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August 19, 2022

Keith Kocher  
Kansas Lottery  
108 N. Kansas Avenue  
Topeka, Kansas 66603

RE: **K.A.R. 111-701-1; 111-701-10; 111-701-20; 111-701-30–36; 111-701-40; 111-701-50; 111-701-60–61; 111-701-70**

Dear Mr. Kocher:

Pursuant to K.S.A. 74-8710(a), as amended by L. 2022, ch. 91, § 25, we have reviewed the above-referenced regulations. We are able to approve K.A.R. 111-701-35, 111-701-36, and 111-701-70. Due to the issues detailed below, we are unable to approve the remainder of the proposed regulations at this time. As always, we will work with you expeditiously to get the following legal issues resolved. The original regulations are enclosed with this letter.

**111-701-1. Definitions.**

(c)

The definition of “virtual event” requires clarification. What is encompassed by this type of event and how does the process described by the definition actually work? Is it limited to sporting event and sports wagering as defined in K.S.A. 74-8702, as amended by L. 2022, ch. 91, § 25? Does this encompass e-sports? Does “players” refer to the person controlling a device that directs the actions of a character within a game or the character itself? Will a programmer know or control the outcome before the event begins? Some aspects could potentially be outside those activities authorized in state statute.

**History**

The regulation does not include the applicable implementing statutes necessary for review. The implementing provision needs to include L. 2022, ch. 91, § 1, L. 2022, ch. 91, § 14 and L. 2022, ch. 91, § 18.

**111-701-10. Marketing Agreements.**

(a)

A regulation should not merely repeat statutory provisions, unless the Legislature requires the repetition. The first sentence recites the second sentence of L. 2022, ch. 91, § 4(c) and should, therefore, be omitted.

The second sentence refers to a “tally” of agreements for determining the 20% threshold. L. 2022, ch. 91, § 4 sets a cap on the total number of marketing agreements lottery gaming facility managers can enter into and requires no less than 20% of those agreements to be with nonprofit fraternal or veterans organizations. If the “tally” of marketing agreements with qualifying nonprofit organizations is calculated by only requiring such a marketing agreement once four other marketing agreements have been entered into, this regulation would conflict with the statutory requirement that no less than 20% of all of the marketing agreement be with nonprofit fraternal organizations.

(b)

The provision recites L. 2022, ch. 91, § 4(d). The sentence needs to be omitted.

History

K.S.A. 74-8702, as amended by L. 2022, ch. 91, § 24, and L. 2022, ch. 91, § 4 need to be added to the implementing section if the Lottery can provide a reason for including the provisions noted above.

**111-701-20. Advertisings; minimum requirements.**

(a)

The provision does not include “problem gamblers” from the list of persons who are not to be targeted. The term “problem gamblers” needs to be added to the provision.

Is there a definition of “vulnerable persons”?

(b)

Does the Lottery or the lottery gaming facility manager work with the interactive sports platform? In several places in these regulations, a requirement is listed as either the lottery gaming facility manager or the interactive sports wagering platform. Which entity submits requests, material, advertisements, etc. to the Lottery? Is it both or does the platform work through the lottery gaming facility manager?

History

L. 2022, ch. 91, § 5 gives the executive director the authority to adopt rules and regulations regarding advertising. L. 2022, ch. 91, § 5, rather than K.S.A. 74-8710, as amended by L. 2022, ch. 91, § 25, should be listed as the statutory authority for adopting and implementing the regulation.

**111-701-30. Sports wagering.**

(b)

The provision is a restatement of provisions in K.S.A. 74-8702, as amended by L. 2022, ch. 91, § 24(i), and L. 2022, ch. 91, § 2. It should be omitted from the regulation.

(c)

The provision appears to be covered in L. 2022, ch. 91, § 18 and would be covered by the compact. Is there a reason for including it in the regulation?

History

L. 2022, ch. 91, § 6 allows the Lottery to restrict wagering on sporting events specified in Lottery's notices. The regulation instead restricts the location at which a wager may be placed. The authority in the implementing section needs to be revised to include the authority for restricting the location at which a wager may be placed.

If subsection (c) remains in the regulation, L. 2022, ch. 91, § 18 would need to be included in the implementing provision of the history citation.

**111-701-31. Prohibited events; pre-approving sporting or athletic events; approval of wagers; revocation of approval.**

(c)

Is subsection (2) referring to the "sports governing body" as defined in K.S.A. 7402, as amended in L. 2022, ch. 91, § 24(qq)? If so, that term should be used. If not, what is the difference?

History

Section (a) appears to exercise authority conferred upon the Lottery through L. 2022, ch. 91, § 6. The statute should be included in the implementing provision of the history.

**111-170-32. Prohibited wagers.**

(c)

Is the term "committee" intended to refer to a panel of judges that through cumulative scoring determine the outcome of events? Clarification in the regulation is needed.

History

L. 2022, ch. 91, § 6 gives the Lottery authority to restrict or exclude wagering on sporting events that it designates. L. 2022, ch. 91, § 6 should be added in the implementing provision.

**111-701-33. House rules.**

(a)

Does the Lottery or the lottery gaming facility manager work with the interactive sports platform? In several places in these regulations, a requirement is listed as either the lottery gaming facility manager or the interactive sports wagering platform. What entity submits requests, material, advertisements, etc. to the

Lottery? Is it both or does the platform work through the lottery gaming facility manager? Subsection (d) appears to contemplate the lottery gaming facility manager's control of the platform's house rules.

**111-701-34. Retail sports wagering.**

(c)

Is a person placing wagers through an interactive sports wagering program required to be within the lottery gaming facility? It isn't clear when (c)(3) is included in a list of areas within a facility. L. 2022, ch. 91, § 2 and L. 2022, ch. 91, § 24(i) require presence within the state.

**111-701-40. Confidentiality of certain information.**

History

The regulation is an incomplete recitation of L. 2022, ch. 91, § 7 and does not address confidentiality requirements included in other statutory provisions that are applicable to sports wagering. The regulation is misleading. It likely should be omitted in its entirety.

**111-701-50. Self-exclusion.**

History

It appears L. 2022, ch. 91, § 10 covers the subject and the regulation is not necessary. If the Lottery will explain why the regulation is necessary, L. 2022, ch. 91, § 10 will need to be added to the implementing provision.

**111-701-60. Payment of revenues from lottery gaming facility managers.**

History

It appears L. 2022, ch. 91, § 11 covers the subject and the regulation is not necessary. If the Lottery will explain why the regulation is necessary, L. 2022, ch. 91, § 11 will need to be added to the implementing provision.

**111-701-61. Game description; retail sale of tickets.**

History

It appears the regulation rehashes L. 2022, ch. 91, § 11 and, therefore, is not necessary. If the Lottery will explain why the regulation is necessary, L. 2022, ch. 91, § 11 will need to be added to the implementing provision.

Please contact Assistant Attorneys General Rich Smith or Philip Michael if discussing these matters would be of assistance in revising the proposed regulations.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL  
DEREK SCHMIDT



Robert C. Hutchison  
Deputy Attorney General