

MAINE STATE LEGISLATURE

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Date: 6/8/11

Report C

L.D. 83
(Filing No. H-583)

CRIMINAL JUSTICE AND PUBLIC SAFETY

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

COMMITTEE AMENDMENT "B" 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:

- 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;

- 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.

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:

27 (1) On that person's property if the use of consumer fireworks on that property
28 occurs at least 1/4 mile from all building structures or if the consumer fireworks
29 are fired from the shore of a lake or other large body of water and directed in
30 such manner that the falling residue from the deflagration will fall into that lake
31 or body of water;

32 (2) On the property of a person who has consented to the use of consumer
33 fireworks if the use of consumer fireworks on that property occurs at least 1/4
34 mile from all building structures or if the consumer fireworks are fired from the
35 shore of a lake or other large body of water and directed in such manner that the
36 falling residue from the deflagration will fall into that lake or body of water; or

37 (3) Under direct supervision of a local fire department.

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

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

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

19 **11. Prohibited acts.** This subsection governs prohibited acts.

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

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

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

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

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

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

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

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

39 **A.** A person who violates subsection 11, paragraph A, B or C commits a Class D
 40 crime. If the violation involves furnishing consumer fireworks to a minor, a fine of
 41 not less than \$500 must be imposed in addition to any term of imprisonment the court
 42 may impose. If a person violates subsection 11, paragraph A, B or C after having

1 been convicted of violating the same paragraph one or more times within the previous
2 6-year period, a fine of not less than \$1,000 must be imposed in addition to any term
3 of imprisonment the court may impose.

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

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

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

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

20 **§236. Adoption of rules**

21 **1. Routine technical rules.** The commissioner may adopt rules concerning the sale,
22 use, storage, transportation and display of consumer fireworks, fireworks and special
23 effect pyrotechnics and to carry out the purposes of this chapter. Rules adopted pursuant
24 to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter
25 2-A.

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

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

38 **Sec. 8. Appropriations and allocations.** The following appropriations and
39 allocations are made.

40 **PUBLIC SAFETY, DEPARTMENT OF**
41 **Fire Marshal - Office of 0327**

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

3	GENERAL FUND	2011-12	2012-13
4	Personal Services	\$121,374	\$129,518
5	All Other	\$16,200	\$16,200
6	Capital Expenditures	\$50,000	\$0
7			
8	GENERAL FUND TOTAL	\$187,574	\$145,718

9	OTHER SPECIAL REVENUE FUNDS	2011-12	2012-13
10	POSITIONS - LEGISLATIVE COUNT	2,000	2,000
11	Personal Services	\$15,000	\$15,000
12			
13	OTHER SPECIAL REVENUE FUNDS TOTAL	\$15,000	\$15,000
14			

15 SUMMARY

16 This amendment makes the following changes to the bill.

17 1. It eliminates the emergency preamble and emergency clause.

18 2. It amends the definition of "consumer fireworks" to include only products tested
19 and certified by a 3rd-party testing laboratory.

20 3. It excludes missile-type rockets, helicopters and aerial spinners and sky rockets
21 and bottle rockets from the definition of "consumer fireworks."

22 4. It removes "allow" and "or possession" from the provision that states a
23 municipality may adopt an ordinance to allow or prohibit the sale, use or possession of
24 consumer fireworks, thereby requiring municipalities that want to prohibit or restrict the
25 sale or use of consumer fireworks in the municipality to adopt an ordinance.
26 Municipalities that adopt such ordinances must provide the Office of the State Fire
27 Marshal with a copy of the restriction or prohibition within 60 days. Possession of
28 consumer fireworks is otherwise allowed in all municipalities.

29 5. It provides that a municipality may require that a person obtain a municipal permit
30 for selling consumer fireworks within the municipality. A municipality that chooses to
31 issue municipal permits must notify the Office of the State Fire Marshal prior to initiating
32 its permitting program.

33 6. It provides that where municipalities do not adopt an ordinance to restrict or
34 prohibit the sale of consumer fireworks and do not choose to issue municipal permits for
35 the sale of consumer fireworks, the sale of consumer fireworks is allowed in accordance
36 with the Maine Revised Statutes, Title 8, section 223-A. A municipal permit is not
37 required in this circumstance.

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

- 1 7. It provides that a state license is valid for one year, costs \$1,500, and funds
2 enforcement through the Office of the State Fire Marshal. A separate license is required
3 for each location at which an applicant seeks to sell fireworks.
- 4 8. It requires that consumer fireworks be sold only in a permanent, fixed, stand-alone
5 building dedicated solely to the sale of consumer fireworks and provides specific
6 requirements for the building.
- 7 9. It requires a person authorized to sell consumer fireworks to maintain public
8 liability and product liability insurance with minimum coverage limits of \$2,000,000.
- 9 10. It requires advertising to contain the words "Check with your local fire
10 department to see if consumer fireworks are allowed in your community" in a
11 conspicuous location and in a consistent font as approved by the commissioner.
- 12 11. It restricts the use of consumer fireworks to between the hours of 9:00 a.m. and
13 10:00 p.m. except that they may be used between the hours of 9:00 a.m. and 12:30 a.m.
14 on July 4th, December 31st and the weekends immediately before and after those dates.
- 15 12. It restricts the use of consumer fireworks to the user's property or the property of
16 a consenting person if the use occurs at least 1/4 mile from all building structures or the
17 fireworks are fired from the shore of a lake or other large body of water and directed in
18 such manner that the falling residue from the deflagration falls into the body of water; or
19 to use under direct supervision of a local fire department.
- 20 13. It makes a violation of restrictions on the use of consumer fireworks a civil
21 violation for which a fine of not less than \$50 and not more than \$500 plus court costs
22 may be adjudged.
- 23 14. It states that the consumer fireworks of a licensee may be seized or removed at
24 the licensee's expense if they are offered for sale, stored, possessed or used in violation of
25 Title 8, section 223-A.
- 26 15. It changes the safety information provision to disclosures to customers and
27 clarifies that a person authorized to sell consumer fireworks shall provide the consumer
28 with written guidelines describing safe and proper use of consumer fireworks. It also
29 requires specific statements that the sale of consumer fireworks to persons under 21 years
30 of age is prohibited be included in the guidelines.
- 31 16. It moves and adds language to the subsection that prohibits the sale of fireworks
32 to a person under 21 years of age or who appears to be under the influence of drugs or
33 alcohol to a subsection governing prohibited acts. It adds that it is an affirmative defense
34 to prosecution for a violation of the prohibition against selling fireworks to a person
35 under 21 years of age that the licensee sold consumer fireworks to a person under 21
36 years of age in reasonable reliance upon fraudulent proof of age presented by the
37 purchaser. It adds that a person may not sell consumer fireworks in this State unless that
38 person holds a valid license or is an employee or agent of a person that holds a valid
39 license.
- 40 17. It provides that a person who sells consumer fireworks without a valid license or
41 furnishes consumer fireworks to a person under 21 years of age or a licensee who sells
42 consumer fireworks to a person under 21 years of age or an intoxicated person commits a
43 Class D crime. A fine of \$500 or more is imposed if the violation involves furnishing

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1 fireworks to a minor. A fine of \$1,000 or more is imposed for a person who has been
2 convicted of the same offense one or more times in the previous 6 years.

3 18. It provides that a fine of between \$200 and \$400 may be imposed on a person
4 under 21 years of age who purchases, uses or possesses consumer fireworks within the
5 State or presents to a consumer fireworks licensee false or fraudulent evidence of age for
6 the purpose of purchasing consumer fireworks.

7 19. It provides that the Office of the State Fire Marshal shall submit a report to the
8 joint standing committee of the Legislature having jurisdiction over criminal justice and
9 public safety matters regarding the sale and use of consumer fireworks, including
10 fireworks-related injuries and fires, by March 1st of each year beginning in 2013.

11 20. It provides that after December 31, 2013, the Commissioner of Public Safety
12 may adopt rules regarding consumer fireworks-related injuries reporting by health care
13 providers. These rules are major substantive rules.

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

21 **FISCAL NOTE REQUIRED**

22 (See attached)

COMMITTEE AMENDMENT



125th MAINE LEGISLATURE

LD 83

LR 418(03)

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

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

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.