



SF 535 – Fireworks (LSB1545SV)

Analyst: Christin Mechler (515.250.0458) christin.mechler@legis.iowa.gov

Fiscal Note Version – New

Description

[Senate File 535](#) modifies existing provisions regarding the regulation and sale of certain consumer, display, and novelty fireworks. The Bill exempts persons entering into the State of Iowa with the intent to sell consumer, display, and novelty fireworks from being required to obtain a transient merchant license pursuant to Iowa Code chapter [9C](#), and limits the sale of consumer fireworks at temporary structures from June 20 to July 8 annually. Additionally, the Bill changes the authorized use of consumer fireworks on certain days and at certain times to include the Fridays and Saturdays immediately preceding and following July 4 and December 31 annually. A person who violates this provision commits a simple misdemeanor, but Iowa Code section [727.2\(4\)](#) explicitly states that a court shall not order imprisonment for such a violation.

[Senate File 535](#) also amends existing regulatory requirements for the State Fire Marshal. The Bill requires the State Fire Marshal to do the following:

- Approve or deny a completed application for a consumer fireworks seller's license, submitted on or before April 30, no later than June 1 for an application to sell at a permanent building, and no later than June 13 for an application to sell at a temporary structure. If the State Fire Marshal does not act on an application within these timeframes, the application will be automatically approved.
- Have the sole authority to require or authorize inspections relating to potential consumer fireworks seller licensure. The State Fire Marshal may authorize a county or city to conduct an inspection on its behalf, but the Bill explicitly prohibits a county or city to require or authorize an inspection unless requested by the State Fire Marshal to do so.
- Adopt rules to prohibit the sale of consumer fireworks in any residential zone or district.

The Bill provides that the sole regulation of fireworks, including consumer, display, and novelty fireworks, be enacted by the General Assembly and through rulemaking by the State Fire Marshal. Any law, ordinance, or regulation regarding fireworks as adopted by a municipality, county, or other governmental unit is deemed unenforceable and void as of the effective date of the Bill. However, [SF 535](#) modifies existing provisions by allowing counties and cities, by ordinance or resolution, to prohibit or limit the use of consumer fireworks on dates and at times that are more stringent than existing limitations. Additionally, [SF 535](#) provides that a county or city shall not adopt or enforce any zoning regulation pursuant to Iowa Code chapter [335](#) or [414](#) that regulates, restricts, or prohibits the location of either permanent or temporary structures used for the sale of consumer fireworks in any location already zoned for commercial and industrial purposes.

Background

Under current law, a person bringing any goods, wares, or merchandise into Iowa with the intent to sell must obtain a transient merchandise license pursuant to Iowa Code chapter [9C](#), including individuals who intend to sell consumer, display, or novelty fireworks. Current law also requires

the State Fire Marshal to regulate the sale of consumer fireworks, establish licensure requirements, and issue consumer fireworks seller licenses to retailers and community groups. In 2018, the State Fire Marshal was assisted by 33 city fire and building inspectors, along with a staff of 45 inspectors from the Office of the State Fire Marshal.

Existing regulations regarding fireworks restrict annual sales of consumer fireworks at temporary structures to the timeframe between June 13 and July 8 and permit sales only under specific circumstances. Under current law, a city may prohibit or limit the use of consumer, display, and novelty fireworks, although current Iowa Code section [727.2\(4\)](#) authorizes the use of consumer fireworks on the Saturdays and Sundays immediately preceding July 4 and December 31.

Pursuant to Iowa Code section [9C.6](#), the annual license fee associated with a transient merchant license is equal to the total of \$25 per day for each day an applicant proposes to sell or offer for sale any goods, wares, or merchandise, or for each day the applicant proposes to engage in or conduct a business as a transient merchant as applicable. [Senate File 535](#) exempts sellers from these licensure requirements.

A simple misdemeanor is punishable by confinement for no more than 30 days, or a fine of at least \$65 but not more than \$625, or by both. However, Iowa Code section [727.4](#) specifically states that a court may not order imprisonment for a violation of the provision of the Bill.

Assumptions

- Sales and tax analysis in this ***Fiscal Note*** will be based primarily on data available for exclusive firework retailers that solely sell fireworks and related products. Sales by nonexclusive firework retailers, such as large chain stores, are excluded from these calculations as it is not possible to separate sales tax payments for nonfirework items.
- As current law provides several restrictions for retailers wanting to sell fireworks in the State of Iowa, it is likely that the exemption from certain licensing requirements and the modification of county and city restrictions on the sale and use of fireworks may increase the number of applications to sell consumer, display, and novelty fireworks in Iowa.
- The new annual application deadline of April 30 will motivate sellers to submit their applications earlier than in previous years, as this will allow for approval in time for the first day of sales or automatic approval if the State Fire Marshal fails to act on an application for a permanent building by June 1 and for a temporary structure by June 13. Allowing retailers to begin selling at an earlier date will lead to increased sales.
- Previously collected data has shown that fireworks sales tend to be concentrated on a few large sellers who participate in the bulk of all sales. It is likely that these large sellers will continue to make the business decision to sell in the State and will not be affected by the incentive to file an application to sell fireworks at an earlier date. For this reason, this analysis does not utilize the average sale of an applicant in its calculations, as the average sale does not provide an accurate representation of all sellers. Rather, this analysis uses the 25th percentile of sellers, as it is likely that smaller merchants will be more greatly affected by the provisions of this Bill, and more accurately reflects the total amount of market sellers.
- The State Fire Marshal will need to hire at least 33 additional Fire Inspectors to accommodate the increased inspection workload. The number of additional Fire Inspectors may be reduced if local city fire and building inspectors choose to assist the State Fire Marshal with inspections.
- To assure all applications are reviewed in a timely manner, the State Fire Marshal's Office will need to hire four Construction Design Engineers to accommodate the workload resulting from the increased number of applications.

Fiscal Impact

Inspection and Regulation Expenditures

Table 1 shows the estimated increase in annual expenditures of the Office of the State Fire Marshal as a result of the changes to fireworks application requirements and subsequent seller inspections.

**Table 1 — State Fire Marshal Estimated Annual Application and Inspection Costs
Beginning FY 2020**

Job Classification	Est. Cost Per Position	Positions Needed	Total Cost Estimate
Fire Inspector — Salary/Benefits	\$ 80,220	33	\$ 2,647,260
Construction Design Engineer — Salary/Benefits	\$ 84,000	4	\$ 336,000
Total			<u>\$ 2,983,260</u>

The costs associated with individual inspections will be covered by funds in the Consumer Fireworks Fee Fund pursuant to Iowa Code section [100.19\(7\)\(a\)](#), which consists of inspection and registration fees collected by the State Fire Marshal.

State Tax Revenue

Table 2 displays the number of licenses issued to exclusive fireworks retailers in FY 2018.

Table 2 — FY 2018 Exclusive Fireworks Retailer Licenses Issued

<u>Date of Issuance</u>	<u>Licenses Issued *</u>
On or before June 15	64
June 16 - 26	56
Subtotal	120
June 26 - 30	54
July 1 - 4	19
July 5 and after	16
Subtotal	89
Total	<u>209</u>
<small>*Note: A single business may have multiple sites and consequently receive multiple licenses.</small>	

Extrapolating data from **Table 2**, an estimated 90 sellers, who under current circumstances would likely apply and be approved in late June, will be incentivized to apply for a seller's

license prior to the April 30 deadline so as to be able to sell in May and the majority of June. Sales reported at the 25th percentile of sellers in the fourth quarter of FY 2018 totaled approximately \$3,833 per retailer.¹ **Table 3** shows the estimated annual taxable revenue collected from the 90 sellers, as well as the distribution of such revenue into State sales tax, Secure an Advanced Vision for Education (SAVE), and local option sales tax (LOST) in FY 2020.

**Table 3 — Estimated Annual Sales Tax, SAVE, and LOST Revenue
Beginning FY 2020**

Number of Sellers	Total Sales Per Retailer	Total Taxable Revenue	State Sales Tax Revenue (6.0%)	SAVE Revenue (1.0%)	LOST Revenue (est. 1.0%)
90	\$ 3,833	\$ 344,970	\$ 20,698	\$ 3,450	\$ 3,450

Beginning in FY 2020, the expected fiscal impact is an increase of approximately \$21,000 in State sales tax revenue, approximately \$3,500 in SAVE revenue, and approximately \$3,500 in LOST revenue. This impact is expected to continue in future fiscal years.

License Revenue

According to the Office of the Secretary of State, no transient merchant licenses were granted to sellers of consumer, display, and novelty fireworks in FY 2018. As [SF 535](#) eliminates the licensing fee entirely, this provision of the Bill is not expected to have a fiscal impact.

Sources

Office of the State Fire Marshal
 Department of Public Safety
 Department of Revenue
 Secretary of State
 LSA calculations

/s/ Holly M. Lyons

April 1, 2019

The fiscal note for this Bill was prepared pursuant to Joint Rule 17 and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.

¹ The fourth quarter of a fiscal year encompasses the months of March through June. As the provisions of [SF 535](#) focus primarily on applications submitted by April 30, the fourth quarter of the fiscal year acts as the most appropriate sales reference point.