

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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Legislative Document

No. 351

H.P. 273

House of Representatives, February 8, 1993

**An Act Related to Common Nuisances.**

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Reference to the Committee on Legal Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative COTE of Auburn.

Cosponsored by Representatives: CATHCART of Orono, HALE of Sanford, HOGLUND of Portland, JOSEPH of Waterville, MELENDY of Rockland, PARADIS of Augusta.

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

4 Sec. 1. 17 MRSA §2741, as amended by PL 1981, c. 279, §9, is  
5 further amended to read:

6 **§2741. Common nuisances; jurisdiction to abate**

7 All places used as houses of ill fame, or for the illegal  
8 sale or keeping of intoxicating liquors or ~~narcotic~~ scheduled  
9 drugs, or resorted to for lewdness or gambling; all houses, shops  
10 or places where intoxicating liquors are sold for tippling  
11 purposes, and all places of resort where intoxicating liquors  
12 are kept, sold, given away, drunk or dispensed in any manner not  
13 provided for by law are common nuisances. The Superior Court  
14 ~~shall have~~ has jurisdiction, upon information filed by the ~~county~~  
15 Attorney General or the district attorney or upon complaint filed  
16 by not less than 7 legal voters of ~~his~~ that county setting forth  
17 any of the facts contained herein in this section, to restrain,  
18 enjoin or abate the same, and an injunction for such purpose may  
19 be issued by ~~said~~ the court. Such an injunction shall forever  
20 ~~run~~ run against the building or other place or structure in  
21 which the nuisance is committed. No dismissal of such  
22 information or complaint shall may prevent action upon any  
23 information or complaint subsequently filed covering the same  
24 subject matter.

25  
26 For purposes of this subchapter, proof by a preponderance of  
27 evidence that an owner or occupant of a building or other place  
28 or structure, or any part thereof, has trafficked or furnished at  
29 the building, place or structure, or any part thereof, any  
30 scheduled drug as defined by Title 17-A, chapter 45 on 2 or more  
31 occasions within a 3-year period is sufficient to prove that the  
32 building, place or structure is a common nuisance.

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38 **STATEMENT OF FACT**

39 This bill is designed to update the common nuisance laws in  
40 order to provide the Attorney General and state prosecutors with  
41 a reasonable and less drastic alternative to the outright  
42 forfeiture of real estate that is habitually used to facilitate  
43 drug crimes. At present, the only practical remedy for  
44 prosecutors is complete forfeiture under the Maine Revised  
45 Statutes, Title 15, chapter 517. This bill provides a mechanism  
46 for prosecutors and courts to use injunctive authority to fashion  
47 less drastic but more flexible solutions depending on individual  
48 circumstances.

2 Under the existing language of the law, "narcotic drugs"  
4 pertain only to heroin and opium-based scheduled drugs as defined  
6 in Title 17-A, section 1101, subsection 6. By changing the  
8 language to "scheduled drugs," the nuisance law is expanded to  
10 cover not just opium-based drugs, but LSD, PCP, hashish, "crack"  
12 and other serious scheduled drugs as defined in Title 17-A,  
14 section 1102.

10 This bill also provides to the courts and the public a  
12 standard to measure the frequency of prohibited use in order to  
14 determine whether a building, place or structure constitutes a  
"habitual common nuisance" and thereby removes any ambiguity or  
uncertainty created by case law.