

810 KAR 3:030. Licensing totalizator companies.

RELATES TO: KRS 230.225, 230.260, 230.290, 230.300, 230.310, 230.320, 230.361, 230.370, 230.380

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3), 230.300, 230.370, 230.380

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(3) and 230.380 vest the commission with authority over any totalizator company that provides totalizator services to racing associations and simulcast facilities located in the Commonwealth. KRS 230.260(3) further requires the commission to license any totalizator company under its jurisdiction, regardless of whether the company is located in the Commonwealth, or operates from a location or locations outside of the Commonwealth. This administrative regulation establishes license application procedures and requirements for totalizator companies that provide totalizator services to racing associations located in the Commonwealth.

Section 1. Definitions.

(1) "Applicant" means an individual, person, or entity that has submitted an application for a license pursuant to this administrative regulation.

(2) "Individual" means a natural person, at least eighteen years of age, but does not include any corporation, partnership, limited liability company, trust, or estate.

(3) "Person" means any corporation, whether organized for profit or not, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

(4) "Principal" is defined by KRS 230.210(14) when used in the context of a licensed association or an applicant for a license to conduct a horse race meeting; when used in the context of any other type of entity, "Principal" means any of the following individuals associated with a partnership, trust association, limited liability company, or corporation:

(a) The chairman and all members of the board of directors of a corporation;

(b) All partners of a partnership and all participating members of a limited liability company;

(c) All trustees and trust beneficiaries of an association;

(d) The president or chief executive officer and all other officers, managers, and employees who have policy-making or fiduciary responsibility within the organization;

(e) All stockholders or other individuals who own, hold, or control, either directly or indirectly, five (5) percent or more of stock or financial interest in the collective organization; and

(f) Any other employee, agent, guardian, personal representative, or lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation.

(5) "Totalizator company" means any person providing totalizator services or equipment to a racing association or simulcast facility.

Section 2. License Required.

(1) Any totalizator company that provides totalizator services to a racing association or simulcast facility located in the Commonwealth shall be licensed by the commission.

(2) To obtain a license, an applicant shall apply to the commission for a license on the Initial/Renewal License Application to Provide Totalizator Services, KHRC 3-030-1.

(a) An initial license shall be effective, and the totalizator company may begin operations, upon approval of the commission.

(b) A license to provide totalizator services shall be renewed annually on or before August 1 of the preceding year. The commission shall render a decision on the renewal application on or before December 20. If approved, a renewal license shall be effective January 1.

(3) If an applicant is unable, despite best efforts, to provide all of the required information, the applicant shall fully explain and document its reasons to the satisfaction of the commission, and shall provide the information promptly upon being able to do so.

Section 3. Licensing Fees and Costs.

(1) An annual license fee of \$1,000 shall be payable to the commission upon submission of a license application. A license application shall not be complete until receipt of the license fee each year.

(2)(a) The applicant shall pay all costs incurred by the commission in reviewing an application for an initial or renewal license, including:

1. Legal and investigative costs, and

2. The cost of performing background checks on any individual or organization associated with the applicant.

(b) To cover these costs, initial applicants shall submit with the application an investigation fee of \$10,000.

(c) Any portion of the payment not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the granting, withdrawal, or rejection of the initial license application.

(d)1. The commission may require a renewal applicant or an applicant proposing a substantial change in ownership to pay an investigation fee in an amount reasonably requested by the commission if:

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

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

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

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

3. Failure to submit the payment shall result in suspension of the processing of renewing the license and may result in denial of the license.

(e) To the extent additional costs become necessary to investigate an applicant for a license or a substantial change in ownership of an applicant, the applicant shall submit a cashier's check or certified check payable to the commission in an amount reasonably requested by the commission within ten (10) days of receipt of the request. Failure to submit an additional requested payment shall result in suspension of the processing of the license application and may result in denial of the license.

(f) The commission may waive the investigation fees, in part or completely, if the applicant has undergone a certification process or other investigative review by a commission-approved industry or regulatory body.

Section 4. License Application Procedures.

(1) The commission may deny a license to any applicant that provides false or misleading information on or omits material information from the application.

(2) In addition to the "Initial/Renewal License Application to Provide Totalizator Services, KHRC 3-030-1, an applicant shall provide to the commission:

(a) Audited financial statements for the last three years or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the commission to determine that the applicant is financially capable of operating as a going concern;

(b) A Service and Organization Controls 1 Report (SOC-1) or other independent report in a

form acceptable to the commission, completed within the preceding twelve (12) months, to assure adequate financial controls are in place and compliance with totalizator standards. The commission may require that a SSAE 16 audit, or other independent report in a form acceptable to the commission, be conducted annually in order to receive a renewal license;

(c) A list of personnel assigned to work in Kentucky, which shall be kept current and be provided to the commission upon request;

(d) A certification of compliance with the Kentucky Horse Racing Commission Totalizator Standards, KHRC 3-030-03; and

(e) An agreement to testing of hardware and software as may be directed by the commission; and

(3) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available that it considers important or relevant to its determination of whether the applicant is qualified to hold a license, including the following:

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

1. Been convicted of any crime of moral turpitude, embezzlement, or larceny, or any violation of any law pertaining to illegal gaming or gambling, or any crime that is inimical to the declared policy of the Commonwealth of Kentucky with regard to horse racing and pari-mutuel wagering thereon;

2. Been convicted in any jurisdiction within ten (10) years preceding initial licensing or license renewal of any crime that is or would be a felony or class A misdemeanor in the Commonwealth of Kentucky;

3. Been identified in the published reports of any federal or state legislative or executive body, or in an opinion of any judicial body, as being a member or associate of organized crime, or of being of notorious or unsavory reputation;

4. Been charged by any federal, state, or local law enforcement authority with a violation of any federal, state, or local law;

5. Had a gaming or totalizator company license revoked in another jurisdiction on grounds that would have been grounds for revoking the license in Kentucky

6. Engaged in any other activities that would pose a threat to the public interest or to the effective regulation of horse racing and wagering in Kentucky, or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of racing and wagering or in the operation of the business and financial arrangements incidental thereto;

7. Been a party to litigation over business practices or disciplinary actions over a business license;

8. Been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;

9. Failed to satisfy judgments, orders, or decrees; and

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

(b) The quality of physical facilities and equipment;

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

(d) Compliance of the applicant with applicable statutes, charters, ordinances, and administrative regulations; and

(e) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in the Commonwealth.

Section 5. License Applicant Presentation.

(1) An applicant that has submitted a completed license application and all accompanying

fees may request or be required to make a presentation of its application at a meeting of the commission prior to the ruling on the application.

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

Section 6. Additional Information. The commission may request additional information from an applicant that would assist the commission in deciding whether to issue or renew a license, including copies of any documents used by the applicant in preparing the application and contracts between the applicant and third parties related to operations.

Section 7. Operations.

(1) Before doing business in Kentucky, the licensee shall be qualified to do business in Kentucky.

(2) In addition to the information the commission may request under this or any other applicable administrative regulation or statute, the commission may require the licensee to remit contemporaneously to the commission a copy of any documents required to be filed with the Department of Revenue or other regulatory agency.

(3) The licensee shall operate in conformity with the Kentucky Horse Racing Commission Totalizator Standards, KHRC 3-030-03.

Section 8. Change in Ownership.

(1) A change in ownership shall be reported to the commission on the Totalizator Services Change of Control Form, KHRC 3-030-2.

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

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

(a) A nominal change of ownership if the licensee is a publicly traded corporation;

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

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

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

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

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

Section 9. Duration of License. A license issued under this administrative regulation shall be valid for the calendar year for which it is issued.

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Initial/Renewal License Application to Provide Totalizator Services" KHRC 3-030-1,

11/2018;

(b) "Totalizator Services Change of Control Form," KHRC 3-030-2, 11/2018; and

(c) "Kentucky Horse Racing Commission Totalizator Standards," KHRC 3-030-3, 11/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained at the commission's Web site, <http://khrc.ky.gov>. (45 Ky.R. 1901; 3104; eff. 5-31-2019.)