

# HOUSE BILL NO. 5005

September 19, 2019, Introduced by Reps. Yaroch, Vaupel, Peterson, Sabo, Brixie, Wozniak and Marino and referred to the Committee on Regulatory Reform.

A bill to amend 2011 PA 256, entitled "Michigan fireworks safety act," by amending sections 2, 7, and 12 (MCL 28.452, 28.457, and 28.462), sections 2 and 12 as amended by 2018 PA 634 and section 7 as amended by 2018 PA 635.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1           Sec. 2. As used in this act:
- 2           (a) "Agricultural and wildlife fireworks" means fireworks
- 3 devices distributed to farmers, ranchers, and growers through a



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1 wildlife management program administered by the United States  
2 Department of the Interior or the department of natural resources  
3 of this state.

4 (b) "APA Standard 87-1" means the "APA Standard 87-1, Standard  
5 for Construction and Approval for Transportation of Fireworks,  
6 Novelties, and Theatrical Pyrotechnics", 2001 edition, published by  
7 the American Pyrotechnics Association of Bethesda, Maryland.

8 (c) "Articles pyrotechnic" means pyrotechnic devices for  
9 professional use that are similar to consumer fireworks in chemical  
10 composition and construction but not intended for consumer use,  
11 that meet the weight limits for consumer fireworks but are not  
12 labeled as such, and that are classified as UN0431 or UN0432 under  
13 49 CFR 172.101.

14 (d) "Citation" means that term as described in section 17a.

15 (e) "Commercial manufacturer" means a person engaged in the  
16 manufacture of consumer fireworks.

17 (f) "Consumer fireworks" means fireworks devices that are  
18 designed to produce visible effects by combustion, that are  
19 required to comply with the construction, chemical composition, and  
20 labeling regulations promulgated by the United States Consumer  
21 Product Safety Commission under 16 CFR parts 1500 and 1507, and  
22 that are listed in APA Standard 87-1, 3.1.2, 3.1.3, or 3.5.  
23 Consumer fireworks does not include low-impact fireworks.

24 (g) "Consumer fireworks certificate" means a certificate  
25 issued under section 4.

26 (h) "Department" means the department of licensing and  
27 regulatory affairs.

28 (i) "Display fireworks" means large fireworks devices that are  
29 explosive materials intended for use in fireworks displays and



1 designed to produce visible or audible effects by combustion,  
2 deflagration, or detonation, as provided in 27 CFR 555.11, 49 CFR  
3 172, and APA Standard 87-1, 4.1.

4 (j) "Firework" or "fireworks" means any composition or device,  
5 except for a starting pistol, a flare gun, or a flare, designed for  
6 the purpose of producing a visible or audible effect by combustion,  
7 deflagration, or detonation. Fireworks consist of consumer  
8 fireworks, low-impact fireworks, articles pyrotechnic, display  
9 fireworks, homemade fireworks, and special effects.

10 (k) "Fireworks safety fund" means the fireworks safety fund  
11 created in section 11.

12 (l) "Homemade fireworks" means any composition or device  
13 designed for the purpose of producing a visible or audible effect  
14 by combustion, deflagration, or detonation that is not produced by  
15 a commercial manufacturer and does not comply with the  
16 construction, chemical composition, and labeling regulations of the  
17 United States Consumer Product Safety Commission under 16 CFR parts  
18 1500 and 1507.

19 (m) "Local unit of government" means a city, village, or  
20 township.

21 (n) "Low-impact fireworks" means ground and handheld sparkling  
22 devices as that phrase is defined under APA Standard 87-1, 3.1,  
23 3.1.1.1 to 3.1.1.8, and 3.5.

24 (o) "Minor" means an individual who is less than 18 years of  
25 age.

26 (p) "NFPA" means the National Fire Protection Association  
27 headquartered at 1 Batterymarch Park, Quincy, Massachusetts.

28 (q) "NFPA 1" means the "Uniform Fire Code", 2006 edition,  
29 developed by NFPA.



1 (r) "NFPA 72" means the "National Fire Alarm Code", 2002  
2 edition, developed by NFPA.

3 (s) "NFPA 101" means the "Life Safety Code", 2009 edition,  
4 developed by NFPA.

5 (t) "NFPA 1123" means the "Code for Fireworks Display", 2010  
6 edition, developed by NFPA.

7 (u) "NFPA 1124" means the "Code for the Manufacture,  
8 Transportation, Storage, and Retail Sales of Fireworks and  
9 Pyrotechnic Articles", 2006 edition, developed by NFPA.

10 (v) "NFPA 1126" means the "Standard for the Use of  
11 Pyrotechnics Before a Proximate Audience", 2011 edition, developed  
12 by NFPA.

13 (w) "Novelties" means that term as defined under APA Standard  
14 87-1, 3.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, and 3.2.5 and all of the  
15 following:

16 (i) Toy plastic or paper caps for toy pistols in sheets,  
17 strips, rolls, or individual caps containing not more than .25 of a  
18 grain of explosive content per cap, in packages labeled to indicate  
19 the maximum explosive content per cap.

20 (ii) Toy pistols, toy cannons, toy canes, toy trick  
21 noisemakers, and toy guns in which toy caps as described in  
22 subparagraph (i) are used, that are constructed so that the hand  
23 cannot come in contact with the cap when in place for the  
24 explosion, and that are not designed to break apart or be separated  
25 so as to form a missile by the explosion.

26 (iii) Flitter sparklers in paper tubes not exceeding 1/8 inch in  
27 diameter.

28 (iv) Toy snakes not containing mercury, if packed in cardboard  
29 boxes with not more than 12 pieces per box for retail sale and if



1 the manufacturer's name and the quantity contained in each box are  
2 printed on the box, and toy smoke devices.

3 (x) "Permanent building or structure" is a building or  
4 structure that is affixed to a foundation on a site that has fixed  
5 utility connections and that is intended to remain on the site for  
6 more than 180 consecutive calendar days.

7 (y) "Person" means an individual, agent, association,  
8 charitable organization, company, limited liability company,  
9 corporation, labor organization, legal representative, partnership,  
10 unincorporated organization, or any other legal or commercial  
11 entity.

12 (z) "Retailer" means a person that sells consumer fireworks or  
13 low-impact fireworks for resale to an individual for ultimate use.

14 (aa) "Retail location" means a facility listed under NFPA  
15 1124, 7.1.2.

16 (bb) "Rule" means a rule, as that term is defined in section 7  
17 of the administrative procedures act of 1969, 1969 PA 306, MCL  
18 24.207, promulgated by the department.

19 (cc) "Serious impairment of a body function" means that term  
20 as defined in section 58c of the Michigan vehicle code, 1949 PA  
21 300, MCL 257.58c.

22 (dd) "Serious violation" means a violation of this act, an  
23 order issued under this act, or a rule promulgated or adopted by  
24 reference under this act for which a substantial probability exists  
25 that death or serious impairment of a body function to an  
26 individual other than the violator may result unless the violator  
27 did not and could not, with the exercise of reasonable diligence,  
28 know of the presence of the violation.

29 (ee) "Sky lantern" means an unmanned, self-contained luminary



1 **device that uses a balloon to become airborne and that while**  
2 **airborne has an open flame or other heat source.**

3 **(ff)** ~~(ee)~~—"Special effects" means a combination of chemical  
4 elements or chemical compounds capable of burning independently of  
5 the oxygen of the atmosphere and designed and intended to produce  
6 an audible, visual, mechanical, or thermal effect as an integral  
7 part of a motion picture, radio, television, theatrical, or opera  
8 production or live entertainment.

9 **(gg)** ~~(ff)~~—"State fire marshal" means the state fire marshal  
10 appointed under section 1b of the fire prevention code, 1941 PA  
11 207, MCL 29.1b.

12 **(hh)** ~~(gg)~~—"Warehouse" means a permanent building or structure  
13 used primarily for the storage of consumer fireworks or low-impact  
14 fireworks.

15 **(ii)** ~~(hh)~~—"Wholesaler" means a person that sells consumer  
16 fireworks or low-impact fireworks to a retailer or any other person  
17 for resale. Wholesaler does not include a person that sells only  
18 display fireworks or special effects.

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

24 (2) A local unit of government may enact an ordinance  
25 regulating the ignition, discharge, and use of consumer fireworks,  
26 including, but not limited to, an ordinance prescribing the hours  
27 of the day or night during which a person may ignite, discharge, or  
28 use consumer fireworks. If a local unit of government enacts an  
29 ordinance under this subsection, the ordinance shall not regulate



1 the ignition, discharge, or use of consumer fireworks on the  
2 following days after 11 a.m.:

3 (a) December 31 until 1 a.m. on January 1.

4 (b) The Saturday and Sunday immediately preceding Memorial Day  
5 until 11:45 p.m. on each of those days.

6 (c) June 29 to July 4 until 11:45 p.m. on each of those days.

7 (d) July 5, if that date is a Friday or Saturday, until 11:45  
8 p.m.

9 (e) The Saturday and Sunday immediately preceding Labor Day  
10 until 11:45 p.m. on each of those days.

11 (3) An ordinance under subsection (2) shall impose a civil  
12 fine of \$1,000.00 for each violation of the ordinance and no other  
13 fine or sanction. The ordinance must provide for the remittance of  
14 \$500.00 of the fine collected under the ordinance to the local law  
15 enforcement agency responsible for enforcing the ordinance.

16 (4) Beginning August 1, 2019, a local unit of government with  
17 a population of 100,000 or more or a local unit of government  
18 located in a county with a population of 750,000 or more may enact  
19 or enforce an ordinance that regulates the use of a temporary  
20 structure. An ordinance established under this subsection may  
21 include, but is not limited to, a restriction on the number of  
22 permits issued for a temporary structure, regulation of the  
23 distance required between 2 or more temporary structures, or a  
24 zoning ordinance that regulates the use of a temporary structure.  
25 An ordinance established under this subsection may not prohibit the  
26 temporary storage, transportation, or distribution of fireworks by  
27 a consumer fireworks certificate holder at a retail location that  
28 is a permanent building or structure. As used in this subsection,  
29 "temporary structure" means a movable structure that is used in the



1 sale, display, storage, transportation, or distribution of  
2 fireworks, including, but not limited to, a tent or a stand.

3 **(5) A local unit of government may enact an ordinance**  
4 **regulating the sale, use, ignition, and release of a sky lantern.**

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

13 (2) A person shall not sell consumer fireworks to a minor. A  
14 person that violates this subsection shall be ordered to pay a  
15 civil fine of not more than \$1,000.00, or, for a second or  
16 subsequent violation of this subsection, a civil fine of not more  
17 than \$2,500.00. For a second or subsequent violation, the  
18 department shall suspend the person's consumer fireworks  
19 certificate for 90 days beginning on the date a civil fine is  
20 ordered. The age of an individual purchasing consumer fireworks  
21 shall be verified by any of the following:

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

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

26 (c) An enhanced driver license or enhanced official state  
27 personal identification card issued under the enhanced driver  
28 license and enhanced official state personal identification card  
29 act, 2008 PA 23, MCL 28.301 to 28.308.





1 (d) A military identification card.

2 (e) A passport.

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

5 (3) An individual shall not discharge, ignite, or use consumer  
6 fireworks or low-impact fireworks while under the influence of  
7 alcoholic liquor, a controlled substance, or a combination of  
8 alcoholic liquor and a controlled substance. A person that violates  
9 this subsection is responsible for a state civil infraction and may  
10 be ordered to pay a civil fine of not more than \$1,000.00. As used  
11 in this subsection:

12 (a) "Alcoholic liquor" means that term as defined in section  
13 1d of the Michigan vehicle code, 1949 PA 300, MCL 257.1d.

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

16 (4) An individual who violates the smoking prohibition  
17 described in NFPA 1124, 7.3.11.1, regardless of the type or  
18 quantity of consumer or low-impact fireworks present, is  
19 responsible for a civil fine of \$1,000.00.

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

22 (6) A person shall not ignite, discharge, or use consumer  
23 fireworks or low-impact fireworks in a manner that is intended to  
24 harass, scare, or injure livestock. As used in this subsection,  
25 "livestock" means that term as defined in section 5 of the animal  
26 industry act, 1988 PA 466, MCL 287.705.

27 **(7) Except as otherwise provided by ordinance by a local unit**  
28 **of government as provided in section 7(5), a person shall not sell**  
29 **at retail or ignite a sky lantern or release an ignited sky**



1 lantern.

