

HOUSE BILL No. 5917

March 20, 2008, Introduced by Rep. Farrah and referred to the Committee on Regulatory Reform.

A bill to revise, consolidate, and codify the laws relating to fireworks; to regulate the purchase, possession, sale, and use of fireworks; to provide for penalties and remedies; to prescribe the powers and duties of certain state agencies; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan fireworks safety act".

3 Sec. 2. As used in this act:

4 (a) "Agricultural and wildlife fireworks" means fireworks
5 devices distributed to farmers, ranchers, and growers through a
6 wildlife management program administered by the United States
7 department of the interior or the department of natural resources
8 of this state.

1 (b) "APA standard 87-1" means the 2001 APA standard 87-1
2 published by the American pyrotechnics association of Bethesda,
3 Maryland.

4 (c) "Articles pyrotechnic" means pyrotechnic devices for
5 professional use that are similar to consumer fireworks in
6 chemical composition and construction but not intended for
7 consumer use, that meet the weight limits for consumer fireworks
8 but are not labeled as such, and that are classified as UN0431 or
9 UN0432 under 49 CFR 172.101.

10 (d) "Bureau" means the bureau of fire services created under
11 section 1b of the fire prevention code, 1941 PA 207, MCL 29.1b.

12 (e) "Consumer fireworks" means small fireworks devices that
13 are designed to produce visible effects by combustion and that
14 are required to comply with the construction, chemical
15 composition, and labeling regulations promulgated by the United
16 States consumer product safety commission under 16 CFR parts 1500
17 and 1507 and that are listed in APA standard 87-1.

18 (f) "Consumer fireworks certificate" or "certificate" is a
19 certificate issued under section 5.

20 (g) "Consumer fireworks retail sales facility" or "CFRSF"
21 means a permanent structure that is used primarily for the retail
22 display and sale of consumer fireworks and low-grade fireworks.

23 (h) "Display fireworks" means large fireworks designed
24 primarily to produce visible or audible effects by combustion,
25 deflagration, or detonation and includes, but is not limited to,
26 salutes containing more than 2 grains (130 milligrams) of
27 explosive materials, aerial shells containing more than 40 grams

1 of pyrotechnic compositions, and other display pieces that exceed
2 the limits of explosive materials for classification as consumer
3 fireworks and are classified as fireworks UN0333, UN0334, or
4 UN0335 under 49 CFR 172.101 and includes fused set pieces
5 containing components that exceed 50 milligrams of salute powder.

6 (i) "Distributor" means a person who sells fireworks to
7 wholesalers and retailers for resale.

8 (j) "Explosive composition" means a chemical or mixture of
9 chemicals that produces an audible effect by deflagration or
10 detonation when ignited.

11 (k) "Firework" or "fireworks" means any composition or
12 device, except for a starting pistol, a flare gun, or a flare,
13 designed for the purpose of producing a visible or audible effect
14 by combustion, deflagration, or detonation. Fireworks consist of
15 consumer fireworks, low-grade fireworks, articles pyrotechnic,
16 display fireworks, and special effects.

17 (l) "Interstate wholesaler" means a person who is engaged in
18 interstate commerce selling fireworks.

19 (m) "Low-grade fireworks" means 1 or more of the following:

20 (i) Ground and handheld sparkling devices as that phrase is
21 defined under APA standard 87-1 3.1.

22 (ii) Novelties as defined under APA standard 87-1 3.2.

23 (iii) Toy caps as defined under APA standard 87-1 3.3.

24 (n) "Local unit of government" means a city, municipality,
25 township, village, or county.

26 (o) "Manufacturer" means a person engaged in the manufacture
27 of fireworks.

1 (p) "Minor" means an individual who is under 18 years of
2 age.

3 (q) "NFPA" means the national fire protection association.

4 (r) "Permanent building or structure" is a building or
5 structure that is affixed to a foundation on a site and that has
6 fixed utility connections and that is intended to remain on the
7 site for more than 180 consecutive calendar days.

8 (s) "Person" means an individual, an association, an
9 organization, a limited liability company, or a corporation.

10 (t) "Pyrotechnic composition" means a mixture of chemicals
11 that produces a visible or audible effect by combustion rather
12 than deflagration or detonation, and that will not explode upon
13 ignition unless severely confined.

14 (u) "Retailer" means a person who purchases consumer
15 fireworks and low-grade fireworks for resale to consumers.

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

22 (w) "State fire marshal" means the state fire marshal
23 appointed under section 1b of the fire prevention code, 1941 PA
24 207, MCL 29.1b.

25 (x) "Wholesaler" means any person who sells consumer
26 fireworks and low-grade fireworks to a retailer or any other
27 person for resale and any person who sells articles pyrotechnics,

1 display fireworks, and special effects to a person licensed to
2 possess and use those devices.

3 Sec. 3. This act does not prohibit any of the following:

4 (a) A wholesaler, retailer, manufacturer, importer, or
5 distributor from the sale, storage, use, transportation, and
6 distribution of consumer fireworks and low-grade fireworks.

7 (b) The use of fireworks by railroads or other
8 transportation agencies for signal purposes or illumination.

9 (c) The use of agricultural or wildlife fireworks.

10 (d) The sale or use of blank cartridges for any of the
11 following:

12 (i) A show or play.

13 (ii) Signal or ceremonial purposes in athletics or sports.

14 (iii) Use by military organizations.

15 (e) The possession, sale, or disposal of fireworks
16 incidental to the public display of fireworks by wholesalers or
17 other persons who possess a permit to possess, store, and sell
18 explosives from the bureau of alcohol, tobacco, firearms, and
19 explosives of the United States department of justice.

20 (f) Interstate wholesalers from the sale, storage, use,
21 transportation, or distribution of fireworks.

22 Sec. 4. Except as provided in sections 15 and 16, a local
23 unit of government shall not enact or enforce an ordinance or
24 regulation pertaining to or in any manner regulating the sale,
25 storage, transportation, or distribution of low-grade fireworks
26 under this act.

27 Sec. 5. (1) A retailer shall not sell consumer fireworks or

1 low-grade fireworks unless the retailer annually obtains and
2 maintains a consumer fireworks certificate from the bureau as
3 provided in this section for each location from which consumer
4 fireworks or low-grade fireworks are to be sold.

5 (2) An application for a consumer fireworks certificate
6 under this section shall meet all of the following requirements:

7 (a) The application is submitted no later than March 1 of
8 each year in which consumer fireworks are to be sold.

9 (b) The application lists the name and address of each
10 location from which consumer fireworks are to be sold.

11 (c) The application includes a registration fee of \$3,500.00
12 for each CFRSF location.

13 (3) A shipping company shall not ship consumer fireworks or
14 low-grade fireworks into this state unless it first obtains and
15 maintains a consumer fireworks certificate under this section and
16 pays the \$3,500.00 registration fee.

17 (4) Not more than 30 days after an application is submitted
18 to the bureau under this section, the bureau shall issue or deny
19 issuance of a consumer fireworks certificate to the retailer or
20 out-of-state shipper and, if issuance is denied, shall indicate
21 to the applicant the reason for denial.

22 (5) If the bureau denies issuance of a consumer fireworks
23 certificate under this section, the applicant may cure any defect
24 of the application within 20 days after the denial without paying
25 an additional fee. The bureau shall not unreasonably delay or
26 deny an application under this section.

27 (6) A consumer fireworks certificate is not transferable,

1 except to a subsequent owner or operator of a business at the
2 same location.

3 (7) A retailer shall not sell consumer fireworks at a
4 location for which a consumer fireworks certificate has not been
5 issued.

6 (8) A retailer who violates subsection (1) or (7) is guilty
7 of a misdemeanor punishable by imprisonment for not more than 2
8 years or a fine of not more than \$5,000.00 for each day the
9 violation continues, or both.

10 (9) An out-of-state shipper that violates subsection (3) is
11 guilty of a misdemeanor punishable by a fine of not more than
12 \$1,000.00 for each shipment made without complying with
13 subsection (3).

14 Sec. 6. (1) A retailer shall only sell consumer fireworks
15 from a consumer fireworks retail sales facility that meets all of
16 the following criteria:

17 (a) A CFRSF shall comply with the requirements of this act
18 and with the requirements of NFPA 1124 that are not in conflict
19 with the provisions of this act.

20 (b) A CFRSF shall be located not less than 300 feet from
21 another CFRSF.

22 (c) A CFRSF shall be equipped with an approved monitored
23 fire and intrusion alarm system.

24 (d) The retail sales area of a CFRSF to which the public may
25 be admitted shall be not less than 3,000 or more than 12,000
26 square feet.

27 (e) Any storage attached to a retail sales area of a CFRSF

1 shall be separated from the retail sales area by an appropriately
2 rated fire wall.

3 (f) A CFRSF shall be equipped with an approved fire
4 suppression system regardless of the size of the CFRSF in
5 compliance with NFPA 1124.

6 (g) Aisles in a CFRSF shall be not less than 60 inches wide.

7 (h) A CFRSF shall maintain public liability and product
8 liability insurance coverage of not less than \$2,000,000.00.

9 (i) A CFRSF shall be equipped with not less than 3 exit
10 doors in compliance with NFPA 1124.

11 (j) Minors shall not be left unattended in strollers or
12 shopping carts in a CFRSF.

13 (k) Storage of fireworks at the site of a wholesaler or
14 dealer shall follow the distance requirements identified and in
15 compliance with NFPA 1123 and NFPA 1124 and required under
16 federal law.

17 (2) A retailer who violates this section is liable for a
18 civil fine of not more than \$2,500.00 for each violation.

19 Sec. 7. (1) Low-grade fireworks shall only be sold from a
20 CFRSF or from another permanent building or structure.

21 (2) All low-grade fireworks sold in a permanent building or
22 structure other than a CFRSF shall satisfy the minimum standards
23 of the United States consumer product safety commission and shall
24 be tested and certified as described in section 9(b).

25 (3) Smoking shall not be permitted in a permanent building
26 or structure where low-grade fireworks are sold.

27 Sec. 8. Fireworks that are manufactured and shipped directly

1 out of state do not require a permit for sale, possession, or
2 transportation. However, this exception to the permit requirement
3 applies only to fireworks transported by commercial carrier, and
4 does not apply to household purchases by individual users. A
5 signed statement that the purchaser will transport the fireworks
6 out of state is insufficient to qualify for a permit exception
7 under this section.

8 Sec. 9. A consumer fireworks retail sales facility operator
9 shall comply with the following criteria:

10 (a) There shall be not less than 1 uniformed security person
11 on duty during business hours at CFRSF for 7 days prior to and
12 including July 4 of each year.

13 (b) All consumer fireworks and low-grade fireworks products
14 sold from a CFRSF shall satisfy the minimum standards of the
15 United States consumer product safety commission and shall be
16 tested, or certified, or both tested and certified by a third-
17 party testing agency recognized by the United States consumer
18 product safety commission.

19 (c) Cigarettes, tobacco products, lighters, or other flame
20 producing devices shall not be permitted in a CFRSF. Smoking
21 shall not be permitted in a CFRSF or within 50 feet of a CFRSF. A
22 person who violates this subdivision is guilty of a misdemeanor
23 punishable by imprisonment for not more than 1 year or a fine of
24 not more than \$1,000.00, or both. Signage stating this no-smoking
25 prohibition and its associated penalties shall be erected and
26 shall be of a number and type and placed in a proximity as
27 determined by rule promulgated under the fire prevention code,

1 1941 PA 207, MCL 29.1 to 29.33.

2 (d) An individual shall be not less than 16 years of age to
3 work in a CFRSF.

4 (e) An individual who has been convicted of or pled guilty
5 to a felony shall not be permitted to hold any interest in or be
6 employed by a business licensed in this state to sell consumer
7 fireworks or low-grade fireworks, or both. An individual's
8 fingerprints and criminal history shall be checked prior to
9 employment.

10 (f) Not less than 1 management level employee of a CFRSF
11 shall have appropriate and approved training in the handling of
12 consumer fireworks and shall share that training with all other
13 employees of the CFRSF who handle or sell the fireworks.
14 Appropriate and approved training shall be in accordance with the
15 guidelines promulgated by the bureau. Certified management level
16 employees of a CFRSF shall be registered in a database managed by
17 the bureau at each training.

18 (g) All CFRSFs shall be inspected by the state fire marshal
19 or an employee of the state fire marshal's office prior to
20 initial certification under this act and thereafter at least
21 annually before the prime fireworks sales season.

22 (h) Each purchaser of consumer fireworks or low-grade
23 fireworks, or both, shall receive, at the time of sale, a
24 consumer fireworks safety brochure approved by the state fire
25 marshal.

26 (i) A minor shall not be admitted to a CFRSF unless the
27 minor is accompanied by his or her parent or guardian. This age

1 requirement shall be verified by an operator's or chauffeur's
2 license issued under the Michigan vehicle code, 1949 PA 300, MCL
3 257.1 to 257.923, or a valid passport containing a photograph of
4 the individual.

5 (j) An individual shall not possess, purchase, or sell
6 consumer fireworks while under the influence of alcoholic liquor,
7 a controlled substance, or a combination of alcoholic liquor and
8 a controlled substance.

9 Sec. 10. A minor shall not purchase consumer fireworks or
10 low-grade fireworks.

11 Sec. 11. (1) A user fee, known as the fireworks safety fee,
12 is imposed on retail transactions made in this state for consumer
13 fireworks and low-grade fireworks as provided in section 13.

14 (2) A person who acquires consumer fireworks or low-grade
15 fireworks in a retail transaction is liable for the fireworks
16 safety fee on the transaction and, except as otherwise provided
17 in this act, shall pay the fireworks safety fee to the retailer
18 as a separate added amount to the consideration in the
19 transaction. The retailer shall collect the fireworks safety fee
20 as an agent for the state.

21 (3) The fireworks safety fee shall be deposited in the
22 fireworks safety fund as provided in section 14.

23 Sec. 12. (1) The fireworks safety fee is determined by the
24 gross retail income from consumer fireworks and low-grade
25 fireworks received by a retail merchant in a retail unitary
26 transaction of fireworks and is imposed at the following rates:

| | | | | |
|----|-----------|------------------|---------------------|---------|
| 1 | FIREWORKS | | GROSS RETAIL INCOME | |
| 2 | SAFETY | | FROM THE | |
| 3 | FEE | | RETAIL UNITARY | |
| 4 | | | TRANSACTION | |
| 5 | \$ 0 | | less than | \$ 0.10 |
| 6 | \$ 0.01 | at least \$ 0.10 | but less than | \$ 0.30 |
| 7 | \$ 0.02 | at least \$ 0.30 | but less than | \$ 0.50 |
| 8 | \$ 0.03 | at least \$ 0.50 | but less than | \$ 0.70 |
| 9 | \$ 0.04 | at least \$ 0.70 | but less than | \$ 0.90 |
| 10 | \$ 0.05 | at least \$ 0.90 | but less than | \$ 1.10 |

11 (2) On a retail unitary transaction in which the gross
 12 retail income received by the retail merchant is \$1.10 or more,
 13 the fireworks safety fee is 5% of that gross retail income.

14 (3) If the fireworks safety fee calculated under subsection
 15 (1) results in a fraction of 1/2 cent or more, the amount of the
 16 fireworks safety fee shall be rounded to the next additional
 17 cent.

18 Sec. 13. A retailer has a duty to remit the fireworks safety
 19 fee as described in section 12 to the department of treasury of
 20 this state, holds the fireworks safety fees collected in trust
 21 for the state until remitted to the state, and is personally
 22 liable for the payment of the fireworks safety fee money to this
 23 state.

24 Sec. 14. (1) The fireworks safety fund is created within the
 25 state treasury.

26 (2) The state treasurer may receive money or other assets
 27 from any source for deposit into the fund. The state treasurer
 28 shall direct the investment of the fund. The state treasurer

1 shall credit to the fund interest and earnings from fund
2 investments.

3 (3) Money in the fund at the close of the fiscal year shall
4 remain in the fund and shall not lapse to the general fund.

5 (4) The first \$1,000,000.00 deposited to the fund shall be
6 used for firefighter training by cities, counties, townships, and
7 villages in accordance with the firefighters training council
8 act, 1966 PA 291, MCL 29.361 to 29.377.

9 (5) The state fire marshal shall expend the remaining money
10 from the fund, upon appropriation, only to carry out the purposes
11 of this act.

12 Sec. 15. (1) The bureau shall promulgate rules under the
13 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
14 24.328, to administer this act, including, but not limited to,
15 all of the following:

16 (a) Establish fees for permits under subdivision (g).

17 (b) Create uniform applications and other forms for
18 dissemination to and use by local units of government under this
19 act.

20 (c) Establish the criteria to be used by local units of
21 government and fire chiefs in deciding whether to grant or deny
22 permits or certificates under this act.

23 (d) Procedures for the collection of application fees and
24 fireworks safety fees.

25 (e) Enforcement of regulatory duties.

26 (f) Plan for the enforcement of age limitations.

27 (g) Establish the criteria used by local units of government

1 for granting permits for supervised public displays of fireworks.

2 (h) Establish the fee for a permit under subdivision (g),
3 which shall be deposited to the fireworks safety fund created
4 under section 14.

5 (i) Subject to section 16, delegate authority and
6 responsibility to local fire officials as it considers necessary
7 to enforce this act under section 2b of the fire prevention code,
8 1941 PA 207, MCL 29.2b.

9 (2) Rules promulgated under this section shall provide that
10 an application for a permit under subsection (1)(g) shall
11 include, at a minimum, all of the following:

12 (a) The name of the operator who will detonate the display
13 fireworks or special effects.

14 (b) A brief summary of the operator's experience sufficient
15 to establish that the operator is competent to officiate the
16 public display of fireworks and detonate the display fireworks or
17 special effects.

18 (c) The application fee as determined by the bureau.

19 (3) An application for a permit under subsection (1)(g)
20 shall be received, along with the applicable fee, not less than 5
21 days before the public display of fireworks is to take place.

22 (4) Rules promulgated under this section shall conform to
23 the following codes developed by the national fire protection
24 association, except for any code provision that conflicts with
25 this act:

26 (a) NFPA 1123, code for fireworks display, 2006 edition.

27 (b) NFPA 1124, code for the manufacture, transportation,

1 storage, and retail sales of fireworks and pyrotechnic articles,
2 2006 edition.

3 (c) NFPA 1126, standard for the use of pyrotechnics before a
4 proximate audience, 2006 edition.

5 Sec. 16. (1) If authority and responsibility are transferred
6 to local fire officials under section 2b of the fire prevention
7 code, 1941 PA 207, MCL 29.2b, funding to perform the delegated
8 operations shall be transferred to the local unit of government
9 that performs the operation in a ratio of 80% local funding: 20%
10 state funding.

11 (2) The state fire marshal's office shall pay the funds to
12 the local units of government to the extent described in
13 subsection (1).

14 (3) The bureau shall enter into a contract with local fire
15 officials performing enforcement of this act. The contract shall
16 clearly state the authority and responsibilities delegated to the
17 local fire officials for enforcing this act.

18 Sec. 17. A person who has 1 or more convictions for
19 violating this act shall not officiate, or be granted a permit to
20 officiate, a public display of fireworks for at least 1 year
21 after his or her latest conviction for a violation of this act.

22 Sec. 18. (1) A person shall only produce or transport, or
23 produce and transport, a firework that is a new explosive and
24 that is either a division 1.3 or division 1.4 explosive if the
25 person first meets the requirements of 49 CFR 173.56(2)(j).

26 (2) As used in this section:

27 (a) "Division 1.3 explosive" means that term as defined in

1 49 CFR 173.50.

2 (b) "Division 1.4 explosive" means that term as defined in
3 49 CFR 173.50.

4 (c) "New explosive" means that term as defined in 49 CFR
5 173.56.

6 Sec. 19. The state fire marshal shall create and maintain,
7 or cause to be created and maintained, an internet website that
8 has as its purpose the protection of the residents of this state
9 who purchase, use, or transport fireworks. The website shall
10 maintain a list of every person or entity that is issued a
11 consumer fireworks certificate.

12 Sec. 20. (1) A person shall not ignite, discharge, or use
13 consumer fireworks or low-grade fireworks on public property,
14 school property, church property, or the property of another
15 person without that organization's or person's express permission
16 to use those fireworks on those premises. Except as otherwise
17 provided in this subsection, a person who violates this
18 subsection is responsible for a state civil infraction and may be
19 ordered to pay a civil fine of not more than \$500.00. A person
20 who commits a second or subsequent violation of this subsection
21 within 5 years of a prior violation of this subsection is guilty
22 of a misdemeanor punishable by imprisonment for not more than 30
23 days or a fine of not more than \$1,000.00, or both.

24 (2) A minor shall not possess, purchase, or offer for sale
25 consumer fireworks or low-grade fireworks. Except as otherwise
26 provided in this subsection, a person who violates this
27 subsection is responsible for a state civil infraction and may be

1 ordered to pay a civil fine of not more than \$500.00 for each day
2 that the violation occurred.

3 (3) Except as otherwise provided in this subsection, a
4 person shall not ignite, discharge, or use consumer fireworks
5 after 12 midnight and before 10 a.m. However, on a legal holiday,
6 a person shall not ignite, discharge, or use consumer fireworks
7 between 1 a.m. and 9 a.m. of the same day. A person who violates
8 this subsection is responsible for a state civil infraction and
9 may be ordered to pay a civil fine of not more than \$500.00 for
10 each day that the violation occurred. However, a person who
11 commits a second or subsequent violation of this subsection
12 within 5 years of a prior violation of this subsection is guilty
13 of a misdemeanor punishable by imprisonment for not more than 30
14 days or a fine of not more than \$500.00 for each day that the
15 violation occurred, or both.

16 (4) Unless otherwise provided in this act, if a person
17 violates this act, the person is guilty of a misdemeanor
18 punishable by imprisonment for not more than 30 days or a fine of
19 not more than \$1,000.00, or both.

20 (5) If a person violates this act and by that violation
21 causes damage to the property of another person, the person is
22 guilty of a misdemeanor punishable by imprisonment for not more
23 than 90 days or a fine of not more than \$5,000.00, or both.

24 (6) If a person violates this act and by that violation
25 causes serious impairment of a body function of another person,
26 the person is guilty of a felony punishable by imprisonment for
27 not more than 1 year or a fine of not more than \$5,000.00, or

1 both. As used in this subsection, "serious impairment of a body
2 function" means that term as defined in section 58c of the
3 Michigan vehicle code, 1949 PA 300, MCL 257.58c.

4 (7) If a person violates this act and by that violation
5 causes the death of another person, the person is guilty of a
6 felony punishable by imprisonment for not more than 5 years or a
7 fine of not more than \$10,000.00, or both.

8 (8) A person who fails to collect or remit a fireworks
9 safety fee as required under section 11 is guilty of a
10 misdemeanor punishable by a fine of not more than \$2,000.00.

11 Enacting section 1. Chapter XXXIX of the Michigan penal
12 code, 1931 PA 328, MCL 750.243a to 750.243e, is repealed.

13 Enacting section 2. This act does not take effect unless all
14 of the following bills of the 94th Legislature are enacted into
15 law:

16 (a) House Bill No. 4692.

17 (b) House Bill No. 4693.

18 (c) House Bill No. 4695.

19 (d) House Bill No. 4696.