

STATEMENT OF EMERGENCY
809 KAR 10:007E.

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 not identical to this emergency administrative regulation. The emergency regulation allows sports wagering operators to conduct individualized self-exclusion programs; whereas, the ordinary regulation merges those individual self-exclusion programs into one that is administered by the Kentucky Horse Racing Commission.

ANDY BESHEAR, Governor
RAY PERRY, Secretary

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(New Emergency Administrative Regulation)

809 KAR 10:007E. Responsible gaming and advertising.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.260(15), (16).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(15) requires the commission to "promulgate administrative regulations establishing a self-exclusion list for individuals who self-identify as being problem or compulsive gamblers." KRS 230.260(16) requires the commission to "promulgate administrative regulations to establish standards for the conduct of sports wagering." This administrative regulation establishes a self-exclusion list and responsible gaming programs for sports wagering participants.

Section 1. Self-Exclusion List.

- (1) Each operator licensee shall develop a commission-approved self-exclusion list for individuals who self-identify as problem or compulsive gamblers.
- (2) The commission shall consider at least the following factors in approving a self-exclusion list:
 - (a) The list shall include the names and other identifying information of the individuals who have self-excluded from sports wagering at a licensed premises and online via a licensee-specific Web site, mobile application, or by phone.
 - (b) Each licensee shall display a notice to the public of the existence of the self-exclusion list and the method or methods individuals may use to self-identify at the licensed premises, online, or by phone.
 - (c) The notice shall be displayed at public entrances to the Race and sports book location, and on the licensee's Web site or mobile application.
 - (d) The notice shall include information about the consequences of self-exclusion.
- (3) The notice and its placement locations shall be approved by the racing commission. In approving the notice, the commission shall consider the notice's visibility and any other relevant factors.
- (4) Each licensee shall collect self-exclusion information from individuals who self-identify as problem or compulsive gamblers.

Section 2. Responsible Gaming Program.

- (1) A licensee shall develop and maintain a responsible gaming program that shall be approved by the racing commission pursuant to this section. The responsible gaming program shall require:
 - (a) Posting in a conspicuous place on the licensee's Web site or mobile application and in every licensed premises a sign that bears a toll-free number for a commission-approved organization that provides assistance to problem or compulsive gamblers;
 - (b) Providing commission-approved disclosures on the licensee's Web site or mobile application and informational leaflets or other similar materials at the licensed premises containing information on the dangers associated with problem gambling;
 - (c) Providing patrons expressing concern with a gambling problem with information on commission-approved organizations that provide assistance to problem or compulsive gamblers;
 - (d) Providing notification that underage gambling is a criminal offense and that anyone who facilitates an underage person to place a sports wager has committed a criminal offense; and
 - (e) Ensuring that any request by a patron who wishes to self-exclude from sports wagering is honored by the licensee.

(2) In approving the organizations and disclosures listed in the previous subsection, the commission shall consider industry standards for responsible gambling and any other relevant factors.

(3) At least every (5) years, the licensee shall ensure that the licensee's responsible gaming program is independently reviewed by a third party, pursuant to industry standards and performed by a third party approved by the racing commission. The racing commission may require the licensee to pay for the independent review.

Section 3. Advertising and Marketing.

(1) A licensee shall not allow, conduct, or participate in any false or misleading advertising or marketing concerning the licensee's sports wagering operations.

(2) A licensee shall only make representations concerning winnings that are accurate, not misleading, and capable of substantiation at the time of the representation. For purposes of this subsection, an advertisement shall be misleading if the advertisement makes representations about average winnings without equally prominently representing the average net winnings of all patrons.

(3) A licensee shall not advertise or market at elementary, middle, or high school activities. The prohibition in this subsection shall exclude an advertisement distributed via mass media, such as television, radio, print media, or the Internet, if the advertisement is not specifically directed toward (but may be incidentally received by) elementary, middle, or high schools.

JONATHAN RABINOWITZ, Commission Chair
RAY PERRY, Secretary

APPROVED BY AGENCY: July 10, 2023

FILED WITH LRC: July 10, 2023 at 4 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.