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Date: (Filing No. H-)

JUDICIARY

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

COMMITTEE AMENDMENT “ ” 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

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.

1 **§9004. Liability; enforcement of red flag gun seizure order**

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

4 **§9005. Civil actions permitted; remedies**

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

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

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

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

24 **SUMMARY**

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

36 **FISCAL NOTE REQUIRED**

37 **(See attached)**