

# MAINE STATE LEGISLATURE

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# ONE HUNDRED AND SEVENTH LEGISLATURE

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**Legislative Document**

**No. 1061**

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H. P. 884

House of Representatives, March 13, 1975

On motion of Mr. Gauthier of Sanford referred to Committee on Judiciary.  
Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Joyce of Portland.

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## STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

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### AN ACT Concerning the Forfeiture of Property Used in Delivering Illegal Drugs.

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

22 MRSA § 2387, as last amended by PL 1973, c. 567, § 20, is repealed and the following enacted in place thereof:

§ 2387. Forfeiture of all property used in delivering drugs

1. Property forfeited. The following property shall be subject to forfeiture to the State and all property rights therein shall be in the State:

A. All materials, products and equipment of any kind which are used, or intended for use, in the unlawful manufacturing, compounding, processing, delivering, dispensing, distributing, importing or exporting of any substance listed in sections 2210, 2210-A, 2212-B, 2362 or 2384;

B. All conveyances, including aircraft, watercraft, vehicles or vessels which are used or are intended for use to transport, conceal or otherwise to facilitate the unlawful manufacture, dispensing, or distribution of substances listed in sections 2210, 2210-A, 2212-B, 2362, or 2384;

C. All conveyances including aircraft, watercraft, vehicles or vessels which are used or are intended for use to transport, conceal or otherwise to facilitate the unlawful possession with intent to manufacture, dispense or distribute a substance listed in sections 2210, 2210-A, 2212-B, 2362, or 2384.

2. Jurisdiction. Property subject to forfeiture under subsection 1, paragraph A shall be declared forfeited by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter.

3. Exceptions. The court shall order forfeiture of all conveyances subject to forfeiture under subsection 1, paragraphs B or C, except as follows:

A. No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of the use of the conveyance for any of the purposes described in subsection 1, paragraphs B or C;

B. No conveyance shall be forfeited by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of this State or of any state;

C. No conveyance shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance was used for one of the purposes described in subsection 1, paragraphs B or C above. Proof that said conveyance was used on 3 or more occasions for one of the purposes described in subsection 1, paragraphs B or C above shall be prima facie evidence that said owner knew thereof or should have known thereof.

4. Petition; order. A district attorney or the Attorney General may petition the Superior Court in the name of the State in the nature of a proceeding in rem to order forfeiture of a conveyance subject to forfeiture under subsection 1, paragraphs B or C above. Such petition shall be filed in the court having jurisdiction over the said conveyance or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. Such proceeding shall be deemed a civil suit, in which the State shall have the burden of proving all material facts by a preponderance of the evidence and the owner of said conveyance or other person claiming thereunder shall have such burden as to all exceptions set forth in subsection 3. The court shall order the State to give notice by certified or registered mail or hand delivered by a deputy sheriff to the owner of the said conveyance and to such other person as appears to have an interest therein and shall promptly, but not less 2 weeks after notice, hold a hearing on the petition. At such hearing, the court shall hear evidence and make findings of fact and enter conclusions of law, and shall thereupon issue a final order, from which the parties shall have such right of appeal. Such final order shall provide for disposition of the said conveyance by the State or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice, and to pay any bona fide mortgage thereon, and the balance, if any, shall be deposited in the treasury of the State, county or municipality making such seizure.

4-A. Criminal conviction not necessary for forfeiture. A criminal conviction under any of the other provisions of this chapter shall not be necessary for a court to declare property forfeited pursuant to this section.

5. Records. Any officer, department or agency having custody of said property subject to forfeiture under subsection 1, paragraphs A, B or C above, or having disposed of said property, shall keep and maintain full and complete records showing from whom it received said property, under what authority it held or received or disposed of said property, to whom it delivered said property, the date and manner of destruction or disposition of said property, and the exact kinds, quantities and forms of said property. Said records shall be open to inspection by all federal and state officers charged with enforcement of federal and state drug control laws. Persons making final disposition or destruction of said property under court order shall report, under oath, to the court the exact circumstances of said disposition or destruction.

6. Preliminary order. The court may issue at the request of the State ex parte any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought and to provide for its custody. Process for seizure of said property shall issue only upon a showing of probable cause; and the application therefor and the issuance, execution and return thereof shall be subject to the provisions of applicable Maine law. Any property subject to forfeiture under this section may be seized upon process except that seizure without process may be made when:

- A. The seizure is incident to an arrest with probable cause or a search under a valid search warrant or an inspection under a valid administrative inspection warrant;
- B. The property subject to seizure has been the subject of a prior judgment in favor of the State in a forfeiture proceeding under this section; or
- C. There is probable cause to believe that the property is directly or indirectly dangerous to health or safety.

#### STATEMENT OF FACT

This bill makes a series of changes to the current statute providing for forfeiture of property used in delivering illegal drugs, including:

- 1. A provision for forfeiture of property used for intended distribution of illegal drugs;
- 2. A provision that no conveyance shall be subject to forfeiture unless the owner knew or should have known that the conveyance was used or intended to be used for delivering illegal drugs;
- 3. A provision that a criminal conviction shall not be required for a forfeiture under this section; and
- 4. A provision detailing when seizure without process may be made.