

CONSUMER FIREWORKS LAW MODIFICATIONS

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

House Bills 5939 and 5941 as enacted
Public Acts 634 and 636 of 2018
Sponsor: Rep. Jim Lilly

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

House Bill 5940 as enacted
Public Act 635 of 2018
Sponsor: Rep. John Chirkun

House Committee: Regulatory Reform
Senate Committee: Regulatory Reform
Complete to 6-27-19

BRIEF SUMMARY: Taken together, the bills make numerous changes to state law regarding consumer fireworks, including the following:

- Applying the fireworks law to homemade fireworks.
- Prohibiting all local units of government from regulating the use of fireworks on certain days and during certain times.
- Requiring retailers to provide with each fireworks purchase a notice of the dates and times fireworks may be used.
- Authorizing certain state or local officials to enforce a no burning restriction (including a ban on the use of consumer fireworks) under certain criteria.
- Revising, or in some instances adding, penalties for violations of the act or failure to comply with certain requirements.
- Decriminalizing certain acts, including selling consumer fireworks without a consumer fireworks certificate (CFC) and failing to collect or remit fireworks safety fees.
- Requiring a civil fine of \$1,000 (rather than up to \$500) for an ordinance violation, with half of that going to the responsible law enforcement agency.
- Allowing larger local governments to regulate the use of temporary structures.
- Requiring, with some exceptions, a retail location in a permanent multitenant building or structure to be equipped with an automatic sprinkler system.
- Prohibiting the sale of consumer fireworks via phone or internet unless they are picked up or shipped from a permanent location for which a person holds a valid CFC.
- Increasing the fee for a CFC.
- Increasing the fee to transfer a CFC and prohibiting the Department of Licensing and Regulatory Affairs (LARA) from processing requests between June 1 and July 31.
- Allowing a person sentenced for a felony within the preceding five years (except for fraud, theft, or arson) to be eligible for a CFC.
- Requiring a \$5,000 bond if an application for a CFC is for a temporary structure and the applicant does not hold a CFC for a permanent location.
- Requiring remittance of sales tax, in addition to fireworks safety fees, for CFC renewal.
- Revising the percentage of revenue from CFC fees shared by LARA with a local government that conducts its own inspections.
- Requiring a \$50 application fee to register on the low-impact fireworks retail registry, with a cap of \$1,000 for persons with multiple retail locations.

FISCAL IMPACT: House Bills 5939 and 5940 would have a fiscal impact on the state and local governments. (See **Fiscal Information**, below, for a detailed discussion.)

THE APPARENT PROBLEM:

Since the Michigan Fireworks Safety Act (MFSA) took effect at the beginning of 2012, many have called for revisions, if not its outright repeal. Among other things, the act allowed fireworks that had previously been illegal in the state—types that are much louder and considered by many to be more dangerous—while designating 30 days (around national holidays) for which local governments could not regulate the time of day fireworks could be used. Reportedly, enforcement of the act by law enforcement has been less than rigorous, with some believing that the low-level misdemeanors imposed by the act provide little incentive for complaints to be acted upon. In the ensuing years, many proposals have surfaced, some in the form of legislation, to revise the act. Legislation in 2013 allowed larger cities to set some time frames for using fireworks on the days surrounding the national holidays, but many have found the provision to be confusing. Once again, legislation was proposed to address some of the concerns raised since the enactment of the act and to clarify many of its provisions.

THE CONTENT OF THE BILLS:

House Bill 5939 amends numerous provisions in the MFSA, including revising penalties for violations of the act and adding *homemade fireworks* to the definition of *fireworks*. Under the bill, *fireworks* consist of consumer fireworks, low-impact fireworks, articles pyrotechnic, display fireworks, special effects, and homemade fireworks.

Homemade fireworks means any composition or device designed to produce 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 U.S. Consumer Product Safety Commission under the Code of Federal Regulations.

Consumer Fireworks Certificates (CFCs)

A consumer fireworks certificate (CFC) allows a person to sell consumer fireworks. The term “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. A person is prohibited from selling consumer fireworks unless the person annually obtains, and maintains, a CFC from the Department of Licensing and Regulatory Affairs (LARA).

Selling fireworks without a CFC

The bill decriminalizes selling fireworks without a CFC and makes a violation punishable by a civil fine as follows:

- First violation—fine of not more than \$5,000.
- Second violation—fine of not more than \$20,000.
- Third or subsequent violation—fine of not more than \$40,000.

The amount of the fine is to be determined by LARA by applying a department-developed scale reflecting the severity of the violation. [Previously, selling consumer fireworks without

annually obtaining and maintaining a CFC was a misdemeanor punishable by up to two years' imprisonment and/or a fine, the maximum of which increased with each subsequent violation.]

Application for a CFC

Under the MFSA, applications for a CFC must be submitted by April 1 of each year in which the applicant will sell consumer fireworks. LARA is prohibited under the act from issuing an initial CFC to an applicant until the Department of Treasury confirms that each sales tax license submitted by an applicant is current and valid and that the applicant is otherwise eligible to obtain a CFC. Each application must be accompanied by the appropriate fee.

The bill revises the fee structure for a nonrefundable CFC as follows:

Permanent building or structure	Nonpermanent building or structure	Nonpermanent building or structure, 10 or more locations
\$1,250 each location	\$1,000 each location	\$700 each location

[Previously, the fee structure had been \$1,000 for each retail location/permanent building or structure or \$600 for each nonpermanent one, with a cap on the fee for temporary structures of 60% of the fee for permanent buildings or structures.]

The bill also requires an applicant for a CFC 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. This bond requirement applies only to an applicant who does not also hold a CFC for a permanent building or structure. The bill retains the requirement that a copy of the applicant's current sales tax license for each retail location where fireworks will be sold must be included with the application.

LARA is prohibited from issuing a CFC to a person who is ineligible under the act. The bill also prohibits a CFC from being issued to a person who has an outstanding fine issued under the MFSA unless the fine is currently under appeal.

Renewal CFC application

An application for a renewal is made in the same manner as for an initial CFC. The bill adds that the renewal application must be made on a form prescribed by LARA certifying that all information on file is true and correct, that the 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. LARA may deny a renewal if it 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 five years, during which the applicant held a CFC. [Previously, LARA was required to deny a renewal application unless the applicant remitted all of the fireworks safety fees required to be paid in the preceding year.]

Transfer of location

Previously, for a \$25 fee, a CFC could be transferred if approved by LARA. Under the bill, the transfer fee is increased to \$250, and LARA is prohibited from processing a request for transfer of location between June 1 and July 31.

Display of CFC

The MFSA previously required the holder of a CFC to display the certificate (original or copy) in the appropriate retail location. A violation was a civil fine of \$100, and each day the CFC was not displayed was a separate violation.

The bill raises the civil fine to \$200 for a violation, eliminates the provision that each day the CFC is not displayed is a separate violation, and clarifies that the original or a copy of the CFC must be displayed in *each* retail location *to which the CFC applies*.

CFC holder requirements

To sell consumer fireworks from a retail location, the MFSA requires that the location satisfy the applicable requirements of certain national standards not in conflict with the MFSA and the Stille-DeRossett-Hale Single State Construction Code Act.

The bill adds that any adjacent or directly associated retail storage must also satisfy the applicable requirements of those national standards. Beginning December 28, 2018 (the bill's effective date), notwithstanding the NFPA 1124¹ requirements regarding automatic sprinkler systems, a retail location in a permanent multitenant building or structure is required to be equipped with an automatic sprinkler system. This requirement does not apply to the retail location of a person that held a consumer fireworks CFC for a retail location of the same address in a permanent building or structure during the calendar year preceding December 28, 2018.

Noncompliance with the above is a civil fine of up to \$2,500 for each violation, with LARA determining a fine that reflects the severity of the violation by applying a scale it develops. [This replaces a provision that specified a fine of \$2,500 for each violation for noncompliance if a person knew, or should have known, that compliance with the above requirements was required.]

The MFSA required, during periods when consumer fireworks were sold, that each retail location selling consumer fireworks add as an additional insured, or public liability and product liability insurance coverage be obtained and maintained, in an amount not less than \$10.0 million per occurrence. A person who knew, or should have known, that he or she was required to comply with this provision but failed or neglected to do so was liable for a civil fine of not more than \$5,000.

The bill keeps the level of required insurance per occurrence at \$10.0 million and the maximum amount of a civil fine for noncompliance at \$5,000, but revises the provision to clarify that this level of coverage must be met during any period of time for which a person is selling consumer fireworks and for each retail location at which the consumer fireworks are sold, with the civil fine imposed if LARA determines that a person failed or neglected to comply with the requirement; in addition, the department is required to issue an order for that person to immediately cease operations.

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.

Low-Impact Fireworks Retail Registry

The MFSA requires LARA to establish and maintain an internet website that contains a low-impact fireworks retail registry and a list of every person and entity that is issued a CFC.

The bill eliminates certain statutory requirements, including the following: that the low-impact fireworks retail registry be maintained and operated at no cost to a user; that it provide for instant registry without condition; and that the cost to maintain and operate the registry be paid for with funds in the Fireworks Safety Fund derived from fireworks safety fees, CFC fees, and fees collected under section 11 of the Firefighters Training Council Act.

The MFSA prohibits a person from selling low-impact fireworks unless that person registers with the low-impact fireworks retail registry at least 10 days before selling the fireworks in each calendar year.

The bill adds a requirement that the person pay a \$50 registry application fee for each retail location registered. If a person has multiple retail locations, the total registry application fees cannot be more than \$1,000. A person that holds a valid CFC issued under the act is not required to also register with the low-impact fireworks retail registry. LARA must order the person to immediately cease the sale of low-impact fireworks until the person complies and pays a civil fine of not more than \$1,000. For a first violation, the fine is waived if the person complies with the registration and fee requirements within 30 days of receiving the notice of violation. [Previously, the act required a person that failed to register to cease selling low-impact fireworks until the person complied with the registration requirements.]

Notice Listing Dates Consumer Fireworks May Be Used

The bill requires a retailer to provide with every purchase of consumer fireworks a notice listing the dates and times permitted under the MFSA for the ignition, discharge, and use of the fireworks. The notice must 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 determine the form and manner of providing the notice. This can include printing or stamping the notice on, or affixing the notice to, a receipt, bag, or the product being purchased or providing a printed handout at the time of purchase. However, posting the notice on a wall, window, display, or otherwise does not satisfy this requirement. Failure to provide the required notice is a civil fine of \$100 for each day on which one or more violations occur, with the fine revenue collected by LARA remitted to the local law enforcement agency responsible for enforcing the notice requirement.

Collection and Remittance of Fireworks Safety Fees

The MFSA imposes a user fee, known as the fireworks safety fee, on retail transactions within Michigan for consumer fireworks and low-impact fireworks. The person who acquires the fireworks in a retail transaction is the party responsible for paying the fee to the retailer as a separate added amount in the transaction. The retailer collects the fee as an agent for the state and remits it to LARA. The fee is deposited into the Fireworks Safety Fund.

Previously under the act, failure to collect or remit the fee, knowing or should have known of the requirement to collect and remit the fee, was a misdemeanor punishable by a criminal fine

that was higher for a first offense but the same for second and subsequent violations as the new civil fine.

The bill decriminalizes the failure to collect and/or remit the fireworks safety fee as required. Instead, the penalties are as follows:

First violation: A civil fine of not more than \$5,000 (reduced from \$10,000). If the person is a retailer of low-impact fireworks, LARA is required to waive the fine if the person remits—within 30 days of receiving a notice of the violation—the equivalent of the amount that should have been collected or that had been collected but not remitted.

Second violation: A civil fine of not more than \$20,000.

Third or subsequent violation: A civil fine of not more than \$40,000.

The MFSA allows LARA to refer past due amounts to the Department of Treasury for collection. The bill also allows LARA to initiate subrogation for collection within the department.

The bill retains the requirement that the collected fireworks safety fees be remitted to LARA within 20 days after the end of each preceding month, but eliminates a requirement that LARA investigate no later than September 30 of each year fees reported, but not paid, by a retailer.

Fireworks Safety Fund

The MFSA prescribes how money deposited into the fund (such as fireworks safety fees and CFC fees) is to be expended by LARA. The act allows LARA to establish a program for delegating inspection duties to one or more local units of government, with LARA paying a percentage of the CFC fee paid by each retail location inspected by that local unit and retaining the remaining percentage.

Under the bill, a local unit must be paid 50% of the revenue from the CFC fee paid by each retail location inspected by the local unit, with LARA retaining the remaining 50%. [Previously, the ratio was 70% to the local unit and 30% to LARA.]

Penalties for Specific Violations of the Act

Selling fireworks to a minor

The bill increases the civil fine for selling fireworks to a minor (a person less than 18 years of age) as follows:

- First offense—a civil fine of up to \$1,000 (increased from \$500).
 - Second or subsequent offense—a civil fine of up to \$2,500 (increased from \$1,000).
- The bill retains the mandatory CFC suspension of 90 days.

Using fireworks while under the influence

The MFSA prohibits a person from discharging, igniting, or using consumer or low-impact fireworks while under the influence of alcohol, controlled substances, or both. The bill specifies that a violation is a state civil infraction and the person may be ordered to pay a civil fine of up to \$1,000.

Violating the smoking prohibition

The bill revises the penalty for a violation of national standards which prohibit smoking within 50 feet of a consumer fireworks retail sales area.² The bill eliminates the previous misdemeanor penalty [up to one year in jail and/or a criminal fine of up to \$1,000] and instead makes a violation punishable by a civil fine of \$1,000. This would apply regardless of the type or quantity of consumer or low-impact fireworks present.

Fireworks to harass or scare livestock

The bill newly prohibits igniting, discharging, or using consumer fireworks or low-impact fireworks in a manner that is intended to harass, scare, or injure livestock. A specific penalty for a violation is not provided. However, under the general penalty provision for a violation of the MFSA, a person who uses fireworks to harass, scare, or injure livestock would be guilty a misdemeanor punishable by up to 30 days in jail and/or a fine of up to \$1,000. Further, the act makes a violation that causes damage to the property of another person a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of up to \$5,000.

Miscellaneous Provisions

Seizure of fireworks

The MFSA requires LARA or law enforcement to seize fireworks as evidence if an investigation determines that a violation of the act has occurred.

The bill makes numerous revisions of an editorial nature of this provision for clarity, such as specifying that if the person is found guilty, responsible, or liable for the violation, the person must be required to pay the storage expense for the evidence seized. Similarly, in the case of fireworks seized for an alleged violation of the act, following a final disposition of a conviction, a person is required to pay the actual costs of storage and disposal of the seized fireworks retained for evidence. The bill adds that the person is required to pay *if found guilty, responsible, or liable for a violation*. The bill also revises the provision to apply to a final disposition of *an appeal* of a conviction *that affirms the conviction*. Lastly, by deleting a reference to the Department of State Police, the bill allows only LARA to use fireworks retained as evidence under this provision for training purposes.

Telephone or internet sales

The bill prohibits the retail sale of consumer fireworks over the telephone or internet or in a similar manner unless the consumer fireworks are picked up or shipped from a permanent location for which the person holds a valid CFC.

Conduct not prohibited by the act

To the list of conduct that the MFSA does not prohibit, the bill adds parking a motor vehicle or a 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.

² NFPA 1124, 7.3.11.1 entitled Code for the Manufacture, Transportation, and Storage of Fireworks and Pyrotechnic Articles.

Citation by state fire marshal

Under the MFSA, the state fire marshal or the fire marshal's designee is required to issue a citation for violations found during an inspection.

The bill adds that the citation is to be issued to the holder of the CFC for the retail location being inspected or to a person conducting or directing the sale of consumer fireworks without a CFC at the retail location being inspected. Under the bill, the person to whom the citation is issued is also responsible for the acts or omissions of an individual under that person's employ or control.

Eligibility for a CFC

An individual who was sentenced for a felony conviction within the preceding five years is no longer ineligible to receive a CFC under the bill. However, as verified by the Internet Criminal History Access Tool (ICHAT) maintained by the Department of State Police, a person who was convicted of a felony involving theft, fraud, or arson is still ineligible to be issued a CFC.

Repealer

The bill repeals section 13 of the MFSA (MCL 28.463), which required a wholesaler to have a resident agent reside in the state with a physical address.

MCL 28.454 et seq.

House Bill 5940 also amends the MFSA. Under the act, a local government may, with some restrictions, enact an ordinance to regulate the use of consumer fireworks (including the hours of the day or night fireworks may be used).

Under the bill, a local government cannot regulate the use of consumer fireworks after 11 a.m. on the following days:

- December 31 (New Year's Eve) until 1 a.m. on January 1.
- The Saturday and Sunday immediately preceding Memorial Day until 11:45 p.m. on each of those days.
- June 29 to July 4 until 11:45 p.m.
- July 5, if that date is Friday or Saturday, until 11:45 p.m.
- The Saturday and Sunday immediately preceding Labor Day until 11:45 p.m. on each of those days.

The bill increases the amount of a civil fine that may be imposed for each violation of the ordinance from \$500 to \$1,000 and requires the ordinance to provide for remittance of \$500 of the fine to the local law enforcement agency responsible for enforcing the ordinance.

[Previously, a local ordinance could not regulate the ignition, discharge, or use of consumer fireworks on the day preceding, day of, or day after a national holiday.³ Larger cities and towns, and cities and towns in larger counties, could regulate fireworks use between 1 a.m. and 8 a.m. on New Year's Day and between midnight and 8 a.m. on the other days. Smaller towns or cities in smaller counties could regulate fireworks use between 1 a.m. and 8 a.m. on those days.]

³ "National holiday" was never defined in the MFSA. The federal public holidays enumerated in 5 USC 6103 are New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

Temporary structures

Beginning April 1, 2019, the bill allows a local unit of government with a population of at least 100,000 or a local unit located in a county with a population of at least 750,000 to regulate the use of a **temporary structure**. Such an ordinance may include 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. Ordinances established under this provision cannot prohibit the temporary storage, transportation, or distribution of fireworks by a CFC holder at a retail location that is a permanent building or structure.

Temporary structure means a movable structure used in the sale, display, storage, transportation, or distribution of fireworks, including a tent or a stand.

MCL 28.457

House Bill 5941 amends the Fire Prevention Code to authorize the commanding officer of a city, village, township, or county fire department, in consultation with the Department of Natural Resources (DNR), to enforce a no burning restriction that includes a ban on the ignition, discharge, and use of consumer fireworks (as defined in the MFSA) within a city, village, township, or county. This authority applies only if the environmental concerns based on the DNR Fire Division criteria are elevated to *extreme* fire conditions or are elevated to *very high* for 72 consecutive hours. The commanding officer of the fire department enforcing such a restriction must ensure that adequate notice of it is provided to the public. [It is not clear if the ban has to be countywide or if it can be limited to those portions of a county for which weather conditions pose a danger if fireworks are used.]

In the same manner, a statewide no burning restriction, including a ban on the use of fireworks, may be enforced by the governor, DNR, or state fire marshal.

Not more than 24 hours after the fire condition is downgraded from *extreme* or *very high*, the commanding officer of the fire department that enforced a no burning restriction described above must lift the restriction and inform the public that the restriction has been lifted in the same manner as notice of the restriction was made.

MCL 29.7a and 29.7d

The bills took effect December 28, 2018.

FISCAL INFORMATION:

House Bill 5939 would have significant fiscal implications for LARA and for other units of state and local government. LARA estimates that it would experience a modest increase in expenditures, while increased fees would lead to additional revenues to the Fireworks Safety Fund. Revenues under the bill are expected to exceed LARA's departmental costs for administration, though the magnitude of the projected surplus is indeterminate.

LARA would be responsible for developing and applying a scale to determine the civil fine amount to be assessed on persons who sell consumer fireworks without obtaining and maintaining a consumer fireworks certificate (CFC), and for creating a similar scale for

determining fines for violations of section 5(1) of the act. The department would also experience other miscellaneous increases in administrative activity.

CFC fees would increase under the bill, as presented in the following table. Revenue increases would impact all future fiscal years, since CFC fees must be paid annually. It should be noted that revenue increases provided in the table are calculated for the number of licensees that LARA reported as of April 2019. Actual revenues may be higher or lower than projected, depending on the number of CFCs that are obtained during the 2018-19 fiscal year.

Fee Type	Previous Fee	Fee Under HB 5939	Number Issued in FY 2017-18	Projected Revenue Increase
CFC for a retail location that is a permanent building or structure	\$1,000	\$1,250	242	\$60,500
CFC for a retail location that is a nonpermanent building or structure	\$600	\$1,000	313	\$125,200
CFC application with 10 or more retail locations that are nonpermanent buildings or structures	\$600	\$700 per location	304	\$30,400
Transfer of a CFC	\$25	\$250	45	\$10,125
Total Revenue				\$226,225

**FY 2017-18 numbers provided by the Department of Licensing and Regulatory Affairs*

The bill would establish a registry application fee for the existing low-impact fireworks retail registry. The fee would be \$50 per location, with a maximum fee of \$1,000 for individuals with multiple retail locations. LARA indicated that there were 1,785 locations on the low-impact fireworks retail registry as of April 2019. Based on this population, the maximum expected annual revenue from the low-impact firework retail registry fee would be \$89,250 (assuming no entities meet the \$1,000 cap). Fluctuations in the number of locations registering in a given year would naturally cause revenues to increase or decrease.

The bill would revise the structure for reimbursements made by LARA to local units if those units conduct inspections required under the act. In such an event, under current law, 70% of the CFC fees paid by retail locations that are inspected by the local unit would be paid to the local unit and LARA would retain the remaining 30%. The bill would stipulate that 50% of the fees would go to local units, while LARA would retain the remaining 50%. At present, there are no local units conducting these inspections, so this change would not affect any present state or local operations.

Several violations that are categorized as misdemeanors under current law would be subject only to civil fines under the bill. Additionally, the bill would also establish several new civil fines, revise the amount of existing civil fines, and establish new prohibitions on fireworks-

related activities. Changes the bill would make with respect to civil fines, misdemeanors, and civil infractions are as follows:

- Change the punishment for selling consumer fireworks without obtaining and maintaining a CFC from a misdemeanor to a civil fine. Civil fines could not exceed the following amounts: \$5,000 for a first violation, \$20,000 for a second violation, and \$40,000 for a third or subsequent violation.
- Change the punishment for violating smoking prohibitions under NFPA 1124, 7.3.11.1 from a misdemeanor to a civil fine of \$1,000.
- Change the punishment for failing to collect fireworks safety fees from a misdemeanor to a civil fine. The civil fine amount would be capped at: \$5,000 for a first violation (but the fine would be waived if the person is a low-impact fireworks retailer and remits the estimated amount that should have been collected within 30 days), \$20,000 for a second violation, and \$40,000 for a third or subsequent violation.
- Establish a civil fine (not to exceed \$1,000) for individuals selling low-impact fireworks without registering with the low-impact fireworks retail registry. The civil fine would be waived for a first violation if the noncompliant person registers within 30 days or receiving a notice of violation.
- Establish a civil infraction and a civil fine of up to \$1,000 for individuals who use consumer fireworks under the influence of alcohol or controlled substances.
- Establish a civil fine for persons who fail to remit collected fireworks safety fees. The civil fine amount would be capped at: \$5,000 for a first violation (but the fine would be waived if the person is a low-impact fireworks retailer and remits the collected amounts that should have been remitted within 30 days); \$20,000 for a second violation; and \$40,000 for a third or subsequent violation.
- Increase civil fines for selling consumer fireworks to a minor from a maximum of \$500 to \$1,000 for a first violation, and from \$1,000 to \$2,500 for a second or subsequent violation.
- Increase the civil fine for individuals in noncompliance with display requirements for CFCs from \$100 to \$200.
- Currently, violations of section 5(1) are subject to a civil fine of \$2,500 per violation. Under the bill, \$2,500 would become the cap for the civil fine, and the fine amount would be determined by a scale developed by LARA.
- Establish a \$100 civil fine for each day during which one or more violations of section 5(4) (notice of consumers regarding permissible dates and times for discharge of fireworks) occur. The bill stipulates that revenues received from this specific civil fine must be remitted by LARA to local law enforcement agencies responsible for enforcing the notice requirement.
- The bill adds language prohibiting the use of fireworks in a manner intended to harass, scare, or injure livestock. Since no language is included regarding a penalty for committing such acts, it is assumed that the penalties would be those established in section 18a.

Revenues to LARA would increase under the bill, as civil fine revenue would be paid to the department and credited to the Fireworks Safety Fund. Violations that would no longer be considered misdemeanor offenses would result in decreased costs for local units of government related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. There could also be a decrease in penal fine revenue, which

would decrease funding for public libraries, which are the constitutionally designated recipients of those revenues.

House Bill 5940 could have a significant fiscal impact on local units of government and on local law enforcement agencies. The bill would increase the maximum civil fine that a local ordinance could impose for violating an ordinance regulating the use of consumer fireworks, increasing the maximum from \$500 to \$1,000 per violation. The bill would also require \$500 of each of the aforementioned civil fines that are collected to be to be remitted to the local law enforcement agency responsible for enforcing the ordinance. Projected revenues from this increase are indeterminate and would depend on the number of civil fines issued in each local unit and whether local units revise their civil fine amounts.

House Bill 5941 would not be expected to have an appreciable fiscal impact on any unit of state or local government.

ARGUMENTS:

For:

The bill package does not change the types of fireworks that may be sold to or bought by consumers. Rather, the bills address other issues raised since the Michigan Fireworks Safety Act took effect in 2012. One of the major complaints has been the number of days each year (30) that local governments could not restrict the use of fireworks. Residents have complained of fireworks going off in residential and rural neighborhoods throughout the night—causing disruptions in sleep, frightening pets and livestock, triggering PTSD symptoms in combat veterans and trauma victims, and raising concerns of fires to nearby structures.

House Bill 5940 addresses this concern by lowering the number of days for which a local unit of government cannot adopt an ordinance regulating the use of fireworks from 30 to 12. However, except for New Year’s Eve, a municipality may require that fireworks not be used after 11:45 p.m. on those days. For the remaining days of the year, each municipality may adopt ordinances that best serve their residents. In addition, the fine for a violation has been increased from up to \$500 per violation to a set fine of \$1,000 per violation. It is hoped that the stiffer fine will deter middle-of-the-night celebrations and encourage fireworks usage during hours less apt to disturb neighbors.

House Bill 5940 also addresses the proliferation of stands and tents selling fireworks in the state’s largest counties (Macomb, Oakland, and Wayne) and largest cities (Ann Arbor, Detroit, Grand Rapids, Lansing, Sterling Heights, and Warren) by allowing counties and cities reaching a certain population threshold to regulate the use of temporary structures. A local regulation could, among other things, limit the number of fireworks stands allowed or restrict tents and stands to certain areas within the city. Reportedly, this could help alleviate a problem in some large communities in which unlicensed vendors set up tents or stands.

House Bill 5941 allows local fire officials, in consultation with officials from the DNR, to institute a local fireworks ban (in addition to a no burning restriction) during periods of drought and when extreme fire conditions are high. Certain state officials, including the governor, could institute a similar statewide ban. As seen in California and other states, wildfires are not limited only to forests and fields where conditions are dry, but can—if conditions are just so—cause devastation and death quickly even in well-populated areas.

The main bill, House Bill 5939, primarily provides greater accountability for those who sell consumer fireworks. From increasing the amount of a fine for selling without proper certification or selling fireworks to minors, to requiring sellers to notify consumers at the point of purchase as to days when local regulations do not apply to using fireworks, the bill clarifies many provisions and provides higher fines when regulations are violated. Using fireworks to scare or injure livestock is a new crime, but several existing violations have been decriminalized and designated as being punishable by civil fines instead of criminal fines. In addition, having a recent felony conviction will no longer prevent a person from obtaining a CFC (though a felony conviction for fraud, theft, or arson still renders a person ineligible). Many argue that conduct that can appropriately be punished with civil penalties and/or license or certification sanctions should be dealt with in that manner, rather than saddling residents with a misdemeanor record that can impact housing, employment, or even immigration status for a lifetime. Moreover, changing fines from criminal to civil for most violations may increase collection rates; for instance, improving the collection and remittance of fireworks safety fees could increase inspections of businesses selling fireworks. The bill does not address every complaint that has surfaced since the fireworks law took effect in early 2012, but the revisions are hoped to improve compliance with regulations—a result that should increase public safety and lessen negative impacts in neighborhoods from excessive or late-night usage.

Against:

Concerns were raised that the bill package favored larger businesses over small fireworks operations. In particular, allowing larger counties and cities to regulate temporary structures (which is likely to decrease the number of businesses that can operate in a locality), increasing the fee for a CFC to an amount greater than 60% of the fee for a permanent structure (which had been the cap before the legislation was enacted), and requiring a bond for owners of a temporary structure are seen as burdensome on the small business owner.

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■ 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.