

**238.535 Licensing of charitable organizations conducting charitable gaming -- Exemptions -- Qualifications.**

- (1) Any charitable organization conducting charitable gaming in the Commonwealth of Kentucky shall be licensed by the department. A charitable organization qualifying under subsection (12) of this section but not exceeding the limitations provided in this subsection shall be exempt from the licensure requirements when conducting the following charitable gaming activities:
  - (a) Bingo in which the gross receipts do not exceed a total of twenty-five thousand dollars (\$25,000) per year;
  - (b) A raffle or raffles for which the gross receipts do not exceed twenty-five thousand dollars (\$25,000) per year; and
  - (c) A charity fundraising event or events that do not involve special limited charitable games and the gross gaming receipts for which do not exceed twenty-five thousand dollars (\$25,000) per year.

However, at no time shall a charitable organization's total limitations under this subsection exceed twenty-five thousand dollars (\$25,000).

- (2)
  - (a) Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall notify the department in writing, on a simple form issued by the department, of its intent to engage in exempt charitable gaming and the address at which the gaming is to occur. Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall comply with all other provisions of this chapter relating to the conduct of charitable gaming, except:
    1. Payment of the fee imposed under the provisions of KRS 238.570; and
    2. The quarterly reporting requirements imposed under the provisions of KRS 238.550(7), unless the exempt charitable organization obtains a retroactive license pursuant to subsection (9) of this section.
  - (b) Before January 31 of the year immediately following the year of exemption, a charitable organization exempt from licensure under the provisions of subsection (1) of this section shall file a financial report with the department, on a form issued by the department, that contains the following information:
    1. The type of gaming activity in which it engaged during that year;
    2. The total gross receipts derived from gaming;
    3. The amount of charitable gaming expenses paid;
    4. The amount of net receipts derived; and
    5. The disposition of those net receipts.
- (3) An exemption that has been granted to a charitable organization for the preceding calendar year shall be automatically renewed on January 1 of the following year.
- (4) If upon receipt of the financial report the department determines that the information appearing on the financial report renders the charitable organization ineligible to possess an exemption, the department shall notify the charitable organization that its exemption is rescinded. The organization may request an

appeal of this rescission pursuant to KRS 238.565.

- (5) If the annual financial report is not received by January 31, the exemption is automatically rescinded unless an extension of no more than thirty (30) days is granted by the department. The organization may request an appeal of this rescission pursuant to KRS 238.565.
- (6) If an exemption is revoked because an organization has exceeded the limit imposed in subsection (1) of this section, the organization shall apply for a retroactive license in accordance with subsection (7) of this section.
- (7) If an organization exceeds the limit imposed by any subsection of this section it shall:
  - (a) Report the amount to the department; and
  - (b) Apply for a retroactive charitable gaming license.
- (8) Upon receipt of a report and application for a retroactive charitable gaming license, the department shall investigate to determine if the organization is otherwise qualified to hold the license.
- (9) If the department determines that the applicant is qualified, it shall issue a charitable gaming license retroactive to the date on which the exemption limit was exceeded. The retroactive charitable gaming license shall be issued in the same manner as regular charitable gaming licenses.
- (10) If the department determines that the applicant is not qualified it shall deny the license and take enforcement action, if appropriate.
- (11) Once a retroactive or regular gaming license is issued to an organization, that organization shall not be eligible for exempt status in the future and shall maintain a charitable gaming license if it intends to continue charitable gaming activities, unless the charitable organization has not exceeded the exemption limitations of subsection (1) of this section for a period of two (2) years prior to its exemption request.
- (12) (a) In order to qualify for licensure, a charitable organization shall:
  1.
    - a. Possess a tax exempt status under 26 U.S.C. secs. 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19), or be covered under a group ruling issued by the Internal Revenue Service under authority of those sections; or
    - b. Be organized within the Commonwealth of Kentucky as a common school as defined in KRS 158.030, as an institution of higher education as defined in KRS 164A.305, or as a state college or university as provided for in KRS 164.290;
  2. Have been established and continuously operating within the Commonwealth of Kentucky for charitable purposes, other than the conduct of charitable gaming, for a period of three (3) years prior to application for licensure. For purposes of this paragraph, an applicant shall demonstrate establishment and continuous operation in Kentucky by its conduct of charitable activities from an office physically located within Kentucky both during the three (3) years immediately preceding

its application for licensure and at all times during which it possesses a charitable gaming license. However, a charitable organization that operates for charitable purposes in more than ten (10) states and whose principal place of business is physically located in a state other than Kentucky may satisfy the requirements of this paragraph if it can document that it has:

- a. Been actively engaged in charitable activities and has made reasonable progress, as defined in subparagraph 3. of this paragraph, in the conduct of charitable activities or the expenditure of funds within Kentucky for a period of three (3) years prior to application for licensure; and
  - b. Operated for charitable purposes from an office or place of business in the Kentucky county where it proposes to conduct charitable gaming for at least one (1) year prior to application for licensure, in accordance with subparagraph 4. of this paragraph and paragraph (c) of this subsection;
3. Have been actively engaged in charitable activities during the three (3) years immediately prior to application for licensure and be able to demonstrate, to the satisfaction of the department, reasonable progress in accomplishing its charitable purposes during this period. As used in this paragraph, "reasonable progress in accomplishing its charitable purposes" means the regular and uninterrupted conduct of activities within the Commonwealth or the expenditure of funds within the Commonwealth to accomplish relief of poverty, advancement of education, protection of health, relief from disease, relief from suffering or distress, protection of the environment, conservation of wildlife, advancement of civic, governmental, or municipal purposes, or advancement of those purposes delineated in KRS 238.505(3). In order to demonstrate reasonable progress in accomplishing its charitable purposes when applying to renew an existing license, a licensed charitable organization shall additionally provide to the department a detailed accounting regarding its expenditure of charitable gaming net receipts for the purposes described in this paragraph; and
  4. Have maintained an office or place of business, other than for the conduct of charitable gaming, for at least one (1) year in the county in which charitable gaming is to be conducted. The office or place of business shall be a separate and distinct address and location from that of any other licensee of the Department of Charitable Gaming; except that up to three (3) licensed charitable organizations may have the same address if they legitimately share office space.
- (b) 1. A charitable organization that has established and maintained an office or place of business in the county for a period of at least one (1) year may hold a raffle drawing or a charity fundraising event, including special limited charity fundraising events, in a Kentucky county other

than that in which the organization's office or place of business is located.

2. For raffles, the organization shall notify the Department of Charitable Gaming in writing of the organization's intent to change the drawing's location at least thirty (30) days before the drawing takes place. This written notification:
  - a. May be transmitted in any commercially reasonable means, authorized by the department, including facsimile and electronic mail; and
  - b. Shall set out the place and the county in which the drawing will take place.

Approval by the department shall be received prior to the conduct of the raffle drawing at the new location.

- (c) Any charitable organization that was registered with the county clerk to conduct charitable gaming in a county on or before March 31, 1992, shall satisfy the requirement contained in paragraph (a)4. of this subsection if it maintained a place of business or operation, other than for the conduct of charitable gaming, for one (1) year prior to application in a Kentucky county adjoining the county in which they were registered.
- (13) In applying for a license, the information to be submitted shall include but not be limited to the following:
- (a) The name and address of the charitable organization;
  - (b) The date of the charitable organization's establishment in the Commonwealth of Kentucky and the date of establishment in the county or counties in which charitable gaming is to be conducted;
  - (c) A statement of the charitable purpose or purposes for which the organization was organized. If the charitable organization is incorporated, a copy of the articles of incorporation shall satisfy this requirement;
  - (d) A statement explaining the organizational structure and management of the organization. For incorporated entities, a copy of the organizations' bylaws shall satisfy this requirement;
  - (e) A detailed accounting of the charitable activities in which the charitable organization has been engaged for the three (3) years preceding application for licensure;
  - (f) The names, addresses, dates of birth, and Social Security numbers of all officers of the organization;
  - (g) The names, addresses, dates of birth, and Social Security numbers of all employees and members of the charitable organization who will be involved in the management and supervision of charitable gaming. No fewer than two (2) employees or members of the charitable organization who are involved in the management and supervision of charitable gaming, along with the chief executive officer or the director of the applicant organization, shall be designated as chairpersons;

- (h) The address of the location at which charitable gaming will be conducted and the name and address of the owner of the property, if it is owned by a person other than the charitable organization;
  - (i) A copy of the letter or other legal document issued by the Internal Revenue Service to grant tax-exempt status;
  - (j) A statement signed by the presiding or other responsible officer of the charitable organization attesting that the information submitted in the application is true and correct and that the organization agrees to comply with all applicable laws and administrative regulations regarding charitable gaming;
  - (k) An agreement that the charitable organization's records may be released by the Federal Internal Revenue Service to the department; and
  - (l) Any other information the department deems appropriate.
- (14) An organization or a group of individuals that does not meet the licensing requirements of subsection (12) of this section may hold a raffle if the gross receipts do not exceed one hundred fifty dollars (\$150) and all proceeds from the raffle are distributed to a charitable organization. The organization or group of individuals may hold up to three (3) raffles each year, and shall be exempt from complying with the notification, application, and reporting requirements of subsections (2) and (13) of this section.
- (15) The department may issue a license for a specified period of time, based on the type of charitable gaming involved and the desired duration of the activity.
- (16) The department shall charge a fee for each license issued and renewed, not to exceed three hundred dollars (\$300). Specific fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulations and based on type of license, type of charitable gaming, actual or projected gross receipts, or other applicable factors, or combination of factors.
- (17) (a) A licensed charitable organization may place its charitable gaming license in escrow if:
- 1. The licensee notifies the department in writing that it desires to place its license in escrow; and
  - 2. The license is in good standing and the department has not initiated disciplinary action against the licensee.
- (b) During the escrow period, the licensee shall not engage in charitable gaming, and the escrow period shall not be included in calculating the licensee's retention rate under KRS 238.536.
- (c) A charitable organization may apply for reinstatement of its active license and the license shall be reinstated provided:
- 1. The charitable organization continues to qualify for licensure;
  - 2. The charitable organization has not engaged in charitable gaming during the escrow period; and
  - 3. The charitable organization pays a reinstatement fee established by the

department.

**Effective:** June 24, 2015

**History:** Amended 2015 Ky. Acts ch. 45, sec. 2, effective June 24, 2015; and ch. 59, sec. 2, effective June 24, 2015. -- Amended 2010 Ky. Acts ch. 24, sec. 540, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 120, sec. 7, effective June 26, 2007. -- Amended 2002 Ky. Acts ch. 346, sec. 238, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 165, sec. 1, effective July 14, 2000; ch. 374, sec. 8, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 232, sec. 6, effective April 1, 1998; and ch. 434, sec. 4, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 331, sec. 7, effective April 10, 1996. -- Created 1994 Ky. Acts ch. 66, sec. 8, effective March 16, 1994.

**Legislative Research Commission Note (6/24/2015).** This statute was amended by 2015 Ky. Acts chs. 45 and 59, which do not appear to be in conflict and have been codified together.