

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1187

S.P. 435

In Senate, March 25, 2009

An Act To Allow the Sale and Use of Consumer Fireworks

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator GOOLEY of Franklin.
Cosponsored by Representative HILL of York and
Senators: DAMON of Hancock, MARRACHÉ of Kennebec, NASS of York, Representatives:
BROWNE of Vassalboro, HOGAN of Old Orchard Beach, MAZUREK of Rockland,
PEOPLES of Westbrook, WEAVER of York.

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

2 **Sec. 1. 8 MRSA §221-A, sub-§1-A** is enacted to read:

3 **1-A. Consumer fireworks.** "Consumer fireworks" has the same meaning as in 27
4 Code of Federal Regulations, Section 555.11 or subsequent provision.

5 **Sec. 2. 8 MRSA §221-A, sub-§3-A** is enacted to read:

6 **3-A. Fire safety official.** "Fire safety official" means a state or municipal official
7 who has authority to enforce life and fire safety laws, statutes, ordinances, rules or
8 regulations.

9 **Sec. 3. 8 MRSA §221-A, sub-§4,** as enacted by PL 1999, c. 671, §2, is amended
10 to read:

11 **4. Fireworks.** "Fireworks" means any:

- 12 A. Combustible or explosive composition or substance;
- 13 B. Combination of explosive compositions or substances;
- 14 C. Other article that was prepared for the purpose of producing a visible or audible
15 effect by combustion, explosion, deflagration or detonation, including blank
16 cartridges or toy cannons in which explosives are used, the type of balloon that
17 requires fire underneath to propel it, firecrackers, torpedoes, skyrockets, roman
18 candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents and other
19 fireworks of like construction;
- 20 D. Fireworks containing any explosive or flammable compound; or
- 21 E. Tablets or other device containing any explosive substance or flammable
22 compound.

23 The term "fireworks" does not include consumer fireworks or toy pistols, toy canes, toy
24 guns or other devices in which paper caps or plastic caps containing 25/100 grains or less
25 of explosive compound are used if they are constructed so that the hand can not come in
26 contact with the cap when in place for the explosion, toy pistol paper caps or plastic caps
27 that contain less than 20/100 grains of explosive mixture or sparklers that do not contain
28 magnesium chlorates or perchlorates.

29 **Sec. 4. 8 MRSA §223, sub-§1,** as amended by PL 2003, c. 452, Pt. C, §3 and
30 affected by Pt. X, §2, is further amended to read:

31 **1. Sale of fireworks prohibited.** A Except for the sale of consumer fireworks under
32 section 223-A, a person may not sell, possess with the intent to sell or offer for sale
33 fireworks.

34 **Sec. 5. 8 MRSA §223-A** is enacted to read:

1 **§223-A. Sale of consumer fireworks**

2 **1. Sale of consumer fireworks.** A person may sell consumer fireworks if that person
3 is 21 years of age or older and possesses:

4 A. A federal permit to sell fireworks under 18 United States Code, Section 843;

5 B. A license under subsection 4; and

6 C. A municipal permit under subsection 3.

7 **2. Prohibited sales.** A person under subsection 1 may not sell consumer fireworks
8 to a person under 21 years of age or who appears to be under the influence of alcohol or
9 drugs.

10 **3. Municipalities.** The legislative body of a municipality may adopt an ordinance to
11 allow or prohibit the sale, use or possession of consumer fireworks within the
12 municipality. A municipal ordinance allowing the sale of consumer fireworks must
13 provide for the issuance of a permit to a person the municipality approves to sell
14 consumer fireworks. A permit may not be issued unless:

15 A. The applicant is 21 years of age or older;

16 B. The applicant applies for a permit under this subsection on a form prescribed by
17 the commissioner;

18 C. The applicant complies with the provisions of subsection 1, paragraph A;

19 D. The applicant complies with the provisions of subsection 5; and

20 E. The application is approved by the municipality's police chief, fire chief and code
21 enforcement officer if those positions exist.

22 A municipality may require a fee for a permit issued under this subsection.

23 **4. State license.** The commissioner may issue a license to sell consumer fireworks if
24 the following requirements are met:

25 A. The applicant is 21 years of age or older;

26 B. The applicant complies with the provisions of subsection 1, paragraphs A and C;

27 C. The applicant complies with the provisions of subsection 5; and

28 D. The applicant has not been convicted of an offense or violated a state, federal or
29 municipal law, rule or regulation involving fireworks or explosives within the 2 years
30 prior to the application.

31 The commissioner shall charge a fee of \$1,500 for a license under this subsection.

32 **5. Storage and handling.** A person authorized to sell consumer fireworks under
33 subsection 1 shall store and sell the fireworks in a building dedicated solely to the storage
34 and sale of consumer fireworks that meets all applicable fire safety codes and standards,
35 building codes, zoning ordinances and municipal ordinances. Pursuant to section 236, the
36 commissioner may adopt rules relative to the use, storage, transportation and display of

1 consumer fireworks. A person at least 18 years of age may handle and sell consumer
2 fireworks if the person is under the direct supervision of a person 21 years of age or older.

3 **6. Advertising.** A person may not advertise the sale of consumer fireworks in a way
4 that is misleading about the conditions under which consumer fireworks may be
5 purchased or used or about the requirements of this section. An advertisement for the sale
6 of consumer fireworks must contain the words "Check with your local fire department to
7 see if consumer fireworks are allowed in your community" in a size and manner required
8 by the commissioner.

9 **7. Civil liability.** A person who violates the provisions of this section is liable in a
10 civil action to a person for damages for bodily injury or property damage resulting from
11 violation and the defenses under Title 14, section 156 or assumption of risk may not be
12 used by the person.

13 **8. Enforcement.** The commissioner, a state law enforcement officer, a municipal
14 law enforcement officer, a code enforcement officer or a fire safety official may petition
15 Superior Court or District Court to seize or remove at the expense of the owner consumer
16 fireworks sold, offered for sale, stored, possessed or used in violation of this section. The
17 commissioner may immediately suspend a license granted under subsection 4 for a
18 violation of this section. A person whose license is suspended under this subsection must
19 receive a hearing within 10 days of the suspension under Title 5, chapter 375, subchapter
20 4. A person whose license is suspended under this subsection may not receive a
21 subsequent license under subsection 4 for a period of at least one year from the date of
22 suspension. A violation of this section is a Class E crime.

23 **Sec. 6. 8 MRSA §236**, as enacted by PL 1999, c. 671, §12, is amended to read:

24 **§236. Adoption of rules**

25 The commissioner ~~shall, in accordance with the Maine Administrative Procedure Act,~~
26 may adopt reasonable rules relative to the use, storage, transportation and display of
27 consumer fireworks, fireworks and special effect pyrotechnics and to carry out the
28 purposes of this chapter. Rules adopted pursuant to this section are routine technical
29 rules pursuant to Title 5, chapter 375, subchapter ~~H-A 2-A~~.

30 **SUMMARY**

31 This bill removes the prohibition on the sale and use of consumer fireworks and
32 establishes a licensing protocol for sellers of consumer fireworks. A seller of consumer
33 fireworks must have a federal and state license and a permit from a municipality. A
34 municipality may adopt an ordinance that allows or prohibits the sale, use or possession
35 of consumer fireworks. A seller of consumer fireworks must be 21 years of age or older
36 and may not have been convicted or found in violation of any state, federal or municipal
37 law, rule or ordinance concerning fireworks or explosives. Consumer fireworks must be
38 stored in a building exclusively used for the storage and sale of fireworks that has met all
39 applicable fire safety, building and zoning codes and municipal ordinances. The
40 Commissioner of Public Safety may adopt rules relative to the use, storage, transportation
41 and display of consumer fireworks. A seller of consumer fireworks may not use

1 misleading advertising and must warn consumers in any advertising to check with the
2 local fire department to see if consumer fireworks are allowed in the community. A
3 person who violates the provisions of this bill is liable for any bodily injury or property
4 damage that results and cannot use certain civil defenses. A violation of the provisions of
5 this bill may result in the seizure of and suspension of a license to sell consumer
6 fireworks and is a Class E crime.