

# Client Alert

## Report of the Massachusetts Special Commission on Online Gaming

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By: Karl Rutledge

Section 137 of Chapter 219 of the Acts of 2016 created a special commission to investigate, study, and make recommendations on the issue of online gaming and daily fantasy sports (the “Special Commission”). The nine member Special Commission convened for the first time on October 31, 2016, and held six meetings where they heard testimony from the public and industry experts. Witnesses read from prepared testimony and answered questions from the commission members.

The Special Commission was tasked with submitting its final report and recommendations for legislation no later than July 31, 2017. Accordingly, on July 31, 2017, the Special Commission released their final report. The report consisted of both the findings of the Special Commission, as well as their recommendations based on those findings. During the July 31 meeting, the Special Commission voted in favor of the final report’s findings and recommendations in a 5-3 vote, with one member abstaining.

The Special Commission’s final report contains three recommendations: (1) that “online gaming” be defined broadly to encompass all manner of online gaming (including, but not limited to, daily fantasy sports); (2) that the Legislature work to balance regulation with innovation and develop a robust framework as to how all online gaming should be governed, taxed, and regulated generally; and (3) that, rather than legalizing all online gaming at once, the Legislature retain oversight over which parts of online gaming should be legalized.

Of particular concern for skill gaming operators is the apparent position taken by the Special Commission that even online, pay-to-play skill gaming is illegal in Massachusetts. The report, in pertinent part, notes:

*Notwithstanding its current illegality in most of the United States, currently there is a robust black market for eSports gambling. For example, there is head-to-head eSports wagering where two players (or two teams) bet on how well they will perform in the game. This can include smaller aspects than just outcome of the match – for example, the number of head shots in a game or goals scored. This head-to-head wagering involves active participation from the patrons because they are playing in the games they are wagering on. There are a number of companies that facilitate this type of betting online, though none are currently legal in Massachusetts.*

Whether intended or not, this position is concerning given its breadth. What is particularly incredible about this position is, whether they realize it or not, the Special Commission’s



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analysis of the gambling prohibitions in Massachusetts is so broad it would irrationally encompass all skill gaming contests, e.g., chess, trivia, baking, etc., where entry fees and prizes exist regardless of whether conducted online or in person.

Employees can use their PST hours for a variety of reasons, including: their own mental or physical illness, injury, or health condition; the mental or physical illness, injury, or health condition of a family member; absences related to abuse, stalking, sexual violence, or domestic violence of either the employee or the employee's family member; and/or when a public health emergency causes the employee's workplace to close, or the employee's child's school or daycare to close.

In regards to next steps, Rep. Joseph Wagner and Sen. Eileen Donoghue, co-chairs of the Special Commission, indicated that they now intend to send the commission's final report to all members of the Legislature with the expectation that there will be a push to write legislation over the next year. The good news is that the commission's report and recommendations are not binding on the Legislature—this commission report is merely a recommendation and which needs legislative enactment but is troubling as it gives a basis for finding that skill gaming constitutes gambling and needs to be regulated.

If this report is of concern and you would like to explore the retention of lobbying representation, either alone or in collaboration with other operators in the skill gaming space, please contact us: Tony Cabot at [Acabot@lrrc.com](mailto:Acabot@lrrc.com) or Karl Rutledge at [KRutledge@lrrc.com](mailto:KRutledge@lrrc.com).

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