

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1715

H.P. 1264

House of Representatives, March 20, 2001

An Act Relating to Video Gaming Machines.

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

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative MICHAEL of Auburn.

Cosponsored by Representatives: DUGAY of Cherryfield, MENDROS of Lewiston, TUTTLE of Sanford, USHER of Westbrook, Senator: FERGUSON of Oxford.

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

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Sec. 1. 8 MRSA §372, sub-§2, ¶I, as repealed and replaced by PL 1993, c. 349, §23, is amended to read:

I. Carry on a continuous study and investigation of the lotteries throughout the State and the operation and administration of similar laws that may be in effect in other states or countries; and

Sec. 2. 8 MRSA §372, sub-§2, ¶J, as enacted by PL 1991, c. 780, Pt. Y, §112, is amended to read:

J. Assign duties as necessary to a designee; and

Sec. 3. 8 MRSA §372, sub-§2, ¶K is enacted to read:

K. Carry out the duties assigned to the director under Title 17, chapter 16.

Sec. 4. 8 MRSA §374, sub-§1, ¶L, as amended by PL 1997, c. 301, §1, is further amended to read:

L. The apportionment of the total annual revenue accruing from the sale of lottery tickets or shares and from all other sources for the payment of prizes to the holders of winning tickets or shares; for the payment of costs incurred in the operation and administration of the lotteries, including the expenses of the commission and the costs resulting from any contract or contracts entered into for promotional, advertising, consulting or operational services or for the purchase or lease of lottery equipment and materials; for the repayment of the money appropriated to the State Lottery Fund; and for transfer to the General Fund for distribution pursuant to section 387; and

Sec. 5. 8 MRSA §374, sub-§1, ¶M, as enacted by PL 1997, c. 301, §2, is amended to read:

M. The imprinting on all lottery tickets sold in the State of the overall odds of winning a prize for each game; and

Sec. 6. 8 MRSA §374, sub-§1, ¶N is enacted to read:

N. Those rules necessary for the administration and enforcement of Title 17, chapter 16. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

2 Sec. 7. 17 MRSA §348 is enacted to read:

4 **§348. Applicability**

6 Except as expressly provided in chapter 16, this chapter
8 does not apply to video gaming machines.

10 Sec. 8. 17 MRSA c. 16 is enacted to read:

12 **CHAPTER 16**

14 **VIDEO GAMING MACHINES**

16 **SUBCHAPTER I**

18 **GENERAL PROVISIONS**

20 **§361. Definitions**

22 As used in this chapter, unless the context otherwise
24 indicates, the following terms have the following meanings.

26 1. Associated equipment. "Associated equipment" means any
28 proprietary device, machine or part used in the manufacture or
30 maintenance of a video gaming machine, including, but not limited
32 to, integrated circuit chips, printed wired assemblies, printed
34 wired boards, printing mechanisms, video display monitors and
36 metering devices.

38 2. Director. "Director" means the Director of the Bureau
40 of Alcoholic Beverages and Lottery Operations in the Department
42 of Administrative and Financial Services.

44 3. Drug abuser. "Drug abuser" has the same meaning as set
46 forth in Title 5, section 20003, subsection 10.

48 4. Drug addict. "Drug addict" has the same meaning as set
50 forth in Title 5, section 20003, subsection 11.

5. Drug-dependent person. "Drug-dependent person" has the
 same meaning as set forth in Title 5, section 20003, subsection
 12.

6. Engaged in reckless or negligent conduct. "Engaged in
 reckless or negligent conduct" means that a person, either
 consciously disregarding or failing to be aware of a risk that
 the person's conduct would cause such a result, engaged in
 conduct that in fact created a substantial risk of death, serious
 bodily injury or bodily injury to another human being and the

2 person's disregard or failure to be aware of that risk, when
3 viewed in light of the nature and purpose of the person's conduct
4 and the circumstances known to the person, involved a gross
5 deviation from the standard of conduct that a reasonable and
6 prudent person would observe in the same situation.

7 7. Formal charging instrument. "Formal charging
8 instrument" means a complaint, indictment, information, juvenile
9 petition or other formal written accusation against a person for
10 some criminal or juvenile offense.

11 8. Fugitive from justice. "Fugitive from justice" means a
12 person described in Title 15, section 201, subsection 4 or 18
13 United States Code, Section 921(a)(15) or a person subject to an
14 outstanding warrant of arrest in this State or any other
15 jurisdiction for a crime punishable by imprisonment for one year
16 or longer.

17 9. Illegal gaming machine. "Illegal gaming machine" or
18 "illegal machine" means a machine as defined in section 330 that:

19 A. Is required to be licensed under this chapter, but is
20 not so licensed;

21 B. Is required to be licensed under chapter 14, but is not
22 so licensed; or

23 C. Is licensed under either chapter 14 or this chapter, but
24 is being operated in a manner that violates the license.

25 10. Licensee. "Licensee" means a person licensed by the
26 director to operate a video gaming machine.

27 11. Net machine income. "Net machine income" means money
28 inserted into a video gaming machine minus credits paid out in
29 cash.

30 12. Operate. "Operate" means to offer for use.

31 13. Payback value. "Payback value" means the value of
32 credits granted to players by a video gaming machine compared to
33 the value of money inserted into the machine by players,
34 calculated on an annual basis.

35 14. Person. "Person" means an individual, corporation,
36 association or partnership.

37 15. Uniform location agreement. "Uniform location
38 agreement" means a written agreement between a licensee and a
39 video gaming machine distributor that governs the terms and
40 conditions of the agreement.

2 conditions of the placement of video gaming machines on the
3 premises of the licensee and that is on a form developed by the
4 director.

6 16. Video gaming machine. "Video gaming machine" means a
7 machine, as defined in section 330, that, upon insertion of coin
8 or currency, is available to play or simulate the play of a video
9 game authorized by the director, including, but not limited to,
10 poker, keno, blackjack and line games utilizing a video display
11 and microprocessor, in which by chance the player may receive
12 free games or credits that may be redeemed for cash.

14 17. Video gaming machine distributor or distributor.
15 "Video gaming machine distributor" or "distributor" means a
16 person who owns video gaming machines and who distributes or
17 places video gaming machines or associated equipment for use in
18 this State.

20 18. Video gaming machine distributor employee or
21 distributor employee. "Video gaming machine distributor
22 employee" or "distributor employee" means a person who is
23 employed by a specific video gaming machine distributor and who
24 is involved in sales, maintenance, repairs, technical service,
25 collection of funds, delivery, distribution or transportation of
26 video gaming machines or who services in any other way video
27 gaming machines or associated equipment on behalf of a
28 distributor for use in this State.

30 19. Video gaming machine manufacturer or manufacturer.
31 "Video gaming machine manufacturer" or "manufacturer" means a
32 person who assembles or produces video gaming machines or
33 associated equipment for sale or use in this State, but who does
34 not distribute video gaming machines.

36 20. Video gaming machine wholesaler or wholesaler. "Video
37 gaming machine wholesaler" or "wholesaler" means a person who
38 sells video gaming machines or associated equipment to video
39 gaming machine distributors, but does not distribute video gaming
40 machines.

42 §362. License required

44 A person may not manufacture, distribute, sell, operate or
45 place a video gaming machine for use in this State unless the
46 person is licensed to do so by the director. A person may not
47 place for use or operate a video gaming machine in this State
48 unless the machine is licensed by the director. Except as
49 authorized by section 376, subsection 4, a person may not be a
50 video gaming machine distributor employee unless licensed by the
director.

2 **§363. Administration and enforcement**

4 The director shall administer and enforce the provisions of
6 this chapter as specified in this chapter.

8 **§364. Powers and duties of the director**

10 **1. Powers.** In addition to powers conferred by any other
12 provision of law, the director may:

14 A. Regulate, supervise and exercise general control over
16 the operation of video gaming machines;

18 B. Investigate the direct or indirect ownership or control
20 of any licensee;

22 C. Propose rules necessary to administer and enforce this
24 chapter. These rules are major substantive rules as defined
26 in Title 5, chapter 375, subchapter II-A;

28 D. In any investigation conducted under this chapter, issue
30 subpoenas to compel the attendance of witnesses and the
32 production of evidence relevant to any fact at issue;

34 E. Subject to approval of the State Liquor and Lottery
36 Commission and to any applicable laws relating to public
38 contracts, enter into a contract for performance of the
40 director's duties under this chapter. All contracts must be
42 awarded in accordance with rules adopted by the Department
44 of Administrative and Financial Services pursuant to Title
46 5, chapters 141, 143, 144 and 145 and Title 5, sections 1812
48 and 1813. A contract awarded or entered into by the
50 director may not be assigned by the holder of the contract,
 except by specific approval of the commission; and

F. Approve or disapprove terms and conditions of uniform
 location agreements.

2. Duties. The director shall:

A. Investigate or cause to be investigated all complaints
 made to the director and all violations of this chapter or
 the rules adopted under this chapter;

B. Propose rules, which are major substantive rules as
 defined in Title 5, chapter 375, subchapter II-A, to prevent
 undesirable conduct relating to the operation of video
 gaming machines, including the following:

- 2 (1) The practice of any fraud or deception upon a
player of a video gaming machine;
- 4 (2) The presence of a video gaming machine in or at
premises that may be unsafe due to fire hazard or other
6 such conditions;
- 8 (3) The use of obscene advertising;
- 10 (4) The solicitation on a public way of persons to
play video gaming machines;
- 12 (5) The infiltration of organized crime into the
14 operation of video gaming machines or into the
distribution of the machines;
- 16 (6) The presence of disorderly persons in a location
18 where video gaming machines are in use; and
- 20 (7) The use of the word "casino" to describe any video
22 gaming machine licensed under this chapter or as the
name or any part of the name of the licensed premises
24 or of a portion of the premises where the video gaming
machine is located;
- 26 C. Disable any video gaming machine if the director has
reason to believe that:
- 28 (1) A person has illegally tampered with the machine;
- 30 (2) The funds from the machine have not been
32 distributed, deposited or allocated in accordance with
section 383;
- 34 (3) The machine does not meet the licensure
36 requirements of this chapter; or
- 38 (4) The licensee is guilty of criminal conduct;
- 40 D. In accordance with the Maine Administrative Procedure
Act, develop industry standards for uniform location
42 agreements to be used as the basis of agreements between
distributors and licensees;
- 44 E. Certify monthly to the Treasurer of State, the State
46 Lottery Commission and the Commissioner of Administrative
and Financial Services a full and complete statement of all
48 video gaming machine revenue, credits disbursed by
licensees, administrative expenses and the allocation of net
50 machine income for the preceding month;

2 F. Submit by January 15th an annual report to the Governor
4 and the joint standing committee of the Legislature having
6 jurisdiction over gaming matters. The report must include
8 information on video gaming machine revenue, credits
10 disbursed by licensees, administrative expenses and the
12 allocation of net machine income for the preceding year; and

14 G. Prepare and submit to the Commissioner of Administrative
16 and Financial Services a budget for the program's
18 administration.

20 **§365. Applicability of chapter 14**

22 Except as expressly provided in this chapter, chapter 14
24 does not apply to video gaming machines.

26 **SUBCHAPTER II**

28 **LICENSING**

30 **§371. License to operate**

32 1. Eligible entities. The director may issue a license to
34 operate video gaming machines to a person who:

36 A. Has held a license to conduct games of chance pursuant
38 to section 332 for the last 2 consecutive years previous to
40 applying for the video gaming machine license;

42 B. Is exempt from federal taxation under the Internal
44 Revenue Code, Section 501(c)(3), 501(c)(4), 501(c)(8),
46 501(c)(10) or 501(c)(19); and

48 C. Owns or leases the premises upon which the video gaming
50 machines will be located and uses those premises to fulfill
the primary charitable or nonprofit purpose of the
organization. If the premises are leased, the lease must
run for a term longer than the license term.

2. Qualifications for license. A person may be issued a
license to operate a video gaming machine if the person is
eligible for a license under subsection 1, has sufficient
financial assets to meet the financial obligations imposed by
this chapter and a method acceptable to the director for meeting
those obligations and the individual and each officer, director
or partner of the corporation, association or partnership:

A. Has not been convicted in this State or any other
jurisdiction of a misdemeanor crime of domestic violence,

2 within the meaning of 18 United States Code, Section
3 921(a)(33);

4 B. Does not have a formal charging instrument pending in
5 the State or any other jurisdiction for a misdemeanor crime
6 of domestic violence, within the meaning of 18 United States
7 Code, Section 921(a)(33);

8 C. Has not been convicted in the State or any other
9 jurisdiction within the past 3 years of 3 or more crimes
10 punishable by imprisonment for less than one year, if those
11 convictions arose from different criminal episodes;

12 D. Has not engaged within the past 3 years in reckless or
13 negligent conduct that is substantiated by information of
14 record by a governmental entity;

15 E. Is current in payment of all taxes, interest and
16 penalties owed to the State or to a municipality, excluding
17 items under formal dispute or appeal pursuant to applicable
18 statutes or ordinances;

19 F. Has not been involved in any criminal activity and has
20 not been convicted of a crime punishable by one year or more
21 of imprisonment in any jurisdiction unless at least 10 years
22 have passed since satisfactory completion of the sentence or
23 probation imposed by the court for the crime;

24 G. Has not been convicted of a violation of this chapter or
25 chapter 14 or of equivalent laws in any other state;

26 H. Has not been adjudicated within the past 3 years of
27 having committed a juvenile offense involving conduct that,
28 if committed by an adult, would cause the director to refuse
29 to approve a license application under this section;

30 I. Is not a fugitive from justice, a drug abuser, a drug
31 addict, a drug-dependent person, an illegal alien or a
32 person who was discharged from the United States Armed
33 Forces under dishonorable conditions within 3 years prior to
34 the date of application;

35 J. Has completed the application form and complied with the
36 requirements of section 375; and

37 K. Has not knowingly made a false statement of material
38 fact to the director in applying for a license under this
39 chapter or chapter 14.

40 **§372. Placement and ownership of machines**

2 1. Number of machines; location. No more than 5 video
3 gaming machines may be placed on the premises of a licensee. A
4 machine may not be placed in any location other than the premises
5 of the licensee. A licensee must own or control the premises on
6 which a video gaming machine is located. The machine area must
7 be designed to permit the licensee or an agent of the licensee to
8 see and control the area at all times to ensure compliance with
9 the provisions of this chapter.

10
11 2. Uniform location agreement. Each location must be
12 subject to a uniform location agreement between the distributor
13 and the licensee. A copy of the agreement must be submitted to
14 the director. The director may approve or disapprove any uniform
15 location agreement. If the uniform location agreement is
16 disapproved, the director shall provide written reasons for the
17 denial. The uniform location agreement is the complete and sole
18 agreement between the licensee and the distributor regarding
19 video gaming machines. No other agreement between the licensee
20 and the distributor is legally binding.

21 3. Appeal to Maine Administrative Procedure Act. Any
22 distributor or licensee denied approval of a uniform location
23 agreement may appeal the decision pursuant to the Maine
24 Administrative Procedure Act.

25 4. Disclosure of other contracts and agreements. A
26 distributor shall disclose to the director any other contracts or
27 agreements that the distributor or a subsidiary of the
28 distributor has made with a licensee.

29 5. Incentives prohibited. A distributor may not offer an
30 incentive to a licensee to accept placement of a video gaming
31 machine on the premises of the licensee and a licensee may not
32 solicit such an incentive. For purposes of this subsection,
33 "incentive" means any consideration, including merchandise, a
34 premium or bonus in cash or an advance payment of the licensee's
35 share of net machine income. "Incentive" does not include the
36 licensee's share of net machine income provided for in section
37 383. A person who violates this subsection is guilty of a Class
38 C crime and that person's license, if any, is revoked and the
39 right to apply for a license under this chapter is precluded.

40 6. Ownership of machines. A person may not place or
41 operate a video gaming machine for use in this State if the
42 machine is owned by a person other than a video gaming machine
43 distributor licensed under this chapter. A video gaming machine
44 distributor may not own more than 100 video gaming machines
45 licensed in this State or more than 15% of the total number of
46 video gaming machines licensed in this State, whichever is lesser.

2 **§373. Licensing of machines**

4 **1. License required.** A video gaming machine may not be
6 placed for public use or operated in this State unless the
8 machine is licensed by the director. The video gaming machine
10 license must be prominently displayed no more than 5 feet from
12 the machine. Language describing the odds of winning the game
14 and warning of the danger of compulsive gambling must also be
16 prominently displayed on the machine.

18 **2. Requirements for license.** To be licensed, a video
20 gaming machine:

22 **A. May offer only games permitted by the director;**

24 **B. May not have any means of manipulation that affect the**
26 random probabilities of winning a game;

28 **C. May not directly dispense coins, cash or tokens;**

30 **D. Must have one or more mechanisms that accept coin or**
32 cash in the form of bills and that are designed to prevent a
34 person from obtaining credits without paying;

36 **E. Must be designed to suspend operation until reset if a**
38 person attempts, by physical or other tampering, to obtain
40 credits without paying; and

42 **F. Must have accounting software that keeps an electronic**
44 record of information that includes, but is not limited to,
46 the following: total cash inserted into the machine, total
48 credits awarded by the machine and total credits played for
50 video games.

52 **3. Amount of play; payback value.** A video gaming machine
54 may be played for a maximum of \$5 in a single game. A video
56 gaming machine may not accept more than \$20 at a time. The
58 maximum prize awarded may not exceed the value of \$1,000. The
60 payback value of each type of game offered by each machine must
62 be at least 85%.

64 **4. Examination of prototypes.** The director and the
66 Attorney General shall examine prototypes of video gaming
68 machines and associated equipment of manufacturers seeking a
70 license as required in this chapter. The director shall require
72 the manufacturer seeking the examination and approval of the
74 video gaming machine or associated equipment to pay the
76 anticipated actual cost of the examination, not to exceed \$300,
78 before the examination occurs. After the examination occurs, the
80 director shall refund overpayments or charge and collect amounts

2 sufficient to reimburse the director for underpayments of actual
3 cost, except that collection may not exceed a cumulative total of
4 \$300 per examination. The director and the Attorney General
5 shall complete the examination within 10 business days. The
6 director may contract for the examinations of video gaming
7 machines and associated equipment as required by this section.

8 5. **Illegal gaming machine.** An illegal gaming machine is
9 subject to seizure and forfeiture to the State pursuant to
10 sections 395 and 396.

12 **§374. Licensing of manufacturer, distributor, wholesaler,**
13 **distributor employee**

14 1. **Qualifications.** To be licensed as a video gaming
15 machine distributor, a person must meet the qualifications set
16 forth in section 371, subsection 2. A video gaming machine
17 distributor employee must meet the qualifications set forth in
18 section 371, subsection 2, paragraphs A to D and F to I.

19 2. **Additional qualifications.** A person may be issued a
20 video gaming machine distributor license only if that person has
21 been a resident of this State for 5 years prior to application
22 for a video gaming machine distributor license. All
23 stockholders, partners, trustees, administrators, officers,
24 principals or shareholders of a corporation, business,
25 association, partnership, company or any other entity entitled to
26 be distributors according to this chapter must be residents of
27 this State for a period of 5 years prior to application for a
28 video gaming machine distributor license by that corporation,
29 business, association, partnership, company or any other entity
30 and must be able to verify residency.

31 3. **Manufacturers and wholesalers.** A video gaming machine
32 manufacturer or wholesaler must be licensed by the director.

33 4. **Limitation on ownership.** A partnership, corporation,
34 person, individual partner or shareholder of more than 5% of a
35 corporation or an immediate family member of a person, individual
36 partner or shareholder of more than 5% of a corporation may not
37 have ownership interests in more than one distributor. For the
38 purposes of this subsection, "immediate family" means a spouse,
39 child, parent, stepchild or stepparent.

40 **§375. Applications; investigation**

41 1. **Form.** An application for a license required under this
42 chapter must be on the form provided by the director. The
43 application must be signed by the individual applicant or by a
44 duly authorized officer of the partnership, corporation or
45 other entity.

2 association applying for the license. The application must
3 contain, but is not limited to, the following information
4 regarding the individual applicant and each officer, director,
5 partner or owner of any interest in a corporation, partnership or
6 association applying for a license:

7 A. Full name;

8
9 B. Full current address and addresses for the prior 5 years
10 and verification of those prior addresses. Verification is
11 sufficient if the applicant utilizes at least one of the
12 following verification methods and the verification method
13 used provides evidence of residency in this State of 5
14 years: copies of tax returns, voter registration cards or
15 voter registration records or driver's licenses;

16
17 C. A record of previous issuances of, refusals to issue and
18 revocations of a license under this chapter; and

19
20 D. Answers to the following questions posed in
21 substantially the following form.

22
23 (1) "Is there a formal charging instrument now pending
24 against you in this or any other jurisdiction for a
25 crime that is punishable by imprisonment for one year
26 or more or for a misdemeanor crime of domestic
27 violence?"

28
29 (2) "Is there a formal charging instrument now pending
30 against you in this or any other jurisdiction for a
31 juvenile offense that involves conduct that, if
32 committed by an adult, would be punishable by
33 imprisonment for one year or more or would constitute a
34 misdemeanor crime of domestic violence?"

35
36 (3) "Have you ever been convicted of a crime described
37 in subparagraph (1) or adjudicated as having committed
38 a juvenile offense as described in subparagraph (2)?"

39
40 (4) "Are you a fugitive from justice?"

41
42 (5) "Are you a drug abuser, drug addict or
43 drug-dependent person?"

44
45 (6) "Have you been discharged from the United States
46 Armed Forces under dishonorable circumstances within
47 the past 5 years?"

48
49 (7) "Are you an illegal alien?"
50

2 (8) "Have you been convicted within the past 3 years
of 3 or more crimes punishable by imprisonment of less
4 than one year?"

6 (9) "Have you been adjudged within the past 3 years to
have committed 3 or more juvenile offenses involving
8 conduct that, if committed by an adult, would be
punishable by imprisonment of less than one year?"

10 (10) "To your knowledge, have you engaged within the
past 3 years in reckless or negligent conduct that is
12 substantiated by the records of a governmental entity?"

14 2. Signature as certification. The applicant, by affixing
the applicant's signature to the application, certifies the
16 following:

18 A. That the statements made in the application and any
documents made a part of the application are true and
20 correct;

22 B. That the applicant understands that an affirmative
answer to one or more of the questions in subsection 1,
24 paragraph D is cause for refusal; and

26 C. That the applicant understands that knowingly making any
false statement in the application or any document made a
28 part of the application is grounds for a refusal to issue a
license or for revocation or suspension of a license.

30 3. Consent to review records. At the request of the
32 director, the applicant shall take whatever action is necessary
to permit the director to examine all accounts and records in the
34 applicant's possession, under the applicant's control or under
the control of 3rd parties but accessible by consent of the
36 applicant and shall authorize all 3rd parties in possession or in
control of those accounts or records to allow the director or a
38 designee to examine the accounts and records as the director
determines necessary to ascertain:

40 A. Whether the information supplied on the application or
42 any documents made a part of the application is true and
correct;

44 B. Whether each of the requirements of this section has
46 been met; or

48 C. Whether the applicant meets the requirements for
licensure under this chapter.

50

2 This requirement includes taking whatever action is necessary to
3 permit the director or a designee to have access to confidential
4 records held by banks, the courts, law enforcement agencies and
5 the military for the purposes stated in this subsection.

6 **4. Investigations; national criminal history record check.**

7 An individual applying for a license, a partner of a partnership
8 or an officer, director or holder of an ownership interest of a
9 corporation or association applying for a video gaming machine
10 license as a licensee, manufacturer, distributor or wholesaler
11 must submit to a background investigation by the Chief of the
12 State Police to verify the applicant's compliance with the
13 requirements of section 371, subsection 2.

14 **5. Notification of municipal officers.** An applicant for a
15 license to operate a video gaming machine must send a copy of the
16 application to the officers of the municipality in which the
17 machine will be operated. The applicant must certify in the
18 application that the copy has been sent and must list the names
19 and addresses of the persons to whom the copy was sent.

20 **§376. Fees; term of license; transferability levels**

21 **1. License levels; fees.** The annual fee for a license
22 issued under this chapter is as follows:

23 A. A license for a video gaming machine manufacturer is a
24 Level 1 license and the fee for a video gaming machine
25 manufacturer license is \$5,000;

26 B. A license for a video gaming machine wholesaler is a
27 Level 1 license and the fee for a video gaming machine
28 wholesaler license is \$5,000;

29 C. A license for a video gaming machine distributor is a
30 Level 2 license and the fee for a video gaming machine
31 distributor license is \$1,000;

32 D. A license to operate a video gaming machine is a Level 3
33 license and the fee for a video gaming machine operator
34 license is \$100; and

35 E. A license for a video gaming machine distributor
36 employee is a Level 4 license and the fee for a video gaming
37 machine distributor employee license is \$100 per employee.

38 In addition to the annual license fee, the director may charge an
39 initial one-time application fee of \$50 for a license issued
40 under this chapter. All fees collected pursuant to this
41 chapter shall be deposited in the State Treasury.

2 subsection must be deposited directly to the Video Gaming Fund
3 established in section 384.

4 2. Term of license. All licenses issued by the director
5 under this chapter are effective for one year and are renewable
6 annually, unless sooner revoked pursuant to section 377.

8 3. Nontransferable. A license issued under this chapter is
9 not transferable or assignable. A license for a video gaming
10 machine distributor employee is not transferable and must be
11 associated with a specific distributor and that distributor
12 association may not be transferred.

14 4. Levels of license; prohibition against multiple
15 licenses. A person licensed as a video gaming machine
16 manufacturer or wholesaler under section 374 has a Level 1
17 license. A person licensed as a video gaming machine distributor
18 under section 374 has a Level 2 license. A licensee under
19 section 371 has a Level 3 license. A person licensed as a video
20 gaming machine distributor employee has a Level 4 license. A
21 person may not hold more than one level of license. A person
22 holding a Level 2 license is automatically authorized to perform
23 the duties of a Level 4 licensee without being required to hold a
24 Level 4 license.

26 **§377. Actions relating to licenses**

28 1. Refusal to renew license. The director may refuse to
29 renew a license for just cause after a hearing in accordance with
30 the Maine Administrative Procedure Act.

32 2. Suspension or revocation of license by the District
33 Court. The District Court may suspend or revoke a license issued
34 under this chapter for just cause.

36 3. Just cause. As used in this section, "just cause"
37 includes:

38 A. Making or causing to be made a false statement of
39 material fact in obtaining a license under this chapter or
40 in connection with service rendered within the scope of the
41 license issued;

44 B. Violating or knowingly instructing a video gaming
45 machine distributor employee to violate any provision of
46 this chapter or any rule adopted under this chapter; or

48 C. Becoming ineligible to hold a license under this chapter.

2 4. Actions taken by video gaming machine distributor
3 employee. A distributor may not be held liable for the actions
4 of a video gaming machine distributor employee unless these
5 actions were instructed by the distributor. A distributor
6 license renewal may not be denied or suspended due to the actions
7 of a video gaming machine distributor employee unless these
8 actions were instructed by the distributor.

9
10 5. Ineligibility period following refusal to issue or renew
11 license or revocation of license. A person may not apply to the
12 director for any license under this chapter less than 2 years
13 after the director refused to issue or renew a license under this
14 chapter or less than 2 years after the District Court revoked a
15 license issued to the person under this chapter.

16 SUBCHAPTER III

17 MACHINE OPERATION; ALLOCATION OF FUNDS

18 §381. Limits on machine use

19
20
21 1. Hours of play. A licensee may not permit a person to
22 play a video gaming machine at any time other than a time when
23 the sale of liquor is permissible under Title 28-A, section 4,
24 subsection 1.

25
26
27 2. Age of player. A licensee may not permit a person under
28 21 years of age to play a video gaming machine.

29
30 3. Time and money limits imposed by licensee. A licensee
31 may impose a daily limit on the amount of time or money spent by
32 an individual playing the video gaming machines on the licensee's
33 premises.

34
35
36 4. Play by members and guests; public events. Except as
37 provided in this subsection, only persons who are members of the
38 licensee organization or guests of those members may play a video
39 gaming machine on the premises of the licensee. The licensee may
40 obtain a license to offer the video gaming machines for public
41 use once every 6 months for a period not to exceed 3 consecutive
42 days.

43 §382. Payment of credits by licensee

44
45
46 A licensee shall redeem credits for players who earn credits
47 on machines located on the premises of that licensee in
48 accordance with rules proposed by the director. Rules adopted
49 pursuant to this section are major substantive rules as defined
50 in Title 5, chapter 375, subchapter II-A. If a person receives a
credit redeemable for more than the amount required by federal

2 law to be reported to the United States Internal Revenue Service,
3 the licensee shall require the person to complete a form listing
4 the person's name, address and social security number. The
5 licensee shall promptly send the form to the Bureau of Revenue
6 Services.

8 **§383. Allocation of funds**

10 **1. Distributor responsible.** A video gaming machine
11 distributor shall collect and allocate funds from video gaming
12 machines owned by the distributor in accordance with this section.

14 **2. Allocation of net machine income.** Funds must be
15 allocated as follows:

16 **A.** Twenty percent must be sent to the Treasurer of State
17 for deposit in the Local Government Fund created in Title
18 30-A, section 5681;

20 **B.** Forty percent must be paid to the distributor that owns
21 the machine; and

22 **C.** Forty percent must be paid to the licensee.

24 **3. Deposit of state funds.** Each distributor shall maintain
25 a bank account accessible by the State for the deposit of funds
26 owed to the State under this chapter. The distributor shall
27 deposit in that account the State's share of the net machine
28 income attributable to machines owned by the distributor during
29 the first 15 days of each month not later than the 22nd day of
30 the month. The distributor shall deposit in that account the
31 State's share of net machine income attributable to machines
32 owned by the distributor between the 16th and the last day of
33 each month not later than the 7th day of the next month. If the
34 day on which funds must be deposited is not a business day, the
35 funds must be deposited on the next business day after that date.

38 **4. Use of state share.** At the end of each fiscal year
39 beginning after June 30, 2001, the Treasurer of State shall
40 transfer to the Local Government Fund created in Title 30-A,
41 section 5681 an amount equal to all revenue collected pursuant to
42 subsection 2, paragraph A.

44 **5. Failure to deposit funds.** A distributor who willfully
45 fails to comply with this section commits a Class C crime. The
46 license of that person may be revoked by the District Court and
47 the video gaming machines to which the undeposited funds are
48 attributable may be disabled by the director.

2 6. Late payments. All payments not remitted when due must
be paid together with a penalty assessment on the unpaid balance
4 at a rate of 1.5% per month.

6 **§384. Video Gaming Fund**

8 1. Fund created. There is created and established a
separate fund to be known as the Video Gaming Fund, referred to
10 in this section as the "fund," and to be deposited in
depositories the Treasurer of State selects. The fund consists
12 of all revenue payable to the State pursuant to section 376 and
all other money credited or transferred to the fund from any
14 other fund or source pursuant to law.

16 2. Use of money. The money in the fund may be appropriated
or allocated only:

18 A. For expenses incurred in implementing or enforcing this
chapter;

20 B. For payment to the Local Government Fund created in
22 Title 30-A, section 5681; and

24 C. For payment to the General Fund.

26 3. Committee review of allocation. The Commissioner of
Administrative and Financial Services shall submit to the joint
28 standing committee of the Legislature having jurisdiction over
gaming matters for review all proposals for allocations from the
30 fund. The proposed allocations for each fiscal year must be
submitted by January 1st preceding the start of the fiscal year.

32 **SUBCHAPTER IV**

34 **ENFORCEMENT AND PENALTIES**

36 **§391. Reports; records; location**

38 1. Reports; records. The director shall require from any
40 licensed video gaming machine distributor, manufacturer,
wholesaler or licensee whatever records and reports the director
42 considers necessary for the administration and enforcement of
this chapter.

44 2. Location. A license holder shall maintain all records
46 required by this chapter or by rules adopted under this chapter
at the primary business office within this State of the license
48 holder or on the premises where the video gaming machine is
operated. In the case of a video gaming machine manufacturer or
50 wholesaler, the records must be maintained at the primary

2 business office of the manufacturer or wholesaler. The primary
3 business office must be designated by the license holder in the
4 license application. All records must be open to inspection by
5 the director or the director's designee and a license holder may
6 not refuse the director or the director's designee the right to
7 inspect or audit the records. Refusal to permit inspection or
8 audit of the records is not a crime under this chapter but does
9 constitute grounds for revocation of the license.

10 **§392. Access to premises, equipment, records**

12 A person holding a license under this chapter shall permit
13 the director or the director's designee to inspect any equipment,
14 prizes, records or items and materials used or to be used in the
15 operation of any video gaming machine manufactured, owned,
16 distributed or operated by that person. A person holding a
17 license under this chapter shall consent in writing to the
18 examination of all accounts, bank accounts and records in the
19 license holder's possession or under the license holder's control
20 and shall authorize all 3rd parties in possession or in control
21 of those accounts or records to allow the director or the
22 director's designee to examine the accounts and records as the
23 director determines necessary.

24 **§393. Contempt**

26 If a witness refuses to obey a subpoena issued by the
27 director or to give any evidence relevant to proper inquiry by
28 the director, the Attorney General may petition the Superior
29 Court in the county where the refusal occurred to find the
30 witness in contempt. The Attorney General shall cause to be
31 served on the witness an order requiring that witness to appear
32 before the Superior Court to show cause why that witness should
33 not be adjudged in contempt. The Superior Court shall, in a
34 summary manner, hear the evidence and, if it is such as to
35 warrant the court to do so, punish the witness in the same manner
36 and to the same extent as for contempt committed before the
37 Superior Court or with reference to the process of the Superior
38 Court.

40 **§394. Violations**

42 **1. Crimes by licensee.** A licensee who performs any of the
43 following acts commits a Class D crime:

46 A. Permitting a person under 21 years of age to play a
47 video gaming machine licensed pursuant to this chapter;

48 B. Permitting a person to play a video gaming machine
49 licensed pursuant to this chapter at a time other than a

2 time when the sale of liquor is permissible under Title
3 28-A, section 4, subsection 1;

4 C. Extending credit to a person in order for the person to
5 play a video gaming machine;

6 D. Permitting a person to use a credit card as a method of
7 payment for playing a video gaming machine; or

8 E. Permitting a visibly intoxicated person to play a video
9 gaming machine.

10 2. Class C crimes by any person. A person who performs any
11 of the following acts commits a Class C crime:

12 A. Tampering with a video gaming machine with intent to
13 interfere with the proper operation of that machine;

14 B. Manipulating or intending to manipulate the outcome,
15 payoff or operation of a video gaming machine by physical
16 tampering or any other means;

17 C. Manufacturing, distributing, selling, operating or
18 placing a video gaming machine for use in this State without
19 a license or manufacturing, distributing, selling, operating
20 or placing an illegal machine for use in this State; or

21 D. Placing for public use or operating an unlicensed video
22 gaming machine in this State.

23 3. Class D crimes by any person. A person who violates any
24 provision of this chapter or any rule adopted under this chapter
25 for which a specific penalty is not provided commits a Class D
26 crime.

27 **§395. Seizure and forfeiture of illegal gaming machines**

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

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

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

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

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

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

24 D. The court shall promptly, but not less than 2 weeks
after notice, hold a hearing on the petition after an answer
26 is filed by a person served with notice under paragraph C.
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
issue a final order from which the parties have a right of
32 appeal. The final order must provide for disposition of the
illegal gaming machine and any monetary contents by the
34 State. Revenue generated by the disposition of the illegal
machine and any monetary contents of the machine must be
36 used to pay the reasonable expenses of the forfeiture
proceedings, seizure, storage, maintenance of custody,
38 advertising and notice. The balance, if any, must be
deposited in the General Fund.

40 4. Records. A law enforcement officer, a department or an
agency having custody of an illegal gaming machine or any
42 monetary contents of an illegal gaming machine, or having
disposed of the illegal gaming machine or any monetary contents,
44 shall keep and maintain during the pendency of the action full
and complete records in accordance with this subsection. Upon
46 issuance by the court of a final order ordering the disposition,
destruction or return of the illegal gaming machine or the
48 monetary contents, the officer, department or agency shall

2 transmit a copy of those records to the Department of Public
3 Safety for inclusion into a centralized record.

4 A. The records must show:

6 (1) From whom the illegal machine and any monetary
7 contents were received;

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

12 (3) To whom the illegal machine and any monetary
14 contents are delivered;

16 (4) The date and manner of destruction or disposition
17 of the illegal machine; and

18 (5) The exact kinds, quantities and forms of illegal
20 gaming machines and the exact amount of any monetary
21 contents of any machine held in custody or disposed of.

22 B. The records must be open to inspections by all federal
23 and state officers authorized by the laws of the United
24 States, a state or territory of the United States or a
25 foreign nation to investigate or prosecute violations of
26 gambling laws.

28 C. The director shall maintain a centralized record of
29 illegal machines seized. At least quarterly, the director
30 shall provide a report of the disposition of property
31 previously held by the director to the Commissioner of
32 Administrative and Financial Services and the legislative
33 Office of Fiscal and Program Review. These records must
34 include an estimate of the fair market value of items seized.

36 5. Report to the court. Persons making final disposition
37 or destruction of an illegal gaming machine or its monetary
38 contents under court order shall report, under oath, to the court
39 the exact circumstances of the destruction or disposition.

40 6. Seizure. An illegal gaming machine together with any
41 monetary contents is contraband and may be seized by any law
42 enforcement officer pursuant to subsection 7 or 8.

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

2 A. Process for seizure of the property may issue only upon
4 a showing of probable cause. The application for process
6 for seizure of the property and the issuance, execution and
8 return of the process are subject to the provisions of
10 applicable state law.

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

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

24 §396. Criminal forfeiture

26 1. Forfeiture upon conviction of violation. A person
28 convicted of a violation of this chapter forfeits to the State
30 all rights, privileges, interests and claims to property that is
32 subject to forfeiture pursuant to section 395. All rights,
34 privileges, interest and title in property subject to forfeiture
36 under this section vest in the State upon the commission of the
38 act giving rise to forfeiture pursuant to section 395.

40 2. Proceeding by indictment. Property subject to
42 forfeiture that is not yet the subject of a final order pursuant
44 to section 395 may be proceeded against by indictment or
46 superseding indictment of the grand jury in any related criminal
48 proceeding in which one or more persons with an interest in the
50 property have been simultaneously 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 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 395, 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. Seizure upon finding of probable cause. 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 395.

4. Trial against property. Trial against property charged
 by indictment or information may be by jury and must be held in a

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

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

2 the petitioner has established by a preponderance of the evidence
3 that:

4 A. The petitioner has a legal right, title or interest in
5 the property and the right, title or interest renders the
6 order of forfeiture invalid in whole or in part because the
7 right, title or interest was vested in the petitioner rather
8 than any defendant or was superior to any right, title or
9 interest to the exclusion of any defendant at the time of
10 the commission of the act that gave rise to the forfeiture
11 of the property under this section; and

12
13 B. The petitioner is a bona fide purchaser for value of the
14 right, title or interest in the property and was at the time
15 of purchase reasonably without cause to believe that the
16 property was subject to forfeiture under this section.

17 6. Title to property following forfeiture. Following the
18 entry of a verdict of forfeiture of property pursuant to this
19 section or the entry of a guilty plea in open court on the
20 record, the State has clear title to property that is the subject
21 of the indictment or information and order of forfeiture and may
22 order all or a portion of the property forfeited to the State to
23 be disposed of pursuant to section 395.

24
25 **§397. Rules**

26
27 Rules adopted pursuant to this chapter must be proposed by
28 the director and are major substantive rules as defined in Title
29 5, chapter 375, subchapter II-A.

30
31 **§398. Short title**

32
33 This chapter may be known and cited as the "Video Gaming
34 Property Tax Relief Act of 2001."

35
36 **Sec. 9. 25 MRSA §3902, sub-§4 is enacted to read:**

37
38 **4. Notice of violation of video gaming machine laws.** A
39 liquor enforcement officer who notices a potential violation of
40 any provision of Title 17, chapter 16 shall promptly notify the
41 Director of the Bureau of Alcoholic Beverages and Lottery
42 Operations in the Department of Administrative and Financial
43 Services of the potential violation.

44
45
46
47 **SUMMARY**

48
49 **This bill allows operation of video gaming machines by**
50 **nonprofit organizations that are eligible for games of chance**

2 licenses and that are exempt from federal tax under the Internal
Revenue Code, Section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10)
4 or 501(c)(19). These sections of the Internal Revenue Code refer
to charitable organizations, civic leagues, fraternal benefit
6 societies, domestic fraternal societies and associations and
veterans organizations. The organization applying for the
8 license must own or lease the premises on which the machines will
be placed and must use the premises for its primary charitable or
nonprofit purpose.

10
12 Video gaming machine manufacturers, distributors,
wholesalers, operators and distributor employees must be licensed
14 by the Director of the Bureau of Alcoholic Beverages and Lottery
Operations in the Department of Administrative and Financial
16 Services, following background investigations of the applicants
and their major business partners.

18 The license specifies the number of machines allowed on the
premises, and the maximum number of machines allowed is 5 per
20 licensee. Machines must be licensed by the Director of the
Bureau of Alcoholic Beverages and Lottery Operations. Persons
22 under 21 years of age are not allowed to use the machines. Only
members of the organization and their guests are allowed to use
24 the machines, except that the organization may obtain a license
to offer the machines for public use once every 6 months for a
26 period of 3 consecutive days. The maximum dollar amount for each
play is \$20 and the maximum payout is \$1,000. Each game on each
28 machine must return at least 85% of wagers to players, calculated
on an annual basis.

30
32 A single video gaming machine distributor may not own more
than 100 machines or 15% of the total number of machines in the
State, whichever is less. A person may not hold more than one
34 type of license; for example, a distributor may not also be a
licensee or a manufacturer.

36
38 Net machine income, which is income after payback to
players, is divided as follows: 20% to the State for payment
40 into the Local Government Fund; 40% to the distributor; and 40%
to the licensee.

42 Licenses are issued for one year. Applicants for an initial
license must pay an additional fee of \$50 to help offset costs of
44 processing the application and performing the background
investigation.
46