

940 CMR 30.00: ILLEGAL LOTTERIES, SWEEPSTAKES AND *DE FACTO* GAMBLING ESTABLISHMENTS

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30.01: Purpose

Outside certain statutory exceptions, existing statutes prohibit the business of gambling, including M.G.L. c. 271 which prohibits, among other unlawful gambling activities, illegal lotteries, namely, soliciting or accepting a payment for the chance to win a prize. 940 CMR 30.00 is designed to protect the public's health, safety and welfare. The purpose of 940 CMR 30.00 is to protect Massachusetts consumers and the public from unlawful lotteries, sweepstakes and other forms of illegal gambling by defining unfair and deceptive acts or practices in the promotion and sale of lotteries, sweepstakes and other forms of illegal gambling. A business that induces consumers to participate in illegal and unregulated forms of gambling by posing as a legitimate business or claiming to offer legitimate sales transactions is unfair and deceptive in violation of M.G.L. c. 93A, § 2(a).

30.02: Scope

940 CMR 30.00 under M.G.L. c. 93A, § 2(c) defines unfair and deceptive acts or practices. 940 CMR 30.00 does not apply to any lottery, game, gaming device, contest or activity that is expressly authorized by Massachusetts laws and regulations, including, without limitation:

- (a) any lottery conducted by the State Lottery Commission pursuant to M.G.L. c. 10, §§ 24, 24A, 27, 27A, 37, 38, and 39A;
- (b) pari-mutuel wagering on horse races, whether live or simulcast, under M.G.L. c. 128A and 128C;
- (c) the game of bingo conducted under M.G.L. chs. 10 and 271; or
- (d) as charitable gaming, so called, conducted under M.G.L. c. 271.

940 CMR 30.00 is not intended to be all inclusive as to the types of activities prohibited by M.G.L. c. 93A, § 2(a). Acts or practices not specifically prohibited by 940 CMR 30.00 are not necessarily consistent with M.G.L. c. 93A.

940 CMR 30.00 shall not be interpreted to authorize any lottery, game, gaming device, contest or activity prohibited by M.G.L. c. 271.

30.03: Definitions

Chance means the opportunity to win a prize where the likelihood of winning is determined by some element of chance.

Customer means any natural person who pays for, or is solicited to pay for, directly or indirectly, either:

- (a) a chance to win a prize; or
- (b) goods or services offered in connection with a chance to win a prize.

Establishment means the location of the business or entity, physical or otherwise, that sells or offers for sale either:

- (a) a chance to win a prize; or
- (b) goods or services offered in connection with a chance to win a prize.

Free Play means the play of a lottery, sweepstakes, similar game or use of gaming devices without providing anything of value in return for that play or use.

Free Play Option means the opportunity to play a lottery, sweepstakes, similar game or use of gaming devices without providing anything of value in return for that play or use.

30.03: continued

Gambling Purpose means that the motivation of the customer in making a payment is to participate in a lottery, sweepstakes, similar game or use of gaming devices.

Game means an activity that involves some element of chance and an opportunity to win a prize.

Payment means providing any money, property or thing of value.

Person means a natural or artificial entity, including, but not limited to, individual, partnership, limited liability company, association, trust or corporation or other legal entities.

Prize means any gift, award, gratuity, money, good, service, credit, or anything else of value, which may be transferred to or for the benefit of a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.

Lottery means a game or activity that includes a payment for a chance to win a prize.

Sweepstakes means any game, advertising scheme or plan, or other promotion, which, with or without payment of any consideration, a person may enter to win or become eligible to receive a prize, the determination of which is based upon an element of chance.

30.04: Prohibition on Unlawful Lotteries, Sweepstakes and *De Facto* Gambling

(1) It is an unfair and deceptive act or practice in violation of M.G.L. c. 93A, § 2(a) for a person to solicit or accept payment for a chance to win a prize.

(2) With respect to a business or a transaction that involves or purports to involve both a chance to win a prize and the sale or purported sale of a good or service, it is an unfair and deceptive act or practice in violation of M.G.L. c. 93A, § 2(a) for any person to engage in a business or engage in a transaction where a gambling purpose predominates over the *bona fide* sale of *bona fide* goods or services.

30.05: Criteria for Determining Whether a Gambling Purpose Predominates

The determination under 940 C.M.R. 30.04(2) whether, with respect to a business or a transaction, a gambling purpose predominates over the *bona fide* sale of *bona fide* goods or services, shall consider the facts and circumstances of the business or transaction including, without limitation, the following criteria:

- (a) The portion of goods or services sold that are actually used or redeemed by the customers of the business;
- (b) The portion of customers that engage in lotteries, sweepstakes or similar games without accepting, using or redeeming the goods or services sold or purportedly sold;
- (c) The manner in which the business or the transactions are marketed, advertised, or promoted, including without limitation:
  1. signage at the establishment;
  2. advertising and other methods of soliciting customers;
  3. the business's interaction with customers at the establishment;
  4. the overall atmosphere and environment at the establishment, including whether it appears or is designed to appear similar to a casino or other gambling establishment;
- (d) Whether and the degree to which the establishment provides instructions to customers with respect to:
  1. use or operation of the lottery, sweepstakes, other games or gaming devices, as compared to;
  2. use or operation of goods or services sold or purportedly sold;
- (e) The motivation or purpose of:
  1. the customers of the business; and/or
  2. the business in offering a transaction involving a lottery, sweepstakes, similar game or use of gaming devices;

30.05: continued

(f) Whether customers are permitted to participate in the lottery, sweepstakes, similar game, use of gaming devices or similar gambling aspect of the business without purchasing the goods or services offered or purportedly offered by the business; and in the event that a free play option is available or purportedly available:

1. the terms and conditions to access, implement or use the free play;
2. whether the free play option permits customers to play in a manner and at a time substantially identical to those customers paying for or purportedly paying for goods or services;
3. the burden to access, implement or use a free play option;

(g) Whether customers who purchase or purportedly purchase goods or services in connection with a lottery, sweepstakes, similar game or use of gaming devices achieve any advantages, whether immediate or over a period of time, in winning a prize over customers who do not purchase or purportedly purchase goods or services.

(h) With respect to businesses that use or purport to use a lottery, sweepstakes, similar game or use of gaming devices to promote the sale of goods or services offered or purportedly offered by the business, whether such promotion is occasional and of limited duration as compared to permanent or of undefined or long-term duration.

30.06: Severability

If any provision of 940 CMR 30.00 or the application of such provision to any person or circumstances is held to be invalid, the validity of the remainder of 940 CMR 30.00 and the applicability of such provision to other persons or circumstances shall not be affected.

REGULATORY AUTHORITY

940 CMR 30.00: M.G.L. c. 93A, § 2(c).

NON-TEXT PAGE