

CHAPTER 23K  
THE MASSACHUSETTS GAMING COMMISSION

Racing Excerpts  
(without errata changes)

**Section 7** (line 650)

- The commission shall administer and enforce chapter 128A and 128C and any other general or special law related to pari-mutuel wagering or simulcasting.
- The commission shall serve as a host racing commission and an off-track betting commission for purposes of 15 U.S.C.A.30001, et seq.

**Section 20** (line 936)

In determining whether an applicant should receive a gaming license, the commission shall evaluate and issue a statement of findings of how each applicant proposes to advance the following objectives:

(6) providing a market analysis detailing the benefits of the site location of the gaming establishment and the estimated recapture rate of gaming-related spending by residents travelling to out-of-state gaming establishments;

(10) maximizing revenues received by the commonwealth;

(12) offering the highest and best value creating a secure and robust gaming market in the region and the commonwealth;

**Section 21** (line 987)

(a) The commission may issue not more than 3 category 1 licenses based on the applications and bids submitted to the commission. Not more than 1 license may be awarded per region, as follows:

- region 1: suffolk, middlesex, essex and worcester counties;
- region 2: norfolk, bristol, plymouth, nantucket, dukes and barnstable counties;
- region 3: hampshire, hamden, franklin and berkshire counties.

Gaming licenses shall only be issued to applicants who are qualified under the criteria set forth in this chapter as determined by the commission. Within any of the regions, if the commission is not convinced that there is an applicant that has both met the eligibility criteria and provided convincing evidence that the applicant will provide value to the region in which the gaming establishment is proposed to be located and to the commonwealth, no gaming license shall be awarded in that region.

(b) No other gaming license shall be issued by the commission for a period of 15 years.

(c) No gaming licensee shall transfer a license or any direct or indirect interest in the license or a gaming establishment without the majority approval of the commission. Any person seeking to acquire a license through a transfer shall qualify for licensure under this chapter. The commission shall reject any license transfer or transfer of interest in the gaming establishment to an unsuitable person and may reject a proposed transfer that, in the opinion of the commission, would be disadvantageous to the interests of the commonwealth.

**Section 22** (line 1005)

(a) The commission may issue not more than 2 category 2 licenses; provided, however, that the category 2 licenses shall only be issued to applicants who are qualified under the criteria set forth in this chapter as determined by the commission.

(b) The commission may issue 1250 slot machines to each qualified applicant for a category 2 license, provided, however, that the commission shall not issue more than 1000 slot machines per establishment when the category 2 applicants are located in the same geographical region of the commonwealth.

(c) A category 2 licensee shall maintain a simulcasting license pursuant to chapter 128C. Upon failure to conduct simulcast wagering the commission shall suspend the category 2 license.

(d) If the category 2 license is awarded to an applicant with live horse racing, issuance of the license shall be contingent upon the licensee's completion of an annual live racing season pursuant to chapter 128A. A category

2 licensee shall continue to conduct live racing and abide by all the live racing terms pursuant to section 25 and shall continue to pay the applicable live racing tax required of category 2 licensees.

(e) THIS ITEM IS MISSING

(f) A category 2 license issued pursuant to this chapter shall not be transferrable or assignable without the approval of the commission; provided, however, that for 5 years after the initial issuance of a category 2 license the commission shall only approve such a transfer if:

- (i) the licensee experiences a change in ownership; or
- (ii) the licensee fails to maintain suitability or other circumstances which the commission may consider, which, in the opinion of a majority of members of the commission, impact a licensee's ability to successfully operate a gaming establishment.

**Section 23** (line 1025)

a) A category 1 or category 2 licensee shall issue an annual report to the commission explicitly stating its progress on meeting each of the stated goals and stipulations put forth in the licensee's original application. Inability to meet stated goals within a reasonable time frame, as determined by the commission, shall result in additional fees as deemed fair and reasonable by the commission. Failure to meet stated goals may also result in revocation of the license at any time by the commission.

Nothing in this section shall preclude the commission at any time from reviewing the business operations of any gaming licensee to ensure that the conditions of licensure are being met, including, but not limited to, the suitability of the licensee and any affiliates and the fiscal stability of the gaming establishment.

(b) The commission shall have the power to condition, suspend or revoke any gaming license upon a finding that a licensee:

- (i) has committed a criminal or civil offense under this chapter or any other laws of the commonwealth;
- (ii) is not in compliance with gaming regulations or is under criminal investigation in another jurisdiction;
- (iii) has breached a condition of licensure;
- (iv) has affiliates, close associates or employees that are not qualified or licensed under this chapter with whom the gaming licensee continues to conduct business or employ;
- (v) is no longer capable of maintaining operations at a gaming establishment; or
- (vi) whose business practice, upon a determination by the commission, is injurious to the policy objectives of this chapter.

**Section 24** (line 1063)

(a) The commission shall prescribe the form of the gaming license, which shall include, but shall not be limited to, the following license conditions for each licensee:

- (1) have an affirmative obligation to abide by every statement made in its application to the commission under section 14, every statement made in its bid submission to the commission including all evaluation criteria under section 20 and the eligibility requirements under section 15
- (2) comply with all laws of the commonwealth and all rules and regulations promulgated under this chapter.
- (3) THIS ITEM IS MISSING
- (4) make, or cause to be made, capital expenditures to its gaming establishment in a minimum aggregate amount equal to or greater than 3.5 per cent of the net gaming revenues derived from the establishment.
- (5) change its business governing structure without the notification and approval of the commission.

(b) THIS ITEM IS MISSING

(c) The board may include any reasonable additional requirements to the license conditions.

**Section 25** (line 1129)

(a) An applicant for any gaming licensee shall maintain any existing racing facility on the premises; provided, however, that said licensee shall increase the number of live racing days to a minimum of 125 days according to the following schedule:

- (i) in the first calendar year of operation a licensee shall hold 105 racing days;
  - (ii) in the second calendar year of operation a licensee shall hold 115 racing days;
  - (iii) in the third calendar year of operation a licensee shall hold 125 racing days;
- (b) A category 2 licensee may increase the number of live racing days if said licensee is holding a minimum of 125 racing days within 3 years of receiving a category 2 license. If a gaming licensee does not conduct live racing for the minimum number of days set forth in subsection (a), the commission shall suspend the gaming license.
- (c) After 3 years of operation, and in consultation with the parties to the purse agreement, the commission may adjust the amount of required racing days at a gaming establishment based on fields, demand and racing performance.
- (d) A gaming licensee shall have an annual purse agreement in effect by December thirty-first of each year for the following year's racing; provided, however, that if the parties to a purse agreement at a gaming establishment cannot in good faith negotiate an agreement by December thirty-first, the purse agreement shall be arbitrated by the commission.

**SECTION 78** (line 2034)

Notwithstanding any general or special law to the contrary, the Massachusetts gaming commission shall analyze the pari-mutuel and simulcasting statutes in effect as of the effective date of this act. Said analysis shall include a review of the efficacy of said statutes and the need to replace said statutes pursuant to the sunset of chapters 128A and 128C of the General Laws established under this act. Said review shall not include a review of whether to increase the number of running horse, harness horse or greyhound racing meeting licensees. Said commission shall report its finding together with legislation, if any, to the clerks of the house of representatives and senate and to the chairs of the joint committee on economic development and emerging technologies no later than January 1, 2013.

**An Act establishing expanded gaming in the Commonwealth HB5001 7/30/2010**

**SECTION 6** (line 79)

Notwithstanding any general or special law rule or regulation to the contrary:

(e) Applicants for a category 2 license who are permitted by the commission to operate 1000 slot machines shall invest not less than \$100,000,000 into the gaming establishment and racecourse, if applicable. Applicants for a category 2 license who are permitted by the commission to operate 1250 slot machines shall invest not less than \$125,000,000 into the gaming establishment and racecourse, if applicable. The investment required under this section shall be made within 2 years of receiving a gaming license; provided, however, that any infrastructure improvements necessary to increase visitor capacity and account for traffic mitigation, as determined by the commission, shall be completed before the category 2 licensee shall be authorized to operate any slot machine at the gaming establishment.

(f) The required licensing fee for a category 2 license shall be not less than \$20,000,000 for 1000 slot machines or \$25,000,000 for 1250 slot machines.

**SECTION 7** (line 126)

Notwithstanding and general or special law rule or regulation to the contrary:

A category 2 license issued by the Massachusetts gaming commission shall be for a period of 5 years. The commission shall establish procedures for renewal and set the renewal fee based on the cost of fees associated with the evaluation of a licensee; provided, however, that the cost of renewal shall not be less than \$100,000.

**SECTION 24** (line 467)

Notwithstanding and general or special law rule or regulation to the contrary:

(a) A category 1 gaming licensee licensed under chapter 23K shall pay a daily tax of 25 per cent on gross gaming revenues.

(b) A category 2 licensee licensed under chapter 23K shall pay a daily tax of 40 per cent on gross gaming revenue.

(c) In addition to the tax imposed under this act, a category 2 licensee shall pay a daily assessment of 9 per cent of their gross gaming revenue to the Massachusetts race horse development fund established by section 53.

(d) THIS ITEM IS MISSING

(e) Taxes imposed under this section shall be remitted to the commission by a gaming licensee the day following each day of wagering. A category 1 licensee or a category 2 licensee shall be subject to chapters 62 through 62E, inclusive, and chapters 63 through 63B, inclusive.

**SECTION 29** (line 511)

Notwithstanding and general or special law rule or regulation to the contrary:

If the person entitled to a prize or any winning ticket is under the age of 21 years said prize shall be remitted to the commission and deposited into the gaming revenue fund established by section 52.

There is hereby established and placed upon the books of the commonwealth a Gaming Revenue Fund which shall receive revenues collected from the tax on gross gaming revenue received from gaming licensees. The commission shall be the trustee of the fund and shall transfer monies in the fund in accordance with the following provisions:

(1) one hundred per cent of the revenue received from category 2 licensees shall be transferred to the gaming local aid fund established by section 55.

(2) Upon the opening of a category 1 facility, all monies received into the fund shall be transferred as follows:

- Five per cent shall be transferred to the gaming mitigation trust fund established under section XX.

**SECTION 30** (line 533)

Notwithstanding and general or special law rule or regulation to the contrary:

(a) There is hereby established and placed upon the books of the commonwealth a Race Horse Development Fund to be administered by the commission. The commission shall make distributions from the race horse fund to each of the active and operating category 2 licensees conducting live racing.

(b) Funds from the race horse development fund shall be distributed in proportion to the gross gaming revenue of each category 2 licensee; provided that the funds received by each licensee shall be allocated in accordance with the following provisions:

- (i) eighty per cent shall be deposited weekly into a separate, interest-bearing purse account to be established by and for the benefit of the horsemen. The earned interest on the account shall be credited to the purse account. Licensees shall combine these funds with revenues from existing purse agreements to fund purses for live races consistent with those agreements with the advice and consent of the horsemen;
- (ii) for a thoroughbred track, 16 per cent shall be deposited on a monthly basis into the Massachusetts thoroughbred breeding program authorized by the commission pursuant to section 2 of chapter 128;
- (iii) for a harness track, 8 per cent shall be deposited on a monthly basis into the Massachusetts standardbred breeding program authorized by the commission pursuant to section 2 of chapter 128 and an additional 8 per cent shall be deposited on a monthly basis into a standardbred breeder development program authorized by the commission;
- (iv) four per cent shall be used to fund health and pension benefits for the members of the horsemen's organizations representing the owners and trainers at the racetrack at which the category 2 licensee operates for the benefit of the organization's members, their families, employees and others in accordance with the rule and eligibility requirements of the organization, as approved by the commission. This amount shall be deposited within 5 business days of the end of each month into a separate account to be established by each respective horsemen's organization at a banking institution of its choice. Of this amount, the commission shall determine how much should be paid annually by the horsemen's organization to the thoroughbred jockeys or standardbred drivers organization at the racetrack at which the licensed racing entity operates for health insurance, life insurance or other benefits to active and disabled thoroughbred jockeys or standardbred drivers in accordance with the rules and eligibility 560 requirements of that organization.