

# MAINE STATE LEGISLATURE

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(Governor's Bill)  
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1415

H.P. 1052 House of Representatives, May 4, 1987  
Reference to the Committee on Judiciary suggested and  
ordered printed.

EDWIN H. PERT, Clerk  
Presented by Representative PARADIS of Old Town.  
Cosponsored by Senator THERIAULT of Aroostook,  
Representative SALSBURY of Bar Harbor, and President PRAY of  
Penobscot.

STATE OF MAINE

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

AN ACT to Fight Illegal Drug Use.

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

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c. 679, is repealed.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        1. Scheduled drugs. All scheduled drugs which  
2 have been manufactured, made, created, grown, culti-  
3 vated, sold, bartered, traded, furnished for consid-  
4 eration, furnished, distributed, dispensed, possessed  
5 or otherwise acquired in violation of any law of this  
6 State, any other state or of the United States;

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

14        3. Other property. All property which is used  
15 or intended for use as a container for property de-  
16 scribed in subsection 1 or 2;

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

23        A. No conveyance used by any person as a common  
24 carrier in the transaction of business as a com-  
25 mon carrier may be forfeited under the provisions  
26 of this section unless it appears that the owner  
27 or other person in charge of the conveyance was a  
28 consenting party or privy to that violation of  
29 law; and

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

39        5. Records. All books, records and research,  
40 including formulas, microfilm, tapes and data, which  
41 are used or intended for use in violation of Title  
42 17-A, chapter 45;

1           6. Money instruments. All money, negotiable in-  
2 struments, securities or other things of value fur-  
3 nished or intended to be furnished by any person in  
4 exchange for a scheduled drug in violation of Title  
5 17-A, chapter 45; all proceeds traceable to such an  
6 exchange and all money, negotiable instruments and  
7 securities used or intended to be used to facilitate  
8 any violation of Title 17-A, chapter 45; except that  
9 no property may be forfeited under this subsection,  
10 to the extent of the interest of an owner, by reason  
11 of any act or omission established by that owner to  
12 have been committed or omitted without the knowledge  
13 or consent of that owner;

14           7. Real property. All real property, including  
15 any right, title and interest in the whole of any lot  
16 or tract of land and any appurtenances or improve-  
17 ments, which is used or intended to be used, in any  
18 manner or part, to commit or to facilitate the com-  
19 mission of a violation of Title 17-A, chapter 45,  
20 which is a Class A, B or C crime; except that no  
21 property may be forfeited under this subsection, to  
22 the extent of an interest of an owner, by reason of  
23 an act or omission established by that owner to have  
24 been committed or omitted without the knowledge or  
25 consent of that owner; and

26           8. Jurisdiction. Property subject to forfeiture  
27 under this section shall be declared forfeit by any  
28 court having jurisdiction over the property or having  
29 final jurisdiction over any related criminal proceed-  
30 ings or by the Superior Court for Kennebec County.

31 §5822. Procedure

32           1. Filing of petition. Filing of a petition  
33 shall be according to this section.

34           A. A district attorney or the Attorney General  
35 may petition the Superior Court in the name of  
36 the State in the nature of a proceeding in rem to  
37 order forfeiture of property subject to forfei-  
38 ture under section 5821, except that to the ex-  
39 tent that such a petition seeks the forfeiture of  
40 property described in section 5821, subsection 7,  
41 the petition shall be filed only with the written  
42 approval of the Attorney General.

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

8 2. Venue. The petition shall be filed in a  
9 court having jurisdiction under section 5821, subsec-  
10 tion 8.

11 3. Type of action. The proceeding shall be  
12 deemed a civil action in which the State shall have  
13 the burden of proving all material facts by a prepon-  
14 derance of the evidence and the owner of the property  
15 or other person claiming under the property shall  
16 have the burden as to all exceptions set forth in  
17 section 5821.

18 4. Hearings. At a hearing, other than default  
19 proceedings, the court shall hear evidence, make  
20 findings of fact, enter conclusions of law and file a  
21 final order from which the parties have the right of  
22 appeal. The final order shall provide for the dispo-  
23 sition of the property to the General Fund, less the  
24 reasonable expenses of the forfeiture proceedings,  
25 seizure, storage, maintenance of custody, advertising  
26 and notice, except to the extent that the court finds  
27 it appropriate and with the written consent of the  
28 Attorney General, the court may order forfeiture of  
29 as much of the property as is appropriate to a munic-  
30 ipality, county or state agency which has made a sub-  
31 stantial contribution to the investigation of a re-  
32 lated criminal case, subject to the requirements of  
33 section 5823. The court may also order the property  
34 sold at public auction and the proceeds of the sale,  
35 less the reasonable expenses of the forfeiture pro-  
36 ceedings, seizure, storage, maintenance of custody,  
37 advertising and notice to pay any bona fide mortgage  
38 or security interest on the mortgage, disposed of in  
39 accordance with other property forfeited under this  
40 subsection.

41 5. Default proceedings. Default proceedings  
42 shall be held in the same manner as default proceed-  
43 ings in other civil actions, except that service of

1 motions and affidavits related to default proceedings  
2 need not be served upon any person who has not an-  
3 swered or otherwise defended in the action.

4 6. Preliminary process. Any Justice of the Su-  
5 preme Judicial Court or the Superior Court, Judge of  
6 the District Court or Judge of the Administrative  
7 Court or Complaint Justice may issue, at the request  
8 of the attorney for the State, ex parte, any prelimi-  
9 nary order or process as is necessary to seize or se-  
10 ecure the property for which forfeiture is or will be  
11 sought and to provide for its custody. That order  
12 may include an order to a financial institution or to  
13 any fiduciary or bailee to require the entity to im-  
14 pound any property in its possession or control and  
15 not to release it except upon further order of the  
16 court. Process for seizure of the property shall is-  
17 sue only upon a showing of probable cause that the  
18 property is subject to forfeiture under section 5821.  
19 The application for process and the issuance, execu-  
20 tion and return of process shall be subject to appli-  
21 cable state law. Any property subject to forfeiture  
22 under this section may be seized upon process, except  
23 that seizure without the process may be made when:

24 A. The seizure is incident to an arrest with  
25 probable cause, a search under a valid search  
26 warrant or an inspection under a valid adminis-  
27 trative inspection warrant;

28 B. The property subject to seizure has been the  
29 subject of a prior judgment in favor of the State  
30 in a forfeiture proceeding under this section or  
31 any other provision of the laws of this State,  
32 any other state or the United States;

33 C. There is probable cause to believe that the  
34 property has been directly or indirectly danger-  
35 ous to health or safety; or

36 D. There is probable cause to believe that the  
37 property has been used or is intended to be used  
38 in violation of any criminal law of this State,  
39 any other state or the United States.

40 7. Rules. After January 1, 1988, the prosecu-  
41 tion of proceedings under this chapter shall be gov-

1 erned by rules adopted or amended by the Attorney  
2 General, pursuant to the Maine Administrative Proce-  
3 dure Act, Title 5, chapter 375. These rules shall  
4 provide standards for prosecution, settlement, ap-  
5 proval of settlement and equitable transfer of for-  
6 feited property.

7 §5823. Equitable transfer of forfeited assets

8 In the case of any asset decreed forfeit under  
9 this chapter or under Title 25, to any entity other  
10 than the General Fund, transfer of title to the asset  
11 shall not occur until the transfer is approved by:

12 1. State; agency or department. In the case of  
13 an agency or department of the State, the Governor;

14 2. County; agency or department. In the case of  
15 an agency or department of a county, a majority of  
16 the commissioners of the county; and

17 3. Municipality; agency or department. In the  
18 case of an agency or department of a municipality,  
19 the elected governing body of the municipality.

20 Sec. 3. 22 MRSA §2387, as amended by PL 1985, c.  
21 737, Pt. B, §19, is repealed.

22 STATEMENT OF FACT

23 The purpose of this bill is to bring Maine for-  
24 feiture laws into substantial conformity with the  
25 laws regarding federal civil forfeitures, United  
26 States Code, Title 21, Section 881. The major  
27 changes from current state law are:

28 1. The inclusion of real estate among property  
29 to be forfeited; and

30 2. The limiting of civil discovery so as to ex-  
31 pedite hearings.

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