

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1114

H.P. 802

House of Representatives, April 11, 1989

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

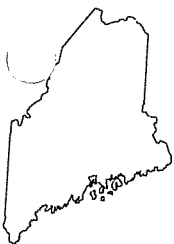
Presented by Representative STEVENS of Bangor.

Cosponsored by Representative CONLEY of Portland and Senator HOBBS of York.

STATE OF MAINE

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

An Act to Clarify the Exempt Status of a Bona Fide Lienholder under
the Forfeiture of Assets Act.



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

3 **Sec. 1. 15 MRSA §5821, sub-§6, ¶A, as enacted by PL 1987, c.**
420, §2, is amended to read:

5
6 A. No property may be forfeited under this subsection, to
7 the extent of the interest of an owner, by reason of any act
8 or omission established by that owner to have been committed
9 or omitted without the knowledge or consent of that owner;
and

11 **Sec. 2. 15 MRSA §5821, sub-§7, ¶A, as enacted by PL 1987, c.**
13 420, §2, is amended to read:

15 A. No property may be forfeited under this subsection, to
16 the extent of an interest of an owner, by reason of an act
17 or omission established by that owner to have been committed
18 or omitted without the knowledge or consent of that owner.
19 When an owner of property which is that person's primary
20 residence proves by a preponderance of the evidence that he
21 is the spouse or minor child of the coowner of the primary
22 residence who has used or intended to use the residence, in
23 any manner or part, to commit or facilitate the commission
24 of a violation of Title 17-A, section 1103 or 1105, the
25 State shall bear the burden of proving knowledge or consent
26 of the spouse or minor child by a preponderance of the
27 evidence.; and

29 **Sec. 3. 15 MRSA §5821, sub-§8 is enacted to read:**

31 8. Bona fide lienholders. A forfeiture, under this
32 section, of property encumbered by a bona fide security interest,
33 is subject to the interest of the secured party if the party
34 neither had knowledge of nor consented to the act or omission
35 upon which the right of forfeiture is based.

37

39

STATEMENT OF FACT

41 This bill makes it clear that the interest of a bona fide
42 lienholder, such as a financial institution which, without
43 knowledge of the borrower's criminal activity, accepts as
44 collateral property which becomes subject to forfeiture, is not
45 extinguished or otherwise impaired when the property is
46 forfeited. The clarification will align the State's forfeiture
47 law with the Uniform Controlled Substances Act, Section 505 and
48 with the forfeiture provisions of the Federal Drug Abuse
49 Prevention and Control Act, 21 United States Code, Section 801 et
seq., as interpreted by case law.