

By Mr. Flaherty of Boston, petition of Francis X. Bellotti (Attorney General), Michael F. Flaherty, Alan D. Sisitsky and Arthur Joseph Lewis, Jr., for legislation relative to the penalties for illegal gambling. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty.

AN ACT RELATING TO ILLEGAL GAMBLING.

Be it enacted by the Senate and House of Representatives in General Court assembled and by the authority of the same, as follows:

1 SECTION 1. Chapter 271 of the General Laws is hereby
2 amended by striking out section fourteen and inserting in place
3 thereof the following section:—

4 *Section 14. Forfeitures.*

5 (a) The following property shall be subject to forfeiture to the
6 Commonwealth and all property rights therein shall be in the
7 Commonwealth:

8 (i) all records, devices, implements, and personal property of any
9 kind used in, or primarily designed for use in, any gambling activity
10 in violation of this chapter;

11 (ii) all moneys used in, intended for use in, or directly derived
12 through or realized from any gambling activity in violation of this
13 chapter;

14 (iii) any other personal property directly derived through or
15 realized from gambling activity in violation of this chapter;

16 (iv) all conveyances, including aircraft, motor vehicles, or ves-
17 sels, which are used to conduct, promote, or otherwise facilitate
18 gambling activity in violation of sections five A, seven, nine,
19 twelve, fifteen, sixteen, sixteen A, seventeen or eighteen of this
20 chapter, or which are used to transport or conceal records or
21 devices in violation of any of said sections.

22 (b) Property subject to forfeiture under subparagraph (i) of
23 subsection (a) of this section shall be declared forfeit by any court
24 having jurisdiction over said property or having final jurisdiction

25 over any related criminal proceeding brought under any provision
26 of this chapter.

27 (c) A district attorney or his designee or the Attorney General or
28 his designee may petition the superior court in the name of the
29 commonwealth in the nature of a proceeding *in rem* to order
30 forfeiture of moneys, personal property, or conveyances subject to
31 forfeiture under the provisions of subparagraphs (ii), (iii) and (iv)
32 of subsection (a). Such petition shall be filed in the court having
33 jurisdiction over said property, moneys, or conveyances or having
34 final jurisdiction over any related criminal proceeding brought
35 under any provision of this chapter. Such proceeding shall be
36 deemed a civil suit in equity, in which the commonwealth shall
37 have the burden of proving all material facts by a preponderance of
38 the evidence, and the owner of a conveyance or other person
39 claiming thereunder shall have the burden as to all exceptions set
40 forth in subsection (d). The court shall order the commonwealth to
41 give notice by certified or registered mail to the owner of said
42 property, moneys, or conveyance and to such other person as
43 appears to have an interest therein, and shall promptly, but not less
44 than two weeks after notice, hold a hearing on the petition. At such
45 hearing the court shall hear evidence and make findings of fact and
46 enter conclusions of law, and shall thereupon issue a final order,
47 from which the parties shall have such right of appeal as from a
48 decree in equity. Such final order shall provide for disposition of
49 said property, moneys, or conveyances by the commonwealth or
50 any subdivision thereof in any manner not prohibited by law,
51 including official use by an authorized law enforcement or other
52 public agency, or sale at public auction or by competitive bidding.
53 The proceeds of any such sale shall be used to pay the reasonable
54 expenses of the forfeiture proceedings, seizure, storage, mainte-
55 nance of custody, advertising, and notice, and the balance, if any,
56 shall be deposited in the treasury of the commonwealth.

57 (d) The court shall order forfeiture of all conveyances subject to
58 the provisions of subparagraph (iv) of subsection (a) of this section,
59 except as follows: (i) No conveyance used by any person as a
60 common carrier in the transaction of business as a common carrier
61 shall be forfeited unless it shall appear that the owner or other
62 person in charge of such conveyance was a consenting party or
63 privy to a violation of this chapter. (ii) No conveyance shall be
64 forfeited by reason of any act or omission established by the owner

65 thereof to have been committed or omitted by any person other
66 than such owner while such conveyance was unlawfully in the
67 possession of a person other than the owner in violation of the
68 criminal laws of the United States, or of the commonwealth, or of
69 any state. (iii) No conveyance shall be subject to forfeiture unless
70 the owner thereof knew or should have known that such convey-
71 ance was used to conduct, promote, or otherwise facilitate gam-
72 bling activity in violation of sections five A, seven, nine, twelve,
73 fifteen, sixteen, sixteen A, seventeen or eighteen of this chapter, or
74 to transport or conceal records or devices in violation of any said
75 sections.

76 (e) Any officer, department, or agency having custody of any
77 property subject to forfeiture under this chapter or having disposed
78 of said property shall keep and maintain full and complete records
79 showing from whom it received said property, under what authori-
80 ty it held or received or disposed of said property, to whom it
81 delivered said property, and the exact kinds, quantities and forms
82 of said properties.

83 (f) During the pendency of the proceedings the court may issue at
84 the request of the commonwealth *ex parte* any preliminary order or
85 process as is necessary to seize or secure the property for which
86 forfeiture is sought and to provide for its custody. Process for
87 seizure of said property, shall issue only upon a showing of proba-
88 ble cause, and the application therefor shall be subject to the
89 provisions of chapter two hundred and seventy-six, so far as appli-
90 cable.

1 SECTION 2. Section five A of said chapter 271 is hereby
2 amended by striking out the words: "under the provisions of
3 chapter two hundred and seventy-six" in lines nineteen and twenty,
4 as appearing in section 7 of chapter 557 of the acts of 1964, and
5 inserting in place thereof the words: — under the provisions of
6 section 14 of this chapter.

1 SECTION 3. Chapter 271 of the General Laws is hereby further
2 amended by striking out section sixteen A, as added by chapter 650
3 of the acts of 1970, and inserting in place thereof the following
4 section: —

5 *Section 16A. Professional Gambling.*

6 (a) Whoever — (i) knowingly organizes, supervises, manages, or

7 finances at least four persons so that such persons may provide
8 facilities or services or assist in the provision of facilities or services
9 for the conduct of unlawful gambling; or (ii) knowingly receives
10 from at least four such persons compensation or payment in any
11 form as a return from unlawful gambling; or (iii) engages in unlaw-
12 ful bookmaking to the extent that he receives or accepts in connec-
13 tion with a particular event more than five bets or wagers having an
14 aggregate value risked by the players in excess of \$5,000; or (if)
15 receives in connection with an unlawful lottery, or an unlawful
16 policy or numbers scheme or enterprise, money or written records
17 from any person, other than a player whose chances or play are
18 represented by such money or records; or (v) receives in connection
19 with any unlawful gambling activity, other than bookmaking, bets
20 or wagers having an aggregate value risked by the players in excess
21 of \$500 in any 24-hour period of play in the scheme or enterprise —
22 shall be punished by imprisonment in the state prison for not more
23 than fifteen years or by a fine of not more than ten thousand
24 dollars, or by both such fine and punishment.

25 (b) As used in this section: (i) the word “persons” shall not
26 include bettors or wagerers who merely avail themselves of facili-
27 ties or services for the purpose of making a bet or wager and do not
28 otherwise provide or assist in the provision of such facilities or
29 services; (ii) “unlawful gambling” shall mean any conduct in viola-
30 tion of sections 1A through 28 of this chapter, inclusive, or conduct
31 in violation of sections thirty-one, thirty-one A, thirty-two, or
32 forty-two of this chapter; (iii) “bookmaking” shall mean accepting
33 bets or wagers as a business upon: the result of a trial or contest of
34 skill, speed, or endurance of man, beast, bird, or machine; or the
35 result of a game, competition, political nomination, appointment
36 or election; or the outcome of any other future contingent event.

1 SECTION 4. Chapter 271 of the General Laws is hereby further
2 amended by inserting after section 28 of said chapter the following
3 section: —

4 *Section 28A. Alternative Fine.*

5 (a) In lieu of a fine otherwise authorized by law, a defendant who
6 has been convicted of a violation of sections five, five A, seven,
7 eight, nine, eleven, twelve, fifteen, sixteen, sixteen A, seventeen,
8 eighteen, thirty-one, or thirty-one A of this chapter, through which
9 the defendant has gained money or any other thing of pecuniary

10 value, the defendant may be sentenced to pay an amount, fixed by
11 the court, not exceeding double the amount of the defendant's gain
12 from the commission fo the crime, plus costs reasonably incurred
13 in the investigation, apprehension, and prosecution of the individ-
14 ual defendant, exclusive of salaries of prosecuting attorneys or law
15 enforcement officers.

16 (b) When an alternative fine under this section is imposed, the
17 court shall make a finding as to the amount of the defendant's gain
18 from the crime. If the record does not contain sufficient evidence to
19 support such a finding, the court may conduct a hearing on the
20 issue. The burden of proving the amount of the defendant's gain
21 rests upon the commonwealth, and a finding as to the amount of
22 the defendant's gain must be based upon a preponderance of the
23 evidence.

24 (c) As used in this section, "amount of the defendant's gain"
25 means the value of the total amount of money, property, or any
26 other thing of pecuniary value derived from the commission of the
27 crime.

28 (d) In fixing the amount of the fine, the court shall, after deter-
29 mining twice the amount of the defendant's gain plus reasonable
30 costs in accordance with subsections (a), (b), and (c) of this section,
31 subtract therefrom the value of any money or other thing of pecun-
32 iary value surrendered to, forfeited to or seized by lawful authority
33 prior to the imposition of sentence.

1 SECTION 5. Section one of said chapter two hundred and
2 seventy-one is hereby repealed.

