MICHIGAN FIREWORKS SAFETY ACT

Act 256 of 2011

AN ACT to revise, consolidate, and codify the laws relating to certain fireworks; to regulate the purchase, possession, sale, and use of certain fireworks; to establish a fireworks safety fund; to establish a fireworks safety fee; to provide for the transfer and expenditure of funds; to prescribe the powers and duties of certain state agencies; to provide for penalties and remedies; and to repeal acts and parts of acts.

History: 2011, Act 256, Eff. Jan. 1, 2012

The People of the State of Michigan enact:

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28.451 Short title.

Sec. 1.

This act shall be known and may be cited as the "Michigan fireworks safety act".

History: 2011, Act 256, Eff. Jan. 1, 2012

28.452 Definitions.

Sec. 2.

As used in this act:

(a) "Agricultural and wildlife fireworks" means fireworks devices distributed to farmers, ranchers, and growers through a wildlife management program administered by the United States Department of the Interior or the department of natural resources of this state.

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

(c) "Articles pyrotechnic" means 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 UN0432 under 49 CFR 172.101.

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

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

(f) "Consumer fireworks" means fireworks devices that are designed to produce visible effects by combustion, 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 and 1507, and that are listed in APA Standard 87-1, 3.1.2, 3.1.3, or 3.5. Consumer fireworks does not include low-impact fireworks.

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

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

(i) "Display fireworks" means 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 27 CFR 555.11, 49 CFR 172, and APA Standard 87-1, 4.1.

(j) "Firework" or "fireworks" means 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-impact fireworks, articles pyrotechnic, display fireworks, homemade fireworks, and special effects.

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

(l) "Homemade fireworks" means any composition or device designed for the purpose of producing a visible or

audible effect by combustion, deflagration, or detonation that is not produced by a commercial manufacturer and does not comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission under 16 CFR parts 1500 and 1507.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Toy snakes not containing mercury, if packed in cardboard boxes with not more than 12 pieces per box for retail sale and if the manufacturer's name and the quantity contained in each box are printed on the box, and toy smoke devices.

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

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

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

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

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

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

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

(ee) "Special effects" means 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.

(ff) "State fire marshal" means the state fire marshal appointed under section 1b of the fire prevention code, 1941 PA 207, MCL 29.1b.

(gg) "Warehouse" means a permanent building or structure used primarily for the storage of consumer fireworks or low-impact fireworks.

(hh) "Wholesaler" means a person that sells consumer fireworks or low-impact fireworks to a retailer or any other person for resale. Wholesaler does not include a person that sells only display fireworks or special effects.

History: 2011, Act 256, Eff. Jan. 1, 2012 ;-- Am. 2012, Act 257, Imd. Eff. July 2, 2012 ;-- Am. 2018, Act 634, Imd. Eff. Dec. 28, 2018

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28.453 Novelties; inapplicability of act.

Sec. 3.

This act does not apply to novelties. Nothing in this act allows a local unit of government to enact or enforce an ordinance, code, or regulation pertaining to, or in any manner regulating, the sale, storage, display for sale, transportation, use, or distribution of novelties.

History: 2011, Act 256, Eff. Jan. 1, 2012

28.454 Sale of consumer fireworks; certificate required; violation as civil fine; penalty; application; requirements; issuance; validity; issuance of original or renewal certificate; sales tax license information; denial; transfer; display; prohibition; location or address; disposition of fees.

Sec. 4.

(1) A person shall not sell consumer fireworks unless the person annually obtains and maintains a consumer fireworks certificate from the department under this section.

(2) A person that fails or neglects to comply with subsection (1) is responsible for a civil fine as follows:

(a) For a first violation, not more than $5,000.00. The department shall determine the amount of the fine imposed under this subdivision by applying a scale, as developed by the department, that reflects the severity of the violation.

(b) For a second violation, not more than $20,000.00.

(c) For a third or subsequent violation, not more than $40,000.00.

(3) An applicant for a consumer fireworks certificate shall do all of the following:

(a) Submit an application no later than April 1 of each year in which the applicant will sell consumer fireworks.

(b) Include on the application the name and address of each retail location from which the applicant will sell consumer fireworks.

(c) Submit with the application all of the following, as applicable:

(i) A nonrefundable consumer fireworks certificate fee of $1,250.00 for each retail location that is a permanent building or structure or $1,000.00 for each retail location that is not a permanent building or structure. If the application includes 10 or more retail locations that are not permanent buildings or structures, the fee described in this subdivision shall be $700.00 for each of those locations.

(ii) For an applicant who applies for a consumer fireworks certificate for a retail location that is not a permanent building or structure and who does not hold a consumer fireworks certificate for a permanent building or structure, a bond in the amount of $5,000.00 to secure the collection of estimated sales tax and fireworks safety fees.

(iii) A copy of the applicant's current sales tax license, including the applicant's account number, issued by the department of treasury for each retail location where the applicant will sell consumer fireworks.

(iv) Any other document required by the department.

(4) The department shall not issue an initial consumer fireworks certificate to an applicant until the department of treasury has confirmed to the department that each sales tax license submitted by the applicant is current and valid, and that the applicant is otherwise eligible to obtain a consumer fireworks certificate under this act.

(5) A consumer fireworks certificate issued under this section is valid from the date of issue until April 30 of the year following the year in which it is issued. A person may renew a consumer fireworks certificate for a retail location by making application on a form prescribed by the department certifying that all information on file with the department is true and correct, that the person's sales tax license for the retail location is current and valid, and that the person has properly remitted all required fireworks safety fees for the preceding year. The department may deny the renewal of a consumer fireworks certificate if the department determines that the applicant did not properly remit all of the required fireworks safety fees For all preceding years, or sales tax for any of the preceding 5 years, during which the applicant held a consumer fireworks certificate. The department shall provide to the department of treasury the sales tax license information received from the applicant and any additional information as may be necessary to allow the department of treasury to confirm that each sales tax license submitted by the applicant is current and valid. The department shall enter into an agreement with the department of treasury under section 28(1) of 1941 PA 122, MCL 205.28, that will allow the department of treasury to provide that information to the department.

(6) Not more than 30 days after an application and all required supporting documentation and fees are submitted to the department under this section, the department shall issue a consumer fireworks certificate to the applicant or deny the application. If the department denies the application, the department shall indicate to the applicant the

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reason for denial.

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

(8) A consumer fireworks certificate is transferable upon approval by the department and the payment of a $250.00 transfer fee. The department shall approve the transfer of a consumer fireworks certificate unless the transferee does not satisfy the eligibility requirements for an original consumer fireworks certificate under this act. The department shall not process a request for a transfer of location between June 1 and July 31.

(9) The holder of a consumer fireworks certificate shall prominently display the original certificate or a copy of the certificate in the each retail location to which the certificate applies. A person that violates this subsection is responsible for a civil fine of $200.00.

(10) The department shall not issue a consumer fireworks certificate to either of the following:

(a) A person that is ineligible under this act.

(b) A person that has an outstanding fine issued under this act not currently under appeal.

(11) The face of the consumer fireworks certificate must indicate the location or address for which it was issued.

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

History: 2011, Act 256, Eff. Jan. 1, 2012 ;-- Am. 2012, Act 257, Imd. Eff. July 2, 2012 ;-- Am. 2013, Act 65, Imd. Eff. June 19, 2013 ;-- Am. 2018, Act 634, Imd. Eff. Dec. 28, 2018

Compiler's Notes: In subsection (9), the words "certificate in the each retail location" evidently should read "certificate in each retail location."

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28.455 Sale of consumer fireworks from retail location; conditions; automatic sprinkler system; failure to comply; civil fine; insurance coverage; notice of dates and times of permissible use; form and content; conditions for sale over phone or internet.

Sec. 5.

(1) A person shall not sell consumer fireworks from a retail location unless all of the following conditions are met:

(a) Except as provided in subdivision (b), the retail location and any adjacent or directly associated retail storage satisfies the applicable requirements of NFPA 101 and NFPA 1124 for consumer and low-impact fireworks that are not in conflict with this act and the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531. Any provision of the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531, that is inconsistent with the applicable requirements of NFPA 101 and NFPA 1124 is superseded to the extent of the inconsistency or conflict.

(b) If the retail location is a permanent building or structure, the building or structure is equipped with a fire suppression system in compliance with NFPA 1124. Beginning on the effective date of the 2018 act that added this sentence and notwithstanding the NFPA 1124 requirements regarding automatic sprinkler systems, if the retail location is in a permanent multitenant building or structure, the building or structure must be equipped with an automatic sprinkler system. The requirement for an automatic sprinkler system described in this subdivision does not apply to the retail location of a person that held a consumer fireworks certificate for a retail location of the same address in a permanent building or structure during the calendar year before the effective date of the 2018 act that added this sentence.

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

(d) The retailer has a valid federal taxpayer identification number. This requirement does not apply to a retailer that is a sole proprietorship.

(2) A person that fails or neglects to comply with subsection (1) is responsible for a civil fine of not more than $2,500.00 for each violation. The department shall determine the amount of the fine imposed under this subsection by applying a scale, as developed by the department, that reflects the severity of the violation. Each day that a person is in noncompliance is a separate violation.

(3) During any period of time in which a person is selling consumer fireworks, the person shall add as an additional insured, or obtain and maintain public liability and product liability insurance coverage for, each retail location at which the person is selling consumer fireworks, in an amount not less than $10,000,000.00 per occurrence. If the department determines that a person has failed or neglected to comply with this subsection, the department shall order the person to immediately cease operations and pay a civil fine of not more than $5,000.00.

(4) A retailer shall provide with every purchase of consumer fireworks a notice listing the dates and times

permitted under this act for the ignition, discharge, and use of consumer fireworks. The notice shall begin with the following statement: "State law permits, under MCL 28.457, the ignition, discharge, and use of consumer fireworks at the following times:". The retailer may provide the notice in a form and manner determined by the retailer, including, but not limited to, printing or stamping the notice on, or affixing the notice to, a receipt, bag, or the product being purchased, or a printed handout provided at the time of purchase. Posting the notice on a wall, window, display, or otherwise, at the retail location, does not satisfy the requirements of this subsection. A retailer who fails to provide the notice required by this subsection is responsible for a civil fine of $100.00 for each day on which 1 or more violations occur. The department shall provide for the remittance of the fine collected under this subsection to the local law enforcement agency responsible for enforcing the notice requirement.

(5) A person shall not engage in the retail sale of consumer fireworks over the telephone, internet, or other like manner unless the consumer fireworks are picked up or shipped from a permanent location for which the person holds a valid consumer fireworks certificate.

History: 2011, Act 256, Eff. Jan. 1, 2012 ;-- Am. 2013, Act 65, Imd. Eff. June 19, 2013 ;-- Am. 2018, Act 634, Imd. Eff. Dec. 28, 2018

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28.456 Website; establishment and maintenance by department; registration with low-impact fireworks retail registry; application fee; failure to register; civil fine.

Sec. 6.

(1) The department shall establish and maintain, or cause to be established and maintained, an internet website that has as its purpose the protection of the residents of this state who purchase, use, or transport fireworks. The website must include, but is not limited to, both of the following:

(a) A list of every person that is issued a consumer fireworks certificate under section 4.

(b) A low-impact fireworks retail registry.

(2) A person shall not sell low-impact fireworks unless that person registers with the low-impact fireworks retail registry not less than 10 days before selling the fireworks in each calendar year and pays a $50.00 registry application fee for each retail location registered. For a person with multiple retail locations, the registry application fees in total shall not exceed $1,000.00. A person that holds a valid consumer fireworks certificate issued under section 4 is not required to register with the low-impact fireworks retail registry.

(3) If the department determines that a person that sells low-impact fireworks at retail has failed to register as described in this section, the department shall order the person to immediately cease the sale of low-impact fireworks until the person complies with subsection (2) and pay a civil fine of not more than $1,000.00. For a first violation of this section, if a person complies with subsection (2) within 30 days of receiving a notice of violation, the department shall waive the civil fine described in this subsection.

History: 2011, Act 256, Eff. Jan. 1, 2012 ;-- Am. 2018, Act 634, Imd. Eff. Dec. 28, 2018

28.457 Local ordinances.

Sec. 7.

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

(2) A local unit of government may enact an ordinance regulating the ignition, discharge, and use of consumer fireworks, including, but not limited to, an ordinance prescribing the hours of the day or night during which a person may ignite, discharge, or use consumer fireworks. If a local unit of government enacts an ordinance under this subsection, the ordinance shall not regulate the ignition, discharge, or use of consumer fireworks on the following days after 11 a.m.:

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

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

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

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

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

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

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

History: 2011, Act 256, Eff. Jan. 1, 2012 ;-- Am. 2013, Act 65, Imd. Eff. June 19, 2013 ;-- Am. 2018, Act 635, Imd. Eff. Dec. 28, 2018

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28.458 Fireworks safety fee; imposition; payment; deposit in fireworks safety fund; failure to comply; civil fine.

Sec. 8.

(1) A user fee, known as the fireworks safety fee, is imposed on retail transactions made in this state for consumer fireworks and low-impact fireworks as provided in section 9.

(2) A person that acquires consumer fireworks or low-impact fireworks in a retail transaction is liable for the fireworks safety fee on the transaction and, except as otherwise provided in this act, shall pay the fireworks safety fee to the retailer as a separate added amount to the consideration in the transaction. The retailer shall collect the fireworks safety fee as an agent for the state.

(3) The fireworks safety fee shall be deposited in the fireworks safety fund.

(4) A person that fails to collect a fireworks safety fee as required under this section is responsible for a civil fine as follows:

(a) For a first violation, not more than $5,000.00. If the person is a retailer of low-impact fireworks and, within 30 days of receiving a notice of violation, the person remits to the department the estimated equivalent of the amount the person should have collected under this section, the department shall waive the civil fine described in this subdivision.

(b) For a second violation, not more than $20,000.00.

(c) For a third or subsequent violation, not more than $40,000.00.

History: 2011, Act 256, Eff. Jan. 1, 2012 ;-- Am. 2012, Act 257, Imd. Eff. July 2, 2012 ;-- Am. 2018, Act 634, Imd. Eff. Dec. 28, 2018

28.459 Fireworks safety fee; determination; rates; collection allowance.

Sec. 9.

(1) Except as provided in subsections (2) and (3), the fireworks safety fee is determined by the gross retail income from consumer fireworks and low-impact fireworks received by a retail merchant in a retail unitary transaction of consumer fireworks and low-impact fireworks and is imposed before any taxes are applied at the following rates:

FIREWORKS SAFETY FEE	GROSS RETAIL INCOME FROM THE RETAIL UNITARY TRANSACTION		
$ 0		less than	$ 0.08

$ 0.01	at least $ 0.08	but less than	$ 0.24
$ 0.02	at least $ 0.24	but less than	$ 0.40
$ 0.03	at least $ 0.40	but less than	$ 0.56
$ 0.04	at least $ 0.56	but less than	$ 0.72
$ 0.05	at least $ 0.72	but less than	$ 0.88
$ 0.06	at least $ 0.88	but less than	$ 1.04

(2) On a retail unitary transaction in which the gross retail income received by the retail merchant is $1.04 or more, the fireworks safety fee is 6% of that gross retail income as determined before any taxes are applied.

(3) If the fireworks safety fee calculated under subsection (1) results in a fraction of 1/2 cent or more, the amount of the fireworks safety fee shall be rounded to the next additional cent.

(4) The retailer whose retail location is a permanent building or structure may retain 1% of the fireworks safety fees that the retailer collected under this section as a collection allowance.

History: 2011, Act 256, Eff. Jan. 1, 2012

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28.460 Fireworks safety fees; remittance; forms; manner; payment liability; past due amounts; aggregate filing; failure to remit; civil fine.

Sec. 10.

(1) A person that holds a consumer fireworks certificate or that is a retailer of low-impact fireworks is responsible for remitting all fireworks safety fees, as described in section 9, to the department. The person shall remit the fees collected with a form provided and in a manner prescribed by the department. The person shall hold in trust for the state the fees collected until those fees are remitted to the state. An individual who holds a consumer fireworks certificate or who is a retailer of low-impact fireworks is personally liable for the payment of the fees collected.

(2) The department may refer for collection to the department of treasury past due amounts of the fireworks safety fee consistent with section 13 of 1941 PA 122, MCL 205.13 or may initiate subrogation for collection within the department.

(3) A person that is responsible for remitting the collected fireworks safety fees under subsection (1) shall remit those fees no later than 20 days after the end of each preceding month. A person that operates 25 or more retail locations in this state that are permanent buildings or structures may remit the collected fees in an aggregate filing under 1 common identification number as determined by the department.

(4) A person that fails to remit the collected fireworks safety fees, as described in subsection (1), is responsible for a civil fine as follows:

(a) For a first violation, not more than $5,000.00. If the person is a retailer of low-impact fireworks and, within 30 days of receiving a notice of violation, the person remits to the department the collected fees that are the subject of the violation, the department shall waive the civil fine described in this subdivision.

(b) For a second violation, not more than $20,000.00.

(c) For a third or subsequent violation, not more than $40,000.00.

History: 2011, Act 256, Eff. Jan. 1, 2012 ;-- Am. 2013, Act 65, Imd. Eff. June 19, 2013 ;-- Am. 2018, Act 634, Imd. Eff. Dec. 28, 2018

28.461 Fireworks safety fund; creation within department of treasury; investment; money remaining in fund; lapse; expenditures; delegation of inspection duties; program.

Sec. 11.

(1) The fireworks safety fund is created within the department of treasury.

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

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

(4) The department shall expend money deposited in the fund as follows:

(a) One hundred percent of the money received from fireworks safety fees under section 8 to be used for the training of firefighters under the direction and approval of the firefighters training council established under the firefighters training council act, 1966 PA 291, MCL 29.361 to 29.377.

(b) One hundred percent of the money received from consumer fireworks certificate fees under section 4 to administer this act and to pay the costs of delegating inspections under this act to local units of government under subsection (5).

(c) One hundred percent of the money received from the fees collected under section 11 of the firefighters training council act, 1966 PA 291, MCL 29.371, to be used for the training of firefighters under the direction and approval of the firefighters training council established under the firefighters training council act, 1966 PA 291, MCL 29.361 to 29.377.

(5) The department may establish a program for delegating inspection duties under this act to 1 or more local units of government. If a local unit of government agrees to carry out inspections, the department shall pay 50% of the consumer fireworks certificate fee paid by each retail location inspected by the local unit of government and retain the remaining 50% of that fee. If a local unit of government declines to participate in the program described in this subsection, the department shall retain its inspection duties under this act.

History: 2011, Act 256, Eff. Jan. 1, 2012 ;-- Am. 2013, Act 65, Imd. Eff. June 19, 2013 ;-- Am. 2017, Act 145, Eff. Jan. 31, 2018 ;-- Am. 2018, Act 634, Imd. Eff. Dec. 28, 2018

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28.462 Prohibited conduct; permission required; violation as civil infraction; civil fine; sale to minor; definitions; violation of smoking prohibition; civil fine; signage.

Sec. 12.

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

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

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

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

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

(d) A military identification card.

(e) A passport.

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

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

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

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

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

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

(6) A person shall not ignite, discharge, or use consumer fireworks or low-impact fireworks in a manner that is intended to harass, scare, or injure livestock. As used in this subsection, "livestock" means that term as defined in section 3 of the animal industry act, 1988 PA 466, MCL 287.703.

History: 2011, Act 256, Eff. Jan. 1, 2012 ;-- Am. 2012, Act 257, Imd. Eff. July 2, 2012 ;-- Am. 2013, Act 65, Imd. Eff. June 19, 2013 ;-- Am. 2018, Act 634, Imd. Eff. Dec. 28, 2018 ;-- Am. 2019, Act 138, Eff. Feb. 19, 2020

28.463 Repealed. 2018, Act 634, Imd. Eff. Dec. 28, 2018.

Compiler's Notes: The repealed section pertained to requiring a wholesaler to maintain a resident agent.

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28.464 Identification of firework in violation of act; investigation; determination of violation; seizure; criminal or civil proceedings.

Sec. 14.

(1) A governmental or law enforcement agency that identifies a firework that is in violation of this act shall secure the firework and immediately notify the department of the alleged violation. The department or law enforcement agency shall investigate the alleged violation for compliance with this act.

(2) If the department or law enforcement agency determines through its investigation under subsection (1) that a violation of this act has occurred, except for a violation of section 6(2), the department or law enforcement agency may seize the firework as evidence of the violation. The department or law enforcement agency shall store, or cause to be stored, the evidence seized under this section pending disposition of any criminal or civil proceedings arising from the violation. If the person subject to criminal or civil proceedings under this section is found guilty, responsible, or liable for the violation, the person shall be required to pay the storage expense for the evidence seized.

History: 2011, Act 256, Eff. Jan. 1, 2012 ;-- Am. 2018, Act 634, Imd. Eff. Dec. 28, 2018

28.465 Storage of seized fireworks; disposal or destruction; storage and disposal costs; use for training purposes.

Sec. 15.

(1) Fireworks seized for an alleged violation of this act shall be stored in compliance with this act and the rules promulgated under this act.

(2) Following a final disposition of an appeal of a conviction under this act that affirms the conviction, the department may dispose of or destroy any fireworks retained as evidence in that prosecution.

(3) A person from whom fireworks are seized under this act shall pay the actual costs of storage and disposal of the seized fireworks if found guilty, responsible, or liable for a violation under this act.

(4) The department may use fireworks described in subsection (2) for training purposes.

History: 2011, Act 256, Eff. Jan. 1, 2012 ;-- Am. 2018, Act 634, Imd. Eff. Dec. 28, 2018

28.466 Articles pyrotechnic or display fireworks ignition; permit; competency and qualifications of operators; retention of fee.

Sec. 16.

(1) The legislative body of a city, village, or township, upon application in writing on forms provided by the department on the department's website and payment of a fee set by the legislative body, if any, may grant a permit for the use of agricultural or wildlife fireworks, articles pyrotechnic, display fireworks, consumer fireworks, or special effects manufactured for outdoor pest control or agricultural purposes, or for public or private display within the city, village, or township by municipalities, fair associations, amusement parks, or other organizations or individuals approved by the city, village, or township authority, if the applicable provisions of this act are met. After a permit has been granted, a permit holder may sell, possess, or transport fireworks for only the purposes described in the permit. A permit granted under this subsection is not transferable and shall not be issued to a minor.

(2) Before a permit for articles pyrotechnic or a display fireworks ignition is issued, the person applying for the permit shall furnish proof of financial responsibility by a bond or insurance in an amount, character, and form deemed necessary by the local governing authority to protect the public and to satisfy claims for damages to property or personal injuries arising out of an act or omission on the part of the person or an agent or employee of the person.

(3) The department shall not issue under this act a permit to a nonresident person for ignition of articles pyrotechnic or display fireworks in this state until the person has appointed in writing a resident member of the bar of this state or a resident agent to be the legal representative upon whom all process in an action or proceeding against the person may be served.

(4) Before granting a permit under this act, the local governing authority shall rule on the competency and qualifications of an articles pyrotechnic and display fireworks operator, as furnished by the operator on the operator's application form, in accordance with the requirements provided under NFPA 1123, and on the time, place, and safety aspects of the display of articles pyrotechnic or display fireworks.

(5) A local unit of government that charges and collects a fee to issue a permit under this section shall retain the collected fee.

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History: 2011, Act 256, Eff. Jan. 1, 2012 ;-- Am. 2018, Act 634, Imd. Eff. Dec. 28, 2018

28.467 Conduct not prohibited by act.

Sec. 17.

Except as otherwise provided in this act, this act does not prohibit any of the following:

(a) A wholesaler, retailer, commercial manufacturer, or importer from selling, storing, using, transporting, or distributing consumer fireworks or low-impact fireworks.

(b) The use of fireworks by railroads or other transportation agencies or law enforcement agencies for signal purposes or illumination.

(c) The use of agricultural or wildlife fireworks.

(d) The sale or use of blank cartridges for any of the following:

(i) A show or play.

(ii) Signal or ceremonial purposes in athletics or sports.

(iii) Use by military organizations.

(iv) Use by law enforcement agencies.

(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, or sell explosives from the bureau of alcohol, tobacco, firearms, and explosives of the United States Department of Justice.

(f) Interstate wholesalers from selling, storing, using, transporting, or distributing fireworks.

(g) A person from parking a motor vehicle, or trailer, that is not being used for the storage of consumer fireworks, within 10 feet of a permanent building or structure used in the retail sale of consumer fireworks.

History: 2011, Act 256, Eff. Jan. 1, 2012 ;-- Am. 2012, Act 257, Imd. Eff. July 2, 2012 ;-- Am. 2018, Act 634, Imd. Eff. Dec. 28, 2018

28.467a Issuance of citation by state fire marshal.

Sec. 17a.

(1) If, as a result of an inspection or investigation, the state fire marshal or the state fire marshal's designee believes that a person has violated this act, an order issued under this act, or a rule promulgated under this act, the state fire marshal or the state fire marshal's designee shall issue a citation not more than 90 days after the completion of the physical inspection or investigation.

(2) The state fire marshal or the state fire marshal's designee shall issue the citation described in subsection (1) to the holder of the consumer fireworks certificate for, or to a person conducting or directing the sale of consumer fireworks without a consumer fireworks certificate at, the retail location that is the subject of the inspection or investigation. A holder of a consumer fireworks certificate, or a person conducting or directing the sale of consumer fireworks without a consumer fireworks certificate, as described in this subsection, is responsible for the acts or omissions of an individual under that person's employ or control.

(3) Except as otherwise provided in this act, upon issuance of a citation, the state fire marshal may immediately suspend the consumer fireworks certificate of the person receiving the citation.

(4) Upon a proper petition, a court of competent jurisdiction may enjoin a violation of this act.

(5) All of the following apply to a citation issued by the state fire marshal or the state fire marshal's designee under this act:

(a) It shall be in writing.

(b) It shall state on its face that it is an allegation of a violation of this act, describe with particularity the nature of the violation, and include a reference to the provision, rule, or order alleged to be violated.

(c) It shall contain all of the following:

(i) The date of the citation.

(ii) The name and title of the individual who issued the citation.

(iii) The name and address of the person receiving the citation.

(iv) The actions necessary to bring the person receiving the citation into compliance, including the payment of a fine.

(v) A space for the signature of the person receiving the citation indicating that the person has received the citation.

(vi) A space where the person receiving the citation may accept the citation and agree to comply or, in the alternative, indicate the person's intent to contest the citation.

(vii) A notice that the person receiving the citation must accept or reject the terms of the citation in writing within 15 days of the receipt of the citation.

(viii) A brief description of the administrative hearing process and the process for settlement as provided for by rule.

(d) A citation may either be mailed to the person receiving the citation by certified mail, return receipt requested, or delivered in person by the state fire marshal, or the state fire marshal's designee who issued the citation.

History: Add. 2012, Act 257, Imd. Eff. July 2, 2012 ;-- Am. 2018, Act 634, Imd. Eff. Dec. 28, 2018

28.468 Violation of act; penalty; reimbursement of storage costs.

Sec. 18.

(1) Unless otherwise provided in this act, if a person violates this act, the person is guilty of a crime as follows:

(a) Except as otherwise provided in this section, a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not more than $1,000.00, or both.

(b) If the violation causes damage to the property of another person, a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $5,000.00, or both.

(c) If the violation causes serious impairment of a body function of another person, a felony punishable by imprisonment for not more than 5 years or a fine of not more than $5,000.00, or both.

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(d) If the violation causes the death of another person, a felony punishable by imprisonment for not more than 15 years or a fine of not more than $10,000.00, or both.

(2) In addition to any other penalty imposed for the violation of this act, a person that is found guilty of a violation of this act shall be required to reimburse the appropriate governmental agency for the costs of storing seized fireworks that the governmental agency confiscated for a violation of this act. This reimbursement shall be in a form and at a time as required by the department and as otherwise required by law.

History: 2011, Act 256, Eff. Jan. 1, 2012 ;-- Am. 2012, Act 257, Imd. Eff. July 2, 2012

28.468a Citation for serious violation; fine; prosecution; payment of civil fines to department; collection proceedings.

Sec. 18a.

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

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

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

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

(5) A civil fine ordered under this act shall be paid to the department within 15 working days after the date the civil fine is ordered, not subject to further review, and credited to the fireworks safety fund.

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

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History: Add. 2012, Act 257, Imd. Eff. July 2, 2012 ;-- Am. 2013, Act 65, Imd. Eff. June 19, 2013 ;-- Am. 2018, Act 634, Imd. Eff. Dec. 28, 2018

Compiler's Notes: Act 65 of 2013 did not amend this section and evidently should not have been cited as amended.

28.468b Issuance of certificate prohibited; revocation.

Sec. 18b.

(1) The department shall not issue, and an individual is ineligible to be issued, a consumer fireworks certificate if, as verified by the internet criminal history access tool (ICHAT) maintained by the department of state police, the individual was convicted of a felony involving theft, fraud, or arson.

(2) If due to a criminal conviction an individual will be ineligible for a consumer fireworks certificate on April 30 of the year following the year for which the individual currently holds a consumer fireworks certificate, the department shall revoke the current consumer fireworks certificate for the balance of the current year.

History: Add. 2012, Act 257, Imd. Eff. July 2, 2012 ;-- Am. 2018, Act 634, Imd. Eff. Dec. 28, 2018

28.468c Person ineligible to obtain consumer fireworks certificates; offenses; periods; sanctions.

Sec. 18c.

(1) A person that is found responsible for any of the following is ineligible, beginning on the date of the finding,

to obtain a consumer fireworks certificate for the period of time indicated:

(a) A second violation of section 4(1), 5 years.

(b) A third or subsequent violation of section 4(1), 10 years.

(c) A first violation of section 8(4), 1 year.

(d) A second violation of section 8(4), 5 years.

(e) A third or subsequent violation of section 8(4), 10 years.

(f) A violation subject to section 18(1)(b), 1 year.

(g) A violation subject to section 18(1)(c), permanently.

(h) A violation subject to section 18(1)(d), permanently.

(2) A sanction imposed under subsection (1) shall be imposed in addition to any other penalty or sanction imposed for a violation of this act.

History: Add. 2012, Act 257, Imd. Eff. July 2, 2012 ;-- Am. 2018, Act 634, Imd. Eff. Dec. 28, 2018

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28.469 Inspections; delegation of authority and responsibility.

Sec. 19.

The department may delegate authority and responsibility to carry out inspections and other duties under this act.

History: 2011, Act 256, Eff. Jan. 1, 2012

28.470 Rules.

Sec. 20.

(1) The department shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to administer this act, including, but not limited to, all of the following:

(a) Create uniform applications and other forms for dissemination to and use by local units of government under this act.

(b) Procedures for the collection of application fees and fireworks safety fees.

(c) Enforcement of regulatory duties.

(d) The enforcement of age limitations.

(2) Rules promulgated under this section shall conform to the following codes developed by the national fire protection association, except for any code provision that conflicts with this act:

(a) NFPA 1123, code for fireworks display.

(b) NFPA 1124, code for manufacture, transportation, storage, and retail sales of fireworks and pyrotechnic articles.

(c) NFPA 1126, standard for the use of pyrotechnics.

(3) The rules promulgated under former chapter XXXIX of the Michigan penal code, 1931 PA 328, MCL 750.243a to 750.243e, pertaining to the display of articles pyrotechnic and display fireworks that are in effect on the effective date of this act shall remain in effect until rescinded or otherwise changed according to law, as provided for in section 31 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.231.

History: 2011, Act 256, Eff. Jan. 1, 2012

28.471 Repealed. 2018, Act 305, Imd. Eff. June 29, 2018.

Compiler's Notes: The repealed section pertained to a report by the state fire marshal.

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