

HOUSE BILL No. 4691

May 1, 2007, Introduced by Reps. Schuitmaker, Angerer, Elsenheimer, Farrah, Spade,
Hammon, Hildenbrand and Moss and referred to the Committee on Regulatory Reform.

A bill to revise, consolidate, and codify the laws relating to fireworks; to regulate the purchase, possession, sale, and use of fireworks; to provide for penalties and remedies; and to prescribe the powers and duties of certain state agencies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan fireworks safety act".

3 Sec. 2. As used in this act:

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

9 (b) "APA standard 87-1" means the 2001 APA standard 87-1

1 published by the American pyrotechnics association of Bethesda,
2 Maryland.

3 (c) "APA standard 87-1 items" means ground and handheld
4 sparkling devices, novelties, and toy caps as those terms are
5 defined in APA standard 87-1 sections 3.1.1, 3.2, and 3.3.

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

12 (e) "Bureau" means the bureau of fire services created under
13 section 1b of the fire prevention code, 1941 PA 207, MCL 29.1b.

14 (f) "Consumer fireworks" means small fireworks devices that
15 are designed to produce visible effects by combustion and that
16 are required to comply with the construction, chemical
17 composition, and labeling regulations promulgated by the United
18 States consumer product safety commission under 16 CFR parts 1500
19 and 1507 and that are listed in APA standard 87-1. Consumer
20 fireworks include, but are not limited to, small devices designed
21 to produce an audible effect, such as whistling devices, ground
22 devices containing 50 milligrams or less of explosive
23 composition, and aerial devices containing 130 milligrams or less
24 of explosive materials and classified as fireworks UN0336 by the
25 United States department of transportation under 49 CFR 172.101,
26 except for fused set pieces containing components that together
27 exceed 50 milligrams of salute powder. Consumer fireworks do not

1 include APA standard 87-1 items.

2 (g) "Consumer fireworks certificate" is a certificate issued
3 under section 5.

4 (h) "Consumer fireworks retail sales facility" means a
5 permanent or temporary building, structure, stand, tent, canopy,
6 or membrane that is used primarily for the retail display and
7 sale of consumer fireworks and APA standard 87-1 items.

8 (i) "Display fireworks" means large fireworks designed
9 primarily to produce visible or audible effects by combustion,
10 deflagration, or detonation and includes, but is not limited to,
11 salutes containing more than 2 grains (130 milligrams) of
12 explosive materials, aerial shells containing more than 40 grams
13 of pyrotechnic compositions, and other display pieces that exceed
14 the limits of explosive materials for classification as consumer
15 fireworks and are classified as fireworks UN0333, UN0334, or
16 UN0335 under 49 CFR 172.101 and includes fused set pieces
17 containing components that exceed 50 milligrams of salute powder.

18 (j) "Distributor" means a person who sells fireworks to
19 wholesalers and retailers for resale.

20 (k) "Explosive composition" means a chemical or mixture of
21 chemicals that produces an audible effect by deflagration or
22 detonation when ignited.

23 (l) "Firework" or "fireworks" means any composition or device
24 designed for the purpose of producing a visible or audible effect
25 by combustion, deflagration, or detonation. Fireworks consist of
26 consumer fireworks, articles pyrotechnic, display fireworks, and
27 special effects.

1 (m) "Interstate wholesaler" means a person who is engaged in
2 interstate commerce selling fireworks.

3 (n) "Local unit of government" means a city, municipality,
4 township, village, or county.

5 (o) "Manufacturer" means a person engaged in the manufacture
6 of fireworks.

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

11 (q) "Person" means an individual, an association, an
12 organization, a limited liability company, or a corporation.

13 (r) "Pyrotechnic composition" means a mixture of chemicals
14 that produces a visible or audible effect by combustion rather
15 than deflagration or detonation, and that will not explode upon
16 ignition unless severely confined.

17 (s) "Retailer" means a person who purchases consumer
18 fireworks and APA standard 87-1 items for resale to consumers.

19 (t) "Special effects" means a combination of chemical
20 elements or chemical compounds capable of burning independently
21 of the oxygen of the atmosphere and designed and intended to
22 produce an audible, visual, mechanical, or thermal effect as an
23 integral part of a motion picture, radio, television, theatrical,
24 or opera production or live entertainment.

25 (u) "State fire marshal" means the state fire marshal
26 appointed under section 1b of the fire prevention code, 1941 PA
27 207, MCL 29.1b.

1 (v) "Temporary consumer fireworks retail sales facility"
2 means a building or structure, other than a permanent building or
3 structure, that has electrical power and wiring for an electrical
4 service in use or in place for a period of 90 consecutive
5 calendar days or less, or 45 consecutive calendar days or less
6 for a tent, for the retail sale of consumer fireworks and APA
7 standard 87-1 items. Temporary consumer fireworks retail sales
8 facility includes, but is not limited to, a tent.

9 (w) "Tent" means a temporary consumer fireworks retail sales
10 facility that meets all of the following:

11 (i) It is constructed of flame-resistant textile as described
12 in section 7b of the fire prevention code, 1941 PA 207, MCL
13 29.7b.

14 (ii) It encloses an area of not less than 500 square feet.

15 (x) "Wholesaler" means any person who sells consumer
16 fireworks and APA standard 87-1 items to a retailer or any other
17 person for resale and any person who sells articles pyrotechnics,
18 display fireworks, and special effects to a person licensed to
19 possess and use those devices.

20 Sec. 3. This act does not prohibit any of the following:

21 (a) A wholesaler, retailer, manufacturer, importer, or
22 distributor from the sale, storage, use, transportation, and
23 distribution of consumer fireworks and APA standard 87-1 items.

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

26 (c) The use of agricultural or wildlife fireworks.

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

1 following:

2 (i) A show or play.

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

4 (iii) Use by military organizations.

5 (e) The possession, sale, or disposal of fireworks
6 incidental to the public display of fireworks by wholesalers or
7 other persons who possess a permit to possess, store, and sell
8 explosives from the bureau of alcohol, tobacco, firearms, and
9 explosives of the United States department of justice.

10 (f) Interstate wholesalers from the sale, storage, use,
11 transportation, or distribution of fireworks.

12 Sec. 4. Except as provided in section 11, a local unit of
13 government shall not enact or enforce an ordinance or regulation
14 pertaining to or in any manner regulating the sale, storage,
15 transportation, or distribution of APA standard 87-1 items under
16 this act.

17 Sec. 5. (1) A retailer shall not sell consumer fireworks
18 unless the retailer annually obtains a consumer fireworks
19 certificate from the bureau as provided in this section for each
20 location from which consumer fireworks are to be sold.

21 (2) An application for a consumer fireworks certificate
22 under this section shall meet all of the following requirements:

23 (a) The application is submitted no later than April 1 of
24 each year in which consumer fireworks are to be sold.

25 (b) The application lists the name and address of each
26 location from which consumer fireworks are to be sold.

27 (c) The application includes a registration fee of \$2,000.00

1 for each sales location, regardless of the type of facility at
2 the location.

3 (3) Not more than 15 days after an application is submitted
4 to the bureau under this section, the bureau shall issue or deny
5 issuance of a consumer fireworks certificate to the retailer and,
6 if issuance is denied, shall indicate to the applicant the reason
7 for denial.

8 (4) The bureau shall not issue a consumer fireworks
9 certificate under this section until each site from which
10 consumer fireworks will be sold passes an inspection conducted by
11 an individual certified as a state fire inspector under rules
12 promulgated under section 3c of the fire prevention code, 1941 PA
13 207, MCL 29.3c.

14 (5) If the bureau denies issuance of a consumer fireworks
15 certificate under this section, the applicant may cure any defect
16 of the application within 20 days after the denial without paying
17 an additional fee. The bureau shall not unreasonably delay or
18 deny an application under this section.

19 (6) A consumer fireworks certificate is not transferable,
20 except to a subsequent owner or operator of a business at the
21 same location.

22 (7) A retailer shall not sell consumer fireworks at a
23 location for which a consumer fireworks certificate has not been
24 issued.

25 (8) A retailer who violates subsection (1) or (7) is guilty
26 of a misdemeanor punishable by a fine of not more than \$1,000.00
27 for each violation.

1 Sec. 6. (1) A retailer shall only sell consumer fireworks
2 and APA standard 87-1 items from a facility that meets the
3 following criteria:

4 (a) A permanent consumer fireworks retail sales facility
5 that is all of the following:

6 (i) Used for year-round or seasonal sales of consumer
7 fireworks and APA standard 87-1 items.

8 (ii) Is not less than 100 feet from another building or
9 structure selling or dispensing gasoline or propane.

10 (iii) Is equipped with monitored burglar and fire alarm
11 systems.

12 (b) Except as provided in subsection (4), a temporary
13 consumer fireworks retail sales facility that is all of the
14 following:

15 (i) Is used for the seasonal sale of consumer fireworks and
16 APA standard 87-1 items.

17 (ii) Is located not less than 20 feet from a permanent
18 building or structure.

19 (iii) Has no vehicle parked closer than 10 feet, except when
20 delivering, loading, or unloading consumer fireworks or other
21 merchandise or material used, stored, or displayed in the
22 facility.

23 (iv) Is not less than 25 feet from a motor vehicle fueling
24 station dispenser.

25 (v) Is limited to sales during not more than 45 days in any
26 calendar year.

27 (2) A retailer who offers to sell consumer fireworks under

1 this section from a tent shall, for each tent location, obtain a
2 bond in the amount of \$100,000.00 for the storage of hazardous
3 material, and obtain and maintain product liability insurance in
4 the amount of \$5,000,000.00.

5 (3) A retailer who violates this section is liable for a
6 civil fine of not more than \$2,500.00.

7 (4) The requirements for temporary consumer fireworks retail
8 sales facilities under subsection (1)(b) do not apply if a local
9 unit of government enacts an ordinance establishing different
10 requirements for temporary consumer firework retail sales
11 facilities from which consumer fireworks and APA standard 87-1
12 fireworks are sold.

13 Sec. 7. (1) A user fee, known as the fireworks safety fee,
14 is imposed on retail transactions made in this state for consumer
15 fireworks and APA standard 87-1 items as provided in section 9.

16 (2) A person who acquires consumer fireworks or APA standard
17 87-1 items in a retail transaction is liable for the fireworks
18 safety fee on the transaction and, except as otherwise provided
19 in this act, shall pay the fireworks safety fee to the retailer
20 as a separate added amount to the consideration in the
21 transaction. The retailer shall collect the fireworks safety fee
22 as an agent for the state as provided in section 9.

23 (3) The fireworks safety fee shall be deposited in the
24 fireworks safety fund as provided in section 10.

25 Sec. 8. (1) The fireworks safety fee is determined by the
26 gross retail income from consumer fireworks and APA standard 87-1
27 items received by a retail merchant in a retail unitary

1 transaction of fireworks and is imposed at the following rates:

2	FIREWORKS		GROSS RETAIL INCOME	
3	SAFETY		FROM THE	
4	FEE		RETAIL UNITARY	
5			TRANSACTION	
6	\$ 0		less than	\$ 0.10
7	\$ 0.01	at least \$ 0.10	but less than	\$ 0.30
8	\$ 0.02	at least \$ 0.30	but less than	\$ 0.50
9	\$ 0.03	at least \$ 0.50	but less than	\$ 0.70
10	\$ 0.04	at least \$ 0.70	but less than	\$ 0.90
11	\$ 0.05	at least \$ 0.90	but less than	\$ 1.10

12 (2) On a retail unitary transaction in which the gross
 13 retail income received by the retail merchant is \$1.10 or more,
 14 the fireworks safety fee is 6% of that gross retail income.

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

19 Sec. 9. A retailer has a duty to remit the fireworks safety
 20 fee as described in section 8 to the department of treasury of
 21 this state, holds the fireworks safety fees collected in trust
 22 for the state until remitted to the state, and is personally
 23 liable for the payment of the fireworks safety fee money to this
 24 state.

25 Sec. 10. (1) The fireworks safety fund is created within the
 26 state treasury.

27 (2) The state treasurer may receive money or other assets

1 from any source for deposit into the fund. The state treasurer
2 shall direct the investment of the fund. The state treasurer
3 shall credit to the fund interest and earnings from fund
4 investments.

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

7 (4) The state fire marshal shall expend money from the fund,
8 upon appropriation, only to carry out the purposes of this act.

9 Sec. 11. (1) The bureau shall promulgate rules under the
10 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
11 24.328, to administer this act, including, but not limited to,
12 all of the following:

13 (a) Establish fees for permits under subdivision (g).

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

17 (c) Establish the criteria to be used by local units of
18 government and fire chiefs in deciding whether to grant or deny
19 permits or certificates under this act.

20 (d) Procedures for the collection of application fees and
21 fireworks safety fees.

22 (e) Enforcement of regulatory duties.

23 (f) Plan for the enforcement of age limitations.

24 (g) Establish the criteria used by local units of government
25 for granting permits for supervised public displays of fireworks.

26 (h) Establish the fee for a permit under subdivision (g),
27 which shall be deposited to the fireworks safety fund created

1 under section 10.

2 (2) Rules promulgated under this section shall provide that
3 an application for a permit under subsection (1)(g) shall
4 include, at a minimum, all of the following:

5 (a) The name of the operator who will detonate the display
6 fireworks or special effects.

7 (b) A brief summary of the operator's experience sufficient
8 to establish that the operator is competent to officiate the
9 public display of fireworks and detonate the display fireworks or
10 special effects.

11 (c) The application fee as determined by the bureau.

12 (3) An application for a permit under subsection (1)(g)
13 shall be received, along with the applicable fee, not less than 5
14 days before the public display of fireworks is to take place.

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

19 (a) NFPA 1123, code for fireworks display, 2006 edition.

20 (b) NFPA 1124, code for the manufacture, transportation,
21 storage, and retail sales of fireworks and pyrotechnic articles,
22 2006 edition.

23 (c) NFPA 1126, standard for the use of pyrotechnics before a
24 proximate audience, 2006 edition.

25 Sec. 12. A person who has 1 or more convictions for
26 violating this act shall not officiate, or be granted a permit to
27 officiate, a public display of fireworks for at least 1 year

1 after his or her latest conviction for a violation of this act.

2 Sec. 13. (1) A person shall only produce or transport, or
3 produce and transport, a firework that is a new explosive and
4 that is either a division 1.3 or division 1.4 explosive if the
5 person first meets the requirements of 49 CFR 173.56(2)(j).

6 (2) As used in this section:

7 (a) "Division 1.3 explosive" means that term as defined in
8 49 CFR 173.50.

9 (b) "Division 1.4 explosive" means that term as defined in
10 49 CFR 173.50.

11 (c) "New explosive" means that term as defined in 49 CFR
12 173.56.

13 Sec. 14. The state fire marshal shall create and maintain,
14 or cause to be created and maintained, an internet website that
15 has as its purpose the protection of the residents of this state
16 who purchase, use, or transport fireworks.

17 Sec. 15. (1) A person shall not ignite, discharge, or use
18 consumer fireworks or APA standard 87-1 items on public property,
19 school property, church property, or the property of another
20 person without that organization's or person's express permission
21 to use those fireworks on those premises. Except as otherwise
22 provided in this subsection, a person who violates this
23 subsection is responsible for a state civil infraction and may be
24 ordered to pay a civil fine of not more than \$500.00. A person
25 who commits a second or subsequent violation of this subsection
26 within 5 years of a prior violation of this subsection is guilty
27 of a misdemeanor punishable by imprisonment for not more than 30

1 days or a fine of not more than \$1,000.00, or both.

2 (2) A person who is less than 18 years of age shall not
3 possess, purchase, or offer for sale consumer fireworks or APA
4 standard 87-1 items. Except as otherwise provided in this
5 subsection, a person who violates this subsection is responsible
6 for a state civil infraction and may be ordered to pay a civil
7 fine of not more than \$500.00.

8 (3) Except as otherwise provided in this subsection, a
9 person shall not ignite, discharge, or use consumer fireworks
10 before 10 a.m. or after 10 p.m. However, on a legal holiday, a
11 person shall not ignite, discharge, or use consumer fireworks
12 between 1 a.m. and 9 a.m. of the same day. A person who violates
13 this subsection is responsible for a state civil infraction and
14 may be ordered to pay a civil fine of not more than \$500.00.
15 However, a person who commits a second or subsequent violation of
16 this subsection within 5 years of a prior violation of this
17 subsection is guilty of a misdemeanor punishable by imprisonment
18 for not more than 30 days or a fine of not more than \$500.00, or
19 both.

20 (4) If a person violates this act and by that violation
21 causes damage to the property of another person, the person is
22 guilty of a misdemeanor punishable by imprisonment for not more
23 than 30 days or a fine of not more than \$1,000.00, or both.

24 (5) If a person violates this act and by that violation
25 causes serious impairment of a body function of another person,
26 the person is guilty of a felony punishable by imprisonment for
27 not more than 1 year or a fine of not more than \$2,000.00, or

1 both. As used in this subsection, "serious impairment of a body
2 function" means that term as defined in section 58c of the
3 Michigan vehicle code, 1949 PA 300, MCL 257.58c.

4 (6) If a person violates this act and by that violation
5 causes the death of another person, the person is guilty of a
6 felony punishable by imprisonment for not more than 5 years or a
7 fine of not more than \$5,000.00, or both.

8 (7) A person who fails to collect or remit a fireworks
9 safety fee as required under section 7 is guilty of a misdemeanor
10 punishable by a fine of not more than \$2,000.00.

11 Enacting section 1. This act does not take effect unless all
12 of the following bills of the 94th Legislature are enacted into
13 law:

14 (a) Senate Bill No. ____ or House Bill No. 4692 (request no.
15 01330'07 a).

16 (b) Senate Bill No. ____ or House Bill No. 4693 (request no.
17 01330'07 b).