

## 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 1307, An Act To Restrict the Sale, Purchase and Use of Fireworks in the State (Cloutier)

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### **Summary of bill**

This bill repeals the provisions of law enacted in Public Law 2011, chapter 416 that permit the sale, purchase and use of consumer fireworks.

### **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 bill's sponsor suggested that a group of interested persons would continue to discuss the issues raised in the bill and in LD 1348 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** – Representative Cloutier, additional members of the public.

**Opponents** – Central Maine Pyrotechnics/Pyro City Maine, Phantom Fireworks, Retail Association of Maine, additional members of the public.

**Neither for nor against** – none.

### **Notes, issues and proposed amendments**

1. **Local regulation** – the consumer fireworks law authorizes municipalities to adopt ordinances to prohibit or restrict the sale or use of consumer fireworks within the municipality (8 MRSA §223-A(2)). Per the Office of the State Fire Marshal (see <https://www.maine.gov/dps/fmo/inspections/fireworks/ordinances>), more than 100 municipalities have adopted ordinances prohibiting or restricting such sale or use including:
  - 52 municipalities that have *prohibited* the use and/or sale of consumer fireworks; and
  - 61 municipalities that have *restricted* the use and/or sale of consumer fireworks.

A number of persons that submitted testimony on this bill suggested that issues with the regulation of consumer fireworks should continue to be addressed at the local level.

2. **Sale or use restrictions; other jurisdictions** – based on information provided by Phantom Fireworks at the work session, it appears that a number of other states or jurisdictions have restricted the use and/or sale of consumer fireworks to certain days or periods of the year,

such as around Independence Day and New Year's as well as other holidays where fireworks are traditionally used, like Chinese New Year and Diwali.

Although there was some discussion at the hearing and work session over the possibility of regulating use and sale based on decibel level, there was disagreement over (1) whether any other jurisdictions have in fact adopted such an approach and (2) whether there was any feasible way to objectively and consistently measure a firework's decibel level.

**Fiscal information**

Not yet available from OFPR.

Committee: CJPS  
Drafter: DCT  
File name: G:\COMMITTEES\CJPS\AMENDMTS\130th 2nd\LD 1307 Cloutier amend.docx  
LR (item)#: 0520(02)  
New Title?: YES  
Add Emergency?: NO  
Date: 1/13/22

**LD 1307**  
**Proposed amendment – Representative Cloutier**

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

**An Act Regarding the Sale and Use of Consumer Fireworks**

*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-§10** is amended to read:

**10. Disclosures to customers.** A person authorized to sell consumer fireworks shall provide to the purchaser at the point of sale written guidelines, which must be published or approved by the commissioner prior to distribution, describing the safe and proper use of consumer fireworks, ~~which must include, but are~~ including, but not limited to, guidelines regarding the safe and proper use of consumer fireworks around bodies of water; guidelines regarding the prevention of littering in the use of consumer fireworks; and guidelines regarding the effects from the use of consumer fireworks on wildlife, livestock and domesticated animals. 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.~~

A. "MAINE LAW EXPRESSLY PROHIBITS PERSONS UNDER 21 YEARS OF AGE FROM PURCHASING, POSSESSING OR USING CONSUMER FIREWORKS";

B. "FURNISHING CONSUMER FIREWORKS TO PERSONS UNDER 21 YEARS OF AGE IS A CRIMINAL OFFENSE IN MAINE"; and

C. "LOCAL ORDINANCES MAY PROHIBIT OR RESTRICT THE USE OF CONSUMER FIREWORKS WITHIN A MUNICIPALITY. INFORMATION REGARDING LOCAL PROHIBITIONS OR RESTRICTIONS IS AVAILABLE THROUGH THE OFFICE OF THE MAINE STATE FIRE MARSHAL.

**Sec. 2. 17 MRSA §2263, sub-§2** is amended to read:

**2. Litter.** "Litter" means all waste materials including, but not limited to, bottles, glass, crockery, cans, scrap metal, junk, paper, garbage, rubbish, offal, except waste parts or remains resulting from the normal field dressing of lawfully harvested wild game or the lawful use of waste parts or remains of wild game as bait, feathers, except feathers from live birds while being transported, abandoned ice-fishing shacks, old automobiles or parts of automobiles or similar refuse, or disposable packages or containers thrown or deposited as prohibited in this chapter, but not including the wastes of the primary processes of mining, logging, sawmilling, farming or manufacturing. "Litter" includes waste materials resulting from or associated with the use of tobacco products, including, but not limited to, cigarette butts, ~~and~~ all waste materials resulting from the outdoor release or abandonment of a balloon and all waste materials resulting from the use of consumer fireworks.

For the purposes of this subsection, "tobacco product" has the same meaning as in Title 22, section 1551, subsection and "consumer fireworks" has the same meaning as in Title 8, section 221-A, subsection 1-A.

**Sec. 3. 17-A MRSA §501-A, sub-§1, ¶A, sub-¶(1)** is amended to read:

(1) Making loud and unreasonable ~~noises~~ noise, including, but not limited to, loud and unreasonable noise resulting from the use of consumer fireworks;

**Sec. 4. 17-A MRSA §501-A, sub-§1, ¶C**

C. In a private place, the person makes loud and unreasonable noise, including, but not limited to, loud and unreasonable noise resulting from the use of consumer fireworks, that can be heard by another person, who may be a law enforcement officer, as unreasonable noise in a public place or in another private place, after having been ordered by a law enforcement officer to cease the noise; or

**Sec. 5. 17-A MRSA §501-A, sub-§2, ¶C** is enacted to read:

C. "Consumer fireworks" has the same meaning as in Title 8, section 221-A, subsection 1-A.

## SUMMARY

This amendment changes the title of and replaces the bill. It requires sellers of consumer fireworks to provide to customers along with other legally-required disclosures a statement that local ordinances may prohibit or restrict the use of consumer fireworks within a municipality and that information on such prohibitions or restrictions is available through the Office of the State Fire Marshal. It amends State litter control law to provide that litter includes all waste materials resulting from the use of consumer fireworks. It amends State disorderly conduct law to provide

that the making of loud and unreasonable noise, which can be element of that crime, includes loud and unreasonable noise resulting from the use of consumer fireworks.