Technical Amendment
July 1, 2024

810 KAR 3:040. Advance deposit account wagering.

RELATES TO: KRS 230.260, 230.290, 230.310, 230.320
STATUTORY AUTHORITY: KRS 230.215(2), 230.260(2), 230.310, 230.370
CERTIFICATION STATEMENT:
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the corporation the authority to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.260(2) authorizes the Kentucky Horse Racing and Gaming Corporation to issue licenses to any person or entity that offers advance deposit account wagering to Kentucky residents. This administrative regulation establishes the license application procedures and requirements to offer advance deposit account wagering to Kentucky residents.

Section 1. Definitions.
(1) "Account" means an account for advance deposit account wagering with a specific identifiable record of deposits, wagers, and withdrawals established by an account holder and managed by the advance deposit account wagering licensee.
(2) "Account holder" means an individual who successfully completed an application and for whom the advance deposit account wagering licensee has opened an account.
(3) "Advance deposit account wagering" is defined by KRS 230.210(1).
(4) "Advance deposit account wagering licensee" is defined by KRS 230.210(2).
(5) "Applicant" means an individual, person, or entity that has submitted an application for a license pursuant to this administrative regulation.
(6) "Confidential information" means:
(a) The amount of money credited to, debited from, withdrawn from, or present in any particular account holder's account;
(b) The amount of money wagered by a particular account holder on any race or series of races;
(c) The account number and secure personal identification code of a particular account holder;
(d) The identities of particular racing associations on which the account holder is wagering or has wagered; and
(e) Unless otherwise authorized by the account holder, the name, address, and other information in the possession of the advance deposit account wagering licensee that would identify the account holder to anyone other than the corporation or the advance deposit account wagering licensee.
(7) "Individual" means a natural person, at least eighteen (18) years of age, but does not include any corporation, partnership, limited liability company, trust, or estate.
(8) "Kentucky resident" is defined by KRS 230.210(12).
(9) "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.
(10) "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.

(11) "Telephone account wagering" is defined by KRS 230.210(19).

Section 2. License Required to Conduct Advance Deposit Account Wagering.

(1) Any individual, person, or entity, other than a licensed association engaged in telephone account wagering as defined in KRS 230.210(20), that offers advance deposit account wagering to Kentucky residents shall be licensed by the corporation.

(2) To obtain a license, an applicant shall apply to the corporation for a license on the Initial/Renewal License Application to Conduct Advance Deposit Account Wagering, Form KHRGC 3-040-01.

(3) An initial license shall be effective, and the advance deposit account wagering licensee may begin operations, upon approval of the corporation.

(4) A license to conduct advance deposit account wagering shall be renewed annually on or before September 1 of the preceding year, except as provided in Section 7 of this administrative regulation. The corporation shall render a decision on the renewal application on or before December 15 of the preceding year. If approved, a renewal license shall be effective January 1.

(5) 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 corporation, 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 corporation 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 corporation 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 $5,000.

(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 corporation 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 corporation 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.

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 corporation in an amount reasonably requested by the corporation 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 corporation may waive the investigation fees, in part or completely, if the applicant has undergone a certification process or other investigative review by a corporation-approved industry or regulatory body.

Section 4. License Application Procedures.

(1) The corporation 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 complete application, an applicant shall provide to the corporation:

(a) Audited financial statements for the last three (3) years or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the corporation to determine that the applicant is financially capable of operating as a going concern and protecting accounts;

(b) A detailed plan of how the advance deposit account wagering system will operate; and

(c) A list of all personnel processing wagers on races made by Kentucky residents. This list shall be kept current and be provided to the corporation upon request.

(3) The corporation may require changes in the proposed plan of operations as a condition of granting a license. There shall not be subsequent material changes in the plan of operations unless ordered by the corporation or until approved by the corporation after receiving a written request.

(4) The corporation may require a report to be conducted in accordance with the Service and Organization Controls 1 Report (SOC-1), or a replacement report approved by the Auditing Standards Board of the American Institute of Certified Public Accountants, or other independent report in a form acceptable to the corporation, to evaluate the applicant's control objectives, control activities, and control processes. The corporation may require that the report be conducted within the twelve (12) months before issuing an initial license and annually in order to receive a renewal license.

(5) In reviewing an application, the corporation 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:

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;

(c) The financial ability of the applicant to conduct advance deposit account wagering;

(d) The protections provided to safeguard accounts, including a certification from the licensee's chief financial officer that account funds will not be comingled with other funds as required in Section 8(13) of this administrative regulation;

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

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

(g) The efforts of the applicant to promote, develop, and improve the horse racing industry in the Commonwealth;

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

(i) The economic impact of the applicant upon 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 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 6. Additional Information. The corporation may request additional information from an applicant if the additional information would assist the corporation in deciding whether to issue or renew a license, including:

(1) Copies of any documents used by the applicant in preparing the application; and

(2) A list of all contracts between the applicant and third parties related to operations. The corporation may review the contracts any time upon request.

Section 7. Duration of License.

(1) An initial license issued under this administrative regulation before July 1 shall be valid for the calendar year for which it is issued.

(2) An initial license issued under this administrative regulation on or after July 1 shall be valid for the calendar year for which it is issued and the following calendar year.

Section 8. Operations and Duties of Licensees.

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

(2)

(a) The licensee shall notify the corporation of any communication, report, or investigation conducted or to be conducted by the Thoroughbred Racing Association, Thoroughbred Racing Protective Bureau, United States Trotting Association, American Quarter Horse Association, Arabian Jockey Club, National Thoroughbred Racing Association, or any state or federal regulatory agency that relates to the safety, integrity, or security of the licensee and its participants, or that would reasonably be deemed to affect public confidence in the licensee.

(b) The licensee shall further send a copy of the communication, correspondence, or report to the corporation within 24 hours of receipt by the licensee.

(c) This subsection shall not be construed to include information delivered to licensee officials acting in the capacity of members of the board of directors of the above referenced organizations.

(3) In addition to the information the corporation may request under this or any other applicable administrative regulation or statute, the corporation may require the licensee to remit contemporaneously to the corporation a copy of any documents required to be filed with any local, state, or federal regulatory agency.
(4) The licensee shall notify the KHRGC within 24 hours of becoming aware of any suspected or confirmed breach of security of data, including intrusions into the personal information of account holders.
(5) The licensee shall notify the KHRGC within 24 hours of becoming aware of a wagering anomaly. The licensee shall provide transactional data to the KHRGC upon request. Wagering anomalies include any incident that might reasonably affect the public's confidence in the wagering pools, such as:
(a) Account wagering fraud;
(b) Suspected manipulation through computerized robotic wagering;
(c) Odds manipulation;
(d) Quick pick or random pick malfunction;
(e) Cancellation of large wagers, especially within two (2) minutes of the closing of a wagering pool;
(f) Suspicious wagering patterns; and
(g) Totalizator or data communications malfunctions.
(6)
(a)
1. All notices required to be given to the corporation pursuant to subsections (2) through (5) of this section shall be provided by phone call to the executive director or the director of pari-mutuel wagering and compliance immediately after the event triggering the notice requirement.
2. In addition, written notice of the event required to be given to the corporation pursuant to subsections (2) through (5) of this section shall be submitted to the executive director and the director of pari-mutuel wagering and compliance no later than twenty-four (24) hours after the event triggering the notice requirement. Written notice may be made by hand delivery, electronic mail, or facsimile.
(b) All notices other than those in subsections (2) through (5) of this section shall be provided to the director of pari-mutuel wagering and compliance within five (5) business days of the event unless otherwise specifically instructed in this administrative regulation.
(7) The licensee shall submit to the director of pari-mutuel wagering and compliance or his or her designee an electronic copy of the Advanced Deposit Wagering Excise Tax Report (Kentucky Form 73A102) no later than the first business day of the second week after the week during which the wagers forming the base of the tax were received.
(8) A licensee shall submit to the corporation a separate report for each affiliate under the control of the licensee on the Kentucky Horse Racing and Gaming Corporation Quarterly ADW Activity Report form, KHRGC 3-040-04, that includes the following information:
(a) For account holders residing in Kentucky:
1. The total amount wagered on races conducted by all Kentucky associations; and
2. The total amount wagered on races conducted by all non-Kentucky associations; or
(b) For account holders not residing in Kentucky, the total amount wagered on races conducted by each Kentucky association.
(9) The Kentucky Horse Racing and Gaming Corporation Quarterly ADW Activity Report shall be submitted to the corporation according to the following schedule:
(a) For wagering from January 1 through and including March 31, the report shall be submitted no later than the first business day following March 14 of the same calendar year;

(b) For wagering from April 1 through and including June 30, the report shall be submitted no later than the first business day following July 14 of the same calendar year;

(c) For wagering from July 1 through and including September 30, the report shall be submitted no later than the first business day following October 14 of the same calendar year; and

(d) For wagering from October 1 through and including December 31, the report shall be submitted no later than the first business day following January 14 of the next calendar year.

(10) On or prior to the third Friday of September of each year, the licensee shall submit to the corporation Kentucky Horse Racing and Gaming Corporation ADW Player Account Balance and Excise Tax Summary Report form, KHRGC 3-040-05, certifying the average daily account total for all account holders residing in Kentucky between the first Monday of March of that calendar year and the last Sunday of August of the same calendar year.

(11) On or prior to the third Friday of September of each year, the licensee shall submit to the corporation Kentucky Horse Racing and Gaming Corporation ADW Player Account Balance and Excise Tax Summary Report form, KHRGC 3-040-05, certifying the average weekly excise tax amount paid to the Commonwealth of Kentucky between the first Monday of March of that calendar year and the last Sunday of August of the same calendar year.

(12) A licensee shall enter into an agreement with each licensed racing association in the Commonwealth on whose races the licensee offers advance deposit account wagering regarding payment of host fees and any other applicable fees, costs, or payments of any kind to be paid to the licensed association. The licensed racing association and the applicable horsemen's organization shall negotiate a separate agreement for contributions to the purse account generated by advanced deposit account wagering.

(13) A licensee shall not comingle account funds with other funds.

(14) A licensee that does not have audited financial statements for the last three (3) years as referenced in Section 4(2)(a) of this administrative regulation shall provide quarterly financial statements to the corporation for the first calendar year of operation.

(15) A licensee shall use and communicate pari-mutuel wagers to a totalizator system licensed by the corporation.

(16) The licensee shall require its licensed totalizator company to provide all wagering data requested by the KHRGC or its designee with respect to any website, affiliate, or any other entity related to the licensee through which the licensee facilitates wagers by Kentucky account holders or by any account holder who is not a Kentucky resident and who is wagering on Kentucky races.

(17) A licensee shall operate and communicate with the totalizator system in a way that does not provide or facilitate a wagering advantage based on access to information and processing of wagers by account holders relative to persons who wager at licensed associations or simulcast facilities.

(18) All personnel processing wagers made by Kentucky residents shall be licensed in the jurisdiction where they are located. If an individual is located in a jurisdiction that is not a racing jurisdiction or that does not require a license, that individual shall be licensed in Kentucky.

(19) Accounts shall only be accepted in the name of an individual and shall not be transferable. Only individuals who have established accounts with a licensee may wager through a licensee.

(20) Each account holder shall provide personal information as the licensee and the corporation require.

(a) Required information shall include:

1. Name;
2. Principal residence address;
3. Telephone number;
4. Social Security number;
5. Date of birth; and 6 Other information necessary for account administration.

(b) The information supplied by the account holder shall be verified by the licensee using means acceptable to the corporation.

(21) The licensee shall provide each account holder a secure personal identification code and password to be used by the account holder to confirm the validity of every account transaction.

(22) An employee or agent of the licensee shall not disclose any confidential information except:

(a) To the corporation;

(b) To the account holder as required by this administrative regulation;

(c) To the licensee and its affiliates;

(d) To the licensed association as required by the agreement between the licensee and the association; and

(e) As otherwise required by law.

(23) The licensee shall provide each account holder a copy of account holder policies and procedures related to pari-mutuel wagering, including the licensee's refund policy, and other information and materials that are pertinent to the operation of the account. This information shall be available on the licensee's official website and shall be viewable without registering for an account with the licensee.

(24) The licensee shall publish a list of racing associations that have authorized the licensee to participate in their wagering pools. This list shall be viewable without registering for an account with the licensee.

(25) The licensee may refuse to establish an account if it is found that any of the information supplied is false or incomplete or for any other reason the licensee deems sufficient.

(26) Each account shall be administered in accordance with the account holder rules/terms of agreement provided to account holders, including, but not limited to:

(a) Placing of wagers;

(b) Deposits to accounts;

(c) Credits to accounts;

(d) Debits to accounts;

(e) Refunds to accounts;

(f) Withdrawals from accounts;

(g) Minimum deposit requirements;

(h) Fees per wager; and

(i) Rebates.

(27) Each licensee shall have protocols in place and shall publicize to its account holders when its wagers are excluded from a host track's wagering pool. These protocols shall include an immediate electronic mail message to affected account holders and immediate posting on the licensee's website.

(28) A licensee shall maintain complete records of the application and the opening of an account for the life of the account plus two (2) additional years. A licensee shall also maintain complete records of the closing of an account for two (2) years after closing. These records shall be provided to the corporation upon request.

(29) A licensee shall maintain complete records of all transactions, including deposits, credits, debits, refunds, withdrawals, fees, wagers, rebates, and earnings for two (2) years. These records shall be provided to the corporation upon request.

(30) All wagering conversations, transactions, or other wagering communications, verbal or electronic, shall be recorded by means of the appropriate electronic media, and the tapes or other records of the communications shall be kept by the licensee for a period of two (2) years. These tapes and other records shall be made available to the corporation upon request.

(31) The recording of the confirmation of the transaction, as reflected in the voice or other data recording, shall be deemed to be the actual wager regardless of what was recorded by the totalizator system.

(32) A licensee shall not accept wagers if its recording system is not operable.

(33) The licensee shall synchronize its timing system with the U.S. Naval Observatory Clock or an alternative time synchronization methods approved by the corporation at least once every twenty-four (24) hour period.

(34) The corporation may monitor the equipment and staff and review the records of a licensee and any of the transactions conducted by the licensee with regards to wagers made by Kentucky residents.

(35) A licensee may suspend or close any account for violation of its account holder rules/terms of agreement, or any other reason it deems sufficient, if it returns to the account holder all monies then on deposit within seven (7) calendar days.

Section 9. Surety Bond or Letter of Credit Required.

(1) Prior to commencement of advance deposit account wagering operations, a licensee shall secure an irrevocable bond from a surety company admitted to the Commonwealth of Kentucky or other form of financial security such as an irrevocable letter of credit in favor of the Commonwealth of Kentucky. A certified copy of the bond shall be submitted to the corporation and shall be accompanied by a certified copy of the Advance Deposit Wagering Provider Surety Bond or Letter of Credit Form, KHRGC 3-040-03.

(2) The bond or letter of credit amount shall be 125% of the amount reported in Part II plus 400% of the amount report in Part III of the Kentucky Horse Racing and Gaming Corporation ADW Player Account Balance and Excise Tax Summary Report form, KHRGC 3-040-05, unless any of the following conditions apply:

(a) If the licensee was not licensed for operation in the Commonwealth of Kentucky prior to January 1 of the current calendar year, the bond or letter of credit amount shall be $50,000.00;

(b) If the sum of the amounts equaling 125% of the amount reported in Part II plus 400% of the amount report in Part III of the Kentucky Horse Racing and Gaming Corporation ADW Player Account Balance and Excise Tax Summary Report form, KHRGC 3-040-05, is less than or equal to $50,000, the bond or letter of credit amount shall be $50,000; or

(c) If the sum of the amounts equaling 125% of the amount reported in Part II plus 400% of the amount report in Part III of the Kentucky Horse Racing and Gaming Corporation ADW Player Account Balance and Excise Tax Summary Report form, KHRGC 3-040-05, exceeds $500,000, the bond or letter of credit amount shall be $500,000.

(3) The bond or letter of credit shall, if necessary, be used to:

(a) Comply with and perform the provisions and undertakings of the advance deposit account wagering licensee stated in the application as finally approved by the corporation;

(b) Discharge the licensee's financial obligations to account holders who are Kentucky residents;

(c) Discharge payment of all taxes and expenses due by the licensee to the Commonwealth; and

(d) Discharge the licensee's financial obligations to any racing association or simulcast facility licensed by the corporation.

Section 10. Change in Ownership.

(1) A change in ownership shall be reported to the corporation on the Advance Deposit Account Wagering Change of Control Form, KHRGC 3-040-02.

(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 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 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 licensee.

(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 11. Unlicensed Activity. With respect to any individual, person, or entity that offers advanced deposit account wagering to Kentucky residents without a license issued by the corporation, the corporation may take the measures it deems necessary, including referral to the appropriate regulatory and law enforcement authorities for civil action or criminal penalties.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering", KHRGC 3-040-1, 11/2018;

(b) "Advance Deposit Account Wagering Change of Control Form", KHRGC 3-040-2, 11/2018;

(c) "Advance Deposit Wagering Provider Surety Bond or Letter of Credit Form", KHRGC 3-040-3, 11/2018;

(d) "Kentucky Horse Racing and Gaming Corporation Quarterly ADW Activity Report", KHRGC 3-040-4, 11/2018; and

(e) "Kentucky Horse Racing Commission ADW Player Account Balance and Excise Tax Summary Report", KHRGC 3-040-5, 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, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained at the corporation's Web site, http://khrc.ky.gov.

(45 Ky.R. 1904; 3106; eff. 5-31-2019; TAm eff. 7-1-2024; Crt eff. 5-20-2026.)

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