

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1240

H.P. 874

House of Representatives, March 27, 2013

An Act To Promote the Safe Use and Sale of Firearms

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative DION of Portland.
Cosponsored by Senator GERZOFKY of Cumberland and
Representatives: COOPER of Yarmouth, GIDEON of Freeport, PLANTE of Berwick,
PRINGLE of Windham.

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

2 **Sec. 1. 12 MRSA §10108, sub-§1**, as enacted by PL 2003, c. 414, Pt. A, §2 and
3 affected by c. 614, §9, is amended to read:

4 **1. Training in firearm safety.** The commissioner shall establish a program for
5 training individuals in the safe handling of firearms and for this purpose may cooperate
6 with any public or private association or organization having as one of its objectives the
7 promotion of safety in firearms handling.

8 In establishing the program under this subsection, the commissioner shall:

9 A. Prescribe the qualifications of instructors. Each instructor authorized by the
10 commissioner to conduct training under the program must be covered by liability
11 insurance protecting that person from liability for damages during the time when
12 instruction is being given. The cost of this insurance must be borne by the State and
13 must be a charge against the funds credited to the department;

14 B. Prescribe the type and course of instruction and the time and place of
15 examinations; ~~and~~. The course must include:

16 (1) Rules for safe handling, storage and use of firearms;

17 (2) Nomenclature and description of various firearms;

18 (3) Responsibilities of firearm ownership;

19 (4) Risk factors in the home or community, including identifying individuals
20 who may be a risk to themselves or others; and

21 (5) Information relating to the availability of firearm safety kits and known local
22 voluntary firearm safety programs.

23 The commissioner shall review firearm safety courses other than the course under
24 this paragraph, including courses from other jurisdictions, and list on the publicly
25 accessible portion of the department's website a course other than the course under
26 this paragraph that meets the requirements of this paragraph; and

27 C. Issue a certificate of competency to individuals who successfully complete the
28 examination.

29 **Sec. 2. 15 MRSA §393, sub-§1, ¶E**, as amended by PL 2009, c. 651, §1, is
30 further amended to read:

31 E. Has been:

32 (1) Committed involuntarily to a hospital pursuant to an order of the District
33 Court under Title 34-B, section 3864 because the person was found to present a
34 likelihood of serious harm, as defined under Title 34-B, section 3801, subsection
35 4-A, paragraphs A to C;

36 (1-A) Admitted to a psychiatric hospital on an emergency basis pursuant to Title
37 34-B, section 3863;

1 (2) Found not criminally responsible by reason of insanity with respect to a
2 criminal charge; or

3 (3) Found not competent to stand trial with respect to a criminal charge.

4 **Sec. 3. 15 MRSA §393, sub-§4-A**, as amended by PL 2011, c. 541, §1, is further
5 amended to read:

6 **4-A. Application for relief.** Except under subsection 4-B or as otherwise provided,
7 a person subject to the federal prohibition against possession of firearms pursuant to 18
8 United States Code, Section 922(g)(4) as a result of being adjudicated a mental defective
9 may, after the expiration of 5 years from the date of final discharge from commitment,
10 apply to the commissioner for relief from the disability.

11 Relief is not available under this subsection for a person found not criminally responsible
12 by reason of insanity or incompetent to stand trial in a criminal case or a person adjudged
13 by a Probate Court to lack the capacity to contract or manage the person's own affairs.

14 A. An application under this subsection must be on a form developed by the
15 commissioner. The application must include the applicant's full name; all aliases;
16 date and place of birth; place of legal residence; occupation; make and model of the
17 firearm sought to be possessed; reason for the request; date, place and docket number
18 of commitment; name of institution to which applicant was committed; names of
19 providers that provided mental health treatment for the applicant; date of discharge
20 from commitment; release for all mental health records; and any other information
21 determined by the commissioner to be of assistance. The application must be
22 accompanied by certified or attested copies of the commitment from which the
23 applicant seeks relief and the report of an independent psychologist or psychiatrist
24 licensed to practice in this State specifically addressing the factors set forth in
25 paragraph E. The commissioner may establish a roster of psychologists and
26 psychiatrists qualified and interested in doing these evaluations. The psychologist or
27 psychiatrist must be available for cross-examination. The psychologist or psychiatrist
28 listed on the roster is an employee for the purposes of the Maine Tort Claims Act for
29 evaluations under this paragraph.

30 B. The commissioner has the independent authority to establish the following, to be
31 paid by the applicant:

32 (1) Application fee; and

33 (2) Fees for evaluations required by paragraph A.

34 C. Upon receipt of a completed application, the commissioner shall notify persons
35 who received notice of the commitment pursuant to Title 34-B, section 3864,
36 subsection 3, paragraph A, subparagraph (2) and the district attorney, chief of police
37 and sheriff in the municipality and county where the applicant resides of the filing of
38 the application, with a request to provide to the commissioner any information
39 relevant to the factors in paragraph E.

40 D. Upon receipt of a completed application, the commissioner shall review the
41 application and determine whether the person has made a prima facie showing of the

1 elements of paragraph E. If the commissioner determines that the person has made a
2 prima facie showing, the commissioner shall schedule a hearing.

3 E. The burden of proof is on the applicant to prove, by clear and convincing
4 evidence, that the circumstances that led to the involuntary commitment to a hospital
5 have changed, that the applicant is not likely to act in a manner dangerous to public
6 safety and that granting the application for relief will not be contrary to the public
7 interest.

8 F. If the commissioner finds by clear and convincing evidence that the circumstances
9 that led to the involuntary commitment have changed, that the applicant is not likely
10 to act in a manner dangerous to public safety and that granting the application for
11 relief will not be contrary to the public interest, the commissioner may grant relief.

12 G. Notwithstanding any other provision of law, and except as indicated in this
13 paragraph, all applications for relief pursuant to this subsection and documents made
14 a part of the application, refusals and any information of record collected by the
15 commissioner during the process of determining whether an applicant qualifies for
16 relief are confidential and may not be made available for public inspection or copying
17 unless:

18 (1) The applicant waives this confidentiality in writing or on the record of any
19 hearing; or

20 (2) A court of record so orders. Proceedings relating to the grant or denial of
21 relief are not public proceedings under Title 1, chapter 13.

22 The commissioner shall make a permanent record, in the form of a summary, of the
23 final decision regarding each application. The summary must include the name of the
24 applicant and indicate whether the application for relief was granted or denied. The
25 information contained in this summary is available for public inspection.

26 H. An applicant may appeal the denial of an application for relief under this
27 subsection within 30 days of receipt of the written notice of decision by filing a
28 complaint in the District Court for de novo review in the district where the
29 Department of Public Safety has its principal office. Hearings are closed unless
30 otherwise agreed to by the applicant. A party aggrieved by a decision of the District
31 Court may not appeal as of right. The time for taking the appeal and the manner and
32 any conditions for the taking of the appeal are as the Supreme Judicial Court provides
33 by rule.

34 **Sec. 4. 15 MRSA §393, sub-§4-B** is enacted to read:

35 **4-B. Application for relief for person admitted to psychiatric hospital on**
36 **emergency basis. A person prohibited from possessing a firearm under subsection 1,**
37 **paragraph E, subparagraph 1-A may petition the District Court at any time for relief from**
38 **the prohibition. A District Court shall hold a hearing for relief within 7 days of receiving**
39 **a petition for relief under this subsection.**

40 **Sec. 5. 15 MRSA §455, sub-§2**, as enacted by PL 2003, c. 452, Pt. H, §1 and
41 affected by Pt. X, §2, is amended to read:

1 **2. False or fictitious name.** A person may not give a false or fictitious name to a
2 dealer. A person who violates this subsection commits a civil violation for which a fine
3 of ~~\$50~~ \$1,000 may be adjudged.

4 **Sec. 6. 25 MRSA §2003, sub-§1, ¶A,** as enacted by PL 1985, c. 478, §2, is
5 amended to read:

6 A. Is ~~18~~ 21 years of age or older;

7 **Sec. 7. 25 MRSA §2003, sub-§1, ¶D,** as amended by PL 2011, c. 298, §7, is
8 further amended to read:

9 D. Submits an application that contains the following:

10 (1) Full name;

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

12 (3) The date and place of birth, height, weight, color of eyes, color of hair, sex
13 and race;

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

20 (5) Answers to the following questions:

21 (a) Are you less than ~~18~~ 21 years of age?

22 (b) Is there a formal charging instrument now pending against you in this
23 State for a crime under the laws of this State that is punishable by
24 imprisonment for a term of one year or more?

25 (c) Is there a formal charging instrument now pending against you in any
26 federal court for a crime under the laws of the United States that is
27 punishable by imprisonment for a term exceeding one year?

28 (d) Is there a formal charging instrument now pending against you in another
29 state for a crime that, under the laws of that state, is punishable by a term of
30 imprisonment exceeding one year?

31 (e) If your answer to the question in division (d) is "yes," is that charged
32 crime classified under the laws of that state as a misdemeanor punishable by
33 a term of imprisonment of 2 years or less?

34 (f) Is there a formal charging instrument pending against you in another state
35 for a crime punishable in that state by a term of imprisonment of 2 years or
36 less and classified by that state as a misdemeanor, but that is substantially
37 similar to a crime that under the laws of this State is punishable by
38 imprisonment for a term of one year or more?

- 1 (g) Is there a formal charging instrument now pending against you under the
2 laws of the United States, this State or any other state or the Passamaquoddy
3 Tribe or Penobscot Nation in a proceeding in which the prosecuting authority
4 has pleaded that you committed the crime with the use of a firearm against a
5 person or with the use of a dangerous weapon as defined in Title 17-A,
6 section 2, subsection 9, paragraph A?
- 7 (h) Is there a formal charging instrument now pending against you in this or
8 any other jurisdiction for a juvenile offense that, if committed by an adult,
9 would be a crime described in division (b), (c), (d) or (f) and involves bodily
10 injury or threatened bodily injury against another person?
- 11 (i) Is there a formal charging instrument now pending against you in this or
12 any other jurisdiction for a juvenile offense that, if committed by an adult,
13 would be a crime described in division (g)?
- 14 (j) Is there a formal charging instrument now pending against you in this or
15 any other jurisdiction for a juvenile offense that, if committed by an adult,
16 would be a crime described in division (b), (c), (d) or (f), but does not
17 involve bodily injury or threatened bodily injury against another person?
- 18 (k) Have you ever been convicted of committing or found not criminally
19 responsible by reason of mental disease or defect of committing a crime
20 described in division (b), (c), (f) or (g)?
- 21 (l) Have you ever been convicted of committing or found not criminally
22 responsible by reason of mental disease or defect of committing a crime
23 described in division (d)?
- 24 (m) If your answer to the question in division (l) is "yes," was that crime
25 classified under the laws of that state as a misdemeanor punishable by a term
26 of imprisonment of 2 years or less?
- 27 (n) Have you ever been adjudicated as having committed a juvenile offense
28 described in division (h) or (i)?
- 29 (o) Have you ever been adjudicated as having committed a juvenile offense
30 described in division (j)?
- 31 (p) Are you currently subject to an order of a Maine court or an order of a
32 court of the United States or another state, territory, commonwealth or tribe
33 that restrains you from harassing, stalking or threatening your intimate
34 partner, as defined in 18 United States Code, Section 921(a), or a child of
35 your intimate partner, or from engaging in other conduct that would place
36 your intimate partner in reasonable fear of bodily injury to that intimate
37 partner or the child?
- 38 (q) Are you a fugitive from justice?
- 39 (r) Are you a drug abuser, drug addict or drug dependent person?
- 40 (s) Do you have a mental disorder that causes you to be potentially
41 dangerous to yourself or others?

- 1 (t) Have you been adjudicated to be an incapacitated person pursuant to Title
2 18-A, Article 5, Parts 3 and 4 and not had that designation removed by an
3 order under Title 18-A, section 5-307, subsection (b)?
- 4 (u) Have you been dishonorably discharged from the military forces within
5 the past 5 years?
- 6 (v) Are you an illegal alien?
- 7 (w) Have you been convicted in a Maine court of a violation of Title 17-A,
8 section 1057 within the past 5 years?
- 9 (x) Have you been adjudicated in a Maine court within the past 5 years as
10 having committed a juvenile offense involving conduct that, if committed by
11 an adult, would be a violation of Title 17-A, section 1057?
- 12 (y) To your knowledge, have you been the subject of an investigation by any
13 law enforcement agency within the past 5 years regarding the alleged abuse
14 by you of family or household members?
- 15 (z) Have you been convicted in any jurisdiction within the past 5 years of 3
16 or more crimes punishable by a term of imprisonment of less than one year or
17 of crimes classified under the laws of a state as a misdemeanor and
18 punishable by a term of imprisonment of 2 years or less?
- 19 (aa) Have you been adjudicated in any jurisdiction within the past 5 years to
20 have committed 3 or more juvenile offenses described in division (o)?
- 21 (bb) To your knowledge, have you engaged within the past 5 years in
22 reckless or negligent conduct that has been the subject of an investigation by
23 a governmental entity?
- 24 (cc) Have you been convicted in a Maine court within the past 5 years of any
25 Title 17-A, chapter 45 drug crime?
- 26 (dd) Have you been adjudicated in a Maine court within the past 5 years as
27 having committed a juvenile offense involving conduct that, if committed by
28 an adult, would have been a violation of Title 17-A, chapter 45?
- 29 (ee) Have you been adjudged in a Maine court to have committed the civil
30 violation of possession of a useable amount of marijuana, butyl nitrite or
31 isobutyl nitrite in violation of Title 22, section 2383 within the past 5 years?
- 32 (ff) Have you been adjudicated in a Maine court within the past 5 years as
33 having committed the juvenile crime defined in Title 15, section 3103,
34 subsection 1, paragraph B of possession of a useable amount of marijuana, as
35 provided in Title 22, section 2383?; and

36 **Sec. 8. 25 MRSA §2003, sub-§1, ¶E**, as amended by PL 2011, c. 298, §7, is
37 further amended to read:

38 E. Does the following:

- 39 (1) At the request of the issuing authority, takes whatever action is required by
40 law to allow the issuing authority to obtain from the Department of Health and

1 Human Services, limited to records of patient committals to Riverview
2 Psychiatric Center and Dorothea Dix Psychiatric Center, the courts, law
3 enforcement agencies and the military information relevant to the following:

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

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

8 (c) Section 2005;

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

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

13 (4) Submits an application fee along with the written application to the proper
14 issuing authority pursuant to the following schedule:

15 (a) Resident of a municipality or unorganized territory, \$35 for an original
16 application and \$20 for a renewal, except that a person who paid \$60 for a
17 concealed firearms permit or renewal during 1991 or 1992 is entitled to a
18 credit toward renewal fees in an amount equal to \$30 for a person who paid
19 \$60 for an original application and \$45 for a person who paid \$60 for a
20 permit renewal. The credit is valid until fully utilized; and

21 (b) Nonresident, \$60 for an original or renewal application; and

22 (5) Demonstrates to the issuing authority a knowledge of handgun safety. The
23 applicant may fully satisfy this requirement by submitting to the issuing
24 authority, through documentation in accordance with this subparagraph, proof
25 that the applicant has within 5 years prior to the date of application completed a
26 course that included handgun safety offered by or under the supervision of a
27 federal, state, county or municipal law enforcement agency or a firearms
28 instructor certified by a private firearms association recognized as knowledgeable
29 in matters of handgun safety by the issuing authority or by the state in which the
30 course was taken and the course includes the elements under Title 12, section
31 10108, subsection 1, paragraph B. A course completion certificate or other
32 document, or a photocopy, is sufficient if it recites or otherwise demonstrates that
33 the course meets all of the requirements of this subparagraph.

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

38 The demonstration of knowledge of handgun safety to the issuing authority may
39 not be required of any applicant who holds a valid state permit to carry a
40 concealed firearm as of April 15, 1990 or of any applicant who was or is in any
41 of the Armed Forces of the United States and has received at least basic firearms
42 training.

1 **Sec. 9. 25 MRSA §2012**, as enacted by PL 1991, c. 127, is amended to read:

2 **§2012. Sale of firearms to include safety brochure; require evidence of completion**
3 **of firearm safety course**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Basic firearm safety brochure" means a brochure, produced by a national,
7 nonprofit membership organization that provides a comprehensive voluntary safety
8 program including the training of people in the safe handling and use of firearms or
9 by any other organization, that contains the following information relating to
10 firearms:

- 11 (1) Rules for safe handling, storage and use of firearms;
- 12 (2) Nomenclature and descriptions of various types of firearms; ~~and~~
- 13 (3) Responsibilities of firearm ownership;
- 14 (4) Risk factors in the home or community, including identifying individuals
15 who may be a risk to themselves or others; and
- 16 (5) Information relating to the availability of firearm safety kits and known local
17 voluntary firearm safety programs.

18 B. "Firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

19 C. "Firearm dealer" means a person who is licensed or is required to be licensed as a
20 dealer under 18 United States Code, Section 923, ~~or who is required to be licensed as~~
21 a dealer under that section is a private seller, including a private seller at a gun show.

22 **2. Requirement.** A firearm dealer must:

23 A. Include a basic firearm safety brochure with every firearm sold at retail in this
24 State, except that the brochure need not be supplied by the firearm dealer if the
25 firearm manufacturer provides a basic firearm safety brochure with the firearm. The
26 dealer may collect a charge for the brochure, which may not be greater than the
27 dealer's cost to obtain the brochure;

28 B. Offer to demonstrate to the purchaser the use of a trigger locking device; ~~and~~

29 C. Post in a conspicuous place information relating to the availability of known local
30 voluntary firearm safety programs; and

31 D. Require the buyer to present:

32 (1) Certification that the buyer has completed a firearm safety course under Title
33 12, section 10108, subsection 1, paragraph B or equivalent firearm safety course
34 listed pursuant to Title 12, section 10108, subsection 1, paragraph B;

35 (2) A copy of a current hunting license issued to the buyer under Title 12,
36 chapter 915; or

37 (3) A copy of a current permit to carry a concealed handgun issued to the buyer
38 under section 2003.

1 A firearm dealer shall maintain records of all documentation required under this
2 paragraph for each sale of a firearm.

3 A law enforcement officer or a former law enforcement officer or a member of the
4 United States Armed Forces is exempt from the purchaser requirements of this
5 paragraph.

6 **3. No liability.** Organizations that produce basic firearm safety brochures for
7 distribution to firearm dealers for subsequent distribution to purchasers of firearms and
8 firearm dealers are not liable for injuries resulting from the accidental discharge of
9 nondefective firearms purchased from any dealer.

10 **4. Violation.** A person who violates this section commits a civil violation for which
11 a fine of up to \$500 may be adjudged. A 2nd or subsequent violation of this section is a
12 Class E crime.

13 **Sec. 10. 25 MRSA §2013** is enacted to read:

14 **§2013. Sale of firearms**

15 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
16 following terms have the following meanings.

17 A. "Family members" means spouses, domestic partners, parents, stepparents, foster
18 parents, children, stepchildren, foster children and other persons related by
19 consanguinity up to the 2nd degree. For purposes of this paragraph, "domestic
20 partners" has the same meaning as in Title 18-A, section 1-201, subsection (10-A).

21 B. "Firearm dealer" has the same meaning as in section 2012, subsection 1,
22 paragraph C.

23 **2. Background check on all firearm sales required.** A firearm dealer shall
24 perform a computerized background check under the Federal Bureau of Investigation,
25 National Instant Criminal Background Check System, or successor background check
26 system approved by the Attorney General of the United States, of the buyer prior to a sale
27 of the firearm and maintain documentation of the background check in the firearm
28 dealer's records. A commercial firearm dealer licensed under 18 United States Code,
29 Section 923 shall perform a background check for a private seller of a firearm for a fee to
30 be determined by rule by the Chief of the State Police. Rules adopted under this
31 subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. A
32 firearm dealer shall maintain records of all documentation required under this subsection
33 for each sale of a firearm. This subsection does not apply to a sale of a firearm between
34 family members.

35 **3. Violation.** A person who violates this section commits a civil violation for which
36 a fine of up to \$500 may be adjudged. A 2nd or subsequent violation of this section is a
37 Class E crime.

38 **Sec. 11. Effective date.** Those sections of this Act that amend the Maine Revised
39 Statutes, Title 12, section 10108, subsection 1, Title 25, section 2003, subsection 1,
40 paragraph E and Title 25, section 2012 take effect January 1, 2014.

1 **SUMMARY**

2 This bill regulates the safe use and sale of firearms by:

3 1. Prescribing elements for the firearm safety course provided by the Department of
4 Inland Fisheries and Wildlife;

5 2. Including in the list of persons prohibited from possessing a firearm or a
6 concealed handgun a person who has been admitted to a psychiatric hospital on an
7 emergency basis and providing a procedure for such a person to appeal the prohibition;

8 3. Increasing the fine from \$50 to \$1,000 for giving a false or fictitious name to a
9 firearm dealer;

10 4. Increasing the minimum age to obtain a concealed handgun permit from 18 to 21
11 years of age;

12 5. Including in the definition of "firearm dealer" a private seller, including a private
13 seller at a gun show;

14 6. Requiring a firearm dealer to require a buyer to present certification of completion
15 of a firearm safety course or a copy of a current hunting license or current concealed
16 handgun permit prior to sale;

17 7. Requiring firearm dealers to conduct background checks of buyers, except for
18 sales between family members; and

19 8. Making a violation of certain requirements for a firearm dealer a civil violation for
20 the first offense and a Class E crime for 2nd and subsequent offenses.