

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

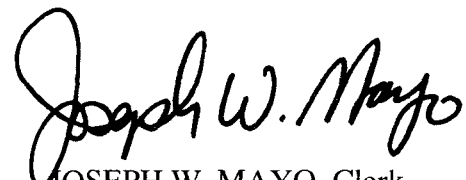
No. 2011

H.P. 1406

House of Representatives, March 23, 1999

An Act to Amend the Laws Regarding Asset Forfeiture.

Reference to the Committee on Judiciary suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative SCHNEIDER of Durham.

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

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Sec. 1. 15 MRSA §5826, sub-§§2, 4 and 6, as enacted by PL 1995, c. 421, §1, are amended to read:

2. Commencement of criminal forfeiture action. Property subject to forfeiture ~~that is not yet the subject of a final order pursuant to section 5822, subsection 4~~ may be proceeded against by indictment ~~or superseding indictment~~ of the grand jury or by complaint in the District Court in any related criminal proceeding in which ~~one or more persons~~ a person with an interest in the property ~~have~~ has been simultaneously ~~indicted for one or more violations~~ charged with a violation of Title 17-A, chapter 45. At any time prior to trial, the State, with the consent of the court and any defendant with an interest in the property, may file an ancillary charging instrument or information alleging that property is subject to criminal forfeiture. ~~Upon commencement of a criminal forfeiture by indictment or information of any property that may be the subject of any pending civil action commenced pursuant to section 5822, the civil action must be immediately stayed and subrogated to the criminal forfeiture action.~~ Discovery in the criminal action must be as provided for by the Maine Rules of Criminal Procedure.

4. Trial proceedings. Trial against property charged by indictment ~~or~~ information or complaint may be by jury and must be held in a single proceeding together with the trial of the related criminal violation. ~~Forfeiture of the property must be proved by the State by a preponderance of the evidence. The court, in its discretion, may allow any defendant with an interest in property indicted pursuant to this section to waive the right to trial by jury as against the property while preserving the right to trial by jury of any crime alleged. At trial by jury, the court, upon motion of a defendant or the State, may separate the trial of the matter against the defendant from the trial of the matter against the property subject to criminal forfeiture. If the court bifurcates the jury trial, the court shall first instruct and submit to the jury the issue of the guilt or innocence of defendants to be determined by proof beyond a reasonable doubt and shall restrict argument of counsel to those issues. After a verdict upon the guilt or innocence of all defendants, the court shall instruct and submit to the jury the issue of the forfeiture of the property to be determined by proof by a preponderance of the evidence and the court shall restrict argument to those issues. A special verdict must be returned as to the extent of the interest or property subject to forfeiture, if any.~~

A. Forfeiture of the property must be proved by the State by a preponderance of the evidence.

2 B. The court, in its discretion, may allow any defendant
4 with an interest in property charged pursuant to this
 section to waive the right to trial by jury as against the
6 property while preserving the right to trial by jury of any
 crime alleged.

8 C. At trial by jury, the court, upon motion of a defendant
 or the State, shall separate the trial of the matter against
10 the defendant from the trial of the matter against the
 property subject to criminal forfeiture. If the court
12 bifurcates the jury trial, the court shall first instruct
 and submit to the jury the issue of the guilt or innocence
14 of defendants to be determined by proof beyond a reasonable
 doubt and shall restrict argument of counsel to those
16 issues. If the jury finds a defendant guilty of the related
 criminal offense, the court shall instruct and submit to the
18 jury the issue of the forfeiture of the property.

20 **6. Final order of disposition of property.** Following the
entry of a verdict of forfeiture of property pursuant to this
22 section or the entry of a guilty plea in open court on the record
and following the court's disposition of all petitions for
24 hearing timely filed by 3rd parties, the State has clear title to
property that is the subject of the indictment ~~or~~ information
26 ~~and order of forfeiture and may order all or a portion of the~~
 ~~property forfeited to the State to be disposed of pursuant to~~
28 ~~section 5822, subsection 4 and section 5824~~ or complaint. The
 final order must provide for the deposit of the property or the
30 proceeds from the disposition of the property, less the
 reasonable expenses of the forfeiture proceedings, seizure,
32 storage, maintenance of custody, advertising and notice, in the
 General Fund, except that, to the extent that the court finds it
34 reasonable, the court may order forfeiture of as much of the
 property as is appropriate, less the reasonable expenses of the
36 forfeiture proceedings, seizure, storage, maintenance of custody,
 advertising and notice, to a municipality, county or state agency
38 that has made a substantial contribution to the investigation or
 prosecution of a related criminal case.

40 **Sec. 2. 15 MRSA §5826, sub-§7** is enacted to read:

42 **7. Equitable transfer of forfeited assets.** In the case of
44 any asset forfeited under this section to any entity other than
 the State, transfer of title to the asset may not occur until the
46 transfer is approved by:

48 A. In the case of an agency or department of a county, a
 majority of the commissioners of the county; and
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2 B. In the case of an agency or department of a
 municipality, a municipal officer of the municipality.

4 When property is forfeited and transferred to a municipality in
 accordance with this section, the municipal officers of the
6 municipality shall determine the disposition of the property.
 When property is forfeited and transferred to a county in
8 accordance with this section, the county commissioners shall
 determine the disposition of the property.

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SUMMARY

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 This bill provides that property subject to forfeiture may
be proceeded against by complaint in District Court. It also
16 provides that the court may order forfeiture of as much property
as is appropriate to a municipality, county or state agency that
18 has made a substantial contribution to the investigation or
prosecution of a related criminal case.