

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWELFTH LEGISLATURE

SECOND REGULAR SESSION
January 8, 1986 to April 16, 1986

SECOND SPECIAL SESSION
May 28, 1986 to May 30, 1986

AND AT THE

THIRD SPECIAL SESSION
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND TWELFTH LEGISLATURE
1985

the steps of appeal, the determination of the State Tax Assessor's right to prevent renewal or reissuance becomes final unless otherwise determined by appeal.

3. Refusal of license or certificate by licensing agency. Any issuing agency which is notified by the State Tax Assessor of his finalized determination to prevent renewal or reissuance of a license or certificate of authority under subsection 2 shall refuse to reissue, renew or otherwise extend that license or certificate of authority until the agency receives a certificate issued by the State Tax Assessor that the person is in good standing with respect to any and all returns due as of the date of issuance of the certificate.

Effective July 16, 1986.

CHAPTER 679

S.P. 847 - L.D. 2139

AN ACT to Strip Crime of its Profit.

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

15 MRSA c. 515 is enacted to read:

CHAPTER 515

ASSET FORFEITURE

§5801. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Conspiracy. "Conspiracy" means that, with the intent that conduct be performed, a person agrees with one or more other persons to engage in or cause the performance of the conduct. For purposes of this chapter, a conspiracy may be proven without proof of a substantial step towards completion, but rather upon a showing that a participant in the conspiracy has engaged in one or more overt acts toward completion of the object of the conspiracy.

2. Predicate offense. "Predicate offense" means a violation of one or more of the following provisions of the Maine Criminal Code, Title 17-A:

A. Chapter 15. A violation of chapter 15 shall not be a predicate offense unless the violation would constitute a Class B crime and the property which is to be forfeited is in some manner procured through conspiracy;

B. Section 802; or

C. Sections 1103 to 1106 and 1108.

3. Proceeds of criminal enterprise. "Proceeds of criminal enterprise" means any one or more of the following:

A. All property other than real estate, of any kind and in whatever form held, which is used or intended to be used to effect, further or protect any conduct which constitutes a violation of a predicate offense;

B. All conveyances, including aircraft, watercraft, vehicles and vessels which are used or are intended for use to transport, conceal, effect, further or otherwise facilitate any conduct which constitutes a violation of a predicate offense;

C. All property, of any kind and in whatever form held, furnished or intended to be furnished by any person or entity to procure the use or ownership of any property other than real estate which that person or entity knows or reasonably should have known to have been procured as the result, in whole or in part, of conduct which constitutes a violation of a predicate offense;

D. All property other than real estate, of any kind and in whatever form held, which was procured through conduct which constitutes a violation of a predicate offense; and

E. All property other than real estate, of any kind and in whatever form held, which was procured through conduct which constitutes a violation of the Maine Criminal Code described in subsection 2, paragraph A.

§5802. Forfeiture of all property which constitutes the proceeds of criminal enterprise

1. Proceeds subject to forfeiture. The proceeds of criminal enterprise shall be subject to forfeiture.

2. Proceeds subject to forfeiture by court. Property subject to forfeiture under subsection 1 shall be declared forfeited by any court having jurisdiction over the property or having final jurisdiction over any related criminal proceeding or by the Superior Court for Kennebec County.

3. Exceptions. The court shall order forfeiture of all proceeds of criminal enterprise except as follows.

A. No conveyance used by any person as a common carrier in the transaction of business as a common carrier may be forfeited unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to the commission of a predicate offense.

B. No conveyance may be forfeited by reason of any act or omission established by the owner of the conveyance to have been committed or omitted by any person other than the owner while the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, this State or any state.

C. No property, to the extent of the interest of the owner, may be forfeited by reason of any act or omission established by that owner to have been committed or omitted by any person other than the owner without the knowledge of that owner.

4. Petition for proceeding to order forfeiture. A district attorney or the Attorney General may petition the Superior Court in the name of the State in the nature of a proceeding in rem to order forfeiture of property subject to forfeiture under subsection 1.

A. The petition shall be filed in the court having jurisdiction as described in subsection 2.

B. The proceeding shall be deemed a civil action in which the State shall have the burden of proving all material facts by a preponderance of the evidence and the owner of the property or other person claiming thereunder shall have the burden as to all exceptions set forth in subsection 3,

except that it shall be presumed that all assets, in any part acquired by a person convicted of a violation of Title 17-A, chapter 15 or 45, which is a Class B or Class C crime, from the date of offense and for 2 years thereafter, is property described by section 5801, subsection 3. The owner of the assets or other person claiming thereunder may rebut that presumption by proving by a preponderance of the evidence that the assets are not property described by section 5801, subsection 3.

C. The State shall give notice of the petition to the owner of the property and to such other persons as appear to have an interest in the property by delivering to those persons a copy of the summons and complaint by certified or registered mail, return receipt requested, in hand or by any other means approved by the court. Subsequent proceedings shall be in conformity with the rules pertaining to civil actions in the Superior Court, except that no depositions may be had and no interrogatories propounded without the consent of the parties or order of court.

D. At a hearing, other than default proceedings, the court shall hear evidence, make findings of fact, enter conclusions of law and file a final order from which the parties have the right of appeal. The final order shall provide for the disposition of the property as follows:

(1) In the case of money, negotiable instruments and securities, to the General Fund, less the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice, except, to the extent that the court finds it appropriate and with the written approval of the Attorney General, the court may order forfeiture of so much of the property as is appropriate to a municipality or county that has made a substantial contribution to the investigation of a related criminal case, subject to the requirements of section 5803; and

(2) In the case of other property, the court may decree forfeiture of the property to the General Fund, less the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice and to pay any bona

fide mortgage thereon, or, to the extent that the court finds appropriate and with the written approval of the Attorney General, to a state agency or any municipality or county, which state agency, municipality or county has made a substantial contribution to the investigation of a related criminal case, subject to the requirements of section 5803. The court may also order the property sold at public auction and the proceeds of the sale, less the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice and to pay any bona fide mortgage thereon, disposed of pursuant to subparagraph (1).

Default proceedings shall be held in the same manner as default proceedings in other civil actions, except that service of motions and affidavits related to default proceedings need not be served upon any person who has not answered or otherwise defended in the action.

5. Preliminary order or process. The court may issue, at the request of the attorney for the State, ex parte, any preliminary order or process as is necessary to seize or secure the property for which forfeiture is or will be sought and to provide for its custody. That order may include an order to a financial institution or to any fiduciary or bailee to require that entity to impound any property in its possession or control and not to release it except upon further order of the court. Process for seizure of the property shall issue only upon a showing of probable cause. The application for process and the issuance, execution and return of process shall be subject to applicable state law. Any property subject to forfeiture under this section may be seized upon process, except that seizure without process may be made when:

A. The seizure is incident to an arrest with probable cause, a search under a valid search warrant or an inspection under a valid administrative inspection warrant;

B. The property subject to seizure has been the subject of a prior judgment in favor of the State in a forfeiture proceeding under this section or any other provision of law;

C. There is probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

D. There is probable cause to believe that the property has been used or is intended to be used in violation of any criminal law of the United States or of this State.

6. Rules. After June 1, 1987, the prosecution of proceedings under this chapter shall be governed in accordance with rules adopted or amended by the Attorney General, pursuant to Title 5, chapter 375. These rules shall provide for adequate protection of innocent 3rd parties whose assets may be seized under this chapter.

§5803. Equitable distribution of forfeited assets

In the case of any asset decreed forfeit under this chapter or under Title 22, section 2387, to any legal entity other than the General Fund, transfer of title to the asset shall not occur until the transfer is approved by:

1. State; agency or department. In the case of an agency or department of the State, the Legislature;

2. County; agency or department. In the case of an agency or department of a county, the commissioners of the county; or

3. Municipality; agency or department. In the case of an agency or department of a municipality, the elected governing body of the municipality.

Notwithstanding this section, an agency or department of the State or of a county or municipality may have the use of the property for a period not to exceed one year in the case of a state agency or department and 3 months in the case of an agency or department of a county or municipality, so long as the agency or department obtains the approval of the court and of the Attorney General.