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Date: (Filing No. H-)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1125, L.D. 1521, “An Act To Strengthen Protections against Civil Asset Forfeiture”

Amend the bill by striking out all of section 2 and inserting the following:

'Sec. 2. 15 MRSA §5821, sub-§3-A, as repealed and replaced by PL 2013, c. 588, Pt. A, §19, is amended to read:

3-A. Firearms and other weapons. Law enforcement officers may seize all firearms and dangerous weapons that they may find in any lawful search for scheduled drugs in which scheduled drugs are found. Except for ~~those seized weapons listed in a petition filed in the Superior Court pursuant to section 5822~~, all weapons seized ~~weapons declared by a court to be forfeited in accordance with section 5826, subsection 9, if the owner of a seized firearm or dangerous weapon is convicted of a crime in which the firearm or dangerous weapon was involved~~, after notice and opportunity for hearing, the firearm or dangerous weapon must be forfeited to the State by the District Court 90 days after a list of the weapons and drugs seized is filed in the District Court in the district in which the weapons and drugs were seized. A weapon need may not be forfeited if the owner appears prior to the declaration of forfeiture and unless the State satisfies the court, by a preponderance of evidence, of all of the following: that the owner of the firearm or dangerous weapon was convicted of a crime in which the firearm or dangerous weapon was involved.

~~A. That the owner had a possessory interest in the weapon at the time of the seizure sufficient to exclude every person involved with the seized drugs or every person at the site of the seizure;~~

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

~~C. That the owner had not given any involved person permission to possess or use the weapon.~~

Post-hearing procedures are as provided in section 5822.

COMMITTEE AMENDMENT

1 A confiscated or forfeited firearm that was confiscated or forfeited because it was used to
2 commit a homicide must be destroyed by the State unless the firearm was stolen and the
3 rightful owner was not the person who committed the homicide, in which case the firearm
4 must be returned to the owner if ascertainable;'

5 Amend the bill in section 3 in subsection 3-B in the first blocked paragraph in the 2nd
6 line (page 2, line 12 in L.D.) by striking out the following: "5822" and inserting the
7 following: '~~5822~~ 5826, subsection 9'

8 Amend the bill by inserting after section 5 the following:

9 '**Sec. 6. 15 MRSA §5822, sub-§1**, as amended by PL 1987, c. 648, is repealed.

10 **Sec. 7. 15 MRSA §5822, sub-§2**, as enacted by PL 1987, c. 420, §2, is repealed.

11 **Sec. 8. 15 MRSA §5822, sub-§3**, as amended by PL 1991, c. 461, §1, is repealed.

12 **Sec. 9. 15 MRSA §5822, sub-§4**, as amended by PL 1999, c. 408, §1, is repealed.

13 **Sec. 10. 15 MRSA §5822, sub-§5**, as enacted by PL 1987, c. 420, §2, is repealed.

14 **Sec. 11. 15 MRSA §5823, sub-§2**, as amended by PL 1991, c. 461, §3, is repealed.'

15 Amend the bill by inserting after section 6 the following:

16 '**Sec. 7. 15 MRSA §5826, sub-§9** is enacted to read:

17 **9. Exceptions to requirement for conviction.** A conviction is not required for seizure
18 only as provided in this subsection.

19 A. Nothing in this chapter prevents property from being forfeited as part of:

20 (1) A plea agreement; or

21 (2) A grant of immunity or reduced punishment, with or without the filing of a
22 criminal charge, in exchange for testifying or assisting a law enforcement
23 investigation or prosecution.

24 B. The court may waive the conviction requirement in this section and grant title to the
25 property to the State if the State files a motion no fewer than 90 days after seizure and
26 shows by a preponderance of the evidence that, before conviction, the defendant:

27 (1) Died;

28 (2) Was deported by the United States Government;

29 (3) Abandoned the property; or

30 (4) Fled the jurisdiction.

31 **Sec. 8. 15 MRSA §5828** is enacted to read:

32 **§5828. Post-seizure proceedings**

33 **1. Prompt post-seizure hearing.** This subsection governs post-seizure proceedings
34 for assets seized pursuant to this chapter.

35 A. Following the seizure of property, a defendant or any person with an interest in the
36 property has a right to a prompt post-seizure hearing.

37 B. A person with an interest in the property may petition the court for a hearing.

- 1 C. At the court's discretion, the court may hold a prompt post-seizure hearing:
- 2 (1) As a separate hearing; or
- 3 (2) At the same time as a probable-cause determination, a post-arraignment
- 4 hearing or other pretrial hearing.
- 5 D. A party, by agreement of all parties or for good cause, may move for one extension
- 6 of the hearing date of no more than 10 days. Any motion may be supported by affidavits
- 7 or other submissions.
- 8 E. The court shall order the return of seized property if it finds:
- 9 (1) The seizure was invalid;
- 10 (2) A criminal charge has not been filed and no extension of the filing period
- 11 established under this section is available;
- 12 (3) The property is not reasonably required to be held as evidence; or
- 13 (4) The final judgment likely will be in favor of the claimant.'

14 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
15 number to read consecutively.

16 **SUMMARY**

17 This amendment represents a report of the committee. It does the following:

- 18 1. It repeals the statutory language describing civil forfeiture;
- 19 2. It repeals language describing the procedure for perfecting title to abandoned
- 20 vehicles;
- 21 3. It adds exceptions to the requirement for conviction for criminal forfeiture; and
- 22 4. It adds language describing the right to a prompt post-seizure hearing for a
- 23 defendant or any person with an interest in the property.

24 **FISCAL NOTE REQUIRED**

25 **(See attached)**

COMMITTEE AMENDMENT