

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 1961

H.P. 1363

House of Representatives, March 23, 1999

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**An Act to Amend the Right of Entry Clauses.**

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Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative SNOWE-MELLO of Poland.  
Cosponsored by Representatives: FOSTER of Gray, JOY of Crystal, KASPRZAK of  
Newport, MacDOUGALL of North Berwick, MACK of Standish, TRAHAN of Waldoboro,  
WHEELER of Eliot, Senator: DAVIS of Piscataquis.

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

2  
4       **Sec. 1. 12 MRSA §685-C, sub-§8**, as amended by PL 1987, c. 816,  
Pt. KK, §12, is further amended to read:

6       **8. Enforcement, inspection and penalties for violations.**  
Standards, rules and orders issued by the commission pursuant to  
8 this chapter shall have the force and effect of law. No  
development may be undertaken, except in conformance with this  
10 chapter, the standards, rules and orders enacted or issued  
pursuant to this chapter, and any real estate or personal  
12 property existing in violation of such shall ~~be~~ is a nuisance.  
For the purposes of inspection and to assure ensure compliance  
14 with standards, orders and permits issued or adopted by the  
commission, authorized commission staff, forest rangers and the  
16 state supervisor or consultant personnel may conduct such  
investigations, examinations, tests and site evaluations deemed  
18 considered necessary to verify information presented to it, and  
may obtain access to any lands and structures regulated pursuant  
20 to this chapter as long as the authorized commission staff,  
forest rangers, state supervisor or consultant personnel have  
22 either the express permission of the landholder and any  
leaseholder; a duly authorized warrant that specifically  
24 designates the place to be searched or inspected or the item to  
be seized; or a good and sufficient reason to suspect a  
26 violation, supported by oath or affirmation, specifying the law  
violated. Entry onto private land in violation of this  
28 subsection, other than responding to an emergency in which human  
life is threatened, is a trespass.

30  
32 Any person who violates any provision of this chapter, or the  
terms or conditions of any standards, rules, permits or orders  
34 adopted or issued pursuant to this chapter, is subject to a civil  
penalty, payable to the State, of not more than \$10,000 for each  
day of the violation.

36  
38 In addition to the other penalties provided, the commission may,  
in the name of the State ~~of Maine~~, institute any appropriate  
40 action, injunction or other proceeding to prevent, restrain,  
correct or abate any violation hereof or of the orders or  
standards or rules ~~promulgated hereunder~~ adopted pursuant to this  
42 subsection. This action may include, but is not limited to,  
proceedings to revoke or suspend any commission permit or  
44 approval, taken either before the commission itself in accordance  
with Title 5, section 10004, before the Administrative Court in  
46 accordance with Title 4, sections 1152 to 1157, or,  
notwithstanding the provisions of Title 4, section 1151,  
48 subsection 2, or Title 5, section 10051, before the Superior  
Court as part of an enforcement action brought by the commission.

50  
52 In addition to any such penalties or remedies provided in this  
subsection, the court may order restoration of any area affected

2 by any action or inaction found to be in violation of any of the  
4 provisions of this chapter or of any order, standard, rule or  
6 permit of the commission, or any decree of the court, to the  
8 condition of such area prior to the violation. When such  
restoration is not practicable, the court may order other actions  
to be taken by the person charged with the violation ~~which that~~  
are in mitigation of the damage caused by the violation.

10 A person who willfully or knowingly falsifies any statement  
12 contained in a permit application or other information required  
to be submitted to the commission ~~shall-be~~ is in violation of  
this chapter and subject to the penalties of this chapter.

14 **Sec. 2. 12 MRSA §1828**, as enacted by PL 1997, c. 678, §13, is  
16 repealed and the following enacted in its place:

18 **§1828. Make surveys; restrictions**

20 1. Restrictions. The bureau and its authorized agents and  
employees may not enter upon any lands and waters in the State  
for the purpose of making surveys and examinations without:

22 A. The express permission of the landholder and any  
24 leaseholder;

26 B. A duly authorized warrant that specifically designates  
the place to be searched or inspected or the item to be  
28 seized; or

30 C. A good and sufficient reason to suspect a violation,  
supported by oath or affirmation, specifying the law  
32 violated.

34 2. Trespass. Entry onto private land or waters in  
violation of this section, other than responding to an emergency  
36 in which human life is threatened, is a trespass.

38 **Sec. 3. 12 MRSA §1884, 2nd ¶**, as enacted by PL 1997, c. 678,  
40 §13, is amended to read:

42 For the purposes of inspection and to ensure compliance with  
44 permits issued or adopted by the bureau, authorized bureau staff  
46 or consultant personnel may conduct investigations, examinations,  
48 tests and site evaluations that are determined to be necessary to  
50 verify information presented to the bureau and may obtain access  
52 to any lands and structures regulated under this subchapter as  
long as the bureau, the bureau staff or the consultant personnel  
have either the express permission of the landholder and any  
leaseholder; a duly authorized warrant that specifically  
designates the place to be searched or inspected or the item to  
be seized; or a good and sufficient reason to suspect a  
violation, supported by oath or affirmation, specifying the law

2 violated. Entry onto private land in violation of this  
3 paragraph, other than responding to an emergency in which human  
4 life is threatened, is a trespass.

6 **Sec. 4. 12 MRSA §8869, sub-§11**, as amended by PL 1997, c. 694,  
7 §1, is further amended to read:

8 **11. Right of entry.** Agents of the bureau ~~have rights of~~  
9 ~~access to all lands within the State to carry out the duties they~~  
10 ~~are authorized by law to administer and enforce. This~~  
11 ~~subsection does not authorize entry into any building or~~  
12 ~~structure.~~ do not have the right to enter private land without:

14 A. The express permission of the landholder and any  
15 leaseholder;

16 B. A duly authorized warrant that specifically designates  
17 the place to be searched or inspected or the item to be  
18 seized; or

19 C. A good and sufficient reason to suspect a violation,  
20 supported by oath or affirmation, specifying the law  
21 violated.

22 Entry onto private land in violation of this subsection, other  
23 than responding to an emergency in which human life is  
24 threatened, is a trespass.

25 **Sec. 5. 38 MRSA §347-C**, as amended by PL 1997, c. 794, Pt. A,  
26 §6, is repealed and the following enacted in its place:

27 **§347-C. Right of inspection and entry**

28 **1. Entry and inspection; restrictions.** Employees and  
29 agents of the Department of Environmental Protection may not  
30 enter any property in order to inspect the property or structure,  
31 including the premises of an industrial user of a publicly owned  
32 treatment works, to take samples, inspect records relevant to any  
33 regulated activity or conduct tests to determine compliance with  
34 any laws administered by the department or the terms and  
35 conditions of any order, regulation, license, permit, approval or  
36 decision of the Commissioner of Environmental Protection or of  
37 the board, without:

38 A. The express permission of the property owner, occupant  
39 or agent;

40 B. A duly authorized warrant that specifically designates  
41 the place to be searched or inspected or the item to be  
42 seized; or

