

MAINE STATE LEGISLATURE

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STATE OF MAINE
125TH LEGISLATURE
FIRST REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed

**JOINT STANDING COMMITTEE ON CRIMINAL JUSTICE
AND PUBLIC SAFETY**

July 2011

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ALYSON MAYO, LEGISLATIVE ANALYST
OFFICE OF POLICY AND LEGAL ANALYSIS
13 STATE HOUSE STATION
AUGUSTA, ME 04333
(207) 287-1670

STATE OF MAINE
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LEGISLATIVE DIGEST OF BILL SUMMARIES AND
ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all LDs and adopted amendments and all laws enacted or finally passed during the First Regular Session of the 125th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. The appendices include a summary of relevant session statistics, an index of all bills by LD number and an index of enacted laws by law type and chapter number.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

CARRIED OVER carried over to a subsequent session of the Legislature
CON RES XXX..... chapter # of constitutional resolution passed by both houses
CONF CMTE UNABLE TO AGREE..... Committee of Conference unable to agree; legislation died
DIED BETWEEN HOUSES..... House & Senate disagreed; legislation died
DIED IN CONCURRENCE..... defeated in each house, but on different motions; legislation died
DIED ON ADJOURNMENT..... action incomplete when session ended; legislation died
EMERGENCY..... enacted law takes effect sooner than 90 days after session adjournment
FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE emergency failed to receive required 2/3 vote
FAILED, ENACTMENT or FINAL PASSAGE..... failed to receive final majority vote
FAILED, MANDATE ENACTMENT legislation proposing local mandate failed required 2/3 vote
HELD BY GOVERNOR..... Governor has not signed; final disposition to be determined at subsequent session
LEAVE TO WITHDRAW..... sponsor's request to withdraw legislation granted
NOT PROPERLY BEFORE THE BODY..... ruled out of order by the presiding officer; legislation died
INDEF PP..... indefinitely postponed; legislation died
ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X... ought-not-to-pass report accepted; legislation died
P&S XXX..... chapter # of enacted private & special law
PUBLIC XXX..... chapter # of enacted public Law
RESOLVE XXX..... chapter # of finally passed resolve
VETO SUSTAINED..... Legislature failed to override Governor's veto

The effective date for non-emergency legislation enacted in the First Regular Session of the 125th Legislature is September 28, 2011. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

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This amendment was not adopted.

Committee Amendment "B" (H-419)

This amendment is the minority report. Instead of making possession of any amount of cocaine or cocaine base at least a Class C crime as the bill does, the amendment specifies that possession of 7 to 14 grams of cocaine and 2 to 4 grams of cocaine in the form of cocaine base is a Class C crime.

The amendment adds an appropriations and allocations section.

This amendment was not adopted.

LD 82 An Act To Amend the Laws Governing County Jail Budgeting for York County PUBLIC 431

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MOULTON COURTNEY	OTP-AM	H-289

This bill amends the tax assessment that may be collected annually by counties for the provision of correctional services, excluding debt service, so that York County's cap is reduced by \$280,433. The changes take effect on July 1, 2011 to coincide with the fiscal year.

Committee Amendment "A" (H-289)

This amendment strikes the emergency preamble and emergency clause and adds an effective date of July 1, 2013.

Enacted Law Summary

Public Law 2011, chapter 431 amends the tax assessment that may be collected annually by counties for the provision of correctional services, excluding debt service, so that York County's cap is reduced by \$280,433. The changes take effect on July 1, 2013.

LD 83 An Act To Legalize the Sale, Possession and Use of Fireworks PUBLIC 416

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
DAMON THIBODEAU	OTP-AM A ONTP B OTP-AM C	H-582 S-326 MASON

This bill removes the prohibition on the sale and use of consumer fireworks and establishes a licensing protocol for sellers of consumer fireworks. A seller of consumer fireworks must have a federal and state license and a permit from a municipality. A municipality may adopt an ordinance that allows or prohibits the sale, use or possession of consumer fireworks. A seller of consumer fireworks must be 21 years of age or older and may not have been convicted or found in violation of any state, federal or municipal law, rule or regulation concerning fireworks or explosives. Consumer fireworks must be stored in a building exclusively used for the storage and sale of fireworks that has met all applicable fire safety and building codes and zoning and municipal ordinances. The Commissioner

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of Public Safety may adopt rules relative to the use, storage, transportation and display of consumer fireworks. A seller of consumer fireworks may not use misleading advertising and must warn consumers in any advertising to check with the local fire department to see if consumer fireworks are allowed in the community. A seller of consumer fireworks must provide a safety pamphlet to each purchaser of consumer fireworks. A person who violates the provisions of this bill is liable for any bodily injury or property damage that results and cannot use certain civil defenses. A violation of the provisions of this bill may result in the seizure of the consumer fireworks and suspension of a license to sell consumer fireworks and is a Class E crime.

Committee Amendment "A" (H-582)

This amendment makes the following changes to the bill.

1. It eliminates the emergency preamble and emergency clause.
2. It amends the definition of "consumer fireworks" to include only products tested and certified by a 3rd-party testing laboratory and excludes missile-type rockets, helicopters and aerial spinners and sky rockets and bottle rockets from the definition of "consumer fireworks."
3. It requires municipalities that want to prohibit or restrict the sale or use of consumer fireworks in the municipality to adopt an ordinance and provide the Office of the State Fire Marshal with a copy of the restriction or prohibition within 60 days. The sale and use of consumer fireworks is otherwise allowed in all municipalities. Possession of consumer fireworks is allowed in all municipalities and cannot be changed by ordinance.
4. It provides that 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 must notify the Office of the State Fire Marshal prior to initiating its permitting program.
5. It provides that a state license is valid for one year, costs \$1,500, and funds enforcement through the Office of the State Fire Marshal. A separate license is required for each location at which an applicant seeks to sell fireworks.
6. It requires that consumer fireworks be sold only in a permanent, fixed, stand-alone building dedicated solely to the sale of consumer fireworks and provides specific requirements for the building.
7. It requires a person authorized to sell consumer fireworks to maintain public liability and product liability insurance with minimum coverage limits of \$2,000,000.
8. It requires advertising to 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.
9. It restricts the use of consumer fireworks to between the hours of 9:00 a.m. and 10:00 p.m. except that they may be used between the hours of 9:00 a.m. and 12:30 a.m. on July 4th, December 31st and the weekends immediately before and after those dates.
10. It restricts the use of consumer fireworks to the user's property or the property of a consenting person.
11. It makes a violation of restrictions on the use of consumer fireworks a civil violation for which a fine of not less than \$50 and not more than \$500 plus court costs may be adjudged.
12. It states that the consumer fireworks of a licensee may be seized or removed at the licensee's expense if they are offered for sale, stored, possessed or used in violation of Title 8, section 223-A.
13. It clarifies that a person authorized to sell consumer fireworks shall provide the consumer with written guidelines describing safe and proper use of consumer fireworks. It also requires specific statements that the sale of

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consumer fireworks to persons under 21 years of age is prohibited be included in the guidelines.

14. It adds that it is an affirmative defense to prosecution for a violation of the prohibition against selling fireworks to a person under 21 years of age 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. It adds that a person may not sell consumer fireworks in this State unless that person holds a valid license or is an employee or agent of a person that holds a valid license.

15. It provides that a person who sells consumer fireworks without a valid license or furnishes consumer fireworks to a person under 21 years of age or a licensee who sells consumer fireworks to a person under 21 years of age or an intoxicated person commits a Class D crime. A fine of \$500 or more is imposed if the violation involves furnishing fireworks to a minor. A fine of \$1,000 or more is imposed for a person who has been convicted of the same offense one or more times in the previous 6 years.

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

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

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

19. 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.

Committee Amendment "B" (H-583)

This amendment contains the same language as Committee Amendment "A" and adds that the use of consumer fireworks is restricted to the user's property or the property of a consenting person if the use occurs at least 1/4 mile from all building structures or the fireworks are fired from the shore of a lake or other large body of water and directed in such manner that the falling residue from the deflagration falls into the body of water, or to use under direct supervision of a local fire department. This amendment was not adopted.

Senate Amendment "A" To Committee Amendment "A" (S-326)

This amendment imposes an initial licensing fee of \$5,000, which then drops to \$1,500 for annual renewal. This amendment also delays the effective date of the legislation to January 1, 2012 and provides for one Public Safety Inspector II position and one clerical position, instead of 2 Public Safety Inspector II positions as proposed in Committee Amendment "A."

House Amendment "A" To Committee Amendment "A" (H-650)

This amendment changes the restrictions concerning the use of consumer fireworks to allow use of consumer fireworks on a user's property or the property of a consenting person if the use occurs at least 1/4 mile from all building structures or the fireworks are fired from the shore of a lake or other large body of water and directed in such manner that the falling residue from the deflagration falls into the body of water, or to allow use under direct supervision of a local fire department. This amendment to Committee Amendment "A" is the same language contained in Committee Amendment "B."

This amendment was not adopted.

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House Amendment "B" To Committee Amendment "A" (H-653)

This amendment changes the restrictions concerning the use of consumer fireworks to allow use of consumer fireworks on a user's property or the property of a consenting person if the use occurs at least 1/4 mile from all building structures or the fireworks are fired from the shore of a lake or other large body of water. House Amendment "B" contains the same language as House Amendment "A" and Committee Amendment "B," except that it removes language that requires consumer fireworks fired from the shore of a lake or other large body of water to be directed in such a manner that the falling residue from the deflagration falls into that lake or body of water. This amendment was not adopted.

Enacted Law Summary

Public Law 2011, chapter 416 does the following.

1. It defines "consumer fireworks" as only products tested and certified by a 3rd-party testing laboratory and excludes missile-type rockets, helicopters and aerial spinners and sky rockets and bottle rockets from the definition of "consumer fireworks."
2. It requires municipalities that want to prohibit or restrict the sale or use of consumer fireworks in the municipality to adopt an ordinance and provide the Office of the State Fire Marshal with a copy of the restriction or prohibition within 60 days. The sale and use of consumer fireworks is otherwise allowed in all municipalities. Possession of consumer fireworks is allowed in all municipalities and cannot be changed by ordinance.
3. It provides that 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 must notify the Office of the State Fire Marshal prior to initiating its permitting program.
4. It provides that a state license is valid for one year, costs \$5,000 the initial year and \$1,500 for annual renewal, and funds enforcement through the Office of the State Fire Marshal. A separate license is required for each location at which an applicant seeks to sell fireworks.
5. It requires that consumer fireworks be sold only in a permanent, fixed, stand-alone building dedicated solely to the sale of consumer fireworks and provides specific requirements for the building.
6. It requires a person authorized to sell consumer fireworks to maintain public liability and product liability insurance with minimum coverage limits of \$2,000,000.
7. It requires advertising to 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.
8. It restricts the use of consumer fireworks to between the hours of 9:00 a.m. and 10:00 p.m. except that they may be used between the hours of 9:00 a.m. and 12:30 a.m. on July 4th, December 31st and the weekends immediately before and after those dates.
9. It restricts the use of consumer fireworks to the user's property or the property of a consenting person.
10. It makes a violation of restrictions on the use of consumer fireworks a civil violation for which a fine of not less than \$50 and not more than \$500 plus court costs may be adjudged.
11. It states that the consumer fireworks of a licensee may be seized or removed at the licensee's expense if they are offered for sale, stored, possessed or used in violation of Title 8, section 223-A.
12. It clarifies that a person authorized to sell consumer fireworks shall provide the consumer with written

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guidelines describing safe and proper use of consumer fireworks. It also requires specific statements that the sale of consumer fireworks to persons under 21 years of age is prohibited be included in the guidelines.

13. It adds that it is an affirmative defense to prosecution for a violation of the prohibition against selling fireworks to a person under 21 years of age 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. It adds that a person may not sell consumer fireworks in this State unless that person holds a valid license or is an employee or agent of a person that holds a valid license.

14. It provides that a person who sells consumer fireworks without a valid license or furnishes consumer fireworks to a person under 21 years of age or a licensee who sells consumer fireworks to a person under 21 years of age or an intoxicated person commits a Class D crime. A fine of \$500 or more is imposed if the violation involves furnishing fireworks to a minor. A fine of \$1,000 or more is imposed for a person who has been convicted of the same offense one or more times in the previous 6 years.

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

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

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

18. 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.

19. It includes a Public Safety Inspector II position and one clerical position.

20. The effective date of the legislation to January 1, 2012.

LD 91 An Act Relating to Disorderly Conduct in the Vicinity of a Funeral

ONTP

Sponsor(s)

CELLI

Committee Report

ONTP

Amendments Adopted

This bill amends the disorderly conduct statute, Title 17-A §501-A, sub-§1, D, by adding a distance requirement to the existing provision. Specifically, the bill prohibits disorderly conduct within 1,000 feet of a funeral, burial or memorial service or within 1,000 feet of the route between locations where such ceremonies are being held. The bill also increases the classification of the crime of disorderly conduct with regard to a funeral, burial or memorial service from a Class E to a Class D crime. Other forms of disorderly conduct remain Class E crimes.