

## FIREWORKS SAFETY ACT

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**House Bills 4293 and 4294**

**Sponsor: Rep. Harold Haugh**

**Committee: Regulatory Reform**

**Complete to 3-15-11**

## A SUMMARY OF HOUSE BILLS 4293 AND 4294 AS INTRODUCED 2-17-11

House Bill 4293 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. The bill would repeal Chapter XXXIX (Fireworks) of the Michigan Penal Code, which currently governs the sales, storage, manufacture, transportation, and display of fireworks.

Generally speaking, the bill would represent an expansion of the fireworks that could be lawfully sold to consumers without a permit. Currently, under the Michigan Penal Code, consumers may lawfully acquire (without a permit) certain low-grade fireworks (sparklers, etc.), whereas "consumer fireworks," a more expansive category of fireworks that includes aerial devices and other more spectacular devices, may be acquired only with a permit. The bill would allow consumers to purchase consumer fireworks without a permit.

House Bill 4294 would make complementary amendments to the sentencing guideline provisions contained in the Code of Criminal Procedure.<sup>1</sup> The following is a section-by-section description of House Bill 4293.

### **House Bill 4293 (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>2</sup>

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<sup>1</sup> House Bill 4293 is identical to the House-passed version of HB 5999 from the 2009-10 legislative session. The Senate took up the bill in December 2010, with the Senate Committee on Economic Development and Regulatory Reform reporting out an S-1 substitute.

- 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>3</sup>
- 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 States Consumer Product Safety Commission under 16 CFR Parts 1500<sup>4</sup> and 1507<sup>5</sup> and that are listed in APA Standard 87-1.<sup>6</sup>
- d) 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,<sup>7</sup> and APA Standard 87-1.<sup>8</sup>

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<sup>2</sup> See the APA website, [<http://www.americanpyro.com/>]. A copy of the standard is included in the 2010 edition of the Ohio fireworks redbook developed by the Ohio Department of Commerce, Division of State Fire Marshal, [<http://www.com.ohio.gov/fire/docs/RedBook.pdf>].

<sup>3</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.

<sup>4</sup> Title 16 (Commercial Practices), Part 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 bear warning labels alerting consumers to potential hazards.

<sup>5</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 consumer-grade fireworks sold in the U.S.

<sup>6</sup> This is the same definition as provided in NFPA 1123, NFPA 1124, and the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) explosives regulations, 27 CFR 555.11.

<sup>7</sup> Title 49 (Transportation), Part 172 (Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, Training Requirements, and Security Plans). The regulations list and classify certain materials as being "hazardous materials" for shipping purposes, and prescribe certain standards for shipping and packaging labels.

<sup>8</sup> This is essentially the same definition as provided in NFPA 1123 and NFPA 1124, although the U.S. Consumer Product Safety Commission's regulations (16 CFR 1500 and 16 CFR 1507) largely do not apply to display fireworks. ("Fireworks that are intended solely for commercial use, such as fireworks used in public displays, are not covered by these regulations," <http://www.cpsc.gov/businfo/regsumfirework.pdf>.) Display fireworks are regulated by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), which defines "display fireworks" to mean *large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. This term includes, but is not limited to, salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as "consumer fireworks."* Display fireworks are classified as fireworks UN0333, UN0334 or UN0335 by the U.S. Department of Transportation at 49 CFR 172.101. This term also includes fused setpieces containing components which together exceed 50 mg of salute powder (27 CFR 555.11). A similar definition is also used in APA Standard 87-1. The Bureau of Fire Services, after consulting with NFPA staff, has indicated that the definition of "display fireworks" in NFPA 1123 and NFPA 1124 appears to be incorrect.

- e) 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.*
- f) 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>9</sup> (ii) novelties as defined under APA Standard 87-1 3.2;<sup>10</sup> (iii) toy plastic or paper caps for toy pistols, (iv) toy pistols, toy cannons, toy canes, toy trick noisemakers, and toy guns, (v) flitter sparklers, and (vi) toy snakes.
- g) Permanent Building or Structure: A building or structure that is affixed to a foundation on a site and that has fixed utility connections and that is intended to remain on the site for more than 180 calendar days.
- h) Retail Sales Facility (RSF): A permanent structure that is used primarily for the retail display and sale of consumer fireworks.
- i) 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 integral part of a motion picture, radio, television, theatrical, or opera production, or live entertainment.

### **Section 3 – Fireworks Certificate**

A person could not transport, store, distribute, or sell fireworks without obtaining a *fireworks certificate* issued by the Bureau of Fire Services. 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, with the bureau required to issue or deny an application for a certificate within 30 days. The application fee would be as follows:

- a) For each *retail sales facility* from which consumer fireworks will be sold: \$5,000 for the initial certificate, and \$2,500 for a renewal certificate.

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<sup>9</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>10</sup> The standard provides that novelties include party poppers, snappers, certain toy smoke devices, snakes/glow worms, and certain wire sparklers/dipped sticks.

- b) For each location/building where *consumer fireworks* will be stored: \$5,000 for the initial certificate, and \$2,500 for a renewal certificate.<sup>11</sup>
- c) For a *retail sales facility* or location where only *low-grade fireworks* will be sold or stored: \$0.<sup>12</sup> If a person holds a fireworks certificate for a retail sales facility where consumer fireworks will be sold or other building where consumer fireworks will be stored, the person may sell or store low-grade fireworks from that same site without being required to obtain a separate fireworks certificate for the low-grade fireworks.

Failure to obtain a required fireworks certificate would be a misdemeanor punishable by a fine of up to \$5,000 and/or imprisonment of up to 2 years. A consumer fireworks certificate would not be required for fireworks that are manufactured and shipped directly out of state by commercial carrier.<sup>13</sup>

#### **Section 4 – Facilities used for the Retail Sale of Fireworks**

Retailers selling consumer fireworks (other than low-grade fireworks) could only do so at a retail sales facility that meets the following criteria:

- a) Compliance with the provisions of 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) that are not inconsistent with the bill.
- 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 retail sales facility.
- e) Has a retail sales area of at least 1,000 square feet.
- f) Maintains at least \$2.0 million in public liability and product liability insurance.

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<sup>11</sup> The bill contains two provisions regarding storage of consumer fireworks, with the certificate fee being required (1) for each location where consumer fireworks will be stored, and (2) for each building where consumer fireworks will be stored. It isn't clear how these two provisions are different, or how they are intended to be construed.

<sup>12</sup> The bill requires the a fireworks certificate to be issued to the storage, distribution, transportation, or sale of "fireworks" which, as defined in the bill, not only includes consumer fireworks and low-grade fireworks, but display fireworks, articles pyrotechnic, and special effects. While the bill specifically states that there is no fee (\$0) for retail sales facilities and other locations where only low-grade fireworks will be sold, the bill is silent as to the fee for storing or selling display fireworks, special effects, or articles pyrotechnic. Given that the bill does not explicitly provide the Bureau of Fire Services with the authority to establish a fee for issuing fireworks certificates for these types of fireworks, it's presumed that there is also no fee for these types of fireworks.

<sup>13</sup> The bill goes on to state that this "exception" does not apply to individuals who purchase fireworks for their own use. It seems that the bill should say that this "section", rather than "exception," does not apply to individuals. Otherwise, it appears that individual consumers of consumer fireworks would not be "excepted" from the certificate requirements.

A retailer who violates these requirements would be liable for a civil fine of up to \$2,500.

### **Section 5 – Retail Sales of Low-Grade Fireworks Only**

Low-grade fireworks sold at a permanent building or structure other than a retail sales facility would have to comply with the NFPA Fire Prevention Code (NFPA 1) and Life Safety Code (NFPA 101), and be tested by third party approved by the U.S. CPSC.

The bill would permit sales of low-grade fireworks from a tent if the following conditions are met:

- a) The entity selling low-grade fireworks is a non-profit charitable organization.
- b) The tent complies with NFPA's Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic (1124).
- c) The tent is not larger than 35ft x 50ft.
- d) The tent is located in the parking lot (with at least 125 parking spaces) of a *retail sales facility* that is a grocery or general merchandise store with at least 25,000 square feet of retail space and licensed by the Department of Agriculture as a retail food establishment.<sup>14</sup>
- e) Complies with local zoning laws.

To sell low-grade fireworks from a tent, the non-profit organization would have to apply to the Bureau of Fire Services for a fireworks certificate. The application would have to be made not later than March 1st. The application would have to include a listing of the specific days low-grade fireworks are to be sold, and would have to be accompanied by a flat fee of \$250. Tent sales could only occur on the dates listed on the certificate, with a violation of this provision being a misdemeanor punishable by imprisonment of up to 2 years and/or a fine of \$5,000 per day of violation.

Local units of government would be permitted to adopt an ordinance regulating tent sales that are at least equal to the bill's requirements on tent sales. Tent sales, however, could not occur in a local unit unless it has adopted an ordinance permitting such sales.<sup>15</sup>

### **Section 6 – Public Displays of Fireworks**

The bill generally provides for a system of local regulation of public displays of fireworks (as is the practice currently).<sup>16</sup> A person conducting a public display would

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<sup>14</sup> If the store does not also sell consumer fireworks (i.e., it is not a retail sales facility), the tent could not be located on its property.

<sup>15</sup> It is not entirely clear how this dual system of regulation of tent sales would work in practice, as the Bureau of Fire Service's current activities in this area primarily consist of providing local units of government with forms to be used when issuing permits. Is the issuance of a fireworks certificate by the Bureau of Fire Services the first step in the process or the last? Certainly, the bureau wouldn't issue a certificate if the applicant is located in a local government that does not have a low-grade sales ordinance. But, is a certificate issued before the applicant demonstrates compliance with local requirements? In contrast, under the Liquor Control Code, the Liquor Control Commission issues a permit only after the local unit of government approves.

have to apply for a permit to be issued by the local unit of government where the display is to be held. The application would have to be submitted at least 30 days before the display, and would have to be accompanied by an application fee, the amount of which would be determined by the Bureau of Fire Services.<sup>17</sup> A person who conducts public displays in the state must have a resident agent who maintains a physical address in the state.

The bill would also permit local units of government to issue a permit to display fireworks dealers allowing dealers to possess display fireworks, articles pyrotechnic, and special effects for sale as a public display.<sup>18</sup> The dealer would have to submit an application to the local unit of government and pay an application fee.<sup>19</sup> The contents of the application and the amount of the fee would be determined by the Bureau of Fire Services.

### **Section 7 – Retail Sale and Storage of Fireworks**

All fireworks and "fireworks products"<sup>20</sup> sold in the state would have to meet the minimum standards prescribed by the U.S. CPSC and tested or certified by a third-party approved by the U.S. CPSC.<sup>21</sup> Additionally, fireworks stored by a dealer or wholesaler would have to comply with the distance requirements of the NFPA Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles (1124) and the NFPA Code for Fireworks Display (1123).

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<sup>16</sup> See, generally, a Michigan Townships Association fact sheet on state and federal fireworks regulations, [[http://www.michigantownships.org/downloads/updated\\_fireworks\\_fact\\_sheet\\_1.pdf](http://www.michigantownships.org/downloads/updated_fireworks_fact_sheet_1.pdf)]. See, also, Section 243b of the Michigan Penal Code, MCL 750.243b.

<sup>17</sup> The fee would be paid to the appropriate local unit when a person applies for a public display permit. The fee would then be transmitted to the state and credited to the Fireworks Safety Fund. While the fee is paid to the state, the actual work of processing the permit application is undertaken by the local unit of government. It's not clear whether the fee would be returned to the local unit that processes a public display permit, or whether it would simply be retained by the bureau to support its costs to administer the act.

<sup>18</sup> See, generally, a Michigan Townships Association fact sheet on state and federal fireworks regulations, [[http://www.michigantownships.org/downloads/updated\\_fireworks\\_fact\\_sheet\\_1.pdf](http://www.michigantownships.org/downloads/updated_fireworks_fact_sheet_1.pdf)]. See, also, Section 243b of the Michigan Penal Code, MCL 750.243b. Also, this permit would be in addition to the fireworks certificate issued by the Bureau of Fire Services under Section 3 of the bill and the explosives permit/license issued by the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives.

<sup>19</sup> As with the public display permit fee, the fee for a display fireworks possession permit would be paid to the local unit, and remitted to the state and credited to the Fireworks Safety Fund, although actual processing of the permit would be done by the local unit.

<sup>20</sup> "Fireworks products" isn't defined in the bill, but seems to be redundant.

<sup>21</sup> Under the Consumer Products Safety Improvement Act of 2008 (CPSIA), P.L. 110-314, fireworks and certain other products to be certified for conformity with applicable CPSC rules, standards, and bans (16 CFR 1500 and 16 CFR 1507), with certification based on a test of each product or a "reasonable testing program." See, "New CPSC Compliance Requirements", *AFSL News*, American Fireworks Safety Laboratory, Vol. 43, November 2008, [<http://nationalfireworks.org/forms/general/afslnews1108-3.pdf>]. See, also, *CPSC Testing and Certification Requirements Applicable to Consumer Fireworks*, American Fireworks Standards Laboratory, February 18, 2010, [[http://www.afsl.org/images/CPSIA\\_Fireworks\\_Certification\\_Requirements\\_-\\_Feb\\_2010.PPT](http://www.afsl.org/images/CPSIA_Fireworks_Certification_Requirements_-_Feb_2010.PPT)]. See, also, *Consumer Fireworks Testing Manual* (4th ed.), U.S. Consumer Products Safety Commission, August 17, 2006, [<http://www.cpsc.gov/businfo/testfireworks.pdf>]. NFPA 1124 (Section 6.2.7.1) provides that, "consumer fireworks shall be tested and certified by an approved, independent third party testing agency for compliance with the regulation of the Consumer Product Safety Commission (CPSC) as set for in 16 CFR 1500 and 1507, using an approved test sampling plan." CPSC regulations generally don't apply, however, to display fireworks.

Individuals who have been convicted of a felony could not hold an interest in a business licensed to sell fireworks in the state. Management employees of a retail sales facility would have to be trained in the handling of consumer fireworks, under a training program approved by the Bureau of Fire Services.

All retail sales facilities and buildings where fireworks are stored 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."<sup>22</sup>

#### **Section 8 – 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 9 – Use of Fireworks While Under the Influence**

An individual could not possess, purchase, or sell consumer fireworks while under the influence of alcohol or a controlled substance, or both.

#### **Section 10 – Smoking Prohibited**

Smoking would not be permitted in, or within 50 feet of, a retail sales facility, or in a tent where low-grade fireworks are sold. 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 11 – Fireworks Safety Fee**

The bill would impose a "user fee" known as the fireworks safety fee on all retail sales of fireworks.<sup>23</sup> 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 12 – Fireworks Safety Fee Schedule**

The fireworks safety fee would equal 5% of the retail selling price. Retailers would be permitted to retain 1% of fee revenue as a collection allowance.

#### **Section 13 – Duty to Remit Fireworks Safety Fee**

Retailers would be responsible for remitting fireworks safety fee revenue to the Department of Treasury on a monthly basis, and would be personally liable for the payment.<sup>24</sup>

#### **Section 14 – Fireworks Safety Fund**

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<sup>22</sup> Facilities that are used to store display fireworks are subject to inspection as part of the triennial licensure cycle by the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives.

<sup>23</sup> Although the fee applies retail sales of "fireworks", display fireworks (a subset of fireworks, as defined in the bill), cannot lawfully be sold to retail customers.

<sup>24</sup> The bill doesn't specify when the payment would be made. Presumably, the remittance schedule would coincide with that of the sales tax, in which case the fee would be due on the 20th of each month.

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 15 – Rule-making Authority**

The bill would provide the Bureau of Fire Services with the authority to promulgate administrative rules, under 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 (1126).

#### **Section 16 – Delegation of Authority to Local Units of Government**

The authority and responsibility to administer the provisions of the bill could 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 split.<sup>25</sup>

#### **Section 17 – Production/Transportation of Certain Explosives**

A person shall not produce or transport new explosives<sup>26</sup> that are not Division 1.3 explosives<sup>27</sup> or Division 1.4 explosives<sup>28</sup> if the person meets the requirements of 49 CFR 173.56.

#### **Section 18 – Use of Fireworks**

The bill would prohibit individuals from igniting, discharging, or using consumer 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

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<sup>25</sup> This 80-20 local-state funding split effectively means that if the Bureau of Fire Services delegates its authority to a local unit of government, the state picks up 80% of the cost to carry out the regulation, with the local unit picking up 20% of the cost. It's not clear how this would work in practice, if the state is supposed to pick up 80% of the current costs. It could be that this arrangement is structured in the same manner as the fire protection grants made to local units where, under 1977 PA 289, the local unit reports to DELEG the amount of expenditures made in the prior fiscal year, which then determines (in part) the amount of the grant for the current year.

<sup>26</sup> "New Explosive" is defined in the bill, by incorporating the definition in 49 CFR 173.56, 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>27</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>28</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."



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. A violation would be punishable by a fine of up to \$500.

A person could not ignite, discharge, or otherwise use consumer fireworks between the hours of midnight and 10 a.m. on any day. On legal holidays, however, the restricted use hours would be between 1 a.m. and 9 a.m.<sup>29</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.

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 up to five years. Violations causing death would be a felony punishable by a fine of up to \$10,000 and/or imprisonment of 15 years.

#### **Section 19 – Reimbursement of Storage Costs**

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

#### **Section 20 – 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 21 – Bureau Website**

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

#### **Section 22 – 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.
- b) The use of fireworks by railroads or other transportation agencies for signal purposes or illumination.
- c) The use of agricultural or wildlife fireworks.

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<sup>29</sup> The bill does not specify the time zone, so these time restrictions would be the local time, irrespective of the time zone. (The Western Upper Peninsula is in the central time zone.)

- 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.
- g) Local units of government from enacting ordinances regulating tent sales.

### **Section 23 – Preemption of Local Authority**

The bill generally would preempt 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.<sup>30</sup>

### **Section 24 – 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 4294 (Code of Criminal Procedure)**

The bill would amend Chapter XVII (Sentencing Guidelines) of the Code of Criminal Procedure to specify that 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. Violation of the low-grade fireworks certificate would be a Class G crime against the public safety, punishable by a statutory maximum incarceration sentence of 2 years. Violations of HB 4293 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 4293 causing death would be punishable by a maximum incarceration sentence of 5 years.

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<sup>30</sup> The bill specifically allows local units of government to enact ordinances regulating or prohibiting sales of low-grade fireworks from tents. The bill also allows local units of government to issue permits allowing for public displays of fireworks.

## FISCAL IMPACT:

**State Revenue:** The bill would result in an increase in state revenue by an, as yet, indeterminate amount, depending on the sales volume in the state following the expansion of what fireworks can be lawfully sold to consumers without a permit. Currently, under the Michigan Penal Code, consumers may lawfully acquire (without a permit) certain low-grade fireworks (sparklers, etc), whereas "consumer fireworks," a more expansive category of fireworks that includes aerial devices, among other devices, may be acquired only with a permit. The bill would allow consumers to purchase consumer fireworks without a permit.

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 widely sold in Michigan currently, the exact volume of sales under current law and anticipated sales under HB 4293 are not currently known.<sup>31</sup>

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 four fiscal years (FYs 2007-2010), according to figures from the Indiana Legislative Services Agency.<sup>32</sup> Assuming the same volume of sales in Michigan as there is in Indiana, such sales would generate an additional \$3.0 million in sales tax revenue, in addition to \$2.5 million from the fireworks safety fee.

Additionally, the bill imposes a variety of fees on persons within the industry. These fees include a (1) \$5,000 fee for each retail sales facility where consumer fireworks will be sold, (2) a \$5,000 fee for each building where consumer fireworks will be stored, and (3) a \$250 fee for non-profit organizations selling low-grade fireworks. Given the uncertainties noted above, particularly concerning the number of retailers, the potential amount of revenue is, again, indeterminate.

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<sup>31</sup> Neither the U.S. Census Bureau nor the Bureau of Labor Statistics publish data on the number of retail fireworks firms, the volume of wholesale/retail fireworks sales, or the amount of consumer expenditures on fireworks. Such information is also not compiled at the state level by the American Pyrotechnic Association, an industry trade group. The APA notes, however, that total fireworks industry revenue in 2009 was about \$945 million, [<http://www.americanpyro.com/pdf/Fireworks%20Revenue%201998-09.pdf>]. Most fireworks firms are privately held companies, which means that sales data isn't available publicly as for publicly-traded companies, therefore such information is closely held, proprietary data that is not readily disclosed by business owners. One article notes that following the expansion of sales in Indiana in 2006, one retailer (Phantom Fireworks), saw a 30% increase in sales. See, Elan Weisz, *Are Fireworks Recession-Proof?*, CNBC News, 8 July 2009, [[http://www.cnbc.com/id/31683036/Are\\_Fireworks\\_Recession\\_Proof](http://www.cnbc.com/id/31683036/Are_Fireworks_Recession_Proof)].

<sup>32</sup> *Indiana Handbook of Taxes, Revenues, and Appropriations (FY 2010)*, Indiana Legislative Services Agency, Office of Fiscal and Management Analysis, [[http://www.in.gov/legislative/pdf/TaxHandbook10\\_online.pdf](http://www.in.gov/legislative/pdf/TaxHandbook10_online.pdf)]. Presumably, some portion of that revenue is attributable to sales of fireworks to Michigan residents and out-of-state (second-home) Michigan residents and tourists who could now make such purchases more freely in Michigan rather than Indiana while en route. It should be noted, however, that there are differences between the Indiana law and the bill that may impact the volume of sales occurring in the state. This is primarily through the fee structure and the types of retail sales facilities. Indiana permits sales in tents whereas House Bill 4293 requires consumer fireworks to be sold in permanent structures of a certain size (at least 1,000 square feet), with tent sales limited by product (low-grade fireworks only), proprietor (non-profit organizations), and location (the parking lot of large grocery stores that also sell consumer fireworks).

Additionally, the bill also imposes two separate fees for display fireworks: (1) a fee for conducting a public display of fireworks, and (2) a fee for possessing display fireworks, special effects, and articles pyrotechnic. The amount of these fees is not specified in the bill, but is instead to be determined by the Bureau of Fire Services. Given that these amounts are not specifically established in the bill, the amount of potential revenue generated by the fees is, accordingly, indeterminate. Current law requires a public display permit (issued locally), although the number of such displays is not currently tracked by the Bureau of Fire Services or the various local government associations. As a point of reference, however, Indiana law allows the state Department of Homeland Security to administratively determine the amount of the public display, as HB 4293 would here. The public display permit fee is currently \$69. According to the Indiana Legislative Services Agency, annual public display permit fee revenue has ranged from \$43,516 to \$59,109 (for an average of approximately \$51,900) over the last five years.<sup>33</sup>

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 retail sales facilities and fireworks storage 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 retail sales facilities that would operate in the state and the ability of the Bureau of Fire Services to delegate its responsibilities to local governments and the willingness of local units to accept those responsibilities. 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.

**Local Revenue:** The bill would reduce local revenue by an indeterminate amount. Currently, many local units impose various permit fees on fireworks retailers and on the public display 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. Although the bill generally preempts local authority to regulate fireworks, it explicitly reserves to local units the authority to regulate sales of low-grade fireworks from tents. The reduction in revenue would occur through the reduction in the number of locations (tents) where fireworks are sold, given the bill's

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<sup>33</sup> *Indiana Handbook of Taxes, Revenues, and Appropriations (FY 2010)*, Indiana Legislative Services Agency, Office of Fiscal and Management Analysis, [[http://www.in.gov/legislative/pdf/TaxHandbook10\\_online.pdf](http://www.in.gov/legislative/pdf/TaxHandbook10_online.pdf)].

restrictions on such sales. Presumably, the local unit of government's authority to enact an ordinance regulating tent sales includes an ability to impose fees to support its regulatory costs, since the \$250 fee imposed under the bill is credited to the Fireworks Safety Fund. Additionally the bill allows the Bureau of Fire Services to delegate its regulatory authority to local units of government, with the state picking up 80% of the cost.

The bill imposes a fee on public display permits, with the amount of the fee determined by the Bureau of Fire Services. Presumably, this fee would be in lieu of the current fee imposed by some local units of government, hence the potential reduction in local revenue.<sup>34</sup> It's not clear, however, how this fee is to be expended (from the state's standpoint). Given that the primary regulatory agency for public displays of fireworks is local government, it could be the case that the fee revenue is simply pass-through funding from the state back to the local unit where the display will take place.<sup>35</sup> In this case, the local revenue impact could either be positive or negative as some local units impose display permit fees and others do not. Otherwise, the preemption of local authority to impose a public display fee reduces local revenue.

Similarly, the bill also permits local units to issue permits allowing fireworks companies to possess display fireworks, special effects, and articles pyrotechnic, as current law allows. The bill imposes a permit fee, the amount of which is to be determined by the Bureau of Fire Services. Similar to the public display permit fee, the work of processing the permit application is done at the local level, although the state collects the fee revenue. So it isn't clear, in this case either, if the permit fee is simply a pass-through back to the local units. If so, the revenue impact would again be positive or negative, depending on whether a local unit currently imposes a fee for these permits. Otherwise, the bill would reduce local revenue attributable to any current fee associated with a permit allowing for the possession/storage of fireworks.<sup>36</sup>

**Local Expenditures:** The bill would have an indeterminate impact on local units of government. The bill continues to allow local units to regulate tent sales, although the number of locations is likely to drop a bit, given the restrictions on such sales in the bill. This would tend reduce local expenditures, depending on the scope of a local units activities in regulating fireworks retail stands. However, the bill also establishes a state-imposed fee for public displays of fireworks. If local units of government are the sponsoring organization of such displays (such as part of a local festival), local units of government could be responsible paying the public display fee, even though it would essentially issue a display permit to itself.<sup>37</sup>

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<sup>34</sup> The bill does not explicitly provide local units of government with the authority to enact ordinances concerning public displays but, instead, permits the Bureau of Fire Services to develop administrative rules providing the criteria local units of government are to follow when issuing permits.

<sup>35</sup> While the state imposes and collects a permit fee, the actual work processing the fee is undertaken by the local unit of government.

<sup>36</sup> Here too, the bill does not explicitly provide local units of government with the authority to enact ordinances concerning the possession of display fireworks, etc., but instead permits the Bureau of Fire Services to develop administrative rules providing the criteria local units of government are to follow when issuing permits.

<sup>37</sup> The amount of the fee is to be determined by the Bureau of Fire Services.

The bill would also permit 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 20% of the cost, with the state picking up the remaining 80%.

**Corrections Impact:** To the extent that the bills increased the numbers of misdemeanor or felony convictions for fireworks violations, 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.

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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.