

MAINE STATE LEGISLATURE

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Date: 4/17/24 Report 'D'

L.D. 2283
(Filing No. H-978)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
131ST LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "C" to H.P. 1470, L.D. 2283, "An Act to Enact the Crisis Intervention Order Act to Protect the Safety of the Public"

Amend the bill by striking out the title and substituting the following:

'An Act to Enact the Prohibit Red Flag Gun Seizure Act'

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 14 MRSA §8104-A, sub-§5 is enacted to read:

5. Enforcement of red flag gun seizure order. A governmental entity is liable for damages resulting from a violation of section 9003, subsection 1 or 2.

Sec. 2. 14 MRSA c. 763 is enacted to read:

CHAPTER 763

PROHIBIT RED FLAG GUN SEIZURE ACT

§9001. Short title

This chapter may be known and cited as "the Prohibit Red Flag Gun Seizure Act."

§9002. Definition

As used in this chapter, "red flag gun seizure order" means a federal regulation, statute, rule, executive order, judicial order or judicial finding or a state statute, rule, executive order, judicial order or judicial finding that does any of the following:

1. Prohibits. Prohibits a specific person from owning, possessing, transporting, transferring or receiving a firearm, ammunition or related accessories, except that a red flag gun seizure order does not include such a regulation, statute, rule, order or finding if the person has been convicted of murder or a Class A, B or C crime; has been committed to a psychiatric hospital under Title 15, chapter 5 or Title 34-B, chapter 3, subchapter 4, article

COMMITTEE AMENDMENT

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1 3; is an alien who is illegally or unlawfully in the State; has been dishonorably discharged
2 from a branch of the United States Armed Forces; has been convicted of a crime listed
3 under Title 17-A, section 207-A, 209-A, 210-B, 210-C or 211-A; is a fugitive from justice
4 as defined in Title 15, section 201, subsection 4; is subject to an order of protection
5 prohibiting firearms pursuant to Title 5, chapter 337-A, Title 19-A, chapter 103 or a
6 substantially similar law of another jurisdiction; is ordered not to possess a firearm,
7 ammunition or related accessories as a condition of bail, parole or probation; or is otherwise
8 prohibited from possessing a firearm under Title 15, section 393; or

9 2. Orders. Orders the removal or requires the surrender of a firearm, ammunition or
10 related accessories from a specific person, except that a red flag gun seizure order does not
11 include such a regulation, statute, rule, order or finding if the person has been convicted of
12 murder or a Class A, B or C crime; has been committed to a psychiatric hospital under Title
13 15, chapter 5 or Title 34-B, chapter 3, subchapter 4, article 3; is an alien who is illegally or
14 unlawfully in the State; has been dishonorably discharged from a branch of the United
15 States Armed Forces; has been convicted of a crime listed under Title 17-A, section 207-A,
16 209-A, 210-B, 210-C or 211-A; is a fugitive from justice as defined in Title 15, section
17 201, subsection 4; is subject to an order of protection prohibiting firearms pursuant to Title
18 5, chapter 337-A, Title 19-A, chapter 103 or a substantially similar law of another
19 jurisdiction; is ordered not to possess a firearm, ammunition or related accessories as a
20 condition of bail, parole or probation; or is otherwise prohibited from possessing a firearm
21 under Title 15, section 393.

22 **§9003. Prohibiting implementation or enforcement of red flag gun seizure order;**
23 **preempting local law; penalties**

24 1. Prohibition on enforcement. The State, including any agency or political
25 subdivision of the State, is prohibited from implementing or enforcing any federal
26 regulation, statute, rule, executive order, judicial order or judicial finding or any state
27 statute, rule, executive order, judicial order or judicial finding that would enforce a red flag
28 gun seizure order against or upon a resident of this State.

29 2. Prohibition on expenditure of public resources. The State and any agency or
30 political subdivision of the State, including any law enforcement agency, may not use any
31 personnel or funds appropriated by the Legislature or any other source of funds that
32 originated within the State or accept any federal funds to implement any federal regulation,
33 statute, rule, executive order, judicial order or judicial finding or any state statute, rule,
34 executive order, judicial order or judicial finding that would enforce a red flag gun seizure
35 order against or upon a resident of this State. This section may not be construed to prohibit
36 state officials from accepting aid from federal officials to enforce any state law not in
37 conflict with this chapter.

38 3. Preemption. This chapter preempts any local law, ordinance or regulation regarding
39 a red flag gun seizure order or any other law, ordinance or regulation that conflicts with
40 any provision of this chapter.

41 4. Relationship to other laws. This chapter may not be construed to prohibit or prevent
42 a firearm, firearm accessory or ammunition from being seized as evidence or collected by
43 a law enforcement officer or law enforcement agency in the course of a lawful
44 investigation. This chapter may not be construed to prevent public resources from being
45 used in the enforcement of Title 34-B, section 3862-A.

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§9004. Liability; enforcement of red flag gun seizure order

A governmental entity as defined in section 8102, subsection 2 is liable for damages resulting from a violation of section 9003, subsection 1 or 2.

§9005. Civil actions permitted; remedies

1. Civil action. An interested party may bring a civil action against another for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of these or any other appropriate relief based on the enforcement of a red flag gun seizure order or the use of public resources to enforce a red flag gun seizure order. A prevailing plaintiff is entitled to an award of attorney's fees and costs.

2. Vicarious liability. An agency of the State, political subdivision of the State or law enforcement agency that employs any public officer who knowingly violates any provision of this chapter by enforcing a red flag gun seizure order against any resident of the State while acting within the scope of the public officer's employment is liable to the injured party for damages resulting from the public officer's conduct in a civil action. The court, upon a finding of a violation of this chapter, may impose a civil penalty against the agency or political subdivision of the State in an amount not to exceed \$50,000 per violation and may order any injunctive or other equitable relief as permitted by law. The court shall hold a hearing on a motion for injunctive or equitable relief regarding a red flag gun seizure order within 30 days of service of the petition.

3. Waiver of sovereign immunity. Sovereign immunity is not an affirmative defense in any action pursuant to this chapter.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment replaces the bill and changes the title. The amendment prohibits the enforcement of or use of public funding in the enforcement of any red flag gun seizure order, which the amendment defines as an order pursuant to federal or state law or judicial order that prohibits a specific person from owning, possessing, transporting, transferring or receiving a firearm, ammunition or related accessories or requires the removal or surrender of a firearm, ammunition or related accessories from a specific person, unless the person has been prohibited from owning, possessing, transporting, transferring or receiving a firearm, ammunition or related accessories under another provision of state law. The amendment also creates a private right of action for relief relating to the enforcement of or use of public funding in the enforcement of a red flag gun seizure order. Sovereign immunity is not an affirmative defense in any action pursuant to this amendment.

FISCAL NOTE REQUIRED

(See attached)



131st MAINE LEGISLATURE

LD 2283

LR 3177(03)

An Act to Enact the Crisis Intervention Order Act to Protect the Safety of the Public

Fiscal Note for Bill as Amended by Committee Amendment

Committee: Judiciary

Fiscal Note Required: Yes

C(H-978)

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

This bill may increase the number of civil suits filed in the court system. The additional workload associated with minimal number of new cases filed in the court system does not require additional funding at this time. The collection of additional filing fees will increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

Any additional costs to the Department of Public Safety associated with the implementation of this legislation are expected to be minor and can be absorbed within existing budgeted resources.