



Senate Fiscal Agency  
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## BILL ANALYSIS



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House Bill 5939 (Substitute H-3 as passed by the House)  
House Bill 5940 (Substitute H-3 as passed by the House)  
House Bill 5941 (Substitute H-3 as passed by the House)  
Sponsor: Representative Jim Lilly (H.B. 5939 & 5941)  
Representative John Chirkun (H.B. 5940)  
House Committee: Regulatory Reform  
Senate Committee: Regulatory Reform

Date Completed: 12-12-18

**CONTENT**

**House Bill 5939 (H-3) would amend the Michigan Fireworks Safety Act to do the following:**

- Specify that a person who sold consumer fireworks and failed to obtain and maintain a consumer fireworks certificate would be responsible for a civil fine.
- Increase the fees an applicant would have to pay to obtain a certificate.
- Require an applicant to submit a bond to secure the collection of estimated sales tax and fireworks safety fees, under certain circumstances.
- Prohibit the Department of Licensing and Regulatory Affairs (LARA) from issuing an initial certificate until the Department of Treasury had confirmed to LARA that each sales tax license submitted by the applicant was current and valid.
- Allow LARA to deny a certificate renewal if the applicant had not paid all of the required fees for all preceding years, or sales tax for any of the preceding five years.
- Increase the civil fine for failing to prominently display a certificate at each retail location the certificate applied.
- Require a retailer to provide with every purchase of consumer fireworks a notice listing the dates and times permitted under the Act for the ignition, discharge, and use of consumer fireworks, and require a notice to contain certain language.
- Specify that a retailer who failed to provide the notice would be responsible for a civil fine for each day on which one or more violations occurred.
- Prohibit a person from selling at retail consumer fireworks over the phone, internet, or other like manner unless the fireworks were picked up or shipped from a permanent location for which the person held a valid certificate.
- Specify that a person who failed to pay a fireworks safety fee would be responsible for a civil fine.
- Increase the civil fine for a person who sold consumer fireworks to a minor in violation of the Act.
- Specify that an individual who discharged, ignited, or used consumer fireworks or low-impact fireworks while under the influence would be responsible for a civil fine.
- Specify that a person from whom fireworks were seized would have to pay the actual costs for the storage and disposal of the seized firework if the person were found guilty, responsible, or liable for a violation of the Act.
- Specify that LARA could use the disposal or destruction of a seized firework for training purposes.

- **Specify that LARA could not issue, and an individual would not be eligible to be issued, a certificate if he or she had ever been convicted of a felony involving theft, fraud, or arson.**

**The bill also would repeal Section 13 of the Act, which requires a wholesaler of consumer fireworks or low-impact fireworks to maintain a resident agent.**

**House Bill 5940 (H-3) would amend the Act to modify when a local unit of government could not enact an ordinance to regulate the ignition, discharge, or use of consumer fireworks, and to allow a local unit that met certain population thresholds to enact or enforce an ordinance that regulated the use of a temporary structure.**

**House Bill 5941 (H-3) would amend the Fire Prevention Code to do the following:**

- **Grant the commanding officer of the fire department of a city, village, township, or county the authority to enforce a no-burning restriction if the environment concerns based on the Department of Natural Resources (DNR) Fire Division criteria were elevated to extreme fire conditions, or if the environmental concerns were elevated to "very high" for 72 consecutive hours.**
- **Allow the Governor, the DNR, or the State Fire Marshal to enforce a statewide no-burning restriction.**
- **Require a commanding officer to lift a ban and inform the public that the ban was lifted, nor more than 24 hours after the fire condition had been downgraded.**

### **House Bill 5939 (H-3)**

#### Consumer Fireworks Certificate

The Act prohibits a person from selling consumer fireworks unless he or she obtains and maintains a consumer fireworks certificate from LARA.

Failure to Obtain a Certificate. A person who knows, or should know, that he or she is required to obtain and maintain a certificate, and who fails or neglects to do so is guilty of a misdemeanor punishable by up to two years' imprisonment or a fine, with the fines as follows:

- For a first violation, not more than \$5,000.
- For a second violation, not more than \$20,000.
- For a third or subsequent violation, not more than \$40,000.

Under the bill, a person who failed or neglected to obtain and maintain a certificate would be responsible for one of the civil fines currently specified in the Act. For a first violation, LARA would have to determine the amount of the fine imposed by applying a scale, as developed by the Department, that reflected the severity of the violation.

Application Fees. An applicant for a consumer fireworks certificate must submit with his or her application the following:

- A copy of the applicant's current sales tax license for each retail location where the applicant will sell consumer fireworks.
- A \$1,000 fee for a certificate for each retail location that is a permanent building or structure, or a \$600 fee for each retail location that is not a permanent building or structure.

The bill would prescribe a \$1,250 nonrefundable certificate fee for each retail location that was a permanent building or structure, and a \$1,000 nonrefundable certificate fee for each retail location that was not a permanent building or structure. If an application included 10 or more retail locations that were not permanent buildings or structures, the fee would be \$700 for each of those locations.

The bill also would require an applicant to submit the following with his or her application:

- A \$5,000 bond to secure the collection of estimated sales tax and fireworks safety fees, for an applicant who applied for a certificate for a retail location that was not a permanent building or structure and who did not hold a certificate for a permanent building or structure.
- Any other document required by LARA.

The Department could not issue an initial certificate to an applicant until the Department of Treasury had confirmed to LARA that each sales tax license submitted by the applicant was current and valid, and that the applicant was otherwise eligible to obtain a certificate.

Renewal. A person may renew a consumer fireworks certificate for a retail location by making an application. The bill would require a renewal application to be on a form prescribed by the Department certifying that all the information on file with LARA was true and correct, that the person's sales tax license for the retail location was current and valid, and that the person had properly paid all required fireworks safety fees for the preceding year.

Under the Act, the Department may not issue a certificate renewal unless it determines that the applicant properly paid all of the required fireworks safety fees required to be paid in the preceding bill. Under the bill, the Department *could* deny a certificate renewal if the applicant had not paid all of the required fees for all preceding years, or sales tax for any of the preceding five years, during which the applicant held a certificate.

Issuance & Denial. Not more than 30 days after an application is submitted, LARA must issue a certificate or deny an application. Under the bill, not more than 30 days after an application was submitted and all required supporting documentation and fees were submitted, the Department would have to issue a certificate or deny an application.

The Act prohibits the Department from issuing a certificate to a person that is ineligible under the Act. Under the bill, LARA also could not issue a certificate to a person that had an outstanding fine issued under the Act not currently under appeal.

Certificate Transfer. A certificate is transferable upon LARA's approval and the payment of a \$25 transfer fee. Under the bill, the transfer fee would be \$250. Also, the Department could not process a request for a transfer of location between June 1 and July 31.

Display. The holder of a certificate must prominently display the original certificate or a copy in each retail location to which the certificate applies. A person that violates this provision is responsible for a \$100 civil fine. Each day that the certificate is not displayed is a separate violation. The bill would delete this provision. Also, under the bill, the civil fine would be \$200.

#### Sale of Consumer Fireworks

Under the Act, a person may not sell consumer fireworks unless certain conditions are met (described below).

The retailer must be licensed under the General Sales Tax Act, and must have a valid Federal taxpayer identification number.

The Act requires a retail location to satisfy all applicable requirements of National Fire Protection Association (NFPA) 101 and NFPA 112. Under the bill, this provision would apply to a retail location and any adjacent or directly associated retail space.

Under the Act, if the retail location is a permanent building or structure, it must be equipped with a fire suppression system in compliance with NFPA 1124. Under the bill, beginning on the bill's effective date, and notwithstanding the requirements of NFPA 1124 regarding automatic sprinklers, if the retail location were a permanent multitenant building or structure, it would have to be equipped with an automatic sprinkler system. This requirement would 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 bill's effective date.

The Act specifies that a person that knows, or should know, that he or she is required to comply with the above provisions, and who fails or neglects to comply with these requirements, is responsible for a civil fine of \$2,500 for each violation. Under the bill, a person that failed or neglected to comply with those requirements would be responsible for a civil fine of *not more than* \$2,500 for each violation. The Department would have to determine the amount of the fine imposed by applying a scale, as developed by the LARA, that reflected the severity of the violation.

During any period of time in which a person is selling consumer fireworks, the person must 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 of at least \$10.0 million per occurrence. A person that knows, or should know, that he or she is required to comply with those requirements and who fails or neglects to do so is liable for a civil fine of not more than \$5,000. Instead, under the bill, if the Department determined that a person had failed or neglected to comply with those requirements, it would have to order the person to *cease operations immediately and* pay a civil fine of not more than \$5,000.

Additionally, the bill would require a retailer to provide with every purchase of consumer fireworks a notice listing the dates and times permitted under the Act for the ignition, discharge, and use of consumer fireworks. The notice would have to 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 could provide the notice in a form and manner determined by the retailer, including printing or stamping the notice on, or affixing it to, a receipt, bag, or the product being purchased, or a printed handout provided at the time of purchase. A retailer who failed to provide the notice would be responsible for a civil fine of \$100 for each day on which one or more violations occurred. The Department would have to provide for the payment of a fine collected for a violation to the local law enforcement agency responsible for enforcing the notice requirement.

A person could not engage in the retail sale of consumer fireworks over the telephone, internet, or other like manner unless the fireworks were picked up or shipped from a permanent location for which the person held a valid consumer fireworks certificate.

### Registry

The Act requires LARA to establish and maintain an internet website that includes, among other things, a low-impact fireworks retail registry. All of the following apply to the online

registry: a) it must be maintained and operated at no cost to the user; b) the cost of maintenance and operation must be paid with funds from the Fireworks Safety Fund; and c) it must provide for instant registry without condition. The bill would delete this provision.

Under the Act, a person may not sell low-impact fireworks unless he or she registers with the registry at least 10 days before selling the fireworks. The bill also would require the person to pay a \$100 registry application fee for each retail location registered. For a person with multiple retail locations, the registry application fees in total could not exceed \$1,000. A person that held a valid consumer fireworks certificate would not be required to register.

The Act specifies that if a person that sells low-impact fireworks at retail and fails to register, the Department must order the person to cease the sale of low-impact fireworks immediately until the person registered. Under the bill, the Department also would have to order the person to pay a civil fine of not more than \$1,000.

### Past Due Fees

Under the Act, LARA may refer for collection to the Department of Treasury any past due fireworks safety fees. The bill also could allow LARA to initiate subrogation for collection within the Department.

The bill would delete a provisions requiring the Department to investigate any fees reported, but not paid, by a retailer no later than September 30 of each year.

Under the bill, a person that failed to pay a fireworks safety fee would be responsible for a civil fine as follows:

- For a first violation, not more than \$10,000.
- For a second violation, not more than \$20,000.
- For a third or subsequent violation, not more than \$40,000.

### Prohibitions

Sale to Minor. The Act prohibits a person from selling consumer fireworks to a minor. A person that violates this provision must pay a civil fine of not more than \$500, or, for a second or subsequent violation, \$1,000. Under the bill, the civil fine for a first violation would be \$1,000, and, for a second or subsequent violation, \$2,500.

Under the Influence. Under the Act, an individual may 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. The bill specifies that a person who violated this provision would be responsible for a civil infraction and could be ordered to pay a fine of not more than \$1,000.

Smoking. The Act specifies that an individual who violates the smoking prohibition described in NFPA 1124 is guilty of a misdemeanor punishable by up to one years' imprisonment or a civil fine of not more than \$1,000, or both. Under the bill, a person who violated the smoking prohibition, regardless of the type or quantity of consumer or low-impact fireworks present would be responsible for a civil fine of \$1,000.

### Investigation

The Act requires a governmental or law enforcement agency that identifies a firework that is in violation of the Act to secure the firework and immediately notify LARA. The Department

or law enforcement agency must investigate the alleged violation for compliance with the Act within a reasonable time. The bill would delete the requirement that the Department or law enforcement agency investigate within a reasonable time.

The Act specifies that a person from whom fireworks are seized must pay the actual costs of storage and disposal of the seized firework. Under the bill, this provision would apply if the person were found guilty, responsible, or liable for a violation of the Act.

Following a final disposition of appeal of a conviction under the Act that affirms the conviction, LARA may dispose of or destroy any fireworks that were seized. The Department and the Michigan State Police may use the fireworks for training purposes. Under the bill, only the Department could use the fireworks for training purposes.

Under the Act, if, as a result of an inspection or investigation, the State Fire Marshal, or his or her designee, believes that a person has violated the Act, he or she must site the person not more than 90 days after the completion of the physical inspection or investigation.

The bill would require the State Fire Marshal, or his or her designee, to issue a citation to the holder of the consumer fireworks certificate for, or to a person conducting or directing the sale of consumer fireworks, without a certificate at, the retail location that was the subject of the inspection or investigation. A hold of a certificate, or a person conducting the sale of consumer fireworks without a certificate, would be responsible for the acts or omissions of an individual under that person's employ or control.

#### Applicability

Under the bill, except as otherwise provided, the Act would not prohibit a person from parking a motor vehicle, or trailer, that was 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.

#### Criminal History Check

Under the Act, the Department may not issue, and an individual is ineligible to be issued, a consumer fireworks certificate if the person was sentenced for a felony conviction within the preceding five years; or has ever been convicted of a felony involving theft, fraud, or arson.

Instead, under the bill, the Department could not issue, and an individual would be ineligible to be issued, a consumer fireworks certificate if the person had ever been convicted of a felony involving theft, fraud, or arson.

#### Homemade Fireworks

The bill would define "homemade fireworks" as 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.

### **House Bill 5940 (H-3)**

Except as provided in the Michigan Fireworks Safety Act, a local unit of government may 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 the Act.

A local unit of government may enact an ordinance regulating the ignition, discharge, and use of consumer fireworks, including 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 enacts an ordinance, it could not regulate the ignition, discharge, or use of consumer fireworks on the day preceding, the day of, or the day after a national holiday except as follows:

- A local unit with a population of 50,000 or more or a local unit located in a county with a population of 750,000 or more may regulate the ignition, discharge, or use of consumer fireworks between the hours of 12 midnight and 8 a.m., or between the hours of 1 a.m. and 8 a.m. on New Year's Day.
- A local unit with a population of less than 50,000 located in a county of less than 750,000 may regulate, discharge, or use fireworks between the hours of 1 a.m. and 8 a.m.

Instead, under the bill, an ordinance could not regulate the ignition, discharge, or use of consumer fireworks on the following days after 11 a.m.:

- December 31 until 1 a.m. on January 1.
- The Saturday and Sunday immediately preceding Memorial Day until 11:30 p.m. on each of those days.
- June 29 to July 4 until 11:30 p.m. on each of those days.
- July 5, if that date was a Friday or Saturday, until 11:30 p.m.
- The Saturday and Sunday immediately preceding Labor Day until 11:30 p.m. on each of those days.

The Act requires an ordinance regulating the ignition, discharge, and use of consumer fireworks to impose only a civil fine of not more than \$500 for each violation of the ordinance and no other fine or sanction. Under the bill, the ordinance would have to impose a fine of \$1,000 for each violation of the ordinance.

The bill would require an ordinance to provide for the payment of \$500 of the fine collected under the ordinance to the local law enforcement agency responsible for enforcing it.

Beginning August 1, 2019, a local unit of government with a population of 100,000 or more, or a local unit located in a county with a population of 750,000 or more, could enact or enforce an ordinance that regulated the use of a temporary structure. The ordinance could include a restriction on the number of permits issued for a temporary structure, regulation of the distance required between two or more temporary structure, or a zoning ordinance that regulated the use of a temporary structure. An ordinance established to regulate the use of a temporary structure could not prohibit the temporary storage, transportation, or distribution of fireworks by a consumer fireworks certificate holder at a retail location that was a permanent building or structure.

"Temporary structure" would mean a movable structure that is used in the sale, display, storage, transportation, or distribution of fireworks, including a tent or stand.

### **House Bill 5941 (H-3)**

Under the bill, if the environmental concerns based on the DNR Fire Division criteria were elevated to extreme fire conditions, or if the environmental concerns were elevated to "very high" for 72 consecutive hours, the commanding officer of the fire department of a city, village, township, or county, in consultation with the DNR, would have the authority to enforce a no-burning restriction that would include a ban on the ignition, discharge, and use of

consumer fireworks within a city, village, township, or county. If a no burning restriction were instituted, the commanding officer of the fire department enforcing the restriction would have to ensure that adequate notice of the restriction was provided to the public.

The Governor, DNR, or State Fire Marshal could enforce a statewide no-burning restriction, including a ban on the ignition, discharge, and use of fireworks.

Not more than 24 hours after the fire condition was downgraded from extreme or very high condition, the commanding officer of the fire department of a city, village, township, or county that enforced a no-burning would have to lift the ban and inform the public that the restriction had been lifted in the same manner that the restriction was announced or made known to the public.

"Consumer fireworks" would mean that term as defined in Section 2 of the Michigan Fireworks Safety Act: fireworks devices that are designed to produce visible effects by combustion, that are required to comply with the construction, chemical composition, and labeling requirements promulgated by the U.S. Consumer Product Safety Commission, and that are listed in APA Standard 87-11, 3.1.2, 3.1.3, or 3.5. Under the Act, the term does not include low-impact fireworks.

MCL 28.452 et al. (H.B. 5939)  
MCL 28.457 (H.B. 5940)  
MCL 29.7a (H.B. 5591)

Legislative Analyst: Stephen Jackson

## **FISCAL IMPACT**

### **House Bill 5939 (H-2)**

The bill would have a positive fiscal impact on the Department of Licensing and Regulatory Affairs (LARA).

The bill contains several fee increases for Consumer Fireworks Certificates:

<b><u>Fee Type</u></b>	<b><u>Current Law</u></b>	<b><u>HB 5939</u></b>
Certificate (permanent structure)	\$1,000.00	\$1,250.00
Certificate (non-permanent structure)	\$600.00	\$1,000.00
Certificate (10+ non-permanent structures) <sup>†</sup>	\$600.00	\$700.00
Transfer	\$25.00	\$250.00

<sup>†</sup> fee per structure

The magnitude of the increase in fee revenue would depend on the number of Consumer Fireworks Certificate applications received. This fee revenue is used to administer the Act and to pay the cost of delegating inspections to local units of government. As of August 2018, there were 665 active temporary certificates and 260 active permanent certificates. If the same number of certificates were issued under the new fee structure, the Department would see a fee revenue increase of \$350,000.

The bill also would add a registry application fee of \$100 for each retail location selling low-impact fireworks, with a maximum fee of \$1,000 per person. The magnitude of this impact would depend on the number of persons registering a low-impact retail location. As of August



2018, there were 558 active low-impact temporary registrations and 1,227 active low-impact permanent registrations.

Under the bill, a person who failed to register would be subject to a civil fine of not more than \$1,000. The bill also would increase the civil fine for failure to properly display a consumer fireworks certificate from \$100 to \$200. A person who failed to remit a Fireworks Safety Fee as required under the Act would be responsible for a civil fine of up to \$10,000 for a first violation, up to \$20,000 for a second violation, and up to \$40,000 for a third or subsequent violation. Revenue from each of these civil fines would be deposited into the Fireworks Safety Fund within LARA. The Department estimates that these increase would result in an additional \$14,000 annually, depending on the number and type of violations.

In addition, the bill would revise the percentage of the certificate fees paid to local governments that agree to carry out inspection duties under the Act. Under the bill, the Department would retain 50% of the fee rather than the 30% retained under current law.

Overall, the Department expects the bill to result in an additional \$1.2 million in annual revenue.

Otherwise, the bill would have no fiscal impact on the State and likely would increase revenue to local law enforcement agencies by an indeterminate amount. Aside from those civil fines discussed above, the bill would mandate a \$100 per day civil fine on retailers who failed to provide notice of the permitted dates and times for the use of fireworks. Fines collected for this violation would be remitted to the local law enforcement agency responsible for enforcing the notice requirement. The amount of increased fine revenue would depend on the number of violations.

The bill also would removes misdemeanor offenses for violations surrounding the sale and use of consumer fireworks. To the extent that changes in the bill led to decreased misdemeanor arrests and prosecutions, it could reduce resource demands on law enforcement, court systems, and jails. Any related decrease in penal fine revenue would reduce funding to public libraries.

### **House Bill 5940 (H-3)**

The bill would have no fiscal impact on the State and likely would increase revenue to local law enforcement agencies by an indeterminate amount. It would increase the civil fine for violations of local ordinances regulating the ignition, discharge, and use of consumer fireworks. The Act currently allows for a civil fine of up to \$500, while the bill would mandate a fine of \$1,000, with \$500 to be remitted to the local law enforcement agency responsible for enforcing the ordinance. The amount of increased fine revenue would depend on the number of violations.

### **House Bill 5941 (H-3)**

The bill would have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.