

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 185

S.P. 82

In Senate, January 11, 1999

### An Act to Enhance Enforcement 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.

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 State and is subject to the authority of any court in which a petition seeking the forfeiture of that property is filed.

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

28 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 of notice by a person then licensed to operate a motor  
14 vehicle in the State is presumed when notice is mailed to  
16 the last known address of that person on file with the  
18 Department of the Secretary of State, Bureau of Motor  
20 Vehicles.

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

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

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

42 A. The records must show:

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

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

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

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

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

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

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

26                   5. A person making final disposition or destruction of an  
                  illegal gambling machine or its monetary contents under court  
28                   order shall report under oath to the court the exact  
                  circumstances of the destruction or disposition.

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

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

40                   A. Process for seizure of the property may be issued only  
                  upon a showing of probable cause. The application for  
42                   process for seizure of the property and the issuance,  
                  execution and return of the process are subject to the  
44                   provisions of applicable state law.

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

48                   8. Seizure without process may be made when seizure is  
50                   incident to a legal search or inspection if the law enforcement

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, interests 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.

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

2 and shall restrict argument of counsel to that issue. 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 that  
7 issue. A special verdict must be returned as to the extent of  
8 the interest in property subject to forfeiture, if any.

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 of notice by a person then  
18 licensed to operate a motor vehicle in the State is presumed when  
19 notice is mailed to the last known address of that person on file  
20 with the Department of the Secretary of State, Bureau of Motor  
21 Vehicles. A person other than the defendant asserting a legal  
22 interest in the property within 30 days of the date of receipt of  
23 the notice may petition the court for a hearing to adjudicate the  
24 validity of any alleged interest in the property. The hearing  
25 must be held before the court without jury. The request for the  
26 hearing must be signed by the petitioner under penalty of perjury  
27 and must state the nature and extent of the petitioner's right,  
28 title or interest in the property, the time and circumstances of  
29 the petitioner's acquisition of the right, title or interest in  
30 the property, any additional facts supporting the petitioner's  
31 claim 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 act that gave rise to the forfeiture  
47 of the property under this section; and

48 B. The petitioner is a bona fide purchaser for value of the  
49 right, title or interest in the property and was at the time  
50 of the commission of the act that gave rise to the forfeiture

of purchase reasonably without cause to believe that the property was subject to forfeiture under this section.

6. 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 has clear title to property that is the subject of the indictment or information and order of forfeiture and may order all or a portion of the property forfeited to the State to be disposed of pursuant to section 959.

**§961. Construction**

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

**SUMMARY**

This bill concerns enforcement of the gambling laws. Specifically, the bill 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.