

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

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No. 1812

S.P. 684

Received by the Secretary, May 6, 1991

Reference to the Committee on Transportation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

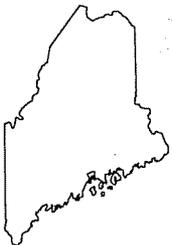
JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator TWITCHELL of Oxford

STATE OF MAINE

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

An Act to Discourage Motor Vehicle Theft.



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

4 29 MRSA c. 21, sub-c. VI is enacted to read:

6 SUBCHAPTER VI

8 STOLEN AND ALTERED PROPERTY

10 §2471. Short title

12 This subchapter is known and may be cited as the "Motor Vehicle Chop Shop, Stolen and Altered Property Act."

14 §2472. Definitions

16 As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

18 1. Chop shop. "Chop shop" means any building, lot or other premises where one or more persons knowingly alters, destroys, disassembles, dismantles, reassembles or knowingly stores any motor vehicle or motor vehicle part known to be illegally obtained by theft, fraud or conspiracy to defraud, in order to either:

26 A. Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate or remove the identity, including the vehicle identification number of any motor vehicle or motor vehicle part, in order to misrepresent the identity of a motor vehicle or motor vehicle part, or to prevent the identification of that motor vehicle or motor vehicle part;
32 or

34 B. Sell or dispose of that motor vehicle or motor vehicle part.

36 2. Motor vehicle. "Motor vehicle" includes every device in, upon, or by which a motor vehicle is self-propelled or which may be connected to and towed by a self-propelled device, and also includes any other land-based devices that are self-propelled but which are not designed for use upon a highway, including, but not limited to, farm machinery and construction equipment.

44 3. Person. "Person" includes a natural person, company, corporation, unincorporated association, partnership, professional corporation or any other legal entity.

48 4. Unidentifiable. "Unidentifiable" means that the uniqueness of a motor vehicle or motor vehicle part can not be established by either expert law enforcement investigative personnel specially trained and experienced in motor vehicle
50
52

2 theft investigative procedures and motor vehicle identification
4 examination techniques, or by expert employees of not-for-profit
6 motor vehicle theft prevention agencies specially trained and
8 experienced in motor vehicle theft investigation procedures and
10 motor vehicle identification examination techniques.

12 5. Vehicle identification number. "Vehicle identification
14 number" means a number or numbers, a letter or letters, a
16 character or characters, a datum or data, a derivative or
18 derivatives, or a combination or combinations of a number or
20 numbers, a letter or letters, a character or characters, a datum
22 or data, a derivative or derivatives, used by the manufacturer or
24 the Secretary of State for the purpose of uniquely identifying a
26 motor vehicle or motor vehicle part. The term includes, but is
28 not limited to, a number or numbers, a letter or letters, a
30 character or characters, a datum or data, a derivative or
32 derivatives, or a combination or combinations of a number or
34 numbers, a letter or letters, a character or characters, a datum
36 or data, a derivative or derivatives.

38 §2473. Operating; transporting; selling or purchasing motor
40 vehicles from chop shops

42 1. Violation. A person violates this subchapter if that
44 person:

46 A. Knowingly owns, operates or conducts a chop shop;
48 transports any motor vehicle or motor vehicle part to or
50 from a location knowing it to be a chop shop; or sells,
52 transfers, purchases or receives any motor vehicle or motor
vehicle part either to or from a location knowing it to be a
chop shop;

B. Knowingly alters, counterfeits, defaces, destroys,
disguises, falsifies, forges, obliterates or knowingly
removes a vehicle identification number, with the intent to
misrepresent the identity or prevent the identification of a
motor vehicle or motor vehicle part; or

C. Knowingly buys, disposes, sells, transfers or possesses
a motor vehicle or motor vehicle part, the vehicle
identification number of which has been altered,
counterfeited, defaced, destroyed, disguised, falsified,
forged, obliterated or removed.

2. Penalties. A person who commits any act described in
subsection 1 is guilty of a felony and the following penalties
apply.

A. Violation of subsection 1, paragraph A is punishable by
imprisonment for not more than 10 years or by a fine of not
more than \$100,000, or both.

2 B. Violation of subsection 1, paragraphs B and C is
4 punishable by imprisonment for not more than 10 years or by
a fine of not more than \$10,000, or both.

6 3. Possession of altered and stolen property; exemption.
8 The following persons are not in violation of this subchapter if
10 they have altered or stolen motor vehicle parts in their
12 possession.

14 A. The provisions of subsection 1, paragraph C do not
16 apply to a motor vehicle scrap processor who, in the normal
18 legal course of business and in good faith, processes a
20 motor vehicle or motor vehicle part by crushing, compacting
22 or other similar methods, provided that any vehicle
24 identification number is not removed from the motor vehicle
26 or motor vehicle part prior to or during any such processing.

28 B. The provisions of subsection 1, paragraph C do not apply
30 to any owner or authorized possessor of a motor vehicle by
32 law enforcement authorities after having been stolen or
34 where the condition of the vehicle identification number of
36 the motor vehicle or motor vehicle part is known to or has
38 been reported to law enforcement authorities. It is
40 presumed that law enforcement authorities have knowledge of
42 all vehicle identification numbers on a motor vehicle or
44 motor vehicle part that are altered, counterfeited, defaced,
46 disguised, falsified, forged, obliterated or removed, when
48 law enforcement authorities deliver or return the motor
50 vehicle or motor vehicle part to its owner or authorized
52 possessor after it has been recovered by law enforcement
authorities after having been reported stolen.

34 §2474. Other offenses

36 1. Attempt. A person commits an attempt when, with intent
38 to commit a violation proscribed by section 2473, the person does
40 any act that constitutes a substantial step toward the commission
42 of the violation proscribed by section 2473 and is guilty of a
44 felony, punishable by imprisonment for not more than 10 years or
46 by a fine of not more than \$10,000, or both.

48 2. Conspiracy. A person commits conspiracy when, with an
50 intent that a violation proscribed by section 2473 is committed,
52 the person agrees with another to the commission of the violation
proscribed by section 2473 and is guilty of a felony, punishable
by imprisonment for not more than 10 years or by a fine of not
more than \$10,000, or both. A person may not be convicted of
conspiracy under this subsection unless an act in furtherance of
such agreement is alleged and proved to have been committed by
that person or a coconspirator.

2 3. Solicitation A person commits solicitation when, with
4 intent that a violation proscribed by section 2473 is committed,
6 the person commands, encourages or requests another to commit the
 violation proscribed by section 2473 and is guilty of a felony
 punishable by imprisonment for not more than 10 years or by a
 fine of not more than \$10,000, or both.

8 4. Aiding and abetting. A person commits aiding and
10 abetting when, either before or during the commission of a
12 violation proscribed by section 2473, with the intent to promote
14 or facilitate such commission, the person aids, abets, agrees or
 attempts to aid another in the planning or commission of the
 violation proscribed in section 2473, and is guilty of a felony,
 punishable by imprisonment for not more than 10 years or by a
 fine or not more than \$10,000, or both.

16 5. Accessory after the fact. A person is an accessory
18 after the fact who maintains, assists, or gives any other aid to
20 an offender while knowing or having reasonable grounds to believe
22 the offender has committed a violation under section 2473 and is
 guilty of a felony, punishable by imprisonment for not more than
 10 years or by a fine or not more than \$10,000, or both.

24 6. Exempt from prosecution. Prosecution may not be
26 brought, and a person may not be convicted, of any violation
28 under section 2473, where acts of the person, otherwise
30 constituting a violation were done in good faith in order to
 comply with the laws or regulations of any state or territory of
 the United States, or of the Federal Government.

32 7. Subsequent convictions; sentence reduction. The
34 sentence imposed upon a person convicted of any violation of this
36 section may not be reduced to less than one year imprisonment for
38 a 2nd conviction of any violation or less than 5 years for a 3rd
40 or subsequent conviction of any violation of the section, and no
42 sentence imposed upon a person for a 2nd or subsequent conviction
 of any violation of this section may be suspended, or reduced
 until that person has served the minimum period of imprisonment
 provided for in this subsection. A person convicted of a 2nd or
 subsequent violation of this section is not eligible for
 probation, parole, furlough or work release.

44 A. In addition to any other punishment a person who
46 violates this section is ordered to make restitution to the
48 lawful owner or owners of the stolen motor vehicle or
50 vehicles or the stolen motor vehicle part or parts, or to
 the owner's insurer to the extent that the owner was
 compensated by the insurer, and to any other person for any
 financial loss sustained as a result of a violation of this
 section.

2 Financial loss, includes, but is not limited to, loss of
4 earnings, out-of-pocket and other expenses, repair and
6 replacement of costs and claims payments. "Lawful owner"
8 includes an innocent bona fide purchaser for value of a
stolen motor vehicle or stolen motor vehicle part who does
not know that the motor vehicle or motor vehicle part is
stolen or an insurer to the extent that the insurer has
compensated a bona fide purchaser for value.

10 B. The court shall determine the extent and method of
12 restitution. In an extraordinary case, the court may
14 determine that the best interests of the victim and justice
16 would not be served by ordering restitution. In any such
case, the court shall make and enter specific written
findings on the record concerning the extraordinary
circumstances presented that militated against restitution.

18 §2475. Seizure of tools, implements or instruments

20 Any tool, implement or instrument, including, but not
22 limited to, a motor vehicle or motor vehicle part, used or
24 possessed in connection with any violation of section 2473 may be
seized by a member of a law enforcement agency upon process
issued by any court of competent jurisdiction.

26 1. Seizure of property. Seizure of the property described
28 in this section may be made by a member of a law enforcement
agency without process if:

30 A. The seizure is in accordance with any applicable law or
32 regulation;

34 B. The seizure is incident to inspection under an
administrative inspection warrant;

36 C. The seizure is incident to search made under a search
38 warrant;

40 D. The seizure is incident to a lawful arrest;

42 E. The seizure is made pursuant to a valid consent to
search;

44 F. The property seized was the subject of a prior judgment
46 in favor of the State in a criminal proceeding, or in an
injunction or forfeiture proceeding under section 2477; or

48 G. There are reasonable grounds to believe that the
50 property is directly or indirectly dangerous to health or
safety.

2 2. Seizing agency. When property is seized under this
3 section, the seizing agency may:

4 A. Place the property under seal; or

6 B. Remove the property to a place selected and designated
7 by the seizing agency.

8
9 §2476. Forfeiture

10 1. Forfeiture of tools, implements or instruments. The
11 following are subject to forfeiture if obtained by theft, fraud
12 or conspiracy to defraud if the rightful owner is known or can be
13 identified and located:

16 A. A tool;

18 B. An implement; or

20 C. An instrument, including, but not limited to, any motor
21 vehicle or motor vehicle part, whether owned or unowned by
22 the person from whose possession or control it was seized,
23 which is used or possessed either in violation of section
24 2473 or to promote or facilitate a violation of section 2473.

26 2. Forfeiture of motor vehicle. A motor vehicle or motor
27 vehicle part used by any person as a common carrier is subject to
28 forfeiture under this section when the owner or other person in
29 charge of the motor vehicle or motor vehicle part is a consenting
30 party to a violation of section 2473.

32 3. Exempt from forfeiture. A motor vehicle, motor vehicle
33 part, tool, implement or instrument is not subject to forfeiture
34 under this section if the owner proves the act or omission was
35 committed or omitted without the owner's knowledge or consent.

36 A. Seizing agencies will utilize their best efforts to
37 identify any seized motor vehicle or motor vehicle part to
38 determine ownership or the identity of any such person
39 having a right or interest in a seized motor vehicle or
40 motor vehicle part. In the agencies attempt to identify and
41 locate the owner, the seizing agency may search the stolen
42 motor vehicle files of the State Police to gather
43 information on motor vehicles similar to the seized motor
44 vehicle or consistent with the seized motor vehicle part.

46 B. When a motor vehicle or motor vehicle part has an
47 apparent value in excess of \$1,000:

50 (1) The seizing agency shall consult with an expert of
51 the type specified in section 2472, subsection 4; and

2 (2) The seizing agency shall also request searches of
4 the on-line and off-line files of the National Crime
6 Information Center and the National Automobile Theft
 Bureau when State Police files have been searched with
 negative results.

8 4. Security interest. A forfeiture of a motor vehicle,
10 motor vehicle part or other conveyance encumbered by a bona fide
12 security interest is subject to the interest of the secured party
 when the secured party neither had knowledge of nor consented to
 the act or omission forming the ground for the forfeiture.

14 5. Replevin. Property, described in subsection 1, seized
16 and held for forfeiture, is not subject to replevin and is
 subject only to the order and judgments of a court of competent
 jurisdiction hearing the forfeiture proceedings.

18 6. Action for forfeiture. A prosecutor in the county where
20 the seizure occurs may bring an action for forfeiture in a court
22 of competent jurisdiction. The forfeiture action must be brought
24 within 60 days from the date of seizure, except when the
26 prosecutor, in the sound exercise of discretion, determines that
 no forfeiture action should be brought because of the rights of
 property owners, lienholders or secured creditors, or because of
 exculpatory, exonerating or mitigating facts and circumstances.

28 The prosecutor shall give notice of the forfeiture proceeding by
30 mailing a copy of the complaint in the forfeiture proceeding to
32 each person whose right, title or interest is of record in the
34 office of the Secretary of State or any other department of the
 State, or any other state or territory of the United States, or
 of the Federal Government if such property is required to be
 registered.

36 Notice of the proceeding must be given to any such person who
38 appears, from the facts and circumstances, to have any right,
 title or interest in or to the property.

40 The owner of the property, or any person having, or claiming,
42 right, title, or interest in the property, may file within 60
44 days after the mailing of the notice a verified answer to the
 complaint and may appear at the hearing on the action for
 forfeiture.

46 The prosecutor shall show at a forfeiture hearing, by a
48 preponderance of the evidence, that the property was used in the
 commission of any violation of section 2473 or was used or
 possessed to facilitate such violation.

50 The owner of the property may show by a preponderance of the
52 evidence that the owner did not know, and did not have reason to
 know, that the property was used or possessed in the commission

2 of any violation or that any of the exceptions to forfeiture are
3 applicable.

4 Unless the prosecutor makes the showing required, the court shall
5 order the property released to the owner. When the prosecutor
6 has made a showing, the court may order that:

8 A. The property be destroyed by the seizing agency or any
9 other agency designated by the court;

10 B. The property be delivered and retained for use by the
11 seizing agency or any other agency designated by the court;
12 or

13 C. The property be sold at public sale.

14
15
16 7. Notice; file with sheriff. A copy of the forfeiture
17 order must be filed with the sheriff of the county in which the
18 forfeiture occurs and with each federal or state department with
19 which the property is required to be registered. The order, when
20 filed, constitutes authority for the issuance to the agency to
21 whom the property is delivered and retained for use or to any
22 purchaser of the property of a title certificate, registration
23 certificate or other special certificate required by law.

24
25
26 8. Sale of property. Proceeds from the sale at public
27 auction, after payment of all reasonable charges and expenses
28 incurred in storing and selling the property, by the agency
29 designated by the court to conduct the sale are paid to the
30 general fund of the county of seizure.

31
32 9. Correction of identification number. A motor vehicle,
33 either seized under section 2475 or forfeited under this section,
34 may not be released by the seizing agency or used or sold by an
35 agency designated by the county unless any altered,
36 counterfeited, defaced, destroyed, disguised, falsified, forged,
37 obliterated or removed vehicle identification number is corrected
38 by the issuance and affixing of either an assigned or replacement
39 vehicle identification number plate as required under any law or
40 regulation of this State.

41
42 10. Destruction of vehicle. A motor vehicle part having
43 any altered, counterfeited, defaced, destroyed, disguised,
44 falsified, forged, obliterated or removed vehicle identification
45 number may not be disposed of upon forfeiture except by
46 destruction of the motor vehicle parts, except that this
47 provision does not apply to any such motor vehicle part that is
48 assembled with and constitutes part of a motor vehicle.

49
50 11. Unidentifiable motor vehicle or motor vehicle part. A
51 motor vehicle or motor vehicle part may not be forfeited under
52 this section solely on the basis that it is unidentifiable.

2 Instead of forfeiture, any seized motor vehicle or motor vehicle
4 part that is unidentifiable must be the subject of a written
6 report sent by the seizing agency to the department of motor
8 vehicles. The report must include a description of the motor
vehicle or motor vehicle part, its color, if any, the date, time
and place of its seizure, the name of the person from whose
possession or control it was seized, the grounds for its seizure
and the location where the motor vehicle or motor vehicle part is
held or stored.

10
12 When a seized unidentifiable motor vehicle or motor vehicle part
14 is held for 60 days or more after notice has been given to the
16 department specified in subsection 7, the seizing agency, or its
18 agent, shall sell the motor vehicle or motor vehicle part at a
public sale to the highest bidder. Notice of the time and place
of sale must be posted in a conspicuous place for at least 30
days prior to the sale on the premises where the motor vehicle or
motor vehicle part is stored.

20 When a seized unidentifiable motor vehicle or motor vehicle part
22 has an apparent value of \$1,000 or less, the seizing agency may
24 authorized the disposal of the motor vehicle or motor vehicle
part, except that the disposition may not be made less than 60
days after the date of the seizure.

26 The proceeds of the public sale of an unidentifiable motor
28 vehicle or motor vehicle part is deposited in the general fund of
the county of seizure after deduction of any reasonable and
necessary towing and storage charges.

30
32 12. Towing and storing motor vehicles. Seizing agencies
34 must arrange for the towing and storing of motor vehicles and
motor vehicle parts in the most economical manner. The owner of
a motor vehicle or a motor vehicle part is not required to pay
more than the minimum reasonable costs of towing and storage.

36
38 13. Vehicle held subject to court order. A seized motor
40 vehicle or motor vehicle part that is neither forfeited nor
42 unidentifiable is subject to the order of the court in which the
44 criminal in action is pending or, if a request for its release
46 from that custody is made, until the prosecutor has notified the
defendant or the defendant's attorney of the request and both the
prosecution and defense are afforded a reasonable opportunity for
an examination of the property to determine its true value and to
produce or reproduce, by photographs or other identifying
techniques, legally sufficient evidence for introduction at trial
or other criminal proceedings. Upon expiration of a reasonable
time for the completion of the examination, which may not exceed
14 days from the date of service upon the defense of the notice
50 of request for return of property as provided in this subsection,
the property is released to the person making such request after

2 satisfactory proof of that person's entitlement to the
3 possession. Notwithstanding the provisions of a request for the
4 release of the property, upon application by either party with
5 notice to the other, the court may order retention of the
6 property if the court determines that retention is necessary.

7 14. Report. When a seized vehicle is forfeited, restored
8 to its owner or disposed of as unidentifiable, the seizing agency
9 shall retain a report of the transaction for a period of at least
10 one year from the date of the transaction.

11 15. Certificate of title. When an applicant for a
12 certificate of title or salvage certificate presents to the
13 Secretary of State proof that the applicant purchased or acquired
14 a motor vehicle at a public sale conducted pursuant to this
15 section and that fact is attested to by the seizing agency, the
16 Secretary of State shall issue a certificate of title or salvage
17 certificate for the motor vehicle upon receipt of the statutory
18 fee, properly executed application for a certificate of title, or
19 any other certificate of ownership and the affidavit of the
20 seizing agency that a number assigned by the State was applied
21 for and affixed to the motor vehicle prior to the time that the
22 motor vehicle was released by the seizing agency to the purchaser.

23 §2477. Institution of civil proceedings

24 1. Persons authorized to institute proceedings. The
25 Attorney General, prosecutor or an aggrieved person may institute
26 civil proceedings against a person in a court of competent
27 jurisdiction seeking relief from conduct constituting a violation
28 of, or any provision of, this subchapter. If the plaintiff in
29 such a proceeding proves the alleged violation, or its threat, by
30 a preponderance of the evidence, any court of competent
31 jurisdiction, after due provision for the rights of innocent
32 persons, shall grant relief by entering any appropriate order of
33 judgment, including, but not limited to:

34 A. Ordering a defendant to be divested of any interest in
35 any property;

36 B. Imposing reasonable restrictions on the future
37 activities or investments for a defendant, including
38 prohibiting a defendant from engaging in the same type of
39 endeavor as the defendant was engaged in previously;

40 C. Ordering the suspension or revocation of a license,
41 permit or prior approval granted by a public agency or any
42 other public authority; or

43 D. Ordering the surrender of the charter of a corporation
44 organized under the laws of the State or the revocation of a
45 certificate authorizing a foreign corporation to conduct
46

2 business in the State. Upon finding that the board of
3 directors or managerial agent, acting on behalf of the
4 corporation in conducting the affairs of the corporation,
5 has authorized or engaged in conduct made unlawful by this
6 subchapter and that, for the prevention of future criminal
7 conduct, the public interest requires that the charter of
8 the corporation be surrendered and the corporation dissolved
9 or the certificate revoked.

10 2. Injunctive relief. In a proceeding under this section,
11 injunctive relief is granted in conformity with the principles
12 that govern the granting of relief from injury or threatened
13 injury in other cases, but a showing of special or irreparable
14 injury may not be made. Pending final determination of a
15 proceeding under this section, a temporary restraining order or a
16 preliminary injunction may be issued upon a showing of immediate
17 danger of significant injury, including the possibility that any
18 judgment for money damages may be difficult to execute and, in a
19 proceeding initiated by an aggrieved person, upon the execution
20 of proper bond against injury for an injunction improvidently
21 granted.

22 3. Additional relief. A person injured, directly or
23 indirectly, by conduct constituting a violation under section
24 2473, in addition to any other relief, shall have a cause of
25 action for treble damages sustained by that person.

26 4. Judgment; decree. A final judgment or decree rendered
27 against the defendant in any civil or criminal proceeding estops
28 the defendant in any subsequent civil action or proceeding
29 brought by any person as to all matters in which the judgment or
30 decree is an estoppel between the parties to the civil or
31 criminal proceeding.

32 5. Period of commencement of action. Notwithstanding any
33 other provision of law providing a shorter period of limitations,
34 a civil action under this section may be commenced at any time
35 within 5 years after the conduct made unlawful under section 2473
36 terminates or the cause of action accrues or within any longer
37 statutory period that may be applicable. If any action is
38 brought by a prosecutor to punish, prevent or restrain an
39 activity made unlawful under section 2473, the running of the
40 period of limitations is suspended during the pendency of that
41 action and for 2 years following the termination of that action.

42 6. Service of process. Personal service of any process in
43 an action under this section may be made upon any person outside
44 the State if the person has engaged in any conduct constituting a
45 violation of section 2473 in this State. The person is
46 determined to have submitted to the jurisdiction of the courts of
47 this State for the purposes of this provision.

