

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that House Bill 1099 be amended to read as follows:

- 1 Page 1, delete lines 1 through 9.
- 2 Page 3, between lines 14 and 15, begin a new paragraph and insert:
- 3 **""Department" means the department of homeland security**
- 4 **established under IC 10-19-2-1."**
- 5 Page 4, reset in roman line 36.
- 6 Page 4, line 37, reset in roman "commerce selling fireworks".
- 7 Page 4, line 37, after "fireworks" insert ".".
- 8 Page 6, line 28, delete ":".
- 9 Page 6, line 29, delete "(1)".
- 10 Page 6, line 29, delete ";" and insert ".".
- 11 Page 6, run in lines 28 through 29.
- 12 Page 6, delete lines 30 through 32, begin a new paragraph and insert:
- 13 **"SECTION 2. IC 22-11-14-2 IS AMENDED TO READ AS**
- 14 **FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The fire**
- 15 **prevention and building safety commission ~~may~~: shall:**
- 16 (1) adopt rules under IC 4-22-2 for the granting of permits for
- 17 supervised public displays of fireworks by municipalities, fair
- 18 associations, amusement parks, and other organizations or groups
- 19 of individuals; and
- 20 (2) establish by rule the fee for the permit, which shall be paid
- 21 into the fire and building services fund created under
- 22 IC 22-12-6-1.
- 23 (b) The application for a permit required under subsection (a) must:
- 24 (1) name a competent operator who is to officiate at the display;
- 25 (2) set forth a brief resume of the operator's experience;

- 1 (3) be made in writing; and  
 2 (4) be received with the applicable fee by the ~~office of the state~~  
 3 ~~fire marshal~~ **division of fire and building safety** at least five (5)  
 4 business days before the display.
- 5 No operator who has a prior conviction for violating this chapter may  
 6 operate any display for one (1) year after the conviction.
- 7 (c) Every display shall be handled by a qualified operator approved  
 8 by the chief of the fire department of the municipality in which the  
 9 display is to be held. A display shall be ~~so~~ located, discharged, or fired  
 10 as, in the opinion of:
- 11 (1) the chief of the fire department of the city or town in which the  
 12 display is to be held; or  
 13 (2) the township fire chief or the fire chief of the municipality  
 14 nearest the site proposed, in the case of a display to be held  
 15 outside of the corporate limits of any city or town;  
 16 after proper inspection, is not hazardous to property or person.
- 17 (d) A permit granted under this section is not transferable.
- 18 (e) A denial of a permit by a municipality shall be issued in writing  
 19 before the date of the display.
- 20 (f) A person ~~who possesses, transports, or delivers~~ **may not possess,**  
 21 **transport, or deliver special** fireworks, except as authorized under this  
 22 section. ~~commits a Class A misdemeanor."~~
- 23 Page 6, delete line 42.  
 24 Page 7, delete line 1.  
 25 Page 7, line 2, delete "discharge location;" and insert "**trained and**  
 26 **experienced in using consumer fireworks;**".  
 27 Page 8, delete lines 9 through 42 and insert:  
 28 "SECTION 4. IC 22-11-14-4 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Nothing in  
 30 this chapter shall be construed to prohibit:
- 31 (1) any resident wholesaler, manufacturer, importer, or distributor  
 32 from selling:
- 33 (A) at wholesale fireworks not prohibited by this chapter; or  
 34 (B) **consumer** fireworks ~~not approved for sale in Indiana~~ if  
 35 they are to be ~~shipped directly out of state within five (5) days~~  
 36 ~~of the date of sale; used:~~
- 37 (i) **on the property of the purchaser;**  
 38 (ii) **on the property of another who has given permission**  
 39 **to use the consumer fireworks; or**  
 40 (ii) **at a special discharge location as set forth in section**  
 41 **3.5 of this chapter.**
- 42 (2) the use of fireworks by railroads or other transportation  
 43 agencies for signal purposes or illumination;  
 44 (3) the sale or use of blank cartridges for:
- 45 (A) a show or theater;  
 46 (B) signal or ceremonial purposes in athletics or sports; or  
 47 (C) use by military organizations;

- 1 (4) the intrastate sale of fireworks not approved for sale in Indiana  
 2 between interstate wholesalers;  
 3 (5) the possession, sale, or disposal of fireworks, incidental to the  
 4 public display of Class B fireworks, by wholesalers or other  
 5 persons who possess a permit to possess, store, and sell Class B  
 6 explosives from the Bureau of Alcohol, Tobacco, ~~and~~ Firearms  
 7 **and Explosives of the** United States Department of ~~the Treasury~~;  
 8 **Justice**; or  
 9 (6) the use of indoor pyrotechnics special effects material before  
 10 an indoor or outdoor proximate audience.

11 (b) For the purposes of this section, a resident wholesaler, importer,  
 12 or distributor, is a person who:

- 13 (1) is a resident of Indiana;  
 14 (2) possesses for resale ~~common~~ fireworks approved or not  
 15 approved for sale in Indiana;  
 16 (3) is engaged in the interstate sale of ~~common~~ fireworks  
 17 described in subdivision (2) as an essential part of a business that  
 18 is located in a permanent structure and is open at least six (6)  
 19 months each year; **and**  
 20 ~~(4) sells common fireworks described in subdivision (2) only to~~  
 21 ~~purchasers who provide a written and signed assurance that the~~  
 22 ~~fireworks are to be shipped out of Indiana within five (5) days of~~  
 23 ~~the date of sale; and~~  
 24 ~~(5) (4) has possession of a certificate of compliance issued by the~~  
 25 ~~state fire marshal under section 5 of this chapter.~~

26 ~~(c) A purchaser may not provide a written and signed assurance that~~  
 27 ~~the fireworks purchased are to be shipped out of Indiana and then sell~~  
 28 ~~or use them in Indiana.~~

29 SECTION 5. IC 22-11-14-4.5 IS ADDED TO THE INDIANA  
 30 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 31 [EFFECTIVE UPON PASSAGE]: **Sec. 4.5. (a) A retailer may sell**  
 32 **consumer fireworks from a tent under the following conditions:**

- 33 (1) **The tent may not be larger than one thousand five**  
 34 **hundred (1,500) square feet.**  
 35 (2) **There may be only one (1) tent for each registration**  
 36 **granted under section 5(b)(3) of this chapter.**  
 37 (3) **The tent may not be located closer than one hundred (100)**  
 38 **feet from a permanent structure.**  
 39 (4) **A vehicle may not be parked closer than twenty (20) feet**  
 40 **from the edge of the tent.**  
 41 (5) **The tent must be fire retardant.**  
 42 (6) **The sales site must comply with all applicable local zoning**  
 43 **and land use rules.**  
 44 (7) **The tent and operation must comply with NFPA 1124,**  
 45 **Standard for the Manufacture, Transportation, Storage, and**  
 46 **Retail Sales of Fireworks and Pyrotechnic Articles, 2006**  
 47 **Edition, published by the National Fire Protection**

- 1           **Association, 1 Batterymarch Park, Quincy, Massachusetts**  
 2           **02269-9101.**
- 3           **(8) The gross weight of consumer fireworks in a tent, other**  
 4           **than those set forth in section 8(a) of this chapter, may not**  
 5           **exceed one thousand five hundred (1,500) pounds of product.**
- 6           **(9) A retailer that legally operated a tent with a registration in**  
 7           **2005 may continue to operate a tent in 2006 and the following**  
 8           **years. A registration under section 5(b)(3) of this chapter is**  
 9           **required for operation in 2006 and following years.**
- 10          **(10) The retailer holds a valid registration under section**  
 11          **5(b)(3) of this chapter.**
- 12          **(b) A retailer may sell consumer fireworks from a structure**  
 13          **under the following conditions:**
- 14               **(1) The structure must be a Class 1 structure used for the sale**  
 15               **and storage of fireworks 1.4G (Class C common fireworks).**
- 16               **(2) The sales site must comply with all applicable local zoning**  
 17               **and land use rules.**
- 18               **(3) The gross weight of consumer fireworks in the structure,**  
 19               **other than those set forth in section 8(a) of this chapter, may**  
 20               **not exceed one thousand five hundred (1,500) pounds of**  
 21               **product.**
- 22               **(4) The structure may not exceed fifteen thousand (15,000)**  
 23               **square feet in total area unless the structure was in existence**  
 24               **and was registered under section 5(b)(3) of this chapter in**  
 25               **2005.**
- 26               **(5) The retailer holds a valid registration under section 5(b)(3)**  
 27               **of this chapter.**
- 28          **(c) The state fire marshal or a deputy fire marshal shall inspect**  
 29          **tents and structures in which common fireworks are sold under**  
 30          **section 9 of this chapter.**
- 31          SECTION 6. IC 22-11-14-5 IS AMENDED TO READ AS  
 32          FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The state fire  
 33          marshal shall remove at the expense of the owner, all stocks of  
 34          fireworks or combustibles possessed, transported, or delivered in  
 35          violation of this chapter.
- 36          (b) The state fire marshal shall stop the shipments and sale of  
 37          fireworks, novelties, and trick noisemakers unless, prior to shipment  
 38          into this state for sale, the manufacturer, wholesaler, importer, or  
 39          distributor of the fireworks, novelties, and trick noisemakers submits to  
 40          the state fire marshal:
- 41               (1) a complete description of each item proposed to be shipped  
 42               into Indiana;
- 43               (2) a written certification that the items are manufactured in  
 44               accordance with section 1 of this chapter; and
- 45               (3) an annual registration fee of one thousand dollars (\$1,000) **for**  
 46               **the first location and an additional registration fee of one**  
 47               **thousand dollars (\$1,000) for each other location from which**

1           **consumer fireworks are to be offered for sale for use at a**  
 2           **special discharge location. The registration fee shall be**  
 3           **deposited in the fire and building services fund as set forth in**  
 4           **IC 22-12-6-1(c).**

5           If upon inspection the state fire marshal finds that this chapter has been  
 6           complied with, an annual certificate of compliance shall be issued to the  
 7           manufacturer, wholesaler, importer, or distributor. An annual certificate  
 8           of compliance **may not be applied for after June 15 of a year and**  
 9           expires December 31 of the year ~~during in~~ which the certificate is  
 10          issued. Each manufacturer, wholesaler, importer, or distributor must  
 11          obtain a certificate of compliance. The certificate is not transferable.  
 12          **except that** A retailer that offers the items for sale to the public is  
 13          entitled to receive a certified copy of the certificate from the  
 14          manufacturer, wholesaler, importer, or distributor from which the  
 15          retailer purchases the items. A certified copy of the certificate of  
 16          compliance must be posted in each location where the items are offered  
 17          for sale to the public. If upon inspection the state fire marshal finds that  
 18          this chapter has not been complied with, the state fire marshal shall  
 19          refuse to issue a certificate of compliance and state the reasons for the  
 20          refusal. A copy of the order denying the issuance of a certificate of  
 21          compliance and the reasons shall be forwarded to the manufacturer,  
 22          wholesaler, importer, or distributor. The state fire marshal may revoke  
 23          any certificate of compliance issued to any manufacturer, wholesaler,  
 24          importer, or distributor if the holder of the certificate has violated this  
 25          chapter.

26          (c) All fireworks, novelties, and trick noisemakers shipped into  
 27          Indiana, or manufactured and sold in Indiana, must have distinctly and  
 28          durably painted, stamped, printed, or marked on the package, box, or  
 29          container in which the items are enclosed the exact number of pieces in  
 30          the container.

31          (d) It is unlawful for a manufacturer, wholesaler, importer, or  
 32          distributor to sell at wholesale, offer to sell at wholesale, or ship or  
 33          cause to be shipped into Indiana fireworks, novelties, or trick  
 34          noisemakers unless the manufacturer, wholesaler, importer, or  
 35          distributor has been issued and holds a valid certificate of compliance  
 36          issued under subsection (b). This subsection applies to nonresidents and  
 37          residents of Indiana.

38          SECTION 7. IC 22-11-14-6 IS AMENDED TO READ AS  
 39          FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. **(a)** A person  
 40          who violates ~~section 4(c); section 2(f), 4.5, 5(c), 5(d), 7, or 8 8(a), 8(c),~~  
 41          **8(d), or 10** of this chapter commits a Class A misdemeanor.

42          **(b) A person who ignites, discharges, or uses consumer**  
 43          **fireworks other than those described in section 8(a) of this chapter**  
 44          **at a site other than:**

- 45                 **(1) a special discharge location;**  
 46                 **(2) the property of the person; or**  
 47                 **(3) the property of another who has given permission to use**

1           **the consumer fireworks;**  
 2           **commits a Class C infraction. However, if a person commits an**  
 3           **offense under this subsection not later than five (5) years after the**  
 4           **date of the commission of a prior offense, the person commits a**  
 5           **Class B infraction.**

6           **(c) A person commits a Class B misdemeanor if the person**  
 7           **recklessly, knowingly, or intentionally uses consumer fireworks**  
 8           **other than those described in section 8(a) of this chapter and the**  
 9           **violation causes harm to the property of a person.**

10          **(d) A person commits a Class A misdemeanor if the person**  
 11          **recklessly, knowingly, or intentionally uses consumer fireworks**  
 12          **other than those described in section 8(a) of this chapter and the**  
 13          **violation results in serious bodily injury to a person.**

14          **(e) A person commits a Class D felony if the person recklessly,**  
 15          **knowingly, or intentionally uses consumer fireworks other than**  
 16          **those described in section 8(a) of this chapter and the violation**  
 17          **results in the death of a person.**

18          **(f) A person commits a Class D felony if the person knowingly**  
 19          **fails to collect or remit the public safety fees due under section 14**  
 20          **of this chapter to the state.**

21          SECTION 8. IC 22-11-14-8 IS AMENDED TO READ AS  
 22          FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. **(a)** A person  
 23          shall not sell at retail, or offer for sale at retail, any **consumer**  
 24          fireworks, novelties, or trick noisemakers **to a person less than**  
 25          **eighteen (18) years of age** other than the following:

26               (1) Dipped sticks or wire sparklers. However, total pyrotechnic  
 27               composition may not exceed one hundred (100) grams per item.  
 28               Devices containing chlorate or perchlorate salts may not exceed  
 29               five (5) grams in total composition per item.

30               (2) Cylindrical fountains.

31               (3) Cone fountains.

32               (4) Illuminating torches.

33               (5) Wheels.

34               (6) Ground spinners.

35               (7) Flitter sparklers.

36               (8) Snakes or glow worms.

37               (9) Smoke devices.

38               (10) Trick noisemakers, which include:

39                       (A) Party poppers.

40                       (B) Booby traps.

41                       (C) Snappers.

42                       (D) Trick matches.

43                       (E) Cigarette loads.

44                       (F) Auto burglar alarms.

45          **(b) A retailer or wholesaler of consumer fireworks may sell**  
 46          **consumer fireworks to a person eighteen (18) years of age or older.**

47          **(c) A retailer or wholesaler of consumer fireworks other than**

1 those listed in subsection (a) may not knowingly or intentionally fail  
2 to:

- 3 (1) request photographic identification of a purchaser who  
4 appears to be less than twenty-five (25) years of age; or  
5 (2) record the following information regarding a sale:  
6 (A) The purchaser's name.  
7 (B) The purchaser's address.  
8 (C) The date of the sale.  
9 (D) The age of the purchaser.

10 The seller shall keep the record of the sale for not less than one (1)  
11 year and shall make the record available to the state fire marshal  
12 upon request.

13 (d) An individual who sells consumer fireworks other than those  
14 listed in subsection (a) must be eighteen (18) years of age or older.

15 SECTION 9. IC 22-11-14-10 IS AMENDED TO READ AS  
16 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) Each  
17 interstate wholesaler shall keep a record of each sale of special  
18 fireworks. not approved for sale in Indiana. This record must include:

- 19 (1) the purchaser's name;  
20 (2) the purchaser's address; and  
21 (3) the date of the sale.

22 These records shall be kept for three (3) years and be available for  
23 inspection by the fire marshal.

24 (b) Each resident wholesaler shall post in a prominent location in the  
25 wholesaler's place of business a sign that reads as follows:

26 "Under Indiana law, a resident wholesaler of fireworks may sell  
27 fireworks not approved for sale in Indiana only to other resident  
28 wholesalers and to purchasers who provide a written and signed  
29 assurance that the fireworks are to be shipped out of Indiana  
30 within five (5) days of the date of sale. A purchaser who provides  
31 a written and signed assurance that fireworks purchased are to be  
32 shipped out of Indiana within five (5) days of the date of sale and  
33 who then sells the fireworks in Indiana or uses them in Indiana  
34 commits a Class A misdemeanor, which is punishable by  
35 imprisonment for up to one (1) year and a fine of up to five  
36 thousand dollars (\$5,000)."

37 The state fire marshal shall provide interstate wholesalers with signs for  
38 the purposes of this subsection:

39 SECTION 10. IC 22-11-14-11 IS ADDED TO THE INDIANA  
40 CODE AS A NEW SECTION TO READ AS FOLLOWS  
41 [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) A user fee, known as  
42 the public safety fee, is imposed on retail transactions made in  
43 Indiana of consumer fireworks other than those set forth in section  
44 8(a) of this chapter.

45 (b) The person who acquires consumer fireworks other than  
46 those set forth in section 8(a) of this chapter in a retail transaction  
47 is liable for the public safety fee on the transaction and, except as

1 otherwise provided in this chapter, shall pay the public safety fee  
 2 to the retailer as a separate added amount to the consideration in  
 3 the transaction. The retailer shall collect the public safety fee as  
 4 agent for the state.

5 (c) The public safety fee shall be paid to the department to be  
 6 used for the following purposes:

- 7 (1) The provision of funds for disaster relief for all Indiana  
 8 state and local governments under IC 10-19-4-2.
- 9 (2) The development and provision of training programs for  
 10 public safety service providers under IC 10-19-9-3.
- 11 (3) The establishment and conduct of advanced training  
 12 programs in public safety and homeland security subjects  
 13 under IC 10-19-9-4.

14 The executive director of the department appointed under  
 15 IC 10-19-3-1 shall determine the distribution of the funds received  
 16 by the department from the public safety fee.

17 (d) The fire prevention and building safety commission shall  
 18 adopt rules under IC 4-22-2 necessary for the administration of the  
 19 collection and distribution of the public safety fee monies from  
 20 retailers as described in subsections (b) and (c) and in section 13 of  
 21 this chapter.

22 SECTION 11. IC 22-11-14-12 IS ADDED TO THE INDIANA  
 23 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 24 [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) The public safety fee  
 25 is measured by the gross retail income received by a retailer in a  
 26 retail unitary transaction of consumer fireworks other than those  
 27 set forth in section 8(a) of this chapter and is imposed at the  
 28 following rates:

PUBLIC SAFETY FEE	GROSS RETAIL INCOME FROM THE RETAIL UNITARY TRANSACTION
\$ 0	less than \$0.25
\$ 0.01	at least \$ 0.25 but less than \$0.50
\$ 0.02	at least \$ 0.50 but less than \$0.75
\$ 0.03	at least \$ 0.75 but less than \$1.00
\$ 0.04	at least \$ 1.00

38 On a retail unitary transaction in which the gross retail income  
 39 received by the retail merchant is one dollar (\$1) or more, the  
 40 public safety fee is four percent (4%) of that gross retail income.

41 (b) If the public safety fee, computed under subsection (a),  
 42 results in a fraction of one-half cent (\$0.005) or more, the amount  
 43 of the public safety fee shall be rounded to the next additional cent.

44 SECTION 12. IC 22-11-14-13 IS ADDED TO THE INDIANA  
 45 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 46 [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) A retailer liable for

1 collecting the public safety fee from a purchaser shall file a return  
 2 for each calendar month and pay the public safety fees that the  
 3 retailer has collected during that month. A retailer shall file the  
 4 retailer's return for a particular month with the department and  
 5 make the retailer's payment of the public safety fees collected for  
 6 that month to the department not more than thirty (30) days after  
 7 the end of that month.

8 (b) Instead of the twelve (12) monthly reporting periods  
 9 required by subsection (a), the department may permit a person to  
 10 divide a year into a different number of reporting periods. The  
 11 return and payment for each reporting period is due not more than  
 12 twenty (20) days after the end of the period.

13 (c) Instead of the reporting periods required under subsection  
 14 (a), the department may permit a retailer to report and pay the  
 15 retailer's public safety fees for a period covering a calendar year,  
 16 if the retailer's public safety fee liability for a calendar year does  
 17 not exceed seventy-five dollars (\$75). A retailer reporting under  
 18 this subsection must file the retailer's return and pay the retailer's  
 19 public safety fee liability not later than the last day of January  
 20 immediately following the close of the prior calendar year.

21 SECTION 13. IC 22-11-14-14 IS ADDED TO THE INDIANA  
 22 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 23 [EFFECTIVE UPON PASSAGE]: **Sec. 14. An individual who:**

24 (1) is an individual retailer or is an employee, an officer, or a  
 25 member of a corporate or partnership retailer; and

26 (2) has a duty to remit the public safety fee as described in  
 27 section 11 of this chapter to the department of homeland  
 28 security;

29 holds the public safety fees collected in trust for the state and is  
 30 personally liable for the payment of the public safety fee money to  
 31 the state.

32 SECTION 14. IC 22-11-14-15 IS ADDED TO THE INDIANA  
 33 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 34 [EFFECTIVE UPON PASSAGE]: **Sec. 15. The fire prevention and  
 35 building safety commission shall adopt rules under IC 4-22-2 to  
 36 carry out this chapter.**

37 SECTION 15. [EFFECTIVE UPON PASSAGE] (a)  
 38 Notwithstanding IC 22-11-14-2(a), as amended by this act,  
 39 IC 22-11-14-11(d), as added by this act, and IC 22-11-14-15, as  
 40 added by this act, the fire prevention and building safety  
 41 commission shall carry out the duties imposed upon it by  
 42 IC 22-11-14-2(a), as amended by this act, IC 22-11-14-11(d), as  
 43 added by this act, and IC 22-11-14-15, as added by this act, under  
 44 interim written guidelines approved by the state fire marshal.

45 (b) This SECTION expires on the earlier of the following:

46 (1) The date rules are last adopted under IC 22-11-14-2(a), as

- 1           **amended by this act, IC 22-11-14-11(d), as added by this act,**
- 2           **and IC 22-11-14-15, as added by this act.**
- 3           **(2) December 31, 2007."**
- 4           Delete pages 9 through 12.
- 5           Page 13, delete lines 1 through 32.
- 6           Renumber all SECTIONS consecutively.  
(Reference is to HB 1099 as printed January 27, 2006.)

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Representative Frizzell