

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

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

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Twin City Printery  
Lewiston, Maine  
1987

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**PUBLIC LAWS**

OF THE

**STATE OF MAINE**

AS PASSED AT THE  
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on or after June 1, 1987, which affect any interest in the real estate or any part of it, including all real estate which has been included in the property description of the real estate within the preceding 3 years.

3. Limitation. This section does not apply to real estate which consists exclusively of residential real estate.

4. Discharge of lien. When the amount with respect to which a lien has been recorded under the provisions of this section has been paid or reduced, the commissioner, upon request by any person of record holding an interest in the real estate, which is the subject of the lien, shall issue a certificate discharging or partially discharging such lien, which certificate shall be recorded in the registry in which the lien was recorded. Any action of the foreclosure of the lien shall be brought by the Attorney General in the name of the State in the Superior Court for the judicial district in which the property subject to the lien is situated.

Sec. 15. PL 1985, c. 746, §36, is amended to read:

Sec. 36. Transition. Consistent with the Maine Revised Statutes, Title 5, chapter 69, for any position affected by this Act and subject to the Personnel Civil Service Law on the effective date of this Act, the incumbent in the position shall retain his appointment subject to the Personnel Law until 3 years after the effective date of this Act. The incumbent shall be compensated, whether occupying the same or another position, according to the terms of his salary range prior to the effective date of this Act during the 3 year period until July 16, 1989, unless that incumbent elects to waive the provisions of this section. If that incumbent waives the provisions of this section, he shall be compensated according to the provisions of the Maine Revised Statutes, Title 2, section 6, subsection 4, if he occupies a position named in that subsection.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 24, 1987.

## CHAPTER 420

H.P. 1052 — L.D. 1415

### AN ACT to Fight Illegal Drug Use.

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

Sec. 1. 15 MRSA c. 515, as enacted by PL 1985, c. 679, is repealed.

Sec. 2. 15 MRSA c. 517 is enacted to read:

#### CHAPTER 517

#### ASSET FORFEITURE

##### §5821. Subject property

The following shall be subject to forfeiture to the State and no property right may exist in them:

1. Scheduled drugs. All scheduled drugs which have been manufactured, made, created, grown, cultivated, sold, bartered, traded, furnished for consideration, furnished, distributed, dispensed, possessed or otherwise acquired in violation of any law of this State, any other state or of the United States;

2. Materials related to scheduled drugs. All raw materials, products and equipment of any kind which are used or intended for use in manufacturing, compounding, processing, delivering, cultivating, growing or otherwise creating any scheduled drug in violation of any law of this State, any other state or the United States;

3. Other property. All property which is used or intended for use as a container for property described in subsection 1 or 2;

4. Conveyances. All conveyances, including aircraft, vehicles or vessels, which are used or are intended for use to transport or in any manner to facilitate the transportation, sale, trafficking, furnishing, receipt, possession or concealment of property described in subsection 1 or 2, except that:

A. No conveyance used by any person as a common carrier in the transaction of business as a common carrier may be forfeited under this section, unless it appears that the owner or other person in charge of the conveyance was a consenting party or had knowledge of that violation of law; and

B. No conveyance may be forfeited under this section 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 this State, any other state or of the United States;

5. Records. All books, records and research, including formulas, microfilm, tapes and data, which are used or intended for use in violation of Title 17-A, chapter 45;

6. Money instruments. Except as provided in paragraph A, all money, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a scheduled drug in violation of Title 17-A, chapter 45; all proceeds traceable to such an exchange and all money, negotiable instruments and securities used or intended to be used to facilitate any violation of Title 17-A, chapter 45;

A. No property may be forfeited under this subsection

tion, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner; and

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

A. No property may be forfeited under this subsection, to the extent of an interest 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 that owner. When an owner of property which is that person's primary residence proves by a preponderance of the evidence that he is the spouse or minor child of the coowner of the primary residence who has used or intended to use the residence, in any manner or part, to commit or facilitate the commission of a violation of Title 17-A, section 1103 or 1105, the State shall bear the burden of proving knowledge or consent of the spouse or minor child by a preponderance of the evidence.

#### §5822. Procedure

1. Filing of petition. A petition for forfeiture must be filed as provided in this section.

A. 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 section 5821, except that to the extent that such a petition seeks the forfeiture of property described in section 5821, subsection 7, the petition shall be filed only with the written approval of the Attorney General.

B. There shall be no discovery other than under the Maine Rules of Civil Procedure, Rule 36, except by order of court upon a showing of substantial need. Any order permitting discovery shall set forth in detail the areas in which substantial need has been shown and the extent to which discovery may take place.

2. Jurisdiction and venue. Property subject to forfeiture under section 5821 shall be declared forfeited by any court having jurisdiction over the property or having final jurisdiction over any related criminal proceedings or by the Superior Court for Kennebec County. A petition under this section shall be filed in a court having jurisdiction under this subsection.

3. Type of action. The proceeding shall be deemed a civil action. The State has the burden of proving all material facts by a preponderance of the evidence and the owner of the property or other person claiming un-

der the property shall have the burden of proving by preponderance of the evidence all exceptions set forth in section 5821, except as provided in section 5821, subsection 7, paragraph A.

4. Hearings. 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. Except as provided in paragraphs A and B, the final order shall provide for the disposition of the property to the General Fund, less the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice.

A. To the extent that the court finds it appropriate and with the written consent of the Attorney General, the court may order forfeiture of as much of the property as is appropriate to a municipality, county or state agency which has made a substantial contribution to the investigation of a related criminal case, subject to the requirements of section 5824.

When property is forfeited and transferred to a municipality in accordance with section 5824, the legislative body of the municipality shall determine the disposition of the property. When property is forfeited and transferred to a county in accordance with section 5824, the county commissioners shall determine the disposition of the property.

B. 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 to pay any bona fide mortgage or security interest on the mortgage, disposed of in accordance with other property forfeited under this subsection.

5. Default proceedings. 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.

6. Preliminary process. Any Justice of the Supreme Judicial Court or the Superior Court, Judge of the District Court or Judge of the Administrative Court or Complaint Justice 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 the 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 that the property is subject to forfeiture under section 5821. 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 the 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 the laws of this State, any other state or the United States;

C. There is probable cause to believe that the property has been 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 this State, any other state or the United States.

7. Rules. After January 1, 1988, the prosecution of proceedings under this chapter shall be governed by rules adopted or amended by the Attorney General, pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375. These rules shall provide standards for prosecution, settlement, approval of settlement and equitable transfer of forfeited property.

#### §5823. Perfecting titles to forfeited vehicles

1. Vehicle report. Any officer, department or agency seizing any vehicle subject to forfeiture under section 5821, shall file a report of seizure with the Attorney General or a district attorney having jurisdiction over the vehicle. This report must be filed at least 21 days from the date of seizure. The report shall be labeled "Vehicle Report" and shall include:

A. A description of the vehicle;

B. The place and date of seizure;

C. The name and address of the owner or operator of the vehicle at the time of seizure; and

D. The name and address of any other person who appears to have an ownership interest in the vehicle.

The seizing officer, department or agency must make a diligent search and inquiry as to ownership of the vehicle. The filing of a vehicle report is conclusive evidence that a diligent search and inquiry were completed.

2. Procedure. The Attorney General or a district attorney upon receiving the seizure report shall petition, within 7 days, the Superior Court in the name of the State in the nature of a proceeding in rem to order forfeiture and perfect the State's title to any vehicle subject to for-

feiture under section 5821. The proceeding shall be the same as for forfeited property under section 5822, except that when the owner of the vehicle cannot be determined, the court shall:

A. Order the State, prior to the forfeiture proceeding, to publish notice of the proceeding once each month for 6 consecutive months in newspapers of general circulation throughout the State; and

B. Hold a hearing on the petition not less than 2 weeks after all notices required by this section have been given.

The final order of forfeiture by the court under this section shall perfect the State's right and interest in and title to the vehicle and shall relate back to the date of seizure.

3. Defaced or missing identification numbers. Any vehicle disposed of under this section which does not have a vehicle identification number or the number is illegible shall be issued a special number by the Secretary of State under Title 29, section 103.

4. Subsequent actions. Neither replevin or any other action to recover any interest in any vehicle disposed of under this section may be maintained in any court of this State.

#### §5824. Equitable transfer of forfeited assets

In the case of any asset decreed forfeit under this chapter or under Title 25, to any 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 Governor;

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

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

#### §5825. Records

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

A. From whom it received the property;

B. Under what authority it held, received or disposed of the property;

C. To whom it delivered the property;

D. The date and manner of destruction or disposition of the property; and

E. The exact kinds, quantities and forms of the property.

The records shall be open to inspection by all federal and state officers responsible for enforcing federal and state drug control laws. Persons making final disposition or destruction of the property under court order shall report, under oath, to the court the exact circumstances or the disposition or destruction.

2. Department of Public Safety; centralized record. The Department of Public Safety shall maintain a centralized record of property seized, held by and ordered to the department. A report of the disposition of property previously held by the department and ordered by the court to any governmental entity shall be provided at least quarterly to the Commissioner of Finance and the Office of Fiscal and Program Review for review. These records shall include an estimate as to the fair market value of items seized.

Sec. 3. 22 MRSA §2387, as amended by PL 1985, c. 737, Pt. B, §19, is repealed.

Sec. 4. 29 MRSA §2374, sub-§4 is enacted to read:

4. Forfeiture of interest. If the interest of an owner in a vehicle is forfeited to the State under Title 15, chapter 517, the owner shall promptly mail or deliver to the Secretary of State his last certificate of title. If the owner is unknown, the State shall proceed to perfect title in accordance with Title 15, section 5823. If the forfeited vehicle is resold to another person, the Secretary of State shall issue a new certificate of title to the purchaser. If the forfeiting owner fails to comply with this subsection, the Secretary of State, pursuant to section 2378, shall revoke the owner's certificate of title and pursuant to section 2376, shall issue a new certificate of title to the purchaser.

Effective September 29, 1987.

## CHAPTER 421

S.P. 631 — L.D. 1852

### AN ACT to Authorize the State Bureau of Identification to Charge Fees to Nongovernmental Agencies for Services.

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

25 MRSA §1541, sub-§6 is enacted to read:

6. Establishment of fees. The State Bureau of Identification may charge nongovernmental organizations for services provided pursuant to this chapter. The commis-

sioner shall establish a schedule of fees which shall cover the cost of providing these services, 100% of which shall be credited to the General Fund.

Effective September 29, 1987.

## CHAPTER 422

H.P. 522 — L.D. 702

### AN ACT to Reduce the Retirement Age Requirement for Governors.

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

2 MRSA §1-A, sub-§1, as enacted by PL 1985, c. 801, §§1 and 7, is amended to read:

1. Terms and conditions. Any former Governor and any surviving spouse of a deceased Governor or former Governor is entitled, upon application and upon reaching age 65 60, to a retirement allowance under the following terms and conditions.

A. The amount of the retirement allowance is 3/8 of the annual salary being paid the current Governor on the date ~~the retirement allowance becomes effective~~ the former Governor reaches age 60 or leaves office, which ever comes later.

B. ~~A surviving spouse of a deceased Governor or former Governor is entitled to receive the allowance beginning the day after the death of the Governor or former Governor.~~ The surviving spouse of a Governor or former Governor shall be eligible to receive:

(1) If the spouse is age 60 or older:

(a) The retirement allowance the Governor was receiving or was entitled to receive if the deceased or former Governor died at age 60 or older; or

(b) A retirement pension equal to 3/8 of the salary paid to the Governor currently in office if the former Governor died before age 60; or

(2) If the spouse is under age 60:

(a) At the time the spouse reaches age 60, a retirement pension equal to 3/8 of the salary paid to the Governor currently in office; or

(b) Before the spouse reaches age 60, a reduced retirement pension actuarially equivalent to the benefit which he would have received under division (a).

C. Any person who succeeds to the office of Governor by means other than by election must serve as Governor a minimum of 6 months to qualify himself