

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 and whose names and year of birth shall be posted on the commission's website (<http://massgaming.com/>).
- (2) The Bureau shall promptly notify each gaming licensee of the placement of an individual on the list. The notification to each gaming licensee shall include:
 - (a) The full name and all aliases the individual is believed to have used;
 - (b) 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;
 - (c) The individual's date of birth;
 - (d) The effective date of the order mandating the exclusion of the individual;
 - (e) A photograph, if obtainable, and the date thereof; and
 - (f) Such other information deemed necessary by the commission for the enforcement of 205 CMR 152.00.

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) the individual's presence in a gaming establishment presents the potential of injurious threat to the interests of the Commonwealth in a gaming establishment.
- (2) In determining whether there exists the potential of injurious threat to the interests of the Commonwealth in a gaming establishment in accordance with 205 CMR 152.03(1)(e), the commission may consider, without limitation, the following:
 - (a) Whether the individual is a known cheat;

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- (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's egregious or repeated conduct poses a clear threat to the safety of the patrons, employees or others on or near the premises of a gaming establishment;
- (d) Whether the individual has a documented history of conduct involving the undue disruption of gaming operations in any jurisdiction; and
- (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 Bureau 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, the Gaming Enforcement Division of the Office of the Attorney General, or a gaming licensee. The Bureau may investigate any individual on its own initiative.

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

(3) The Bureau shall serve the 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 order shall also 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 review the Bureau's order. The order shall be sent by registered or certified mail return receipt requested or by publication in a daily newspaper of general circulation for one week. The individual shall have 30 days from the date of the service of the order 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 Bureau may provide an individual with in hand service of 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 in accordance with 205 CMR 101.00 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 101.02: *Review of Orders or Civil Administrative Penalties /Forfeitures Issued by the Bureau, Commission Staff, or the Racing Division*.

(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.

(6) In accordance with 205 CMR 101.00, a decision of the hearing officer may be appealed to the commission. A request for appeal to the commission shall not operate as a stay of the decision of the hearing officer.

152.05: Placement on the Exclusion List Pursuant to M.G.L. c. 23K, § 45(i)

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: Duty of Gaming Licensee

- (1) Each gaming licensee shall ensure that it accesses and reviews the list on a regular basis and that the list is made available to employees of the gaming licensee in a manner designed to assist them in identifying and inhibiting excluded individuals from entering the gaming establishment.
- (2) Upon identification, a gaming licensee shall immediately notify the Massachusetts State Police Gaming Enforcement Unit, the Surveillance Department and the Security Department of any individual who is present in the gaming establishment and is an individual who has been placed on the list in accordance with 205 CMR 152.04.
- (3) The Surveillance Department shall track the individual who has been placed on the list while that individual is present in the gaming establishment and the Security Department shall coordinate with the Massachusetts State Police Gaming Enforcement Unit regarding removing the individual from the gaming establishment.
- (4) It shall be the continuing duty of a gaming licensee to refer to the Bureau, in writing, individuals whom it wishes to be placed on the exclusion list and to promptly notify the Bureau in writing of no trespass orders which it issues.
- (5) 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:
 - (a) Prevent an individual on the exclusion list from entering the gaming establishment;
 - (b) Identify and coordinate with the Massachusetts State Police Gaming Enforcement Unit to 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; and
 - (e) Train employees relative to the exclusion list and the licensee's program.
- (6) The commission may revoke, limit, condition, suspend or fine a gaming licensee if it knowingly or recklessly fails to exclude or identify or coordinate with the Massachusetts State Police Gaming Enforcement Unit to eject from its gaming establishment any individual placed by the commission on the list of excluded persons.

152.07: 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 Bureau 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. Following an investigation, the Bureau shall prepare a written determination whether to remove the individual from the list and setting forth a factual basis as to why the individual does or does not continue to satisfy one or more of the criterion for inclusion on the list.
- (3) The individual shall have 30 days from the date of service of the Bureau's determination to request a hearing before the hearing officer in accordance with 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*. 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.

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(4) In accordance with 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*, a decision of a hearing officer may be appealed to the commission. Removal of an individual's name from the list shall not occur until all agency appeals have been exhausted or the time for such appeals has run.

(5) 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 152.07.

152.08: 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) In accordance with 205 CMR 152.06(2) and 205 CMR 152.06(3), coordinate with the Massachusetts State Police Gaming Enforcement Unit to remove the individual from the gaming establishment; and

(b) Notify the Bureau who shall lawfully confiscate, or cause to be refused to pay 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; and
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, and transmit the cash value to the commission for deposit in the Gaming Revenue Fund.

(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. A hearing shall be conducted in accordance with 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings* to determine whether the subject funds were properly forfeited in accordance with 205 CMR 152.08.

152.09: Sanctions against a Gaming Licensee

(1) Grounds for Action. A gaming license may be conditioned, suspended, or revoked, and/or the gaming licensee assessed a civil administrative penalty if the Bureau finds that a gaming licensee has:

(a) knowingly or recklessly fails to exclude or eject from its premises any individual placed on the list of excluded persons. Provided, it shall not be deemed a knowing or reckless failure if an individual on the exclusion list shielded their identity or otherwise attempted to avoid identification while present at a gaming establishment; or

(b) failed to abide by any provision of 205 CMR 152.00, M.G.L. c. 23K, § 45, the gaming licensee's approved written policy for compliance with the exclusion list program pursuant to 205 CMR 152.06(5), or any law related to the exclusion of patrons in a gaming establishment.

(2) Finding and Decision. If the Bureau finds that a gaming licensee has violated a provision of 205 CMR 152.09(1), it may issue a written notice of decision recommending that the commission suspend, revoke, and or condition said gaming licensee. Either in conjunction with or in *lieu* of such a recommendation, the Bureau may issue a written notice assessing a civil administrative penalty upon said licensee. Such notices shall be provided in writing and contain a factual basis and the reasoning in support the decision including citation to the applicable statute(s) or regulation(s) that supports the decision.

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(3) Civil Administrative Penalties. The Bureau may assess a civil administrative penalty on a gaming licensee in accordance with M.G.L. c. 23K, § 36 for a violation of 205 CMR 152.09(1).

(4) Review of Decision. A recommendation made by the Bureau to the commission that a gaming license be conditioned, suspended or revoked shall proceed directly to the commission for review in accordance with 205 CMR 101.01: *Hearings Before the Commission*. If the gaming licensee is aggrieved by a decision made by the Bureau to assess a civil administrative penalty in accordance with 205 CMR 152.09(2) and (3), it may request review of said decision in accordance with 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.

REGULATORY AUTHORITY

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