

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 257

H.P. 172

House of Representatives, February 1, 1991

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 PARADIS of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Improve the Forfeiture Provisions of the Maine Drug Laws.



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

2
4 **Sec. 1. 15 MRSA §5821, sub-§7**, as amended by PL 1989, c. 302, §2, is further amended to read:

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

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

28 **Sec. 2. 15 MRSA §5826** is enacted to read:

30 §5826. Forfeiture under federal law

32 1. Acceptance. An agency or department of the State, a
34 county or a municipality may not accept any property forfeited
under 21 United States Code, Section 881, unless the transfer is
approved as required for property subject to forfeiture under
36 section 5821.

38 2. Records. The agency or department accepting property
40 forfeited under 21 United States Code, Section 881 shall comply
with the record-keeping requirements described in section 5825
42 that are applicable to property subject to forfeiture under
section 5821.

44 **STATEMENT OF FACT**

46 The bill makes the state law parallel to the federal law
48 concerning forfeiture of real property used in drug violations.
Current state law exempts real property used in marijuana
50 violations, while the same land is subject to forfeiture under
federal law. Current law also places a heavy evidentiary burden
52 on the State with regard to coowners of real property.

2 This bill removes the exemption for real property implicated
4 in drug violations involving marijuana if the violation is a
6 Class A, B or C crime, thereby making the property subject to
8 forfeiture under state law. It also repeals the unreasonable
evidentiary burden on state prosecutors, which does not exist in
federal law.

10 The bill also requires that state or local agencies or
12 departments receiving property forfeited under the federal system
comply with the approval and record-keeping requirements that
apply to property forfeited under state law.

14 These changes give local officials jurisdiction over
16 forfeiture proceedings that are occurring in the federal system.
When property is forfeited through the federal system, the checks
and protections by the state law are avoided.