

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)



116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

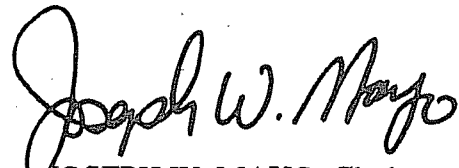
No. 1766

H.P. 1311

House of Representatives, January 24, 1994

**An Act to Ensure Appropriate and Equitable Penalties for Violation of
Electoral Laws.**

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Legal Affairs suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative LARRIVEE of Gorham.
Cosponsored by Representative: GWADOSKY of Fairfield.

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

2
4 Sec. 1. 21-A MRSA §32, sub-§1, ¶¶A and B, as enacted by PL 1993, c. 473, §2 and affected by §46, are amended to read:

6 A. Knowingly violates a provision of this Title for which
no penalty has been provided; ~~or~~

8 B. Knowingly displays or distributes political
10 advertisements in or on state-owned or state-leased property.

12 This paragraph does not apply to acts on state highways or
to displays on motor vehicles not owned by the State while
14 temporarily parked in parking areas on land maintained by
the State. This paragraph does not apply to acts in or on a
16 state-owned or state-leased building for a period beginning
48 hours before and ending 48 hours after that building is
18 used by a political party to conduct a political activity
within the building; or

20 Sec. 2. 21-A MRSA §32, sub-§1, ¶C is enacted to read:

22 C. Is a public official and knowingly fails or refuses to
24 perform a duty required of that official under this Title.

26 Sec. 3. 21-A MRSA §32, sub-§2, as enacted by PL 1993, c. 473,
§2 and affected by §46, is repealed.

28 Sec. 4. 21-A MRSA §167, as amended by PL 1993, c. 473, §9 and
30 affected by §46, is further amended to read:

32 **§167. Violation and penalty**

34 A person who places or removes the name of another on or
from a voting list or general register with the intent to affect
36 the other person's eligibility to vote, knowing that person has
no legal right to do so, commits a Class -C- D crime.

38 Sec. 5. 21-A MRSA §674, sub-§2, ¶¶A and B, as repealed and
40 replaced by PL 1993, c. 473, §18 and affected by §46, are amended
to read:

42 A. Assists another person in voting, knowing that the other
44 person is not eligible to vote; ~~or~~

46 B. Solicits votes from another person, knowing that the
other person is under guardianship because of mental
48 illness; or

50 Sec. 6. 21-A MRSA §674, sub-§2, ¶E is enacted to read:

2 E. Causes a delay in the registration or enrollment of
4 another or causes a delay in the delivery of an absentee
6 ballot or absentee ballot application with the intent to
 prevent a person from voting or to render that person's vote
 ineffective.

8 **Sec. 7. 21-A MRSA §674, sub-§3, ¶A,** as enacted by PL 1993, c.
10 473, §18 and affected by §46, is repealed.

12 **Sec. 8. 21-A MRSA §682, sub-§3,** as amended by PL 1993, c. 473,
§20 and affected by §46, is further amended to read:

14 **3. Advertising prohibited.** A person may not display any
16 advertising material, operate any advertising medium, including a
18 sound amplification device, or distribute campaign literature,
20 posters, palm cards, buttons or stickers intended to influence
22 the opinion of any voter within 250 feet of the entrance to
 either the voting place or the registrar's office. The term
 "sound amplification device" includes, but is not limited to,
 sound trucks, loudspeakers and blowhorns.

24 Party workers and others who remain in the voting place outside
26 the guardrail enclosure may not use, with the intent of affecting
28 the outcome of any election, within the voting place cellular
phones, beepers, voice or signal pagers or similar devices that
make noise or allow direct audible voice communication within the
voting place.

30 A. This subsection does not apply to advertising material
32 on automobiles traveling to and from the voting place. It
34 does not prohibit a person from passing out stickers at the
36 voting place to be pasted on the ballot at a primary
 election. It does not prohibit a person who is at the polls
 solely for the purpose of voting from wearing a campaign
 button when the longest dimension of the button does not
 exceed 3 inches.

38 B. A person who knowingly engages in activities prohibited
40 by this section commits a Class E crime.

42 **Sec. 9. 21-A MRSA §791, sub-§2, ¶A,** as repealed and replaced
44 by PL 1993, c. 473, §37 and affected by §46, is amended to read:

46 A. Delivers, receives, accepts, notarizes or witnesses an
48 absentee ballot for any compensation. This paragraph does
 not apply to a governmental employee handling ballots in the
 course of that employee's official duties or a person who
 handles absentee ballots before the unvoted ballots are

2 delivered to the municipality or after the voted ballots are
returned to the clerk; or

4 **Sec. 10. 21-A MRSA §791, sub-§2, ¶D** is enacted to read:

6 D. Is a candidate who, notwithstanding the other provisions
8 of this subchapter, delivers, receives, accepts, notarizes
10 or witnesses an absentee ballot, other than the candidate's
12 own absentee ballot, furnished by the clerk of a
14 municipality in this State. This paragraph does not apply
16 to an elected municipal clerk in an election when no other
18 name for the office of clerk appears on the ballot. In a
contested election for the office of clerk, a clerk is not
exempt from the provisions of this paragraph but shall
instead appoint a deputy or an assistant to whom the
municipality shall pay all associated costs for the duration
of the deputy's or assistant's temporary employment in that
capacity.

20 **Sec. 11. 21-A MRSA §791, sub-§3, ¶A**, as enacted by PL 1993, c.
22 473, §38 and affected by §46, is amended to read:

24 A. Forges Notwithstanding Title 17-A, section 702, forges
the name of another on an absentee ballot, the return
envelope or the application for an absentee ballot; ~~or~~.

26 **Sec. 12. 21-A MRSA §791, sub-§3, ¶B**, as enacted by PL 1993, c.
28 473, §38 and affected by §46, is repealed.

30 **Sec. 13. 21-A MRSA §860**, as amended by PL 1993, c. 473, §40
and affected by §46, is further amended to read:

32 **§860. Violation and penalty**

34 Any person who, before, during or after an election, with
36 the intent to change the outcome of any election, tampers with or
willfully--injures damages any voting device, ballot cards or
38 other records or equipment used in the election, or interferes ~~or~~
attempts--to--interfere with the correct operation of such a device
40 or equipment or the secrecy of voting, commits a Class C crime.

42
44 **STATEMENT OF FACT**

46 Public Law 1993, chapter 473 revised the election laws to
48 establish additional and more severe penalties for certain
violations. The purpose of this bill is to amend the penalties
50 for violation of election laws to ensure that they are both
adequate and consistent with the context of the rest of state
law, including the Maine Criminal Code.

2 The bill amends the general penalty section of the Maine
4 Revised Statutes, Title 21-A. Public Law 1993, chapter 473 made
6 it a Class D crime for a public official to knowingly fail or
8 refuse to perform a duty required of that public official under
10 the election laws. Prior to chapter 473, the crime was a Class E
12 crime. The bill repeals the Class D paragraph and restates the
14 crime as a Class E crime. This is consistent with the crime of
16 "official oppression," of which this crime is a subset.

18 The bill addresses the question of the severity of the
20 penalty for adding or removing names on a voting list or general
22 register without the right to do so. Chapter 473 changed this
24 crime from a Class E crime to a Class C crime. This bill adds
26 the specific intent of doing so to affect the other person's
28 eligibility to vote. It also reduces the crime to a Class D
30 crime.

32 The bill addresses the concern that causing a delay in
34 registration, enrollment or delivery of absentee ballots or
36 absentee ballot applications is a crime if done with the intent
38 to prevent a person from voting or to render that person's vote
40 ineffective. Chapter 473 made that activity a Class C crime.
42 This bill reduces it to a Class D crime.

44 The bill inserts the element of intent in the provision
46 prohibiting the use of cellular phones and similar devices within
48 voting places. Chapter 473 made it a Class E crime to use such
50 devices within the voting place. This bill requires that the
devices be used with the intent of affecting the outcome of any
election for it to be a crime.

 The bill reclassifies impermissible candidate involvement in
the absentee ballot process from a Class C crime, as enacted by
chapter 473, to a Class D crime. This is to recognize that no
criminal intent is specified, making the activity a strict
liability crime. Strict liability crimes may be appropriate when
the purpose is to avoid even the appearance of impropriety, as is
the purpose here.

 The bill clarifies that the penalty specified for forging
another's name on an absentee ballot, return envelope or absentee
ballot application is a Class C crime, despite the overlap with
the aggravated forgery statute in the Maine Criminal Code, Title
17-A, section 702. Aggravated forgery is a Class B crime.

 The bill amends the law regarding tampering or damaging
voting devices, ballot cards or other records or equipment.
Chapter 473 raised the class from a Class D to a Class C crime.
This bill retains that classification, but inserts the specific

2 intent of engaging in those activities with the intent to change
the outcome of any election. Any damage done without that intent
4 can be classified as "criminal mischief" (Title 17-A, section
806) or "aggravated criminal mischief" (Title 17-A, section
6 805). It also corrects language with regard to damaging, as
opposed to "injuring," inanimate objects and removes the term
8 "willfully" because the added intent provides the requisite
criminal intent for a Class C crime. The bill also removes the
10 provision regarding attempt to commit this crime. The Maine
Criminal Code, Title 17-A, section 152, addresses "attempt"
12 generally, and classifies it as one class less than the
classification of the offense attempted. By removing "attempt,"
14 Title 21-A, section 860 is made consistent with the Maine
Criminal Code with regard to attempted crimes.

16 _____
18
20 This document has not yet been reviewed to determine the
need for cross-reference, stylistic and other technical
22 amendments to conform existing law to current drafting standards.