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House Bill 5999 (Substitute H-5 as passed by the House)
House Bill 6000 (Substitute H-4 as passed by the House)
Sponsor: Representative Harold Haugh (H.B. 5999)
Representative Andrew Kandrevas (H.B. 6000)
House Committee: Appropriations
Senate Committee: Economic Development and Regulatory Reform

Date Completed: 11-30-10

CONTENT

House Bill 5999 (H-5) would repeal Chapter 34 (Fireworks) of the Michigan Penal Code, and create the "Michigan Fireworks Safety Act" to do the following:

- Require a person to obtain an annual fireworks certificate in order to transport, store, distribute, or sell fireworks; and prescribe certificate application fees.
- Create the "Fireworks Safety Fund" and require application fees to be deposited in it.
- Prescribe requirements for the sale of consumer fireworks, including specific provisions for the sale of low-grade fireworks.
- Allow low-grade fireworks to be sold from a tent by a nonprofit charitable organization if a local ordinance permitted and regulated such sales, and other conditions were met.
- Impose a fireworks safety fee on fireworks retail transactions; and require the fee to be deposited in the proposed Fund.
- Require annual inspections of retail sales facilities where fireworks were sold and fireworks storage buildings.

- Restrict the hours during which consumer fireworks could be used.
- Prohibit a convicted felon from holding any interest in a business that sold fireworks in Michigan.
- Prohibit a person from possessing, purchasing, or selling consumer fireworks while under the influence of alcohol or drugs.
- Prohibit a person from smoking in a facility where fireworks were sold.
- Prohibit the use of consumer fireworks on another person's property without permission.
- Prohibit a minor from possessing, purchasing, or selling consumer fireworks.
- Prescribe civil and criminal penalties for violations of the proposed Act, including felony penalties for causing serious impairment of a body function or death.
- Allow the Bureau of Fire Services to delegate authority and responsibility to local fire officials.

House Bill 6000 (H-4) would amend the Code of Criminal Procedure to add to the sentencing guidelines certain violations of the proposed Michigan Fireworks Safety Act.

House Bill 6000 (H-4) is tie-barred to House Bill 5999.

House Bill 5999 (H-5)

Fireworks Certificate

Except as otherwise provided, a person could not transport, store, distribute, or sell fireworks unless the person obtained and maintained an annual fireworks certificate from the Bureau of Fire Services and paid the applicable fee.

("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-grade fireworks, articles pyrotechnic, display fireworks, and special effects.)

An application for a fireworks certificate would have to be accompanied by a fee of \$5,000 for an original certificate or \$2,500 for a renewal certificate. These fees would apply to each retail sales facility (RSF) where consumer fireworks would be sold and each location where they would be stored; and each building where consumer fireworks would be stored. There would be no fee for an RSF or location where only low-grade fireworks would be sold or stored.

("Retail sales facility" or "RSF" would mean a permanent structure that is used for the retail display and sale of fireworks. "Consumer fireworks" would mean fireworks devices that are designed to produce visible effects by combustion and that are required to comply with construction, chemical composition, and labeling regulations promulgated by the U.S. Consumer Product Safety Commission (USCPC).)

A person who obtained and maintained a current fireworks certificate for the sale or storage of consumer fireworks from an RSF or structure could sell or store low-grade fireworks from the same RSF without obtaining a separate certificate.

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 for it. If the Bureau denied issuance, the applicant could cure any defect of the application within 20 days without paying an additional fee. The Bureau could not delay or deny an application unreasonably.

A fireworks certificate would not be transferable. A person could not sell fireworks at a location for which an appropriate certificate had not been issued.

A retailer who violated the certificate provisions would be guilty of a misdemeanor punishable by imprisonment for up to two years and/or a maximum fine of \$5,000 for each day the violation continued.

A certificate holder would have to display the certificate prominently in the appropriate RSF or warehouse, as applicable. A violator would be responsible for a civil fine of \$100. Each day that the certificate was not displayed would be a separate violation.

A person who manufactured fireworks in Michigan and shipped them out of State by commercial carrier would not have to obtain a certificate. This exception would not apply to individuals who purchased fireworks for their own use. A signed statement that an individual purchaser would transport the fireworks out of State would be insufficient to qualify for a certificate.

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

Sale of Consumer Fireworks (Not Low-Grade)

Except as otherwise provided in the proposed Act, a retailer could sell consumer fireworks other than low-grade fireworks only from an RSF that complied with the requirements of the Act and certain requirements of the National Fire Protection Association (NFPA) that were not in conflict with the Act. In addition, the RSF would have to be in compliance with specific NFPA codes. Also, the RSF would have to maintain public liability and product liability insurance coverage of at

least \$2.0 million, and meet other requirements regarding size and distance from another RSF. A retailer who violated these requirements would be liable for a civil fine of up to \$2,500 for each violation.

Sale of Low-Grade Fireworks

Sale from a Permanent Structure. Low-grade fireworks could be sold only from an RSF or from another permanent building or structure, except as otherwise provided. All low-grade fireworks sold in a permanent building or structure other than an RSF would have to satisfy certain minimum standards of the NFPA, and would have to be tested and certified as described below.

Sale from a Tent. Except as otherwise provided, low-grade fireworks could be sold from a tent if the person who sold them were a tax-exempt nonprofit charitable organization. In addition, the tent would have to be located in the parking lot of an RSF that was all of the following:

- A grocery and general merchandise retail store open to the public.
- The holder of a valid retail food establishment license issued by the Michigan Department of Agriculture.
- A permanent building or structure composed of more than 25,000 square feet of retail space.

Also, the location of the tent would have to be allowed under applicable zoning laws, and the parking lot would have to contain at least 125 marked spaces. The person who intended to sell fireworks from the tent would have to obtain a certificate and pay an application fee of \$250. The certificate would be valid only for the days indicated on it.

A person could not sell low-grade fireworks at a location for which a certificate had not been issued or on a date not indicated on the face of the certificate. A person who violated these provisions would be guilty of a misdemeanor punishable by imprisonment for up to two years and/or a maximum fine of \$5,000 for each day the violation continued.

On or after the effective date of the proposed Act, a local unit of government (i.e., a city, village, township, or county) could adopt an ordinance permitting and regulating tent sales of low-grade fireworks. A local unit's regulation of tent sales would have to include, and could exceed, the requirements of the proposed Act. Low-grade fireworks could not be sold from tents unless the local unit adopted an ordinance permitting those sales.

Special Permit

The legislative body of a local unit could issue to a person a permit allowing the use of articles pyrotechnic, special effects, and display fireworks if certain conditions were met. (Similar provisions exist under Chapter 34 of the Penal Code.)

A person who had one or more convictions for violating the proposed Act could not officiate, or be issued a permit to officiate, a public detonation and display of fireworks for at least one year after his or her latest conviction.

Sale & Storage of Fireworks: General Provisions

All fireworks and fireworks products sold in Michigan would have to satisfy the minimum standards of the USCPSC, and would have to be tested and/or certified by a third-party testing agency recognized by the USCPSC.

Storage of fireworks at the site of a wholesaler or dealer would have to follow the distance requirements identified and in compliance with NFPA standards and required under Federal law.

(Chapter 34 of the Penal Code contains specific requirements for the storage of fireworks, including a requirement that storage buildings be located a prescribed distance from inhabited buildings, passenger railroads, and public highways.)

A person who had been convicted of a felony could not hold any interest in a business licensed in Michigan to sell fireworks.

At least one management level employee of an RSF where consumer fireworks other than low-grade fireworks were sold would have to have appropriate and approved training in the handling of consumer fireworks. The training would have to be in accordance with the Bureau's guidelines. The Bureau would have to maintain a list of individuals who had successfully completed approved training.

All RSFs and buildings where fireworks were stored would have to be inspected by the State Fire Marshal or his or her employee before an initial certification under the proposed Act and at least annually before the prime fireworks sales season.

Fireworks Safety Fee

Retail transactions made in Michigan for fireworks would be subject to a user fee, known as the fireworks safety fee. A person who acquired 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 fireworks received by a retail merchant in a retail unitary transaction of fireworks, and would be imposed as shown in Table 1.

Table 1

| Gross Retail Income from the Retail Unitary Transaction | Fireworks Safety Fee |
|--|----------------------------------|
| Less than \$0.10 | \$0 |
| \$0.10-\$0.29 | \$0.01 |
| \$0.30-\$0.49 | \$0.02 |
| \$0.50-\$0.69 | \$0.03 |
| \$0.70-\$0.89 | \$0.04 |
| \$0.90-\$1.09 | \$0.05 |
| \$1.10 or more | 5% of the gross retail income |

The retailer 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 on a monthly basis, 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 failed to collect or remit a fireworks safety fee 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 and the Fire Prevention Code.

Local Fire Officials

The Bureau could delegate authority and responsibility to local fire officials to carry out inspections and other duties under the proposed Act. If delegation occurred, 80% of the cost of performing the delegated operations would have to be transferred to the local unit. The State Fire Marshal's office would have to pay the funds to the local units to that extent.

The Bureau would have to enter into a contract with local fire officials performing delegated enforcement of the Act. The contract would have to state clearly the authority and responsibilities delegated to the local officials.

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. A person who committed a second or subsequent violation within five years would be guilty of a misdemeanor punishable by imprisonment for up to 30 days and/or a maximum fine of \$1,000.

A minor could not possess, purchase, or offer consumer fireworks for sale. 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 for each day that the violation occurred.

A person could not ignite, discharge, or use consumer fireworks after 12 midnight and before 10 a.m.; or, on a legal holiday, between 1 a.m. and 9 a.m. of the same day. A violator would be responsible for a State civil infraction and could be ordered to pay a civil fine of up to \$500 for each day that the violation occurred. A person who committed a second or subsequent violation within five years would be guilty of a misdemeanor punishable by imprisonment for up to 30 days and/or a maximum fine of \$500 for each day that the violation occurred.

Alcohol & Drugs; Smoking

An individual could not possess, purchase, or sell consumer fireworks while under the influence of alcoholic liquor and/or a controlled substance.

A person could not smoke in a building or tent where low-grade fireworks were sold, in an RSF, or within 50 feet of an RSF. A person who violated the smoking ban 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, a person who violated the proposed 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.)

Investigation of Violations

A governmental agency that identified a facility or firework that was in violation of the proposed Act, or a person who was in possession of a firework in violation of the Act, would have to secure the firework and notify the Bureau immediately. The Bureau would have to investigate the suspected violation for compliance within a reasonable time.

If the Bureau determined that a violation had occurred, it could seize the firework as evidence. The evidence would have to be stored pending disposition of any criminal or civil proceedings arising from a violation of the Act at the expense of the person, if that person were found guilty, responsible, or liable.

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 purposes of this requirement.

Fireworks Certificate Website

The State Fire Marshal would be required to create 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 fireworks certificate.

Permitted Acts

The proposed Act would not prohibit a wholesaler, retailer, manufacturer, or importer from selling, storing, using, transporting, or distributing consumer fireworks. Also, the Act 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; or local units of government from adopting an ordinance prohibiting the sale of low-grade fireworks from tents.

New Explosives

A person could produce and/or transport a firework that was a new explosive and that was either a division 1.3 or division 1.4 explosive only if the person first met the applicable requirements of 49 CFR 173.56.

(Under that Federal regulation, "new explosive" means an explosive produced by a person who has not previously produced that explosive; or who has previously produced that explosive but has changed the formulation, design, or process so as to alter any of its properties.)

Local Regulation & Enforcement

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

Seizure of Fireworks

Fireworks would be regulated solely under the proposed Act. Fireworks seized for a suspected 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 would have to destroy fireworks retained as evidence in that prosecution. If they were determined to constitute hazardous waste, however, the Department of Natural Resources and Environment would have to dispose of them as required under Part 111 (Hazardous Waste Management) of the Natural Resources and Environmental Protection Act.

Rules

The Bureau would have to promulgate rules to administer the proposed Act. The rules would have to conform to specific codes developed by the NFPA, except for provisions that conflicted with the Act.

House Bill 6000 (H-4)

The bill would add violations proposed by House Bill 5999 (H-5) to the sentencing guidelines as shown in Table 2.

Table 2

| 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 (H.B. 6000)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

House Bill 5999 (H-5) would likely have a positive effect on State revenue. The bill would generate new revenue from the \$5,000 initial fee (\$2,500 annually to renew) imposed on retail sales facilities (RSFs) as well as from an identical fee imposed on buildings where consumer fireworks would be stored. The State also would receive revenue from a 5% safety fee levied on retail fireworks sales, as well as revenue from a \$250 fee imposed on nonprofits that sold low-grade fireworks. Additionally, new revenue would be collected from two separate fees imposed upon those wishing to conduct a display of fireworks, or to possess "display" fireworks, articles pyrotechnic, or special effects. These fees would be set administratively.

The amount of revenue raised by these fees is indeterminate, as it is not known how many retailers would apply to be RSFs, or what the volume of potential fireworks sales would be. However, the

bill would create the Fireworks Safety Fund, which would receive all new revenue under the bill.

The State also would likely experience various increased costs under House Bill 5999 (H-5). The Bureau of Fire Services would be required to issue consumer fireworks certificates, inspect RSFs and storage facilities, establish guidelines for training RSF management personnel, and promulgate related administrative rules. The Department of Energy, Labor, and Economic Growth has not provided cost estimates for these responsibilities. In addition, the Department of Treasury would likely experience some costs resulting from the administration of the Fireworks Safety Fund as well as collection of the fireworks safety fee.

House Bill 5999 (H-5) would likely have some fiscal impact on local governments, but whether this impact would be positive or negative is unknown. Currently, some local governments collect fees for fireworks display permits and fireworks tents. Under the bill, the Bureau of Fire Services would receive these fees. It is possible, however, that the Bureau would pass this revenue through to local governments, as the bill would allow the State to delegate administration of the proposed Act to local governments. If this were done, revenue generated under the Act would be split with the local government 80-20 (80% going to the local government, and 20% to the State).

In addition, the criminal penalties in House Bills 5999 (H-5) and 6000 (H-4) would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offenses. An offender convicted of one 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 penal fine revenue 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.