

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2267

S.P. 891

In Senate, February 1, 1990

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator ERWIN of Oxford.

Cosponsored by Senator LUDWIG of Aroostook, Representative JACQUES of Waterville and Representative LORD of Waterboro.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Strengthen the Laws Regarding the Casual Disposal of Solid Waste.

(EMERGENCY)



Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the First Regular Session of the 114th Legislature enacted laws providing for a comprehensive solid waste management program; and

Whereas, some individuals engage in illegal "back roads" dumping which is in direct contrast to the comprehensive solid waste management goals; and

Whereas, current littering penalties for so-called "back roads" dumping do not reflect the severity of the violation; and

Whereas, the intent of this legislation is to strengthen existing litter control laws in an effort to encourage compliance with the solid waste management program; and

Whereas, effective enforcement by the Department of Environmental Protection will be enhanced by the addition of penalty options; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 17 MRSA §2263, sub-§1-C is enacted to read:

1-C. Commercial purpose. "Commercial purpose" means for the purpose of economic gain.

Sec. 2. 17 MRSA §2263, sub-§4-A is enacted to read:

4-A. Commercial vehicle. "Commercial vehicle" means a vehicle owned or used by a business, corporation, association, partnership, or the sole proprietorship of any entity conducting business for a commercial purpose.

Sec. 3. 17 MRSA §2264, as amended by PL 1989, c. 97, §§1 and 2, is repealed and the following enacted in its place:

§2264. Littering prohibited

No person may throw, drop, deposit, discard, dump or otherwise dispose of litter in any manner or amount:

2 1. Public property. In or on any public highway, road,
4 street, alley, public right-of-way or other public lands, except
6 in containers, receptacles or on property that is designated for
8 disposal of garbage and refuse by the State or its agencies or
10 political subdivisions;

12 2. Water. In any fresh water lake, river, stream, tidal or
14 coastal water or on ice over the water. When any litter is
16 thrown or discarded from a watercraft, the operator of the
18 watercraft, unless it is a watercraft being used for the carriage
20 of passengers for hire and the person actually disposing of the
22 litter, is in violation of this section. This subsection does
24 not prohibit persons who fish, lobster or otherwise harvest from
26 the water and return to the water those materials which naturally
originate in the water;

18 3. Private property. In or on any private property, unless
20 prior consent of the owner has been given and unless the litter
22 is not a public nuisance or in violation of any state law or
24 local rule;

22 4. Vehicle or trailer. From a trailer or vehicle that is
24 constructed, loaded or uncovered in such a way that the load may
26 drop, sift, leak or otherwise escape. This subsection applies to
vehicles or trailers carrying trash, rubbish or other materials
that may be construed as "litter"; or

28 5. Vehicle operator. From within a vehicle, the operator
30 shall not allow any person to throw, drop, deposit, discard or
32 otherwise dispose of litter in violation of this section. The
34 operator of the vehicle, unless it is a vehicle being used for
36 the carriage of passengers for hire, as well as the person
actually throwing, dropping, depositing, discarding or otherwise
disposing of the litter, shall be in violation of this section
and the violation shall be enforced in accordance with Title 29,
chapter 19.

38 A record of a violation of this subsection must be forwarded
40 to the Secretary of State who, in accordance with Title 29,
42 section 2304, shall add the violation to the department's point
44 system and the violation is counted in determining an
individual's total points under the point system of the Division
of Motor Vehicles.

46 For the purposes of this chapter, if a person dumps litter from a
48 commercial vehicle, that person is presumed to have dumped the
litter for commercial purposes.

50 **Sec. 4. 17 MRSA §§2264-A to 2264-C are enacted to read:**

52 **2264-A. Penalties**

2 Unless otherwise indicated, a person who disposes of litter
3 in violation of this chapter commits a civil violation for which
4 the following forfeitures apply.

5 1. Disposal of less than 15 pounds or 27 cubic feet. A
6 person who disposes of less than 15 pounds of litter or 27 cubic
7 feet in volume is subject to a forfeiture of not more than \$200
8 nor less than \$25 for the first violation and a forfeiture of not
9 more than \$500 nor less than \$100 for a subsequent violation.

10 2. Disposal of litter exceeding 15 pounds or 27 cubic
11 feet. A person who disposes of litter in an amount exceeding 15
12 pounds or 27 cubic feet in volume is subject to a forfeiture of
13 not less than \$250 for the first violation and a forfeiture of
14 \$500 for a subsequent violation.

15 3. Commercial purpose. A person disposing of litter
16 exceeding 500 pounds or 100 cubic feet in volume for any
17 commercial purpose is subject to the provisions provided in Title
18 38, chapter 2.

19 **§2264-B. Penalty options**

20 In addition to the forfeitures imposed in section 2264-A,
21 the court may order a person adjudicated to have violated section
22 2264 to:

23 1. Removal of litter. Remove the litter dumped in
24 violation of section 2264;

25 2. Cost of cleanup. Pay the owner of the property treble
26 the owner's cost of clean up or removal of the litter;

27 3. Damages. Pay the person sustaining damages arising out
28 of a violation of this subsection treble the actual damages or
29 \$200, whichever amount is greater, plus the injured party's court
30 costs and attorney's fees if action results in a civil proceeding;

31 4. Public service. Perform public service relating to the
32 removal of litter, or to the restoration of an area polluted by
33 litter, dumped in violation of section 2264;

34 5. License suspension. Surrender motor vehicle operator's
35 license for a period not exceeding 30 days. The court may
36 suspend an operator's license for any violation of section 2264
37 which involves the use of a motor vehicle; and

38 6. Forfeiture. Be subject to forfeiture of all
39 conveyances, including aircraft, watercraft, vehicles, vessels,
40 containers or cranes used to dump litter that exceeds 500 pounds
41 in weight or 100 cubic feet in volume. Forfeiture proceedings
42 are as provided in section 2264-C.

2 §2264-C. Forfeiture of conveyances used in the violation of
4 Maine's litter laws

6 1. Conveyances forfeited. The following are subject to
forfeiture to the State and no property right may exist in them:

8 A. All conveyances, including aircraft, watercraft,
10 vehicles, vessels, containers or cranes that are used, or
12 intended for use, to dump litter that exceeds 500 pounds in
 weight or 100 cubic feet in volume in violation of this
 chapter.

14 2. Jurisdiction. Conveyances subject to forfeiture under
16 subsection 1, paragraph A, must be declared forfeited by any
 court having jurisdiction over the conveyance or having final
18 jurisdiction over any related proceeding brought under this
 chapter.

20 3. Exceptions. The court shall order forfeiture of all
22 conveyances subject to forfeiture under subsection 1, paragraph
 A, except as follows.

24 A. A conveyance used by any person as a for-hire carrier in
26 the transaction of business as a for-hire carrier is not
 forfeited unless it appears that the owner or other person
28 in charge of the conveyance was a consenting party or privy
 to a violation of this chapter.

30 B. A conveyance is not forfeited by reason of any act or
32 omission established by the owner of the conveyance to have
 been committed or omitted by any person other than the owner
34 while the conveyance was illegally in the possession of a
 person other than the owner in violation of the criminal
 laws of the United States, the State or of any state.

36 C. A conveyance is not subject to forfeiture unless the
38 owner knew or should have known that the conveyance was used
 in violation of this chapter.

40 4. Forfeiture procedure. Forfeitures under this section
42 must be accomplished by the following procedure.

44 A. A district attorney or the Attorney General may petition
46 the Superior Court in the name of the State in the nature of
 a proceeding in rem to order forfeiture of conveyances
48 subject to forfeiture under subsection 1, paragraph A. The
 petition must be filed in the court having jurisdiction over
 the property.

50 B. The proceeding is deemed a civil suit in which the State
52 shall have the burden of proving all material facts by a

2 preponderance of the evidence. The owner of the conveyance,
3 or other person claiming under the owner, shall have the
4 burden of proving all the exceptions set forth in subsection
5 3 by a preponderance of the evidence.

6 C. The court shall order the State to give notice by
7 certified or registered mail or hand delivery by a deputy
8 sheriff to the owner of the conveyance and to any other
9 person who appears to have an interest in the conveyance.

10 D. The court shall promptly, but not less than 2 weeks
11 after notice, hold a hearing on the petition. At the
12 hearing, the court shall hear evidence and make findings of
13 fact and enter conclusions of law.

14 E. Based on the findings and conclusions, the court shall
15 issue a final order from which the parties have a right of
16 appeal. The final order must provide for disposition of the
17 conveyance by the State or any subdivision of the State in
18 any manner not prohibited by law, including official use by
19 an authorized law enforcement or other public agency, sale
20 at public auction or by competitive bidding.

21 (1) The proceeds of any sale must be used to pay the
22 reasonable expenses of the forfeiture proceedings,
23 seizure, storage, maintenance of custody, advertising
24 and notice and to pay any bona fide mortgage on the
25 conveyance. The balance, if any, must be deposited in
26 the State Treasury, or the treasury of the county or
27 municipality making the seizure.

28 5. Records. Any officer, department or agency having
29 custody of a conveyance subject to forfeiture under subsection 1,
30 or having disposed of that conveyance, shall keep and maintain
31 full and complete records concerning that conveyance.

32 A. The records must show:

33 (1) A description of the conveyance;

34 (2) Under what authority the officer, department or
35 agency having custody of the conveyance held, received
36 or disposed of the conveyance;

37 (3) The name and address of the owner or owners of the
38 conveyance at the time of seizure; and

39 (4) The date and manner of destruction or disposition
40 of the conveyance.

2 B. The records must be open to inspection by all state and
4 federal officers charged with enforcement of federal and
6 state laws.

8 C. Persons making final disposition or destruction of the
10 conveyance under court order shall report, under oath, to
12 the court the exact circumstances of the destruction or
14 disposition.

16 D. The Department of Public Safety is responsible for
18 maintaining a centralized record of the conveyance seized
20 and held under an order to the department. At least
22 quarterly, the department must provide a report of the
24 disposition of the conveyance previously held by the
26 department. The report must be submitted to the
28 Commissioner of Finance and the Office of Fiscal and Program
30 Review for review. These records must include an estimate of
32 the fair market value of the conveyance seized.

34 6. Preliminary order. At the request of the State ex parte,
36 the court may issue any preliminary order or process necessary to
38 seize or secure the conveyance for which forfeiture is sought and
40 provide for its custody.

42 A. Process for seizure of the conveyance is to be issued
44 only upon a showing of probable cause. The application for
46 process for seizure of the conveyance and the issuance,
48 execution and return of the process are subject to the
50 provisions of applicable Maine law.

B. Any conveyance subject to forfeiture under this section
may be seized upon process, except that seizure without
process may be made when:

(1) The seizure is incident to:

(a) An arrest with probable cause;

(b) A search under a valid search warrant; or

(c) An inspection under a valid administrative
inspection warrant;

(2) The conveyance subject to seizure has been the
subject of a prior judgment in favor of the State in a
forfeiture proceeding under this section;

(3) There is probable cause to believe that the
conveyance is directly or indirectly dangerous to
public health or safety; or

2 (4) There is probable cause to believe the conveyance
3 has been used or is intended to be used in violation of
4 this chapter.

6 Sec. 5. 17 MRSA §2265, as amended by PL 1977, c. 564, §83, is
7 repealed.

8 Sec. 6. 17 MRSA §2266, as amended by PL 1977, c. 93, §3, is
9 repealed.

10 Sec. 7. 17 MRSA §2267, as amended by PL 1977, c. 93, §4, is
11 repealed.

12 **Emergency clause.** In view of the emergency cited in the
13 preamble, this Act shall take effect when approved.

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20 **STATEMENT OF FACT**

21 Due to the strengthening of the solid waste disposal laws,
22 some individuals are engaging in illegal, "back roads" dumping.
23 The purpose of this bill is to tighten the litter control laws,
24 especially those regarding the "back roads" disposal of waste.
25 This bill consolidates the current litter laws and strengthens
26 the penalties against those who illegally dispose of litter.
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