

PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(Amendment)

820 KAR 1:005. Charitable gaming licenses and exemptions.

RELATES TO: KRS 238.515, 238.525, 238.530, 238.535, 238.540, 238.555

STATUTORY AUTHORITY: KRS 238.515, 238.525, 238.530, 238.535(2), (13), 238.555

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(1) requires the Department of Charitable Gaming to license charitable organizations, charitable gaming facilities, manufacturers, and distributors that desire to engage in charitable gaming. KRS 238.515(2) authorizes the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities. This administrative regulation establishes the requirements, fees, and procedures for licensure of a qualifying charitable organization, distributor, manufacturer, or charitable gaming facility. This administrative regulation establishes criteria for temporary licenses, exemptions, and inspections for verifying the information contained in an application.

Section 1. Application for Licensure.

(1) At least sixty (60) days prior to the expiration of its existing license or its first expected date of gaming, facility operation, or business operations in Kentucky during the license period, an applicant shall submit the appropriate complete, accurate, and documented application:

- (a) A charitable organization shall submit Form CG-APP-ORG~~[CG-1]~~;
- (b) An organization authorized to hold special event raffles pursuant to KRS 238.535(14)(b) shall submit Form CG-APP-SER~~[CG-SER]~~;
- (c) A distributor shall submit Form CG-APP-DIS~~[CG-2]~~;
- (d) A manufacturer shall submit Form CG-APP-MAN~~[CG-3]~~; ~~and~~
- (e) A charitable gaming facility shall submit Form CG-APP-FAC~~[CG-4]~~; ~~and~~
- (f) A licensed charitable organization shall submit Form CG-APP-ORG-CFE in addition to Form CG-ORG-APP for each charity fundraising event it intends to conduct.

(2) The department shall review the application and notify the applicant in writing of any deficiencies in the application as soon as practicable. An application shall not be considered complete until all deficiencies are resolved.

(3) If the applicant does not file a written response to a deficiency request, provide requested information and documents, or otherwise cure the identified deficiency within thirty (30) days of the written notice, the application shall be deemed withdrawn.

(4) If the applicant files a written response to a deficiency request within thirty (30) days of the written notice, but the response does not cure the identified deficiency, the department shall issue a subsequent deficiency notice. If the deficiency is incapable of being cured, the department shall deny the license.

(5) Once the department has received a complete application, it shall grant or deny the license within sixty (60) days of receipt.

Section 2. License Requirements, Fees, and Issuance.

(1) The department shall issue a license if the applicant has:

- (a) Met the statutory requirements established:
 - 1. For charitable organizations, by KRS 238.535;
 - 2. For special event raffle organizations, by KRS 238.535(14)(b);
 - 3. For distributors and manufacturers, by KRS 238.530; or
 - 4. For charitable gaming facilities, by KRS 238.555;

- (b) Paid all fees and fines;
 - (c) Filed all required reports;
 - (d) Filed an acceptable financial plan, if required;
 - (e) Complied with all terms and conditions of any applicable settlement agreement or probationary terms; and
 - (f) Submitted fingerprints cards as required by KRS 238.525.
- (2) Fees for licenses issued shall be paid according to the following schedule:
- (a) A nonrefundable application fee of twenty-five (25) dollars shall accompany each application for licensure and shall be credited against the amount of the annual license fee, if the requested license is granted.
 - (b) For charitable organizations and organizations licensed pursuant to KRS 238.535(14)(b):
 - 1. \$100 for:
 - a. A charitable organization upon initial application; or
 - b. A charitable organization with gross receipts not in excess of \$100,000;
 - 2. \$200 for a charitable organization with gross receipts over \$100,000, but not in excess of \$250,000; or
 - 3. \$300 for a charitable organization with gross receipts over \$250,000.
 - (c) For manufacturers or distributors: \$1,000.
 - (d) For charitable gaming facilities:
 - 1. \$1,000 for a facility that does not conduct bingo sessions; or
 - 2. ~~1.~~ \$1,250 for a facility conducting between one (1) and eight (8) bingo~~for fewer~~ sessions per week; or
 - 3. ~~2.~~ \$2,500 for a facility conducting between nine (9) and eighteen (18) bingo sessions per week.
- (3) A license shall not be issued until the license fee and any other fees or fines due are paid in full.
- (4) The license term shall be for one (1) year from the effective date of the license.
- (5) A licensed charitable organization, distributor, manufacturer, or charitable gaming facility may submit a written change request to change any information contained in the license application or printed on the license. All change requests shall be accompanied by a twenty-five (25) dollar change fee and be signed by an officer. The department shall process change requests and issue or deny an amended license within ten (10) days of receipt, and the licensee shall not engage in gaming until a license reflecting the change request has been issued. An organization shall submit requests for changes to its listed officers and chairpersons by submitting Form CG-OCC-ORG (2023), Notice of Change in Officers or Chairpersons.
- (a) Except as provided in KRS 238.535(12)(b)(2), a licensed charitable organization may change the date, time, or location of a charitable gaming session if the licensed charitable organization submits a written request to the department at least ten (10) days prior to the date of the requested change. Any change request made pursuant to this subsection ~~shall must~~ be accompanied by a lease, if required, for the new gaming location.
 - (b) If a charitable organization wishes to cancel a charitable gaming session, the organization shall notify the department, in writing, at least twenty-four (24) hours prior to the scheduled start of the charitable gaming session, except ~~if in the event of~~ an emergency beyond the organization's control occurs, in which case the organization shall notify the department of the change as soon as practicable. A cancellation shall not require a change fee.
- (6) A charitable organization shall not advertise any charitable gaming activity until the activity has been licensed by the department.

Section 3. Temporary License.

- (1) Application for Licensure. The department may issue a temporary license to an applicant for a charitable gaming license if the applicant has submitted a complete and accurate license application form, and has complied with all other licensing requirements for an annual license.
- (2) License Fee. For each temporary license issued, the licensee shall pay a twenty-five (25) dollar fee. The total temporary license fee charged in a year shall not exceed the annual license fee.

Section 4. Distributor Requirements.

- (1) For the operation of a distributorship, a distributor shall maintain a separate bank account that is not commingled with a personal account or another business account. If the licensed distributor owns multiple distributorships, a separate bank account shall be maintained for each distributorship.
- (2) Any payments received by a distributor from a charitable organization shall be by check drawn on the charitable gaming account or electronic fund transfer from the charitable gaming account.
- (3) A distributor or its agent shall maintain storage facilities within this state for gaming supplies to be sold within the Commonwealth of Kentucky, and shall identify the facilities' physical locations to the department. Storage facilities shall be made accessible to the department for inspection upon request.

Section 5. Charitable Gaming Facility Requirements.

- (1) A licensed charitable gaming facility shall be permitted to list on its Web site the names, license numbers, gaming sessions, and information regarding the charitable organizations that game at that licensed charitable gaming facility.
- (2) If a charitable organization contracts with a licensed charitable gaming facility to operate a concession stand, the members of the charitable organization that volunteer at the concession stand may volunteer to work for their own gaming session, but shall not volunteer for the gaming session of any other charitable organization that games at that licensed charitable gaming facility.
- (3) For a licensed gaming facility operation, a licensed gaming facility shall maintain a separate bank account that is not commingled with a personal account or another business account. If the licensee owns multiple licensed gaming facilities, a separate bank account shall be maintained for each licensed gaming facility. If separate businesses are operated out of the licensed gaming facility, including a check cashing service or a concession stand, each business shall have a separate bank account.
- (4) Any payments received by a licensed gaming facility from a charitable organization shall be by check drawn on the charitable gaming account or electronic fund transfer from the charitable gaming account of the charitable organization.
- (5) The lease agreement executed between the licensed charitable gaming facility and charitable organization shall contain the day and time of each charitable gaming session a charitable organization will conduct at the licensed gaming facility. The day and time listed in the lease agreement shall be accurate and shall match the day and time listed on the organization's charitable gaming license.

Section 6. Exempt Organizations.

- (1) An organization seeking exemption from charitable gaming licensing requirements shall submit a complete and accurate Form CG-APP-EXE, Notification of Intent to Engage in Exempt Charitable Gaming~~[CG-Exempt, Organization Crossing Under \$25,000 Application for Exemption]~~, at least thirty (30) days prior to the expected date of gaming. The Form CG-APP-EXE~~[CG-Exempt]~~ shall be submitted with a non-refundable fee of twenty-five (25) dollars.

- (2) If the charitable organization has submitted a complete application, and meets the requirements for exemption established in KRS Chapter 238, the department shall issue a Notification of Exemption within thirty (30) days of the completed submission.
- (3) The department shall review the application and shall notify the applicant within thirty (30) days of receipt of the initial application of the nature of any deficiencies. If identified deficiencies are not cured within thirty (30) days from the notice, the application shall be deemed withdrawn, and no exemption will be granted in response to the application.
- (4) The charitable organization shall not be required to file an additional exemption application with the department if the gaming activities of the charitable organization remain within the qualifications for exempt status.
- (5) The charitable organization shall notify the department of any changes in the exempt status of the charitable organization within thirty (30) days of the occurrence of ~~the~~~~[such]~~ changes.
- (6) A charitable organization that conducts charitable gaming pursuant to an exemption~~[possessing a Notice of Exemption]~~ shall file an annual report with the department before January 31 of each year. This report shall be filed on Form CG-FIN-EXE~~[CG-EFR]~~, Annual Financial Report ~~for~~~~[For]~~ Exempt Organization. The report may be filed electronically.
- (7) A charitable organization that has had its exemption revoked for any reason shall pay a nonrefundable reinstatement fee of twenty-five dollars (25) with any application or request for reinstatement.

Section 7. Licensee Inspections.

- (1) An applicant for a license or an exemption shall be able to demonstrate the existence of their establishment by:
 - (a) Contracts or leases;
 - (b) Utility bills;
 - (c) Records maintained by the parent organization;
 - (d) Bank records; or
 - (e) Similar documents.
- (2) Any such records shall be accessible to the department for inspection.
- (3) An applicant for a license or an exemption shall be able to demonstrate its maintenance of an office by copies of the business records including the articles of incorporation and by-laws, if any, any tax forms, the check book and bank statements, and any other records kept in the ordinary course of operating the type of business for which licensure is sought.
- (4) An applicant for a charitable gaming facility license shall be able to demonstrate that it is the entity that is operating the charitable gaming facility and that the charitable gaming facility does not have any prohibited relationships with organizations, distributors, or manufacturers. This may include an inspection of its office including contracts, required reports, checkbook, bank accounts, and any other records regarding the operation of the charitable gaming facility. Any such records stored or maintained in electronic formats shall likewise be accessible to the department for inspection.
- (5) An applicant for a distributor's or manufacturer's license shall be able to demonstrate prior to licensing that it manufactures or distributes gaming supplies from the locations stated on the license application. This may include an inspection of those locations and a demonstration or explanation of its ability to track gaming supplies and maintain the appropriate records. Any such records stored or maintained in electronic formats shall likewise be accessible to the department for inspection.
- (6) Inspections shall be completed by appropriate department personnel who shall file a report stating the results of the inspection performed.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) Form CG-APP-EXE, "Notice of Intent to Engage in Exempt Charitable Gaming (2023)"~~[(CG-Exempt, "Organization Crossing Under \$25,000 Application for Exemption (2019))"]~~;
- (b) Form CG-FIN-EXE~~[(CG-EFR)]~~, "Annual Financial Report ~~for~~~~[(For)]~~ Exempt Charitable Organization (2023)~~[(2019)]~~";
- (c) Form CG-APP-ORG~~[(CG-1)]~~, "Charitable Gaming Organization License Application (2023)~~[(2019)]~~";
- (d) Form CG-APP-SER~~[(CG-SER)]~~, "Special Event Raffle License Application (2023)~~[(2019)]~~";
- (e) Form CG-APP-DIS~~[(CG-2)]~~, "Charitable Gaming Distributor License Application (2023)~~[(2019)]~~";
- (f) Form CG-APP-MAN~~[(CG-3)]~~, "Charitable Gaming Manufacturer License Application (2023)~~[(2019)]~~";
- (g) Form CG-APP-FAC~~[(CG-4)]~~, "Charitable Gaming Facility License Application (2023)~~[(2019)]~~"; and
- (h) Form CG-OCC-ORG~~[(CG-OC)]~~, "Notice ~~of~~~~[(Of)]~~ Change ~~in~~~~[(In)]~~ Officers ~~or~~~~[(Or)]~~ Chairpersons (2023)~~[(2019)]~~".

(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, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that this administrative regulation was distributed for review and commented 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 1:00 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.

CONTACT PERSON: Doug Hardin, Staff Attorney, Department of Charitable, 500 Mero Street 2NW24, Frankfort, Kentucky 40601, phone (502) 782-8204, fax (502) 573-6625, email doug.hardin@ky.gov.

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 identifies the requirements for certification of charitable organizations as exempt from licensure and sets forth the requirements for charitable gaming organizations, manufacturers, distributors, and gaming facilities to apply for and obtain licensure from the Department of Charitable Gaming for charitable gaming activities within the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation:

This regulation is necessary so that the Department of Charitable Gaming may issue licenses and exemptions pursuant to 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, the Department provided a copy of these proposed amendments to the Charitable Gaming Advisory Commission on December 16, 2022. KRS 238.515 authorizes the department to promulgate administrative regulations in order to carry out and implement KRS Chapter 238. This administrative regulation provides the basis for the Department to issue charitable gaming licenses and exempt organizations from licensure.

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

The Department of Charitable Gaming is charged with the responsibility of licensing and regulating charitable gaming. This administrative regulation establishes the process and forms necessary for exemptions and licensure of charitable organizations, manufacturers, distributors, and gaming facilities.

(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:

The department has developed new forms to be used by its licensees when applying for or amending an existing charitable gaming license. The changes to the text of the regulation reflect the new titles of the forms. This amendment also amends the annual fee for licensed charitable gaming facilities to include a lesser fee for facilities that do not host regularly-scheduled bingo sessions.

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

Applicants sometimes find the department's current applications difficult to complete, resulting in delays due to deficiencies identified in license applications, so the department felt a need to make the applications simpler and easier to complete.

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

These amendments conform to the content of the authorizing statute because this regulation sets forth licensing requirements as permitted by KRS 238.515.

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

The department is streamlining its applications to make them more user-friendly and to reduce the number of questions that ask for information not specifically required

by statute. This should result in fewer license applications being delayed by application deficiencies.

(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, its employees, licensees, and exempt organizations will be affected by this administrative regulation. As of November 2022, the Department of Charitable Gaming regulates over 1,300 charitable gaming entities that will be affected by this administrative regulation, as follows: Over 500 charitable gaming organizations; Over 800 exempt charitable gaming organizations; Eighteen (18) manufacturers of charitable gaming supplies; Eighteen (18) distributors of charitable gaming supplies; and Thirty-one (31) 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:

Entities seeking licensure or exemption must complete the forms, provide the necessary information, and pay the required fees set forth in this administrative regulation. All these organizations must conform to this administrative regulation prior to conducting charitable gaming.

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

The existing administrative regulation contains fees for licensure, which the amendment does not increase. Concerning facilities, the amendment would reduce the fee for certain facility applicants.

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

Licensees and exempt organizations will have simpler forms to fill out, which should eliminate some delays in the application process due to application deficiencies.

(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?

The licensing fee for charitable gaming facilities is tiered based on the number of weekly bingo sessions that will be hosted at the facility.

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, except that certain licensed charitable gaming facilities will have a reduced annual fee if they do not host regularly scheduled bingo sessions.

(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 the first year, except that certain licensed charitable gaming facilities will have a reduced annual fee if they do not host regularly scheduled bingo sessions.

(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 or anticipated to have a major economic impact as defined by KRS 13A.010(13).