

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 1, 2010 to June 29, 2011**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 28, 2011**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**Augusta, Maine**  
**2011**

**Sec. 10. Appropriations and allocations.**  
The following appropriations and allocations are made.

**EDUCATION, DEPARTMENT OF  
Charter School Program N083**

Initiative: Provides base allocations beginning in fiscal year 2012-13 for the public charter schools program.

FEDERAL EXPENDITURES FUND	2011-12	2012-13
All Other	\$0	\$500
FEDERAL EXPENDITURES FUND TOTAL	\$0	\$500

See title page for effective date.

**CHAPTER 415**

**H.P. 1143 - L.D. 1557**

**An Act To Raise the Speed  
Limit on Interstate 95 between  
the City of Old Town and the  
Town of Houlton**

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

**Sec. 1. 29-A MRSA §2052, sub-§6,** as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

**6. Ways with speed limit of 65 or more miles per hour.** An operator driving on a limited-access way with a speed limit of 65 or more miles per hour is restricted in ordinary operation to the right-hand lane and may use adjacent lanes for overtaking and passing another vehicle, but must return to the right-hand lane at the earliest opportunity. This requirement does not apply to an authorized emergency vehicle, or to a vehicle otherwise directed by posted signs, a law enforcement officer or a highway maintenance crew.

**Sec. 2. 29-A MRSA §2073, sub-§1, ¶C,** as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

C. Make an adjustment of maximum rates of speed. An adjustment under this paragraph is exempt from the provisions of the Maine Administrative Procedure Act.

The commissioner may not set maximums that exceed 60 miles per hour or, on the interstate system or other divided controlled-access highways, 65 miles per hour or 75 miles per hour on the Interstate Highway System from the City of Old Town to the Town of Houlton.

The commissioner may not set maximums for the Maine Turnpike.

**Sec. 3. 29-A MRSA §2074, sub-§3-A,** as enacted by PL 1995, c. 584, Pt. B, §9, is amended to read:

**3-A. Minimum fine.** A person who operates a motor vehicle on the Maine Turnpike or the Interstate Highway System at a speed that exceeds the posted speed of 65 miles per hour or of 75 miles per hour on the Interstate Highway System from the City of Old Town to the Town of Houlton by less than 30 miles per hour commits a traffic infraction punishable by a fine of not less than \$50.

See title page for effective date.

**CHAPTER 416**

**H.P. 71 - L.D. 83**

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

**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:

- 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 consumer fireworks or 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, sparklers that do not contain magnesium chlorates or perchlorates or signal, antique or replica cannons if no projectile is fired.

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

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

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

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

**1. Sale of consumer fireworks.** A person may not sell consumer fireworks unless that person is 21 years of age or older and possesses:

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

**2. Municipalities.** The legislative body of a municipality may adopt an ordinance to prohibit or restrict the sale or use of consumer fireworks within the municipality. Municipalities that prohibit or restrict the sale or use of consumer fireworks shall provide to the Office of the State Fire Marshal a copy of the relevant restriction or prohibition within 60 days of adoption. A municipality may require that a person obtain a municipal permit for selling consumer fireworks within the municipality. A municipality that chooses to issue municipal permits under this subsection shall notify the Office of the State Fire Marshal at least 60 days prior to the initiation of its permitting program for the sale of consumer fireworks. A municipal permit may not be issued unless:

- A. The applicant is 21 years of age or older;
- B. The applicant applies for a permit under this subsection on a form prescribed by the commissioner;
- C. The applicant possesses the federal permit required under subsection 1, paragraph A;
- D. The applicant complies with the provisions of subsection 4; and
- E. The application is approved by the municipality's police chief, fire chief and code enforcement officer if those positions exist.

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

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

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

The commissioner shall charge a fee of \$5,000 for the initial license issued to an applicant and \$1,500 for each annual license renewal. The term of a license is one year. A separate license is required for each location at which an applicant seeks to sell consumer fireworks. Fees 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.

**4. Storage and handling.** A person authorized to sell consumer fireworks under subsection 1 may

store and sell the fireworks only in a permanent, fixed, stand-alone building dedicated solely to the storage and sale of consumer fireworks in accordance with this subsection.

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

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

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

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

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

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

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

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

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

A. Consumer fireworks may be used between the hours of 9:00 a.m. and 10:00 p.m., except that on

the following dates they may be used between the hours of 9:00 a.m. and 12:30 a.m. the following day:

(1) July 4th;

(2) December 31st; and

(3) The weekends immediately before and after July 4th and December 31st.

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

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

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

**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.

**13. Annual report to the Legislature.** Beginning in 2013, the Office of the State Fire Marshal shall submit to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters a written report regarding the sale and use of consumer fireworks in this State. The re-

port must, at a minimum, include information on the issuance and oversight of licenses to sell consumer fireworks, reported consumer fireworks-related injuries, reported consumer fireworks-related fires or other property damage and municipal restrictions or prohibitions on the sale or use of consumer fireworks. The report must be submitted not later than March 1st each year.

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

**§236. Adoption of rules**

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

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

**Sec. 7. Method for reporting data regarding consumer fireworks-related injuries.** The Office of the State Fire Marshal shall work with the 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 as defined in the Maine Revised Statutes, Title 8, section 221-A. This data may not include personally identifying information on persons treated, but may include information on the age of the person treated, the type and severity of the injury and, if known, the type of consumer firework involved in the injury.

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

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

Initiative: Provides appropriations and allocations for one Public Safety Inspector II position and one Office Associate II position and related costs to inspect entities licensed to sell consumer fireworks.

GENERAL FUND	2011-12	2012-13
Personal Services	\$12,708	\$93,361
All Other	\$15,100	\$22,700
Capital Expenditures	\$25,000	\$0

GENERAL FUND TOTAL	\$52,808	\$116,061
<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2011-12</b>	<b>2012-13</b>
POSITIONS - LEGISLATIVE COUNT	2,000	2,000
Personal Services	\$50,000	\$40,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$50,000	\$40,000

**Sec. 9. Effective date.** This Act takes effect January 1, 2012.

Effective January 1, 2012.

**CHAPTER 417**

**H.P. 1044 - L.D. 1418**

**An Act To Allow Table Games at a Facility Licensed To Operate Slot Machines on January 1, 2011**

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

**Sec. 1. 8 MRSA §1001, sub-§5-A**, as enacted by IB 2009, c. 2, §2, is amended to read:

**5-A. Casino.** "Casino" means a facility ~~in Oxford County, other than a commercial track licensed in accordance with this chapter,~~ where gambling activities occur, including, but not limited to, the operation of slot machines and table games.

**Sec. 2. 8 MRSA §1011, sub-§2-A**, as enacted by IB 2009, c. 2, §29, is amended to read:

**2-A. Persons eligible for casino operator license.** The board may accept an application for a casino operator license to operate slot machines and table games at a casino from a commercial track licensed to operate a slot machine facility on January 1, 2011 for the same location where slot machines were operated on January 1, 2011 and any person if that person and casino satisfy the following criteria:

A. The casino is located on a parcel of land in Oxford County that is:

- (1) No less than 50 acres in size; and
- (2) Located not more than:
  - (a) Thirty miles from a Level I or Level II trauma center verified as such by the American College of Surgeons or successor organization;

- (b) Fifteen miles from the main office of a county sheriff;
- (c) Twenty-five miles from the main office of a state police field troop;
- (d) Thirty miles from an interchange of the interstate highway system;
- (e) Ten miles from a fire station;
- (f) Ten miles from a facility at which harness racing was conducted pursuant to a license from the State Harness Racing Commission for the 2009 racing year; and
- (g) One-half mile from a state highway as defined in Title 23, section 1903, subsection 15.

For the purposes of this paragraph, distances are determined by measuring along the most commonly used roadway, as determined by the Department of Transportation;

B. The criteria adopted through rulemaking by the board regarding the licensing of the operation of slot machines and table games;

C. The operation of a casino is approved by the voters of the municipality in which the casino to be licensed is located in a referendum election or by a vote of the municipal officers in the municipality in which the casino is to be licensed and located held at any time after October 1, 2009 and on or before December 31, 2011;

D. The person owns a facility that is within 10 miles of the proposed casino at which harness racing was conducted pursuant to a license from the State Harness Racing Commission for the 2009 racing year; and

E. The slot machines and table games are located and operated in the casino.

**Sec. 3. 8 MRSA §1011, sub-§3**, as amended by IB 2009, c. 2, §29, is further amended to read:

**3. Requirements for license; continued commercial track licensure.** The board may not issue a license to operate a slot machine facility or a casino to any person unless that person demonstrates compliance with the qualifications set forth in sections 1016 and 1019. To maintain eligibility for a slot machine operator license or a casino operator license under subsection 2-A issued to a commercial track with slot machines, a licensed commercial track must at all times maintain a license to operate a commercial track; without lapse, suspension or revocation, ~~and a licensed commercial track is not eligible for a license to operate table games but may apply for a license to operate slot machines as long as the licensed commercial track satisfies the requirements of this chapter.~~