

MAINE STATE LEGISLATURE

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(New Draft of H.P. 817, L.D. 1091)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1775

H.P. 1297 House of Representatives, June 9, 1987
Reported by Representative BEGLEY from the Committee on
Judiciary and printed under Joint Rule 2.

EDWIN H. PERT, Clerk

Original bill sponsored by Representative SEAVEY of
Kennebunkport. Cosponsored by Representative MARSANO of
Belfast, Senators GAUVREAU of Androscoggin and BRANNIGAN of
Cumberland.

STATE OF MAINE

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

1 AN ACT to Prevent Criminals from Profiting as
2 an Indirect Result of Their Crime.
3

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

6 17-A MRSA §1330-A is enacted to read:

7 §1330-A. Distribution of money received as result of
8 commission of crime

9 1. Definition. As used in this section, unless
10 the context otherwise indicates, "victim" means a hu-
11 man being who suffers personal injury, death or eco-
12 nomic loss as a result of a crime or as a result of
13 the good faith effort of any person to prevent a
14 crime.

1 2. Money to be paid to Attorney General; escrow
2 account. Every person, firm, corporation, partner-
3 ship, association or other legal entity contracting
4 with any person, or the representative or assignee of
5 any person, accused or convicted of a crime in this
6 State, with respect to the reenactment of that crime,
7 by way of a movie, book, magazine article, tape re-
8 recording, phonograph record, radio or television pre-
9 sentation, live entertainment of any kind or from the
10 expression of the accused or convicted person's
11 thoughts, feelings, opinions or emotions regarding
12 that crime, shall submit a copy of that contract to
13 the Department of the Attorney General and pay over
14 to the department any money which, by the terms of
15 that contract, would otherwise be owing to the person
16 accused or convicted of the crime or his representa-
17 tives. The Attorney General shall deposit that money
18 in an escrow account for the benefit of and payable
19 to any victim or the legal representative of any vic-
20 tim of crimes committed by:

21 A. The convicted person; or

22 B. The accused person, but only if the accused
23 person is eventually convicted of the crime.

24 No payment may be made to a victim unless, within 5
25 years of the date of the establishment of the escrow
26 account, or within 5 years from the date of release
27 of the convicted person from imprisonment, whichever
28 is later, the victim or his representative brings a
29 civil action in a court of competent jurisdiction and
30 recovers a money judgment against the convicted or
31 accused person or his representative.

32 Prior to paying any money to the Department of the
33 Attorney General under this subsection, any person,
34 firm, corporation, partnership, association or other
35 legal entity contracting as described in this subsec-
36 tion may submit a copy of the contract to the Attor-
37 ney General for a determination of whether the con-
38 tract is covered by this subsection.

39 3. Notice. The Attorney General, at least once
40 every 6 months for 5 years from the date he receives
41 money pursuant to subsection 2, or for 5 years from
42 the date of release of the convicted person from im-

1 prisonment, whichever is later, shall publish a legal
2 notice in newspapers of general circulation in the
3 county in which the crime was committed and in coun-
4 ties contiguous to that county advising any victim
5 that escrow money is available to satisfy money judg-
6 ments pursuant to this section. The Attorney General
7 may provide for additional notice as he determines
8 necessary. The costs of publishing and providing no-
9 tice under this subsection shall be paid out of the
10 escrow money.

11 4. Acquittal; return of money. Upon dismissal
12 of charges or acquittal of any accused person, the
13 Attorney General shall immediately pay over to that
14 person the money in the escrow account established on
15 behalf of that person.

16 5. Limitation. Upon a showing by any convicted
17 person that 5 years have elapsed from the establish-
18 ment of the escrow account or from the date of the
19 convicted person's release from imprisonment, which-
20 ever is later, and that no actions are pending
21 against that person pursuant to this section, the At-
22 torney General shall immediately pay over any money
23 in the escrow account to that person or his legal
24 representative.

25 6. Insanity. For purposes of this section, a
26 person found not guilty pursuant to section 39 shall
27 be deemed to be a convicted person.

28 7. Competent to stand trial; interpleader.
29 When, pursuant to Title 15, section 101, it is found
30 that a person accused of a crime is not competent to
31 stand trial, the Attorney General shall petition the
32 court to determine disposition of the escrow account.

33 8. Period not to run until account established.
34 Notwithstanding any other provision of law, the first
35 5-year period provided for in subsection 2 shall not
36 begin to run until an escrow account has been estab-
37 lished.

38 9. Payment to convicted or accused person. Not-
39 withstanding this section, the Attorney General shall
40 make payments from an escrow account to any person
41 accused or convicted of a crime upon the order of a

1 court of competent jurisdiction, after a showing by
2 that person that the money shall be used for the ex-
3 clusive purpose of retaining legal representation, at
4 any stage of the criminal proceedings against that
5 person, including the appeals process. The Attorney
6 General, in his discretion and after notice to the
7 victims of the crime, may make payments from the es-
8 crow account to a representative of any person ac-
9 cused or convicted of a crime for the necessary ex-
10 penses of the production of the money paid into the
11 escrow account, provided that the Attorney General
12 finds that those payments would be in the best inter-
13 ests of the victims of the crime and would not be
14 contrary to public policy. The total of all payments
15 made from the escrow account under this subsection
16 shall not exceed 1/5 of the total money paid into the
17 escrow account and available to satisfy civil judg-
18 ments obtained by the victims of the crime.

19 10. Actions taken to defeat purpose of section.
20 Any action taken by any person accused or convicted
21 of a crime, whether by way of execution of a power of
22 attorney, creation of corporate entities or other-
23 wise, to defeat the purpose of this section shall be
24 void as against the public policy of this State.

25 11. Priority of payments. Notwithstanding any
26 other provision of law, claims on money in the escrow
27 account have the following priorities:

28 A. Payments ordered by the Attorney General or a
29 court pursuant to subsection 9;

30 B. Civil judgments of the victims of the crime;

31 C. Other judgment creditors or persons claiming
32 money through the person accused or convicted of
33 a crime who present lawful claims, including
34 State Government or local government agencies;
35 and

36 D. The person accused or convicted of the crime.

37 No payment may be made out of the escrow account when
38 that payment would be in derogation of claims, either
39 presented or pending, entitled to a higher priority
40 under this subsection. The Attorney General may

1 bring an action for a declaratory judgment when he
2 cannot determine the priority of claims and the prop-
3 er disposition of the escrow account.

4 Money in the escrow account shall not be subject to
5 execution, levy, attachment or lien, except in ac-
6 cordance with the priority of claims established in
7 this subsection.

8 12. Control over money. The Attorney General
9 shall have exclusive jurisdiction and control, as es-
10 crow agent, over any money subject to this section.
11 No distribution of money in the escrow account may be
12 made except by determination and order of the Attor-
13 ney General, pursuant to this section. Any party ag-
14 grieved by a final determination and order of the At-
15 torney General, under this section, may seek judicial
16 review of that decision.

17 13. Penalty. Any person, firm, corporation,
18 partnership, association or other legal entity who
19 fails to pay over money as required by subsection 2,
20 and any person who takes an action described in sub-
21 section 10, commits a civil violation for which a
22 forfeiture not to exceed \$1,000 may be adjudged.

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FISCAL NOTE

24 Enactment of this new draft will result in an in-
25 determinate amount of money being paid into a special
26 account in the Department of the Attorney General for
27 the purpose of reimbursing victims of crime. Prelim-
28 inary estimates indicate that, in all likelihood,
29 substantial sums of money will not be involved.

30 The Department of the Attorney General will be
31 able to absorb the cost of administering this legis-
32 lation within existing resources.

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STATEMENT OF FACT

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The purposes of this new draft are:

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1. To add a definition of "victim" so that only a human being, and not an organization, who has been a crime victim may receive payments from the escrow account established under the new draft.

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2. To permit the Attorney General to pay for notices of the existence of an escrow account out of the escrow money.

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3. To correct a misspelling and to renumber subsections.

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4. To permit the person contracting with the accused or convicted person to seek the Attorney General's determination as to whether that contract is covered by this law.

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5. To add a penalty provision.

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