

House, No. 132

Presented by: [Representative David L. Flynn](#)

Petition of David L. Flynn and Marc R. Pacheco for legislation to establish the Massachusetts pari-mutuel enhancement act.

01/01/03 H Referred to the committee on [Government Regulations](#)

01/01/03 S Senate concurred

Public Hearing date Mar 31 am at 9:30 in Gardner Auditorium

HOUSE, No. 132

By Mr. Flynn of Bridgewater, petition of David L. Flynn and Marc R. Pacheco for legislation to establish the Massachusetts pari-mutuel enhancement act. Government Regulations.

The Commonwealth of Massachusetts

In the Year Two Thousand and Three.

AN ACT ESTABLISHING THE MASSACHUSETTS PARI-MUTUEL ENHANCEMENT ACT.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

The General Laws are hereby amended by inserting after Chapter 128C the following new section:—

Chapter 128D.

The Massachusetts Pari-mutuel Enhancement Act.

Section 1. General Provisions

(a) This chapter shall be known and may be cited as the “Massachusetts Pari-mutuel Enhancement Act.”

(b) No applicant for a gaming license, or a manufacturer’s or distributors license or other affirmative commission approval has any right to a license or the granting of the approval sought. Any license issued or other commission approval granted pursuant to the provisions of this act is a revocable privilege, and no holder acquires any vested right therein or thereunder.

(c) Nothing in this chapter shall preclude any city or town in the commonwealth from prohibiting gaming.

(d) In the event of any conflict between the provisions of this chapter and any other provisions of the General Laws, the provisions of this chapter shall prevail.

Section 2. Definitions.

The following words as used in this chapter shall, unless the context clearly requires otherwise, have the following meanings:

(a) “Adjusted net gaming revenues,” means the total of all net gaming revenues, less the total of all sums paid out as winnings to patrons as required under regulations promulgated by the commission and less all sums set aside as provided by this Act. In the case of slot machines, adjusted net gaming revenues shall not exceed fifteen percent of gross gaming revenues.

(b) “Affiliate”, means any person which a licensee or applicant directly or indirectly controls or in which an applicant or licensee possesses an interest. For the purposes of this section “controls” means either (i) directly or indirectly holding more than ten percent of voting membership rights or voting stock or partnership interests, or (ii) that a majority of the directors, general partners, trustees, or members of an entity’s governing body or representatives of, or are directly or indirectly controlled by, the licensee or applicant. For the purposes of this subsection, “possesses an interest in” means either (i) directly or indirectly holding more than five percent of voting membership rights or voting stock, or (ii) that at least twenty-five percent of the directors, general partners, trustees, or members of an entity’s governing body or representatives of, or are directly or indirectly controlled by, the licensee or applicant;

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- (c) "Applicant", means any person who on his own behalf or on behalf of another has applied for permission to engage in any act or activity which is regulated by the provisions of this act or regulations promulgated thereunder;
- (d) "Application", means a written request for permission to engage in any act or activity which is regulated under the provisions of this act.
- (e) "Chairman", means the chairman of the state gaming commission.
- (f) "Commission", means the Massachusetts state gaming commission;
- (g) "Commissioner", means a member of the state gaming commission.
- (h) "Committee", means the state gaming policy committee.
- (i) "Controlled game" or "controlled gaming", any game of chance played for currency, check, credit, or any other thing of value that is not prohibited and made unlawful by chapter two hundred and seventy-one of the General Laws, or any other general or special laws, or by local ordinance except:
- (1) The game of bingo conducted pursuant to section seven A of chapter two hundred and seventy-one and 961 C.M.R. 3.00.
- (2) Pari-mutuel wagering on horse and dog races, whether live or simulcast, regulated by the state racing commission.
- (3) Any lottery game conducted by the state lottery commission, in accordance with section twenty-four of chapter 10 of the General Laws..
- (4) Games played with cards in private homes or residences in which no person makes money for operating the game, except as a player.
- (j) "Electronic Gaming Device", means any mechanical, electrical or other device, contrivance or machine, including any so-called video wagering terminal, video lottery terminal or video poker machine, which, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate, the plan or operation of which, whether by reason of the skill of the operator in playing a gambling game which is presented for play by the machine or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tokens or any thing of value, whether the payoff is made automatically from the machine or in any other manner.
- (k) "Establishment", means any building, room, place or other indoor or outdoor premises where any controlled gaming occurs, including all public and non-public areas of any such establishment;
- (l) "Game" and "gambling game", means any game approved by the commission and played with equipment or any mechanical, electromechanical or electronic device or machine, including slot machine as defined by this act, for money, property, checks, credit or any representative of value, but does not include games played with cards in private homes or residences in which no person makes money for operating the game, except as a player, or games defined within chapter ten or chapter two hundred seventy-one of the General Laws of the commonwealth,
- (m) "Gaming", "gambling", and "gaming operations", means to operate, carry on, conduct, maintain or expose for play any game as defined in this section.
- (n) "Gaming device", means any equipment or mechanical, electromechanical or electronic contrivance, component or machine, including slot machine as defined in this section, used remotely or directly in connection with gaming or any game which affects the result of a wager by determining win or loss.
- (o) "Gaming employee", means any person employed in a properly licensed gaming facility including, without limitation, boxmen; floormen; machine mechanics; security employees; count room personnel; cage personnel; slot machine and slot booth personnel; collection personnel; surveillance personnel; and data processing personnel; or any other person whose employment duties predominantly involves the maintenance or operation of gaming activity or equipment and assets associated therewith or who, in the judgment of the commission, is so regularly required to work in a restricted area that licensure as a gaming employee is appropriate.
- (p) "Gaming establishment", means any establishment licensed to conduct gaming operations in the commonwealth under this chapter.
- (q) "Gaming license" or "license", means any license or work permit issued by the commission under this chapter that authorizes the person named therein to engage or participate in controlled gaming, including, work permits and licenses issued to gaming establishments, to gaming suppliers, to parties in interest, to gaming schools, and to officers and directors of licensed persons or entities;
- (r) "Gaming establishment", any establishment licensed to conduct gaming operations in the commonwealth under this chapter;
- (s) "Gaming service industry", means any form of enterprise which provides more than one hundred thousand dollars per annum in goods or services regarding the realty, construction, maintenance, or business of a proposed or existing gaming facility on a regular or continuing basis which directly relate to gaming activities or indirectly relate

to gaming operations including, without limitation, junket enterprises; security businesses; manufacturers, suppliers, distributors and servicers of gaming devices or equipment; waste disposal companies; maintenance companies; schools teaching gaming and either playing or dealing techniques; suppliers of alcoholic beverages, food and nonalcoholic beverages; vending machine providers; linen suppliers; shopkeepers located within the approved hotels; limousine services; and construction companies contracting with gaming applicants or licensees or their employees or agents, or any other enterprise which purchases more than fifty thousand dollars per annum in goods or services from or which does more than fifty thousand dollars worth of business per annum with licensed gaming facilities provided that professional services such as accountants, auditors, attorneys, and broker dealers, or other professions which are regulated by a public agency, are exempt from the provisions of this subsection.

(v) "Holding company", means any corporation, firm, partnership, trust, or other form of business organization not a natural person that, directly or indirectly, owns, has the power or right to control, or holds with power to vote, all or any part of the limited partnership interests or outstanding voting securities of a corporation or any other business entity that holds or applies for a state gambling license. In addition, a holding company indirectly has, holds, or owns any power, right, or security mentioned herein if it does so through any interest in a subsidiary or successive subsidiaries, however many of these subsidiaries may intervene between the holding company and the corporate licensee or applicant.

(w) "Intermediary company" means any corporation, firm, partnership, trust, or other form of business organization other than natural person that is both of the following: (1) a holding company with respect to a corporation or limited partnership that holds or applies for a gaming license, and (2) a subsidiary with respect to a holding company.

(x) "Land-based licensed gaming facility" means any licensed gaming facility that is principally located on land.

(aa) "License", means a gaming license, or a manufacturer's or distributor's license.

(bb) "License fees", means any money required by law to be paid to obtain or renew a gaming license, manufacturer's or distributor's license.

(cc) "Licensed gaming facility", means any facility wherein all gaming is sanctioned and regulated by the Commission and fully taxed by the commonwealth.

(dd) "Licensee", means any person to whom a valid gaming license, manufacturer's or distributor's license has been issued.

(ee) "Manufacturer", means a person who: (1) manufactures, assembles, programs or makes modifications to a gaming device or cashless wagering system; or (2) designs, controls the design or assembly or maintains a copyright over the design of a mechanism, electronic circuit or computer program which cannot be reasonably demonstrated to have any application other than in a gaming device or in a cashless wagering system, for use or play in this state or for distribution outside of this state.

(ff) "Manufacturer's, seller's or distributor's license", means a license issued pursuant to this act.

(gg) "Net gaming revenue", means the total, prior to the deduction of any operating, capital or other expenses whatsoever, of all gaming revenue derived from slot machines and retained by any gaming establishment licensed under this chapter derived from the conduct of any controlled game;

(jj) "Party in interest", means any corporation, firm, partnership, trust, or other entity or person with any direct or indirect pecuniary interest in a licensed gaming establishment, or a person who owns any interest in the premises of a licensed gaming establishment, or land upon which such premises is licensed, whether he leases the property directly or through an affiliate.

(kk) "Person" or "party", means a natural person, corporation, partnership, limited partnership, trustee, holding company, joint venture, association, or any business entity.

(mm) "Skimming", means the intentional excluding of or the taking of any monies, chips, or any other items in an attempt to exclude any monies, chips, or any other items or their value from the deposit, counting, collection, or computation of gross revenues from gaming operations or activities, net gaming proceeds, or amounts due the commonwealth pursuant to this act.

(nn) "Slot machine", means any mechanical, electrical or other device, contrivance or machine, including any so-called video wagering, terminal, video lottery terminal or video poker machine, which, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator in playing a gambling game which is presented for play by the machine or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tokens or any thing of value, whether the payoff is made automatically from the machine or in any other manner.

(rr) "Work permit", means any card, certificate, or permit issued by the commission authorizing the holder to be

employed in a licensed gaming facility.

Section 3. Gaming Control Commission: Composition, powers & duties.

(a) There shall be established a Massachusetts gaming control commission consisting of five members. Each member shall be a citizen of the United States and a resident of the commonwealth. No person holding any elective office in state, county, or local government; nor any officer or official of any political party, nor any person who was formerly a licensee or an unlicensed employee of a gaming licensee within the five years prior to any appointment shall be eligible for appointment to the commission. The commission shall be composed of the most qualified persons available; but no person actively engaged or having a direct pecuniary interest in gaming activities shall be a member of the commission. Not more than three members of the commission shall be of the same major political affiliation. The governor shall appoint three members of the commission and designate one member to serve as chairman of the commission. The attorney general of the commonwealth shall appoint one member of the commission. The auditor of the commonwealth shall appoint one member of the commission.

(b) The term of office of each member of the commission shall be five years except that, of the members initially appointed, one shall be appointed by the governor for a term of two years, one shall be appointed by the attorney general for a term of three years, one shall be appointed by the governor for a term of four years, one shall be appointed by the auditor for a term of five years, and one shall be appointed by the governor for a term of five years. After the initial term, the term of office for each member of the commission is five years, provided that no member serve more than two consecutive terms of five year periods. Any vacancies shall be filled by the original appointing authority within sixty days of the occurrence of such vacancy. Any appointee shall continue in office beyond the expiration date of his term until the appointment of a successor but in no event longer than six months. Any commissioner may be removed by the governor for just cause, and shall be removed immediately upon conviction of any felony. Any person so suspended and later acquitted of any such felony shall be reinstated to the commission upon such acquittal, with full back pay.

(c) The commission members shall devote that time to the business of the commission as may be necessary to the discharge of their duties. The members of the commission shall be compensated for work performed for the commission at fifty thousand dollars per annum, with the chairman receiving ten thousand dollars per annum in addition to his compensation. Commission members shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties. Before entering upon the duties of his or her office each member shall swear that he or she is not pecuniary interested in any business or organization holding a gaming license under this act, or doing business with any gaming service industry, as defined by this act and shall submit to the governor, attorney general and state auditor, a statement of financial interest required by chapter two hundred sixty-eight B of the General Laws listing all assets and liabilities, property and business interests, and sources of income of said commissioner and his spouse. Such statement shall be under oath and shall be filed at the time of employment and annually thereafter. No commission member shall have any interest, direct or indirect, in any applicant or in any person licensed by or registered with the commission during his term of office. Regular and special meetings of the commission may be held, at the discretion of the commission, at such times and places as it may deem convenient but at least one regular meeting may be held each month on or after the fifteenth day of the month.

(d) The commission shall make an annual report of its activities to the general court by March thirty-one, for the prior calendar year.

(e) The commission shall establish and maintain its general place of business in Boston, Massachusetts. The commission may hold meetings at any place within the state when the interests of the public may be better served. Except as otherwise provided for herein, meetings of the commission shall be subject to the provisions of section eleven A and eleven A and one-half of chapter thirty of the General Laws. A majority of the membership of the commission is a quorum of the commission. A public record of every vote shall be maintained at the commission's general office. The commission may maintain any other files and records as it deems appropriate.

(f) The commission shall have general responsibility for the implementation of this act, as hereinafter provided, including, the right to hear and decide promptly and in reasonable order all license, registration, certificate, and permit applications and causes affecting the granting, suspension, revocation or renewal thereof; to conduct all hearings pertaining to civil violations of this act or regulations promulgated hereunder; to promulgate and implement, pursuant to sections two and three of chapter thirty A of the General Laws, rules and regulations for the implementation of this act, including the method and form of application which any applicant for a gaming license or for a manufacturer's, seller's or distributor's license must follow and complete before consideration of his application by the commission; the information to be furnished by any applicant or licensee concerning his antecedents, habits, character, associates, criminal history or record, business activities and financial affairs, past or

present; the information to be furnished by a licensee relating to his gaming employees; the fingerprinting of an applicant or licensee or employee of a licensee or other methods of identification; the manner and procedure of all hearings conducted by commission, including special rules of evidence applicable thereto and notices thereof; the issuance and revocation of work permits for employment of persons in licensed gambling facilities; the manner in which winnings, compensation from games and gaming devices, and gross revenue must be computed and reported by the licensee; the minimum procedures for adoption by each licensee to exercise effective control over its internal fiscal affairs; the payment by any applicant of all or any part of the fees and cost of investigation of such applicant as may be determined the commission; governing the manufacture, sale and distribution of gambling devices and equipment; licensee bonding requirements; monitoring of licensee requirements; investigations both civil and criminal; the method and operation of gambling operations including the type and manner of gambling, record keeping, accounting, audit requirements and safeguarding of assets; the testing and inspection of gambling equipment; the licensing of corporations, limited partnerships, holding companies and intermediary companies; the limitations of security contracts and agreements; the sale of securities of affiliated companies; emergency proceedings; setting forth those persons to be excluded or ejected from gambling establishments including the type of conduct prohibited thereat; to collect all license and registration fees, taxes, and penalties imposed by this act and the regulations issued pursuant hereto; to be present through its inspectors and agents at all times during the operation of any licensed gaming facility for the purpose of certifying the revenue thereof and receiving complaints from the public; and to review and rule upon any complaint by a licensed gaming facility licensee regarding any investigative procedures of the bureau which are unnecessarily disruptive of licensed gaming facility operations. The need to inspect and or investigate a licensed gaming facility shall be presumed at all times. The commission shall adopt an official seal and alter same at pleasure.

(g) The commission shall conduct hearings in accordance with the provisions of chapter thirty A. The commission may, by a majority vote, issue subpoenas for the attendance of witnesses or the production of any records, books, memoranda, documents, or other papers, or things, at or prior to any hearing as is necessary to enable the commission to effectually discharge its duties, and may administer oaths or affirmations as necessary in connection therewith. The commission may petition a superior court for an order requiring compliance with a subpoena. The commission shall have the authority to propound written interrogatories and may appoint hearing examiners, to whom may be delegated the power and authority to administer oaths, issue subpoenas, propound written interrogatories, require testimony under oath, report same, and fashion recommended decisions upon the recommendation of said commission.

(h) The commission may require any person to apply for a license as provided in this act and approve or disapprove, transactions, events, and processes as provided in this act. The commission may grant or deny any application for a license or approval may limit, condition, restrict, suspend, or revoke any license or approval for any cause deemed reasonable by the commission, consistent with this act or any general or special law. The commission may also impose a civil fine of not more than five thousand dollars upon any person licensed, registered or otherwise approved under this act, for any violation of this act or of any general or special law related to gambling. The commission may, as further provided in regulations approve or disapprove transactions, events, and processes as provided in this act, take actions reasonably designed to ensure that no unsuitable persons are associated with controlled gambling activities. The commission may expend for legal, investigative, clerical and other assistance such as may be appropriated therefor. Investigators employed by the commission shall have access to all records maintained by all the licensees and registrants hereunder, whether maintained at the licensed gambling establishment or other location as may be pertinent to the investigative powers of the commission.

(i) The commission shall assure, to the extent required by this act, that licenses, approvals, certificates, or permits shall not be issued to nor held by, nor shall there be any material involvement, directly or indirectly, with the licensed gaming facility operation or the ownership thereof by, unqualified or disqualified persons or persons whose operations are conducted in a manner not conforming with the provisions of this act. In enforcing the provisions of this act, the commission shall have the power and authority to deny any application; limit or restrict any license, registration, certificate, permit or approval; suspend or revoke any license, registration, certificate, permit or approval; and, impose a penalty on any person licensed, registered, or previously approved for any cause deemed reasonable by the commission pursuant to rules and regulations promulgated thereby.

(j) No commission member or person employed by the commission shall represent any person or party other than the commonwealth before or against the commission for a period of two years from the termination of his office or employment with the commission.

(k) The commission shall initiate proceedings or actions appropriate to enforce statutory and regulatory requirements mandated of license-holders.

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(l) The commission may refuse to reveal, in any court or administrative proceeding except a proceeding brought by the commonwealth of Massachusetts or the United States government the identity of an informant, or the information obtained from the informant, or both the identity and the information.

(m) The commission shall have the power to acquire, lease, use, hold and mortgage real, personal or mixed property or any interest, easements or rights therein, as may be necessary or appropriate to carry out the provisions of this act; to enter into agreements or other transactions with the commonwealth or any political subdivision or public instrumentalities thereof, the United States government or any federal, state or other governmental agency; to formulate plans for the projects involving the acquisition and operation of facilities pursuant to the provisions of this act, and to construct or reconstruct, expand, remodel, to fix and revise from time to time, and to charge and collect rates, fees, rentals and other charges for the use of any building, structure, other property or portion thereof under its control; and to acquire in the name of the commission by purchase or otherwise, in such terms and conditions and in such manner as it may deem proper, or except with respect to the state, by exercise of the power of eminent domain, pursuant to the provisions of chapter seventy-nine of the General Laws, any land and other property and any and all rights, title and interest in such land and other property, and any fee simple absolute in, easements upon or the benefit of restrictions upon abutting property, and to preserve and protect any project.

(n) The commission may investigate, civilly or criminally, fraud, deceit, misrepresentation or violations of law by any person licensed or registered under this act, or the occurrence of any such activity within or involving any licensed gambling establishment or gambling operation. If the commission has reasonable basis to believe that any person licensed or registered under this act is engaged in criminal behavior or that criminal activity is occurring within or involving any licensed gaming facility or licensed gambling operation said commission shall report same to the attorney general of the commonwealth and the district attorney of the county within which the gaming facility is located and make available to the attorney general and said district attorney all relevant information on such activity. The commission, as it deems appropriate, may ask the attorney general and/or said district attorney to restrain a violation of this act or enforce any provision thereof. An action brought against a person pursuant to this act does not preclude any other criminal or civil proceeding as may be authorized by law.

(o) No person shall transfer a direct or indirect pecuniary interest in a licensed operating entity or premises, or enter into an option contract or other agreement providing for such transfer in the future, without having notified the commission. No person shall transfer a greater than five percent direct or indirect pecuniary interest in a licensed operating entity or premises without the issuance by the commission to the transferee of an operating license or an affirmative statement that the transferee has met the operating license standards, as the commission may require.

(p) Before the beginning of each legislative year, the commission shall submit to the house and senate committees on ways and means and the joint committee on government regulations a report defining, for the preceding twelve month period, the gross revenue, net revenue, and average depreciation of each licensee; the number of persons employed by each licensee, and related payroll information; and the assessed valuation of each Massachusetts licensed gaming facility as listed on the assessment rolls.

Section 5. Records of Commission Proceedings.

(a) The commission shall cause to be made and kept a record of all proceedings at regular and special meetings of the commission. These records shall be open to public inspection.

(b) Notwithstanding any other general or special law to the contrary all files, records, reports, and other information in possession of any state or local governmental agency including tax filings and related information that are relevant to an investigation by the commission conducted pursuant to this act shall be made available to the commission as requested. However, any tax or financial information received from a governmental agency shall be used solely for effectuating the purposes of this act. To the extent that these files, records, reports, or information are confidential or otherwise privileged from disclosure under any law they shall not lose that confidential or privileged status for having been disclosed to the commission.

(c) No statement, and no publication of any document, described in this section shall impose liability for defamation or constitute a ground for recovery in any civil action. If any document or communication described above contains any information that is privileged or exempt from public disclosure that privilege or exemption is not waived or lost because the document or communication is disclosed to the commission or any of their agents or employees.

(d) The attorney general, every district attorney, and every state and local law enforcement agency shall notify the commission of any investigation or prosecution of any person if it appears that a violation of any law related to gambling had occurred.

Section 6. Finding of suitability. License approval.

(a) The commission shall investigate the qualifications of each applicant under this act before any license is issued or any registration, finding of suitability or approval of acts or transactions for which commission approval is

required or permission is granted, and shall continue to monitor the conduct of all licensees and registrants and other persons having a material involvement, directly or indirectly with a licensed gaming facility or holding company to ensure that licenses are not issued or held by, nor is there any material involvement directly or indirectly with a licensed gaming facility or holding company by unqualified, disqualified or unsuitable persons, or persons whose operations are conducted in an unsuitable manner or in unsuitable or prohibited places or locations, as provided in commission regulations. All expenses associated with the licensing of any applicant shall be borne by the applicant. Pursuant to its regulations, the commission shall require each applicant for a gambling license to deposit with the commission, together with the application therefor, an application fee. Such fee shall constitute the anticipated costs and charges incurred in the investigation and processing of the application, and any additional sums as are required by the commission to pay final costs and charges.

(b) The commission may require a finding of suitability or the licensing of any person who owns any interest in the premises of a licensed establishment; owns any interest in real property used by a licensed establishment whether he leases the property directly to the licensee or through an intermediary; repairs, rebuilds or modifies any gaming device; manufactures or distributes chips or gaming tokens for use in this state.

(c) The commission may require a finding of suitability or the licensing of any person who furnishes services or property to a state gaming licensee under any arrangement pursuant to which the person receives payments based on earnings, profits or receipts from gaming.

(d) No person shall operate a gaming establishment without having obtained all necessary operating licenses from the commission. There shall be a single licensed operator for each gaming establishment. The licensing standards must be met at all times by each officer, director, partner, and trustee of the operating entity, by each substantial party in interest of the operating entity or of the premises on which such establishment is located, and by such other party in interest of the operating entity, the premises, or any holding company or intermediary company of the operating entity or the premises as the commission may require. In no event shall the commission permit a person or entity previously convicted of a felony to be a party in interest of the operating entity or of the premises or of any holding or intermediary company of the operating entity or the premises. A separate license shall be required for any person described above, unless the commission specifically determines otherwise. The commission may grant not more than four licensed operator licenses to be issued to the following:

(1) Persons licensed to conduct running horse racing meetings in Suffolk and Norfolk County, as of January 1, 2000, or their respective assigns and/or successors in interest, not including running horse racing meetings held in connection with a state or county fair, who run a full schedule of live races as defined in section two of chapter one hundred and twenty-eight C, shall be authorized to operate up to one thousand five hundred electronic gaming devices or slot machines to be operated only on the premises of said licensee, as approved by the commission.

(2) Persons licensed to conduct greyhound dog racing meetings in Suffolk and Bristol County, as of January 1, 2000, or their respective assigns and/or successors in interest, not including greyhound dog racing meetings held in connection with a state or county fair, who run a full schedule of live races as defined in section two of chapter one hundred twenty-eight C, shall be authorized to each operate one thousand five hundred electronic, gaming devices or slot machines to be operated only, respectively, on the premises of a greyhound dog racing meeting licensee in Suffolk and Bristol Counties, as approved by the commission; provided, however, that where two or more greyhound dog racing meeting licensees in Bristol County use the same track during a calendar year, said Bristol County licensees, for purposes of seeking a licensed operator license, shall be considered one applicant.

(e) A person may apply to be a licensed operator by filing an application with the commission, in the form and with such accompanying application fees as the commission may establish. Information on the application will be used as the basis for a thorough background investigation which the bureau shall conduct with respect to each applicant.

Each application shall disclose the identity of each party in interest, each holding company and intermediary company, and each affiliate of the operating entity. The application shall disclose, in the case of a privately held corporation, the names and addresses of all directors, officers, and stockholders; in the case of a publicly traded corporation, the names and addresses of all directors, officers, and persons holding at least one percent of the total capital stock issued and outstanding; in the case of a partnership, the names and addresses of all partners, both general and limited; and in the case of a trust, the names and addresses of all trustees and beneficiaries.

(f) Each operating entity shall identify, in its application, the premises containing the establishment where it proposes to conduct its gaming operations. The application shall contain such information regarding the physical location and condition of the premises and the potential impact of the proposed gaming operations upon adjacent properties and the municipality and region within which the premises are located, as the commission may require.

The application shall disclose the identity of all parties in interest regarding the premises; and provided, further, except as otherwise permitted herein, no person other than a licensee hereunder shall have any right to or interest in

net gaming revenue or adjusted net gaming revenue in the form of a percentage of any sums payable hereunder.

(g) No licensed operator shall obtain any gaming equipment from a person who does not hold a license. No licensed operator shall enter into any agreement for the receipt of goods or services, of any form and in any amount, from a person who does not hold a license, when a license is required for such agreement under this act or under regulations promulgated by the commission.

(h) No licensed operator shall employ any person in a gaming establishment who does not hold a work permit, when a work permit is required for such position under regulations promulgated by the commission.

(i) Any person who the commission determines is qualified to receive a license or be found suitable under the provisions of this act, may be issued a state gaming license or found suitable, as appropriate. The burden of proving his qualification to receive any license or be found suitable is on the applicant. A license to operate a gaming establishment must not be granted unless the applicant has satisfied the commission that he or she has adequate business probity, competence and experience, in gaming; and the proposed financing of the entire operation is adequate for the nature of the proposed operation; and, from a suitable source.

An application to receive a license or be found suitable constitutes a request for a determination of the applicant's general character, integrity, and ability to participate or engage in, or be associated with gaming, as appropriate. The commission may limit the license or place such conditions thereon as it may deem necessary in the public interest.

The commission may, if it considers necessary, issue a probationary license. No state gaming license may be assigned either in whole or in part. The commission may limit or place such conditions as it may deem necessary in the public interest upon any registration, finding of suitability or approval for which application has been made

(j) Any state license in force may be renewed by the commission for the next succeeding license period upon proper application for renewal and payment of state license fees and taxes as required by law and the regulations of the commission. If any licensee or other person fails to renew his license the commission may order the immediate closure of all his gaming activity until the license is renewed by the payment of the necessary fees, taxes, interest and any penalties.

(k) If satisfied that an applicant is eligible to receive a state gaming, manufacturing, selling, or distributing license, and upon tender of all license fees and taxes as required by law and regulation of the commission; and a bond executed by the applicant as principal, and by a corporation qualified under the laws of the commonwealth as surety, payable to the commonwealth, and conditioned upon the payment of license fees and taxes and the faithful performance of all requirements imposed by law or regulation or the conditions of the license, the commission shall issue and deliver to the applicant a license entitling him to engage in the gaming, manufacturing, selling, or distributing operation for which he is licensed, together with an enumeration of the specific terms and conditions of the license.

(l) A license issued pursuant to the provisions of this act must be posted by the licensee and kept posted at all times in a conspicuous place in the area where gaming is conducted in the establishment for which the license is issued until it is replaced by a succeeding license.

(m) If the commission is not satisfied that an applicant is qualified to be licensed under this act, the commission may cause to be made such investigation into and conduct such hearings concerning the qualifications of the applicant in accordance with its regulations as it may deem necessary.

(n) The commission has full and absolute power and authority to deny any application for any cause it deems reasonable. If an application is denied, the commission shall prepare and file its written decision upon which its order denying the application is based.

(o) A person who has had his application for a license denied or who has been found unsuitable by the commission shall not retain his interest in a corporation, partnership, limited partnership, limited-liability company or joint venture beyond that period prescribed by the commission; and shall not accept more for his interest in a corporation, partnership, limited partnership, limited-liability company or joint venture than he paid for it or the market value on the date of the denial of the license or the finding of unsuitability.

(p) The voluntary surrender of a license by a licensee does not become effective until accepted in the manner provided in the regulations of the commission. The surrender of a license does not relieve the former licensee of any penalties, fines, fees, taxes or interest due.

(q) Each licensee or registrant, or applicant for a license or registration under this act shall cooperate with the commission in the performance of their duties.

(r) Every licensed gaming facility must, upon receipt of criminal or civil process compelling testimony or production of documents in connection any criminal investigation, immediately disclose such information to the bureau.

Section 7. Right to Hearing.

Any person aggrieved by a determination by the commission to issue, deny, modify, revoke or suspend any license

or approval, or to issue an order, under the provisions of this act, may request an adjudicatory hearing before the commission under the provisions of chapter thirty A of the General Laws. Any such determination shall contain a notice of this right to request a hearing and may specify a time limit, not to exceed twenty-one days, within which said person shall request said hearing. If no such request is timely made, the determination shall be deemed assented to. If a timely request is received, the commission shall within a reasonable time act upon a request in accordance with the provisions of said chapter thirty A. A person aggrieved by a final decision in an adjudicatory hearing held under the provisions of this section may obtain judicial review thereof pursuant to the provisions of chapter thirty A. Section 8. Criminal Acts and Penalties; Age Restrictions.

(a) Except as otherwise provided in this act or in chapter ten or in section seven A of chapter two hundred seventy-one of the General Laws, it is unlawful for any person to deal, operate, carry on, conduct, maintain or expose for play in the commonwealth of Massachusetts any gambling game, gaming device, or slot machine as defined by this act; to receive, directly or indirectly, any compensation or reward or any percentage or share of the money or property played, for keeping, running or carrying on any gambling game, gaming device, or slot machine; to permit any gambling game, gaming device, or slot machine to be conducted, operated, dealt or carried on in any house or building or other premises owned by him, in whole or in part; to lend, let, lease or otherwise deliver or furnish any equipment of any gambling game, including any slot machine, for any interest, percentage or share of the money or property played, under guise of any agreement whatever; to lend, let, lease or otherwise deliver or furnish, except by a bona fide sale or capital lease, any slot machine under guise of any agreement whereby any consideration is paid or is payable for the right to possess or use that slot machine, whether the consideration is measured by a percentage of the revenue derived from the machine or by a fixed fee or otherwise; to furnish services or property, real or personal, on the basis of a contract, lease or license, pursuant to which that person receives payments based on earnings or profits from any gambling game, including any slot machine, without having first procured a state gaming license from the commission.

(b) Any person included on the list of persons to be excluded or ejected from a gambling establishment pursuant to regulations promulgated pursuant to this act who knowingly enters or remains on the premises of a licensed gambling establishment shall be punished by a fine to be determined by the commission, in addition to any other penalties prescribed by law.

(c) Any person under the age of twenty-one years who plays, places wagers at, or collects winnings from, whether personally or through an agent, any controlled game, or who is employed as an employee in a licensed gaming establishment shall be punished by imprisonment in the house of correction for not more than one year, or by a fine of not more than one thousand dollars, or by both such imprisonment and fine. Any licensee, or other person, who knowingly allows a person under the age of twenty-one to play, place wagers at or collect winnings, whether personally or through an agent, shall be punished by imprisonment in the house of correction for a term of not more than one year or pay a fine of not more than ten thousand dollars, or by both such imprisonment and fine. A subsequent violation of this section shall subject the licensee to imprisonment in the house of correction for not more than two years or pay a fine of not more than twenty-five thousand dollars or by both such imprisonment and fine. In any prosecution or other proceeding for the violation of this subsection, it shall not be a defense for the licensee or his agent to plead that he believed the person to be twenty-one years of age or older.

(d) Any person who willfully fails to report, pay, or truthfully account for and pay over any license registration fee, penalty, fine, or interest thereon imposed by this act, or willfully attempts in any manner to evade or defeat the license fee, penalty, fine, or interest thereon or payment thereof shall be punished by a fine to be determined by the commission.

(e) Any person who willfully resists, prevents, impedes, or interferes with the commission or the bureau or any of their agents or employees in the performance of duties pursuant to this act shall be punished by a fine to be determined by the commission, in addition to any other penalties prescribed by law.

(f) Any person who willfully violates, attempts to violate, or conspires to violate any provision of a regulation adopted pursuant to, this chapter shall be punished by a fine to be determined by the commission, in addition to any other penalties prescribed by law.

(g) Any person, as owner, lessee, or employee, whether for hire or not, either solely or in conjunction with others, who shall do any of the following without having first procured and thereafter maintained in effect all licenses required by law:

(1) to deal, operate, carry on, conduct, maintain, or expose for play in this state any controlled game or gaming equipment used in connection with any controlled game;

(2) to receive, directly or indirectly, any compensation or reward or any percentage or share of the revenue, for keeping, running, or carrying on any controlled game, or owning the real property or location in which any

controlled game occurs;

(3) to manufacture or distribute within the territorial boundaries of the commonwealth any gaming equipment to be used in connection with controlled gaming shall be punished by imprisonment in the state prison for not more than five years, or by imprisonment in a house of correction for not more than two and one-half years, or by a fine of not more than ten thousand dollars, or by both such imprisonment and fine.

(h) Any person who knowingly permits any controlled game to be conducted, operated, dealt, or carried on in any house or building or other premises that he or she owns or leases, in whole or in part, if that activity is undertaken by a person who is not licensed as required by state law shall be punished by imprisonment in a state prison for not more than five years, or by imprisonment in a house of correction for not more than one year, or by a fine of not less than ten thousand dollars, or by both such imprisonment and fine.

(i) Any former commission member who, within three years after his employment on said commission has ceased, solicits or accepts employment with or provides consultant services to any licensee or at any licensed gaming facility shall be deemed to have violated chapter two hundred sixty-eight B of the General Laws. Any licensed gaming facility which employs a former commission member in violation of this subsection shall be punishable by a fine to be determined by the commission.

(j) It is unlawful for any person:

(1) to alter or misrepresent the outcome of a game or other event on which wagers have been made after the outcome is determined but before it is revealed to the players;

(2) knowingly to entice or induce another to go to any place where gaming is being conducted or operated in violation of the provisions of this chapter, with the intent that the other person play or participate in that gaming;

(3) to manipulate, with the intent to cheat, any component of a gaming device in a manner contrary to the designed and normal operational purpose for the component, including but not limited to, varying the pull of the handle of a slot machine, with knowledge that the manipulation affects or reasonably may tend to affect the outcome of the game or with knowledge of any event that affects the outcome of the game;

As used in this section, "cheat" means to alter the selection of criteria which determine: (a) the results of a game; or

(b) the amount or frequency of payment in a game.

(4) to have on his person or in his possession on or off the premises of any licensed gaming establishment any key or device known to have been designed for the purpose of and suitable for opening, entering or affecting the operation of any gaming or equipment, or for removing money or other contents therefrom, except where such person is a duly authorized employee of a licensee acting in furtherance of his employment within a licensed gaming establishment. A violation of this section shall be punishable by imprisonment in a house of correction for not more than two years or by a fine of not more than one thousand dollars, or by both such imprisonment and fine.

(k) Any individual who commits, attempts, or conspires to commit skimming, as defined by this act, for a total value of less than one thousand dollars against a gaming licensee or upon the premises of a licensed gaming facility shall be punished by imprisonment in a house of correction for not more than five years and by a fine of not more than five thousand dollars, or by imprisonment in a house of correction for not more than ten years and by a fine of not more than ten thousand dollars if the total value is more than one thousand dollars.

(1) In addition to any other penalty imposed under this section, a violation of this section by a licensed gaming establishment shall subject to forfeiture to the commonwealth any or all of the gaming equipment related to the violation. A district attorney may petition the superior court in the name of the commonwealth in the nature of a proceeding in to order forfeiture of any such gaming equipment subject to forfeiture under the provisions of this paragraph. Such petition shall be filed in the court having jurisdiction over said gaming equipment or having final jurisdiction over any related criminal proceedings brought under any provision of this chapter. In all such suits where the property is claimed by any person, other than the commonwealth, the commonwealth shall have the burden of proving to the court the existence of probable cause to institute the action, and any such claimant shall then have the burden of proving that the gaming equipment is not forfeitable. The court shall order the commonwealth to give notice by certified or registered mail to the owner of said gaming equipment and to such other persons as appear to have an interest therein, and the court shall promptly, but not less than two weeks after notice, hold a hearing on the petition. Upon the motion of the owner of said gaming equipment the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of this chapter. At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order, from which the parties shall have a right of appeal. In all such suits where a final order results in a forfeiture, said final order shall provide for disposition of said gaming equipment, by the commonwealth in any manner not prohibited by law, including official use by an authorized law enforcement or in other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable

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expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising, and notice, and the balance thereof shall be deposited in the gaming regulatory account established by this chapter.

Section 9. Revenues; License Fees; Penalties.

(a) There is hereby established a gaming investigative account. Any and all expenses associated with the licensing of any applicant and monitoring of any licensee shall be borne by the applicant or licensee. Pursuant to its regulations, the commission shall require each applicant to deposit with the commission, together with the application therefor, an application fee which shall be deposited in the gaming investigative account. Such fee shall constitute the anticipated costs and charges incurred in the investigation and processing of the application, and any additional sums as are required by the commission and the bureau to pay final costs and charges. Any money received from an applicant in excess of the costs and charges incurred in the investigation or the processing of the application shall be refunded pursuant to regulations adopted by the commission.

(b) All fees, revenue, and penalties collected pursuant to this act, with the exception of those revenues collected as stated in section nine (a) or section twelve (g) or section 12(f) of this act, shall be deposited in the general fund. Funds deposited in the general fund, pursuant to this act, shall, subject to appropriation, be expended for the support of the commission and the bureau in carrying out their duties and responsibilities under this act.

(c) All revenue received from any game or gaming device which is leased for operation on the premises of the licensee-owner to a person other than the owner thereof, or located in an area or space on the premises which is leased by the licensee-owner to any such person, must be attributed to the owner for the purposes of this section and be counted as part of the gross revenue of the owner. The lessee is liable to the owner for his proportionate share of the license fees.

(d) In addition to any other tax or fee imposed by this act, there is also hereby imposed an annual license fee of one hundred thousand dollars for gaming license holders, and an annual license fee of five hundred dollars upon every slot machine maintained for use or in use in any licensed gaming facility in the commonwealth.

(e) All gaming license fees and penalties imposed by the provisions of this act must be paid to the state treasurer to be deposited into the general fund. Fees shall be paid annually on or before June twentieth. Penalties imposed under this act shall be paid within thirty days of the final determination of the commission of the violation.

(f) There is hereby imposed upon each slot machine operated in this state an annual excise tax of two hundred and fifty dollars. If a slot machine is replaced by another, the replacement is not considered a different slot machine for the purpose of imposing this tax. The commission shall collect the tax annually on or before June twentieth, as a condition precedent to the issuance of a state gaming license to operate any slot machine for the ensuing fiscal year beginning July first, from a licensee whose operation is continuing; collect the tax in advance from a licensee who begins operation or puts additional slot machines into play during the fiscal year, prorated monthly after July thirty-first; include the proceeds of the tax in its reports of state gaming taxes collected. The commission shall pay over the tax as collected to the treasurer of the municipality within which the gaming facility is located to be deposited to the general fund of said municipality.

Section 10. Reporting Violations of Act.

All licensees, all registrants, all persons required to be qualified under this act, and all persons employed by a gaming service industry licensed pursuant to this act, shall have a duty to inform the commission or bureau of any action which they believe would constitute a violation of this act. No person who so informs the commission or the bureau shall be discriminated against by an applicant, licensee or registrant because of the supplying of such information.

Section 11. Licensing of Gaming Service Industries.

(a) All gaming service industries as defined in this act offering goods or services which directly relate to gaming activities or indirectly relate to gaming operations shall be licensed in accordance with rules of the commission and prior to conducting any business whatsoever with a gaming applicant or licensee, its employees or agents, and in the case of a school, prior to enrollment of any students or offering of any courses to the public whether for compensation or not. Gaming service industries that directly relate to gaming activities shall include gaming and wagering equipment manufacturers, suppliers and repairers, schools teaching gaming and either playing or dealing techniques, and gaming security services. Gaming service industries that indirectly relate to gaming operations shall include junket enterprises; suppliers of alcoholic beverages, food and nonalcoholic beverages; garbage handlers; vending machine providers; linen suppliers; maintenance companies; shopkeepers located within the approved hotels; limousine services and construction companies contracting with gaming applicants or licensees or their employees or agents.

(b) Each gaming service industry, as well as its owners, management and supervisory personnel and other principal employees must qualify under standards promulgated by the commission.

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(c) The commission may exempt any person or field of commerce from the licensing requirements of this subsection if the person or field of commerce demonstrates that it is regulated by a public agency or that it will provide goods or services in insubstantial or insignificant amounts or quantities, or provides professional services such as accountants, auditors, attorneys, or broker dealers, and that licensing is not deemed necessary in order to protect the public interest or to accomplish the policies established by this act. Upon granting an exemption or at any time thereafter, the commission may limit or place such restrictions thereupon as it may deem necessary in the public interest, and shall require the exempted person to cooperate with the commission and the bureau and, upon request, to provide information in the same manner as required of a gaming service industry licensed pursuant to this section.

(d) Licensure pursuant to this section of any gaming service industry may be denied to any applicant disqualified in accordance with the criteria contained in section six of this act.

Section 12. Gaming Revenue Payable to Commission.

(a) Each licensed operator within the commonwealth also licensed as a live running horse racing meeting licensee within the commonwealth shall pay to the commission, as the commission shall direct, from the adjusted net gaming revenues: a percentage on behalf of the commonwealth; a percentage on behalf of the horse owners at the running horse racing meeting licensee for purses in accordance with the rules and established customs of conducting running horse racing meetings at that licensee's racing facility; and a percentage on behalf of the breeders association at the licensee's facility for the purposes of promoting the breeding of running horses in the commonwealth pursuant to law; provided that if the adjusted net gaming revenues exceed, in any calendar year, thirty-five million dollars each such licensed operator shall pay from the amount above that thirty-five million dollars, on behalf of the commonwealth a sum on behalf of the horse owners at the racing meeting licensee for said purses.

(b) Each licensed operator within the commonwealth also licensed as a greyhound dog racing meeting licensee within the commonwealth shall pay to the commission, as the commission shall direct, from the adjusted net gaming revenues: a sum on behalf of the commonwealth; a percentage on behalf of the dog owners at the greyhound dog racing meeting licensee for purses in accordance with the rules and established customs of conducting greyhound dog racing meetings at that licensee's racing facility; provided that if the adjusted net gaming revenues exceed, in any calendar year, thirty-five million dollars each such licensed operator shall pay from that amount above that thirty-five million dollars, on behalf of the commonwealth a sum and on behalf of the dog owners at the racing meeting licensee for said purses.

(c) Notwithstanding the foregoing, if adjusted net gaming revenues of any licensed operator under section twelve (a) and (b) exceed, in any calendar year, fifty million dollars, such licensed operator(s) shall pay to the commission, on behalf of the commonwealth, as the commission shall direct, from the adjusted net gaming revenue above said amount, a percentage on behalf of the commonwealth.

(d) Provided, however, that each licensed operator shall receive as and offset from any amount due under sections twelve (a), (b), (c), or (d) any amount assessed by the commission to cover the licensed operator's pro rata share of the regulatory costs of the commission. Such regulatory costs shall not include any license or application fee assessed by the commission.

(f) Revenue generated by each licensed operator including, a licensed running horse racing facility, a licensed harness horse racing facility, a licensed greyhound dog racing facility, shall be placed into a separate account, to be known as the "revenue gaming account". Twenty-five percent (25%) of said revenue shall, subject to appropriation, be dedicated to the Department of Education for the purpose of supporting the public school system in the Commonwealth. The remaining revenue shall be returned to the General Fund.

(g) There is hereby established a debt service account. Each licensed operator within the commonwealth operating a licensed running horse racing facility, a licensed harness horse racing facility, a licensed greyhound dog racing facility, or a licensed gaming facility as designated in section six (d)(1), (2), (3), (4), and (5) shall pay, on behalf of the commonwealth, a percentage of their adjusted net gaming revenue, said percentage which shall be deposited in the debt service account. Said account shall be used to fund payments toward the debt service of the commonwealth.

Section 13. Problem Gambling Education and Treatment.

The department of public health is hereby authorized and directed to conduct a comprehensive study to measure the prevalence of compulsive, obsessive behaviors in Massachusetts; to measure the prevalence of problem gambling in Massachusetts; to measure the prevalence of underage problem gambling in Massachusetts; and, to measure the social cost of problem gambling in Massachusetts; and to develop appropriate treatment modalities and public education strategies that address the findings of said study.

Section 14. Disclosure requirements.

Every licensed gaming establishment shall disclose clearly and conspicuously on each electronic gaming device the numerical odds of winning or if the odds cannot be calculated, the manner by which a person may be notified of all

previous winnings on each electronic gaming device, and the number of previous winners.

Section 15. Recovery of Gaming Debts by Patrons.

(a) Whenever a licensee refuses payment of alleged winnings to a patron, the licensee and the patron are unable to resolve the dispute to the satisfaction of the patron and the dispute involves,

1) at least five hundred dollars, the licensee shall immediately notify the commission; or
2) less than five hundred dollars, the licensee shall inform the patron of his right to request that the commission conduct an investigation. The bureau shall conduct whatever investigation it deems necessary and shall determine, in its sole discretion and without need for a hearing, whether payment should be clone. In the event the commission determines that payment should be made, all costs of the investigation shall be borne by the licensee. Failure of the licensee to notify the bureau or inform the patron as provided herein shall subject the licensee to disciplinary action.

(b) Any party aggrieved by the determination of the commission may file a petition for reconsideration with the commission setting forth the basis of the request for reconsideration. Any hearing for reconsideration shall be conducted pursuant to regulations adopted by the commission.

Section 16. Off-Track Betting.

In the event that an off-track betting system is sanctioned by the commonwealth each licensed gaming facility shall, on reasonable terms and conditions, make available within said facility space for an off-track betting facility to be jointly leased and operated by all persons licensed under section three of chapter one hundred and twenty-eight A, other than licensees conducting horse or dog racing in connection with a state or county fair, to be operated in accordance with the rules and regulations applicable to the enabling legislation of that off-track betting system.

Section 17. Severability.

The invalidity of any section, sections or subsections or parts of this act shall not affect the validity of the remainder of this act.