

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1243

S.P. 403

In Senate, April 13, 1987

Reference to the Committee on Judiciary suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator BRANNIGAN of Cumberland.

Cosponsored by Representative PARADIS of Augusta,
Representative COTE of Auburn, Representative MACBRIDE of
Presque Isle.

STATE OF MAINE

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

1 **AN ACT to Clarify the Law Relating to**
2 **Restitution for Victims of Crime by**
3 **Expressly Providing that Cities,**
4 **Counties and other Governmental**
5 **Entities can be Victims and that**
6 **Organizations may be Ordered to Pay**
7 **Restitution.**
8

9 **Emergency preamble. Whereas, Acts of the Legis-**
10 **lature do not become effective until 90 days after**
11 **adjournment unless enacted as emergencies; and**

12 **Whereas, the Legislature has declared in the**
13 **Maine Revised Statutes, Title 17-A, section 1321,**
14 **that repayment, in whole or in part, to the victim by**
15 **a person convicted of a crime may operate to rehabil-**
16 **itate the offender in certain instances; and**

1 Whereas, the Legislature has recognized the need
2 to encourage the compensation of crime victims by the
3 person most responsible for the victim's loss, that
4 is, the offender; and

5 Whereas, restitution by the offender may serve to
6 reinforce the offender's sense of responsibility for
7 the crime and to provide him the opportunity to pay
8 his debts to society and to his victim in a construc-
9 tive manner; and

10 Whereas, the term "victim" as it is now defined
11 in the Maine Revised Statutes, Title 17-A, section
12 1322, subsection 7, includes an organization and a
13 human being but does not include cities, towns, coun-
14 ties and other governmental entities; and

15 Whereas, towns, cities, counties, departments and
16 agencies of the State, and other governmental enti-
17 ties within the meaning of Title 17-A, section 2,
18 subsection 13, frequently suffer economic loss as a
19 result of crimes, as do human beings or organizations
20 within the meaning of Title 17-A, section 2, subsec-
21 tion 19; and

22 Whereas, in the year 1986, the Department of the
23 Attorney General prosecuted thefts of government
24 property valued between \$70,000 to \$100,000; and

25 Whereas, it is unclear whether under Title 17-A,
26 chapter 54, courts have authority to order restitu-
27 tion, when appropriate, to governmental entities that
28 are victims of crime; and

29 Whereas, it is desirable to clarify as soon as
30 possible that courts in Maine do have authority to
31 order criminal offenders to make restitution to gov-
32 ernmental entities; and

33 Whereas, the Maine Criminal Code contains a chap-
34 ter on fraud which includes criminal conduct by busi-
35 nesses; and

36 Whereas, the Maine Criminal Code now does not in-
37 clude restitution as a sentencing alternative for or-
38 ganizations such as corporations, partnerships or
39 other business entities convicted of a crime; and

1 Whereas, restitution, which would prevent an or-
2 ganization from keeping funds obtained as a result of
3 a crime, would have a direct economic impact and be
4 of significant deterrent value; and

5 Whereas, in the judgment of the Legislature,
6 these facts create an emergency within the meaning of
7 the Constitution of Maine and require the following
8 legislation as immediately necessary for the preser-
9 vation of the public peace, health and safety; now,
10 therefore,

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

13 Sec. 1. 17-A MRSa §1152, sub-§3, as amended by
14 PL 1977, c. 53, §2, is repealed and the following en-
15 acted in its place:

16 3. Every organization convicted of a crime shall
17 be sentenced to one of the following:

18 A. Unconditional discharge as authorized by
19 chapter 49;

20 B. A suspended fine with probation as authorized
21 by chapter 49;

22 C. A fine as authorized by chapter 53. Subject
23 to the limitations of section 1302, such a fine
24 may be imposed in addition to the sentencing al-
25 ternatives in paragraphs B and D; or

26 D. A sanction authorized by section 1153. This
27 sanction may be imposed in addition to the sen-
28 tencing alternatives in paragraphs B and C.

29 Sec. 2. 17-A MRSa §1152, sub-§3-A is enacted to
30 read:

31 3-A. Every organization convicted of a crime may
32 be required to make restitution as authorized by
33 chapter 54. Subject to the limitations of chapter
34 54, restitution may be imposed as a condition of pro-
35 bation or may be imposed in addition to any other
36 sentencing alternative included within subsection 3,
37 with the exception of an unconditional discharge.

1 Sec. 3. 17-A MRSA §1322, sub-§§3, 5 and 7, as
2 enacted by PL 1977, c. 455, §3, are amended to read:

3 3. Economic loss. "Economic loss" means includes
4 economic detriment consisting only of property loss,
5 allowable expense, work loss, replacement services
6 loss and, if injury causes death, dependent's econom-
7 ic loss, and dependent's replacement services loss
8 ~~and property loss~~. Noneconomic detriment is not loss.
9 Economic detriment is loss although caused by pain
10 and suffering or physical impairment.

11 A. Allowable expense. "Allowable expense" means
12 reasonable charges incurred for reasonably needed
13 products, services and accommodations, including
14 those for medical care, rehabilitation, rehabili-
15 tative occupational training and other remedial
16 treatment and care, and nonmedical remedial care
17 and treatment rendered in accordance with a rec-
18 ognized religious method of healing. The term in-
19 cludes a total charge not in excess of \$500 for
20 expenses in any way related to funeral, cremation
21 and burial. It does not include that portion of a
22 charge for a room in a hospital, clinic, conva-
23 lescent or nursing home, or any other institution
24 engaged in providing nursing care and related
25 services, in excess of a reasonable and customary
26 charge for semiprivate accommodations, unless
27 other accommodations are medically required.

28 B. Dependent's economic loss. "Dependent's eco-
29 nomic loss" means loss after decedent's death of
30 contributions of things of economic value to his
31 dependents, not including services they would
32 have received from the decedent if he had not
33 suffered the fatal injury, less expenses of the
34 dependents avoided by reason of decedent's death.

35 C. Dependent's replacement services loss. "De-
36 pendent's replacement loss" means loss reasonably
37 incurred by dependents after decedent's death in
38 obtaining ordinary and necessary services in lieu
39 of those the decedent would have performed for
40 their benefit if he had not suffered the fatal
41 injury, less expenses of the dependents avoided
42 by reason of decedent's death and not subtracted
43 in calculating dependent's economic loss.

1 D. Property loss. "Property loss" means the val-
2 ue of property taken from the victim, or of prop-
3 erty destroyed or otherwise broken or harmed. A
4 property loss shall include the value of taxes or
5 other obligations due to the government that have
6 not been paid.

7 E. Replacement services loss. "Replacement ser-
8 vices loss" means expenses reasonably incurred in
9 obtaining ordinary and necessary services in lieu
10 of those the injured person would have performed,
11 not for income but for the benefit of himself or
12 his family, if he had not been injured.

13 F. Work loss. "Work loss" means loss of income
14 from work the injured person would have performed
15 if he had not been injured and expenses reason-
16 ably incurred by him in obtaining services in
17 lieu of those he would have performed for income,
18 reduced by any income for substitute work actual-
19 ly performed by him or by income he would have
20 earned in available appropriate substitute work
21 he was capable of performing but unreasonably
22 failed to undertake.

23 5. Offender. "Offender" means any natural person
24 or organization convicted of a crime.

25 7. Victim. "Victim" means a government that suf-
26 fers economic loss or a person who suffers personal
27 injury, death or economic loss as a result of a crime
28 or the good faith effort of any person to prevent a
29 crime.

30 Sec. 4. 17-A MRSA §1323, sub-§3 is enacted to
31 read:

32 3. Restitution required. In any prosecution for
33 a crime committed prior to the effective date of this
34 chapter, or any amendment to this chapter, the court
35 may, with the consent of the defendant, require the
36 defendant to make restitution in accordance with this
37 chapter as amended.

38 Sec. 5. 17-A MRSA §1325, sub-§3 is enacted to
39 read:

