



## LEGAL UPDATE

December 2011

### An Act Establishing Expanded Gaming in the Commonwealth

#### Chapter 194 of the Acts of 2011

On November 22, 2011, Governor Deval Patrick signed a comprehensive law to expand gaming in Massachusetts. The new law established legalized gaming by authorizing up to three resort casinos and one slot machine facility. The law created an independent entity, the Massachusetts Gaming Commission, which is responsible for implementing and overseeing the gaming license process. The law created an investigation and enforcement bureau within the Gaming Commission to serve as the primary enforcement agent for regulatory matters. The law also established gaming enforcement divisions within the Attorney General's Office and the State Police to investigate and enforce criminal violations related to gaming.

This Legal Update focuses solely on the creation of two new crimes: money laundering and enterprise crime.

#### Money Laundering, G.L. c. 267A

The newly created Chapter 267A defines the following four terms: criminal activity, financial institution, monetary instrument and transaction.

#### It is a crime to knowingly:

1. Transport or possess a monetary instrument or other property derived from criminal activity with the intent to promote, carry on or facilitate criminal activity;
2. Engage in a transaction involving a monetary instrument or other property known to be derived from criminal activity:
  - a. With the intent to promote, carry on or facilitate criminal activity; or
  - b. Knowing that the transaction is designed in whole or in part either to:
    - i. Conceal or disguise the nature, location, source, ownership or control of the property derived from criminal activity; or
    - ii. Avoid a transaction reporting requirement of this chapter, or of any other state;
3. Direct, organize, finance, plan, manage, supervise or control the transportation of, or transactions in, monetary instruments or other property known to be derived from criminal activity or which a reasonable person would believe to be derived from criminal activity.

The criminal penalties are:

- State prison for not more than 6 years;
- Fine of not more than \$250,000, or twice the value of the property transacted, whichever is greater; or
- Both such imprisonment and fine.

Second or Subsequent Offense penalties are:

- State prison for not less than 2 years, but not more than 8 years;
- Fine of not more than \$500,000, or three times the value of the property transacted, whichever is greater; or
- Both such imprisonment and fine.

Forfeiture:

- All monetary instruments or other property, real, intellectual or personal, obtained directly as a result of a violation of this chapter shall be subject to forfeiture to the Commonwealth.
- Forfeiture proceedings shall be conducted as provided in G.L. c. 94C, §47 (b) to (j).
- The investigations and enforcement bureau of the Massachusetts Gaming Commission shall be considered a police department and shall be entitled to a police department's distribution of forfeiture proceedings.

**Enterprise Crime, G.L. c. 271A**

The newly created Chapter 271A defines the following five terms: criminal enterprise activity, enterprise, gaming establishment, pattern of criminal enterprise activity and unlawful debt.

It is a crime to knowingly:

1. Through a pattern of criminal enterprise activity or through the collection of an unlawful debt acquire or maintain, directly or indirectly, an interest in or control of an enterprise that is engaged in, or the activities that affect, licensed gaming under Chapter 23K or ancillary industries that do business with a gaming establishment;
2. Have received proceeds derived, directly or indirectly, from a pattern of criminal enterprise activity or through the collection of an unlawful debt, use or invest, directly or indirectly, part of the proceeds, including proceeds derived from the investment, in the acquisition of an interest in real property to be used in connection with licensed gaming, or in the establishment or operation of an enterprise that is engaged in, or the activities that affect, licensed gaming operations or ancillary industries that do business with a gaming establishment;
3. Be employed by or associated with an enterprise to conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs or activities that affect licensed gaming operations or ancillary industries that do business with a gaming establishment by engaging in a pattern of criminal enterprise activity or through the collection of an unlawful debt; or
4. Conspire or attempt to violate clauses (1), (2), or (3), or attempts to so conspire.

The criminal penalties are:

- State prison for not more than 15 years;
- Fine of not more than \$25,000; or
- Both such imprisonment and fine.

Forfeiture:

- All monetary proceeds or other property, real, intellectual or personal, obtained directly as a result of a violation of this chapter shall be subject to forfeiture to the Commonwealth.
- Forfeiture proceedings shall be conducted as provided in G.L. c. 94C, §47 (b) to (j).
- The investigations and enforcement bureau of the Massachusetts Gaming Commission shall be considered a police department and shall be entitled to a police department's distribution of forfeiture proceedings.