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An Act To Promote the Safe Use and Sale of Firearms

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

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

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

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

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

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

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

(2) Nomenclature and description of various firearms;

(3) Responsibilities of firearm ownership;

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

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

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

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

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

E. Has been:

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

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

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

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

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

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

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

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

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

- (1) Application fee; and
- (2) Fees for evaluations required by paragraph A.

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

D. Upon receipt of a completed application, the commissioner shall review the application and determine whether the person has made a prima facie showing of the elements of paragraph E. If the commissioner determines that the person has made a prima facie showing, the commissioner shall schedule a hearing.

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

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

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

- (1) The applicant waives this confidentiality in writing or on the record of any hearing; or
- (2) A court of record so orders. Proceedings relating to the grant or denial of relief are not public proceedings under Title 1, chapter 13.

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

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

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

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

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

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

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

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

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

D. Submits an application 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, color of eyes, color of hair, sex and race;

(4) A record of previous issuances of, refusals to issue and revocations of a permit to carry concealed firearms, handguns 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) Are you less than ~~18~~21 years of age?

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

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

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

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

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

(g) Is there a formal charging instrument now pending against you under the laws of the United States, this State or any other state or the Passamaquoddy Tribe or Penobscot Nation in a proceeding in which the prosecuting authority has pleaded that you committed the crime with the use of a firearm against a person or with the use of a dangerous weapon as defined in Title 17-A, section 2, subsection 9, paragraph A?

(h) Is there a formal charging instrument now pending against you in this or any other jurisdiction for a juvenile offense that, if committed by an adult, would be a crime described in division (b), (c), (d) or (f) and involves bodily injury or threatened bodily injury against another person?

(i) Is there a formal charging instrument now pending against you in this or any other jurisdiction for a juvenile offense that, if committed by an adult, would be a crime described in division (g)?

(j) Is there a formal charging instrument now pending against you in this or any other jurisdiction for a juvenile offense that, if committed by an adult, would be a crime described in division (b), (c), (d) or (f), but does not involve bodily injury or threatened bodily injury against another person?

(k) Have you ever been convicted of committing or found not criminally responsible by reason of mental disease or defect of committing a crime described in division (b), (c), (f) or (g)?

(l) Have you ever been convicted of committing or found not criminally responsible by reason of mental disease or defect of committing a crime described in division (d)?

(m) If your answer to the question in division (l) is "yes," was that crime classified under the laws of that state as a misdemeanor punishable by a term of imprisonment of 2 years or less?

(n) Have you ever been adjudicated as having committed a juvenile offense described in division (h) or (i)?

(o) Have you ever been adjudicated as having committed a juvenile offense described in division (j)?

(p) Are you currently subject to an order of a Maine court or an order of a court of the United States or another state, territory, commonwealth or tribe that restrains you from harassing, stalking or threatening your intimate partner, as defined in 18 United States Code, Section 921(a), or a child of your intimate partner, or from engaging in other conduct that would place your intimate partner in reasonable fear of bodily injury to that intimate partner or the child?

(q) Are you a fugitive from justice?

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

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

(t) Have you been adjudicated to be an incapacitated person pursuant to Title 18-A, Article 5, Parts 3 and 4 and not had that designation removed by an order under Title 18-A, section 5-307, subsection (b)?

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

(v) Are you an illegal alien?

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

(x) Have you been adjudicated in a Maine court 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?

(y) 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?

(z) Have you been convicted in any jurisdiction within the past 5 years of 3 or more crimes punishable by a term of imprisonment of less than one year or of crimes classified under the laws of a state as a misdemeanor and punishable by a term of imprisonment of 2 years or less?

(aa) Have you been adjudicated in any jurisdiction within the past 5 years to have committed 3 or more juvenile offenses described in division (o)?

(bb) 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?

(cc) Have you been convicted in a Maine court within the past 5 years of any Title 17-A, chapter 45 drug crime?

(dd) Have you been adjudicated in a Maine court within the past 5 years as having committed a juvenile offense involving conduct that, if committed by an adult, would have been a violation of Title 17-A, chapter 45?

(ee) Have you been adjudged in a Maine court to have committed the civil violation of possession of a useable amount of marijuana, butyl nitrite or isobutyl nitrite in violation of Title 22, section 2383 within the past 5 years?

(ff) Have you been adjudicated in a Maine court within the past 5 years as having committed the juvenile crime defined in Title 15, section 3103, subsection 1, paragraph B of possession of a useable amount of marijuana, as provided in Title 22, section 2383?; and

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

E. Does the following:

(1) At the request of the issuing authority, takes whatever action is required by law to allow the issuing authority to obtain from the Department of Health and Human Services, limited to records of patient committals to Riverview Psychiatric Center and Dorothea Dix Psychiatric Center, 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 handguns adopted by an issuing authority, submits to being photographed for that purpose;

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

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

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

(b) Nonresident, \$60 for an original or renewal application; 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 handgun safety by the issuing authority or by the state in which the course was taken and the course includes the elements under Title 12, section 10108, subsection 1, paragraph B. 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. 9. 25 MRSA §2012, as enacted by PL 1991, c. 127, is amended to read:

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

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

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

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

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

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

2. Requirement. A firearm dealer must:

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

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

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

D. Require the buyer to present:

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

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

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

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

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

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

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

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

§ 2013. Sale of firearms

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

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

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

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

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

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

SUMMARY

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

1. Prescribing elements for the firearm safety course provided by the Department of Inland Fisheries and Wildlife;
2. Including in the list of persons prohibited from possessing a firearm or a concealed handgun a person who has been admitted to a psychiatric hospital on an emergency basis and providing a procedure for such a person to appeal the prohibition;
3. Increasing the fine from \$50 to \$1,000 for giving a false or fictitious name to a firearm dealer;
4. Increasing the minimum age to obtain a concealed handgun permit from 18 to 21 years of age;
5. Including in the definition of "firearm dealer" a private seller, including a private seller at a gun show;
6. Requiring a firearm dealer to require a buyer to present certification of completion of a firearm safety course or a copy of a current hunting license or current concealed handgun permit prior to sale;
7. Requiring firearm dealers to conduct background checks of buyers, except for sales between family members; and
8. Making a violation of certain requirements for a firearm dealer a civil violation for the first offense and a Class E crime for 2nd and subsequent offenses.