

MAINE STATE LEGISLATURE

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1 (New Draft of S.P. 569, L.D. 1505)
2 (New Title)
3 SECOND REGULAR SESSION
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE
6

7 Legislative Document

No. 2139

9 S.P. 847

In Senate, March 5, 1986

10 Reported by Senator Chalmers of Knox from the Committee on Judiciary
11 and printed under Joint Rule 2. Original bill sponsored by Senator Clark of
Cumberland. Cosponsored by Representative McGowan of Canaan.

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

13
14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-SIX
18

19 AN ACT to Strip Crime of its Profit.
20

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

23 15 MRSA c. 515 is enacted to read:

24 CHAPTER 515

25 ASSET FORFEITURE

26 §5801. Definitions

27 As used in this chapter, unless the context indi-
28 icates otherwise, the following terms have the follow-
29 ing meanings.

30 1. Conspiracy. "Conspiracy" means that, with
31 the intent that conduct be performed, a person agrees
32 with one or more other persons to engage in or cause

1 the performance of the conduct. For purposes of this
2 chapter, a conspiracy may be proven without proof of
3 a substantial step towards completion, but rather
4 upon a showing that a participant in the conspiracy
5 has engaged in one or more overt acts toward comple-
6 tion of the object of the conspiracy.

7 2. Predicate offense. "Predicate offense" means
8 a violation of one or more of the following provi-
9 sions of the Maine Criminal Code, Title 17-A:

10 A. Chapter 15. A violation of chapter 15 shall
11 not be a predicate offense unless the violation
12 would constitute a Class B crime and the property
13 which is to be forfeited is in some manner pro-
14 cured through conspiracy;

15 B. Section 802; or

16 C. Sections 1103 to 1106 and 1108.

17 3. Proceeds of criminal enterprise. "Proceeds
18 of criminal enterprise" means any one or more of the
19 following:

20 A. All property other than real estate, of any
21 kind and in whatever form held, which is used or
22 intended to be used to effect, further or protect
23 any conduct which constitutes a violation of a
24 predicate offense;

25 B. All conveyances, including aircraft, water-
26 craft, vehicles and vessels which are used or are
27 intended for use to transport, conceal, effect,
28 further or otherwise facilitate any conduct which
29 constitutes a violation of a predicate offense;

30 C. All property, of any kind and in whatever
31 form held, furnished or intended to be furnished
32 by any person or entity to procure the use or
33 ownership of any property other than real estate
34 which that person or entity knows or reasonably
35 should have known to have been procured as the
36 result, in whole or in part, of conduct which
37 constitutes a violation of a predicate offense;

1 D. All property other than real estate, of any
2 kind and in whatever form held, which was pro-
3 cured through conduct which constitutes a viola-
4 tion of a predicate offense; and

5 E. All property other than real estate, of any
6 kind and in whatever form held, which was pro-
7 cured through conduct which constitutes a viola-
8 tion of the Maine Criminal Code described in sub-
9 section 2, paragraph A.

10 §5802. Forfeiture of all property which constitutes
11 the proceeds of criminal enterprise

12 1. Proceeds subject to forfeiture. The proceeds
13 of criminal enterprise shall be subject to forfei-
14 ture.

15 2. Proceeds subject to forfeiture by court.
16 Property subject to forfeiture under subsection 1
17 shall be declared forfeited by any court having ju-
18 risdiction over the property or having final jurisdic-
19 tion over any related criminal proceeding or by
20 the Superior Court for Kennebec County.

21 3. Exceptions. The court shall order forfeiture
22 of all proceeds of criminal enterprise except as fol-
23 lows.

24 A. No conveyance used by any person as a common
25 carrier in the transaction of business as a com-
26 mon carrier may be forfeited unless it appears
27 that the owner or other person in charge of the
28 conveyance was a consenting party or privy to the
29 commission of a predicate offense.

30 B. No conveyance may be forfeited by reason of
31 any act or omission established by the owner of
32 the conveyance to have been committed or omitted
33 by any person other than the owner while the con-
34 veyance was unlawfully in the possession of a
35 person other than the owner in violation of the
36 criminal laws of the United States, this State or
37 any state.

38 C. No property, to the extent of the interest of
39 the owner, may be forfeited by reason of any act

1 or omission established by that owner to have
2 been committed or omitted by any person other
3 than the owner without the knowledge of that own-
4 er.

5 4. Petition for proceeding to order forfeiture.
6 A district attorney or the Attorney General may peti-
7 tion the Superior Court in the name of the State in
8 the nature of a proceeding in rem to order forfeiture
9 of property subject to forfeiture under subsection 1.

10 A. The petition shall be filed in the court hav-
11 ing jurisdiction as described in subsection 2.

12 B. The proceeding shall be deemed a civil action
13 in which the State shall have the burden of prov-
14 ing all material facts by a preponderance of the
15 evidence and the owner of the property or other
16 person claiming thereunder shall have the burden
17 as to all exceptions set forth in subsection 3,
18 except that it shall be presumed that all assets,
19 in any part acquired by a person convicted of a
20 violation of Title 17-A, chapter 15 or 45, which
21 is a Class B or Class C crime, from the date of
22 offense and for 2 years thereafter, is property
23 described by section 5801, subsection 3. The
24 owner of the assets or other person claiming
25 thereunder may rebut that presumption by proving
26 by a preponderance of the evidence that the as-
27 sets are not property described by section 5801,
28 subsection 3.

29 C. The State shall give notice of the petition
30 to the owner of the property and to such other
31 persons as appear to have an interest in the
32 property by delivering to those persons a copy of
33 the summons and complaint by certified or regis-
34 tered mail, return receipt requested, in hand or
35 by any other means approved by the court. Subse-
36 quent proceedings shall be in conformity with the
37 rules pertaining to civil actions in the Superior
38 Court, except that no depositions may be had and
39 no interrogatories propounded without the consent
40 of the parties or order of court.

41 D. At a hearing, other than default proceedings,
42 the court shall hear evidence, make findings of

1 fact, enter conclusions of law and file a final
2 order from which the parties have the right of
3 appeal. The final order shall provide for the
4 disposition of the property as follows:

5 (1) In the case of money, negotiable in-
6 struments and securities, to the General
7 Fund, except, to the extent that the court
8 finds it appropriate and with the written
9 approval of the Attorney General, the court
10 may order forfeiture of so much of the prop-
11 erty as is appropriate to a municipality or
12 county that has made a substantial contribu-
13 tion to the investigation of a related crim-
14 inal case, subject to the requirements of
15 section 5803; and

16 (2) In the case of other property, the
17 court may decree forfeiture of the property
18 to the General Fund or, to the extent that
19 the court finds appropriate and with the
20 written approval of the Attorney General, to
21 a state agency or any municipality or coun-
22 ty, which state agency, municipality or
23 county has made a substantial contribution
24 to the investigation of a related criminal
25 case, subject to the requirements of section
26 5803. The court may also order the property
27 sold at public auction and the proceeds of
28 the sale disposed of pursuant to subpara-
29 graph (1).

30 Default proceedings shall be held in the same
31 manner as default proceedings in other civil ac-
32 tions, except that service of motions and affida-
33 vits related to default proceedings need not be
34 served upon any person who has not answered or
35 otherwise defended in the action.

36 5. Preliminary order or process. The court may
37 issue, at the request of the attorney for the State,
38 ex parte, any preliminary order or process as is nec-
39 essary to seize or secure the property for which for-
40 feiture is or will be sought and to provide for its
41 custody. That order may include an order to a finan-
42 cial institution or to any fiduciary or bailee to re-
43 quire that entity to impound any property in its pos-

1 session or control and not to release it except upon
2 further order of the court. Process for seizure of
3 the property shall issue only upon a showing of prob-
4 able cause. The application for process and the is-
5 suance, execution and return of process shall be sub-
6 ject to applicable state law. Any property subject
7 to forfeiture under this section may be seized upon
8 process, except that seizure without process may be
9 made when:

10 A. The seizure is incident to an arrest with
11 probable cause, a search under a valid search
12 warrant or an inspection under a valid adminis-
13 trative inspection warrant;

14 B. The property subject to seizure has been the
15 subject of a prior judgment in favor of the State
16 in a forfeiture proceeding under this section or
17 any other provision of law;

18 C. There is probable cause to believe that the
19 property is directly or indirectly dangerous to
20 health or safety; or

21 D. There is probable cause to believe that the
22 property has been used or is intended to be used
23 in violation of any criminal law of the United
24 States or of this State.

25 §5803. Equitable distribution of forfeited assets

26 In the case of any asset decreed forfeit under
27 this chapter or under Title 22, section 2387, to any
28 legal entity other than the General Fund, transfer of
29 title to the asset shall not occur until the transfer
30 is approved by:

31 1. State; agency or department. In the case of
32 an agency or department of the State, the Legisla-
33 ture;

34 2. County; agency or department. In the case of
35 an agency or department of a county, the commission-
36 ers of the county; or

37 3. Municipality; agency or department. In the
38 case of an agency or department of a municipality,
39 the elected governing body of the municipality.

1 vestigation; or to a municipality or county that con-
2 tributed to the pertinent criminal investigation af-
3 ter the property has been turned into money at public
4 auction and with the Attorney General's approval.

5 Under section 5803, the approval of other govern-
6 mental bodies must be had before certain property
7 forfeited under section 5802 may be accepted by the
8 agency to which it is forfeited. When an asset is
9 forfeited to other than the General Fund, the title
10 transfers only when:

11 1. The Legislature approves the transfer of an
12 asset forfeited to a state agency;

13 2. The county commissioners approve the transfer
14 of an asset forfeited to a county agency; or

15 3. The elected governing body of a municipality
16 approves the transfer of an asset forfeited to a mu-
17 nicipal agency.

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