

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 2154

6
7 S.P. 806

In Senate, February 29, 1984

8 Submitted by the Department of Inland Fisheries and Wildlife pursuant
9 to Joint Rule 24.

10 Referred to the Committee on Fisheries and Wildlife and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Usher of Cumberland.

Cosponsors: Representative MacEachern of Lincoln and Senator Collins
of Knox.

11
12 STATE OF MAINE
13

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

17 AN ACT to Allow Certain Fish and Wildlife
18 Offenses to be Treated as Civil Violations.
19

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

22 Sec. 1. 12 MRSA §7001, sub-§4-A is enacted to
23 read:

24 4-A. Conviction. Conviction means a judgment of
25 the court in favor of the State in either a criminal
26 or civil proceeding.

27 Sec. 2. 12 MRSA §7901, sub-§4, as amended by PL
28 1983, c. 440, §15, is repealed.

29 Sec. 3. 12 MRSA §7901, sub-§5, as enacted by PL
30 1983, c. 329, §4, c. 440, §16, and 572, §5, is re-
31 pealed and the following enacted in its place:

1 5. Violation. Whenever a violation of any pro-
2 hibited Act in chapters 701 to 721, is committed by
3 an habitual violator, as defined in section 7001,
4 subsection 13-A, the penalty for that violation shall
5 be a fine of not less than \$500 and a term of impris-
6 onment of not less than 3 days, this fine and impris-
7 onment not to be suspended.

8 6. Violation not a crime. Notwithstanding any
9 other provision of this section, violation of section
10 7801, subsection 28, is not a crime.

11 Sec. 4. 12 MRSA §7901-A is enacted to read:

12 §7901-A. Penalties; civil violations

13 A violation of any prohibited act in chapters 701
14 to 721 is a civil violation, for which a forfeiture
15 of not more than \$500 may be adjudged, except as pro-
16 vided in this section.

17 1. Violation of portions of sections 7406, 7458
18 and 7464. A violation of section 7406, subsection 1
19 as it applies to deer, or of section 7406, subsection
20 5 or 15, or of section 7458, subsection 3 or of sec-
21 tion 7464, subsection 1 or 2, shall not consitute a
22 civil violation.

23 2. Habitual offender. A violation of any pro-
24 hibited act in chapters 701 to 721 by an habitual of-
25 fender, as defined in section 7001, subsection 13-A,
26 shall not consitute a civil violation.

27 3. Fishing violations. A violation of any of
28 the acts prohibited in chapter 711, subchapter III,
29 fishing violations, is a civil violation, except that
30 in addition to any forfeiture which might be ad-
31 judged, an additional forfeiture of \$5, shall be ad-
32 judged for each fish illegally possessed, this for-
33 feiture not to be suspended.

34 4. Violations of section 7505, subsection 3. A
35 violation of section 7505, subsection 3, is a civil
36 violation for which a forfeiture of not less than
37 \$100, nor more than \$500, may be adjudged, this for-
38 feiture not to be suspended.

1 5. Violations of section 7371, subsection 3. A
2 violation of section 7371, subsection 3, is a civil
3 violation for which a forfeiture of not less than
4 twice the applicable license fee shall be adjudged,
5 this forfeiture not to be suspended.

6 6. Violation of section 7776 or permit issued
7 under section 7777. A violation of section 7776 or a
8 violation of any of the terms or conditions of a per-
9 mit issued pursuant to section 7777, is a civil vio-
10 lation for which a forfeiture of not less than \$100,
11 not more than \$10,000, may be adjudged.

12 Sec. 5. 12 MRSA §7901-B is enacted to read:

13 §7901-B. Election of civil violations

14 When a person has been arrested or summonsed for
15 a crime under this Title, which crime also consti-
16 tutes a civil violation under section 7901-A, the at-
17 torney for the State may elect to charge the defend-
18 ant with a civil violation in lieu of a criminal
19 prosecution. The election of the attorney for the
20 State to charge a civil violation, or the failure to
21 so elect, shall not be subject to review.

22 Sec. 6. 12 MRSA §7906, as enacted by PL 1979, c.
23 420, §1, is amended to read:

24 §7906. Failure to appear

25 If a person from whom a game warden has accepted
26 personal recognizance and a deposit in accordance
27 with section 7053, subsection 2, paragraph C fails to
28 appear in court on the day specified in the summons,
29 either in person or by counsel, the court shall order
30 the recognizance and deposit forfeited, and the clerk
31 shall immediately notify the commissioner. The de-
32 fault and forfeiture shall be considered a conviction
33 for purposes of revocation of licenses. If a person
34 is charged with a civil violation pursuant to section
35 7901-B, and that person fails to appear on the day
36 specified in the summons, or otherwise fails to re-
37 spond in accordance with law, the court may adjudge
38 him to have committed the violation and order any de-
39 posit to be applied to the forfeiture adjudged.

1 STATEMENT OF FACT

2 Most fish and wildlife violations are considered
3 Class E crimes even though the misconduct may not be
4 criminal in nature. In many types of fish and wild-
5 life "crimes," fines seldom exceed \$100, and jail
6 sentences are never imposed. Also, the criminal
7 record which accompanies conviction of many of these
8 violations is unwarranted.

9 This bill gives prosecutors the option to handle
10 certain fish and wildlife offenses as either criminal
11 or civil violations. A prosecutor would not have
12 this discretion in the more serious cases.

13 By eliminating the threat of incarceration and
14 the social stigma associated with criminal records,
15 most violations would be settled at the District
16 Court level without excessive cost to the State.

17 Section 1 defines conviction to mean a judgment
18 of a court in favor of the state in either a civil or
19 criminal proceeding. This is necessary in order for
20 the commissioner to revoke licenses in those in-
21 stances where fish and wildlife violations are han-
22 dled through civil process.

23 Section 2 removes a civil penalty from the sec-
24 tion which now deals exclusively with criminal penal-
25 ties.

26 Section 3 corrects an error whereby 3 different
27 provisions were enacted as the same subsection.

28 Section 4 defines which offenses are civil viola-
29 tions and sets forth the applicable penalties.

30 Section 5 establishes that charging a civil rath-
31 er than a criminal violation is a matter of
32 prosecutorial discretion.

1 Section 6 allows a person who has been summonsed
2 for a criminal offense to answer to a civil complaint
3 without further service or process, although failure
4 to appear may result in a default judgment if the
5 prosecutor has chosen the civil violation.

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