

By Messrs. Monahan of Beverly and Nickinello of Natick, petition (accompanied by bill, House, No. 2801) of Sumner Segall and another relative to the licensing of automatic amusement devices. Government Regulations.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty.

AN ACT RELATIVE TO AUTOMATIC AMUSEMENT MACHINES.

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. Section One Hundred and Seventy-Seven A of
2 Chapter One Hundred and Forty of the General Laws as inserted
3 by Chapter Three Hundred Sixty-One of the Acts of 1949 is hereby
4 stricken out, and the following section is inserted in place thereof:

5 §177A *Licensing of Automatic Amusement Devices*

6 A. *Definitions*

7 In this section, the following words and phrases shall have the
8 following meanings, unless the context requires otherwise: —

9 1. "Applicant", any person who files an application with the
10 Commission, or the licensing authorities upon forms provided by
11 the Commission or the licensing authorities. If the applicant is a
12 corporation, partnership, association or trust, the directors of the
13 corporation, the partners in the partnership, the members of the
14 association and the trustees of the trust shall also be deemed to be
15 the applicant.

16 2. "Arcade", any premises used for the primary purposes of
17 playing Class A automatic amusement machines.

18 3. "Arcade Permit", the license granted by the licensing authori-
19 ties to carry on the business of an arcade.

20 4. "Automatic Amusement Machine", any machine approved
21 by the director of standards and necessities of life under section
22 two hundred and eighty-three of Chapter ninety-four in connec-

23 tion with which any apparatus is released or set in motion or put in
24 a position where it may be set in motion for the purpose of
25 dispensing amusement, or for the purpose of playing any game
26 involving in whole or in part the skill of the player.

27 5. "Automatic Amusement Machine Permit", the license grant-
28 ed by the licensing authorities for the maintenance or operation of
29 an automatic amusement machine by a location owner.

30 6. "Operator Permit", the license granted by the Commission to
31 carry on the business of an operator within the Commonwealth of
32 Massachusetts.

33 7. "Class A Machine", an automatic amusement machine that is
34 capable of being operated for amusement or pleasure involving in
35 whole or in part the skill of the person operating the device. This
36 class shall include, but is not limited to, machines commonly
37 known as video games, coin-operated billiard and bumper pool
38 games, shuffle alley, and pinball machines. Any machine within
39 this class which involves the skill of the player in whole or in part
40 shall be exempt from the operation of G.L. c. 271 §7 if skill
41 predominates over chance.

42 8. "Class B Machine", an automatic amusement machine that is
43 capable of dispensing music upon insertion of a coin or token. This
44 class shall include such machines commonly known as juke boxes.

45 9. "Class C Machine", an automatic amusement machine that is
46 youth-oriented and shall include, but is not limited to machines
47 commonly known as a kiddie ride, a cartoon booth and other
48 mechanical-electrical games for children.

49 10. "Commission", the Massachusetts Automatic Amusement
50 Machine Commission.

51 11. "Location Owner", any person who owns, rents or otherwise
52 occupies premises where any automatic amusement machine is
53 kept or maintained for play by the public.

54 12. "Operator", any person who sells, leases, or otherwise dis-
55 tributes any automatic amusement machine for resale, exhibition,
56 or other public use within the Commonwealth of Massachusetts,
57 and includes a location owner if he owns the automatic amusement
58 machines at his premises.

59 13. "Person", an individual, a corporation, a partnership, an
60 association, a trust, an unincorporated association or any other

61 entity or organization or any combination thereof.

62 14. "Premises", the total floor area of a structure open to the
63 public.

64 B. *MASSACHUSETTS AUTOMATIC AMUSEMENT MA-*
65 *CHINE COMMISSION*

66 1. There is hereby created an agency of the Commonwealth of
67 Massachusetts known as the Massachusetts Automatic Amuse-
68 ment Machine Commission. The Commission shall consist of three
69 members to be appointed by the Governor, one to be designated as
70 Chairman by the Governor. Members of the Commission shall
71 serve for six years; provided, however, that of the first three
72 appointed members, one shall be appointed for two years, a second
73 for four years and a third for six years. At least one member shall
74 have been a location owner or operator of automatic amusement
75 machines. Nothing herein shall be construed to mean that any
76 member may not be reappointed after the expiration of his term.

77 The Commission shall appoint an Executive Director. The Ex-
78 ecutive Director shall be paid an annual salary of
79 \$ and shall be responsible for the daily operation of
80 the Commission.

81 All members of the Commission shall be compensated in the
82 amount of \$ per day for each day they are actually
83 engaged in performing their duties. Members of the Commission
84 shall be reimbursed for their actual and necessary travelling ex-
85 penses in the performance of their duties.

86 2. *Operator Permit Required*— No person shall engage in the
87 business of an operator without first being licensed therefor by the
88 Commission.

89 3. *Application for Operator Permit*— Any person desiring an
90 Operator permit shall apply to the Commission for such permit in
91 writing on a form provided by the Commission. The application
92 shall contain:

93 a. The name and address of the applicant, age, date and place of
94 birth. If the applicant is a corporation, the applicant shall file a
95 copy of its articles of organization and current certificate of condi-
96 tion. If the applicant is a partnership or association, the applicant
97 shall file a copy of its business certificate filed pursuant to G.L.

98 c.110 §5, and a list of the applicant's directors, partners or
99 members.

100 b. A list of persons who have at least a 10% financial interest in
101 the business operation of the applicant.

102 c. A list of prior felony convictions of the applicant.

103 d. The application shall designate a person who is responsible
104 for the record-keeping requirements of this section.

105 e. The information contained in the application shall become
106 public record upon issuance of the license.

107 f. The application shall be accompanied by the annual license
108 fee and shall designate a location within this Commonwealth
109 where the applicant proposes to maintain the records required by
110 this Section. Such records shall be open and available for inspec-
111 tion by the Commission upon reasonable notice to the operator.

112 4. *Issuance of Operator Permit* — The Commission shall issue
113 an operator permit to the applicant within twenty days of the filing
114 of an application upon the payment of the appropriate fee unless it
115 finds that one of the following conditions exist:

116 a. The applicant has been convicted of any felony as defined in
117 Chapter 274, §1. This provision shall not apply if:

118 (1) The last conviction of the applicant occurred more than five
119 years prior to the date of the application; or

120 (2) The applicant has received a pardon pursuant to G.L. c.127,
121 §152; or

122 (3) No conviction of the applicant directly relates to the appli-
123 cant's fitness to conduct the business of an operator.

124 b. That the applicant has intentionally made any false or mis-
125 leading statements or omissions of any material fact to the Com-
126 mission.

127 c. The applicant, if an individual, has not reached the age of 21.

128 d. The applicant has a record of revocation or suspension of
129 other licenses within the six-month period immediately preceding
130 the application.

131 5. *Notice and Hearing*

132 a. No operator permit shall be suspended or revoked and no
133 application for said permit shall be refused except upon ten days'
134 notice to the licensed operator or applicant, as the case may be, of
135 the Commission's intent to suspend, revoke or refuse. At the

136 expiration of the said ten-day period, the Commission shall hold a
137 hearing forthwith and shall within 20 days of the convening of the
138 hearing publish its findings. The Commission shall make full and
139 complete findings in writing.

140 b. Notice of all such hearings shall be given by first class mail,
141 postage prepaid, to the licensed operator or applicant at the ad-
142 dress provided in the application.

143 c. Publication of the Commission's findings shall be made by
144 posting the same in a conspicuous place at the office of the Com-
145 mission.

146 d. Any party may make a record of the hearing at its own
147 expense.

148 e. In the event that the Commission fails to make findings and
149 publish the same within 20 days of the convening of the hearing, the
150 Commission shall have been deemed to have found in favor of the
151 licensed operator or applicant.

152 f. All such hearings shall be conducted in accordance with
153 General Laws Chapter 30A.

154 g. Review of the Commission's findings may be had by a li-
155 censed operator or applicant pursuant to Section 14 of Chapter
156 30A of the General Laws.

157 6. *Terms and Conditions of Operator Permit* —

158 a. The operator permit shall be an annual permit and shall
159 expire on December 31st of each year unless it expires earlier by
160 suspension, revocation, by the death of a holder of a business permit
161 or upon dissolution, receivership, or bankruptcy.

162 b. Operator permits shall be renewed upon payment of the
163 annual fee and the submission to the Commission of all informa-
164 tion necessary to update the original application. The issuance of
165 business permits under this paragraph shall be subject to the
166 provision of paragraphs 4 and 5 hereunder.

167 c. The operator permit shall create no property interest or right
168 in the operator except to conduct the business of an operator
169 during the term of the permit.

170 d. Except as otherwise provided, the operator permit is non-
171 transferable, non-assignable and is not subject to execution.

172 7. *Temporary Permit* — When an operator permit expires due
173 to the death of an individual holder of an operator permit or

174 dissolution, receivership or bankruptcy, the Commission shall,
175 except for good cause shown, upon request by the successor in
176 interest and upon reasonable evidence that he is the successor in
177 interest, issue a temporary permit to the successor to operate the
178 business. The temporary permit shall expire on December 31 of the
179 year issued and is subject to this section as if it were an original
180 operator permit. The successor in interest may apply for an origi-
181 nal operator permit to take effect upon the expiration of the
182 temporary permit in the same manner and fashion as did the
183 original holder of the operator permit.

184 8. *Rules and Record-Keeping*

185 a. The Commission may make and publish rules and regula-
186 tions not inconsistent with this Chapter or other laws for the
187 administration of the provisions of this Chapter.

188 b. Every operator shall keep for inspection by the Commission
189 for a period of two years a complete itemized record of every
190 automatic amusement machine purchased, received, possessed,
191 handled, exhibited or displayed in this Commonwealth. Such re-
192 cords shall include the following information: the name of each
193 machine, the date acquired or received in the Commonwealth, the
194 date placed in operation and the name and address of each location
195 owner.

196 9. *Grounds for Revocation or Suspension of Operator Permits*

197 — The Commission may suspend or revoke any operator permit
198 on any of the following grounds:

199 a. Engaging in the business of an operator without first having
200 been issued an operator permit by the Commission.

201 b. The failure of an operator to maintain records as required by
202 this Section.

203 c. The falsification of any records required to be maintained by
204 this Section.

205 d. The refusal or failure to present such records for inspection
206 upon reasonable notice by the Commission.

207 e. The use of an unfair or deceptive practice to conceal any
208 violation of this Section or to obstruct the Commission in the
209 administration of the Section.

210 f. The violation of any provision of this Section or the rules or
211 regulations promulgated by the Commission.

212 g. The use by an operator of physical force or the threat of
213 physical harm in the sale, lease, resale or other distribution of any
214 automatic amusement machines.

215 h. The conviction of the operator of a felony prior to the expira-
216 tion of his permit that directly relates to the operator's fitness to
217 conduct business.

218 i. The discovery by the Commission prior to the expiration of
219 the operator permit that the operator has willfully falsified his
220 application for an operator permit.

221 C. LOCAL LICENSING AUTHORITIES

222 1. *Automatic Amusement Machine Permit* — No Location
223 owner shall keep or maintain any automatic amusement machines
224 for play by the public without first being licensed therefor by the
225 licensing authorities.

226 2. *Application for Permit* — Any location owner desiring an
227 automatic amusement machine permit shall apply to the licensing
228 authorities for such permit in writing on a form provided by the
229 licensing authorities. Each application shall contain:

230 a. Name and address of the applicant, age, date and place of
231 birth. If the applicant is a corporation, the applicant shall file a
232 copy of its articles of organization. If the applicant is a partnership
233 or association, the applicant shall file a copy of its business certifi-
234 cate filed pursuant to G.L. c. 110 §5, and a list of applicant's
235 directors, partners, or members. If the applicant is the holder of
236 another license issued under the Massachusetts General Laws, the
237 applicant may file a copy of said license as a substitute for the
238 above documentation.

239 b. A list of prior felony convictions of the applicant.

240 c. Number of machines to be licensed including the number
241 contained in each class of automatic amusement machines as
242 defined in this section.

243 d. The name and address of the manager or other employee
244 charged with the supervision of the business premises.

245 e. Name and address of operator.

246 3. *Issuance of Permit* — The licensing authorities shall issue a
247 permit to the applicant within fourteen days of filing unless it finds
248 that one of the following conditions exist:

249 a. That the applicant, or the employee charged with the respon-

250 sibility for supervising the business premises have been convicted
251 of any felony as defined in General Laws, Chapter 274, Section 1.
252 This provision shall not apply if:

253 (1) The last conviction occurred more than five years prior to
254 the date of the application; or

255 (2) A pardon has been received pursuant to G.L. c. 127, §152; or

256 (3) No conviction of the applicant or supervising employee
257 directly relates to the applicant's fitness to operate or maintain a
258 location.

259 b. That the applicant has intentionally made any false or mis-
260 leading statement of any material fact to the licensing authorities.

261 c. That the applicant has contracted with an operator who does
262 not hold an operator permit issued by the Commission.

263 d. That an applicant who is an individual has not reached the
264 age of 21.

265 4. *Term and Conditions of Permit* — Permits granted under this
266 section, unless sooner revoked, shall expire on December 31st of
267 each year and shall supersede the operation of Sections 3 and 4 of
268 Chapter One Hundred and Thirty-Six. Every such permit shall
269 specify the street and number of the premises, shall state the class of
270 automatic amusement machine to which it relates; but such permit
271 shall under no circumstances cover an automatic amusement ma-
272 chine of a class other than the class specified in such permit. No
273 such permit shall specify more than one premises at one time.

274 5. *Transfer of permit* — A permit shall not be transferable from
275 person to person nor from place to place, without the prior written
276 approval of the licensing authorities.

277 6. *Display of Automatic Amusement Machine Permit* — The
278 permit issued under this Section shall at all times be available for
279 inspection.

280 7. *Suspension or Revocation of Automatic Amusement Ma-*
281 *chine Permit* —

282 (a) Any violation of any provision of this section shall be cause
283 for the suspension or revocation of any automatic amusement
284 machine permit issued under this section.

285 (b) If, at any time after the issuance of an automatic amusement
286 machine permit the licensing authorities find

287 (1) That the issuance of the permit was obtained through any

288 false and misleading statement or omission of a material fact; or
289 (2) that issuance of a permit to a location owner has been the
290 proximate cause of the creation of public nuisance at the premises;
291 such findings shall be grounds for the suspension or revocation
292 of all permits for automatic amusement machines kept or offered
293 for operation at such premises, pursuant to the procedure outlined
294 in Paragraph Ten.

295 8. *Special Rules Applicable to Arcades* —

296 a. Permit Required — No location owner shall operate or main-
297 tain an arcade without first being issued an arcade permit by the
298 licensing authorities. An Arcade Permit issued under this para-
299 graph shall cover all automatic amusement machines of all classes
300 located at an arcade.

301 b. Application — In addition to the requirements of paragraph
302 (c)(2), the licensing authorities may require the following addition-
303 al information on an application for an arcade permit:

304 (1) A floor plan of the premises indicating the intended posi-
305 tion of each automatic amusement machine.

306 (2) A list of persons who have at least a ten (10%) percent
307 financial interest in the operation of automatic amusement ma-
308 chines at the premises.

309 (3) The approval of the Building Commissioner or his delegate
310 that the premises meet with the applicable requirements of all
311 building and zoning codes, ordinances and by-laws.

312 c. Arcade Permit/Issuance — Within twenty days after the re-
313 ceipt of the original application, the local licensing authorities shall
314 grant the arcade permit or order a public hearing preceded by at
315 least ten days' written notice to the applicant; said hearing to take
316 place no later than forty-five days from the date of filing of the
317 original application. Within twenty days after the date of the
318 commencement of the hearing, the authority shall grant a permit
319 unless it appears by a preponderance of the evidence from the
320 information supplied in the application or from specific facts
321 introduced at the hearing that:

322 (1) The applicant has failed to provide for the following:

323 (a) adequate provision for the safety of the public in and around
324 the premises;

325 (b) adequate maintenance to ensure cleanliness in and around

326 the premises;

327 (c) adequate soundproofing to prevent unreasonable noise out-
328 side the premises;

329 (d) adequate supervision in and around the premises.

330 (2) The applicant has intentionally made any false or misleading
331 statement or omission of any material fact to the licensing authori-
332 ties.

333 (3) The applicant has been convicted of a felony as defined in
334 General Laws, Chapter 274, Section 1. This provision shall not
335 apply if:

336 (a) The last conviction of the applicant occurred more than five
337 years prior to the date of the application;

338 (b) The applicant has received a pardon pursuant to G.L. c. 127,
339 §152.

340 (c) No conviction of the applicant directly relates to the appli-
341 cant's fitness to operate or maintain an arcade.

342 (4) That the applicant, if an individual, has not reached the age
343 of twenty-one.

344 Any denial by the licensing authorities shall be accompanied by
345 a detailed statement of the reasons therefor.

346 8. *Permit Fees* —

347 a. The fee for an operator permit shall be \$500.00

348 b. The fee for a permit for a Class A machine shall be \$40.00

349 c. The fee for a permit for a Class B machine shall be \$20.00

350 d. The fee for a permit for a Class C machine shall be \$4.00

351 e. The fee for an Arcade permit shall be \$500.00

352 All fees shall be payable annually. Fees for permits issued after
353 January thirty-first in any year shall be pro-rated on the basis of the
354 number of months in which the permit is to be in force compared
355 with twelve months. All fees, except for the Operator permit fee,
356 shall be payable by the location owner upon submission of an
357 application. If the location owner's application is rejected, the fee
358 shall be refunded in full. The payment of fees shall automatically
359 renew all permits in good standing subject to the provisions of this
360 Section on suspension and revocation of permits. Fifty percent of
361 all permit fees collected by the licensing authorities shall be re-
362 tained by the licensing authorities with fifty percent being turned
363 over to the Commission.

364 9. *Suspension or Revocation of Arcade Permit* —

365 (a) Any violation of the special rules applicable to arcade per-
366 mits shall be cause for the suspension or revocation of any arcade
367 permit issued under this section.

368 (b) If, at any time after the issuance of an arcade permit, the
369 licensing authorities find

370 (1) That the issuance of the arcade permit was obtained through
371 any false and misleading statement or omission of a material fact;
372 or

373 (2) That the location owner has failed to provide for the follow-
374 ing:

375 (a) adequate provision for the safety of the public in and around
376 the premises;

377 (b) adequate maintenance to ensure cleanliness in and around
378 the premises;

379 (c) adequate soundproofing to prevent noise outside the pre-
380 mises;

381 (d) adequate supervision in and around the premises;
382 such findings shall be grounds for the suspension or revocation of
383 an arcade permit for such premises, pursuant to the procedure
384 outlined in Paragraph Ten.

385 10. *Notice and Hearing* — No permit may be suspended or re-
386 voked by the licensing authorities prior to written notice to the
387 location owner and a hearing. Said notice shall give at least ten
388 days' advance notice of the hearing and shall specify the violations
389 with which the location owner is charged. At such hearing, the
390 location owner may present and submit evidence and witnesses to
391 refute the claimed violations. Any party may keep a record of the
392 proceedings at his own expense. If, after hearing, the licensing
393 authorities find the preponderance of the evidence before it that a
394 violation has occurred, the permit may be suspended or revoked. If
395 the licensing authorities fail to render a final order within twenty
396 (20) days after the convening of a hearing, the permit shall be
397 deemed to be in good standing.

398 11. *Right of Appeal* —

399 a. Any decision of the licensing authorities adverse to the loca-
400 tion owner may be appealed to the Commission. Appeals shall be
401 commenced within 21 days after notice of the final order of the

402 licensing authorities, shall be entered on forms provided by the
403 Commission and shall be accompanied by an entry fee to be
404 determined by the Commission. The Commission may make furth-
405 er rules and regulations concerning appeals. In the absence of such
406 rules, the provisions of Chapter 30A of the General Laws shall
407 govern appeals before the Commission.

408 b. Hearing — Appeals shall be heard by the Commission and
409 shall be tried and determined as if originally entered before the
410 Commission.

411 c. Automatic Stay — Entry of an appeal before the Commission
412 shall automatically stay all proceedings in furtherance of the deci-
413 sion appealed from. Any party may move before the Commission
414 upon short notice for a dissolution of this stay.

415 d. Appeals from the Commission: Any party aggrieved by a
416 decision of the Commission may appeal to any court of competent
417 jurisdiction in accordance with Section 14 of Chapter 30A of the
418 General Laws.

419 D. *PENALTY*

420 Whoever knowingly engages in any activity required to be li-
421 censed hereunder without a license therefor shall be punished by a
422 fine of not less than fifty dollars nor greater than two hundred and
423 fifty dollars. Every day of operation shall be considered a separate
424 offense.

425 E. *SEVERABILITY OF PROVISIONS*

426 The provisions of this act are severable, and if any of its provi-
427 sions shall be held unconstitutional by any court of competent
428 jurisdiction, the decision of such court shall not affect or impair
429 any of the remaining provisions.