

# Legislative Analysis



## MICHIGAN FIREWORKS SAFETY ACT

Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 6410 (Substitute H-2)**  
**Sponsor: Rep. Tonya Schuitmaker**

**House Bill 6412 as introduced**  
**Sponsor: Rep. Bruce Caswell**

**House Bill 6411 as introduced**  
**Sponsor: Rep. Kevin Elsenheimer**

**House Bill 6413 as introduced**  
**Sponsor: Rep. Rick Shaffer**

**Committee: Government Operations**

**Complete to 9-19-06**

### A SUMMARY OF HOUSE BILLS 6410 - 6413 AS REPORTED FROM COMMITTEE

House Bill 6410 (H-2) would establish the "Michigan Fireworks Safety Act," a comprehensive new law to regulate the purchase, possession, sale, 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 within the Treasury Department.

House Bill 6411 would amend the Michigan Penal Code (MCL 750.411) to require hospitals, pharmacies, physicians, and surgeons to report injuries to persons caused by fireworks or pyrotechnics to appropriate local law enforcement officials in the same way they are currently required to report injuries caused by knives, guns, pistols, and other deadly weapons.

House Bill 6412 would amend the Code of Criminal Procedure (MCL 777.11c) to put new fireworks-related felonies into sentencing guidelines.

House Bill 6413 would repeal Chapter XXXIX of the Michigan Penal Code (MCL 750.243a to 750.243e), which contains the existing Penal Code provisions relating to fireworks.

House Bills 6411-6413 are tie-barred to House Bill 6410. They were reported out of committee simultaneously with two other fireworks-related bills, House Bills 6414 and 6415. See the note concerning conflicting provisions in the package of bills at the end of this summary.

A more complete description of the proposed "Michigan Fireworks Safety Act" follows.

#### **House Bill 6410 (H-2 Substitute)**

Definition of Fireworks. "Firework" or "fireworks" means "any composition or device designed for the purpose of producing a visible or audible effect of combustion,

deflagration, or detonation. Fireworks consist of consumer fireworks, items referenced in section 8(1), and "special fireworks." The bill excludes the following items from its definition of fireworks: model rockets; toy pistol caps; emergency signal flares; matches; fixed ammunition for firearms; shells, ammunition components intended for use in firearms, muzzle loading cannons, or small arms; shells, cartridges, and primers for use in firearms, muzzle loading cannons, or small arms; indoor pyrotechnics special effects material; M-80's, cherry bombs, silver salutes, and any device banned by the federal government. Many specific types of fireworks are further defined in Section 2 of the bill.

Categories of fireworks. The bill divides fireworks into the categories of "special fireworks," "consumer fireworks," and Section 8(1) items.

**"Special fireworks"** means "fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation, including firecrackers containing more than 130 milligrams of explosive composition, aerial shells containing more than 40 grams of pyrotechnic composition, and other exhibition display items that exceed the limits for classification as consumer fireworks." Generally speaking, special fireworks are fireworks used for municipal and other public fireworks displays.

**"Consumer fireworks"** means "a small firework that is designed primarily to produce visible effects by combustion and that is required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States Consumer Products Safety Commission under 16 CFR 1507. Consumer firework also may include small devices designed to produce an audible effect, such as whistling devices, devices containing 50 milligrams or less of explosive composition, and aerial devices containing 130 milligrams or less of explosive composition. Propelling or expelling charges consisting of a mixture of charcoal, sulfur, and potassium nitrate are not considered as designed to produce an audible effect. Consumer fireworks include all of the following:

- (i) Aerial devices, which include sky rockets, missile type rockets, helicopter or aerial spinners, Roman candles, mines, and shells.
- (ii) Ground audible devices, which include firecrackers, salutes, and chasers.
- (iii) Firework devices containing combinations of 2 or more of the effects described in subparagraphs (i) and (ii)."

"Consumer fireworks" do not include Section 8(1) items, discussed next, and "wire sparklers that contain no magnesium and less than 100 grams of composition per item."

Generally speaking, "consumer fireworks" means fireworks that can be lawfully sold to consumers under federal law and would include certain types of fireworks not currently lawfully sold in Michigan.

**Section 8(1) items** consist of:

- Dipped sticks or wire sparklers. Total pyrotechnic composition may not exceed 100 grams per item. Dipped sticks and wire sparklers containing chlorate or perchlorate salts may not exceed 5 grams in total composition per item.

- Cylindrical fountains.
- Cone Fountains.
- Illuminating torches.
- Wheels.
- Ground spinners.
- Flitter sparklers.
- Snakes or glow worms.
- Smoke devices.
- Trick noisemakers, including party poppers, booby traps, snappers, trick matches, cigarette loads, and auto burglar alarms.

Public fireworks display permits. The bill would require a municipality, fair association, amusement park, organization, or group to obtain a permit for a supervised public display of fireworks. Not more than five days before the planned display, the sponsor would be required to submit a permit application on an approved form to the local unit of government closest to the location where the fireworks display is to be held. If a local unit of government denies a permit, it must issue the denial in writing before the planned date of the fireworks display. Fireworks display permits are not transferable.

The application must include the appropriate fee, as determined by the Bureau of Fire Services, and the following information in writing:

- The name of a competent operator who is to operate the fireworks display.
- A brief resume of the operator who is to officiate at the display.
- Proof that the fire chief of the municipality where the display is to be held has approved the qualified operator, in the manner and form required by the Bureau of Fire Services.

A person with a prior conviction under a Michigan fireworks law would be barred from operating a public fireworks display for at least one year after the conviction.

The display would be required to be located and operated in a manner approved by the local fire chief, after property inspection, as not hazardous to persons or property.

The possession, transportation, or delivery of special fireworks without a public fireworks display permit would be a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$5,000, or both.

Non-prohibited fireworks sales and uses. The bill expressly does not prohibit any of the following:

- A resident wholesaler, manufacturer, importer, or distributor from (1) selling at wholesale, fireworks not prohibited by the bill; or (2) selling consumer fireworks to consumers for use on the purchaser's property, or on the property of another person who has given permission, or at a special discharge location.
- The use of fireworks by railroads or other transportation agencies for signals or illumination.

- The sale or use of blank cartridges for (1) use by a show or theater; (2) signal or ceremonial purposes in athletics or sports; or (3) use by military organizations.
- The intrastate sale of fireworks not approved for sale in this state between interstate wholesalers.
- The possession, sale, or disposal of fireworks incidental to the public display of Class B fireworks by wholesalers or other persons who possess a permit to possess, store, and sell Class B explosives from the Bureau of Alcohol, Tobacco, Firearms and Explosives of the United States Department of Justice.
- The use of indoor pyrotechnics special effects material before an indoor or outdoor proximate audience.

A "resident wholesaler, importer, or distributor" means a person who (1) is a resident of Michigan; (2) possesses for storage or resale fireworks approved or not approved for sale in Michigan; (3) is engaged in the interstate sale of fireworks as an essential part of a business that is located in a permanent structure open at least six months each year; and (4) has a certificate of compliance issued by the State Fire Marshal. Certificates of compliance are discussed below.

Fireworks sales from tents. A retailer may sell consumer fireworks and Section 8(1) items from a tent under the following conditions:

- The tent is not larger 1,500 square feet.
- There is only one tent per registration.
- The tent is not located within 100 feet of a permanent structure.
- Vehicles are not parked within 20 feet of the tent.
- The tent is fire retardant.
- The sales site complies with applicable local zoning and land use rules.
- Sales from the tent do not exceed 45 days in a year.
- The weight of consumer fireworks in a tent does not exceed 3,000 gross pounds of consumer fireworks.
- A retailer that legally operated a tent in 2006 may continue tent operations in [2007] and following years. A registration is required for operation in 2007 and following years. In this subsection, retailer includes a resident wholesaler who supplied consumer fireworks to an applicant for a tent registration in 2006.
- The retailer holds a valid registration

A retailer who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$5,000, or both.

Fireworks sales from structures other than tents. A retailer may sell consumer fireworks and Section 8(1) items only from a structure that satisfies requirements promulgated by the Bureau of Fire Services. In addition, the following conditions must be met:

- The structure is a structure in which consumer fireworks are sold and stored.
- The sales site complies with applicable local zoning and land use rules.

- The weight of consumer fireworks in the structure does not exceed 3,000 gross pounds.
- The retailer holds a valid registration.
- A retailer that sold consumer fireworks and operated from a structure with a registration in 2006 may continue operation in the structure in 2007 and in following years. A registration is required for operation in 2007 and following years.

Inspections of tents and structures. The State Fire Marshal or an employee of the Bureau of Fire Services will be required to inspect tents and structures in which fireworks are sold. The Fire Marshal may, subject to policies and procedures, delegate this duty to a fire department with jurisdiction over the tent or structure.

Special quantity provision for Section 8(1) items. The act does not limit the quantity of Section 8(1) items that may be sold from any structure that complied with a statute or the rules in effect before the effective date of the bill.

State Fire Marshal's authority to stop unlawful shipments and sales of fireworks; criminal penalties. The State Fire Marshal will remove, at the owner's expense, all fireworks or combustibles possessed, transported, or delivered in violation of the law.

The Fire Marshal will stop the shipments and sales of fireworks, novelties, and trick noisemakers unless, before shipment into this state or sale, the manufacturer, wholesaler, importer, or distributor submits all of the following to the State Fire Marshal:

- A complete description of each item proposed to be shipped into the state.
- A written certification that the items are manufactured in accordance with the act.
- An annual registration fee of \$1,000.00 collected by the State Fire Marshall and deposited in the Fireworks Safety Fund.

Required lists of customers selling Section 8(1) items. A manufacturer, wholesaler, importer, or distributor of fireworks, novelties, and trick noisemakers shall submit a list to the State Fire Marshal by June 1 of each year containing the name and address of each retail location of each of the customers of the manufacturer, wholesaler, importer, or distributor at which Section 8(1) items will be sold.

Certificates of compliance. If upon inspection the State Fire Marshal finds that the law has been complied with, an annual certificate of compliance shall be issued to the manufacturer, wholesaler, importer, or distributor. An annual certificate of compliance will not be granted for an application submitted after June 15 of a year. A certificate will expire on December 31 of the year of issuance. Each manufacturer, wholesaler, importer, or distributor is required to obtain a certificate of compliance. The certificate is not transferable except to a subsequent owner or operator of a business at the same location in accordance with the policies and guidelines of the State Fire Marshal. A certified copy of the certificate of compliance must be posted in each location where the items are offered for sale to the public.

If upon inspection the State Fire Marshal finds that the act has not been complied with, the State Fire Marshal will not issue a certificate of compliance and will state the reasons for the refusal. A copy of the order denying the issuance of a certificate will be forwarded to the manufacturer, wholesaler, importer, or distributor.

The State Fire Marshal may revoke the certificate of compliance of any certificate holder who has violated the law. Manufacturers, wholesalers, importers or distributors are not allowed to sell at wholesale or ship into Michigan fireworks, novelties, or trick noisemakers without a valid certificate of compliance.

Required quantity labeling. All fireworks, novelties, and trick noisemakers shipped into Michigan, or manufactured or sold in Michigan, must have the exact number of pieces in the container marked on the container.

Criminal penalty for failure to obtain a certificate of compliance or violating labeling rules. A person who violates the provisions requiring certificates of compliance or quantity labeling is guilty of a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$5,000, or both.

Permits for retail sales of fireworks from temporary stands; criminal penalties. A retailer selling Section 8(1) items at one or more temporary stands must obtain a fireworks stand permit from the Bureau of Fire Services. A person who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$5,000, or both.

An application for a fireworks stand permit must be made before June 1 each year in the manner required by the Bureau of Fire Services. At a minimum, the application will require:

- The retailer's retail merchant certificate number or proof of application for a certificate number.
- The location of each retail sales stand.

The Bureau of Fire Services will have seven days after receipt of an application to issue the permit or notify the applicant of the denial of the permit.

The Bureau of Fire Services will determine the fee for a fireworks stand permit. Permits will be valid for one year from the date of issuance, and must be posted at the stand so that it is easily seen by the public. The issuance of the permit does not constitute approval of the fireworks offered for sale by the retailer. The retailer is responsible for determining that all fireworks offered for sale are lawful.

Other rules pertaining to fireworks stands:

- Salespeople must be at least 16 years old to sell Section 8(1) items. [Salespeople must be at least 18 years old to sell consumer fireworks.]

- Retailers may not sell either consumer fireworks or Section 8(1) items to persons under the age of 18.
- Fireworks sales are not allowed to be sold from motor vehicles.
- Only Section 8(1) items may be sold from or stored at a temporary stand. Other types of fireworks may not be sold from or stored at a temporary stands.

Wholesaler and distributor requirements and fees. Retailers would only be allowed to purchase fireworks for resale from a wholesaler, distributor, or other entity that is licensed under Section 9. Wholesalers and distributors would not be allowed to sell fireworks to retailers without first complying with Section 9. Upon application as required by the Bureau of Fire Services, the Bureau would have to issue a license to a wholesaler or distributor if the wholesaler or distributor met the following requirements;

- Obtains and maintains fireworks product liability insurance and provides proof of that insurance.
- Pays an annual fee of \$2,500.

Wholesaler and distributor license would contain a license number which would be made available to each retailer who purchases fireworks from the licensed wholesaler or distributor. The annual license fee for wholesalers and distributors is in addition to any other fees required to be paid under the bill. Fees collected under this section would be deposited in the Fireworks Safety Fund created by the bill.

Retailer requirements and fees. A retailer would not be allowed to sell consumer fireworks unless the retailer has filed an annual application with the Bureau of Fire Services for each sales location, paid the applicable registration fee, and listed the name and license number of each wholesaler and distributor from whom the retailer has purchased or will purchase fireworks for resale and has received a certificate of compliance. The application fee would be \$1,000 for the first location; \$500 for each additional sales location in a tent; and \$200 for each additional sales location in a structure.

Upon receipt of a completed application form, the accompanying fee, and any required affidavit, the Bureau of Fire Services will issue a certificate of compliance to the retailer for each sales location.

A person who has previously sold consumer fireworks from a structure or tent who is seeking a certificate of compliance shall submit the following with the application:

- An affidavit executed by an appropriate party that consumer fireworks were previously sold from the same location as of a specified date.
- Proof of sales of consumer fireworks from that location.

A person is not allowed to sell consumer fireworks at retail if a certificate of compliance from the Bureau of Fire Services has not been issued for the location showing proper registration. A violation of this subsection is a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$5,000, or both.

Certificates of compliance are not transferable except to a subsequent owner or operator of a business at the same location in accordance with the policies and guidelines of the State Fire Marshal.

Fireworks safety fees and Fireworks Safety Fund. A fireworks safety fee is imposed on retail sales of fireworks. The retail purchaser of fireworks is liable for the fee and must pay the fee to the retailer. The retailer will collect the fee as agent for the state. Generally speaking, the fee is five percent of gross retail income from fireworks. The retailer has a duty to submit the fees to the Department of Treasury, must hold the fireworks safety fees in trust for the state, and is personally liable for the payment of the fee money.

The bill creates a Fireworks Safety Fund within the State Treasury. The State Treasurer may deposit money or other assets from any source into the Fund and direct the investment of the Fund. The Fund will be credited with interest and earnings from its investments. Money in the Fund at the close of the fiscal year remains in the Fund and does not lapse to the General Fund. The State Fire Marshal may expend funds, upon appropriation, only to carry out the purposes of the bill.

Administrative rules. The Bureau of Fire Services is authorized to promulgate rules under the Administrative Procedures Act of 1969 to implement the Fireworks Safety Act, including, but not limited to: (1) establishing fees for permits and certificates; (2) creating uniform applications and other forms for use by local units of government; (3) establishing the criteria to be used by local units of government and fire chiefs in granting or denying permits; (4) developing procedures for the collection of application fees and fireworks safety fees; (5) enforcing regulatory duties; (6) planning for the enforcement of age limits; (7) establishing building standards and other specifications for fireworks storage; and (8) any other matter that will assist in enforcement of the law.

Setting off fireworks at improper locations. A person must not ignite, discharge, or use consumer fireworks anywhere other than at a special discharge location, on the person's own property, or on the property of a person who has given permission for the fireworks. Except as otherwise provided, a person who violates this subsection has committed a state civil infraction and is subject to a fine of up to \$500 for a first violation. A person who commits a second or subsequent violation within five years of a prior violation is guilty of a misdemeanor punishable by imprisonment for up to 60 days or a fine of not more than \$500, or both.

Use of fireworks by minors. A person under the age of 18 must not possess or use a firework unless his or her parent is present and responsible. Except as otherwise provided, a person who violates this subsection has committed a state civil infraction and is subject to a fine of not more than \$500.

Time of day restrictions. A person must not set off consumer fireworks before 9 a.m. or after 11 p.m. On Saturdays, Sundays, and legal holidays, fireworks may be set off until 12 midnight. Except as otherwise provided, a person who violates this subsection has committed a state civil infraction and is subject to a fine of not more than \$500 for a first violation. A person who commits a second or subsequent violation within five years of a



prior violation is guilty of a misdemeanor punishable by imprisonment for up to 60 days or a fine of not more than \$500, or both.

Violations resulting in property damage. If a person's violation of the fireworks law causes damage to the property of another person, the person is guilty of a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$5,000, or both.

Violations resulting in serious impairment of a body function. If a person's violation of the fireworks law causes serious impairment of a body function of another person, as that term is defined in the Michigan Vehicle Code, the person is guilty of a felony punishable by imprisonment for not more than two years or a fine of not more than \$5,000, or both.

Violations resulting in death of another person. If a person's violation of the fireworks law causes the death of another person, the person is guilty of a felony punishable by imprisonment for not more than five years or a fine of not more than \$5,000, or both.

Failure to collect or remit fireworks safety fees. Failure to collect or remit the required fireworks safety fees on retail transactions is a felony punishable by imprisonment for not more than five years or a fine of not more than \$5,000, or both.

[Note: House Bills 6410 - 6413 were reported out of the Government Operations Committee with a favorable recommendation simultaneously with House 6414 and 6415 on September 12, 2006.

- House Bill 6414 (H-2) would amend the Penal Code to create some new fireworks-related crimes.
- House Bill 6415 would put the new fireworks-related felonies created by House Bill 6414 into sentencing guidelines.

As currently drafted, the package of bills contains some conflicting provisions. House Bill 6414 amends the chapter of the Michigan Penal Code (Chapter XXXIX) that House Bill 6413 would repeal. House Bills 6410 (H-2) and House Bill 6414 both create new fireworks-related crimes. Similar crimes created by House Bills 6410 (H-2) and 6414 contain different maximum penalties:

#### **Fireworks Violations Causing Property Damage**

HB 6410 (H-2) (Rep. Schuitmaker)	1 year/\$5,000 (or both)
HB 6414 (Rep. Hildenbrand)	1 year/\$500 (or both)

#### **Fireworks Violation Causing Injury other than Serious Impairment of Body Function or Death**

HB 6410 (H-2)	N/A
HB 6414	4 years/\$2,000 (or both)

**Fireworks Violation Causing Serious Impairment  
of Body Function**

HB 6410 (H-2)	2 years/\$5,000 (or both)
HB 6414	10 years/\$5,000 (or both)

**Fireworks Injury Causing Death**

HB 6410 (H-2)	5 years/\$5,000 (or both)
HB 6414	15 years/\$10,000 (or both)

House Bill 6410 (H-2) also creates numerous other crimes with no direct counterpart in House Bill 6414.]

**FISCAL IMPACT:**

The bill's fiscal impact on the Department of Labor and Economic Growth includes an increase in revenue from the retail transaction fireworks safety fee of 5% and a \$1,000.00 annual registration fee imposed on manufacturers, wholesalers, importers and distributors of fireworks in Michigan. The bill also adds an annual license fee of \$2,500.00 on wholesalers and distributors. Retailers must pay an annual registration fee of \$1,000.00 for the first location, \$500.00 for each additional sales location in a tent, and \$200.00 for each additional sales location in structures other than tents. In addition, the Department of Labor and Economic Growth's Bureau of Fire Services is authorized to levy an application fee on any organization, including municipalities, seeking to publicly display fireworks. Expenditures are also expected to increase for both local units of government which would process Bureau of Fire Services applications for public fireworks displays, and for the Bureau of Fire Services, which would be responsible for enforcing the provisions of this bill. However, at this time, the amount of these future revenues and expenditures is not determinable.

The bills would have an indeterminate fiscal impact on the state and local units of government, depending on how they affected numbers of and sentences for people held responsible for state civil infractions, found guilty of misdemeanors, or found guilty of felonies. Depending on circumstances, offenders sentenced for criminal offenses may receive probation, a period of incarceration, a fine, or some combination thereof. The following table shows how the revenues and costs of various penalties would affect the state and local units of government.

<b>Responsible for/Guilty of:</b>	<b>Fine</b>	<b>Court-ordered Costs ("Minimum State Costs")</b>	<b>Costs of Incarceration</b>	<b>Costs of Probation Supervision</b>
<b>State Civil Infraction</b>	To local library	\$10 to state Justice System Fund	Not applicable	Not applicable
<b>Misdemeanor</b>	To local library	\$40 to state Justice System Fund	Local costs of incarceration in county jail; costs vary by county	Local.
<b>Felony</b>	To local library	\$60 to state Justice System Fund	Can be sentenced to jail or state prison. State prison: approximately \$30,000 per prisoner per year. Actual cost varies by location and security level. Jail: costs vary by county	State. Probation and parole supervision average about \$2,000 per supervised offender annually.

**POSITIONS:**

American Eagle Superstore Inc., of Lansing, indicated its support. (9-12-06)

Captain Boom Fireworks LLC supports the bill. (9-12-06)

Michigan Pyrotechnics Arts Guild indicated its support. (9-12-06)

United States Fireworks Safety Commission, an industry group, supports the bill. (9-12-06)

The Department of Labor and Economic Growth indicated its opposition. (9-12-06)

The State Fire Marshal opposes the bill. (9-12-06)

Bureau of Fire Services indicated its opposition. (9-12-06)

Michigan Association of Fire Chiefs opposes the bill. (9-12-06)

Michigan Fire Inspectors Society indicated its opposition. (9-12-06)

Michigan Fire Service Coalition indicated its opposition. (9-12-06)

The City of Tecumseh indicated its opposition. (9-12-06)

Legislative Analyst: Shannan Kane  
Fiscal Analyst: Richard Child  
Marilyn Peterson

■ 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.