

810 KAR 1:070. Kentucky Thoroughbred Breeders' Incentive Fund.

RELATES TO: KRS 230.225(7)(b), 230.330, 230.800

STATUTORY AUTHORITY: KRS 230.800

NECESSITY, FUNCTION AND CONFORMITY: KRS. 230.800 establishes the Kentucky Horse Breeders' Incentive Fund. KRS 230.800(2)(b) authorizes the Authority to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the administration of payments from the fund.

Section 1. Definitions. (1) "Allowance race" means an overnight race for which eligibility and weight to be carried is determined according to specified conditions which include age, gender, earnings, and number of wins, excluding starter allowance races.

(2) "Claiming earnings" means the gross cash portion, as this portion is determined by the Jockey Club, of the prize awarded to a qualified Kentucky claiming horse that is paid from the association or the license holder permitted to conduct racing in the jurisdiction.

(3) "Claiming race" means a race in which every horse running therein may be transferred in conformity with 810 KAR 1:015.

(4) "Grade I stakes race" means a nonrestricted race held in the United States which has been assigned Grade I stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association for the United States.

(5) "Grade II stakes race" means a nonrestricted race held in the United States which has been assigned Grade II stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association for the United States.

(6) "Grade III stakes race" means a nonrestricted race held in the United States which has been assigned Grade III stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association for the United States.

(7) "Group I race" means:

(a) A nonrestricted race held in England, France, or Ireland which has been assigned Group I race status for the year contested by the European Pattern Committee; or

(b) A nonrestricted race held in Canada which has been assigned Canadian Grade I stakes status for the year contested by the Canadian Graded Stakes Committee.

(8) "Group II race" means:

(a) A nonrestricted race held in England, France, or Ireland which has been assigned Group II race status for the year contested by the European Pattern Committee; or

(b) A nonrestricted race held in Canada which has been assigned Canadian Grade II stakes status for the year contested by the Canadian Graded Stakes Committee.

(9) "Group III race" means:

(a) A nonrestricted race held in England, France, or Ireland which has been assigned Group III race status for the year contested by the European Pattern Committee; or

(b) A nonrestricted race held in Canada which has been assigned Canadian Grade III stakes status for the year contested by the Canadian Graded Stakes Committee.

(10) "Intended breeder of record" means the owner or lessee of a thoroughbred mare who desires to use the mare for breeding purposes and to qualify the foal for the Kentucky Thoroughbred Breeders' Incentive Fund and who is listed as the intended breeder of record on the forms necessary to register under the KBIF.

(11) "KBIF" means the Kentucky Thoroughbred Breeders' Incentive Fund.

(12) "KBIF registered horse" means a horse registered with the Kentucky Thoroughbred Breeders' Incentive Fund.

(13) "Kentucky sire" means a sire registered as a Kentucky Thoroughbred Development Fund sire.

(14) "Kentucky Thoroughbred Breeders' Incentive Fund" means the trust and revolving fund set out in KRS 230.800.

(15) "Maiden special weight race" means a race in which:

(a) None of the runners have been previously declared a winner; and

(b) None of the runners are eligible to be claimed.

(16) "Overnight race" means a race for which entries close at a time set by the racing secretary.

(17) "Qualified breeder" means the breeder of record as listed in the Jockey Club records.

(18) "Qualified Kentucky claiming horse" means a foal who is born out of a qualified mare and from a Kentucky sire, and who receives earnings from a claiming race in Kentucky.

(19) "Qualified mare" means a thoroughbred dam who resides in Kentucky from the time of the first cover in Kentucky by a Kentucky sire until foaling, unless one (1) of the exceptions in Section 5(4) of this administrative regulation is met.

(20) "Qualified winner" means a thoroughbred horse born out of a qualified mare and from a Kentucky sire and whose nose reaches the finish line first or is placed first through disqualification by the stewards and is not eligible to be claimed in that race.

(21) "Qualified winner's earnings" means the gross cash portion of the prize, as this portion is determined by the Jockey Club, awarded to the qualified winner of a race that is paid for from the association or the license holder permitted to conduct racing in the jurisdiction.

(22) "Starter allowance" means a race written to allow claiming horses who have improved from their earlier form to run in a nonclaiming event.

Section 2. Timing of Awards; Eligibility. (1) Disbursements from the Kentucky Thoroughbred Breeders' Incentive Fund shall be made as soon as is practicable after the end of each full racing year based on a calendar year, but not later than February 15 of the calendar year following the last date the application may be filed under Section 7(3)(b) of this administrative regulation.

(2) For a horse foaled prior to 2007, if the horse is eligible to be registered to receive funds under the Kentucky Thoroughbred Development Fund, the breeder shall be eligible to receive funds from the Kentucky Thoroughbred Breeders' Incentive Fund, subject to registration under Section 4(1) of this administrative regulation.

(3) For a horse foaled during or after 2007, the requirements set forth in this administrative regulation shall be met.

(4) The races eligible for awards from the KBIF as provided in Sections 3 and 6 of this administration regulation shall be those run on and after January 1, 2006.

Section 3. Awards. (1) Kentucky first component:

(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight, allowance, and stakes race run in Kentucky, except for any Breeders' Cup World Thoroughbred Championship race run in Kentucky and any Grade I stakes race run in Kentucky.

(b) The incentive shall be that amount which is equal to twenty-five (25) percent of the qualified winner's earnings except for those receiving awards under subsection (3) of this section.

(c) The amount a qualified breeder may be awarded from the KBIF in each race shall be no more than \$10,000 except for those receiving awards under subsection (3) of this section.

(2) National component:

(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each

maiden special weight and allowance race won by two (2), three (3), and four (4) year old thoroughbreds held in states within the United States other than Kentucky.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings.

(c) The amount a qualified breeder may be awarded from the KBIF in each race shall be no more than \$10,000.

(3) Kentucky Grade I stakes race component. An incentive shall be awarded to the qualified breeder of the qualified winner of each Grade I stakes race run in Kentucky, except for any Breeders' Cup World Thoroughbred Championship race run in Kentucky as follows:

(a) An incentive in the total amount of \$25,000 shall be awarded to the qualified breeder of each of the qualified winners of each Grade I stakes race run in Kentucky, except for the Kentucky Derby and the Kentucky Oaks; and

(b) An incentive in the total amount of \$100,000 shall be awarded to the qualified breeder of the qualified winner of each of the Kentucky Derby and the Kentucky Oaks.

(4) National Grade I stakes race component. An incentive in the amount of \$2,500 shall be awarded to the qualified breeder of the qualified winner of each Grade I stakes race run within the United States but outside of Kentucky except that an incentive shall not be awarded under this administrative regulation in connection with any Breeders' Cup World Thoroughbred Championship race.

(5) Kentucky claiming component. An incentive shall be awarded to the qualified breeders of Kentucky's best claiming horses as follows:

(a) An incentive of \$25,000 shall be awarded to the qualified breeder of the qualified Kentucky claiming horse that has the highest earnings in claiming races run at each of Churchill Downs, Ellis Park, Keeneland, and Turfway Park, respectively, for each calendar year; and

(b) A claiming title incentive of \$100,000 shall be divided among the breeders of the top three (3) qualified Kentucky claiming horses with the highest cumulative claiming earnings derived from claiming races in Kentucky for each calendar year in the following percentages:

1. Fifty (50) percent for 1st place;
2. Thirty (30) percent for 2nd place; and
3. Twenty (20) percent for 3rd place.

Section 4. Registration of Foals. (1)(a) For a horse foaled prior to 2007 and eligible to be registered under Section 2(2) of this administrative regulation, the intended breeder of record shall file with the Authority a "Grandfather Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for a horse born in 2006 and prior years)".

(b) The application shall be filed no later than December 31 of the year following the year in which the horse has raced in a race that would qualify him for an incentive from the KBIF.

(c) A filing fee of thirty (30) dollars may be paid with the application or it shall be deducted from the award amount.

(2)(a) For the 2006 breeding season, the intended breeder of record shall file with the Authority an "Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for the 2006 breeding season)".

(b) The application shall be filed either:

(i) Within forty five (45) days after the first cover of the mare proposed to be a qualified mare to a Kentucky sire, along with a filing fee of thirty (30) dollars; or

(ii) On or prior to August 1, 2006 along with a filing fee of sixty (60) dollars, except as provided in subsection (6) of this section.

(3) For the breeding season beginning in 2007 and thereafter, the intended breeder of record shall register the unborn foal with the Authority on or prior to August 1 of the breeding sea-

son by filing the "Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for the breeding season beginning in 2007)" and paying a filing fee of sixty (60) dollars, except as provided in subsection (6) of this section.

(4)(a) The Authority shall be recognized and designated as the sole official registrar of the Kentucky Thoroughbred Breeders' Incentive Fund for the purposes of registering Kentucky thoroughbred foals in accordance with the terms of this administrative regulation.

(b) The records of the Jockey Club shall be used as the official records of the Authority for determining the following information:

1. The identity of the qualified breeder;
2. The claiming earnings for each race pursuant to which an award shall be granted under this administrative regulation;
3. The qualified winners' earnings for each race pursuant to which an award shall be granted under this administrative regulation;
4. The name of the qualified winner for each race pursuant to which an award shall be granted under this administrative regulation;
5. The name of each horse determined to be a qualified Kentucky claiming horse for purposes of calculating the awards under Section 3(5) of this administrative regulation;
6. the registration number or special identification number of the KBIF-registered horse;
7. The name of the KBIF-registered horse; and
8. Other information for purposes of administering the KBIF.

(5) If the information on a form required under this section is found to be incorrect or becomes incorrect or changes, the person considered to be the intended breeder of record shall be responsible for promptly filing an amended form with the Authority to correct the information within thirty (30) days of realizing the inaccuracy or of the circumstances causing the information to change. An amended form shall not be required if the only change is a change of address for the mare, provided the mare remains in Kentucky.

(6)(a) A hardship filing may be made if the intended breeder of record can prove that there was good cause for the application to not have been filed on a timely basis as required under subsections (2) and (3) of this section, and that the foal otherwise met the eligibility requirements to be a KBIF-registered horse. The filing shall be made on the form "Late Filing of Application for the Kentucky Breeders' Incentive Fund".

(b) The amount of the filing fee shall be as follows:

- (i) For a filing made after August 1 of the breeding season and on or prior to December 31 of the year foaled, the filing fee shall be \$750; and
- (ii) For a filing made between January 1 and December 31 of the yearling year, the filing fee shall be \$1,500. No other late filing shall be permitted.

(7) A breeder may appoint an authorized agent by completing and filing with the Authority a "Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form".

(8) If ownership of a mare is transferred, a "Mare Transfer of Ownership Report in connection with the Kentucky Thoroughbred Breeders' Incentive Fund" shall be filed with the Authority.

Section 5. Qualification of Foal And Qualified Mare. (1) The Authority shall have the right to inspect the location where the mare proposed to be a qualified mare is boarded to determine that the residency requirement is met. The Authority shall also have the right to request, obtain, and inspect records relating to the location of the mare proposed to be a qualified mare to determine that the residency requirement is met.

(2) The person claiming to be the qualified breeder shall bear the burden of proof to show that a mare is a qualified mare.

(3) A failure to comply with a term, condition, or requirement of this administrative regulation shall not result in the loss of the registration of the foal, if the person claiming the foal should be registered proves to the Authority:

(a) The failure to comply was insignificant with respect to the registration requirements as a whole; and

(b) A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of this administrative regulation.

(4) In order for the mare to be a qualified mare as defined in Section 1(19) of this administrative regulation, the thoroughbred dam shall have resided in Kentucky from the time of the first cover in Kentucky by a Kentucky sire until foaling unless one (1) of the following exceptions is met:

(a) Medical procedure.

1. A medical procedure is required to be performed to protect the health of the mare or the unborn foal that involves an extraordinary medical situation and the breeder desires to have an expert located outside of Kentucky conduct the procedure;

2. The owner or the lessee of the mare, at the time the mare leaves Kentucky, files an "Application to Move a Mare outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund" and provides information relating to the procedure as requested by the Authority within fourteen (14) days after the mare leaves Kentucky;

3. The executive director of the Authority approves the departure of the mare from Kentucky; and

4. The mare remains under the care of a veterinarian during the entire period of time she is not residing in Kentucky other than the time during which she is traveling to and from Kentucky; or

(b) Training.

1. The mare has not yet delivered her first foal and is in active training outside of Kentucky;

2. The owner or the lessee of the mare, at the time the mare leaves Kentucky, files an "Application to Move a Mare Outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund" and provides information relating to the training outside of Kentucky as requested by the Authority within fourteen (14) days after the mare leaves Kentucky;

3. The executive director of the Authority approves the departure of the mare from Kentucky; and

4. The mare returns to Kentucky within ten (10) days after the end of her racing career.

(5) The executive director shall notify the Authority if an exception is made to the residency requirement pursuant to subsection (4) of this section.

(6) A qualified breeder of a qualified mare shall be responsible for:

(a) The registration and records of the KBIF -registered horse; and

(b) Complying with the requirements of the Kentucky Thoroughbred Breeders' Incentive Fund.

(7) The owner or lessee of the desire to withdraw the mare's foal from the KBIF by filing a "Notice of Withdrawal of Foal from the Kentucky Thoroughbred Breeders' Incentive Fund."

Section 6. Calculation. (1) Funds available in the KBIF state account resulting from the breeding season relating to each year preceding the granting of the actual awards shall be apportioned according to Sections 3 and 6 of this administrative regulation.

(2) The funds apportioned to each qualified breeder shall be awarded by determining the amount a qualified breeder is eligible to receive based on Sections 3 and 6 of this administrative regulation.

(3) If, at the close of any calendar year, inadequate funding is available to the KBIF to fund

the awards provided for in Section 3 of this administrative regulation, the funding shall be decreased in the following order:

(a) The incentive awarded under the Kentucky first component and the national component shall each be decreased proportionately as provided below, as needed to make the funding adequate:

1. For the Kentucky first component, the award shall be decreased to no less than an amount which is twenty (20) percent of the qualified winners' earnings; and

2. For the national component, the award shall be decreased to no less than an amount which is eight (8) percent of the qualified winners' earnings.

(b) If the reductions made pursuant to paragraph (a) of this subsection are insufficient, the incentive awarded under the national Grade I stakes race component and the Kentucky claiming component shall be decreased by the same percentage as needed to make the funding adequate. The decrease shall not exceed fifty (50) percent for each component.

(c) If the reductions made pursuant to paragraphs (a) and (b) of this subsection are insufficient, the incentive awarded under the national component shall be decreased as needed to make the funding adequate.

(4)(a) If, at the close of a calendar year, the amount available for awards is in excess of the amount necessary to fund the awards provided in Section 3 of this administrative regulation, after payment of operating expenses, a reserve fund shall be established in the KBIF in an amount which is no more than five (5) percent of the amount of funding available from tax receipts for that calendar year.

(b) Moneys in the reserve account may be used as needed to provide funding of awards in a subsequent calendar year if the amount available at the close of the last calendar year is insufficient to fund the awards provided in Section 3 of this administrative regulation.

(c) Additional money shall not be added to the reserve fund if it contains at least \$5,000,000 at the time the excess funding is available.

(5) If, at the close of a calendar year, the amount available for awards is in excess of the amount necessary to fund the awards provided in Section 3 of this administrative regulation and an amount has been designated for the reserve fund provided for in subsection (4)(a) of this section, then the awards shall be increased as provided in this subsection. The order in which an award shall be increased shall be:

(a) An international component shall be added for Group I races with an award of no less than \$750 and no more than \$2,500 per race as the fund permits.

(b) If the funding continues to be in excess of that required for the reserve and for the allocations set forth in paragraph (a) of this subsection, the incentives for Group I races and national Grade I stakes races shall be increased to an award of up to \$5,000 per race as the fund permits.

(c) If the funding continues to be in excess of that required for the reserve and for the allocations set forth in paragraphs (a) and (b) of this subsection, the additional funds shall be divided with fifty (50) percent of the additional funds (the "total Kentucky bonus") being awarded to Kentucky races as set forth in subparagraph 1 of this paragraph and fifty (50) percent of the additional funds (the "total national and international bonus") being awarded to national and international races as set forth in subparagraph 2 of this paragraph.

1. Kentucky races. The awards for the Kentucky races shall be increased in the following order as the KBIF permits:

a. The incentives for Grade II stakes races and Grade III stakes races in Kentucky shall be increased equally to an award of up to \$25,000 per race; and

b. If the funding continues to be in excess of that required for the reserve and for the allocations set forth in paragraphs (a) and (b) of this subsection and clause a of this subparagraph,

the incentives provided for in Section 3(1), (3), and (5) of this administrative regulation and clause a of this subparagraph, then a bonus amount shall be given to each recipient of an award under Section 3(1), (3), and (5) of this administrative regulation and clause a of this subparagraph (the "Kentucky bonus components") determined as follows:

(i) The denominator to be used in calculating the factor shall be the sum of the dollar amounts awarded pursuant to Section 3(1), (3), (5) of this administrative regulation and clause a of this subparagraph.

(ii) The numerator to be used in calculating the factor shall be the dollar amount of the additional funds available under the total Kentucky bonus.

(iii) The factor shall be the result of the division of the numerator into the denominator.

(iv) The factor shall be multiplied by each individual award granted under the Kentucky bonus components to determine the bonus amount for each award.

2. International and national races. The awards for the International and national races shall be increased in the following order as the KBIF permits:

a. The incentives for Grade II stakes race, Grade III stakes race, Group II races and Group III races shall be increased to an award of up to \$5,000 per race; and

b. If the funding continues to be in excess of that required for the reserve and for the allocations set forth in paragraphs (a) and (b) of this subsection and clause a of this subparagraph, and the incentives provided in Section 3(2) and (4) of this administrative regulation, paragraph (b) of this subsection, and clause a of this subparagraph, then a bonus amount shall be given to each recipient of an award under Section 3(2) and (4) of this administrative regulation, paragraph (b) of this subsection, and clause a of this subparagraph (the "national and international bonus components") determined as follows:

(i) The denominator to be used in calculating the factor shall be the sum of the dollar amounts awarded pursuant to Section 3(2) and (4) of this administrative regulation, paragraph (b) of this subsection, and clause a of this subparagraph.

(ii) The numerator to be used in calculating the factor shall be the dollar amount of the additional funds available for the total national and international bonus.

(iii) The factor shall be the result of the division of the numerator into the denominator.

(iv) The factor shall be multiplied by each individual award granted under the national and international bonus components to determine the bonus amount for each award.

Section 7. Application Requirements. (1) The amount due for awards shall be calculated after the end of each racing year. The recipient of an award shall be notified of the amount of the award to which the recipient may be entitled according to the last known address on file with the Authority.

(2)(a) After receipt of notification of an award, each potential recipient shall be required to return an application for the award that certifies that the applicant is entitled to the award and certifies the applicant's taxpayer ID number or Social Security number.

(b) The application shall be on the form "Application for an Award from Kentucky Thoroughbred Breeders' Incentive Fund".

(3)(a) Awards due recipients who cannot be located by December 31 of the year after the year in which the qualified winner or qualified Kentucky claiming horse became eligible to receive an incentive under Section 3 of this administrative regulation shall lapse to the KBIF for distribution or building the reserve in the following year.

(b) Failure to return the application required by subsection (2) of this section by December 31 of the year after the year in which the qualified winner or qualified Kentucky claiming horse became eligible to receive an incentive under Section 3 of this administrative regulation, shall result in forfeiture of the award and the award money shall lapse to the KBIF for distribution or

building the reserve in the following year.

Section 8. Disputes. (1) Any dispute arising under this administrative regulation shall be raised by the aggrieved party filing a petition seeking relief with the executive director, within thirty (30) days of action or inaction leading to the dispute.

(2) If the executive director and the aggrieved party do not agree on a resolution of the dispute, the executive director shall assign the case to a hearing officer who shall conduct a hearing pursuant to KRS Chapter 13B.

Section 9. Disciplinary Procedures. (1) The Authority may deny or revoke the registration of a foal or horse if the qualified breeder, or an applicant for qualified breeder status:

(a) Knowingly provides the Authority with incorrect, false, or misleading information concerning a foal or horse and fails within thirty (30) days to provide accurate information upon request by the Authority;

(b) Knowingly fails to furnish within thirty (30) days information the Authority has requested relating to the registration of a foal or horse; or

(c) Knowingly violates this administrative regulation in any other manner.

(2) If the Authority denies or revokes the registration of the foal or horse, the qualified breeder or applicant for qualified breeder status may request, and the Authority shall thereupon schedule, a hearing to be conducted pursuant to KRS Chapter 13B.

(3) At the conclusion of the hearing, the Authority shall in its final order determine whether the qualified breeder or applicant for qualified breeder status has knowingly provided the Authority with false or misleading information, or has knowingly failed to provide the Authority with requested information, or has knowingly violated this administrative regulation in any other manner, and may take one (1) or more of the following actions:

(a) Deny or revoke the registration;

(b) Uphold the denial or revocation of the registration;

(c) Rescind the denial or revocation of the registration; or

(d) Bar the applicant who failed to furnish the requested information or who has knowingly violated the administrative regulation from registering foals to the fund for a period of one (1) to five (5) breeding seasons, based on the seriousness of the violation, beginning with the season in which the violation occurred.

(4) If a person or his or her designee or representative fails to appear at the hearing, the Authority may take one (1) or more of the following actions:

(a) Deny or revoke the registration; or

(b) Bar the owner or lessee who failed to respond to the summons from registering foals to the fund for a period of one (1) to five (5) breeding seasons, based on the seriousness of the violation, beginning with the breeding season in which the violation occurred.

(5) A second or subsequent violation of this administrative regulation may result in a lifetime bar of the applicant or qualified breeder from being eligible to receive an incentive from the KBIF.

(6) The Authority shall notify the applicant or qualified breeder in writing of the action taken by the Authority.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Grandfather Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for a horse born in 2006 and prior years)", KHRA Form 20-1, (4/06);

(b) "Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for the 2006

breeding season)", KHRA Form 20-2, (4/06);

(c) "Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for the breeding season beginning 2007)", KHRA Form 20-3, (4/06)

(d) "Mare Transfer of Ownership Report in connection with the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-4, (4/06);

(e) "Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form", KHRA Form 20-5, (4/06);

(f) "Application to Move a Mare Outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-6, (4/06);

(g) "Notice of Withdrawal of Foal from the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-7, (4/06);

(h) "Late Filing of Application for the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-8, (4/06); and

(i) "Application for Award from Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-9, (4/06).

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(3) This material may also be obtained from the KHRA Web site at www.khra.ky.gov. (32 Ky.R. 1501; 2030; 2269; eff. 7-7-2006.)