

205 CMR 102.00: CONSTRUCTION AND APPLICATION

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102.01: Authority

205 CMR 101.00 through 131.00 are issued pursuant to M.G.L. c. 23K, §§ 4(37) and 5, unless otherwise specified.

102.02: Definitions

As used in 205 CMR 101.00 through 131.00, the following words and phrases shall have the following meaning, unless the context clearly requires otherwise:

Affiliate as defined in M.G.L. c. 23K, § 2.

Applicant as defined in M.G.L. c. 23K, § 2.

Application as defined in M.G.L. c. 23K, § 2.

Bureau as defined in M.G.L. c. 23K, § 2.

Bureau Decision as described in 205 CMR 115.03: *Phase 1 Investigation and Recommendations by the Bureau* and 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.

Bureau Hearing as described in 205 CMR 101.02: *Hearings Before the Bureau*.

Business as defined in M.G.L. c. 23K, § 2.

Business Entity Disclosure Form (BED) as described in 205 CMR 111.02: *Business Entity Disclosure Form Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies*.

Candidate means a person seeking nomination or election to any local, county, or state public office in Massachusetts, but shall not include a person seeking nomination or election to any federal public office.

Capital Expenditure as defined in M.G.L. c. 23K, § 2.

Cashless Wagering System as defined in M.G.L. c. 23K, § 2.

Category 1 License as defined in M.G.L. c. 23K, § 2.

Category 2 License as defined in M.G.L. c. 23K, § 2.

Chair as defined in M.G.L. c. 23K, § 2.

Change of Control means a transfer of interest which directly or indirectly results in a person obtaining greater than 50% ownership interest in a gaming licensee or which results in, or is likely to result in, significant change to the management or operation of a gaming licensee.

Cheat as defined in M.G.L. c. 23K, § 2.

Cheating and Swindling Device or Cheating and Swindling Game as defined in M.G.L. c. 23K, § 2.

102.02: continued

Chief Executive Officer means:

- (a) As to gaming licensees or applicants the natural person who is ultimately responsible for the daily conduct of the gaming establishment business of one or more affiliated gaming licensees or applicants, regardless of the form of business association of the gaming licensee or applicant or the particular title which that person or any other person holds; and
- (b) As to gaming vendor licensees or applicants, the natural person who bears ultimate responsibility for the organization and business activities of the enterprise.

Chief Financial and Accounting Officer means the chief financial and accounting officer of the commission.

Close Associate as defined in M.G.L. c. 23K, § 2.

Commission as defined in M.G.L. c. 23K, § 2.

Commissioner as defined in M.G.L. c. 23K, § 2.

Community Contribution means a political contribution or contribution in kind made by an applicant for a gaming license to a municipality or a municipal employee as allowed by M.G.L. c. 23K, § 47.

Competitively-Sensitive Information means all records which are, and those portions of records which contain, confidential personal or business information which if made publicly available would have a reasonable likelihood of placing a person at a competitive disadvantage, or be detrimental to or otherwise cause substantial damage or irreparable harm, such as identity theft, industrial espionage, unfair competition, or similar adverse consequences, to the person. Competitively-sensitive information includes, without limitation, social security numbers, passport numbers and other unique identifying information, research and development information, financial records, banking or lending records, mortgage and credit history, lists of customers or business contacts, pricing information, marketing information, processes and methods, and any other unique information, methodology, technique, system, or feature which is restricted by appropriate security measures to the individual or person or to top management, counsel, research and development staff, and expert consultants only in the ordinary course.

Complimentary Service or Item as defined in M.G.L. c. 23K, § 2.

Conservator as defined in M.G.L. c. 23K, § 2.

Contractor Investigator as described in 205 CMR 105.10: *Authority to Retain and Utilize Contractor Investigators*.

Contribution means a payment, transfer or pledge of money or a thing of value to or for the benefit of a candidate or political organization.

Credit Card as defined in M.G.L. c. 23K, § 2.

Credit Instrument as defined in M.G.L. c. 23K, § 2.

Dependent Person means a person who is:

- (a) An employee or co-employee of a prohibited person;
- (b) An employee or co-employee of a person affiliated with a prohibited person;
- (c) An enterprise or firm, or an officer, director, partner, owner or principal employee of an enterprise or firm, that is a party to any contract with, or is bidding for or seeking to enter any contract with, or regularly represents or provides services to, a prohibited person; or
- (d) A child residing with a prohibited person or who is claimed as a dependent by a prohibited person for Federal tax reporting purposes.

102.02: continued

Deputy Director means the deputy director of the bureau.

Director of Gaming Enforcement means the assistant attorney general designated by the attorney general as the director of gaming enforcement pursuant to M.G.L. c. 12, § 11M(b).

Director of Security means an employee of a gaming establishment in charge of and with overall supervisory responsibility for security of the gaming establishment.

Director of Surveillance means an employee of a gaming establishment in charge of and with overall supervisory responsibility for, surveillance at the gaming establishment.

Division as defined in M.G.L. c. 23K, § 2.

Executive Director as defined in M.G.L. c. 23K, § 2.

Financial Stability as described in 205 CMR 117.00: *Phase 1 Determination of Financial Stability*.

Gambling as defined in M.G.L. c. 23K, § 2.

Game as defined in M.G.L. c. 23K, § 2.

Gaming as defined in M.G.L. c. 23K, § 2.

Gaming Area as defined in M.G.L. c. 23K, § 2.

Gaming Device or Gaming Equipment as defined in M.G.L. c. 23K, § 2.

Gaming Employee as defined in M.G.L. c. 23K, § 2.

Gaming Enforcement Unit means the gaming enforcement unit established by the colonel of state police pursuant to M.G.L. c. 22C, § 70.

Gaming Establishment as defined in M.G.L. c. 23K, § 2.

Gaming License as defined in M.G.L. c. 23K, § 2.

Gaming Licensee as defined in M.G.L. c. 23K, § 2.

Gaming Position as defined in M.G.L. c. 23K, § 2.

Gaming Service Employee as defined in M.G.L. c. 23K, § 2.

Gaming Vendor as defined in M.G.L. c. 23K, § 2.

Gaming Vendor License as defined in M.G.L. c. 23K, § 2.

General Counsel means the person designated by the commission as its general counsel or acting general counsel.

102.02: continued

Governing Body as defined in M.G.L. c. 23K, § 2.

Gross Revenue or Gross Gaming Revenue as defined in M.G.L. c. 23K, § 2.

Holding Company as defined in M.G.L. c. 23K, § 2.

Host Community as defined in M.G.L. c. 23K, § 2.

Impacted Live Entertainment Venue as defined in M.G.L. c. 23K, § 2.

Institutional Investor as defined in M.G.L. c. 23K, § 2.

Intermediary Company as defined in M.G.L. c. 23K, § 2.

Investigatory Material means any document, record, transcript, complaint, evidentiary material of any nature, correspondence, memoranda, report, work product, or other information concerning any examination, any investigation (whether formal or informal), or any related litigation, which pertains to or may disclose:

- (a) the possible violation by any person of any provision of any statute, rule, or regulation administered by the commission or the bureau, by any other federal, state, local or foreign governmental authority, by any professional association, or by any securities industry self-regulatory organization as well as all written communications from, or to, any person complaining of or otherwise furnishing information with respect to such possible violations;
- (b) information relating to an ongoing investigation that could potentially alert subjects to the activities of investigative officials;
- (c) confidential investigative techniques the disclosure of which would prejudice future law enforcement efforts;
- (d) any details in witness statements, which if released create a grave risk of directly or indirectly identifying a private citizen who volunteers as a witness; and
- (e) the background of any person the disclosure of which would constitute an unwarranted invasion of personal privacy.

Junket as defined in M.G.L. c. 23K, § 2.

Junket Enterprise as defined in M.G.L. c. 23K, § 2.

Junket Representative as defined in M.G.L. c. 23K, § 2.

Key Gaming Employee as defined in M.G.L. c. 23K, § 2.

License as defined in M.G.L. c. 23K, § 2.

List of Excluded Persons as defined in M.G.L. c. 23K, § 2.

Lottery as defined in M.G.L. c. 23K, § 2.

Major Policymaking Position as defined in M.G.L. c. 23K, § 2.

Massachusetts Supplement Form (PHD-MA-SUPP) as described in 205 CMR 111.04: *Massachusetts Supplemental Form*.

MEPA means the Massachusetts Environmental Policy Act.

Minority Business Enterprise (MBE) means a minority-owned business that has been certified by either the Massachusetts Supplier Diversity Office within the Operational Services Division, the Greater New England Minority Supplier Development Council, or both.

Money means cash or instruments that are convertible to cash in any negotiable currency.

102.02: continued

Multi-jurisdictional Personal History Disclosure Form (PHD-MA) as described in 205 CMR 111.03: *Multi-jurisdictional Personal History Form*.

Non-gaming Vendor as defined in M.G.L. c. 23K, § 2.

Operation Certificate as defined in M.G.L. c. 23K, § 2.

Person as defined in M.G.L. c. 23K, § 2.

Political Contribution means a contribution as defined in M.G.L. c. 55, § 1, except for a community contribution as defined in 205 CMR 102.02.

Political Organization means any committee of any political party in the Commonwealth of Massachusetts, as structured and defined in accordance with M.G.L. c. 23K, §§ 46 and 47, or any group, committee, or association organized in support of such political party or any candidate. Political Organization shall not include a national party committee or the committee of a federal candidate for the United States Senate or House of Representatives, unless such a committee contributes to a state candidate from its general receipts.

Prohibited Person means any officer, director, key gaming employee, qualifier or principal employee of an applicant for a gaming license or of any holding, intermediary or subsidiary company thereof.

Promotional Gaming Credit as defined in M.G.L. c. 23K, § 2.

Proprietary Information means all records which are, and those portions of records which contain personal or business information which, owing to its confidential nature, is in the ordinary course subjected to strict measures to preserve its confidentiality, including confidentiality agreements, non-competition agreements, encryption and password protection for electronic information, restriction of access to those with a need-to-know, and other policies, procedures, security measures or markings designed to protect the secrecy of information and to keep the information strictly confidential.

Publicly Traded Corporation means a person, other than an individual, which:

- (a) has a class or series of securities registered under the Securities and Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a *et seq.*);
- (b) is a registered management company under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 *et seq.*); or
- (c) is subject to the reporting obligations imposed by section 15(d) of the Securities and Exchange Act of 1934 by reason of having filed a registration statement which has become effective under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a *et seq.*) or by reason of an indenture entered into pursuant to an exemption from registration under the Securities Act of 1933.

Qualification or Qualified as defined in M.G.L. c. 23K, § 2.

Qualifier as defined as a person whose qualification must be established in evaluating the suitability of an applicant in accordance with the standards and criteria set forth in M.G.L. c. 23K, § 12(a), and 205 CMR 115.01: *Phase 1 Determination Standards* and 205 CMR 116.02: *Persons Required to be Qualified*.

Restricted Area means a part of the gaming establishment that is not open to the public as determined by the commission.

Rewards Card as defined in M.G.L. c. 23K, § 2.

RFA-P1 or RFA-1 Process as described in 205 CMR 110.00: *Issuance of Request for Category 1 and Category 2 License Applications*.

102.02: continued

RFA-2 as described in 205 CMR 110.00: *Issuance of Request for Category 1 and Category 2 License Applications.*

Secretary of EOEEA means the Secretary of the Executive Office of Energy and Environmental Affairs.

Slot Machine as defined in M.G.L. c. 23K, § 2.

Solicitation means a request, suggestion or recommendation made to a particular person, by any means of communication, that the person make a contribution; provided, however, that a statement to a person expressing support for or opposition to the election of any candidate, or support for or opposition to any political organization, which is made without reference to a contribution or a statement intended for and given public dissemination encouraging all persons to make contributions to any candidate or political organization, is not a solicitation.

State Police as defined in M.G.L. c. 23K, § 2.

Subsidiary as defined in M.G.L. c. 23K, § 2.

Surrounding Communities as defined in M.G.L. c. 23K, § 2.

Table Game as defined in M.G.L. c. 23K, § 2.

Thing of Value means:

- (a) An item of real, personal or intellectual property that may be converted into money by selling it or pledging it as security for a loan or other advance of funds;
- (b) A loan of assets, property, personnel or facilities for use by a candidate or political organization, such as, without limitation, office space, automobiles, telephones or telephone services, or the time and effort of employees or consultants who are paid by the person making the contribution;
- (c) A personal or professional service that is not incidental to the expression of a person's ideological beliefs or membership in a political organization, and that has a value to the candidate or political organization;
- (d) A non-reimbursed expense that is not incidental to the expression of a person's ideological beliefs or membership in a political organization, and is of the type normally incurred by the candidate or political organization; or
- (e) A thing, service, expense or other item of value similar to that identified in 205 CMR 102.02, which may be identified by the commission in an advisory ruling or other appropriate proceeding.

Trade Secret means all records which are, and those portions of records which contain, anything tangible or intangible or electronically kept or stored, which constitutes, represents, evidences or records secret scientific, technical, merchandising, production, manufacturing, or management information, design, process, procedure, formula, invention, method, or improvement which its owner considers to be and treats as confidential and which is not available to the public by any other source. Trade Secret shall include anything which is a trade secret pursuant to M.G.L. c. 266, § 30(4).

Transfer as defined in M.G.L. c. 23K, § 2.

Veteran Business Enterprise (VBE) means a "Veteran-owned small business concern" as defined by 38 CFR 74.1, the status of which can be verified by Vendor Information Pages on the U.S. Department of Veterans Affairs Office of Small & Disadvantaged Business Utilization website or by the Licensing Division of the Massachusetts Gaming Commission. Veteran Business Enterprise is inclusive of the service-disabled veteran-owned business as defined in 15 USC § 632. Additionally, VBE shall include any entity certified as a VBE, as defined by M.G.L. c. 7, § 58, by the Massachusetts Supplier Diversity Office within the Operational Services Division pursuant to regulations promulgated in accordance with M.G.L. c. 7, § 61(a).

102.02: continued

Notwithstanding the foregoing, for purposes of 205 CMR 135.02(8) and 205 CMR 139.04(3), effective upon the issuance of an operation certificate to a gaming licensee, for vendors associated with that licensee, VBE shall only include those entities certified as such by the Supplier Diversity Office, or verified with the U.S. Department of Veterans Affairs. (Note: vendors previously verified by the Licensing Division will continue to be recognized until the end of their existing contract.)

Vulnerable Populations means groups of people that studies have shown to be more susceptible to gambling problems than others, including people with a history of alcohol or other drug abuse, people with a history of mental health issues, low income patrons of gaming establishments, and older adults.

Wager as defined in M.G.L. c. 23K, § 2.

Women Business Enterprise (WBE) means a women-owned business that has been certified by either the Massachusetts Supplier Diversity Office within the Operational Services Division, the Women's Business Enterprise National Council (or its local affiliate, Center for Women & Enterprise), or both.

102.03: Construction and Amendments

(1) 205 CMR, shall be construed in accordance with generally accepted principles of statutory construction in the Commonwealth of Massachusetts, including those set forth in M.G.L. c. 23K.

(2) 205 CMR shall be liberally construed to permit the commission, the bureau, and their agents and employees to effectively carry out their respective statutory functions and to secure a just and expeditious determination of issues properly presented to the commission and the bureau.

(3) Nothing in 205 CMR shall be construed to conflict with any provision of M.G.L. c. 23K.

(4) Waivers and Variances.

(a) General. The commission may in its discretion waive or grant a variance from any provision or requirement contained in 205 CMR, not specifically required by law, where the commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

(b) Filings. All requests for waivers or variances shall be in writing, shall set forth the specific provision to which a waiver or variance is sought, and shall state the basis for the proposed waiver or variance.

(c) Determination. The commission may grant a waiver or variance, deny a waiver or variance, or grant a waiver or variance subject to such terms, conditions and limitations as the commission may determine. Any waiver request not acted on by the commission within 60 days of filing shall be deemed denied.

102.04: Words and Terms; Tense, Number and Gender

In construing 205 CMR 101.00 through 131.00, except when otherwise plainly declared or clearly apparent from the context: words in the present tense shall include the future tense; words in the masculine shall include the feminine and neuter genders; and words in the singular shall include the plural and the plural shall include the singular.

102.05: Computation of Time

(1) Unless specified otherwise, computation of any time period referred to in 205 CMR 101.00 through 131.00 shall begin with the first day following the act which initiates the running of the time period. The last day of the time period is to be included, unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until the end of the next business day. When the time period is seven days or less, intervening Saturdays, Sundays, or legal holidays shall be excluded in the computation. When a time period is greater than seven days each intervening calendar day shall be included in the computation.

(2) Whenever a provision of 205 CMR 101.00 through 131.00 requires that an act or event occur on a specified day or date, and such day or date falls upon a Saturday or Sunday or legal holiday, such provision shall be construed to refer to the next business day immediately following such day or date.

102.06: Matters Not Provided For

In recognition of the inherent difficulty of drafting functional regulations that contemplate every situation that may arise in the regulation of gaming in the Commonwealth, 205 CMR 102.06 provides the Commission, the IEB, and Commission staff, with reasonable discretion to ensure that all issues that may arise in the enforcement of 205 CMR may be appropriately addressed. Matters not specifically provided for in 205 CMR regarding the licensing of a gaming establishment, individual, or vendor, or the operation of a gaming establishment, shall be determined by the Commission or, where applicable, IEB or Commission staff in a manner consistent with the principles set forth in M.G.L. c. 23K, § 1. If this provision is used, the Commission, IEB, or Commission staff shall make a written determination setting forth the rationale therefor. Such determination shall be presented to the Commission.

102.07: Legal Challenges

No person or local governmental entity may challenge or seek to enjoin commission action based solely on a claim that an applicant failed to adhere to one or more provisions of 205 CMR 102.00 through 128.00 or that the commission did not require the applicant to do so; provided further that no person or local governmental entity may challenge any action taken by any party before the promulgation of 205 CMR 118.00 through 131.00 based on a failure to comply with a provision of 205 CMR 118.00 through 131.00 so long as such action complied with the provisions of M.G.L. c. 23K.

REGULATORY AUTHORITY

205 CMR 102.00: M.G.L. c. 12, § 11M; M.G.L. c. 22C, § 70; M.G.L. c. 23K, §§ 2, 4(37), 5, 9(b), 12(a), 21(a)(7), 46 and 47; M.G.L. c. 55, §§ 1 and 7A; and M.G.L. c. 266, § 30.