

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 269

6
7 S.P. 88

In Senate, January 29, 1985

8 Reference to the Committee on Judiciary suggested and ordered printed.

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

10 Presented by Senator Matthews of Kennebec.

Cosponsored by Representative Erwin of Rumford, Representative
Rotondi of Athens and Representative Mills of Bethel.

11
12 STATE OF MAINE
13

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

17 AN ACT to Allow Certain Fish and Wildlife
18 Offenses to be Treated as Civil
19 Violations.
20

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

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

25 4-A. Conviction. "Conviction" means a judgment
26 of the court in favor of the State in either a crimi-
27 nal or civil proceeding.

28 Sec. 2. 12 MRSA §7901, sub-§4, as amended by PL
29 1983, c. 440, §15, is repealed.

30 Sec. 3. 12 MRSA §§7901-A and 7901-B are enacted
31 to read:

32 §7901-A. Penalties; civil violations

1 Except as otherwise provided in this section, a
2 violation of any prohibited act in chapters 701 to
3 721 is a civil violation for which a forfeiture of
4 not more than \$500 may be adjudged.

5 1. Violation of portions of sections 7406, 7458
6 and 7464. A violation of section 7406, subsection 1
7 as it applies to deer, or of section 7406, subsection
8 5 or 15, or of section 7458, subsection 3 or of sec-
9 tion 7464, subsection 1 or 2, shall not constitute a
10 civil violation.

11 2. Habitual offender. A violation of any pro-
12 hibited act in chapters 701 to 721 by an habitual of-
13 fender, as defined in section 7001, subsection 13-A,
14 shall not constitute a civil violation.

15 3. Fishing violations. A violation of any of
16 the acts prohibited in chapter 711, subchapter III,
17 fishing violations, is a civil violation, except that
18 in addition to any forfeiture which might be ad-
19 judged, an additional forfeiture of \$5 shall be ad-
20 judged for each fish illegally possessed, this forfei-
21 ture not to be suspended.

22 4. Violations of section 7505, subsection 3. A
23 violation of section 7505, subsection 3, is a civil
24 violation for which a forfeiture of not less than
25 \$100 nor more than \$500 may be adjudged, this forfei-
26 ture not to be suspended.

27 5. Violations of section 7371, subsection 3. A
28 violation of section 7371, subsection 3, is a civil
29 violation for which a forfeiture of not less than
30 twice the applicable license fee shall be adjudged,
31 this forfeiture not to be suspended.

32 6. Violation of section 7776 or permit issued
33 under section 7777. A violation of section 7776, or
34 a violation of any of the terms or conditions of a
35 permit issued pursuant to section 7777, is a civil
36 violation for which a forfeiture of not less than
37 \$100 not more than \$10,000 may be adjudged.

38 §7901-B. Election of civil violations

1 When a person has been arrested or summonsed for
2 a crime under this Title, which crime also consti-
3 tutes a civil violation under section 7901-A, the at-
4 torney for the State may elect to charge the defend-
5 ant with a civil violation in lieu of a criminal
6 prosecution. The election of the attorney for the
7 State to charge a civil violation, or the failure to
8 so elect, shall not be subject to review.

9 Sec. 4. 12 MRSA §7906, as enacted by PL 1979, c.
10 420, §1, is amended to read:

11 §7906. Failure to appear

12 If a person from whom a game warden has accepted
13 personal recognizance and a deposit in accordance
14 with section 7053, subsection 2, paragraph C fails to
15 appear in court on the day specified in the summons,
16 either in person or by counsel, the court shall order
17 the recognizance and deposit forfeited, and the clerk
18 shall immediately notify the commissioner. The de-
19 fault and forfeiture shall be considered a conviction
20 for purposes of revocation of licenses. If a person
21 is charged with a civil violation pursuant to section
22 7901-B, and that person fails to appear on the day
23 specified in the summons, or otherwise fails to re-
24 spond in accordance with law, the court may adjudge
25 him to have committed the violation and order any de-
26 posit to be applied to the forfeiture adjudged.

27 STATEMENT OF FACT

28 Most fish and wildlife violations are considered
29 Class E crimes even though the misconduct may not be
30 criminal in nature. In many types of fish and wild-
31 life "crimes," fines seldom exceed \$100, and jail
32 sentences are never imposed. Also, the criminal
33 record which accompanies conviction of many of these
34 violations is unwarranted.

35 This bill gives prosecutors the option to handle
36 certain fish and wildlife offenses as either criminal
37 or civil violations. A prosecutor would not have
38 this discretion in the more serious cases.

1 By eliminating the threat of incarceration and
2 the social stigma associated with criminal records,
3 most violations would be settled at the District
4 Court level without excessive cost to the State.

5 Section 1 defines conviction to mean a judgment
6 of a court in favor of the State in either a civil or
7 criminal proceeding. This is necessary in order for
8 the commissioner to revoke licenses in those in-
9 stances where fish and wildlife violations are han-
10 dled through civil process.

11 Section 2 removes a civil penalty from the sec-
12 tion which now deals exclusively with criminal penal-
13 ties.

14 Section 3 defines which offenses are civil viola-
15 tions and sets forth the applicable penalties. Sec-
16 tion 3 also establishes that charging a civil rather
17 than a criminal violation is a matter of
18 prosecutorial discretion.

19 Section 4 allows a person who has been summonsed
20 for a criminal offense to answer to a civil complaint
21 without further service or process, although failure
22 to appear may result in a default judgment if the
23 prosecutor has chosen the civil violation.

24 0222120684