

CONSUMER FIREWORKS LAW MODIFICATIONS

House Bills 5939 and 5941 as introduced
Sponsor: Rep. Jim Lilly

House Bill 5940 as introduced
Sponsor: Rep. John Chirkun

Committee: Regulatory Reform
Complete to 10-2-18

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

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY:

House Bill 5939 would make several changes to the state fireworks law that include:

- Establishing a uniform, statewide schedule of days and hours during which a local government could not regulate the use of fireworks by ordinance, rather than basing the hours on population.
- Increasing the civil fine for a violation of a local ordinance from \$500 to \$1,000, with \$500 of the fine remitted to local law enforcement.
- Requiring certain applicants for a consumer fireworks certificate to also file a \$5,000 bond to secure the collection of estimated sales tax.
- Require remittance of sales tax, in addition to the fireworks safety fees, as a requisite for a renewal certificate in a subsequent year.
- Not processing transfer of location requests between June 1 and July 31.
- Requiring, with some exceptions, a retail location in a permanent multitenant building or structure to be equipped with an automatic sprinkler system.
- Requiring the Department of Licensing and Regulatory Affairs (LARA) to prepare a notice of the times consumer fireworks may be used and to post the notice on its website.
- Requiring retailers to provide the notice described above to consumers at the time of purchase or to conspicuously post the notice at points of sale. Failure to comply would be a \$500 civil fine.
- Exempting holders of a consumer fireworks certificate from registering with the low-impact fireworks retail registry.

House Bill 5940 would allow a local governmental unit meeting certain population thresholds to enact or enforce an ordinance regulating the use of a temporary structure with fireworks. The bill would also include sky lanterns as a low-impact firework.

House Bill 5941 would prohibit the state fire marshal or local fire departments from issuing a fireworks ban due to weather conditions. The bill would allow the governor to institute a similar weather-related fireworks ban if he or she determined that weather conditions would make the use of fireworks a danger to persons and property.

Each bill would take effect 90 days after enactment.

DETAILED SUMMARY:

House Bill 5939 would amend the Michigan Fireworks Safety Act to amend provisions pertaining to a consumer fireworks certificate, which allows a person to sell consumer fireworks. “Consumer fireworks” generally refers to fireworks devices that are designed to produce visible effects by combustion (such as aerial fireworks like bottle rockets and small mortar shells). The term does not include low-impact fireworks such as smoke bombs and sparklers.

Prohibited times of regulation by local ordinances

Currently, although a local government may enact an ordinance to regulate the use of consumer fireworks (including the hours of the day or night fireworks may be used), the ordinance cannot regulate the ignition, discharge, or use of consumer fireworks on the day preceding, day of, or day after a national holiday. An exception is made for larger cities and towns, and cities and towns in larger counties, between 1 a.m. and 8 a.m. on New Year’s Day. Smaller towns or cities in smaller counties can regulate fireworks use between 1 a.m. and 8 a.m.

The bill instead would specify that a local unit could not regulate the use of consumer fireworks on the following days:

- December 31.
- January 1 between 12 midnight and 1 a.m.
- The Saturday immediately preceding Memorial Day until 11:30 p.m.
- The Friday and Saturday immediately preceding July 4 until 11:30 p.m. on each of those days.
- June 30 until 11:30 p.m. if July 4 is a Saturday or Sunday.
- July 1 to July 4 until 11:30 p.m. on each of those days.
- The Saturday immediately preceding Labor Day until 11:30 p.m.

LARA would have to prepare a notice of the times permitted for the ignition, discharge, and use of consumer fireworks and make the notice available on its website. The notice, which could be no larger than 8-1/2 inches by 11 inches, would have to be provided by the retailer at the time of a purchase or be prominently displayed in a conspicuous location near each point of purchase at the retail location. Failure to provide or display the notice as required could result in a civil fine of \$500 for each violation, with remittance of the fine revenue by LARA to the local law enforcement agency responsible for enforcing the notice requirement.

Further, the bill would increase the amount of a civil fine that may be imposed for each violation of the ordinance from \$500 to \$1,000, with the ordinance having to provide that \$500 of the fine would be remitted to the local law enforcement agency responsible for enforcing the ordinance.

Bond

The bill would require an applicant for a consumer fireworks certificate for a retail location that is not a permanent building or structure (e.g., a tent) to file with the Department of Treasury a bond in the amount of \$5,000 to secure the collection of estimated sales tax and fireworks safety fees. The bond would apply only to an applicant who does not also hold a consumer fireworks certificate for a permanent building or structure.

Renewal certificate

A renewal consumer fireworks certificate could not be issued unless the applicant properly remitted the sales tax for any of the preceding 5 years that the applicant held a consumer fireworks certificate. Remittance of the sales tax would be in addition to remittance of all the required fireworks safety fees, which is currently required before a certificate can be renewed.

Transfer of location

Currently, for a small fee, a consumer fireworks certificate is transferable if approved by LARA. Under the bill, LARA would be prohibited from processing a request for transfer of location between June 1 and July 31.

Sprinkler system

Beginning on the bill's effective date, notwithstanding the NFPA 1124¹ requirements regarding automatic sprinkler systems, a retail location in a permanent multitenant building or structure would be required to be equipped with an automatic sprinkler system. This requirement would not apply to a 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 bill's effective date.

Low-impact fireworks retail registry

Currently, LARA is required to establish and maintain an internet website which contains a list of every person and entity that is issued a consumer fireworks certificate and also a low-impact fireworks retail registry. Under the bill, a person who holds a valid consumer fireworks certificate would not also have to register with the low-impact fireworks retail registry.

MCL 28.454 et al.

House Bill 5940 would also amend the Michigan Fireworks Safety Act. The bill would allow a local unit of government with a population of at least 100,000 or a local unit located in a county with at least 750,000 to enact or enforce an ordinance regulating the use of a *temporary structure* with fireworks. Such an ordinance could include, but would not be limited to, a restriction on the number of permits issued for a temporary structure, regulation of the distance required between multiple temporary structures, or a zoning ordinance regulating the use of a *temporary structure*.

Temporary structure would mean a movable structure used in the sale, display, storage, transportation, or distribution of fireworks, including, but not limited to, a tent or a stand.

The bill would also define the term "sky lantern" as an unmanned free-floating luminary device that uses heated air produced by an open flame or other heat source to become or remain airborne. Sky lanterns would be classified as a low-impact firework and thus would be considered a firework subject to the use and sales restrictions of the Act.

MCL 28.452 and 28.457

House Bill 5941 would amend the Fire Prevention Code to specifically prohibit the state fire marshal, or the commanding officer of a city, village, township, or county fire department, or

¹ The "Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles," 2006 edition, developed by the National Fire Protection Association.

a firefighter in uniform acting under the orders and direction of the commanding officer, from prohibiting the ignition, discharge, and use of consumer fireworks within a city, village, township, or county due to weather conditions.

However, the bill would allow the governor to prohibit the ignition, discharge, and use of consumer fireworks in one or more counties in the state if he or she determines that weather conditions make such use of fireworks dangerous to persons and property. “Consumer fireworks” would mean that term as defined in the Michigan Fireworks Safety Act (see above). [It is not clear if the ban would have to be countywide or if it could be limited to those portions of a county for which weather conditions would pose a danger if fireworks were used.]

MCL 29.7a

FISCAL IMPACT:

House Bill 5939

House Bill 5939 would likely increase revenues designated for local law enforcement agencies by an indeterminate amount. The bill would require LARA to prepare a notice regarding times when ignition, discharge, and use of consumer fireworks are permitted and to make this notice available on its website. Retailers would be required to make this notice available to consumers, and retailers that fail to do so would be responsible for a civil fine of \$500 for each violation. Civil fines collected for failing to display the required notice would be remitted to the local law enforcement agencies responsible for enforcing the notice requirement. The bill would also raise the civil fine required for violations of local ordinances regulating the ignition, discharge, and use of consumer fireworks. Currently, the civil fine mandated for these local ordinances is \$500. Under the bill, the fine would increase to \$1,000, with \$500 being earmarked for remittance to local law enforcement agencies responsible for enforcing the ordinance. The amount of revenue that would be collected from the civil fines addressed in the bill would be dependent on the volume of violations.

The bill could have a fiscal impact on local court systems, depending on how provisions of the bill affect caseloads and related administrative costs.

The bill would create negligible administrative costs for the Department of Treasury by requiring certain applicants to file a \$5,000 bond with the department. Any costs would be covered under current appropriation levels.

The requirement to file a bond may increase revenues to the state through the collection of sales taxes and fireworks safety fees. Any increase in revenues likely would be minimal.

House Bills 5940 and 5941

House Bills 5940 and 5941 would not have an impact on expenditures or revenues for any unit of state or local government.

Legislative Analyst: Susan Stutzky
Fiscal Analysts: Marcus Coffin
Robin Risko
Ben Gielczyk

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.