

STATEMENT OF EMERGENCY

809 KAR 1:002E.

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
Kentucky Horse Racing Commission
(New Emergency Administrative Regulation)

809 KAR 1:002E. Service provider licensing.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260, KRS 230.361, KRS 230.811, KRS 230.814

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." KRS 230.811 and KRS 230.814 permit a licensed service provider to conduct sports wagering in Kentucky. This administrative regulation establishes clear requirements and guidelines concerning the process by which applications for a service provider license for sports wagering in Kentucky are reviewed and approved.

Section 1. Definitions.

- (1) "Applicant" means a person applying for a service provider license under KRS 230.814.
- (2) "Application" means "Initial/Renewal Application for Service Provider License," KHRC 01-003-01, 06/2023.
- (3) "Service provider" is defined by KRS 230.210.
- (4) "Service provider license" means a license granted to a service provider that has a contract with an operator to provide sports wagering services pursuant to KRS 230.814.
- (5) "Substantial owner" means a person who owns five (5) percent or more of the company.

Section 2. Applications for Sports Wagering Service Providers.

- (1) Initial applications. An applicant shall apply to the commission for a service provider license pursuant to KRS 230.814.
- (2) Renewal applications. A service provider license shall be renewed annually in accordance with KRS 230.814.
- (3) An initial or renewal application for a service provider license shall be submitted on the form "Initial/Renewal Application for a Service Provider License," KHRC 01-003-01, 06/2023, pursuant to Section 6 of this administrative regulation.

Section 3. License Fees.

- (1) An applicant shall submit the initial fee of \$50,000 with an initial application for a service provider license. The initial fee shall not be refundable.
- (2) A service provider shall submit the renewal fee of \$10,000 with a renewal application for a service provider license. The renewal fee shall not be refundable.
- (3) Pursuant to KRS 230.811, the fees in this section shall be deposited into the fund established by KRS 230.817.
- (4) Renewal applications for a service provider license shall be received by the commission 120 days before the expiration of the current license.

Section 4. Licensing Criteria. The commission shall grant a service provider application if the commission determines that the applicant's participation as a sports wagering service provider is in the best interests of sports wagering in Kentucky. The commission shall consider, at a minimum, the following factors:

- (1) Whether the applicant otherwise qualifies to receive a license under KRS Chapter 230;

- (2) Whether the applicant's key persons and substantial owners qualify to receive applicable occupational licenses under 809 KAR 1:003;
- (3) Whether the applicant, in the case of an individual, or the applicant's substantial owners, is at least eighteen (18) years of age;
- (4) Whether the applicant demonstrates a level of skill, experience, knowledge, and ability necessary to operate as a service provider as required under this administrative regulation;
- (5) Whether the applicant was convicted or charged with any offense for a violation of a gaming law in any jurisdiction;
- (6) Whether the applicant appears on the exclusion list of any jurisdiction for having violated a rule of gaming;
- (7) Whether the applicant has at least one (1) contract to provide services pursuant to KRS 230.814 to a sports wagering operator; and
- (8) Whether the applicant or the applicant's substantial owners are in substantial compliance with all state and federal tax laws.

Section 5. Temporary Licensing.

- (1) The commission may grant a temporary license after an applicant submits an initial application.
- (2) An applicant issued a temporary license pursuant to this administrative regulation or KRS 230.260 shall not be entitled to receive any refund of the license fee submitted in connection with the license application.
- (3) The commission may change a temporary license issued pursuant to this administrative regulation into an annual license if:
 - (a) All investigations into the license application are complete;
 - (b) The commission is satisfied the holder of a temporary license qualifies to hold an annual license; and
 - (c) The applicant, its parent company, or affiliate subsidiaries have demonstrated that it is licensed to provide gaming services in at least three (3) other United States gaming jurisdictions.
- (4) When the commission changes a temporary license into an annual license, the date of issuance of the annual license shall be deemed to be the date that the commission approved the annual license.
- (5) A temporary authorization may expire of its own accord, or it may be suspended, revoked, or summarily suspended under the same terms and conditions as an annual license.
- (6) The temporary license shall not extend beyond one (1) year and shall expire at the end of the calendar year for which it was issued.

Section 6. Application Procedure.

- (1) Application procedures for service providers shall be as follows:
 - (a) A material misrepresentation or omission made with respect to an application may be grounds for denial of the application.
 - (b) An application shall be deemed filed when the commission receives the completed application forms, including all additional information that the commission requires.
 - (c) The completed applications shall be filed as follows:
 1. An applicant shall submit an original and five (5) copies of a fully-executed hard copy application to the commission at the commission's office in Lexington, Kentucky or shall submit the application online at <https://khrc.ky.gov/>.
 2. Applicants shall submit the application prior to November 1 of each year.
 - (d) An applicant shall be under a continuing duty to disclose any changes in the information submitted to the commission.

- (e) Any service provider license holder that enters into a contract with a new operator licensed under 810 KAR 3:010 shall provide notice to the commission and a copy of the contract within fourteen (14) calendar days.
- (f) Any service provider license holder that enters into a contract with a new occupational licensee that is an information services provider shall provide notice to the commission within fourteen (14) calendar days and, as requested, a copy of the contract.
- (g) If a service provider license holder ceases to offer goods and services to an operator licensee, then the service provider shall notify the commission.
- (2) An application for a service provider's license shall include the following information:
 - (a) The name, address, and legal information of the applicant that allows the commission to verify the applicant's legal existence, status, and eligibility for a license, including the applicant's:
 - 1. Business registration details,
 - 2. Business structure, and
 - 3. Business identification number.
 - (b) A Key Employee License Application for a substantial owner or key person;
 - (c) A description of all sports wagering services, equipment, devices, and supplies offered for sale or lease by the applicant in connection with sports wagering;
 - (d) Details regarding the corporate form of the applicant, including the legal structure or type of business applying for the license;
 - (e) Relevant contracts related to the sports wagering;
 - (f) Disclosure of any criminal, civil, or administrative action brought against the applicant;
 - (g) Description of all other licenses held by the applicant;
 - (h) The applicant's audited financial statements for each of the three (3) fiscal years immediately preceding the application; and
 - (i) Organizational and ownership charts of the applicant.
- (3) Initial applications completed for sports wagering conducted in 2023 may also serve as the renewal application for sports wagering conducted in 2024.
- (4) For sports wagering conducted in 2025 and thereafter, an application shall be filed with the commission prior to November 1 of the preceding calendar year.

Section 7. Duty to Maintain Suitability; Duty to Disclose; Transfer of Ownership Interest.

- (1) A service provider shall have a continuing duty to maintain suitability for licensure. A license issued under this administrative regulation does not create a property right but shall be a revocable privilege granted by the commission contingent upon continuing suitability for licensure.
- (2) A service provider shall be responsible for the following:
 - (a) Ensuring that all aspects of the sports wagering operation are conducted in accordance with 809 KAR 10:001 through 809 KAR 10:007;
 - (b) The acts of its employees and agents in the course of their employment; and
 - (c) Notification of a material change in the information submitted in the application, or a matter that renders the service provider ineligible to hold a service provider license.
- (3) A substantial change in ownership shall not occur without prior approval from the commission.

Section 8. Incorporation by Reference. "Initial/Renewal Application for Service Provider License", KHRC 01-002-001, 06/2023, is incorporated by reference.

JONATHAN RABINOWITZ, Chair
RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4:00 p.m.

PUBLIC HEARING AND 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, General Counsel, 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

Contact Person:Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This regulation establishes the procedures and requirements for applying for a service provider license for sports wagering.

(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 service provider license for sports wagering in Kentucky are reviewed and approved.

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

KRS 230.260 requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." KRS 230.361 states the "racing commission shall promulgate administrative regulations to establish a fully functioning sports wagering system...." KRS 230.811 and KRS 230.814 permit a licensed service provider to conduct sports wagering in Kentucky.

(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 sports wagering pursuant to KRS 230.811 and KRS 230.814 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:

This is a new regulation.

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

This is a new regulation.

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

This is a new regulation.

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

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 applicants for a service provider license for sports wagering in Kentucky.

(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 service provider license for sports wagering will be required to file initial and renewal applications and pay corresponding fees to obtain and maintain a

service provider license. Service providers must also maintain suitability for licensure.

(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 service provider license are assessed a fee of \$50,000. Applicants seeking to renew a sports wagering license are assessed a fee of \$10,000.

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

As a result of compliance, service providers will be permitted to contract with licensed racing associations to conduct sports wagering in 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.

(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:

This regulation establishes licensure fees for initial and renewal applicants for service provider licenses.

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

This regulation establishes licensure fees for initial and renewal applicants for service provider licenses.

(9) TIERING: Is tiering applied?

Tiering was not applied, because this amended regulation will apply to all similarly-situated entities in an equal manner.

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 Horse Racing Commission 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 230.260, 230.361, 230.811, and 230.814.

(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 is not 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?

Service providers seeking an initial license to conduct sports wagering will pay an initial fee of \$50,000.

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

Service providers seeking to renew a license to conduct sports wagering will pay a renewal fee of \$10,000.

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.

(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 will have a major economic impact. Service providers seeking a license to conduct sports wagering will pay an initial fee of \$50,000 and/or a renewal fee of \$10,000. 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.