

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

810 KAR 3:030. 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(3), 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 license application procedures and requirements for totalizator companies that provide totalizator services to racing associations located in the Commonwealth.

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 3:001, Section 1(26).

(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 (5) percent 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 3:001, Section 1(39).

(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 be licensed by the commission.

(2) To obtain a license, an applicant shall apply to the commission for a license on the "Initial/Renewal License Application to Provide Totalizator Services, KHRC 3-030-1 (9/18).

(a) An initial license shall be effective, and the totalizator company may begin operations, upon approval of the commission.

(b) A license to provide totalizator services shall be renewed annually on or before August 1 of the preceding year. The commission shall render a decision on the renewal application on or before December 20. If approved, a renewal license shall be effective January 1.

(3) If an applicant is unable, despite best efforts, to provide all of the required information, 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 Fees and Costs.

(1) An annual license fee of \$1,000 shall be payable to the commission upon submission of a license application. A license application shall not be complete until receipt of the license fee each year.

(2) (a) The applicant shall pay all costs incurred by the commission in reviewing an application for an initial or renewal license, including:

1. Legal and investigative costs, and

2. The cost of performing background checks on any individual or organization associated with the applicant.

(b) To cover these costs, initial applicants shall submit with the application an investigation fee of \$10,000.

(c) 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.

(d) 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 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.

(e) To the extent additional costs become necessary to investigate an applicant for a license or a substantial change in ownership of an applicant, 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.

(f) The commission may waive the investigation fees, in part or completely, if the applicant has undergone a certification process or other investigative review by a commission-approved industry or regulatory body.

Section 4. License Application Procedures.

(1) The commission may deny a license to any applicant that provides false or misleading information on or omits material information from the application.

(2) In addition to the "Initial/Renewal License Application to Provide Totalizator Services, KHRC 3-030-1 (9/18), an applicant shall provide to the commission:

(a) 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;

(b) A Service and Organization Controls 1 Report (SOC-1) or other independent report in a form acceptable to the commission, completed within the preceding twelve (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;

(c) A list of personnel assigned to work in Kentucky, which shall be kept current and be provided to the commission upon request;

(d) A certification of compliance with the Kentucky Horse Racing Commission Totalizator Standards, KHRC 3-030-03 (9/18);

(e) An agreement to testing of hardware and software as may be directed by the commission; and

(2) In reviewing an application, the commission may consider

(a) 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:

(b) 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:

(c) The quality of physical facilities and equipment;

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

(e) Compliance of the applicant with applicable statutes, charters, ordinances, and administrative regulations; and

(f) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in the Commonwealth.

Section 5. License Applicant Presentation.

(1) An applicant that has submitted a completed license application and all accompanying fees may request or be required 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 6. Additional Information. The commission may request additional information from an applicant that 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, KHRC 3-030-03 (9/18).

Section 8. Change in Ownership.

(1) A change in ownership shall be reported to the commission on the Totalizator Serves 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 a licensee, 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 licensee.

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

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Initial/Renewal License Application to Provide Totalizator Services" KHRC 3-030-1 (9/18);

(b) "Totalizator Change of Control Form," KHRC 3-030-2 (9/18); and

(c) "Kentucky Horse Racing Commission Totalizator Standards," KHRC 3-030-3 (9/18).

(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.

(3) This material may also be obtained at the commission's Web site, <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 requires totalizator companies that provide totalizator services to racing associations located in the Commonwealth to be licensed. It establishes application and licensing fees and sets forth the requirements for obtaining a license.

(b) The necessity of this administrative regulation: This new administrative regulation is being promulgated as part of a comprehensive revision of the Kentucky Horse Racing Commission's regulatory scheme. This regulation is intended to replace previous regulations concerning the same subject matter which are being concurrently repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse

racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.260 vests the commission with jurisdiction over any totalizator company that provides totalizator services to a racing association located in the Commonwealth and requires such totalizator company to be licensed by the commission. It further allows the commission to impose application and license fees on the totalizator companies and requires it to promulgate administrative regulations which establish conditions and procedures for the licensing of totalizator companies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes application and licensing fees, as well as the conditions and procedures for the licensing of totalizator companies.

(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: There are three major totalizator companies that could be affected by this administrative regulation. At the present time, all three of those companies are doing business in Kentucky. If any other chooses to do business in the Commonwealth, it will have to comply with the regulation.

(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: The entities identified in question (3) will have to pay the application fee to apply for a license and the licensing fee to receive a license. They will have to provide the documentation required by the license application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The totalizator companies will have to pay an application fee of \$10,000 to apply for a license. Any portion of this money not expended during the review of the license will be refunded. If the cost of reviewing the license application exceeds \$10,000, the totalizator company will be assessed those additional costs. If the company is granted a license, it will be assessed a \$1,000 license fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Licensed totalizator companies will benefit from having their duties and regulatory guidelines clearly defined.

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

(a) Initially: The total initial cost would be expected to be minimal since most of the regulatory personnel and regulatory infrastructure are currently in place.

(b) On a continuing basis: The total ongoing costs would be expected to be minimal since regulating simulcast facilities would be included with the costs of regulating all pari-mutuel wagering in the Commonwealth.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The licensee will also be required to reimburse the commission pursuant to KRS 230.260 to cover the commission's increased regulatory costs relating to compensation of additional personnel and other expenses.

(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 the imposition of application and license fees. Since these license fees are currently in place, there is no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not increase any current fees to participate. This administrative regulation replaces an existing regulation that has the same fee structure.

(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 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. The statutory authority for this administrative regulation is found in KRS 230.260.

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? Since there are three (3) licensed totalizator companies in the Commonwealth, and all three (3) have paid their initial license fees, the Commonwealth is expected to generate \$3,000.00 annually from the license fees, plus any payroll taxes imposed upon all participants for employees located in the Commonwealth.

(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? Since there are three (3) licensed totalizator companies in the Commonwealth, and all three (3) have paid their initial license fees, the Commonwealth is expected to generate \$3,000.00 annually from the license fees, plus any payroll taxes imposed upon all participants for employees located in the Commonwealth.

(c) How much will it cost to administer this program for the first year? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program in 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 - No specific estimate

Expenditures (+/-): No impact

Other Explanation: There are currently three companies in this industry that have historically paid the licensing fees, but additional companies could enter the market.