Massachusetts Gaming Commission

MEMORANDUM

Date: 1/30/14

To: The Honorable Deval Patrick; the Honorable Therese Murray; The Honorable Robert DeLeo

From: Stephen P. Crosby, Chairman, Massachusetts Gaming Commission

Re: $600 Withholding and Reporting Requirement

I. THE ISSUE

The enabling Legislation for expanded gaming in Massachusetts, Chapter 194 of the Acts of 2011, includes sections that establish standards for withholding Massachusetts income tax from gambling winnings.

Although the Department of Revenue has not issued regulations concerning these sections, nor has the Commission or any other official body discussed the intention of these sections, it has been widely believed and accepted in the gaming industry (including pari-mutuel gambling, slots and table games in casino gambling, and the Lottery) that these sections require gaming operators to report and withhold Massachusetts state income tax on any gambling winnings of $600 or greater. There is no offset in Massachusetts law for gambling losses, or, at least in most cases, the price of the wager, to the withholding tax assessment.

The relevant sections are as follows:

> SECTION 27. Section 5A of chapter 62 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word "commonwealth", in line 24, the following words:-, including gaming winnings acquired at or through a gaming establishment licensed under chapter 23k.
>
> SECTION 28. The seventh paragraph of section 2 of chapter 62B of the General Laws, as so appearing, is hereby amended by striking out the first 2 sentences and inserting in place thereof the following 2 sentences:- Every person, including the United States, the commonwealth or any other state, or any political subdivision or instrumentality of the foregoing, making any payment of lottery or wagering winnings which are subject to tax under chapter 62 and which are subject withholding under section 3402 of the internal Revenue Code, without the

exception for slot machines, keno and bingo played at licensed casinos in subsections (q)(5) and (r) of said section 3402 of the Internal Revenue Code, shall deduct and withhold from such payment an amount equal to 5 per cent of such payment, except that such withholding for purposes of this chapter shall apply to payments of winnings of $600 or greater notwithstanding any contrary provision of the Internal Revenue Code. For the purposes of this chapter and chapter 62C, such payment of winnings shall be treated as if it were wages paid by an employer to an employee.

Many gaming operators have raised strong concerns that this requirement is non-standard in the industry, and will put Massachusetts gaming operators at a serious competitive disadvantage, and may even make expanded gaming in Massachusetts non-viable.

II. INDUSTRY NORMS

Federal law governing the reporting and withholding of gaming winnings on the federal level comes from two sources: the Internal Revenue Code ("IRC") and IRS regulations (26 CFR). The IRC provides the withholding rules while the CFR provides the reporting rules. The Federal Internal Revenue Service (IRS) standard on reporting and withholding on gambling winnings has been in place since 1973 and has the following principal terms, as they pertain to winnings in Massachusetts gaming:

- At slots machine winnings of $1200 or greater, the operator must report winnings on a form W2-G, while verifying the identity of the winner; in the event of a non-resident winner, withholding will be made on site, and a 1099 issued.
- Gaming operators are required to both report and withhold on winnings which are greater than $5,000 and which are won against odds greater than 300-1.
- Gaming operators are required to report with issuance of a W2-G any other gambling winnings of $600 or more, and which result from bets with greater than 300-1 odds. As a practical matter, this eliminates reporting or withholdings on table games, since virtually no table games have odds greater than 300-1. However, due to the multiple "exotic" bets in pari-mutuel gambling, the $600 threshold at 300-1 odds does generate significant transactions in pari-mutuel gambling.
- Importantly, when filing federal tax returns, the taxpayer may offset taxable winnings with gambling losses, so long as the losses can be documented.

The full Internal Revenue Code and regulations can be found in Attachment A.

III. WITHHOLDING AND REPORTING IN OTHER STATE JURISDICTIONS

There are 23 states which permit commercial casino gambling (non-tribal), in which the state law regulates the payment of the state withholding taxes. In at least 18 of those jurisdictions, the state withholding either mirrors the federal standard (16 states) or has no withholding requirements whatsoever. The remaining 5 jurisdictions have some

idiosyncratic features, but none have withholding or reporting standards as rigorous as those in the Massachusetts laws.

Furthermore, of the surrounding jurisdictions to Massachusetts—Maine, Rhode Island, Connecticut and New York—all use the federal standard for withholding.

A detailed description of the withholding requirements in other states is attached as Attachment B.

IV. PROBLEMS CREATED BY THE MASSACHUSETTS LAW

After considerable research and deliberation, the Gaming Commission has concluded that the concerns about this withholding standard raised by the horseracing and casino gambling industries have considerable merit. The particular problems are as follows:

1. Competitive disadvantage. Since one of the major objectives of the expanded gaming law is to repatriate gambling dollars presently spent by Massachusetts citizens in neighboring jurisdictions, our operators have been directed by the Legislature and the Gaming Commission to focus on this objective. Forcing Massachusetts operators to not only report winnings at the $600 threshold (rather than the federal standard of $1200) but also to actually collect withholding taxes, will dramatically disrupt the flow of gambling at slot machines (where frequently a player will go up and down by $600 within the same sitting.) Furthermore, calculating winnings in real-time at multi-player, multi-hand/play table games is virtually impossible. There is a strong commonsense argument to support the gaming operators' concerns that more sophisticated and well-to-do players, i.e. the most "profitable" players, for both the operator and the Commonwealth, will take their gambling to nearby out-of-state jurisdictions which don't have this reporting and withholding requirement.
2. Administrative and operational costs. According to various gaming operators, each time a slot machine win occurs at $1200 or more, and a staff person is dispatched to execute the $1200 IRS reporting, the transaction takes 15 minutes of the staff person's time. Lowering the threshold to $600, and adding the requirement of actually withholding the tax, will both increase the amount of administrative time at each transaction, and vastly increase the number of reportable/withholding transactions—all those winnings between $600 and $1200. This is an administrative and cost burden not borne by operators in any other jurisdiction in the country.

   Similarly, since the implementation of the $600 threshold in pari-mutuel gambling, there has been a 60% increase in taxable transactions from the prior year—an unwelcome administrative burden for already cash-strapped race tracks.

3. Revenue lost to the Commonwealth. The Gaming Commission's financial consultants, HLT Advisory, a consulting firm with extensive experience in the Hospitality and Gaming

> industries, estimates that the implementation of the $600 winnings threshold will likely have a negative effect on revenue paid to the Commonwealth. As stated in a January 13 memorandum to the Commission, HLT concluded, "as a result, while the 5% State tax withholding requirement at a $600 threshold was enacted with a view to capturing additional tax revenue to the State, it is very likely that such a move will result in a reduction of overall taxation revenue to the State. . . . . We estimate that the implementation of the withholding and reporting requirements under the Act will cost the State between $28.8M and $57.5M in lost taxation revenues."

In addition to the concerns raised by the industry and the Commission's gaming consultants, the Commission also believes that the Massachusetts withholding requirement is fundamentally inequitable in its failure to permit a casual gambler (the rules are different for professional gamblers, who may offset winnings against losses) from being unable to offset winnings with their losses. On a two-day trip to a casino for example, a gambler might lose $2,000 one day, and win $600 the next. The gambler will be required to pay income tax on the $600, despite actually being $1400 in the hole.

V. THE LOTTERY ANOMALY

It is possible that extending the $600 threshold to all gambling winnings was done by the Legislature in an attempt to create equity with the withholding threshold for the Lottery, which has been in place at $600 or more since 2004. The Lottery's situation is significantly different from pari-mutuel and casino gambling. The Lottery requires all of its winners of $600 or more to bring their ticket to the Lottery office for payment; and it doesn't really have an alternative payment system, since most small retailers that sell Lottery tickets would be unable and/or unwilling to make these payments. Furthermore, unlike the slots requirement, the Lottery gambler can continue to play—that is, to buy Lottery tickets. And the Lottery itself and its retailers have no functional competitive alternative, as most Lottery ticket buying is done on a convenience basis near peoples' home and work.

Most lotteries also use the federal threshold of $1200 or more for state withholding, although a few have a lower threshold. Only 2 use the $600 threshold—Iowa and Missouri. **Please see Attachment C for details of slots withholding requirements for Lottery winnings.**

VI. SOLUTIONS

The Commission's initial reaction to this issue when it came before us was to be reluctant to suggest a change, since raising the threshold seems to in some way be supporting an effort to avoid paying income taxes. We continue to have that concern, and will do everything within our authority to be sure that the income taxes are paid appropriately. Accordingly, we initially considered whether there was some kind of regulatory—or other— "fix" to this problem, which would not require Legislative action, and could mitigate the negative effects

while not eliminating its presumed legislative intent.

- Regulatory interpretation. The Commission does believe that it would be possible, in collaboration with the Department of Revenue, to clarify this law in a way that might preclude the application of withholding requirements to table games. It may also be appropriate to use interpretation of the key word "payment" in the statute to minimize the administrative imposition, and perhaps even to mitigate it's applicability to pari-mutuel gaming. However, we see no regulatory fix that fully addresses the concerns raised in the previous section, particularly the substantial imposition on slots play and tax equity.

- Technological solutions. In an attempt to promote taxpaying by maintaining the lower threshold, while alleviating the administrative burden and at least mitigating to some extent the negative competitive impact, the Commission explored with Mr. Steve Kastner (Executive Director for Product Compliance at International Gaming Technology (IGT), one of the leading designers and testers of gaming equipment) whether there could be a way to automate the reporting and withholding requirement, at least as far as it impacts slots games. However, although gaming designers would like to find an automated solution to sell to gaming operators for use even at the $1200 threshold, no such automated solution is plausible. Federal law requires in-person verification of a player with a government ID, and the implementation of the state law will require similar verification of the individual's identity and taxpayer ID. Further, the player needs to be given a W-2G on site and must actually pay the tax at the time of the transaction, both of which are impossible to automate.

  As a practical matter, there is no way to automate the withholding of state income tax, even in slot machine winnings.

VII. CONCLUSION

After considering all of the various issues, and alternative solutions, to challenges imposed by the state withholding requirement, the Commission has concluded that the best solution is to adopt the federal withholding standard, including and adding a reporting and/or withholding of the state income tax at the federal threshold.

VIII. PROPOSED LEGISLATIVE AMENDMENT

A proposed legislative amendment that will adopt the federal standard for pari-mutuel and casino gambling winnings is found in Attachment D.

ATTACHMENT A

The applicable section of the Internal Revenue Code is as follows:

IRC- 26 USC 3402(q) - Extension of withholding to certain gambling winnings

(1) General rule

Every person, including the Government of the United States, a State, or a political subdivision thereof, or any instrumentalities of the foregoing, making any payment of winnings which are subject to withholding shall deduct and withhold from such payment a tax in an amount equal to the product of the third lowest rate of tax applicable under section 1(c) and such payment.

(2) Exemption where tax otherwise withheld

In the case of any payment of winnings which are subject to withholding made to a nonresident alien individual or a foreign corporation, the tax imposed under paragraph (1) shall not apply to any such payment subject to tax under section 1441(a) (relating to withholding on nonresident aliens) or tax under section 1442(a) (relating to withholding on foreign corporations).

(3) Winnings which are subject to withholding

For purposes of this subsection, the term "winnings which are subject to withholding" means proceeds from a wager determined in accordance with the following:

(A) In general

Except as provided in subparagraphs (B) and (C), proceeds of more than $5,000 from a wagering transaction, if the amount of such proceeds is at least 300 times as large as the amount wagered.

(B) State-conducted lotteries

Proceeds of more than $5,000 from a wager placed in a lottery conducted by an agency of a State acting under authority of State law, but only if such wager is placed with the State agency conducting such lottery, or with its authorized employees or agents.

(C) Sweepstakes, wagering pools, certain parimutuel pools, jai alai, and lotteries

Proceeds of more than $5,000 from—

(i)a wager placed in a sweepstakes, wagering pool, or lottery (other than a wager described in subparagraph (B)), or

(ii)a wagering transaction in a parimutuel pool with respect to horse races, dog races, or jai alai if the amount of such proceeds is at least 300 times as large as the amount wagered.

(4) Rules for determining proceeds from a wager

For purposes of this subsection—

(A)proceeds from a wager shall be determined by reducing the amount received by the amount of the wager, and

(B)proceeds which are not money shall be taken into account at their fair market value.

(5) Exception for bingo, keno, and slot machines

The tax imposed under paragraph (1) shall not apply to winnings from a slot machine, keno, and bingo.

(6) Statement by recipient

Every person who is to receive a payment of winnings which are subject to withholding shall furnish the person making such payment a statement, made under the penalties of perjury, containing the name, address, and taxpayer identification number of the person receiving the payment and of each person entitled to any portion of such payment.

(7) Coordination with other sections

For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except section 7205) as relates to this chapter, payments to any person of winnings which are subject to withholding shall be treated as if they were wages paid by an employer to an employee.

The applicable section of the Code of Federal Regulations is as follows:

26 CFR 7.6041–1 - Return of information as to payments of winnings from bingo, keno, and slot machines.

(a) In general. On or after May 1, 1977, every person engaged in a trade or business and making a payment in the course of such trade or business of winnings (including winnings which are exempt from

withholding under section 3402(q)(5)) of $1,200 or more from a bingo game or slot machine play or of $1,500 or more from a keno game shall make an information return with respect to such payment.

(b) Special rules. For purposes of paragraph (a) of this section, in determining whether such winnings equal or exceed the $1,200 or $1,500 amount--

(1) In the case of a bingo game or slot machine play, the amount of winnings shall not be reduced by the amount wagered;

(2) In the case of a keno game, the amount of winnings from one game shall be reduced by the amount wagered in that one game;

(3) Winnings shall include the fair market value of a payment in any medium other than cash;

(4) All winnings by the winner from one bingo or keno game shall be aggregated; and

(5) Winnings and losses from any other wagering transaction by the winner shall not be taken into account.

(c) Prescribed form. The return required by paragraph (a) of this section shall be made on Form W–2G and shall be filed with the Internal Revenue Service Center serving the district in which is located the principal place of business of the person making the return on or before February 28 of the calendar year following the calendar year in which the payment of winnings is made. Each Form W–2G shall contain the following:

(1) Name, address, and employer identification number of the person making the payment;

(2) Name, address, and social security number of the winner;

(3) General description of two types of identification *(e.g.,* "driver's license", "social security card", or "voter registration card") furnished to the maker of the payment for verification of the winner's name, address, and social security number;

(4) Date and amount of the payment; and

(5) Type of wagering transaction.

In addition, in the case of a bingo or keno game, Form W–2G shall show any number, color, or other designation assigned to the game with respect to which the payment is made. In the case of a slot machine play, Form W–2G shall show the identification number of the slot machine.

ATTACHMENT B

State Withholding Taxes on Gaming Winnings

American Gaming Association

January 22, 2014

Federal / IRS	**Reportable Gambling Winnings** The Internal Revenue Service (IRS) requires certain gambling winnings to be reported on Form W-2G if: 1. The winnings (not reduced by the wager) are $1,200 or more from a bingo game or slot machine. 2. The winnings (reduced by the wager) are $1,500 or more from a Keno game. 3. The winnings (reduced by wager or buy-in) are more than $5,000 from a poker tournament. 4. The winnings (except winnings from bingo, slot machines, keno and poker tournaments) reduced, at the option of the payer, by the wager are: a. $600 or more, and b. At least 300 times the amount of the wager, or 5. The winnings are subject to federal income tax withholding (either regular gambling withholding or backup withholding).
Colorado	State withholding requirements are the same as federal thresholds
Delaware	State withholding requirements are the same as federal thresholds, with the exception of Keno. DE issues a W-2G for Keno winnings of $600 or more, not reduced by the wager.
Florida	State withholding requirements are the same as federal thresholds
Illinois	No state withholding requirements. Patron is given the option to request state withholding if he or she desires it after a gaming win that meets or exceeds federal thresholds.
Indiana	State withholding requirements are the same as federal thresholds
Iowa	State withholding requirements are the same as federal thresholds
Kansas	State withholding requirements are the same as federal thresholds
Louisiana	
Maine	State withholding requirements are the same as federal thresholds
Maryland	If winnings total more than $5,000, Maryland income taxes will automatically be withheld. If prize money totals between $500 and $5,000, one must file Maryland **Form 502D** and pay the tax on that income within 60 days from the time you receive the prize money. If win is less than $500, one doesn't have to file Form 502D, but they still must report the winnings and pay tax on it when they file their annual state income tax return.
Michigan	State withholding requirements are the same as federal thresholds
Mississippi	State withholding requirements are the same as federal thresholds. State withholding tax is 3%.
Missouri	State withholding requirements are the same as federal thresholds

Nevada	No state withholding requirements
New Jersey	State withholding requirements are the same as federal thresholds
New Mexico	State withholding requirements are the same as federal thresholds
New York	Winning is reportable if the prize reduced by the wager is $600 or more **and** the prize is at least 300 times the amount of the wager. Prizes over $600 but less than $5,000 with no tax ID # are subject to backup withholding. Finally, there is a mandatory withholding on all prizes over $5,000. Any winnings of $600 or more are subject to the following offsets (in order): - Child Support: 100% of the prize after mandatory withholding - Public Assistance: 50% of the prize after mandatory withholding - NY State Tax Arrears: 100% of the prize after mandatory withholding
Ohio	State withholding requirements are the same as federal thresholds (for casino gaming), and operator shall deduct and withhold OH income tax from person's winnings at a rate of four percent.
Oklahoma	State withholding requirements are the same as federal thresholds
Pennsylvania	
Rhode Island	State withholding requirements are the same as federal thresholds
South Dakota	State withholding requirements are the same as federal thresholds
West Virginia	

ATTACHMENT C

MEMORANDUM

To: Chairman Crosby
From: Artem Shtatnov
Date: January 27, 2014
RE: Lottery Withholdings

Question

At what thresholds do states automatically withhold taxes from distributions of lottery winnings?

Answer

All states are required to withhold 25% for the payment of federal taxes when winnings are above $5,000.[1] Many states withhold their state taxes starting at the same threshold. Several states also withhold past due taxes and other amounts, such as overdue child support, before distributing winnings.

The IRS requires disclosure via a W-2G form of all winnings that are both over $600 and at least 300 times the amount wagered but does not require any automatic withholding.[2] Several states use the lower $600 threshold for withholding state taxes. States with a withholding threshold different from the federal threshold are marked in bold below.

State	Deduction Threshold	Notes
Alabama		
Alaska		
Arizona		
Arkansas		
California		
Colorado	$5,000	http://www.coloradolottery.com/WINNER-SECTION/WINNERS/FINANCIAL-COUNSEL/
Connecticut	$5,000	Conn. Gen. Stat. § 12-829 http://www.ct.gov/drs/cwp/view.asp?A=1510&Q=493772
Delaware	$5,000	http://www.delottery.com/faqs.asp#7

[1] 26 U.S.C. § 3402.
[2] http://www.irs.gov/instructions/iw2g/ar02.html

DC	$5,000	http://dclottery.com/aboutus/faq.aspx#node7
Florida	$5,000	http://www.flalottery.com/faq.do
Georgia	$5,000	http://www.galottery.com/help/faqs#14 $2,500 threshold for unpaid liabilities
Hawaii		
Idaho	$5,000	http://www.idaholottery.com/theIdahoLottery/faqs.aspx
Illinois	**$1,000**	http://www.illinoislottery.com/en-us/Faq.html
Indiana		
Iowa	**$600**	http://www.ialottery.com/FAQs/FAQ-ClaimingPrizes.asp
Kansas	$5,000	http://www.kslottery.com/aboutus/faq.aspx
Kentucky		
Louisiana	$5,000	http://www.louisianalottery.com/index.cfm?md=faq&tmp=home&navID=115&cpID=0&cfmID=0&catID=7#Q27
Maine	$5,000	36 M.R.S.A. § 185 18-553 CMR Ch. 30, Pt. II, § 3.0 http://mainelottery.com/howdoi/index.html
Maryland	$5,000	http://mdlottery.com/winners/how-to-claim/
Massachusetts	**$600**	http://www.masslottery.com/winners/faqs.html M.G.L. c. 10 § 28A
Michigan	$5,000	https://www.michigan.gov/lottery/0,4603,7-110-29196_32094---,00.html
Minnesota	$5,000	http://www.mnlottery.com/claim_a_prize/claim_your_prize/ $600 threshold for unpaid liabilities
Mississippi		
Missouri	**$600**	http://www.molottery.com/whenyouwin/whenyouwin.shtm
Montana	$5,000	http://montanalottery.com/faq?print
Nebraska	$5,000	http://www.nelottery.com/claim.xsp
Nevada		
New Hampshire	$5,000	N.H. Rev. Stat. § 287-F:10 N.H. Code Admin. R. Sw 902.01 http://www.nhlottery.com/Winners/Prize-Claiming.aspx
New Jersey		N.J.S.A. 54A:6-11 N.J.A.C. 17:42-1.4 N.J.A.C. 17:43-1.4
New Mexico	$5,000	http://www.us-lotteries.com/New_Mexico/nm-lottery-info.asp
New York	$5,000	N.Y. Tax Law § 1613-c http://nylottery.ny.gov/wps/wcm/connect/nysl+content+library/nysl+internet+site/quick+help/legal/general+rules $600 threshold for unpaid liabilities
North Carolina		
North Dakota	$5,000	https://www.lottery.nd.gov/faqs/
Ohio	$5,000	R.C. § 5747.062
Oklahoma	$5,000	http://www.lottery.ok.gov/faq.asp

Oregon	$5,000	http://www.oregonlottery.org/About/FAQ/
Pennsylvania	$5,000	72 P.S. § 3761-312 http://www.palottery.state.pa.us/Games/How-to-Claim-Your-Prize-Games.aspx
Rhode Island	$5,000	R.I. Code R. 60-1-155:1 Mirrors federal: 26 CFR 31.3402(q)-1
South Carolina		
South Dakota	$5,000	https://lottery.sd.gov/look/claim/
Tennessee	$5,000	http://www.state.tn.us/revenue/faqs/indincome.shtml
Texas	$5,000	http://www.txlottery.org/export/sites/lottery/FAQ/#prize
Utah		
Vermont	$5,000	http://www.vtlottery.com/faq/winning.aspx 15 V.S.A. § 792 $500 threshold for child support
Virginia	$5,000	https://www.valottery.com/claimprize/ $100 threshold for back taxes or unpaid child support
Washington	$5,000	http://walottery.com/WinningNumbers/ClaimYourPrize/Default.aspx
West Virginia		
Wisconsin	**$1,999**	http://www.wilottery.com/faqs.aspx
Wyoming		

http://www.usamega.com/powerball-faq.htm

ATTACHMENT D

AN ACT RELATIVE TO THE PERSONAL TAXATION OF GAMING REVENUES

SECTION 1. The seventh paragraph of section 2 of chapter 62B of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- Every person, including the United States, the commonwealth or any other state, or any political subdivision or instrumentality of the foregoing, making any payment of lottery winnings which are subject to tax under chapter 62 and which are subject to withholding under section 3402 of the Internal Revenue Code, without the exception for keno and bingo in subsections (q)(5) and (r) of said section 3402 of the Internal Revenue Code, shall deduct and withhold from such payment an amount equal to 5 per cent of such payment, except that such withholding for purposes of this chapter shall apply to payments of winnings of $600 or greater notwithstanding any contrary provision of the Internal Revenue Code.

SECTION 2. Section 2 of chapter 62B, as so appearing, is hereby amended by inserting after the seventh paragraph the following paragraph:- Every gaming establishment licensed in accordance with chapter 23K and any racing meeting licensee licensed under chapter 128A making a payment of winnings of $1200 or more from slot machine play or pari-mutuel wagering shall file a form W-2G with respect to such payment. For purposes of this section, in determining whether such winnings equal or exceed the $1200 amount, the amount of winnings shall not be reduced by the amount wagered. Every gaming establishment licensed in accordance with chapter 23K and any racing meeting licensee licensed under chapter 128A making a payment of winnings which are subject to tax under chapter 62 and subject to withholding under section 3402 of the Internal Revenue Code shall deduct and withhold from such payment an amount equal to 5 per cent of such payment. Every person who is to receive a payment of winnings which are subject to withholding shall furnish the person making such payment a statement, made under the penalties of perjury, containing the name, address, and taxpayer identification number of the person receiving the payment and of each person entitled to any portion of such payment.

SECTION 3. Section 3 of chapter 62, as so appearing, is hereby amended by inserting after section (B)(a)(16) the following provision:- (17) losses from wagering transactions, that were incurred at a gaming establishment licensed in accordance with c.23K or at any racing meeting licensee licensed under chapter 128A, only to the extent of the gains from such transactions.

ATTACHMENT B

MICHAEL & CARROLL
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REPLY TO: POINT PLEASANT OFFICE ☐
ATLANTIC CITY OFFICE ☐

MEMORANDUM

TO: Stephen Crosby, Chairman

FROM: Michael & Carroll

SUBJECT: Gaming Service Employee Licensing Standards

DATE: March 27, 2014

You have asked us to review the present standards established under M.G.L. Chapter 23K ("Act"). You have further requested that we compare those standards to those utilized in other jurisdictions and then provide you with our suggestions about whether it might be useful to revise them in order to better achieve the aims of the Gaming law.

For the reasons that follow, we do recommend that the Commission suggest legislative changes that would provide the agency with greater discretion in determining the qualification of applicants for gaming service employee registration.[1]

1. Present Statutory Standards

Section 30(c) of the Act provides that:

[1] We have taken the information contained here from the applicable statutes and regulations. It is our experience that sometimes gaming agencies will promulgate informal policies beyond the words of the published rules. These policies are also often changed. We cannot speak definitively regarding every state's informal practice. We have tried to make this review as comprehensive as possible, but we note this caveat.

All other employees in a gaming establishment who are not considered to be gaming employees, key gaming employees or who have restricted access to an area of the gaming establishment or knowledge of security procedures, shall be required to register with the bureau as a gaming service employee and shall produce such information as the bureau may require to become registered under this chapter.

Thus, "gaming service employees" are those persons whose work at the gaming establishment is the least sensitive in terms of the integrity of operations. When determining the qualifications of these persons for permission to work in these positions, Section 16(b) of the Act, in part, requires the Commission to deny registration if the applicant:

. . . . . has been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury; provided, however, that for convictions which occurred before the 10-year period immediately preceding application for licensure, an applicant may demonstrate, and the commission shall consider, the applicant's rehabilitation and whether such conviction should not be an automatic disqualification under this section . . . . .

Accordingly, under this scheme, reading these two statutory provisions together, the Commission is now required to deny permission to persons who want to assume the least sensitive jobs in a casino if those persons have felony or other theft or fraud convictions within ten years of their application. This rule should be analyzed in the context of one of the principle, enunciated purposes of casino legalization in the Commonwealth. Section 1((5) of the Act establishes that:

the Commonwealth must provide for new employment opportunities in all sectors of the economy, particularly opportunities for the unemployed . . . .

It is our view that the mandatory disqualification of gaming service employees who have convictions of the type described in Section 16(b) works at cross -purposes with the Legislature's policy declaration at Section 1(5). We also believe that, given the nature of the non-gaming functions served by casino service employees, the restrictions of Section 16(b) are not necessary in order to maintain the appropriate degree of honesty and efficiency in in a casino.

We buttress these opinions with a survey of the standards now utilized by other jurisdictions. In the following section, we will explain those standards.

2. Survey of Other Jurisdictions

We do not offer the comparisons below as an exhaustive list. To do so would be unnecessary and duplicative. We have chosen what we consider the major gaming jurisdictions in the United States. Should you want additional jurisdictional comparisons, please let us know.

New Jersey

Historically, New Jersey licensed all facility employees, including those working solely within the hotel. Gradually, New Jersey lowered those standards. First, the state reduced the standard to registration only. Recently, all pre-approval requirements were dropped. At present, employees who work in non-gaming capacities (analogous to casino service employees in the Commonwealth) are not licensed or registered at all.

In fact, the present licensing system in New Jersey does not even require the licensing of casino employees (defined in New Jersey as those, generally who perform services in the gaming areas, including dealers, et al). This category of employees is only registered and their registration standards include rehabilitation without any mandatory disqualifications.

Nevada

Nevada registers only its "gaming employees" This category is defined to include those positions traditionally associated with direct involvement in gaming activity. It expressly excludes "barbacks or bartenders whose duties do not involve gaming activities, cocktail servers or other persons engaged exclusively in preparing or serving food or beverages." The standard for registration of these employees is discretionary. The Board is not required to deny any applicant. The regulations establish standards within which the Board "may" deny a registration. Approval of persons who work at the gaming facility but are not "gaming employees" are not handled by the Board. Some are required to obtain only Sheriff's work cards.

Ohio

Many years after the New Jersey initial experience, Ohio commenced its operations by licensing only key employees and casino gaming employees. In its definition of "casino gaming employee," the legislation expressly exempts, "an individual whose duties are related solely to non-gaming activities such as entertainment, hotel operations, maintenance, or preparing or serving food and beverage." This description would apply to Massachusetts' "gaming service

employees." Therefore, Ohio does not require pre-approval of "casino service employees", let alone require any mandatory disqualification for this category.

Pennsylvania

Pennsylvania issues permits to those persons considered non-gaming employees. Under the controlling legislation, this category includes, "bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages, clerical or secretarial personnel, parking attendants, janitorial, stage, sound and light technicians and other nongaming personnel as determined by the board." These employees would be considered "casino service employees" in Massachusetts.

Applicants for these permits are addressed under a discretionary standard otherwise applicable to all applicants. The governing regulation states in its introduction to the disqualification criteria that:

An application for issuance or renewal of a license, permit, certification or registration may be denied; or a license, permit, certification or registration may be suspended or revoked if...."

Accordingly, Pennsylvania provides for no automatic mandatory disapproval of persons who would, under Massachusetts parlance, be considered "casino service employees."

Mississippi

The Mississippi system requires that those considered "gaming employees' obtain licenses. For this category of employee, the law does contain mandatory disqualification for a wide variety of criminal conduct. However, the definition of "gaming employee" to whom these standards would apply states that, "gaming employee does not include bartenders, cocktail waitresses or other persons engaged in preparing or serving food or beverages unless acting in some other capacity." There are no pre-qualification requirements for those persons exempted from the "gaming employee" category. Thus, here, too, those who would be considered "gaming service employees" in Massachusetts would have no mandatory disqualifications applied to them.

Missouri

Missouri does contain a mandatory disqualification standard for employees. The State divides employees into two Categories. Category Level I are those who would be considered key employees. Level II includes those who would clearly be considered gaming-related persons, but it also is broad enough to potentially include, at the discretion of the Gaming Commission, some employees who might be considered "gaming service employees" in Massachusetts. The mandatory disqualification applies to both Level I and Level II employees. However, it is temporally more limited than the mandatory terms of the Commonwealth.

Level I and Level II employee applications may be denied for, among other things, any criminal record. However, those applications must be denied for convictions **within 5 years** for convictions for offenses involving generally gambling, theft, fraud or dishonesty. Thus, while Missouri, like Massachusetts, includes a mandatory disqualification requirement for persons who may be similar to "casino service employees', that standard applies only to those within 5 years of application, not 10 years as in the Commonwealth.

Iowa

Iowa is somewhat like Missouri. All persons working on the riverboat casinos must be licensed. There is also a mandatory disqualification requirement for convictions for felonies; theft or fraudulent practices in excess of $500; using an alias for fraud; illegal bookmaking; and for certain serious or repeated misdemeanors. . However, like Missouri, the mandatory criteria apply only for convictions within 5 years. If the conviction is more than 5 years old, then a showing of rehabilitation is available.

Michigan

Michigan establishes three levels of employee licensure. Level III, the lowest level, includes persons who directly effect gaming but do not come in contact with gaming. Examples include beverage servers, wait staff, maintenance staff and housekeeping personnel, but only those with access to the areas where gaming is conducted. On this basis alone, the Michigan licensing scheme does not include persons who would be "casino service employees" in Massachusetts. However, the system does allow the Board to designate others for licensing in this category at its discretion.

The standards for licensing employees of all Levels are the same and they DO include mandatory disqualification. The rules prevent issuance of a license to any applicant with a felony conviction or with misdemeanor convictions for gambling, theft, or fraud.[2] Therefore, Michigan could be said to be similar in its treatment of "casino service employees", but only in the case of the Board reaching out specially for one of those persons and including them as a special Level III licensee. In the main, Michigan does not provide an automatic disqualification for persons who would be "casino service employees".

Indiana

Indiana is the only state on our list that does provide for automatic disqualification of persons who would be "casino service employees" in Massachusetts. Like Michigan, Indiana has three levels of employee license. Level 3 is the lowest level. Unlike Michigan, however, the category of Level 3 is much broader. Not only can the regulators designate anyone to require Level 3 scrutiny, but the Level 3 designation applies to "any employee of a riverboat gambling operation whose duties are performed on the riverboat . . ." Accordingly, this would apply to many, if not all, "casino service employees."

In addition, the standard applied to all Levels of employee, including Level 3, contains a mandatory denial for any felony conviction. There is no rehabilitation available and there is no time limit.

3. Conclusion

Based on our experience, and on the above analysis of other jurisdictions, we believe that the present statutory standard for the issuance of casino service employee registration is too harsh. We say this with a full appreciation for the need to strictly control casino operations and the people who staff them. However, we come to this conclusion for three basic reasons:

1. The type of work that will be undertaken by casino service employees will not directly impact on the integrity of casino operations. The focus of gaming control should be on the conduct of gaming. Casino service employees will not be involved in that activity.

[2] There is also a provision in the Michigan statute that seems to contradict the mandatory standard. It provides only that the Board "may" deny applicants on the basis of these convictions. We have used here the most restrictive interpretation.

2. It is an important stated policy of the Act to foster new employment opportunities for the disadvantaged and the unemployed. Often, sadly, those within this demographic will be more likely to have had some involvement with law enforcement in their past. It is, therefore, counter-productive to render the job possibilities created by the Act to be unavailable to the people who need them most.

3. The experience of other jurisdictions has illustrated that rigid licensing standards for the casino service employee category are not necessary for effective gaming regulation. Most major jurisdictions either don't license this type of employee at all or do so with discretionary standards. We point especially to the experience of New Jersey where the level of scrutiny of this type of employee has continually lessened. It has gone from full licensing to now, no pre-qualification whatsoever.

4.Recommendation

Based on all of the above, we would recommend two potential changes to the Act as it applies to the standards for casino service employees.

Our first recommendation is, we recognize, likely too extreme at this time. It is common at the outset of gaming in any jurisdiction that stricter standards are more popular. It takes a period of successful experience before those standards can be loosened. However, if feasible, we would recommend that the requirement for registration of casino service employees be removed In its entirety. To do so would not interfere with the integrity of gaming. In fact, it could conceivably improve it by allowing the Commission to focus its attention on more sensitive matters.

Our second recommendation would be to make a less radical revision to the present language. We suggest the following:

"Section 16(b) The commission shall deny an application for a *gaming* license [or registration, other than a gaming license] or a license for a key gaming employee under this chapter if the applicant: has been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury; provided, however, that (a) for *an applicant for a casino employee license,* convictions which occurred before the 10-year period immediately preceding application for licensure, *and (b) for applicants for casino service employee registrations, convictions which occurred at any time,* an applicant may demonstrate .....[remainder remain unchanged] "

We hope this information is helpful to you. We are, of course available to discuss this with you at your convenience. Thank you.

5(d) – NO DOCUMENTS

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 115.00: PHASE 1 AND NEW QUALIFIER SUITABILITY DETERMINATION, STANDARDS, AND PROCEDURES

115.01: Phase 1 and New Qualifier Determination Standards

(1) Phase 1 Determination Standards. The commission shall not issue an affirmative determination of suitability for any Category 1 or Category 2 applicants unless:

(a) The applicant meets the standards in M.G.L. c. 23K, §§ 12, 16, 46 and 47.
(b) The applicant complies with the provisions of 205 CMR 111.00: *Phase 1 Application Requirements* and 205 CMR 115.00.
(c) The commission has determined that the applicant has demonstrated financial stability pursuant to 205 CMR 117.00: *Phase I Determination of Financial Stability.*
(d) All qualifiers under 205 CMR. 116.02: *Persons Required to be Qualified* have been determined to be suitable by the commission or received a waiver under 205 CMR 116.03: *Waivers.*

(2) Burden of Proof. All applicants for a Phase 1 suitability determination must establish their qualifications by clear and convincing evidence.

(3) New qualifiers Subsequent to the issuance of a positive determination of suitability in accordance with 205 CMR 115.05(3) relative to a gaming licensee or applicant for a gaming license, if a new person is designated by the bureau as a person required to be qualified in accordance with 205 CMR 116.02, they shall submit a completed application to the bureau. An entity qualifier shall submit to the bureau a *Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies* in accordance with 111.02. An individual qualifier shall submit to the bureau a *Multi-jurisdictional Personal History Disclosure Form* in accordance with 205 CMR 111.03 and a *Massachusetts Supplemental Form* in accordance with 205 CMR 111.04. A new qualifier designated in accordance with 205 CMR 116.02 must establish their qualifications and meet the standards in M.G.L. c. 23K, §§ 12 and 16 by clear and convincing evidence and shall be subject to all applicable procedures contained in 205 CMR 115.00.

115:02: Phase 1 and New Qualifier Procedures

(1) When a completed RFA-1 application, *Multi-jurisdictional Personal History Disclosure Form*, *Massachusetts Supplemental Form*, or *Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies* is filed, the application shall be referred by the commission to the bureau for a determination of completeness and investigation.

(2) Determination of Administrative Completeness. After receiving the application containing the information required by 205 CMR 111.02: *Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies* or 205 CMR 111.03: *Multi-jurisdictional Personal History Disclosure Form* and 205 CMR 111.04: *Massachusetts Supplemental Form* the bureau will either determine that the application is sufficiently complete for purposes of initiating substantive review or request additional information from the applicant.

(3) Notice. ~~After the bureau has determined the application to be administratively complete pursuant to 205 CMR 111.02(2): *Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies*, the commission shall notify the applicant of the determination and notify the public that an application has been filed.~~ After the bureau has determined that an application is administratively complete in accordance with 205 CMR 115.02(2) it shall notify the applicant or new qualifier of such determination.

115.03: Phase 1 and New Qualifier Investigation and Recommendations by the Bureau

(1) The bureau shall conduct an investigation into the qualifications and suitability of all applicants and qualifiers, as provided for in M.G.L. c. 23K, §§ 12 and 16. The bureau may conduct the investigation, in whole or in part, with the assistance of one or more contractor investigators pursuant to 205 CMR 105.10: *Authority to Retain and Utilize Contractor Investigators.*

(2) At the completion of the bureau's investigation, it shall submit a written report to the commission. At a minimum, this report will include: recommendations pursuant to M.G.L. c. 23K, §§ 12, 14(i) and 16 and findings of fact pursuant to M.G.L. c. 23K, § 17(f), as required, relative to the suitability of the applicant for a gaming license and of any new qualifiers.

115.04: Phase 1 and New Qualifier Proceedings by the Commission

(1) After the commission has received the bureau's report under 205 CMR 115.03(2) it shall provide a copy to the applicant or new qualifier and the commission shall determine whether it shall initiate a process for a public hearing or adjudicatory proceeding. The commission may utilize the public hearing process if the bureau has not raised any complex concerns relative to suitability in the report.

~~(2) Applicant's Notice of Claim. If the applicant contests any of the bureau's recommendations~~

~~or findings of fact it shall file a notice of claim with the commission within 30 days of receipt of the bureau's report.~~

~~(3)~~ (2) Adjudicatory Proceeding. If ~~the applicant files a Notice of Claim pursuant to 205 CMR 115.04(2) or on the commission's own initiative,~~ the commission determines that an adjudicatory proceeding shall be held, the commission shall conduct an adjudicatory proceeding pursuant to 205 CMR ~~101.03: *Special Procedures for Hearings before the Commission*~~ 101.00 *M.G.L. c. 23K Adjudicatory Proceedings* on the ~~Phase 1~~ report by the bureau concerning the applicant pursuant to 205 CMR 115.03(2). The commission will issue a public notice in advance of the adjudicatory proceeding stating the date, time and place of the hearing.

~~(4)~~ (3) Public Hearing. If the ~~bureau's suitability report under 205 CMR 115.03(2) recommends an unconditional positive determination of suitability for the applicant, without findings of fact that are contested by the applicant, then the applicant may request and the commission may waive the need for an adjudicatory hearing concerning the bureau's report, in which case~~ commission determines that a public hearing should be held, the commission shall review the bureau's suitability report in a public hearing, subject to redaction of confidential and exempt information described in 205 CMR 103.02(1) through (5). The commission will issue a notice in advance of the public hearing stating the date, time and place of the hearing and the form (oral or written) and conditions pursuant to which the commission will receive public comments.

115.05: Phase 1 and New Qualifier Determination by the Commission

(1) After the proceedings under 205 CMR 115.04, the commission shall issue a written determination of suitability pursuant to M.G.L. c. 23K, §§ 4(15), 12 and 17.

(2) Negative Determination. If the commission finds that an applicant or new qualifier failed to meet its burden of demonstrating compliance with the suitability standards in M.G.L. c. 23K and 205 CMR 115.00, the commission shall issue a negative determination of suitability.

(3) Positive Determination. If the commission finds that an applicant or new qualifier has met its burden of demonstrating compliance with the suitability in M.G.L. c. 23K and 205 CMR 115.00, the commission shall issue a positive determination of suitability which may include conditions and restrictions.

(4) The commission shall not entertain a Phase 2 application for any applicant unless and until the commission has issued a positive suitability determination on that applicant.

(5) No Appeal from Commission's Determination of Suitability. Pursuant to M.L.G. c. 23K, § 17(g) the applicant or qualifier shall not be entitled to any further review.

(6) A host community may not hold an election in accordance with M.G.L. c. 23, § 15(13) until the commission has issued a positive determination of suitability to the applicant in accordance with 205 CMR 115.05(3) unless the following conditions are satisfied:

(a) Prior to the request by the applicant for an election in accordance with 205 CMR 124.02(1), the governing body of the community formally approves of holding the election

prior to a positive determination of suitability having been issued to the applicant by the commission; and

(b) at the expense of the applicant, prior to the election the community has conducted a process for informing the community about the commission's determination of suitability standards and procedures, which shall include, but not be limited to, the provision of a notice designed to be received by voting households within the community informing such households that an election is to be held for which the applicant has yet to be issued a positive determination of suitability, that the commission will make its determination of suitability after completing a thorough background investigation of the applicant, its principal operating officers and investors, and that the commission will not permit the applicant or its principal operating officers or investors to proceed with the application unless it determines that they are suitable to operate a gaming facility in Massachusetts. The content of the notice shall be forwarded to the commission for approval prior to dissemination. A description of other methods to so inform the community about the commission's determination of suitability standards and procedures shall also be forwarded to the commission prior to holding of the election. Any failure to issue the notice to one or more voting households shall not be deemed by the commission to be a failure to meet the requirements of 205 CMR 115.05(6), provided that a community demonstrates reasonable efforts to comply with the requirements of 205 CMR 115.05(6).

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 116.00: PERSONS REQUIRED TO BE LICENSED OR QUALIFIED

116.01: Persons Required to be Licensed

No Category 1 or Category 2 license shall be issued by the commission or shall remain in effect unless and until the applicant and all qualifiers identified in 205 CMR 116.00 have been found by the commission to meet all standards necessary for a Phase 1 determination of suitability under 205 CMR 115.00: *Phase 1 and New Qualifier Suitability Determination, Standards and Procedures.*

116.02: Persons Required to be Qualified

(1) The following persons shall be required to qualify as part of the Phase 1 or new qualifier determination for a Category 1 or Category 2 license:

(a) If the applicant is a corporation:
1. Each officer
2. Each director
3. In the judgment of the commission in accordance with this M.G.L. c. 23K:
   a. each shareholder holding 5% or more of the common stock of the company
   b. each lender
   c. each holder of evidence of indebtedness
   d. each underwriter
   e. each close associate
   f. each executive
   g. each agent
   h. each employee

(b) If the applicant is a limited liability corporation:
1. Each Member
2. Each transferee of a Member's interest
3. Each Director
4. Each Manager
5. In the judgment of the commission in accordance with M.G.L. c. 23K:
   a. each lender
   b. each holder of evidence of indebtedness
   c. each underwriter
   d. each close associate
   e. each executive
   f. each agent

(c) If the applicant is a limited partnership:
1. Each General Partner
2. Each Limited Partner

3. In the judgment of the commission in accordance with this M.G.L. c. 23K:
   a. each lender
   b. each holder of evidence of indebtedness
   c. each underwriter
   d. each close associate
   e. each executive
   f. each agent

(d) If the applicant is a partnership:
1. Each Partner
2. In the judgment of the commission in accordance with this M.G.L. c. 23K:
   a. each lender
   b. each holder of evidence of indebtedness
   c. each underwriter
   d. each close associate
   e. each executive
   f. each agent
   e. In all cases, any person who, in the opinion of the commission, can exercise control or provide direction to a gaming licensee or applicant for a gaming license or holding, intermediary or subsidiary companies thereof.

(2) Other Oualifiers. The commission may, at its sole discretion, require other persons or companies that have a business association of any kind with the applicant or gaming licensee to undergo a Phase 1 or new qualifier review and determination process under 205 CMR 115.00: *Phase 1 and New Qualifier Suitability Determination, Standards and Procedures*. These affiliated companies or persons include, but are not limited to, holding, intermediary or subsidiary companies of the applicant.

116.03: Waivers

(1) The commission may in its discretion waive qualification requirements for the following persons under the following conditions:

(a) In the case of applicant corporations and holding, intermediary and subsidiary corporations, those persons holding less than 5% of the common stock of the company;

(b) In the case of institutional investors, if the institutional investor holds less than 15% of the stock of the applicant, holding, intermediary or subsidiary company;

(c) In the case of persons involved in the financing of the gaming establishment provided:

1. A lender to an applicant or licensee that is obtaining financing for the construction or operation of a Category 1 or Category 2 facility shall be required to be licensed unless the following apply:

   a. The lender is in the business of providing debt or equity capital to individuals or entities;

b. The loan is in the ordinary course of the lender's business; and

c. The lender does not have the ability to control or otherwise influence the affairs of the applicant or licensee.

2. A lender that is required to be licensed may lend to an applicant or licensee if the lender has filed a completed application in accordance with 205 CMR ~~101.00 to 117.00~~ and has received lender authorization from the commission or bureau.

3. A person that acquires a debt instrument issued by an applicant or licensee in a public or exempt private offering shall not be required to be licensed if:

a. The person does not have any right or ability to control or influence the affairs of the licensee; and

b. The person's acquisition of the debt instrument is in the ordinary course of business and is not part of a plan or scheme to avoid the requirements of this section.

4. Notwithstanding any provision to the contrary in 205 CMR 116.00, the commission may require the licensure of any person that holds a debt instrument issued by an applicant or licensee if the commission has reason to believe that the person would not satisfy the requirements of 205 CMR ~~101.00 through 117.00~~ or M.G.L. c. 23K; or

(d) In the case of any person that, in the opinion of the commission cannot exercise control or provide direction to a gaming licensee or applicant for a gaming licensee or a holding, intermediary or subsidiary company thereof.

(2) In determining whether to waive qualification requirements under 205 CMR 116.03(1), the commission shall consider whether the person seeking the waiver obtained its interest for investment purposes only and does not have any intention to influence or affect the affairs of the applicant or any affiliated companies thereof.

(3) Any person may seek a waiver under 205 CMR 116.03(1) by filing a petition with the Commission pursuant to 205 CMR 102.03(4); provided, however, that the commission or the bureau may require the submission of any such information deemed necessary to act on the request for a waiver or, at any time, if the commission or the bureau has reason to believe that the person would not satisfy any of the requirements of 205 CMR ~~101.00 through 117.00~~ or M.G.L. c. 23K.

(4) Any party granted a waiver under 205 CMR 116.03 which subsequently anticipates engaging in any activity that will or could influence or affect the affairs or operations of the applicant or the holding, intermediary or subsidiary company thereof, shall provide not less than 30 days' notice to the commission of such intent and the party shall not exercise any influence or effect on the affairs or operations of the applicant or the holding, intermediary or subsidiary company thereof unless and until the commission issues a determination of suitability under 205 CMR

115.00: *Phase 1 and New Qualifier Suitability Determination, Standards and Procedures* for said party.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 101.00: M.G.L. C.23K ADJUDICATORY PROCEEDINGS

101.01: Hearings Before the Commission

(1) Except as set forth in M.G.L. c. 23K ~~and 205 CMR 101.03~~, the commission will conduct the following types of adjudicatory hearings in accordance with the procedures in 801 CMR 1.01: Formal Rules: Hearings before the commission pursuant to M.G.L. c. 23K, § 17(f), to contest any findings of fact by the bureau relative to the suitability of the applicant for an initial gaming license or the renewal of a gaming license, including without limitation, recommendations and recommended conditions resulting from the RFA-1 or new qualifier process pursuant to 205 CMR 115.00: *Phase 1 and New Qualifier Suitability Determinations, Standards and Procedures* and the RFA-2 process described in 205 CMR 110.00: *Issuance of Request for Category 1 and Category 2 License Applications*.

101.02: Special Procedures for Hearings Before the Commission

Hearings Concerning Phase 1 Determinations of Suitability. For hearings before the commission pursuant to M.G.L. c. 23K, § 17(f) and 205 CMR 101.01(1) concerning the bureau's Phase 1 or new qualifier recommendations and findings of fact pursuant to 205 CMR 115.00: *Phase 1 and New Qualifier Suitability Determinations, Standards and Procedures*, the following provisions of M.G.L. c. 23K and 205 CMR 101.00 shall supersede any conflicting provisions of 801 CMR 1.01: Formal Rules:

(a) Standing: No person other than an aggrieved applicant shall have automatic standing to participate in the hearing under 205 CMR 101.01.

(b) Presiding Officer: Pursuant to M.G.L. c. 23K, § 3(h), the chair may direct that all of the commissioners participate in the hearing and decision of the matter before the commission. In the alternative, pursuant to M.G.L. c. 23K, § 3(h), the chair with the concurrence of one other commissioner may appoint a presiding officer to preside over the hearing. The notice scheduling the time and place for the pre-hearing conference shall specify whether the commission or a designated individual shall act as presiding officer in the particular case.

(c) Burden of Proof. The applicant shall have the affirmative obligation to establish by clear and convincing evidence both its affirmative qualification for licensure and the absence of any disqualification for licensure.

(d) No Appeal From Commission's Determination of Suitability. Pursuant to M.G.L. c. 23K, § 17(g), the applicant shall not be entitled to any further review from the commission's determination of suitability.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 143.00: GAMING DEVICES AND ELECTRONIC GAMING EQUIPMENT

Section

143.01: Standards for gaming devices

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-11: Gaming Devices in Casinos, version 2.1, released Aug 25, 2011, subject to the following amendments:

(a) Delete section 1.1.1.

(b) Delete section 1.1.2.

(c) Delete section 1.2.

(d) Delete section 1.4.

(e) Replace in section 3.4.1 “seventy-five percent (75%)” with “eighty percent (80%)”.

(f) Add the following after the first paragraph of section 3.4.1: The calculation of minimum payout percentage excludes the cash equivalent value of any merchandise or other thing of value that cannot be converted into cash by the gaming establishment but may include the acquisition cost to the gaming licensee of the merchandise or other thing of value.

(g) Replace in section 3.4.1(b) “75%” with “80%”.

(h) Replace in section 3.10.1(f) “seventy-five percent (75%)” with “eighty percent (80%)”

(2) For purposes of M.G.L. c.23K and 205 CMR the term slot machine as defined by M.G.L. c.23K, §2 shall not include automatic amusement devices as defined by G.L. c 140, § 177A(2).

(3) For purposes of M.G.L. c.23K and 205 CMR each gaming position, as defined by M.G.L. c.23K, §2, at a slot machine shall be considered a separate slot machine.

(4) A gaming licensee shall provide the commission with a real-time stream of data, other than personally identifiable information, in the communication format specified by the commission in 205 CMR 143.16 directly from each slot machine. Such data shall be provided for purposes of computing and reconciling daily tax obligations as provided in 205 CMR 140.00, for purposes of investigating patron disputes filed in accordance with 205 CMR 134.19, and for purposes of maintaining general oversight of a gaming establishment. The commission is not obligated to monitor or review the data on an ongoing basis. If communications between the slot machine and the commission’s system fails, the slot machine shall continue to record all required data for the most recent seven days of operation and send the data directly to the commission as soon as the connection is reestablished. If the connection is not reestablished within 24 hours due to a problem stemming from the gaming establishment’s systems, then any slot machine affected shall cease operation until the connection is reestablished.

143.02: Progressive Gaming Devices

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-12: Progressive Gaming Devices in Casinos, version 2.1, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.1.

(b) Delete section 1.2.

(c) Delete section 1.3.2.

(d) Delete section 1.4.

143.03: On-Line Monitoring and Control Systems (MCS) and Validation System

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-13: On-Line Monitoring and Control Systems (MCS) and Validation Systems in Casinos, version 2.1, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.1.

(b) Delete section 1.3.

(c) Delete section 1.5.

143.04: Cashless Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-16: Cashless Systems in Casinos, version 2.1, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.2.

(b) Delete section 1.4.

(2) No slot machine at a gaming establishment shall accept debit cards or credit cards, or government-issued electronic benefits transfer cards as a form of payment.

143.05: Bonusing Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-17: Bonusing Systems in Casinos, version 1.3, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.2.

(b) Delete section 1.4.

143.06: Promotional Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-18: Promotional Systems in Casinos, version 2.1, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.2.

(b) Delete section 1.4.

143.07: Kiosks

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-20: Kiosks, version 1.5, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.1.3.

(b) Delete section 1.3.

143.08: Client-Server Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-21: Client-Server Systems, version 2.2, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.1.

(b) Delete section 1.2.

(c) Delete section 1.4.

143.09: Electronic Table Game Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-24: Electronic Table Game Systems, version 1.3, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.1.

(b) Delete section 1.3.

(2) An electronic table game shall be considered a slot machine in accordance with M.G.L. c. 23K, § 2 unless the simulation requires the intervention of a gaming employee prior to the final determination of winnings.

143.10: Dealer Controlled Electronic Table Games [RESERVED]

143.11: Wireless Gaming Systems [RESERVED]

143.12: Network Security

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-27: Network Security Best Practices, version 1.1, released Jan 21, 2013, subject to the following amendments:

(a) Delete section 1.1.

(b) Delete section 1.2.

143.13: Player User Interface Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-28: Player User Interface Systems, version 1.0, released Feb 14, 2011, subject to the following amendments:

(a) Delete section 1.1.

143.14: Card Shufflers and Dealer Shoes [RESERVED]

143.15: Electronic Raffle Systems [RESERVED]

143.16: Communications Protocols

(1) A gaming licensee shall not operate any slot machine in a gaming establishment after January 1, 2017 unless that slot machine is compatible with the Gaming Standards Association G2S protocol. Provided however, any slot machine that is registered and operating in a gaming establishment prior to January 1, 2017 is not required to comply with the G2S protocol. A gaming licensee shall not operate any slot machine in a gaming establishment unless the slot machine:

(a) is able to bi-directionally communicate with the commission's central control system;

(b) transmits, on a per bet basis, data relative to amounts wagered, amounts won, cash in, cash out, and similar financial information necessary for tax collection and auditing;

(c) allows remote verification of gaming device software using a SHA-1 or similar hashing system;

(d) allows remotely activating and disabling slot machines; and

(e) transmits data relative to any restarts, shutdowns, resets, game changes, door open, and other maintenance events;

REGULATORY AUTHORITY

205 CMR 143: M.G.L. c. 23K, §§x

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 144.00: APPROVAL OF SLOT MACHINES AND ELECTRONIC GAMING EQUIPMENT AND TESTING LABORATORIES

Section

144.01: Required Permits and Registration

(1) No new or modified gaming device listed in 205 CMR 144.01(2) shall be:

(a) sold by a gaming vendor unless a prototype of the gaming device has received a permit from the commission in accordance with 205 CMR 144.02;

(b) operated by a gaming licensee in a gaming establishment unless the gaming device is registered with the commission in accordance with 205 CMR 144.03.

(2) The following gaming devices require permitting and registration by the commission:

(a) Slot machines;

(b) Electronic table games;

(c) Kiosks;

(d) Wireless wagering devices;

(e) Money counters;

(f) Chip sorters;

(g) Devices used in conjunction with table games such as gaming chips, dice, cards, Pai Gow tiles, card readers, dealer shoes, automated shuffling machines, dice shakers, and roulette wheels; and

(h) Tables for conducting table games such as roulette, blackjack, poker, craps, baccarat, big six, and Pai Gow.

(i) Slot machine games;

(j) Multiplayer systems;

(k) Server supported slot systems;

(l) Slot machine bonus systems;

(m) Table game bonus systems;

(n) Progressive systems;

(o) Account based wagering systems;

(p) Slot monitoring systems and casino management systems;

(q) Gaming voucher systems;

(r) Devices used in conjunction with a slot monitoring system or casino management system, unless the devices provide read-only functionality;

(s) Devices used in conjunction with gaming devices such as bill acceptors, printers, and coin acceptors that are not integrated into and tested as part of another gaming device;

144.02: Permitting of Gaming Device Prototypes

(1) In order to receive a permit for a gaming device, a gaming vendor, at its own expense, must submit the gaming device for scientific testing and technical evaluation in accordance with 205 CMR 144.04 by a commission certified independent testing laboratory certified pursuant to 205 CMR 144.06 to determine compliance with M.G.L. c. 23K and 205 CMR 143. The gaming vendor must provide the certified independent testing laboratory with all documentation and other materials necessary to conduct testing and evaluate compliance.

(2) Upon completion of testing by a certified independent testing laboratory, a gaming vendor may submit an application for permitting of the gaming device to the commission's gaming technology laboratory. The commission may reject any gaming device permit application that is deemed administratively incomplete. The application for a gaming device permit shall be in the form prescribed by the commission and contain:

(a) the gaming vendor's name;

(b) the gaming vendor's license number pursuant to 205 CMR 134;

(c) a unique name and version number for the gaming device for which the registration is sought;

(d) a copy of the commission certified independent testing laboratory report for the gaming device in accordance with 205 CMR 144.04;

(e) a list of all jurisdictions in which the gaming device has been granted or denied licensure, registration, or similar; and

(f) the application fee in accordance with 205 CMR 144.05.

(3) Upon receipt of the gaming device permit application, the commission's gaming technology lab may require that the gaming vendor provide to the commission's gaming technology lab, at the gaming vendor's expense, a functioning prototype of the gaming device as well as all documentation and other materials necessary to conduct testing and evaluate compliance.

(4) The gaming vendor shall promptly notify the commission of any negative action taken in another jurisdiction or if it becomes aware of an issue that may negatively impact the reporting of revenue, game outcome, or the integrity of a device that has been submitted to the commission for permitting or has been permitted.

(5) Prior to issuing a permit and after completing a review of a proposed gaming device that has not been available for public use in other jurisdictions for at least 45 days, the commission may require a trial period of up to 45 days to test the gaming device in a gaming establishment. During the trial period, minor changes in the operation or design of the gaming device may be made with prior approval of the commission.

(6) Upon reviewing a gaming device permit application and conducting any additional testing or trials that the commission requires, the commission shall issue a gaming device permit if the device meets the requirements of 205 CMR 144.02(7). If a gaming device does not meet the requirements of 205 CMR 144.02(7), the commission may deny the permit or issue the permit subject to conditions necessary for the gaming device to meet the requirements of 205 CMR 144.02(7). If the commission denies or conditions the gaming device permit, the commission shall provide a written notification containing the reason for the denial or condition. The gaming device permit shall not expire, but shall be subject to any future conditions imposed in accordance with 205 CMR 144.02(8).

(7) Prior to permitting, a gaming device must:

(a) meet the applicable requirements of G.L. c. 23K and 205 CMR 143; and

(b) not endanger, compromise, or weaken the credibility or integrity of gaming in the Commonwealth.

(8) The commission, or its designee, may add, modify or remove conditions following the initial permitting of a gaming device as necessary to ensure the integrity of the gaming device or the effective administration of 205 CMR.

(9) A gaming vendor may appeal a permit denial, permit revocation, or imposition of any condition on a permit by filing a petition on a form prescribed by the commission. Upon receipt

of a petition, the gaming technology lab shall schedule a hearing to be conducted in accordance with 205 CMR 144.02(10) and provide the gaming vendor with reasonable notice containing the date, time, and location of the hearing.

(10) Hearings convened pursuant to 205 CMR 144.02(9) shall be conducted in accordance with 801 CMR 1.02: *Informal/Fair Hearing Rules* and M.G.L. c. 30A. Given the sensitive nature of gaming device operations, the hearing will not be open to the public. Any party may be represented by legal counsel. All parties shall be permitted to present an opening statement, testify on their own behalf, cross-examine all witnesses, present any relevant witness testimony, present any relevant documentary evidence, and offer a closing argument. The gaming technology lab may question any witness and include any records kept by the commission as exhibits. The commission's executive director shall designate a hearing officer to preside over the hearing. The decision of the hearing officer will be final. Any person aggrieved by a decision of the hearings officer may appeal such decision in conformance with M.G.L. c. 30A, § 14.

144.03: Registration of Gaming Device Inventory

(1) In order to register a gaming device for use in a gaming establishment, a gaming licensee must submit a gaming device registration application with the commission's gaming technology laboratory. The commission may reject any gaming device registration application that is deemed administratively incomplete. The application for a gaming device registration shall be in the form prescribed by the commission and contain:

(a) the gaming licensee's name;

(b) the gaming device number issued by the commission for the permitted prototype on which the gaming device is based;

(c) in the case of a physical gaming device, the unique serial number and the date of manufacture for each copy of the gaming device that the gaming licensee intends to use in the gaming establishment;

(d) in the case of a software gaming device, the maximum number of instances of the software that the gaming licensee intends to use at any one time in the gaming establishment;

(2) Upon reviewing a gaming device registration application, the commission shall register the gaming device if the gaming device registration application is in compliance with the requirements and conditions of the gaming device permit on which the device is based. The gaming device registration shall not expire, but shall be subject to any future conditions imposed in accordance with 205 CMR 144.03(4).

(3) A registered gaming device must:

(a) be identical in all mechanical, electrical, electronic or other material aspects to the prototype permitted in accordance with 205 CMR 144.02 on which the gaming device is based;

(b) comply with any conditions of the permitted prototype on which the gaming device is based; and

(c) not endanger, compromise, or weaken the credibility or integrity of gaming in the Commonwealth.

(4) The gaming licensee must ensure that the registered gaming device is and remains in compliance with 205 CMR 144.03(3) at all times. The commission may at any time inspect any registered gaming device and revoke or condition the registration if that device fails to comply with section 205 CMR 144.03(3). Prior to revoking or conditioning the registration of a gaming device currently in use in a gaming establishment, the commission shall allow the gaming licensee a reasonable amount of time to bring the device into compliance.

(5) A gaming licensee may appeal a registration denial, registration revocation, or imposition of any condition on registration by filing a petition on a form prescribed by the commission. Upon receipt of a petition, the gaming technology lab shall schedule a hearing to be conducted in accordance with 205 CMR 144.03(6) and provide the gaming licensee with reasonable notice containing the date, time, and location of the hearing.

(6) Hearings convened pursuant to 205 CMR 144.03(5) shall be conducted in accordance with 801 CMR 1.02: *Informal/Fair Hearing Rules* and M.G.L. c. 30A. Given the sensitive nature of gaming device operations, the hearing will not be open to the public. Any party may be represented by legal counsel. All parties shall be permitted to present an opening statement, testify on their own behalf, cross-examine all witnesses, present any relevant witness testimony, present any relevant documentary evidence, and offer a closing argument. The gaming technology lab may question any witness and include any records kept by the commission as exhibits. The commission's executive director shall designate a hearing officer to preside over the hearing. The decision of the hearing officer will be final. Any person aggrieved by a decision of the hearings officer may appeal such decision in conformance with M.G.L. c. 30A, § 14.

(7) A gaming licensee shall inform the commission's gaming technology laboratory of any registered gaming device that the gaming licensee no longer possesses no later than the second Monday of the month following termination of possession.

144.04: Required Testing by Independent Testing Laboratories

(1) Any testing by a commission certified independent testing laboratory for the purposes of permitting a gaming device shall be conducted in compliance with M.G.L. c. 23K and 205 CMR 143 and 144.

(2) The independent testing laboratory shall issue a report of the testing results to the gaming vendor. Such report shall contain:

(a) the part and version numbers of the gaming device tested;

(b) attachments containing documents sufficient to describe the functionality and operation of all material components of the gaming device;

(c) a description of all tests conducted and the results of such tests;

(d) a statement as to whether each of the components within the gaming device, each interaction between components, and the device as a whole is compliant with the latest version of M.G.L. c. 23K and 205 CMR 143 as of the start date of testing;

(e) the date the gaming device was submitted for testing;

(f) the start and end dates of the gaming device testing;

(g) the location of the facility used to perform the testing; and

(h) a statement, signed under penalty of perjury, that all information provided in the report is accurate and complete.

(3) The independent testing laboratory's report shall not contain any information in its body that if publically released may harm the integrity of the gaming device, but such information may be disclosed in an attachment.

(4) The independent testing laboratory may communicate with the applicant to request additional documentation or to discuss potentially non-compliant components. The independent testing laboratory shall log any communication between itself and the applicant and be able to provide to the commission copies of all documents transmitted to or from the applicant for at least seven years following the issuance of the report.

(5) The independent testing laboratory may only rely on testing conducted and data collected from a third party or from its own testing for another jurisdiction if the testing was performed during the past six years by an independent party with no apparent interest in the result. An independent testing laboratory relying on such external testing or data must clearly identify in its report all such reliance and independently verify the validity of such data or testing by:

(a) finding that the methods described in the earlier test are reliable and there is no indication that the data are incorrect; or

(b) showing that the gaming device has been implemented for public use for at least 6 months in other jurisdictions and has performed in conformance with the data;

(6) An independent testing laboratory may rely on any data or results of testing conducted by a commission certified independent testing laboratory during the past six years when such testing was conducted for purposes of permitting a gaming device in the Commonwealth. Any reliance pursuant to 205 CMR 144.04(5) or (6) must be clearly identified in the report.

144.05: Fees for Testing, Permitting, and Registration of Gaming Devices

(1) A gaming vendor seeking a gaming device permit shall remit appropriate fees to the commission along with the gaming device permit application. The application fee for submitting a new gaming device for permitting or for modification of a currently permitted gaming device is $500. If the Commission's costs for testing, in accordance with the fee schedule posted by the Commission to its website, exceed the initial application fee, the gaming vendor shall pay the additional amount within 30 days after notification of insufficient fees or the application shall be rejected.

(2) A gaming vendor requesting that a commission certified independent testing laboratory conduct testing shall pay all costs of the testing directly to the independent testing laboratory.

(3) There is no fee for registering a gaming device based on a permitted prototype of the same device.

144.06: Independent Testing Laboratory Certification and Auditing

(1) Certification Process. In order to provide testing services of gaming devices in Massachusetts, a person must be certified as an independent testing laboratory in accordance with 205 CMR 144.06. The certification process will take place as follows:

(a) The commission may issue yearly a request for applications from applicants interested in being certified as independent testing laboratories.

(b) Upon receipt of an application in the form prescribed in 205 CMR 144.06(5) the gaming technology laboratory and the bureau shall conduct any investigation they deem reasonable, including any visit, review or inspection of each independent testing laboratory seeking certification to evaluate the laboratory's qualifications and capabilities pursuant to 205 CMR 144.06(3).

(c) The applicant is required to submit a $5,000 application fee with its application for certification. If the Commission's costs associated with the investigation, including site visits, inspections, and background investigations, of the applicant during the certification evaluation period, in accordance with the fee schedule posted by the Commission to its website, exceed the application fee, the applicant shall pay the additional amount within 30 days after notification of insufficient fees or the application shall be rejected.

(d) Upon the conclusion of evaluation and upon full payment of any costs associated with the certification process, the gaming technology laboratory, with the input of the bureau, shall issue a written report to the commission and to the applicant. The commission shall determine whether to initiate a process for a public hearing or adjudicatory proceeding.

(e) If the commission determines that an adjudicatory proceeding will be held, the commission shall conduct an adjudicatory proceeding in accordance with 801 CMR 1.02: *Informal/Fair Hearing Rules* and M.G.L. c. 30A on the gaming technology laboratory's report under 205 CMR 144.06(1)(d) concerning the applicant. Any party may be represented by legal counsel. All parties shall be permitted to present an opening statement, testify on their own behalf, cross-examine all witnesses, present any relevant witness testimony, present any relevant documentary evidence, and offer a closing argument. The commission will issue a public notice in advance of the adjudicatory proceeding stating the date, time and place of the hearing. The commission shall issue a final decision granting or denying the certification within 30 days of the hearing.

(f) If the commission determines that a public hearing should be held, the commission shall review the gaming technology laboratory's report and make a final decision granting or denying the certification at a public hearing. The commission will issue a notice in advance of the public hearing stating the date, time and place of the hearing.

(g) Certification as an independent testing lab shall be valid for one year and shall automatically renew annually thereafter upon payment of a renewal and audit fee of $2,000. The commission may audit the compliance of the certified independent testing laboratory with commission requirements annually or more often if needed. The commission may revoke the registration of a certified independent testing laboratory if the testing laboratory no longer meets the requirements of G.L. c. 23K and 205 CMR.

(h) The commission shall maintain a list of certified independent testing laboratories along with the categories of gaming device that each independent testing laboratory may test.

(2) Categories of Certification. Each independent testing laboratory must be certified for each category of testing for which the laboratory seeks to provide results. The categories of testing include:

(a) Games and game variations;

(b) Gaming devices and gaming device modifications;

(c) Gaming associated equipment and gaming associated equipment modifications;

(d) Cashless wagering systems and cashless wagering system modifications;

(e) Inter-casino linked systems and inter-casino linked system modifications;

(f) Mobile gaming systems and mobile gaming system modifications;

(g) Interactive gaming systems and interactive gaming system modifications; and

(h) Any other category of testing that the commission may deem appropriate.

(3) Standards for Certification. To qualify for certification, the independent testing laboratory, must:

(a) Be independent pursuant to 205 CMR 144.06(4)

(b) Be accredited in accordance with ISO/IEC 17025 by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Agreement, unless the independent testing laboratory is only seeking certification for the testing of games and game variations;

(c) Demonstrate suitability in accordance with G.L. c. 23K, §§ 12 and 16 by clear and convincing evidence after considering reciprocity from other jurisdictions;

(d) Demonstrate that it is technically competent in testing the category of game, device, or system in which it is seeking certification; and

(e) Demonstrate that it is technically competent to test compliance with the applicable Massachusetts statutes, regulations, standards and policies.

(4) Independence. An independent testing laboratory must be independent at all times while certified by the commission.

(a) To be considered independent from a manufacturer, distributor, or operator pursuant to 205 CMR 144.06(3)(b), the independent testing laboratory, including its employees, management, directors, owners, compliance committee members and gaming regulatory advisors, with the exception of the independent testing laboratory's external accountants and attorneys:

1. Must not have a financial or other interest, direct or otherwise, in a manufacturer, distributor, or operator of any game, gaming device, associated equipment, cashless wagering system, inter-casino linked system, mobile gaming system or interactive gaming system, or any component thereof or modification thereto, regardless of whether or not the person or entity is licensed, registered, or otherwise does business in Massachusetts;

2. Must not participate, consult, or otherwise be involved in the design, development, programming, or manufacture of any game, gaming device,

associated equipment, cashless wagering system, inter-casino linked system, mobile gaming system or interactive gaming system, or any component thereof or modification thereto;

3. Must not have any other interest in or involvement with a manufacturer, distributor, or operator that could cause the independent testing laboratory to act in a manner that is not impartial; and

4. Such individuals shall not serve in any capacity with a manufacturer, distributor, or operator beyond the scope of the independent testing laboratory's engagement pursuant to these regulations.

(b) The restrictions in 205 CMR 144.06(4)(a) shall not be interpreted to limit an independent testing laboratory, or the above listed individuals, from providing consulting services to a manufacturer, distributor, or operator, provided that such services do not directly or indirectly indicate, suggest, or imply how to design, develop, program or manufacture a game, gaming device, associated equipment, cashless wagering system, inter-casino linked system, mobile gaming system or interactive gaming system, or any components thereof or modification thereto.

(c) The restrictions in 205 CMR 144.06(4)(a) shall not be interpreted to limit its ability to accept fees from a gaming device vendor in accordance with 205 CMR 144.05.

(5) Form of Application. An application for certification as an independent testing laboratory shall be in the form prescribed by the commission and contain:

(a) The required application fee pursuant to 205 CMR 144.06(1)(c);

(b) A completed business entity disclosure form as set forth in 205 CMR 134.07(6) for the applicant entity;

(c) Completed multi-jurisdictional personal history disclosure forms as set forth in 205 CMR 134.07(1) for each person who would be a gaming vendor qualifier pursuant to 205 CMR 134.04(4) if the applicant were a gaming vendor;

(d) Copies of all ISO/IEC 17025 certification and accreditation materials except if the independent testing laboratory is only seeking registration for the testing of games and game variations;

(e) All ISO required internal controls, policies and procedures, except if the independent laboratory is only seeking registration for the testing of games and game variations;

(f) Detailed description of the testing facilities;

(g) Detailed description of available testing staff and staff qualifications, including education, training, experience and skill levels;

(h) Detailed description of available testing equipment;

(i) Copies of documented policies, systems, programs, procedures and instructions to assure the quality of test results;

(j) Copies of all test scripts to be used for testing against the applicable Massachusetts statutes, regulations, standards, and policies.

(k) A statement subscribed by the applicant that:

1. The information being provided to the commission is accurate and complete;

2. The applicant agrees to cooperate with all requests, inquiries, or investigations of the commission;

3. The applicant acknowledges that the commission shall retain jurisdiction over the independent testing laboratory in any matter involving a gaming device;

4. The applicant acknowledges that it will comply with G.L. c. 23K, § 13(b) and (c) and update the commission in accordance with 205 CMR 144.06(6);

5. The applicant agrees to indemnify and hold harmless the Commonwealth of Massachusetts and the commission, and each of their members, agents, and employees in their individual and representative capacities against any and all claims, suits and actions, brought against the persons named in this section by reason of any inspections or certifications performed by the applicant as a certified independent testing laboratory, and all other matters relating thereto, and against any and all expenses, damages, charges and costs, including court costs and attorney fees, which may be sustained by the persons and entities named in this subsection as a result of said claims, suits and actions; and

(l) any additional information that the commission may require.

(6) Notification Requirements. Certified independent testing laboratories shall:

(a) notify the commission of any change in ownership of the certified independent testing laboratory, any change in directors, executives, or key management or employees of the independent testing laboratory, and any other material changes to the information included in its application for registration or the information submitted in conjunction with or subsequent to its application within 30 days of such change;

(b) no later than by the 15th day of each January, inform the commission in writing of any changes to the information that was contained on the registered independent testing laboratory's application for registration or submitted in conjunction with or subsequent to its application, or that no changes have occurred since the last reporting date;

(c) maintain copies of the results of any ISO/IEC 17025 audits or reviews and notify the commission in writing of the of the availability of the results within 15 days of when they become available to the registered independent testing laboratory and provide copies to the commission upon request.

(d) notify the commission immediately of any material issues concerning any gaming device that it tested for use in Massachusetts;

(e) notify the commission immediately of any attempts by a manufacturer, distributor, or operator to improperly influence the certified independent testing laboratory, or any of its employees, managers, or owners, in or in connection with any testing of gaming devices for use in Massachusetts; and

(f) timely provide the commission with such other information as the commission may request or require.

(7) Continued Obligations. Certified independent testing laboratories shall abide by the following requirements while certified:

(a) In the interest of preserving a competitive gaming industry, a certified independent testing laboratory shall not implement or maintain any procedure or policy or take any action that would inhibit or prevent a manufacturer, distributor or operator that has otherwise been deemed suitable for doing business in Massachusetts by the commission from submitting a game, gaming device, associated equipment, cashless wagering system, inter-casino linked system, mobile gaming system or interactive gaming system, or any component thereof or modification thereto, for testing for use in Massachusetts, or that would call into question or tend to erode the independence of the certified independent laboratory from any clients that utilize its services.

(b) All testing shall be performed by a person directly employed by the certified independent testing laboratory. The certified independent testing laboratory shall not assign, delegate, subcontract, or otherwise engage any person not directly employed by the certified independent testing laboratory for any testing for which the laboratory has been certified. The certified independent testing laboratory shall provide the commission each month with a list and description of all amounts paid by or invoiced to licensed gaming vendors for costs of gaming device testing or otherwise.

(c) A certified independent testing laboratory shall implement and maintain a hiring and background check process that ensures, at a minimum, that no person is hired in a

position involving testing relating to Massachusetts, or in a position overseeing or managing an employee in such a position, who has:

1. failed to disclose or misstated information or otherwise attempted to mislead the commission with respect to any information the person has provided to the commission;

2. been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury;

3. committed prior acts which have not been prosecuted or in which the person was not convicted but form a pattern of misconduct that makes the person unsuitable;

4. Been identified in the published reports of any federal or state legislative or executive body as being a member or associate of organized crime, or as being of notorious and unsavory reputation;

5. Been placed and remains in the constructive custody of any federal, state or municipal law enforcement authority; or

6. Had any gaming license, registration or other like credential revoked or committed any act which is a ground for the revocation of a gaming license, registration or other professional credential held by the person or would have been a ground for the revocation of a gaming license, registration or other professional credential had the person held such license, registration, or credential.

(d) A certified independent testing laboratory shall handle all information and data prepared or obtained as part of the testing process as confidential.

(e) A certified independent testing laboratory shall implement and maintain security and access control systems designed to secure and protect the confidentiality of all equipment, software, and other information entrusted to it as part of the testing process.

(f) The commission may, as appropriate, periodically provide further guidance as to what is required of a certified independent testing laboratory through industry notices or other written communications.

(g) If a certified independent testing laboratory hires an individual who was previously employed by, or performed any work for, a manufacturer, distributor or operator within one year prior to the individual's date of employment with the independent testing laboratory, the certified independent testing laboratory shall not permit that person to test any gaming device for use in Massachusetts, for which the person had any involvement

with, whatsoever, while he or she was employed by the manufacturer, distributor or operator for a period of one year from the individual's date of employment with the independent testing laboratory.

REGULATORY AUTHORITY

205 CMR 144: M.G.L. c. 23K, §§x

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 145.00: POSSESSION OF SLOT MACHINES

Section

145.01: Possession of Slot Machines

(1) The following persons and any employee or agent acting on their behalf may, subject to any terms and conditions imposed by the commission, possess slot machines in the commonwealth for the purposes provided herein, and such possession is not restricted by G.L. c. 271, § 5A, provided that the machines are kept only in such locations as may be specifically approved in writing by the commission and that any machines located outside of a gaming establishment not be used for gaming activity:

(a) A holder of:

1. A gaming license at the gaming establishment;

2. A gaming vendor license, for the purpose of distributing, repairing or servicing slot machines;

(b) An employee or agent of the commission, for the purpose of fulfilling official duties or responsibilities;

(c) A common carrier, for the purpose of transporting such slot machines;

(d) A trade school approved by the commission to possess slot machines for educational purposes; or

(e) Any other person the commission may approve after finding that possession of slot machines by such person in this state is necessary and appropriate to fulfill the goals and objectives of M.G.L. c. 23K and 205 CMR.

(2) Each gaming licensee shall file, prior to the commencement of gaming and every thirty days thereafter with the commission a comprehensive lists of:

(a) The slot machines and bill validators and/or bill changers not integrated into a slot machine on its gaming floor (the "Slot Machine Master List");

(b) The slot machines possessed by the licensee in restricted areas off the gaming floor but on the premises of its gaming establishment;

(c) The slot machines possessed by the licensee at locations in this state but off the premises of its gaming establishment.

(3) At a minimum, each list of slot machines required by paragraph (2) of this rule shall contain the following information, as applicable, for each slot machine and any accompanying bill validator and/or bill changer on the "Slot Machine Master List," in consecutive order by location number:

(a) The date on which the list was prepared;

(b) A description of each slot machine by:

1. Slot machine model and serial number;

2. Computer program number;

3. Denomination;

4. Manufacturer and machine type; and

5. Whether the slot machine has an electronic funds transfer (EFT) feature.

(c) A cross reference for each slot machine by zone and serial number;

(d) The restricted area within the gaming establishment where the slot machine is located for each slot machine included on the list required by paragraph (2)(b) of this rule;

(e) The address of the slot machine storage facility where the slot machine is located for each slot machine included on the list required by paragraph (2)(c) of this rule; and

(f) Such other information as the commission may require.

(4) Any building located outside of a casino facility where slot machines will be kept shall meet, at a minimum, the following requirements:

(a) All access doors and windows must be locked and alarmed;

(b) Access is restricted to those individuals permitted to maintain slot machines pursuant to this regulation; and

(c) Any other requirements as deemed appropriate by the commission.

145.02: Transportation of Slot Machines

(1) Pursuant to St. 2011, c. 194, §§ 101 and 102, any transportation of a slot machine in accordance with 205 CMR 145.02 shall be exempt from the provisions of chapter 1194, 64 Stat. 1134, 15 U.S.C. 1171 to 1178.

(2) Prior to the transport or movement of any slot machine into the Commonwealth; from one authorized location to another authorized location within the Commonwealth unless both locations are operated and controlled by the same gaming licensee; or out of the Commonwealth, the person causing such slot machine to be transported or moved shall first notify the commission in writing giving the following information:

(a) The full name and address of the person shipping or moving the machine;

(b) The full name and address of the person who owns the machine, including the name of any new owner in the event ownership is being changed in conjunction with the shipment or movement;

(c) The method of shipment or movement and the name of the carrier or carriers;

(d) The full name and address of the person to whom the machine is being sent and the destination of the machine if different from such address;

(e) The quantity of machines being shipped or moved and the manufacturer's serial number of each machine;

(f) The expected date and time of delivery to or removal from any authorized location in the Commonwealth;

(g) The port of entry, or exit, if any, of the machine if the origin or destination of the machine is outside the continental United States; and

(h) The reason for transporting the machine.

(3) The person shipping or moving any slot machine shall provide to the shipper a document, at least one copy of which shall be kept with the slot machine at all times during the shipping process, that contains the following information, at a minimum:

(a) The manufacturer's serial number of the slot machine being transported;

(b) The full name and address of the person from whom the machine was obtained;

(c) The full name and address of the person to whom the machine is being sent; and

(d) The dates of shipment.

(4) Any person, company, or school receiving a slot machine shipment from outside of the Commonwealth shall, within three business days of receipt, provide the commission with the information enumerated in (b) above.

(5) All movements of slot machines shall be recorded in a log that shall be maintained in accordance with the record retention requirements contained in 205 CMR 135.XX and include the following:

(a) The manufacturer's serial number;

(b) The casino operator's equipment number, if applicable;

(c) An indication as to whether the equipment is equipped for tokenization, and if so, the denomination;

(d) The date and time of movement of the equipment;

(e) The location from which the equipment was moved;

(f) The location to which the equipment was moved; and

(g) The printed name(s) and signature(s) of the person(s) involved in moving the equipment.

REGULATORY AUTHORITY

205 CMR 145: M.G.L. c. 23K, §§x

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 143.00: GAMING DEVICES AND ELECTRONIC GAMING EQUIPMENT

Section

143.01: Standards for gaming devices

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-11: Gaming Devices in Casinos, version 2.1, released Aug 25, 2011, subject to the following amendments:

(a) Delete section 1.1.1.

(b) Delete section 1.1.2.

(c) Delete section 1.2.

(d) Delete section 1.4.

(e) Replace in section 3.4.1 “seventy-five percent (75%)” with “eighty percent (80%)”.

(f) Add the following after the first paragraph of section 3.4.1: The calculation of minimum payout percentage excludes the cash equivalent value of any merchandise or other thing of value that cannot be converted into cash by the gaming establishment but may include the acquisition cost to the gaming licensee of the merchandise or other thing of value.

(g) Replace in section 3.4.1(b) “75%” with “80%”.

(h) Replace in section 3.10.1(f) “seventy-five percent (75%)” with “eighty percent (80%)”

(2) For purposes of M.G.L. c.23K and 205 CMR the term slot machine as defined by M.G.L. c.23K, §2 shall not include automatic amusement devices as defined by G.L. c 140, § 177A(2).

(3) For purposes of M.G.L. c.23K and 205 CMR each gaming position, as defined by M.G.L. c.23K, §2, at a slot machine shall be considered a separate slot machine.

(4) A gaming licensee shall provide the commission with a real-time stream of data, other than personally identifiable information, in the communication format specified by the commission in 205 CMR 143.16 directly from each slot machine. Such data shall be provided for purposes of computing and reconciling daily tax obligations as provided in 205 CMR 140.00, for purposes of investigating patron disputes filed in accordance with 205 CMR 134.19, and for purposes of maintaining general oversight of a gaming establishment. The commission is not obligated to monitor or review the data on an ongoing basis. If communications between the slot machine and the commission’s system fails, the slot machine shall continue to record all required data for the most recent seven days of operation and send the data directly to the commission as soon as the connection is reestablished. If the connection is not reestablished within 24 hours due to a problem stemming from the gaming establishment’s systems, then any slot machine affected shall cease operation until the connection is reestablished.

143.02: Progressive Gaming Devices

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-12: Progressive Gaming Devices in Casinos, version 2.1, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.1.

(b) Delete section 1.2.

(c) Delete section 1.3.2.

(d) Delete section 1.4.

143.03: On-Line Monitoring and Control Systems (MCS) and Validation System

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-13: On-Line Monitoring and Control Systems (MCS) and Validation Systems in Casinos, version 2.1, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.1.

(b) Delete section 1.3.

(c) Delete section 1.5.

143.04: Cashless Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-16: Cashless Systems in Casinos, version 2.1, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.2.

(b) Delete section 1.4.

(2) No slot machine at a gaming establishment shall accept debit cards or credit cards, or government-issued electronic benefits transfer cards as a form of payment.

143.05: Bonusing Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-17: Bonusing Systems in Casinos, version 1.3, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.2.

(b) Delete section 1.4.

143.06: Promotional Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-18: Promotional Systems in Casinos, version 2.1, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.2.

(b) Delete section 1.4.

143.07: Kiosks

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-20: Kiosks, version 1.5, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.1.3.

(b) Delete section 1.3.

143.08: Client-Server Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-21: Client-Server Systems, version 2.2, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.1.

(b) Delete section 1.2.

(c) Delete section 1.4.

143.09: Electronic Table Game Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-24: Electronic Table Game Systems, version 1.3, released Sept 6, 2011, subject to the following amendments:

(a) Delete section 1.1.

(b) Delete section 1.3.

(2) An electronic table game shall be considered a slot machine in accordance with M.G.L. c. 23K, § 2 unless the simulation requires the intervention of a gaming employee prior to the final determination of winnings.

143.10: Dealer Controlled Electronic Table Games [RESERVED]

143.11: Wireless Gaming Systems [RESERVED]

143.12: Network Security

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-27: Network Security Best Practices, version 1.1, released Jan 21, 2013, subject to the following amendments:

(a) Delete section 1.1.

(b) Delete section 1.2.

143.13: Player User Interface Systems

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-28: Player User Interface Systems, version 1.0, released Feb 14, 2011, subject to the following amendments:

(a) Delete section 1.1.

143.14: Card Shufflers and Dealer Shoes [RESERVED]

143.15: Electronic Raffle Systems [RESERVED]

143.16: Communications Protocols

(1) A gaming licensee shall not operate any slot machine in a gaming establishment after January 1, 2017 unless that slot machine is compatible with the Gaming Standards Association G2S protocol. Provided however, any slot machine that is registered and operating in a gaming establishment prior to January 1, 2017 is not required to comply with the G2S protocol. A gaming licensee shall not operate any slot machine in a gaming establishment unless the slot machine:

(a) is able to bi-directionally communicate with the commission's central control system;

(b) transmits, on a per bet basis, data relative to amounts wagered, amounts won, cash in, cash out, and similar financial information necessary for tax collection and auditing;

(c) allows remote verification of gaming device software using a SHA-1 or similar hashing system;

(d) allows remotely activating and disabling slot machines; and

(e) transmits data relative to any restarts, shutdowns, resets, game changes, door open, and other maintenance events;

REGULATORY AUTHORITY

205 CMR 143: M.G.L. c. 23K, §§x

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 144.00: APPROVAL OF SLOT MACHINES AND ELECTRONIC GAMING EQUIPMENT AND TESTING LABORATORIES

Section

144.01: Required Permits and Registration

(1) No new or modified gaming device listed in 205 CMR 144.01(2) shall be:

(a) sold by a gaming vendor unless a prototype of the gaming device has received a permit from the commission in accordance with 205 CMR 144.02;

(b) operated by a gaming licensee in a gaming establishment unless the gaming device is registered with the commission in accordance with 205 CMR 144.03.

(2) The following gaming devices require permitting and registration by the commission:

(a) Slot machines;

(b) Electronic table games;

(c) Kiosks;

(d) Wireless wagering devices;

(e) Money counters;

(f) Chip sorters;

(g) Devices used in conjunction with table games such as gaming chips, dice, cards, Pai Gow tiles, card readers, dealer shoes, automated shuffling machines, dice shakers, and roulette wheels; and

(h) Tables for conducting table games such as roulette, blackjack, poker, craps, baccarat, big six, and Pai Gow.

(i) Slot machine games;

(j) Multiplayer systems;

(k) Server supported slot systems;

(l) Slot machine bonus systems;

(m) Table game bonus systems;

(n) Progressive systems;

(o) Account based wagering systems;

(p) Slot monitoring systems and casino management systems;

(q) Gaming voucher systems;

(r) Devices used in conjunction with a slot monitoring system or casino management system, unless the devices provide read-only functionality;

(s) Devices used in conjunction with gaming devices such as bill acceptors, printers, and coin acceptors that are not integrated into and tested as part of another gaming device;

144.02: Permitting of Gaming Device Prototypes

(1) In order to receive a permit for a gaming device, a gaming vendor, at its own expense, must submit the gaming device for scientific testing and technical evaluation in accordance with 205 CMR 144.04 by a commission certified independent testing laboratory certified pursuant to 205 CMR 144.06 to determine compliance with M.G.L. c. 23K and 205 CMR 143. The gaming vendor must provide the certified independent testing laboratory with all documentation and other materials necessary to conduct testing and evaluate compliance.

(2) Upon completion of testing by a certified independent testing laboratory, a gaming vendor may submit an application for permitting of the gaming device to the commission's gaming technology laboratory. The commission may reject any gaming device permit application that is deemed administratively incomplete. The application for a gaming device permit shall be in the form prescribed by the commission and contain:

(a) the gaming vendor's name;

(b) the gaming vendor's license number pursuant to 205 CMR 134;

(c) a unique name and version number for the gaming device for which the registration is sought;

(d) a copy of the commission certified independent testing laboratory report for the gaming device in accordance with 205 CMR 144.04;

(e) a list of all jurisdictions in which the gaming device has been granted or denied licensure, registration, or similar; and

(f) the application fee in accordance with 205 CMR 144.05.

(3) Upon receipt of the gaming device permit application, the commission's gaming technology lab may require that the gaming vendor provide to the commission's gaming technology lab, at the gaming vendor's expense, a functioning prototype of the gaming device as well as all documentation and other materials necessary to conduct testing and evaluate compliance.

(4) The gaming vendor shall promptly notify the commission of any negative action taken in another jurisdiction or if it becomes aware of an issue that may negatively impact the reporting of revenue, game outcome, or the integrity of a device that has been submitted to the commission for permitting or has been permitted.

(5) Prior to issuing a permit and after completing a review of a proposed gaming device that has not been available for public use in other jurisdictions for at least 45 days, the commission may require a trial period of up to 45 days to test the gaming device in a gaming establishment. During the trial period, minor changes in the operation or design of the gaming device may be made with prior approval of the commission.

(6) Upon reviewing a gaming device permit application and conducting any additional testing or trials that the commission requires, the commission shall issue a gaming device permit if the device meets the requirements of 205 CMR 144.02(7). If a gaming device does not meet the requirements of 205 CMR 144.02(7), the commission may deny the permit or issue the permit subject to conditions necessary for the gaming device to meet the requirements of 205 CMR 144.02(7). If the commission denies or conditions the gaming device permit, the commission shall provide a written notification containing the reason for the denial or condition. The gaming device permit shall not expire, but shall be subject to any future conditions imposed in accordance with 205 CMR 144.02(8).

(7) Prior to permitting, a gaming device must:

(a) meet the applicable requirements of G.L. c. 23K and 205 CMR 143; and

(b) not endanger, compromise, or weaken the credibility or integrity of gaming in the Commonwealth.

(8) The commission, or its designee, may add, modify or remove conditions following the initial permitting of a gaming device as necessary to ensure the integrity of the gaming device or the effective administration of 205 CMR.

(9) A gaming vendor may appeal a permit denial, permit revocation, or imposition of any condition on a permit by filing a petition on a form prescribed by the commission. Upon receipt

of a petition, the gaming technology lab shall schedule a hearing to be conducted in accordance with 205 CMR 144.02(10) and provide the gaming vendor with reasonable notice containing the date, time, and location of the hearing.

(10) Hearings convened pursuant to 205 CMR 144.02(9) shall be conducted in accordance with 801 CMR 1.02: *Informal/Fair Hearing Rules* and M.G.L. c. 30A. Given the sensitive nature of gaming device operations, the hearing will not be open to the public. Any party may be represented by legal counsel. All parties shall be permitted to present an opening statement, testify on their own behalf, cross-examine all witnesses, present any relevant witness testimony, present any relevant documentary evidence, and offer a closing argument. The gaming technology lab may question any witness and include any records kept by the commission as exhibits. The commission's executive director shall designate a hearing officer to preside over the hearing. The decision of the hearing officer will be final. Any person aggrieved by a decision of the hearings officer may appeal such decision in conformance with M.G.L. c. 30A, § 14.

144.03: Registration of Gaming Device Inventory

(1) In order to register a gaming device for use in a gaming establishment, a gaming licensee must submit a gaming device registration application with the commission's gaming technology laboratory. The commission may reject any gaming device registration application that is deemed administratively incomplete. The application for a gaming device registration shall be in the form prescribed by the commission and contain:

(a) the gaming licensee's name;

(b) the gaming device number issued by the commission for the permitted prototype on which the gaming device is based;

(c) in the case of a physical gaming device, the unique serial number and the date of manufacture for each copy of the gaming device that the gaming licensee intends to use in the gaming establishment;

(d) in the case of a software gaming device, the maximum number of instances of the software that the gaming licensee intends to use at any one time in the gaming establishment;

(2) Upon reviewing a gaming device registration application, the commission shall register the gaming device if the gaming device registration application is in compliance with the requirements and conditions of the gaming device permit on which the device is based. The gaming device registration shall not expire, but shall be subject to any future conditions imposed in accordance with 205 CMR 144.03(4).

(3) A registered gaming device must:

(a) be identical in all mechanical, electrical, electronic or other material aspects to the prototype permitted in accordance with 205 CMR 144.02 on which the gaming device is based;

(b) comply with any conditions of the permitted prototype on which the gaming device is based; and

(c) not endanger, compromise, or weaken the credibility or integrity of gaming in the Commonwealth.

(4) The gaming licensee must ensure that the registered gaming device is and remains in compliance with 205 CMR 144.03(3) at all times. The commission may at any time inspect any registered gaming device and revoke or condition the registration if that device fails to comply with section 205 CMR 144.03(3). Prior to revoking or conditioning the registration of a gaming device currently in use in a gaming establishment, the commission shall allow the gaming licensee a reasonable amount of time to bring the device into compliance.

(5) A gaming licensee may appeal a registration denial, registration revocation, or imposition of any condition on registration by filing a petition on a form prescribed by the commission. Upon receipt of a petition, the gaming technology lab shall schedule a hearing to be conducted in accordance with 205 CMR 144.03(6) and provide the gaming licensee with reasonable notice containing the date, time, and location of the hearing.

(6) Hearings convened pursuant to 205 CMR 144.03(5) shall be conducted in accordance with 801 CMR 1.02: *Informal/Fair Hearing Rules* and M.G.L. c. 30A. Given the sensitive nature of gaming device operations, the hearing will not be open to the public. Any party may be represented by legal counsel. All parties shall be permitted to present an opening statement, testify on their own behalf, cross-examine all witnesses, present any relevant witness testimony, present any relevant documentary evidence, and offer a closing argument. The gaming technology lab may question any witness and include any records kept by the commission as exhibits. The commission's executive director shall designate a hearing officer to preside over the hearing. The decision of the hearing officer will be final. Any person aggrieved by a decision of the hearings officer may appeal such decision in conformance with M.G.L. c. 30A, § 14.

(7) A gaming licensee shall inform the commission's gaming technology laboratory of any registered gaming device that the gaming licensee no longer possesses no later than the second Monday of the month following termination of possession.

144.04: Required Testing by Independent Testing Laboratories

(1) Any testing by a commission certified independent testing laboratory for the purposes of permitting a gaming device shall be conducted in compliance with M.G.L. c. 23K and 205 CMR 143 and 144.

(2) The independent testing laboratory shall issue a report of the testing results to the gaming vendor. Such report shall contain:

(a) the part and version numbers of the gaming device tested;

(b) attachments containing documents sufficient to describe the functionality and operation of all material components of the gaming device;

(c) a description of all tests conducted and the results of such tests;

(d) a statement as to whether each of the components within the gaming device, each interaction between components, and the device as a whole is compliant with the latest version of M.G.L. c. 23K and 205 CMR 143 as of the start date of testing;

~~(e) an attachment listing all known methods of breaching the security of the gaming device;~~

(e) the date the gaming device was submitted for testing;

(f) the start and end dates of the gaming device testing;

(g) the location of the facility used to perform the testing; and

(h) a statement, signed under penalty of perjury, that all information provided in the report is accurate and complete.

(3) The independent testing laboratory's report shall not contain any information in its body that if publically released may harm the integrity of the gaming device, but such information may be disclosed in an attachment.

(4) The independent testing laboratory may communicate with the applicant to request additional documentation or to discuss potentially non-compliant components. The independent testing laboratory shall log any communication between itself and the applicant and be able to provide to the commission copies of all documents transmitted to or from the applicant for at least seven years following the issuance of the report.

(5) The independent testing laboratory may only rely on testing conducted and data collected from a third party or from its own testing for another jurisdiction if the testing was performed during the past six years by an independent party with no apparent interest in the result. An independent testing laboratory relying on such external testing or data must clearly identify in its report all such reliance and independently verify the validity of such data or testing by:

(a) finding that the methods described in the earlier test are reliable and there is no indication that the data are incorrect; or

(b) showing that the gaming device has been implemented for public use for at least 6 months in other jurisdictions and has performed in conformance with the data;

(6) An independent testing laboratory may rely on any data or results of testing conducted by a commission certified independent testing laboratory during the past six years when such testing was conducted for purposes of permitting a gaming device in the Commonwealth. Any reliance pursuant to 205 CMR 144.04(5) or (6) must be clearly identified in the report.

144.05: Fees for Testing, Permitting, and Registration of Gaming Devices

(1) A gaming vendor seeking a gaming device permit shall remit appropriate fees to the commission along with the gaming device permit application. The application fee for submitting a new gaming device for permitting or for modification of a currently permitted gaming device is $500. If the Commission's costs for testing, in accordance with the fee schedule posted by the Commission to its website, exceed the initial application fee, the gaming vendor shall pay the additional amount within 30 days after notification of insufficient fees or the application shall be rejected.

~~(2) A gaming vendor seeking a gaming device permit or update to a gaming device permit shall, in addition to the application fee, pay to the commission all costs incurred by the commission in the testing process.~~

(2) A gaming vendor requesting that a commission certified independent testing laboratory conduct testing shall pay all costs of the testing directly to the independent testing laboratory.

(3) There is no fee for registering a gaming device based on a permitted prototype of the same device.

144.06: Independent Testing Laboratory Certification and Auditing

(1) Certification Process. In order to provide testing services of gaming devices in Massachusetts, a person must be certified as an independent testing laboratory in accordance with 205 CMR 144.06. The certification process will take place as follows:

(a) The commission may issue yearly a request for applications from applicants interested in being certified as independent testing laboratories.

(b) Upon receipt of an application in the form prescribed in 205 CMR 144.06(5) the gaming technology laboratory and the bureau shall conduct any investigation they deem reasonable, including any visit, review or inspection of each independent testing laboratory seeking certification to evaluate the laboratory's qualifications and capabilities pursuant to 205 CMR 144.06(3).

(c) The applicant is required to submit a $5,000 application fee with its application for certification. If the Commission's ~~pay any and all~~ costs associated with the investigation,

including site visits, inspections, and background investigations, of the applicant during the certification evaluation period, in accordance with the fee schedule posted by the Commission to its website, exceed the application fee, the applicant shall pay the additional amount within 30 days after notification of insufficient fees or the application shall be rejected.

(d) Upon the conclusion of evaluation and upon full payment of any costs associated with the certification process, the gaming technology laboratory, with the input of the bureau, shall issue a written report to the commission and to the applicant. The commission shall determine whether to initiate a process for a public hearing or adjudicatory proceeding. ~~The commission may utilize the public hearing process if the bureau has not raised any complex concerns relative to suitability in the report.~~

(e) If the commission determines that an adjudicatory proceeding will be held, the commission shall conduct an adjudicatory proceeding in accordance with 801 CMR 1.02: *Informal/Fair Hearing Rules* and M.G.L. c. 30A on the gaming technology laboratory's report under 205 CMR 144.06(1)(d) concerning the applicant. Any party may be represented by legal counsel. All parties shall be permitted to present an opening statement, testify on their own behalf, cross-examine all witnesses, present any relevant witness testimony, present any relevant documentary evidence, and offer a closing argument. The commission will issue a public notice in advance of the adjudicatory proceeding stating the date, time and place of the hearing. The commission shall issue a final decision granting or denying the certification within 30 days of the hearing.

(f) If the commission determines that a public hearing should be held, the commission shall review the gaming technology laboratory's report and make a final decision granting or denying the certification at a public hearing. The commission will issue a notice in advance of the public hearing stating the date, time and place of the hearing.

(g) Certification as an independent testing lab shall be valid for one year and shall automatically renew annually thereafter upon payment of a renewal and audit fee of $2,000. The commission may audit the compliance of the certified independent testing laboratory with commission requirements annually or more often if needed. The commission may revoke the registration of a certified independent testing laboratory if the testing laboratory no longer meets the requirements of G.L. c. 23K and 205 CMR.

(h) The commission shall maintain a list of certified independent testing laboratories along with the categories of gaming device that each independent testing laboratory may test.

(2) Categories of Certification. Each independent testing laboratory must be certified for each category of testing for which the laboratory seeks to provide results. The categories of testing include:

(a) Games and game variations;

(b) Gaming devices and gaming device modifications;

(c) Gaming associated equipment and gaming associated equipment modifications;

(d) Cashless wagering systems and cashless wagering system modifications;

(e) Inter-casino linked systems and inter-casino linked system modifications;

(f) Mobile gaming systems and mobile gaming system modifications;

(g) Interactive gaming systems and interactive gaming system modifications; and

(h) Any other category of testing that the commission may deem appropriate.

(3) Standards for Certification. To qualify for certification, the independent testing laboratory, must:

(a) Be independent pursuant to 205 CMR 144.06(4)

(b) Be accredited in accordance with ISO/IEC 17025 by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Agreement, unless the independent testing laboratory is only seeking certification for the testing of games and game variations;

(c) Demonstrate suitability in accordance with G.L. c. 23K, §§ 12 and 16 by clear and convincing evidence after considering reciprocity from other jurisdictions;

(d) Demonstrate that it is technically competent in testing the category of game, device, or system in which it is seeking certification; and

(e) Demonstrate that it is technically competent to test compliance with the applicable Massachusetts statutes, regulations, standards and policies.

(4) Independence. An independent testing laboratory must be independent at all times while certified by the commission.

(a) To be considered independent from a manufacturer, distributor, or operator pursuant to 205 CMR 144.06(3)(b), the independent testing laboratory, including its employees, management, directors, owners, compliance committee members and gaming regulatory advisors, with the exception of the independent testing laboratory's external accountants and attorneys:

1. Must not have a financial or other interest, direct or otherwise, in a manufacturer, distributor, or operator of any game, gaming device, associated

equipment, cashless wagering system, inter-casino linked system, mobile gaming system or interactive gaming system, or any component thereof or modification thereto, regardless of whether or not the person or entity is licensed, registered, or otherwise does business in Massachusetts;

2. Must not participate, consult, or otherwise be involved in the design, development, programming, or manufacture of any game, gaming device, associated equipment, cashless wagering system, inter-casino linked system, mobile gaming system or interactive gaming system, or any component thereof or modification thereto;

3. Must not have any other interest in or involvement with a manufacturer, distributor, or operator that could cause the independent testing laboratory to act in a manner that is not impartial; and

4. Such individuals shall not serve in any capacity with a manufacturer, distributor, or operator beyond the scope of the independent testing laboratory's engagement pursuant to these regulations.

(b) The restrictions in 205 CMR 144.06(4)(a) shall not be interpreted to limit an independent testing laboratory, or the above listed individuals, from providing consulting services to a manufacturer, distributor, or operator, provided that such services do not directly or indirectly indicate, suggest, or imply how to design, develop, program or manufacture a game, gaming device, associated equipment, cashless wagering system, inter-casino linked system, mobile gaming system or interactive gaming system, or any components thereof or modification thereto.

(c) The restrictions in 205 CMR 144.06(4)(a) shall not be interpreted to limit its ability to accept fees from a gaming device vendor in accordance with 205 CMR 144.05.

(5) Form of Application. An application for certification as an independent testing laboratory shall be in the form prescribed by the commission and contain:

(a) The required application fee pursuant to 205 CMR 144.06(1)(c);

(b) A completed business entity disclosure form as set forth in 205 CMR 134.07(6) for the applicant entity;

(c) Completed multi-jurisdictional personal history disclosure forms as set forth in 205 CMR 134.07(1) for each person who would be a gaming vendor qualifier pursuant to 205 CMR 134.04(4) if the applicant were a gaming vendor;

(d) Copies of all ISO/IEC 17025 certification and accreditation materials except if the independent testing laboratory is only seeking registration for the testing of games and game variations;

(e) All ISO required internal controls, policies and procedures, except if the independent laboratory is only seeking registration for the testing of games and game variations;

(f) Detailed description of the testing facilities;

(g) Detailed description of available testing staff and staff qualifications, including education, training, experience and skill levels;

(h) Detailed description of available testing equipment;

(i) Copies of documented policies, systems, programs, procedures and instructions to assure the quality of test results;

(j) Copies of all test scripts to be used for testing against the applicable Massachusetts statutes, regulations, standards, and policies.

(k) A statement subscribed by the applicant that:

1. The information being provided to the commission is accurate and complete;

2. The applicant agrees to cooperate with all requests, inquiries, or investigations of the commission;

3. The applicant acknowledges that the commission shall retain jurisdiction over the independent testing laboratory in any matter involving a gaming device;

4. The applicant acknowledges that it will comply with G.L. c. 23K, § 13(b) and (c) and update the commission in accordance with 205 CMR 144.06(6);

5. The applicant agrees to indemnify and hold harmless the Commonwealth of Massachusetts and the commission, and each of their members, agents, and employees in their individual and representative capacities against any and all claims, suits and actions, brought against the persons named in this section by reason of any inspections or certifications performed by the applicant as a certified independent testing laboratory, and all other matters relating thereto, and against any and all expenses, damages, charges and costs, including court costs and attorney fees, which may be sustained by the persons and entities named in this subsection as a result of said claims, suits and actions; and

(l) any additional information that the commission may require.

(6) Notification Requirements. Certified independent testing laboratories shall:

(a) notify the commission of any change in ownership of the certified independent testing laboratory, any change in directors, executives, or key management or employees of the independent testing laboratory, and any other material changes to the information included in its application for registration or the information submitted in conjunction with or subsequent to its application within 30 days of such change;

(b) no later than by the 15th day of each January, inform the commission in writing of any changes to the information that was contained on the registered independent testing laboratory's application for registration or submitted in conjunction with or subsequent to its application, or that no changes have occurred since the last reporting date;

(c) maintain copies of the results of any ISO/IEC 17025 audits or reviews and notify the commission in writing of the of the availability of the results within 15 days of when they become available to the registered independent testing laboratory and provide copies to the commission upon request.

(d) notify the commission immediately of any material issues concerning any gaming device that it tested for use in Massachusetts;

(e) notify the commission immediately of any attempts by a manufacturer, distributor, or operator to improperly influence the certified independent testing laboratory, or any of its employees, managers, or owners, in or in connection with any testing of gaming devices for use in Massachusetts; and

(f) timely provide the commission with such other information as the commission may request or require.

(7) Continued Obligations. Certified independent testing laboratories shall abide by the following requirements while certified:

(a) In the interest of preserving a competitive gaming industry, a certified independent testing laboratory shall not implement or maintain any procedure or policy or take any action that would inhibit or prevent a manufacturer, distributor or operator that has otherwise been deemed suitable for doing business in Massachusetts by the commission from submitting a game, gaming device, associated equipment, cashless wagering system, inter-casino linked system, mobile gaming system or interactive gaming system, or any component thereof or modification thereto, for testing for use in Massachusetts, or that would call into question or tend to erode the independence of the certified independent laboratory from any clients that utilize its services.

(b) All testing shall be performed by a person directly employed by the certified independent testing laboratory. The certified independent testing laboratory shall not

assign, delegate, subcontract, or otherwise engage any person not directly employed by the certified independent testing laboratory for any testing for which the laboratory has been certified. The certified independent testing laboratory shall provide the commission each month with a list and description of all amounts paid by or invoiced to licensed gaming vendors for costs of gaming device testing or otherwise.

(c) A certified independent testing laboratory shall implement and maintain a hiring and background check process that ensures, at a minimum, that no person is hired in a position involving testing relating to Massachusetts, or in a position overseeing or managing an employee in such a position, who has:

1. failed to disclose or misstated information or otherwise attempted to mislead the commission with respect to any information the person has provided to the commission;

2. been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury;

3. committed prior acts which have not been prosecuted or in which the person was not convicted but form a pattern of misconduct that makes the person unsuitable;

4. Been identified in the published reports of any federal or state legislative or executive body as being a member or associate of organized crime, or as being of notorious and unsavory reputation;

5. Been placed and remains in the constructive custody of any federal, state or municipal law enforcement authority; or

6. Had any gaming license, registration or other like credential revoked or committed any act which is a ground for the revocation of a gaming license, registration or other professional credential held by the person or would have been a ground for the revocation of a gaming license, registration or other professional credential had the person held such license, registration, or credential.

(d) A certified independent testing laboratory shall handle all information and data prepared or obtained as part of the testing process as confidential.

(e) A certified independent testing laboratory shall implement and maintain security and access control systems designed to secure and protect the confidentiality of all equipment, software, and other information entrusted to it as part of the testing process.

(f) The commission may, as appropriate, periodically provide further guidance as to what is required of a certified independent testing laboratory through industry notices or other written communications.

(g) If a certified independent testing laboratory hires an individual who was previously employed by, or performed any work for, a manufacturer, distributor or operator within one year prior to the individual's date of employment with the independent testing laboratory, the certified independent testing laboratory shall not permit that person to test any gaming device for use in Massachusetts, for which the person had any involvement with, whatsoever, while he or she was employed by the manufacturer, distributor or operator for a period of one year from the individual's date of employment with the independent testing laboratory.

REGULATORY AUTHORITY

205 CMR 144: M.G.L. c. 23K, §§x

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 145.00: POSSESSION OF SLOT MACHINES

Section

145.01: Possession of Slot Machines

(1) The following persons and any employee or agent acting on their behalf may, subject to any terms and conditions imposed by the commission, possess slot machines in the commonwealth for the purposes provided herein, and such possession is not restricted by G.L. c. 271, § 5A, provided that the machines are kept only in such locations as may be specifically approved in writing by the commission and that any machines located outside of a gaming establishment not be used for gaming activity:

(a) A holder of:

1. A gaming license at the gaming establishment;

2. A gaming vendor license, for the purpose of distributing, repairing or servicing slot machines;

(b) An employee or agent of the commission, for the purpose of fulfilling official duties or responsibilities;

(c) A common carrier, for the purpose of transporting such slot machines;

(d) A trade school approved by the commission to possess slot machines for educational purposes; or

(e) Any other person the commission may approve after finding that possession of slot machines by such person in this state is necessary and appropriate to fulfill the goals and objectives of M.G.L. c. 23K and 205 CMR.

(2) Each gaming licensee shall file, prior to the commencement of gaming and every thirty days thereafter with the commission a comprehensive lists of:

(a) The slot machines and bill validators and/or bill changers not integrated into a slot machine on its gaming floor (the "Slot Machine Master List");

(b) The slot machines possessed by the licensee in restricted areas off the gaming floor but on the premises of its gaming establishment;

(c) The slot machines possessed by the licensee at locations in this state but off the premises of its gaming establishment.

(3) At a minimum, each list of slot machines required by paragraph (2) of this rule shall contain the following information, as applicable, for each slot machine and any accompanying bill validator and/or bill changer on the "Slot Machine Master List," in consecutive order by location number:

(a) The date on which the list was prepared;

(b) A description of each slot machine by:

1. Slot machine model and serial number;

2. Computer program number;

3. Denomination;

4. Manufacturer and machine type; and

5. Whether the slot machine has an electronic funds transfer (EFT) feature.

(c) A cross reference for each slot machine by zone and serial number;

(d) The restricted area within the gaming establishment where the slot machine is located for each slot machine included on the list required by paragraph (2)(b) of this rule;

(e) The address of the slot machine storage facility where the slot machine is located for each slot machine included on the list required by paragraph (2)(c) of this rule; and

(f) Such other information as the commission may require.

(4) Any building located outside of a casino facility where slot machines will be kept shall meet, at a minimum, the following requirements:

(a) All access doors and windows must be locked and alarmed;

(b) Access is restricted to those individuals permitted to maintain slot machines pursuant to this regulation; and

(c) Any other requirements as deemed appropriate by the commission.

145.02: Transportation of Slot Machines

(1) Pursuant to St. 2011, c. 194, §§ 101 and 102, any transportation of a slot machine in accordance with 205 CMR 145.02 shall be exempt from the provisions of chapter 1194, 64 Stat. 1134, 15 U.S.C. 1171 to 1178.

(2) Prior to the transport or movement of any slot machine into the Commonwealth; from one authorized location to another authorized location within the Commonwealth unless both locations are operated and controlled by the same gaming licensee; or out of the Commonwealth, the person causing such slot machine to be transported or moved shall first notify the commission in writing giving the following information:

(a) The full name and address of the person shipping or moving the machine;

(b) The full name and address of the person who owns the machine, including the name of any new owner in the event ownership is being changed in conjunction with the shipment or movement;

(c) The method of shipment or movement and the name of the carrier or carriers;

(d) The full name and address of the person to whom the machine is being sent and the destination of the machine if different from such address;

(e) The quantity of machines being shipped or moved and the manufacturer's serial number of each machine;

(f) The expected date and time of delivery to or removal from any authorized location in the Commonwealth;

(g) The port of entry, or exit, if any, of the machine if the origin or destination of the machine is outside the continental United States; and

(h) The reason for transporting the machine.

(3) The person shipping or moving any slot machine shall provide to the shipper a document, at least one copy of which shall be kept with the slot machine at all times during the shipping process, that contains the following information, at a minimum:

(a) The manufacturer's serial number of the slot machine being transported;

(b) The full name and address of the person from whom the machine was obtained;

(c) The full name and address of the person to whom the machine is being sent; and

(d) The dates of shipment.

(4) Any person, company, or school receiving a slot machine shipment from outside of the Commonwealth shall, within three business days of receipt, provide the commission with the information enumerated in (b) above.

(5) All movements of slot machines shall be recorded in a log that shall be maintained in accordance with the record retention requirements contained in 205 CMR 135.XX and include the following:

(a) The manufacturer's serial number;

(b) The casino operator's equipment number, if applicable;

(c) An indication as to whether the equipment is equipped for tokenization, and if so, the denomination;

(d) The date and time of movement of the equipment;

(e) The location from which the equipment was moved;

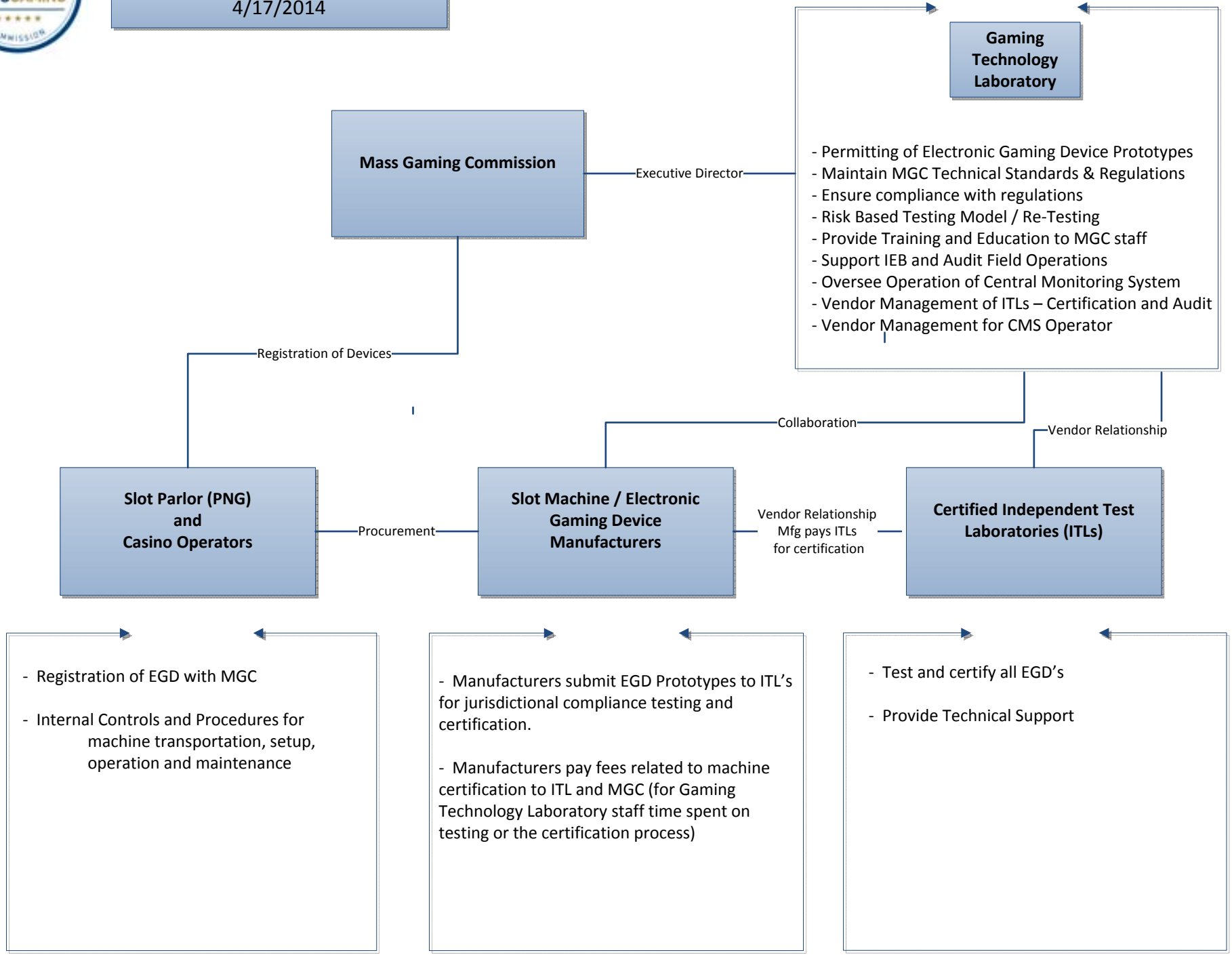
(f) The location to which the equipment was moved; and

(g) The printed name(s) and signature(s) of the person(s) involved in moving the equipment.

REGULATORY AUTHORITY

205 CMR 145: M.G.L. c. 23K, §§x

Gaming Lab Operating Model Roles
4/17/2014




$25
BlackJack
ROYAL MATCH 21
PLAY INSTRUCTIONS
ROYAL MATCH 21
GAME RULES
BE SMART.
USE YOUR CARD.
GET REWARDS!
Get Bonus Play!
Get Bonus Entries!
Exclusive Ticket Offers!
Coupons & Discounts!