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H.P. 1125

House of Representatives, April 19, 2021

An Act To Strengthen Protections against Civil Asset Forfeiture

Received by the Clerk of the House on April 15, 2021. Referred to the Committee on Criminal Justice and Public Safety pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative FAULKINGHAM of Winter Harbor.
Cosponsored by Senator MIRAMANT of Knox and
Representatives: ANDREWS of Paris, FECTEAU of Augusta, LIBBY of Auburn, TALBOT
ROSS of Portland, WARREN of Hallowell, Senator: MAXMIN of Lincoln.

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

2 **Sec. 1. 15 MRSA §5821, first ¶**, as amended by PL 2017, c. 409, Pt. B, §1, is
3 further amended to read:

4 Except as provided in section 5821-A or 5821-B, the following are subject to forfeiture
5 to the State and no property right may exist in them if the owner of the following is
6 convicted of 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7 **Sec. 2. 15 MRSA §5821, sub-§3-A**, as repealed and replaced by PL 2013, c. 588,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 firearms
10 and dangerous weapons that they may find in any lawful search for scheduled drugs in
11 which scheduled drugs are found. Except for those seized weapons listed in a petition filed
12 in the Superior Court pursuant to section 5822, ~~all weapons seized, for every firearm or~~
13 ~~dangerous weapon seized, if the owner of the firearm or dangerous weapon is convicted of~~
14 a crime in which the firearm or dangerous weapon was involved, after notice and
15 opportunity for hearing, the firearm or dangerous weapon must be forfeited to the State by
16 the District Court 90 days after a list of the weapons and drugs seized is filed in the District
17 Court in the district in which the weapons and drugs were seized. A weapon need may not
18 be forfeited if the owner appears prior to the declaration of forfeiture and unless the State
19 satisfies the court, by a preponderance of evidence, of all of the following: that the owner
20 of the firearm or dangerous weapon was convicted of a crime in which the firearm or
21 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 the~~
24 ~~site of the seizure;~~

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

27 ~~C. That the owner had not given any involved person permission to possess or use the~~
28 ~~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 amended by PL 2019, c. 113, Pt. C, §52, is
35 further 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 1504, this subsection controls the
38 forfeiture of firearms used in the commission of certain acts.

39 A. Except as provided in paragraph B, a firearm is subject to forfeiture to the State if
40 the firearm is used by a person who is the owner of the firearm to commit a criminal
41 act that in fact causes serious bodily injury or death to another human being and,
42 following that act, the person either commits suicide or attempts to commit suicide and

1 the attempt results in the person's becoming incompetent to stand trial or the person is
2 killed or rendered incompetent to stand trial as the result of a justifiable use of deadly
3 force by a law enforcement officer. Except as provided in paragraph B, a property
4 right does not exist in the firearm subject to forfeiture.

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

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

14 **Sec. 4. 15 MRSA §5821, sub-§7-A**, as amended by PL 2019, c. 97, §1, is further
15 amended to read:

16 **7-A. Computers.** ~~Except as provided in paragraph A, all computers~~ Computers, as
17 defined in Title 17-A, section 431, subsection 2, and computer equipment, including, but
18 not limited to, printers and scanners, that are used or are attempted to be used in violation
19 of Title 17-A, section 259-A;

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

23 **Sec. 5. 15 MRSA §5821**, as amended by PL 2019, c. 97, §§1 to 3 and c. 113, Pt. C,
24 §52, is further amended by adding at the end a new paragraph to read:

25 Unless seized property under this section includes United States currency in excess of
26 \$100,000, a law enforcement agency, prosecuting authority, state agency, county or
27 municipality may not enter into an agreement to transfer or refer property seized under this
28 section to a federal agency directly, indirectly, through adoption, through an
29 intergovernmental joint task force or by other means that circumvent the provisions of this
30 section.

31 **Sec. 6. 15 MRSA §5825**, as amended by PL 2019, c. 651, §1, is further amended to
32 read:

33 **§5825. Records; reports**

34 **1. Records of forfeited property.** Any officer to whom or department or agency to
35 which property subject to forfeiture under section 5821 has been ordered forfeited shall
36 maintain records showing:

37 A. The name of the court that ordered each item of property to be forfeited to the
38 officer, department or agency;

39 D. The date on which each item of property was ordered forfeited to the officer,
40 department or agency; and

41 E. A description of each item of property forfeited to the officer, department or agency.

1 The records must be open to inspection. A copy of each record must be filed with the
2 Department of Public Safety.

3 **2. Department of Public Safety.** A report of the transfer of property previously held
4 by the Department of Public Safety and then ordered by a court to be forfeited to another
5 governmental entity must be provided upon request to the Commissioner of Administrative
6 and Financial Services and the Office of Fiscal and Program Review. The report must
7 account for any such transfer that occurred during the 12 months preceding such a request.
8 The Department of Public Safety shall maintain all records filed with the department
9 pursuant to subsection 1. The Department of Public Safety shall make all records under
10 this subsection available on a publicly accessible website.

11 SUMMARY

12 This bill requires that, for property to be forfeited under the criminal forfeiture laws,
13 the owner of the property be convicted of a crime in which the property was involved, and
14 it prohibits a law enforcement agency or other entity from entering into an agreement to
15 transfer or refer the property seized to a federal agency. This bill also requires that the
16 records of forfeited property be posted by the Department of Public Safety on a publicly
17 accessible website.