

MAINE STATE LEGISLATURE

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MS

L.D. 1825

DATE:

4/4/06

(Filing No. H-943)

CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
122ND LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1265, L.D. 1825, Bill, "An Act To Facilitate Inspections of Heating Appliances and Chimneys"

Amend the bill by striking out the title and substituting the following:

'An Act To Amend the Rule-making Authority of the Commissioner of Public Safety Regarding the Construction, Installation, Maintenance and Inspection of Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances'

Further amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

'Emergency preamble. Whereas, acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Legislature seeks to amend the rule-making authority of the Department of Public Safety with respect to the construction, installation, maintenance and inspection of chimneys, fireplaces, vents and solid fuel burning appliances and to authorize the Department of Public Safety to adopt new rules as quickly as the process will allow; and

Whereas, the Legislature seeks to immediately repeal current rule-making authority pertaining to inspection of chimneys,

COMMITTEE AMENDMENT

fireplaces, vents and solid fuel burning appliances upon the sale or transfer of real estate and to authorize the Department of Public Safety to adopt new rules as quickly as the process will allow; and

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency, so rules pertaining to inspection and maintenance of chimneys, fireplaces, vents and solid fuel burning appliances upon the sale or transfer of real estate must come back to the Legislature for that review; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 25 MRSA §2465, as corrected by RR 2003, c. 1, §25, is amended to read:

§2465. Adoption of rules

~~1. -- Adoption of rules. -- The Commissioner of Public Safety shall, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, adopt by reference the Rules and Regulations as found in the then current edition of the National Fire Protection Association Code #211, -- "The Standards for Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances".~~

1-A. Routine technical rules. The Commissioner of Public Safety shall adopt rules pertaining to the construction, installation, maintenance and inspection of chimneys, fireplaces, vents and solid fuel burning appliances. Rules adopted pursuant to this subsection may include rules pertaining to maintenance and inspections, except as provided in subsection 1-B. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

1-B. Major substantive rules. The Commissioner of Public Safety may adopt rules requiring maintenance and inspection of chimneys, fireplaces, vents and solid fuel burning appliances upon the sale or transfer of property. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

2. **Prohibitions.** A person may not for compensation construct ~~or~~ install or maintain any vent or solid fuel burning appliance unless that vent or appliance is constructed or installed or maintained in accordance with the provisions of the National Fire Protection Association Code #211, "The Standards for Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances." this section or the rules adopted pursuant to this section. Construction and installation of chimneys and fireplaces are also governed by Title 32, chapter 33.

3. **Enforcement.** Subject to Title 32, chapter 33, the Commissioner of Public Safety or the commissioner's designees, state oil and solid fuel compliance officers, duly appointed fire chiefs or their designees, and municipal building inspectors and code enforcement officers may enforce the requirements of "The Standards for Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances" this section, the rules adopted pursuant to this section and Title 32, section 2313-A.

4. **Prior installation.** Any chimney, fireplace, vent or solid fuel burning appliance constructed or installed prior to ~~the effective date of this section~~ July 13, 1982 may be continued in use subject to the provisions of section 2432.

5. **Home rule.** Subject to Title 32, chapter 33, any municipality may adopt as ordinance requirements for the materials, installation ~~or~~ construction, maintenance or inspection of chimneys, fireplaces, vents or solid fuel burning appliances that exceed the requirements of "The Standards for Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances," this section and the rules adopted pursuant to this section.

5-A. **Safety information.** A new factory-built fireplace, fireplace stove or solid fuel burning room heater may not be sold in retail trade, unless the seller provides the buyer, on or before the sale, with an installation instruction manual or, in the case where such a manual is not available, with a publication of the Department of Economic and Community Development containing recommended clearances ~~the same as those prescribed in the National Fire Protection Association Code #211, "The Standards for Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances," as approved by the Commissioner of Public Safety in accordance with the rules adopted pursuant to this section.~~

6. **Penalty.** The following penalties apply.

A. A person who, for compensation, constructs or installs vents or solid fuel burning appliances in violation of the standards and then permits such violation to remain

uncorrected after 30 days' notice from an official empowered to enforce this section commits a civil violation for which a fine of not more than \$500 for each violation may be adjudged. The court may waive any penalty or cost against a violator upon satisfactory proof that the violation was corrected within 30 days of the issuance of a complaint. Construction and installation of chimneys and fireplaces are governed by Title 32, chapter 33.

B. A person who fails to provide a purchaser with an instruction manual or the authorized publication of the Department of Economic and Community Development, as described in subsection 5-A, commits a civil violation for which a fine of not less than \$200 and not more than \$500 may be adjudged.

C. A person who violates paragraph B after having previously violated paragraph B commits a civil violation for which a fine of not less than \$500 and not more than \$800 for each offense may be adjudged.

D. A person who violates a rule adopted pursuant to this section commits a civil violation for which a fine of not less than \$200 and not more than \$500 may be adjudged, except that this paragraph does not apply to a rule requiring an annual chimney inspection for a single-family home.

In addition to the penalties provided in this subsection, a violation of this chapter constitutes a violation of Title 5, chapter 10.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.'

SUMMARY

This amendment replaces the bill, changes the title, adds an emergency preamble and clause and amends the Commissioner of Public Safety's rule-making authority regarding the construction, installation, maintenance and inspection of chimneys, fireplaces, vents and solid fuel burning appliances. The amendment repeals the current directive to the Commissioner of Public Safety to adopt the National Fire Protection Association Code #211, "The Standards for Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances," and replaces that with more general rule-making authority that directs the commissioner to adopt routine technical rules pertaining to the construction, installation, maintenance and inspection of chimneys, fireplaces, vents and

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2 solid fuel burning appliances. The amendment also authorizes the
3 commissioner to adopt major substantive rules pertaining to the
4 inspection and maintenance of chimneys, fireplaces, vents and
5 solid fuel burning appliances upon the sale or transfer of
6 property.

7 The purpose of amending the current rule-making authority is
8 specifically to address the current regulatory requirement that
9 Level II chimney inspections be conducted upon the sale or
10 transfer of real estate pursuant to National Fire Protection
11 Association Code #211. The amendment gives the Commissioner of
12 Public Safety the ability to tailor rules to the needs of the
13 State.

14 The amendment also adds a penalty provision that specifies
15 that a person who violates a rule adopted pursuant to the Maine
16 Revised Statutes, Title 25, section 2465 commits a civil
17 violation for which a fine of not less than \$200 and not more
18 than \$500 may be adjudged. This penalty does not apply to a rule
19 requiring an annual chimney inspection for a single-family home.
20

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



Approved: 04/03/06 *mac*

122nd MAINE LEGISLATURE

LD 1825

LR 2914(02)

An Act to Facilitate Inspections of Heating Appliances and Chimneys

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Criminal Justice and Public Safety

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Establishes a new civil violation.

The collection of additional fines may increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

The additional costs associated with implementing this legislation can be absorbed by the Department of Public Safety utilizing existing budgeted resources.