

MUNICIPAL REGULATORY AUTHORITY EXPANDED BY AMENDMENT TO MICHIGAN FIREWORKS LAW

On June 19, 2013, Governor Snyder signed House Bill No. 4743 (the “Amendment”) amending the Michigan Fireworks Safety Act, MCL 28.451, et seq (the “Act”). The Amendment allows municipalities with a population of more than 50,000 residents or those located in a county of more than 750,000 residents (Macomb) to restrict usage of fireworks from 12:00 a.m. to 8:00 a.m. on the day before, the day of and the day after national holidays, except for New Year’s Day during which time usage may be restricted between 1:00 a.m. and 8:00 a.m. on January 1 in order to allow for midnight celebrations on New Year’s Day. Municipalities with a population of less than 50,000 residents, or those that are located in a county with fewer than 750,000 residents (St. Clair and Lapeer) may now restrict usage of fireworks from 1:00 a.m. to 8:00 a.m. on the day before, the day of and the day after all national holidays. The Amendment was ordered to take immediate effect.

Previously, under the Act, municipalities could not regulate the ignition, discharge and use of consumer fireworks the day before, the day of or the day after a national holiday. The Amendment allows municipalities that wish to do so, the ability to prevent the ignition and discharge during those hours in further effort to relieve noise complaints.

The Amendment also removed a sunset provision on required vendor application fees. These fees, under the Act, were set to expire on January 1, 2014. That is no longer the case and a \$1,000 fireworks certificate application fee for a retail location in a permanent structure, and a \$600 application for a “non-permanent” retail location will remain in place. Moreover, the State must now pay 70% of that fee to a municipality *if the municipality conducts the relevant inspections required by the Act* on the retail location.

Therefore, any municipality that works with the Department of Licensing and Regulatory Affairs to establish a program and conducts the necessary inspections of retail establishments, will receive 70% of the application fees paid by a retailer to the State.

Many municipalities have been regulating noise complaints by the issuance of disturbing the peace citations and/or noise ordinance violations. Although municipalities may continue to do so, the Amendment provides one more tool for municipalities to fight individuals who fail to use common sense when igniting and discharging fireworks. We recommend municipalities that wish to address fireworks noise complaints amend their ordinances to conform to the Amendment of the Act. Prosecutions for disturbing the peace violations require a civilian complaining witness to appear in court to testify, whereas prosecution for violation of a fireworks ordinance would only require the appearance of a police officer.

Unfortunately, the Amendment occurred too late for either general law or charter townships to adopt an ordinance to be effective for the 2013 4th of July holiday. For the upcoming holiday, noise complaints should be handled without reference to the Amendment.

Under the Act licensed vendors can sell high powered, airborne fireworks that previously were illegal in Michigan but available for purchase in several border states. Vendors are required to pay application fees to the State and collect sales tax and a safety fee from consumers. As a result of the recent Amendment, municipalities will share in the application fees if they conduct the required inspections on behalf of the State, and now may adopt ordinances with respect to the hours of discharge applicable on the day before, the day of and the day after a national holiday. The legislation also tightens restrictions on

vendors who do not pay sales tax and fire safety fees to the State and further requires that 100% of the money received from fireworks safety fees will be used for the training of fire fighters under the direction and approval of the Fire Fighters Training Council.