

## 2023 Kansas Statutes

**74-8844. Same; action for breach of lottery gaming facility management contract; jurisdiction; limitation on claims and damages; payment of certain damages by facility manager licensee; privilege fee repayment fund established.** (a) Prior to the operation of any historical horse race machines pursuant to K.S.A. 2023 Supp. 74-8843, and amendments thereto, the executive director shall provide written notice to any lottery gaming facility manager managing a lottery gaming facility located in the same gaming zone as a racetrack facility where such historical horse race machines are to be operated. Such notice shall state the commission's intent to authorize the operation of historical horse race machines at such racetrack facility.

(b) No action against the state of Kansas or any other person or party for specific performance, anticipatory breach or breach of contract, the basis of which is that the authorization of historical horse race machines under K.S.A. 2023 Supp. 74-8843, and amendments thereto, violates the provisions of K.S.A. 74-8734(h)(19) or 74-8741(c) (4), and amendments thereto, or that the authorization of historical horse race machines under K.S.A. 2023 Supp. 74-8843, and amendments thereto, creates a material breach of a lottery gaming facility manager's management contract with the Kansas lottery, including any claim for reimbursement of privilege fees and interest thereon, shall be deemed to have accrued until the lottery gaming facility manager receives written notice from the executive director pursuant to subsection (a). Any such action shall be commenced within 60 days after receipt of such written notice and shall be filed as an original action in the supreme court. The supreme court shall have original jurisdiction for determination of any claims made and damages related thereto.

(c) No claim for equitable relief, including injunctive relief, may be brought in any action filed pursuant to this section. No claim may be brought in any action filed pursuant to this section except by the lottery gaming facility manager for the lottery gaming facility located in the same gaming zone as the racetrack facility where such historical horse race machines are to be operated.

(d) Any monetary damages awarded in any action brought pursuant to this section shall not exceed an amount equal to the privilege fee paid by the lottery gaming facility manager filing such action, plus any interest from the date such action accrued as specified in subsection (b).

(e) (1) If no action is filed pursuant to subsection (b), the commission may authorize the operation of historical horse race machines at the racetrack facility.

(2) If an action is properly filed, the commission shall not authorize the operation of historical horse race machines until such time as the supreme court issues a final order in such action and such order does not prohibit the commission from authorizing the operation of such machines.

(3) If the final judgment of the court orders the repayment of the privilege fees, or any portion thereof, paid by the lottery gaming facility manager, including any interest from the date such action accrued, as specified in subsection (b), the executive director shall determine the total amount due for such repayment in accordance with such order and certify such repayment amount to the facility manager licensee for the racetrack facility. The commission shall not authorize the operation of any historical horse race machines at such racetrack facility until the executive director has received such certified amount. The executive director shall remit all such moneys received to the state treasurer in accordance with K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the privilege fee repayment fund.

(f) The privilege fee repayment fund is hereby created in the state treasury and shall be administered by the Kansas lottery. The privilege fee repayment fund shall consist of those moneys credited to the privilege fee repayment fund from any payments received pursuant to subsection (e). All expenditures from the privilege fee repayment fund shall be for the repayment of privilege fees, including accrued interest thereon, and shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the

executive director or the executive director's designee.

(g) The provisions of this section shall be a part of and supplemental to the Kansas parimutuel racing act.

**History:** L. 2022, ch. 91, § 16; July 1.