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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 – 809 KAR 010:001 & E, 809 KAR 010:002 & E, 809 KAR 010:003 & E, 809 KAR 010:004 & E, 809 KAR 010:005 & E, 809 KAR 010:006 & E, 809 KAR 010:007 & E, 809 KAR 010:008 & 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. Council
REGULATIONS COMPILER

STATEMENT OF EMERGENCY

809 KAR 10:007E *TD*

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 not identical to this emergency administrative regulation. The emergency regulation allows sports wagering operators to conduct individualized self-exclusion programs; whereas, the ordinary regulation merges those individual self-exclusion programs into one that is administered by the Kentucky Horse Racing Commission.



Andy Beshear
Governor



Ray Perry
Secretary, Public Protection Cabinet

1 PUBLIC PROTECTION CABINET

2 KENTUCKY HORSE RACING COMMISSION

3 New emergency administrative regulation

4 809 KAR 10:007E. Responsible gaming and advertising.

5 RELATES TO: KRS Chapter 230

6 STATUTORY AUTHORITY: KRS 230.260(15), (16).

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(15) requires the
8 commission to "promulgate administrative regulations establishing a self-exclusion list
9 for individuals who self-identify as being problem or compulsive gamblers." KRS
10 230.260(16) requires the commission to "promulgate administrative regulations to
11 establish standards for the conduct of sports wagering." This administrative regulation
12 establishes a self-exclusion list and responsible gaming programs for sports wagering
13 participants.

14 Section 1. Self-Exclusion List.

15 (1) Each operator licensee shall develop a commission-approved self-exclusion list
16 for individuals who self-identify as problem or compulsive gamblers.

17 (2) The commission shall consider at least the following factors in approving a self-
18 exclusion list:

19 (a) The list shall include the names and other identifying information of the
20 individuals who have self-excluded from sports wagering at a licensed premises and
21 online via a licensee-specific Web site, mobile application, or by phone.

1 (b) Each licensee shall display a notice to the public of the existence of the
2 self-exclusion list and the method or methods individuals may use to self-identify at the
3 Licensed Premises, online, or by phone.

4 (c) The notice shall be displayed at public entrances to the Race and Sports
5 Book Location, and on the Licensee's Web site or mobile application.

6 (d) The notice shall include information about the consequences of self-
7 exclusion.

8 (3) The notice and its placement locations shall be approved by the racing
9 commission. In approving the notice, the commission shall consider the notice's visibility
10 and any other relevant factors.

11 (4) Each licensee shall collect self-exclusion information from individuals who self-
12 identify as problem or compulsive gamblers.

13 Section 2. Responsible gaming program.

14 (1) A licensee shall develop and maintain a responsible gaming program that shall
15 be approved by the racing commission pursuant to this section. The responsible gaming
16 program shall require:

17 (a) Posting in a conspicuous place on the licensee's Web site or mobile
18 application and in every licensed premises a sign that bears a toll-free number for a
19 commission-approved organization that provides assistance to problem or compulsive
20 gamblers;

21 (b) Providing commission-approved disclosures on the licensee's Web site or
22 mobile application and informational leaflets or other similar materials at the licensed
23 premises containing information on the dangers associated with problem gambling;

1 (c) Providing patrons expressing concern with a gambling problem with
2 information on commission-approved organizations that provide assistance to problem
3 or compulsive gamblers;

4 (d) Providing notification that underage gambling is a criminal offense and
5 that anyone who facilitates an underage person to place a sports wager has committed
6 a criminal offense; and

7 (e) Ensuring that any request by a patron who wishes to self-exclude from
8 sports wagering is honored by the licensee.

9 (2) In approving the organizations and disclosures listed in the previous subsection,
10 the commission shall consider industry standards for responsible gambling and any
11 other relevant factors.

12 (3) At least every (5) years, the licensee shall ensure that the licensee's responsible
13 gaming program is independently reviewed by a third party, pursuant to industry
14 standards and performed by a third party approved by the racing commission. The racing
15 commission may require the licensee to pay for the independent review.

16 Section 3. Advertising and marketing.

17 (1) A licensee shall not allow, conduct, or participate in any false or misleading
18 advertising or marketing concerning the licensee's sports wagering operations.

19 (2) A licensee shall only make representations concerning winnings that are accurate,
20 not misleading, and capable of substantiation at the time of the representation. For
21 purposes of this subsection, an advertisement shall be misleading if the advertisement
22 makes representations about average winnings without equally prominently representing
23 the average net winnings of all patrons.

1 (3) A licensee shall not advertise or market at elementary, middle, or high school
2 activities. The prohibition in this subsection shall exclude an advertisement distributed via
3 mass media, such as television, radio, print media, or the Internet, if the advertisement is
4 not specifically directed toward (but may be incidentally received by) elementary, middle,
5 or high schools.

809 KAR 10:007E

READ AND APPROVED



Jonathan Rabinowitz
Chair, Kentucky Horse Racing Commission

7/10/23
Date



Ray Perry
Secretary, Public Protection Cabinet

7
0-10-23
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 the 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

809 KAR 10:007

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 and maintains a voluntary self-exclusion list, requires tracks and/or their service providers to provide a commission-approved responsible gaming program, and precludes false or misleading advertising.

(b) The necessity of this administrative regulation: This regulation is necessary to provide specific rules concerning responsible gaming and advertising.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260(15) requires the commission to "promulgate administrative regulations establishing a self-exclusion list for individuals who self-identify as being problem or compulsive gamers." KRS 230.260(16) requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of statutes by ensuring that sports wagering providers establish a voluntary self-exclusion list for problem or compulsive gamblers. It also ensures that providers maintain a responsible gaming program. Finally, this regulation ensures that sports wagering providers avoid engaging in false or misleading advertising practices.

(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: N/A. This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: N/A. This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: N/A. This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A. This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the licensed tracks that apply for and receive a license to conduct sports wagering in the Commonwealth. There are currently nine (9) licensed tracks operating in the Commonwealth. Each track is allowed to contract with up to three (3) service providers.

Therefore, up to 27 service providers may be affected by the definitions in this regulation. Additionally, there are an unknown number of patrons who will be impacted by the voluntary self-exclusion list and responsible gaming program. Finally, there is an unknown number of Kentuckians who will be impacted by the ban on false or misleading sports wagering advertising.

(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: Licensed tracks offering sports wagering and service providers must establish a self-exclusion program and a commission-approved responsible gaming program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs are unknown, but should be minimal. Kentucky's licensed tracks already have individualized self-exclusion programs. They will simply report those names to the Commission for inclusion in a confidential state database shared by other tracks, pursuant to KRS 230.260(15). The costs of establishing a responsible gaming program to the commission's specifications will also be minimal, as it will primarily consist of conspicuous postings and disclosures regarding assistance programs for problem or compulsive gamblers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Tracks will benefit from having clear standards for their voluntary self-exclusion and responsible gaming programs. Patrons will benefit from being able to take advantage of self-exclusion and responsible gaming programs. Kentuckians will benefit from the avoidance of false or misleading advertising.

(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 this 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 increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any new fees or increase any current fees.

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

FISCAL NOTE

809 KAR 10:007

Contact Person: Jennifer Wolsing

Phone: (859) 246-2040

Email: jennifer.wolsing@ky.gov

(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 will be affected 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 230.260(15) and (16) require or authorize the actions taken by this regulation.

(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? This sports wagering account regulation will not generate revenue during the first full 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? This sports wagering account regulation will not generate 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

(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 will not generate cost savings for 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 generate cost savings for subsequent years.

(c) How much will it cost the regulated entities for the first year? Costs for the first year are unknown, but should be minimal. Kentucky's licensed tracks already have individualized self-exclusion programs. They will simply report those names to the Commission for inclusion in a confidential state database shared by other tracks, pursuant to KRS 230.260(15). The costs of establishing a responsible gaming program to the commission's specifications will also be minimal, as it will primarily consist of conspicuous postings and disclosures regarding assistance programs for problem or compulsive gamblers.

(d) How much will it cost the regulated entities for subsequent years? Costs for subsequent years are unknown, but should be minimal. Kentucky's licensed tracks already have individualized self-exclusion programs. They will simply report those names to the Commission for inclusion in a confidential state database shared by other tracks, pursuant to KRS 230.260(15). The costs of establishing a responsible gaming program to the commission's specifications will also be minimal, as it will primarily consist of conspicuous postings and disclosures regarding assistance programs for problem or compulsive gamblers.

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

Cost Savings (+/-): None.

Expenditures (+/-): Minimal, as set forth above in (4)(c) and (d).

Other Explanation: None.

(5) 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 is not anticipated to have a major economic impact on Kentucky for the reasons stated above.