

810 KAR 3:010. Licensing of racing associations.

RELATES TO: KRS 230.215, 230.260, 230.280, 230.290, 230.300, 230.320

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(9), 230.280, 230.300(1), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) vests the Kentucky Horse Racing Commission with the authority to promulgate regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.280 prohibits any person from conducting a horse race meeting for any stake, purse, or reward within the Commonwealth without securing the required license from the commission. KRS 230.260(9) authorizes the commission to prescribe by administrative regulation application forms for licenses. KRS 230.300 authorizes the commission to issue licenses to conduct race meetings. This administrative regulation establishes licensing application procedures and requirements for conducting horse racing at horse race meetings in the Commonwealth.

Section 1. Definitions.

- (1) "Principal" is defined by KRS 230.210(14).
- (2) "Publicly traded corporation" means a corporation that:
 - (a) Has voting securities registered under Section 12 of the Securities Exchange Act of 1934 (1934 Act), 15 U.S.C. 78a et seq.;
 - (b) Issues securities subject to Section 15(d) of the 1934 Act;
 - (c) Has voting securities exempted from the registration requirements due to Section 3 of the Securities Act of 1933, 48 U.S.C. 77a et seq.; or
 - (d) Is required to file under the 1934 Act.

Section 2. License Applications.

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

Section 3. License and Investigation Fees.

- (1) License fee.
 - (a) An initial applicant for an initial license shall submit with the application a non-refundable initial license fee of \$5,000.
 - (b) A renewal applicant shall not be charged a fee to renew a racing association license, unless an investigation fee is authorized by subsection (2) of this section.
- (2) Investigation fees.
 - (a) Initial applicants shall submit with the application an investigation fee of \$10,000.
 - (b)
 1. The commission may require a renewal applicant or an applicant proposing a substantial change in ownership to pay an investigation fee of \$10,000 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.
- (c) The investigation fee shall pay all costs incurred by the commission in reviewing the application.
- (d) Any portion of the investigation fee not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the withdrawal, rejection, or approval of the license application or proposed change of ownership.
- (e) If additional costs are incurred in the conduct of the investigation, the applicant shall submit a cashier's check payable to the commission in the amount reasonably requested by the commission within ten (10) days of receipt of the request. Failure to submit this payment shall result in suspension of processing the license application or proposed change of ownership and may result in denial of the license or proposed change of ownership.

Section 4. Licensing Criteria.

- (1) The commission shall issue a license if it determines that:
 - (a) The applicant meets all requirements of KRS Chapter 230 and KAR Title 810;
 - (b) The applicant is qualified and financially capable of operating a race track;
 - (c) The applicant will conduct racing in accordance with KRS Chapter 230 and KAR Title 810;
 - (d) The applicant will conduct racing in accordance with the highest standards and the greatest level of integrity; and
 - (e) The issuance of a license will ensure the protection of the public interest.
- (2) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available which it deems relevant to its determination of whether the applicant is qualified to hold a license, including:
 - (a) The integrity of the applicant and its principals, including:
 - 1. Whether the applicant or its principals is unsuitable pursuant to KRS 230.280(2) (f);
 - 2. Whether the applicant or its principals has been a party to litigation over business practices, disciplinary actions over a business license, or refusal to renew a license;
 - 3. Whether the applicant or its principals has 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;
 - 4. Whether the applicant or its principals has failed to satisfy judgments, orders, or decrees; and
 - 5. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes;
 - (b) The quality of physical facilities and equipment, including any improvements and equipment proposed or existing in the applicant's facility;
 - (c) If a new applicant, the schedule for completion of a racing facility and the feasibility of meeting the schedule;
 - (d) The types and variety of pari-mutuel horse racing which the applicant proposes to offer;
 - (e) The financial ability of the applicant to develop, own, and operate a pari-mutuel facility successfully;
 - (f) If a new applicant, the status of governmental actions required to approve or facilitate the applicant's facility;
 - (g) The management ability of the applicant and its principals;

- (h) Compliance of the applicant with applicable statutes, charters, ordinances, or regulations;
- (i) The efforts of the applicant to promote, develop, and improve the horse racing industry in Kentucky;
- (j) The impact of the facility upon the Commonwealth of Kentucky in the following areas:
 - 1. Employment created, purchases of goods and services, public and private investment, and taxes generated;
 - 2. Ecological and environmental impact;
 - 3. Social impact; and
 - 4. Cost of public improvements;
- (k) The extent of public support or opposition to horse racing and pari-mutuel wagering at the location where the license is sought; and
- (l) The effects of the location of the track, including the following:
 - 1. Number, nature, and relative location of other licensees; and
 - 2. Minimum and optimum number of racing days sought by the applicant.

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

- (1) The types and dates of racing meetings held elsewhere, both within and outside of the Commonwealth;
- (2) The effects that various types of pari-mutuel racing have upon one another;
- (3) The quality of horse racing provided at other racetracks;
- (4) Dates traditionally awarded racetracks in the past;
- (5) The past performance of the licensee;
- (6) Whether the licensee has complied with KRS Chapter 230 and KAR Title 810;
- (7) Whether the assignment of racing dates will maximize revenues to the state;
- (8) Whether the assignment of racing dates will adversely affect the public health, welfare, and safety;
- (9) The projected stability of the racing dates to be awarded; and
- (10) The stability of the racing circuit within and outside the Commonwealth.

Section 6. License Applicant Presentation.

- (1) An applicant that has submitted a completed license application and all accompanying fees may request 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 7. Additional Information. At any time prior to issuing a license, the commission may request additional information if the information would assist the commission in deciding whether to issue a license, including:

- (1) Copies of any documents used by the applicant in preparing the application; and
- (2) Contracts between the applicant and third parties related to operations.

Section 8. Change in Ownership.

- (1) A change in ownership shall be reported to the commission on the Kentucky Horse Racing Commission Racing Association Change of Control Form, KHRC 3-010-2.
- (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 in ownership if the licensee is a publicly traded corporation;
 - (b) The transfer of an ownership interest in an association, direct or indirect, whether substantial or nominal, if by a publicly traded corporation and the beneficial ownership is acquired by a person who will 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 association.
- (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. Material Modification of Proposed or Existing Facility. A new applicant or association with an existing facility shall not materially alter the grounds or facilities after a license has been issued for that facility without prior written approval of the commission or, if designated by the commission, the executive director of the commission.

Section 10. Late Fee.

- (1) A licensee that fails to conduct racing after the commencement date specified in the license may be subject to a late fee not to exceed \$15,000 per day.
- (2) The amount of the late fee shall be based on the economic impact caused by the licensee's failure to perform.
- (3) The late fee shall not be imposed for a particular day if the licensee can prove to the satisfaction of the commission that the cause of delay was:
 - (a) Beyond the control and without the fault or negligence of the licensee, its contractors, and subcontractors; or
 - (b) The default of a contractor or subcontractor, if:
 - 1. Arising from causes beyond the control of the licensee, its contractors, and subcontractors; and
 - 2. The supplies or services to be furnished by the contractor or subcontractor were not obtainable from other sources in sufficient time for the licensee to meet the completion date.

Section 11. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering Form", KHRC 3-010-1, 11/2018; and
 - (b) "Kentucky Horse Racing Commission Racing Association Change of Control Form", KHRC 3-010-2, 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 a.m. to 4:30 p.m. This material may also be obtained at the commission's Web site at <http://khrc.ky.gov>.
- (45 Ky.R. 1892; 3096; eff. 5-31-2019.)