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H.P. 1412

House of Representatives, February 5, 2024

An Act to Combat Racketeering in Scheduled Drugs by Certain Organizations

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

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

ROBERT B. HUNT
Clerk

Presented by Representative ANDREWS of Paris.
Cosponsored by Senator HARRINGTON of York and
Representatives: ARDELL of Monticello, CYRWAY of Albion, NEWMAN of Belgrade,
NUTTING of Oakland, PERKINS of Dover-Foxcroft, POIRIER of Skowhegan, SOBOLESKI
of Phillips, WHITE of Guilford.

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

2 **Sec. 1. 17-A MRSA c. 46** is enacted to read:

3 **CHAPTER 46**

4 **RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS**

5 **§1131. Definitions**

6 As used in this chapter, unless the context otherwise indicates, the following terms
7 have the following meanings.

8 **1. Criminal act.** "Criminal act" means conduct constituting, or a conspiracy or attempt
9 to commit, a violation punishable by imprisonment for one year or more of any of sections
10 1103 to 1106; 1107-A to 1109; or 1117 to 1124.

11 **2. Criminal proceeding.** "Criminal proceeding" means a criminal proceeding brought
12 under section 1132.

13 **3. Enterprise.** "Enterprise" means a sole proprietorship, partnership, corporation, trust
14 or other legal entity, or a union, governmental entity, association or group of persons
15 associated in fact but not a legal entity, and includes illicit as well as legitimate enterprises.

16 **4. Participates in a pattern of criminal activity.** "Participates in a pattern of criminal
17 activity" means, with respect to a person who participates in a pattern of criminal activity,
18 that the person participating is a principal with respect to conduct constituting at least 3 of
19 the criminal acts included in the pattern of criminal activity and at least 2 of the criminal
20 acts are criminal acts other than conspiracy.

21 **5. Pattern of criminal activity.** "Pattern of criminal activity" means conduct
22 constituting 3 or more criminal acts that:

23 A. Were committed within 10 years of the commencement of the applicable criminal
24 proceeding;

25 B. Are neither isolated incidents nor so closely related and connected in point of time
26 or circumstance of commission as to constitute a single criminal offense; and

27 C. Were either:

28 (1) Related to one another through a common scheme or plan or a shared criminal
29 purpose; or

30 (2) Committed, solicited or intentionally aided by persons acting with the culpable
31 state of mind required for the commission of the criminal acts and associated with
32 or in an enterprise involved in those criminal acts.

33 **6. Personal property.** "Personal property" means personal property, an interest in
34 personal property or a right, including a bank account, a debt, corporate stock, a patent or
35 a copyright.

36 **7. Principal.** "Principal" means a person who personally engages in conduct
37 constituting a criminal act or who is criminally liable under section 57 for the conduct of
38 another constituting a criminal act.

1 **8. Prosecuting authority.** "Prosecuting authority" means the office of a district
2 attorney or the Department of the Attorney General.

3 **9. Real property.** "Real property" means any real property or an interest in real
4 property, including a lease of, or mortgage on, real property.

5 **§1132. Racketeering**

6 **1. Crime.** A person is guilty of racketeering if the person:

7 A. Is employed by or associated with an enterprise and intentionally conducts or
8 participates in the affairs of the enterprise by participating in a pattern of criminal
9 activity;

10 B. Acquires or maintains an interest in or control of an enterprise, or an interest in real
11 property, by participating in a pattern of criminal activity; or

12 C. Participates in a pattern of criminal activity and knowingly invests any proceeds
13 derived from that conduct, or any proceeds derived from the investment or use of those
14 proceeds, in an enterprise or in real property.

15 **2. Permitted activities.** It is not a violation of this section to:

16 A. Purchase securities on the open market with intent to make an investment, and
17 without the intent of controlling or participating in the control of the issuer, or of
18 assisting another to do so, if the securities of the issuer held by the purchaser, the
19 members of the purchaser's immediate family and the purchaser's accomplices in a
20 pattern of criminal activity do not amount in the aggregate to 5% of the outstanding
21 securities of any one class and do not confer, either in the law or in fact, the power to
22 elect one or more directors of the issuer;

23 B. Make a deposit in an account maintained in a financial institution, as defined in Title
24 32, section 6151, subsection 4, that creates an ownership interest in that institution; or

25 C. Purchase nonvoting shares in a limited partnership with intent to make an investment
26 and without the intent of controlling or participating in the control of the partnership.

27 **3. Affirmative defense; federal offenses.** It is an affirmative defense to prosecution
28 under this section that the person engaged in racketeering because the person is a trafficked
29 person as defined in Title 5, section 4701, subsection 1, paragraph A. The prosecuting
30 authority shall recommend that federal action not be commenced for violations of federal
31 law that are committed by a person engaged in racketeering because the person is a
32 trafficked person and that arise out of conduct that constitutes racketeering.

33 **§1133. Criminal penalties**

34 **1. Penalty.** Except as provided in this subsection, a person convicted of violating
35 section 1132 commits a Class A crime for which a term of imprisonment of not more than
36 20 years or, notwithstanding sections 1704 and 1705, a fine of not more than \$1,000,000,
37 or both, may be imposed. A person convicted of violating section 1132 when at least one
38 of the criminal acts in the pattern of criminal activity is a violation of section 1105-A
39 involving the making, creating or manufacturing of scheduled drugs as described in section
40 1101, subsection 17, paragraph A commits a Class A crime for which a term of
41 imprisonment of not more than 30 years or, notwithstanding sections 1704 and 1705, a fine
42 of not more than \$1,000,000, or both, may be imposed.

1 **2. Fine.** In lieu of the fine authorized by subsection 1, a person convicted of violating
2 section 1132, who received economic gain from the act or caused economic loss or personal
3 injury during the act, may be sentenced to pay a fine calculated under this subsection. The
4 maximum fine is 3 times the gross economic gain or 3 times the gross economic loss,
5 whichever is greater, plus court costs and the costs of investigation and prosecution
6 reasonably incurred, less the value of any property forfeited under section 1134. The court
7 shall hold a hearing to determine the amount of the fine authorized by this subsection. In
8 imposing a fine, the court shall consider the seriousness of the conduct, whether the amount
9 of the fine is disproportionate to the conduct in which the person engaged, the impact of
10 the conduct on victims and any legitimate enterprise involved in that conduct, as well as
11 the economic circumstances of the convicted person, including the effect of the imposition
12 of the fine on the person's immediate family. For purposes of this subsection, "loss" does
13 not include pain and suffering.

14 **3. Injunctive relief.** After the entry of a judgment that includes a fine under this section
15 or an order of criminal forfeiture under section 1134, the court may enter a restraining order
16 or injunction, require the execution of a satisfactory performance bond or take other action,
17 including the appointment of a receiver, that the court considers proper to protect the
18 interests of the prosecuting authority in collecting the money or forfeiture or the interests
19 of an innocent party.

20 **4. Disposition of fine proceeds.** The court shall apply fines collected under this section
21 to the costs and expenses of investigation and prosecution, including costs of resources and
22 personnel reasonably incurred in investigation and prosecution, and the balance, if any,
23 must be deposited in the General Fund.

24 **5. Restitution.** In a settlement discussion or before the imposition of a sentence under
25 this section, the prosecuting authority shall vigorously advocate full restitution to an
26 aggrieved person. Before the acceptance of a plea or after a verdict but before the
27 imposition of a sentence under this section, the court must ensure that full restitution has
28 been duly effected or that a satisfactory explanation of why full restitution is impractical
29 has been made to the court.

30 **§1134. Criminal forfeiture**

31 **1. Forfeiture.** When a person is convicted of violating section 1132, the court may
32 order the person to forfeit to the prosecuting authority any real property or personal
33 property subject to forfeiture under this section. Property subject to forfeiture is real
34 property and personal property that was used in the course of, intended for use in the course
35 of, derived from or realized through conduct in violation of section 1132. A court may not
36 order the forfeiture of property that has been used to pay reasonable attorney's fees in
37 connection with a criminal proceeding under section 1132. For the purposes of this section,
38 "property" includes property constituting an interest in or means of control or influence
39 over the enterprise involved in the violation of section 1132 and any property constituting
40 proceeds derived from the violation of section 1132, including:

41 A. A position, office, appointment, tenure, commission or employment contract:

42 (1) That was acquired or maintained in violation of section 1132;

43 (2) Through which the person conducted or participated in the conduct of the
44 affairs of an enterprise in violation of section 1132; or

1 (3) That afforded the person a source of influence or control over the affairs of an
2 enterprise that the person exercised in violation of section 1132;

3 B. Any compensation, right or benefit derived from a position, office, appointment,
4 tenure, commission or employment contract described in paragraph A that accrued to
5 the person during the period of conduct in violation of section 1132;

6 C. Any interest in an enterprise, any security of an enterprise, any claim against an
7 enterprise or a property or contractual right affording the person a source of influence
8 or control over the affairs of an enterprise that the person exercised in violation of
9 section 1132; and

10 D. Any amount payable or paid under any contract for goods or services that was
11 awarded or performed in violation of section 1132.

12 **2. Other property of defendant.** The court may order criminal forfeiture of any
13 property other than property described under subsection 1 of the defendant up to the value
14 of the property that is unreachable if any property subject to criminal forfeiture under
15 subsection 1:

16 A. Cannot be located;

17 B. Has been sold to a bona fide purchaser for value;

18 C. Has been placed beyond the jurisdiction of the court;

19 D. Has been substantially diminished in value by the conduct of the defendant;

20 E. Has been commingled with other property that cannot be divided without difficulty
21 or undue injury to innocent persons; or

22 F. Is otherwise unreachable without undue injury to an innocent person.

23 **§1135. Preservation of property subject to forfeiture**

24 **1. Temporary restraining order.** When an indictment or complaint is filed under
25 section 1132, the court may take any of the following actions if the prosecuting authority
26 shows by a preponderance of the evidence that the action is necessary to preserve the
27 reachability of property subject to criminal forfeiture:

28 A. Enter a restraining order or injunction;

29 B. Require the execution of a satisfactory performance bond; or

30 C. Take any other reasonable action, including the appointment of a receiver.

31 Before granting the remedies provided by this subsection, the court shall hold a hearing,
32 after notice to all affected persons, giving them a reasonable opportunity to respond. At the
33 hearing, the rules of evidence do not apply.

34 **2. Preindictment order.** The following provisions govern preindictment orders.

35 A. If an indictment or complaint has not been filed, the court may take actions provided
36 in subsection 1 if the prosecuting authority makes the showing required by subsection
37 1 and also shows that:

38 (1) There is probable cause to believe that the property with respect to which the
39 order is sought would, in the event of a conviction, be subject to criminal forfeiture
40 under section 1134; and

1 (2) The requested order would not result in substantial and irreparable harm or
2 injury to the party against whom the order is to be entered, or to other affected
3 persons, that outweighs the need to preserve the reachability of the property.

4 B. An order entered under this subsection is effective for a maximum of 90 days unless:

5 (1) Extended by the court for good cause; or

6 (2) Terminated by the filing of an indictment or complaint alleging that the
7 property is subject to forfeiture.

8 **3. Restraining order without notice.** On application by the prosecuting authority, the
9 court may grant, without notice to any party, a temporary restraining order to preserve the
10 reachability of property subject to criminal forfeiture under section 1134 if:

11 A. An indictment or complaint alleging that property is subject to criminal forfeiture
12 has been filed or the court determines that there is probable cause to believe that
13 property with respect to which the order is sought would, in the event of a conviction,
14 be subject to criminal forfeiture under section 1134;

15 B. The property is in the possession or control of the party against whom the order is
16 to be entered; and

17 C. The court makes a specific finding in writing that the property can be concealed,
18 disposed of or placed beyond the jurisdiction of the court before any party may be
19 heard in opposition.

20 A temporary restraining order granted without notice to any party under this subsection
21 expires within the time fixed by the court, not to exceed 10 days. The court may extend the
22 order for good cause shown or if the party against whom it is entered consents to an
23 extension. After a temporary restraining order is granted under this subsection, a hearing
24 concerning the entry of an order under this section must be held at the earliest practicable
25 time and before the temporary order expires.

26 **§1136. Disposition of forfeiture proceeds**

27 **1. Disposition alternatives.** Except as provided in subsection 2, after making due
28 provisions for the rights of innocent persons, the prosecuting authority shall, as soon as
29 feasible, dispose of all property ordered forfeited under section 1134 by:

30 A. Public sale;

31 B. Sale or transfer to an innocent person; or

32 C. Destruction, if the property is not needed for evidence in a pending criminal or civil
33 proceeding.

34 **2. Transfer to Maine State Housing Authority.** The prosecuting authority shall, as
35 soon as feasible, transfer real property ordered forfeited under section 1134 and suitable
36 for residential use to the Maine State Housing Authority.

37 **3. No reversion to defendant.** For the purposes of this section, an interest in personal
38 property or real property not exercisable by or transferable for value by the prosecuting
39 authority expires and does not revert to the defendant. Forfeited property may not be
40 purchased by the defendant, a relative of the defendant or any person acting in concert with
41 the defendant or on the defendant's behalf.

1 **4. Sale proceeds.** The proceeds of a sale or other disposition of forfeited property under
2 this section, whether by final judgment, settlement or otherwise, must be applied as
3 follows:

4 A. To the fees and costs of the forfeiture and sale, including expenses of seizure,
5 maintenance and custody of the property pending its disposition, advertising and court
6 costs; and

7 B. The balance to the Maine State Housing Authority to be used by the authority to pay
8 taxes, fees and liens associated with real property transferred to the authority pursuant
9 to subsection 2 and rehabilitate that real property into livable residential real property
10 for resale.

11 **§1137. Additional relief available**

12 With respect to property ordered forfeited, a fine imposed or a civil penalty imposed
13 in a criminal proceeding under section 1132 or civil proceeding under section 1139, the
14 court may, on petition of the prosecuting authority or any other person within 60 days of a
15 final order:

16 1. Authorize compromise. Authorize the compromise of claims;

17 2. Award compensation. Award compensation to persons providing information that
18 results in a forfeiture under section 1134;

19 3. Grant petition. Grant a petition for mitigation or remission of a forfeiture or fine;

20 4. Restore forfeited property or award imposed fines. Restore forfeited property or
21 award imposed fines to victims of a violation of section 1132; and

22 5. Take any other action. Take any other action to protect the rights of innocent
23 persons that is in the interests of justice and is consistent with the purposes of this chapter.

24 **§1138. Relation to other sanctions**

25 1. Remedy not exclusive. Except as provided in this section, a criminal penalty,
26 forfeiture or fine imposed under section 1132, 1133, 1134 or 1139 does not preclude the
27 application of any other criminal penalty or civil remedy for the separate criminal acts. A
28 prosecuting authority may not file a civil action under section 1139 if any prosecuting
29 authority has filed a previous criminal proceeding under section 1132 against the same
30 person based on the same criminal conduct and the charges were dismissed after jeopardy
31 attached or the person was acquitted.

32 2. Restitution. A restitution payment to a victim under section 1133 does not limit
33 liability for damages in a civil action or proceeding for an amount greater than the
34 restitution payment.

35 **§1139. Civil remedies**

36 1. Relief available. The prosecuting authority may institute civil proceedings in court
37 seeking relief from conduct constituting a violation of section 1132 or to prevent or restrain
38 future violations. If the prosecuting authority proves the alleged violation by a
39 preponderance of the evidence, and the court has made due provision for the rights of
40 innocent persons, the court may:

41 A. Order a defendant to divest an interest in an enterprise or in real property;

1 B. Impose reasonable restrictions on the future activities or investments of a defendant,
2 including prohibiting a defendant from engaging in the same type of endeavor as the
3 enterprise in which the defendant was engaged in violation of section 1132;

4 C. Order the dissolution or reorganization of an enterprise;

5 D. Order the suspension or revocation of a license, permit or prior approval granted to
6 an enterprise by a state agency; or

7 E. Order the surrender of the charter of a corporation organized under the law of this
8 State, the dissolution of an enterprise or the revocation of the authority for a foreign
9 corporation to conduct business in this State if the court finds that:

10 (1) The board of directors or a managerial agent acting on behalf of the corporation,
11 in conducting the affairs of the corporation, authorized or engaged in conduct
12 constituting a violation of section 1132; and

13 (2) The public interest in preventing future criminal conduct requires the action.

14 **2. Injunctive relief.** In a proceeding under this section, the court may grant injunctive
15 relief.

16 **3. Civil penalty.** The prosecuting authority may institute proceedings against an
17 enterprise or an individual to recover a civil penalty. The penalty may be imposed in the
18 discretion of the court for conduct constituting a violation of section 1132. The civil penalty
19 may not exceed \$1,000,000 less a fine imposed under section 1133. Penalties collected
20 under this section must be paid to the State and applied to the costs and expenses of
21 investigation and prosecution, including costs of resources and personnel incurred in
22 investigation and prosecution, and the balance, if any, must be deposited in the General
23 Fund.

24 **4. Attorney's fees.** If the court issues an injunction or grants other relief under this
25 section, or the prosecuting authority otherwise substantially prevails, the prosecuting
26 authority must also recover reasonable attorney's fees in the trial and appellate courts and
27 costs of investigation and litigation reasonably incurred.

28 **5. Personal jurisdiction.** Personal service of process in a proceeding under this section
29 may be made on any person outside of this State if the person was a principal in any conduct
30 constituting a violation of section 1132 in this State. The person is deemed to have
31 submitted to the jurisdiction of the courts of this State for the purposes of this section.

32 **§1140. Notice to other prosecuting authorities**

33 When a prosecuting authority or law enforcement agency begins an investigation, files
34 a charge or makes an arrest involving this chapter, the prosecuting authority or law
35 enforcement agency shall notify the Department of the Attorney General. An office of a
36 district attorney or a law enforcement agency is not required to obtain the permission of the
37 Attorney General to conduct an investigation, file a charge or make an arrest involving this
38 chapter. The Attorney General shall notify all prosecuting authorities and law enforcement
39 agencies that are conducting investigations, filing charges or making arrests involving this
40 chapter, the same actors and the same acts. The Attorney General shall designate the
41 prosecuting authority or law enforcement agency that first filed notice of an investigation
42 involving this chapter, the same actors and the same acts as the exclusive prosecuting

1 authority or law enforcement agency for the matter under investigation if that prosecuting
2 authority or law enforcement agency requests that designation.

3 **§1141. Personal property and real property**

4 For purposes of this chapter:

5 **1. Personal property.** Personal property and a beneficial interest in personal property
6 are deemed to be located where the trustee is, the personal property is or the instrument
7 evidencing the right is; and

8 **2. Real property.** A beneficial interest in real property is deemed to be located where
9 the real property is located.

10 **Sec. 2. 30-A MRSA §4173, sub-§6** is enacted to read:

11 **6. Permit required.** A permit is required for the installation or upgrade of electrical
12 service to a total of 400 amperes or more in a residential building. The ampere ratings of
13 all electrical panels must be added together to determine whether the 400-ampere threshold
14 in this subsection is met. If the residential building is in a municipality that has provided
15 for electrical inspections, the person performing the work must apply to the municipal
16 electrical inspector in writing for a permit. If the residential building is not in a municipality
17 that has provided for electrical inspections, the person performing the work must apply to
18 a state electrical inspector in writing for a permit. A municipal electrical inspector or state
19 electrical inspector shall notify the transmission and distribution utility that serves the
20 residential building of an application made under this subsection.

21 **Sec. 3. 33 MRSA §451** is repealed and the following enacted in its place:

22 **§451. Rights of aliens**

23 **1. Alien may take, hold, convey and devise real estate.** Except as provided in
24 subsection 2, an alien may take, hold, convey and devise real estate or any interest therein.
25 All conveyances and devises of real estate or interest already made by or to an alien are
26 valid.

27 **2. Certain aliens may not purchase or otherwise acquire real estate.** An alien,
28 except an alien who is a legal permanent resident of the United States, who is a citizen of
29 one of the following countries may not purchase or otherwise acquire real estate or any
30 interest in real estate in this State:

31 A. The People's Republic of China, including the Hong Kong Special Administrative
32 Region;

33 B. The Republic of Cuba;

34 C. The Islamic Republic of Iran;

35 D. The Democratic People's Republic of Korea; or

36 E. The Russian Federation.

37 **Sec. 4. 35-A MRSA §3217, sub-§5** is enacted to read:

38 **5. Suspicious power use reports.** The following provisions govern suspicious power
39 use reports.

1 than \$1,000,000, or both, may be imposed. In lieu of these fines, a person guilty of
2 racketeering who received economic gain from the act or caused economic loss or personal
3 injury during the act may be sentenced to pay a fine that is no greater than 3 times the gross
4 economic value gained or 3 times the gross economic loss caused, whichever is greater,
5 plus court costs and the costs of investigation and prosecution reasonably incurred, less the
6 value of any property forfeited.

7 The bill provides that when a person is convicted of racketeering, the court may order
8 the person to forfeit to the prosecuting authority any real or personal property that was used
9 in the course of, intended for use in the course of, derived from or realized through conduct
10 in violation of the racketeering laws. The prosecuting authority must transfer real property
11 ordered forfeited and suitable for residential use to the Maine State Housing Authority. The
12 proceeds of a sale or other disposition of forfeited property must be applied to the fees and
13 costs of the forfeiture and sale and the balance must be transferred to the Maine State
14 Housing Authority to be used by the authority to pay taxes, fees and liens associated with
15 real property transferred to the authority as a result of forfeiture and to rehabilitate that real
16 property into livable residential real property for resale.

17 The bill provides that the prosecuting authority may institute civil proceedings in court
18 seeking relief from conduct constituting a violation of the laws governing racketeering or
19 to prevent or restrain future violations.

20 The bill provides that when a prosecuting authority or law enforcement agency begins
21 an investigation, files a charge or makes an arrest involving the laws governing
22 racketeering, the prosecuting authority or law enforcement agency must notify the
23 Department of the Attorney General. An office of a district attorney or a law enforcement
24 agency is not required to obtain the permission of the Attorney General to conduct an
25 investigation, file a charge or make an arrest. The Attorney General must notify all
26 prosecuting authorities and law enforcement agencies that are conducting investigations,
27 filing charges or making arrests involving the laws governing racketeering, the same actors
28 and the same acts. The Attorney General must designate the prosecuting authority or law
29 enforcement agency that first filed notice of an investigation involving the laws governing
30 racketeering, the same actors and the same acts as the exclusive prosecuting authority or
31 law enforcement agency for the matter under investigation if that prosecuting authority or
32 law enforcement agency requests that designation.

33 The bill requires a permit for the installation or upgrade of electrical service to a total
34 of 400 amperes or more in a residential building. It also requires a transmission and
35 distribution electric utility to generate a suspicious power use report and transmit that report
36 to the Department of Public Safety, Maine State Police when: a 400 ampere or more total
37 service is installed or an existing service is upgraded to a 400 ampere or more total service
38 at a residential property, regardless of whether that installation or upgrade is a single 400
39 ampere or more panel or multiple smaller panels the sum of which is 400 amperes or more;
40 a transformer malfunctions; a transformer larger than 25 kilovolt-amperes is installed or a
41 transformer is upgraded to a transformer larger than 25 kilovolt-amperes for a residential
42 customer; or there is a month-to-month increase in power consumption of greater than
43 500% for a residential customer. A transmission and distribution electric utility also is
44 required to generate a list of 400 ampere or more total service installations and upgrades
45 and malfunctioning transformers at residential properties since 2013 and submit this list to
46 the Maine State Police in a manner specified by the Maine State Police.

1 The bill provides that an alien, except an alien who is a legal permanent resident of the
2 United States, who is a citizen of the People's Republic of China, including the Hong Kong
3 Special Administrative Region; the Republic of Cuba; the Islamic Republic of Iran; the
4 Democratic People's Republic of Korea; or the Russian Federation may not purchase or
5 otherwise acquire real estate or any interest in real estate in this State.