

HOUSE No. 373

By Mr. Rogers of Norwood, petition of John H. Rogers and others relative to the conduct of poker games and sponsorship by certain charitable organizations. Economic Development and Emerging Technologies.

The Commonwealth of Massachusetts

PETITION OF:

John H. Rogers
Timothy J. Toomey, Jr.

Michael J. Moran

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO THE CONDUCT OF POKER GAMES AND SPONSORSHIP
BY CERTAIN CHARITABLE ORGANIZATIONS.

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 10 of the general laws, as appearing in the
2 2006 official edition, is hereby amended by inserting after Section
3 35CC, the following new section:—
4 Section 35DD, Charitable Organizations Trust Fund. There shall
5 be an expendable trust, to be known as the Charitable Organizations
6 Trust Fund, the purpose of which is to support any educational, char-
7 itable, religious, fraternal or civic purposes or for veterans' benefits
8 in the commonwealth. The fund shall consist of revenues received
9 by the commonwealth under the provisions of section 37A of this
10 chapter, from public and private sources as gifts, grants, and dona-
11 tions to further the purposes of the fund. Revenues credited to the
12 fund under this section shall remain in the fund, not subject to appro-
13 priation, for application to those purposes. The state treasurer shall
14 not deposit the revenues in, or transfer the revenues to, the General
15 Fund or any other fund other than the Charitable Organizations Trust
16 Fund. The state treasurer shall deposit monies in the fund in accor-
17 dance with subsection (1) of section 37A of this chapter in such
18 manner as will secure the highest interest rate available consistent
19 with safety of the fund and with the requirement that all amounts on

20 deposit be available for immediate withdrawal at any time. Revenues
21 received for the Charitable Organizations Trust Fund shall be
22 directly paid through the established expendable trust to qualifying
23 charitable organizations selected by the charitable division of the
24 state lottery commission; provided such organization shall have been
25 organized and actively functioning as a nonprofit organization in the
26 commonwealth for a period of not less than two years before it may
27 apply and provided further, that all approved organizations receive
28 an equitable sum in any given distribution period.

1 SECTION 2. Chapter 10 of the general laws, is hereby further
2 amended by inserting after Section 37, the following new Section:—

3 Section 37A, Poker Games, Licensing, Sponsorship of Certain
4 Charitable Organizations.

5 State law prohibits commercially operated lotteries, banked or
6 percentage games, and gambling machines, and strictly regulates
7 wagering on horse and dog racing. To the extent that state law cate-
8 gorically prohibits certain forms of gambling and prohibits gambling
9 devices, nothing herein shall be construed, in any manner, to reflect
10 a legislative intent to relax those prohibitions. It is not the purpose of
11 this chapter to expand opportunities for regulated wagering on horse
12 or dog racing in this state, or to create any right to operate a gam-
13 bling enterprise in this state. It is the purpose of this section to regu-
14 late businesses in the lawful operation and conduct of poker games
15 in suitable locations while ensuring recordkeeping and fundraising
16 for charitable organizations.

17 As used in this section, the following words shall, unless the con-
18 text otherwise requires, have the following meanings:—

19 “Key employee” means any natural person employed in the oper-
20 ation of a poker game licensee in a supervisory capacity or empow-
21 ered to make discretionary decisions that regulate poker game
22 operations, including, without limitation, pit bosses, shift bosses,

23 credit executives, cashier operations supervisors, game operation
24 managers and assistant managers, managers or supervisors of secu-
25 rity employees, or any other natural person designated as a key
26 employee by the commission for reasons consistent with the policies
27 of this chapter.

28 “Key employee certificate” means a state certificate of clearance
29 authorizing the holder to be associated with a poker game licensee as
30 a key employee.

31 “Licensee” means a person, firm or corporation authorized by the
32 state lottery commission to engage in the business of promoting,
33 advertising, operating, holding, dealing, and conducting for the play
34 of poker games, in connection with which prizes are offered to be
35 won by chance and skill.

36 “Poker” means a card game of chance and skill that does not
37 include video, electronic or internet games.

38 “Prize” means money or any right, privilege or thing of any prop-
39 erty value distributed by way of winning a poker hand, game, com-
40 petition, tournament or jackpot.

41 (a) Notwithstanding any special or general law to the contrary, the
42 state lottery commission may issue a limited number of licenses in
43 each of the five regions of the state to promote, operate, hold and
44 conduct the game of poker under this section exclusively; provided
45 that such conduct is open to the general public on commercial
46 premises leased or owned by said licensee for which a city or town
47 has voted to allow granting of a permit for the promotion, advertise-
48 ment, operation, holding and conducting of said poker game therein;
49 provided that the application for such permit is in the case of a city,
50 other than the city of Boston, approved by the majority of the city
51 council and approved by the mayor, in a town by the board of
52 selectmen, and in the city of Boston, approved by the licensing
53 board for said city; and provided further, that a percentage of funds
54 derived therefrom shall be deposited consistent with this section into
55 the state treasury and Charitable Organization Trust Fund estab-
56 lished in section 35DD of this chapter. The location of lawful poker
57 gaming premises, the hours of operation of those premises, the
58 amount and type of security required, adequate law enforcement
59 capability, the number of tables permitted in those premises, and
60 wagering limits in permissible games conducted in those premises
61 are proper subjects for regulation by local governmental bodies.
62 However, consideration of those same subjects by the commission,
63 with direction from the commissioner of public safety as appro-
64 priate, is warranted when local governmental regulation respecting
65 those subjects is inadequate or the regulation fails to safeguard the
66 legitimate interests of residents in other governmental jurisdictions.

67 (b) Nothing in this section shall prohibit an organization, society,
68 church or club, which conducts a raffle or bazaar in accordance with
69 the provisions of section 7A of chapter 271, from promoting, oper-

70 ating and conducting a poker game; provided the net profits of any
71 poker game to be conducted under said section shall be the exclusive
72 property of the organization sponsoring said game; and provided fur-
73 ther, that nothing in section 17 of said chapter 271 or any special or
74 general law to the contrary shall prohibit a licensee under this
75 section from becoming the designated poker game operator, dealer,
76 custodian, or depositary for hire, commission or compensation.

77 (c) A license may be issued only to a firm or corporation duly
78 incorporated under the laws of the commonwealth, conducting busi-
79 ness exclusively in the commonwealth, who has a resident agent reg-
80 istered with the secretary of state for the commonwealth that serves
81 as an officer; provided that such applicant provides satisfactory
82 proof of permit to engage in said conduct by a city or town and pro-
83 vided further; that per the discretion of the director after a criminal
84 history background investigation no unsuitable person or key
85 employee be permitted to associate with poker game business activi-
86 ties. A license holder may transfer their license to another so long as
87 the assignment is to an officer of a firm or corporation incorporated
88 under the laws of the commonwealth who, in the director's discre-
89 tion, substantially satisfies the license qualifications of this section.

90 (d) The fee for any such license, or permit under this section shall
91 be determined annually by the commissioner of administration under
92 the provision of section 3B of chapter 7, but shall not exceed two
93 hundred and fifty dollars. The proceeds of said license fees and any
94 fine collected pursuant to this section shall be paid into the treasury
95 of the commonwealth and shall be used by the commission to defray
96 the cost of administering this section, subject to appropriation.

97 (e) A licensee may conduct tournaments, or so called winner-
98 take-all games, on any one day on which the licensee is authorized
99 to conduct poker games, which may be multiple games or a series of
100 games, or jackpot games where poker game play may occur on mul-
101 tiple days.

102 (f) Any such licensee shall not be subject to prosecution for set-
103 ting up, promoting, advertising, operating, holding or conducting a
104 poker game, or any other crime incidental thereto, or for selling
105 game admission tickets to any said poker game, the price of which
106 shall be printed on each ticket; provided that no poker game shall be
107 advertised or publicized by sign or billboard beyond the city or town
108 limits covered by each licensee and provided further, that no person

109 under 21 years of age shall be permitted in that portion of any
110 building or premises of the licensee during such time as any game is
111 being conducted.

112 (g) The commission shall regulate how licensees determine the
113 price of game admission, shall retain five percent of gross revenue
114 from poker game admission ticket sales and shall allow a licensee to
115 print or produce game admission tickets. Each licensee shall be enti-
116 tled to retain, a so called entry fee, covering operating expenses from
117 poker game conduct, of not less than fifteen per cent of the value of
118 game admission tickets sold by it, and shall be solely responsible for
119 paying poker game prizes won. Prizes, commonly referred to as the
120 buy in, shall not be less than 65 percent of funds collected from
121 game admission tickets sold on a poker game. Profits of other poker
122 game related activities conducted in accordance with the laws of this
123 commonwealth shall be the property of the licensee conducting said
124 game, unless provided otherwise in this section.

125 (h) Responsibilities of the commission include, without limita-
126 tion, all of the following; assuring that license approvals, renewals
127 and key employee certificates are not issued to, or held by, unquali-
128 fied or disqualified persons, or by persons whose operations are con-
129 ducted in a manner that is inimical to the public health, safety. Such
130 license may be revoked at the discretion of the commission after
131 notice and a hearing in compliance with chapter 30A and shall be
132 suspended or revoked upon written request to the director by the city
133 or town approving authority as set forth above in subsection (a). Any
134 licensee or former licensee aggrieved by the action of such authority
135 revoking such permit may appeal to the district court having juris-
136 diction in the city or town where the permit was issued; provided
137 that such appeal shall be filed in such court within twenty days
138 following receipt of notification by said authority. The court shall
139 hear all pertinent evidence and determine the facts and upon the
140 facts so determined annul such action or make such decision as
141 equity may require. The foregoing remedy shall be exclusive. How-
142 ever, any license issued, or other approval granted pursuant to this
143 section, is declared to be a revocable privilege, and no holder
144 acquires any vested right therein or thereunder.

145 (i) A licensee shall be limited to the playing of any poker game on
146 any days as the city or town may require. If a licensee fails to exer-
147 cise exclusive control and management of said game, or fails to have

148 one of its key employees in good standing in full control and man-
149 agement of the game at all times during its operation, it shall be pun-
150 ished by a fine of not less than \$3,000.

151 (j) Accurate records and books shall be kept by each licensee on
152 forms provided by the commission showing the total amount of all
153 monies deposited by people who played, attended, participated in
154 said games, the expenses incurred and the name and address of each
155 organization receiving revenue and the appropriate chapter 62C
156 information of any person receiving a prize valued at six hundred
157 dollars or more. A separate checking account shall be kept of
158 receipts and expenditures of poker card games and money for
159 expenses shall be withdrawn only by checks having preprinted con-
160 secutive numbers and made payable to a specific person or corpora-
161 tion and at no time shall a check be made payable to cash. Proceeds
162 from any poker game shall be kept in a separate bank account and
163 the licensee shall monthly file an end of month return with the com-
164 mission on a form prepared by it and shall pay therewith a tax of five
165 percent of the gross receipts derived from any such game. Further,
166 an annual report of the preceding year shall be filed with the director
167 in January in such form as the director may prescribe. The director,
168 the approving authority of the city or town wherein said game is
169 conducted, or their duly authorized agents or representatives, shall at
170 all times have access to said records and books of any licensee for
171 the purpose of examining and checking the same.

172 (k) The director shall file an annual report in January of the chari-
173 table, religious or educational disbursements of the preceding year.
174 Such annual report shall be a public record. All monies expended for
175 said educational, charitable, religious, fraternal or civic purposes or
176 for veterans' benefits shall be duly and accurately recorded as to
177 specific amounts expended and the purposes for which expended. A
178 report of such records and any information the director may deem
179 relevant shall be filed with the clerk of the house of representatives
180 and the clerk of the senate on or before December 31 of each year.

181 (l) All sums received by said commission from the tax imposed
182 by this section as taxes, interest thereon, fees, penalties, forfeitures,
183 costs of suits or fines, less all amounts refunded thereon, together
184 with any interest or costs paid on account of such refunds, shall be
185 paid into the treasury of the commonwealth and shall be credited as
186 follows:— (1) Three fifths of all such sums received shall be cred-

187 ited to the commission for the payment of costs incurred by the com-
188 mission in the operation and administration of the activities autho-
189 rized by this section, including the expenses of the commission and
190 the costs resulting from any contract or contracts entered into for
191 promotional, advertising or operational service, subject to appropria-
192 tion; and (2) the balance of said revenue, as determined by the
193 comptroller on June 1 and December 1 of each year, shall be cred-
194 ited to the Charitable Organizations Trust Fund established under the
195 provisions of section 35DD and distributed in accordance with its
196 provisions.

197 (m) Activities authorized by this section shall be subject to all
198 provisions of the state lottery law not inconsistent herewith. The
199 commission may make such other rules and regulations as it may
200 deem necessary to carry out the provisions of this section and the
201 director, is empowered to perform criminal background checks,
202 financial audits, and other investigatory services as needed to assist
203 the commission and may assess and collect reasonable fees and
204 deposits as necessary to defray the costs of providing this regulation
205 and oversight Whoever violates any regulation promulgated by the
206 commission under this section may be punished by a fine not less
207 than \$3,000.

1 SECTION 3. Section 40 of said chapter 10 of the General Laws,
2 is hereby further amended, in line one, by adding after the word
3 “sections” the following words:— “thirty-seven A,”.

1 SECTION 4. Section 7A of chapter 271 of the General Laws, as
2 appearing in the 2004 Official Edition, is hereby amended, in line
3 (36), by adding at the end of the third sentence of the third full para-
4 graph of said section the following:- “except that the sponsoring
5 organization shall retain, at a reasonable fee, a licensed entity in
6 accordance with section 37A of chapter 10 to assist in the operation
7 and conduct of any poker game, including providing paid dealers
8 and game supervisors to insure that the rules of the game are prop-
9 erly administered and complied with and records regarding a poker
10 game prize winner are uniformly kept.”

1 SECTION 5. Section 17 of said chapter 271 of the General Laws,
2 as appearing in the 2004 Official Edition, is hereby amended, by
3 adding at the end of the first full paragraph of said section the

6 following:— “All licensed poker game establishments in this state
7 must remain open to the general public and the access of the general
8 public to said licensed activities must not be restricted in any
9 manner, however, subject to state and federal prohibitions against
10 discrimination, nothing herein shall be construed to preclude exclu-
11 sion of unsuitable persons from licensed poker game establishments
12 in the exercise of reasonable business judgment. Nothing in this
13 section shall prohibit a person from advertising for, selling to, partic-
14 ipating at, or entering into contact with a poker game business duly
15 licensed in accordance with section 37A of chapter 10 of the General
16 Laws.”

1 SECTION 6. Chapter 62C of the General Laws, as appearing in
2 the 2004 Official Edition, is hereby amended by adding the
3 following new Section:—

4 Section 18A. Every licensee and organization sponsoring a poker
5 game under section thirty-seven A of chapter ten shall within thirty
6 days after such game is held file an information return with the com-
7 missioner containing the names and addresses of all persons
8 receiving prizes over six hundred dollars in such game and the
9 amount of every such prize.

1 SECTION 7. Said chapter 62C is hereby further amended in
2 section 21 by striking the words “and section eighteen ” in line _ of
3 subsection (b)(3) after the word “sixteen” and adding the
4 following:— “, section eighteen and section eighteen A”.

1 SECTION 8. Upon the effective date of this act, for a period of
2 three months, the director shall issue up to five (5) licenses on a first
3 come first serve basis for a fee of two hundred and fifty dollars to
4 any person with proof of at least two years experience in the gaming
5 equipment rental service and assistance of charitable organizations
6 sponsoring poker game tournament events within the common-
7 wealth; provided a criminal background investigation is satisfactory
8 to the director and a permit authorizing poker game conduct by local
9 authorities is submitted.