

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 485

H.P. 365

House of Representatives, February 9, 1995

An Act to Protect Maine Neighborhoods from Drug Houses.

Received by the Clerk of the House on February 7, 1995. Referred to the Committee on Criminal Justice and ordered printed pursuant to Joint Rule 14.

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

JOSEPH W. MAYO, Clerk

Presented by Representative BAILEY of Township 27.

Cosponsored by Representatives: BUNKER of Kossuth Township, HEINO of Boothbay, JACQUES of Waterville, MARSHALL of Eliot, O'NEAL of Limestone, PLOWMAN of Hampden, REED of Dexter, WHEELER of Bridgewater, Senator: MICHAUD of Penobscot.

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

4 **Sec. 1. 5 MRSA §200-H** is enacted to read:

6 **§200-H. Drug house closure**

8 The Attorney General, with the cooperation of county and
10 municipal law enforcement departments, shall develop a program to
12 use the procedures of Title 17, chapter 91, subchapter II to
14 close buildings used for the purchase, sale or use of scheduled
16 drugs.

18 **Sec. 2. 17 MRSA §2741**, as amended by PL 1993, c. 98, §1, is
20 repealed and the following enacted in its place:

22 **§2741. Common nuisances**

24 **1. Descriptions.** The following are common nuisances:

26 A. Places used as houses of ill fame;

28 B. Places used for the illegal sale or keeping of
30 intoxicating liquors or scheduled drugs;

32 C. Places resorted to for lewdness or gambling; and

34 D. Places of resort where intoxicating liquors are kept,
36 sold, given away, drunk or dispensed in any manner not
38 provided for by law.

40 For purposes of this subchapter, proof by a preponderance of
42 evidence that an owner or occupant of a building or other place
44 or structure, or any part thereof, has trafficked in or furnished
46 at the building, place or structure, or any part thereof, any
48 scheduled drug as defined by Title 17-A, chapter 45 on 2 or more
50 occasions within a 3-year period is sufficient to prove that the
52 building, place or structure is a common nuisance.

2. Information or complaint. The Superior Court has
jurisdiction, upon request for a permanent injunction based upon
information alleging that a common nuisance exists filed by the
Attorney General or a district attorney or upon complaint
alleging that a common nuisance exists filed by not less than 7
legal voters of the county in which the common nuisance is
alleged to exist, to restrain, enjoin or abate that common
nuisance and the court may issue injunctions and orders for that
purpose as provided in subsections 3 and 4.

3. Preliminary injunction and restraining orders.
Preliminary injunctions and restraining orders may be issued as
follows.

2 A. When filing the information or complaint under
3 subsection 2, the complainant may also file an application
4 for a preliminary injunction.

5 B. If an application for a preliminary injunction is filed,
6 the court, on application of the complainant, may issue an
7 ex parte restraining order restraining the defendant and all
8 other persons from removing or in any manner interfering
9 with the personal property and contents of the place where
10 the nuisance is alleged to exist.

11 (1) The restraining order may be served by handing it
12 to and leaving a copy of it with any person who is in
13 charge of the place where the nuisance is alleged to
14 exist or who resides in that place or by posting a copy
15 of it in a conspicuous place at or upon one or more of
16 the principal doors or entrances to that place.

17 (2) The person serving the restraining order shall
18 immediately make and return into court an inventory of
19 the personal property and contents situated in and used
20 in conducting or maintaining the nuisance.

21 (3) Any violation of the restraining order is a
22 contempt of court, and, if the order is posted, its
23 mutilation or removal while it remains in force is a
24 contempt of court, if the posted order contains a
25 notice to that effect.

26 C. The court shall hold a hearing on the application for a
27 preliminary injunction within 10 days after the application
28 is filed. A copy of the information or complaint filed
29 pursuant to subsection 2, a copy of the application for
30 preliminary injunction and a notice of the time and place of
31 the hearing must be served upon the defendant at least 5
32 days before the hearing.

33 (1) If the hearing is continued on the motion of any
34 defendant, the court shall immediately issue the
35 requested preliminary injunction.

36 (2) If, upon hearing, the allegations of the
37 information or complaint are proven by clear and
38 convincing evidence, the court shall issue a
39 preliminary injunction without additional bond
40 restraining the defendant and any other person from
41 continuing the nuisance.

42 (3) Except as provided in paragraph D, when the court
43 issues a preliminary injunction under this paragraph,
44 it shall also immediately issue an order closing the
45 place and enjoining its use as a common nuisance until
46 the court orders otherwise.

2 a final decision is made on the request for a permanent
3 injunction if:

4 (a) At the time of granting the preliminary
5 injunction it further appears that the person
6 owning, in control of or in charge of the nuisance
7 enjoined had received 5 days' notice of the
8 hearing; and

10 (b) The person owning, in control of or in charge
11 of the nuisance enjoined does not show to the
12 satisfaction of the court that the nuisance
13 complained of is abated or that the person
14 immediately proceeded to enforce that person's
15 rights under section 2743.

16 If a restraining order has not already been issued, the
17 order closing the place must include an order
18 restraining for that period the removal of or
19 interference with the personal property and contents
20 located in the place.

22 The order closing the place must be served and an
23 inventory of the personal property and contents
24 situated in the place must be made and filed as
25 provided in paragraph B for restraining orders.

28 D. The owners of any real or personal property closed or
29 restrained pursuant to this subsection may appear in the
30 Superior Court to oppose the request for an injunction or to
31 claim property subject to the injunction or restraining
32 order between the time of the filing of the complaint
33 described in subsection 2 and the hearing on the information
34 or complaint. The court shall order that the real or
35 personal property, or both, be returned to the respective
36 owners and shall discharge or refrain from issuing at the
37 time of the hearing on the application for the preliminary
38 injunction any order closing the real property or
39 restraining the removal or interference with the personal
40 property if the following conditions are met:

42 (1) All costs incurred by the court and the
43 complainant are paid;

44 (2) The owner of the real property files a bond with
45 sureties approved by the court in the full value of the
46 real property as ascertained by the court;

48 (3) The owner of the real property has agreed to abate
49 the nuisance and prevent it from continuing or being
50 reestablished until the decision of the court is

2 rendered on the information or complaint requesting the
3 permanent injunction; and

4 (4) The court is satisfied of the good faith of the
5 owner of the real property and of innocence on the part
6 of any owner of the personal property of any knowledge
7 of the use of the personal property as a nuisance and
8 that, with reasonable care and diligence, the owner of
9 the personal property could not have known of its use
10 as a nuisance.

11 The release of any real or personal property under this
12 paragraph does not release it from any judgment, lien,
13 penalty or liability to which it may be subjected.

14 **4. Permanent injunction; transfer of ownership.** The court
15 shall hold a hearing on the request for a permanent injunction in
16 accordance with the Maine Rules of Civil Procedure. If the court
17 issues a permanent injunction, the injunction runs against the
18 building or other place or structure while titled in the name of
19 the same owner under which the nuisance was initially enjoined.
20 The injunction ceases to run against the building or other place
21 or structure upon transfer of ownership to a bona fide
22 purchaser. If the Attorney General or a district attorney has
23 reasonable grounds to question whether a transfer of ownership is
24 to a bona fide purchaser following the issuance of an injunction,
25 within one year from the date of transfer of ownership the
26 Attorney General or the district attorney shall move the court to
27 reinstate the injunction against the title of the new owner.
28 Dismissal of the information or complaint filed pursuant to
29 subsection 2 may not prevent action upon any information or
30 complaint subsequently filed covering the same subject matter.

31

32 **STATEMENT OF FACT**

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34 This bill amends the current common nuisance laws to provide
35 for the closure of buildings used for the purchase, sale or use
36 of illegal drugs. It is modeled on Ohio nuisance laws used for
37 the same purposes.

38 Current law allows the Attorney General, a district attorney
39 or 7 citizens to initiate an action against the nuisance. This
40 bill adds provisions to allow the court to order a restraining
41 order prohibiting anyone from entering or taking any contents
42 from a building against which an injunction has been issued.

43 The bill also requires the Attorney General, in cooperation
44 with local law enforcement agencies, to develop a program to
45 eradicate drug houses by using remedies for common nuisances.

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