

Office of Policy and Legal Analysis

Date: January 14, 2022

To: Joint Standing Committee on Criminal Justice and Public Safety

From: Dan Tartakoff, Legislative Analyst

Re: LD 1348, An Act To Limit the Decibel Level of Fireworks Near Working Farms (Cyrway)

Summary of bill

This bill prohibits a person from discharging fireworks or consumer fireworks that results in a noise level that exceeds 75 decibels at a boundary of a farm actively engaged in agricultural production and containing livestock.

Committee history

This bill had a public hearing on May 7, 2021 and a work session on May 11, 2021 at which the Committee unanimously voted to carry over the bill to the Second Regular Session.

At the work session, the sponsor of LD 1307, another fireworks bill, suggested that a group of interested persons would continue to discuss the issues raised in both LDs over the legislative interim and provide the Committee with an update in 2022. It was suggested that this informal stakeholder group could include the sponsors of both bills, Steve Marson (Central Maine Pyrotechnics/Pyro City Maine), Danial Peart (Phantom Fireworks) Julie Ann Smith (Maine Farm Bureau), a representative of the State Fire Marshal's Office and Vicki Schmidt.

List of legislators/entities that submitted written testimony and/or spoke at the hearing

Proponents – Senator Cyrway, Maine Farm Bureau, additional members of the public.

Opponents – Central Maine Pyrotechnics/Pyro City Maine, Phantom Fireworks (opposes original bill but supports sponsor's amendment distributed at the hearing), Retail Association of Maine, additional members of the public.

Neither for nor against – none.

Notes, issues and proposed amendments

1. **Sponsor's amendment** – the sponsor distributed at the hearing an amendment to replace the bill that would amend the provisions of law restricting the use of consumer fireworks by adding the following restriction (amendment to 8 MRSA §223-A(8)):

An individual using consumer fireworks within 250 feet of the pen or containment area of livestock of a neighboring property owner must provide 5 days advance notice to the owner or manager of the livestock so that precautions can be put in place to ensure the safety and well-being of the livestock. For the purposes of this paragraph, "livestock" has the same meaning as defined in Title 7, section 81, subsection 8.

- 2. Regulation by decibel level; issues** – many of those testifying noted the difficulty in objectively and consistently measuring the decibel level of fireworks, which can be affected by a variety of environmental and other factors. The original bill sought to impose a 75-decibel limit on certain fireworks discharges, while the sponsor’s amendment focused on the distance between a firework discharge and a nearby livestock pen or containment area.

Information provided at the hearing suggested that consumer fireworks reportedly create a noise between 140 and 170 decibels. So-called low noise fireworks (see also discussion below also) reportedly create a noise between 75 and 100 decibels

- 3. Low noise fireworks** – there was discussion at the hearing and work session regarding the feasibility of requiring the use of so-called low noise fireworks in proximity to livestock. Although some persons testifying suggested that there are many options for low noise fireworks already commercially available and that it is a growing market, Phantom Fireworks disputed this claim, noting it offers only 7 products that are marketed as low noise or no noise fireworks and only 2 of those are aerially discharged. For context, Phantom Fireworks noted it offers over 650 different fireworks products.
- 4. Enforcement issues** – multiple speakers acknowledged the difficulties in enforcing most of the proposed solutions to addressing the issue underlying the proposal as well as the general difficulty in enforcing the existing consumer fireworks law. It was suggested that the enforcement authority – likely local law enforcement – would be unable to take any substantive action on an alleged illegal discharge unless an officer actually sees the illegal discharge occur.

Fiscal information

Preliminary fiscal impact statement dated April 15, 2021 indicates no fiscal impact, no fiscal note required.

Committee: CJPS
Drafter: DCT
File name: G:\COMMITTEES\CJPS\AMENDMTS\130th 2nd\LD 1348 Cyrway amend.docx
LR (item)#: 1556(02)
New Title?: YES
Add Emergency?: NO
Date: 1/13/22

LD 1348
Proposed amendment – Senator Cyrway

Amend the bill by striking the title and inserting the following in its place:

An Act Regarding Municipal Fireworks Use Permits

Amend the bill by striking everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 8 MRSA §223-A, sub-§1, ¶ C is amended to read:

C. A municipal sales permit if required under subsection 2.

Sec. 1. 8 MRSA §223-A, sub-§2 is amended to read:

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 sales permit for selling consumer fireworks within the municipality or a municipal use permit for using 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 or its permitting program for the use of consumer fireworks. A municipal sales permit under this subsection may not be issued unless:

- A. The applicant is 21 years of age or older;
- B. The applicant applies for a municipal sales 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 municipality that pursuant to this subsection requires a person to obtain a municipal use permit for using fireworks within the municipality may allow a person to obtain such a permit using the system for the electronic issuance of permits for burning developed by the Department of Agriculture, Conservation and Forestry, Bureau of Forestry pursuant to Title 12, section 9326 if that system is designed to issue municipal use permits for using fireworks within a municipality. A person holding a municipal sales permit issued by a municipality under this subsection may not sell consumer fireworks unless the person satisfies all the requirements of subsection 1.

SUMMARY

This amendment changes the title of and replaces the bill. It amends the State's consumer fireworks law to clarify that a municipality may require that a person obtain a municipal use permit for using fireworks within the municipality. A municipality that requires such a permit for using fireworks within the municipality may allow a person to obtain that permit using the system for the electronic issuance of permits for burning developed by the Department of Agriculture, Conservation and Forestry, Bureau of Forestry pursuant to the Maine Revised Statutes, Title 12, section 9326 if that system is designed to issue municipal use permits for using fireworks within a municipality.