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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. 1085, L.D. 1696, “An Act to Create a Civil Cause of Action for Persons Suffering Damages Arising from the Sale of Abnormally Dangerous Firearms”

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

'An Act to Create a Civil Cause of Action for Persons Suffering Damages Arising from the Illegal Sale or Marketing of Firearm-related Products'

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

'Sec. 1. 14 MRSA §1522, sub-§1, ¶U, as enacted by PL 1991, c. 9, Pt. G, §2, is amended to read:

U. Title 38, section 1319-J; ~~and~~

Sec. 2. 14 MRSA §1522, sub-§1, ¶V, as enacted by PL 1991, c. 9, Pt. G, §2, is amended to read:

V. Title 38, section 1367-; ~~and~~

Sec. 3. 14 MRSA §1522, sub-§1, ¶W is enacted to read:

W. Title 14, section 9002, subsection 2.

Sec. 4. 14 MRSA c. 763 is enacted to read:

CHAPTER 763

**CIVIL LIABILITY FOR THE ILLEGAL SALE OR MARKETING OF
FIREARM-RELATED PRODUCTS**

§9001. Definitions

COMMITTEE AMENDMENT

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

3 **1. Firearm.** "Firearm" has the same meaning as in Title 17-A, section 2, subsection
4 12-A.

5 **2. Firearm industry member.** "Firearm industry member" means a person, firm,
6 corporation, company, partnership, society, joint stock company or any other entity or
7 association engaged in the sale, manufacturing, distribution, importing or marketing of a
8 firearm-related product or any officer, agent, employee or other person authorized to act
9 on behalf of the person, firm, corporation, company, partnership, society, joint stock
10 company or other entity or association or that acts in concert or participation with one or
11 more such persons, firms, corporations, companies, partnerships, societies, joint stock
12 companies or other entities or associations.

13 **3. Firearm-related product.** "Firearm-related product" means a firearm, ammunition,
14 ammunition magazine, firearm component or part, including a firearm frame, firearm
15 receiver or firearm accessory, that is or is intended to be sold, manufactured, distributed,
16 imported or marketed.

17 **4. Firearm trafficker.** "Firearm trafficker" means a person that acquires, transfers or
18 attempts to acquire or transfer a firearm for purposes of unlawful commerce.

19 **5. Person.** "Person" means a natural person or legal entity, including a corporation,
20 partnership, limited liability company or incorporated or unincorporated association.

21 **6. Straw purchaser.** "Straw purchaser" means a person that conceals or intends to
22 conceal that the purchase of a firearm-related product is being made on behalf of a 3rd
23 party. "Straw purchaser" does not include a person that, in purchasing a firearm-related
24 product, intends for that firearm-related product to be a bona fide gift to a person that is not
25 prohibited by law from owning, possessing or receiving a firearm-related product, except
26 that a gift is not bona fide if the intended recipient has offered or provided the purchaser
27 with a service or anything of value in consideration of the acquisition of the firearm-related
28 product.

29 **§9002. Civil action authorized**

30 **1. Private cause of action.** Notwithstanding any action by the Attorney General under
31 subsection 2, a person that has suffered damages in this State that are proximately caused,
32 in whole or in part, by a violation of this chapter committed knowingly by a firearm
33 industry member may bring a civil action for the recovery of those damages, injunctive
34 relief and reasonable attorney's fees and costs.

35 **2. Attorney General investigation and enforcement.** The Attorney General may do
36 the following.

37 A. Whenever the Attorney General has reason to believe that a firearm industry
38 member has engaged in, is engaging in or is about to engage in conduct that violates
39 section 9003 or 9004 and that an investigation is in the public interest, the Attorney
40 General may by written request examine any documents and records relevant to such
41 a violation and require the firearm industry member or any person with knowledge
42 related to the investigation to provide testimony under oath in written responses to
43 interrogatories and upon oral deposition. The Attorney General shall provide service
44 of a written request under this paragraph by first-class mail, and the fact and date of

1 service is conclusively established by receipt of a United States Postal Service
2 certificate of mailing. A person receiving a written request from the Attorney General
3 pursuant to this paragraph shall comply with the request within 20 days or otherwise
4 file in the Kennebec County Superior Court within 20 days of service of the request a
5 motion to quash or modify the request. The court may not grant a motion to quash or
6 modify a request unless the movant demonstrates that the request or specific portions
7 of the request are made without good cause. The Attorney General may file a petition
8 for an order to enforce a request. A violation of this paragraph is a civil violation for
9 which a civil penalty of not less than \$10,000 and not more than \$50,000 must be
10 awarded.

11 B. Whenever the Attorney General has reason to believe that a firearm industry
12 member has engaged in, is engaging in or is about to engage in conduct that violates
13 section 9003 or 9004, the Attorney General may commence a civil action to obtain:

14 (1) Injunctive relief;

15 (2) A civil penalty of not more than \$100,000 for each violation of this chapter
16 committed knowingly; and

17 (3) Equitable monetary relief, including restitution and disgorgement, for the
18 financial loss suffered by a person that is proximately caused, in whole or in part,
19 by a violation of this chapter committed knowingly by a firearm industry member.

20 C. In any action by the Attorney General under this subsection, the court may not enter
21 a judgment for the duplicative recovery of monetary relief that has in fact been awarded
22 to a prevailing party under subsection 1.

23 **3. Venue.** An action brought pursuant to this section must be filed in the Superior Court
24 in the county in which the firearm industry member resides or has its principal place of
25 business, or in Kennebec County if the firearm industry member has no residence or
26 principal place of business in this State.

27 **4. Conduct committed knowingly.** For the purposes of this chapter, a person acts
28 knowingly in violation of this chapter when the person is subjectively aware or reasonably
29 should be aware that the conduct is unlawful.

30 **5. Proximate cause.** For the purposes of this chapter, a particular harm or loss is
31 proximately caused by a violation of this chapter if the violation played a substantial part
32 in bringing about the harm or loss and the harm or loss was either a direct result of, or a
33 reasonably foreseeable consequence of, the violation. In determining whether a particular
34 harm or loss is proximately caused by a violation of this chapter, the criminal or tortious
35 act or conduct of a 3rd party with respect to the use of a firearm-related product may not
36 be considered an intervening or superseding cause.

37 **6. Exemptions.** An action may not be brought under this section by a person injured:

38 A. By that person's use of a firearm-related product in the commission of a crime or
39 tort; or

40 B. By that person's use of a firearm-related product to intentionally or recklessly inflict
41 or cause a self-injury.

42 **§9003. Prohibited conduct**

1 A firearm industry member may not sell or offer or market for sale a firearm-related
2 product in a manner that:

3 1. **Modification.** Promotes conversion or modification of a legal firearm-related
4 product into an illegal firearm-related product;

5 2. **Prohibited persons.** Is targeted to persons that are prohibited from owning,
6 possessing or receiving a firearm under state or federal law; or

7 3. **Deception.** Is unconscionable or deceptive.

8 **§9004. Reasonable controls required**

9 1. **Prevention of sales to certain persons.** A firearm industry member shall establish,
10 implement and enforce reasonable procedures, acts or practices to prevent the sale or
11 offering or marketing for sale of a firearm-related product to:

12 A. A straw purchaser;

13 B. A firearm trafficker;

14 C. A person prohibited from owning, possessing or receiving a firearm under state or
15 federal law;

16 D. A person that the firearm industry member knows or has reasonable cause to believe
17 is at substantial risk of using a firearm-related product for self-harm or to harm another
18 person; or

19 E. A person that the firearm industry member knows or has reasonable cause to believe
20 is at substantial risk of using, owning, possessing or receiving a firearm-related product
21 unlawfully.

22 2. **Theft or loss prevention.** A firearm industry member shall establish, implement and
23 enforce reasonable procedures, acts or practices to prevent the theft or loss of a
24 firearm-related product from the firearm industry member.

25 3. **Compliance with state and federal laws.** A firearm industry member shall
26 establish, implement and enforce reasonable procedures, acts or practices to ensure that the
27 firearm industry member complies with all provisions of state and federal laws.'

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

30 **SUMMARY**

31 This amendment, which is the majority report of the committee, replaces the bill and
32 changes the title. The amendment does the following.

33 1. It defines "firearm," "firearm industry member," "firearm-related product," "firearm
34 trafficker," "person" and "straw purchaser."

35 2. It authorizes a private cause of action for a person that has suffered damages as a
36 result of a violation committed knowingly by a firearm industry member.

37 3. It authorizes the Attorney General to investigate and bring a civil action against a
38 firearm industry member for a violation.

39 4. It establishes a procedure for civil actions.

- 1 5. It creates exemptions for civil actions.
- 2 6. It establishes conduct for which a civil action may be brought.
- 3 7. It establishes reasonable controls required of the firearm industry member to prevent
- 4 a violation.

FISCAL NOTE REQUIRED

(See attached)

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