



# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 83

H.P. 71

House of Representatives, January 12, 2011

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

(EMERGENCY)

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Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script, reading 'Heather J.R. Priest'.

HEATHER J.R. PRIEST  
Clerk

Presented by Representative DAMON of Bangor.  
Cosponsored by Senator THIBODEAU of Waldo and  
Representatives: BENNETT of Kennebunk, JOHNSON of Eddington, LIBBY of Waterboro,  
O'CONNOR of Berwick, PARKER of Veazie, RIOUX of Winterport, SIROCKI of  
Scarborough, WOOD of Sabattus.

1           **Emergency preamble. Whereas,** acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** this legislation needs to take effect before the 4th of July holiday and  
4 before the 90-day period expires; and

5           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
6 the meaning of the Constitution of Maine and require the following legislation as  
7 immediately necessary for the preservation of the public peace, health and safety; now,  
8 therefore,

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

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

11           **1-A. Consumer fireworks.** "Consumer fireworks" has the same meaning as in 27  
12 Code of Federal Regulations, Section 555.11 or subsequent provision.

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

14           **3-A. Fire safety official.** "Fire safety official" means a state or municipal official  
15 who has authority to enforce life and fire safety laws, statutes, ordinances, rules or  
16 regulations.

17           **Sec. 3. 8 MRSA §221-A, sub-§4,** as enacted by PL 1999, c. 671, §2, is amended  
18 to read:

19           **4. Fireworks.** "Fireworks" means any:

20           A. Combustible or explosive composition or substance;

21           B. Combination of explosive compositions or substances;

22           C. Other article that was prepared for the purpose of producing a visible or audible  
23 effect by combustion, explosion, deflagration or detonation, including blank  
24 cartridges or toy cannons in which explosives are used, the type of balloon that  
25 requires fire underneath to propel it, firecrackers, torpedoes, skyrockets, roman  
26 candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents and other  
27 fireworks of like construction;

28           D. Fireworks containing any explosive or flammable compound; or

29           E. Tablets or other device containing any explosive substance or flammable  
30 compound.

31           The term "fireworks" does not include consumer fireworks or toy pistols, toy canes, toy  
32 guns or other devices in which paper caps or plastic caps containing 25/100 grains or less  
33 of explosive compound are used if they are constructed so that the hand can not come in  
34 contact with the cap when in place for the explosion, toy pistol paper caps or plastic caps  
35 that contain less than 20/100 grains of explosive mixture or sparklers that do not contain  
36 magnesium chlorates or perchlorates.

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

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

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

7           **§223-A. Sale of consumer fireworks**

8           **1. Sale of consumer fireworks.** A person may sell consumer fireworks if that person  
9 is 21 years of age or older and possesses:

10           A. A federal permit to sell fireworks under 18 United States Code, Section 843;

11           B. A license under subsection 4; and

12           C. A municipal permit under subsection 3.

13           **2. Prohibited sales.** A person under subsection 1 may not sell consumer fireworks  
14 to a person under 21 years of age or who appears to be under the influence of alcohol or  
15 drugs.

16           **3. Municipalities.** The legislative body of a municipality may adopt an ordinance to  
17 allow or prohibit the sale, use or possession of consumer fireworks within the  
18 municipality. A municipal ordinance allowing the sale of consumer fireworks must  
19 provide for the issuance of a permit to a person the municipality approves to sell  
20 consumer fireworks. A permit may not be issued unless:

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

22           B. The applicant applies for a permit under this subsection on a form prescribed by  
23 the commissioner;

24           C. The applicant complies with the provisions of subsection 1, paragraph A;

25           D. The applicant complies with the provisions of subsection 5; and

26           E. The application is approved by the municipality's police chief, fire chief and code  
27 enforcement officer if those positions exist.

28           A municipality may require a fee for a permit issued under this subsection.

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

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

32           B. The applicant complies with the provisions of subsection 1, paragraphs A and C;

33           C. The applicant complies with the provisions of subsection 5; and

34           D. The applicant has not been convicted of an offense or violated a state, federal or  
35 municipal law, rule or regulation involving fireworks or explosives within the 2 years  
36 prior to the application.

1 The commissioner shall charge a fee of \$1,500 for a license under this subsection.

2 **5. Storage and handling.** A person authorized to sell consumer fireworks under  
3 subsection 1 shall store and sell the fireworks in a building dedicated solely to the storage  
4 and sale of consumer fireworks that meets all applicable fire safety codes and standards,  
5 building codes, zoning ordinances and municipal ordinances. Pursuant to section 236, the  
6 commissioner may adopt rules relative to the use, storage, transportation and display of  
7 consumer fireworks. A person at least 18 years of age may handle and sell consumer  
8 fireworks if the person is under the direct supervision of a person 21 years of age or older.

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

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

19 **8. Enforcement.** The commissioner, a state law enforcement officer, a municipal  
20 law enforcement officer, a code enforcement officer or a fire safety official may petition  
21 the Superior Court or District Court to seize or remove at the expense of the owner  
22 consumer fireworks sold, offered for sale, stored, possessed or used in violation of this  
23 section. The commissioner may immediately suspend a license granted under subsection  
24 4 for a violation of this section. A person whose license is suspended under this  
25 subsection must receive a hearing within 10 days of the suspension under Title 5, chapter  
26 375, subchapter 4. A person whose license is suspended under this subsection may not  
27 receive a subsequent license under subsection 4 for a period of at least one year from the  
28 date of suspension.

29 **9. Safety information.** A person authorized to sell consumer fireworks shall  
30 provide a safety pamphlet published by the commissioner to each purchaser of consumer  
31 fireworks.

32 **10. Violation.** A violation of this section is a Class E crime.

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

34 **§236. Adoption of rules**

35 The commissioner shall, in accordance with the Maine Administrative Procedure Act,  
36 may adopt reasonable rules relative to the use, storage, transportation and display of  
37 consumer fireworks, fireworks and special effect pyrotechnics and to carry out the  
38 purposes of this chapter and shall devise and publish a safety pamphlet detailing  
39 appropriate use of the permissible fireworks. Rules adopted pursuant to this section are  
40 routine technical rules pursuant to Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

