

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 7, 1994 to June 30, 1995

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 29, 1995

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

J.S. McCarthy Company
Augusta, Maine
1995

5. Reimbursement. The department may establish by rule a fee to reimburse birthing centers for each voluntary acknowledgement of paternity form completed.

6. Rulemaking. The department shall adopt rules to implement this section that comply with all applicable federal regulations.

Sec. 30. 36 MRSA §191, sub-§2, ¶P, as amended by PL 1995, c. 178, §2, is amended to read:

P. The public disclosure by the State Tax Assessor of the name, last known business address and title of the professional license or certificate of any person whose license or certificate of authority to conduct a profession, trade or business in this State has not been renewed, reissued or otherwise extended by order of the assessor pursuant to section 175. This disclosure may be made only after no further administrative or judicial review of the order is available under section 151 or the Maine Administrative Procedure Act; ~~and~~

Sec. 31. 36 MRSA §191, sub-§2, ¶Q, as enacted by PL 1995, c. 178, §3, is amended to read:

Q. The listing of special fuel suppliers possessing certificates under section 3204-; and

Sec. 32. 36 MRSA §191, sub-§2, ¶R is enacted to read:

R. The disclosure to an authorized representative of the Department of Human Services of information in the possession of the bureau identifying the location of an interest-bearing account in the name and social security number of a delinquent payor of child support as requested by the Department of Human Services.

Sec. 33. 36 MRSA §191, sub-§3, as enacted by PL 1977, c. 668, §2, is amended to read:

3. Additional restrictions for information provided by Internal Revenue Service. Federal returns and federal return information provided to the State by the Internal Revenue Service ~~shall~~ may not be disclosed to other states, districts and territories of the United States or provinces of Canada, to legislative committees or the agents of the committees, to any person retained on an independent contract basis or the employee of that person, or to the Attorney General for the purpose of criminal investigations and prosecutions unrelated to this Title. These restrictions are in addition to those imposed by subsection 1. Upon request by the Department of Human Services under Title 22, section 3755-A, information provided by the Internal Revenue Service concerning the location of interest-bearing accounts in the names and

social security numbers of delinquent payors of child support may be disclosed to an authorized representative of the Department of Human Services in the form of a list or automated computer match list.

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

Effective July 3, 1995.

CHAPTER 420

H.P. 1116 - L.D. 1561

An Act to Exempt Food Banks from Sales Tax

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

Sec. 1. 36 MRSA §1760, sub-§47, as enacted by PL 1983, c. 855, §7, is amended to read:

47. Emergency shelters, feeding organizations and emergency food supply programs. Sales of household and sanitary supplies and food items otherwise subject to tax to incorporated nonprofit organizations ~~which~~ that provide free temporary emergency shelter or food for underprivileged individuals in this State-;

See title page for effective date.

CHAPTER 421

H.P. 1058 - L.D. 1487

An Act Relating to Criminal Forfeitures

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the constitutional legitimacy of civil asset forfeitures has been challenged and the absence of an alternative criminal forfeiture procedure would significantly undermine the drug enforcement effort in the State; and

Whereas, the existing practice in many cases of instituting 2 actions, one criminal against individuals who violate the Maine Revised Statutes, Title 17-A, chapter 45 and one civil against property as a consequence of such violations or intended violations, often results in an unnecessary duplication of effort and a drain on scarce judicial, prosecutorial and law enforcement resources when both actions are actually

part of a single, coordinated law enforcement effort; and

Whereas, this legislation authorizes prosecutors to institute both the criminal action against the individual and the forfeiture action against the subject property in one proceeding, minimizing both duplication and the impact upon judicial, prosecutorial and law enforcement resources; and

Whereas, this legislation does not expand the kind or nature of property that is subject to forfeiture either civilly or criminally; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 15 MRSA §§5826 and 5827 are enacted to read:

§5826. Criminal forfeiture

1. Property subject to criminal forfeiture.

Notwithstanding any other provision of law, a person convicted of a violation of Title 17-A, chapter 45 forfeits to the State all rights, privileges, interests and claims to property that is subject to forfeiture pursuant to section 5821. All rights, privileges, interest and title in property subject to forfeiture under this section vests in the State upon the commission of the act giving rise to forfeiture pursuant to section 5821.

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 in any related criminal proceeding in which one or more persons with an interest in the property have been simultaneously indicted for one or more violations 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.

3. Seizure upon indictment. Property subject to forfeiture that has been indicted by the grand jury pursuant to this section may be seized pursuant to section 5822, subsection 6, except that real property subject to forfeiture pursuant to section 5821, subsection 7 may not be seized without prior notice to and opportunity to be heard by all owners of record or upon a finding by probable cause that prior notice to one or more of the owners is likely to result in the destruction, diminution of value or alienation of interest of the property.

4. Bifurcated trial proceedings. Trial against property charged by indictment or information 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.

5. Ancillary hearing of 3rd-party interests. A person not charged in the indictment may not intervene in the criminal action. Following the entry of a verdict of forfeiture of property pursuant to this section or the entry of a guilty plea in open court on the record, the State shall provide written notice of its intent to dispose of the property to any person known to have alleged an interest in the property. The notice may be by certified, return receipt mail or as otherwise ordered by the court. Receipt by a person then licensed to operate a motor vehicle in the State is presumed when notice is mailed to the last known address of that person on file with the Secretary of State, Bureau of Motor Vehicles. A person other than the defendant asserting a legal interest in the property, within 30 days of the date of receipt of the notice, may petition the court for a hearing to adjudicate the validity of any alleged interest in the property. The hearing must be held before the court without jury. The request for the hearing must be signed by the

petitioner under penalty of perjury and must state the nature and extent of the petitioner's right, title or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title or interest in the property, any additional facts supporting the petitioner's claim and the relief sought. Upon the filing of any petition for hearing, the court shall schedule the hearing as soon as practicable but in no event later than 6 months or after the sentencing of any defendant convicted upon the same indictment. The court shall issue or amend a final order of forfeiture in accordance with its determination if, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that:

A. The petitioner has a legal right, title or interest in the property and the right, title or interest renders the order of forfeiture invalid in whole or in part because the right, title or interest was vested in the petitioner rather than in any defendant or was superior to any right, title or interest to the exclusion of any defendant at the time of the commission of the acts that gave rise to the forfeiture of the property under this section; or

B. The petitioner is a bona fide purchaser for value of the right, title or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section.

6. Final order of disposition of property.

Following the entry of a verdict of forfeiture of property pursuant to this section or the entry of a guilty plea in open court on the record and following the court's disposition of all petitions for hearing timely filed by 3rd parties, the State has clear title to property that is the subject of the indictment or information and order of forfeiture and may order all or a portion of the property forfeited to the State to be disposed of pursuant to section 5822, subsection 4 and section 5824.

§5827. Construction

The provisions of this chapter must be liberally construed to effectuate its remedial purposes.

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

Effective July 3, 1995.

CHAPTER 422

H.P. 152 - L.D. 200

An Act to Allow the Imposition of Any Term of Years or Life for Certain Attempted Murders

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

Sec. 1. **17-A MRSA §152, sub-§4**, as amended by PL 1977, c. 510, §§33 and 34, is further amended to read:

4. Criminal attempt is an offense classified as one grade less serious than the classification of the offense attempted, except that an attempt to commit a Class E crime is a Class E crime, and an attempt to commit murder is a Class A crime. The sentence for attempted murder is as authorized for a Class A crime if the court finds that the person engaged in the conduct constituting the substantial step while under the influence of extreme anger or extreme fear brought about by adequate provocation. Adequate provocation has the same meaning as in section 201, subsection 4. Absent that finding by the court, the sentence for attempted murder is as authorized for a Class A crime except that, notwithstanding section 1252, subsection 2, paragraph A, the court is authorized to set a definite period of imprisonment of any term of years or, with proper findings, life. The special penalty provision of life imprisonment may be imposed only if the court finds one or more of the following aggravating circumstances is in fact present:

A. The person's intent to kill was accompanied by premeditation-in-fact;

B. The person, at the time of the crime, intended to cause multiple deaths;

C. The person was previously convicted of criminal homicide or any other crime involving the use of deadly force against a person;

D. The attempted murder was accompanied by torture, sexual assault or other extreme cruelty inflicted upon the victim;

E. The attempted murder was committed in a penal institution by an inmate of that institution against another inmate or against prison personnel;

F. The attempted murder was committed against a law enforcement officer while the officer was acting in the performance of that officer's duties; or