

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 7366

BILL NUMBER: HB 1272

DATE PREPARED: Feb 20, 2001

BILL AMENDED: Feb 19, 2001

SUBJECT: Sale of Common Fireworks.

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FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) The bill removes the penalty for the possession, transportation, or delivery of common fireworks. It permits a retailer to sell common fireworks at retail, and amends the categories of common fireworks, novelties, and trick noisemakers that are permitted to be sold. The bill also repeals the wholesaler requirements for fireworks not approved for sale in Indiana. It also provides that a person who possesses, transports, or delivers special fireworks other than as authorized commits a Class A misdemeanor. This bill provides that a retailer may not knowingly sell unapproved fireworks to a person who is less than 18 years old. The bill provides that a person who is less than 18 years old and possesses unapproved fireworks commits a Class C misdemeanor. It provides that a person who, in a state of intoxication, ignites or discharges certain common fireworks commits a Class C misdemeanor. It also provides that the Fire and Building Safety Commission shall adopt rules for the granting of permits for the possession and use of certain common fireworks in a park. The bill provides an exception for municipal corporations and nonprofit corporations to the requirement that certain fireworks may only be sold in a permanent structure. This bill also makes conforming amendments.

Effective Date: Upon passage.

Explanation of State Expenditures: (Revised) The Department of Fire and Building Services and the State Fire Marshal may experience additional expenditures to produce updated information material explaining the proposed regulations on fireworks. It is believed the agencies could absorb these costs within their existing budgets.

Exempt municipal entity and not-for-profit retailers: As amended, the Department will be required to design and produce a new application form for permits on non-permanent retail sales stands to incorporate a space for the retailer tax-exempt identification number. The Department should be able to absorb expenditures necessary to design and produce the new application form.

Enforcement of Provisions: Additionally, as amended, the bill requires the State Fire Marshal to enforce the following:

- A) permits for supervised public displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals.
- B) obtaining a certificate of insurance conditioned for the payment of all damages which may be caused either to a person or persons in an amount of not less than ten thousand dollars (\$10,000) and to property in an amount of not less than ten thousand dollars (\$10,000).
- C) obtaining an annual certificate of compliance.
- D) obtaining a fireworks stand retail sales permit for retailers selling fireworks at one (1) or more temporary stands.

The State Fire Marshal is already required to enforce the above listed responsibilities. Any impact would be subject to the interpretation of how enforcement is to be performed.

Creation of permit regulating use of common fireworks in parks: The bill requires adoption of new rules by the Fire Prevention and Building Safety Commission (FPBSC) for granting of permits for common fireworks (excluding novelty fireworks as described in the bill) for use in a park. The FPBSC would also be required to set the fee to be charged for this permit. These provisions can be implemented in the course of a regularly scheduled hearing by the FPBSC. With regard to the issuance of these permits, new expenditures may be required by the Department to process additional permits issued. Additionally, until permanent rules are adopted, the Fire Marshal is required to implement and carry out temporary rules for the regulation of common fireworks in parks. Increases in expenditures to enforce the temporary rules could be incurred at an indeterminable amount.

Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Explanation of State Revenues: (Revised) This proposal would narrow the classification of fireworks which would impose a Class A misdemeanor for unlawful possession, transportation, or delivery. The penalty would only be applied to violations with special fireworks. Special fireworks are defined as fireworks that contain more than 130 milligrams of explosive composition, and aerial shells that contain more than 40 grams of pyrotechnic composition, or other types of display fireworks that exceed the limits to be classified as a common firework.

Additionally, the bill provides for a Class A misdemeanor if a person knowingly sells at retail certain fireworks to a person who is less than eighteen years of age. The bill also introduces a Class C misdemeanor if a person under the age of eighteen uses any fireworks specified by the bill as illegal for the use of minors under the age of eighteen. As amended, a Class C misdemeanor is also introduced for violations with the possession, transportation, delivery, or use of common fireworks (excluding novelty fireworks as described in the bill) in a park. A Class C misdemeanor may be charged if a person, while intoxicated, recklessly, knowingly, or intentionally ignites or discharges a common firework (excluding a novelty type firework as described in the bill).

If additional court cases occur and fines are collected, revenue to both the Common School Fund and the

State General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. The maximum fine for a Class C misdemeanor is \$500. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the State General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the State General Fund.

With respect to Class A misdemeanors involving special fireworks, there may be a reduction of fines and court fees collected due to the narrowing of the classification of fireworks that may not be unlawfully possessed, transported, or delivered.

Ultimately, any impact to revenue would depend upon the number of arrests and convictions processed under this proposal.

The bill also removes the five-day grace period for an interstate wholesaler purchasing common fireworks in Indiana to exit the state for fireworks not approved for sale in the state and establishes the ability to sell common fireworks at retail in Indiana.

The fee involved to sell fireworks would include a retail sales stand permit which is currently set at \$0. The stand would also be required to have a certificate of compliance on file. The fee for a certificate of compliance is \$1,000. In FY 2000, \$167,000 in fees were collected from certificates of compliance. In FY 1999, \$181,000 in fees were collected.

Secondary Impact: The proposal could generate increased sales of fireworks directly in Indiana and may increase state sales tax collections as a result. Dr. Lee Craig's *Estimates of the Economic Impact of the Fireworks Industry in Indiana* projects the sales tax on fireworks to generate approximately \$2 M in state revenue in FY 2002. Craig's estimate is based on the types of fireworks offered for retail sale that the statute currently allows. The bill could generate sales tax revenue in addition to this estimate.

Explanation of Local Expenditures: (Revised) *Penalty Provision:* A Class A misdemeanor is punishable by up to one year in jail. A Class C misdemeanor is punishable by up to 60 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

With respect to Class A misdemeanors involving special fireworks, expenditures for incarceration may decrease if fewer violations occur as a result of narrowing the classification of fireworks that would be illegal to possess, transport, or deliver.

Ultimately, any impact to local expenditures would depend upon the number of arrests and convictions processed under this proposal.

Explanation of Local Revenues: (Revised) *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Office of the State Fire Marshal; Department of Fire and Building Services;

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Office of the Auditor of State; Office of the State Fire Marshal; Department of State Revenue; Lee A Craig, Ph.D., *Estimates of the Economic Impact of the Fireworks Industry in Indiana*, Oct. 15, 2000, submitted to the 2000 Interim Study Committee on Public Safety Issues.