

# Legislative Analysis



## INCREASE PENALTIES FOR FIREWORKS VIOLATIONS

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

**Senate Bill 193 as enrolled**

**Public Act 257 of 2012**

**Sponsor: Sen. Rick Jones**

**House Committee: None (Placed immediately on Second Reading)**

**Senate Committee: Regulatory Reform**

**Complete to 1-28-13**

### A SUMMARY OF SENATE BILL 193 AS PASSED BY THE HOUSE & ENACTED

The bill would amend the Michigan Fireworks Safety Act (2011 PA 256) to increase the penalties for committing certain violations, create new penalties for violations, and modify eligibility criteria for obtaining a consumer fireworks certificate.

#### Selling Without a Consumer Fireworks Certificate

Under the act, individuals are prohibited from selling consumer fireworks without obtaining a consumer fireworks certificate. Currently, individuals in violation of this provision would be subject to a \$5,000 fine for each day the individual is in violation, in addition to up to two years imprisonment. The bill would increase the fine up to: \$5,000 for a first violation, \$20,000 for a second violation, and \$40,000 for a third or subsequent violation.

#### Issuance of Certificate

The Department of Licensing and Regulatory Affairs (LARA) cannot issue renewal certificates unless it has determined the applicant properly remitted all of the fireworks safety fees required under the act in the preceding year. The determination is made in conjunction with the Department of Treasury. The bill would clarify that in addition to remitting the fireworks safety fees, the applicant must be *otherwise eligible to obtain a fireworks certificate*.

#### Remittance of Fireworks Safety Fee

The fireworks safety fee is a user fee collected on each retail transaction of consumer and low-impact fireworks. Retailers are required to collect and remit the fireworks safety fees to the state. Individuals that fail to collect or remit the fee are currently subject to a maximum fine of \$10,000. The bill would increase the penalty up to: \$10,000 for a first violation, \$20,000 for a second violation, and \$40,000 for a third or subsequent violation.

#### Consumer Fireworks and Minors

It is prohibited to sell consumer fireworks to minors. Under current law, selling to a minor is a state civil infraction and violators could be ordered to pay a civil fine up to \$500. The bill would eliminate the civil infraction and require, rather than allow, a maximum civil fine of \$500 for a first offense and \$1,000 for a second or subsequent

offense. The individual's consumer fireworks certificate would also be suspended for 90 days after the civil fine is ordered for a second or subsequent offense.

#### Issuance of Citation

The bill would allow the state fire marshal, or a designee, to issue a citation up to 90 days after a completed inspection or investigation, if as a result of the investigation the fire marshal believes the person is in violation of the act, an order, or rules promulgated under the act. Once a citation is issued, the fire marshal could immediately suspend the person's consumer fireworks certificate.

All of the following apply to the citation:

- It must be in writing
- It must state on its face it is an allegation of violation of the fireworks act, describe with particularity the nature of the violation, and include a reference to the provision, rule, or order that is alleged to have been violated.
- The citation must include:
  - The name and title of issuer.
  - The name and address of the person being cited.
  - The actions necessary to bring the person into compliance (including payment of a fine).
  - A space for the person to sign indicating he or she received the citation.
  - A space where the person can accept the citation and agree to comply or indicate the intent to contest the citation.
  - A notice that the citation must be accepted or rejected within 15 days.
  - A brief description of the administrative hearing process and the settlement process.

Citations could be mailed by certified mail, return receipt requested, or delivered in person by the state fire marshal or a designee.

A person receiving a citation for a serious violation, an order, or rule promulgated under the act would be assessed a civil fine of up to \$1,000 for each violation. Citations for a violation that is not a serious violation could be assessed a civil fine of up to \$500. These fines would not apply to violations in the act that contain specific civil fines. Fines collected for these violations would be required to be paid within 15 working days after the penalty is ordered and would be credited to the Fireworks Safety Fund. These fines would not be subject to further review.

The State Fire Marshal could request a county prosecutor to issue a complaint and request a warrant of a person who commits a criminal violation under the act.

#### Ineligibility for and Revocation of Certificate

LARA could not issue a certificate to anyone that was (1) sentenced for a felony conviction within the previous five years or to (2) a person that has ever been convicted of a felony involving theft, fraud, or arson.

If a certificate holder is convicted of a crime that would make the person ineligible to be issued a renewal certificate, the certificate would be revoked for the balance of the year for which it was issued.

A person convicted of the following offenses would be ineligible for a certificate for the following periods of time after the conviction:

- Selling consumer fireworks without a certificate: five years for the first offense, ten years for a second offense, and ten years for a third or subsequent offense.
- Failing to collect or remit the fireworks safety fee: one year for a first offense, five years for a second offense, and ten years for a third or subsequent offense.
- A violation that causes property damage to another person: one year.
- Permanently, for a violation that causes serious impairment of a body function of another person.
- Permanently, for a violation that causes the death of another person.

### **FISCAL IMPACT:**

Senate Bill 193 would have a positive fiscal impact on the state to the extent the higher fines and costs levied on criminal violations and civil violations of the Michigan Fireworks Safety Act would result in higher revenues.

Fines levies on criminal violations (i.e. selling consumer fireworks without a fireworks certificate or failing to remit Fireworks Safety Fee revenue to the state) are credited to the support of public libraries, and costs imposed on violations are credited to the Justice System Fund.

Fines levied on civil violations (i.e. selling consumer fireworks to a minor or persons receiving a citation for a serious or not serious violation from the State Fire Marshall) are credited to the Fireworks Safety Fund which supports the administration of the Bureau of Fire Services.

Legislative Analyst: Jeff Stoutenburg  
Fiscal Analyst: Paul Holland

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■ 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.