

MAINE STATE LEGISLATURE

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H.P. 1065

House of Representatives, March 20, 2007

An Act To Guarantee Free Speech in Privately Owned Public Gathering Places

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative HINCK of Portland.
Cosponsored by Senator MILLS of Somerset and
Representatives: ADAMS of Portland, BERRY of Bowdoinham, BRAUTIGAM of Falmouth,
CRAVEN of Lewiston, Senator: ROTUNDO of Androscoggin.

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

2 **Sec. 1. 5 MRSA §4681, sub-§1**, as enacted by PL 2001, c. 50, §1, is amended to
3 read:

4 **1. Interference with rights; action by Attorney General.** Whenever any person,
5 whether or not acting under color of law, intentionally interferes or attempts to
6 intentionally interfere by physical force or violence against a person, damage or
7 destruction of property or trespass on property or by the threat of physical force or
8 violence against a person, damage or destruction of property or trespass on property with
9 the exercise or enjoyment by any other person of rights secured by the United States
10 Constitution or the laws of the United States or of rights secured by the Constitution of
11 Maine or laws of the State or violates section 4684-B or 4684-C, the Attorney General
12 may bring a civil action for injunctive or other appropriate equitable relief in order to
13 protect the peaceable exercise or enjoyment of the rights secured.

14 **Sec. 2. 5 MRSA §4682, sub-§1-A**, as reallocated by RR 2001, c. 1, §11, is
15 amended to read:

16 **1-A. Interference with rights; private actions.** Whenever any person, whether or
17 not acting under color of law, intentionally interferes or attempts to intentionally interfere
18 by physical force or violence against a person, damage or destruction of property or
19 trespass on property or by the threat of physical force or violence against a person,
20 damage or destruction of property or trespass on property with the exercise or enjoyment
21 by any other person of rights secured by the United States Constitution or the laws of the
22 United States or of rights secured by the Constitution of Maine or laws of the State or
23 violates section 4684-B or 4684-C, the person whose exercise or enjoyment of these
24 rights has been interfered with, or attempted to be interfered with, may institute and
25 prosecute in that person's own name and on that person's own behalf a civil action for
26 legal or equitable relief.

27 **Sec. 3. 5 MRSA §4684-C** is enacted to read:

28 **§4684-C. Exercise of the rights of free speech and free expression and the right to**
29 **petition in public gathering places**

30 **1. Definitions.** As used in this section, the following terms have the following
31 meanings.

32 **A. "Common area" means that part of a shopping center or shopping mall that**
33 **consists of entrances, exits, passageways, sidewalks, malls, concourses and parking**
34 **lots that provide access to or that connect the establishments of the shopping center or**
35 **shopping mall and that do not constitute part of the gross leasable area of the**
36 **shopping center or shopping mall.**

37 **B. "Establishment" means a store, bank, restaurant, theater, arcade or other similar**
38 **type of facility.**

39 **C. "Gross leasable area" means the total square foot area of all establishments of a**
40 **shopping center or shopping mall leased or offered for lease, regardless of whether**

1 vacant or occupied, the location of the area within the shopping center or shopping
2 mall or the duration of the lease.

3 D. "Management" means any person, partnership, limited liability company,
4 corporation, joint venture or other entity managing, owning, operating or otherwise
5 controlling the administration of a shopping center or shopping mall.

6 E. "Shopping center" means a privately owned complex, enclosed or otherwise, that
7 consists of at least 5 establishments in which merchandise is sold at retail, grants
8 access to the general public and, including common areas, has at least 75,000 square
9 feet of gross leasable area.

10 **2. Access to shopping centers.** Subject to the provisions of this subsection, a
11 person has the right of free speech and the right to petition in the common area of a
12 shopping center, as long as such activities do not interfere with commerce and the free
13 flow of pedestrian traffic. The right of free speech includes but is not limited to
14 expressive activities including wearing articles of clothing, buttons, arm bands and other
15 forms of symbolic expression that convey an ideological or political point of view.

16 **3. Space for posting.** If management of a shopping center provides space readily
17 accessible to pedestrian traffic in the shopping center for the posting of announcements,
18 public service messages, proclamations, pamphlets and other related material, the posting
19 of material in the display space may not be prohibited on the basis of content except when
20 the prohibition is otherwise consistent with constitutional principles relating to freedom
21 of speech.

22 **4. Laws regulating conduct not superseded.** Nothing in this section is intended to
23 supersede any laws that regulate conduct.

24 A. The management of a shopping center may establish reasonable time, place and
25 manner regulations governing the use of a shopping center by persons wishing to
26 exercise the right of free speech and the right to petition. The regulations may
27 include, but are not limited to:

28 (1) Requiring a prior application for organized gatherings of 10 or more persons,
29 as long as there is an expeditious review of every such application. The
30 management retains the right to establish a reasonable limit on the total number
31 of persons in a gathering;

32 (2) Designating certain portions of the common area of the shopping center to be
33 used for the exercise of such rights, as long as the restrictions reasonably
34 accommodate efforts to exercise such rights in central common areas of the
35 shopping center;

36 (3) Limiting the use of shopping center facilities if the exercise of such rights
37 would interfere with the free flow of pedestrian traffic;

38 (4) Restricting or prohibiting the on-site solicitation of money;

39 (5) Prohibiting littering, fighting and making obscene gestures; and

40 (6) Restricting or prohibiting the use of lights, sound amplification or other
41 equipment that unreasonably interferes with pedestrians, shoppers or occupants.

1 The regulations may not discriminate based on the political or ideological content of
2 the speech or expressive activities, and they may not be applied to promote or
3 undermine a particular political or ideological point of view.

4 B. A person may not be required to post a bond or make any payment for the
5 exercise of the right of free speech or the right to petition in the common area of a
6 shopping center, except that the management of a shopping center may require
7 persons to clean up litter or other debris resulting from the use of the shopping center
8 and may deny future access or require a bond if the person using the shopping center
9 has demonstrated a failure to clean up litter or debris in connection with a prior use of
10 the shopping center.

11 SUMMARY

12 This bill amends the Maine Civil Rights Act to address the right of free of speech and
13 the right to petition at shopping centers that are privately owned. A shopping center is
14 defined as a privately owned complex, enclosed or otherwise, that consists of at least 5
15 establishments in which merchandise is sold at retail, grants access to the general public
16 and, including common areas, has at least 75,000 square feet of gross leasable area.

17 This bill guarantees the right of free speech, including expressive activities, and the
18 right to petition in the common area of a shopping center, as long as such expressive
19 activities do not interfere with commerce and the free flow of pedestrian traffic. The
20 management of a shopping mall may adopt reasonable time, place and manner
21 regulations.

22 This bill prohibits shopping centers, if they provide space for the posting of
23 announcements, public service messages, proclamations, pamphlets and other such
24 material, from prohibiting posting based on the content except where the prohibition is
25 otherwise consistent with constitutional principles relating to free speech.