

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



125th MAINE LEGISLATURE

SECOND REGULAR SESSION-2012

Legislative Document

No. 1859

H.P. 1377

House of Representatives, March 12, 2012

An Act To Protect Firearm Ownership during Times of Emergency

(AFTER DEADLINE)

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

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

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

HEATHER J.R. PRIEST
Clerk

Presented by Representative SHAW of Standish.
Cosponsored by Senator DIAMOND of Cumberland and
Representatives: CEBRA of Naples, CLARK of Millinocket, GRAHAM of North Yarmouth,
HANLEY of Gardiner, HARMON of Palermo, PLUMMER of Windham, SARTY of
Denmark, Senator: LANGLEY of Hancock.

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

3 **Whereas,** the right to keep and bear firearms is provided for by the Second
4 Amendment to the Constitution of the United States; and

5 **Whereas,** this legislation clarifies the authority of persons acting in an official
6 capacity to restrict or seize firearms in times of emergency; and

7 **Whereas,** since it is unknown when a state of emergency may exist next, it is vital
8 that this clarification be in place as soon as possible; and

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

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

14 **Sec. 1. 25 MRSA §2011, sub-§5** is enacted to read:

15 **5. Restrictions on firearms and ammunition prohibited during state of**
16 **emergency.** The provisions of this subsection apply to restrictions on firearms and
17 ammunition during a state of emergency, as declared by the Governor pursuant to Title
18 37-B, section 742, subsection 1.

19 A. During a state of emergency, notwithstanding any provision of law to the
20 contrary, a person acting on behalf or under the authority of the State or a political
21 subdivision of the State may not:

22 (1) Prohibit or restrict the otherwise lawful possession, use, carrying, transfer,
23 transportation, storage or display of a firearm or ammunition. The provisions of
24 this paragraph regarding the lawful transfer of a firearm or ammunition do not
25 apply to the commercial sale of a firearm or ammunition if an authorized person
26 has ordered an evacuation or general closure of businesses in the area of the
27 business engaged in the sale of firearms or ammunition;

28 (2) Seize or confiscate, or authorize the seizure or confiscation of, an otherwise
29 lawfully possessed firearm or ammunition unless the person acting on behalf of
30 or under the authority of the State is:

31 (a) Acting in self-defense against an assault;

32 (b) Defending another person from an assault;

33 (c) Arresting a person in actual possession of a firearm or ammunition for a
34 violation of law; or

35 (d) Seizing or confiscating the firearm or ammunition as evidence of a
36 crime; or

1 (3) Require registration of a firearm or ammunition for which registration is not
2 otherwise required by state law.

3 B. An individual aggrieved by a violation of this subsection may seek relief in an
4 action at law or in equity for redress against any person who subjects that individual,
5 or causes that individual to be subjected, to an action prohibited by this subsection.

6 C. In addition to any other remedy at law or in equity, an individual aggrieved by the
7 seizure or confiscation of a firearm or ammunition in violation of this subsection may
8 bring an action for the return of the firearm or ammunition in the Superior Court of
9 the county in which that individual resides or in which the firearm or ammunition is
10 located.

11 D. In an action or proceeding to enforce this subsection, the court shall award a
12 prevailing plaintiff costs and reasonable attorney's fees.

13 **Sec. 2. 37-B MRSA §742, sub-§1, ¶C**, as amended by PL 2001, c. 353, §4, is
14 further amended to read:

15 C. After the filing of the emergency proclamation and in addition to any other
16 powers conferred by law, the Governor may:

17 (1) Suspend the enforcement of any statute prescribing the procedures for
18 conduct of state business, or the orders or rules of any state agency, if strict
19 compliance with the provisions of the statute, order or rule would in any way
20 prevent, hinder or delay necessary action in coping with the emergency;

21 (2) Utilize all available resources of the State Government and of each political
22 subdivision of the State as reasonably necessary to cope with the disaster
23 emergency;

24 (3) Transfer the direction, personnel or functions of state departments and
25 agencies, or units thereof, for the purposes of performing or facilitating
26 emergency services;

27 (4) Authorize the obtaining and acquisition of property, supplies and materials
28 pursuant to section 821;

29 (5) Enlist the aid of any person to assist in the effort to control, put out or end the
30 emergency or aid in the caring for the safety of persons;

31 (6) Direct and compel the evacuation of all or part of the population from any
32 stricken or threatened area within the State, if the Governor determines this
33 action necessary for the preservation of life or other disaster mitigation, response
34 or recovery;

35 (7) Prescribe routes, modes of transportation and destinations in connection with
36 evacuations;

37 (8) Control ingress and egress to and from a disaster area, the movement of
38 persons within the area and the occupancy of premises therein;

39 (9) Suspend or limit the sale, dispensing or transportation of alcoholic beverages,
40 ~~firearms~~, explosives and combustibles;

1 (10) Make provision for the availability and use of temporary emergency
2 housing;

3 (11) Order the termination, temporary or permanent, of any process, operation,
4 machine or device which may be causing or is understood to be the cause of the
5 state of emergency for which this proclamation was made; and

6 (12) Take whatever action is necessary to abate, clean up or mitigate whatever
7 danger may exist within the affected area.

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

10 **SUMMARY**

11 This bill prohibits a person acting on behalf or under the authority of the State or a
12 political subdivision of the State from prohibiting or restricting the otherwise lawful
13 possession, use, carrying, transfer, transportation, storage or display of a firearm or
14 ammunition during a declared state of emergency. This bill also removes the power of
15 the Governor to suspend or limit the sale, dispensing and transportation of firearms
16 during a declared state of emergency.