

## **FIREWORKS SAFETY ACT**

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### **House Bill 5999**

**Sponsor: Rep. Harold Haugh**

### **House Bill 6000**

**Sponsor: Rep. Andrew Kandrevas**

**Committee: Appropriations**

**Complete to 5-5-10**

## **A SUMMARY OF HOUSE BILLS 5999 AND 6000 AS INTRODUCED 3-25-10**

House Bill 5999 would establish the Michigan Fireworks Safety Act, a comprehensive new law regulating the sale, purchase, possession, and use of fireworks; provide civil and criminal penalties for violations of the act; impose various fees on wholesalers, distributors, and retailers; impose a five percent fee on the retail sale of fireworks; and establish a Fireworks Safety Fund. House Bill 6000 would make complimentary amendments to the sentencing guideline provisions contained in the Code of Criminal Procedure.

### **House Bill 5999 (Fireworks Safety Act)**

#### **Section 1 – Title**

The bill may be known as the Michigan Fireworks Safety Act.

#### **Section 2 – Definitions**

This section contains a number of definitions. Notable definitions include:

- a) APA Standard 87-1: The 2001 APA Standard 87-1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, published by the American Pyrotechnics Association.<sup>1</sup>
- b) Articles Pyrotechnic: Pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but not intended for consumer use, that meet the weight limits for consumer fireworks but are not labeled as such, and that are classified as UN0431 or UN 0432 under 49 CFR 172.101.<sup>2</sup>

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<sup>1</sup> See the APA website, [<http://www.americanpyro.com/>].

<sup>2</sup> See Title 49 (Transportation), Part 172 (Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, Training Requirements, and Security Plans) of the Code of Federal Regulations. UN 0431 and UN 0432 refer to "articles, pyrotechnic for technical purposes". They are known as special effects fireworks.

- c) **Consumer Fireworks:** Fireworks devices that are designed to produce visible effects by combustion and that are required to comply with the construction, chemical composition, and labeling regulations promulgated by the United State Consumer Product Safety Commission under 16 CFR Parts 1500<sup>3</sup> and 1507<sup>4</sup> and that are listed in APA Standard 87-1.
- d) **Consumer Fireworks Retail Sales Facility:** A permanent structure that is used primarily for the retail display and sale of consumer fireworks and low-grade fireworks.
- e) **Display Fireworks:** 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 16 CFR 1500 and 1507, 49 CFR 172 and APA Standard 87-1.
- f) **Firework:** Any composition or device, except for a starting pistol, a flare gun, or a flare, designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of consumer fireworks, low-grade fireworks, articles pyrotechnic, display fireworks, and special effects.
- g) **Low-Grade Fireworks:** One or more of the following: (i) ground and handheld sparking devices as that phrase is defined under APA Standard 87-1 3.1;<sup>5</sup> (ii) novelties as defined under APA Standard 87-1 3.2;<sup>6</sup> (iii) Toy caps as defined under APA Standard 87-1 3.3.<sup>7</sup>
- h) **Special Effects:** A combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere and designed and intended to produce an audible, visual, mechanical, or thermal effect as an

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<sup>3</sup> Title 16 (Commercial Practices), Title 1500 (Hazardous Substances and Articles; Administration and Enforcement Regulations) of the Code of Federal Regulations. The regulations under this part implement the Federal Hazardous Substances Act, PL 86-613, 15 USC 1261 et seq., which requires that certain hazardous household products to bear warning labels alerting consumers to potential hazards.

<sup>4</sup> Title 16 (Commercial Products), Part 1507 (Fireworks Devices) of the Code of Federal Regulations. The regulations under Part 1507 set out the performance and construction requirements of fireworks sold in the U.S.

<sup>5</sup> The standard provides, "[t]hese devices are ground-based or hand-held devices that produce a shower of white, gold, or colored sparks as their primary pyrotechnic effect. Additional effects may include a colored flame, an audible crackling effect, and audible whistle effect, and smoke. These devices do not rise into the air, do not fire inserts or projectiles into the air, and do not explode or produce a report (a mild audible crackling-type effect is not considered to be a report.) Ground-based or hand-held devices that produce a cloud of smoke as their sole pyrotechnic effect are also included in this category." These devices include cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners, flitter sparklers, toy smoke devices, and wire sparklers/dipped sticks, although certain toy smoke devices and wire sparklers/dipped sticks are considered to be "novelties".

<sup>6</sup> The standard provides that novelties include party poppers, snappers, certain toy smoke devices, snakes/glow worms, and certain wire sparklers/dipped sticks.

<sup>7</sup> The standard defines "toy caps" to mean "toy plastic or paper caps for toy pistols in sheets, strips, rolls, or individual caps, containing not more than an average of 0.25 grains (16 mg) of explosive composition per cap."

integral part of a motion picture, radio, television, theatrical, or opera production, or live entertainment.

### **Section 3 – Activities Not Prohibited**

The bill provides that the following activities are not prohibited:

- a) A wholesaler, retailer, manufacturer, importer, or distributor from selling, storing, using, transporting, or distributing consumer fireworks and low-grade fireworks.
- b) The use of fireworks by railroads or other transportation agencies for signal purposes or illumination.
- c) The use of agricultural or wildlife fireworks.
- d) The sale or use of blank cartridges for a show or play, signal or ceremonial purposes in an athletic event, or use by military organizations.
- e) The possession, sale, or disposal of fireworks incidental to the public display of fireworks by wholesalers or other persons who possess a permit to possess, store, and sell explosives from the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives
- f) Interstate wholesalers from selling, storing, using, transporting, or distributing fireworks.

### **Section 4 – Preemption of Local Authority**

This section preempts local units of government from enacting or enforcing an ordinance or other regulation pertaining to the sale, storage, transportation, or distribution of fireworks regulated under the bill.

### **Section 5 – Consumer Fireworks Certificate**

The bill would require retailers, shippers, and wholesalers of fireworks to obtain a Consumer Fireworks Certificate from the DELEG, Bureau of Fire Services, prior to transporting, storing, distributing, or selling fireworks in the state. A certificate permits the sale, transportation, distribution, or storage of fireworks between May 1st and the following April 30th. An application for the certificate would have to be submitted by March 1st. There would be an application fee of \$5,000 for a wholesaler certificate, \$5,000 for each consumer firework retail sales facility or location where the consumer fireworks are stored, \$5,000 for each vehicle in which consumer fireworks will be transported, and \$100 for each location where only low-grade fireworks will be sold, stored, or transported.

### **Section 6 – Consumer Fireworks Certificate/Out-of-State**

A consumer fireworks certificate would not be required to fireworks that are manufactured and shipped directly out of state by commercial carrier.

## **Section 7 – Facilities used for the Retail Sale of Fireworks**

Retailers selling fireworks could only do so a facility (a permanent structure, per Section 2) that meets the following requirements:

- a) Compliance with the National Fire Protection Association's Life Safety Code (101) and Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles (1124).
- b) Includes a fire alarm system and burglar alarm system.
- c) Includes a fire suppression system that complies with NFPA 1124, beginning 1 year after the bill's effective date.
- d) Not located within 300 feet of another fireworks facility.
- e) Has a retail sales area between 3,000 square feet and 12,000 square feet
- f) Maintains at least \$2.0 million in public liability and product liability insurance.

A retailer who violates the above requirements is liable for a civil fine of up to \$2,500 per violation.

## **Section 8 – Retail Sale of Low-Grade Fireworks**

Low-grade fireworks may be sold at a consumer fireworks retail sales facility or at another permanent building or structure that meets the minimum requirements established by the U.S. Consumer Products Safety Commission.

## **Section 9 – Retail Sale of Fireworks**

A retailer operating a consumer fireworks retail sales facility shall only sell consumer fireworks and low-grade fireworks that meet the minimum standards prescribed by the U.S. CPSC and that are tested or certified by a third-party approved by the U.S. CPSC.

Individuals less than 16 years of age could not work in a consumer fireworks retail sales facility, and individuals who have been convicted of a felony could have hold an interest in a business licensed to sell consumer fireworks or low-grade fireworks. Management employees would have to be trained in the handling of consumer fireworks, under a training program approved by the Bureau of Fire Services.

All consumer fireworks retail sales facilities would have to be inspected by the Bureau of Fire Services before initial certification, and would have to be inspected by the bureau annually before the start of the "prime fireworks sales season."

Minors would not be allowed within a consumer fireworks retail sales facility unless accompanied by a parent or guardian.

**Section 10 – Purchase by Minors Prohibited**

Minors would be prohibited from purchasing consumer fireworks or low-grade fireworks.

**Section 11 – Smoking Prohibited**

Smoking would not be permitted in, or within 50 feet, of a consumer fireworks retail sales facility. A violation of this prohibition would be a misdemeanor punishable by a fine of at least \$1,000 and/or one year imprisonment. Signs noting the prohibition would have to be posted.

**Section 12 – Fireworks Safety Fee**

The bill would impose a "user fee" known as the fireworks safety fee on all retail sales of consumer fireworks and low-grade fireworks. The fee would be paid by the consumer (similar to the sales tax), and remitted to the state by the retailer. A retailer that fails to remit the fee to the state or fails to collect the fee would be guilty of a misdemeanor punishable by a fine of up to \$10,000, and would not be eligible to be issued a consumer fireworks certificate for one year. Fee revenue would be credited Fireworks Safety Fund.

**Section 13 – Fireworks Safety Fee Schedule**

The fireworks safety fee would be an excise tax equal to 5% of the retail selling price.

**Section 14 – Duty to Remit Fireworks Safety Fee**

Retailers would be responsible for remitting fireworks safety fee revenue to the Department of Treasury, and would be personally liable for the payment.

**Section 15 – Fireworks Safety Fund**

Revenue from the fireworks safety fund would be credited to a new fund, known as the Fireworks Safety Fund, which would also include any common cash earnings. Money remaining in the fund at the close of a fiscal year would remain in the fund, rather than lapse to the General Fund. The fund would only be expended to implement the bill and the Fire Prevention Code.

**Section 16 – Rule-making Authority**

The bill would provide the Bureau of Fire Services with the authority to promulgate administrative rules, pursuant to the Administrative Procedures Act. This rule-making authority would cover (1) the criteria used to by local units of government when granting fireworks permits, (2) enforcement of the bureau's regulatory functions, and (3) the amount of the public display fee. As applicable, rules developed by the bureau would have to be consistent with the NFPA Code for Fireworks Displays (1123), the NFPA Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles (1124), and the NFPA Standard for the Use of Pyrotechnics Before a Proximate Audience.

**Section 17 – Delegation of Authority to Local Units of Government**

The authority and responsibility to administer the provisions of the bill may be delegated to local units of government. If that responsibility is delegated, the funding received

under the bill is transferred to that local unit of government in an 80-20 (local-state) match.

### **Section 18 – Public Display of Fireworks by Person with Prior Violation**

A person who has committed, and been convicted of, a violation of the bill could not officiate, a public display of fireworks for at least one year following the latest conviction.

### **Section 19 – Production/Transportation of Certain Explosives**

A person shall not produce or transport new explosive<sup>8</sup> that are not Division 1.3 explosives<sup>9</sup> or Division 1.4 explosives<sup>10</sup> if the person is meets the requirements of 49 CFR 173.56.

### **Section 20 – Bureau Website**

The Bureau's website would have to include a list of each person issued a consumer fireworks certificate.

### **Section 21 – Use of Fireworks**

The bill would prohibit individuals from igniting, discharging, or using consumer fireworks or low-grade fireworks on public property, school property, church property, or property of another person without permission. A first violation would be a state civil infraction subject to a fine of up to \$500. A subsequent violation would be a misdemeanor punishable by a fine of up to \$1,000 and/or 30 days imprisonment.

Minors could not possess, purchase, or offer for sale consumer fireworks or low-grade fireworks, with a violation punishable by a fine of up to \$500.

A person could no ignite, discharge, or otherwise use consumer fireworks between the hours of midnight and 10:00 a.m. on any day. On legal holidays, however, the restricted use hours would between 1:00 a.m. and 9:00 a.m.<sup>11</sup> A violation would be a state civil infraction punishable by a fine of up to \$500 for a first violation. Subsequent violations would be a misdemeanor punishable by a fine of up to \$500 for each day of a violation and/or 30 days imprisonment.

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<sup>8</sup> "New Explosive" is defined in the bill, by incorporating the definition in 49 CFR 17356, as "an explosive produced by a person who: (1) Has not previously produced that explosive; or (2) Has previously produced that explosive but has made a change in the formulation, design or process so as to alter any of the properties of the explosive."

<sup>9</sup> "Division 1.3 explosive" is defined in the bill, by incorporating the definition in 49 CFR 173.50, as explosives "that have a fire hazard and either a minor blast hazard or a minor projection hazard or both, but not a mass explosion hazard."

<sup>10</sup> "Division 1.4 explosive" is defined in the bill, by incorporating the definition in 49 CFR 17.50, as explosives "that present a minor explosion hazard. The explosive effects are largely confined to the package and no projection of fragments of appreciable size or range is to be expected. An external fire must not cause virtually instantaneous explosion of almost the entire contents of the package."

<sup>11</sup> The bill does not specify the time zone, so that these time restrictions would be the local time, irrespective of the time zone. (The Western Upper Peninsula is in the central time zone.)

Other violations of the act would be a misdemeanor punishable by a fine of up to \$1,000 and/or imprisonment of 30 days. If a violation causes damage to property or another person, it would be a misdemeanor punishable by a fine of up to \$5,000 and/or imprisonment of 90 days. Violations causing serious impairment of a body function would be a felony punishable by a fine of up to \$5,000 and/or imprisonment of 90 days. Violations causing death would be a felony punishable by a fine of up to \$10,000 and/or imprisonment of one year.

#### **Section 22 – Resident Agent of Wholesaler**

Each fireworks wholesaler would have to have an agent who resides in the state and has a physical address in the state.

#### **Section 23 – Reimbursement of Storage Costs**

A person convicted of a violation would have to reimburse the appropriate governmental agency that stores seized fireworks.

#### **Section 24 – Investigation/Seizure of Fireworks**

The Bureau of Fire Services would investigate the suspected violations of the bill, and may seize fireworks as evidence of a violation.

#### **Section – Regulatory Authority/Storage of Fireworks**

The regulation of fireworks falls solely under the authority of the bill. Also, seized fireworks would have to be stored in compliance with the bill and appropriate administrative rules developed by the bureau.

#### **Enacting Section 1 – Repeal of Penal Code Fireworks Provisions**

The bill would repeal Chapter XXXIX (Fireworks) of the Michigan Penal Code, which currently governs the sales, storage, manufacture, transportation, and display of fireworks.

### **House Bill 6000 (Code of Criminal Procedure)**

The bill would amend Chapter XVII (Sentencing Guidelines) of the Code of Criminal Procedure to specify that a violating the consumer fireworks certificate requirements would be a Class G crime against the public safety, punishable by a statutory maximum incarceration sentence of 2 years. The bill would also specify that violations of HB 5999 causing serious impairment would be a Class G crime against the public safety, punishable by a maximum incarceration sentence of 1 year. The bill would also specify that violations of HB 5999 causing death would be punishable by a maximum incarceration sentence of 5 years.

#### **FISCAL IMPACT:**

**State Revenue:** The bill would result in an increase in state revenue by an, as yet, indeterminate amount, depending on the volume of sales of fireworks in the state following the expansion of fireworks able to be lawfully sold in the state under the bill.



Currently, under the Michigan Penal Code, consumers may lawfully acquire certain low-grade fireworks (sparklers, smoke bombs and the like), whereas under the bill, consumers can acquire "consumer fireworks" a more expansive category of fireworks that includes aerial devices, fountains, and the like.

The primary state revenue impact is through the imposition of a five percent "fireworks safety fee" imposed, at retail, on the sale of such fireworks. Given that much of these fireworks are not currently sold lawfully in Michigan without a permit, the exact volume of anticipated sales is not currently known. However, as a point of reference, under legislation enacted in 2006, Indiana currently imposes a similar 5% fee on fireworks, with the fee generating approximately \$2.5 million in each of last three fiscal years (FYs 2007-2009), according to figures from the Indiana Legislative Services Agency. (Presumably, some portion of that revenue is attributable to sales of fireworks to Michigan residents who would now make such purchases in Michigan.)<sup>12</sup>

One complicating factor in estimating the potential state revenue impact is the type of retail sales facilities at which consumer fireworks can be lawfully sold in Michigan under the bill. As introduced, the bill restricts retail sales of consumer fireworks to permanent structures between 3,000 square feet and 12,000 square feet in size. This effectively precludes sales of consumer fireworks from retail sales tents (a common location) and traditional "big-box" retailers.<sup>13</sup> Given that there are likely few stores that currently meet the requirements for a "consumer fireworks retail sales facility" under the bill, it's not entirely clear as to what impact these sales restrictions would have on the level of sales in the state, or the number of fireworks sales facilities that will eventually operate in the state.

Additionally, the bill imposes a variety of fees on persons within the industry. These fees include a (1) \$5,000 fee for each consumer fireworks retail sales facility or location where consumer fireworks are to be sold, (2) a \$5,000 fee each vehicle in which fireworks (consumer, low-grade, display) will be transported, (3) a \$100 fee for each consumer fireworks retail facility or other facility where only low-grade fireworks will be sold, and (4) a \$5,000 fee for each wholesaler. Given the uncertainties noted above, particularly concerning the number of retailers, the potential amount of revenue is, again, indeterminate. Additionally, the bill also imposes a fee for the public display of fireworks. The amount of this fee is not specified in the bill, but is instead to be determined by the Bureau of Fire Services. Given that this amount is not determined, the amount of potential revenue generated by the fee is, accordingly, indeterminate. Current law requires a public display permit, although the number of such displays is not currently tracked by the Bureau of Fire Services. As a point of reference, however, under Indiana law the public display permit fee is \$69 and is also set administratively.

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<sup>12</sup> It should be noted, however, that there are differences between the Indiana law and the bill (as introduced) that may impact the volume of sales occurring in the state. This is primarily through the types of retail sales facilities, as Indiana permits sales in tents whereas the bill requires consumer fireworks to be sold in permanent structures of a certain size limit.

<sup>13</sup> Under the bill, low-grade fireworks can be sold from a "consumer fireworks retail sales facility" or other permanent structure. This eliminates tent sales, continues to allow retailers, including the "big box" stores, to sell those fireworks.



According to the Indiana Department of Homeland Security, in FY 2008, the public display permit fee generated approximately \$49,300 in permit revenue, which roughly equates to 714 public displays in the state.

Revenue from the proposed fireworks safety fee as well as the several certification/permit fees would be credited to a new fund, known as the Fireworks Safety Fund, which would also receive any common cash earnings. Money in the fund at the close of the fiscal year would remain in the fund rather than lapse to the General Fund. The fund would be expended to carry out the implementation of the bill, and to carry out the Fire Prevention Code.

**State Expenditures:** The bill imposes a number of requirements on the Bureau of Fire Services including issuing consumer fireworks certificates, conducting annual inspections of consumer fireworks retail sales facilities, establishing guidelines relative to the training of retail fireworks management personnel and maintaining a database of trained personnel, providing consumer fireworks certificates to certificate holders, and promulgating administrative rules. At this time, the Bureau of Fire Services has not provided an estimate as to the impact on its staffing needs or expenditure requirements. Much of the uncertainty is due, primarily, to the uncertainty surrounding the number of consumer finance retail sales facilities that would operate in the state. Additionally, the scope of the bureau's activities would be determined, in part, as it develops administrative rules further fleshing out the requirements of the bill. Additionally, the Department of Treasury would be impacted through the bill's requirement that it collect the fireworks safety fee. The bill does not explicitly provide that a portion of the Fireworks Safety Fund could be used to support the Department of Treasury's activities.

**Local Revenue:** The bill would reduce local revenue by an indeterminate amount. Currently, many local units impose various permit fees on fireworks retailers and public displays of fireworks. It's not immediately known how much these fees generate in aggregate, as the figures are not tracked by the Bureau of Fire Services or the various local government associations. Through the bill's preemption of local authority to regulate fireworks, the bill would eliminate the ability of local units to impose such fees. However, the bill also allows the Bureau of Fire Services to delegate its regulatory authority to a local unit of government, with the state then picking up 20% of the cost.

**Local Expenditures:** Similar to above, the bill could potentially reduce the costs to many local units of government to regulate fireworks retailers and the public display of fireworks, through its preemption of local regulatory authority. This reduction in local expenditures is mitigated somewhat through the provision in the bill permitting the Bureau of Fire Services to delegate its authority to the local unit of government. With the delegation of regulatory authority, the local unit would then pick up 80% of the cost, with the state picking up the remaining 20%. Given the funding split, it's not anticipated that many local units would voluntarily choose to assume regulatory authority from the Bureau of Fire Services.

**Corrections Impact:** To the extent that the bill increased the numbers of misdemeanor or felony convictions, it could increase state or local costs related to jail or prison incarceration or probation. The average annual cost of housing a prisoner in a state prison is about \$34,000, a figure that includes various fixed administrative and operational costs. Costs of parole and probation supervision, exclusive of the cost of electronic tether, average about \$2,100 per supervised offender per year. Local jail costs vary by jurisdiction. Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

**Other Information:** The House-passed version of the FY 2011 budget bill for the Department of Energy, Labor, and Economic Growth (HB 5884) included \$2.6 million in revenue to be generated under the House Bill 5999 to support the current activities of the Bureau of Fire Services. This fee revenue is in lieu of GF/GP funding provided for in the current fiscal year (see 2009 PA 130) for existing bureau operations, and is in lieu of the Executive Recommendation's use of increased fire service fee revenue that is provided for in HB 5026, which is currently pending before the Senate. The Senate Appropriations Subcommittee on Economic Development did not include fee revenue generated under this bill, opting to continue to support the bureau (in part) with GF/GP revenue. The chart below shows the recommended FY 2010-11 appropriation for the Bureau of Fire Services.

<b>Bureau of Fire Services</b>	<b>Executive</b>	<b>House</b>	<b>Senate</b>
IDG-DCH	\$100,000	\$100,000	\$100,000
HHS, Title XVIII and XIX	\$700,000	\$700,000	\$700,000
FEMA	\$28,000	\$28,000	\$28,000
U.S. DOT	\$60,000	\$60,000	\$60,000
Fire Alarm Fees	\$113,400	\$113,400	\$107,200
Fire Services Fees	\$1,955,000	\$1,955,000	\$1,848,000
Fire Safety Standards Fund	\$40,000	\$40,000	\$40,000
Fireworks Safety Fund	\$0	\$2,600,000	\$0
State Fire Services Fund	\$2,600,000	\$0	\$0
General Fund/General Purpose	\$0	\$0	\$2,600,000
<b>Gross Appropriation</b>	<b>\$5,596,400</b>	<b>\$5,596,400</b>	<b>\$5,483,200</b>
FTE Positions	57.0	57.0	57.0

**Note:** The Senate figures reflect those recommended by the Senate Appropriations Subcommittee on Economic Development.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.