

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 563

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S.P. 180

In Senate, January 28, 1997

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### An Act to Clarify Enforcement Provisions of the Gambling Laws.

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Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator MILLS of Somerset.  
Cosponsored by Senator CLEVELAND of Androscoggin.

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

4 **Sec. 1. 17-A MRSA §952, sub-§5-A is enacted to read:**

6 5-A. "Illegal gambling machine" means any machine, including electronic devices, however operated:

8 A. The internal mechanism or components of which when set in motion or activated may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tickets or something of value;

12 B. That is used to advance gambling activity; and

14 C. That is not a machine that a person may lawfully operate pursuant to a license that has been issued under Title 17, chapter 14.

18 **Sec. 2. 17-A MRSA §§959 to 961 are enacted to read:**

20 **§959. Illegal gambling machines; forfeiture**

22 1. An illegal gambling machine, including any monetary contents, is subject to forfeiture to the State.

24 2. An illegal gambling machine and any monetary contents may be declared forfeited by any court that has jurisdiction over the illegal gambling machine or final jurisdiction over any related criminal proceeding brought under this chapter or by the Superior Court for Kennebec County. Property subject to forfeiture may be kept or stored at any location within the territorial boundaries of the State and is subject to the authority of any court in which a petition seeking the forfeiture of that property is filed.

28 3. Forfeitures under this section must be accomplished by the following procedure.

30 A. A district attorney or the Attorney General may petition the Superior Court in the name of the State in the nature of a proceeding in rem to order forfeiture of an illegal gambling machine and any monetary contents. The petition must be filed in the court having jurisdiction over the property.

32 B. The proceeding is an in rem civil action, in which the State has the burden of proving all material facts by a preponderance of the evidence.

2 C. The court shall order the State to give notice of the  
4 pendency of the action and the right to be heard by  
6 certified or registered mail or hand delivered by a deputy  
8 sheriff to any person who appears to have an interest in the  
10 illegal gambling machine and any monetary contents. Receipt  
12 by a person then licensed to operate a motor vehicle in the  
14 State is presumed when notice is mailed to the last known  
16 address of that person on file with the Department of the  
18 Secretary of State, Bureau of Motor Vehicles.

20 D. The court shall promptly, but not less than 2 weeks  
22 after notice, hold a hearing on the petition after an answer  
24 is filed by a person served with notice under paragraph C.  
26 At the hearing, the court shall hear evidence and make  
28 findings of fact and enter conclusions of law.

30 E. Based on the findings and conclusions, the court shall  
32 issue a final order, from which the parties have a right of  
34 appeal. The final order must provide for disposition of the  
36 illegal gambling machine and any monetary contents by the  
38 State. Any revenue generated by the disposition of the  
40 illegal gambling machine and any monetary contents of the  
42 machine must be used to pay the reasonable expenses of the  
44 forfeiture proceedings, seizure, storage, maintenance of  
46 custody, advertising and notice. The balance, if any, must  
48 be deposited in the General Fund.

40 4. Any law enforcement officer, department or agency having  
42 custody of an illegal gambling machine or any monetary contents  
44 of an illegal gambling machine, or having disposed of the illegal  
46 gambling machine or any monetary contents, shall keep and  
48 maintain during the pendency of the action full and complete  
50 records in accordance with this subsection. Upon issuance by the  
52 court of a final order ordering the disposition, destruction or  
54 return of the illegal gambling machine or the monetary contents,  
56 the officer, department or agency shall transmit a copy of those  
58 records to the Department of Public Safety for inclusion into a  
60 centralized record.

62 A. The records must show:

64 (1) From whom the illegal gambling machine and any  
66 monetary contents were received;

68 (2) Under what authority the illegal gambling machine  
70 and any monetary contents are held, received or  
72 disposed of;

2           (3) To whom the illegal gambling machine and any  
3           monetary contents are delivered;

4           (4) The date and manner of destruction or disposition  
5           of the illegal gambling machine; and

6           (5) The exact kinds, quantities and forms of illegal  
7           gambling machines and the exact amount of any monetary  
8           contents of any machine held in custody or disposed of.

10           B. The records must be open to inspections by all federal  
11           and state officers authorized by the laws of the United  
12           States, a state or territory of the United States or a  
13           foreign nation to investigate or prosecute gambling laws.

14           C. The Department of Public Safety is responsible for  
15           maintaining a centralized record of illegal gambling  
16           machines seized. At least quarterly, the department shall  
17           provide a report of the disposition of property previously  
18           held by the department to the Commissioner of Administrative  
19           and Financial Services and the legislative Office of Fiscal  
20           and Program Review for review. These records must include  
21           an estimate of the fair market value of items seized.

22           5. Persons making final disposition or destruction of an  
23           illegal gambling machine or its monetary contents under court  
24           order shall report, under oath, to the court the exact  
25           circumstances of the destruction or disposition.

26           6. An illegal gambling machine together with any monetary  
27           contents is contraband and may be seized by any law enforcement  
28           officer pursuant to subsection 7 or 8.

29           7. At the request of the State ex parte, the court may  
30           issue any preliminary order or process necessary to seize or  
31           secure the property for which forfeiture is sought and provide  
32           for its custody.

33           A. Process for seizure of the property may issue only upon  
34           a showing of probable cause. The application for process  
35           for seizure of the property and the issuance, execution and  
36           return of the process are subject to the provisions of  
37           applicable state law.

38           B. Any property subject to forfeiture under this section  
39           may be seized upon process.

40           8. Seizure without process may be made when seizure is  
41           incident to a legal search or inspection if the law enforcement  
42           officer has probable cause to believe that the property is  
43           subject to forfeiture.

2 officer has probable cause to believe the property seized is an  
3 illegal gambling machine.

4 **§960. Criminal forfeiture**

6 1. Notwithstanding any other provision of law, a person  
7 convicted of a violation of this chapter forfeits to the State  
8 all rights, privileges, interests and claims to property that is  
9 subject to forfeiture pursuant to section 959. All rights,  
10 privileges, interest and title in property subject to forfeiture  
11 under this section vest in the State upon the commission of the  
12 act giving rise to forfeiture pursuant to section 959.

14 2. Property subject to forfeiture that is not yet the  
15 subject of a final order pursuant to section 959 may be proceeded  
16 against by indictment or superseding indictment of the grand jury  
17 in any related criminal proceeding in which one or more persons  
18 with an interest in the property have been simultaneously  
19 indicted for one or more violations of this chapter. At any time  
20 prior to trial, the State, with the consent of the court and any  
21 defendant with an interest in the property, may file an ancillary  
22 charging instrument or information alleging that that property is  
23 subject to criminal forfeiture. Upon commencement of a criminal  
24 forfeiture by indictment or information of any property that may  
25 be the subject of any pending civil action commenced pursuant to  
26 section 959, the civil action must be immediately stayed and  
27 subrogated to the criminal forfeiture action. Discovery in the  
28 criminal action must be as provided by the Maine Rules of  
29 Criminal Procedure.

30 3. Property subject to forfeiture that has not already been  
31 seized but has been indicted by the grand jury pursuant to this  
32 section may also be ordered seized based upon the grand jury's  
33 finding of probable cause pursuant to section 959.

34 4. Trial against property charged by indictment or  
35 information may be by jury and must be held in a single  
36 proceeding together with the trial of the related criminal  
37 violation. Forfeiture of the property must be proved by the  
38 State by a preponderance of the evidence. The court, in its  
39 discretion, may allow any defendant with an interest in property  
40 indicted pursuant to this section to waive the right to trial by  
41 jury as against the property while preserving the right to trial  
42 by jury of any crime alleged. At trial by jury, the court, upon  
43 motion of a defendant or the State, may separate the trial of the  
44 matter against the defendant from the trial of the matter against  
45 the property subject to criminal forfeiture. If the court  
46 bifurcates the jury trial, the court shall first instruct and  
47 submit to the jury the issue of the guilt or innocence of  
48 defendants to be determined by proof beyond a reasonable doubt  
49

2 and shall restrict argument of counsel to those issues. After a  
3 verdict upon the guilt or innocence of all defendants, the court  
4 shall instruct and submit to the jury the issue of the forfeiture  
5 of the property to be determined by proof by a preponderance of  
6 the evidence and the court shall restrict argument to those  
7 issues. A special verdict must be returned as to the extent of  
8 the interest in property subject to forfeiture, if any.

9  
10 5. A person not charged in the indictment may not intervene  
11 in the criminal action. Following the entry of a verdict of  
12 forfeiture of property pursuant to this section or the entry of a  
13 guilty plea in open court on the record, the State shall provide  
14 written notice of its intent to dispose of the property to any  
15 person known to have alleged an interest in the property. The  
16 notice may be by certified, return receipt mail or as otherwise  
17 ordered by the court. Receipt by a person then licensed to  
18 operate a motor vehicle in the State is presumed when notice is  
19 mailed to the last known address of that person on file with the  
20 Department of the Secretary of State, Bureau of Motor Vehicles.  
21 A person other than the defendant asserting a legal interest in  
22 the property within 30 days of the date of receipt of the notice  
23 may petition the court for a hearing to adjudicate the validity  
24 of any alleged interest in the property. The hearing must be  
25 held before the court without jury. The request for the hearing  
26 must be signed by the petitioner under penalty of perjury and  
27 must state the nature and extent of the petitioner's right, title  
28 or interest in the property, the time and circumstances of the  
29 petitioner's acquisition of the right, title or interest in the  
30 property, any additional facts supporting the petitioner's claim  
31 and the relief sought. Upon the filing of any petition for  
32 hearing, the court shall schedule the hearing as soon as  
33 practicable, but in no event later than 6 months after the  
34 petition is filed or after the sentencing of any defendant  
35 convicted upon the same indictment. The court shall issue or  
36 amend a final order of forfeiture in accordance with its  
37 determination if, after the hearing, the court determines that  
38 the petitioner has established by a preponderance of the evidence  
39 that:

40 A. The petitioner has a legal right, title or interest in  
41 the property and the right, title or interest renders the  
42 order of forfeiture invalid in whole or in part because the  
43 right, title or interest was vested in the petitioner rather  
44 than any defendant or was superior to any right, title or  
45 interest to the exclusion of any defendant at the time of  
46 the commission of the acts that gave rise to the forfeiture  
47 of the property under this section; and

48  
49 B. The petitioner is a bona fide purchaser for value of the  
50 right, title or interest in the property and was at the time

