

CHANGES TO THE MICHIGAN FIREWORKS LAW

The Michigan Fireworks Safety Act (“Act”), MCL 28.541 *et seq.*, effective January 1, 2012 allows for the sale of “consumer fireworks”. Consumer fireworks are defined as firework 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 a specified American Pyrotechnic Association Standard. Consumer fireworks generally consist of roman candles, bottle rockets, firecrackers and other items that leave the ground. Previously, the sale, use or possession of anything that left the ground or generated a moderately loud “boom” was prohibited; that is no longer the case. However, “M-80’s”, “M-100’s”, and “cherry bombs” remain illegal nationwide.

An individual or retailer who obtains a consumer fireworks certificate from the Michigan Department of Licensing and Regulatory Affairs (“Department”) may sell consumer fireworks within Michigan. The certificate will cost the individual or retailer a fee of \$1,000 for every site at a permanent location and \$600 for each site situated in a non-permanent location. Certificates must be applied for prior to April first of the year in which the fireworks are to be sold and must be renewed annually. All locations will be inspected by the Bureau of Fire Services prior to the issuance of a certificate. The Act also requires a person or company selling “low impact fireworks” to register online (at no cost). Low impact fireworks are defined as ground and handheld sparkling devices, more commonly known as sparklers, snakes, snaps and poppers.

The Act imposes a fireworks safety fee (user fee) on all retail transactions within the State for both consumer fireworks and low impact fireworks. The fireworks safety fee amounts to approximately six (6%) percent, which will be paid in addition to the six (6%) percent sales tax. Both the fireworks safety fee and certificate fee will be remitted into a fireworks safety fund.

Novelty fireworks, such as toy plastic or paper caps for toy pistols, toy trick noisemakers, and small flitter sparklers continue to remain exempt from regulation by the Act and local municipalities. Display fireworks identified as large explosive items, typically used at celebrations, may be permitted by a municipality. Upon written application (a form provided by the Department), compliance with several specific requirements set forth in the Act, and payment of a fee set by the municipality, a permit may be granted by a municipality for the use of: agricultural or wildlife fireworks, articles pyrotechnic (pyrotechnic devices for professional use), display fireworks; special effects manufactured for outdoor pest control or agricultural purposes; fireworks for public or private display within the municipality by municipalities, fair associations, amusement parks or other organizations or individuals approved by the municipality. These permit fees are retained by the municipality.

Most notably, the Act expressly PROHIBITS municipalities from enacting or enforcing any ordinance, code or regulation pertaining to or in any manner regulating the sale, display, storage, transportation or distribution of *all fireworks regulated by the Act*. However, it expressly PERMITS a municipality the authority to enact an ordinance regulating the ignition, discharge and use of *consumer fireworks* – EXCEPT on the day preceding, the day of or the day after a national holiday.

Further, the Act prohibits the use of consumer fireworks on another person's property without their express written permission, prohibits the sale of consumer fireworks to a minor, and prohibits the use of low impact and consumer fireworks while under the influence of alcohol or drugs.

Local police or sheriff's deputies identifying a firework in violation of the Act must secure the firework and immediately notify the Department of the alleged violation. The Act provides that either the law enforcement agency or the Department shall investigate the alleged violation for compliance with the Act within a reasonable time. If convicted, the person from whom the fireworks are seized shall pay the actual cost of storage and disposal.

The Act also requires the Department to establish rules and regulations to administer the Michigan Fireworks Safety Act. On March 9, 2012, the Department filed Emergency Rules for implementation of the Act with the Secretary of State. These rules shall remain in effect for a period of six (6) months in order to enable the Department to implement the Act providing a safe environment for Michigan citizens during the upcoming firework season.

Both the Act and the Emergency Rules leave many unanswered questions, such as:

- what constitutes 'under the influence' for purposes of firework safety?
- do these provisions preclude the enforcement of general noise ordinances?
- do these provisions preclude the enforcement of the residential building code?
- although a minor cannot purchase consumer fireworks, may they possess them?
- the extent to which zoning ordinance provisions may be pre-empted by the Act?

- whether the requirement to 'secure a firework' in violation of the Act mandates seizure of the firework?

We will continue to research these issues and will post updates to our website and any changes in the regulations promulgated by the Department.

All consumer firework facilities having been granted a permit and a listing of registered low impact firework facilities, along with applicable forms can be found (by link) on the Department of Licensing and Regulatory Affairs website or at www.michigan.gov/bfs.