

MAINE STATE LEGISLATURE

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N I N E T Y - S I X T H L E G I S L A T U R E

Legislative Document

No. 1336

H. P. 1187

House of Representatives, March 11, 1953

Referred to the Committee on Legal Affairs. Sent up for concurrence and 1,000 copies ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Stewart of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-THREE

AN ACT Creating the Model Anti-Gambling Act.

Be it enacted by the People of the State of Maine, as follows:

R. S., c. 126-A, additional. The revised statutes are hereby amended by adding thereto a new chapter to be numbered 126-A, to read as follows:

‘CHAPTER 126-A.

ANTI-GAMBLING ACT.

Sec. 1. Legislative policy; construction. It is hereby declared to be the policy of the legislature, recognizing the close relationship between professional gambling and other organized crime, to restrain all persons from seeking profit from gambling activities in this state; to restrain all persons from patronizing such activities when conducted for the profit of any person; to safeguard the public against the evils induced by common gamblers and common gambling houses; and at the same time the preserve the freedom of the press and to avoid restricting participation by individuals in sport and social pastime which are not for profit, do not affect the public, and do not breach the peace. All the provisions of this chapter shall be liberally construed to achieve these ends, and administered and enforced with a view to carrying out the above declaration of policy.

Sec. 2. Definitions. As used in this chapter:

“Gain” means the direct realization of winnings; “profit” means any other realized or unrealized benefit, direct or indirect, including without limitation benefits from proprietorship, management, or unequal advantage in a series of transactions.

“Gambling” means risking any money, credit, deposit or other thing of value for gain contingent in whole or in part upon lot, chance or the operation of a gambling device, but does not include: bona fide contests of skill, speed, strength or endurance in which awards are made only to entrants or the owners of entries; bona fide business transactions which are valid under the law of contracts; and other acts of transactions now or hereafter expressly authorized by law.

“Professional gambling” means accepting or offering to accept, for profit, money, credits, deposits or other things of value risked in gambling, or any claim thereon or interest therein. Without limiting the generality of this definition, the following shall be included: pool-selling and bookmaking; maintaining slot machines, one-ball machines or variants thereof, pinball machines which award anything other than an immediate and unrecorded right of replay, roulette wheels, dice tables, or money or merchandise push-cards, punchboards, jars of spindles, in any place accessible to the public; and conducting lotteries, gift enterprises, or policy or numbers games, or selling chances therein; and the following shall be presumed to be included: conducting any banking or percentage game played with cards, dice or counters, or accepting any fixed share of the stakes therein.

“Gambling devise” means any device or mechanism by the operation of which a right to money, credits, deposits or other things of value may be created, in return for a consideration, as the result of the operation of an element of chance; any device or mechanism which, when operated for a consideration does not return the same value or thing of value for the same consideration upon each operation thereof; any device, mechanism, furniture, fixture, construction or installation designed primarily for use in connection with professional gambling; and any sub-assembly or essential part designed or intended for use in connection with any such device, mechanism, furniture, fixture, construction or installation. But in the application of this definition an immediate and unrecorded right of replay mechanically conferred on players of pinball machines and similar amusement devices shall be presumed to be without value.

“Gambling record” means any record, receipt, ticket, certificate, token,

slip or notation given, made, used or intended to be used in connection with professional gambling.

“Gambling information” means a communication with respect to any wager made in the course of and any information intended to be used for professional gambling. In the application of this definition the following shall be presumed to be intended for use in professional gambling: information as to wagers, betting odds or changes in betting odds.

“Gambling premise” means any building, room, enclosure, vehicle, vessel or other place whether open or enclosed, used or intended to be used for professional gambling. In the application of this definition, any place where a gambling device is found shall be presumed to be intended to be used for professional gambling.

“Whoever” and “person” include natural persons, partnerships and associations of persons and corporations; and any corporate officer, director or stockholder who authorizes, participates in, or knowingly accepts benefits from any violation of this chapter committed by his corporation.

“Peace officer” means any officer or official who has authority to make an arrest.

Sec. 3. Gambling; exemption; professional gambling. Whoever engages in gambling, or solicits or induces another to engage in gambling shall be punished by a fine of not more than \$500, or by imprisonment for not more than 6 months, or by both such fine and imprisonment.

Natural persons shall be exempt from prosecution and punishment under the provisions of the preceding paragraph for any game, wager or transaction which is incidental to a bona fide social relationship, is participated in by natural persons only, and in which not person is participating, directly or indirectly, in professional gambling.

Whoever engages in professional gambling, or knowingly causes, aids, abets or conspires with another to engage in profesisonal gambling shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than 11 months, or by both such fine and imprisonment.

Sec. 4. Gambling devices; gambling records. All gambling devices are common nuisances and are subject to seizure, immediately upon detection, by any peace officer, who shall hold the same subject to confiscation and destruction by order of a court having jurisdiction.

No property right in any gambling device shall exist or be recognized

in any person, except the possessory right of officers enforcing the provisions of this chapter.

All furnishings, fixtures, equipment and stock, including without limitation furnishings and fixtures adaptable to non-gambling uses and stock for printing, recording, computing, transporting, safekeeping or, except as otherwise provided in paragraph 3 of section 5, communication, used in connection with professional gambling or maintaining a gambling premise, and all money or other things of value at stake or displayed in or in connection with professional gambling or any gambling device, shall be subject to seizure, immediately upon detection, by any peace officer, and shall, unless good cause is shown to the contrary by the owner, be forfeited to the state by order of a court having jurisdiction, for sale by public auction or as otherwise provided by law. Bona fide liens against property so forfeited shall, on good cause shown by the lienor, be transferred from the property to the proceeds of the sale of the property. Forfeit monies and other proceeds realized from the enforcement of this paragraph shall be paid equally into the general fund of the state and the general funds of the political subdivision or other public agency, if any, whose officers made the seizure, except as otherwise provided by law.

Whoever knowingly owns, manufactures, possesses, buys, sells, rents, leases, stores, repairs or transports any gambling device, or offers or solicits any interest therein, whether through an agent or employee or otherwise, shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than 11 months, or both such fine and imprisonment. Paragraph 2 of this section shall have no application in the enforcement of this paragraph.

Whoever knowingly prints, makes, possesses, stores or transports any gambling record, or buys, sells, offers or solicits any interest therein, whether through an agent or employee or otherwise, shall be punished by a fine of not more than \$500, or by imprisonment for not more than 6 months, or by both such fine and imprisonment, and in the enforcement of this paragraph direct possession of any gambling record shall be presumed to be knowing possession thereof.

Sec. 5. Gambling information. Whoever knowingly transmits or receives gambling information by telephone, telegraph, radio, semaphore or other means, or knowingly installs or maintains equipment for the transmission or receipt of gambling information shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than 11 months, or by both such fine and imprisonment.

When any public utility is notified in writing by a law enforcement agency acting within its jurisdiction that any service, facility or equipment furnished by it is being used or will be used to violate this section, it shall discontinue or refuse the furnishing of such service, facility or equipment, and no damages, penalty or forfeiture, civil or criminal, shall be found against any public utility for any act done in compliance with any such notice. Unreasonable failure to comply with such notice shall be prima facie evidence of knowledge against such public utility. Nothing in this paragraph shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, that such service, facility or equipment should not be discontinued or removed, or should be restored.

Facilities and equipment furnished by a public utility in the regular course of business, and which remain the property of such utility while so furnished, shall not be seized pursuant to paragraph 3 of section 4 except in connection with an alleged violation of this chapter by such public utility, and shall be forfeited only upon conviction of such public utility therefor.

Sec. 6. Gambling premises. All gambling premises are common nuisances and shall be subject to abatement by injunction or as otherwise provided by law. In any action brought under this paragraph the plaintiff need not show damage and may, in the discretion of the court, be relieved of all requirements as to giving security.

When any property or premise is determined by a court having jurisdiction to be a gambling premise, the owner shall have the right to terminate all interest of anyone holding the same under him.

When any property or premise for which one or more licenses, permits or certificates issued by this state, or any political subdivisions or other public agency thereof, are in effect, is determined by a court having jurisdiction to be a gambling premise, all such licenses, permits and certificates shall be void, and no license, permit or certificate so cancelled shall be re-issued for such property or premise for a period of 60 days thereafter. Enforcement of this paragraph shall be the duty of all peace officers and all taxing and licensing officials of this state and its political subdivisions and other public agencies.

Whoever as owner, lessee, agent, employee, operator, occupant or otherwise knowingly maintains or aids or permits the maintaining of a gambling premise shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than 11 months, or by both such fine and imprisonment, and whoever does any act in violation of this paragraph within any locked,

barricaded or camouflaged place or in connection with any electrical or mechanical alarm or warning system or arrangement shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than 5 years, or by both such fine and imprisonment.

Sec. 7. Repeated offenses. Any person who has been convicted of a violation of paragraph 2 of section 3, paragraph 4 of section 4, paragraph 1 of section 5 or paragraph 4 of section 6 or prior similar laws may, upon any subsequent violation of paragraph 2 of section 3, paragraph 4 of section 4, paragraph 1 of section 5 or paragraph 4 of section 6, be prosecuted as a repeating offender, and upon conviction shall, in lieu of any other penalty, be punished by a fine of not more than \$5,000, or by imprisonment for not more than 10 years, or by both such fine and imprisonment.

Sec. 8. Witness immunity. In any proceeding arising out of a violation of this chapter, if a natural person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated under this chapter, the court, when requested in writing by the prosecuting attorney, shall, unless it finds that to do so would be clearly contrary to the public interest, order such person to answer or produce the evidence, and that person shall comply with the order. After complying with the order, and if, but for this section, he would have been privileged to withhold the answer given or the evidence produced by him, such person shall not be prosecuted or subjected to penalty or forfeiture under this chapter for or on account of any transaction, matter or thing concerning which, in accordance with the order, he gave answer or produced evidence. He may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury or contempt committed in answering, or failing to answer, or in producing, or failing to produce, evidence in accordance with the order.'