MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 682

S.P. 218

In Senate, February 8, 2005

An Act To Create a 5-year Statute of Limitations for Environmental Violations

Reference to the Committee on Natural Resources suggested and ordered printed.

JOY J. O'BRIEN Secretary of the Senate

Presented by Senator SNOWE-MELLO of Androscoggin.
Cosponsored by Representative GLYNN of South Portland and
Senators: DAVIS of Piscataquis, DOW of Lincoln, SAVAGE of Knox, Representatives:
BOWLES of Sanford, CEBRA of Naples, JOY of Crystal, ROBINSON of Raymond,
SHIELDS of Auburn.

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

Sec. 1. 38 MRSA §347-A, sub-§8 is enacted to read:

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8. Limitations on enforcement actions. Notwithstanding Title 14, section 752, any enforcement action for civil or administrative penalties brought by the department or the Attorney General for a violation of this Title, of rules adopted under this Title or of the terms or conditions of a license, permit or order issued by the department must be initiated within 5 years of the date of the violation.

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Sec. 2. 38 MRSA §349, sub-§1, as amended by PL 2003, c. 452, Pt. W, §2 and affected by Pt. X, §2, is further amended to read:

16 Criminal penalties. Except as otherwise specifically provided, a person who intentionally, knowingly, recklessly or with criminal negligence violates a law administered by the 18 department, including, without limitation, a violation of the terms or conditions of an order, rule, license, permit, approval 20 or decision of the board or commissioner, or who disposes of more than 500 pounds or more than 100 cubic feet of litter for a 22 commercial purpose, in violation of Title 17, section 2264-A, Notwithstanding Title 17-A, section 24 commits a Class E crime. 1301, the fine for a violation of this subsection may not be less 26

than \$2,500 and not more than \$25,000 for each day--ef--the violation, except that the minimum amount for knowing violations is \$5,000 for each day-of violation. 28

This subsection does not apply to actions subject to the criminal penalties set forth in section 1319-T.

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- Sec. 3. 38 MRSA §349, sub-§2, as amended by PL 2003, c. 452, Pt. W, §3 and affected by Pt. X, §2, is further amended to read:
- Civil penalties. Except as otherwise specifically 36 provided, a person who violates a law administered by the 38 department, including, without limitation, a violation of the terms or conditions of an order, rule, license, permit, approval or decision of the board or commissioner, or who disposes of more 40 than 500 pounds or more than 100 cubic feet of litter for a commercial purpose, in violation of Title 17, section 2265-A, is 42 subject to a civil penalty, payable to the State, of not less 44 than \$100 and not more than \$10,000 for each day--ef--that violation or, if the violation relates to hazardous waste, of not more than \$25,000 for each day-ef-the violation. This penalty is 46 recoverable in a civil action.

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- Sec. 4. 38 MRSA §349, sub-§6, as amended by PL 1997, c. 794, Pt. A, §8, is further amended to read:
- 6. Maximum penalties. The maximum civil penalty may exceed \$10,000 for each day--ef--that violation, but may not exceed \$25,000 for each day-ef-the violation, when it can be shown that there has been a previous violation of the same law by the same party within the 5 preceding years, and the maximum criminal penalty may exceed \$25,000 for each day-ef violation, but may not exceed twice the amounts in subsection 1, when it can be shown that there has been a previous violation of the same law by the same party.
 - Sec. 5. 38 MRSA §349, sub-§8, as enacted by PL 1989, c. 282, §5, is amended to read:

16 If the economic benefit resulting Economic benefit. 18 from the violation exceeds the applicable penalties under subsection 2, the maximum civil penalties may be increased for each day-of--the violation. The maximum civil penalty may not 2.0 exceed an amount equal to twice the economic benefit resulting from the violation. The court shall consider as economic 22 benefit, without limitation, the costs avoided or enhanced value accrued at the time of the violation by the violator not 24 complying with the applicable legal requirements.

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SUMMARY

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This bill requires enforcement actions for violations of environmental laws to be brought by the Department of Environmental Protection or the Attorney General within 5 years of the date of the violation. This bill also deletes provisions in the law that allow a penalty to be imposed for each day of a violation.