

Technical Amendment
July 1, 2024

810 KAR 3:010. Licensing of racing associations.

RELATES TO: KRS 230.215, 230.260, 230.280, 230.290, 230.300, 230.320, 230.811, 230.817, 15 U.S.C. 77a, 78a

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(9), 230.280, 230.300(1), (9), 230.811

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing and Gaming Corporation to promulgate regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.280(1) requires any person conducting a horse race meeting for any stake, purse, or reward within the Commonwealth to obtain the required license from the corporation. KRS 230.260(9) authorizes the corporation to promulgate by administrative regulation, application forms for licenses. KRS 230.300 authorizes the corporation to issue licenses to conduct race meetings. KRS 230.811 requires all applicants for a sports wagering operator's license to apply to the corporation. KRS 230.260(16) requires the corporation to promulgate administrative regulations to establish standards for the conduct of sports wagering. This administrative regulation establishes licensing application procedures and requirements for conducting horse racing at horse race meetings in the Commonwealth and establishes licensing application procedures and requirements for a licensed racing association to obtain a sports wagering operator's license and offer sports wagering in the Commonwealth.

Section 1. Definitions.

- (1) "Application" means Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, Pari-Mutuel Wagering, and Sports Wagering Form, KHRGC 3-010-1.
- (2) "Applicant for operator license" means a person licensed as an association under KRS 230.300 who is eligible for an operator license pursuant to KRS 230.811.
- (3) "Operator" means a sports wagering operator license applicant that has been granted a license.
- (4) "Operator license" means a license to conduct, manage, or offer to conduct sports wagering within the Commonwealth of Kentucky, pursuant to KRS 230.811.
- (5) "Occupational licensee" means a person holding a license authorized by KRS 230.210 and 809 KAR 1:003.
- (6) "Principal" is defined by KRS 230.210(20).
- (7) "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, 15 U.S.C. 77a et seq.; or
 - (d) Is required to file under the 1934 Act.
- (8) "Service provider" is defined by KRS 230.210(30).
- (9) "Sports wagering" is defined as established in KRS 230.210(28).
- (10) "Substantial owner" is any person who owns five (5) percent or more of the business.

Section 2. Racing License Applications.

- (1) New racing license applications. A person or legal entity desiring to conduct horse racing in the Commonwealth shall apply to the corporation for an association license

pursuant to KRS 230.300(1).

(2) Renewal racing 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, Pari-mutuel Wagering, and Sports Wagering, KHRGC 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 corporation its inability to provide the information at the time of filing the application, and shall provide the information upon being able to do so.

Section 3. Racing License and Investigation Fees.

(1) Racing license fee.

(a) An applicant for an initial license shall submit with the application a non-refundable application 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) Racing license investigation fees.

(a) With the application, initial applicants shall submit an investigation fee of \$10,000.

(b)

1. The corporation 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 corporation 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 corporation within ten (10) days of receipt of the request.

(c) The investigation fee shall pay all costs incurred by the corporation 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 corporation in the amount reasonably requested by the corporation 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. Racing Licensing Criteria.

(1) The corporation shall issue a racing 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 corporation may consider any information, data, reports, findings, or other factors available and relevant to its determination of if the

applicant is qualified to hold a license, including:

- (a) The integrity of the applicant and its principals, including if the applicant and its principals:
 - 1. Are unsuitable pursuant to KRS 230.280(2)(f);
 - 2. Have been a party to litigation over business practices, disciplinary actions over a business license, or refusal to renew a license;
 - 3. Have 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. Have failed to satisfy judgments, orders, or decrees; and
 - 5. Have 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 that 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 and regulations, charters, or ordinances in all relevant jurisdictions, charters, or ordinances;
- (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:
 - 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:
 - 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 corporation 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) If the licensee has complied with KRS Chapter 230 and KAR Title 810;
- (7) If the assignment of racing dates will maximize revenues to the state;
- (8) If 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. Racing 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 corporation 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 corporation.

Section 7. Additional Information. At any time prior to issuing a license, the corporation may request additional information if the information would assist the corporation in deciding whether or not 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 corporation on the Kentucky Horse Racing and Gaming Corporation Racing Association Change of Control Form, KHRGC 3-010-2.

(2) Notice of a nominal change in ownership shall be filed with the corporation 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 corporation 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 corporation, 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 corporation.

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 corporation or, if designated by the corporation, the executive director of the corporation.

Section 10. Racing Licensee Late Fee.

(1) Failure of a licensee to conduct racing after the commencement date stated in the license shall be grounds for 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 corporation 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 provided by the contractor or subcontractor were not obtainable from other sources in sufficient time for the licensee to meet the completion date.

Section 11. Sports Wagering Operator License Applications; Deadlines; Provision for 2023.

- (1) A racing association shall not offer sports wagering without a valid license issued by the corporation.
- (2) Initial applications. An applicant for an operator license in the Commonwealth shall apply to the corporation for an operator license pursuant to KRS 230.811.
- (3) Renewal applications. An operator license shall be renewed annually in accordance with KRS 230.811.
- (4) Except as established in Section 14 of this administrative regulation, an initial or renewal application for an operator license shall be submitted on the form, Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, Pari-Mutuel Wagering, and Sports Wagering Form, KHRGC 3-010-1.
- (5) Initial operator licenses granted for sports wagering conducted in 2023 shall be effective through December 31, 2023.
- (6) For sports wagering conducted in 2024 and thereafter, an application shall be filed with the corporation prior to September 1 of the preceding calendar year.
- (7) For sports wagering conducted in 2023, operators that offer sports wagering in a licensed facility for sports wagering shall offer in-person sports wagering at their licensed facility for sports wagering starting on or after September 7, 2023. Operators shall not offer sports wagering via a Web site or mobile application before September 28, 2023.

Section 12. Operator License Fees.

- (1) An applicant for an operator license shall submit the initial fee of \$500,000 with its initial application for a license. The initial fee shall be non-refundable.
- (2) An operator shall submit the renewal fee of \$50,000 with a renewal application for their license. The renewal fee shall be non-refundable.
- (3) Pursuant to KRS 230.811, the fees in this section shall be deposited into the fund established by KRS 230.817.

Section 13. Operator Licensing Criteria.

- (1) The corporation shall issue an operator license if it determines that the applicant for an operator's participation as a sports wagering operator is in the best interests of sports wagering in Kentucky.
- (2) In reviewing an application, the corporation may consider any information, data, reports, findings, or other factors available that it deems relevant to its determination of whether or not the applicant for an operator license is qualified to be an operator. The corporation shall consider, at a minimum, if:
 - (a) The applicant for an operator license has completed and filed an Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, Pari-Mutuel Wagering, and Sports Wagering Form, KHRGC 3-010-1;
 - (b) The applicant for an operator license meets all applicable requirements of KRS Chapter 230, KAR Title 810, and KAR Title 809;
 - (c) The applicant for an operator license is qualified and financially capable of conducting sports wagering;
 - (d) The applicant for an operator license will conduct sports wagering in accordance with KRS Chapter 230, KAR Title 810, and KAR Title 809;
 - (e) The applicant for an operator license will conduct sports wagering in a controlled environment that protects patrons from cheating and fraud; and

- (f) The issuance of an operator license will ensure the protection of the public interest.
 - 1. The corporation may authorize a temporary sports wagering operator license while determining suitability for the annual operator license.
 - 2. The corporation shall consider at least the following factors in determining whether or not to issue a temporary operator license:
 - a. The information submitted by the applicant is sufficient to determine the applicant's suitability;
 - b. The applicant for an operator's history of offering pari-mutuel wagering in the Commonwealth; and
 - c. The history, if any, of the applicant for an operator license or its parent company of offering sports wagering or other gaming in other jurisdictions.

Section 14. Operator Application Procedures.

- (1) An applicant for an operator license shall submit a fully executed original application.
- (2) An application shall be deemed filed once the corporation has received the completed application forms, including the information and documentation required by the application, unless a waiver is granted pursuant to subsection (10) of this section.
- (3) The completed applications shall be filed as established in paragraphs (a) through (c) of this subsection.
 - (a) Applicants for an operator license shall submit six (6) copies or electronically through the portal maintained by the corporation at <https://khrc.ky.gov/Sportsbetting/newappwelcome>.
 - (b) Applicants for an operator license shall submit the application to the corporation's office in Lexington, Kentucky.
 - (c) Applicants for an operator license shall submit the application prior to expiration of the deadlines established in Section 11 of this administrative regulation.
- (4) An applicant for an operator license shall be under a continuing duty to disclose any changes in the information submitted to the corporation.
- (5) Any operator that enters into a contract with a service provider to provide services in Kentucky shall provide notice to the corporation and a copy of the contract within fourteen (14) calendar days. If an operator has entered into a contract with a service provider to provide services in Kentucky, the operator shall attach the contract to its application for an operator's license. The operator shall provide notice to the corporation within fourteen (14) calendar days of any subsequent amendments, modifications, or revisions made to the contract.
- (6) Any operator that enters into a contract with a information services provider to provide services in Kentucky shall provide notice to the corporation within fourteen (14) calendar days of entry into the contract and, as requested by the corporation, a copy of the contract. If an operator has entered into a contract with an information services provider to provide services in Kentucky, the operator shall attach the contract to its application for an operator's license. The operator shall provide notice to the corporation within fourteen (14) calendar days of any subsequent amendments, modifications, or revisions made to the contract.
- (7) If an occupational licensee ceases to offer goods and services to an operator licensee, then the operator licensee shall notify the corporation.
- (8) An application shall include at least:
 - (a) The name, address, and business structure of the applicant for an operator license;
 - (b) A Multi Jurisdictional Key Employee License Form, incorporated by reference in 809 KAR 1:003, for a substantial owner or key person;
 - (c) A description of all sports wagering services, equipment, devices, and supplies used by the applicant for an operator;

- (d) Contracts with service providers or occupational licensees, which are related to the sports wagering;
 - (e) Disclosure of any criminal, civil, or administrative action brought against the applicant for an operator license;
 - (f) Description of all other licenses held by the applicant for an operator license;
 - (g) Internal controls related to the conduct of sports wagering;
 - (h) The applicant for an operator's license shall submit audited financial statements for each of the three (3) fiscal years immediately preceding the application.
 - (i) If the applicant for an operator's license does not have audited financial statements, the applicant shall provide audited financial statements of its parent company and the applicant's unaudited financial statements, which document the applicant's financial performance, assets, and liabilities, including:
 - 1. A balance sheet;
 - 2. An income statement;
 - 3. A cash flow statement;
 - 4. A statement of retained earnings; and
 - 5. Notes for financial statements.
 - (j) Organizational and ownership charts of the applicant for an operator license; and
 - (k) Information regarding all testing, certifications, or approvals on any component used by the applicant for an operator license to provide sports wagering services.
- (9)
- (a) For applicants for an operator license in 2024 and subsequent years, internal controls shall be produced to the corporation simultaneously with licensure applications.
 - (b) For 2023 applicants for an operator license, internal controls shall be produced to the corporation thirty (30) days before the applicant for an operator license intends to begin accepting sports wagers.
 - (c) Sports wagers shall not be offered by an applicant for an operator license until the corporation has approved its internal controls or otherwise issued a temporary license pursuant to Section 13 of this administrative regulation.
- (10)
- (a) Submission of the application fee and pages 23 through 31 of Form KHRGC 3-010-1 on or before August 1, 2023, shall constitute an application to provide sports wagering in 2023.
 - (b) Starting in 2023, submission of the application fee and the entire Form KHRGC 3-010-1 on or before October 1 shall constitute an application to provide live horse racing, simulcasting, pari-mutuel wagering, and sports wagering in the subsequent year.
- (11) The corporation may grant an applicant for an operator license a waiver to submit all or part of the required information if it deems that the applicant for an operator license has already submitted the information as a part of the application required under this administrative regulation. An applicant for an operator license shall request this waiver in advance of submitting an application under this chapter and provide written justification for each waiver sought.

Section 15. Operator License Requirements.

- (1) A license issued under this chapter shall include, at a minimum:
 - (a) The applicant for an operator's license name and business address;
 - (b) License number assigned by the corporation;
 - (c) Signature of the executive director, the chairman of the corporation, or their designee;
 - (d) Date the license was issued;

- (e) The date that the license will expire; and
 - (f) A reference to the conditions placed on the license.
- (2) The operator license shall remain the property of the corporation at all times and the corporation may:
- (a) Take licensure action. Licensure action shall be as established in 810 KAR 10:008; and
 - (b) Issue conditions for the license.

Section 16. Applicant for an Operator License Presentation.

- (1) An applicant for an operator license 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 corporation 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 for an operator's suitability. The admission of supplemental information shall be subject to the discretion of the corporation, in the best interests of sports wagering in the Commonwealth.

Section 17. Joint Ventures. Two (2) or more associations licensed under KRS 230.805 may conduct sports wagering together as part of a joint venture or pursuant to an agreement between them. A joint venture agreement or contract shall be submitted to the corporation within five (5) days of the effective date.

Section 18. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, Pari-mutuel Wagering, and Sports Wagering Form", KHRGC 3-010-1, 11/2023; and
 - (b) "Kentucky Horse Racing and Gaming Corporation Racing Association Change of Control Form", KHRGC 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, 4047 Iron Works Parkway, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained at the corporation's Web site at <http://khrc.ky.gov>.
- (45 Ky.R. 1892; 3096; eff. 5-31-2019; 50 Ky.R. 462, 1354, 1527; eff. 4-2-2024; TAm eff. 7-1-2024.)

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