

810 KAR 1:080. International wagering hubs.

RELATES TO: KRS 138.510, 230.210(10), 230.3615, 230.775-230.785

STATUTORY AUTHORITY: KRS 230.779(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.779(6) authorizes the Kentucky Horse Racing Authority to promulgate administrative regulations to effectuate the provisions of KRS 230.775 to 230.785 relating to international wagering hubs. The function of this administrative regulation is to establish the licensing procedures and requirements for operating an international wagering hub.

Section 1. Definitions. (1) "Account holder" means a natural person who uses a subscriber-based service in order to be able to place a pari-mutuel wager on a horse.

(2) "Account wager" means a wager made by an account holder through a hub.

(3) "Source market" means the population living near a licensed racing association.

(4) "Take out rate" means the total amount of money withheld from a pari-mutuel pool pursuant to KRS 230.3615.

(5) "Track" is defined by KRS 230.210(9).

(6) "Wagering pool" means the amount of money bet on a race divided among the holders of winning tickets after the deduction of authorized taxes and fees.

Section 2. Duration of License. (1) A license shall be issued for a calendar year except as provided in subsection (2) of this section.

(2) A license issued in response to an initial application received by July 1, 2007 shall be effective immediately upon issuance and shall expire on December 31, 2008.

Section 3. Application Requirements. (1) Persons or entities desiring to operate a hub in the Commonwealth shall apply to the Authority for a license.

(2) The initial application shall be made in writing and filed at the Authority office on or before July 1, 2007. For licensing periods beginning January 1, 2009, and thereafter, renewal applications for existing licensees or initial applications for new applicants shall be submitted by September 1 of the year preceding the calendar year in which the license is to be in force. No applications shall be approved until after these prescribed deadlines. The application shall be submitted on the Kentucky Horse Racing Authority Multi-Jurisdictional Hub Application Form, KHRA 80-1. With the exception that an application for a hub license to operate during 2006 may be filed during 2006.

(3) An application shall not be acted upon by the Authority until the Authority is satisfied a full disclosure by the applicant of all relevant information has been made.

(4) An application for a hub license shall include:

(a) The applicant's legal name;

(b) The location of the applicant's principal office;

(c) The names, addresses, and dates of birth of all shareholders, directors, officers, and other persons owning or controlling a beneficial interest in the hub with the degree of ownership or type of interest shown. Corporations, partnerships, or other legal entities which own or control a beneficial interest in the applicant, either directly or through other corporations or legal entities, shall similarly file with the application a list showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the legal entities, with the degree of ownership or type of interest pertaining to the ownership or interest;

(d) If the applicant is a corporation ultimately owned by a not-for-profit entity without any

shareholders, or is a publicly traded corporation, the information required in paragraph (c) of this subsection shall be required from the directors of the membership organization, or the directors and officers of the publicly traded corporation, in lieu of the shareholders;

(e) A copy of the organizational documents of the applicant;

(f) The names of the racetracks the applicant, or its agent, has contracts with that allow the applicant to provide a simulcast signal and pari-mutuel wagering;

(g) Financial information from the applicant that demonstrates whether the applicant has the financial resources to install and operate a hub. If the applicant has audited financial statements, the statements for the last three (3) years shall be provided to the Authority;

(h) A detailed budget showing on a monthly basis anticipated revenue, expenditures and cash flows, from the hub's operation during the license period;

(i) The number of days that the applicant is planning to operate the hub during the calendar year in which it is seeking to be licensed;

(j) A copy of the proposed surety bond or letter of credit identifying the insurance company and limits of liability as required by Section 5 of this administrative regulation;

(k) A detailed plan of operations in a format and containing information as required by the Authority and KRS 230.779(2). The plan of operations shall provide the following information:

1. A description of the manner in which the proposed simulcasting and wagering system shall operate;

2. A statement that the requirements for a qualified subscriber-based service or closed-loop system as defined in KRS 230.775(2) have been met;

3. A description of the program or information to be provided to account holders to promote responsible wagering;

4. A description of the effect of account wagering on the source market in which the account holder resides;

5. A list of the states from which accounts may be established and operated.

6. Evidence that the pari-mutuel wagering is permitted pursuant to the laws of each jurisdiction from which the applicant intends to accept accounts; and

7. As part of the operational plan or update to the plan, the total take-out rate, subject to the approval of the Authority based on the take-out rates authorized under KRS 138.510 and 230.3615, for those wagering pools which are not merged with the wagering pools of the race track where the race is being run live; and

8. Evidence that the applicant maintains separate accounts for operations and for account wagering.

(l) The terms of the contents of any agreements entered into under KRS 230.779(5). The summary of the terms of the contents shall include the names of the parties, the beginning date and the termination date of the agreement and any termination provisions, the consideration to be paid, and the duties and responsibilities of the parties. A copy of the agreement shall be provided with the filing of the Kentucky Horse Racing Authority Racing Multi-Jurisdictional Hub Application Form, KHRA 80-1; and

(m) Other information requested by the Authority in reviewing the application that is necessary to determine whether the application meets the approval standards of Section 3 of this administrative regulation.

(5) As a condition of granting a license, the Authority may require:

(a) A change in a proposed plan of operations related to the criteria of granting the license;

(b) A commitment or undertaking to do or refrain from an action relating to the factors the Authority analyzes in determining whether to approve an application; or

(c) A commitment not to subcontract or transfer the operations without prior written consent of the Authority.

(6) All application information shall be confidential, and protected from disclosure, except as provided by KRS Chapter 61.

Section 4. Application Approval. In determining if an applicant is eligible to receive a license to operate a hub, the Authority shall consider all relevant factors, including the following:

- (1) The financial strength of the applicant;
- (2) The experience of the applicant;
- (3) The effect of account wagering of the hub on the source market of a track or simulcast facility;
- (4) Whether the hub would be in the best interest of the public health, safety, and welfare of the immediate community and the Commonwealth; and
- (5) The potential effect on revenue to the Commonwealth.

Section 5. Fees. (1)(a) In accordance with KRS 230.779(2), an application fee of \$200 per day the hub plans to operate under the proposed license must accompany the application. If the license is denied by the authority the fee will be refunded less the amount equal to the amount that the authority expended in conducting investigations and inspections which was in excess of the expenses that would have otherwise been incurred by the Authority.

(2) In accordance with KRS 230.779(7), for licenses issued prior to January 1, 2009 an additional fee shall be calculated according to one (1) of the following formulas as elected by the hub operator in the manner specified below:

(a) Payment of 0.125 percent of the first \$60 million in gross mutual wagering receipts during the license period and 0.25 percent of the gross mutual wagering receipts in excess of \$60 million during that period.

1. Total payments during the license period will not exceed \$350,000 for the period prior to and during fiscal year 2008.

2. The maximum payment set out in subsection (2)(a)1 will increase seven and five-tenths (7.5) percent on an annual basis for each fiscal year after the fiscal year 2008.

(b) Payment of 0.25 percent of gross mutual wagering receipts, except that, if the hub operator conducts business in a state where hubs are specifically authorized and the tax rate is less than 0.25 percent, the tax rate for wagers by the residents of such state would be that of the state in which they reside. This exception is limited to a single state designated by the hub operator in the manner specified in subsection (4) of this section.

(c) Payment of a flat 0.25 percent of all wagers on merged pools and 1.0 percent of wagers on nonmerged pools.

(3) These fees shall be paid to the authority by the tenth (10th) working day of the month for the prior calendar month of operations, beginning after the first calendar month the hub licensee begins operations.

(4) The hub operator shall state in its election to pay tax calculated pursuant to subsection (2)(a), (b) or (c), and shall designate a state that is subject to the exception in subsection (3)(b), if that formula is elected, in its license application for each year or at such other time as is specified by the Authority. Neither the payment formula nor the state subject to the exemption may be changed during a license period without prior approval of the authority.

(5) Seventy-five (75) percent of the fees collected shall be retained by the. The remaining twenty-five (25) percent of the fees collected shall go to the General Fund.

Section 6. Bond or Irrevocable Letter of Credit. (1) At least thirty (30) days before a hub licensed by the Authority begins operations, it shall submit to the Authority a surety bond or irrevocable letter of credit in the amount required by the Authority. In determining the amount of

the bond, the Authority shall consider the payments due to the Authority under Section 4 and 5(2) of this administrative regulation. The bond shall be in an amount which is not less than \$50,000 and no more than the financial obligations due in a monthly period.

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

(a) Comply with and perform the provisions and undertakings of the applicant set forth in the application as finally approved by the Authority;

(b) Discharge the applicant's financial obligations to account holders;

(c) Discharge payment of all taxes due by the applicant to the Commonwealth;

(d) Discharge the applicant's financial obligations to any other parties as indicated in the application; and

(e) Discharge the applicant's financial obligation to the Commonwealth under Section 4 of this administrative regulation.

Section 7. Disputes. (1) Any dispute arising under this administrative regulation shall be raised by the aggrieved party filing a petition seeking relief with the executive director within thirty (30) days of action or inaction leading to the dispute.

(2) If the executive director and the aggrieved party do not agree on a resolution of the dispute, the executive director shall assign the case to a hearing officer who shall conduct a hearing pursuant to KRS Chapter 13B. The case shall not be heard by the stewards prior to being assigned to the hearing officer.

(3)(a) An account holder who claims that nonpayment has occurred, may make a claim of nonpayment to the Authority.

(b) The Authority shall investigate the claim and provide the hub with an opportunity to respond thereto and submit any supporting documents or evidence it needs to defend the claim.

(c) If the Authority determines that the account holder is entitled to restitution, the hub shall have ten (10) days to pay the amount determined by the Authority to the account holder.

(d) If the hub fails to make restitution within this time, the Authority may take appropriate action against the bond.

(e) Any dispute hereunder shall be adjudicated in accordance with KRS Chapter 13B.

Section 8. No Surcharge. No surcharge shall be charged on any wager processed through the hub.

Section 9. Number of Hubs. A telephone wagering system, as defined in KRS 230.379, shall not be considered a hub for purposes of determining the number of hubs in the Commonwealth.

Section 10. Changes. (1) After approval has been granted based on information given to the Authority as a condition of licensure, a hub shall not change its operations unless ordered to do so by the Authority, or unless prior approval is obtained from the Authority. A request for changes in a proposed plan of operation shall be submitted in writing to the Authority.

(2) A license issued under this administrative regulation is neither transferable nor assignable, including by operation of law, without the prior written consent of the Authority. The Authority may request information from the proposed new license holder to assist in determining whether to grant consent.

Section 11. Quarterly Filings. The following information shall be provided to the Authority on a quarterly basis:

(1) The handle from each track;

- (2) The total dollar amount returned in winnings to the bettors;
- (3) The dollar amount distributed to each track;
- (4) The source market fees paid (if any);
- (5) The retention by the advanced deposit wagering company (or other cooperative venture); and
- (6) The dollar amount paid in any governmental fees or percentage of gross.

Section 12. Revocation or Modification of License. (1) If the Authority receives information furnishing reasonable grounds to believe that the hub is not meeting or may not be able to timely meet, all of its obligations under KRS Chapter 230 or this administrative regulation, a show cause order shall be issued to the hub detailing the purported deficiency and setting a time and place for a hearing conducted pursuant to KRS Chapter 13B.

(2) The Authority may revoke the license of the hub upon a finding that any of the following conditions exist:

(a) The hub is operating:

1. In contravention of its submitted application;
2. In material violation of this administrative regulation; or
3. In material violation of its obligations under KRS Chapter 230;

(b) The hub no longer has the financial ability to assure its ability to meet its obligations; or

(c) The hub has failed or refused to provide access to the books and records relating to the hub activities of the entity.

(3) The hub license may be revoked by the Authority after issuance of a show cause order setting forth the grounds of revocation and setting a hearing date in not less than ten (10) days. The hearing shall be conducted pursuant to KRS Chapter 13B. During the pendency of a hearing or appeal, the Authority may utilize the bond or letter of credit provided by the hub to make payments which are due and are not being paid by the hub.

Section 13. Incorporation by Reference. (1) "Kentucky Horse Racing Authority Multi-Jurisdictional Hub Application Form, KHRA 80-1" (4/07), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Kentucky Horse Racing Authority, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the KHRA Web site at www.khra.ky.gov. (32 Ky.R. 1854; Am. 2292; 33 Ky.R. 3379; eff. 6-1-07; TAm eff. 8-9-2007.)