

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

## SECOND REGULAR SESSION - 1990

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Legislative Document

No. 2398

H.P. 1737

House of Representatives, March 2, 1990

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

Reference to the Committee on Legal Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Speaker MARTIN of Eagle Lake.

Cosponsored by Senator BRANNIGAN of Cumberland, Senator DILLENBACK of Cumberland and Representative MARSH of West Gardiner.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY

---

An Act Concerning the Carrying of Firearms and Firearms Safety Programs.

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(AFTER DEADLINE)



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

2           Sec. 1. 15 MRSA §393, sub-§1, as amended by PL 1977, c. 564,  
4 §72, is further amended to read:

6           **1. Possession prohibited.** No person who has been convicted  
8 of any crime, under the laws of the United States, the State of  
10 Maine or any other state, which that is punishable by one year or  
12 more imprisonment or any other crime which that was committed  
14 with the use of a dangerous weapon or of a firearm against a  
16 person, except for a violation of Title 12, chapter 319,  
18 subchapter III, and no person who has been adjudicated in the  
20 State or determined under the law of the United States or any  
22 other state jurisdiction to have engaged in conduct as a juvenile  
24 that, if committed by an adult, would have been a disqualifying  
26 conviction under this subsection, shall may own, have in his that  
28 person's possession or under his that person's control any  
30 firearm, unless such a person has obtained a permit under this  
32 section. For the purposes of this subsection, a person shall-be  
34 is deemed to have been convicted upon the acceptance of a plea of  
36 guilty or nolo contendere or a verdict or finding of guilty, or  
38 the equivalent in a juvenile case, by a court of competent  
40 jurisdiction.

24           Sec. 2. 17-A MRSA §1057 is enacted to read:

26           **§1057. Possession of firearms in an establishment licensed for**  
28 **on-premises consumption of liquor**

30           **1. A person is guilty of criminal possession of a firearm**  
32 **if:**

34           **A. Not being a law enforcement officer or a private**  
36 **investigator licensed under Title 32, chapter 89 and**  
38 **actually performing as a private investigator, the person**  
40 **possesses any firearm on the premises of a licensed**  
42 **establishment posted to prohibit or restrict the possession**  
44 **of firearms in a manner reasonably likely to come to the**  
46 **attention of patrons, in violation of the posted prohibition**  
48 **or restriction; or**

42           **B. While under the influence of intoxicating liquor or**  
44 **drugs or a combination of liquor and drugs or with an**  
46 **excessive blood-alcohol level, the person possesses a**  
48 **firearm in a licensed establishment.**

46           **2. For purposes of this section, "licensed establishment"**  
48 **and "premises" have the same meanings as set forth in Title 28-A,**  
50 **section 2.**

2           3. It is not a defense to a prosecution under subsection 1  
4           that the person holds a permit to carry a concealed firearm  
            issued under Title 25, chapter 252.

6           4. A law enforcement officer who has probable cause to  
8           believe that a person has violated subsection 1, paragraph B, may  
10           require that person to submit to chemical testing to determine  
12           blood-alcohol level or drug concentration. If the court is  
14           satisfied that the law enforcement officer had probable cause to  
16           believe that the defendant was in violation of subsection 1,  
            paragraph B, and that the person was informed of the requirement  
            to submit to chemical testing, the person's failure to comply  
            with the requirement to submit to chemical testing is admissible  
            evidence on the issue of whether that person was under the  
            influence of intoxicating liquor or drugs.

18           5. For purposes of this section, "under the influence of  
20           intoxicating liquor or drugs or a combination of liquor and drugs  
22           or with an excessive blood-alcohol level" has the same meaning as  
24           specified in Title 29, section 1312-B, subsection 1. Standards,  
26           tests and procedures applicable in determining whether a person  
28           is under the influence or has an excessive blood-alcohol level  
            within the meaning of this section are those applicable pursuant  
            to Title 29, section 1312-B; except that the suspension of a  
            permit to carry concealed firearms issued pursuant to Title 25,  
            chapter 252, or of the authority of a private investigator  
            licensed to carry a concealed firearm pursuant to Title 32,  
            chapter 89, is as provided in those chapters.

30           6. Criminal possession of a firearm is a Class D crime. In  
32           addition, as part of every judgment of conviction and sentence  
            imposed, the court shall:

34           A. Revoke any permit to carry a concealed firearm issued to  
36           the person so convicted; and

38           B. If the person so convicted is licensed as a private  
40           investigator, suspend for a period of 5 years that person's  
            right as a private investigator to carry a concealed firearm.

42           A person convicted of a violation of this section is not eligible  
44           to obtain or apply for a permit to carry a concealed firearm for  
            5 years from the date of that conviction.

46           Sec. 3. 20-A MRSA §254, sub-§8 is enacted to read:

48           8. Firearm safety. The commissioner shall submit to the  
50           Legislature, no later than January 1, 1991, a firearms safety  
52           familiarization program for use in public elementary schools to  
            provide students with a basic knowledge of firearm safety. The  
            commissioner shall develop the program in consultation with the  
            Department of Inland Fisheries and Wildlife.

2           **Sec. 4. 25 MRSA §2001, sub-§1**, as enacted by PL 1985, c. 478,  
§2, is amended to read:

4  
6           **1. Permit issued.** Persons Firearms carried by any person  
to whom a valid permit to carry a concealed firearm has been  
issued as provided in this chapter;

8  
10           **Sec. 5. 25 MRSA §2001, sub-§4**, as enacted by PL 1985, c. 478,  
§2, is amended to read:

12           **4. Law enforcement officers and corrections officers.** Law  
enforcement officers and corrections officers as permitted in  
14 writing by their employer; ~~or~~

16           **Sec. 6. 25 MRSA §2001, sub-§5**, as repealed and replaced by PL  
1987, c. 602, §1, is amended to read:

18  
20           **5. Private investigators.** Private Firearms carried by  
private investigators licensed under Title 32, chapter 89, while  
performing the duties of a private investigator, unless the  
22 licensee's right to carry a concealed firearm has been suspended;  
or

24  
26           **Sec. 7. 25 MRSA §2001, sub-§6** is enacted to read:

28           **6. Licensed hunters and trappers.** Firearms carried by any  
person engaged in conduct for which a state-issued hunting or  
trapping license is required and possessing the required license,  
30 or firearms carried by a resident person engaged in conduct  
expressly authorized by Title 12, section 7377, subsections 1 and  
32 2. This subsection does not authorize or permit the carrying of  
a concealed or loaded firearm in a motor vehicle.

34  
36           **Sec. 8. 25 MRSA §2002, sub-§1**, as enacted by PL 1985, c. 478,  
§2, is amended to read:

38           **1. Corrections officer.** "Corrections officer" has the same  
meaning as set forth in section 2805 2801-A, subsection 2,  
40 paragraph C, ~~subparagraph-(1) A~~.

42           **Sec. 9. 25 MRSA §2003, sub-§1, ¶D**, as enacted by PL 1985, c.  
478, §2, is amended to read:

44  
46           D. Submits an application which that contains the  
following:

48                   (1) Full name;

50                   (2) Full current address and addresses for the prior 5  
52 years;

2 (3) The date and place of birth, height, weight and  
color of eyes;

4 (4) A record of previous issuances of, refusals to  
6 issue and revocations of a permit to carry concealed  
firearms or other concealed weapons by any issuing  
8 authority in the State or any other jurisdiction. The  
record of previous refusals alone does not constitute  
10 cause for refusal and the record of previous  
revocations alone constitutes cause for refusal only as  
12 provided in section 2005; and

14 (5) Answers to the following questions+.

16 (a) Is there a formal charging instrument now  
18 pending against you in this or any other  
jurisdiction for a crime which that is punishable  
20 by one year or more imprisonment or for any other  
crime alleged to have been committed by you with  
22 the use of a dangerous weapon, as defined in Title  
17-A, section 2, subsection 9, or of a firearm  
against another person?

24 (b) Is there a formal charging instrument now  
26 pending against you in this or any other  
jurisdiction for a juvenile offense which that  
28 involves conduct which that, if committed by an  
adult, would be punishable by one year or more  
30 imprisonment or for any other juvenile offense  
alleged to have been committed by you with the use  
32 of a dangerous weapon, as defined in Title 17-A,  
section 2, subsection 9, or of a firearm against  
34 another person?

36 (c) Have you ever been convicted of a crime  
described in division (a) or adjudicated as having  
38 committed a juvenile offense as described in  
division (b)?

40 (d) Are you a fugitive from justice?

42 (e) Are you a drug abuser, drug addict or drug  
44 dependent person?

46 (f) Do you have a mental disorder which that  
causes you to be potentially dangerous to yourself  
48 or others?

50 (g) Have you been adjudicated to be an  
incapacitated person pursuant to Title 18-A,  
Article V, Parts 3 and 4, and not had that

2 designation removed by an order under Title 18-A,  
section 5-307, subsection (b)?

4 (h) Have you been dishonorably discharged from  
the military forces within the past 5 years?

6 (i) Are you an illegal alien?

8 (j) Have you been convicted of a violation of  
10 Title 17-A, section 1057 within the past 5 years?

12 (k) Have you been adjudicated within the past 5  
14 years as having committed a juvenile offense  
involving conduct that, if committed by an adult,  
16 would be a violation of Title 17-A, section 1057?

18 (l) Have you been the subject of an investigation  
by any law enforcement agency within the past 5  
20 years regarding the alleged abuse by you of family  
or household members?

22 (m) Have you been convicted within the past 5  
24 years of 3 or more crimes punishable by  
imprisonment of less than one year?

26 (n) Have you been adjudged within the past 5  
28 years to have committed 3 or more juvenile  
offenses involving conduct that, if committed by  
30 an adult, would be punishable by imprisonment of  
less than one year?

32 (o) To your knowledge, have you engaged within  
34 the past 5 years in reckless or negligent conduct  
that has been the subject of an investigation by a  
36 governmental entity?

38 **Sec. 10. 25 MRSA §2003, sub-§1, ¶E,** as amended by PL 1985, c.  
478, §2, is further amended to read:

40 E. Does the following:

42 (1) At the request of the issuing authority, takes  
44 whatever action is required of him by law to allow the  
issuing authority to obtain from the Department of  
46 Mental Health and Mental Retardation, limited to  
records of patient committals to Augusta Mental Health  
48 Institute and Bangor Mental Health Institute, the  
courts, law enforcement agencies and the military  
information relevant to the following:

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(a) The ascertainment of whether the information supplied on the application or any documents made a part of the application is true and correct;

(b) The ascertainment of whether each of the additional requirements of this section has been met; and

(c) Section 2005;

(2) If a photograph is an integral part of the permit to carry concealed firearms adopted by an issuing authority, submits to being photographed for that purpose;

(3) If it becomes necessary to resolve any questions as to his identity, submits to having his fingerprints taken by the issuing authority; and

(4) Submits an application fee not to exceed \$20 for an original application and \$10 for a renewal for a resident of the State. The fee shall cover both the cost of processing the application by the issuing authority and the cost of the permit to carry concealed firearms issued by the issuing authority; and

(5) Demonstrates to the issuing authority a knowledge of handgun safety. The applicant may fully satisfy this requirement by submitting to the issuing authority, through documentation in accordance with this subparagraph, proof that the applicant has within 5 years prior to the date of application completed a course that included handgun safety offered by or under the supervision of a federal, state, county or municipal law enforcement agency or a firearms instructor certified by the National Rifle Association or by the state in which the course was taken. A course completion certificate or other document, or a photocopy, is sufficient if it recites or otherwise demonstrates that the course meets all of the requirements of this subparagraph.

As an alternative way of fully satisfying this requirement, an applicant may personally demonstrate knowledge of handgun safety to an issuing authority, if the issuing authority is willing to evaluate an applicant's personal demonstration of such knowledge. The issuing authority is not required to offer this 2nd option.

The demonstration of knowledge of handgun safety to the issuing authority may not be required of any applicant



2                   who holds a valid State permit to carry a concealed  
3                   firearm as of April 1, 1990 or of any applicant who was  
4                   or is in any of the Armed Forces of the United States  
5                   and has received at least basic firearms training.

6                   **Sec. 11. 25 MRSA §2003, sub-§2, ¶B**, as enacted by PL 1985, c.  
7                   478, §2, is repealed and the following enacted in its place:

8                   B. That the applicant understands that an affirmative  
9                   answer to one or more of the questions in subsection 1,  
10                   paragraph D, subparagraph (5), divisions (c) to (k) is cause  
11                   for refusal;

12                   **Sec. 12. 25 MRSA §2003, sub-§2, ¶B-1** is enacted to read:

13                   B-1. That the applicant understands that an affirmative  
14                   answer to one or more of the questions in subsection 1,  
15                   paragraph D, subparagraph (5), divisions (a), (b), (l), (m),  
16                   (n) and (o) is used by the issuing authority, along with  
17                   other information, in judging good moral character under  
18                   subsection 4; and

19                   **Sec. 13. 25 MRSA §2003, sub-§3-A** is enacted to read:

20                   3-A. Model forms. The Attorney General shall develop model  
21                   forms for the following:

22                   A. An application for a resident permit to carry concealed  
23                   firearms;

24                   B. An application for a nonresident permit to carry  
25                   concealed firearms;

26                   C. A resident permit to carry concealed firearms of which a  
27                   photograph is an integral part;

28                   D. A resident permit to carry concealed firearms of which a  
29                   photograph is not an integral part;

30                   E. A nonresident permit to carry concealed firearms; and

31                   F. Authority to release information to the issuing  
32                   authority for the purpose of evaluating information supplied  
33                   on the application.

34                   Each issuing authority shall utilize the model forms.

35                   **Sec. 14. 25 MRSA §2005, sub-§1**, as enacted by PL 1985, c. 478,  
36                   §2, is amended to read:

37                   1. Revocation. The issuing authority shall revoke a permit  
38                   on the basis of one or more of the following determinations:

- 2 A. The application or any documents made part of the  
4 application contained a material misstatement;
- 6 B. The permit holder has been convicted of a violation of  
8 section 2001; or
- 10 C. The permit holder becomes ineligible to possess a permit  
12 under this chapter. Ineligibility is determined on the  
14 basis of the criteria contained in section 2003.
- 16 D. For conduct that occurred after a permit was issued,  
18 that the permit holder was convicted of operating a motor  
20 vehicle, snowmobile, ATV or watercraft while under the  
22 influence of intoxicating liquor or drugs or with an  
excessive blood-alcohol level and, by a preponderance of the  
evidence, that at the time of the offense the permit holder  
was in possession of a loaded firearm; or
- E. For conduct that occurred after a permit was issued,  
that the permit holder was convicted of any violation of  
Title 17-A, chapter 45.

24 **Sec. 15. 25 MRSA §2005, sub-§2, ¶B** is enacted to read:

26 B. If the issuing authority of the permit holder's new  
28 residence so requests, the previous issuing authority shall  
30 provide a photocopy of the permit holder's application,  
documents made a part of the application and any information  
of record collected by that previous issuing authority.

32 **Sec. 16. 25 MRSA §2005, sub-§3,** as enacted by PL 1985, c. 478,  
34 §2, is amended to read:

36 **3. Reapplication.** No If a permit has been revoked solely  
38 under subsection 1, paragraph D, the former permit holder may  
40 reapply upon successful completion of a substance abuse treatment  
42 program approved by the Department of Human Services as  
appropriate for the permit holder's problem or condition. Except  
as specified in this subsection, no person, otherwise eligible,  
who has had a permit revoked, is eligible for reapplication until  
the expiration of 5 years from the date of revocation.

44 **Sec. 17. 25 MRSA §2005-A** is enacted to read:

46 **§2005-A. Suspension of permit upon refusal**

48 **1. Immediate suspension.** If the permit holder is required  
50 by law to submit to chemical testing for the presence of  
intoxicating liquor or drugs pursuant to Title 17-A, section 1057  
or for conduct that occurs while the permit holder is in

2 possession of a loaded firearm, and the permit holder refuses to  
3 submit to the required testing, the permit to carry a concealed  
4 firearm issued to that person is immediately suspended and must  
5 be surrendered at that time by the permit holder to the law  
6 enforcement officer.

7 2. Notice to issuing authority. The law enforcement  
8 officer who has probable cause to require chemical testing shall  
9 promptly notify the issuing authority, in writing, of the permit  
10 holder's refusal and shall return the surrendered permit to the  
11 issuing authority.

12 3. Suspension in effect during pendency. The suspension  
13 remains in effect until the entry of judgment if charges are  
14 filed of violating Title 17-A, section 1057 or of operating a  
15 motor vehicle, snowmobile, ATV, or watercraft under the influence  
16 of intoxicating liquor or drugs, unless it is determined by the  
17 court in which the criminal charge or civil violation is pending,  
18 or by the Secretary of State if a hearing is held pursuant to  
19 Title 29, section 1312, that the law enforcement officer did not  
20 have probable cause to require the permit holder to submit to  
21 chemical testing.

22 4. Suspension terminated. If the permit holder is  
23 acquitted of the criminal charges to which the refusal pertains,  
24 if the charges are dismissed by the State or by the court or if a  
25 determination of no probable cause is made, the suspension is  
26 terminated and the court or the State shall promptly notify the  
27 issuing authority in writing. Upon receipt of the written notice  
28 the issuing authority shall return the permit.

29 Sec. 18. 32 MRSA §8113-A is enacted to read:

30 §8113-A. Suspension for refusal

31 1. Immediate suspension. If the commissioner has probable  
32 cause to believe that a person licensed pursuant to this chapter  
33 is required to submit to chemical testing for the presence of  
34 intoxicating liquor or drugs pursuant to Title 17-A, section 1057  
35 or for conduct that occurs while the licensee is in possession of  
36 a loaded firearm and the licensee refuses to submit to the  
37 required testing, the commissioner shall immediately suspend the  
38 licensee's right to carry a concealed firearm.

39 2. Report to commissioner. The law enforcement officer who  
40 has probable cause to require chemical testing shall promptly  
41 notify the commissioner of the licensee's refusal and provide the  
42 commissioner with a report of the facts and circumstances of the  
43 requirement to submit to chemical testing and of the licensee's  
44 refusal.



2 4. Amendments to the Maine Revised Statutes, Title 25,  
holder to carry a concealed firearm and that firearms are the  
4 concealed weapons that private investigators are authorized to  
carry, recognizing that that right may be suspended under certain  
6 circumstances.

8 5. The bill creates new exemptions to the concealed  
firearms law for licensed resident or nonresident hunters and  
10 trappers and unlicensed resident hunters and trappers on their  
own land as authorized by Title 12, section 7377, subsections 1  
12 and 2. Under this bill a firearm may be carried concealed while  
actually hunting or trapping without the necessity of obtaining a  
14 permit to carry a concealed firearm. Note that this amendment  
does not permit the carrying of a loaded or a concealed weapon in  
16 or on a motor vehicle, snowmobile or ATV; to do so would still  
require a concealed firearms permit. This amendment does not  
18 preclude hunters from obtaining a concealed firearms permit, but  
it is designed to make such a permit unnecessary for individuals  
20 who presently obtain a permit to carry a firearm solely to make  
the carrying of a concealed firearm while hunting or trapping  
22 lawful.

24 6. The bill amends the definition of "corrections officer"  
to reflect a new statutory reference.

26 7. The bill explicitly states that out-of-state  
28 applications for permits to carry any kind of concealed weapon  
out of state and refusals and revocations of such permits out of  
30 state must be reported by persons making application for a permit  
to carry a concealed firearm in Maine.

32 8. This bill adds new questions to the application for a  
concealed firearms permit. Two questions address convictions and  
34 juvenile violations of Title 17-A, section 1057. The balance of  
these new questions is presently covered in Title 25, section  
36 2003, subsection 4, but these questions are now explicitly  
38 required to be part of the application.

40 9. The bill requires that a concealed firearms permit  
holder possess basic knowledge of handgun safety. All persons  
42 holding a Maine permit to carry a concealed firearm as of April  
1, 1990, are exempt from the requirement, as are current and  
44 former members of the armed forces who have had basic firearms  
training. The requirement of this section can be met by taking  
46 or having taken within the prior 5 years any of a variety of  
courses in firearms safety that includes handgun safety. If the  
48 issuing authority is willing to assess it, this requirement may  
also be met by the applicant demonstrating to the issuing  
50 authority that the applicant is familiar with handgun safety. If  
the issuing authority chooses to offer this alternative, it can  
52 not require the use of this alternative to the exclusion of

2 the handgun safety course alternative nor can the issuing  
3 authority require that the applicant satisfy both.

4 10. The bill requires the Attorney General to develop model  
5 forms for applications, release forms and permits for use by  
6 issuing authorities.

8 11. Under this bill, if the holder of a concealed firearms  
9 permit is convicted of operating under the influence and at the  
10 time of the offense had in his or her possession a loaded  
11 firearm, the permit is revoked until the permit holder completes  
12 a Department of Human Services approved substance abuse course  
13 and reapplies for a permit.

14 12. Conviction of a drug crime is a basis for revocation of  
15 a concealed firearms permit.

18 13. The bill makes it clear that when a permit holder  
19 changes residence and a new permit is issued by the new  
20 municipality, the new town of residence can obtain from the  
21 former municipality photocopies of the application, accompanying  
22 documents and any information of record collected by that  
23 previous issuing authority in assessing the application. The new  
24 language also makes it clear that the former issuing authority  
25 must provide the requested documents and that doing so does not  
26 violate the confidentiality provisions.

28 14. This bill enacts an implied consent provision like  
29 similar provisions in the various OUI laws, that is designed to  
30 encourage chemical testing when such testing is required.

32 A. A concealed firearms permit holder would have the permit  
33 suspended for refusing to take a chemical test. The permit  
34 is restored when the individual is acquitted of the charge  
35 under Title 25, section 1057, or if the trial judge or the  
36 Secretary of State in a motor vehicle case finds that the  
37 officer lacked probable cause to require that the chemical  
38 tests be taken. Certain of the  
39 operating-under-the-influence provisions, for example, Title  
40 12, section 7912, subsection 2, make the refusal to take the  
41 test a civil violation. In those cases a trial judge's  
42 finding in favor of the permit holder on the civil violation  
43 will result in restoration of the permit.

44 B. A parallel provision is created for private  
45 investigators who refuse to take required chemical tests.  
46 Since the Commissioner of Public Safety issues private  
47 investigator licenses, the commissioner may make the  
48 determination of probable cause. The private investigator's  
49 right to carry a firearm would be restored if the judge in a  
50 criminal case, or the judge on a civil violation, determines

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that the officer did not have probable cause to require the private investigator to take the test.