

MAINE STATE LEGISLATURE

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DATE: April 3, 1996 (Filing No. S-592)

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STATE OF MAINE
SENATE
117TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT "A " to SENATE AMENDMENT "A" to H.P. 296, L.D. 400, Bill, "An Act to Authorize Video Gaming"

Amend the amendment by inserting after section 4 the following:

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

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

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;

B. That is used to advance gambling activity; and

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.

Sec. 6. 17-A MRSA §§959 to 961 are enacted to read:

§959. Illegal gambling machines; forfeiture

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

2. An illegal gambling machine and any monetary contents may be declared forfeited by any court having jurisdiction over

2 the illegal gambling machine, having final jurisdiction over any
4 related criminal proceeding brought under this chapter or by the
6 Superior Court for Kennebec County. Property subject to
8 forfeiture may be kept or stored at any location within the
10 territorial boundaries of the State and is subject to the
12 authority of any court in which a petition seeking the forfeiture
14 of that property is filed.

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

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

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

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

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

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

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2 4. Any law enforcement officer, department or agency having
4 custody of an illegal gambling machine or any monetary contents
6 of an illegal gambling machine, or having disposed of the illegal
8 gambling machine or any monetary contents, shall keep and
10 maintain during the pendency of the action full and complete
12 records in accordance with this subsection. Upon issuance by the
14 court of a final order ordering the disposition, destruction or
16 return of an illegal gambling machine or the monetary contents of
18 an illegal gambling machine, the officer, department or agency
20 shall transmit a copy of those records to the Department of
22 Public Safety for inclusion into a centralized record.

14 A. The records must show:

- 16 (1) From whom an illegal gambling machine or any
18 monetary contents of an illegal gambling machine were
20 received;
- 22 (2) Under what authority an illegal gambling machine
24 or any monetary contents of an illegal gambling machine
26 are held, received or disposed of;
- 28 (3) To whom an illegal gambling machine or any
30 monetary contents of an illegal gambling machine are
32 delivered;
- 34 (4) The date and manner of destruction or disposition
36 of an illegal gambling machine; and
- 38 (5) The exact kinds, quantities and forms of illegal
40 gambling machines and the exact amount of any monetary
42 contents of any machine held in custody or disposed of.

34 B. The records must be open to inspections by all federal
36 and state officers authorized by the laws of the United
38 States, or a state or territory of the United States, or a
40 foreign nation to investigate or prosecute gambling laws.

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

48 5. Persons making final disposition or destruction of an
illegal gambling machine or its monetary contents under court

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2 order shall report, under oath, to the court the exact
circumstances of the destruction or disposition.

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

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

12 A. Process for seizure of the property may issue only upon
14 a showing of probable cause. The application for process
for seizure of the property and the issuance, execution and
16 return of the process are subject to the provisions of
applicable state law.

18 B. Any property subject to forfeiture under this section
20 may be seized upon process.

22 8. Seizure without process may be made when seizure is
incident to a legal search or inspection if the law enforcement
24 officer has probable cause to believe the property seized is an
illegal gambling machine.

26 **§960. Criminal forfeiture**

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

36 2. Property subject to forfeiture that is not yet the
38 subject of a final order pursuant to section 959 may be proceeded
against by indictment or superseding indictment of the grand jury
40 in any related criminal proceeding in which one or more persons
with an interest in the property have been simultaneously
42 indicted for one or more violations of this chapter. At any time
prior to trial, the State, with the consent of the court and any
44 defendant with an interest in the property, may file an ancillary
charging instrument or information alleging that that property is
46 subject to criminal forfeiture. Upon commencement of a criminal
forfeiture by indictment or information of any property that may
48 be the subject of any pending civil action commenced pursuant to
section 959, the civil action must be immediately stayed and
50 subrogated to the criminal forfeiture action. Discovery in the

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2 criminal action must be as provided by the Maine Rules of
Criminal Procedure.

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

10 4. Trial against property charged by indictment or
12 information may be by jury and must be held in a single
14 proceeding together with the trial of the related criminal
16 violation. Forfeiture of the property must be proved by the
18 State by a preponderance of the evidence. The court, in its
20 discretion, may allow any defendant with an interest in property
22 indicted pursuant to this section to waive the right to trial by
24 jury as against the property while preserving the right to trial
26 by jury of any crime alleged. At trial by jury, the court, upon
28 motion of a defendant or the State, may separate the trial of the
30 matter against the defendant from the trial of the matter against
the property subject to criminal forfeiture. If the court
bifurcates the jury trial, the court shall first instruct and
submit to the jury the issue of the guilt or innocence of
defendants to be determined by proof beyond a reasonable doubt
and shall restrict argument of counsel to those issues. After a
verdict upon the guilt or innocence of all defendants, the court
shall instruct and submit to the jury the issue of the forfeiture
of the property to be determined by proof by a preponderance of
the evidence and the court shall restrict argument to those
issues. A special verdict must be returned as to the extent of
the interest in property subject to forfeiture, if any.

32 5. A person not charged in the indictment may not intervene
34 in the criminal action. Following the entry of a verdict of
36 forfeiture of property pursuant to this section or the entry of a
38 guilty plea in open court on the record, the State shall provide
40 written notice of its intent to dispose of the property to any
42 person known to have alleged an interest in the property. The
44 notice may be by certified, return receipt mail or as otherwise
46 ordered by the court. Receipt by a person then licensed to
48 operate a motor vehicle in the State is presumed when notice is
50 mailed to the last known address of that person on file with the
Department of the Secretary of State, Bureau of Motor Vehicles.
A person other than the defendant asserting a legal interest in
the property within 30 days of the date of receipt of the notice
may petition the court for a hearing to adjudicate the validity
of any alleged interest in the property. The hearing must be
held before the court without jury. The request for the hearing
must be signed by the petitioner under penalty of perjury and
must state the nature and extent of the petitioners right, title
or interest in the property, the time and circumstances of the

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2 petitioner's acquisition of the right, title or interest in the
3 property, any additional facts supporting the petitioner's claim
4 and the relief sought. Upon the filing of any petition for
5 hearing, the court shall schedule the hearing as soon as
6 practicable, but in no event later than 6 months after the
7 petition is filed or after the sentencing of any defendant
8 convicted upon the same indictment. The court shall issue or
9 amend a final order of forfeiture in accordance with its
10 determination if, after the hearing, the court determines that
11 the petitioner has established by a preponderance of the evidence
12 that:

13 A. The petitioner has a legal right, title or interest in
14 the property and the right, title or interest renders the
15 order of forfeiture invalid in whole or in part because the
16 right, title or interest was vested in the petitioner rather
17 than any defendant or was superior to any right, title or
18 interest to the exclusion of any defendant at the time of
19 the commission of the acts that gave rise to the forfeiture
20 of the property under this section; and

21 B. The petitioner is a bona fide purchaser for value of the
22 right, title or interest in the property and was at the time
23 of purchase reasonably without cause to believe that the
24 property was subject to forfeiture under this section.

25 6. Following the entry of a verdict of forfeiture of
26 property pursuant to this section or the entry of a guilty plea
27 in open court on the record, the State has clear title to
28 property that is the subject of the indictment or information and
29 order of forfeiture and may order all or a portion of the
30 property forfeited to the State to be disposed of pursuant to
31 section 959.

32 **§961. Construction**

33 Sections 959 and 960 must be liberally construed to
34 effectuate their remedial purposes.'

35 **FISCAL NOTE**

36 The Judicial Department may require General Fund
37 appropriations to cover expenses incurred as a result of
38 additional forfeiture proceedings and jury trials. The amounts
39 can not be estimated at this time.
40

Any net revenue generated from forfeiture proceedings will be credited to the General Fund. The exact amount of revenue can not be determined at this time.

The additional costs associated with the additional enforcement responsibilities can be absorbed by the Department of Public Safety utilizing existing budgeted resources.

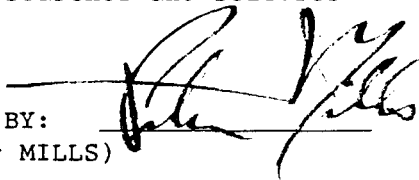
The additional costs associated with providing legal services and enforcement responsibilities can be absorbed by the Department of the Attorney General utilizing existing budgeted resources.

This amendment may increase prosecutions for Class D crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$83.70 per day per prisoner. These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

The additional workload, administrative costs and indigent defense costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may also increase General Fund revenue by minor amounts.

SUMMARY

This amendment adds provisions concerning enforcement of the gambling laws. Specifically, the amendment defines illegal gambling machines and provides that illegal gambling machines and their monetary contents are subject to seizure and forfeiture in both civil and criminal proceedings. Seizure may be pursuant to court process or without process if the seizure is incident to a search that is in conformity with constitutional requirements governing searches and seizures.

SPONSORED BY: 
(Senator MILLS)

COUNTY: Somerset