

PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(Amendment)

820 KAR 1:130. Administrative actions.

RELATES TO: KRS 238.510, 238.515, 238.530, 238.555, 238.560, 238.995

STATUTORY AUTHORITY: KRS 238.515, 238.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515 and 238.560 authorize the Department of Charitable Gaming to take appropriate disciplinary action against licensed charitable organizations, charitable gaming facilities, manufacturers, distributors, or persons who do not operate in compliance with KRS Chapter 238 and the administrative regulations promulgated thereunder. KRS 238.560 authorizes the department to classify offenses and recommended administrative actions. This administrative regulation establishes the required classifications and penalties.

Section 1. Department Enforcement Powers.

- (1) The department may issue a letter of warning, letter of reprimand, or a cease and desist order to any license holder for any violation of KRS Chapter 238 or 820 KAR Chapter 1.
- (2) The department may impose administrative action pursuant to KRS 238.560 if the department determines that the action will deter future violations and promote efforts to correct the violation cited.

Section 2. Fines.

- (1) The department may assess fines against any license holder in accordance with the following schedule:
- (2) A violation of KRS Chapter 238 or 820 KAR Chapter 1 relative to charitable gaming recordkeeping and reporting requirements, except for failure to file quarterly reports, may be subject to a fine not to exceed \$500 for each offense. A second or subsequent violation of the same statutory or regulatory provision during a three-year period~~[the same year]~~ may be subject to a fine not to exceed \$1,000 for each offense.
- (3) A violation of KRS Chapter 238 or 820 KAR Chapter 1 relative to the conduct of charitable games, may be subject to a fine not to exceed \$500 for each offense. A second or subsequent violation of the same statutory or regulatory provision during a three-year period~~[the same year]~~ may be subject to a fine not to exceed \$1,000 for each offense.
- (4) A violation of KRS Chapter 238 or 820 KAR Chapter 1 relative to manufacture, packaging, and distribution of charitable gaming supplies and equipment may be subject to a fine not to exceed \$500 for each offense. A second or subsequent violation of the same statutory or regulatory provision during a three-year period~~[the same year]~~ may be subject to a fine not to exceed \$1,000 for each offense.
- (5) A violation of the provisions of KRS 238.530(10) or 238.555(3) relative to conflicts of interest among types of licensees may be subject to a fine not to exceed \$750 for each offense. A second or subsequent violation during a three-year period~~[the same year]~~ may be subject to a fine not to exceed \$1,000 for each offense.
- (6) A violation for conducting any activity without a license for which a license is required pursuant to KRS Chapter 238 and 820 KAR Chapter 1 may be subject to a fine not to exceed \$1,000 for each offense.
- (7) A violation for making false statements in any documents submitted to the department may be subject to a fine not to exceed \$1,000 for each offense.
- (8) A violation of KRS Chapter 238 or 820 KAR Chapter 1 relative to diversion of net receipts from authorized expenses or charitable purposes, unlawful compensation to an individual involved in the conduct of charitable gaming, or any other inurement of net

receipts to the private benefit or financial gain of an individual or person, may be subject to a fine not to exceed \$1,000 for each offense.

(9) A violation of KRS 238.510(5) relative to gambling offenses committed on licensed charitable gaming premises or in conjunction with charitable gaming may be subject to a fine not to exceed \$1,000 for each offense.

(10) Any other violation of KRS Chapter 238 or 820 KAR Chapter 1 for which a fine is not established in this section may be subject to a fine not to exceed \$1,000 for each offense.

Section 3. Probation.

(1) The department may impose upon any license holder a term of probation for any violation of KRS Chapter 238 or 820 KAR Chapter 1.

(2) The department may impose this administrative action, pursuant to KRS 238.560(3), if it determines that department oversight and monitoring of the license holder's activities will promote efforts to correct the cited violation and deter future violations.

Section 4. Revocation, Suspension, or Denial of License.

(1) The department shall revoke, suspend, or deny a license or application for a license if:

(a) An applicant, license holder, license holder seeking renewal, or individual associated with the applicant or license holder in a capacity established in KRS 238.525(3) fails to meet the requirements of KRS 238.525(4) or 820 KAR 1:005~~[Chapter 1]~~;

(b) A license holder fails to pay a fine, correct a violation, or comply with any other requirement imposed by a final order of the department within the previous five years;
~~[A license holder fails to file any reports required pursuant to KRS Chapter 238 or 820 KAR Chapter 1; or]~~

(c) A license holder, upon notice of delinquency, fails to remit to the department any charitable gaming fee required pursuant to KRS 238.570(1);~~[-]~~

(d) A licensed charitable organization fails to maintain its federal tax-exempt status or status as a common school, institute of higher learning, or public college or university, as required by KRS 238.535(12)(a); or

(e) A licensed charitable organization fails to maintain an office an office or place of business in the Commonwealth of Kentucky, as required by KRS 238.535(12)(b) and
(d).

(2) The department may revoke, suspend, or deny the license or application of a licensed charitable organization, manufacturer, distributor, or charitable gaming facility for violations of KRS Chapter 238 or 820 KAR Chapter 1 if the nature, frequency, and severity of the offenses charged or the license holder's or applicant's history of previous violations demonstrate an unwillingness or inability to operate in compliance with the law.

Section 5. Written Notice of Violation. The department shall issue a written notice of violation to a license holder determined to have violated any provision of KRS Chapter 238 or 820 KAR Chapter 1. ~~[This notice shall be provided on a Form CG-NOV, Notice of Violation(s).]~~ Any notices of violation~~[Notices of Violation]~~ issued to a license holder shall be considered by the department in evaluating the license holder's history of previous violation. A notice of violation~~[Notice of Violation]~~ shall state the provisions alleged to have been violated and shall notify the license holder that the department may take administrative action against the license holder as a result of the violations.

Section 6. Investigations. A person may submit a request, in writing, to the department to initiate an investigation of an alleged violation.

~~[Section 7.] [Incorporation by Reference.]~~

~~[(1)] [Form CG-NOV, "Notice of Violation(s) (2019)", is incorporated by reference.]~~
~~[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 500 Mero Street 2NW24, Frankfort, Kentucky 40601-3714, Monday through Friday, 8 a.m. to 4:30 p.m.]~~
(28 Ky.R. 1539; 2039; eff. 3-13-2002; TAm eff. 8-9-2007; 42 Ky.R. 960; eff. 1-4-2016; 44 Ky.R. 2693; 45 Ky.R. 1607; eff. 1-4-2019; TAm eff. 11-22-2019.)

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

AMBROSE WILSON IV, Commissioner

APPROVED BY AGENCY: January 12, 2023

FILED WITH LRC: January 13, 2023 at 10:15 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2023, at 1 PM Eastern Time at the Mayo-Underwood Building, Room 133CE, 500 Mero Street, Frankfort, Kentucky 40601. 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 is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. 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 March 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes administrative actions that may be taken by the Department of Charitable Gaming in the event of violations of KRS Chapter 238 and 820 KAR Chapter 1.

(b) The necessity of this administrative regulation:

This regulation is necessary to establish disciplinary actions that may be taken by the Department of Charitable Gaming in the event of violations of KRS Chapter 238 and 820 KAR Chapter 1.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

Pursuant to KRS 238.522, a draft of this regulatory amendment was submitted to members of the Charitable Gaming Advisory Commission on December 16, 2023. No written comments were received from the members of the commission. KRS 238.515 authorizes the department to promulgate administrative regulations to carry out and implement KRS Chapter 238. KRS 238.515(9) authorizes the Department to promulgate administrative regulations to carry out and implement KRS Chapter 238.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation is necessary to clearly establish the circumstances under which the department will take certain administrative actions.

(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:

This administrative regulation amends the time period during which administrative violations are enhanceable from within the same calendar year to within a three-year period. This amendment eliminates circumstances in which the Department "shall" deny, revoke, or suspend a charitable gaming license and gives the Department discretion to pursue alternate remedies short of license revocation or suspension. The amendment further gives the Department authority to revoke or suspend a license if a licensee fails to comply with statutory license eligibility requirements.

(b) The necessity of the amendment to this administrative regulation:

"Primary office location" was not previously defined, though it is mentioned in various locations in KRS Chapter 238 and 820 KAR Chapter 1.

(c) How the amendment conforms to the content of the authorizing statutes:

KRS 238.515(9) authorizes the department to promulgate administrative regulations in order to carry out and implement KRS Chapter 238. KRS 238.515(2) grants the department the power to establish and enforce reasonable standards for the conduct of charitable gaming. KRS 238.515(6) authorizes the department to take appropriate disciplinary action and make criminal referrals against persons who fail to comply with KRS Chapter 238. KRS 238.560 authorizes the department to investigate allegations of wrongdoing and administrative action against any person licensed under KRS Chapter 238 for violations of the chapter or administrative regulations promulgated thereunder.

(d) How the amendment will assist in the effective administration of the statutes:

This regulation will assist the Department of Charitable Gaming in effectively carrying out KRS Chapter 238 by clarifying administrative actions that may be taken by the Department of Charitable Gaming in the event of violations of KRS Chapter 238 and 820 KAR Chapter 1.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

The Department of Charitable Gaming and its employees are affected by this administrative regulation. Manufacturers and distributors of paper and electronic pulltabs are also impacted by this administrative regulation. In addition, the licensees and exempt organizations will be affected by this administrative regulation. As of November 2022, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, including 647 charitable gaming organizations, over 767 exempt charitable gaming organizations, twenty (20) manufacturers of charitable gaming supplies; fifteen (15) distributors of charitable gaming supplies; and twenty-nine (29) charitable gaming facilities.

(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:

Regulated entities will not have to take any new action to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

The amendment to 820 KAR 1:130 will impose no new costs on regulated persons or entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Regulated entities complying with the law will not face administrative actions authorized by this regulation.

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

(a) Initially:

There will be no additional cost to implement this administrative regulation initially.

(b) On a continuing basis:

There will be no additional cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

There is no additional funding necessary to implement this amendment to the administrative 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:

The implementation of this administrative regulation requires no increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation neither directly nor indirectly increases any fees.

(9) TIERING: Is tiering applied?

No, tiering is not applied because the definitions set forth in this administrative regulation apply equally to all licensees.

FISCAL NOTE

(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 Department of Charitable Gaming is the agency responsible for implementing this regulation. Local fire departments and school districts that use charitable gaming for fundraising 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 238.515(2), (6), and (9).

(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 administrative regulation is not intended to generate revenue for any state or local government agency.

(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 administrative regulation is not intended to generate revenue for any state or local government agency.

(c) How much will it cost to administer this program for the first year?

There is no cost to administer this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years?

There is no cost to administer this administrative regulation for subsequent years.

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

Revenues (+/-):None

Expenditures (+/-):None

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 is not intended to generate cost savings for regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

This administrative regulation is not intended to generate cost savings for regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year?

This administrative regulation is not intended to generate costs for regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years?

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 (+/-):None

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 administrative regulation is not intended to have a major economic impact as defined by KRS 13A.010(13).