

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

810 KAR 3:010. Licensing of racing associations.

RELATES TO: KRS 230.215, 230.260, 230.280, 230.290, 230.300, 230.320

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(9), 230.280, 230.300(1), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) vests the Kentucky Horse Racing Commission with the authority to promulgate regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.280 prohibits any person from conducting a horse race meeting for any stake, purse, or reward within the Commonwealth without securing the required license from the commission. KRS 230.260(9) authorizes the commission to prescribe by administrative regulation application forms for licenses. KRS 230.300 authorizes the commission to issue licenses to conduct race meetings. This administrative regulation establishes licensing application procedures and requirements for conducting horse racing at horse race meetings in the Commonwealth.

Section 1. Definitions.

- (1) "Nominal change in ownership" is defined in 810 KAR 3:001, Section 1(26).
- (2) "Principal" is defined by KRS 230.210(17).
- (3) "Publicly traded corporation" means a corporation that:
 - (a) Has voting securities registered under Section 12 of the Securities Exchange Act of 1934 (1934 Act), 15 U.S.C. 78a et seq.;
 - (b) Issues securities subject to Section 15(d) of the 1934 Act;
 - (c) Has voting securities exempted from the registration requirements due to Section 3 of the Securities Act of 1933, 48 U.S.C. 77a et seq.; or
 - (d) Is required to file under the 1934 Act.
- (4) "Substantial change in ownership" is defined by 810 KAR 3:001, Section 1(39).

Section 2. License Applications.

- (1) New license applications. A person or legal entity desiring to conduct thoroughbred racing in the Commonwealth shall apply to the commission for an association license pursuant to KRS 230.300(1).
- (2) Renewal applications. Racing association licenses shall be renewed annually in accordance with KRS 230.300.
- (3) An initial or renewal license application to conduct a horse racing meeting shall be submitted on the form "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-mutuel Wagering," KHRC 3-010-1.
- (4) An applicant that is unable to provide information required on the application shall fully explain and document to the satisfaction of the commission its inability to provide the information, and shall provide the information promptly upon being able to do so.

Section 3. License and Investigation Fees.

- (1) An initial applicant for an initial license shall submit with the application a non-refundable initial license fee of \$5,000.
- (2) Initial applicants shall submit with the application an investigation fee of \$10,000. If the commission determines that investigation of a renewal applicant or an applicant that is proposing to undergo a substantial change in ownership is necessary, the applicant shall pay an in-

vestigation fee of \$10,000. The investigation fee shall pay all costs incurred by the commission in reviewing the application.

(a) Any portion of the investigation fee not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the withdrawal, rejection, or approval of the license application or proposed change of ownership.

(b) If additional costs are incurred in the conduct of the investigation, the applicant shall submit a cashier's check payable to the commission in the amount requested by the commission within ten (10) days of receipt of the request. Failure to submit this payment shall result in suspension of processing the license application or proposed change of ownership and may result in denial of the license or proposed change of ownership.

Section 4. Licensing Criteria.

(1) The commission shall issue a license if it determines that:

(a) The applicant meets all requirements of KRS Chapter 230 and this KAR Title 810;

(b) The applicant is qualified and financially capable of operating a race track;

(c) The applicant will conduct racing in accordance with KRS Chapter 230 and KAR Title 810;

(d) The applicant will conduct racing in accordance with the highest standards and the greatest level of integrity; and

(e) The issuance of a license will ensure the protection of the public interest.

(2) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available which it deems relevant to its determination of whether the applicant is qualified to hold a license, including:

(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, including any improvements and equipment proposed or existing in the applicant's facility;

(c) If a new applicant, the schedule for completion of a racing facility and the feasibility of meeting the schedule;

(d) The types and variety of pari-mutuel horse racing which the applicant proposes to offer;

(e) The financial ability of the applicant to develop, own, and operate a pari-mutuel facility successfully;

(f) If a new applicant, the status of governmental actions required to approve or facilitate the applicant's facility;

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

(h) Compliance of the applicant with applicable statutes, charters, ordinances, or regulations;

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

(j) The impact of the facility upon the Commonwealth of Kentucky in the following areas:

1. Employment created, purchases of goods and services, public and private investment, and taxes generated;
2. Ecological and environmental impact;
3. Social impact; and
4. Cost of public improvements.

(k) The extent of public support or opposition to horse racing and pari-mutuel wagering at the location where the license is sought; and

(l) The effects of the location of the track, including the following:

1. Number, nature, and relative location of other licensees; and
2. Minimum and optimum number of racing days sought by the applicant.

Section 5. Racing Date Assignments. In assigning racing meetings and race dates to applicants, the commission shall consider factors relating to the economic and practical feasibility of conducting racing meetings at association race tracks, including:

(1) The types and dates of racing meetings held elsewhere, both within and outside of the Commonwealth;

(2) The effects that various types of pari-mutuel racing have upon one another;

(3) The quality of horse racing provided at other racetracks;

(4) Dates traditionally awarded racetracks in the past;

(5) The past performance of the licensee;

(6) Whether the licensee has complied with KRS Chapter 230 and Title 810 KAR;

(7) Whether the assignment of racing dates will maximize revenues to the state;

(8) Whether the assignment of racing dates will adversely affect the public health, welfare, and safety;

(9) The projected stability of the racing dates to be awarded; and

(10) The stability of the racing circuit within and outside the Commonwealth.

Section 6. License Applicant Presentation.

(1) An applicant that has submitted a completed license application and all accompanying fees may request to make a presentation of its application at a meeting of the commission 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 commission.

Section 7. Additional Information. At any time prior to issuing a license, the commission may request additional information if the information would assist the commission in deciding whether to issue a license, including:

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

(2) Contracts between the applicant and third parties related to operations.

Section 8. Change in Ownership.

(1) A change in ownership shall be reported to the commission on the Kentucky Horse Racing Commission Racing Association Change of Control Form.

(2) 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 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 an association, direct or indirect, whether substantial or nominal, if by a publicly traded corporation and the beneficial ownership is acquired by a person who shall hold the voting securities of the publicly traded corporation for investment purposes only; or

(c) A debt transaction of a publicly traded corporation, unless such transaction results in the pledge or encumbrance of the assets or any portion thereof of the association.

(4) Notice of a substantial change in ownership shall be filed with the commission 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 commission, 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 commission.

Section 9. Material Modification of Proposed or Existing Facility. A new applicant or association with an existing facility shall not materially alter the grounds or facilities after a license has been issued for that facility without prior written approval of the commission or, if designated by the commission, the executive director of the commission.

Section 10. Late Fee.

(1) A licensee that fails to conduct racing after the commencement date specified in the license may be subject to a late fee not to exceed \$15,000 per day.

(2) The amount of the late fee shall be based on the economic impact caused by the licensee's failure to perform.

(3) The late fee shall not be imposed for a particular day if the licensee can prove to the satisfaction of the commission that the cause of delay was:

(a) Beyond the control and without the fault or negligence of the licensee, its contractors, and subcontractors; or

(b) The default of a contractor or subcontractor, if:

1. Arising from causes beyond the control of the licensee, its contractors, and subcontractors; and

2. The supplies or services to be furnished by the contractor or subcontractor were not obtainable from other sources in sufficient time for the licensee to meet the completion date.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering Form", KHRC 3-010-1; and

(b) "Kentucky Horse Racing Commission Racing Association Change of Control Form", KHRC 3-010-2.

(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 a.m. to 4:30 p.m. This material may also be obtained at the commission's Web site at <http://khrc.ky.gov>.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 1:30 p.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by five (5) working days 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 cancelled. 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 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email John.Forgy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for applying for a license to conduct racing in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish clear guidelines concerning the process by which applications for a license to conduct racing in the Commonwealth of Kentucky are reviewed and approved.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.300 requires any person desiring to conduct horse racing at a horse race meeting within the Commonwealth of Kentucky to apply for a license to do so. This administrative regulation sets forth the procedures and requirements for applying for a license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation enables the commission to issue licenses to conduct a horse racing meeting pursuant to KRS 230.300 in a consistent and systematic way.

(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: This is a new administrative regulation.

(b) The necessity of the amendment to this regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects applicants for a license to conduct horse racing in the Commonwealth. Currently there are seven licensed race tracks operating in the Commonwealth.

(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: Applicants for a license under this administrative regulation will be required to file initial and renewal applications and corresponding fees to obtain and maintain a license to conduct horse racing in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Applicants for a new license are assessed a fee of \$5,000. Initial applicants are assessed a \$10,000 investigation fee, the unused portion of which is returned to the applicant. The investigation fee may also be charged to renewal applicants or where a licensee proposes undergoing a change of ownership.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this amendment.

(b) On a continuing basis: There is no continuing cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding will be necessary for the implementation and enforcement of this 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: No additional funding will be necessary for the implementation and enforcement of this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes that license and investigation fees are applicable to initial applicants, and that investigation fees may be charged for a licensee to renew a license or when a substantial change in ownership is to occur.

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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 Horse Racing Commission and racing association applicants 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 230.215, 230.240, 230.260, 230.280, 230.290, KRS 230.300, 230.310, 230.320, 230.370.

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 will not generate revenue for state or local government for the first year.

(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 will not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this 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 (+/-): Increase

Expenditures (+/-): Neutral

Other Explanation: Any increase in revenues generated by this amended administrative regulation will be dependent on the number of initial license applicants and renewal applicants that have undergone a substantial change in ownership.