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JOURNAL of LAW REFORM ONLINE

COMMENT

PLAYING WITH FIRE: PROCEEDING CAUTIOUSLY WITH REFORMS TO THE MICHIGAN FIREWORKS SAFETY ACT

Nicholas Pietropaulo*

On January 1, 2012, the Michigan Fireworks Safety Act went into effect.¹ It marked a significant change in how the state of Michigan treats the sale and use of “consumer fireworks.”² Effectively, the new statute authorizes the sale and use of Roman Candles, bottle rockets, aerials, and other fireworks³ that had previously been banned.⁴ Almost immediately, challenges and complaints were raised. On one side, eight fireworks vendors challenged the constitutionality of one of the law’s provisions that required such vendors to purchase insurance at an arguably unreasonable rate.⁵ The court dismissed that case, holding that it could not be said that the Act’s insurance requirement lacked a rational basis.⁶ On the other side were local municipalities that opposed the new law and immediately sought to limit its impact in their jurisdictions. For example, Warren, Michigan passed an ordinance that would prohibit the use of fireworks within 30 feet of a residential building.⁷ Though provisions of the law might need adjustment once their impact is seen, this is not something

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1. See MICH. COMP. LAWS ANN. § 28.451 (West 2001 & Supp. 2012).

2. See *id.* § 28.452(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 ...”).

3. See *Fireworks in Michigan*, MICH. LICENSING & REGULATORY AFFAIRS, http://www.michigan.gov/documents/lara/fireworks_381040_7.pdf (last visited Oct. 16, 2012) (providing a list of legal fireworks with pictures of examples).

4. See MICH. COMP. LAWS § 750.243 (repealed 2011) (prohibiting the sale, possession, transportation, and use of most fireworks without a permit).

5. *Wolverine Fireworks Display v. Towne*, No. 12-10426, 2012 WL 1570864, at *3 (N.D. Mich. June 7, 2012).

6. *Id.* at *10-11.

7. See *Warren Ordinance Challenges Michigan Fireworks Law*, CRAIN’S DETROIT BUSINESS (June 27, 2012, 11:11 AM), <http://www.craindetroit.com/article/20120627/FREE/120629937/warren-ordinance-challenges-michigan-fireworks-law>.

that should be done prematurely. This Comment advocates a careful, calculative approach to potential reforms of Michigan's nascent fireworks law. Instead of changing the law, the legislature should hold off on any revisions until the law's full impact can be seen.

The Michigan legislature intended the new law to be a source of additional revenue for the state in the form of new licensing fees and a six percent fireworks safety fee on all sales of fireworks.⁸ Vendors able to set up shop in Michigan and customers who would no longer need to travel to neighboring states in order to purchase fireworks would pay these taxes and fees.⁹ Prior to the law's enactment, residents of Michigan frequently traveled to Wisconsin, Ohio, or Indiana to purchase fireworks that were unavailable in Michigan. Laws in those states differ somewhat in detail and applicability, but all permit Michigan residents to purchase fireworks that would be illegal to sell in their home state. Vendors in Indiana,¹⁰ Wisconsin,¹¹ and Ohio are allowed to sell to out-of-state residents, though Ohio does require valid identification,¹² even if the use of those fireworks would not be allowed in-state without a special permit.

Anecdotal evidence suggests that Michigan's new law has increased business across the state. Various newsgroups spoke with vendors, all of whom reported increased sales and expanded business in the summer of 2012.¹³ With almost 1,000 applications

8. MATTHEW GRABOWSKI & JOSH SEFTON, MICH. S. FISCAL AGENCY B. ANALYSIS, H. B. 4293 & S.B. 194 (Nov. 3, 2011), *available at* <http://www.legislature.mi.gov/documents/2011-2012/billanalysis/senate/pdf/2011-SFA-4293-S.pdf>.

9. MICH. DEP'T OF LABOR & ECON. GROWTH, B. ANALYSIS H. B. 4293 (S-3) S. B. 194 (S-5) (2011).

10. IND. CODE ANN. § 22-11-14-11 (West 2001 & Supp. 2012).

11. WIS. STAT. ANN. § 167.10 (West 2001 & Supp. 2012).

12. OHIO REV. CODE ANN § 3743.44(A) (West 2001 & Supp. 2012) ("Any person who resides in another state and who intends to obtain possession in this state of fireworks purchased in this state shall obtain possession of the fireworks only from a licensed manufacturer or licensed wholesaler and ... presents ... an identification card issued to the person by a governmental agency in the person's state of residence indicating that the person is a resident of that state.").

13. *See, e.g.*, Al Jones, *Fireworks Sellers Say New Michigan Law is Helping Sales Boom in Kalamazoo*, MLIVE.COM (July 1, 2012, 1:00 PM), http://www.mlive.com/business/west-michigan/index.ssf/2012/07/fireworks_sellers_say_loose_ned.html; John Counts, *Safety and Fire Concerns: New Michigan Fireworks Law Sparks Statewide Debate*, ANNARBOR.COM (July 3, 2012, 5:57 AM), <http://www.annarbor.com/news/new-state-fireworks-law-doesnt-have-everyone-oohing-and-aahing/>.

for sales permits received before the April 1, 2012 deadline,¹⁴ vendors clearly expected to profit from Michigan sales. Even though the expected revenue from the new law has not been as high as some predicted, it raised approximately \$2 million in the first three quarters of 2012.¹⁵ At this point, it is not known whether this amount will increase in future years as more people learn of the new law and more vendors begin to open shops. However, it is better to leave the law in its current form and gather more data about its impact before addressing challenges to it through revisions that will only further confuse potential customers and vendors.

Despite the potential for additional revenue, opponents, including municipalities, feared increased costs of enforcement, damage, and injuries. In some places, at least, these fears were unfounded over the summer. In Jackson, for example, the number of reported injuries and fires did not increase from previous years over the Fourth of July weekend.¹⁶ Meanwhile, the number of hospitalizations for fireworks-related injuries in Detroit over the same weekend remained about the same as in 2011.¹⁷

In fact, various features of the new law address the aforementioned concerns. For example, the new law includes several limitations on who can buy and use consumer fireworks, including age restrictions and a prohibition on concomitant use of alcohol.¹⁸ Michigan's Licensing and Regulatory Affairs Agency, moreover, provides usage recommendations to consumers on its website.¹⁹ If the reports of no major increases in injuries are true

14. J. Patrick Pepper, *Law Changes on Fireworks, Officials Advise Caution*, PRESS&GUIDE.COM (June 26, 2012), <http://www.pressandguide.com/articles/2012/06/26/news/doc4fea19bde2e7a495229501.txt>.

15. Greg McDonald, *Mich. Fireworks Law Fizzles on Revenues*, NEWSMAX (Sept. 10, 2012), <http://www.newsmax.com/TheWire/fireworks-revenues-michigan/2012/09/10/id/451272>.

16. Jonathan Kaminsky, *Fireworks Bring Money, No Widespread Mayhem to Jackson Area*, THE JACKSON INDEPENDENT MONITOR (July 9, 2012), <http://www.jimonitor.com/article/fireworks-bring-money-no-widespread-mayhem-jackson-area>.

17. Cecil Angel & Dawson Bell, *Revamped Fireworks Law Doesn't Ignite Spike in Injuries*, DETROIT FREE PRESS (July 6, 2012), <http://www.freep.com/article/20120706/NEWS05/207060395/Revamped-fireworks-law-doesn-t-ignite-spike-in-injuries>.

18. MICH. COMP. LAWS ANN. § 28.462 (West 2001 & Supp. 2012).

19. *See State Fire Marshal Calls for Extreme Caution, Safety When Using Fireworks; Hot, Dry, Windy Weather Sparks Greater Risk for Fires, Injuries, Burns*, MICH. LICENSING & REGULATORY AFFAIRS (June 29, 2012), http://www.michigan.gov/lara/0,4601,7-154-10573_11472-281627-,00.html.

across the state, it would seem that Michigan citizens are using fireworks cautiously and safely. Adding new restrictions to the law before fully understanding its effect on public safety and actual costs would be premature, unnecessary, and would hinder the law's benefit of additional revenues.

While the law makes some allowances for safety protections, it remains to be seen whether these protections will alleviate the concerns of opponents—who have garnered over 6,000 signatures since February, 2013—to repeal the law.²⁰ Various city councils have voiced their opposition, with some, like Warren, effectively rendering the law meaningless by creating restrictions that effectively ban the use of fireworks, contrary to the law's intention of prohibiting such an absolute ban.²¹ Rather than simply repealing the law, the state legislature should consider possible revisions that satisfy everyone's concerns while preserving people's ability to purchase and use fireworks.

One aspect of the law that may require future revisions, for example, involves the law's interplay with local noise ordinances. One of the complaints raised by various municipalities and residents has been an increase in late night noise that local officials are not able to prevent.²² Part of the difficulty in integrating local noise ordinances with the Act stems from language in the law itself, which provides that local units of government may not regulate the use of fireworks on national holidays or the days preceding or following them.²³ Additional language in the law clarifying how and when noise ordinances might be applicable to the use of fireworks would likely be sufficient to preserve the intent and spirit of the law without

20. SIGNON.ORG, <http://signon.org/sign/repeal-the-michigan-firework> (last visited Feb. 10, 2013).

21. MICH. COMP. LAWS ANN. § 28.457 (West 2001 & Supp. 2012) ("Except as provided in this act, a local unit of government shall 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 this act.").

22. See Angel & Bell, *supra* note 17 (quoting Warren Deputy Police Commissioner Louis Galasso: "The state law trumps out the noise ordinance. We're limited as to what we can enforce.").

23. MICH. COMP. LAWS ANN. § 28.457 (West 2001 & Supp. 2012) ("A local unit of government may enact an ordinance regulating the ignition, discharge, and use of consumer fireworks. However, an ordinance enacted under this subsection shall not regulate the use of consumer fireworks on the day preceding, the day of, or the day after a national holiday.").

creating unnecessary noise or nuisances for local municipalities. Another concern voiced by detractors is the danger posed during dry spells. Once research is done and data collected, it should be possible to determine when it is safe to allow fireworks, and the law could be amended accordingly.

The Michigan Fireworks Safety Act is an effective law. It provides additional revenue to Michigan, and it allows residents to legally engage in conduct that they were engaging in for years despite legal prohibitions.²⁴ Reforms should only be made after analysis of how and what the law has actually done over time. Coming to a reasoned judgment on what changes to make requires the collection of comprehensive data from around the state. In the first year of this new law, there has been an increase in revenue and associated costs seem to have remained constant. Costs should continue to be examined closely in the coming years and decisions made only after costs and benefits have been carefully weighed. Before the Michigan legislature considers revisions, it would behoove them to wait until the whole picture is clear.

24. See MICH. DEP'T OF LABOR & ECON. GROWTH, *supra* note 9 (noting that even the Senate's analysis of the issue conceded that black market vendors and buyers were prevalent throughout the state).