HOUSE DOCKET, NO. 3240 FILED ON: 2/18/2011

HOUSE . . . . . No. 3406

The Commonwealth of Massachusetts

PRESENTED BY:

Brian M. Ashe

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act prohibiting electronic devices for sweepstakes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Brian M. Ashe	*2nd Hampden*
Martin J. Walsh	*13th Suffolk*
Denise Provost	*27th Middlesex*

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HOUSE . . . . . No. 3406

By Mr. Ashe of Longmeadow, a petition (accompanied by bill, House, No. 3406) of Brian M. Ashe, Martin J. Walsh and Denise Provost relative to prohibiting electronic devices for sweepstakes. Economic Development and Emerging Technologies.

The Commonwealth of Massachusetts

An Act prohibiting electronic devices for sweepstakes.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 271 of the General Laws is hereby amendment by adding the following section:-

Section XXX As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

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

"Electronic machine or device", a mechanically, electrically or electronically operated machine or device, that is owned, leased or otherwise possessed by a sweepstakes sponsor or promoter, or any of the sweepstakes sponsor's or promoter's partners, affiliates, subsidiaries or contractors, that is intended to be used by a sweepstakes entrant, that uses energy, and that is capable of displaying information on a screen or other mechanism. This section is applicable to an electronic machine or device whether or not:-

It is server based;

It uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries;

It utilizes software such that the simulated game influences or determines the winning or value of the prize;

It selects prizes from a predetermined finite pool of entries;

It utilizes a mechanism that reveals the content of a predetermined sweepstakes entry;

It predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed;

It utilizes software to create a game result;

It requires deposit of any money, coin, or token, or the use of any credit card, debit card, prepaid card, or any other method of payment to activate the electronic machine or device;

It requires direct payment into the electronic machine or device, or remote activation of the electronic machine or device;

It requires purchase of a related product;

The related product, if any, has legitimate value;

It reveals the prize incrementally, even though it may not influence if a prize is awarded or the value of any prize awarded;

It determines and associates the prize with an entry or entries at the time the sweepstakes is entered; or

It is a slot machine or other form of electrical, mechanical, or computer game.

"Enter" or "entry", the act or process by which a person becomes eligible to receive any prize offered in a sweepstakes.

"Entertaining display", visual information, capable of being seen by a sweepstakes entrant, that takes the form of actual game play, or simulated game play, such as, by way of illustration and not exclusion:-

a. A video poker game or any other kind of video playing card game;

b. A video bingo game;

c. A video craps game;

d. A video keno game;

e. A video lotto game;

f. Eight liner;

g. Pot of gold;

h. A video game based on or involving the random or chance matching of different pictures, words, numbers, or symbols not dependent on the skill or dexterity of the player; or

i. Any other video game not dependent on skill or dexterity that is played while revealing a prize as the result of an entry into a sweepstake.

“Establishment”, means the location of the business or entity, physical or otherwise,

that sells or offers for sale either (i) a chance to win a prize; or (ii) goods or services offered in connection with a chance to win a prize.

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

“Lottery”, a game or activity that includes a payment for a chance to win a prize.

"Prize", any gift, award, gratuity, good, service, credit, or anything else of value, which may be transferred to 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.

"Sweepstakes", 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 any prize, the determination of which is based upon chance.

It shall be unlawful for any person to operate, or place into operation, an electronic machine or device to do the following:-

(1) Conduct a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize;

(2) Promote a sweepstakes that is conducted through the use of an entertaining display, including the entry process or the reveal of a prize;

It shall be unlawful for any person to operate, a business or enter into a transaction where a gambling purpose predominates over the bona fide sale of bona fide goods or services. The following circumstances of the business or transaction including, without limitation, shall constitute a violation of this section:-

(1) The portion of goods or services sold that are actually used or redeemed by the customers of the business;

(2) 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;

(3) The manner in which the business or the transactions are marketed, advertised, or promoted, including without limitation:-

(a) signage at the establishment;

78 (b) advertising and other methods of soliciting customers;

79 (c) the business's interaction with customers at the establishment;

80 (d) the overall atmosphere and environment at the establishment, including whether it
81 appears or is designed to appear similar to a casino or other gambling establishment;

82 (4) Whether and the degree to which instructions are provided with respect to: (i) use or
83 operation of the lottery, sweepstakes, other games or gaming devices, as compared to (ii) use or
84 operation of goods or services sold or purportedly sold;

85 (5) The motivation or purpose of either: (i) the customers of the business; or (ii) the
86 business in offering a transaction involving a lottery, sweepstakes, similar game or use of gaming
87 devices;

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

92 (a) the terms and conditions to access, implement or use the free play;

93 (b) whether the free play option permits customers to play in a manner and at a time
94 substantially identical to those customers paying for or purportedly paying for goods or services;

95 (c) the burden to access, implement or use a free play option; or

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

100 Whoever violates any provision of this section shall be punished by a fine of not more
101 than $10,000 or by imprisonment in a state prison for not more than 5 years or in a jail for not
102 more than 2 1/2 years or both such fine and imprisonment.