

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

SECOND REGULAR SESSION-2000

Legislative Document

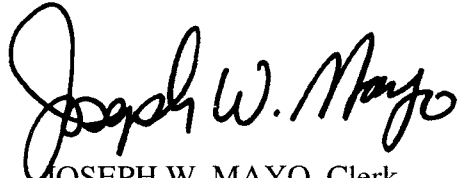
No. 2466

H.P. 1760

House of Representatives, January 10, 2000

An Act to Promote the Safe Conduct of Fireworks Displays in the State of Maine.

Submitted by the Department of Public Safety pursuant to Joint Rule 204.
Reference to the Committee on Criminal Justice suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative McALEVEY of Waterboro.
Cosponsored by Senators: DAVIS of Piscataquis, O'GARA of Cumberland.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 8 MRSA §221, as enacted by PL 1985, c. 23, §2, is repealed.

Sec. 2. 8 MRSA §221-A is enacted to read:

§221-A. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Commissioner. "Commissioner" means the Commissioner of Public Safety or a designee.

2. Department. "Department" means the Department of Public Safety.

3. Display. "Display" means an entertainment feature where the public or a private group is admitted or permitted to view the display or discharge of fireworks or special effects. "Display" includes a special effects display.

4. Fireworks. "Fireworks" means any:

A. Combustible or explosive composition or substance;

B. Combination of explosive compositions or substances;

C. Other article that was prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, including blank cartridges or toy cannons in which explosives are used, the type of balloon that requires fire underneath to propel it, firecrackers, torpedoes, skyrockets, roman candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents and other fireworks of like construction;

D. Fireworks containing any explosive or flammable compound; or

E. Tablets or other device containing any explosive substance or flammable compound.

The term "fireworks" does not include toy pistols, toy canes, toy guns or other devices in which paper caps or plastic caps containing 25/100 grains or less of explosive compound are used if they are constructed so that the hand can not come in contact with the cap when in place for the explosion, toy pistol paper

caps or plastic caps that contain less than 20/100 grains of explosive mixture or sparklers that do not contain magnesium chlorates or perchlorates.

5. Fireworks technician. "Fireworks technician" means a person licensed pursuant to section 231 who, by examination, experience and training, has demonstrated the required skill and competence in the use and discharge of fireworks to conduct a display or special effects display. A fireworks technician is the person who is responsible for safety, setting up and conducting the display or special effects display.

6. Fireworks technician assistant. "Fireworks technician assistant" means a person licensed pursuant to section 232 who works under the direction of the fireworks technician during a display or special effects display.

7. Permit. "Permit" means the nontransferable permission granted by the commissioner pursuant to section 227-A to hold a display or special effects display.

8. Person. "Person" means any individual, combination of individuals, association, municipality, amusement park or other legal or commercial entity.

9. Possession. "Possession" means the intentional or knowing possession of what the possessor knows or believes to be fireworks.

10. Sale or sell. "Sale" or "sell" means any transfer or delivery of fireworks to a person for consideration.

11. Special effects display. "Special effects display" means an entertainment feature using pyrotechnics manufactured or designed to be used with or discharged in conjunction with theatrical, musical or similar productions. "Special effects display" includes the indoor use of pyrotechnics before a proximate audience.

Sec. 3. 8 MRSA §222, as amended by PL 1995, c. 528, §1, is further amended to read:

§222. Possession of fireworks

A person may not possess or have under that person's control fireworks, except if that person is issued a permit pursuant to section 227 227-A.

2 **Sec. 4. 8 MRSA §227**, as amended by PL 1991, c. 464, §2, is
repealed.

4 **Sec. 5. 8 MRSA §§227-A and 227-B** are enacted to read:

6 **§227-A. Requirements for obtaining permit**

8 **1. Application.** Any person desiring to hold a display or
special effects display shall apply in writing to the
10 commissioner for a permit at least 10 days in advance of the
proposed display.

12 **2. Form.** Application requests must be submitted on forms
14 furnished by the department. An application for a permit must
include:

16 A. A certificate of public liability insurance in the
18 amount of \$500,000 to cover loss, damage or injuries to
persons or property that might result from the display; and

20 B. A site plan for the proposed display depicting a diagram
22 of the grounds or facilities at which or in which the
display will be held. The diagram must show points of
24 discharge, fallout areas, any buildings or other structures
in proximity to the display site and the location of any
26 audience that may be present. Distances of and distances
between the points of discharge and any buildings or
28 structures must be stated on the diagram.

30 **3. Regulation restricted.** Except as provided in subsection
4, a political subdivision of the State, including, but not
32 limited to, a municipality, county, township or village
corporation, may not adopt any order, ordinance, rule or
34 regulation concerning the issuance of permits.

36 **4. Exception.** This section does not prohibit an order,
ordinance, rule or regulation of any political subdivision that,
38 with the exception of appropriate penalty provisions, conforms
exactly with any applicable provision of state law or that
40 regulates the issuance of permits within a jurisdiction.

42 **5. Fees.** The following schedule of fees applies to permits
required by this section. All fees received by the department
44 must be used for carrying out this chapter. Any balance of these
fees does not lapse but must be carried forward as a continuing
46 account to be expended for the same purpose in the following
fiscal years.

48 A. Permit: \$30 per display or special effects display.

50 B. Site inspection: \$15 per inspection.

2 Upon receipt of a complete application, the department shall
3 conduct an inspection of the proposed display site to determine
4 the hazard posed by the display.

6 **§227-B. Denial or revocation of permit**

8 The commissioner may refuse to issue or may revoke a permit
9 on any one or more of the following grounds:

10 1. Incomplete. The application, or any document filed with
11 the application, is incomplete;

12 2. Misstatement. The application, or any document filed
13 with the application, contains a material misstatement; or

14 3. Site inspection. Failure of the site to pass an
15 inspection conducted by the department pursuant to section 227-A.

16 **Sec. 6. 8 MRSA §228, sub-§2, ¶B,** as enacted by PL 1985, c. 23,
17 **§2,** is repealed.

18 **Sec. 7. 8 MRSA §228, sub-§2, ¶D,** as enacted by PL 1985, c. 23,
19 **§2,** is amended to read:

20 D. To the sale or use of blank cartridges ~~for a duly~~
21 ~~licensed show or theatre or~~ for signal or ceremonial
22 purposes in athletics or sports;

23 **Sec. 8. 8 MRSA §228, sub-§2, ¶¶G and H,** as enacted by PL 1985,
24 **c. 23, §2,** are amended to read:

25 G. In teaching the use of firearms; or

26 H. To the sale of shells for firearms, cartridges,
27 gunpowder and explosives for the purpose of any legal use of
28 firearms ~~or~~.

29 **Sec. 9. 8 MRSA §228, sub-§2, ¶I,** as enacted by PL 1985, c. 23,
30 **§2,** is repealed.

31 **Sec. 10. 8 MRSA §229, sub-§1,** as amended by PL 1995, c. 528,
32 **§2,** is further amended to read:

33 **1. Criminal penalties.** A person who violates section 222,
34 if the value of the fireworks possessed exceeds \$100, or section
35 224 or 225 commits a Class E crime. A person who violates
36 section 227 227-A by failing to obtain a permit for display
37 commits a Class D crime. Any person who violates section 227
38 227-A by conducting the display in violation of the permit
39 commits a Class E crime.
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2 Sec. 11. 8 MRSA §§231 to 237 are enacted to read:

4 §231. Fireworks technician's license qualifications

6 A person may not act as a fireworks technician unless the
8 person meets the qualifications specified in this section and
 obtains a license. The person must:

10 1. Age. Be at least 21 years of age;

12 2. Citizenship. Be a citizen or resident alien of the
14 United States;

16 3. Graduate. Be a graduate of an accredited high school or
 has been granted high school equivalency status by the State;

18 4. Experience. Have experience and training as a fireworks
20 technician assistant or comperable position, as determined by the
 department;

22 5. Character. Be of good moral character as determined by
24 the department and not have been convicted of a crime that is
26 punishable by a maximum term of imprisonment equal to or
 exceeding one year. In making the determination of good moral
28 character, the commissioner shall consider matters recorded
 within the previous 5 years, including, but not limited to, the
 following:

30 A. Records of incidents of abuse by the applicant of family
32 or household members provided pursuant to Title 19-A,
 section 4012, subsection 1;

34 B. Records provided by the Department of Human Services
36 regarding the failure of the applicant to meet child or
 family support obligations;

38 C. Records of 3 or more convictions of the applicant for
40 Class D or Class E crimes;

42 D. Records of 3 or more civil violations by the applicant;
 and

44 E. Records that the applicant has engaged in recklessness
46 or negligence that endangered the safety of others;

48 6. Examination. Successfully complete a written
50 examination administered by the department encompassing fireworks
 and the conduct of displays; and

2 7. Application. Submit an application to the department
3 that contains the following:

4 A. Full name;

6 B. Full current address;

8 C. Social security number;

10 D. Date of birth; and

12 E. A statement granting the commissioner authority to check
13 the criminal records of the applicant.

14 **§232. Fireworks technician assistant's license qualifications**

16 A person may not act as a fireworks technician assistant
17 unless the person meets the qualifications specified in this
18 section and obtains a license. The person must:

20 1. Age. Be at least 18 years of age;

22 2. Graduate. Be a graduate of an accredited high school or
23 has been granted high school equivalency status by the State; and

24 3. Application. Submit an application to the department
25 that contains the following:

26 A. Full name;

28 B. Full current address;

30 C. Social security number;

32 D. Date of birth; and

34 E. The signature of the licensed fireworks technician who
35 will provide supervision while the assistant performs the
36 duties authorized by the license of the fireworks technician
37 assistant.

38 **§233. Fees**

40 All license and permit fees received pursuant to this
41 chapter by the department must be used for carrying out this
42 chapter. Any balance of these fees may not lapse but must be
43 carried forward as a continuing account to be expended for the
44 same purpose in the following fiscal years.

45 1. Fee for fireworks technician. The fee for a fireworks
46 technician license is \$25.

2 2. Fee for fireworks technician assistant. The fee for a
3 fireworks technician assistant license is \$15.

4 **§234. Renewal of license**

6 Each fireworks technician license and fireworks technician
7 assistant license is valid for a term of one year. Unless
8 revoked or suspended, the license is renewable annually.

10 **§235. Denial; suspension; revocation; grounds**

12 The commissioner may, after a hearing in conformance with
13 applicable provisions of the Maine Administrative Procedure Act,
14 suspend or revoke a license issued under this chapter. The
15 following are grounds for denial, suspension or revocation of a
16 license:

18 1. Fraud or deceit. The practice of fraud or deceit in
19 obtaining a license under this chapter or in the performance of
20 services within the scope of the license issued;

22 2. Conviction of certain crimes. Conviction of a crime
23 that relates directly to the practice for which the person is
24 licensed or conviction of any crime for which incarceration for
25 one year or more may be imposed;

27 3. Violation of chapter or rule. Any violation of this
28 chapter or any rule adopted by the commissioner;

30 4. Aiding or abetting unlicensed practice. Aiding or
31 abetting the practice of displaying or discharging fireworks by a
32 person not duly licensed under this chapter and who is
33 represented as duly licensed; or

35 5. Incompetence. Incompetence in the practice of
36 displaying or discharging fireworks. A licensee is considered
37 incompetent in the practice if the licensee has:

39 A. Engaged in professional conduct that evidences a lack of
40 ability or fitness to perform the duties for which that
41 licensee is licensed; or

43 B. Engaged in professional conduct that evidences a lack of
44 knowledge of, or inability to apply, appropriate principles
45 or skills to carry out the practice for which that licensee
46 is licensed.

48 **§236. Suspension by commissioner**

1. Immediate suspension. If the commissioner has probable cause to believe that a person licensed under this chapter poses, because of gross negligence in the performance of duties associated with the license, an immediate threat to the public, the commissioner shall immediately suspend that person's license.

2. Suspension in effect during pendency. The suspension remains in effect until the entry of judgment, unless it is determined by the court in which the criminal charge or civil or administrative violation is pending that the commissioner did not have probable cause to suspend the license.

§237. Adoption of rules

The commissioner shall, in accordance with the Maine Administrative Procedure Act, adopt reasonable rules relative to the use, storage, transportation and display of fireworks and special-effect pyrotechnics. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

SUMMARY

The bill amends the statutes pertaining to fireworks as follows.

1. Definitions are added to clarify the regulation of fireworks and special-effect pyrotechnics.

2. Application procedures are provided for obtaining a fireworks display permit, including fees.

3. A mechanism is established for the Commissioner of Public Safety to deny or revoke a fireworks display permit.

4. Licensing qualifications, application procedures and fees for persons using or discharging fireworks and for persons assisting in the discharge of fireworks during a display are established.

5. A mechanism is established for the Commissioner of Public Safety to deny, suspend or revoke a fireworks technician or fireworks technician assistant license.

6. The Commissioner of Public Safety is authorized to adopt rules in accordance with the Maine Administrative Procedure Act for the use, storage, transportation and display of fireworks.