

205 CMR 134.00: LICENSING AND REGISTRATION OF EMPLOYEES, VENDORS, JUNKET ENTERPRISES AND REPRESENTATIVES, AND LABOR ORGANIZATIONS

Section

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134.04: Vendors

No person shall conduct business with a gaming licensee as a vendor to a gaming establishment unless such person has been licensed as a gaming vendor, as defined by M.G.L. c. 23K, § 2, or registered as a non-gaming vendor, as defined by M.G.L. c. 23K, § 2, in accordance with 205 CMR 134.00. A person shall be considered to be conducting business upon commencement of performance of a contract or provision of a good or service.

A subcontractor to a vendor shall not be required to obtain licensure or registration under 205 CMR 134.00. For purposes of 205 CMR 134.00 a subcontractor shall be considered a person that contracts with a licensed or registered vendor to provide goods or services necessary to fulfill the licensed or registered vendor's contract with a gaming licensee. As part of the application process, vendors shall be required to identify all of its known or anticipated subcontractors and shall have a continuing duty to update the Bureau relative to the identification of any new subcontractors. The Bureau may, at its discretion, require the submission of additional information and documents, including but not limited to the Subcontractor Information Form as provided in 205 CMR 134.07(11).

(1) Gaming Vendors.

(a) Gaming Vendors- Primary. A person who conducts business with a gaming applicant or gaming licensee on a regular or continuing basis for provision of goods or services which

directly relates to gaming, as defined by M.G.L. c. 23K, § 2, including, but not limited to a person who does any of the following, shall be designated as a gaming vendor-primary:

1. Manufactures, sells, leases, supplies, or distributes devices, machines, equipment (except gaming table layouts), accessories, or items that meet at least one of the following conditions:
  - a. are designed for use in a gaming area as defined by M.G.L. c. 23K, § 2;
  - b. are designed for use in a simulcast wagering area;
  - c. are used in connection with a game in the gaming area;
  - d. have the capacity to affect the calculation, storage, collection, electronic security, or control of the gaming revenues from a gaming establishment.
2. provides maintenance services or repairs gaming or simulcast wagering equipment, including slot machines;
3. acts as a junket enterprise; or
4. provides items or services that the Commission has determined are used in or are incidental to gaming or to an activity of a gaming facility.

Exception. Any person, by submission of a written petition, may request a determination from the commission that the person providing goods or services deemed by the Bureau to meet a description contained in 205 CMR 134.04(1)(a) need not be licensed as a Gaming Vendor-primary on the grounds that they are not providing services on a regular or continuing basis or that they do not directly relate to gaming.

(b) Gaming Vendors- Secondary. Any person who regularly conducts over \$250,000 in gross sales with any one gaming licensee within a 12 month period or a person who conducts over \$100,000 in gross sales with any one gaming licensee within a three month period, and who does not otherwise qualify for designation as a Gaming Vendor-primary in accordance with 205 CMR 134.04(1)(a)1., may be designated a Gaming Vendor-secondary by the Commission regardless of the type of goods or services being provided. This designation may be made either by virtue of submission of a *Business Entity Disclosure Form- Gaming Vendor-secondary* application by the vendor in anticipation of meeting the monetary threshold, or in accordance with 205 CMR 134.04(3).

(2) Non-gaming Vendors. A person who offers to a gaming establishment or gaming licensee goods or services which are not directly related to gaming, as defined by M.G.L. c. 23K, § 2, including, but not limited to any of the following, shall be designated as a non-gaming vendor:

- (1) construction company;
- (2) vending machine provider;
- (3) linen supplier;
- (4) garbage handler;
- (5) maintenance company;
- (6) limousine service company;
- (7) food purveyor;
- (8) supplier of alcoholic beverages;
- (9) a person that sells, distributes, tests, or repairs antique slot machines as described in M.G.L. c. 271, § 5A;
- (10) suppliers of gaming table layouts.

~~(3) The Division of Licensing shall determine upon review of the agreement submitted in accordance with 205 CMR whether a registered non-gaming vendor has met the conditions provided in 205 CMR 134.04(1)(b). If the Division of Licensing determines that the non-gaming vendor registrant has met the threshold it shall forward notice of such to the vendor of its obligation to submit an application for licensure as a gaming vendor secondary. Within 45 days of service of the notice, the registrant shall either submit a completed *Business Entity Disclosure Form-Gaming Vendor Secondary* as set forth in 205 CMR 134.07(7) for licensure as a gaming vendor secondary, discontinue providing the goods or services it is contracted to provide, file for an exemption in accordance with 205 CMR 134.04(6), or file a written request to the Division of Licensing for reconsideration from the determination requiring filing of an application for licensure as a gaming vendor secondary on the grounds that they are not providing goods or services on a regular or continuing basis.~~

The Division of Licensing shall determine upon consultation with the gaming licensee, review of the *Disbursement Report* required to be submitted in accordance with 205 CMR 138.06(2), and/or review of the terms of the agreement required to be maintained pursuant to 205 CMR 138.06(3) whether a non-gaming vendor has met or is reasonably likely to meet the thresholds provided in 205 CMR 134.04(1)(b). If the Division of Licensing determines that the non-gaming vendor has met or is likely to meet a threshold, it shall forward notice of such to the vendor of its obligation to submit an application for licensure as a gaming vendor-secondary. Within 45 days of service of the notice, the vendor, if already providing goods and/or services to the gaming licensee as a registrant, shall submit a completed *Business Entity Disclosure Form-Gaming Vendor- Secondary* as set forth in 205 CMR 134.07(7) for licensure as a gaming vendor-secondary, discontinue providing the goods and/or services it is contracted to provide, file for an exemption in accordance with 205 CMR 134.04(6), or file a written request to the Division of Licensing for reconsideration from the determination requiring filing of an application for licensure as a gaming vendor-secondary on the grounds that it is not providing goods or services on a regular or continuing basis. If the vendor is not already providing goods and/or services to the gaming licensee as a registrant, it may file for an exemption in accordance with 205 CMR 134.04(6), or file a written request to the Division of Licensing for reconsideration from the determination requiring filing of an application for licensure as a gaming vendor-secondary on the grounds that it will not be providing goods and/or services on a regular or continuing basis.

(4) Gaming Vendor Qualifier.

- (a) The following persons shall be designated as a gaming vendor qualifier and must establish their qualifications for licensure in accordance with 205 CMR 134.09 and 134.10:
1. If the gaming vendor applicant is a sole proprietor: The owner.
  2. If the gaming vendor applicant is a corporation:
    - a. Each officer;
    - b. Each inside director and those outside directors serving on the audit or compliance committees;
    - c. Any person owning more than 5% of the common stock of a company applying for licensure as a gaming vendor as provided by 205 CMR 134.04(1)(a), or a holding, intermediary or subsidiary company of such company;
    - d. Any person who will act as a sales representative or regularly engage in the solicitation of business from a licensed gaming establishment;
    - e. In the judgment of the Bureau any person with significant and substantial responsibility for the applicant's business in the Commonwealth.

3. If the applicant is a limited liability corporation:
    - a. Each Member;
    - b. Each transferee of a Member's interest;
    - c. Each Manager;
    - d. In the judgment of the Bureau any person with significant and substantial responsibility for the applicant's business in the Commonwealth.
  4. If the applicant is a limited partnership:
    - a. Each General Partner;
    - b. Each Limited Partner;
    - c. In the judgment of the Bureau any person with significant and substantial responsibility for the applicant's business in the Commonwealth.
  5. If the applicant is a partnership:
    - a. Each Partner;
    - b. In the judgment of the Bureau any person with significant and substantial responsibility for the applicant's business in the Commonwealth.
- (b) In all cases, any person who, in the opinion of the commission or Bureau, can exercise control or provide direction to a gaming vendor or applicant for a gaming vendor license or holding, intermediary or subsidiary companies thereof may be designated a Gaming Vendor qualifier.
- (c) Other Qualifiers. The commission or Bureau may, at its discretion, require other persons that have a business association of any kind with the applicant for a gaming vendor license to be licensed as a gaming vendor qualifier. These persons include, but are not limited to an affiliate or holding, intermediary or subsidiary companies of the applicant for a gaming vendor license.
- (d) An applicant may appeal any determination made by the Bureau in accordance with 205 CMR 134.04(4) to the commission by filing a petition on a form prescribed by the commission. The commission shall decide the appeal at a public hearing on the matter at which it may allow representatives of the petitioner and Bureau to testify.
- (5) Waiver. Upon written petition, the commission may waive the requirement to be licensed as a gaming vendor qualifier for:
- (a) institutional investors holding up to 15% of the stock of the gaming vendor or applicant for a gaming vendor license, or holding, intermediary or subsidiary company thereof, upon a showing by the person seeking the waiver that it purchased the securities for investment purposes only and does not have any intention to influence or affect the affairs or operations of the gaming vendor or applicant for a gaming vendor license or a holding, intermediary or subsidiary company thereof. Provided, however, any institutional investor granted a waiver which subsequently determines to influence or affect the affairs or operations of the gaming vendor or applicant for a gaming vendor license, or a holding, intermediary thereof shall provide not less than 30 days' notice to the commission of such intent and shall file an application and be subject to the licensing requirements of 205 CMR 134.00 before taking any action that may influence or affect the affairs of the gaming vendor or applicant for a gaming vendor license or a holding, intermediary or subsidiary company. Any person holding over 15% of a gaming vendor or applicant for a gaming vendor license, or a holding, intermediary or subsidiary company thereof, shall be required to apply for a license before doing business in the Commonwealth; or

(b) Any person who, in the opinion of the Bureau or the commission, cannot exercise control or provide direction to a gaming vendor or applicant for a gaming vendor license or a holding, intermediary or subsidiary company thereof. Provided, however, a person who is not an institutional investor and who holds more than 5% of the common stock of a company, or holding, intermediary or subsidiary company of such a company may not petition for waiver in accordance with 205 CMR 134.04(5)(b).

(6) Exemptions. For purposes of 205 CMR 134.04 the following persons engaged in the following fields of commerce who provide goods or services to a gaming applicant or gaming licensee, and that are not otherwise required to be licensed as a key gaming employee, gaming employee, or gaming service employee, shall not be deemed to be conducting business for purposes of M.G.L. c. 23K, § 31 and accordingly shall not be required to obtain licensure or registration as a vendor:

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- (a) insurance companies and insurance agencies;
- (b) television, radio, newspaper, internet or other similar media outlets used for advertising purposes;
- (c) transactions with a governmental entity;
- (d) professional legal, accounting, and financial services;
- (e) physicians;
- (f) labor organizations, unions, or affiliates registered in accordance with 205 CMR 134.00;
- (g) utility companies;
- (h) telecommunications companies;
- (i) training seminars, publication subscriptions, conference registration or membership dues for professional associations intended to directly contribute to the work performance or professional development of an employee;
- (j) non-profit charitable corporations or organizations, provided that no consideration is received for the contribution;
- (k) court order or stipulation of settlement or for settlement of guest losses or guest refunds
- (l) payments for freight charges to freight transporters select by the vendor for delivering goods;
- (m) professional entertainers and/or celebrity appearances;
- (n) any other person that, by submission of a written petition, can demonstrate to the commission that registration as a non-gaming vendor is not necessary to protect the public interest.

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134.18: Duties of Applicants and Licensees

(1) All applicants, licensees, and registrants shall have the continuing duty to provide any assistance or information required by the commission or the Bureau and to cooperate in any inquiry or investigation conducted by the commission or the Bureau. Refusal to answer or produce information, evidence or testimony by an applicant, licensee, or registrant may result in denial of the application or suspension or revocation of the license or registration.

(2) No applicant, licensee, registrant shall willfully withhold information from, or knowingly give false or misleading information to, the commission or the Bureau. If the commission or Bureau determines that an applicant, or a close associate of an applicant, has willfully provided false or misleading information, such applicant shall not be eligible to receive a license or registration under 205 CMR 134.00. Any licensee or registrant who willfully provides false or misleading information shall have its license conditioned, suspended or revoked by the commission.

(3) Notification of changes by employees. Each key gaming employee applicant or licensee, gaming employee applicant or licensee, and gaming service employee registrant shall have a continuing duty to notify and update the commission, in writing, within ten (10) days of the occurrence of the following:

- (a) Any denial, suspension or revocation by a government agency in any jurisdiction of a license, registration, certification, permit or approval held by or applied for by the individual;
- (b) Any discipline imposed upon the individual by a government agency in any jurisdiction;
- (c) Any arrest, indictment, charge or criminal conviction of the individual in any jurisdiction;
- (d) Any reports, complaints or allegations of which the individual is or should be aware involving conduct of that individual that could lead to potential criminal charges, including but not limited to allegations of theft or embezzlement; and
- (e) Any exclusion or barring of the individual from any casino, gaming establishment or gambling/gaming related entity in any jurisdiction.

(4) Notification of changes by Gaming Vendors. Each gaming vendor applicant or licensee shall have a continuing duty to promptly notify and update the commission, in writing, within ten (10) days of the occurrence of the following:

- (a) The proposed appointment, appointment, proposed nomination, nomination, election, hiring, intended resignation, resignation, removal, firing, incapacitation or death of any person required to be a qualifier under 205 CMR 134.04(4);
- (b) Any denial, suspension or revocation by a government agency of a license, registration, certification, permit or approval held by or applied for by the vendor or any qualifying entity or individual;
- (c) Any indictment, charge or criminal conviction of the vendor or any qualifying entity or individual;

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- (d) Any civil litigation in which the vendor is named as a party if damages are reasonably expected to exceed \$100,000, except for claims covered by insurance; and
- (e) Any judgments or petitions by or against the vendor, any qualifying entity or individual or any holding or intermediary company of the vendor for bankruptcy or insolvency.

(5) Notification of changes by Non-Gaming Vendors. Each non-gaming vendor registrant shall have a continuing duty to notify the commission, in writing, of the name, residence address, social security number, and date of birth of each relevant person within ten (10) days of the occurrence of the following:

- (a) Any denial, suspension or revocation by a government agency of a license, registration, certification, permit or approval held by or applied for by the vendor or any qualifying individual;
- (b) Any indictment, charge or criminal conviction of the vendor or any qualifying individual;
- (c) The sales representative(s) or other person(s) who solicit(s) business from a gaming licensee; and
- (d) Any person authorized to sign any agreement with the gaming licensee on behalf of the vendor.

(6) Notification of change of ownership of vendor entities. Each gaming vendor applicant or licensee and each non-gaming vendor registrant shall have a continuing duty to promptly notify and update the commission, in writing, prior to or immediately upon becoming aware of any proposed or contemplated change of ownership which involves more than 5% of the vendor. This duty includes without limitation the duty to specify whether the transaction involving the change in ownership will result in a consolidation involving the vendor and another entity, including by merger or acquisition.

(7) Commission referral to IEB. Upon receipt of a notice under 205 CMR 134.18(3) through (6), the commission shall refer the matter to the IEB for appropriate handling, which may include, without limitation, a notice to the applicant, licensee or registrant requiring the filing of an appropriate application or information and the subsequent investigation of that application or information.