

MAINE STATE LEGISLATURE

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Date: 6/8/11

Report A

L.D. 83
(Filing No. H-582)

CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 71, L.D. 83, Bill, "An Act To Legalize the Sale, Possession and Use of Fireworks"

Amend the bill by striking out everything after the title and before the summary and inserting the following:

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

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

1-A. Consumer fireworks. "Consumer fireworks" has the same meaning as in 27 Code of Federal Regulations, Section 555.11 or subsequent provision, but includes only products that are tested and certified by a 3rd-party testing laboratory as conforming with United States Consumer Product Safety Commission standards, in accordance with 15 United States Code, Chapter 47. "Consumer fireworks" does not include the following products:

- A. Missile-type rockets, as defined by the State Fire Marshal by rule;
- B. Helicopters and aerial spinners, as defined by the State Fire Marshal by rule; and
- C. Sky rockets and bottle rockets. For purposes of this paragraph, "sky rockets and bottle rockets" means cylindrical tubes containing not more than 20 grams of chemical composition, as defined by the State Fire Marshal by rule, with a wooden stick attached for guidance and stability that rise into the air upon ignition and that may produce a burst of color or sound at or near the height of flight.

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

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

Sec. 3. 8 MRSA §221-A, sub-§4, as amended by PL 2011, c. 202, §1, is further amended to read:

4. Fireworks. "Fireworks" means any:

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- 1 A. Combustible or explosive composition or substance;
- 2 B. Combination of explosive compositions or substances;
- 3 C. Other article that was prepared for the purpose of producing a visible or audible
- 4 effect by combustion, explosion, deflagration or detonation, including blank
- 5 cartridges or toy cannons in which explosives are used, the type of balloon that
- 6 requires fire underneath to propel it, firecrackers, torpedoes, skyrockets, roman
- 7 candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents and other
- 8 fireworks of like construction;
- 9 D. Fireworks containing any explosive or flammable compound; or
- 10 E. Tablets or other device containing any explosive substance or flammable
- 11 compound.

12 The term "fireworks" does not include consumer fireworks or toy pistols, toy canes, toy

13 guns or other devices in which paper caps or plastic caps containing 25/100 grains or less

14 of explosive compound are used if they are constructed so that the hand can not come in

15 contact with the cap when in place for the explosion, toy pistol paper caps or plastic caps

16 that contain less than 20/100 grains of explosive mixture, sparklers that do not contain

17 magnesium chlorates or perchlorates or signal, antique or replica cannons if no projectile

18 is fired.

19 **Sec. 4. 8 MRSA §223, sub-§1**, as amended by PL 2003, c. 452, Pt. C, §3 and

20 affected by Pt. X, §2, is further amended to read:

21 **1. Sale of fireworks prohibited.** A Except for the sale of consumer fireworks under

22 section 223-A, a person may not sell, possess with the intent to sell or offer for sale

23 fireworks.

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

25 **§223-A. Sale of consumer fireworks**

26 **1. Sale of consumer fireworks.** A person may not sell consumer fireworks unless

27 that person is 21 years of age or older and possesses:

- 28 A. A federal permit to sell fireworks under 18 United States Code, Section 843;
- 29 B. A license under subsection 3; and
- 30 C. A municipal permit if required under subsection 2.

31 **2. Municipalities.** The legislative body of a municipality may adopt an ordinance to

32 prohibit or restrict the sale or use of consumer fireworks within the municipality.

33 Municipalities that prohibit or restrict the sale or use of consumer fireworks shall provide

34 to the Office of the State Fire Marshal a copy of the relevant restriction or prohibition

35 within 60 days of adoption. A municipality may require that a person obtain a municipal

36 permit for selling consumer fireworks within the municipality. A municipality that

37 chooses to issue municipal permits under this subsection shall notify the Office of the

38 State Fire Marshal at least 60 days prior to the initiation of its permitting program for the

39 sale of consumer fireworks. A municipal permit may not be issued unless:

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

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- 1 B. The applicant applies for a permit under this subsection on a form prescribed by
- 2 the commissioner;
- 3 C. The applicant possesses the federal permit required under subsection 1, paragraph
- 4 A;
- 5 D. The applicant complies with the provisions of subsection 4; and
- 6 E. The application is approved by the municipality's police chief, fire chief and code
- 7 enforcement officer if those positions exist.

8 A municipality may require a reasonable fee for a permit issued under this subsection. A
9 person holding a permit issued by a municipality under this subsection may not sell
10 consumer fireworks unless the person satisfies all the requirements of subsection 1.

11 **3. State license.** The commissioner may issue a license to sell consumer fireworks
12 to an applicant who:

- 13 A. Is 21 years of age or older;
- 14 B. Possesses the permits required under subsection 1, paragraphs A and C;
- 15 C. Complies with the provisions of subsection 4; and
- 16 D. Has not been convicted of an offense or violated a state, federal or municipal law,
- 17 rule or regulation involving fireworks or explosives within the 2 years prior to the
- 18 application.

19 The commissioner shall charge a fee of \$1,500 for a license under this subsection. The
20 term of a license is one year. A separate license is required for each location at which an
21 applicant seeks to sell consumer fireworks. Fees collected under this subsection must be
22 deposited in a nonlapsing account of the Office of the State Fire Marshal to be used for
23 the purpose of enforcing this section.

24 **4. Storage and handling.** A person authorized to sell consumer fireworks under
25 subsection 1 may store and sell the fireworks only in a permanent, fixed, stand-alone
26 building dedicated solely to the storage and sale of consumer fireworks in accordance
27 with this subsection.

28 A. The building must be constructed, maintained and operated, and all consumer
29 fireworks must be stored, in compliance with the requirements of National Fire
30 Protection Association Standard 1124, as adopted by the Office of the State Fire
31 Marshal, relevant building codes, zoning ordinances and other municipal ordinances.

32 B. The building may not be less than 60 feet from another permanent building and
33 may not be less than 300 feet from a structure at which gasoline, propane or other
34 flammable material is sold or dispensed.

35 C. Cigarettes, tobacco products or lighters or other flame-producing devices may not
36 be permitted in the building.

37 D. A person under 21 years of age may not be admitted to the building unless
38 accompanied by a parent or guardian.

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1 E. Notwithstanding paragraph D, a person at least 18 years of age may handle and
2 sell consumer fireworks if the person is under the direct supervision of a person 21
3 years of age or older.

4 5. Insurance. A person authorized to sell consumer fireworks under subsection 1
5 shall at all times maintain public liability and product liability insurance with minimum
6 coverage limits of \$2,000,000 to cover the losses, damages or injuries that might ensue to
7 persons or property as a result of the person selling consumer fireworks.

8 6. Advertising. A person may not advertise the sale of consumer fireworks in a way
9 that is misleading about the conditions under which consumer fireworks may be
10 purchased or used or about the requirements of this section. An advertisement for the
11 sale of consumer fireworks must contain the words "Check with your local fire
12 department to see if consumer fireworks are allowed in your community" in a
13 conspicuous location and in a consistent font as approved by the commissioner.

14 7. Civil liability. A person who violates the provisions of this section is liable in a
15 civil action for damages for bodily injury or property damage resulting from violation,
16 and the defenses under Title 14, section 156 or a defense based on assumption of risk
17 may not be used by the person.

18 8. Restrictions on use of consumer fireworks. The use of consumer fireworks is
19 governed by this subsection.

20 A. Consumer fireworks may be used between the hours of 9:00 a.m. and 10:00 p.m.,
21 except that on the following dates they may be used between the hours of 9:00 a.m.
22 and 12:30 a.m. the following day:

- 23 (1) July 4th;
- 24 (2) December 31st; and
- 25 (3) The weekends immediately before and after July 4th and December 31st.

26 B. A person may use consumer fireworks only on that person's property or on the
27 property of a person who has consented to the use of consumer fireworks on that
28 property.

29 A person who violates this subsection commits a civil violation for which a fine of not
30 less than \$50 and not more than \$500, plus court costs, may be adjudged for any one
31 offense.

32 9. Enforcement against licensees. The commissioner, a state law enforcement
33 officer, a municipal law enforcement officer, a code enforcement officer or a fire safety
34 official may petition the Superior Court or District Court to seize or remove at the
35 expense of a licensee consumer fireworks sold, offered for sale, stored, possessed or used
36 in violation of this section. The commissioner may immediately suspend a license
37 granted under subsection 3 for a violation of this section. A person whose license is
38 suspended under this subsection must receive a hearing within 10 days of the suspension
39 under Title 5, chapter 375, subchapter 4. A person whose license is suspended under this
40 subsection may not receive a license under subsection 3 for a period of at least one year
41 from the date of suspension.

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10. Disclosures to customers. A person authorized to sell consumer fireworks shall provide to the purchaser at the point of sale written guidelines describing the safe and proper use of consumer fireworks. The guidelines must also include the following statements in a conspicuous location: "MAINE LAW EXPRESSLY PROHIBITS PERSONS UNDER 21 YEARS OF AGE FROM PURCHASING, POSSESSING OR USING CONSUMER FIREWORKS" and "FURNISHING CONSUMER FIREWORKS TO PERSONS UNDER 21 YEARS OF AGE IS A CRIMINAL OFFENSE IN MAINE." Such guidelines must be published or approved by the commissioner prior to distribution.

11. Prohibited acts. This subsection governs prohibited acts.

A. A person may not sell consumer fireworks within the State unless that person holds a valid license or is an employee or agent of a person that holds a valid license.

B. A person licensed to sell consumer fireworks under this chapter may not sell consumer fireworks to a person under 21 years of age or who appears to be under the influence of alcohol or drugs.

C. Except as specifically allowed under subsection 4, paragraph E, a person may not knowingly:

(1) Procure, or in any way aid or assist in procuring, furnish, give, sell or deliver consumer fireworks for or to a person under 21 years of age; or

(2) Allow a person under 21 years of age under that person's control or in a place under that person's control to possess or use consumer fireworks.

D. A person under 21 years of age may not purchase, use or possess consumer fireworks within the State or present to a person licensed to sell consumer fireworks any evidence of age that is false, fraudulent or not actually the person's own for the purpose of purchasing consumer fireworks.

It is an affirmative defense to prosecution for a violation of paragraph B or C that the licensee sold consumer fireworks to a person under 21 years of age in reasonable reliance upon fraudulent proof of age presented by the purchaser.

12. Violations. The following penalties apply to violations of subsection 11.

A. A person who violates subsection 11, paragraph A, B or C commits a Class D crime. If the violation involves furnishing consumer fireworks to a minor, a fine of not less than \$500 must be imposed in addition to any term of imprisonment the court may impose. If a person violates subsection 11, paragraph A, B or C after having been convicted of violating the same paragraph one or more times within the previous 6-year period, a fine of not less than \$1,000 must be imposed in addition to any term of imprisonment the court may impose.

B. A person who violates subsection 11, paragraph D commits a civil violation for which a fine of not less than \$200 and not more than \$400 must be imposed. If the person has been previously convicted of violating subsection 11, paragraph D one or more times, a fine of not less than \$300 and not more than \$600 must be imposed.

Fines collected under this subsection must be deposited in a nonlapsing account of the Office of the State Fire Marshal to be used for the purpose of enforcing this section.

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1 13. Annual report to the Legislature. Beginning in 2013, the Office of the State
2 Fire Marshal shall submit to the joint standing committee of the Legislature having
3 jurisdiction over criminal justice and public safety matters a written report regarding the
4 sale and use of consumer fireworks in this State. The report must, at a minimum, include
5 information on the issuance and oversight of licenses to sell consumer fireworks, reported
6 consumer fireworks-related injuries, reported consumer fireworks-related fires or other
7 property damage and municipal restrictions or prohibitions on the sale or use of consumer
8 fireworks. The report must be submitted not later than March 1st each year.

9 **Sec. 6. 8 MRSA §236**, as enacted by PL 1999, c. 671, §12, is repealed and the
10 following enacted in its place:

11 **§236. Adoption of rules**

12 **1. Routine technical rules.** The commissioner may adopt rules concerning the sale,
13 use, storage, transportation and display of consumer fireworks, fireworks and special
14 effect pyrotechnics and to carry out the purposes of this chapter. Rules adopted pursuant
15 to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter
16 2-A.

17 **2. Major substantive rules.** After December 31, 2013, the commissioner may adopt
18 rules governing the reporting of consumer fireworks-related injuries by health care
19 providers. Rules adopted pursuant to this subsection are major substantive rules pursuant
20 to Title 5, chapter 375, subchapter 2-A.

21 **Sec. 7. Method for reporting data regarding consumer fireworks-related**
22 **injuries.** The Office of the State Fire Marshal shall work with the statewide associations
23 representing hospitals and physicians to develop a method for health care providers to
24 collect and report voluntarily to the Office of the State Fire Marshal data regarding
25 injuries related to consumer fireworks as defined in the Maine Revised Statutes, Title 8,
26 section 221-A. This data may not include personally identifying information on persons
27 treated, but may include information on the age of the person treated, the type and
28 severity of the injury and, if known, the type of consumer firework involved in the injury.

29 **Sec. 8. Appropriations and allocations.** The following appropriations and
30 allocations are made.

31 **PUBLIC SAFETY, DEPARTMENT OF**
32 **Fire Marshal - Office of 0327**

33 Initiative: Provides appropriation and allocation for 2 Public Safety Inspector II positions
34 and related costs to inspect entities licensed to sell consumer fireworks.

35	GENERAL FUND	2011-12	2012-13
36	Personal Services	\$121,374	\$129,518
37	All Other	\$16,200	\$16,200
38	Capital Expenditures	\$50,000	\$0
39			
40	GENERAL FUND TOTAL	\$187,574	\$145,718

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COMMITTEE AMENDMENT "A" to H.P. 71, L.D. 83

1	OTHER SPECIAL REVENUE FUNDS	2011-12	2012-13
2	POSITIONS - LEGISLATIVE COUNT	2,000	2,000
3	Personal Services	\$15,000	\$15,000
4			
5	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$15,000</u>	<u>\$15,000</u>
6			

SUMMARY

This amendment makes the following changes to the bill.

- 9 1. It eliminates the emergency preamble and emergency clause.
- 10 2. It amends the definition of "consumer fireworks" to include only products tested
11 and certified by a 3rd-party testing laboratory.
- 12 3. It excludes missile-type rockets, helicopters and aerial spinners and sky rockets
13 and bottle rockets from the definition of "consumer fireworks."
- 14 4. It removes "allow" and "or possession" from the provision that states a
15 municipality may adopt an ordinance to allow or prohibit the sale, use or possession of
16 consumer fireworks, thereby requiring municipalities that want to prohibit or restrict the
17 sale or use of consumer fireworks in the municipality to adopt an ordinance.
18 Municipalities that adopt such ordinances must provide the Office of the State Fire
19 Marshal with a copy of the restriction or prohibition within 60 days. Possession of
20 consumer fireworks is otherwise allowed in all municipalities.
- 21 5. It provides that a municipality may require that a person obtain a municipal permit
22 for selling consumer fireworks within the municipality. A municipality that chooses to
23 issue municipal permits must notify the Office of the State Fire Marshal prior to initiating
24 its permitting program.
- 25 6. It provides that where municipalities do not adopt an ordinance to restrict or
26 prohibit the sale of consumer fireworks and do not choose to issue municipal permits for
27 the sale of consumer fireworks, the sale of consumer fireworks is allowed in accordance
28 with the Maine Revised Statutes, Title 8, section 223-A. A municipal permit is not
29 required in this circumstance.
- 30 7. It provides that a state license is valid for one year, costs \$1,500, and funds
31 enforcement through the Office of the State Fire Marshal. A separate license is required
32 for each location at which an applicant seeks to sell fireworks.
- 33 8. It requires that consumer fireworks be sold only in a permanent, fixed, stand-alone
34 building dedicated solely to the sale of consumer fireworks and provides specific
35 requirements for the building.
- 36 9. It requires a person authorized to sell consumer fireworks to maintain public
37 liability and product liability insurance with minimum coverage limits of \$2,000,000.
- 38 10. It requires advertising to contain the words "Check with your local fire
39 department to see if consumer fireworks are allowed in your community" in a
40 conspicuous location and in a consistent font as approved by the commissioner.

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- 1 11. It restricts the use of consumer fireworks to between the hours of 9:00 a.m. and
2 10:00 p.m. except that they may be used between the hours of 9:00 a.m. and 12:30 a.m.
3 on July 4th, December 31st and the weekends immediately before and after those dates.
- 4 12. It restricts the use of consumer fireworks to the user's property or the property of
5 a consenting person.
- 6 13. It makes a violation of restrictions on the use of consumer fireworks a civil
7 violation for which a fine of not less than \$50 and not more than \$500 plus court costs
8 may be adjudged.
- 9 14. It states that the consumer fireworks of a licensee may be seized or removed at
10 the licensee's expense if they are offered for sale, stored, possessed or used in violation of
11 Title 8, section 223-A.
- 12 15. It changes the safety information provision to disclosures to customers and
13 clarifies that a person authorized to sell consumer fireworks shall provide the consumer
14 with written guidelines describing safe and proper use of consumer fireworks. It also
15 requires specific statements that the sale of consumer fireworks to persons under 21 years
16 of age is prohibited be included in the guidelines.
- 17 16. It moves and adds language to the subsection that prohibits the sale of fireworks
18 to a person under 21 years of age or who appears to be under the influence of drugs or
19 alcohol to a subsection governing prohibited acts. It adds that it is an affirmative defense
20 to prosecution for a violation of the prohibition against selling fireworks to a person
21 under 21 years of age that the licensee sold consumer fireworks to a person under 21
22 years of age in reasonable reliance upon fraudulent proof of age presented by the
23 purchaser. It adds that a person may not sell consumer fireworks in this State unless that
24 person holds a valid license or is an employee or agent of a person that holds a valid
25 license.
- 26 17. It provides that a person who sells consumer fireworks without a valid license or
27 furnishes consumer fireworks to a person under 21 years of age or a licensee who sells
28 consumer fireworks to a person under 21 years of age or an intoxicated person commits a
29 Class D crime. A fine of \$500 or more is imposed if the violation involves furnishing
30 fireworks to a minor. A fine of \$1,000 or more is imposed for a person who has been
31 convicted of the same offense one or more times in the previous 6 years.
- 32 18. It provides that a fine of between \$200 and \$400 may be imposed on a person
33 under 21 years of age who purchases, uses or possesses consumer fireworks within the
34 State or presents to a consumer fireworks licensee false or fraudulent evidence of age for
35 the purpose of purchasing consumer fireworks.
- 36 19. It provides that the Office of the State Fire Marshal shall submit a report to the
37 joint standing committee of the Legislature having jurisdiction over criminal justice and
38 public safety matters regarding the sale and use of consumer fireworks, including
39 fireworks-related injuries and fires, by March 1st of each year beginning in 2013.
- 40 20. It provides that after December 31, 2013, the Commissioner of Public Safety
41 may adopt rules regarding consumer fireworks-related injuries reporting by health care
42 providers. These rules are major substantive rules.

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21. It requires the Office of the State Fire Marshal to work with statewide associations representing hospitals and physicians to develop a method for health care providers to collect and report voluntarily to the Office of the State Fire Marshal data regarding injuries related to consumer fireworks. Data may include information on the age of the person treated and the type and severity of the injury, as well as the type of consumer firework involved in the injury if known. Personally identifying data may not be included in the report.

FISCAL NOTE REQUIRED

(See attached)



125th MAINE LEGISLATURE

LD 83

LR 418(02)

An Act To Legalize the Sale, Possession and Use of Fireworks

Fiscal Note for Bill as Amended by Committee Amendment "A"
Committee: Criminal Justice and Public Safety
Fiscal Note Required: Yes

Fiscal Note

	FY 2011-12	FY 2012-13	Projections FY 2013-14	Projections FY 2014-15
Net Cost (Savings)				
General Fund	\$141,024	\$27,015	\$29,034	\$31,140
Appropriations/Allocations				
General Fund	\$187,574	\$145,718	\$150,111	\$154,638
Other Special Revenue Funds	\$15,000	\$15,000	\$15,000	\$15,000
Revenue				
General Fund	\$46,550	\$118,703	\$121,077	\$123,498
Other Special Revenue Funds	\$17,450	\$21,248	\$21,372	\$21,500

Correctional and Judicial Impact Statements

- Eliminates Class B, C, D and E crimes.
- Establishes new Class D crimes and civil violations.
- Insignificant impact on General Fund fine revenue.
- The collection of additional fines may also increase Other Special Revenue Funds revenue by minor amounts.

Fiscal Detail and Notes

This bill removes the prohibition on the sale and use of consumer fireworks subject to certain restrictions in the bill as amended, increasing General Fund revenue and increasing revenue sharing as a result of the additional sales tax collections. Other Special Revenue Funds revenue to the Department of Public Safety from the issuance of licenses to sell consumer fireworks is estimated to be \$15,000 in fiscal year 2011-12 and thereafter. This estimate assumes issuance of 10 licenses in fiscal year 2011-12 and thereafter. The bill includes an Other Special Revenue Funds allocation in the amount of this estimated revenue for two Public Safety Inspector II positions and related costs to the Department of Public Safety to inspect entities licensed to sell consumer fireworks. Since the estimated revenue from licenses does not cover the cost of the positions and related costs, the bill includes a General Fund appropriation to the Department of Public Safety of \$187,574 in fiscal year 2011-12 and \$145,718 in fiscal year 2012-13.