

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 888

S.P. 288

In Senate, March 7, 2017

An Act To Strengthen Protections against Civil Asset Forfeiture

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator BRAKEY of Androscoggin.
Cosponsored by Senators: BELLOWS of Kennebec, DION of Cumberland, KATZ of Kennebec, Representatives: HAMANN of South Portland, HICKMAN of Winthrop, O'CONNOR of Berwick, SIROCKI of Scarborough, WARREN of Hallowell.

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

2 **Sec. 1. 15 MRSA §5821, first ¶**, as amended by IB 1999, c. 1, §2, is further
3 amended to read:

4 Except as provided in section 5821-A, the following are subject to forfeiture to the
5 State and no property right may exist in them if the owner of the following is convicted of
6 a crime in which the following was involved:

7 **Sec. 2. 15 MRSA §5821, sub-§3-A**, as repealed and replaced by PL 2013, c. 588,
8 Pt. A, §19, is amended to read:

9 **3-A. Firearms and other weapons.** Law enforcement officers may seize all
10 firearms and dangerous weapons that they may find in any lawful search for scheduled
11 drugs in which scheduled drugs are found. Except for those seized weapons listed in a
12 petition filed in the Superior Court pursuant to section 5822 ~~all weapons seized, for every~~
13 firearm or dangerous weapon seized, if the owner of the firearm or dangerous weapon is
14 convicted of a crime in which the firearm or dangerous weapon was involved, after notice
15 and opportunity for hearing, the firearm or dangerous weapon must be forfeited to the
16 State by the District Court 90 days after a list of the weapons and drugs seized is filed in
17 the District Court in the district in which the weapons and drugs were seized. A weapon
18 ~~need may~~ not be forfeited ~~if the owner appears prior to the declaration of forfeiture and~~
19 unless the State satisfies the court, by a preponderance of evidence, ~~of all of the~~
20 following: that the owner of the firearm or dangerous weapon was convicted of a crime in
21 which the firearm or dangerous weapon was involved.

22 ~~A. That the owner had a possessory interest in the weapon at the time of the seizure~~
23 ~~sufficient to exclude every person involved with the seized drugs or every person at~~
24 ~~the site of the seizure;~~

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

27 ~~C. That the owner had not given any involved person permission to possess or use~~
28 ~~the weapon.~~

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

30 A confiscated or forfeited firearm that was confiscated or forfeited because it was used to
31 commit a homicide must be destroyed by the State unless the firearm was stolen and the
32 rightful owner was not the person who committed the homicide, in which case the firearm
33 must be returned to the owner if ascertainable;

34 **Sec. 3. 15 MRSA §5821, sub-§3-B**, as enacted by PL 2013, c. 328, §2, is
35 amended to read:

36 **3-B. Forfeiture of firearms used in the commission of certain acts.** In addition to
37 the provisions of subsection 3-A and Title 17-A, section 1158-A, this subsection controls
38 the forfeiture of firearms used in the commission of certain acts.

1 A. Except as provided in paragraph B, a firearm is subject to forfeiture to the State if
2 the firearm is used by a person who is the owner of the firearm to commit a criminal
3 act that in fact causes serious bodily injury or death to another human being and,
4 following that act, the person either commits suicide or attempts to commit suicide
5 and the attempt results in the person's becoming incompetent to stand trial or the
6 person is killed or rendered incompetent to stand trial as the result of a justifiable use
7 of deadly force by a law enforcement officer. Except as provided in paragraph B, a
8 property right does not exist in the firearm subject to forfeiture.

9 B. A firearm that is used in the commission of a criminal act described in paragraph
10 A is exempt from forfeiture under this subsection if the firearm belongs to another
11 person who is the rightful owner from whom the firearm has been stolen and the
12 other person is not a principal or accomplice in the criminal act. In that case, the
13 firearm must be transferred to the other person unless that person is otherwise
14 prohibited from possessing a firearm under applicable law.

15 A firearm subject to forfeiture pursuant to this subsection that is declared by a court to be
16 forfeited pursuant to section 5822 must be promptly destroyed, or caused to be promptly
17 destroyed, by the law enforcement agency that has custody of the firearm.;

18 **Sec. 4. 15 MRSA §5821, sub-§7-A**, as amended by PL 2011, c. 597, §1, is
19 further amended to read:

20 **7-A. Computers.** ~~Except as provided in paragraph A, all computers~~ Computers, as
21 defined in Title 17-A, section 431, subsection 2, and computer equipment, including, but
22 not limited to, printers and scanners, that are used or are attempted to be used in violation
23 of Title 17-A, section 259-A.;

24 ~~and~~ and
25 ~~A. Property may not be forfeited under this subsection, to the extent of the interest~~
26 ~~of an owner, by reason of an act or omission established by that owner to have been~~
~~committed or omitted without the knowledge or consent of the owner; and~~

27 **Sec. 5. 15 MRSA §5821, sub-§10** is enacted to read:

28 **10. Agreement to transfer property seized to a federal agency prohibited.**
29 Unless the seized property includes United States currency in excess of \$100,000, a law
30 enforcement agency, prosecuting authority, state agency, county or municipality may not
31 enter into an agreement to transfer or refer property seized under this section to a federal
32 agency directly, indirectly, through adoption, through an intergovernmental joint task
33 force or by other means that circumvent the provisions of this section.

34 **Sec. 6. 15 MRSA §5825**, as amended by PL 1991, c. 780, Pt. Y, §116, is further
35 amended to read:

36 **§5825. Records**

37 **1. Records of forfeited property.** Any officer, department or agency having
38 custody of property subject to forfeiture under section 5821 or having disposed of the
39 property shall maintain complete records showing:

40 A. From whom it received the property;

- 1 B. Under what authority it held, received or disposed of the property;
- 2 C. To whom it delivered the property;
- 3 D. The date and manner of destruction or disposition of the property; and
- 4 E. The exact kinds, quantities and forms of the property.

5 The records ~~shall~~ must be open to inspection by all federal and state officers responsible
6 for enforcing federal and state drug control laws. A copy of each record must be filed
7 with the Department of Public Safety. Persons making final disposition or destruction of
8 the property under court order shall report, under oath, to the court the exact
9 circumstances ~~or~~ of the disposition or destruction.

10 **2. Department of Public Safety; centralized record.** The Department of Public
11 Safety shall maintain a centralized record of property seized, held by and ordered to the
12 department and all records filed with the department under subsection 1. A report of the
13 disposition of property previously held by the department and ordered by the court to any
14 governmental entity must be provided at least quarterly to the Commissioner of
15 Administrative and Financial Services and the Office of Fiscal and Program Review for
16 review. These records must include an estimate as to the fair market value of items
17 seized. The Department of Public Safety shall make all records under this subsection
18 available on a publicly accessible website.

19 **SUMMARY**

20 This bill requires that for property to be forfeited under the criminal forfeiture laws
21 the owner of the property be convicted of a crime in which the property was involved,
22 and it prohibits a law enforcement agency or other entity from circumventing the law by
23 an agreement to transfer or refer the property seized to a federal agency. This bill also
24 requires that the records of forfeited property be posted by the Department of Public
25 Safety on a publicly accessible website.