

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
SENATE  
117TH LEGISLATURE  
SECOND REGULAR SESSION

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

Amend the bill by striking out the title and substituting the following:

'An Act to Clarify the Enforcement Provisions of the Gambling Laws'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 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. 2. 17-A MRSA §§959, 960 and 961 are enacted to read:

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§959. Illegal gambling machines; forfeiture

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

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

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

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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.

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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.

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C. The court shall order the State to give notice of the pendency of the action and the right to be heard by certified or registered mail or hand delivered by a deputy sheriff to any person who appears to have an interest in the illegal gambling machine and any monetary contents. Receipt 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.

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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.

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E. Based on the findings and conclusions, the court shall issue a final order, from which the parties have a right of

## SENATE AMENDMENT "B" to H.P. 296, L.D. 400

2 appeal. The final order must provide for disposition of the  
3 illegal gambling machine and any monetary contents by the  
4 State. Any revenue generated by the disposition of the  
5 illegal gambling machine and any monetary contents of the  
6 machine must be used to pay the reasonable expenses of the  
7 forfeiture proceedings, seizure, storage, maintenance of  
8 custody, advertising and notice. The balance, if any, must  
9 be deposited in the General Fund.

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

21 A. The records must show:

22 (1) From whom an illegal gambling machine or any  
23 monetary contents of an illegal gambling machine were  
24 received;

25 (2) Under what authority an illegal gambling machine  
26 or any monetary contents of an illegal gambling machine  
27 are held, received or disposed of;

28 (3) To whom an illegal gambling machine or any  
29 monetary contents of an illegal gambling machine are  
30 delivered;

31 (4) The date and manner of destruction or disposition  
32 of an illegal gambling machine; and

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

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

40 C. The Department of Public Safety is responsible for  
41 maintaining a centralized record of illegal gambling  
42 machines seized. At least quarterly, the department shall  
43 maintain a record of the disposition of each machine seized.  
44 At least quarterly, the department shall  
45 maintain a record of the disposition of each machine seized.  
46 At least quarterly, the department shall  
47 maintain a record of the disposition of each machine seized.  
48 At least quarterly, the department shall  
49 maintain a record of the disposition of each machine seized.  
50 At least quarterly, the department shall

2 provide a report of the disposition of property previously  
3 held by the department to the Commissioner of Administrative  
4 and Financial Services and the legislative Office of Fiscal  
5 and Program Review for review. These records must include  
6 an estimate of the fair market value of items seized.

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8 5. Persons making final disposition or destruction of an  
9 illegal gambling machine or its monetary contents under court  
10 order shall report, under oath, to the court the exact  
11 circumstances of the destruction or disposition.

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

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

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20 A. Process for seizure of the property may issue only upon  
21 a showing of probable cause. The application for process  
22 for seizure of the property and the issuance, execution and  
23 return of the process are subject to the provisions of  
24 applicable state law.

25 B. Any property subject to forfeiture under this section  
26 may be seized upon process.

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

33 **§960. Criminal forfeiture**

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

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

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

4. Trial against property charged by indictment or information may be by jury and must be held in a single proceeding together with the trial of the related criminal violation. Forfeiture of the property must be proved by the State by a preponderance of the evidence. The court, in its discretion, may allow any defendant with an interest in property indicted pursuant to this section to waive the right to trial by jury as against the property while preserving the right to trial by jury of any crime alleged. At trial by jury, the court, upon motion of a defendant or the State, may separate the trial of the 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.

5. A person not charged in the indictment may not intervene in the criminal action. Following the entry of a verdict of forfeiture of property pursuant to this section or the entry of a guilty plea in open court on the record, the State shall provide written notice of its intent to dispose of the property to any person known to have alleged an interest in the property. The notice may be by certified, return receipt mail or as otherwise ordered by the court. Receipt 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.

2 A person other than the defendant asserting a legal interest in  
4 the property within 30 days of the date of receipt of the notice  
6 may petition the court for a hearing to adjudicate the validity  
8 of any alleged interest in the property. The hearing must be  
10 held before the court without jury. The request for the hearing  
12 must be signed by the petitioner under penalty of perjury and  
14 must state the nature and extent of the petitioners right, title  
16 or interest in the property, the time and circumstances of the  
18 petitioner's acquisition of the right, title or interest in the  
20 property, any additional facts supporting the petitioner's claim  
22 and the relief sought. Upon the filing of any petition for  
24 hearing, the court shall schedule the hearing as soon as  
26 practicable, but in no event later than 6 months after the  
28 petition is filed or after the sentencing of any defendant  
30 convicted upon the same indictment. The court shall issue or  
32 amend a final order of forfeiture in accordance with its  
34 determination if, after the hearing, the court determines that  
36 the petitioner has established by a preponderance of the evidence  
38 that:

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22 A. The petitioner has a legal right, title or interest in  
24 the property and the right, title or interest renders the  
26 order of forfeiture invalid in whole or in part because the  
28 right, title or interest was vested in the petitioner rather  
30 than any defendant or was superior to any right, title or  
32 interest to the exclusion of any defendant at the time of  
34 the commission of the acts that gave rise to the forfeiture  
36 of the property under this section; and

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

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36 6. Following the entry of a verdict of forfeiture of  
38 property pursuant to this section or the entry of a guilty plea  
40 in open court on the record, the State has clear title to  
42 property that is the subject of the indictment or information and  
44 order of forfeiture and may order all or a portion of the  
46 property forfeited to the State to be disposed of pursuant to  
48 section 959.

42 §961. Construction

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46 Sections 959 and 960 must be liberally construed to  
48 effectuate their remedial purposes.'

48 Further amend the bill by inserting at the end before the  
statement of fact the following:

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**FISCAL NOTE**

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

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.

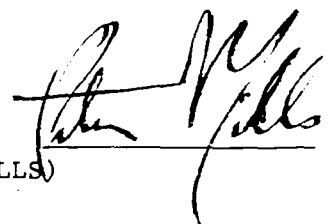
The additional costs associated with providing legal services and enforcement responsibilities can be absorbed by the Department of the Attorney General utilizing existing budgeted resources.

This bill 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 replaces the bill. 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. It also adds a fiscal note to the bill.

SPONSORED BY:   
(Senator MILLS)

COUNTY: Somerset