



# 131st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2023

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Legislative Document

No. 836

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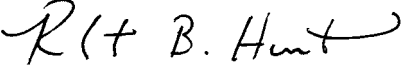
H.P. 525

House of Representatives, February 21, 2023

**An Act to Codify Forfeiture by Wrongdoing as an Exception to the Rule Against Hearsay**

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Reference to the Committee on Judiciary suggested and ordered printed.

  
ROBERT B. HUNT  
Clerk

Presented by Representative STOVER of Boothbay.  
Cosponsored by Representatives: CRAVEN of Lewiston, GRAHAM of North Yarmouth,  
GRAMLICH of Old Orchard Beach, MEYER of Eliot, MILLETT of Cape Elizabeth, O'NEIL  
of Saco, RIELLY of Westbrook, TERRY of Gorham.

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

2 **Sec. 1. 16 MRSA §62** is enacted to read:

3 **§62. Exception to rule against hearsay; forfeiture by wrongdoing**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
5 following terms have the following meanings.

6 A. "Declarant" means the person who made the statement.

7 B. "Hearsay" means a statement that:

8 (1) The declarant does not make while testifying at the trial or hearing; and

9 (2) A party offers in evidence to prove the truth of the matter asserted in the  
10 statement.

11 C. "Statement" means a person's oral assertion, written assertion or nonverbal conduct  
12 if the person intended the nonverbal conduct as an assertion.

13 D. "Unavailable" means the declarant is considered to be unavailable as a witness  
14 because the declarant:

15 (1) Is exempted from testifying about the subject matter of the declarant's  
16 statement because the court rules that a privilege applies;

17 (2) Refuses to testify about the subject matter despite a court order to do so;

18 (3) Testifies to not remembering the subject matter;

19 (4) Cannot be present or testify at the trial or hearing because of death or a  
20 then-existing infirmity, physical illness or mental illness; or

21 (5) Is absent from the trial or hearing and the statement's proponent has not been  
22 able, by process or other reasonable means, to procure the declarant's attendance.

23 **2. Statement offered against party that wrongfully caused declarant's**  
24 **unavailability.** A statement offered against a party that wrongfully caused or acquiesced  
25 in wrongfully causing the declarant to be unavailable as a witness, when the party causing  
26 the declarant to be unavailable intended that result, is admissible as evidence in a criminal  
27 proceeding as an exception to the rule against hearsay. A party seeking to have the  
28 statement admitted under this exception must prove by a preponderance of the evidence  
29 that the opposing party wrongfully caused or acquiesced in wrongfully causing the  
30 declarant to be unavailable.

31 **SUMMARY**

32 This bill codifies the forfeiture by wrongdoing exception to the rule against hearsay,  
33 making an out-of-court statement made by an unavailable witness admissible when that  
34 statement is offered against a party that wrongfully caused or acquiesced in wrongfully  
35 causing the declarant's unavailability. The party seeking to have this type of statement  
36 admitted under this exception must show by a preponderance of the evidence that the  
37 opposing party wrongfully caused or acquiesced in wrongfully causing the declarant's  
38 unavailability.