

810 KAR 1:070. Kentucky thoroughbred breeders' incentive fund.

RELATES TO: KRS 230.330, 230.800

STATUTORY AUTHORITY: KRS 230.800

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.800 establishes the Kentucky Thoroughbred Breeders' Incentive Fund (KBIF). KRS 230.800(2)(b) requires the commission 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 in the race 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.

(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.

(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.

(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) "Public auction" means a thoroughbred auction conducted by a recognized member of the Society of International Thoroughbred Auctioneers, or other similar public auction approved by the KBIF advisory committee.

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

(19) "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.

(20) "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.

(21) "Qualified winner" means a thoroughbred horse born out of a qualified mare and from a Kentucky sire that is declared the official winner by the stewards and is not eligible to be claimed in that race.

(22) "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.

(23) "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 KBIF shall be made after December 31, but not later than March 31, for awards earned for the preceding calendar year.

(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)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each of the Kentucky Derby and Kentucky Oaks.

(b) The incentive shall be \$50,000.

(2)(a) An incentive shall be awarded to the top twenty (20) horses with the most claiming wins in Kentucky each year.

(b) Horses earning awards at a Kentucky race track through any component other than the claiming component during the same calendar year shall not be eligible for the Kentucky claiming component.

(c) An incentive of \$200,000 shall be distributed to the top twenty (20) qualified Kentucky

claiming horses with the most wins, as follows:

1. \$20,000 to the horse with the most wins;
2. \$17,500 to the horse with the second most wins;
3. \$15,000 to the horse with the third most wins;
4. \$12,500 to the horse with the fourth most wins;
5. \$12,000 to the horse with the fifth most wins;
6. \$11,500 to the horse with the sixth most wins;
7. \$11,000 to the horse with the seventh most wins;
8. \$10,500 to the horse with the eighth most wins;
9. \$10,000 to the horse with the ninth most wins;
10. \$9,500 to the horse with the tenth most wins;
11. \$9,000 to the horse with the eleventh most wins;
12. \$8,500 to the horse with the twelfth most wins;
13. \$8,000 to the horse with the thirteenth most wins;
14. \$7,500 to the horse with the fourteenth most wins;
15. \$7,000 to the horse with the fifteenth most wins;
16. \$6,500 to the horse with the sixteenth most wins;
17. \$6,000 to the horse with the seventeenth most wins;
18. \$6,000 to the horse with the eighteenth most wins;
19. \$6,000 to the horse with the nineteenth most wins; and
20. \$6,000 to the horse with the twentieth most wins.

(d) Claiming earnings earned at a Kentucky race track from the same calendar year shall be used to settle any ties.

(e) If two (2) or more horses have the same number of wins and the same total earnings, all incentive totals to which those horses would have been entitled shall be divided equally between or among them.

(3)(a) For those KBIF registered horses foaled in 2007 or after, an incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight and allowance race held in the United States, but outside Kentucky, or at Woodbine Racetrack in Ontario, Canada.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings except it shall not exceed \$3,000.

(4)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight and allowance race held in Kentucky.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings except it shall not exceed \$3,000.

(5)(a) For those KBIF registered horses foaled in 2007 or after, an incentive shall be awarded to the qualified breeder of the qualified winner of each non-graded stakes race held in the United States, but outside Kentucky, or at Woodbine Racetrack in Ontario, Canada.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings except it shall not exceed \$4,000.

(6)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each non-graded stakes race held in Kentucky.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings except it shall not exceed \$4,000.

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

1. Grade I stakes race held in the United States;
2. Group 1 race held in Canada, England, France, and Ireland; and
3. Group I race held on Dubai World Cup day, Japan Cup day, and Hong Kong International

day.

(b) The incentive shall be \$7,500.

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

1. Grade II and Grade III stakes race held in the United States; and
2. Group 2 and Group 3 race held in Canada, England, France, and Ireland.

(b) The incentive shall be \$5,000.

(9) An incentive shall not be awarded to the winner of any Breeders' Cup World Championship race.

Section 4. Registration of Foals. (1)(a) For a horse foaled on or before December 31, 2006 and eligible to be registered under Section 2(2) of this administrative regulation, the intended breeder of record shall file a Kentucky Thoroughbred Breeders' Incentive Fund Application for Award with the commission.

(b) The Kentucky Thoroughbred Breeders' Incentive Fund Application for Award 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 the horse for an incentive from the KBIF.

(c) A filing fee of thirty (30) dollars shall be deducted from the award amount.

(d) The filing fee shall be assessed one (1) time per horse.

(2) For a horse foaled on or after January 1, 2007, the intended breeder of record shall register the unborn foal with the commission on or prior to August 15 of the cover year by filing the Kentucky Thoroughbred Breeders' Incentive Fund Application for Mare Registration and paying a filing fee of sixty (60) dollars, except as provided in subsection (5) of this section.

(3)(a) The commission shall be recognized and designated as the sole official registrar of the KBIF for the purposes of registering Kentucky thoroughbred foals in accordance with this administrative regulation.

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

1. The identity of the qualified breeder;
2. The claiming wins and 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(2) 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.

(4) 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 promptly file an amended form with the commission to correct the information.

(5)(a) A late filing may be made if the intended breeder of record can prove that the foal otherwise met the eligibility requirements to be a KBIF registered horse. The filing shall be made on the form Kentucky Thoroughbred Breeders' Incentive Fund Application for Late Mare Registration.

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

1. For a filing made after August 15 of the cover year and on or prior to December 31 of the cover year, the filing fee shall be \$150;

2. For a filing made between January 1 and December 31 of the weanling year, the filing fee shall be \$750; and

3. For a filing made between January 1 and December 31 of the yearling year, the filing fee shall be \$1,500.

(6)(a) A special filing may be made if a pregnant mare is purchased at public auction outside of Kentucky and:

1. The mare resided in Kentucky from the time of the first cover in Kentucky by a Kentucky sire to the time of foaling;

2. The mare returned to Kentucky within fourteen (14) days after the conclusion of the auction; and

3. The foal meets all of the other eligibility requirements to be a KBIF registered horse.

(b) The filing shall be made on the form Kentucky Thoroughbred Breeders' Incentive Fund Application for Special Filing of Mare Registration.

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

1. For a filing made between January 1 and December 31 of the cover year, the filing fee shall be \$300;

2. For a filing made between January 1 and December 31 of the weanling year, the filing fee shall be \$1,500; and

3. For a filing made between January 1 and December 31 of the yearling year, the filing fee shall be \$3,000.

(7) If ownership of a mare is transferred, a Kentucky Thoroughbred Breeders' Incentive Fund Mare Transfer Form shall be filed with the commission.

(8) If any registration or nomination deadline imposed by this administrative regulation falls on a weekend or holiday, the deadline shall be moved to the next business day following the original deadline.

Section 5. Qualification of Foal And Qualified Mare. (1) The commission may inspect the location where the mare proposed to be a qualified mare is boarded to determine that the residency requirement is met. The commission may also 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 satisfaction of the commission:

(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 thoroughbred dam to be a qualified mare as defined in Section 1(20) 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 files a Kentucky Thoroughbred Breeders' Incentive

Fund Application to Move Mare Outside of Kentucky no later than fourteen (14) days after the mare leaves Kentucky and provides information relating to the procedure as requested by the commission;

3. The executive director of the commission approves the departure of the mare from Kentucky based on the criteria established in paragraph (a) of this subsection;

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;

5. The mare is in Kentucky for foaling; and

6. The owner or lessee of the mare provides documentation to establish to the satisfaction of the commission that the mare was in Kentucky for foaling;

(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 files a Kentucky Thoroughbred Breeders' Incentive Fund Application to Move Mare Outside of Kentucky at least fourteen (14) days before the mare leaves Kentucky and provides information relating to the training outside of Kentucky as requested by the commission;

3. The executive director of the commission approves the departure of the mare from Kentucky based on the criteria established in paragraph (b) of this subsection;

4. The mare is in Kentucky for foaling; and

5. The owner or lessee of the mare provides documentation to establish to the satisfaction of the commission that the mare was in Kentucky for foaling; or

(c) Public auction.

1. The owner of the mare desires to enter her for sale at a public auction held outside of Kentucky;

2. The owner of the mare files with the commission a Kentucky Thoroughbred Breeders' Incentive Fund Application to Move Mare Outside of Kentucky at least fourteen (14) days before the mare leaves Kentucky and provides information relating to the auction as requested by the commission;

3. The executive director of the commission approves the departure of the mare from Kentucky based on the criteria established in paragraph (c) of this subsection;

4. The mare returns to Kentucky within fourteen (14) days after the conclusion of the auction;

5. The mare is in Kentucky for foaling; and

6. The owner or lessee of the mare provides documentation to establish to the satisfaction of the commission that the mare was in Kentucky for foaling.

(5) The executive director shall notify the commission 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 mare may withdraw the mare's foal from the KBIF by filing a Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal.

Section 6. Bonus Calculation. (1) Funds available in the KBIF state account resulting from the cover year 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 in the KBIF to fund the awards provided for in Section 3 of this administrative regulation, the funding shall be decreased proportionally among all awards, excluding the Kentucky claiming award, the Kentucky Oaks award, and the Kentucky Derby award, until funding is adequate to fund all awards.

(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 when 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 proportionally among all awards except the Kentucky claiming award, the Kentucky Oaks award, and the Kentucky Derby award.

Section 7. Application Requirements. (1) The amount due for awards shall be calculated after the end of each calendar 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 KBIF.

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

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

(c) A breeder may appoint an authorized agent to complete the Kentucky Thoroughbred Breeders' Incentive Fund Application for Award by completing and filing with the commission a Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form.

(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 person claiming to be aggrieved by a decision of the commission arising under this administrative regulation shall file a complaint with the executive director within thirty (30) days of the decision.

(2) An appeal of the decision of the executive director pursuant to subsection (1) of this section shall be filed with the commission within ten (10) days of mailing of the decision and shall

be conducted pursuant to KRS Chapter 13B.

Section 9. Disciplinary Procedures. (1) The commission may deny or revoke the qualified winner's earnings or registration of a foal or horse, and bar a person from participation in the fund for a period of one (1) to five (5) years based on the seriousness of the violation if the qualified winner, qualified breeder, or an applicant for qualified breeder status:

(a) Provides the commission 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 commission;

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

(c) Is charged or convicted of a crime, offense, or other criminal or civil violation involving cruelty, mistreatment, abuse, or neglect of a horse. A person charged, but not convicted of a crime, offense, or other criminal or civil violation as provided in this subsection may petition the commission for reinstatement. The commission shall reinstate the earnings, registration, or application upon submission of proof satisfactory to the commission that the charges were dismissed and the facts forming the basis of the charges were false;

(d) Engages in conduct that is against the best interest of breeding or horse racing; or

(e) Violates this administrative regulation in any other manner.

(2) 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.

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

(4) A decision imposed pursuant to this section may be appealed pursuant to KRS Chapter 13B. The appeal shall be filed with the commission within ten (10) days of receipt of the decision.

Section 10. The commission may establish an advisory committee to assist the commission in the administration of the KBIF. If established, the advisory committee shall consist of five (5) members appointed by the chairman of the commission by July 1 of each year. Each member of the advisory committee shall serve from July 1 through June 30 of the following year. Each member of the advisory committee shall be a resident of Kentucky. The advisory committee shall select a chairman from its membership annually.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Thoroughbred Breeders' Incentive Fund Application for Mare Registration", KHRC Form 70-1, 6/15;

(b) "Kentucky Thoroughbred Breeders' Incentive Fund Mare Transfer Form", KHRC Form 70-2, 6/15;

(c) "Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form", KHRC Form 70-3, 6/15;

(d) "Kentucky Thoroughbred Breeders' Incentive Fund Application to Move Mare Outside of Kentucky", KHRC Form 70-4, 6/15;

(e) "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-5, 6/15;

(f) "Kentucky Thoroughbred Breeders' Incentive Fund Application for Late Mare Registration", KHRC Form 70-6, 6/15;

(g) "Kentucky Thoroughbred Breeders' Incentive Fund Application for Award", KHRC Form 70-7, 6/15; and

(h) "Kentucky Thoroughbred Breeders' Incentive Fund Application for Special Filing of Mare Registration", KHRC Form 70-8, 6/15.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the KHRC Web site at <http://khrc.ky.gov>. (32 Ky.R. 1501; 2030; 2269; eff. 7-7-2006; 38 Ky.R. 155; 769; eff. 11-4-2011; 42 Ky.R. 534; 1187; 11-6-2015.)