

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND TWENTIETH LEGISLATURE**  
**FIRST REGULAR SESSION**  
**December 6, 2000 to June 22, 2001**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 21, 2001**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**2001**

**DEPARTMENT OF DEFENSE,  
VETERANS AND EMERGENCY  
MANAGEMENT**  
TOTAL (\$129,000)

**INLAND FISHERIES AND  
WILDLIFE, DEPARTMENT OF  
Administrative Services - Inland  
Fisheries and Wildlife**

All Other	\$129,000
Allocates funds on a one-time basis from the Dam Repair and Reconstruction Fund within the Department of Defense, Veterans and Emergency Management for the reconstruction of 2 dams that control the water level at Rocky Lake in Whiting. Any unspent funds shall lapse to the Dam Repair and Reconstruction Fund.	

**DEPARTMENT OF INLAND  
FISHERIES AND WILDLIFE**  
TOTAL \$129,000

**TOTAL ALLOCATIONS** \$0

See title page for effective date.

**CHAPTER 461**

**S.P. 480 - L.D. 1544**

**An Act to Enhance Penalties for Use  
of Illegal Gambling Machines**

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

**Sec. 1. 17-A MRSA §952, sub-§5-A** is enacted to read:

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

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

B. That is used to advance gambling activity; and

C. That is not a machine that a person may lawfully operate pursuant to a license that has been issued under Title 17, chapter 14 or that is operated by the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations.

**Sec. 2. 17-A MRSA §§959 to 961** are enacted to read:

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

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

2. An illegal gambling machine and any monetary contents may be declared forfeited under this section 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 territorial boundaries of the State and is subject to the authority of any court in which a petition seeking the forfeiture of that property is filed.

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

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.

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.

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. 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.

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.

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 by the State. Any revenue generated by the disposition of the illegal gambling machine and any monetary contents of the machine 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.

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

A. The records must show:

- (1) From whom the illegal gambling machine and any monetary contents were received;
- (2) Under what authority the illegal gambling machine and any monetary contents are held, received or disposed of;
- (3) To whom the illegal gambling machine and any monetary contents are delivered;
- (4) The date and manner of destruction or disposition of the illegal gambling machine; and
- (5) The exact kinds, quantities and forms of illegal gambling machines and the exact amount of any monetary contents of any machine held in custody or disposed of.

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

C. The Department of Public Safety is responsible for maintaining a centralized record of illegal gambling machines seized. At least quarterly, the department shall provide a report of the disposition of property previously held by the department to the Commissioner of Administrative

and Financial Services and the legislative Office of Fiscal and Program Review for review. These records must include an estimate of the fair market value of items seized.

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

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

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

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

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

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

**§960. Criminal forfeiture**

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

2. Property subject to forfeiture that is not yet the subject of a final order pursuant to section 959 may be proceeded against by indictment or superseding indictment of a grand jury in any related criminal proceeding in which one or more persons with an interest in the 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 959, the civil action must be immediately stayed and subrogated to the criminal forfeiture action. Discovery in the criminal action must be as provided by the Maine Rules of Criminal Procedure.

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

4. Trial against property charged by indictment or information may be by jury and must be held in a single proceeding together with the trial of the related criminal violation. Forfeiture of the property must be proved by the State by a preponderance of the evidence. The court, in its discretion, may allow any defendant with an interest in property indicted pursuant to this section to waive the right to trial by jury as against the property while preserving the right to trial by jury of any crime alleged. At trial by jury, the court, upon motion of a defendant or the State, may separate the trial of the matter against the defendant from the trial of the matter against the property subject to criminal forfeiture. If the court bifurcates the jury trial, the court shall first instruct and submit to the jury the issue of the guilt or innocence of defendants to be determined by proof beyond a reasonable doubt and shall restrict argument of counsel to those issues. After a verdict upon the guilt or innocence of all defendants, the court shall instruct and submit to the jury the issue of the forfeiture of the property to be determined by proof by a preponderance of the evidence and the court shall restrict argument to those issues. A special verdict must be returned as to the extent of the interest in property subject to forfeiture, if any.

5. A person not charged in an indictment under this section may not intervene in the criminal action. Following the entry of a verdict of forfeiture of property pursuant to this section or the entry of a guilty plea in open court on the record, the State shall provide written notice of its intent to dispose of the property to any person known to have alleged an interest in the property. The notice may be by certified, return receipt mail or as otherwise ordered by the court. Receipt by a person then licensed to operate a motor vehicle in the State is presumed when notice is mailed to the last known address of that person on file with the Department of the Secretary of State, Bureau of Motor Vehicles. A person other than the defendant asserting a legal interest in the property within 30 days of the date of receipt of the notice may petition the court for a hearing to adjudicate the validity of any alleged interest in the property. The hearing 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:

A. The petitioner has a legal right, title or interest in the property and the right, title or interest renders the 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 the commission of the acts that gave rise to the forfeiture of the property under this section; and

B. The petitioner is a bona fide purchaser for value of the right, title or interest in the property and was at the time 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.

See title page for effective date.

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## **CHAPTER 462**

**S.P. 568 - L.D. 1732**

### **An Act to Establish for an Additional Two Years the Commission to Study the Needs and Opportunities Associated with the Production of Salmonid Sport Fish in Maine**