

810 KAR 1:150. Licensing totalizator companies.

RELATES TO: KRS 230.225, 230.260, 230.290, 230.300, 230.310, 230.320, 230.361, 230.370, 230.380

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.300, 230.370, 230.380

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(3) and 230.380 vest the commission with authority over any totalizator company that provides totalizator services to racing associations and simulcast facilities located in the Commonwealth. KRS 230.260(3) further requires the commission to license any totalizator company under its jurisdiction, regardless of whether the company is located in the Commonwealth, or operates from a location or locations outside of the Commonwealth. This administrative regulation establishes the license application procedures and requirements for totalizator companies that provide totalizator services to racing associations located in the Commonwealth that offer thoroughbred racing.

Section 1. Definitions. (1) "Applicant" means an individual, person, or entity that has submitted an application for a license pursuant to this administrative regulation.

(2) "Individual" means a natural person, at least eighteen years of age, but does not include any corporation, partnership, limited liability company, trust, or estate.

(3) "Nominal change in ownership" is defined in 810 KAR 1:037, Section 1(1).

(4) "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.

(5) "Principal" is defined in KRS 230.210 when used in the context of a licensed association or an applicant for a license to conduct a horse race meeting; when used in the context of any other type of entity, "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 percent (5%) 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.

(6) "Substantial change in ownership" is defined by 810 KAR 1:037, Section 1(4).

(7) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of such wagers, and records, displays, and stores pari-mutuel wagering information.

(8) "Totalizator company" means any person providing totalizator services or equipment to a racing association or simulcast facility.

Section 2. License Required. (1) Any totalizator company that provides totalizator services to a racing association or simulcast facility located in the Commonwealth shall apply to the commission for a license pursuant to KRS 230.260(3). Deadlines for new license applications shall be as follows:

(a) Any totalizator company that provides totalizator services to a racing association or sim-

ulcast facility located in the Commonwealth prior to October 7, 2011, shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Provide Totalizator Services" on or before December 6, 2011. Between the time that the license application is submitted and the commission renders a decision, the totalizator company may continue to operate. The license shall be effective upon approval of the commission.

(b) Any other totalizator company shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Provide Totalizator Services." The license shall be effective, and the totalizator company may begin operations, upon approval of the commission.

(2) Renewal applications. A license to provide totalizator services shall be renewed annually in accordance with this administrative regulation. A renewal application shall be submitted on the form "Initial/Renewal License Application to Provide Totalizator Services" on or before August 1 of the preceding year. The commission shall render a decision on the application on or before December 20. If approved, a renewal license shall be effective January 1.

(3) The applicant shall provide all information required to be disclosed in the application. If an applicant is unable, despite best efforts, to provide any information required, the applicant shall fully explain and document its reasons to the satisfaction of the commission, and shall provide the information promptly upon being able to do so.

Section 3. Licensing Costs and Fees. (1) In accordance with KRS 230.260(6), the applicant shall pay all costs incurred by the commission in reviewing an application for an initial license, including legal and investigative costs, including the cost of performing background checks on the applicant's employees, owners and principals, and the cost of other necessary outside professionals and consultants. As an initial payment for these costs, the applicant shall submit, along with a license application, a cashier's check or certified check payable to the commission in the amount of ten thousand dollars (\$10,000). 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. To the extent additional costs become necessary, the applicant shall submit a cashier's check or certified check payable to the commission in an amount reasonably requested by the commission 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.

(2) An applicant for a renewal license shall pay all reasonable costs incurred by the commission in reviewing a renewal license, including legal and investigative costs and the cost of other necessary outside professionals and consultants. The applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of request. Failure to submit the payment shall result in suspension of the processing of renewing the license and may result in denial of the license.

(3) The commission may waive the requirements of subsections (1) and (2) of this section, in part or completely, if the applicant has undergone a certification process or other investigative review by a commission-approved industry or regulatory body.

(4) An annual license fee one thousand dollars (\$1,000) shall be payable to the commission upon issuance of the original license and thereafter, if a renewal license is granted, on or before January 1 of each year. A license shall not be issued until receipt of the license fee each year.

Section 4. License Application Procedures. (1) An application for a license shall be in the form and manner prescribed by the commission in accordance with Section 2(1) of this administrative regulation. The commission may deny a license to any applicant that provides false or

misleading information on or omits material information from the application. The application shall include:

- (a) The applicant's legal name;
- (b) The location of the applicant's principal office;
- (c) The name, address, and date of birth of each principal with a five percent (5%) or greater share of ownership or beneficial interest in the applicant;
- (d) Audited financial statements for the last three years or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the commission to determine that the applicant is financially capable of operating as a going concern;
- (e) A Standards for Attestation Engagements (SSAE) No. 16 report, or other independent report in a form acceptable to the commission, completed within the preceding 12 months, to assure adequate financial controls are in place and compliance with totalizator standards. The commission may require that a SSAE 16 audit, or other independent report in a form acceptable to the commission, be conducted annually in order to receive a renewal license;
- (f) A list of personnel assigned to work in Kentucky, which shall be kept current and be provided to the commission upon request;
- (g) A certification of compliance with the Kentucky Horse Racing Commission Totalizator Standards;
- (h) An agreement to testing of hardware and software as may be directed by the commission; and
- (i) Copies of all documents described and required pursuant to the "Initial/Renewal License Application to Provide Totalizator Services."

(2) In reviewing an application, the commission 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 whether the applicant has:
 - 1. Been convicted of any crime of moral turpitude, embezzlement, or larceny, or any violation of any law pertaining to illegal gaming or gambling, or any crime that is inimical to the declared policy of the Commonwealth of Kentucky with regard to horse racing and pari-mutuel wagering thereon;
 - 2. Been convicted in any jurisdiction within ten (10) years preceding initial licensing or license renewal of any crime that is or would be a felony or class A misdemeanor in the Commonwealth of Kentucky;
 - 3. Been identified in the published reports of any federal or state legislative or executive body, or in an opinion of any judicial body, as being a member or associate of organized crime, or of being of notorious or unsavory reputation;
 - 4. Been charged by any federal, state, or local law enforcement authority with a violation of any federal, state, or local law;
 - 5. Had a gaming or totalizator company license revoked in another jurisdiction on grounds that would have been grounds for revoking the license in Kentucky;
 - 6. Engaged in any other activities that would pose a threat to the public interest or to the effective regulation of horse racing and wagering in Kentucky, or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of racing and wagering or in the operation of the business and financial arrangements incidental thereto;
 - 7. Been a party to litigation over business practices or disciplinary actions over a business license;
 - 8. 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;

9. Failed to satisfy judgments, orders, or decrees; and
10. 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 management ability of the applicant and its principals;
 - (d) Compliance of the applicant with applicable statutes, charters, ordinances, and administrative regulations; and
 - (e) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in the Commonwealth.

Section 5. Oral Presentation by Applicant. (1) Prior to making its ruling, the commission may require an applicant to make an oral presentation concerning its application in order to clarify or otherwise respond to questions concerning the application. The presentation shall be limited to the information contained in the applicant's application and any supplemental information relevant to the commission's determination of the applicant's suitability. The admission as evidence of the supplemental information shall be subject to the discretion of the commission.

(2) If the commission deems an applicant's application incomplete and does not accept it for filing, the applicant shall not be entitled to make an oral presentation.

Section 6. Additional Information. (1) The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue or renew a license, including copies of any documents used by the applicant in preparing the application and contracts between the applicant and third parties related to operations.

Section 7. Operations. (1) Before doing business in Kentucky, the licensee shall be qualified to do business in Kentucky.

(2) In addition to the information the commission may request under this or any other applicable administrative regulation or statute, the commission may require the licensee to remit contemporaneously to the commission a copy of any documents required to be filed with the Department of Revenue or other regulatory agency.

(3) The licensee shall operate in conformity with the Kentucky Horse Racing Commission Totalizator Standards.

Section 8. Transfers of Licenses. (1) A license issued under this administrative regulation shall not be transferable or assignable.

(2) A substantial change in ownership in a licensee shall result in termination of the license unless prior written approval for the change has been obtained from the commission. Any request for approval of a substantial change in ownership shall be made on the form "Totalizator Change of Control Form." Upon receipt of all required information, the commission shall, as soon as practicable, make a determination whether to authorize and approve the substantial change in ownership.

(3) Notice of a nominal change in ownership shall be filed with the commission within fifteen (15) days of the execution of the documents upon which the proposed nominal change in ownership will be based.

(4) For purposes of subsection (3) of this section, notice is not 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, whether substantial or nominal, direct or indirect, if by a publicly traded corporation, and if the beneficial ownership transferred 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 of the assets of the association.

Section 9. Duration of License. A license issued under this administrative regulation shall be valid for the calendar year for which it is issued.

Section 10. Penalties and Enforcement. (1) The commission shall have all of the rights, powers, and remedies provided for in KRS Chapter 230, KAR Title 810, and KAR Title 811 to ensure compliance with this administrative regulation, including, but not limited to, revocation, suspension, or modification of a license and the imposition of fines.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Initial/Renewal License Application to Provide Totalizator Services" KHRC 150-01, 6/11;

(b) "Totalizator Change of Control Form," KHRC 150-02, 6/11; and

(c) "Kentucky Horse Racing Commission Totalizator Standards," KHRC 150-03, 6/11.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. <http://>

(3) This material may also be obtained at the commission's Web site, www.khrc.ky.gov. (38 Ky.R. 179; 611; eff. 10-7-11.)