

205 CMR 152.00: INDIVIDUALS EXCLUDED FROM A GAMING ESTABLISHMENT

Section

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152.01: Scope and Authority

The provisions of 205 CMR 152.00 shall provide for the establishment and maintenance of a list, and associated protocols and procedures, for exclusion of individuals from gaming establishments in accordance with M.G.L. c. 23K, §§ 45(a) through (e) and 45(j). Such list shall be maintained separately from that established and maintained in accordance with M.G.L. c. 23K, § 45(f) through (h).

152.02: Maintenance and Distribution of List

- (1) The Commission shall maintain a list of persons to be excluded or ejected from a gaming establishment which shall be posted on the commission's website (<http://massgaming.com/>).
- (2) Each gaming licensee shall ensure that its accesses and reviews the list on a regular basis and that it is made available to all employees of the gaming establishment.

152.03: Criteria for Exclusion

- (1) In the commission's discretion, an individual may be placed on the exclusion list if the commission determines that the individual meets one or more of the following criteria:
  - (a) the individual has been convicted of a criminal offense under the laws of any state or the United States that is punishable by more than six months in a state prison, a house of correction or any comparable incarceration, a crime of moral turpitude or a violation of the gaming laws of any state;
  - (b) the individual has violated or conspired to violate M.G.L. c. 23K or any laws related to gaming;
  - (c) the individual has a notorious or unsavory reputation which would adversely affect public confidence and trust that the gaming industry is free from criminal or corruptive elements;
  - (d) the individual is an associate of an individual who falls into a category identified in 205 CMR 152.03(1)(a) through (c);
  - (e) there exists the potential of injurious threat to the interests of the commonwealth if the individual is permitted in a gaming establishment.
- (2) In determining whether there exists the potential of injurious threat to the interests of the commonwealth if an individual is permitted in a gaming establishment in accordance with 205 CMR 152.03(1)(e), the commission may consider the following:
  - (a) Whether the individual is a known cheat;
  - (b) Whether the individual has had a license or registration issued in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*, or a like license or registration issued by another jurisdiction, suspended or revoked or has been otherwise subjected to adverse action;
  - (c) Whether the individual poses a threat to the safety of the patrons or employees of a gaming establishment;
  - (d) Whether the individual has a documented history of conduct involving the undue disruption of gaming operations in any jurisdiction;

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(e) Whether the individual is subject to a no trespass order at any casino or gaming establishment in any jurisdiction.

(3) The commission shall not base a finding to place an individual on the excluded list on an individual's race, color, religion, religious creed, national origin, ancestry, sexual orientation, gender identity or expression, age (other than minimum age requirements), marital status, veteran status, genetic information, disability or sex.

152.04: Investigation and Initial Placement of Names on the List

(1) The IEB shall investigate any individual who may meet one or more criterion for inclusion on the list in accordance with 205 CMR 152.03 upon referral by the commission or a gaming licensee. The IEB may investigate any individual on its own initiative.

(2) If, upon completion of an investigation, the IEB determines that an individual meets one or more criterion contained in 205 CMR 152.03 and should be placed on the exclusion list, the IEB shall prepare a preliminary order that identifies the individual and sets forth a factual basis as to why the IEB believes the individual meets one or more criterion for inclusion on the list in accordance with 205 CMR 152.03.

(3) The IEB shall serve the preliminary order prepared in accordance with 205 CMR 152.04(2) upon the named individual advising them that it intends to place the individual's name on the exclusion list. The preliminary order shall serve to notify the individual that placement of their name on the exclusion list will result in their prohibition from being present in a gaming establishment and shall offer them an opportunity to request a hearing before a hearing officer to determine whether the individual meets one or more criterion for inclusion on the list in accordance with 205 CMR 152.03. The preliminary order shall be sent by either first class mail to the individual's last ascertainable address, email, publication in a daily newspaper of general circulation for one week, or via any practicable means reasonably calculated to provide the individual with actual notice. The individual shall have 30 days from the date of the notice to request a hearing, except for notice provided by publication in a newspaper in which case the individual shall have 60 days from the last publication. Alternatively, the IEB may provide an individual with in hand service of the preliminary order in which case the individual shall have ten days from the date of service to request a hearing.

(4) If a request for a hearing is received from the individual, a hearing shall be scheduled before a hearing officer and notice of such, including the date, time, and issue to be presented, shall be sent to the individual. The hearing shall be conducted in accordance with 205 CMR 101.03: *Review of Orders Issued by the Bureau or the Racing Division*. If the hearing officer finds that the individual meets one or more criterion for inclusion on the list in accordance with 205 CMR 152.03 the individual's name shall be placed on the exclusion list. If the hearing officer finds that the individual does not meet any criterion for inclusion on the list, the individual's name shall not be placed on the list and the matter closed.

(5) If no request for a hearing is received within the applicable timeline provided in 205 CMR 152.04(3), the individual's name shall be placed on the exclusion list.

152.05: Notice and Proceedings Before the Commission

(1) Whenever an individual's name is placed on the list of excluded persons in accordance with 205 CMR 152.04, the IEB shall promptly serve written notice upon that individual by personal service, registered or certified mail return receipt requested to the last ascertainable address or by publication in a daily newspaper of general circulation for one week. The notice shall contain a description of the cause for the exclusion, notice that the individual is prohibited from being present at and gambling in a gaming establishment, and an explanation of the hearing process and manner in which the individual may request a hearing in accordance with 205 CMR 152.05(2).

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- (2) (a) Within 30 days of receipt of service of notice by mail or 60 days after the last publication under 205 CMR 152.05(1), an individual placed on the list of excluded persons may request an adjudicatory hearing before the commission under M.G.L. c. 30A and show cause as to why the individual should be removed from the list of excluded persons. Such request shall be made by the individual in writing. Failure to demand a hearing within the time allotted in 205 CMR 152.05(2)(a) shall preclude the individual from having an administrative hearing, but shall not affect the individual's right to petition for judicial review.
  - (b) Upon receipt of a demand for hearing, the commission shall set a time and place for the hearing. This hearing shall be held not later than 30 days after receipt of the demand for the hearing, unless the time of the hearing is changed by agreement of the commission and the individual demanding the hearing. The hearing shall be conducted in accordance with 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*. Where applicable, the administrative record of the hearing conducted in accordance with 205 CMR 152.04(4) shall be made part of the hearing record.
  - (c) If upon completion of the hearing the commission determines that the individual was wrongfully placed on the list of excluded persons, the commission shall remove the individual's name from the list of excluded persons and notify all gaming licensees.
  - (d) A person aggrieved by a final decision of the commission in an adjudicatory proceeding under 205 CMR 152.05 may petition for judicial review under M.G.L. c. 30A, § 14.
- (3) Upon receipt of notice from a district court that an individual has been prohibited from gaming in gaming establishments in accordance with M.G.L. c. 23K, § 45(i) the commission shall place the name of an individual on the excluded list.

152.06: Information Contained on List

The following information and data, where available, shall be provided for each excluded individual:

- (1) The full name and all aliases the individual is believed to have used;
- (2) A description of the individual's physical appearance, including height, weight, type of build, color of hair and eyes and any other physical characteristics which may assist in the identification of the individual;
- (3) The individual's date of birth;
- (4) The effective date of the order mandating the exclusion of the individual;
- (5) A photograph, if obtainable, and the date thereof; and
- (6) Such other information deemed necessary by the commission for the enforcement of 205 CMR 152.00.

152.07: Duty of Gaming Licensee

- (1) Upon identification, a gaming licensee shall exclude or eject from its gaming establishment any individual who has been placed on the list in accordance with 205 CMR 152.00.
- (2) If an excluded individual enters, attempts to enter, or is in a gaming establishment and is recognized by the gaming licensee, the gaming licensee shall immediately notify the IEB.
- (3) It shall be the continuing duty of a gaming licensee to inform the commission in writing of the names of individuals it believes are appropriate for placement on the exclusion list.
- (4) A gaming licensee shall submit a written policy for compliance with the exclusion list program for approval by the executive director. The executive director shall review the plan for compliance with 205 CMR 152.00. If approved, notice shall be provided to the commission and the plan shall be implemented and followed by the gaming licensee. The plan for compliance with the exclusion list program shall include at a minimum procedures to:

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- (a) Prevent an individual on the exclusion list from entering the gaming establishment;
- (b) Identify and eject individuals on the list from the gaming establishment if they are able to enter;
- (c) Remove individuals on the exclusion list from marketing lists and refrain from sending or transmitting to them any advertisement, promotion, or other direct marketing mailing from the gaming establishment more than 30 days after receiving notice from commission that the individual has been placed on the exclusion list;
- (d) Prevent an individual on the exclusion list from having access to credit, cashless wagering program access, or from receiving complimentary services, check-cashing services, junket participation and other benefits from the gaming establishment;
- (e) Train employees relative to the exclusion list and the licensee's program.

(5) The commission may revoke, limit, condition, suspend or fine a gaming licensee if it knowingly or recklessly fails to exclude or eject from its gaming establishment any individual placed by the commission on the list of excluded persons.

152.08: Petition to Remove Name from Exclusion List

(1) An individual who has been placed on the list in accordance with 205 CMR 152.00 may petition the commission in writing to request that their name be removed from the list. Except in extraordinary circumstances, such a petition may not be filed sooner than five years from the date an individual's name is initially placed on the list.

(2) The individual shall state with particularity in the petition the reason why the individual believes they no longer satisfy one or more criterion for inclusion on the list in accordance with 205 CMR 152.03.

(3) The commission shall schedule a hearing on any properly filed petitions and provide written notice to the petitioner identifying the time and place of the hearing. Such a hearing shall be conducted in accordance with 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.

(4) An individual who was placed on the excluded list by virtue of an order of the district court in accordance with M.G.L. c. 23K, § 45(i) may not petition for removal in accordance with 205 CMR 152.08.

152.09: Forfeiture of Winnings

(1) An individual who is on the excluded list shall not collect any winnings or recover losses arising as a result of prohibited gaming in a gaming establishment and such winnings shall be forfeited to the commission and deposited into the Gaming Revenue Fund pursuant to M.G.L. c. 23K, §§ 45(j) and 59.

(2) Upon verification that an individual who is present in its gaming establishment is on the excluded list, a gaming licensee shall take steps to:

- (a) Remove the individual from the gaming establishment;
- (b) Where possible, lawfully cause the individual to forfeit any winnings or things of value obtained from engaging in a gaming transaction including:
  - 1. gaming chips, gaming plaques, slot machine tokens and vouchers, and gaming vouchers;
  - 2. any electronic gaming device or slot machine jackpot won by the individual;
  - 3. any cashable credits remaining on an electronic gaming device or slot machine credit meter played by the individual.
- (c) Deliver any winnings or things of value obtained from the individual to the cashiers' cage, where they shall be converted into cash, and the cash value transmitted to the commission for deposit in the Gaming Revenue Fund.

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(d) In conjunction with a forfeiture of winnings or things of value, a gaming licensee shall prepare a form known as a Notice of Forfeiture, which shall include, without limitation, the name of the individual on the list and the manner in which the individual's identity was established, the total value of the forfeited winnings or things of value, the date, time, and a description of the incident leading to the forfeiture. The Notice of Forfeiture shall be signed and attested to by the prohibited individual, unless the individual refuses to sign or is unknown, the employee delivering the winnings or things of value to the cashiers' cage, and the cashiers' cage employee who received the winnings or things of value.

(3) If an individual wishes to contest the forfeiture of winnings or things of value, the individual may request a hearing in writing with the commission within 15 days of the date of the forfeiture. The request shall identify the reason why the winnings or things of value should not be forfeited. The commission shall schedule a hearing on such request and provide notice to the petitioner.

#### REGULATORY AUTHORITY

205 CMR 152.00: M.G.L. c. 23K, §§ 4(28), 4(37), and 45.