

**H.B. 172\***  
**134<sup>th</sup> General Assembly**

# Occupational Regulation Report

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**Primary Sponsors:** Reps. Baldrige and O'Brien

**Impacted Professions:** Fireworks manufacturers, wholesalers, and retailers

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LSC is required by law to issue a report for each introduced bill that substantially changes or enacts an occupational regulation. The report must: (1) explain the bill's regulatory framework in the context of Ohio's statutory policy of using the least restrictive regulation necessary to protect consumers, (2) compare the regulatory schemes governing the same occupation in other states, and (3) examine the bill's potential impact on employment, consumer choice, market competition, and cost to government.<sup>1</sup>

## LEAST RESTRICTIVE REGULATION COMPARISON

### Ohio's general regulatory policy

The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect consumers from "present, significant, and substantiated harms that threaten health, safety, or welfare," the state's expressed intent is to enact the "least restrictive regulation that will adequately protect consumers from such harms."<sup>2</sup>

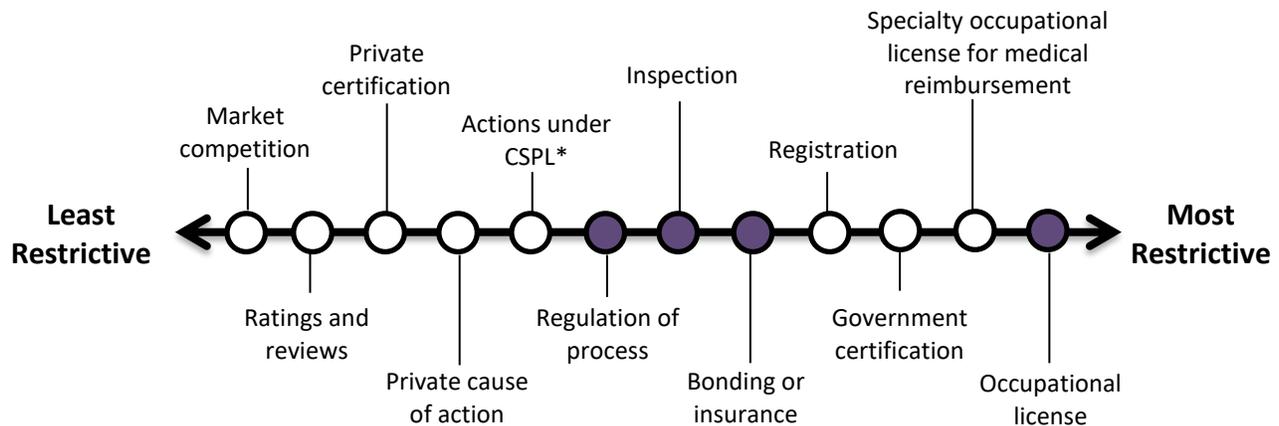
The degree of "restrictiveness" of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state's policy by least to most restrictive:

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\*This report addresses the "As Introduced" version of H.B. 172. It does not account for changes that may have been adopted after the bill's introduction.

<sup>1</sup> R.C. 103.26, not in the bill.

<sup>2</sup> R.C. 4798.01 and 4798.02, neither in the bill.



\*CSPL – The Consumer Sales Practices Law

The bill enacts or changes several occupational regulations – some of these enactments and changes appear to decrease the restrictiveness of current law, others appear to increase restrictiveness, and to maintain the status quo. The bill establishes a new occupational license for fountain device retailers and prescribes inspection and insurance requirements for persons who sells those devices. It also modifies existing license requirements for fireworks manufacturers and wholesalers by extending moratoriums on issuing new licenses and transferring the location of existing licenses. All fireworks licensees (manufacturers, wholesalers, and fountain device retailers) must pay the bill’s fireworks safety fee and would be subject to a new process regulation requiring the provision of safety pamphlets and access to protective eyewear. Fireworks licensees might also be affected by the recommendations of the Fire Code Rule Recommendation Committee established by the bill.

## Necessity of regulations

Representatives Brian Baldrige and Michael O’Brien, the bill’s sponsors, testified that the purpose of H.B. 172 is to relax the “largely ignored” state law prohibiting the use of fireworks and allow Ohioans to “express their national pride and joy” through fireworks at Independence Day celebrations. The sponsors’ testimony suggests that educating consumers about firework safety and providing access to protective equipment are more efficient means of preventing firework-related injuries than prohibiting the use of fireworks altogether. In support of this assertion, Representative O’Brien cited data from a U.S. Consumer Product Safety Commission report indicating that, despite considerable increases in firework consumption, the number of annual firework-related injuries has remained relatively constant since 1976. Both Representative Baldrige and Representative O’Brien emphasized that illegal “homemade” fireworks and improper use of fireworks contribute significantly to firework-related injuries.

The sponsors testified that the purpose of the bill’s fireworks safety fee is to provide financial resources to be used by the State Fire Marshal in designing firework safety materials and enforcing firework industry regulations and by local fire departments to supplement the cost of firefighter training. The testimony indicates that the purpose of the bill’s safety pamphlet and protective eyewear requirements is to provide consumers with a “gentle reminder” of the

importance of taking the proper precautions when using fireworks. The Fire Code Rule Recommendation Committee is needed, according to the testimony, to advise the State Fire Marshal regarding rulemaking related to firework usage, sale, manufacturing, and licensing.

The written sponsor testimony does not directly address the bill's extension of the fireworks manufacturer and wholesaler license moratoriums or the license created for fountain device retailers.<sup>3</sup>

## **Restrictiveness of regulations**

### **Licensure requirements**

Licensure is the most restrictive of all regulatory options identified within the state's general policy on occupational regulations. Accordingly, the policy prescribes a narrow range of situations in which it is appropriate. Specifically, when all of the following circumstances are present: (1) the occupation involves providing a service regulated by both state and federal law, (2) the licensing framework allows individuals licensed in other states and territories to practice in Ohio, and (3) the licensing requirement is based on uniform national laws, practices, and examinations that have been adopted by at least 50 U.S. states and territories.<sup>4</sup>

The manufacture, storage, sale, and discharge of fireworks is regulated within all 50 states and by the federal government to varying degrees.<sup>5</sup> Continuing law, unchanged by the bill, does not allow individuals licensed in other states to manufacture or sell fireworks in Ohio but none of the surrounding states grant reciprocity to out-of-state licensees either. The National Fire Protection Association (NFPA) 1124, Code for the Manufacture, Transportation, Storage and Retail Sales of Fireworks and Pyrotechnic Articles, is utilized by the bill and by current law to establish minimum standards for fireworks licensees.<sup>6</sup> NFPA 1124 is widely adopted among U.S. states including all of Ohio's surrounding states.<sup>7</sup>

### **Fountain device retailers**

The fountain device retailer license created by the bill does not appear to be entirely consistent with the state's general policy due to the lack of a reciprocity provision. However, it is not clear that the license increases the restrictiveness of occupational regulation. The license makes it easier to sell fireworks in Ohio by creating an alternative pathway to engage in an activity that is otherwise illegal. Continuing law prohibits unlicensed persons from selling fountain devices or any other consumer grade firework. The license fees and standards that apply to

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<sup>3</sup> Rep. Baldrige and Rep. O'Brien, [H.B. 172 Proponent Testimony](#), March 17, 2021.

<sup>4</sup> R.C. 4798.02, not in the bill.

<sup>5</sup> See, e.g., 27 Code of Federal Regulations (C.F.R.) 555, 16 C.F.R. 1500 and 1507, and American Pyrotechnics Association, [2020 State Fireworks Control Laws](#).

<sup>6</sup> See, e.g., R.C. 3726(A)(2)(b), 3743.27(A)(1), and 3743.28(B) of the bill; R.C. 3743.05, 3743.18, 3743.53, and 3743.58 of current law.

<sup>7</sup> See, e.g., Ind. Code § 22-11-14-1, Ky. Rev. Stat. § 227.715, Michigan Department of Licensing and Regulatory Affairs, [Fireworks Program](#), 72 Pa. Stat. Ann. § 9401, W. Va. Code § 29-3E-2(18) and (19).

fountain device retailers under the bill are less than those that apply to licensed manufacturers and wholesalers under continuing law. So, in effect, the license allows prospective retailers an opportunity to enter the fireworks industry more easily and at a reduced cost.

### **Fireworks manufacturers and wholesalers**

The extension of the fireworks manufacturer and wholesaler license moratoriums maintains the status quo; new fireworks manufacturer and wholesaler licenses have not been issued in Ohio since June 29, 2001.<sup>8</sup> The moratoriums are uncommonly restrictive measures that impede fireworks manufacturers and wholesalers from relocating their place of business and, with a few exceptions, prevent new persons from entering those professions. None of the surrounding states have adopted similar license moratoriums for the fireworks industry.

### **Fireworks safety fee**

The fireworks safety fee imposed by the bill on licensed fountain device retailers, manufacturers, and wholesalers could be a significant financial hurdle for some licensees. The fee is in addition to the \$2,750 annual licensing fee (plus \$100 for each fireworks storage facility) that applies to fireworks manufacturers and wholesalers under continuing law and the \$25 (or less) annual licensing fee that applies to fountain device retailers under the bill. The bill expressly allows licensees to bill or invoice the fee to others. So, in practice, it might be passed along to consumers like an additional sales tax. It is unclear if the fee will reduce consumer demand for fireworks. But any such reduction could be mitigated or exceeded by an increase in demand stemming from the bill's legalization of firework use.

All surrounding states other than West Virginia impose an additional tax or fee on the sale price of consumer fireworks. The 4% fireworks safety fee proposed by the bill is less than the tax or fee levied by any of those states. (See "**COMPARISON TO OTHER STATES**," below.)

### **Insurance requirement**

The state's policy provides that an insurance requirement is appropriate when the intention of the regulation is to protect against externalities such as damages to third parties that are not the buyer or the seller.<sup>9</sup> The bill requires prospective fountain device retailers, when submitting a license application, to include proof of insurance in an amount and type specified by the State Fire Marshal by rule.<sup>10</sup> It is reasonable to ascribe some risk of third-party personal injury or property damage in connection with the storage and use of fountain devices. Requiring fountain device retailers to maintain insurance will, presumably, bolster the likelihood that persons who incur such injuries or damages will be compensated for their losses. Therefore, if the General Assembly deems it necessary to mitigate the inherent risks associated with fountain devices, an insurance requirement appears to be an appropriate way to do so under the state's policy.

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<sup>8</sup> R.C. 3743.75.

<sup>9</sup> R.C. 4798.02(B)(3), not in the bill.

<sup>10</sup> R.C. 3743.26(A)(2).

## **Inspection requirement**

The state's policy provides that an inspection requirement is appropriate when the intention of the regulation is to "protect consumers against unsanitary facilities and general health, safety, or welfare concerns."<sup>11</sup> The bill permits the State Fire Marshal to inspect the premises, the inventory, and the retail sale records of a licensed fountain device retailer during the retailer's period of licensure to determine whether the retailer is in compliance with the law.<sup>12</sup> The inventory and facility inspection requirements might diminish the risk of an accident, such as a fire, at a facility that stores fountain devices to be offered for sale to consumers. Therefore, those requirements appear to be consistent with the state's policy. It is less clear if the bill's provision allowing for inspection of retail sale records is intended to address the type of negative outcome contemplated in the state's policy.

## **Regulations of process**

The state's policy does not provide specific guidance as to when a regulation of process is the best means of protecting the health, safety, and welfare of consumers. However, the policy as a whole suggests that regulations of process are the most preferred method of regulation when market competition, ratings and reviews, private certifications, private causes of actions, and actions under the state's Consumer Sales Practices Law (CSPL) do not provide sufficient protection. The sponsors' testimony suggests that the fireworks safety pamphlet and protective requirements are intended to educate and encourage consumers to engage in proper safety practices. Whether the requirements are necessary to protect consumers is a policy judgment, but they appear to be of the type contemplated by the state's policy.

## **Fire Code Rule Recommendation Committee**

Establishing the Fire Code Rule Recommendation Committee does not immediately affect the restrictiveness of fireworks industry regulations. However, the recommendations of the committee (if implemented by the State Fire Marshal) could be impactful for industry professionals.

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# **IMPACT STATEMENT**

## **Opportunities for employment**

The moratoriums in H.B. 172 would tend to reduce opportunities for employment, though only temporarily. Similarly, the retail licensing fee implemented by the bill would tend to reduce such opportunities, though at \$25 or less for the license, the fee amount presents a minor barrier to entry. More significantly, fireworks safety fees of 4% of gross receipts for retailers, wholesalers, and manufacturers may discourage consumption of consumer fireworks, thereby limiting opportunities.

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<sup>11</sup> R.C. 4798.02(B)(2), not in the bill.

<sup>12</sup> R.C. 3743.29(A).

The effects of these changes are likely more than offset by allowing retail sales of fountain devices and, though this is not related to occupational licensing, the bill's legalizing consumer use of consumer fireworks in Ohio. Considering the bill as a whole, the latter changes would likely be the dominant ones, and the bill would tend to promote opportunities for employment in Ohio.

## **Consumer choice and market competition**

The bill would expand consumer choice and increase market competition by permitting more outlets for retail sales of fountain devices.<sup>13</sup> Fireworks safety fees would discourage both consumer demand and producer supply, and the requirement to provide safety pamphlets and glasses may discourage supply; both provisions may dampen the expansion of consumer choice and increase in competition.

## **Cost to government**

The costs to government are outlined in the [LBO fiscal note](#).

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# **SUMMARY OF PROPOSED REGULATIONS**

This report addresses the provisions of H.B. 172 that might affect individuals working or seeking to work in the fireworks industry. For a full summary of the bill, see the [H.B. 172 Bill Analysis](#).

## **Manufacturer and wholesaler license moratoriums**

### **Extension**

The bill extends existing moratoriums on the issuance of new and geographic transfer of existing fireworks manufacturer and wholesaler licenses. Under current law, the moratoriums are set to expire on December 31, 2021. The bill extends the moratorium on the geographic transfer of existing licenses until 260 days after the bill's effective date. The moratorium on the issuance of new licenses is extended until 18 months after the expiration of the geographic transfer moratorium.<sup>14</sup>

### **Exceptions**

Under the bill, the State Fire Marshal may grant exceptions to the geographic transfer moratorium for existing licensees that meet certain specified criteria. In a related change, the bill eliminates an existing exception to the moratorium for fireworks wholesalers changing locations within the same municipal corporation or township.

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<sup>13</sup> Legalizing consumer use of fireworks in Ohio also expands consumer choice, though not an occupation-licensing provision.

<sup>14</sup> R.C. 3743.75(A).

The bill specifies that the moratorium on issuing new licenses does not apply to a license transfer that occurs through inheritance or sale approved by the State Fire Marshal.<sup>15</sup>

### **One-time license period**

The bill establishes a one-time license period for new fireworks manufacturers and wholesalers to coincide with the end of the moratorium. New licenses must be approved in a manner that does not unduly burden the State Fire Marshal's ability to ensure public safety.<sup>16</sup>

### **Showroom size**

The bill increases from 5,000 square feet to 10,000 square feet, the maximum size of a retail sales showroom used by a licensed manufacturer or wholesaler to sell consumer grade fireworks.<sup>17</sup>

### **Fireworks safety fee**

The bill imposes a fee on licensed retailers, manufacturers, and wholesalers selling consumer-grade fireworks equal to 4% of gross receipts from such sales (excluding sales tax). The proceeds of the fee would primarily be used to fund firefighter training programs, but a portion would be used to pay the State Fire Marshal's expenses in administering fireworks law.<sup>18</sup>

### **Fountain device retailer license**

Beginning in 2022, the bill creates a new license for retailers who wish to sell "fountain devices" – a consumer grade ground-based or hand-held firework that produces a shower of sparks upon ignition. Under current law, only licensed fireworks manufacturers and wholesalers are permitted to sell fireworks (including fountain devices). Nonlicensed retailers are limited to selling novelty items such as wire sparklers, snappers, snakes, glow worms, and trick matches. The fountain device retailer license creates a pathway for retailers to sell a certain type of firework without seeking a manufacturer or wholesaler license.

A fountain device retailer license would be obtained by applying to the State Fire Marshal before October 1 of any given year. Each application must include: (1) a license fee of \$25 or less (the amount is set by the State Fire Marshal), (2) an affidavit affirming compliance with the NFPA's guidelines for the manufacture, transportation, storage, and sale of fireworks, and (3) proof of insurance. Licenses are valid for one year. A retailer must apply for and obtain a separate license for each location at which fountain devices will be sold.

All sales of fountain devices must be conducted from the licensed location to purchasers who are 18 years or older. Sales must be made from inside a licensed building; no sales from tents or trailers are permitted. The State Fire Marshal is required to adopt additional rules to

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<sup>15</sup> R.C. 3743.75 and 3743.17.

<sup>16</sup> R.C. 3743.021, 3743.041, 3743.151, 3743.171, and 3743.75(A) through (D).

<sup>17</sup> R.C. 3743.25(C)(2) and 3743.17.

<sup>18</sup> R.C. 3743.08, 3743.21, and 3743.22(D) and (E).

promote the safety and security of employees, the public, and the premises from which fountain devices are sold. Licensed fountain device retailers are subject to periodic inspections to ensure compliance with the law.<sup>19</sup>

### **Safety pamphlets and protective eyewear**

The bill requires all licensed fireworks manufacturers, wholesalers, and fountain device retailers to provide customers with a fireworks safety pamphlet and offer protective eyewear for little or no charge at the point of sale, beginning 260 days after the bill's effective date.<sup>20</sup>

### **Fire Code Rule Recommendation Committee**

The bill creates the Ohio Fire Code Rule Recommendation Committee to review fireworks law and make recommendations to the State Fire Marshal regarding: (1) fireworks manufacturer and wholesaler licensing and operations, (2) the purchase of consumer-grade fireworks, (3) the moratorium on new and geographic transfer of existing manufacturer and wholesaler licenses, (4) the State Fire Marshal's rulemaking as it pertains to building code requirements for 1.3G display-grade fireworks manufacturing facilities, and (5) the development of a licensing program for fireworks wholesalers and manufacturers.<sup>21</sup>

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<sup>19</sup> R.C. 3743.01(H), 3743.26, 3743.27, 3743.28, 3743.29, and 3743.99; Section 4 of the bill.

<sup>20</sup> R.C. 3743.227(B) and (C), 3743.47, 3743.60(K) and (L), 3743.51(K) and (L), and 3743.99(G); Section 3 of the bill.

<sup>21</sup> R.C. 3743.67.

## COMPARISON TO OTHER STATES

All of the surrounding states have a license, certificate, or registration for retailers of consumer fireworks that is distinct from a fireworks manufacturer or wholesaler license. All but West Virginia allow retailers to sell novelty items like sparklers without prior authorization (at least under certain conditions). However, there is a wide variance among the states in terms of what is considered a novelty item and what is considered a firework, and in terms of the license fees, insurance requirements, and inspection requirements. All of the surrounding states except for Kentucky impose a tax or fee, in addition to the standard licensure fee, based on the sale price of consumer fireworks.

The table below summarizes the fireworks laws of the surrounding states in greater detail.

Fireworks Retailer Requirements					
	Indiana <sup>22</sup>	Kentucky <sup>23</sup>	Michigan <sup>24</sup>	Pennsylvania <sup>25</sup>	West Virginia <sup>26</sup>
<b>Authorization required</b>	A <i>certificate of compliance</i> is required to sell consumer grade fireworks at retail. Novelty items such as sparklers and smoke devices may be sold from a tent or permanent structure without a certificate.	A retailer that is open all year may sell hand-held sparkling devices and novelty items <i>without a permit</i> so long as such sales are ancillary to the retailer's primary course of business.	Retailers may sell novelty items like sparklers and toy snakes without authorization.  Retailers may sell ground and hand-held sparkling devices by registering with the	Retailers may sell novelty items, toy caps, and ground and hand-held sparkling devices (fountain devices) without prior authorization.	A <i>sparkling devices and novelties registration</i> is required to sell such items at retail.  A <i>consumer fireworks certificate</i> is required to sell other consumer grade fireworks.

<sup>22</sup> Ind. Code §§ 22-11-14-1 *et. seq.*; 675 Ind. Admin. Code §§ 12-3-10 and 12-9-7; Indiana Department of Homeland Security, [Fireworks Information](#).

<sup>23</sup> Ky. Rev. Stat. §§ 227.700, 702, 704, 710, and 715.

<sup>24</sup> Mich. Comp. Laws §§ 28.452, *et. seq.*

<sup>25</sup> 72 Pa. Stat. Ann. §§ 9401, 9408, and 9409; Pennsylvania Department of Revenue, [Consumer Fireworks Tax](#), December 28, 2017.

<sup>26</sup> W. Va. Code §§ 29-3E-4, 5, and 7; W. Va. Code R. § 103-4-5.

Fireworks Retailer Requirements					
	Indiana <sup>22</sup>	Kentucky <sup>23</sup>	Michigan <sup>24</sup>	Pennsylvania <sup>25</sup>	West Virginia <sup>26</sup>
	However, a <i>fireworks stand retail sales permit</i> is required to sell novelty items at a temporary location.	Seasonal retailers, retailers that sell aerial and audible ground devices, and retailers whose primary course of business is the sale of fireworks must register with the State Fire Marshal.	<i>low-impact fireworks retail registry</i> .  <i>A consumer fireworks certificate</i> is required to sell other consumer grade fireworks.	A license is required to sell other consumer fireworks.	
<b>Administrator</b>	State Fire Marshal.	State Fire Marshal.	Department of Licensing and Regulatory Affairs and the Bureau of Fire Services.	Department of Agriculture.	State Fire Marshal.
<b>License Fee</b>	For a <i>certificate of compliance</i> , \$1,000 for the first location plus additional fees for each additional location (\$500 for a tent and \$200 for a structure). For a <i>fireworks stand retail sales permit</i> , the fee ranges from \$276 for 1-4 stands to \$1,380 for 21-50 stands.	\$25 per location for seasonal retailers or retailers whose primary course of business is the sale of fireworks, if the only fireworks sold are hand-held sparkling devices and novelty items.  \$250 per location for retailers that sell aerial or audible ground devices only between	For the <i>low-impact fireworks retail registry</i> , \$50 per location up to a maximum of \$1,000.  For the <i>consumer fireworks certificate</i> , \$1,250 per permanent retail location plus \$1,000 per nonpermanent retail location (e.g., tents). The fee is discounted to \$700 per	Application fee ranges from \$1,000 to \$2,500 depending on the characteristics of the facility at which the fireworks are to be sold. The license fee depends on the size of the facility: <ul style="list-style-type: none"> <li>▪ \$7,500 for up to 10,000 sq. ft.</li> </ul>	For the <i>sparkling devices and novelties registration</i> , \$15 per location.  For the <i>consumer fireworks certificate</i> , \$1,000 per permanent sales location.

Fireworks Retailer Requirements					
	Indiana <sup>22</sup>	Kentucky <sup>23</sup>	Michigan <sup>24</sup>	Pennsylvania <sup>25</sup>	West Virginia <sup>26</sup>
		June 10 and July 7, or December 26 and January 4, or both.  \$500 per location for retailers that sell aerial or audible ground devices at any other time of year.	nonpermanent retail location if there are 10 or more.	<ul style="list-style-type: none"> <li>▪ \$10,000 for 10,000-15,000 sq. ft.</li> <li>▪ \$20,000 for greater than 15,000 sq. ft.</li> </ul>	
<b>Renewal period</b>	One year.	One year.	One year.	One year.	One year.
<b>Inspection and insurance requirements</b>	Inspection required for <i>certificate of compliance</i> only. No statutory reference to insurance requirements.	No statutory reference to such requirements.	Inspection and insurance (\$10 million per occurrence) requirements apply to consumer fireworks retailers.	Inspection and insurance (\$2 million per occurrence) requirements apply.	Inspection and insurance (\$1 million per occurrence) requirements apply to <i>consumer fireworks certificate</i> only.
<b>Additional tax or fee on gross receipts from fireworks sales</b>	Fireworks public safety fee equal to 5% of sale price imposed on the consumer at the point of sale.	N/A	Fire safety fee equal to 6% of sale price imposed on the consumer at the point of sale.	Consumer fireworks tax equal to 12% of sale price is imposed on consumer at point of sale.	Fireworks safety fee equal to 12% of the sale price is imposed on consumer at point of sale.