

127th MAINE LEGISLATURE

SECOND REGULAR SESSION-2016

Legislative Document

No. 1520

H.P. 1045

House of Representatives, January 6, 2016

An Act To Amend Maine's Military Bureau Laws

(EMERGENCY)

Submitted by the Department of Defense, Veterans and Emergency Management pursuant to Joint Rule 203.

Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed.

R(+ B. Hunt

ROBERT B. HUNT Clerk

Presented by Representative HANINGTON of Lincoln. Cosponsored by Senator CYRWAY of Kennebec and Representatives: KINNEY of Limington, LUCHINI of Ellsworth, POULIOT of Augusta, SAUCIER of Presque Isle, TUELL of East Machias.

- 1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not 2 become effective until 90 days after adjournment unless enacted as emergencies; and
- 3 **Whereas,** the office of the state judge advocate is currently unable to receive timely 4 police reports and information related to alleged misconduct; and

5 Whereas, the absence of specific language in statute creates the potential that 6 members of the Maine National Guard could be personally liable for actions relating to 7 their service in the Maine National Guard on behalf of the State and the United States and 8 is inconsistent with protections provided to military commissioned officers and law 9 enforcement officials; and

- 10 **Whereas,** legislative action is immediately necessary to ensure protection from 11 liability for members and the efficient operation of the Maine National Guard; and
- 12 **Whereas,** in the judgment of the Legislature, these facts create an emergency within 13 the meaning of the Constitution of Maine and require the following legislation as 14 immediately necessary for the preservation of the public peace, health and safety; now, 15 therefore,
- 16 Be it enacted by the People of the State of Maine as follows:
- 17 Sec. 1. 16 MRSA §703, sub-§4, as enacted by PL 2013, c. 267, Pt. A, §2, is 18 amended to read:
- 19 4. Criminal justice agency. "Criminal justice agency" means a federal, state or 20 State of Maine government agency or any subunit of a government agency at any governmental level that performs the administration of criminal justice pursuant to a 21 statute or executive order. "Criminal justice agency" includes federal courts, Maine 22 23 courts, courts in any other state, the Department of the Attorney General, district 24 attorneys' offices and the equivalent departments or offices in any federal or state 25 jurisdiction and the office of the state judge advocate appointed in accordance with Title <u>37-B, section 405</u>. "Criminal justice agency" also includes any equivalent agency at any 26 27 level of Canadian government and the government of any federally recognized Indian 28 tribe.
- Sec. 2. 16 MRSA §803, sub-§4, as enacted by PL 2013, c. 267, Pt. A, §3, is
 amended to read:
- 4. Criminal justice agency. "Criminal justice agency" means a federal, state or 31 32 State of Maine government agency or any subunit of a government agency at any governmental level that performs the administration of criminal justice pursuant to a 33 statute or executive order. "Criminal justice agency" includes the Department of the 34 Attorney General, district attorneys' offices and the equivalent departments or offices in 35 any federal or state jurisdiction and the office of the state judge advocate appointed in 36 accordance with Title 37-B, section 405. "Criminal justice agency" also includes any 37 38 equivalent agency at any level of Canadian government and the government of any federally recognized Indian tribe. 39

1 Sec. 3. 37-B MRSA §185, sub-§1, as amended by PL 1995, c. 196, Pt. B, §2, is 2 further amended to read:

3 1. Immunity from civil and criminal liability. A member of the state military 4 forces may not be liable civilly or criminally for any act done or caused, ordered or directed to be done by that member while on active state service in the performance of 5 6 that member's duty, including for the use of deadly force for self-defense or to defend a 3rd person from what the member reasonably believes is the imminent use of unlawful 7 8 deadly force. If an action of any nature has been commenced in any court by any person 9 against an officer or enlisted member of the state military forces for such an act, done or caused, ordered or directed to be done, all expenses of the defense of the action, including 10 fees of witnesses for the defense, defendant's court costs, and all costs for transcripts of 11 12 records and abstract thereof on appeal, must be paid by the State out of the Military Fund. When the action is civil, it is the duty of the Attorney General to defend that officer or 13 14 enlisted member. When the action is criminal, the Adjutant General shall designate a judge advocate of the National Guard or other authorized state military or naval force to 15 conduct the defense of the member. If the services of a judge advocate are not available, 16 17 the Adjutant General shall select some other competent attorney to conduct the defense. 18 In any civil action, the defendant may require the person instituting the action to file security for payment of costs that may be awarded the defendant, which costs, if paid out 19 20 of the Military Fund, when received, must be paid into the State Treasury and credited to 21 the Military Fund.

22 Sec. 4. 37-B MRSA §185, sub-§4, as amended by PL 2001, c. 662, §23, is 23 further amended to read:

4. Rights of a law enforcement officer. A commissioned officer of the state
 military forces and an Army National Guard or Air National Guard military police officer
 or security forces member when called to active state service under section 181-A,
 subsection 1, in addition to such other rights conferred by this chapter and otherwise by
 law, has the rights, authority and immunities of a law enforcement officer.

- Emergency clause. In view of the emergency cited in the preamble, this
 legislation takes effect when approved.
- 31 SUMMARY

This bill adds the office of the state judge advocate to the definition of "criminal justice agency." It also amends the laws regarding rights and liabilities of state military forces members by providing members with immunity for the use of deadly force under certain conditions and by providing that Army National Guard and Air National Guard military police officers and security forces have certain rights of law enforcement officers.