

MASSACHUSETTS

I. Definition of Gambling

Mass. Ann. Laws ch. 271, § 7 makes it illegal for an individual to set up or promote a lottery. As true with most other jurisdictions, the three elements of a lottery include prize, consideration, and chance. *Commonwealth v. Plissner*, 4 N.E. 2d 214, 244 (Mass. 1936). As always, the burning question is how much chance must be present in a game before it is considered a lottery.

Massachusetts uses the “predominant test” in evaluating if a particular game or scheme is a lottery. This means that even though both chance and skill may be present in a game, if chance is the dominant element then it is considered a lottery. *Commonwealth v. Lake*, 57 N.E.2d 923, 925 (Mass. 1944). Explained in another way, if the element of chance overrides the exercise of skill and judgment in a game, then the game is a lottery. *Commonwealth v. Plissner*, 4 N.E.2d 241, 245 (Mass. 1936). Massachusetts courts have said that in determining what factor is predominant in a game, it may be necessary to look beyond the game itself and look at the people that actually play it. *Lake*, 57 N.E.2d at 925. In the *Lake* case, the court said that although some people may be able to gain a significant amount of skill at the “crane game” in question, the majority of people that play the game play it so infrequently that it would definitely be considered a game of chance. *Id.* Therefore, the court held that this was a lottery. *Id.*

Free Entry

Whether or not free entry takes a game or scheme out of the lottery definition in Massachusetts is a fact-based question. The promotional game in *Mobil Oil Corp. v. Attorney Gen.*, 280 N.E.2d 406, 411 (Mass. 1972), involved a gas station giving out game pieces that could lead to winning a prize if the consumer collected the right combination of these pieces. No purchase or payment was required to get these game pieces. *Id.* Although the Attorney General argued that this scheme was very similar to the bank nights found illegal in Massachusetts, the court disagreed. *Id.* at 412. The court said in those bank nights purchasing an admission ticket gave one an advantage over another individual that didn't. *Id.* Those in the theatre could easily hear if their name was called as the winner and would not have to fight the mass crowd outside to collect their prize. *Id.* The court said in this scheme that because one's presence was not required at a certain place to collect the prize and the prizes were redeemable over a number of weeks, that those who purchased products from the gas station gained no discernable advantage over those who got their game pieces free. *Id.*

As mentioned above, bank night schemes have been held to be illegal lotteries in Massachusetts. In *Commonwealth v. Wall*, 3 N.E.2d 28 (Mass. 1936), the court held that a bank night scheme--where one could enter without buying a ticket for admission--was illegal. The court said that the consideration element required for a lottery meant giving something of value. *Id.* at 29-30. But the court stated that just because some people are allowed to enter a contest without giving up something of value does not remove a scheme from a lottery classification if others have to pay

for their chance to win. *Id.* at 30. The court said that the increased attendance *inside* the theatre on the nights when this promotion was run was due to people thinking that they would gain an advantage in winning the prize if they bought a ticket. *Id.* The court was convinced that this made this game a lottery. *Id.*

II. Definition of Bookmaking

Mass. Ann. Laws ch. 271, § 17 makes it illegal for a person to keep a place where they have “apparatus, books or any device, used for registering bets, or buying or selling pools, upon the result of a trial or contest of skill, speed or endurance of man, beast, bird or machine, or upon the result of a game, competition, political nomination, appointment or election”

The Massachusetts courts have went so far as to hold that one can “register” a bet by committing it to memory. *Commonwealth v. Cosolito*, 269 N.E.2d 679, 681 (Mass. 1971). Massachusetts courts also interpret this definition of apparatus very broadly. These courts have held that an ordinary article can become an apparatus when used in connection with gambling activity. *Id.* at 681 (holding that a racing publication was an apparatus because it was used in placing bets).

III. Specific gaming device definitions

A gambling device in Massachusetts is defined as a slot machine or any “machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and which, when operated, may deal, as a result of the element of chance, any money or property” Mass. Ann. Laws ch. 271, § 5A . However, there is an exception for antique slot machines that are over thirty years old and that are not used for gambling purposes. Mass. Ann. Laws ch. 271, § 5A . Massachusetts is strict with this reel or drum requirement as a slot machine-like device without these components was held not to be a gambling device. *Commonwealth v. Frate*, 537 N.E.2d 1235, 1236 (Mass. 1989). Massachusetts has also taken liberal view of the definition “property” as meant by this statute. Free games awarded by a slot machine were held to be sufficient property. *Commonwealth v. Rivers*, 82 N.E.2d 216, 219 (Mass. 1948).

IV. Bucket Shop Laws

A bucketing or bucket shopping in Massachusetts is defined as:

a) The making of, or offering to make, any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities, wherein both parties thereto intend, or such keeper intends, that such contract shall be, or may be, terminated, closed or settled according to, or upon the basis of, the public market quotations of prices made on any board of trade or exchange upon which said securities or commodities are dealt in, and without a bona fide purchase or sale of the same; or

(b) The making of, or offering to make, any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities, wherein both parties intend, or such keeper intends, that such contract shall be, or may be, deemed terminated, closed or settled, when such public market quotations of prices for the securities or commodities named in such contract shall reach a certain figure without a bona fide purchase or sale of the same; or

(c) The making of, or offering to make, any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities, wherein both parties do not intend, or such keeper does not intend, the actual or bona fide receipt or delivery of such securities or commodities, but do intend, or such keeper does intend, a settlement of such contract based upon the differences in such public market quotations of prices at which said securities or commodities are, or are asserted to be, bought and sold.

Mass. Ann. Laws ch. 271, § 35.

V. Express Prohibitions on games of skill

1. Poker/Card games

While the game of Poker has been recognized by Massachusetts courts as having elements of skill, it still seems that these courts regard chance as the predominant element. *See Commonwealth v. Club Caravan, Inc.*, 571 N.E.2d 405, 406 (Mass. App. Ct. 1991).

Mass. Ann. Laws ch. 271, § 2 specifically bans those in a public conveyance or public place, or in a private place upon which he is trespassing, to play or bet on a card game. In *Commonwealth v. Douglas*, 503 N.E.2d 28, 29 (Mass. 1987), two individuals were criminally charged with playing poker for money. Furthermore, Poker was described as an unlawful game in *Commonwealth v. Novak*, 172 N.E. 84, 84-5 (Mass. 1930). *See also Garvey v. McNulty*, 170 N.E. 58, 59 (Mass. 1930).

Also, the court in *Chapin v. Haley*, 133 Mass. 127, 131 (1882), held that an jury instruction which stated that if the jury “found the game of draw poker, as described by witnesses, to be a game of chance on which money was hazarded upon the kind of cards held by the respective players, or by betting upon the hands so held, and if chips redeemable in money were used by the players in place of money, then it was gaming prohibited by the laws of this Commonwealth” was not erroneous. The jury did in fact conclude that this was an illegal game of chance prohibited by Massachusetts law. *Id.* at 129.

Additionally, the case of *Commonwealth v. Wolbarst*, 65 N.E.2d 552, 554 (Mass. 1946), described an older Massachusetts statute that punished those that played at cards for money.

2. Dice

Mass. Ann. Laws ch. 271, § 7(2009) specifically prohibit lotteries that dispose of property by using dice. Mass. Ann. Laws ch. 271, § 2(2009) bans people from playing dice in a public place or at a private place where they are trespassing.

Additionally, the case of *Commonwealth v. Wolbarst*, 65 N.E.2d 552, 554 (Mass. 1946), described an older statute that punished those that played dice for money. *See also Goldberg v. Feiga*, 48 N.E. 1073 (Mass. 1898) (holding that gaming includes a dice game).

In the case of *Commonwealth v. Coleman*, 68 N.E. 220, 221 (Mass. 1903), the court punished an individual that knew that the game of dice was being played in his premises. The statute this individual was punished under specifically punishes those that allow dice or *other games of chance* to be conducted (emphasis added). *Id.* This language seems to indicate that dice is grouped under the broad heading of games of chance.

3. Billiards

Mass. Ann. Laws ch. 271, § 4(2009) states that:

Whoever, in any place mentioned in the preceding section, for the purpose of gaming for money or other property, uses or takes part in using a billiard table, bowling alley or other implement of gaming, or there plays at an unlawful game or sport, or, for the purpose of such gaming, uses or takes part in using a billiard table or bowling alley kept by a person licensed under chapter one hundred and forty, shall forfeit not more than fifty dollars. This passage seems to indicate that gaming for money by using a billiard table is a punishable offense.

In *Murphy v. Rogers*, 24 N.E. 35, 35-6 (Mass. 1890), the court held that playing billiards, where the loser was to pay for certain agreed upon things for the winner, amounts to gaming.

4. Bowling

Mass. Ann. Laws ch. 271, § 4(2009) states that:

Whoever, in any place mentioned in the preceding section, for the purpose of gaming for money or other property, uses or takes part in using a billiard table, bowling alley or other implement of gaming, or there plays at an unlawful game or sport, or, for the purpose of such gaming, uses or takes part in using a billiard table or bowling alley kept by a person licensed under chapter one hundred and forty, shall forfeit not more than fifty dollars.

This passage seems to indicate that using a bowling alley to engage in gaming for money or other property is a punishable offense.

The case of *Commonwealth v. Dean*, 1 Pick. 387 (Mass. 1823), held that the playing of ninepins (an older version of bowling), constituted gaming. *See also Commonwealth v. Drew*, 57 Mass. 279 (1849).

5. Darts

In *Commonwealth v. Theatre Adv. Co.*, 190 N.E. 518 (Mass. 1934), the court dealt with the game of beano, which in this instance involved the use of darts. While the court alluded to the fact that skill was present in this game because of the throwing of the darts, the element of chance in this game thwarted that skill component, making this a game of chance. *Id.* at 520.

VI. Express Exemptions

1. Social gambling

According to Mass. Ann. Laws ch. 10, § 38(2009), an organization that is composed of individuals sixty years or older, may operate or conduct beano games without a license between the times of 9:00 am and 10:00 pm. However, these organizations cannot charge more than five dollars to play, and the prizes awarded are limited to one hundred dollars. Mass. Ann. Laws ch. 10, § 38.

Also, a town or city may grant a license to keep and operate an automatic amusement device for hire, gain or reward. Mass. Ann. Laws ch. 140, § 177A(2009). This device is defined in Mass. Ann. Laws ch. 140, § 177A(2009) as:

any mechanism whereby, upon the deposit therein of a coin or token, any apparatus is released or set in motion or put in a position where it may be set in motion for the purpose of playing any game involving, in whole or in part, the skill of the player, including, but not exclusively, such devices as are commonly known as pinball machines including free play pinball machines.

These machines must be kept for amusement only. *See Commonwealth v. Macomber*, 130 N.E.2d 545, 546 (Mass. 1930). However, these machines are still allowed to award the player a free play or game. *Id.* However, if any other prize is offered as a result of playing the game, then this machine cannot be legally licensed as it conflicts with the lottery prohibition in the state of Massachusetts. *Id.*

The court in *Commonwealth v. Club Caravan, Inc.*, 571 N.E.2d 405, 406-07 (Mass. App. Ct. 1991), held that video poker machines involved an element of skill and thus could qualify as automatic amusement devices.

2. Charity gambling

Certain organizations are allowed to conduct a raffle or bazaar in the state of Massachusetts. These organizations are:

(a) a veterans' organization chartered by the Congress of the United States or included in clause (12) of section five of chapter forty of the General Laws; (b) a church or religious organization; (c) a fraternal or fraternal benefit society; (d) an educational or charitable organization; (e) a civic or service club or organization; and (f) clubs or organizations organized and operated

exclusively for pleasure, recreation and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any member or shareholder.

Mass. Ann. Laws ch. 271, § 7A(2009).

These organizations must apply for a permit from the clerk of the city or town in which the raffle will be drawn or the bazaar held. Mass. Ann. Laws ch. 271, § 7A(2009). Only three bazaars per organization can be held in a given calendar year, and these bazaars are limited to only five consecutive hours per instance. Mass. Ann. Laws ch. 271, § 7A(2009).

Charitable organizations are also allowed to conduct, promote, and give out prizes for the card game known as bridge, as long as the admission charges for these games go solely to a charitable purpose. Mass. Ann. Laws ch. 271, § 22A(2009).

Mass. Ann. Laws ch. 271, § 22B(2009) also authorizes certain organizations to conduct beano games, where lottery tickets can be sold, if these organizations get a license from the director of the state lottery. These organizations include:

Any fraternal organization having chapters or branches in at least one other New England state, or any corporation organized under the provisions of chapter 180, any religious organization under the control of or affiliated with an established church of the commonwealth and any veterans' organization incorporated or chartered by the Congress of the United States or listed in clause (12) of section 5 of chapter 40, any volunteer, non-profit fire company or similar organization furnishing public fire protection, any voluntary association for promotion of the interests of retarded children, the Boston Firemen's Relief Fund, any volunteer, non-profit organization furnishing a public ambulance service, and non-profit athletic associations

Mass. Ann. Laws ch. 10, § 38(2009). An organization can only hold two beano games per calendar week, provided one game is limited between the hours of 6:00 pm and 12:00 midnight, and the other is limited to the hours of 1:00 pm until 6:00 pm.

Mass. Ann. Laws ch. 10, § 38(2009).

Prize values for a beano game are limited to one hundred dollars in value, subject to a number of exceptions. Mass. Ann. Laws ch. 10, § 38(2009). These exceptions include:

A) bonus cards, which can increase the prize in direct relation to the cost of the cards, provided that it doesn't increase the prize more than one hundred percent. Mass. Ann. Laws ch. 10, § 38(2009).

B) Special games, which cannot exceed five hundred dollars in cash or merchandise for prizes. Mass. Ann. Laws ch. 10, § 38(2009).

C) two winner-take-all games per day, limited to five hundred dollars in cash or merchandise for prizes. Mass. Ann. Laws ch. 10, § 38(2009).

D) four 50-50 games, limited to a prize not exceeding \$1,200. Mass. Ann. Laws ch. 10, §

38(2009).

E) two progressive jackpot games, where the total accumulated prize is limited to three thousand dollars. Mass. Ann. Laws ch. 10, § 38(2009).

It also seems that these charitable organizations that can conduct beano games are allowed to operate the game of Keno as well. Mass. Ann. Laws ch. 10, § 27A(2009).

Also, no person other than a fraternal, veterans', or charitable organization can be licensed as an agent to sell lottery tickets or shares if such person engages in business exclusively as a lottery sales agent. Mass. Ann. Laws ch. 10, § 27(2009).

3. Chucky Cheese exception

There is no statute governing family entertainment centers in Massachusetts, but Mass. Ann. Laws ch. 140, § 177A(2009), provides for the licensing of automatic amusement machines. However, as stated in previous sections, the only "prize" that seems to be allowed to be offered is free plays or games, not coins or tickets that can be redeemed for a small piece of merchandise.

4. Slot Machines/Commercial gambling

There is no commercial gambling allowed in Massachusetts. In fact, a slot machine is specifically considered a gambling device. Mass. Ann. Laws ch. 271, § 5A(2009). There is no exception for charitable organizations or even horse tracks to set up and operate slot machines.

5. Lottery

Massachusetts has a state lottery commission that oversees the state lottery activity in the state. Mass. Ann. Laws ch. 10, § 23(2009). It is vested with the power to conduct a state lottery and determine what type of lotteries to operate; what prizes to award; the manner of selecting and paying the winners; the licensing of agents to sell the tickets etc. Mass. Ann. Laws ch. 10, § 24(2009). The commission cannot license a person to be an agent if they intend to be in business for the sole purpose of selling these tickets, unless the person is a fraternal, veterans,' or charitable organization. Mass. Ann. Laws ch. 10, § 27(2009).

One of these games the commission is authorized to implement is Keno, provided this game is run in coordination with or exclusively by charitable gaming licensees. Mass. Ann. Laws ch. 10, § 27A(2009).

An interesting power of this state lottery commission is that if an individual that owes child support wins over six hundred dollars in the state lottery, the commission can disburse money to the appropriate agency to satisfy this debt. Mass. Ann. Laws ch. 10, § 28A(2009).

Perhaps out of fear of collusion, no spouse, child, sibling, or parent residing as a member of the same household of a commission member or employee is eligible to win a prize through the state lottery. Mass. Ann. Laws ch. 10, § 31(2009).

Massachusetts has also given itself the possibility of joining into an agreement with one or more states to set up a multi-jurisdictional lottery game. Mass. Ann. Laws ch. 10, § 24A(2009).

6. Horseracing/Dog Racing

Massachusetts has a state racing commission that is in charge of approving applications for individuals wishing to conduct racing meetings. Mass. Ann. Laws ch. 128A, § 2(2009). This commission is also in charge of licensing vets, blacksmiths, owners, trainers, jockeys and stable employees at these tracks. Mass. Ann. Laws ch. 128A, § 9A(2009). If the racing meet is run in connection with a state or county fair, then the person wishing to hold the race must bring forth a certificate from the commissioner of food and agriculture that states:

1) such fair is a state or county fair as defined in section one, (2) such fair has been operating for each of the five consecutive years immediately preceding the date of filing such application and had received for each of said five consecutive years assistance from the agricultural purposes fund, (3) such fair is properly qualified as hereinafter in this paragraph provided and (4) the location where such racing meeting is to be held is annually approved by him and by the board of agriculture; and provided, further, that on an application for a license to conduct a horse or dog racing meeting in connection with a state or county fair by an applicant to whom a prior license to conduct such a racing meeting at the race track specified in said application has been granted by the commission, no hearing need be held, unless a request, signed by at least one per cent of the registered voters of the city or town in which the track is located, is filed with the commission not later than thirty days following the granting of said license.

Mass. Ann. Laws ch. 128A, § 3(2009). Before these licenses can be granted, a majority of the registered voters of that county must vote to allow pari-mutuel betting on these races. Mass. Ann. Laws ch. 128A, § 14(2009).

No license shall be issued for more than two hundred aggregate days of horse racing meetings in a single calendar year. Mass. Ann. Laws ch. 128A, § 3(a)(2009). However, up to two hundred days can be awarded in Suffolk county only. Mass. Ann. Laws ch. 128A, § 3(a)(2009). Except for races at a state or county fair, there cannot be more than one horse race held during the same time of the day at more than one racetrack, unless the tracks are more than seventy-five miles apart. Mass. Ann. Laws ch. 128A, § 3(e)(2009).

The same aggregate two hundred day limit applies to harness horseracing meetings. Mass. Ann. Laws ch. 128A, § 3(b)(2009). However, up to two hundred days may be awarded in Norfolk County only. Mass. Ann. Laws ch. 128A, § 3(b)(2009). Except for races at a state or county fair, there cannot be more than one harness horse race held during the same time of the day at more

than one race track, unless the tracks are more than seventy-five miles apart. Mass. Ann. Laws ch. 128A, § 3(f)(2009).

Also, no license shall be issued for more than 1,190 aggregate days of dog racing meets, excluding meetings held by a state or county fair in Essex County. Mass. Ann. Laws ch. 128A, § 3(c)(2009). No license can be issued to permit dog-racing meetings to be conducted, except those at a state or county fair, at the same time at more than one racetrack within the same county or within twenty-five miles of another track. Mass. Ann. Laws ch. 128A, § 3(j)(2009). Also, there cannot be dog racing at the same time at more than four racetracks within the state. Mass. Ann. Laws ch. 128A, § 3(j)(2009).

These racing licensees are required to set up a pari-mutuel or certificate system of wagering at their facilities before they can conduct a racing meet. Mass. Ann. Laws ch. 128A, § 5(a)(2009). Automatic betting machines capable of determining awards or dividends must be used at these locations. Mass. Ann. Laws ch. 128A, § 5(a)(2009). This system of betting is limited just to licensed tracks. Mass. Ann. Laws ch. 128A, § 5(b)(2009). There seems to be no provision in Massachusetts that allows for off-track betting facilities.

Massachusetts also permits a racing meeting licensee, except one operating in Berkshire County, to simulcast live races within the commonwealth, except in Berkshire county, and to other pari-mutuel licensees or other licensed wagering facilities located outside the state. Mass. Ann. Laws ch. 128C, § 2(2009). All wagers on simulcast races accepted by a racing meeting licensee within the state or by a licensee in another jurisdiction operating as a guest track are included in the pari-mutuel pool of the licensee that conducts the live race. Mass. Ann. Laws ch. 128C, § 3(2009).

VII. Specific Internet Prohibition

No specific law governing Internet gambling is found in Massachusetts.

VIII. Penalties

1. Gaming Offenses

Gaming or betting; forfeiture

A person convicted of winning money or goods exceeding five dollars by betting on the sides or hands of those gaming, shall forfeit double the value of the money or goods if a prosecution is commenced within eighteen months after the commission of the crime. Mass. Ann. Laws ch. 271, § 1(2009). Obviously, this applies to those that are making the bets or wagers.

Gaming or betting in public conveyance or place or while trespassing in private place; arrest without warrant

According to Mass. Ann. Laws ch. 271, § 2(2009) , a person playing cards, dice, or any other game for money or property, or bets on the sides or hands of those playing at a public place or a private place where he is trespassing, is subject to a fine of up to fifty dollars or a prison term up to three months. This part of the statute only applies to the players of these games. However, the statute goes on to state that those that permit or set up these games are subject to a fine up to one hundred dollars or a prison term between three and twelve months. Mass. Ann. Laws ch. 271, § 2 (2009). This part of the statute applies to the operators of these games only.

Innholders and others keeping or suffering implements to be used for gaming/Gaming in Inns and other occupied places; use of billiard table, bowling alley or other implement for gaming

Inn holders, or a person that keeps at any place occupied by him gambling implements that are actually used for gaming for money or other property is subject to an one hundred dollar fine or a prison term up to three months long for the first offense. Mass. Ann. Laws ch. 271, § 3(2009). Each later offense is punishable by up to one year in prison. Mass. Ann. Laws ch. 271, § (2009). This statute only applies to keep those that keep these areas and gambling implements, and not those that use it for gaming or engage in gaming at these premises. However, Mass. Ann. Laws ch. 271, § 4(2009), provides a penalty for those that game for money or property at those locations, or that use a billiard table, bowling alley, or other implement of gaming for gaming purposes at these premises. These individuals can be fined up to fifty dollars. Mass. Ann. Laws ch. 271, § 4(2009).

Gaming, lottery, pool or betting houses; tables or apparatus for gaming

Mass. Ann. Laws ch. 271, § 5(2009) is a statute that applies both to operators and players. It states that an individual that keeps or assists in keeping a common gaming structure, or is found playing or present at one of these locations, can be fined up to fifty dollars or be imprisoned for up to three months. Mass. Ann. Laws ch. 271, § 5(2009).

Gambling devices; forfeiture; antique slot machines

It is illegal in Massachusetts to manufacture, transport, sell, store, display, repair, recondition, possess or use a gambling device. Mass. Ann. Laws ch. 271, § 5A(2009). Because this includes using a gambling device, this statute applies equally to operators, manufacturer, and players. Individuals found guilty of this statute can be fined up to five thousand dollars. Mass. Ann. Laws ch. 271, § 5A(2009).

Gaming relative to cattle shows, military muster or public gathering; arrest without warrant

Mass. Ann. Laws ch. 271, § 6(2009) provides that if one practices or engages in gambling within one mile and during or within twelve hours of a cattle show, military muster, or public gathering, then they must forfeit not more than twenty dollars. If found in the act of gambling, they can be arrested for not more than twenty-four hours until a complaint is lodged against him. Mass. Ann.

Laws ch. 271, § 6(2009). The language used here seems to apply equally to both operators and players.

Lotteries; disposal of property by chance

Those that set up or promote a lottery for money or property in Massachusetts are subject to a fine up to three thousand dollars or a prison term of up to three years. Mass. Ann. Laws ch. 271, § 7 (2009). Those that set up or promote a skill of game or that set up or promote a “pyramid scheme” are considered to be in violation of this lottery section. Mass. Ann. Laws ch. 271, §§ 6A-6B(2009). Because there is no mention of those that just merely participate in these lotteries, this provision only applies to the operators of these games.

Permitting lotteries, raffles and games of chance in buildings

Individuals that knowingly permit the setting up of a lottery at a structure owned or occupied by them can be fined up to two thousand dollars or can be sent to prison for up to one year. Mass. Ann. Laws ch. 271, § 8(2009). Because of the broad lottery definition, those that knowingly suffer money or other property to be given out via a raffle or a dice game or other game of chance are subject to punishment under this statute. Mass. Ann. Laws ch. 271, § 8(2009). This statute seemingly only applies to those that keep the structures, not those that frequent it for gaming purposes.

Organizing or promoting gambling facilities or services/Place for registering bets or dealing in pools; owner or occupant custodian or depository

Whoever organizes, supervises, manages, or finances at least four persons that will conduct illegal lotteries, illegal bookmaking, etc. and receives compensation from these individuals as a return from these lotteries, is subject to a fine up to fifteen thousand dollars or a prison term up to fifteen years. Mass. Ann. Laws ch. 271, § 16A(2009). This statute applies only to the person supervising, not the individuals that the person is supervising. However, those that keep a place used for bookmaking or pool-selling purposes are subject to a fine up to three thousand dollars or a prison sentence not exceeding three years. Mass. Ann. Laws ch. 271, § 17(2009). Mass Ann. Laws ch. 271, § 17(2009) also punishes those that are found at such a location, which could punish individuals that do not keep the building but frequent it to place bets or wagers.

Telephones; use for gaming purposes

A individual that uses a telephone, knowingly permits another to use their telephone, or falsely procures telephone service to engage in accepting wagers or bets, or buying or selling of pools upon the results of an athletic game or contest, a horse or dog race, or a lottery numbers game, can be fined up to two thousand dollars or be put in prison for a year. Mass. Ann. Laws ch. 271, § 17A(2009) .

Policy lotteries or shops; production, sale or possession of lottery tickets or tokens

Whoever keeps, sets up, promotes or is concerned in an ownership capacity in managing a policy lottery or policy shop, or writes, prints, sells, transfers or delivers a lottery ticket-like device for money or any other thing of value, can be fined up to five hundred dollars or be imprisoned for up to one year. Mass. Ann. Laws ch. 271, § 18(2009). From this language, it is easy to conclude that this statute only applies to those that keep the shops not those that frequent it for gaming purposes.

Delivery to or from a person engaged in a lottery or other gaming

Anyone that receives mail from a person having reasonable cause to believe that the mail is related to some form of gaming, and the letter actually does concern some form of gaming, can be fined between fifty and five hundred dollars. Mass. Ann. Laws ch. 271, § 22(2009).

Bucketing contracts; keeper of shop; domestic and foreign corporations

Anyone that keeps a bucket shop or makes or tries to make a contract of bucketing can be fined up to one thousand dollars or be imprisoned for up to one year for the first offense. Mass. Ann. Laws ch. 271, § 36(2009). If there is a second offense, a prison term of up to five years may be levied. Mass. Ann. Laws ch. 271, § 36(2009).

Gifts to influence action of participants in, and others connected with, a game or contest

Anyone that tries to use gifts to influence the participants within a game or contest can be fined up to one thousand dollars or be imprisoned up to two years, or both. Mass. Ann. Laws ch. 271, § 39A .

Boxing matches or exhibitions; betting or selling pools

Also, those that bet, wager, or sell pools on the result of a boxing match can be fined up to fifty dollars and be imprisoned for up to three months. Mass. Ann. Laws ch. 271, § 42 .

2. Lottery Tickets offenses

Lottery ticket; advertising

Whoever sells, has intent to sell, or assists in selling a unauthorized lottery ticket or other related writing, is subject to a fine of two thousand dollars or a prison term up to one year. Mass Ann. Laws ch. 271, § 9(2009). Those that advertise a lottery ticket for sale can be subject to the same penalties. Mass Ann. Laws ch. 271, § 11(2009).

False lottery tickets; creation, sale, or possession

Whoever makes or sells, or has in his possession with intent to sell a false lottery ticket and who knows it to be false or receives money or other thing of value for such ticket can be imprisoned for up to three years. Mass Ann. Laws ch. 271, § 12(2009).

Lottery for money drawn out of commonwealth; aiding or promoting/tickets of lottery described in section 15; sale or possession

A person found guilty of aiding, setting up, or promoting a lottery for money drawn out of the commonwealth without authorization, is subject to a monetary penalty up to two thousand dollars or imprisonment for up to one year. Mass. Ann. Laws ch. 271, § 15(2009). Those that sell, have the intent to sell, or assist another in selling lottery tickets for money drawn out of the commonwealth are subject to a two thousand dollar fine or imprisonment for up to a year. Mass. Ann. Laws ch. 271, § 16(2009).

3. Horse racing offenses

Racing horses for bet or stakes

Whoever engages in racing for betting or wagering purposes that are not licensed by the state racing commission can be fined up to one thousand dollars or be imprisoned for up to one year. Mass Ann. Laws ch. 271, § 31(2009). Furthermore, those that keep or own an unauthorized race ground or trotting park can be fined up to one thousand dollars or imprisoned up to one year. Mass. Ann. Laws ch. 271, § 34(2009).

Racing results or information; transmission for unlawful purposes

Anyone that supplies information about the results of a race or a race in progress knowing that this information will be used for unlawful gambling purposes can suffer a fine of up to five thousand dollars or be imprisoned for up to five years, or be placed in a house of correction up to two and a half years. Mass Ann. Laws ch. 271, § 31A(2009). However, newspapers, television stations, and radio stations can still report the result of races. Mass Ann. Laws ch. 271, § 31A(2009).

Horseracing; fraud

Anyone that enters a disguised horse into a race or is a different horse than the one that purports to be entered, or enters a horse into a class in which it does not belong, can be fined up to five hundred dollars or be imprisoned for up to six months. Mass. Ann. Laws ch. 271, § 32 (2009).

IX. Statute of Anne/ Recovery of Debts

Mass. Ann. Laws ch. 137, § 1(2009) states that

Whoever, by playing at cards, dice or other game, or by betting on the sides or hands of those gaming, loses to a person so playing or betting money or goods, and pays or delivers the same or any part thereof to the winner, or whoever pays or delivers money or other thing of value to another person for or in consideration of a lottery, policy or pool ticket, certificate, check or slip, or for or in consideration of a chance of drawing or obtaining any money, prize or other thing of

value in a lottery or policy game, pool or combination, or other bet, may recover such money or the value of such goods in contract; and if he does not within three months after such loss, payment or delivery, without covin or collusion, prosecute such action with effect, any other person may sue for and recover in tort treble the value thereof.

This statute is odd in the fact that if the loser fails within three months to bring this action to recover his money, any person can bring this cause of action to recover the treble value of the losses within a year's time. *Donovan v. Eastern Racing Ass'n*, 86 N.E.2d 903, 904-05 (Mass. 1949).

It seems that individuals can even recover this loss from the stakeholder of an illegal wager if they demand the money from the stakeholder before it is paid over to the winner. *Morgan v. Beaumont*, 121 Mass. 7, 7 (Mass. 1876).