

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1439

H.P. 1033

House of Representatives, April 24, 2013

**An Act To Repeal Certain Maine Criminal Code Provisions
Addressing So-called Bath Salts Containing Synthetic
Hallucinogenic Drugs and Instead To Define Them as Schedule W
Drugs**

Reported by Representative DION of Portland for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed pursuant to Joint Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

2 **Sec. 1. 15 MRSA §5821, sub-§§1 and 2,** as amended by PL 2011, c. 465, §1, are
3 further amended to read:

4 **1. Scheduled drugs.** All scheduled drugs ~~and all synthetic hallucinogenic drugs, as~~
5 ~~defined in Title 17-A, section 1101, subsection 16-A,~~ that have been manufactured, made,
6 created, grown, cultivated, sold, bartered, traded, furnished for consideration, furnished,
7 distributed, dispensed, possessed or otherwise acquired in violation of any law of this
8 State, any other state or of the United States;

9 **2. Materials related to scheduled drugs.** All raw materials, products and
10 equipment of any kind that are used or intended for use in manufacturing, compounding,
11 processing, delivering, cultivating, growing or otherwise creating any scheduled drug ~~or~~
12 ~~any synthetic hallucinogenic drug, as defined in Title 17-A, section 1101, subsection~~
13 ~~16-A,~~ in violation of any law of this State, any other state or the United States;

14 **Sec. 2. 15 MRSA §5821, sub-§3-A,** as amended by PL 2011, c. 465, §2, is
15 further amended to read:

16 **3-A. Firearms and other weapons.** Law enforcement officers may seize all
17 firearms and dangerous weapons that they may find in any lawful search for scheduled
18 drugs ~~or synthetic hallucinogenic drugs, as defined in Title 17-A, section 1101,~~
19 ~~subsection 16-A,~~ in which scheduled drugs ~~or synthetic hallucinogenic drugs~~ are found.
20 Except for those seized weapons listed in a petition filed in the Superior Court pursuant to
21 section 5822, all weapons seized, after notice and opportunity for hearing, must be
22 forfeited to the State by the District Court 90 days after a list of the weapons and drugs
23 seized is filed in the District Court in the district in which the weapons and drugs were
24 seized. A weapon need not be forfeited if the owner appears prior to the declaration of
25 forfeiture and satisfies the court, by a preponderance of evidence, of all of the following:

26 A. That the owner had a possessory interest in the weapon at the time of the seizure
27 sufficient to exclude every person involved with the seized drugs or every person at
28 the site of the seizure;

29 B. That the owner had no knowledge of or involvement with the drugs and was not
30 at the site of the seizure; and

31 C. That the owner had not given any involved person permission to possess or use
32 the weapon.

33 Post-hearing procedures are as provided in section 5822.

34 A confiscated or forfeited handgun that was confiscated or forfeited because it was used
35 to commit a homicide must be destroyed by the State unless the handgun was stolen and
36 the rightful owner was not the person who committed the homicide, in which case the
37 handgun must be returned to the owner if ascertainable. For purposes of this subsection,
38 "handgun" means a firearm, including a pistol or revolver, designed to be fired by use of
39 a single hand.

1 **Sec. 3. 15 MRSA §5821, sub-§6**, as amended by PL 2011, c. 465, §3, is further
2 amended to read:

3 **6. Money instruments.** Except as provided in paragraph A, all money, negotiable
4 instruments, securities or other things of value furnished or intended to be furnished by
5 any person in exchange for a scheduled drug ~~or synthetic hallucinogenic drug, as defined~~
6 ~~in Title 17-A, section 1101, subsection 16-A~~, in violation of Title 17-A, chapter 45; all
7 proceeds traceable to such an exchange; and all money, negotiable instruments and
8 securities used or intended to be used to facilitate any violation of Title 17-A, chapter 45.

9 A. No property may be forfeited under this subsection, to the extent of the interest of
10 an owner, by reason of any act or omission established by that owner to have been
11 committed or omitted without the knowledge or consent of that owner;

12 **Sec. 4. 15 MRSA §5821, sub-§7**, as amended by PL 2011, c. 465, §4, is further
13 amended to read:

14 **7. Real property.** Except as provided in paragraph A, all real property, including
15 any right, title or interest in the whole of any lot or tract of land and any appurtenances or
16 improvements, that is used or intended for use, in any manner or part, to commit or to
17 facilitate the commission of a violation of Title 17-A, section 1103, 1105-A, 1105-B; or
18 ~~1105-C, 1120, 1121 or 1123~~ that is a Class A, Class B or Class C crime, with the
19 exception of offenses involving marijuana.

20 A. Property may not be forfeited under this subsection, to the extent of an interest of
21 an owner, by reason of an act or omission established by that owner to have been
22 committed or omitted without the knowledge or consent of that owner. When an
23 owner of property that is that person's primary residence proves by a preponderance
24 of the evidence that the owner is the spouse or minor child of the coowner of the
25 primary residence who has used or intended to use the residence, in any manner or
26 part, to commit or facilitate the commission of a violation of Title 17-A, section
27 1103, 1105-A, 1105-B; or 1105-C, ~~1120, 1121 or 1123~~, the State shall bear the
28 burden of proving knowledge or consent of the spouse or minor child by a
29 preponderance of the evidence;

30 **Sec. 5. 17-A MRSA §1101, sub-§16-A**, as amended by PL 2011, c. 578, §§1 and
31 2, is repealed.

32 **Sec. 6. 17-A MRSA §1102, sub-§1, ¶N**, as amended by PL 2001, c. 419, §5, is
33 further amended to read:

34 N. Flunitrazepam or its chemical equivalent; ~~and~~

35 **Sec. 7. 17-A MRSA §1102, sub-§1, ¶O**, as enacted by PL 2001, c. 419, §6, is
36 amended to read:

37 O. Unless listed or described in another schedule, the following hallucinogenic
38 drugs or their salts, isomers and salts of isomers whenever the existence of the salts,
39 isomers and salts of isomers is possible within the chemical designation:

- 40 (1) 3, 4 - methylenedioxy amphetamine, MDA;

- 1 (2) 5 methoxy - 3, 4 methylenedioxy amphetamine, MMDA;
- 2 (3) 3, 4, 5 - trimethoxy amphetamine, TMA;
- 3 (4) 4 - methyl - 2, 5 - dimethoxyamphetamine, DOM;
- 4 (5) 2, - 3 methylenedioxyamphetamine;
- 5 (6) 2, 5 - dimethoxyamphetamine, DMA;
- 6 (7) 4 - bromo - 2, 5 - dimethoxyamphetamine, DOB;
- 7 (8) 4 methoxyamphetamine;
- 8 (9) 3, 4 - methylenedioxymethamphetamine, MDMA;
- 9 (10) 4 - bromo - 2, 5 - dimethoxyphenethylamine, NEXUS;
- 10 (11) 3, 4 - methylenedioxy-N-ethylamphetamine, MDE;
- 11 (12) Paramethoxymethamphetamine, PMMA;
- 12 (13) Paramethoxyamphetamine, PMA; and
- 13 (14) Paramethoxyethylamphetamine, PMEAs; and

14 **Sec. 8. 17-A MRSA §1102, sub-§1, ¶P** is enacted to read:

15 P. Unless listed or described in another schedule, the following synthetic
16 hallucinogenic drugs:

- 17 (1) 3, 4 - methylenedioxymethcathinone, MDMC;
- 18 (2) 3, 4 - methylenedioxypyrovalerone, MDPV;
- 19 (3) 4 - methylmethcathinone, 4-MMC;
- 20 (4) 4 - methoxymethcathinone, bk-PMMA, PMMC;
- 21 (5) 3 - fluoromethcathinone, FMC;
- 22 (6) 4 - fluoromethcathinone, FMC;
- 23 (7) Napthylpyrovalerone, NRG-1;
- 24 (8) Beta-keto-N-methylbenzodioxolylpropylamine;
- 25 (9) 4 - methylethcathinone, 4-MEC;
- 26 (10) Butylone;
- 27 (11) Eutylone;
- 28 (12) Pentedrone;
- 29 (13) Pentylone;
- 30 (14) 2, 5 - dimethoxy-4-ethylphenethylamine; or
- 31 (15) A derivative of cathinone, including any compound, material, mixture,
32 preparation or other product, structurally derived from 2-aminopropan-1-one by
33 substitution at the 1-position with either phenyl, naphthyl or thiophene ring

1 systems, whether or not the compound is further modified in any of the following
2 ways:

3 (a) By substitution in the ring system to any extent with alkyl, alkylendioxy,
4 alkoxy, haloalkyl, hydroxyl or halide substituents, whether or not further
5 substituted in the ring system by one or more other univalent substituents;

6 (b) By substitution at the 3-position with an acyclic alkyl substituent; or

7 (c) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or
8 methoxybenzyl groups or by inclusion of the 2-amino nitrogen atom in a
9 cyclic structure.

10 This subparagraph does not include a drug listed in section 1102 or a drug
11 approved by the United States Food and Drug Administration.

12 **Sec. 9. 17-A MRSA §1102, sub-§5**, as enacted by PL 1975, c. 499, §1, is
13 repealed.

14 **Sec. 10. 17-A MRSA §§1119 to 1123**, as enacted by PL 2011, c. 465, §6, are
15 repealed.

16 **Sec. 11. 17-A MRSA §1201, sub-§1, ¶A-1**, as amended by PL 2011, c. 640, Pt.
17 B, §7, is further amended to read:

18 A-1. The conviction is for a Class D or Class E crime other than:

19 (1) A Class D or Class E crime relative to which, based upon both the written
20 agreement of the parties and a court finding, the facts and circumstances of the
21 underlying criminal episode giving rise to the conviction generated probable
22 cause to believe the defendant had committed a Class A, Class B or Class C
23 crime in the course of that criminal episode and, as agreed upon in writing by the
24 parties and found by the court, the defendant has no prior conviction for murder
25 or for a Class A, Class B or Class C crime and has not been placed on probation
26 pursuant to this subparagraph on any prior occasion;

27 (2) A Class D crime that the State pleads and proves was committed against a
28 family or household member or a dating partner under chapter 9 or 13 or section
29 554, 555 or 758. As used in this subparagraph, "family or household member"
30 has the same meaning as in Title 19-A, section 4002, subsection 4; "dating
31 partner" has the same meaning as in Title 19-A, section 4002, subsection 3-A;

32 (2-A) A Class D crime under Title 5, section 4659, subsection 1, Title 15,
33 section 321, subsection 6 or Title 19-A, section 4011, subsection 1;

34 (3) A Class D or Class E crime in chapter 11 or 12;

35 (4) A Class D crime under section 210-A;

36 (4-A) A Class E crime under section 552;

37 (5) A Class D or Class E crime under section 556, section 854, excluding
38 subsection 1, paragraph A, subparagraph (1), or section 855;

39 (6) A Class D crime in chapter 45 relating to a schedule W drug;

- 1 (7) A Class D or Class E crime under Title 29-A, section 2411, subsection 1-A,
2 paragraph B;
- 3 (8) A Class D crime under Title 17, section 1031; or
- 4 ~~(9) A Class D crime under Title 17-A, section 1119, subsection 1; or~~
- 5 (10) A Class E crime under Title 15, section 1092, subsection 1, paragraph A, if
6 the condition of release violated is specified in Title 15, section 1026, subsection
7 3, paragraph A, subparagraph (5) or (8) and the underlying crime involved
8 domestic violence.

9 **Sec. 12. 22 MRSA §2383-B, sub-§2-A**, as enacted by PL 2011, c. 465, §8, is
10 repealed.

11 **Sec. 13. 22 MRSA §2383-B, sub-§3, ¶D-1**, as enacted by PL 2011, c. 465, §9, is
12 repealed.

13 **Sec. 14. Maine Revised Statutes headnote amended; revision clause.** In
14 the Maine Revised Statutes, Title 22, chapter 558, in the chapter headnote, the words
15 "marijuana, scheduled drugs, imitation scheduled drugs, certain synthetic hallucinogenic
16 drugs and hypodermic apparatuses" are amended to read "marijuana, scheduled drugs,
17 imitation scheduled drugs and hypodermic apparatuses" and the Revisor of Statutes shall
18 implement this revision when updating, publishing or republishing the statutes.

19 **SUMMARY**

20 This bill is proposed by the Criminal Law Advisory Commission. The bill repeals
21 provisions criminalizing synthetic hallucinogenic drugs in chapter 45 of the Maine
22 Criminal Code and in related provisions regarding asset forfeiture in the Maine Revised
23 Statutes, Title 15 and regarding drug-related offenses in Title 22 and instead classifies
24 these drugs as schedule W drugs. As schedule W drugs, they are treated the same as all
25 other schedule W drugs for purposes of possession, trafficking and furnishing.

26 The bill also repeals an unnecessary provision of law that prohibits including a drug
27 or substance in schedule W, X, Y or Z that is legally sold in the State without any federal
28 or state requirements as to prescription and that is unaltered as to its form.