

MAINE STATE LEGISLATURE

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EMERGENCY
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 88

S. P. 55

In Senate, January 7, 1981

Submitted by the Department of Public Safety pursuant to Joint Rule 24.

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

MAY M. ROSS, Secretary of the Senate

Presented by Senator Usher of Cumberland.

Cosponsors: Senator Kerry of York, Senator Devoe of Penobscot and Senator L. Higgins of Scarborough.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Include Money in the Law Regarding the Forfeiture of Property Used or Intended for Use in Violation of the Criminal Law Relating to Drugs.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, at any time situations may arise in which law enforcement efforts would be more effective if the forfeiture laws applied to cash and other things of value; and

Whereas, this Act would extend the forfeiture laws to cover cash and other things of value; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 22 MRSA § 2387, sub-§ 1, ¶ B, as amended by PL 1975, c. 740, § 126, is further amended to read:

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 manufacture, trafficking or furnishing of a substance in violation of Title 17-A, chapter 45; and

Sec. 2. 22 MRSA § 2387, sub-§ 1, ¶ C is enacted to read:

C. All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a scheduled drug in violation of Title 17-A, chapter 45, all proceeds traceable to such an exchange, and all moneys, negotiable instruments and securities used or intended to be used to facilitate any violation of Title 17-A, chapter 45.

Sec. 3. 22 MRSA § 2387, sub-§ 3-A is enacted to read:

3-A. Exceptions to subsection 1, paragraph C. The court shall order forfeiture of all property under subsection 1, paragraph C, except that no such property may be forfeited, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

Sec. 4. 22 MRSA § 2387, sub-§ 6, ¶¶ B and C, as repealed and replaced by PL 1975, c. 740, § 130, are amended to read:

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; or

Sec. 5. 22 MRSA § 2387, sub-§ 6, ¶ D is enacted to read:

D. There is probable cause to believe that the property has been used or is intended to be used in violation of Title 17-A, chapter 45.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

Section 2 tracks federal law in permitting the State to seize money and other things of value involved in drug transactions. The current law provides no means for the State to keep the cash or other valuable commodity which is typically part of a drug transaction, and the loss of which is, as in the case of a conveyance, a financial setback for the drug trafficker.

Section 3 provides an exception, also tracking federal law, which exempts the innocent owner from liability under this section.

Sections 4 and 5 allow law enforcement officers to seize forfeitable property on probable cause where it appears a violation of Title 17-A, chapter 45, has occurred

or is intended to occur. Both the federal statute and the Uniform Controlled Substances Act, which is enacted in some form in a majority of states, have this provision. As currently drafted, the law imposes a greater burden on law enforcement in seizures for forfeiture than it does in criminal search and seizure cases, notwithstanding that less protection is afforded by the Fourth Amendment to the United States Constitution to the forfeiture situation than to the criminal one.