

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Allow the Sale and Use of Consumer 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.

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 enacted by PL 1999, c. 671, §2, is 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 or sparklers that do not contain magnesium chlorates or perchlorates.

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. AExcept 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 sell consumer fireworks if 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 4; and
- C. A municipal permit under subsection 3.

2. Prohibited sales. A person under subsection 1 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.

3. Municipalities. The legislative body of a municipality may adopt an ordinance to allow or prohibit the sale, use or possession of consumer fireworks within the municipality. A municipal ordinance allowing the sale of consumer fireworks must provide for the issuance of a permit to a person the municipality approves to sell consumer fireworks. A 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 complies with the provisions of subsection 1, paragraph A;
- D. The applicant complies with the provisions of subsection 5; 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 fee for a permit issued under this subsection.

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

- A. The applicant is 21 years of age or older;
- B. The applicant complies with the provisions of subsection 1, paragraphs A and C;
- C. The applicant complies with the provisions of subsection 5; and
- D. The applicant 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 \$1,500 for a license under this subsection.

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

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 size and manner required by the commissioner.

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

8. Enforcement. The commissioner, a state law enforcement officer, a municipal law enforcement officer, a code enforcement officer or a fire safety official may petition Superior Court or District Court to seize or remove at the expense of the owner 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 4 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 subsequent license under subsection 4 for a period of at least one year from the date of suspension. A violation of this section is a Class E crime.

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

§ 236. Adoption of rules

~~The commissioner shall, in accordance with the Maine Administrative Procedure Act, may adopt reasonable rules relative to the 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 section are routine technical rules pursuant to Title 5, chapter 375, subchapter H-A2-A.~~

SUMMARY

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 ordinance 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, building and zoning codes and municipal ordinances. The Commissioner 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 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 and suspension of a license to sell consumer fireworks and is a Class E crime.