

Committee: Criminal Justice and Public Safety

MAJORITY REPORT

LA: Curtis Bentley

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New Title: yes

Add Emergency: no

Date: March 5, 2014

Committee Amendment to LD 222, An Act to Designate the Chief of the State Police as the Only Issuing Authority of a Permit To Carry a Concealed Handgun

Amend the bill by striking out the title and replacing it with the following:

‘An Act Regarding the Issuance of a Permit to Carry a Concealed Handgun’

Further amend the bill by striking out everything after the enacting clause and before the summary and replacing it with the following:

Sec. 1. 25 MRSA § 2002, sub-§ 9, is amended to read:

9. Issuing authority. "Issuing authority" means the following:

A. To a legal resident of a municipality:

(1) ~~The mayor and full-time Chief of Police of a municipality municipal officers or councilors of a city, municipal officers or councilors of a town or the assessors of a plantation or, if they so choose, their full-time chief of police as their designee; or~~

~~(2) The Chief of the State Police as the designee of the municipal officers under section 2002-A;~~

(3) The Chief of the State Police if the municipality does not have a full-time Chief of Police unless the municipality designates the county sheriff of the county where the municipality is primarily located as its designate under section 2002-A;

B. To a resident of an unorganized territory:

(1) The Chief of the State Police;

C. To a nonresident:

(1) The Chief of the State Police; and

D. To a professional investigator licensed under Title 32, chapter 89:

(1) The Chief of the State Police.

Sec. 2. Title 25 MRSA §2002-A, is amended to read:

§2002-A. Assignment of authority.

The municipal officers of a municipality without a full-time chief of police may designate, if the county sheriff agrees, the county sheriff of the county where the municipality is primarily located ~~State Police~~ as the issuing authority for that municipality. The designation must be made by written agreement with the county sheriff ~~Chief of the State Police~~. The agreement must include provisions for termination of the agreement. During the term of an agreement, the county sheriff ~~State Police~~ shall perform all the functions of the issuing authority, including suspension and revocation of permits. The county sheriff ~~is State Police~~ are entitled to receive any fees authorized for performing the functions of an issuing authority. The county sheriff ~~Chief of the State Police~~ continues to serve as the issuing authority until the county sheriff ~~chief~~ receives from the municipal officers written notice of cancellation or revocation of the designation.

Sec. 3. 25 MRSA § 2003, is amended to read:

1. Criteria for issuing permit. The issuing authority shall, upon written application, issue a permit to carry concealed handguns to an applicant over whom it has issuing authority and who has demonstrated good moral character and who meets the following requirements:

A. Is 18 years of age or older;

B. Is not disqualified to possess a firearm pursuant to Title 15, section 393, is not disqualified as a permit holder under that same section and is not disqualified to possess a firearm based on federal law as a result of a criminal conviction;

B-1. If a nonresident, that person must have a valid concealed handgun permit from that person's state of residency. This paragraph does not apply to a nonresident whose state of residency does not require a permit to carry a concealed handgun;

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) Subject to subsection 2-A, answers to the following questions:

(a) Are you less than 18 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

E. Does the following:

- (1) At the request of the issuing authority or the State Police, takes whatever action is required by law to allow the issuing authority or the State Police 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 or any other mental health facility within the state, 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, If requested by~~ At the request of the issuing authority, submits to being photographed for a permit to carry a concealed handgun 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, \$52.50~~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, \$120 ~~60~~ for an original or renewal application; and

(c) Resident, \$15 to replace a valid concealed handgun permit issued on or before January 1, 2016 with a permit issued under section 2003, subsection 9; 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. 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.

2. Complete application; certification by applicant. The requirements set out in subsection 1, constitute a complete application. By affixing the applicant's signature to the application, the applicant certifies the following:

A. That the statements the applicant makes in the application and any documents the applicant makes a part of the application are true and correct;

A-1. That the applicant understands that an affirmative answer to the question in subsection 1, paragraph D, subparagraph (5), division (l) or (o) is cause for refusal unless the applicant is nonetheless authorized to possess a firearm under Title 15, section 393;

A-2. That the applicant understands that an affirmative answer to subsection 1, paragraph;

D, subparagraph (5), division (p) is cause for refusal if the order of the court meets the preconditions contained in Title 15, section 393, subsection 1, paragraph D. If the order of the court does not meet the preconditions, the conduct underlying the order may be used by the issuing authority, along with other information, in judging good moral character under subsection 4;

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

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 (b) to (j), (m), (y), (z) or (aa) to (ff) is used by the issuing authority, along with other information, in judging good moral character under subsection 4; and

C. That the applicant understands any false statements made in the application or in any document made a part of the application may result in prosecution as provided in section 2004.

An applicant may provide that person's signature by an electronic means approved by the State Police.

2-A. Modification of questions. The Attorney General may modify or reword the questions in subsection 1, paragraph D, subparagraph (5) to improve readability and clarity as long as the subject matter of the questions is retained. The Attorney General shall submit any proposed changes to those questions to the joint standing committee of the Legislation having jurisdiction over criminal justice and public safety matters for review.

3. Copy of laws furnished to applicant. A copy of this chapter and the definitions from other chapters that are used in this chapter must be provided to every applicant.

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

- A. An application for a resident permit to carry concealed handguns;
- B. An application for a nonresident permit to carry concealed handguns;
- ~~C. A resident permit to carry concealed handguns of which a photograph is an integral part;~~
- ~~D. A resident permit to carry concealed handguns of which a photograph is not an integral part;~~
- ~~E. A nonresident permit to carry concealed handguns; and~~
- F. Authority to release information to the issuing authority for the purpose of evaluating information supplied on the application.

~~Each~~ An issuing authority shall utilize only the model forms.

4. Good moral character. The issuing authority in judging good moral character shall make its determination in writing based solely upon information recorded by governmental entities within 5 years of receipt of the application, including, but not limited to, the following matters:

- A. Information of record relative to incidents of abuse by the applicant of family or household members, provided pursuant to Title 19-A, section 4012, subsection 1;
- B. Information of record relative to 3 or more convictions of the applicant for crimes punishable by less than one year imprisonment or one or more adjudications of the applicant for juvenile offenses involving conduct that, if committed by an adult, is punishable by less than one year imprisonment;
- C. Information of record indicating that the applicant has engaged in reckless or negligent conduct; or
- D. Information of record indicating that the applicant has been convicted of or adjudicated as having committed a violation of Title 17-A, chapter 45 or Title 22, section 2383, or adjudicated as having committed a juvenile crime that is a violation of Title 22, section 2383 or a juvenile crime that would be defined as a criminal violation under Title 17-A, chapter 45 if committed by an adult.

5. Access to confidential records. Notwithstanding that certain records retained by governmental entities are by law made confidential, the records pertaining to patient committals to any mental health facility, including but not limited to, Riverview Psychiatric Center and Dorothea Dix Psychiatric Center, and records compiled pursuant to Title 19-A, section 4012, subsection 1, that are necessary to the issuing authority's determination of the applicant's good moral character and compliance with the additional requirements of this section and of section 2005 must, at the request of the issuing authority, be made available for inspection by and dissemination to the issuing authority.

6. Unorganized territory.

7. Nonresident.

8. Term of permit. All concealed handgun permits are valid for ~~6~~ 4 years from the date of issue, unless sooner revoked for cause by the issuing authority. If a permit renewal is issued before the expiration date of the permit being renewed or within 6 months of the expiration date of the permit being renewed, the permit renewal is valid for ~~6~~ 4 years from the expiration date of the permit being renewed.

9. Permit form ~~Information contained in permit.~~ By January 1, 2016, the State Police shall develop and make available a concealed handgun permit that ~~Each permit to carry concealed handguns issued must~~ contains the following components: The name, address, a recent photograph and physical description of the permit holder; the holder's signature; the date of issuance; and the date of expiration. All issuing authorities must use

this form and every issued permit must include the designated information. At the request of an issuing authority, the Secretary of State may provide a photograph of the applicant to be incorporated into that applicant's permit to carry a concealed handgun. A permit to carry concealed handguns may additionally contain a photograph of the permit holder if the issuing authority makes a photograph an integral part of the permit to carry concealed handguns.

10. Validity of permit throughout the State. Permits issued authorize the person to carry those concealed handguns throughout the State.

11. Permit to be in permit holder's immediate possession. Every permit holder shall have the holder's permit in the holder's immediate possession at all times when carrying a concealed handgun and shall display the same on demand of any law enforcement officer. A person charged with violating this subsection may not be adjudicated as having committed a civil violation if that person produces in court the concealed handgun permit that was valid at the time of the issuance of a summons to court or, if the holder exhibits the permit to a law enforcement officer designated by the summoning officer not later than 24 hours before the time set for the court appearance, a complaint may not be issued.

12. Permit for a resident of 5 or more years to be issued or denied within 30 days; permit for a nonresident and resident of less than 5 years to be issued or denied within 60 days. The issuing authority, as defined in this chapter, shall issue or deny, and reply in writing as to the reason for any denial, within 30 days of the application date in the case of a resident of 5 or more years and within 60 days of the application date in the case of a nonresident or in the case of a resident of less than 5 years. If the issuing authority does not issue or deny a request for a permit renewal within the time limits specified in this subsection, the validity of the expired permit is extended until the issuing authority issues or denies the renewal.

13. Fee waiver. An issuing authority may waive the permit fee for a permit issued to a law enforcement officer certified by the Maine Criminal Justice Academy.

14. Lapsed permit. A person may apply for renewal of a permit at the permit renewal rate at any time within 6 months after expiration of a permit. A person who applies for a permit more than 6 months after the expiration date of the permit last issued to that person must submit an original application and pay the original application fee.

15. Duty of issuing authority; application fees. The application fees submitted by the applicant as required by subsection 1, paragraph E, subparagraph (4) are subject to the following.

A. If the issuing authority is other than the Chief of the State Police, \$42.50 ~~25~~ of the fee for an original application and ~~\$15~~ of the fee for a renewal and \$10 of the fee for an application to replace a valid permit with a permit issued by the State Police on or after January 1, 2016 must be paid over to the Treasurer of State.

~~B. If the Chief of the State Police is the issuing authority as the designee of a municipality under section 2002-A, \$25 of the fee for an original application and \$15 of the fee for a renewal must be paid over to the Treasurer of State.~~

C. If the Chief of the State Police is the issuing authority because the applicant is either a resident of an unorganized territory or a nonresident, the application fee must be paid over to the Treasurer of State. ~~The fee must be applied to the expenses of administration incurred by the State Police.~~

The fees paid over to the Treasurer of State pursuant to this subsection must be deposited in the Maine State Police, Licensing & Enforcement Other Special Revenue Account.

16. Application fee; use. The application fee submitted by the applicant as required by subsection 1, paragraph E, subparagraph (4) covers the cost of processing the application by the issuing authority and the cost of developing the permit to carry concealed handguns issued by the issuing authority.

17. Waiver of law enforcement agency record and background check fees. Notwithstanding any other provision of law, a law enforcement agency may not charge an issuing authority a fee in association with the law enforcement agency's conducting a concealed handgun permit applicant record check or background check for the issuing authority.

18. Submission of information to the State Police. The issuing authority must provide information received from an applicant pursuant to subsection 1 to the State Police for purposes of a criminal history record check, a mental health record check and a Department of Motor Vehicle record checks. The State Police shall provide the results of its record checks to the issuing authority for consideration before the issuing authority makes a final determination on the application. Unless the State Police is the issuing authority as provided for in section 2002, subsection 9, the State Police does not have the authority to approve or deny an application for a concealed handgun permit.

19. Confidential data base. The State Police shall establish and maintain a confidential data base only accessible by a law enforcement agency or law enforcement officers for criminal justice and concealed handgun permit purposes or by court order, containing the following information about a permit holder or an applicant for a concealed handgun permit:

A. Name;

B. Address;

C. Date of Birth;

D. Permit information;

E. Status of the permit; and

E. Prior action taken on the permit.

The data base must be accessible by law enforcement agencies or law enforcement officer at any time. Information about a permit holder or an applicant must be purged from the data base within 5 years after the permit expires or after the period for an appeal on a denial or a revocation of a permit has run.

Sec. 3. Application. This Act does not apply to a valid concealed handgun permit issued before the effective date of this Act. An application for a concealed handgun permit or the renewal of a valid existing concealed handgun permit on or after the effective date of this Act is subject to the provisions of this Act.

Sec. 4. Effective date. That the section of this Act that amends the Maine Revised Statutes, Title 25, section 2003, subsection 3-A takes effect on January 1, 2016.

SUMMARY

This amendment is the majority report and replaces the bill and does the following:

1. It removes the authority of municipal officers and counselors and assessors of plantations to issue concealed handgun permits and makes the municipality's full-time chief of police the sole issuing authority for that municipality. If the municipality does not have a full-time chief of police, the Chief of the State Police is the issuing authority unless the municipality has an agreement with the county sheriff in which the municipality is located to serve as that municipality's issuing authority;

2. It provides that a nonresident must have a valid concealed handgun permit in that person's state of residence before that person is eligible for a Maine concealed handgun permit unless that person's state of jurisdiction does not require a permit to carry a concealed handgun;

3. It provides that the State Police must conduct record checks on an applicant for a concealed handgun permit and provide that information to the issuing authority for consideration when processing the application. It expressly provides that unless the State Police is the issuing authority, it does not have the power to issue or prevent the issuance of a concealed handgun permit. Only the issuing authority can make that determination;

4. It requires the State Police to establish a confidential data base containing information about concealed handgun permit holders and applicants for concealed handgun permits. It provides that the data base must be accessible by law enforcement agencies or law enforcement officers at any time and that information about a permit

holder or an applicant must be purged from the data base within 5 years after the permit expires or after the period for an appeal on a denial or a revocation of a permit has run;

5. It authorizes the Attorney General to modify or reword the statutory application questions for a concealed handgun permit to improve readability and clarity as long as the subject matter of those questions is retained. It also requires the Attorney General to provide the proposed changes to the wording of the questions to the Joint Standing Committee on Criminal Justice and Public Safety for review;

6. It increases the application fee for a concealed handgun permit for a resident from \$35 to \$52.50 and for a renew from \$20 to \$52.50 and for a nonresident from \$60 to \$120. It also extends the period a permit is valid from 4 years to 6 years;

7. It allows applicants to provide signatures on concealed handgun permit applications by an electron means approved by the State Police;

8. It allows the holder of a valid resident concealed handgun permit issued before January 1, 2016 to replace that permit with the new standard concealed handgun permit developed by the State Police on or after January 1, 2016 for a fee of \$15;

9. It provides that by January 1, 2016, the State Police must develop and make available a uniform concealed handgun permit form, which must be used by all issuing authorities;

10. It provides that concealed handgun permit fees paid over to the Treasurer of State must be deposited in a special revenue account for the sole purpose of reimbursing the issuing authority for expenditures related to the development and the issuance of concealed handgun permits;

11. It provides that the Act does not apply to a valid concealed handgun permit issued before the effective date of this Act. An application for a concealed handgun permit or for renewal of a valid existing concealed handgun permit submitted on or after the effective date of this Act is subject to the provisions of this Act; and

12. It makes the changes in the amendment to the current types of concealed handgun model forms the Attorney General must develop effective on January 1, 2016 to coincide with the date the State Police must produce a uniform concealed handgun permit.