

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1963 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 4

Discard Previous Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1963

Sec. 10. Common thief.

Quoted in State v. Mottram, 158 Me. 325, 184 A. (2d) 225.

Willful Concealment of Merchandise.

Sec. 10-A. Willful concealment of merchandise. — Whoever, without authority, willfully conceals the goods or merchandise of any store, while still upon the premises of such store, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$100, or by imprisonment for not more than 6 months, or by both such fine and imprisonment. Goods or merchandise found concealed upon the person shall be prima facie evidence of a willful concealment. (1955, c. 66.)

Buying, Receiving or Aiding to Conceal Stolen Goods.

Sec. 11. Buying, receiving or aiding to conceal stolen property; restoration of stolen property; subsequent conviction.

Applied in State v. Sanborn, 157 Me. 424, 173 A. (2d) 854. Cited in State v. Jutras, 154 Me. 198, 144 A. (2d) 865.

Sec. 13. Compensation to prosecutor and officer. — The court, other than the district court, upon conviction before it of burglary, robbery or larceny, and when there is no conviction by reason of the death of the offender or of his escape without their fault, may allow to the prosecutor and to the officer who has secured or kept the property a fair compensation for their actual expenses, time and trouble in arresting the offender and securing the property stolen. (R. S. c. 119, § 13. 1963, c. 402, § 209.)

Effect of amendment.—The 1963 amendment substituted "the district court" for "a municipal court or trial justice."

Application of amending act.—Section 280 of c. 402, P. L. 1963, provides that the

act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Chapter 133.

Forgery, Counterfeiting, False Pretenses and Frauds.

Sections 11 to 29-B. False Pretenses and Other Frauds.

Forgery and Counterfeiting.

Sec. 1. Forgery, definition. — Whoever, with intent to defraud, falsely makes, alters, forges or counterfeits any public record or proceeding filed or entered in any court; or process issued, or purporting to be issued by a competent court, magistrate or officer; or attestation or certificate of any person required by law or receivable as legal proof in relation to any matter; or any charter, deed, will, testament, bond, writing obligatory, power of attorney, letter of credit, policy of insurance, bill of lading, bill of exchange, promissory note, order or acceptance, or indorsement or assignment thereof, or of any debt or contract; or acquittance, discharge or accountable receipt for anything of value; or a motor vehicle operator's license or registration certificate; or any other written instrument of another, or purporting to be such, by which any pecuniary demand or obligation or any right in any property is or purports to be created, increased, conveyed, transferred, diminished or discharged; and whoever utters and publishes as true any instrument before-mentioned, knowing it to be false, forged or counterfeit,

with like intent, shall be punished by imprisonment for not more than 10 years. (R. S. c. 120, § 1. 1955, c. 29.)

Effect of amendment.—The 1955 amendment inserted the words “or a motor vehicle operator’s license or registration certificate” near the middle of the section.

Element of crime.—This section requires

that a specific intent to defraud must be affirmatively shown as an element of the crime of forgery. *State v. Dupuis*, 159 Me. 100, 188 A. (2d) 688.

False Pretenses and Other Frauds.

Sec. 11. Cheating by false pretenses.—Whoever, designedly and by any false pretense or privy or false token and with intent to defraud, obtains from another any money, goods or other property, the making of a loan or credit, the extension of credit, the discount of an account receivable or what is represented to be an account receivable, or the making, acceptance, discount, sale or indorsement of a bill of exchange, bank check or promissory note, or his signature to any written instrument, the false making of which is forgery, or whoever knowingly, and with intent to defraud, sells, conveys, mortgages or pledges to another personal property on which there is an existing mortgage or to which he has no title, without notice to the purchaser of such mortgage or of such want of title, is guilty of cheating by false pretenses and shall be punished by a fine of not more than \$500 or by imprisonment for not more than 7 years. A promise, if unconditional and made without present intention of performance, will constitute a false pretense within this section. (R. S. c. 120, § 11. 1961, c. 40.)

Effect of amendment.—The 1961 amendment added the last sentence in the section.

Promise may now constitute false pretense.—After the 1961 amendment to this section, a promise, if unconditional and made without present intention of performance, constituted a false pretense within the meaning of this section. In such a case, however, the state must allege and prove that the promise was unconditional and was made without a present intention to perform. *State v. Austin*, 159 Me. 71, 188 A. (2d) 275.

Prior to the 1961 amendment, the failure to perform a promise to fulfill a contract was not indictable. *State v. Austin*, 159 Me. 71, 188 A. (2d) 275.

In the absence of a statute authorizing a prosecution upon a promise made without a present intention of performance, a false pretense to be indictable must be an untrue statement of a past or an existing fact. A false pretense as to future acts or events will not support a conviction for obtaining property under false pretenses. *State v. Austin*, 159 Me. 71, 188 A. (2d) 275.

The crime punished by this section is “infamous” within the meaning of article I, § 7, of the Constitution of Maine. *Tuttle v. State*, 158 Me. 150, 180 A. (2d) 608, cert. den. 371 U. S. 879, 83 S. Ct. 151, 9 L. Ed. (2d) 116.

Sec. 11-A. Fraudulently obtaining long-distance telephone service without payment.—Whoever, with intent to cheat or defraud shall, by any impersonation, false pretense or false representation, wrongfully obtain, or attempt to obtain, any long-distance telephone service without paying the charge therefor, shall be punished by a fine of not more than \$100 or by imprisonment for not more than 30 days, or by both. (1961, c. 278.)

Sec. 18. False representations of standard for sale of sterling and coin silver articles.—Whoever makes or sells, or offers to sell or dispose of, or has in his possession with intent to sell or dispose of, any article of merchandise marked, stamped or branded with the words “sterling,” “sterling silver,” “coin” or “coin silver,” or encased or enclosed in any box, package, cover or wrapper, or other thing in or by which the said article is packed, enclosed or otherwise prepared for sale or disposition, having thereon any engraving or printed label, stamp, imprint, mark or trade-mark, indicating or denoting by such marking, stamping, branding, engraving or printing that such article is silver, sterling silver, solid silver, coin or coin silver, shall, unless 925/1000 of the com-

ponent parts of the metal, of which the said article so enclosed or so marked, stamped or branded with the words "silver," "sterling silver" or "solid silver" is manufactured, are pure silver, or unless 900/1000 of the component parts of the metal, of which the article so enclosed or so marked, stamped or branded with the words "coin" or "coin silver" is manufactured, are pure silver, be punished by a fine of not more than \$100 for each offense. District courts shall have original jurisdiction in all cases arising under this section. (R. S. c. 120, § 18. 1963, c. 402, § 210.)

Effect of amendment.—The 1963 amendment substituted "District courts" for "Trial justices" in the last sentence, deleted "with municipal courts" following "jurisdiction" therein and deleted "the provisions of" preceding "this section" in such sentence.

Application of amending act.—Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Sec. 25. Fraudulent issue of transfer tickets.—Every conductor of a public conveyance, and every other person whose duty it is to collect fares on such vehicle or conveyance, or issue a transfer ticket, or written or printed instrument, giving or purporting to give the right of transfer to another person or persons from a public conveyance operated upon line or route to a public conveyance upon the same or different lines or routes, who shall knowingly and with intent to defraud the person or corporation operating such public conveyance or vehicle issue, sell or give any such transfer ticket or instrument to another person not lawfully entitled thereto, or receive, use or return any such transfer ticket or instrument unlawfully issued or presented for fare in lieu of a regular cash fare, or substitute any such transfer ticket or instrument for any cash fare collected by him; and every person who shall fraudulently and with intent to evade the payment of fare receive and use or offer for passage any transfer ticket or instrument not originally issued to him; and every person, who shall sell or give any such transfer ticket or instrument originally issued to him to another person with intent to have such transfer ticket or instrument used or offered for passage by such other person, shall be punished by a fine of not more than \$50 or by imprisonment for not more than 30 days, or by both. (R. S. c. 120, § 25. 1961, c. 395, § 49.)

Effect of amendment.—The 1961 amendment, effective on its approval, June 17, 1961, deleted "street railroad car or other" near the beginning of this section, substituted "vehicle" for "car" twice in this section, substituted "to a public conveyance upon the same or different lines or routes"

for "of a street railroad to a public conveyance upon another line or route of a street railroad, or from one car to another upon the same line of a street railroad" and deleted "such fine and imprisonment" at the end of the section.

Sec. 26. Tampering with fare-box or fare-register of public vehicles or depositing mutilated coins therein with intent to defraud.—Whoever with intent to defraud opens, defaces or in any way tampers with any fare-box or fare-register of any public vehicles, or in any way disarranges the mechanism thereof; and whoever with intent to defraud deposits, causes to be deposited or furnishes to another person with intent that same shall be deposited in such fare-box or register any coin which has been, or may hereafter be, coined at the mints of the United States, or any foreign coin, of a sort that is in actual use or circulation as money within this State, knowing that said coin has been defaced, mutilated or altered in shape in such fashion that it will not be properly registered in such fare-box or register, shall be punished by a fine of not less than \$25 nor more than \$100, and by imprisonment for not more than 60 days. Whoever with intent to defraud procures or has in his possession any such coin so defaced, mutilated or altered in shape knowing that said coin is so defaced, mutilated or altered in shape and with intent to deposit such coin

or cause same to be deposited in any fare-box or fare-register of any public vehicles, or with intent to furnish same to any third person with intent that same shall be deposited in such fare-box or register, shall be punished by a fine of not less than \$25 nor more than \$100, and by imprisonment for not more than 60 days. (R. S. c. 120, § 26. 1961, c. 395, § 50.)

Effect of amendment.—The 1961 amendment, effective on its approval, June 17, 1961, substituted “public vehicles” for “street railway company” twice in this section.

Sec. 28. Circulating advertisements in the similitude of bank bills.—Whoever puts in circulation or distributes any notice, advertisement or shop bill, in the form and similitude of a bank bill, forfeits \$50 for each offense, to be recovered by civil action in the name and to the use of the prosecutor. (R. S. c. 120, § 28. 1961, c. 317, § 461.)

Effect of amendment.—The 1961 amendment substituted “civil action” for “action of debt” in this section.

Sec. 29. Fraudulent advertising.—Any person, firm, corporation or association who, with intent to sell or in anywise dispose of merchandise, service or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto or an interest therein, makes, publishes, disseminates, circulates or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, sign, billboard, bill, circular, pamphlet or letter, photograph, motion picture, radio, loud speaker, television, telephone, telegraph, or in any other way, an advertisement of any sort regarding merchandise, service or anything so offered to the public, which advertisement contains any assertion representation or statement of fact which is untrue and designed to be deceptive or misleading, or is intended or designed not to sell the merchandise, commodities or service so advertised at the price stated therein, or otherwise communicated, or with intent not to sell the merchandise, commodities or service so advertised, may be enjoined from such advertising, and shall be punished by a fine of not more than \$500.

The provisions of this section shall not apply to any radio station, publisher of a newspaper, magazine or other publication, or any other established and recognized advertising media, or printer who publishes or prints said advertisement without actual knowledge of its falsity. The fact of the publishing or printing of such advertisement shall not be prima facie evidence of such actual knowledge of falsity. (R. S. c. 120, § 29. 1955, c. 54.)

Effect of amendment.—The 1955 amendment rewrote the first paragraph and inserted the words “or any other established and recognized advertising media” in the second paragraph.

Sec. 29-A. Use of false or unauthorized credit devices.—Any person who knowingly obtains or attempts to obtain credit, or purchases or attempts to purchase any goods, property or service, by the use of any false, fictitious or counterfeit credit card, credit number, telephone number or other credit device, or by the use of any credit card, credit number, telephone number or other credit device of another without the authority of the person to whom such card, number or device was issued, or by the use of any credit card, credit number, telephone number or other credit device in any case where such card, number or device has been revoked and notice of revocation, as provided in section 29-B, has been given to the person to whom issued, shall be punished by a fine of not

more than \$100, or by imprisonment for not more than one year, or by both. (1963, c. 301.)

Sec. 29-B. Notice of credit revocation.—The word “notice” as used in section 29-A includes either notice given in person or notice given in writing to the person to whom the credit card, number or device was issued. The sending of a notice in writing by registered or certified mail, duly stamped and addressed to the person at his last address known to the issuer, shall be prima facie evidence that such notice was duly received. (1963, c. 301.)

Maritime Frauds.

Sec. 34. Aiding sailors to desert.—Whoever entices or persuades or attempts to entice or persuade, or aids, assists or attempts to aid or assist, a member of the crew of any vessel arriving in or about to sail from a port in this state to leave or desert such vessel before the expiration of his term of service therein shall be punished by a fine of not more than \$100, and by imprisonment for not less than 30 days nor more than 6 months. District courts shall have original jurisdiction in all cases arising under this section. (R. S. c. 120, § 34. 1963, c. 402, § 211.)

Effect of amendment.—The 1963 amendment substituted “District courts” for “Trial justices” in the last sentence and deleted “with municipal courts” following

“jurisdiction” in that sentence.

Application of amending act.—See note to § 18.

Chapter 134.

Crimes against Chastity, Morality and Decency. Sunday Activities.

Sexual Crimes.

Sec. 2. Incest.

Proof of relationship.—Statements on the part of a child that the defendant was her father and defendant’s admission that the child was his daughter were sufficient to prove the relationship necessary to convict under this section. *State v. Beckwith*, 158 Me. 174, 180 A. (2d) 605.

The kinship between the parties may be proved by the evidence of relatives and friends and by family reputation. *State v. Beckwith*, 158 Me. 174, 180 A. (2d) 605.

Evidence of prior and subsequent intercourse is admissible.—Evidence tending to

show illicit intercourse by the defendant with the same person charged in the indictment, both before and after the day laid, is competent to prove the relation and mutual disposition of the parties. *State v. Beckwith*, 158 Me. 174, 180 A. (2d) 605.

Degree of consanguinity a jury question.—It is for the jury to determine what degree of consanguinity or affinity has been shown. *State v. Beckwith*, 158 Me. 174, 180 A. (2d) 605.

Sec. 3. Crime against nature.

Age of victim or pathic is not material.—Where the crime against nature is charged, the age of the victim or pathic is not material and there is no requirement that it be alleged. *State v. Pratt*, 151 Me. 236, 116 A. (2d) 924.

Penetration of a natural orifice of the body essential.—An indictment which charged that the defendant committed the offense of the crime against nature by

causing a female to manipulate his sexual parts was vulnerable to demurrer, since the crime against nature involving mankind is not complete without some penetration, however slight, of a natural orifice of the body. *State v. Pratt*, 151 Me. 236, 116 A. (2d) 924.

Cited in *Austin v. State*, 158 Me. 292, 183 A. (2d) 515.