

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 510

H. P. 460

House of Representatives, January 29, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative P. Paradis of Augusta.

Cosponsors: Representative Jacques of Waterville and Representative Gwadosky of Fairfield.

STATE OF MAINE

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

**AN ACT to Provide for Forfeiture of Illegally Obtained or Illegally used Property.**

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

22 MRSA § 2387, as last amended by PL 1975, c. 740, §§ 126 to 130, is further amended to read:

**§ 2387. Forfeiture of illegally obtained or illegally used property**

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 manufacturing, trafficking or furnishing any substance in violation of Title 17-A, chapter 45, or any Class A, B or C crime or a violation of Title 29, section 2501-A, subsection 3;

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, or any Class A, B or C crime or a violation of Title 29, section 2501-A, subsection 3; and

C. All profits or gain from the commission of a Class A, B or C crime and all conveyances, including aircraft, watercraft, vehicles or vessels, material

products and equipment of any kind, which are used, or intended for use, transportation, conceal, or otherwise facilitate the commission or attempted commission, or conspiracy to commit a Class A, B or C crime or a violation of Title 29, section 2501-A, subsection 3.

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

3. **Exceptions.** The court shall order forfeiture under subsection 1, paragraph A, 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~~ may 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 Title 17-A, chapter 45, a violation of Title 29, section 2501-A, subsection 3, or any Class A, B or C crime.

B. No conveyance ~~shall~~ may 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~~ may be subject to forfeiture unless the owner thereof knew or should have known that such conveyance was used in and for the unlawful manufacturing, trafficking or furnishing or any substance in violation of Title 17-A, chapter 45, a violation of Title 29, section 2501-A, subsection 3, or any Class A, B or C crime. Proof that the conveyance was used on ~~3~~ 2 or more occasions for the ~~purpose of unlawfully manufacturing, trafficking or furnishing any such substance~~ purposes contained in section 1, paragraph A, B or C, shall be prima facie evidence that such 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~~ property subject to forfeiture under subsection 1, paragraph A, B or C. Such petition shall be filed in the court having jurisdiction over the ~~said~~ conveyance. 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~~ the 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 than 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 bonafide mortgage thereon, and the balance, if any, shall be deposited in the treasury of the State, county or municipality making such seizure.

**5. Records.** Any officer, department or agency having custody or property subject to forfeiture under subsection 1, paragraph A ~~or~~, B or C, 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. ~~Said~~ **These** 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~~ the property under court order shall report, under oath, to the court the exact circumstances of ~~said~~ 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 such 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 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 broaden the law providing for forfeiture of illegally obtained or illegally used property to include materials, products and equipment used in any Class A, B or C crime and certain other violations.