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MEMORANDUM

TO: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission
FROM: Emily Caudill, Regulations Compiler
RE: Acknowledgement of Proposed & Emergency Regulation – 810 KAR 003:010 & E
DATE: July 10, 2023

A copy of the ordinary and emergency administrative regulations listed above are enclosed for your files. Pursuant to KRS 13A.190, the emergency administrative regulation became effective upon filing with our office on **July 10, 2023** and, unless an extension on the accompanying ordinary is requested, will expire either in 270 days on **April 5, 2024**, or when replaced by its corresponding ordinary regulation, whichever occurs first. Please note - Expiration dates may be impacted by legislation or other statutes.

Emergency regulation

The emergency regulation is tentatively scheduled for review by the Administrative Regulation Review Subcommittee at its **September 2023** meeting. We will notify you of the date and time of this meeting once it has been scheduled. Pursuant to KRS 13A.280, *if* comments are received during the public comment period, a Statement of Consideration for this emergency regulation is due **by noon on September 15, 2023**.

Ordinary regulation

The ordinary regulation is tentatively scheduled for review by the Administrative Regulation Review Subcommittee at its **October 2023** meeting. We will notify you of the date and time of this meeting once it has been scheduled. Pursuant to KRS 13A.280, *if* comments are received during the public comment period, a Statement of Consideration for this ordinary regulation or a one-month extension request is due **by noon on October 13, 2023**.

Please reference KRS 13A.270 and 13A.280 for other requirements relating to the public hearing and public comment period and Statements of Consideration.

If you have questions, please contact us at RegsCompiler@LRC.ky.gov or (502) 564-8100.

Enclosures


FILED WITH LRC
TIME: 4pm
JUL 10 2023
Emily B Caudill
REGULATIONS COMPILER

STATEMENT OF EMERGENCY

810 KAR 3:010E 40

This emergency regulatory amendment is promulgated to prevent a loss of state funds that are required to be deposited with the State Treasury pursuant to KRS 230.817, and to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. More specifically, this administrative regulation is filed on an emergency basis to ensure: (1) that funds are timely remitted to the State Treasury in accordance with the General Assembly's statutory mandate set out in KRS 230.817; and (2) that a fully functioning sports wagering system is established within six (6) months of the effective date of House Bill 551 (2023 Regular Session), pursuant to the timeline established in KRS 230.361. The Kentucky Horse Racing Commission therefore seeks to implement sports wagering on an emergency basis, in order to comply with the above-referenced statutory requirements.

This emergency regulation will be replaced by an ordinary administrative regulation at this time. The ordinary administrative regulation is identical to this emergency administrative regulation.



Andy Beshear
Governor



Ray Perry
Secretary, Public Protection Cabinet

1 PUBLIC PROTECTION CABINET

2 KENTUCKY HOME RACING COMMISSION

3 (Emergency Amendment)

4 810 KAR 3:010E. Licensing of racing associations

5 RELATES TO: KRS 230.215, 230.260, 230.280, 230.290, 230.300, 230.320,
6 230.811, 230.817.

7 STATUTORY AUTHORITY: KRS 230.215(2), 230.260(9), 230.280,
8 230.300(1),(9), KRS 230.811.

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) vests the
10 Kentucky Horse Racing Commission with the authority to promulgate regulations
11 prescribing conditions under which all legitimate horse racing and wagering thereon is
12 conducted in the Commonwealth. KRS 230.280 prohibits any person from conducting a
13 horse race meeting for any stake, purse, or reward within the Commonwealth without
14 securing the required license from the commission. KRS 230.260(9) authorizes the
15 commission to prescribe by administrative regulation application forms for licenses. KRS
16 230.300 authorizes the commission to issue licenses to conduct race meetings. KRS
17 230.811 requires all applicants for a sports wagering operator's license to apply to the
18 commission. KRS 230.260(16) requires the commission to promulgate administrative
19 regulations to establish standards for the conduct of sports wagering. This administrative
20 regulation establishes licensing application procedures and requirements for conducting

1 horse racing at horse race meetings in the Commonwealth, and also establishes licensing
2 application procedures and requirements for a licensed racing association to obtain a
3 sports wagering operator's license and offer sports wagering in the Commonwealth.

4 Section 1. Definitions.

5 (1) "Application" means Initial/Renewal Application for License to Conduct Live Horse
6 Racing, Simulcasting, Pari-Mutuel Wagering, and Sports Wagering Form" KHRC 3-010-
7 1, incorporated by reference in Section 2 of this regulation.

8 (2) "Applicant for Operator License" means a person licensed as an association under
9 KRS 230.300 that is eligible for an Operator license pursuant to KRS 230.811.

10 (3) "Operator" means a sports wagering operator license applicant that has been
11 granted a license.

12 (4) "Operator License" means a license to conduct, manage, or offer to conduct sports
13 wagering within the Commonwealth of Kentucky, pursuant to KRS 230.811.

14 (5) "Occupational Licensee" means a person holding a license authorized by KRS
15 230.210 and 809 KAR 1:003.

16 (6) [(4)] "Principal" is defined by KRS 230.210(14).

17 (7) [(2)] "Publicly traded corporation" means a corporation that:

18 (a) Has voting securities registered under Section 12 of the Securities Exchange
19 Act of 1934 (1934 Act), 15 U.S.C. 78a et seq.

20 (b) Issues securities subject to Section 15(d) of the 1934 Act;

21 (c) Has voting securities exempted from the registration requirements due to
22 Section 3 of the Securities Act of 1933, 48 U.S.C. 77a et seq.; or

23 (d) Is required to file under the 1934 Act.

- 1 (8) “Service Provider” is defined by KRS 230.210.
- 2 (9) “Sports wagering” is defined as established in KRS 230.210.
- 3 (10) “Substantial owner” is any person who owns 5% or more of the business.

4 Section 2. Racing License Applications.

- 5 (1) New racing license applications. A person or legal entity desiring to conduct
6 thoroughbred racing in the Commonwealth shall apply to the commission for an
7 association license pursuant to KRS 230.300(1).
- 8 (2) Renewal racing applications. Racing association licenses shall be renewed
9 annually in accordance with KRS 230.300(1).
- 10 (3) An initial or renewal license application to conduct a horse racing meeting shall be
11 submitted on the form “Initial/Renewal Application for License to Conduct Live Horse
12 Racing, Simulcasting, and Pari-mutuel Wagering,” KHRC 3-010-1.
- 13 (4) An applicant that is unable to provide information required on the application shall
14 fully explain and document to the satisfaction of the commission its inability to provide the
15 information, and shall provide the information promptly upon being able to do so.

16 Section 3. Racing License and Investigation Fees.

- 17 (1) Racing license [~~License~~] fee.
- 18 (a) An initial applicant for an initial license shall submit with the application a
19 non-refundable initial license fee of \$5,000.
- 20 (b) A renewal applicant shall not be charged a fee to renew a racing association
21 license, unless an investigation fee is authorized by subsection (2) of this section.
- 22 (2) Racing license investigation [~~Investigation~~] fees.

1 (a) Initial applicants shall submit with the application an investigation fee of
2 \$10,000.

3 (b)

4 1. The commission may require a renewal applicant or an applicant
5 proposing a substantial change in ownership to pay an investigation fee of \$10,000
6 if:

7 a. The applicant or one (1) of its principals has not previously been
8 subject to an investigation;

9 b. More than five (5) years has passed since the last investigation of
10 the applicant or one (1) of its principals was conducted; or

11 c. The commission finds other good cause for an investigation.

12 2. If an investigation fee is requested, the applicant shall submit a
13 cashier's check or certified check payable to the commission within ten (10) days
14 of receipt of the request.

15 (c) The investigation fee shall pay all costs incurred by the commission in
16 reviewing the application.

17 (d) Any portion of the investigation fee not required to complete the
18 investigation shall be refunded to the applicant within twenty (20) days of the withdrawal,
19 rejection, or approval of the license application or proposed change of ownership.

20 (e) If additional costs are incurred in the conduct of the investigation, the
21 applicant shall submit a cashier's check payable to the commission in the amount
22 reasonably requested by the commission within ten (10) days of receipt of the request.
23 Failure to submit this payment shall result in suspension of processing the license

1 application or proposed change of ownership and may result in denial of the license or
2 proposed change of ownership.

3 Section 4. Racing Licensing [~~Licensing~~] Criteria.

4 (1) The commission shall issue a racing license if it determines that:

5 (a) The applicant meets all requirements of KRS Chapter 230 and this KAR
6 Title 810;

7 (b) The applicant is qualified and financially capable of operating a race track;

8 (c) The applicant will conduct racing in accordance with KRS Chapter 230 and
9 KAR Title 810;

10 (d) The applicant will conduct racing in accordance with the highest standards
11 and the greatest level of integrity; and

12 (e) The issuance of a license will ensure the protection of the public interest.

13 (2) In reviewing an application, the commission may consider any information, data,
14 reports, findings, or other factors available which it deems relevant to its determination of
15 whether the applicant is qualified to hold a license, including:

16 (a) The integrity of the applicant and its principals, including:

17 1. Whether the applicant or its principals is unsuitable pursuant to KRS
18 230.280(2)(f);

19 2. Whether the applicant or its principals has been a party to litigation
20 over business practices, disciplinary actions over a business license, or refusal to
21 renew a license;

22 3. Whether the applicant or its principals has been a party to
23 proceedings in which unfair labor practices, discrimination, or violation of

1 government regulations pertaining to racing or gaming laws was an issue, or
2 bankruptcy proceedings;

3 4. Whether the applicant or its principals has failed to satisfy judgments,
4 orders, or decrees; and

5 5. Whether the applicant or its principals has been delinquent in filing
6 tax reports or remitting taxes;

7 (b) The quality of physical facilities and equipment, including any improvements
8 and equipment proposed or existing in the applicant's facility;

9 (c) If a new applicant, the schedule for completion of a racing facility and the
10 feasibility of meeting the schedule;

11 (d) The types and variety of pari-mutuel horse racing which the applicant
12 proposes to offer;

13 (e) The financial ability of the applicant to develop, own, and operate a pari-
14 mutuel facility successfully;

15 (f) If a new applicant, the status of governmental actions required to approve
16 or facilitate the applicant's facility;

17 (g) The management ability of the applicant and its principals;

18 (h) Compliance of the applicant with applicable statutes, charters, ordinances,
19 or regulations;

20 (i) The efforts of the applicant to promote, develop, and improve the horse
21 racing industry in Kentucky;

22 (j) The impact of the facility upon the Commonwealth of Kentucky in the
23 following areas:

1 1. Employment created, purchases of goods and services, public and
2 private investment, and taxes generated;

3 2. Ecological and environmental impact;

4 3. Social impact; and

5 4. Cost of public improvements;

6 (k) The extent of public support or opposition to horse racing and pari-mutuel
7 wagering at the location where the license is sought; and

8 (l) The effects of the location of the track, including the following:

9 1. Number, nature, and relative location of other licensees; and

10 2. Minimum and optimum number of racing days sought by the
11 applicant.

12 Section 5. Racing Date Assignments. In assigning racing meetings and race dates to
13 applicants, the commission shall consider factors relating to the economic and practical
14 feasibility of conducting racing meetings at association race tracks, including:

15 (1) The types and dates of racing meetings held elsewhere, both within and
16 outside of the Commonwealth;

17 (2) The effects that various types of pari-mutuel racing have upon one another;

18 (3) The quality of horse racing provided at other racetracks;

19 (4) Dates traditionally awarded racetracks in the past;

20 (5) The past performance of the licensee;

21 (6) Whether the licensee has complied with KRS Chapter 230 and KAR Title
22 810;

1 (7) Whether the assignment of racing dates will maximize revenues to the
2 state,

3 (8) Whether the assignment of racing dates will adversely affect the public
4 health, welfare, and safety;

5 (9) The projected stability of the racing dates to be awarded; and

6 (10) The stability of the racing circuit within and outside the Commonwealth.

7 Section 6. Racing License Applicant Presentation.

8 (1) An applicant that has submitted a completed license application and all
9 accompanying fees may request to make a presentation of its application at a meeting of
10 the commission prior to the ruling on the application.

11 (2) The presentation shall be limited to information contained in the application and
12 any supplemental information relevant to the applicant's suitability. The admission of
13 supplemental information shall be subject to the discretion of the commission.

14 Section 7. Additional Information. At any time prior to issuing a license, the commission
15 may request additional information if the information would assist the commission in
16 deciding whether to issue a license, including:

17 (1) Copies of any documents used by the applicant in preparing the application; and

18 (2) Contracts between the applicant and third parties related to operations.

19 Section 8. Change in Ownership.

20 (1) A change in ownership shall be reported to the commission on the Kentucky Horse
21 Racing Commission Racing Association Change of Control Form, KHRC 3-010-2.

1 (2) Notice of a nominal change in ownership shall be filed with the commission within
2 fifteen (15) days of the execution of the documents upon which the proposed nominal
3 change is based.

4 (3) Notice of a change of ownership shall not be required for:

5 (a) A nominal change in ownership if the licensee is a publicly traded
6 corporation;

7 (b) The transfer of an ownership interest in an association, direct or indirect,
8 whether substantial or nominal, if by a publicly traded corporation and the beneficial
9 ownership is acquired by a person who will hold the voting securities of the publicly traded
10 corporation for investment purposes only; or

11 (c) A debt transaction of a publicly traded corporation, unless the transaction
12 results in the pledge or encumbrance of the assets or any portion thereof of the
13 association.

14 (4) Notice of a substantial change in ownership shall be filed with the commission
15 prior to the execution of the documents upon which the proposed substantial change is
16 based and shall constitute a request for approval of the change.

17 (a) Absent prior written approval from the commission, a substantial change in
18 ownership shall result in termination of the license.

19 (b) Any attempt to effect substantial change in ownership not in writing shall be
20 considered void by the commission.

21 Section 9. Material Modification of Proposed or Existing Facility. A new applicant or
22 association with an existing facility shall not materially alter the grounds or facilities after

1 a license has been issued for that facility without prior written approval of the commission
2 or, if designated by the commission, the executive director of the commission.

3 Section 10. Racing Licensee Late Fee.

4 (1) A licensee that fails to conduct racing after the commencement date specified in
5 the license may be subject to a late fee not to exceed \$15,000 per day.

6 (2) The amount of the late fee shall be based on the economic impact caused by the
7 licensee's failure to perform.

8 (3) The late fee shall not be imposed for a particular day if the licensee can prove to
9 the satisfaction of the commission that the cause of delay was:

10 (a) Beyond the control and without the fault or negligence of the licensee, its
11 contractors, and subcontractors; or

12 (b) The default of a contractor or subcontractor, if:

13 1. Arising from causes beyond the control of the licensee, its
14 contractors, and subcontractors; and

15 2. The supplies or services to be furnished by the contractor or
16 subcontractor were not obtainable from other sources in sufficient time for the licensee
17 to meet the completion date.

18 Section 11. Sports Wagering Operator License Applications; Deadlines; Provision for
19 2023.

20 (1) No racing associations shall offer sports wagering without a valid license issued
21 by the commission.

22 (2) Initial applications. An Applicant for an Operator License in the Commonwealth
23 shall apply to the commission for an Operator License pursuant to KRS 230.811.

1 (3) Renewal applications. An Operator License shall be renewed annually in
2 accordance with KRS 230.811.

3 (4) Except as otherwise provided in Section 14, an initial or renewal application for an
4 Operator License shall be submitted on the form Initial/Renewal Application for License
5 to Conduct Live Horse Racing, Simulcasting, Pari-Mutuel Wagering, and Sports Wagering
6 Form” KHRC 3-010-1, 06/2023.

7 (5) Initial applications completed for sports wagering conducted in 2023 shall be
8 effective through December 31, 2023.

9 (6) For sports wagering conducted in 2024 and thereafter, an application shall be filed
10 with the commission prior to September 1 of the preceding calendar year.

11 (7) For sports wagering conducted in 2023, Operators that offer sports wagering in a
12 Licensed Facility for Sports Wagering shall offer in-person sports wagering at their
13 Licensed Facility for Sports Wagering starting on or after September 7, 2023. Operators
14 shall not offer sports wagering via a website or mobile application before September 28,
15 2023.

16 Section 12. Operator License Fees

17 (1) An Applicant for an Operator License shall submit the Initial Fee of \$500,000 with
18 its initial application for a License. The initial fee shall be non-refundable.

19 (2) An Operator shall submit the Renewal Fee of \$50,000 with a renewal application
20 for their License. The renewal fee shall be non-refundable.

21 (3) Pursuant to KRS 230.811, the fees in this section shall be deposited into the fund
22 established by KRS 230.817.

23 Section 13. Operator Licensing criteria

1 (1) The commission shall issue a Operator License if it determines that the Applicant
2 for an Operator's participation as a sports wagering Operator is in the best interests of
3 sports wagering in Kentucky.

4 (2) In reviewing an application, the commission may consider any information, data,
5 reports, findings, or other factors available that it deems relevant to its determination of
6 whether the Applicant for an Operator License is qualified to be an operator. The
7 commission shall consider, at a minimum, whether:

8 (a) The Applicant for an Operator License has completed and filed an
9 Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, Pari-
10 Mutuel Wagering, and Sports Wagering Form, KHRC 3-010-1;

11 (b) The Applicant for an Operator License meets all applicable requirements of
12 KRS Chapter 230, KAR Title 810, and KAR Title 809;

13 (c) The Applicant for an Operator License is qualified and financially capable
14 of conducting sports wagering;

15 (d) The Applicant for an Operator License will conduct sports wagering in
16 accordance with KRS Chapter 230, KAR Title 810; and KAR Title 809;

17 (e) The Applicant for an Operator License will conduct sports wagering in a
18 controlled environment that protects patrons from cheating and fraud; and

19 (f) The issuance of an Operator License will ensure the protection of the public
20 interest.

21 1. The commission may authorize a temporary sports wagering
22 Operator License while determining suitability for the annual Operator License.

1 The commission shall consider at least the following factors in determining whether
2 to issue a temporary Operator License:

3 (g) The information submitted by the applicant is sufficient to determine the
4 applicant's suitability;

5 (h) The Applicant for an Operator's history of offering pari-mutuel wagering in
6 the Commonwealth; and

7 (i) The history, if any, of the Applicant for an Operator License or its parent
8 company of offering sports wagering or other gaming in other jurisdictions.

9 Section 14. Operator Application procedures

10 (1) An Applicant for an Operator License shall submit a fully executed original
11 application.

12 (2) An application is deemed filed when the commission has received the completed
13 application forms, including the information and documentation required by the
14 application, unless a waiver is granted pursuant to subsection (10).

15 (3) The completed applications shall be filed as follows:

16 (a) Applicants for an Operator License shall submit six (6) copies or
17 electronically in a method approved by the Commission

18 (b) Applicants for an Operator License shall submit the application to the
19 commission's office in Lexington, Kentucky.

20 (c) Applicants for an Operator License shall submit the Application prior to
21 expiration of the deadlines established in Section 11.

22 (4) An Applicant for an Operator License is under a continuing duty to disclose any
23 changes in the information submitted to the commission.

1 (5) Any Operator that enters into a contract with a new Service Provider to provide
2 services in Kentucky shall provide notice to the commission and a copy of such contract
3 within fourteen (14) calendar days. If an Operator has entered into a contract with a
4 Service Provider to provide services in Kentucky prior to the effective date of this
5 regulation, the Operator shall attach the contract to its application for an Operator's
6 License. The Operator shall provide notice to the commission within fourteen (14)
7 calendar days of any subsequent amendments, modifications, or revisions made to the
8 contract.

9 (6) Any Operator that enters into a contract with a new Information Services Provider
10 to provide services in Kentucky shall provide notice to the commission within fourteen (14)
11 calendar days of entry into the contract and, as requested by the commission, a copy of
12 such contract. If an Operator has entered into a contract with an Information Services
13 Provider to provide services in Kentucky prior to the effective date of this regulation, the
14 Operator shall attach the contract to its application for an Operator's License. The
15 Operator shall provide notice to the commission within fourteen (14) calendar days of any
16 subsequent amendments, modifications, or revisions made to the contract.

17 (7) If an Occupational Licensee ceases to offer goods and services to an Operator
18 Licensee, then the Operator Licensee shall notify the commission.

19 (8) An application shall include at least the following information:

20 (a) The name, address, and business structure of the Applicant for an Operator
21 License;

22 (b) A Key Employee License application for a substantial owner or key person;

1 (c) A description of all sports wagering services, equipment, devices, and
2 supplies used by the Applicant for an Operator;

3 (d) Contracts with Service Providers or Occupational Licensees, which are
4 related to the sports wagering;

5 (e) Disclosure of any criminal, civil, or administrative action brought against the
6 Applicant for an Operator License;

7 (f) Description of all other licenses held by the Applicant for an Operator
8 License;

9 (g) Internal controls related to the conduct of sports wagering;

10 (h) The Applicant for an Operator's License shall submit audited financial
11 statements for each of the three (3) fiscal years immediately preceding the
12 application.

13 (i) If the Applicant for an Operator's License has no audited financial
14 statements, the applicant shall provide audited financial statements of its parent
15 company and the applicant's unaudited financial statements, which document the
16 applicant's financial performance, assets, and liabilities, including:

- 17 1. A balance sheet;
- 18 2. An income statement;
- 19 3. A cash flow statement;
- 20 4. A statement of retained earnings; and
- 21 5. Notes for financial statements.

22 (j) Organizational and ownership charts of the Applicant for an Operator
23 License; and

1 (k) Information regarding all testing, certifications, or approvals on any
2 component used by the Applicant for an Operator License to provide sports wagering
3 services.

4 (9) For Applicants for an Operator License in 2024 and subsequent years, internal
5 controls shall be produced to the commission simultaneously with licensure applications.
6 For 2023 Applicants for an Operator License, internal controls shall be produced to the
7 commission thirty (30) days before the Applicant for an Operator License intends to begin
8 accepting sports wagers. No sports wagers shall be offered by an Applicant for an
9 Operator License until the commission has approved its internal controls or otherwise
10 issued a temporary license pursuant to Section 13.

11 (10) Submission of the application fee and pages 23 through 31 of Form KHRC 3-010-
12 1 on or before August 1, 2023, constitutes an application to provide sports wagering in
13 2023. Starting in 2023, submission of the application fee and the entire Form KHRC 3-
14 010-1 on or before September 1 constitutes an application to provide live horse racing,
15 simulcasting, pari-mutuel wagering, and sports wagering in the subsequent year.

16 (11) The commission may grant an Applicant for an Operator License a waiver to
17 submit all or part of the required information if it deems that the Applicant for an Operator
18 License has already submitted the information as a part of the application required under
19 810 KAR 3:010. An Applicant for an Operator License shall request this waiver in advance
20 of submitting an application under this chapter and provide written justification for each
21 waiver sought. This justification shall be drafted to the commission's satisfaction.

22 Section 15. Operator License requirements

23 (1) A License issued under this chapter shall include, at a minimum:

- 1 (a) The Applicant for an Operator's License name and business address;
2 (b) License number assigned by the commission;
3 (c) Signature of the executive director, the chairman of the commission, or their
4 designee;
5 (d) Date the license was issued;
6 (e) The date that the license will expire; and
7 (f) A reference to the conditions placed on the license.

8 (2) The Operator License shall remain the property of the commission at all times and
9 the commission may:

- 10 (a) Take licensure action as set forth in 810 KAR 10:008;
11 (b) Issue conditions thereon.

12 Section 16. Applicant for an Operator License presentation

13 (1) An Applicant for an Operator License that has submitted a completed license
14 application and all accompanying fees may request to make a presentation of its
15 application at a meeting of the commission prior to the ruling on the application.

16 (2) The presentation shall be limited to information contained in the application and
17 any supplemental information relevant to the Applicant for an Operator's suitability. The
18 admission of supplemental information shall be subject to the discretion of the
19 commission, in the best interests of sports wagering in the Commonwealth.

20 Section 17. Joint Ventures.

21 (1) Two or more associations licensed under KRS 230.805 may conduct sports
22 wagering together as part of a joint venture or pursuant to an agreement between them.

1 Such joint venture agreements or contracts shall be submitted to the commission within
2 five (5) days of the effective date.

3 Section 18 [44]. Incorporation by Reference.

4 (1) The following material is incorporated by reference:

5 (a) "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting,
6 [~~and~~] Pari-Mutuel Wagering, and Sports Wagering Form" KHRC 3-010-1, 06/2023

7 [11/2018]; and

8 (b) "Kentucky Horse Racing Commission Racing Association Change of Control Form"
9 KHRC 3-010-2, 11/2018.

10 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
11 law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B,
12 Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material
13 may also be obtained at the commission's Web site at <http://khrc.ky.gov>.

810 KAR 3:010E

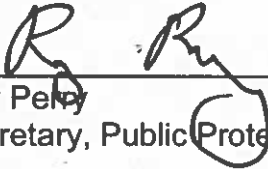
READ AND APPROVED



Jonathan Rabinowitz
Chair, Kentucky Horse Racing Commission

7/10/23

Date



Ray Pelt
Secretary, Public Protection Cabinet

7-10-23

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on August 22, 2023, at 9:00 a.m., at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Jennifer Wolsing

Title: General Counsel

Address: Kentucky Horse Racing Commission, 4063 Iron Works Parkway,
Building B, Lexington, Kentucky 40511

Phone: (859) 246-2040

Fax: (859) 246-2039

Email: jennifer.wolsing@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

810 KAR 3:010

Contact Person: Jennifer Wolsing

Phone: (859) 246-2040

Email: jennifer.wolsing@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the procedures and requirements for applying for a license to conduct racing in the Commonwealth of Kentucky. This regulation also establishes the procedures and requirements for a track to apply for a license to conduct sports wagering in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish clear requirements and guidelines concerning the process by which applications for a license to conduct racing and a license to conduct sports wagering in Kentucky are reviewed and approved.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.300 requires any person desiring to conduct horse racing at a horse race meeting within the Commonwealth of Kentucky to apply for a license to do so. This regulation sets forth the procedures and requirements for applying for a license. Additionally, KRS 230.811 states that only licensed racing associations shall conduct sports wagering.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation enables the commission to issue licenses to conduct a horse racing meeting pursuant to KRS 230.300 and sports wagering pursuant to KRS 230.811 in a consistent and systematic way.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment adds procedures and requirements for licensed racing associations to apply for a license to conduct sports wagering.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow licensed racing associations to conduct sports wagering.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 230.811, because it provides clear requirements and guidelines concerning the process by which applications for a license to conduct sports wagering are reviewed and approved.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in effectively administering KRS 230.811, because it enables the commission to issue sports wagering licenses in a consistent and systematic way.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects applicants for a license to conduct horse racing in the Commonwealth. This regulation also affects licensed tracks that apply for a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for a racing license under this administrative regulation will be required to file initial and renewal applications and corresponding fees to obtain and maintain a license to conduct horse racing in the Commonwealth. Additionally, licensed racing associations applying for a license to conduct sports wagering under this regulation will also be required to file initial and renewal applications and corresponding fees to obtain and maintain a license to conduct sports wagering in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Applicants for a new horse racing license are assessed a fee of \$5,000. Initial applicants are assessed a \$10,000 investigation fee, the unused portion of which is returned to the applicant. The investigation fee may also be charged to renewal applicants or where a licensee proposed undergoing a change of ownership. Applicants for a new sports wagering license are assessed a fee of \$500,000. Applicants seeking to renew a sports wagering license are assessed a fee of \$50,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with the racing application requirements, racing associations will be allowed to conduct legal race meetings in the Commonwealth of Kentucky. As a result of compliance with the sports wagering application requirements, licensed racing associations will be allowed to conduct legal sports wagering in the Commonwealth of Kentucky.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year.

(b) On a continuing basis: It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky on a yearly basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to implement and enforce sports wagering in Kentucky will come from the sports wagering administrative fund, as established in KRS 230.817. No additional funding is

required for the implementation and enforcement of the race track licensure regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding will be necessary for the implementation and enforcement of the race track licensure portion of this regulation. However, the sports wagering licensure portion of this regulation establishes licensure fees for initial and renewal applicants for sports wagering licenses.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes that license and investigation fees are applicable to initial race track licensure applicants and that investigation fees may be charged for a track licensee to renew a license or when a substantial change in ownership is to occur. This regulation also establishes license fees for initial and renewal applicants for sports wagering licenses.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not applied, because this amended regulation will apply to all similarly-situated entities in an equal manner.

FISCAL NOTE

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(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission, racing association applicants, and licensed racing associations applying for sports wagering licenses will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.210, 230.215, 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.370, 230.811, and 230.817.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The licensure of racing associations will not generate additional revenue for state or local government for the first year. It is estimated that the licensure of sports wagering facilities will generate approximately \$5 million for the Sports Wagering Administration Fund for the first year. It is anticipated that sports wagers will generate additional tax revenue during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The licensure of racing associations will not generate additional revenue for state or local government for subsequent years. It is estimated that the licensure of sports wagering facilities will generate approximately \$500,000 in renewal fees per year for the Sports Wagering Administration Fund for subsequent years. As above, it is anticipated that sports wagers will generate additional tax revenue during subsequent years.

(c) How much will it cost to administer this program for the first year? It is estimated that the commission will spend approximately \$2.4 million in the first year to implement sports wagering in Kentucky.

(d) How much will it cost to administer this program for subsequent years? It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Any revenue increase will be dependent on the number of initial license applicants and renewal applicants. It is estimated that revenues will be increased by approximately \$5 million during the first year and \$500,000 during subsequent years. Revenues will also be increased by sports wagering taxes. The exact amount cannot be determined at this date, as it will depend on the number and type of wagers and the location of those wagers (i.e., online or in a retail location).

Expenditures (+/-): Any revenue increase will be dependent on the number of initial license applicants and renewal applicants. It is estimated that expenditures will increase by \$2.4 million during the first year and \$1.2 million during subsequent years.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not expected to generate cost savings for the regulated entities during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not be expected to generate cost savings for the regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? Racing associations seeking an initial license to conduct horse race meetings will pay an initial license fee of \$5,000 and an investigation fee of \$10,000. Licensed associations seeking an initial license to conduct sports wagering will pay an initial fee of \$500,000.

(d) How much will it cost the regulated entities for subsequent years? Racing associations seeking to renew a license to conduct horse race meetings may pay an investigation fee of \$10,000 under certain limited conditions. Licensed associations seeking to renew a license to conduct sports wagering will pay a renewal fee of \$50,000.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-): \$0.00

Expenditures (+/-): Please see the answers to (c) and (d) above.

Other Explanation: N/A.

Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]* This regulation will have a major economic impact. It is estimated that racing associations seeking an initial license to conduct horse race meetings will pay an initial license fee of \$5,000 and an investigation fee of \$10,000. Licensed associations seeking a license to conduct sports wagering will pay an initial fee of \$500,000 and/or a renewal fee of \$50,000. It is estimated that the commission will spend approximately \$2.4 million to implement sports wagering in Kentucky in the first year. It is further estimated that the commission will spend approximately \$1.2 million annually to continue regulating sports wagering in Kentucky in subsequent years. It is estimated that revenues will be increased by approximately \$5 million during the first year and \$500,000 during subsequent years. This estimate does not include tax revenue obtained from sports wagers, which cannot be estimated at this time.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE: The “Kentucky Horse Racing Commission Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, Pari-Mutuel Wagering, and Sports Wagering,” Form KHRC 3-010-1 (07/2023) is incorporated by reference. This document is a 31-page application form that racing associations are required to file in order to receive a license to conduct horse race meetings in Kentucky. Pages 23 through 31 of the application form are the optional sports wagering operator application form, which licensed tracks are required to file in order to receive a license to operate sports wagering in Kentucky. These forms are required by KRS 230.300 requires racing associations to be licensed by the commission in order to conduct race meetings in Kentucky. Similarly, KRS 230.811 requires that licensed racing associations shall be the only entities in Kentucky that operate sports wagering.