworks by railroads or other transportation agencies for signals or illumination.
- The sale or use of blank cartridges for (1) use by a show or theater; (2) signal or ceremonial purposes in athletics or sports; or (3) use by military organizations.
- The intrastate sale of fireworks not approved for sale in this state between interstate wholesalers.
- The possession, sale, or disposal of fireworks incidental to the public display of Class B fireworks by wholesalers or other persons who possess a permit to possess, store, and sell Class B explosives from the Bureau of Alcohol, Tobacco, Firearms and Explosives of the United States Department of Justice.
- The use of indoor pyrotechnics special effects material before an indoor or outdoor proximate audience.

A "resident wholesaler, importer, or distributor" means a person who (1) is a resident of Michigan; (2) possesses for storage or resale fireworks approved or not approved for sale in Michigan; (3) is engaged in the interstate sale of fireworks as an essential part of a business that is located in a permanent structure open at least six months each year; and (4) has a certificate of compliance issued by the State Fire Marshal. Certificates of compliance are discussed below.

Fireworks sales from tents. A retailer may sell consumer fireworks and Section 7(1) items from a tent under the following conditions:

- The tent is not larger 1,500 square feet.
- There is only one tent per registration.
- The tent is not located within 100 feet of a permanent structure.
- Vehicles are not parked within 20 feet of the tent.
- The tent is fire retardant.
- The sales site complies with applicable local zoning and land use rules.
- Sales from the tent do not exceed 45 days in a year.
- The weight of consumer fireworks in a tent does not exceed 3,000 gross pounds of consumer fireworks.
- The retailer holds a valid registration
- A retailer that legally operated a tent in 2006 may continue tent operations in [2007] and following years. A registration is required for operation in 2007 and following years. In this subsection, retailer includes a resident wholesaler who supplied consumer fireworks to an applicant for a tent registration in 2006.

The State Fire Marshal or an employee of the Bureau of Fire Services will be required to inspect tents and structures in which fireworks are sold. The Fire Marshal may, subject to policies and procedures, delegate this duty to a fire department with jurisdiction over the tent or structure.

A retailer who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$5,000, or both.

Fireworks sales from structures other than tents. A retailer may sell consumer fireworks and Section 7(1) items only from a structure that meets requirements established by the Bureau of Fire Services. In addition, the following conditions must be met:

- The structure is a structure in which consumer fireworks are sold and stored.
- The sales site complies with applicable local zoning and land use rules.
- The weight of consumer fireworks in the structure is not more than 3,000 gross pounds.
- The retailer holds a valid registration.
- A retailer that sold consumer fireworks and operated from a structure with a registration in 2006 may continue operation in the structure in 2007 and in following years. A registration is required for operation in 2007 and following years.

The State Fire Marshal or an employee of the Bureau of Fire Services is required to inspect tents and structures in which fireworks are sold. The Fire Marshal may, subject to policies and procedures, delegate this duty to a fire department with jurisdiction over the tent or structure.

Special quantity provision for Section 7(1) items. The act does not limit the quantity of Section 7(1) items that may be sold from any structure that complied with a statute or rules in effect before the effective date of the bill.

State Fire Marshal's authority to stop unlawful shipments and sales of fireworks; criminal penalties. The State Fire Marshal will remove, at the owner's expense, all fireworks or combustibles possessed, transported, or delivered in violation of the law.

The Fire Marshal will stop the shipments and sales of fireworks, novelties, and trick noisemakers unless, before shipment into this state or sale, the manufacturer, wholesaler, importer, or distributor submits all of the following to the State Fire Marshal:

- A complete description of each item proposed to be shipped into the state.
- A written certification that the items are manufactured in accordance with the act.
- An annual registration fee of \$1,000 collected by the State Fire Marshall and deposited in the Fireworks Safety Fund.

Required lists of customers selling Section 7(1) items. A manufacturer, wholesaler, importer, or distributor of fireworks, novelties, and trick noisemakers shall submit a list to the State Fire Marshal by June 1 of each year containing the name and address of each retail location of each of the customers of the manufacturer, wholesaler, importer, or distributor at which Section 7(1) items will be sold.

Certificates of compliance. If upon inspection the State Fire Marshal finds that the law has been complied with, an annual certificate of compliance shall be issued to the manufacturer, wholesaler, importer, or distributor. An annual certificate of compliance will not be granted for an application submitted after June 15 of a year. A certificate will expire on December 31 of the year of issuance. Each manufacturer, wholesaler, importer, or distributor is required to obtain a certificate of compliance. The certificate is not transferable except to a subsequent owner or operator of a business at the same location in accordance with the policies and guidelines of the state fire marshal. A certified copy of the certificate of compliance must be posted in each location where the items are offered for sale to the public.

If upon inspection the State Fire Marshal finds that the act has not been complied with, the State Fire Marshal will not issue a certificate of compliance and will state the reasons for the refusal. A copy of the order denying the issuance of a certificate will be forwarded to the manufacturer, wholesaler, importer, or distributor.

The State Fire Marshal may revoke the certificate of compliance of any certificate holder who has violated the law.

Manufacturers, wholesalers, importers or distributors are not allowed to sell at wholesale or ship into Michigan fireworks, novelties, or trick noisemakers without a valid certificate of compliance.

Required quantity labeling. All fireworks, novelties, and trick noisemakers shipped into Michigan, or manufactured or sold in Michigan, must have the exact number of pieces in the container marked on the container.

Criminal penalty for failure to obtain a certificate of compliance or violating labeling rules. A person who violates the provisions requiring certificates of compliance or quantity labeling is guilty of a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$5,000, or both.

Permits for retail sales of fireworks from temporary stands; criminal penalties. A retailer selling Section 7(1) items at one or more temporary stands must obtain a fireworks stand permit from the Bureau of Fire Services. A person who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$5,000, or both.

An application for a fireworks stand permit must be made before June 1 each year in the manner required by the Bureau of Fire Services. At a minimum, the application will require:

- The retailer's retail merchant certificate number or proof of application for a certificate number.
- The location of each retail sales stand.

The Bureau of Fire Services will have seven days after receipt of an application to issue the permit or notify the applicant of the denial of the permit.

The Bureau of Fire Services will determine the fee for a fireworks stand permit. Permits will be valid for one year from the date of issuance, and must be posted at the stand so that it is easily seen by the public. The issuance of the permit does not constitute approval of the fireworks offered for sale by the retailer. The retailer is responsible for determining that all fireworks offered for sale are lawful.

Other rules pertaining to fireworks stands:

- Salespeople must be at least 16 years old to sell Section 7(1) items. [Salespeople must be at least 18 years old to sell consumer fireworks.]
- Retailers may not sell either consumer fireworks or Section 7(1) items to persons under the age of 18.
- Fireworks sales are not allowed to be sold from motor vehicles.
- Only Section 7(1) items may be sold from or stored at a temporary stand. Other types of fireworks may not be sold from temporary stands.

Recordkeeping requirements for sales of special fireworks by interstate wholesalers; criminal penalties. Each interstate wholesaler must keep a record of each sale of special fireworks, including the purchaser's name, address and the date of the sale. Each record must be kept for at least three years and may be inspected by the Fire Marshal. A person who violates the recordkeeping provision is guilty of a misdemeanor punishable by imprisonment for not more than one year or a fine of not less than \$5,000, or both.

Retailer requirements. A retailer may not sell consumer fireworks unless the retailer has filed an annual application with the Bureau of Fire Services for each sales location and paid the applicable registration fee. The application fee would be \$1,000 for the first location; \$500 for each additional sales location in a tent; and \$200 for each additional sales location in a structure.

Upon receipt of a completed application form, the accompanying fee, and any required affidavit, the Bureau of Fire Services will issue a certificate of compliance to the retailer for each sales location.

A person who has previously sold consumer fireworks from a structure or tent who is seeking a certificate of compliance shall submit the following with the application:

- An affidavit executed by an appropriate party that consumer fireworks were previously sold from the same location as of a specified date.
- Proof of sales of consumer fireworks from that location.

A person is not allowed to sell consumer fireworks at retail if a certificate of compliance from the Bureau of Fire Services has not been issued for the location showing proper registration. A violation of this subsection is a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$5,000, or both.

Certificates of compliance are not transferable except to a subsequent owner or operator of a business at the same location in accordance with the policies and guidelines of the State Fire Marshal.

Fireworks safety fees and Fireworks Safety Fund. A fireworks safety fee is imposed on retail sales of fireworks. The retail purchaser of fireworks is liable for the fee and must pay the fee to the retailer. The retailer will collect the fee as agent for the state. Generally speaking, the fee is five percent of gross retail income from fireworks. The retailer has a duty to submit the fees to the Department of Treasury, must hold the fireworks safety fees in trust for the state, and is personally liable for the payment of the fee money.

The bill creates a Fireworks Safety Fund within the State Treasury. The State Treasurer may deposit money or other assets from any source into the Fund and direct the investment of the Fund. The Fund will be credited with interest and earnings from its investments. Money in the Fund at the close of the fiscal year remains in the Fund and does not lapse to the General Fund. Funds may be expended, upon appropriation, only to carry out the purposes of the bill.

Administrative rules. The Bureau of Fire Safety is authorized to promulgate rules under the Administrative Procedures Act of 1969 to implement the Fireworks Safety Act, including, but not limited to: (1) establishing fees for permits and certificates; (2) creating uniform applications and other forms for use by local units of government; (3) establishing the criteria to be used by local units of government and fire chiefs in granting or denying permits; (4) developing procedures for the collection of application fees and fireworks safety fees; (5) enforcing regulatory duties; (6) planning for the enforcement of age limits; (7) establishing building standards and other specifications for fireworks storage; and (8) any other matter that will assist in enforcement of the law.

Setting off fireworks at improper locations. A person must not ignite, discharge, or use consumer fireworks anywhere other than at a special discharge location, on the person's own property, or on the property of a person who has given permission for the fireworks. Except as otherwise provided, a person who violates this subsection has committed a state civil infraction and is subject to a fine of up to \$500 for a first violation. A person who commits a second or subsequent violation within five years of a prior violation is guilty of a misdemeanor punishable by imprisonment for up to 60 days or a fine of not more than \$500, or both.

Use of fireworks by minors. A person under the age of 18 must not possess or use a firework [unless] a person 18 years of age or older is present and responsible. Except as otherwise provided, a person who violates this subsection has committed a state civil infraction and is subject to a fine of not more than \$500.

Time of day restrictions. A person must not set off consumer fireworks before 9 a.m. or after 11 p.m. On Saturdays, Sundays, and legal holidays, fireworks may be set off until 12 midnight. Except as otherwise provided, a person who violates this subsection has committed a state civil infraction and is subject to a fine of not more than \$500 for a first violation. A person who commits a second or subsequent violation within five years of a prior violation is guilty of a misdemeanor punishable by imprisonment for up to 60 days or a fine of not more than \$500, or both.

Violations resulting in property damage. If a person's violation of the fireworks law causes damage to the property of another person, the person is guilty of a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$5,000, or both.

Violations resulting in serious impairment of a body function. If a person's violation of the fireworks law causes serious impairment of a body function of another person, as that term is defined in the Michigan Vehicle Code, the person is guilty of a felony punishable by imprisonment for not more than two years or a fine of not more than \$2,000, or both.

Violations resulting in death of another person. If a person's violation of the fireworks law causes the death of another person, the person is guilty of a felony punishable by imprisonment for not more than five years or a fine of not more than \$5,000

Failure to collect or remit fireworks safety fees. Failure to collect or remit the required fireworks safety fees on retail transactions is a felony punishable by imprisonment for not more than five years or a fine of not more than \$5,000, or both.

**FISCAL IMPACT:**

The bill's fiscal impact on the Department of Labor and Economic Growth includes an increase in revenue from the retail transaction fireworks safety fee of 5 percent and a \$1,000.00 annual registration fee imposed on manufacturers, wholesalers, importers and distributors of fireworks in Michigan. In addition, the Department of Labor and Economic Growth's Bureau of Fire Services is authorized to levy an application fee on any organization, including municipalities, seeking to publicly display fireworks. Expenditures are also expected to increase for both local units of government which would process Bureau of Fire Services applications for public fireworks displays, and for the Bureau of Fire Services, which would be responsible for enforcing the provisions of this bill. However, at this time, the amount of these future revenues and expenditures is not determinable.

The bill's fiscal impact on state and local criminal justice systems would depend on how it affected numbers of and sentences for misdemeanor and felony convictions. Increased felony convictions could increase correctional costs for the state and local units of government. Costs of felony probation supervision are borne by the state; costs of parole and probation supervision are about \$2,000 per supervised offender annually. A convicted felon may be sentenced to incarceration in state prison, at an average cost of about \$30,000 per prisoner per year, or to the county jail, the cost of which varies by county. Increased misdemeanor convictions could increase correctional costs for local units of government, as costs of misdemeanor probation supervision or jail incarceration are borne by local units of government. Any increases in penal fine revenue could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

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