

HOUSE BILL No. 4743

May 16, 2013, Introduced by Reps. Haugh, Schor, Tlaib, Faris, Roberts, Dillon, Goike, Yonker, Geiss, Foster, Crawford, McBroom, Lane, McCann, Driskell, Dianda, Howrylak and Nathan and referred to the Committee on Regulatory Reform.

A bill to amend 2011 PA 256, entitled
"Michigan fireworks safety act,"
by amending sections 4, 5, 7, 12, and 18a (MCL 28.454, 28.455,
28.457, 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:

8 (a) For a first violation of this subsection, not more than

1 \$5,000.00.

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

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

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

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

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

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

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

24 (D) ~~(e)~~ The application shall be accompanied by a copy of the
25 applicant's current sales tax license, including the applicant's
26 account number, issued by the department of treasury for each
27 retail location where consumer fireworks are to be sold by the

1 applicant.

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

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

1 reason for denial.

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

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

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

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

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

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

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

1 (a) Except as provided in subdivision (b), a retail location
2 satisfies the applicable requirements of NFPA 101 and NFPA 1124 not
3 in conflict with this act **AND THE STILLE-DEROSSETT-HALE SINGLE**
4 **STATE CONSTRUCTION ACT, 1972 PA 230, MCL 125.1501 TO 125.1531.**

5 (b) Beginning ~~1 year after the effective date of this act,~~
6 **JANUARY 1, 2013**, a permanent building or structure shall be
7 equipped with a fire suppression system in compliance with NFPA
8 1124.

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

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

15 **(E) SIGNAGE IS POSTED IN THE RETAIL FACILITY THAT INFORMS THE**
16 **CONSUMER OF ALL OF THE FOLLOWING:**

17 **(i) THAT THE CONSUMER MAY VIEW A COPY OF THIS ACT BY VISITING**
18 **THE DEPARTMENT'S WEBSITE.**

19 **(ii) THAT THE CONSUMER MAY CONTACT THE LOCAL UNIT OF GOVERNMENT**
20 **IN WHICH THE RETAIL FACILITY IS LOCATED TO LEARN ABOUT LOCAL**
21 **ORDINANCES CONCERNING THE USE OF CONSUMER FIREWORKS.**

22 **(F) THE DEPARTMENT SHALL PROMULGATE RULES PRESCRIBING THE**
23 **REQUIREMENTS FOR THE SIGNAGE UNDER SUBDIVISION (E).**

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

1 separate violation.

2 (3) During periods when consumer fireworks are sold, each
3 retail location selling consumer fireworks either shall be added as
4 an additional insured, or public liability and product liability
5 insurance coverage shall be obtained and maintained, in an amount
6 not less than \$10,000,000.00 per occurrence. A person that knows,
7 or should know, that he or she is required to comply with this
8 subsection and who fails or neglects to do so is liable for a civil
9 fine of not more than \$5,000.00.

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

15 (2) A local unit of government may enact an ordinance
16 regulating the ignition, discharge, and use of consumer fireworks,
17 **INCLUDING, BUT NOT LIMITED TO, AN ORDINANCE PRESCRIBING THE HOURS**
18 **OF THE DAY OR NIGHT DURING WHICH A PERSON MAY IGNITE, DISCHARGE, OR**
19 **USE CONSUMER FIREWORKS.** However, an ordinance enacted under this
20 subsection shall not regulate the **IGNITION, DISCHARGE, OR** use of
21 consumer fireworks on the day preceding, the day of, or the day
22 after a national holiday **EXCEPT ANY TIME BETWEEN THE HOURS OF 12**
23 **MIDNIGHT AND 8 A.M. AN ORDINANCE UNDER THIS SUBSECTION SHALL ONLY**
24 **IMPOSE A CIVIL FINE OF NOT MORE THAN \$500.00 FOR EACH VIOLATION OF**
25 **THE ORDINANCE AND NO OTHER FINE OR SANCTION.**

26 Sec. 12. (1) A person shall not ignite, discharge, or use
27 consumer fireworks on public property, school property, church

1 property, or the property of another person without that
2 organization's or person's express permission to use those
3 fireworks on those premises. Except as otherwise provided in this
4 section, a person that violates this subsection is responsible for
5 a state civil infraction and may be ordered to pay a civil fine of
6 not more than \$500.00.

7 (2) Consumer fireworks shall not be sold to a minor. A person
8 that violates this subsection shall be ordered to pay a civil fine
9 of not more than \$500.00, or, for a second or subsequent violation
10 of this subsection, a civil fine of not more than \$1,000.00. In
11 addition, the person's consumer fireworks certificate shall be
12 suspended for 90 days after the civil fine is ordered for a second
13 or subsequent violation. This age requirement shall be verified by
14 any of the following:

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

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

19 (c) An enhanced driver license or enhanced official state
20 personal identification card issued under the enhanced driver
21 license and enhanced official state personal identification card
22 act, 2008 PA 23, MCL 28.301 to 28.308.

23 (d) A military identification card.

24 (e) A passport.

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

27 (3) An individual shall not **DISCHARGE, IGNITE, OR** use consumer

1 fireworks or low-impact fireworks while under the influence of
2 alcoholic liquor, a controlled substance, or a combination of
3 alcoholic liquor and a controlled substance. As used in this
4 subsection:

5 (a) "Alcoholic liquor" means that term as defined in section
6 1d of the Michigan vehicle code, 1949 PA 300, MCL 257.1d.

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

9 (4) An individual who violates the smoking prohibition under
10 NFPA 1124, 7.3.11.1 is guilty of a misdemeanor punishable by
11 imprisonment for not more than 1 year or a fine of not more than
12 \$1,000.00, or both.

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

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

20 (2) Except as otherwise provided in this section, a person who
21 receives a citation for a violation of this act that is not a
22 serious violation may be assessed a civil fine of not more than
23 \$500.00 for each violation.

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

26 (4) The state fire marshal may request that the prosecuting
27 attorney for the county in which a violation of this act occurred

1 issue a complaint and request a warrant for the prosecution of a
2 person who commits a criminal violation of this act.

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

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

9 Enacting section 1. This amendatory act does not take effect
10 unless Senate Bill No. ____ or House Bill No. 4744 (request no.
11 02259'13) of the 97th Legislature is enacted into law.