

# Bill as Introduced

HB 291 - AS INTRODUCED

2011 SESSION

11-0627

05/03

HOUSE BILL           **291**

AN ACT               relative to permissible fireworks.

SPONSORS:       Rep. L. Christiansen, Hills 27; Rep. Jennifer Coffey, Merr 6; Rep. G. Hopper,  
                  Hills 7

COMMITTEE:       Commerce and Consumer Affairs

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ANALYSIS

This bill defines permissible fireworks as consumer fireworks, which are defined by federal regulation and were formerly known as class C common fireworks.

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Explanation:       Matter added to current law appears in ***bold italics***.  
                  Matter removed from current law appears [~~in brackets and struck through~~]  
                  Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT                   relative to permissible fireworks.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1           1 Intent. This act, which shall be known as the "Independence Day Freedom act" gives people in  
2 New Hampshire the freedom to celebrate with the consumer fireworks (formerly class "C") of their  
3 choice. There is no need for a state fireworks bureaucracy to pick and choose which fireworks a  
4 person may buy and use. The federal government has already determined what are safe consumer  
5 fireworks. Allowable fireworks under federal law do not include large reloadable mortar shells,  
6 cherry bombs, aerial bombs, M-80 salutes, and larger firecrackers containing more than 2 grains of  
7 powder. This act removes an unnecessary bureaucracy, increases freedom, and yet maintains the  
8 federal standard of safety.

9           2 Permissible Fireworks; Definition of Permissible Fireworks. RSA 160-C:1, V is repealed and  
10 reenacted to read as follows:

11           V. "Permissible fireworks" means consumer fireworks.

12           3 Repeal. The following are repealed:

13           I. RSA 160-C:13, relative to the permissible fireworks review committee.

14           II. RSA 160-C:15, relative to the permissible fireworks list.

15           III. RSA 160-C:16, relative to emergency removal from retail sale of permissible fireworks.

16           IV. RSA 160-C:17, II and III, relative to functions of the permissible fireworks committee.

17           4 Effective Date. This act shall take effect 60 days after its passage.

# Amendments

Amendment to HB 291

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 References Updated. Amend the following RSA provisions by replacing 27 C.F.R. section 55.11  
4 with 27 C.F.R. section 555.11: RSA 158:9-c, III-a; 189:9-f, III; 160-B:1, I, IX, and X; 160-C:1, II, III,  
5 and IV.

6 2 Definition of Permissible Fireworks. RSA 160-C:1, V is repealed and reenacted to read as  
7 follows:

8 V. "Permissible fireworks" means consumer fireworks, except for those items that are  
9 prohibited pursuant to RSA 160-B:16, 160-B:16-b, and 160-B:16-c.

10 3 Distribution of Pamphlet. Amend RSA 160-C:12 to read as follows:

11 160-C:12 Distribution of Pamphlet Required. Any person engaged in selling permissible  
12 fireworks shall [~~provide~~] *make available* to the purchaser a pamphlet, approved by the  
13 commissioner, detailing the appropriate and safe use of the permissible fireworks being sold.

14 4 Permissible Fireworks Advisory Committee. RSA 160-C:13 is repealed and reenacted to read  
15 as follows:

16 160-C:13 Permissible Fireworks Advisory Committee.

17 I. There is hereby established a permissible fireworks advisory committee. The composition  
18 of this committee shall be as follows: one senator, appointed by the senate president; one  
19 representative, appointed by the speaker of the house of representatives; the state fire marshal, or  
20 designee; the director of the division of state police, or designee; and 3 public members, 2 of whom  
21 shall be engaged in the retail sale of consumer fireworks in New Hampshire and one of whom shall  
22 be a regular purchaser of consumer fireworks, appointed by the governor. No vote of the committee  
23 shall take place unless 3 members of the committee are present. The term of office of each member  
24 appointed by the governor shall be 2 years and until a successor is appointed and qualified. The  
25 other members of the committee shall serve terms coterminous with their terms in office. Vacancies  
26 shall be filled in the same manner for the unexpired terms. Members shall serve without  
27 compensation, except that the legislative members shall receive mileage at the legislative rate. The  
28 committee shall elect a chairperson annually.

29 II. The committee shall meet at least once per calendar year, prior to October 1, and within  
30 30 days of any emergency removal from retail sale of permissible fireworks pursuant to RSA 160-  
31 C:16. The purpose of the meeting following the emergency removal of permissible fireworks shall be

Amendment to HB 291

- Page 2 -

1 to review the basis for the commissioner's decision and to make a recommendation to the  
2 commissioner as to whether the items are properly classified pursuant to 27 C.F.R. section 555.11.

3 III. The committee shall review the rules and standards of the Consumer Product Safety  
4 Commission regarding consumer fireworks so as to provide information and advice to the  
5 commissioner on the application and enforcement of the state's fireworks laws.

6 IV. On or before December 1, 2011, and each December 1 thereafter the committee shall  
7 make a report of the committee's activities and any recommendations for legislation to the  
8 commissioner, the speaker of the house of representatives, the senate president, the house clerk, the  
9 senate clerk, and the state library.

10 5 Emergency Removal from Retail Sale. RSA 160-C:16, I is repealed and reenacted to read as  
11 follows:

12 I.(a) The commissioner may, upon the recommendation of the state fire marshal or the  
13 director of state police, at any time and with notice to the permissible fireworks advisory committee,  
14 suspend from retail sale or otherwise order the removal from retail sale of any permissible firework  
15 item that poses an imminent threat to life and property.

16 (b) The commissioner shall, within 15 days of action taken pursuant to this paragraph,  
17 file a report and request a finding from the federal Consumer Product Safety Commission, a  
18 determination on the legal status of the permissible consumer firework item being suspended or  
19 removed by the commissioner from retail sale.

20 (c) The commissioner's suspension or removal of any such firework items shall continue  
21 in force and effect until such time as a determination can be made and shall not supersede any  
22 finding by the Consumer Product Safety Commission pursuant to the commissioner's report and  
23 request.

24 6 Repeal. The following are repealed:

25 I. RSA 160-B:16-a, prohibiting the retail sale of reloadable aerial shells.

26 II. RSA 160-C:10, II and III, relative to list of permissible fireworks offered for sale.

27 III. RSA 160-C:15, relative to the permissible fireworks list.

28 IV. RSA 160-C:17, II, and III, relative to the fireworks inspector's duties.

29 7 Effective Date. This act shall take effect upon its passage.

**Amendment to HB 291**  
**- Page 3 -**

2011-0675h

**AMENDED ANALYSIS**

This bill defines permissible fireworks as consumer fireworks, with certain limited exceptions. The bill also revises the membership and duties of the permissible fireworks review committee.

# Speakers





# Hearing Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 291

**BILL TITLE:** relative to permissible fireworks.

**DATE:** 2-8-11

**LOB ROOM:** 302      **Time Public Hearing Called to Order:** 1002

**Time Adjourned:** 1109

(please circle if present)

**Committee Members:** Reps. Hunt, Coffey, Belanger, Flanders, Quandt, Headd, Nevins, Palfrey, Sullivan, Bergevin, Manuse, Mauro, McGuinness, Rice, Taylor, Meader, Gidge and Schlachman.

**Bill Sponsors:** Reps. L. Christiansen, Jennifer Coffey, G. Hopper

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

**Rep. Lars Christenson, prime sponsor** – Introduced the bill.

**Rep. David Welch** – Permissible fireworks was established to determine which fireworks could be used in the state. Bill eliminates the committee; I do believe there should be a way to have the fire marshal communicate with sellers. Would like a subcommittee to look into the issue. If item is a safety concern the commission now has the authority to take the product off the shelf. This bill removes that prerogative. Bill has nothing to do with permitting by towns.

\***Steven Carbone, NH Fireworks Assn.** – Supports the bill. Read from written testimony; copy in file. Referred to RSA 160-8; changes he requests are in red on his written testimony; red is to be removed; green should be incorporated.

\***Richard Bouley, attorney representing Atlas Fireworks** – Opposes bill; has written testimony and read from same; copy in file. Recommends ITL of this bill ore retained. Be slow in acting here.

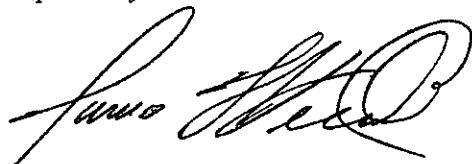
\***John Raymond, state fire marshal** – Handed out written testimony; read from same. Recommends we retain this bill.

**Richard Ward, President, NH Fire Prevention Society** – Opposes the bill. Most fireworks used in New Hampshire are shot by licensed pyro technicians. We would like to retain the permissible use committee. In New Hampshire one must be 21 years of age and display fireworks on your own property.

**Jarred Savinelli, Fantasy Fireworks** – Supports the bill. None of these fireworks came into the country without having been tested. Class B fireworks not permissible to be owned by the public only licensed pyro technicians. Citizens can only legally purchase Class C.

**Dan Peart, Phantom Fireworks Co.** – Supports the bill. Consumer fireworks are considerably safer today than they have ever been. We are proud of the safety record in the country. We support expanding the scope of fireworks in the state of New Hampshire. We are not in favor of eliminating the Fireworks Council. It is a system of checks and balances that work well.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "James F. Headd". The signature is written in a cursive style with a large, looping initial "J".

James F. Headd, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 291

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DATE: 2-8-11

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Committee Members: Reps. Hunt, Coffey, Belanger, Flanders, Quandt, Headd, Nevins, Palfrey, Sullivan, Bergevin, Manuse, Mauro, McGuinness, Rice, Taylor, Meador, Gidge and Schlachman

Bill Sponsors: Reps. L. Christiansen, Jennifer Coffey, G. Hopper

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

- #1 Rep Lars Christiansen - introduced the bill
- #2 Rep David Welch - Permitted fireworks were established to determine which fireworks could be used in the state - Bill eliminated the committee - I do believe there should be a way to have the fire Marshall communicate with sellers - would like a subcommittee look into the issue. If item is a safety concern the commission now has the authority to take the product off the shelf - This bill removes that prerogative.

#2

HB 291

B.P. has nothing to do with  
permitting by Towns -

#3

Steven CARBONE - N.H. Fireworks  
Assoc - Read from written  
testimony - copy in FILE 5  
Replied to PRA Koo's  
changes the requests are in  
Red on his written testimony  
Red is to be removed  
Green should be incorporated

#4

Richard Bouly - Representative  
ATLAS Fireworks -

opposes bill - has written  
testimony & read from same  
copy in file

Recommends FTH of the bill  
OR Retained - Be slow in acting here

#5

John Raymond - State Fire Marshall's  
office - handed out written  
testimony - read from same  
Recommends we Retain the bill

#3

#6

Richard Ward - President  
NH Fire Prevention Society -  
opposes the Bill - most fireworks  
used in NH are shot by licensed  
pyro technicians

We ~~not~~ would like to retain the  
permissible use committee -

In NH one must be 21 years of  
age to display fireworks on your  
own property.

#7

Jared Lovino, LI - Represents  
Fantasy Fireworks - Supports the Bill  
None of these fireworks come into  
the country without having been  
tested. Class B fireworks not  
permitted to be owned by the public  
only licensed pyro technicians  
Citizens can only ~~own~~ legally purchase  
~~class~~ class C.

#8

DAN PEART - Phantom  
Fireworks & BJ Atlas Co. Supports  
the Bill - Consumer fireworks  
are considerably safer today than they  
have ever been - We are proud of  
the safety record in the country

We support expanding the scope of  
fireworks in the STATE of NH  
We are not in favor of eliminating  
the fireworks count. It is a  
system of checks & balances that  
work ~~all~~ well.

SUB COMMITTEE

Rep	Mr. GUNN
chair	Mr. DR. RICK



# Sub-Committee Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION ON HB 291

**BILL TITLE:** relative to permissible fireworks.

**DATE:** 2-28-11

**Subcommittee Members:** Reps. McGuinness, Taylor, Rice

**Comments and Recommendations:** No notes.

**Amendments:**

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Sean McGuinness  
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION ON HB 291

**BILL TITLE:** relative to permissible fireworks.

**DATE:** 2/28/11

**Subcommittee Members:** Reps. McGuinness, Taylor, + Rice

**Comments and Recommendations:**

**Amendments:**

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. {Type NAME}  
Subcommittee Chairman/Clerk

# Testimony

Mr. Chairman and Members of the Committee  
My name is Steve Carbone, President of Atomic  
Fireworks located in Seabrook, NH. A resident of NH  
for 38 years and today I represent as chairman the  
New Hampshire Fireworks Association. HB291  
known as the Independence Day Freedom act is all  
sizzle and no steak. It implies it gives people in New  
Hampshire the freedom to celebrate with the  
consumer fireworks of their choice; nothing could be  
further from the truth. To attain that goal, this bill will  
have to be amended to include the changes I have  
submitted in regards to 160 B and 160 C This year  
NH fireworks retailers may well be facing competition  
from Maine and Mass. Maine had in committee  
yesterday a bill to legalize all consumer fireworks and  
throughout the committee meeting it seemed to be  
well received with absolutely no opposition from the  
SFMO and it is listed as an emergency legislative bill  
so that it can take effect this season. If this bill passes  
it will be devastating to NH retailers and could cause  
some retailers to close. Up to now fireworks  
customers have come to NH from all the New  
England states to purchase fireworks and while here  
they purchase cigarettes, alcohol, gasoline, eat in our  
restaurants and some making it a weekend event in  
NH. Fireworks customers would certainly travel an  
extra 20 minutes bypassing NH stores to purchase a  
better variety of fireworks in Maine as some  
consumers now do going to Vermont. This is not a  
loss just to fireworks businesses but to many other tax  
generating businesses in NH. Banned consumer

fireworks purchased over the internet have been shipped into NH for years and now is the time to let NH stores compete on a level playing field.

From 1976 to 2008 fireworks usage has increased 750% yet injuries have decreased 91%. No other consumer item can claim this. Increase snowmobile use and injuries increase same can be said for sports, bikes, cars smoking, and your gas grill in the back yard, all are accepted risks with never a thought to outlaw those items. We ask for a sub committee to be appointed to fix this bill and truly make it the Independence Day Freedom Act.

Thank you for letting me speak and also thank you for dedicating so much of your time making NH a great place to live and raise a family.

All red verbiage to be removed.

All green verbiage to be incorporated in law.

## TITLE XII PUBLIC SAFETY AND WELFARE

### CHAPTER 160-C PERMISSIBLE FIREWORKS

#### Section 160-C:1

**160-C:1 Definitions.** – In this chapter:

V. "Permissible fireworks" means the items on the permissible fireworks list established pursuant to RSA 160-C:15, I, and the fireworks listed below, provided they meet all applicable federal rules, regulations, and standards:

(a) Cone fountain, meaning a cardboard or heavy paper cone which contains up to 50 grams of pyrotechnic composition, and which produces the same effect as a cylindrical fountain. Any fountain that is designed to be hand held shall not be considered permissible.

(b) Cylindrical fountain, meaning cylindrical tube not exceeding 3/4 inch in inside diameter and containing up to 75 grams of pyrotechnic composition, which produces a shower of color and sparks upon ignition, and sometimes a whistling effect. Cylindrical fountains may contain a spike to be inserted in the ground (spike fountain), or a wooden or plastic base to be placed on the ground (base fountain). Any fountain that is designed to be hand held shall not be considered permissible.

(c) Ground spinner, meaning a small spinning device containing up to 20 grams of pyrotechnic composition per driver with a maximum of 3 drivers, which is similar to wheels in design and effect when placed on the ground and ignited, and which produces a shower of sparks and color when spinning. Any ground spinner that is designed to lift off the ground or shoot upward shall not be considered permissible.

(d) Wheel, meaning a pyrotechnic device that:

- (1) Is attached to a post or tree by means of a nail or string;
- (2) Contains up to 6 driver units (tubes not exceeding 1/2 inch in inside diameter) containing up to 60 grams of pyrotechnic composition per driver unit; and
- (3) Revolves, upon ignition, producing a shower of color and sparks and sometimes a whistling effect.

(e) Firework devices up to 500 grams of pyrotechnic composition that:

- (1) Have vertical tubes and discharge vertically; and

(2) Are tested to American Fireworks Standard Laboratories (AFSL) standards in compliance with the Consumer Product Safety Improvement Act, effective February 10, 2010, and any subsequent amendments thereto

### **Section 160-C:2**

#### **160-C:2 Sale of Permissible Fireworks; Penalty. –**

III. Any person who violates the provisions of this section shall be guilty of a misdemeanor violation.

### **Section 160-C:3**

#### **160-C:3 Requirements for the Sale of Permissible Fireworks. –**

I. Any person who desires to sell permissible fireworks shall apply to the municipality in which the permissible fireworks are to be sold. Such application shall be in a form prescribed by the commissioner. The licensing board of any municipality or, if one does not exist, the governing body may issue a permit to sell permissible fireworks to a person who applies, provided that the person has a valid permit for the sale of fireworks issued pursuant to Title 18 of the United States Code. No permit to sell permissible fireworks shall be issued by the governing body without the prior approval of the police chief, fire chief, and building inspector, if any, of the municipality. The municipality may charge a fee up to \$500 for the permit or application for permit under this section.

III. The state license may be issued to an applicant who, at the time such license is issued, possesses a permit issued in accordance with the provisions of Title 18, United States Code, governing fireworks, and a permit issued pursuant to RSA 160-C:3, I. No license shall be issued for the sale of permissible fireworks unless the applicant establishes that it will locate its business in a permanent structure which meets all applicable fire safety codes, building codes, zoning codes, and the requirements of local ordinances. No license for the sale of permissible fireworks shall be issued to any person who has been convicted of any offense misdemeanor involving fireworks or explosives within the 2-years prior to the application. or who has been found to have violated any fireworks or explosives laws, rules, or regulations within the 2 years prior to the application. No license shall be issued to any person under 21 years of age.

VII. The fee for a license for each location shall be \$1,500 \$3,000 per year, payable annually to the department of safety for deposit into the general fund.

X. No licensee shall employ a person to handle or sell fireworks who has been convicted of any offense misdemeanor involving fireworks or explosives within the past 2 years or who has been found to have violated any fireworks or explosives laws, rules, or regulations within the past 2 years.

### **Section 160-C:5**

**160-C:5 Enforcement.** – Upon application, the superior court or district court is authorized to permit the law enforcement officials or certified fire citation officers of the state, counties, or any city or town to seize, take, remove, or cause to be removed at the expense of the owner all stocks of permissible unlawful fireworks offered or exposed for sale, stored, or held in violation of this chapter. Nothing in this section shall be construed



to restrict or limit any other authority granted by law to law enforcement officials or certified fire citation officers.

### **Section 160-C:7**

**160-C:7 Civil Liability.** – In addition to any other penalties imposed under this chapter, any person who violates the provisions of this chapter shall be liable, in any civil action, to any person for damages resulting from the illegal sale or use of permissible fireworks, and neither assumption of risk nor contributory negligence shall be a defense for such violator.

### **Section 160-C:10**

#### **160-C:10 Sales of Permissible Fireworks Allowed; Penalty. –**

II. Any person who sells permissible fireworks shall post in a conspicuous place on the sales premises a list prepared by the commissioner, of all permissible fireworks that are authorized for retail sale.

III. Any person who sells permissible fireworks shall post, in a prominent place within the public area of the store, a list with the appropriate United States Department of Transportation EX number of each item on the premises.

IV. Any person who violates the provisions of this section shall be guilty of a violation if a natural person, or guilty of a class B misdemeanor if any other person.

### **Section 160-C:11**

#### **160-C:11 Possession and Display of Permissible Fireworks; Penalty. –**

II. Any person who violates the provisions of this section shall be guilty of a violation if a natural person, or guilty of a class B misdemeanor if any other person.

### **Section 160-C:12**

**160-C:12 Distribution of Pamphlet Required.** – Any person engaged in selling permissible fireworks shall provide make available to the purchaser a pamphlet, approved by the commissioner, detailing the appropriate and safe use of the permissible fireworks being sold.

### **Section 160-C:13**

#### **160-C:13 Permissible Fireworks Review Committee. –**

I. There is hereby established a permissible fireworks review committee. The composition of this committee shall be as follows: 2 senators, appointed by the senate president; 2 representatives, one of whom shall be a member of the house committee having jurisdiction over public safety, appointed by the speaker of the house; the director of the division of state police, or designee; the state fire marshal, or designee; 2 members representing the permissible fireworks industry, who shall be associated with the retailing of permissible fireworks, appointed by the governor; and 2 members, one of whom shall be an alternate, representing the New Hampshire Association of Fire Chiefs, appointed by the governor. No vote of the committee shall take place unless 5 members of the committee are present. The term of office of each member appointed by the governor shall be 2 years and until a successor is appointed and qualified. The other members of

the committee shall serve terms coterminous with their terms in office. Vacancies shall be filled in the same manner for unexpired terms. Members shall serve without compensation, except that the legislative members shall receive mileage at the legislative rate. The committee shall elect a chairperson annually.

II. The committee shall meet at least once per calendar year, prior to October 1, and 30 days prior to any testing and approval conducted pursuant to RSA 160-C:13, III, or earlier at the discretion of the chairperson, to ensure that testing and approval guidelines are finalized, safety preparations are complete, and issues relative to the division of labor are addressed. In addition, the committee shall meet at the request of 3 or more members of the committee.

III. The committee shall consider whether items suggested by the fireworks industry shall be classified as permissible fireworks under this chapter. If the committee determines that an item should be so classified, the committee shall recommend that the commissioner add the item to the list of approved permissible fireworks pursuant to RSA 160-C:15. The committee may also recommend that any items so classified pursuant to RSA 160-C:15 shall be removed from such classification.

**Source.** 1999, 348:14, eff. Jan. 21, 2000. 2003, 6:1, eff. June 21, 2003. 2004, 247:4, eff. Sept. 30, 2004.

### **Section 160-C:15**

#### **160-C:15 Permissible Fireworks List. –**

I. Within 30 days of receiving the recommendation of the permissible fireworks review committee, the commissioner shall determine whether an item should be classified as a permissible firework under this chapter. The commissioner shall establish a list of items that have been classified as permissible fireworks.

II. Upon the recommendation of the permissible fireworks review committee, the commissioner shall determine whether an item shall be removed from the list of items that have been classified as permissible fireworks.

**Source.** 1999, 348:14, eff. Jan. 21, 2000.

### **Section 160-C:16**

#### **160-C:16 Emergency Removal from Retail Sale of Permissible Fireworks. –**

I. The commissioner may, upon the recommendation of the state fire marshal or the director of state police, prohibit the retail sale of any permissible consumer fireworks that pose an imminent threat to life and property.

II. Upon notification by the commissioner or designee that a permissible firework is prohibited from being sold, a person licensed to sell permissible fireworks shall remove the item from the public sales area and shall not sell the item to any person.

III. Any person who sells a permissible firework item after being notified by the commissioner or designee that the item is prohibited from being sold shall be guilty of a class B misdemeanor. In addition, the commissioner may revoke the violator's license for a minimum period of 10 consecutive days, but not to exceed 30 days. On the third violation of this section, the commissioner shall revoke the license for the remainder of the licensure term.

IV. Any license holder aggrieved by the action of the commissioner pursuant to this section may appeal pursuant to RSA 541.

**Source.** 1999, 348:14, eff. Jan. 21, 2000.

### **Section 160-C:17**

**160-C:17 Fireworks Inspector.** – There is hereby established in the office of the state fire marshal the full-time classified position of fireworks inspector. The fireworks inspector shall be under the direction and supervision of the state fire marshal and shall:

I. Inspect fireworks sales outlets.

I-a. Inspect sites and facilities for the display or storage of display fireworks, as defined in RSA 160-B:1, X.

I-b. Coordinate enforcement activities relative to illegal sales, including the disposal or proper storage of illegal fireworks.

II. Coordinate meetings of the permissible fireworks review committee.

III. Coordinate revisions to the list of permissible fireworks.

IV. Develop an informational booklet on fireworks to be issued to police and fire agencies throughout the state.

V. Coordinate media releases and public education efforts concerning fireworks.

**Source.** 1999, 348:14, eff. Jan. 21, 2000. 2008, 192:2, 3, eff. June 11, 2008.

All red verbiage to be removed.

All green verbiage to be incorporated in law.

## **TITLE XII PUBLIC SAFETY AND WELFARE**

### **CHAPTER 160-B FIREWORKS**

#### **Section 160-B:1**

**160-B:1 Definitions.** – As used in this chapter:

XI. “Non-permitted consumer fireworks” means a bottle rocket as defined by the American Pyrotechnics Association in APA Standard 87-1 (2001) 3.1.2.1, as amended

#### **Section 160-B:2**

**160-B:2 Sale; Penalty.** –

(b) Has a state license to sell display and consumer fireworks issued pursuant to RSA 160-B:6.

(c) Has a local permit to sell display and consumer fireworks issued pursuant to RSA 160-B:6.

#### **Section 160-B:3**

**160-B:3 Display; Penalty.** –

I. No person shall display display fireworks other than a person who meets all of the following requirements:

III. Any person who violates the provisions of this section by displaying consumer common fireworks shall be guilty of a violation for a first offense and a misdemeanor for any subsequent offense.

#### **Section 160-B:4**

**160-B:4 Possession; Penalty. –**

I. No person shall possess display fireworks other than the following:

**Section 160-B:5**

**160-B:5 Issuance of Permit; Penalty. –**

I. No person shall issue a permit or license to display display fireworks contrary to this chapter.

**Section 160-B:6**

**160-B:6 Requirements for Sale of Fireworks. –**

I. Any person who desires to sell display and consumer fireworks as limited by RSA 160-B:2 may apply to the municipality in which such person desires to sell fireworks. Such application shall be in a form prescribed by the commissioner. The licensing board of any municipality or, if one does not exist, the governing body may issue a permit to sell display and consumer fireworks to a person who applies, provided that the person has a valid permit for the sale of fireworks issued pursuant to title 18 of the United States Code. No permit to sell fireworks shall be issued by the governing body without prior approval of the police chief and fire chief, if any, of the municipality. The municipality may charge a fee for the permit or application for permit under this section.

II. After the person has obtained a municipal permit to sell display and consumer fireworks, such person may apply for a state license to sell display and consumer fireworks. Upon application of any person, the commissioner, or a person designated by the commissioner, may issue a license authorizing the applicant to sell or market display and consumer fireworks in this state for not more than one year from the date of issue, provided the person has first obtained a permit to sell display and consumer fireworks pursuant to RSA 160-B:6, I. The license shall bear the name, address, description, and signature of the licensee. The license shall be displayed at all times, openly and publicly, at the licensee's place of business. The license shall be issued within a reasonable time after application.

III. The state license may be issued to an applicant who, at the time such license is issued, possesses a permit issued in accordance with the provisions of title 18, United States Code, governing fireworks, and a permit issued pursuant to RSA 160-B:6, I. No license shall be issued for the sale of display and consumer fireworks unless the applicant establishes that it will locate its business in a permanent structure which meets all applicable fire safety codes, building codes, zoning codes, and the requirements of local ordinances. No license for the sale of display and consumer fireworks shall be issued to or held by any person who has been convicted of a felony if the felony has not been annulled by a court of record. No license shall be issued to any person under 21 years of age.

III-a. Buildings used for the sale or storage of display and consumer fireworks shall be dedicated solely to the sale or storage of display and consumer fireworks and items relating to the sale and promotion of fireworks provided for in rules adopted by the commissioner pursuant to RSA 541-A and shall comply with the applicable requirements of the state fire code adopted pursuant to RSA 153:5.

III-b. Prior to the issuance of a state license, the department of safety may conduct a background investigation of the applicant and may conduct an inspection of the site, including all buildings, in which the display and consumer fireworks are to be sold or

stored.

V. The fee for a license for each location shall be \$1,500 ~~\$3000~~ per year, payable annually to the department of safety for deposit into the general fund.

VI. A person who has a federal permit issued in accordance with the provisions of title 18, United States Code, governing fireworks, a state license issued pursuant to this section, and a local permit issued pursuant to this section may sell display and consumer fireworks; however, such a person shall only sell display fireworks to a person who shows a certificate of competency issued pursuant to RSA 158:9-f, or who shows a license for the storage of display fireworks issued pursuant to RSA 158:9-c, or a license to sell display and consumer fireworks pursuant to this chapter. Any sale which the seller makes shall be recorded, and the record, at a minimum, shall contain a copy of the purchaser's certificate of competency and display permit and, in the case of a wholesale sale, the purchaser's retail number from the state of residence, IRS tax identification number or such other information as the commissioner shall specify by rule adopted pursuant to RSA 541-A.

IX. No person under the age of 21 shall be engaged in the business of handling or selling any display or consumer fireworks; provided, however, that a person less than 21 years of age but at least 18 years of age may handle and sell display or consumer fireworks at a licensed sales or storage location or may handle display or consumer fireworks at a permitted display site if he or she is under the direct supervision of a person 21 years of age or older.

### **Section 160-B:8**

**160-B:8 Rulemaking.** – The commissioner shall adopt rules pursuant to RSA 541-A relative to:

III. Expanding the definition of fireworks to cover any other devices used for the purpose of producing a visible or an audible effect by combustion, deflagration, or detonation which are not covered by the federal regulations governing display and consumer fireworks but which are deemed by the commissioner to constitute a threat to public safety.

### **Section 160-B:16-a**

**160-B:16-a Retail Sale of Reloadable Aerial Shells Prohibited; Penalty.** – The retail sale of reloadable aerial shells is prohibited. In this section, "reloadable aerial shell" means a consumer (formerly class C common) firework device that is individually fused and designed to be inserted by the consumer into a tube prior to firing. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

**Source.** 1999, 69:4, eff. May 28, 1999.

## **Section 160-B:16-b**

**160-B:16-b Retail Sale of Firecrackers Prohibited; Penalty.** – The retail sale of firecrackers is prohibited. In this section, ""firecracker" means a ground device firecracker as defined by the American Pyrotechnics Association in APA Standard 87-1 (2001) 3.1.3.1, as amended. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

Source. 2004, 247:2, eff. Sept. 30, 2004.

## **Section 160-B:16-c**

**160-B:16-c Retail Sale of Bottle Rockets Prohibited; Penalty.** – The retail sale of bottle rockets is prohibited. In this section, ""bottle rocket" means a bottle rocket as defined by the American Pyrotechnics Association in APA Standard 87-1 (2001) 3.1.2.1, as amended. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

Source. 2004, 247:2, eff. Sept. 30, 2004.

# **Permissible Display Fireworks**

## **Section 160-B:19-a**

**160-B:19-a Emergency Removal From Sale or Use of Unsafe Devices.** –

I. The commissioner may, upon the recommendation of the state fire marshal or the director of state police, prohibit the sale or use of any display or consumer fireworks that pose an imminent threat to life and property.

II. Upon notification by the commissioner or designee that a display or consumer firework is prohibited for sale or use, a person licensed to sell display or consumer fireworks shall remove the item from the sales area and shall not sell the item to any person.

III. Any person who sells a display or consumer firework after being notified by the commissioner or designee that the item is prohibited for sale or use shall be guilty of a class A misdemeanor for the first offense and a class B felony for the second offense. In addition, the commissioner may revoke the violator's license for a minimum period of 30 consecutive days.

IV. Any person who uses a display or consumer firework after being notified by the commissioner or designee, or by a law enforcement officer or fire official that the item is prohibited for sale or use shall be guilty of a class A misdemeanor for the first offense and a class B felony for the second offense. In addition, the commissioner may revoke the violator's certificate of competency for a minimum period of 30 consecutive days.



## Fireworks-Related Injury Rates, 1976-2008

Year	Fireworks Consumption, Millions of Pounds <sup>1</sup>	Estimated Fireworks-related Injuries <sup>2</sup>	Injuries per 100,000 Pounds
1976	29.0	11,100	38.3
1977	32.2	8,300	25.8
1978	32.8	7,100	21.6
1979	36.0	8,100	22.5
1980	41.2	9,400	22.8
1981	42.1	11,400	27.1
1982	50.7	8,500	16.8
1983	51.9	8,200	15.8
1984	55.0	9,900	18.0
1985	63.6	10,300	16.2
1986	72.1	12,600	17.5
1987	72.8	9,000	12.4
1988	66.8	10,200	15.2
1989	80.2	9,700	12.1
1990	67.6	12,000	17.7
1991	73.7	10,900	14.7
1992	87.1	12,500	14.3
1993	101.9	12,000	11.7
1994	117.0	12,500	10.7
1995	115.0	10,900	9.4
1996	118.0	7,300	6.1
1997	132.9	8,300	6.2
1998	112.6	8,500	7.5
1999	156.9	8,500	5.4
2000	152.6	11,000	7.2
2001	161.6	9,500	5.8
2002	190.1	8,800	4.6
2003	220.8	9,700	4.4
2004	236.2	9,600	4.1
2005	281.5	10,800	3.8
2006	278.2	9,200	3.3
2007	265.5	9,800	3.7
2008	213.2	7,000	3.3

750%  
INCREASE

91%  
DECREASE

<sup>1</sup> Summary of Trade and Tariff Information — Fireworks (TSUS Item 755.15), U.S. International Trade Commission, Washington, D.C.

<sup>2</sup> National Electronic Injury Surveillance System, U.S. Consumer Product Safety Commission, Washington, D.C.

Source: American Pyrotechnics Association



February 8, 2011

Written testimony by: Stephen Pelkey, CEO – Atlas Advanced Pyrotechnics

Dear Chairman Hunt and Honorable Members of the Commerce and Consumer Affairs Committee:

I regret that I am unable to personally attend this hearing regarding HB 291 relative to permissible fireworks. Please accept this testimony by Mr. Richard Bouley on behalf of the Atlas Companies.

After careful review of HB 291 I can only say that this proposed legislation will set the NH fireworks industry back 20 years in the name of the "Independence Day Freedom Act." Having been part of the initial legislation of RSA 160 which currently governs the display, licensing, local control, permissible review committee, permitting, possession, sale and storage of display and consumer fireworks, HB 291 guts every consumer protection and public safety mechanism that RSA 160C has provided the citizens of the State of NH.

The success of RSA 160C is due to the very structure of the Permissible Review Committee which is made up of members of the fireworks industry; public safety officials; and representatives of the general court. Annually Class C fireworks (Consumer fireworks known in NH as NH Permissible Fireworks) are approved and or disapproved by the NH Permissible Review Committee for not only complying with all Federal regulations, but also which meet the means test of "allowable and safe" products for use by NH consumers. Not all Class C fireworks are created equal. There are many devices that are appropriate for use in the Midwest and West coast which are not in the best interest and safety of a region like southern New Hampshire where many neighborhoods within communities are densely populated. Each year there are a high percentage of items that are not approved by the Permissible Review Committee due to its angled firing, erratic trajectory of inserts or the amount and prolonged noise within the device. Consumer Product Safety Commission, US Dept of Transportation and independent testing standards of the American Fireworks Standards Laboratory does not always qualify in the best interest of every state or region of the US. We at Atlas would like to think that this legislative body is much more responsible to our citizenry than this loosely worded bill. Above all this bill would strip the Department of Public Safety from issuing an order to remove items that may be dangerous for continued sale. Although this has only happened on 5 or 6 occasions, it was as a direct result in devices that were placed on notice by the Consumer Product Safety Commission or devices that have come to the attention as being harmful to consumers. Additionally the wording in this bill misspeaks of "reloadable mortar shells" as being banned by "the federal government." Additionally, this bill would remove those items that have been removed from the Permissible Fireworks List of approved items that are known to have caused a majority of all personal injuries. Those devices on the NH banned list are re-loadable tube items, stick rockets, firecrackers and certain plastic devices from helicopter items.

Finally, we at Atlas believe that the current statute of RSA-160C clearly and definitively charts the proper public policy for the safe sale and use of consumer fireworks known as NH Permissible Fireworks. We all enjoy our freedoms but also have the moral and disciplined

obligation to protect the unsuspecting consumer from harming themselves, their property or the property of their neighbors. RSA 160C is the reason we have enjoyed nearly 20 years of the safe use and sale of NH Permissible Fireworks. We at Atlas urge the members of the Commerce and Consumer Affairs committee to recommend ITL of HB291.



# State of New Hampshire

DEPARTMENT OF SAFETY  
JAMES H. HAYES BLDG. 33 HAZEN DR.  
CONCORD, N.H. 03305  
603/271-2559

JOHN J. BARTHELMES  
COMMISSIONER OF SAFETY

EARL M. SWEENEY  
ASSISTANT COMMISSIONER

## HOUSE COMMERCE AND CONSUMER AFFAIRS

### HB 291

AN ACT relative to permissible fireworks

**Good morning Chairman Hunt and honorable members of the committee. For the record my name is John Raymond, Assistant Director for the State Fire Marshal's Office and Chairman of the Permissible Fireworks Review Committee.**

**[This bill defines permissible fireworks as consumer fireworks, which are regulated by the federal government and were formerly known as Class C common fireworks.]**

**This bill eliminates the Permissible Fireworks Committee that lists what fireworks a person may purchase and use in this state.**

**The Department of Safety supports this bill in part and opposes it in part. It repeals the burdensome Permissible Fireworks Review Committee, and we support this move. It repeals the creation of what has become an un-manageable list of permissible fireworks, because the manufacturers keep reintroducing the same or similar products under different names every year, resulting in duplication of effort. It eliminates the need for our Fireworks Inspector to provide logistical support to this committee.**

**The section we have concern with is in section 3, roman numeral III, which repeals RSA 160-C: 16, the authority of the Commissioner of Safety to remove from retail sale certain dangerous and nonconforming fireworks by ordering emergency removal. The NH Department of Safety may be the first in the nation to identify a life-threatening device and to give New Hampshire no right to manage itself but require getting the Federal Consumer Products Safety Commission to do a recall takes anywhere from months to a year or more.**

**The second issue we have is in section 2 roman numeral V, which deletes the present definition of permissible fireworks in RSA 160-C: 1, V, and goes with the federal list of consumer fireworks instead. The federal list already excludes large reloadable mortar shells, cherry bombs, aerial bombs, M-80's, and firecrackers containing more than 2 grains of powder. However, the Legislature just last year revised permissible fireworks to reduce the bureaucracy and maintain the focus that these are intended to be backyard fireworks devices that will help prevent injuries from unpredictable devices and ones that may go off at an angle toward a neighbor's home.**

**The Department of Safety would like to offer an amendment that retains the authority for emergency removal of dangerous fireworks for sale and relaxes the definition of permissible fireworks.**

**We would like this bill go to a Study Committee to work with the fireworks industry to take care of these issues. We have been able to obtain 139 page document from the American Fireworks Standards Laboratory (AFSL) that is an independent non-profit corporation that test fireworks before they come to the United States. We believe that with working with the fireworks industry we will able to come up with and amendment that will be satisfactory to everyone involved.**

## Stapler, Carol

---

**From:** Jim Headd [JimHeadd@comcast.net]  
**Sent:** Friday, February 11, 2011 2:37 PM  
**To:** Stapler, Carol  
**Subject:** Fw: HB 291

Carol: please place a copy of this memo in the file---thanks Jim

----- Original Message -----

**From:** <capnken@worldpath.net>  
**To:** <jimheadd@comcast.net>  
**Sent:** Wednesday, February 09, 2011 11:21 PM  
**Subject:** HB 291

Kenneth A Raymond February 10, 2011  
PO Box 333  
74 Highland Dr.  
Rindge, NH 03461-0333

Committee Clerk: James Headd  
Commerce and Consumer Affairs  
Rockingham- District 03, Seat #: 3042  
New Hampshire House of Representatives  
107 North Main Street, Concord, NH 03301  
e-mail: jimheadd@comcast.net

Dear Representative Headd, It has come to my attention that HB 291 (An act relative to permissible fireworks) was recently introduced to the House of Representatives and was the subject of public hearing on 02/08/2011. I want to say up front that I support this amendment to RSA 160-C for the following reasons. The current system for product approval of consumer permissible fireworks prevents retailers from offering for sale new and popular items. Manufacturers produce products that are designed to be compliant with requirements of the Consumer Product Safety Commission (CPSC) and tested to American Fireworks Standard Laboratories (AFSL) standards. The current system in NH controls available products to the detriment of commerce with no benefit to the public. This system has been more about eliminating products from the marketplace through the use of doom and gloom prophecy predicting unprecedented personal injury. The proven safety record of commercially produced consumer fireworks under existing federal regulations is sufficient to ensure that NH consumers will be protected from unsafe products. The truth is that personal injury related to consumer fireworks nationwide are at an all time low while the sales of these same products are at an all time high. The dreaded products often cited as the cause of these injuries are not consumer fireworks at all but are Federally banned black market illegal explosive devices. The banning of legitimate fireworks products contributes to the proliferation of these illegal devices. CPSC approved and AFSL tested products meet stringent requirements prior to being introduced in United States. Inspection by the NH permissible fireworks review committee should no longer be required. Allowing pyrotechnic products that are CPSC and AFSL approved relief from the hurdle of this unnecessary bureaucracy will enable NH merchants to compete in the marketplace with the full range of products available based on Federal Regulations. Elimination of the permissible fireworks review committee is overdue. As a consumer of NH approved permissible fireworks I would appreciate the opportunity to purchase the full range of pyrotechnic items that are allowed under Federal Law from

NH fireworks dealers. Approval of HB 291 will be good for retailers and consumers alike without compromising the public safety. I am a life long resident of New Hampshire and a registered voter. I advocate the responsible use of consumer fireworks and feel that HB 291 is in line with that sentiment. I hope you will support HB 291 and vote in the affirmative when it comes up for your consideration.

Respectfully Submitted  
With Best Regards  
Ken Raymond

Phone: (603) 899 3127  
Email to: capnken@worldpath.net

**Stapler, Carol**

**From:** Steve Pelkey [steve@atlaspyro.com]  
**Sent:** Wednesday, February 09, 2011 11:14 AM  
**To:** Hunt, John; Stapler, Carol  
**Subject:** Maine Proposed Legislation  
**Attachments:** 2011MaineHouseBillHP0071-LD83.pdf

Hi Carol/John:

Attached is the pdf for the Maine House Bill – An Act to Legalize the Sale, Possession and Use of Fireworks

First a little history...Maine tried for the last two years to bring up a similar bill that was defeated each time on the floor. This is round 3 with a modest change in the political environment in Maine. This time around however, the governor who is looking to have any business that can create revenue for the State of Maine is good. Not sure if that includes gambling and prostitution (LOL) but who knows as governors are desperate to find revenue. As such, the governor has "ordered" the State Fire Marshal to NOT APPEAR or OPPOSE the proposed legislation. Bear in mind...this is not sitting well with the FM. He has already been aligning the fire and police chiefs association to oppose this legislation. Here is the CATCH...Section 223-A paragraph 3(E) – The application must be approved by the municipality's police chief, fire chief and code enforcement officer. So, in addition to having the legislative body of a city or town MAY approve the sale, use and possession or any combination thereof. We have been in contact with several communities that we have a great relationship with doing displays including York, Kennebunk, Old Orchard Beach, Wells, Saco, Portland and Bar Harbor to name a few and none of those communities are receptive to the idea of fireworks sales in their communities. I suspect even if there is an approved piece of legislation coming out of Maine this year...it will have more of the flavor of NH in it...including banning firecrackers, reloadable tube items, missiles and angled effects greater than 25mm inserts.

Any argument used by some of the other NH retailers losing business is just false. VT, RI and CT are open to fountains and or other products and there is has been very little change in sales attributable to those markets opening. Any reduction in sales which we are down about 8 to 10% since 2008 has much more to do with the economy than competition. We still have the same number of sales and slightly higher...it is the average per sale that is down...not the customer count. We are able to track this information because we have all of our sales computerized to track for marketing.

I hope this helps. If you need me for more specific information I would be more than happy to help out. I am sorry I was not able to attend the hearing. I would have enjoyed seeing the old and new and improved committee.

*Stephen*



**STEPHEN PELKEY**, CEO/Artistic Director  
 Tel: 603-532-8324 | Fax: 603-532-4530  
 Web: [www.atlaspyro.com](http://www.atlaspyro.com)  
 Email: [steve@atlaspyro.com](mailto:steve@atlaspyro.com)

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2/9/2011

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 Legalize the Sale, Possession and Use of Fireworks**

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

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

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

**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.** 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 the 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.

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

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

**Sec. 6. 8 MRS §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 and shall devise and publish a safety pamphlet detailing appropriate use of the permissible fireworks. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter H-A2-A.~~

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

### 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 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 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.

# Voting Sheets

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 291

**BILL TITLE:** relative to permissible fireworks.

**DATE:** 3-9-11

**LOB ROOM:** 302

**Amendments:**

Sponsor: Rep. Rice/McGuinness OLS Document #: 2011 0675h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

**Motions:** OTP OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. McGuinness

Seconded by Rep. Coffey

Vote: 17-0 (Please attach record of roll call vote.)

**Motions:** OTP OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. McGuinness

Seconded by Rep. Coffey

Vote: 17-0 (Please attach record of roll call vote.)

**CONSENT CALENDAR VOTE:** Consent or Regular (Circle One)

(Vote to place on Consent Calendar must be unanimous.)

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep. Jim Headd, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on ~~HB~~ 291

BILL TITLE: relative to permissible fireworks.

DATE: 3-9-11

LOB ROOM: 302

Amendments: 0675 h

Sponsor: Rep. Mc Guinness

OLS Document #: 0675 h

Sponsor: Rep. ~~Coffey~~

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Mc Guinness

Seconded by Rep. Coffey

Vote: 17-0 (Please attach record of roll call vote.)

Motions: OTP OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Mc Guinness

Seconded by Rep. Coffey

Vote: 17-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: Consent or Regular (Circle One) 17-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Jim Headd, Clerk

COMMERCE AND CONSUMER AFFAIRS

Bill #: HB291 Title: \_\_\_\_\_

PH Date: 1/1 Exec Session Date: 3/9/11

Motion: OTR Amendment #: 06954

MEMBER	YEAS	NAYS
Hunt, John B, Chairman	/	
Coffey, Jennifer R, V Chairman	✓	
Belanger, Ronald J	—	
Flanders, Donald H	/	
Quandt, Matt J	/	
Headd, James F	/	
Nevins, Chris F	/	
Palfrey, David J	/	
Sullivan, James M	/	
Bergevin, Jerry E	/	
Manuse, Andrew J	/	
Mauro, Donna C	/	
McGuinness, Sean M	/	
Rice, Frederick C	/	
Taylor, Kathleen N	/	
Meader, David R	/	
Gidge, Kenneth N	/	
Schlachman, Donna L	/	
	17-0	

COMMERCE AND CONSUMER AFFAIRS

Bill #: HB 291 Title: \_\_\_\_\_

PH Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Exec Session Date: 3 19 11

Motion: OTPA

Amendment #: \_\_\_\_\_

MEMBER	YEAS	NAYS
Hunt, John B, Chairman	/	
Coffey, Jennifer R, V Chairman	/	
Belanger, Ronald J	/	
Flanders, Donald H	/	
Quandt, Matt J	/	
Headd, James F	/	
Nevins, Chris F	/	
Palfrey, David J	/	
Sullivan, James M	/	
Bergevin, Jerry E	/	
Manuse, Andrew J	/	
Mauro, Donna C	/	
McGuinness, Sean M	/	
Rice, Frederick C	/	
Taylor, Kathleen N	/	
Meador, David R	/	
Gidge, Kenneth N	/	
Schlachman, Donna L	/	
	R-O	
TOTAL VOTE:		



# Committee Report

**CONSENT CALENDAR**

**March 16, 2011**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on COMMERCE AND CONSUMER  
AFFAIRS to which was referred HB291,**

**AN ACT relative to permissible fireworks. Having  
considered the same, report the same with the following  
amendment, and the recommendation that the bill  
OUGHT TO PASS WITH AMENDMENT.**

**Rep. Sean M McGuinness**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	<b>COMMERCE AND CONSUMER AFFAIRS</b>
Bill Number:	<b>HB291</b>
Title:	<b>relative to permissible fireworks.</b>
Date:	<b>March 9, 2011</b>
Consent Calendar:	<b>YES</b>
Recommendation:	<b>OUGHT TO PASS WITH AMENDMENT</b>

### STATEMENT OF INTENT

This bill repeals a statutory committee system that currently tests and evaluates consumer fireworks that will be placed on a list of permissible fireworks available for sale in the state. Currently there are over 2400 individual items on the permissible list and this list is always changing. This bill changes "permissible fireworks" to mean "consumer fireworks which are those items that are approved by the federal Consumer Product Safety Commission under 27 F.R. Sec 555.111"; the only exception being those particular consumer fireworks specifically prohibited by statute. The bill has broad support with testimony coming from public and private interests. The act removes unnecessary bureaucracy, simplifies enforcement and maintains the federal standard of safety.

Vote 17-0.

Rep. Sean M McGuinness  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

### COMMERCE AND CONSUMER AFFAIRS

**HB291**, relative to permissible fireworks. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Sean M McGuinness for COMMERCE AND CONSUMER AFFAIRS. This bill repeals a statutory committee system that currently tests and evaluates consumer fireworks that will be placed on a list of permissible fireworks available for sale in the state. Currently there are over 2400 individual items on the permissible list and this list is always changing. This bill changes "permissible fireworks" to mean "consumer fireworks which are those items that are approved by the federal Consumer Product Safety Commission under 27 F.R. Sec 555.111"; the only exception being those particular consumer fireworks specifically prohibited by statute. The bill has broad support with testimony coming from public and private interests. The act removes unnecessary bureaucracy, simplifies enforcement and maintains the federal standard of safety. **Vote 17-0.**

Original: House Clerk  
Cc: Committee Bill File

HB 291 Relative to permissible fireworks – OUGHT TO PASS WITH  
AMMENDMENT

REP Sean McGuinness for Commerce and Consumer Affairs.

This Bill repeals a statutory committee system that currently tests and evaluates consumer fireworks that will be placed on a list of permissible fireworks available for sale in the state. Currently there are over ~~400~~ 2400 individual items on the permissible list and this list is always changing. This bill changes "permissible fireworks" to mean "Consumer fireworks which are those items that are approved by the federal Consumer Product Safety Commission under 27 C.F.R. Sec 555.111." The only exception being those particular consumer fireworks specifically prohibited by statute. The bill has broad support with testimony coming from public and private interests. The act removes unnecessary bureaucracy, simplifies enforcement and maintains the federal standard of safety. VOTE 17 - 0

A handwritten signature, possibly 'JAW', is enclosed within a hand-drawn oval. The signature is written in dark ink and is positioned in the lower right quadrant of the page.