

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 983

H.P. 693

House of Representatives, February 24, 2005

An Act To Make Technical Changes to the Maine Criminal Code

Reported by Representative BLANCHETTE of Bangor for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed under Joint Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

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4 **Sec. 1. 17-A MRSA §959, sub-§§3, 4, 5 and 6,** as enacted by PL 2001, c. 461, §2, are amended to read:

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

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10 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 and any associated proceeds. The petition must be filed in the court having jurisdiction over the property.

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16 B. The proceeding under paragraph A 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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20 C. A 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 through hand delivery by a deputy sheriff to any person who appears to have an interest in the illegal gambling machine and, any monetary contents and any associated proceeds. 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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30 D. A 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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36 E. Based on the findings and conclusions, the court shall issue a final order, from which the parties have a right of appeal. The final order must provide for disposition of the illegal gambling machine and, any monetary contents and any associated proceeds by the State. Any revenue generated by the disposition of the illegal gambling machine and, any monetary contents of the machine and any associated proceeds must be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice. The balance, if any, must be deposited in the General Fund.

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48 4. Any law enforcement officer, department or agency having custody of an illegal gambling machine ~~or~~, any monetary contents

2 of an illegal gambling machine or any associated proceeds or
3 having disposed of the illegal gambling machine ~~or~~, any monetary
4 contents or any associated proceeds shall keep and maintain
5 during the pendency of the action full and complete records in
6 accordance with this subsection. Upon issuance by the court of a
7 final order ordering the disposition, destruction or return of
8 the illegal gambling machine ~~or the~~, any monetary contents or any
9 associated proceeds, the officer, department or agency must
10 transmit a copy of those records to the Department of Public
11 Safety for inclusion into a centralized record.

12 A. The records must show:

13 (1) From whom the illegal gambling machine ~~and~~, any
14 monetary contents and any associated proceeds were
15 received;

16 (2) Under what authority the illegal gambling machine
17 ~~and~~, any monetary contents and any associated proceeds
18 are held, received or disposed of;

19 (3) To whom the illegal gambling machine ~~and~~, any
20 monetary contents and any associated proceeds are
21 delivered;

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

24 (5) The exact kinds, quantities and forms of illegal
25 gambling machines ~~and~~, the exact amount of any monetary
26 contents of any machine and the exact amount of any
27 associated proceeds held in custody or disposed of.

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

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

40 5. Persons making final disposition or destruction of an
41 illegal gambling machine ~~or~~, its monetary contents or any
42 associated proceeds under court order shall report, under oath,
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2 to the court the exact circumstances of the destruction or
disposition.

4 6. An illegal gambling machine together with any monetary
6 contents and any associated proceeds is contraband and may be
8 seized by any law enforcement officer pursuant to subsection 7 or
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10 **Sec. 2. 17-A MRSA §1233**, as enacted by PL 1999, c. 788, §7,
is amended to read:

12 **§1233. Revocation procedures**

14 The procedures, rights and responsibilities that apply to
16 probation revocation under sections 1205 to 1208, including bail
18 under section ~~1205, -subsectien-8~~ 1205-C, subsections 5 and 6 and
appellate review of revocation under section 1207, apply to
revocation of supervised release.

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22 **SUMMARY**

24 The 121st Legislature amended the Maine Revised Statutes,
26 Title 17-A, section 959 regarding illegal gambling machines to
give the State the authority to order forfeiture of "any
28 associated proceeds" of an illegal gambling machine. However,
parallel changes to the procedural provisions in Title 17-A,
30 section 959, subsections 3, 4, 5 and 6 were not made. This bill
corrects the omission.

32 This bill also replaces an outdated reference to former
34 Title 17-A, section 1205, subsection 8 with a reference to
current section 1205-C, subsections 5 and 6. Former Title 17-A,
36 section 1205, subsection 8 was repealed by Public Law 1999,
chapter 246.