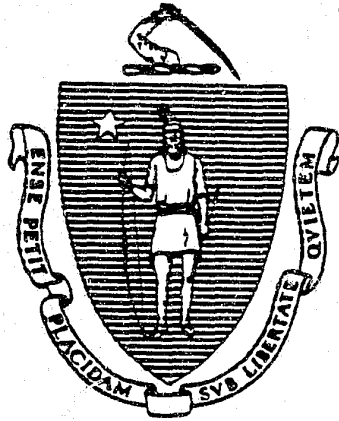




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150724



**REPORT ON THE SALE OF
LOTTERY TICKETS TO MINORS
IN MASSACHUSETTS**

JULY 1994

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ACQUISITIONS

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LOTTERY TICKETS TO MINORS
IN MASSACHUSETTS**

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SUMMARY: RESULTS OF MINORS' ATTEMPTS TO
PURCHASE LOTTERY TICKETS FROM SALES AGENTS

	ATTEMPTS ^{1/}	PURCHASES ^{2/}	SUCCESS RATE
OVERALL RESULTS	153	122	80%
GIRLS	77	63	82%
BOYS	76	59	78%
GREATER BOSTON AREA Boston, Brookline, Newton, Waltham, Watertown.	32	19	59%
NORTH SUBURBAN AREA Beverly, Dracut Lawrence, Lowell, Methuen, Tewksbury, Salem.	51	46	90%
SOUTH SUBURBAN AREA Brockton, Dartmouth, New Bedford.	53	42	79%
WEST SUBURBAN Framingham.	12	10	83%
WESTERN/CENTRAL MASSACHUSETTS Great Barrington, Lee, Pittsfield,	5	5	100%

^{1/} 21 minors, 11 girls and 10 boys, between the ages of 9 and 17 participated in the study.

^{2/} The tickets were purchased at dozens of convenience stores and supermarkets operating under eleven well-known trade names.

I. BACKGROUND

A. INTRODUCTION.

Section 29 of the Lottery Law prohibits sales of lottery tickets to anyone under the age of 18. Nonetheless, the Attorney General has found that this prohibition has little effect on the practices of ticket sales agents. In this survey, minors succeeded in purchasing lottery tickets 80% of the time. Even a child as young as nine was able to purchase a lottery ticket. In addition, the investigation revealed that most sales agents fail to conspicuously post legally-mandated notices about help available to problem gamblers. G.L. c. 10, §27.

The willingness of sales agents to sell lottery tickets to children has not been ignored by the minors themselves. In a recent two-part survey, the Massachusetts Council On Compulsive Gambling found extensive lottery participation among Massachusetts high school students. H. Shaffer, The Emergence of Youthful Addiction: The Prevalence of Underage Lottery Use and the Impact of Gambling, Massachusetts Council On Compulsive Gambling Technical Report No. 011394-100 (1994) (hereinafter the "Council Report"). Analyzing data collected in a Massachusetts Department of Public Health survey of 2,127 high school students in 97 public schools across the Commonwealth,

the Council on Compulsive Gambling found that 47.10% of seventh graders and 74.60% of seniors had purchased lottery tickets. Id. at 8. 2.9% of seventh graders and 5.5% of seniors reported that they had purchased lottery tickets between six and nineteen times during the preceding month.^{3/} Id. at 10.

Illegal sales of lottery tickets to minors are cause for concern. Scrupulous enforcement of the lottery law is essential for the perceived integrity, hence, preservation of the Massachusetts State Lottery. See Part B, n.4, infra. Illegal sales to minors also raise public welfare concerns. Gambling among minors has long been viewed as contrary to public policy. F.T.C. v. Keppel & Brothers, 291 U.S. 304, 313, (1934). Among other concerns, gambling is a potentially addictive behavior^{4/} and gamblers may commit crimes to support

^{3/} The findings are consistent with results in other jurisdictions. A study of 332 Atlantic City High School students conducted seven years after the advent of casino gambling in New Jersey found that 64% of students aged 14-16 had gambled at casinos. Of those who gambled, the median number of casino visits was six. A. Acuri, D. Lester, and F. Smith, Shaping Adolescent Gambling Behavior, XX Adolescence 935, 936-937 (No. 80, Winter 1985). See also R. Rychlak, Lotteries Revenues and Social Costs, 34 B.C.L. Rev. 11, 69 (1992) (citing similar studies).

^{4/} The American Psychiatric Association first defined pathological gambling a diagnosable mental disorder in 1980. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 291 (3d ed. 1980). See H. Lesieur, The Compulsive Gambler's Spiral of Options, 42 Psychiatry 79, 83 (1979) (Fraud, forgery and embezzlement associated with gambling); Lesieur, Current Research Into Pathological Gambling, in Compulsive Gambling at 239 (H. Shaffer et al. eds., 1989).

their activities.^{5/} In the second part of its report, the Council on Compulsive Gambling found that gambling-related problems are prevalent among Massachusetts high school students. In a survey of all forms of gambling among 801 Massachusetts high school students, many students reported that their gambling had lead to undesirable behavior, including, family problems, neglect of school or work, and trouble with the law. Counsel Report 12. 13% reported that they were unable to resist the impulse to gamble and 4% had sought help for gambling. 5% reported that they had been arrested for gambling-related problems.^{6/}

^{5/} Both problems are evident to some extent in Massachusetts. A recent report of the Massachusetts Senate recited evidence that 2.1% of Massachusetts adult residents were problem gamblers and another 2.3% were probable pathological gamblers. Senate Committee on Post Audit and Oversight, Toward Gaming Regulation: Part II: Problem Gambling, and Regulatory Matters (hereinafter "Senate Report") at 5, 17. The Senate Committee held public hearings on gambling in 1993. The statistics derive from a National Institute of Mental Health study of gambling in several states conducted between 1986 and 1990. The National Institute of Mental Health study found elevated rates of problem gambling among younger, less educated, adults and speculated that increased access to gambling is resulting in higher rates of pathology. Senate Report, 18-19. (R. Volberg, principal investigator). See also R. Volberg and H. Steadman, Refining Prevalence Estimates of Pathological Gambling, 145 American Journal of Psychiatry 502, 503 (1988)

^{6/} These results concerning gambling-related problems in minors appear consistent with studies in other jurisdictions. See H. Lesieur and R. Klein, Pathological Gambling Among High School Students, 12 Addictive Behaviors 129, 132 (1987) (In a study of 892 New Jersey 11th and 12th graders, 5.7% showed signs of pathological gambling).

B. OVERVIEW OF THE MASSACHUSETTS LOTTERY.

Legislation establishing the Massachusetts State Lottery was enacted in 1971.^{7/} The Lottery Law, G.L. c. 10, §§22-36, governs all aspects of the Lottery, including the powers and duties of the Lottery Commission,^{8/} G.L. c.10, §§23, 24, 26; the duties and licensing requirements of lottery ticket sales

^{7/} Lotteries had been outlawed in Massachusetts since 1812 when funds mysteriously disappeared from a lottery chartered to repair Plymouth Beach. R. Rychlak, Lotteries Revenues and Social Costs, 34 B.C.L. Rev. 11, 35 (1992). Due to inadequate mechanisms of taxation, state and charitable lotteries played an important role in financing the fledgling nation, including the financing of Jamestown, the Ivy League and the Revolutionary War. In the decades prior to the Civil War, 70% of states conducted lotteries to finance public works. Rychlak, *supra*. at 13, 24-31. Nonetheless fraud, corruption and public welfare concerns led all states to ban lotteries by the turn of the century. *Id.* 37-38.

Until recently, Federal law has also constrained state lotteries. In response to the Louisiana Lottery, Congress forbade the use of the mails to disseminate lottery material in 1890. *Id.* at 43. Because illegal gambling supports organized crime and the corruption of public officials, between 1951 and 1971 the Federal government passed a series of acts aimed at curtailing gambling; including, *inter alia*, statutes restricting bank involvement in state lottery financing, and prohibitions on interstate wire communication of gambling information, interstate transport of gambling devices and paraphernalia, and interstate travel for the purpose of gambling. Blakey, Legal Regulation of Gambling since 1950, 474 *Annals of the American Academy of Political and Social Science* 12, 14-16 (1984). In the mid-1970s, when lotteries were decriminalized in many states, Congress created exemptions for state lotteries.

In 1964, again as a result of revenue concerns, New Hampshire became the first of many states to sponsor a modern lottery. As of 1992, 33 states and the District of Columbia conducted lotteries.

^{8/} The Commission is obligated and empowered to investigate the conduct of the lottery and make recommendations to prevent abuses. G.L. c.10, §24. The Director is obligated to suspend or revoke the licenses of sales agents who violate the Lottery

agents, G.L. c.10, §§24, 26, 27, 29; the apportionment of revenues,^{9/} G.L. c.10, §§25, 35; and the establishment of various lottery-related offenses, G.L. c.10, §§29, 30, 30A. See also 961 CMR 2:00. The Lottery is administered by the Lottery Commission from within the Office of the State Treasurer.^{10/}

Since its inception, the Lottery has offered a variety of games falling within several basic categories; viz., the Daily Numbers Game, the Weekly Money Game and Instant Games. Information about the Lottery has been disseminated through all forms of media, including special weekly or daily television shows and direct residential mailing. Annual Report of the Massachusetts State Lottery Commission 1975, 1976, 1977 and 1985 (hereinafter "AR ___"). Consumers can obtain gift

Law. G.L. c.10, §26.

^{9/} By statute, at least 45% of lottery revenues must be distributed in prizes. Operating expenses cannot exceed 15% of revenues. The balance must be paid into the State Lottery Fund. A substantial portion of net lottery revenue is then distributed through the Local Aid Fund, to cities and towns for property tax relief. According to the Lottery Commission, cities and towns typically obtain 10% of their annual budgets through the lottery. AR 87.

^{10/} The Lottery Commission also assumed control over the regulation and conduct of charitable lotteries in 1973. Charitable lotteries and games must be licensed by the Commission and revenues must be allocated in accordance with the law. G.L. c.10, §§37-39. Net revenues must be used for charitable, educational or religious purposes. Funds received by the Commission from licensing fees, charity ticket sales and taxation of proceeds are credited to the Local Aid Fund.

An Arts Lottery was established under the control of the Commission in 1982. 10.5 The annual reports are not paginated and will be cited by year "AR ___".

certificates and season tickets, as well as credit cards that enable them to bet by telephone. AR 76; AR 85; AR 87; AR 91.

Lottery tickets can be sold only by licensed sales agents. There are currently approximately 6,000 licensed agents. Sales agents are given strong incentives to sell tickets, including commissions on ticket sales and bonuses on large prizes won by customers.^{11/} AR 90. For example in 1987, agents earned an average of \$15,000 from ticket sales. AR 87. In 1984, fifty-six sales agents earned at least \$50,000 in commissions, seven earned more than \$100,000. AR 84.

According to a report of the Massachusetts Senate, Massachusetts has paid insufficient attention to inappropriate gambling behaviors. Since 1990, the Commonwealth has annually appropriated less than \$250,000 for education and treatment. No state tax revenue has been allocated for such programs, the money has come from unclaimed prizes. Senate Report 15-16.

II. PROHIBITIONS ON SALES OF LOTTERY TICKETS TO MINORS

Sections 26, 27 and 29 of the Lottery Law impose restrictions on the sale of Massachusetts Lottery Tickets. Tickets may be sold only by vendors who satisfy the requirements necessary to become licensed sales agents. G.L. c.10, §§26-27, 29. Sales agents may not sell tickets to those

^{11/} In 1984, agents received a 5% commission on the sale of each ticket and bonuses of 1% of each prize. By statute, sales agents cannot be engaged solely in the business of selling lottery tickets. AR 84.

under the age of eighteen. G.L. c. 10, §29. Minors are not barred, however, from possessing tickets and claiming prizes. G.L. c. 10, §34. The Lottery Law also requires sales agents to conspicuously post notices of the name and number of the Council on Compulsive Gambling and a statement of its availability to offer assistance. G.L. c. 10, §27.

A violation of the prohibition against sales to minors constitutes an unfair trade practice actionable under G.L. c. 93A, § 2(a), the Massachusetts Consumer Protection Act. See 940 CMR 3.16 (The failure to comply with a statute meant for the protection of the public health, safety or welfare is a violation of c. 93A); F.T.C. v. Keppel & Brothers, 291 U.S. 304 (1934) (Encouraging gambling among minors is unfair because it violates public policy). A civil penalty of up to \$5,000.00 may be imposed for each violation of this Act. In addition, the Lottery Law prescribes penalties applicable to illegal sales. The director of the Lottery is empowered to revoke or suspend the license of any sales agent who violates the Lottery Law or the rules and regulations promulgated thereunder. G.L. c.10, §26. Sales agents may be fined not less than one hundred nor more than five hundred dollars for failing to comply with this law. G.L. c. 10, §29. Finally, sales agents who fail to comply with the law are vulnerable to criminal prosecution for conducting lotteries declared illegal by G.L. c. 271, §§5-20. See G.L. c. 10, §27 (Compliance with the Lottery Law is a safe-harbor against criminal prosecution for conducting an illegal lottery).

III. SURVEY METHODS

Pursuant to his authority to address suspected violations of the law under G.L. c. 93A, §6 and G.L. c. 12, §10, the Attorney General enlisted volunteers to conduct a state wide survey of illegal sales of lottery tickets to minors. With the consent of their parents or guardians, twenty-one students between the ages of nine and seventeen volunteered to participate in the investigation.^{12/} Supermarkets and convenience stores in twenty cities and towns across the Commonwealth were investigated.

Accompanied by a representative of the Attorney General's Office, minors attempted to buy lottery tickets from stores licensed as sales agents.^{13/} In the process, they also scanned store premises to determine whether legally mandated information about the Massachusetts Council on Compulsive

^{12/} Students participated without remuneration. Lottery tickets were not defaced and will be returned to the Lottery Commission. Most of the students had previously demonstrated an interest in serving the public through involvement with community programs or prior investigations. The Attorney General did not seek the endorsement of schools or community groups.

^{13/} Because they can play a leadership role in upholding the law, chain stores and franchises were investigated rather than independent entities.

Gambling was conspicuously posted.^{14/} After each attempt, a written report of the outcome was compiled.

IV. RESULTS

Minors successfully purchased lottery tickets from stores licensed as sales agents eighty percent of the time.^{15/} Minors made one hundred and fifty-three attempts to purchase lottery tickets in stores across the Commonwealth. One hundred and twenty-two of those attempts were successful. The youngest child to purchase a ticket was nine years old. Girls were slightly more successful than boys in purchasing lottery tickets, but rates of successful attempts were not significantly different between supermarkets and convenience stores.

Only forty percent of the stores conspicuously posted legally mandated information about help available from the Council on Compulsive Gambling.

V. ENFORCEMENT PLAN

The Attorney General recommends that the Lottery Commission take several steps to increase compliance with the Lottery

^{14/} This aspect of the investigation was designed to determine whether notices were conspicuously posted, as required by law. Students were not asked to search store premises for notices; consequently, more stores may actually post notices than is indicated by this investigation.

^{15/} Tickets included one, two and five dollar scratch tickets, and various number games, including one dollar Megabucks, Mass Millions and Mass Cash games.

Law. The most effective way to curtail the illegal practices is to educate sales agents, minors and parents about the law and the dangers and penalties associated with illegal sales to minors. In addition, the Lottery Commission should work with retailers and their associations to design and implement procedures to reduce the rate of illegal sales to minors. Finally, the Attorney General is available to work with the Lottery Commission to establish additional enforcement measures to eliminate illegal sales to minors.

VI. RECOMMENDATIONS

To reduce the problem of illegal sales of lottery tickets to minors, the Office of the Attorney General recommends that the Lottery Commission adopt the following measures:

1. Training programs for sales agents should include extensive education about the problem of illegal sales to minors and the need for posting required notices. All employees of stores which sell tickets must receive training and education. Supplemental educational materials should be sent to sales agents on a regular basis.

2. Children and young adults should be required to show proof of age, in the form of legitimate photographic identification cards, to buy lottery tickets.

3. Sales agents should post notices informing consumers they cannot sell lottery tickets to minors and compliance with all notice requirements should be routinely monitored by field investigators from the Lottery Commission.

4. Sales agents should monitor their own compliance with the law by conducting quarterly tests of employees' sales practices.