

# MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1086, L.D. 1455, Bill, "An Act to Implement the Recommendations of the Committee to Study Further Decriminalization of the Criminal Laws of Maine"

Amend the bill in Part A in section 1 by striking out all of that part designated "§5601." and inserting in its place the following:

§5601. Statute of limitations

1. Three-year period of limitation. A proceeding against a person for a Title 29-A traffic infraction or a Title 12 civil violation related to marine resources laws and inland fisheries and wildlife laws must be commenced within 3 years after the traffic infraction or civil violation is committed. The burden is on the defendant to prove by a preponderance of the evidence that a proceeding against a person for the traffic infraction or civil violation was commenced after the expiration of the 3-year period of limitation.

2. Limitations on period of limitation. The period of limitation may not run:

A. During any time when the defendant is absent from the State, but in no event may this paragraph extend the period of limitation by more than 5 years; or

B. During any time when a traffic infraction or civil violation proceeding against the defendant for the same traffic infraction or civil violation based on the same conduct is pending in this State.

3. Definitions. For purposes of this section:

COMMITTEE AMENDMENT

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A. A civil violation is committed when every definitional component of the civil violation has occurred or, if the civil violation consists of a continuing course of conduct, at the time when the course of conduct or the defendant's complicity in the course of conduct is terminated; and

B. A civil violation proceeding is commenced whenever a complaint or citation is filed.'

Further amend the bill in Part A in section 1 in that part designated "**§5603.**" in subsection 3 in paragraph A in the 4th line (page 2, line 40 in L.D.) by striking out the following: "petitioner" and inserting in its place the following: 'person'

Further amend the bill in Part A in section 1 in that part designated "**§5603.**" in subsection 3 in paragraph A in the 5th line (page 2, line 41 in L.D.) by striking out the following: "petitioner" and inserting in its place the following: 'person'

Further amend the bill in Part A in section 1 in that part designated "**§5603.**" by striking out all of subsection 4 (page 3, lines 5 to 7 in L.D.) and inserting in its place the following:

'4. Supplement; superseded. The authority conferred by this section is in addition to the authority a department or agency of the State has to enforce violations under other provisions of law. Statutes that provide specific authority for a department or agency to suspend or revoke a license, permit or certificate supersede this section.

This section may not be construed to create any right to a hearing when such a hearing otherwise would be within the discretion of the department or agency in accordance with law.'

Further amend the bill in Part A in section 2 in subsection 3-A in the 2nd line (page 3, line 12 in L.D.) by striking out the following: "civil violations" and inserting in its place the following: 'Title 12 civil violations relating to marine resources laws or inland fisheries and wildlife laws'

Further amend the bill in Part B by striking out all of sections 13 and 14 and inserting in their place the following:

'**Sec. B-13. 12 MRSA §6114**, as enacted by PL 1985, c. 254, is amended to read:

**§6114. Violation; enforcement**

1. **Forfeiture.** A violation of this chapter ~~chapter~~ subchapter is a

civil violation for which a forfeiture not to exceed \$100 may be adjudged.

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**Sec. B-14. 12 MRSA §6302-A, sub-§6**, as enacted by PL 1997, c. 708, §1 and affected by §3, is amended to read:

**6. License suspension.** If a member of the Passamaquoddy Tribe issued a license or permit under this section is convicted or adjudicated of a violation for which a license suspension is mandatory under chapter 617, the commissioner shall suspend that member's license or permit for the specified period. If a member of the Passamaquoddy Tribe issued a license or permit under this section is convicted or adjudicated of a violation for which the commissioner may suspend a license, the commissioner may suspend that member's license or permit in accordance with chapter 617.'

Further amend the bill in Part B by inserting after section 15 the following:

**'Sec. B-16. 12 MRSA §6371**, as amended by PL 1999, c. 547, Pt. B, §29 and affected by §80, is further amended to read:

**§6371. Suspension without criminal conviction or civil adjudication**

**1. Suspension for refusal to allow inspection.** Refusal to allow inspection or seizure under section 6306 ~~shall--be~~ is grounds for suspension of any ~~and--all~~ licenses issued under marine ~~resources'~~ resources laws. In order to suspend a license because of a refusal to allow inspection or seizure, the commissioner shall follow the procedures of section 6372.

**2. Suspension for refusal to allow a shellfish inspection or for violation of shellfish sanitation provisions.** Refusal to allow a shellfish inspection under section 6856 or violation of shellfish sanitation regulations adopted under section 6856 ~~shall~~ be is grounds for suspension of any ~~and--all~~ licenses or certificates issued under marine ~~resources'~~ resources laws. In order to suspend a license or certificate for these reasons, the commissioner shall follow the procedures of section 6373.

**3. Suspension for violations.** Violation of any section of marine ~~resources'~~ resources laws is grounds for suspension of any ~~and--all~~ licenses or certificates issued under this Part. In order to suspend a license or certificate for a violation, the commissioner shall follow the procedures for license suspension or revocation in the District Court, as provided under Title 4, chapter 5.'

Further amend the bill in Part B by striking out all of

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section 16 and inserting in its place the following:

'Sec. B-16. 12 MRSA §6401, as amended by PL 1985, c. 43, is further amended to read:

§6401. Suspension based on criminal conviction

1. Violation of marine resources laws. The commissioner may suspend any and all licenses or certificates issued under this Part if a person is convicted or adjudicated in court of violating any section of the marine resources' resources laws.

2. Length of suspension. The suspension of a license or certificate may not exceed the following:

A. One year from the date of the first conviction or adjudication;

B. Two years from the date of the 2nd conviction or adjudication; and

C. Three years from the date of the 3rd or subsequent conviction or adjudication.

3. Applicable standards. Any conviction or adjudication occurring more than 7 years before the last conviction shall or adjudication may not be counted in determining lengths of suspension.'

Further amend the bill in Part B by striking out all of sections 17 and 18.

Further amend the bill in Part B by striking out all of section 24.

Further amend the bill in Part B by striking out all of sections 66 and 67 and inserting in their place the following:

'Sec. B-66. 12 MRSA §7001, sub-§13-A, as amended by PL 1991, c. 443, §5, is repealed and the following enacted in its place:

13-A. Habitual violator. "Habitual violator" means any person whose record, as maintained by the department, shows that:

A. The person has been convicted of 3 or more of the prohibited acts contained in chapters 701 to 721 within the previous 5-year period, except that, whenever more than one prohibited act is violated at the same time, multiple convictions are deemed to be one offense; or

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B. The person has been convicted of 2 or more Class E crimes pursuant to section 7002 within the previous 5-year period.

**Sec. B-67. 12 MRSA §7002** is enacted to read:

**§7002. Multiple civil violations**

The violation of a prohibited act under chapters 701 to 721 by a person who has 3 or more adjudications of having committed civil violations under chapters 701 to 721 within the previous 5-year period is a Class E crime.'

Further amend the bill in Part B by inserting after section 81 the following:

'**Sec. B-82. 12 MRSA §7541, sub-§3**, as enacted by PL 1983, c. 366, is repealed.'

Further amend the bill in Part B in section 89 in that part designated "~~§7901-A.~~" in subsection 4 by striking out all of paragraph A (page 44, lines 37 and 38 in L.D.) and inserting in its place the following:

'A. License restriction violation as described in section 7371, subsection 1, relating to the following licenses:

(1) Commercial shooting area license under section 7104;

(2) Trapping license under section 7133;

(3) Eel permit for licensed trappers under section 7174;

(4) License to sell commercially grown or imported fish under section 7201;

(5) Special dog training area license under section 7331;

(6) License to hold field trials under section 7332;

(7) Hide dealer's license under section 7352;

(8) Special hide dealer's license under section 7352-A;

(9) Snowmobile dealer's registration and license under section 7825; and

2                   (10) ATV dealer's registration and license under  
4                   section 7855;

6                   Further amend the bill in Part B in section 89 in that part  
8                   designated "§7901-A." in subsection 4 in paragraph C in the 2nd  
10                   line (page 44, line 44 in L.D.) by inserting after the  
12                   following: "1" the following: 'if the violation committed by  
14                   the client is a civil violation'

16                   Further amend the bill in Part B in section 89 in that part  
18                   designated "§7901-A." in subsection 6 in paragraph D in  
20                   subparagraph (3) in the 2nd line (page 47, line 17 in L.D.) by  
22                   inserting after the following: "3" the following: ', except  
24                   that a forfeiture of not less than \$500 nor more than \$1,000,  
26                   none of which may be suspended, may be adjudged for failure to  
28                   restrain a nuisance dog as described in section 7505, subsection  
30                   3, paragraph A or B'

32                   Further amend the bill in Part B in section 89 in that part  
34                   designated "§7901-A." by striking out all of subsection 9 and  
36                   inserting in its place the following:

38                   '9. Civil violations of chapter 711. The following  
40                   violations of chapter 711 are civil violations for which a  
42                   forfeiture of not less than \$100 nor more than \$500 may be  
44                   adjudged:

46                   A. Sale of bait or baitfish in polystyrene foam containers  
48                   as described in section 7606, subsection 1-A;

50                   B. Failure to label baitfish traps or baitfish holding  
52                   boxes as described in section 7606, subsection 2;

54                   C. Failure to check baitfish traps as described in section  
56                   7606-B;

58                   D. Illegal sale of lead sinkers as described in section  
60                   7608-A;

62                   E. Fishing with more than 2 lines as described in section  
64                   7611;

66                   F. Illegal importation or sale of certain fresh or frozen  
68                   fish as described in section 7616;

70                   G. Advance baiting as described in section 7622;

72                   H. Unlawfully trolling a fly as described in section 7623;

- 2            I. Failure to label fish as described in section 7625;  
4            J. Night ice fishing as described in section 7626;  
6            K. Leaving an ice fishing shack as described in section  
8            7627;  
10           L. Illegally placing an ice fishing shack as described in  
12           section 7627-A;  
14           M. Failure to label an ice fishing shack as described in  
16           section 7628; and  
18           N. Violation of an ice fishing restriction as described in  
             section 7629 that is based on an open water restriction that  
             is a civil violation.'

20           Further amend the bill in Part B in section 89 in that part  
22           designated "~~§7901-A.~~" in subsection 10 in paragraph A in the  
             first line (page 50, line 24 in L.D.) by striking out the  
             following: "8" and inserting in its place the following: '9'

24           Further amend the bill in Part B in section 89 in that part  
26           designated "~~§7901-A.~~" in subsection 12 in paragraph A by  
             inserting after subparagraph (12) the following:

28                '(13) Operating a personal watercraft while under age  
30                as described in section 7801, subsection 13-A;'

32           Further amend the bill in Part B in section 89 in that part  
34           designated "~~§7901-A.~~" in subsection 12 in paragraph A in  
             subparagraph (27) in the 2nd line (page 53, line 41 in L.D.) by  
             striking out the following: "and"

36           Further amend the bill in Part B in section 89 in that part  
38           designated "~~§7901-A.~~" in subsection 12 in paragraph A by  
             inserting after subparagraph (28) the following:

40                '(29) Operating an airmobile or motorboat that exceeds  
42                noise limits as described in section 7801, subsection  
             33;

44                (30) Tampering with a motorboat muffler system as  
46                described in section 7801, subsection 34;

48                (31) Illegally operating a personal watercraft in a  
             prohibited area as described in section 7801,  
             subsection 35; and



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2                   (32) Operating a rented or leased personal watercraft  
4                   without an identification decal as described in section  
                    7801, subsection 36;'

6                   Further amend the bill in Part B in section 89 in that part  
8                   designated "~~§7901-A.~~" in subsection 12 in paragraph A by  
                    renumbering the subparagraphs to read consecutively.

10                  Further amend the bill in Part B in section 89 in that part  
12                  designated "~~§7901-A.~~" in subsection 12 in paragraph C in  
                    subparagraph (23) in the 2nd line (page 56, line 37 in L.D.) by  
14                  striking out the following: "and"

16                  Further amend the bill in Part B in section 89 in that part  
                    designated "~~§7901-A.~~" in subsection 12 in paragraph C in  
18                  subparagraph (24) in the 2nd line (page 56, line 40 in L.D.) by  
                    striking out the following: "." and inserting in its place the  
20                  following: '; and'

22                  Further amend the bill in Part B in section 89 in that part  
                    designated "~~§7901-A.~~" in subsection 12 in paragraph C by  
24                  inserting after subparagraph (24) the following:

26                               '(25) Selling an ATV without lights as described in  
                                  section 7857, subsection 25.'

28                  Further amend the bill in Part B in section 89 in that part  
30                  designated "~~§7901-A.~~" in subsection 18 by striking out all of  
                    paragraph A (page 60, lines 6 to 8 in L.D.) and inserting in its  
32                  place the following:

34                               'A. A violation of a rule regulating open water fishing and  
                                  ice fishing, except a rule implementing a statute the  
36                               violation of which is a Class E crime;'

38                  Further amend the bill in Part B in section 89 in that part  
                    designated "~~§7901-A.~~" in subsection 18 by striking out all of  
40                  paragraph G (page 60, lines 23 to 37 in L.D.) and inserting in  
                    its place the following:

42                               'G. A violation of a rule regulating watercraft;'

44                  Further amend the bill by inserting after Part B the  
46                  following:

48   '**PART C**

50                  **Sec. C-1. Effective date.** This Act takes effect January 1,  
                    2002.'

2 Further amend the bill by relettering or renumbering any  
4 nonconsecutive Part letter or section number to read  
consecutively.

6 Further amend the bill by inserting at the end before the  
8 summary the following:

10 **FISCAL NOTE**

12 The decriminalization of certain violations may increase  
14 fine revenue collected by the Department of Inland Fisheries and  
Wildlife for the General Fund. The amounts can not be determined  
16 at this time. If the amounts turn out to be significantly  
greater than previously budgeted amounts, in order to meet the  
18 constitutional requirement that the total level of General Fund  
appropriations must at least be equal to the undedicated revenues  
20 collected by the department, the department may require  
additional General Fund appropriations.

22 This bill may reduce prosecutions for Class D and Class E  
24 crimes. If the number of jail sentences is reduced, the savings  
to the counties are estimated to be \$83.36 per day per prisoner.  
26 The amount of any reduction of jail time and the resulting  
savings to the county jail system are expected to be  
28 insignificant.

30 The additional costs associated with the technology and  
administrative costs associated with updating the offense file  
32 for the numerous changes in this bill can be absorbed by the  
Judicial Department utilizing existing budgeted resources.  
34 General Fund fine revenue may also increase by a minor amount as  
a result of decriminalizing certain violations.

36 The additional costs associated with these changes can be  
absorbed by the Department of the Attorney General utilizing  
38 existing budgeted resources.'

40 **SUMMARY**

42 This amendment makes the following changes to the bill.

44 1. It revises the new 3-year statute of limitations  
46 provision to apply to the Maine Revised Statutes, Title 29-A  
traffic infractions and civil violations of marine resources laws  
48 and inland fisheries and wildlife laws in Title 12. It also  
revises the language to more appropriately refer to civil  
50 violation definitional components and how civil violations are  
prosecuted.

2           2. The general license suspension language is revised to  
4 clarify that existing suspension authority of departments and  
6 agencies remains unchanged, and the new general language does not  
8 be in the discretion of the department or agency in accordance  
10 with existing law.

12           3. It revises the language concerning the duties of  
14 district attorneys to prosecute civil violations to specifically  
16 cover Title 12 civil violations of marine resources laws and  
18 inland fisheries and wildlife laws.

20           4. It clarifies that a violation of the surimi laws is a  
22 civil violation.

24           5. It clarifies that the Commissioner of Marine Resources  
26 has the authority to suspend and revoke licenses based on  
28 adjudications of civil violations, in addition to convictions for  
30 criminal violations, and revises language accordingly.

32           6. It deletes from the bill sections decriminalizing  
34 molesting lobster traps and dragging in cable areas; these  
36 violations remain criminal.

38           7. A new provision provides that if a person has been  
40 adjudicated as having committed 3 civil violations of the inland  
42 fisheries and wildlife laws within 5 years, the 4th and  
44 subsequent civil violations within the same 5-year period are  
46 Class E crimes. The "habitual violator" definition is revised to  
48 include a person who has been convicted of that Class E crime  
50 twice within the 5-year period. That is, the 4th and 5th civil  
violations will be treated as Class E crimes, and the next civil  
or criminal violation will subject the violator to the sanctions  
applicable to habitual violators.

          8. It specifically lists the licenses for which violation  
of the restrictions is a civil violation. These are licenses  
pertaining to commercial shooting areas, trapping, eel permits  
for licensed trappers, the sale of commercially grown or imported  
fish, special dog training areas, field trials, hide dealers,  
special hide dealers, snowmobile dealers and ATV dealers.

          9. It clarifies that a licensed guide who guides a client  
who is in violation of the statute commits a civil violation if  
the client's violation is civil. If the client's violation is  
criminal, the guide's violation is a Class E crime.

          10. It clarifies that there is a minimum, nonsuspendable  
forfeiture for certain circumstances of failing to restrain a  
nuisance dog.

2 11. It removes a redundant provision concerning harassment  
4 while another person is hunting, fishing or trapping.

6 12. It removes the following violations from the listing of  
8 civil violations in Title 12, chapter 711 in the bill, thereby  
keeping them as Class E crimes:

10 A. Possession of illegal implements and devices for  
fishing; and

12 B. Purchase or sale of certain fish.

14 13. It adds certain violations to the listing of civil  
16 violations in Title 12, chapter 711, thereby making them civil  
violations:

18 A. Illegal sale of lead sinkers;

20 B. Fishing with more than 2 lines; and

22 C. Unlawfully trolling a fly.

24 14. It adds certain violations to the listing of civil  
26 violations in Title 12, chapter 715, thereby making them civil  
violations:

28 A. Operating a personal watercraft while underage  
30 consistent with the treatment of operating snowmobiles, ATVs  
and watercraft while underage;

32 B. Operating an airmobile or motorboat that exceeds noise  
34 limits;

36 C. Tampering with a motorboat muffler system;

38 D. Illegally operating a personal watercraft in a  
prohibited area;

40 E. Operating a rented or leased personal watercraft without  
42 an identification decal; and

44 F. Selling an ATV without lights.

46 15. It clarifies that violation of an ice fishing  
48 restriction that is based on an open water fishing restriction is a  
civil violation if the open water fishing restriction is a  
civil violation.

50 16. It clarifies that a violation of rules regulating  
watercraft is a civil violation.

2           17. It corrects an internal cross-reference.

4           18. It provides that a violation of a rule regulating open  
6 water fishing and ice fishing is a civil violation, except for  
rules implementing a statute that, if violated, is a crime.

8           19. It adds an effective date section to make all the  
10 changes effective January 1, 2002 and adds a fiscal note to the  
bill.