

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1273

6
7 S.P. 420

In Senate, March 22, 1983

8 Referred to the Committee on Legal Affairs. Sent down for concurrence
9 and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator McBreaity of Aroostook.

Cosponsors: Senator Charette of Androscoggin, Representative Matthews
11 of Caribou and Representative Crouse of Washburn.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT Relating to Drinking in Public.
18

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

21 17 MRSA §2003-A, as enacted by PL 1981, c. 418,
22 §2, is repealed and the following enacted in its
23 place:

24 §2003-A. Public drinking

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

28 A. "Liquor" means and includes any alcoholic,
29 spirituous vinous, fermented or other alcoholic
30 beverage, or combination of liquors and mixed
31 liquors, intended for human consumption, which
32 contains more than 1/2 of 1% of alcohol by
33 volume.

1 B. "Open container" means not having a cap,
2 stopper or other cover in place.

3 C. "Public place" means:

4 (1) A place owned or operated by a govern-
5 mental entity to which the public at large
6 or a substantial number of the public has
7 access, including, but not limited to:

8 (a) Public ways as defined in Title
9 17-A, section 505; and

10 (b) Schools and government-owned cus-
11 todial facilities;

12 (2) Private ways and parking areas, physi-
13 cally adjacent to public ways and designed
14 primarily for vehicular traffic; and

15 (3) A place or portion of a place to which
16 the public at large or a substantial number
17 of the public has access, and which is not
18 subject to a license for the consumption of
19 liquor under Title 28, chapter 19, includ-
20 ing, but not limited to:

21 (a) Common carriers;

22 (b) Dance, entertainment, amusement or
23 sports facilities; and

24 (c) Grounds adjacent thereto and used
25 in conjunction therewith.

26 2. Crime. A person is guilty of a criminal
27 violation under this section if he drinks liquor in
28 any public place knowing that he is not licensed or
29 privileged to do so. Violation of this section is a
30 Class E crime.

31 2-A. Civil violation. When a person has been
32 arrested or summonsed for a violation of this
33 section, the attorney for the State may elect to
34 charge the defendant with the civil violation of
35 public drinking. The determination of the attorney
36 for the State, under this subsection, that a person

1 should be prosecuted under this subsection or under
2 subsection 2, shall not be subject to review.

3 A. A person commits a civil violation under this
4 subsection if he drinks liquor in a public place,
5 knowing that he is not licensed or privileged to
6 do so.

7 B. A violation of this subsection is a civil
8 violation for which a forfeiture of not less than
9 \$25 nor more than \$100 shall be adjudged. The
10 minimum forfeiture shall not be suspended.

11 C. The attorney for the State shall not elect to
12 charge a violation of this subsection in lieu of
13 criminal prosecution under subsection 2 with
14 respect to any defendant who has previously been
15 convicted of public drinking or who has previ-
16 ously been adjudged to have committed the civil
17 violation of public drinking.

18 D. The attorney for the State may elect to
19 charge a violation of subsection 2, in lieu of
20 civil prosecution under this subsection in any
21 other circumstances. These circumstances
22 include, but are not limited to, when the defen-
23 dant:

24 (1) Was previously convicted of or adjudged
25 to have committed a violation of any state
26 statute involving the use of intoxicating
27 liquor or drugs;

28 (2) Refused to cease his public drinking
29 after being confronted by an officer; or

30 (3) During the course of the public drink-
31 ing which resulted in the prosecution for
32 public drinking, committed any other viola-
33 tion of a state law which the attorney for
34 the State believes warrants criminal prose-
35 cution.

36 E. The discretion of the attorney for the State
37 under paragraph D shall not be subject to review.

F. The matters set out in paragraph C and D are not elements of the offense and are not subject to proof or disproof as prerequisites or conditions for conviction or adjudication under this subsection or subsection 2.

3. Evidence. The possession of an open container of liquor in a public place is prima facie evidence of a violation of this section.

STATEMENT OF FACT

The purpose of this bill is to amend the public drinking law to provide for a civil and a criminal violation. A person could be prosecuted for either a civil violation or for a criminal violation. This distinction is modelled on the laws concerning operating a motor vehicle under the influence of drugs or liquor.

This bill also specifically removes the requirement in current law that a person be warned by a law enforcement officer to stop drinking before his continued drinking becomes the offense of drinking in public. The bill removes the ability of an authorized person, which under current law includes custodians and any others having a relationship to the premises, to give permission for drinking in a public place. The bill, in its redefinition of "public place," recognizes that drinking in what could otherwise be characterized as a public place is not an offense when the place or event held in the place is subject to a license for liquor consumption under Title 28, chapter 19.

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