

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4743

A bill to amend 2011 PA 256, entitled
"Michigan fireworks safety act,"
by amending sections 4, 5, 7, 10, 11, 12, and 18a (MCL 28.454,
28.455, 28.457, 28.460, 28.461, 28.462, and 28.468a), sections 4
and 12 as amended and section 18a as added by 2012 PA 257.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) A person shall not sell consumer fireworks unless
2 the person annually obtains and maintains a consumer fireworks
3 certificate from the department under this section. A person who
4 knows, or should know, that he or she is required to comply with
5 this subsection and who fails or neglects to do so is guilty of a
6 misdemeanor punishable by imprisonment for not more than 2 years or
7 a fine, or both, with the fine as follows:

1 (a) For a first violation of this subsection, not more than
2 \$5,000.00.

3 (b) For a second violation of this subsection, not more than
4 \$20,000.00.

5 (c) For a third or subsequent violation of this subsection,
6 not more than \$40,000.00.

7 (2) An application for a consumer fireworks certificate shall
8 meet all of the following requirements:

9 ~~— (a) Before January 1, 2012, the application shall be submitted~~
10 ~~not less than 90 days before the applicant sells consumer~~
11 ~~fireworks.~~

12 (A) ~~(b) Beginning January 1, 2012, the~~ **THE** application shall
13 be submitted no later than April 1 of each year in which consumer
14 fireworks are to be sold.

15 (B) ~~(c)~~ The application shall list the name and address of
16 each retail location from which consumer fireworks are to be sold.

17 (C) ~~(d) Until January 1, 2014, the~~ **THE** application shall be
18 accompanied by a fee of \$1,000.00 for a certificate for each retail
19 location that is a permanent building or structure or \$600.00 for
20 each retail location that is not a permanent building or structure.
21 ~~Until January 1, 2014, the~~ **THE** fireworks certificate fee required
22 to be paid for a retail location that is not a permanent building
23 or structure shall not exceed 60% of the fireworks certificate fee
24 for a retail location that is a permanent building or structure.

25 (D) ~~(e)~~ The application shall be accompanied by a copy of the
26 applicant's current sales tax license, including the applicant's
27 account number, issued by the department of treasury for each

1 retail location where consumer fireworks are to be sold by the
2 applicant.

3 (3) A consumer fireworks certificate issued under this section
4 is valid from the date of issue until April 30 of the year after it
5 was issued. A person may renew a consumer fireworks certificate for
6 a retail location by making application in the same manner as
7 provided under subsection (2). However, the department shall not
8 issue a renewal consumer fireworks certificate unless the
9 department determines that the applicant properly remitted all of
10 the fireworks safety fees required to be paid in the preceding
11 year. The department shall provide to the department of treasury
12 the sales tax license information received from the applicant and
13 any additional information as may be necessary to allow the
14 department of treasury to confirm that each sales tax license
15 submitted by the applicant is current and valid. The department
16 shall enter into an agreement with the department of treasury under
17 section 28(1) of 1941 PA 122, MCL 205.28, that will allow the
18 department of treasury to provide that information to the
19 department. The department shall not issue an original or renewal
20 consumer fireworks certificate to an applicant until the department
21 of treasury has confirmed to the department that each sales tax
22 license submitted by the applicant is current and valid, and that
23 the applicant is otherwise eligible to obtain a consumer fireworks
24 certificate under this act.

25 (4) Not more than 30 days after an application is submitted to
26 the department under this section, the department shall issue or
27 deny issuance of a consumer fireworks certificate to the applicant

1 and, if issuance is denied, shall indicate to the applicant the
2 reason for denial.

3 (5) If the department denies issuance of a consumer fireworks
4 certificate under this section, the applicant may cure any defect
5 of the application within 45 days after the denial without paying
6 an additional fee. The department shall not unreasonably delay or
7 deny an application under this section.

8 (6) A consumer fireworks certificate is transferable upon
9 approval by the department and the payment of a \$25.00 transfer
10 fee. However, the department shall not approve the transfer of a
11 consumer fireworks certificate unless the transferee satisfies
12 eligibility requirements for an original consumer fireworks
13 certificate under this act.

14 (7) The holder of a consumer fireworks certificate shall
15 prominently display the original or copy of the certificate in the
16 appropriate retail location. A person that violates this subsection
17 is responsible for a civil fine of \$100.00. Each day that the
18 consumer fireworks certificate is not displayed as required under
19 this subsection is a separate violation.

20 (8) The department shall not issue a consumer fireworks
21 certificate to a person that is ineligible under this act.

22 (9) The face of the consumer fireworks certificate shall
23 indicate the location or address for which it was issued.

24 (10) Fees collected under this section shall be deposited in
25 the fireworks safety fund.

26 Sec. 5. (1) Consumer fireworks shall only be sold from a
27 retail location if all of the following applicable conditions are

1 met:

2 (a) Except as provided in subdivision (b), a retail location
3 satisfies the applicable requirements of NFPA 101 and NFPA 1124 not
4 in conflict with this act, **AND THE STILLE-DEROSSETT-HALE SINGLE**
5 **STATE CONSTRUCTION CODE ACT, 1972 PA 230, MCL 125.1501 TO 125.1531.**
6 **HOWEVER, ANY PROVISION OF THE STILLE-DEROSSETT-HALE SINGLE STATE**
7 **CONSTRUCTION CODE ACT, 1972 PA 230, MCL 125.1501 TO 125.1531, THAT**
8 **IS INCONSISTENT WITH THE APPLICABLE REQUIREMENTS OF NFPA 101 AND**
9 **NFPA 1124 IS SUPERSEDED TO THE EXTENT OF THE INCONSISTENCY OR**
10 **CONFLICT.**

11 (b) Beginning ~~1 year after the effective date of this act,~~
12 **JANUARY 1, 2013**, a permanent building or structure shall be
13 equipped with a fire suppression system in compliance with NFPA
14 1124.

15 (c) The retailer at that retail location is licensed under
16 section 3 of the general sales tax act, 1933 PA 167, MCL 205.53.

17 (d) The retailer has a valid federal taxpayer identification
18 number issued by the federal department of the treasury, internal
19 revenue service. This requirement does not apply to a retailer that
20 is a sole proprietorship.

21 (2) A person that knows, or should know, that he or she is
22 required to comply with subsection (1) and who fails or neglects to
23 do so is responsible for a civil fine of \$2,500.00 for each
24 violation. Each day that a person is in noncompliance constitutes a
25 separate violation.

26 (3) During periods when consumer fireworks are sold, each
27 retail location selling consumer fireworks either shall be added as

1 an additional insured, or public liability and product liability
2 insurance coverage shall be obtained and maintained, in an amount
3 not less than \$10,000,000.00 per occurrence. A person that knows,
4 or should know, that he or she is required to comply with this
5 subsection and who fails or neglects to do so is liable for a civil
6 fine of not more than \$5,000.00.

7 Sec. 7. (1) Except as provided in this act, a local unit of
8 government shall not enact or enforce an ordinance, code, or
9 regulation pertaining to or in any manner regulating the sale,
10 display, storage, transportation, or distribution of fireworks
11 regulated under this act.

12 (2) A local unit of government may enact an ordinance
13 regulating the ignition, discharge, and use of consumer fireworks,
14 **INCLUDING, BUT NOT LIMITED TO, AN ORDINANCE PRESCRIBING THE HOURS**
15 **OF THE DAY OR NIGHT DURING WHICH A PERSON MAY IGNITE, DISCHARGE, OR**
16 **USE CONSUMER FIREWORKS. However, IF A LOCAL UNIT OF GOVERNMENT**
17 **ENACTS** an ordinance ~~enacted~~ under this subsection, **THE ORDINANCE**
18 shall not regulate the **IGNITION, DISCHARGE, OR** use of consumer
19 fireworks on the day preceding, the day of, or the day after a
20 national holiday ~~—EXCEPT AS FOLLOWS:~~

21 **(A) A LOCAL UNIT OF GOVERNMENT WITH A POPULATION OF 50,000 OR**
22 **MORE OR A LOCAL UNIT OF GOVERNMENT LOCATED IN A COUNTY WITH A**
23 **POPULATION OF 750,000 OR MORE MAY REGULATE THE IGNITION, DISCHARGE,**
24 **OR USE OF CONSUMER FIREWORKS BETWEEN THE HOURS OF 12 MIDNIGHT AND 8**
25 **A.M. OR BETWEEN THE HOURS OF 1 A.M. AND 8 A.M. ON NEW YEAR'S DAY.**

26 **(B) A LOCAL UNIT OF GOVERNMENT WITH A POPULATION OF LESS THAN**
27 **50,000 LOCATED IN A COUNTY WITH A POPULATION OF LESS THAN 750,000**

1 MAY REGULATE THE IGNITION, DISCHARGE, OR USE OF CONSUMER FIREWORKS
2 BETWEEN THE HOURS OF 1 A.M. AND 8 A.M.

3 (3) AN ORDINANCE UNDER SUBSECTION (2) SHALL ONLY IMPOSE A
4 CIVIL FINE OF NOT MORE THAN \$500.00 FOR EACH VIOLATION OF THE
5 ORDINANCE AND NO OTHER FINE OR SANCTION.

6 Sec. 10. ~~A retailer shall remit the fireworks safety fee as~~
7 ~~described in section 9 to the department on forms and in the manner~~
8 ~~prescribed by the department, shall hold the fireworks safety fees~~
9 ~~collected in trust for the state until remitted to the state, and~~
10 ~~is personally liable for the payment of the fireworks safety fee~~
11 ~~money to this state.~~

12 (1) THE RETAILER OR PERSON TO WHOM A CONSUMER FIREWORKS
13 CERTIFICATE IS ISSUED IS RESPONSIBLE FOR REMITTING ALL FIREWORKS
14 SAFETY FEES AS DESCRIBED IN SECTION 9 TO THE DEPARTMENT ON FORMS
15 AND IN THE MANNER PRESCRIBED BY THE DEPARTMENT; SHALL HOLD THE
16 FIREWORKS SAFETY FEES COLLECTED IN TRUST FOR THE STATE UNTIL
17 REMITTED TO THE STATE; AND IS PERSONALLY LIABLE FOR THE PAYMENT OF
18 THE FIREWORKS SAFETY FEE MONEY TO THIS STATE.

19 (2) THE DEPARTMENT MAY REFER FOR COLLECTION TO THE DEPARTMENT
20 OF TREASURY PAST DUE AMOUNTS OF THE FIREWORKS SAFETY FEE CONSISTENT
21 WITH SECTION 13 OF 1941 PA 122, MCL 205.13.

22 (3) A RETAILER OR PERSON SHALL REMIT THE FIREWORKS SAFETY FEES
23 NO LATER THAN 20 DAYS AFTER THE END OF EACH PRECEDING MONTH. A
24 RETAILER OR PERSON THAT OPERATES 25 OR MORE RETAIL LOCATIONS IN
25 THIS STATE THAT ARE PERMANENT BUILDINGS OR STRUCTURES MAY REMIT THE
26 FIREWORKS SAFETY FEES IN AN AGGREGATE FILING UNDER 1 COMMON
27 IDENTIFICATION NUMBER AS DETERMINED BY THE DEPARTMENT.

1 (4) THE DEPARTMENT SHALL INVESTIGATE ANY FIREWORKS SAFETY FEES
2 REPORTED, BUT NOT PAID, BY A RETAILER NO LATER THAN SEPTEMBER 30 OF
3 EACH YEAR.

4 Sec. 11. (1) The fireworks safety fund is created within the
5 department of treasury.

6 (2) The state treasurer may receive money or other assets from
7 any source for deposit into the fund. The state treasurer shall
8 direct the investment of the fund. The state treasurer shall credit
9 to the fund interest and earnings from fund investments.

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

12 (4) The department shall expend money deposited in the fund ~~to~~
13 ~~carry out the purposes of this act, the fire prevention code, 1941~~
14 ~~PA 207, MCL 29.1 to 29.33, and the firefighters training council~~
15 ~~created under section 3 of the firefighters training council act,~~
16 ~~1966 PA 291, MCL 29.363. Of the first \$1,000,000.00 collected in~~
17 ~~the fireworks safety fund in each fiscal year, the department may~~
18 ~~expend not more than \$1,000,000.00 in discretionary grants to local~~
19 ~~units of government to defray inspection costs associated with the~~
20 ~~enforcement of this act.~~ AS FOLLOWS:

21 (A) ONE HUNDRED PERCENT OF THE MONEY RECEIVED FROM FIREWORKS
22 SAFETY FEES UNDER SECTION 8 TO BE USED FOR THE TRAINING OF
23 FIREFIGHTERS UNDER THE DIRECTION AND APPROVAL OF THE FIREFIGHTERS
24 TRAINING COUNCIL ESTABLISHED UNDER THE FIREFIGHTERS TRAINING
25 COUNCIL ACT, 1966 PA 291, MCL 29.361 TO 29.377.

26 (B) ONE HUNDRED PERCENT OF THE MONEY RECEIVED FROM CONSUMER
27 FIREWORKS SAFETY CERTIFICATES UNDER SECTION 4 TO ADMINISTER THIS

1 ACT AND TO PAY THE COSTS OF DELEGATING INSPECTIONS UNDER THIS ACT
2 TO LOCAL UNITS OF GOVERNMENT UNDER SUBSECTION (5).

3 (5) THE DEPARTMENT MAY ESTABLISH A PROGRAM FOR DELEGATING
4 INSPECTION DUTIES UNDER THIS ACT TO 1 OR MORE LOCAL UNITS OF
5 GOVERNMENT. IF A LOCAL UNIT OF GOVERNMENT AGREES TO CARRY OUT
6 INSPECTIONS, THE DEPARTMENT SHALL PAY 70% OF THE CONSUMER FIREWORKS
7 SAFETY CERTIFICATE FEE PAID BY EACH RETAIL LOCATION INSPECTED BY
8 THE LOCAL UNIT OF GOVERNMENT AND RETAIN THE REMAINING 30% OF THAT
9 FEE. IF A LOCAL UNIT OF GOVERNMENT DECLINES TO PARTICIPATE IN THE
10 PROGRAM DESCRIBED IN THIS SUBSECTION, THE DEPARTMENT RETAINS ITS
11 INSPECTION DUTIES UNDER THIS ACT.

12 Sec. 12. (1) A person shall not ignite, discharge, or use
13 consumer fireworks on public property, school property, church
14 property, or the property of another person without that
15 organization's or person's express permission to use those
16 fireworks on those premises. Except as otherwise provided in this
17 section, a person that violates this subsection is responsible for
18 a state civil infraction and may be ordered to pay a civil fine of
19 not more than \$500.00.

20 (2) Consumer fireworks shall not be sold to a minor. A person
21 that violates this subsection shall be ordered to pay a civil fine
22 of not more than \$500.00, or, for a second or subsequent violation
23 of this subsection, a civil fine of not more than \$1,000.00. In
24 addition, the person's consumer fireworks certificate shall be
25 suspended for 90 days after the civil fine is ordered for a second
26 or subsequent violation. This age requirement shall be verified by
27 any of the following:

1 (a) An operator's or chauffeur's license issued under the
2 Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

3 (b) An official state personal identification card issued
4 under 1972 PA 222, MCL 28.291 to 28.300.

5 (c) An enhanced driver license or enhanced official state
6 personal identification card issued under the enhanced driver
7 license and enhanced official state personal identification card
8 act, 2008 PA 23, MCL 28.301 to 28.308.

9 (d) A military identification card.

10 (e) A passport.

11 (f) Any other bona fide photograph identification that
12 establishes the identity and age of the individual.

13 (3) An individual shall not **DISCHARGE, IGNITE, OR** use consumer
14 fireworks or low-impact fireworks while under the influence of
15 alcoholic liquor, a controlled substance, or a combination of
16 alcoholic liquor and a controlled substance. As used in this
17 subsection:

18 (a) "Alcoholic liquor" means that term as defined in section
19 1d of the Michigan vehicle code, 1949 PA 300, MCL 257.1d.

20 (b) "Controlled substance" means that term as defined in
21 section 8b of the Michigan vehicle code, 1949 PA 300, MCL 257.8b.

22 (4) An individual who violates the smoking prohibition under
23 NFPA 1124, 7.3.11.1 is guilty of a misdemeanor punishable by
24 imprisonment for not more than 1 year or a fine of not more than
25 \$1,000.00, or both.

26 (5) Signage stating the smoking prohibition described in
27 subsection (4) satisfies the requirements of NFPA 1124.

1 Sec. 18a. (1) Except as otherwise provided in this section, a
2 person who receives a citation for a serious violation, an order
3 issued under this act, or a rule promulgated under this act shall
4 be assessed a civil fine of not more than \$1,000.00 for each
5 violation.

6 (2) Except as otherwise provided in this section, a person who
7 receives a citation for a violation of this act that is not a
8 serious violation may be assessed a civil fine of not more than
9 \$500.00 for each violation.

10 (3) Subsections (1) and (2) do not apply to violations for
11 which a specific civil fine is provided by this act.

12 (4) The state fire marshal may request that the prosecuting
13 attorney for the county in which a violation of this act occurred
14 issue a complaint and request a warrant for the prosecution of a
15 person who commits a criminal violation of this act.

16 (5) All civil fines collected under this section shall be paid
17 to the department within 15 working days after the date the penalty
18 is ordered, not subject to further review, and credited to the
19 fireworks safety fund.

20 (6) The department of treasury shall institute proceedings to
21 collect any civil fines ordered but not paid under this act.