

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND FOURTEENTH LEGISLATURE  
**FIRST SPECIAL SESSION**

August 21, 1989 to August 22, 1989

and

**SECOND REGULAR SESSION**

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR  
NON-EMERGENCY LAWS IS  
July 14, 1990

PUBLISHED BY THE REVISOR OF STATUTES  
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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J.S. McCarthy Company  
Augusta, Maine  
1990

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**PUBLIC LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED AT THE**  
**SECOND REGULAR SESSION**

**of the**  
**ONE HUNDRED AND FOURTEENTH LEGISLATURE**

**January 3, 1990 to April 14, 1990**

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**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved, except as otherwise indicated.

Effective April 24, 1990, unless otherwise indicated.

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## CHAPTER 916

H.P. 1685 - L.D. 2333

### An Act to Provide Greater Opportunities for Orphans and Foster Children

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

**Sec. 1. 20-A MRSA §5802-A** is enacted to read:

**§5802-A. Pilot project for state wards**

The Department of Education is authorized to designate one residential child care facility providing long-term care for 6 or more children who are in the custody of the Department of Human Services as a pilot project. In school year 1991-92, the Commissioner of Education shall pay to the school unit in which the designated facility is located the school unit's actual local per pupil education expenditure and approved transportation costs for each state ward at the facility. Expenditures for this pilot project may not exceed \$30,000.

**Sec. 2. Assessment of implementation of this Act.** The Department of Education and the Department of Human Services shall jointly assess the implementation of this Act and submit a written report on the results of their assessment to the Joint Standing Committee on Education by December 1, 1992. The departments shall also submit a copy of their report to the Office of the Executive Director of the Legislative Council. The report must include a summary of the number of students and facilities covered by this Act, the costs of providing educational services to state wards under this Act, an evaluation of the need for the type of facilities provided in this Act and any recommendations for future action.

See title page for effective date.

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## CHAPTER 917

H.P. 1737 - L.D. 2398

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

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

**Whereas,** this Act makes a number of changes to the laws regarding the issuance of permits for concealed weapons; and

**Whereas,** these changes are designed to promote the safe exercise of the right of Maine citizens to bear arms; and

**Whereas,** emergency enactment of this legislation will discourage a marked increase in concealed weapon permits sought under the current law and thus avoid imposing on and overburdening the resources of local officials charged with issuing concealed weapon permits; 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. 15 MRSA §393, sub-§1,** as amended by PL 1977, c. 564, §72, is further amended to read:

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

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

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

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

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

**B. While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs or**

with an excessive blood-alcohol level, the person possesses a firearm in a licensed establishment.

2. For the purposes of this section, "licensed establishment" means a licensed establishment as defined by Title 28-A, section 2, subsection 15, the license for which is held by an on-premise retail licensee, as defined by Title 28-A, section 2, subsection 27, paragraph B. For the purposes of this section, "premises" has the same meaning as set forth in Title 28-A, section 2, subsection 24.

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

4. A law enforcement officer who has probable cause to believe that a person has violated subsection 1, paragraph B, may require that person to submit to chemical testing to determine blood-alcohol level or drug concentration. If the court is satisfied that the law enforcement officer had probable cause to 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.

5. For purposes of this section, "under the influence of intoxicating liquor or drugs or a combination of liquor and drugs or with an excessive blood-alcohol level" has the same meaning as specified in Title 29, section 1312-B, subsection 1. Standards, tests and procedures applicable in determining whether a person 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.

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

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

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

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

**Sec. 3. 25 MRSA §2001, sub-§1**, as enacted by PL 1985, c. 478, §2, is amended to read:

**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;

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

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

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

**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 licensee's right to carry a concealed firearm has been suspended; or

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

**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, or firearms carried by a resident person engaged in conduct expressly authorized by Title 12, section 7377, subsections 1 and 2. This subsection does not authorize or permit the carrying of a concealed or loaded firearm in a motor vehicle.

**Sec. 7. 25 MRSA §2002, sub-§1**, as enacted by PL 1985, c. 478, §2, is amended to read:

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

**Sec. 8. 25 MRSA §2003, sub-§1, ¶D**, as enacted by PL 1985, c. 478, §2, is amended to read:

D. Submits an application ~~which~~ that contains the following:

- (1) Full name;
- (2) Full current address and addresses for the prior 5 years;
- (3) The date and place of birth, height, weight and color of eyes;
- (4) A record of previous issuances of, refusals to issue and revocations of a permit to carry concealed firearms or other concealed weapons by any issuing authority in the State or any other jurisdiction. The record of previous refusals alone does not constitute cause for refusal and the record of previous revocations alone constitutes cause for refusal only as provided in section 2005; and

(5) Answers to the following questions:

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

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

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

(d) Are you a fugitive from justice?

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

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

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

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

(i) Are you an illegal alien?

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

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

(l) To your knowledge, have you been the subject of an investigation by any law enforcement agency within the past 5 years regarding the alleged abuse by you of family or household members?

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

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

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

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

## E. Does the following:

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

(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 a private firearms association recognized as knowledgeable in matters of firearms safety by the issuing authority 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 who holds a valid State permit to carry a concealed firearm as of April 15, 1990 or of any applicant who was or is in any of the Armed Forces of the United States and has received at least basic firearms training.

**Sec. 10. 25 MRSA §2003, sub-§2, ¶B**, as enacted by PL 1985, c. 478, §2, is repealed and the following enacted in its place:

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

**Sec. 11. 25 MRSA §2003, sub-§2, ¶B-1** is enacted to read:

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

**Sec. 12. 25 MRSA §2003, sub-§3-A** is enacted to read:

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

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

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

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

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

E. A nonresident permit to carry concealed firearms; and

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

Each issuing authority shall utilize only the model forms.

**Sec. 13. 25 MRSA §2005, sub-§1**, as enacted by PL 1985, c. 478, §2, is amended to read:

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

A. The application or any documents made part of the application contained a material misstatement;

B. The permit holder has been convicted of a violation of section 2001; or

C. The permit holder becomes ineligible to possess a permit under this chapter. Ineligibility is determined on the basis of the criteria contained in section 2003;

D. For conduct that occurred after a permit was issued, that the permit holder was convicted of operating a motor vehicle, snowmobile, ATV or watercraft while under the 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.

**Sec. 14. 25 MRSA §2005, sub-§2, ¶B** is enacted to read:

B. If the issuing authority of the permit holder's new residence so requests, the previous issuing

authority shall 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.

**Sec. 15. 25 MRSA §2005, sub-§3,** as enacted by PL 1985, c. 478, §2, is amended to read:

**3. Reapplication.** No If a permit has been revoked solely under subsection 1, paragraph D, the former permit holder may reapply upon successful completion of a substance abuse treatment 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.

**Sec. 16. 25 MRSA §2005-A** is enacted to read:

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

**1. Immediate suspension.** If the permit holder is required 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 possession of a loaded firearm, and the permit holder refuses to submit to the required testing, the permit to carry a concealed firearm issued to that person is immediately suspended and must be surrendered at that time by the permit holder to the law enforcement officer.

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

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

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

**Sec. 17. 32 MRSA §8113-A** is enacted to read:

**§8113-A. Suspension for refusal**

**1. Immediate suspension.** If the commissioner has probable cause to believe that a person licensed pursuant to this chapter is required 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 licensee is in possession of a loaded firearm and the licensee refuses to submit to the required testing, the commissioner shall immediately suspend the licensee's right to carry a concealed firearm.

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

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

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved, unless otherwise indicated.

Effective April 24, 1990, unless otherwise indicated.

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## CHAPTER 918

H.P. 1763 - L.D. 2428

### An Act to Make Supplemental Appropriations and Allocations and to Change Certain Provisions of the Law for the Department of Inland Fisheries and Wildlife for the Fiscal Years Ending June 30, 1990 and June 30, 1991

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

**Whereas,** the 90-day period may not terminate until after the beginning of the next fiscal year; and

**Whereas,** certain obligations and expenses incident to the operation of the Department of Inland Fisheries and Wildlife will become due and payable immediately; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the