

MAINE STATE LEGISLATURE

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(EMERGENCY)
(After Deadline)
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1692

S. P. 701

In Senate, June 19, 1981

(Approved by a Majority of the Legislative Council pursuant to Joint Rule 27.)

Reference to the Committee on Judiciary suggested and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Devoe of Penobscot.

STATE OF MAINE

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

AN ACT to Make Additional Corrections of Errors and Inconsistencies in the Laws of Maine.

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

Whereas, Acts of the 110th Legislature have resulted in technical errors and inconsistencies in the divorce and theft laws of Maine; and

Whereas, these errors and inconsistencies will create uncertainties and confusion in interpreting legislative intent; and

Whereas, it is vitally necessary that these uncertainties and this confusion be resolved in order to prevent any injustice or hardship to the citizens of Maine; 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Sec. 1. 17-A MRSA § 356, as repealed and replaced by PL 1981, c. 317, § 9, is repealed and the following enacted in its place:

§ 356. Theft of lost, mislaid or mistakenly delivered property

A person is guilty of theft if:

1. He obtains or exercises control over the property of another which he knows to have been lost or mislaid or to have been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property; and

2. With the intent to deprive the owner of the property at any time subsequent to acquiring it, he fails to take reasonable measures to return it.

Sec. 2. 19 MRSA § 662, as repealed and replaced by PL 1981, c. 470, § 45, is repealed and the following enacted in its place:

§ 662. Certain divorces validated

1. Writ of attachment. All divorces heretofore granted in this State on libels inserted in a writ of attachment, and otherwise valid except for the want of attachment nominal or otherwise upon the writ, are validated.

2. Pendency of another claim. All judgments or orders heretofore entered granting a divorce, annulment, disposition of property under Title 19, section 722-A, or other disposition, award or division of property incident upon a divorce or annulment, and otherwise final except for the pendency of another claim or counterclaim in the same action, are declared final, nonappealable and effective for all purposes as of the date of entry of such judgment or order. This subsection does not apply to any judgment for divorce, annulment or property disposition in which the appeal period, including any extensions, has commenced but has not expired as of the effective date of this subsection.

Sec. 3. 22 MRSA § 2387, sub-§ 4, as amended by PL 1973, c. 567, § 20, is further amended to read:

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 paragraphs B and C.~~ Such petition shall be filed in the court having jurisdiction over the ~~said conveyance~~ **property**. 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~~ **the property** 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~~ **property** 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~~ **property** 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.

Sec. 4. 22 MRSA § 2387, sub-§ 5, first sentence, as repealed and replaced by PL 1975, c. 740, § 129, is amended to read:

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.

Emergency clause. In view of the emergency cited in the preamble, section 2 of this Act shall take effect when approved.

STATEMENT OF FACT

This bill corrects errors in 2 bills enacted earlier this session. Section one corrects the definition of theft to delete a recently enacted change in the theft laws which was incorrectly included in a committee amendment to the original bill.

Section 2 replaces language which was enacted this year to correct a problem in divorce actions. The Law Court, in the case of Parent v. Parent, ruled that all divorce actions, presumed to be final, but which had counterclaims that were not dismissed, could not be deemed final until the counterclaims were resolved. This ruling left the status of many divorce actions unsettled, even though both parties had presumed the action was complete. Legislation enacted this year was to have corrected this problem by declaring those divorce cases final. The language enacted does not accomplish that purpose. This section corrects faulty language in the new law.

Sections 3 and 4 confer jurisdiction on the Superior Court to process forfeiture of money on criminal drug violation cases. The law enacted this year which provided that the State could receive such money, instead of the Federal Government, did not make any specific provision for jurisdiction the courts. These sections correct that omission.