Act No. 257
Public Acts of 2012
Approved by the Governor
June 25, 2012
Filed with the Secretary of State
July 2, 2012
EFFECTIVE DATE: July 2, 2012

STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012

Introduced by Senators Jones, Booher, Proos, Bieda, Casperson, Gleason, Hansen, Hildenbrand, Hunter, Jansen, Marleau, Moolenaar, Richardville and Whitmer

ENROLLED SENATE BILL No. 193

AN ACT to amend 2011 PA 256, entitled "An act to revise, consolidate, and codify the laws relating to certain fireworks; to regulate the purchase, possession, sale, and use of certain fireworks; to establish a fireworks safety fund; to establish a fireworks safety fee; to provide for the transfer and expenditure of funds; to prescribe the powers and duties of certain state agencies; to provide for penalties and remedies; and to repeal acts and parts of acts," by amending sections 2, 4, 8, 12, 17, and 18 (MCL 28.452, 28.454, 28.458, 28.462, 28.467, and 28.468) and by adding sections 17a, 18a, 18b, and 18c.

The People of the State of Michigan enact:

Sec. 2. As used in this act:

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

(b) "APA standard 87-1" means 2001 APA standard 87-1, standard for construction and approval for transportation of fireworks, novelties, and theatrical pyrotechnics, published by the American pyrotechnics association of Bethesda, Maryland.

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

(d) "Citation" means that term as described in section 17a.

(e) "Commercial manufacturer" means a person engaged in the manufacture of consumer fireworks.

(f) "Consumer fireworks" means fireworks devices that are designed to produce visible effects by combustion, that are required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States consumer product safety commission under 16 CFR parts 1500 and 1507, and that are listed in APA standard 87-1, 3.1.2, 3.1.3, or 3.5. Consumer fireworks does not include low-impact fireworks.

(g) "Consumer fireworks certificate" means a certificate issued under section 4.

(h) "Department" means the department of licensing and regulatory affairs.

(i) "Display fireworks" means large fireworks devices that are explosive materials intended for use in fireworks displays and designed to produce visible or audible effects by combustion, deflagration, or detonation, as provided in 27 CFR 555.11, 49 CFR 172, and APA standard 87-1, 4.1.

(j) "Firework" or "fireworks" means any composition or device, except for a starting pistol, a flare gun, or a flare, designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of consumer fireworks, low-impact fireworks, articles pyrotechnic, display fireworks, and special effects.

(k) "Fireworks safety fund" means the fireworks safety fund created in section 11.

(*l*) "Local unit of government" means a city, village, or township.

(m) "Low-impact fireworks" means ground and handheld sparkling devices as that phrase is defined under APA standard 87-1, 3.1, 3.1.1.1 to 3.1.1.8, and 3.5.

(n) "Minor" means an individual who is less than 18 years of age.

(o) "NFPA" means the national fire protection association headquartered at 1 Batterymarch Park, Quincy, Massachusetts.

(p) "NFPA 1" means the uniform fire code, 2006 edition, developed by NFPA.

(q) "NFPA 72" means the "National Fire Alarm Code", 2002 edition, developed by NFPA.

(r) "NFPA 101" means the "Life Safety Code", 2009 edition, developed by NFPA.

(s) "NFPA 1123" means the "Code for Fireworks Display", 2010 edition, developed by NFPA.

(t) "NFPA 1124" means the "Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles", 2006 edition, developed by NFPA.

(u) "NFPA 1126" means the "Standard for the Use of Pyrotechnics Before a Proximate Audience", 2011 edition, developed by NFPA.

(v) "Novelties" means that term as defined under APA standard 87-1, 3.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, and 3.2.5 and all of the following:

(*i*) Toy plastic or paper caps for toy pistols in sheets, strips, rolls, or individual caps containing not more than .25 of a grain of explosive content per cap, in packages labeled to indicate the maximum explosive content per cap.

(*ii*) Toy pistols, toy cannons, toy canes, toy trick noisemakers, and toy guns in which toy caps as described in subparagraph (*i*) are used, that are constructed so that the hand cannot come in contact with the cap when in place for the explosion, and that are not designed to break apart or be separated so as to form a missile by the explosion.

(*iii*) Flitter sparklers in paper tubes not exceeding 1/8 inch in diameter.

(*iv*) Toy snakes not containing mercury, if packed in cardboard boxes with not more than 12 pieces per box for retail sale and if the manufacturer's name and the quantity contained in each box are printed on the box; and toy smoke devices.

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

(x) "Person" means an individual, agent, association, charitable organization, company, limited liability company, corporation, labor organization, legal representative, partnership, unincorporated organization, or any other legal or commercial entity.

(y) "Retailer" means a person who sells consumer fireworks or low-impact fireworks for resale to an individual for ultimate use.

(z) "Retail location" means a facility listed under NFPA 1124, 7.1.2.

(aa) "Rule" means that term as defined in section 7 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.207, that was promulgated by the department.

(bb) "Serious impairment of a body function" means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

(cc) "Serious violation" means a violation of this act, an order issued under this act, or a rule promulgated or adopted by reference under this act for which a substantial probability exists that death or serious impairment of a body function to a person other than the violator may result unless the violator did not and could not, with the exercise of reasonable diligence, know of the presence of the violation.

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

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

(ff) "Warehouse" means a permanent building or structure used primarily for the storage of consumer fireworks or low-impact fireworks.

(gg) "Wholesaler" means any person who sells consumer fireworks or low-impact fireworks to a retailer or any other person for resale. Wholesaler does not include a person who sells only display fireworks or special effects.

Sec. 4. (1) A person shall not sell consumer fireworks unless the person annually obtains and maintains a consumer fireworks certificate from the department under this section. A person who knows, or should know, that he or she is required to comply with this subsection and who fails or neglects to do so is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine, or both, with the fine as follows:

(a) For a first violation of this subsection, not more than $5,000.00.

(b) For a second violation of this subsection, not more than $20,000.00.

(c) For a third or subsequent violation of this subsection, not more than $40,000.00.

(2) An application for a consumer fireworks certificate shall meet all of the following requirements:

(a) Before January 1, 2012, the application shall be submitted not less than 90 days before the applicant sells consumer fireworks.

(b) Beginning January 1, 2012, the application shall be submitted no later than April 1 of each year in which consumer fireworks are to be sold.

(c) The application shall list the name and address of each retail location from which consumer fireworks are to be sold.

(d) Until January 1, 2014, the application shall be accompanied by a fee of $1,000.00 for a certificate for each retail location that is a permanent building or structure or $600.00 for each retail location that is not a permanent building or structure. Until January 1, 2014, the fireworks certificate fee required to be paid for a retail location that is not a permanent building or structure shall not exceed 60% of the fireworks certificate fee for a retail location that is a permanent building or structure.

(e) The application shall be accompanied by a copy of the applicant's current sales tax license, including the applicant's account number, issued by the department of treasury for each retail location where consumer fireworks are to be sold by the applicant.

(3) A consumer fireworks certificate issued under this section is valid from the date of issue until April 30 of the year after it was issued. A person may renew a consumer fireworks certificate for a retail location by making application in the same manner as provided under subsection (2). However, the department shall not issue a renewal consumer fireworks certificate unless the department determines that the applicant properly remitted all of the fireworks safety fees required to be paid in the preceding year. The department shall provide to the department of treasury the sales tax license information received from the applicant and any additional information as may be necessary to allow the department of treasury to confirm that each sales tax license submitted by the applicant is current and valid. The department shall enter into an agreement with the department of treasury under section 28(1) of 1941 PA 122, MCL 205.28, that will allow the department of treasury to provide that information to the department. The department shall not issue an original or renewal consumer fireworks certificate to an applicant until the department of treasury has confirmed to the department that each sales tax license submitted by the applicant is current and valid, and that the applicant is otherwise eligible to obtain a consumer fireworks certificate under this act.

(4) Not more than 30 days after an application is submitted to the department under this section, the department shall issue or deny issuance of a consumer fireworks certificate to the applicant and, if issuance is denied, shall indicate to the applicant the reason for denial.

(5) If the department denies issuance of a consumer fireworks certificate under this section, the applicant may cure any defect of the application within 45 days after the denial without paying an additional fee. The department shall not unreasonably delay or deny an application under this section.

(6) A consumer fireworks certificate is transferable upon approval by the department and the payment of a $25.00 transfer fee. However, the department shall not approve the transfer of a consumer fireworks certificate unless the transferee satisfies eligibility requirements for an original consumer fireworks certificate under this act.

(7) The holder of a consumer fireworks certificate shall prominently display the original or copy of the certificate in the appropriate retail location. A person that violates this subsection is responsible for a civil fine of $100.00. Each day that the consumer fireworks certificate is not displayed as required under this subsection is a separate violation.

(8) The department shall not issue a consumer fireworks certificate to a person that is ineligible under this act.

(9) The face of the consumer fireworks certificate shall indicate the location or address for which it was issued.

(10) Fees collected under this section shall be deposited in the fireworks safety fund.

Sec. 8. (1) A user fee, known as the fireworks safety fee, is imposed on retail transactions made in this state for consumer fireworks and low-impact fireworks as provided in section 9.

(2) A person that acquires consumer fireworks or low-impact fireworks in a retail transaction is liable for the fireworks safety fee on the transaction and, except as otherwise provided in this act, shall pay the fireworks safety fee to the retailer as a separate added amount to the consideration in the transaction. The retailer shall collect the fireworks safety fee as an agent for the state.

(3) The fireworks safety fee shall be deposited in the fireworks safety fund.

(4) A person that knows or should know that he or she is required to comply with the requirements of subsection (2) but fails to collect or remit a fireworks safety fee as required under this section is guilty of a misdemeanor punishable by a fine as follows:

(a) For a first violation of this subsection, not more than $10,000.00.

(b) For a second violation of this subsection, not more than $20,000.00.

(c) For a third or subsequent violation of this subsection, not more than $40,000.00.

Sec. 12. (1) A person shall not ignite, discharge, or use consumer fireworks on public property, school property, church property, or the property of another person without that organization's or person's express permission to use those fireworks on those premises. Except as otherwise provided in this section, a person that violates this subsection is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

(2) Consumer fireworks shall not be sold to a minor. A person that violates this subsection shall be ordered to pay a civil fine of not more than $500.00, or, for a second or subsequent violation of this subsection, a civil fine of not more than $1,000.00. In addition, the person's consumer fireworks certificate shall be suspended for 90 days after the civil fine is ordered for a second or subsequent violation. This age requirement shall be verified by any of the following:

(a) An operator's or chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(b) An official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300.

(c) An enhanced driver license or enhanced official state personal identification card issued under the enhanced driver license and enhanced official state personal identification card act, 2008 PA 23, MCL 28.301 to 28.308.

(d) A military identification card.

(e) A passport.

(f) Any other bona fide photograph identification that establishes the identity and age of the individual.

(3) An individual shall not 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. As used in this subsection:

(a) "Alcoholic liquor" means that term as defined in section 1d of the Michigan vehicle code, 1949 PA 300, MCL 257.1d.

(b) "Controlled substance" means that term as defined in section 8b of the Michigan vehicle code, 1949 PA 300, MCL 257.8b.

(4) An individual who violates the smoking prohibition under NFPA 1124, 7.3.11.1 is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(5) Signage stating the smoking prohibition described in subsection (4) satisfies the requirements of NFPA 1124.

Sec. 17. Except as otherwise provided in this act, this act does not prohibit any of the following:

(a) A wholesaler, retailer, commercial manufacturer, or importer from selling, storing, using, transporting, or distributing consumer fireworks or low-impact fireworks.

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

(c) The use of agricultural or wildlife fireworks.

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

(*i*) A show or play.

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

(*iii*) Use by military organizations.

(*iv*) Use by law enforcement agencies.

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

(f) Interstate wholesalers from selling, storing, using, transporting, or distributing fireworks.

Sec. 17a. (1) If, as a result of an inspection or investigation, the state fire marshal or the state fire marshal's designee believes that a person has violated this act, an order issued under this act, or a rule promulgated under this act, the

state fire marshal or his or her designee shall issue a citation to the person not more than 90 days after the completion of the physical inspection or investigation.

(2) Except as otherwise provided in this act, upon issuance of a citation, the state fire marshal may immediately suspend the consumer fireworks certificate of the person to whom the citation was issued.

(3) Upon a proper petition, a court of competent jurisdiction may enjoin a violation of this act.

(4) All of the following apply to a citation issued by the state fire marshal or the state fire marshal's designee under this act:

(a) It shall be in writing.

(b) It shall state on its face that it is an allegation of a violation of this act, describe with particularity the nature of the violation, and include a reference to the provision, rule, or order alleged to be violated.

(c) It shall contain all of the following:

(*i*) The date of the citation.

(*ii*) The name and title of the individual who issued the citation.

(*iii*) The name and address of the person to whom the citation is issued.

(*iv*) The actions necessary to bring the person to whom the citation is issued into compliance, including the payment of a fine.

(*v*) A space for the signature of the person to whom the citation is issued indicating that the person has received the citation.

(*vi*) A space where the person to whom the citation is issued may accept the citation and agree to comply or, in the alternative, may indicate the intent of the person to whom the citation is issued to contest the citation.

(*vii*) A notice that the person to whom the citation is issued shall accept or reject the terms of the citation within 15 days of the date of the citation.

(*viii*) A brief description of the administrative hearing process and the process for settlement as provided for by rule.

(d) A citation may either be mailed to the person to whom the citation is issued by certified mail, return receipt requested, or delivered in person by the state fire marshal or state fire marshal's designee who issued the citation.

Sec. 18. (1) Unless otherwise provided in this act, if a person violates this act, the person is guilty of a crime as follows:

(a) Except as otherwise provided in this section, a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not more than $1,000.00, or both.

(b) If the violation causes damage to the property of another person, a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $5,000.00, or both.

(c) If the violation causes serious impairment of a body function of another person, a felony punishable by imprisonment for not more than 5 years or a fine of not more than $5,000.00, or both.

(d) If the violation causes the death of another person, a felony punishable by imprisonment for not more than 15 years or a fine of not more than $10,000.00, or both.

(2) In addition to any other penalty imposed for the violation of this act, a person that is found guilty of a violation of this act shall be required to reimburse the appropriate governmental agency for the costs of storing seized fireworks that the governmental agency confiscated for a violation of this act. This reimbursement shall be in a form and at a time as required by the department and as otherwise required by law.

Sec. 18a. (1) Except as otherwise provided in this section, a person who receives a citation for a serious violation, an order issued under this act, or a rule promulgated under this act shall be assessed a civil fine of not more than $1,000.00 for each violation.

(2) Except as otherwise provided in this section, a person who receives a citation for a violation of this act that is not a serious violation may be assessed a civil fine of not more than $500.00 for each violation.

(3) Subsections (1) and (2) do not apply to violations for which a specific civil fine is provided by this act.

(4) The state fire marshal may request that the prosecuting attorney for the county in which a violation of this act occurred issue a complaint and request a warrant for the prosecution of a person who commits a criminal violation of this act.

(5) All civil fines collected under this section shall be paid to the department within 15 working days after the date the penalty is ordered, not subject to further review, and credited to the fireworks safety fund.

(6) The department of treasury shall institute proceedings to collect any civil fines ordered but not paid under this act.

Sec. 18b. (1) The department shall not issue, and a person is ineligible to be issued, a consumer fireworks certificate if either of the following apply:

(a) The person was sentenced for a felony conviction within the preceding 5 years.

(b) The person has ever been convicted of a felony involving theft, fraud, or arson.

(2) If a person is convicted of a crime that would cause the person to be ineligible to be issued a consumer fireworks certificate on April 30 of the following year, the person's consumer fireworks certificate shall be revoked for the balance of the year for which the person's current consumer fireworks certificate was issued.

Sec. 18c. (1) A person who is convicted of the following offenses is ineligible to obtain a consumer fireworks certificate for the following periods of time after conviction:

(a) For a second violation of section 4(1), 5 years.

(b) For a third or subsequent violation of section 4(1), 10 years.

(c) For a first violation of section 8(4), 1 year.

(d) For a second violation of section 8(4), 5 years.

(e) For a third or subsequent violation of section 8(4), 10 years.

(f) For a violation of section 18(1)(b), 1 year.

(g) For a violation of section 18(1)(c), permanently.

(h) For a violation of section 18(1)(d), permanently.

(2) A sanction imposed under subsection (1) shall be imposed in addition to any other penalty or sanction imposed for a violation of this act.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Gary E Randall

Clerk of the House of Representatives

Approved .....

.....

Governor