

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

FIRST REGULAR SESSION

---

---

ONE HUNDRED AND NINTH LEGISLATURE

---

---

**Legislative Document**

**No. 211**

S. P. 105

In Senate, January 30, 1979

Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

Presented by Senator Devoe of Penobscot.

MAY M. ROSS, Secretary of the Senate

---

---

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

---

**AN ACT to Permit Forfeiture of Property Used to Conceal, Store or Transport  
Stolen Goods.**

---

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

17-A MRSA § 405 is enacted to read:

§ 405. **Forfeiture of property used to conceal, store or transport stolen goods**

1. **Property forfeited.** The following property shall be subject to forfeiture to the State and all property rights therein shall be in the State or as ordered by the court:

A. All materials, products and equipment of any kind which are used, or are intended for use, in concealing, storing or transporting any person or item which has been taken or transported in violation of chapter 11, 13, 15, 17, 27, 41 or 43; and

B. All conveyances, including aircraft, watercraft, vehicles or vessels, which are used, or are intended for use, to conceal, store, transport or otherwise facilitate the distribution of any person or item which has been taken or transported in violation of chapter 11, 13, 15, 17, 27, 41 or 43.

2. **Jurisdiction.** Property subject to forfeiture under subsection 1, paragraphs

A and B shall be declared forfeited by any court having jurisdiction over that property or having final jurisdiction over any related criminal proceeding brought under any provision of law.

3. **Exceptions.** The court shall order forfeiture of all conveyances subject to forfeiture under subsection 1, paragraphs A and B, except as follows.

A. No conveyance used by a 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 the conveyance was a consenting party or privy to the violation alleged.

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 a person other than the owner while the 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 the conveyance was used in and for the concealing, storing, transportation or distribution of items or persons in violation of chapter 11, 13, 15, 17, 27, 41 or 43. Proof that the conveyance was used on 3 or more occasions for these purposes shall be prima facie evidence that the owner knew or should have known of the activity.

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 A and B. The petition shall be filed in the court having jurisdiction over the conveyance. The 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 the conveyance or other person claiming thereunder shall have the 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 delivery by a deputy sheriff to the owner of the conveyance and to such other person as appears to have an interest therein and shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition. At the 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 the right of appeal. The final order shall provide for disposition of the conveyance by the State or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement official or other public agency or sale at public auction or by competitive bidding. The proceeds of any 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 State, county or municipality making the seizure.

**5. Records.** Any officer, department or agency having custody or property subject to forfeiture under subsection 1, paragraphs A or B, or having disposed of the property shall keep and maintain full and complete records showing from whom it received the property, under what authority it held or received or disposed of the property, to whom it delivered the property, the date and manner of destruction or disposition of the property and the exact kinds, quantities and forms of the property. The records shall be public records and open for inspection as the law provides. Persons making final disposition or destruction of the property under court order shall report, under oath, to the court the exact circumstances of the 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 the 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 or search with probable cause 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 a probable cause to believe that the property is directly or indirectly dangerous to health or safety.

#### STATEMENT OF FACT

The purpose of this bill is to provide law enforcement officers with appropriate tools for dealing with high crime rates, particularly burglary in rural areas. This bill provides for forfeiture of property or conveyances used to conceal, store, transport or distribute stolen goods, kidnapping victims, explosives and dangerous weapons.

Title 22, section 2387 already provides similar authority for conveyances used to transport or distribute drugs in violation of Title 17-A chapter 45.