

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 2004

6
7 S.P. 797

In Senate, February 7, 1986

8 Approved for introduction by a majority of the Legislative Council
9 pursuant to Joint Rule 26.

Reference to the Committee on Judiciary suggested and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Twitchell of Oxford.

Cosponsored by Representative Walker of Norway.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-SIX
16

17 AN ACT to Amend the Drug Enforcement Law.
18

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

21 Sec. 1. 17-A MRSa §1103, sub-§2-A is enacted to
22 read:

23 2-A. Notwithstanding section 1301, any person
24 convicted of a crime under this section shall be sen-
25 tenced to pay a fine of not less than an amount equal
26 to the value of the scheduled drug or drugs, the val-
27 ue to be determined in accordance with schedules es-
28 tablished by the Chief of the State Police. This
29 minimum fine may not be suspended.

30 When the court imposes a fine under this subsection,
31 the court shall make a finding as to the value of the
32 scheduled drug or drugs. If the record does not con-
33 tain sufficient evidence to support a finding, the
34 court may conduct, in connection with its imposition
35 of a sentence, a hearing on this issue.

1 Sec. 2. 17-A MRSA §1105, sub-§3 is enacted to
2 read:

3 3. Notwithstanding section 1301, any person con-
4 victed of a crime under this section shall be sen-
5 tenced to pay a fine of not less than an amount equal
6 to the value of the scheduled drug or drugs, the val-
7 ue to be determined in accordance with schedules es-
8 tablished by the Chief of the State Police. This
9 minimum fine may not be suspended.

10 When the court imposes a fine under this subsection,
11 the court shall make a finding as to the value of the
12 scheduled drug or drugs. If the record does not con-
13 tain sufficient evidence to support a finding, the
14 court may conduct, in connection with its imposition
15 of a sentence, a hearing on this issue.

16 Sec. 3. 17-A MRSA §1106, sub-§2-A is enacted to
17 read:

18 2-A. Notwithstanding section 1301, any person
19 convicted of a crime under this section shall be sen-
20 tenced to pay a fine of not less than an amount equal
21 to the value of the scheduled drug or drugs, the val-
22 ue to be determined in accordance with schedules es-
23 tablished by the Chief of the State Police. This
24 minimum fine may not be suspended.

25 When the court imposes a fine under this subsection,
26 the court shall make a finding as to the value of the
27 scheduled drug or drugs. If the record does not con-
28 tain sufficient evidence to support a finding, the
29 court may conduct, in connection with its imposition
30 of a sentence, a hearing on this issue.

31 Sec. 4. 17-A MRSA §1107, sub-§3 is enacted to
32 read:

33 3. Notwithstanding section 1301, any person con-
34 victed of a crime under this section shall be sen-
35 tenced to pay a fine of not less than an amount equal
36 to the value of the scheduled drug or drugs, the val-
37 ue to be determined in accordance with schedules es-
38 tablished by the Chief of the State Police. This
39 minimum fine may not be suspended.

1 When the court imposes a fine under this subsection,
2 the court shall make a finding as to the value of the
3 scheduled drug or drugs. If the record does not con-
4 tain sufficient evidence to support a finding, the
5 court may conduct, in connection with its imposition
6 of a sentence, a hearing on this issue.

7 Sec. 5. 22 MRSA §2383, as repealed and replaced
8 by PL 1975, c. 499, §51, is repealed and the follow-
9 ing enacted in its place:

10 §2383. Possession

11 Possession of a usable amount of marijuana is a
12 civil violation for which a forfeiture of not more
13 than \$200 may be adjudged; except that the minimum
14 forfeiture shall not be less than an amount equal to
15 the value of the marijuana possessed, the value to be
16 determined in accordance with schedules established
17 by the Chief of the State Police. The court shall
18 make a finding as to the value of the marijuana in
19 the defendant's possession. If the record does not
20 contain sufficient evidence to support a finding, the
21 court may conduct, in connection with its imposition
22 of a forfeiture, a hearing on this issue.

23 Sec. 6. 22 MRSA §2387, sub-§1, as amended by PL
24 1981, c. 470, Pt. A, §94, is further amended to
25 read:

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

29 A. All materials, products and equipment of any
30 kind which are used, or intended for use, in man-
31 ufacturing, trafficking or furnishing any sub-
32 stance in violation of Title 17-A, chapter 45;
33 **and**

34 B. All conveyances, including aircraft, water-
35 craft, vehicles or vessels, which are used, or
36 are intended for use, to transport, conceal or
37 otherwise to facilitate the manufacture, traf-
38 ficking or furnishing of a substance in violation
39 of Title 17-A, chapter 45; **and**

1 C. All moneys, negotiable instruments, securi-
2 ties or other things of value furnished or in-
3 tended to be furnished by any person in exchange
4 for a scheduled drug in violation of Title 17-A,
5 chapter 45, all proceeds traceable to such an ex-
6 change, and all moneys, negotiable instruments
7 and securities used or intended to be used to fa-
8 cilitate any violation of Title 17-A, chapter
9 45-; and

10 D. All real property, including any right, title
11 and interest in the whole of any lot or tract of
12 land and any appurtenances or improvements, which
13 is used, or intended to be used, in any manner or
14 part, to commit or to facilitate the commission
15 of a violation of Title 17-A, chapter 45.

16 Sec. 7. 22 MRSA §2387, sub-§4, as amended by PL
17 1981, c. 529, §3, is repealed and the following en-
18 acted in its place:

19 4. Petition; order. A district attorney or the
20 Attorney General may petition the Superior Court in
21 the name of the State in the nature of a proceeding
22 in rem to order forfeiture of property subject to
23 forfeiture under subsection 1, paragraphs B, C and D.
24 The petition shall be filed in the court having ju-
25 risdiction over the property. The proceeding shall be
26 deemed a civil suit in which the State shall have the
27 burden of proving all material facts by a preponder-
28 ance of the evidence and the owner of the property or
29 other person claiming thereunder shall have such bur-
30 den as to all exceptions set forth in subsection 3.
31 The court shall order the State to give notice by
32 certified or registered mail or hand delivered by a
33 deputy sheriff to the owner of the property and to
34 such other person as appears to have an interest in
35 the property and shall promptly, but not less than 2
36 weeks after notice, hold a hearing on the petition.
37 At that hearing, the court shall hear evidence and
38 make findings of fact and enter conclusions of law
39 and shall issue a final order from which the parties
40 shall have the right of appeal. The final order shall
41 provide for disposition of the property by the State
42 or any subdivision of the State according to the fol-
43 lowing:

1 A. The order may provide that the property may
2 be used in any manner not prohibited by law, in-
3 cluding official use by any authorized law en-
4 forcement or other public agency; or

5 B. Sale at public auction or by competitive bid-
6 ding, the proceeds of any such sale to be dis-
7 burged according to subsection 4-A.

8 Sec. 8. 22 MRSA §2387, sub-§4-A is enacted to
9 read:

10 4-A. Disbursement. The proceeds of any sale
11 pursuant to subsection 4 and all money, negotiable
12 instruments, securities, proceeds and other things of
13 value forfeited pursuant to subsection 1, paragraph C
14 shall be used to pay the reasonable expenses of the
15 forfeiture proceedings, seizure, storage, maintenance
16 of custody, advertising and notice, any bona fide
17 mortgage on the property and the balance, if any,
18 shall be disbursed as follows:

19 A. If the seizure was made by a law enforcement
20 agency having statewide jurisdiction, to the
21 Treasurer of State to be used by the Department
22 of the Attorney General solely for the purpose of
23 drug enforcement;

24 B. If the seizure was made by a law enforcement
25 agency having county or local jurisdiction, to
26 the county treasury to be used by the office of
27 the district attorney solely for the purpose of
28 drug enforcement; or

29 C. If the seizure was made jointly by a law en-
30 forcement agency having statewide jurisdiction
31 and a law enforcement agency having county or lo-
32 cal jurisdiction, to the Treasurer of State and
33 the county treasury in an amount to be equitably
34 apportioned by the court, to be used as set out
35 in paragraphs A and B.

36 Any entity receiving use of any funds distributed un-
37 der this subsection shall not anticipate future dis-
38 bursements pursuant to this subsection in prepara-
39 tion, adoption or approval of its budget.

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STATEMENT OF FACT

2 This bill amends the fine structure for drug of-
3 fenses involving scheduled drugs to require that the
4 minimum fine be at least equal to the "street value"
5 of the drugs. The bill also makes several changes in
6 drug enforcement forfeiture provisions by including
7 real property interests and by establishing a dis-
8 bursement schedule of proceedings from forfeited
9 property.

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