

MAINE STATE LEGISLATURE

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L.D. 1415

(Filing No. H- 234)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
113TH LEGISLATURE
FIRST REGULAR SESSION

HOUSE AMENDMENT "A" to H.P. 1052, L.D. 1415,
Bill, "AN ACT to Fight Illegal Drug Use."

Amend the Bill by striking out everything after
the enacting clause and inserting in its place the
following:

'Sec. 1. 15 MRSA c. 515, as enacted by PL 1985,
c. 679, is repealed.

Sec. 2. 15 MRSA c. 517 is enacted to read:

CHAPTER 517

ASSET FORFEITURE

§5821. Subject property

The following shall be subject to forfeiture to
the State and no property right may exist in them:

1. Scheduled drugs. All scheduled drugs which
have been manufactured, made, created, grown, culti-
vated, sold, bartered, traded, furnished for consid-
eration, furnished, distributed, dispensed, possessed
or otherwise acquired in violation of any law of this
State, any other state or of the United States;

2. Materials related to scheduled drugs. All
raw materials, products and equipment of any kind
which are used or intended for use in manufacturing,
compounding, processing, delivering, cultivating,
growing or otherwise creating any scheduled drug in
violation of any law of this State, any other state
or the United States;

3. Other property. All property which is used

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1 or intended for use as a container for property de-
2 scribed in subsection 1 or 2;

3 4. Conveyances. All conveyances, including air-
4 craft, vehicles or vessels, which are used or are in-
5 tended for use to transport or in any manner to fa-
6 facilitate the transportation, sale, trafficking, fur-
7 nishing, receipt, possession or concealment of prop-
8 erty described in subsection 1 or 2, except that:

9 A. No conveyance used by any person as a common
10 carrier in the transaction of business as a com-
11 mon carrier may be forfeited under this section,
12 unless it appears that the owner or other person
13 in charge of the conveyance was a consenting par-
14 ty or had knowledge of that violation of law; and

15 B. No conveyance may be forfeited under this
16 section by reason of any act or omission estab-
17 lished by the owner of the conveyance to have
18 been committed or omitted by any person other
19 than the owner while the conveyance was unlawfu-
20 ly in the possession of a person other than the
21 owner in violation of the criminal laws of this
22 State, any other state or of the United States;

23 5. Records. All books, records and research,
24 including formulas, microfilm, tapes and data, which
25 are used or intended for use in violation of Title
26 17-A, chapter 45;

27 6. Money instruments. Except as provided in
28 paragraph A, all money, negotiable instruments, secu-
29 rities or other things of value furnished or intended
30 to be furnished by any person in exchange for a
31 scheduled drug in violation of Title 17-A, chapter
32 45; all proceeds traceable to such an exchange and
33 all money, negotiable instruments and securities used
34 or intended to be used to facilitate any violation of
35 Title 17-A, chapter 45;

36 A. No property may be forfeited under this sub-

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1 section, to the extent of the interest of an own-
2 er, by reason of any act or omission established
3 by that owner to have been committed or omitted
4 without the knowledge or consent of that owner;
5 and

6 7. Real property. Except as provided in para-
7 graph A, all real property, including any right, ti-
8 tle or interest in the whole of any lot or tract of
9 land and any appurtenances or improvements, which is
10 used or intended for use, in any manner or part, to
11 commit or to facilitate the commission of a violation
12 of Title 17-A, section 1103 or 1105, which is a Class
13 A, Class B or Class C crime, with the exception of
14 offenses involving marijuana.

15 A. No property may be forfeited under this sub-
16 section, to the extent of an interest of an own-
17 er, by reason of an act or omission established
18 by that owner to have been committed or omitted
19 without the knowledge or consent of that owner.
20 When an owner of property which is that person's
21 primary residence proves by a preponderance of
22 the evidence that he is the spouse or minor child
23 of the coowner of the primary residence who has
24 used or intended to use the residence, in any
25 manner or part, to commit or facilitate the com-
26 mission of a violation of Title 17-A, section
27 1103 or 1105, the State shall bear the burden of
28 proving knowledge or consent of the spouse or mi-
29 nor child by a preponderance of the evidence.

30 §5822. Procedure

31 1. Filing of petition. A petition for forfei-
32 ture must be filed as provided in this section.

33 A. A district attorney or the Attorney General
34 may petition the Superior Court in the name of
35 the State in the nature of a proceeding in rem to
36 order forfeiture of property subject to forfei-
37 ture under section 5821, except that to the ex-

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1 tent that such a petition seeks the forfeiture of
2 property described in section 5821, subsection 7,
3 the petition shall be filed only with the written
4 approval of the Attorney General.

5 B. There shall be no discovery other than under
6 the Maine Rules of Civil Procedure, Rule 36, ex-
7 cept by order of court upon a showing of substan-
8 tial need. Any order permitting discovery
9 shall set forth in detail the areas in which sub-
10 stantial need has been shown and the extent to
11 which discovery may take place.

12 2. Jurisdiction and venue. Property subject to
13 forfeiture under section 5821 shall be declared for-
14 feited by any court having jurisdiction over the
15 property or having final jurisdiction over any relat-
16 ed criminal proceedings or by the Superior Court for
17 Kennebec County. A petition under this section shall
18 be filed in a court having jurisdiction under this
19 subsection.

20 3. Type of action. The proceeding shall be
21 deemed a civil action. The State has the burden of
22 proving all material facts by a preponderance of the
23 evidence and the owner of the property or other per-
24 son claiming under the property shall have the burden
25 of proving by preponderance of the evidence all ex-
26 ceptions set forth in section 5821, except as pro-
27 vided in section 5821, subsection 7, paragraph A.

28 4. Hearings. At a hearing, other than default
29 proceedings, the court shall hear evidence, make
30 findings of fact, enter conclusions of law and file a
31 final order from which the parties have the right of
32 appeal. Except as provided in paragraphs A and B,
33 the final order shall provide for the disposition of
34 the property to the General Fund, less the reasonable
35 expenses of the forfeiture proceedings, seizure,
36 storage, maintenance of custody, advertising and no-
37 tice.

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1 A. To the extent that the court finds it appro-
2 priate and with the written consent of the Attor-
3 ney General, the court may order forfeiture of as
4 much of the property as is appropriate to a mu-
5 nicipality, county or state agency which has made
6 a substantial contribution to the investigation
7 of a related criminal case, subject to the re-
8 quirements of section 5824.

9 When property is forfeited and transferred to a
10 municipality in accordance with section 5824, the
11 legislative body of the municipality shall deter-
12 mine the disposition of the property. When prop-
13 erty is forfeited and transferred to a county in
14 accordance with section 5824, the county commis-
15 sioners shall determine the disposition of the
16 property.

17 B. The court may also order the property sold at
18 public auction and the proceeds of the sale, less
19 the reasonable expenses of the forfeiture pro-
20 ceedings, seizure, storage, maintenance of custo-
21 dy, advertising and notice to pay any bona fide
22 mortgage or security interest on the mortgage,
23 disposed of in accordance with other property
24 forfeited under this subsection.

25 5. Default proceedings. Default proceedings
26 shall be held in the same manner as default proceed-
27 ings in other civil actions, except that service of
28 motions and affidavits related to default proceedings
29 need not be served upon any person who has not an-
30 swered or otherwise defended in the action.

31 6. Preliminary process. Any Justice of the Su-
32 preme Judicial Court or the Superior Court, Judge of
33 the District Court or Judge of the Administrative
34 Court or Complaint Justice may issue, at the request
35 of the attorney for the State, ex parte, any prelimi-
36 nary order or process as is necessary to seize or se-
37 ecure the property for which forfeiture is or will be
38 sought and to provide for its custody. That order

1 may include an order to a financial institution or to
2 any fiduciary or bailee to require the entity to im-
3 pound any property in its possession or control and
4 not to release it except upon further order of the
5 court. Process for seizure of the property shall is-
6 sue only upon a showing of probable cause that the
7 property is subject to forfeiture under section 5821.
8 The application for process and the issuance, execu-
9 tion and return of process shall be subject to appli-
10 cable state law. Any property subject to forfeiture
11 under this section may be seized upon process, except
12 that seizure without the process may be made when:

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

17 B. The property subject to seizure has been the
18 subject of a prior judgment in favor of the State
19 in a forfeiture proceeding under this section or
20 any other provision of the laws of this State,
21 any other state or the United States;

22 C. There is probable cause to believe that the
23 property has been directly or indirectly danger-
24 ous to health or safety; or

25 D. There is probable cause to believe that the
26 property has been used or is intended to be used
27 in violation of any criminal law of this State,
28 any other state or the United States.

29 7. Rules. After January 1, 1988, the prosecu-
30 tion of proceedings under this chapter shall be gov-
31 erned by rules adopted or amended by the Attorney
32 General, pursuant to the Maine Administrative Proce-
33 dure Act, Title 5, chapter 375. These rules shall
34 provide standards for prosecution, settlement, ap-
35 proval of settlement and equitable transfer of for-
36 feited property.

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1 §5823. Perfecting titles to forfeited vehicles

2 1. Vehicle report. Any officer, department or
3 agency seizing any vehicle subject to forfeiture un-
4 der section 5821, shall file a report of seizure with
5 the Attorney General or a district attorney having
6 jurisdiction over the vehicle. This report must be
7 filed at least 21 days from the date of seizure.
8 The report shall be labeled "Vehicle Report" and
9 shall include:

10 A. A description of the vehicle;

11 B. The place and date of seizure;

12 C. The name and address of the owner or operator
13 of the vehicle at the time of seizure; and

14 D. The name and address of any other person who
15 appears to have an ownership interest in the ve-
16 hicle.

17 The seizing officer, department or agency must make a
18 diligent search and inquiry as to ownership of the
19 vehicle. The filing of a vehicle report is conclu-
20 sive evidence that a diligent search and inquiry were
21 completed.

22 2. Procedure. The Attorney General or a district
23 attorney upon receiving the seizure report shall pe-
24 tition, within 7 days, the Superior Court in the name
25 of the State in the nature of a proceeding in rem to
26 order forfeiture and perfect the State's title to any
27 vehicle subject to forfeiture under section 5821.
28 The proceeding shall be the same as for forfeited
29 property under section 5822, except that when the
30 owner of the vehicle cannot be determined, the court
31 shall:

32 A. Order the State, prior to the forfeiture pro-
33 ceeding, to publish notice of the proceeding once
34 each month for 6 consecutive months in newspapers

1 of general circulation throughout the State; and

2 B. Hold a hearing on the petition not less than
3 2 weeks after all notices required by this sec-
4 tion have been given.

5 The final order of forfeiture by the court under this
6 section shall perfect the State's right and interest
7 in and title to the vehicle and shall relate back to
8 the date of seizure.

9 3. Defaced or missing identification numbers.
10 Any vehicle disposed of under this section which does
11 not have a vehicle identification number or the num-
12 ber is illegible shall be issued a special number by
13 the Secretary of State under Title 29, section 103.

14 4. Subsequent actions. Neither replevin or any
15 other action to recover any interest in any vehicle
16 disposed of under this section may be maintained in
17 any court of this State.

18 §5824. Equitable transfer of forfeited assets

19 In the case of any asset decreed forfeit under
20 this chapter or under Title 25, to any entity other
21 than the General Fund, transfer of title to the asset
22 shall not occur until the transfer is approved by:

23 1. State; agency or department. In the case of
24 an agency or department of the State, the Governor;

25 2. County; agency or department. In the case of
26 an agency or department of a county, a majority of
27 the commissioners of the county; and

28 3. Municipality; agency or department. In the
29 case of an agency or department of a municipality,
30 the legislative body of the municipality.

31 §5825. Records

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1 1. Records of forfeited property. Any officer,
2 department or agency having custody of property sub-
3 ject to forfeiture under section 5821 or having dis-
4 posed of the property shall maintain complete records
5 showing:

6 A. From whom it received the property;

7 B. Under what authority it held, received or
8 disposed of the property;

9 C. To whom it delivered the property;

10 D. The date and manner of destruction or dispo-
11 sition of the property; and

12 E. The exact kinds, quantities and forms of the
13 property.

14 The records shall be open to inspection by all feder-
15 al and state officers responsible for enforcing fed-
16 eral and state drug control laws. Persons making fi-
17 nal disposition or destruction of the property under
18 court order shall report, under oath, to the court
19 the exact circumstances or the disposition or de-
20 struction.

21 2. Department of Public Safety; centralized
22 record. The Department of Public Safety shall main-
23 tain a centralized record of property seized, held by
24 and ordered to the department. A report of the dis-
25 position of property previously held by the depart-
26 ment and ordered by the court to any governmental en-
27 tity shall be provided at least quarterly to the Com-
28 missioner of Finance and the Office of Fiscal and
29 Program Review for review. These records shall in-
30 clude an estimate as to the fair market value of
31 items seized.

32 Sec. 3. 22 MRSA §2387, as amended by PL 1985, c.
33 737, Pt. B, §19, is repealed.

1 Sec. 4. 29 MRSA §2374, sub-§4 is enacted to
2 read:

3 4. Forfeiture of interest. If the interest of
4 an owner in a vehicle is forfeited to the State under
5 Title 15, chapter 517, the owner shall promptly mail
6 or deliver to the Secretary of State his last certif-
7 icate of title. If the owner is unknown, the State
8 shall proceed to perfect title in accordance with Ti-
9 tle 15, section 5823. If the forfeited vehicle is
10 resold to another person, the Secretary of State
11 shall issue a new certificate of title to the pur-
12 chaser. If the forfeiting owner fails to comply with
13 this subsection, the Secretary of State, pursuant to
14 section 2378, shall revoke the owner's certificate of
15 title and pursuant to section 2376, shall issue a new
16 certificate of title to the purchaser.'

17 Further amend the Bill by inserting before the
18 statement of fact the following:

19 'FISCAL NOTE

20 This amendment will add costs to various depart-
21 ments, but it appears that they can all be absorbed
22 within existing resources. There also is a possible
23 impact to the General Fund due to the asset forfei-
24 ture language being proposed, but the specific impact
25 cannot be determined before the fact.'

26 STATEMENT OF FACT

27 This amendment completely replaces the original
28 bill with a redrafted version that includes portions
29 of other bills. The amendment includes a provision
30 clarifying the right of local governing bodies to de-
31 termine the disposition of funds forfeited by drug
32 dealers and which are awarded to a municipality or
33 county in compensation for law enforcement assistance
34 provided by the municipality or county in the under-

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1 lying arrests. The amendment also includes a provi-
2 sion to clarify the procedure by which the State may
3 gain clear title to vehicles forfeited by drug deal-
4 ers under this bill.

5 The amendment also makes changes in the original
6 provisions of the bill. It restricts the confisca-
7 tion of real estate used for drug dealing purposes to
8 property used for crimes involving drugs other than
9 marijuana. This will protect the rural landowner who
10 has no knowledge of the use of his land to cultivate
11 or smuggle marijuana. The amendment provides protec-
12 tion to the spouse and minor children of a person who
13 is convicted for drug trafficking out of the family's
14 primary residence. Once such a person shows that he
15 is a spouse or a minor child of the offender, the
16 property may not be confiscated unless the State can
17 prove that the spouse or minor child had knowledge of
18 or consented to the use of the residence for illegal
19 purposes. The amendment also retains the present
20 record-keeping requirements regarding forfeited prop-
21 erty that appear in current law.

22

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Filed by Rep. Paradis of Augusta
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