

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1544

S.P. 480

In Senate, March 8, 2001

**An Act to Establish a Lottery Game to Improve Purses for Maine
Harness Racing and to Enhance Penalties for Use of Illegal Gambling
Machines.**

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

4 **Sec. 1. 8 MRSA §296** is enacted to read:

5 **§296. Harness Racing Purse Fund**

6 The Harness Racing Purse Fund, referred to in this section
7 as the "fund," is established.

8
9
10 The purpose of the fund is to improve purses for harness
11 racing. The fund is administered by the commission, which shall
12 adopt rules to implement this section. The fund consists of
13 revenues received pursuant to section 387, subsection 1,
14 paragraph E and from any public or private source. The
15 commission shall make an expenditure from the fund to carry out
16 the purposes of the fund in accordance with rules the commission
17 adopts to administer the fund. The fund must be held separate
18 and apart from all other money, funds and accounts. Eligible
19 investment credit earnings credited to the assets of the fund
20 become part of the assets of the fund. Any balance remaining at
21 the end of the year does not lapse but must be carried forward.
22 Rules adopted pursuant to this section are routine technical
23 rules as defined in Title 5, chapter 375, subchapter II-A.

24 **Sec. 2. 8 MRSA §374, sub-§6** is enacted to read:

25
26 **6. Harness racing lottery game.** No later than January 30,
27 2002, the commission, in consultation with the State Harness
28 Racing Commission, shall develop and initiate a harness racing
29 lottery game designed to raise funds for the Harness Racing Purse
30 Fund established in section 296. The commission shall provide
31 the net proceeds of this harness racing lottery game to the
32 Harness Racing Purse Fund annually. The commission shall change
33 the harness racing lottery game ticket periodically throughout
34 the year.

35
36 **Sec. 3. 8 MRSA §387, sub-§1,** as amended by PL 1995, c. 494,
37 §5, is further amended to read:

38
39 **1. Appropriation.** The money in the State Lottery Fund may
40 be appropriated only:

41
42 A. For the payment of prizes to the holders of winning
43 lottery tickets or shares;

44
45 B. For the expense of the division in its operation of the
46 lottery;

47
48 C. For payment to the General Fund; and
49
50

2 D. For payment to the Maine Outdoor Heritage Fund pursuant
to Title 12, section 7782-; and

4 E. For payment to the Harness Racing Purse Fund pursuant to
section 296.

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

8 5-A. "Illegal gambling machine" means any machine,
10 including electronic devices, however operated:

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

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

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

24 **Sec. 5. 17-A MRSA §§959 to 961** are enacted to read:

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

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

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

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

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

2 B. The proceeding under paragraph A is an in rem civil
3 action, in which the State has the burden of proving all
4 material facts by a preponderance of the evidence.

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

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

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

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

40 A. The records must show:

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

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

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

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

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

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

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

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

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

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

35 A. Process for seizure of the property for which forfeiture
36 is sought under this section may issue only upon a showing
37 of probable cause. The application for process for seizure
38 of the property and the issuance, execution and return of
39 the process are subject to the provisions of applicable
40 state law.

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

4 8. Seizure of property forfeited under this section without
5 process may be made when seizure is incident to a legal search or
6 inspection if a law enforcement officer has probable cause to
7 believe the property seized is an illegal gambling machine.

8
9 §960. Criminal forfeiture

10 1. A person convicted of a violation of this chapter
11 forfeits to the State all rights, privileges, interests and
12 claims to property that is subject to forfeiture pursuant to
13 section 959. All rights, privileges, interest and title in
14 property subject to forfeiture under this section vest in the
15 State upon the commission of the act giving rise to forfeiture
16 pursuant to section 959.

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

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

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

2 matter against the defendant from the trial of the matter against
4 the property subject to criminal forfeiture. If the court
6 bifurcates the jury trial, the court shall first instruct and
8 submit to the jury the issue of the guilt or innocence of
10 defendants to be determined by proof beyond a reasonable doubt
12 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.

14 5. A person not charged in an indictment under this section
16 may not intervene in the criminal action. Following the entry of
18 a verdict of forfeiture of property pursuant to this section or
20 the entry of a guilty plea in open court on the record, the State
22 shall provide written notice of its intent to dispose of the
24 property to any person known to have alleged an interest in the
26 property. The notice may be by certified, return receipt mail or
28 as otherwise ordered by the court. Receipt by a person then
30 licensed to operate a motor vehicle in the State is presumed when
32 notice is mailed to the last known address of that person on file
34 with the Department of the Secretary of State, Bureau of Motor
36 Vehicles. A person other than the defendant asserting a legal
38 interest in the property within 30 days of the date of receipt of
40 the notice may petition the court for a hearing to adjudicate the
42 validity of any alleged interest in the property. The hearing
44 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 petitioner's right,
title or interest in the property, the time and circumstances of
the petitioner's acquisition of the right, title or interest in
the property, any additional facts supporting the petitioner's
claim and the relief sought. Upon the filing of any petition for
hearing, the court shall schedule the hearing as soon as
practicable, but in no event later than 6 months after the
petition is filed or after the sentencing of any defendant
convicted upon the same indictment. The court shall issue or
amend a final order of forfeiture in accordance with its
determination if, after the hearing, the court determines that
the petitioner has established by a preponderance of the evidence
that:

46 A. The petitioner has a legal right, title or interest in
48 the property and the right, title or interest renders the
50 order of forfeiture invalid in whole or in part because the
right, title or interest was vested in the petitioner rather
than any defendant or was superior to any right, title or
interest to the exclusion of any defendant at the time of

