

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1225

H. P. 975

House of Representatives, March 14, 1979

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Baker of Portland.

Cosponsors: Mr. Tuttle of Sanford, Mr. Rolde of York and Mrs. Wentworth of Wells

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Clarify Public Recreation Rights Along the Coast of Maine.

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

Sec. 1. Recreation in intertidal area. The public is entitled to exercise recreational rights in the area between the line of mean high tide and the line of mean low tide at every point on the coast of Maine, including islands, that is affected by the rise and fall of the tide.

A. The public is entitled to transit freely across an area from the line of mean high water to a distance of 6 feet above that line on every dry sand beach on the coast of Maine, including islands, affected by the rise and fall of the tide, provided that the public right to transit has been acquired by right of use, or easement, by prescription, dedication, custom or continuous right in the public, or otherwise by operation of law or equity.

B. In any action brought with respect to the right of the public to transit in the 6 foot area described in paragraph A, a demonstration that the right of transit is to be exercised within that area shall be prima facie evidence that the title of the littoral owner does not prevent the public's free right of transit within the area from the line of mean high water to a distance of 6 feet above that line.

Sec. 2. Owner's right to bring suit. Any littoral owner whose right may be affected by this Act shall be entitled to bring suit for a declaratory judgment in the Superior Court against the State to try the issue or issues.

Sec. 3. Construction. This Act shall not be construed as extending or limiting the rights of the public in any manner not explicitly addressed in sections 1 and 2.

STATEMENT OF FACT

Although most of Maine's coast line is in private ownership to the low water mark, the Colonial Ordinances of 1641-7 established the public's right to use the intertidal area for various purposes. Since the ordinance does not explicitly establish the public's recreational rights in their intertidal area and Maine judicial decisions have not specifically found them to exist, legal uncertainty exists with respect to public right in this essential regard. The uncertainty results in confrontation and conflict between private land owners and members of the public asserting their right to recreational use of intertidal areas along Maine's shore. This bill clarifies the public's right to use the intertidal areas.

In Maine, the public has traditionally used the area of a sandy beach above mean high water line to transit from one point of access to another, or to return. This bill confirms the public right of transit across the privately owned land where it has been established by custom, dedication, prescription or otherwise by operation of law and protects the public's transit rights by the rebuttable presumption it establishes. The bill protects the interests of private landowners by guaranteeing them the right to institute declaratory judgment in Superior Court to decide issues involving the public use of their shore property.