



September 12, 2017

Chairwoman Barbara L'Italien
Joint Committee on Consumer Protection and Professional Licensure
24 Beacon Street
Room 109-E
Boston, MA 02133

Chairman Tackey Chan
Joint Committee on Consumer Protection and Professional Licensure
24 Beacon Street
Room 42
Boston, MA 02133

RE: Online Lottery Legislation

Dear Chairwoman L'Italien and Chairman Chan:

Please allow this correspondence to address in advance certain concerns raised by the language of the three lottery bills (SB 134, HB 135 and HB 26) currently scheduled for a hearing on September 19, 2007.

As you know, one of the policy objectives of the Expanded Gaming Act, M.G.L. c. 23K is "enhancing and supporting the performance of the state lottery." Thus the Massachusetts Gaming Commission (MGC) endeavors to work towards the mutual benefit of both the lottery as well as the nascent gaming industry in the Commonwealth. While much of the current focus in the local gaming community is centered on the construction of the casinos in Springfield and Everett, a number of other gaming and gaming-adjacent issues were recently investigated by the legislature's Special Commission on Online Gaming and Daily Fantasy Sports. Specifically, the Commission concluded that the legalization of online gaming was "inevitable" and advised a cooperative relationship between the MGC and the Legislature to address and investigate online gaming subjects prior to legalization. It is through this lens that the MGC views the three bills seeking to establish an online lottery.

One of the common elements amongst the three bills is the lack of a definition of "lottery" or "lottery games." The MGC believes that the type of lottery products that will be offered online require a definition to avoid future conflict with online casino gaming or other types of online gaming, to the extent they are legalized in the Commonwealth. The lack of such a definition is problematic given the very broad definition of a "lottery" in Massachusetts case law. Courts have broadly defined the term "lottery" to include any activities that contain "(1) the payment of a price for (2) the possibility of winning a prize, depending upon (3) hazard or chance." See Com. v. Stewart-Johnson, 78 Mass. App. Ct. 592, 594 (2011), quoting Com. v. Lake, 317 Mass. 264, 267 (1944). Utilizing this definition and failing to clarify the exact nature

of the games that the Lottery Commission would be offering online would invariably lead to confusion. The Special Commission was prohibited from discussing any lottery related topics; however, it is critical to address this distinction prior to enacting legislation lest it lead to future conflict between casino and lottery interests about the nature of the games each is allowed to operate online.



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The MGC believes that there are balanced approaches that would allow the lottery to expand while at the same time acknowledging the likelihood of casino and other gaming interests advancing into the online realm. One approach would be to define "online lottery games." Below is a viable definition that clearly identifies the types of games that the lottery would be able to offer online:

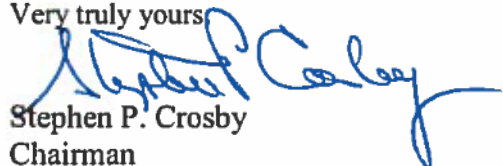
"Online Lottery Games" means the following types of online games offered through the use of communication technology¹:

- (a) Instant ticket or "scratch" games in which winners are determined by the purchaser revealing various numbers, letters, characters, words, symbols or pictures on their ticket and seeking to match the revealed images to the winning sequence as provided by the rules of the game.
- (b) Passive lottery games wherein purchased tickets bear pre-assigned numbers, words, symbols or pictures. Winners in such games shall be determined by publicly held drawings wherein randomly drawn numbers, words, symbols or pictures are selected and tickets matching those numbers, words, symbols or pictures drawn shall entitle the ticket holder to the prize indicated on the ticket and in accordance with the prize structure established by the game rules.
- (c) Active lottery games wherein an individual purchases tickets and chooses their own sequence of numbers, words, symbols or pictures. Winners in such games shall be determined by publicly held drawings wherein randomly drawn numbers, words, symbols or pictures are selected and tickets matching those numbers, words, symbols or pictures drawn shall entitle the ticket holder to the prize indicated on the ticket and in accordance with the prize structure established by the game rules.

This definition provides clear guidelines for the expansion of lottery-style games into an online forum without creating any confusion between the types of games offered by the lottery and casino games that may arrive in the future. The MGC would be happy to discuss a collaborative approach towards crafting legislation that advances all interests while minimalizing any potential for future conflict.

Thank you for your attention to this matter.

Very truly yours,


Stephen P. Crosby
Chairman

¹ Communications technology would be separately defined as: any method used and the components employed to facilitate the transmission and receipt of information, including transmission and reception by systems using wire, wireless, cable, radio, microwave, light, fiber optics, satellite or computer data networks, including the internet and intranets.



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101 Federal Street, 12th Floor, Boston, Massachusetts 02110 | TEL 617.979.8400 | FAX 617.725.0258 | www.massgaming.com