

Ohio Revised Code Horse Racing Law

Chapter 3769.089

3769.089 Simulcast horse racing; purse fund.

(A) As used in this chapter:

(1) "Racing day" means any day authorized under a permit holder's permit on which, at a simulcast host, either a live racing program is conducted as authorized under section 3769.07 of the Revised Code or a simulcast racing program is conducted as authorized under this section.

(2) "Live racing day" means a racing day on which a live racing program is conducted by the permit holder along with simulcasts of all other available racing programs from within this state and simulcast racing programs from outside this state as authorized under this section.

(3) "Live racing program" means a racing program consisting of no fewer than seven live horse races at thoroughbred tracks and nine live races at standardbred tracks and additional horse races simulcast from other facilities located either inside or outside this state, in which not more than two horse races on which pari-mutuel wagering is conducted are simulcast from facilities located outside this state. If only one racing meeting of a particular breed of horse is being held, no fewer than nine live horse races shall be held on a live racing day. If, during the course of a racing meeting at a standardbred track, the racing secretary of the permit holder determines that there is an insufficient number of entries to have a full field of eight horses for each of nine races on a live racing program, then the racing secretary of the permit holder, after consultation with the Ohio harness horsemen's association, may reduce the number of live races on that live racing program, as the racing secretary may determine. The racing secretary shall not reduce the live racing program to less than seven live races. If during the course of a meeting at a thoroughbred track, the racing secretary of a permit holder determines that there is an insufficient number of entries to have a full field of eight horses for each of nine races on a live racing program, then the racing secretary of the permit holder, with the consent of the thoroughbred horsemen's association, may reduce the number of live races on that live racing program, as the racing secretary may determine. The racing secretary shall not reduce the live racing program to less than seven live races. No more than seventeen races on which pari-mutuel wagering is conducted, including both live races and races simulcast from other facilities located either inside or outside this state, shall be part of a live racing program.

(4) "Simulcast host" means a track or enclosure in this state where, on a racing day, a permit holder is doing one or both of the following:

(a) Conducting a live racing program and offering this program for simulcasting to one or more simulcast guests and satellite facilities in this state;

(b) Receiving a simulcast racing program for simulcasting to one or more simulcast guests and satellite facilities in this state.

(5) "Simulcast guest" means any track or enclosure that is receiving from a simulcast host, on a day other than a racing day, a live racing program or a simulcast racing program.

(6) "Simulcast racing program" means all simulcasts of horse races to a simulcast host or simulcast guest on a racing day or on any other day on which pari-mutuel wagering is conducted, but does not include any simulcast horse races from inside or outside this state that are included in a simulcast host's live racing program.

(7) "Satellite facility" has the same meaning as in section 3769.25 of the Revised Code.

(8) "Collection and settlement agent" has the same meaning as in section 3769.0810 of the Revised Code.

(9) "Special racing event" means individual races in live racing programs or simulcast racing programs, and simulcast racing programs on special event days under division (C) of this section, conducted at facilities located outside this state for which the track, racing association, or state regulatory agency conducting such races charges a simulcast host a fee for the privilege of receiving a simulcast of such races into this state that is higher than the customary and regular fee charged for simulcast races because of the status or popularity of such races.

(B)(1)(a) The state racing commission shall, upon request by any permit holder, permit electronically televised simulcasts of horse races at the permit holder's track or enclosure on racing days authorized by the permit holder's permit. Except as provided in division (B) of this section, the commission shall not permit the simulcast of any simulcast racing program conducted at tracks or facilities located outside this state unless the out-of-state simulcast racing program is available at the same signal rate to all permit holders, whether serving as simulcast hosts or simulcast guests, and all satellite facilities, in this state open and operating on that day. A permit holder or satellite facility may inform the commission that it waives the right to receive the simulcast of a simulcast racing program or a race in a simulcast racing program on that day and in this event the simulcast racing program or simulcast race shall be available to all other simulcast hosts, simulcast guests, and satellite facilities open and operating in this state on that day.

(b) In order for a permit holder to offer simulcasts of horse races conducted at facilities located outside this state, the permit holder shall have conducted live racing programs during the immediately preceding calendar year on a number of days that is not less than the number of regular live racing days it conducted in calendar year 1991, not including additional racing days conducted in calendar year 1991 by the permit holder at a winterized facility under a permit issued under section 3769.07 of the Revised Code, as certified by the commission. In satisfying the foregoing requirement for live racing days during the immediately preceding calendar year, a permit holder may include the number of days on which live racing programs were conducted under a permit issued under section 3769.07 of the Revised Code for additional racing days at a winterized facility. In addition, in order for a permit holder to offer simulcasts of horse races conducted at facilities located outside this state, the permit holder shall offer all simulcasts of horse races conducted in this state made available to it.

In order for a permit holder to offer simulcasts of races conducted at race tracks located outside this state at the same time and during the hours in which the live races of a live racing program are being conducted at its track, a permit holder conducting a thoroughbred live racing program shall obtain the consent of the thoroughbred horsemen's association and a permit holder conducting a harness live racing program shall obtain the consent of the Ohio harness horsemen's association. The consent of the horsemen's organization shall not be unreasonably withheld, and shall be consistent with the interest of preserving live racing in this state. If a horsemen's organization withholds its consent, the permit holder may file an objection with the commission, which shall promptly consider the objection and determine whether the horsemen's organization's action in withholding consent is without substantial merit and, if the commission so determines, shall authorize the permit holder to simulcast the simulcast racing programs. The determination of the commission is final. A permit holder, as a simulcast host, may offer simulcast racing programs at its track or enclosure of races conducted at tracks and facilities located outside this state prior to the commencement of, and following the conclusion of, its live races without obtaining the consent of a horsemen's organization under this division.

(c) Division (B)(1)(b) of this section remains in effect for each permit holder until the calendar year after that permit holder first receives a commission as a lottery sales agent for conducting video lottery terminal gaming on behalf of the state.

(2) Notwithstanding section 3769.07 of the Revised Code and unless otherwise agreed to by the applicable horsemen's association and the permit holder, beginning in the calendar year after the permit holder first receives video lottery terminal income, one of the following applies as determined on a yearly basis:

(a) If eleven per cent of the gross gaming revenue from video lottery terminals at the permit holder's facilities (either existing or relocated) in the previous calendar year exceeds fifteen million dollars, a permit holder shall conduct a minimum of one hundred twenty-five live racing days.

(b) If eleven per cent of the gross gaming revenue from video lottery terminals at the permit holder's facilities (either existing or relocated) in the previous calendar year exceeds eleven million dollars, but is less than or equal to fifteen million dollars, a permit holder shall conduct a minimum of one hundred live racing days or the number of racing days applied for by the permit holder in calendar year 2012, whichever is greater.

(c) If eleven per cent of the gross gaming revenue from video lottery terminals at the permit holder's facilities (either existing or relocated) in the previous calendar year is less than or equal to eleven million dollars, a permit holder shall conduct a minimum of seventy-five racing days or the number of racing days applied for by the permit holder for calendar year 2012, whichever is greater.

In no case shall the minimum number of racing days for any permit holder exceed one hundred twenty-five racing days or the maximum number of racing days for any permit holder exceed two hundred ten racing days.

(3) For the purposes of division (B)(2) of this section, for live racing conducted at a track with more than one permit, the minimum and maximum live racing days shall apply to those permits collectively and not as a single permit.

(4) In addition to the required live racing days, a permit holder shall simulcast a simulcast racing program on a minimum of three hundred sixty days each calendar year. The permit holder shall simulcast all simulcast racing programs conducted in this state and made available to the permit holder and simulcast racing programs conducted outside this state.

(5) The commission may make exception to the required minimum number of live racing days or simulcast racing program days in instances of natural disaster or other unexpected circumstances as defined by the commission, in its sole discretion. For any calendar year, the horsemen's association at each track may negotiate an agreement with the permit holder for that track to reduce the number of live racing days at that track to less than the minimum live racing days required by division (B)(2)(a), (b), or (c) of this section, as applicable, or to increase the number of live racing days at that track to a number that is greater than the maximum live racing days permitted by division (B)(2)(c) of this section, subject to the approval of the commission. These negotiations shall not reduce the number of live racing days to less than fifty days per calendar year.

(6) To satisfy the requirement of live racing days, a permit holder may include the number of days on which live racing programs were conducted under a permit issued under section 3769.07 of the Revised Code for racing days authorized at a winterized facility.

(C) The commission shall allocate to each track one racing day for each permit holder during each calendar year for the conduct of a live racing program on which a permit holder may conduct as few as one live horse race, with the remainder of the horse races on that racing day on which pari-mutuel wagering is conducted as part of the live racing program being simulcast from other tracks and facilities located either inside or outside this state. In addition, the commission may allocate to each permit holder racing days on which it may as part of a live racing program simulcast more than two horse races from facilities located outside this state if the horse races involve a national wagering pool and pari-mutuel wagering is conducted on the national wagering pool, but on such a racing day there shall in no event be more than two horse races simulcast from facilities located outside this state included in a live racing program on which separate pari-mutuel wagering is conducted. As used in this division, "national wagering pool" means an interstate or intrastate common pari-mutuel wagering pool involving two or more selections covering two or more horse races conducted at tracks located inside or outside this state.

In emergency situations, the commission may authorize a live racing day at a track in which all horse races on that racing day on which pari-mutuel wagering is conducted are simulcast from tracks and facilities located either inside or outside this state with the consent of the thoroughbred horsemen's association for a track conducting a thoroughbred live racing program and with the consent of the Ohio harness horsemen's association for a track conducting a harness live racing program. If a horsemen's organization withholds its consent, the permit holder may file an objection with the commission, which shall promptly consider the objection and determine whether the horsemen's organization's action in withholding consent is without substantial merit and, if the commission so determines, shall authorize the permit holder to simulcast the simulcast racing programs. The determination of the commission is final.

(D) On any day that a racing day has been applied for at any track in this state, each track in this state may operate as either a simulcast host or a simulcast guest and may conduct, with the approval of the state racing commission, pari-mutuel wagering on all simulcasts of races conducted inside this state made available to it plus all simulcasts of races conducted at facilities located outside this state as determined by the simulcast hosts. Except as otherwise provided in this section, any simulcast host or simulcast guest may receive and conduct simulcast racing programs that feature any breed of horse at any time of day, as authorized by the commission. Those persons holding state fair, county fair, or other fair permits shall not receive a simulcast racing program on which pari-mutuel wagering is conducted, except that a holder of a permit issued under section 3769.07 of the Revised Code that has been authorized by the commission to conduct races of the state fair, a county fair, or other fair at a commercial track may receive and conduct simulcast racing programs as a simulcast host or simulcast guest at the same time in conjunction with the live racing program of the state fair, county fair, or other fair permit holder conducted at its track.

The simulcast hosts, with the approval of the state racing commission, shall determine which simulcast racing programs offered by race tracks located outside this state will be simulcast at their tracks and at all simulcast hosts, simulcast guests, and satellite facilities in this state that are open and operating during the hours that the simulcast hosts are operating. Simulcast guests and satellite facilities shall receive all approved simulcast racing programs offered by simulcast hosts. In addition, a simulcast host and simulcast guest, with the approval of the commission, may also receive simulcast horse races and simulcast racing programs not agreed to by simulcast hosts.

A simulcast host that normally operates during the day only may serve as a simulcast host for only day-simulcast racing programs, which include all simulcast racing programs that commence at a track located outside this state on or before four p.m. A simulcast host that normally operates during the evening only may serve as a simulcast host for only evening-simulcast racing programs, which include all simulcast racing programs that commence at a track located outside this state on or after three p.m. A simulcast host that normally operates during the evening, but that under its permit conducts live racing programs during the day, may serve as a simulcast host for day-simulcast racing programs. A permit holder that is offering at its track simulcast racing programs that commence at a track located outside this state on or before four p.m. and simulcast racing programs that commence at a track located outside this state on or after three p.m. may serve as a simulcast host for both the day-simulcast racing program and the evening-simulcast racing program only if no other permit holder is serving as a simulcast host for the other simulcast racing programs. The times listed in this and the immediately following paragraphs are standard time as described in section 1.04 of the Revised Code and in the "Uniform Time Act of 1966," 80 Stat. 107, 15 U.S.C. 260 to 265.

If a simulcast host is conducting a racing program that features thoroughbred or quarter horses on the same day that another simulcast host is conducting a live racing program that features harness horses at a track located in the same county as, or within twenty miles of, the track of the first simulcast host, the first simulcast host shall

not conduct pari-mutuel wagering on simulcast racing programs that commence after four p.m. on that day and the second simulcast host shall not conduct wagering on simulcast racing programs that commence before three p.m. on that day.

A simulcast host that is conducting a live racing program and is simulcasting that program to other simulcast hosts and simulcast guests in this state shall receive from each simulcast host and each simulcast guest receiving the simulcast an intrastate simulcast fee of one and three-eighths per cent of the amounts wagered on such simulcast racing program at its facilities. The simulcast hosts and simulcast guests receiving such simulcast racing program shall pay the intrastate simulcast fee to the collection and settlement agent, and the fee shall be disbursed by the agent, at the time and in the manner provided in section 3769.0810 of the Revised Code.

(E)(1) The moneys wagered on simulcast racing programs on a racing day shall be separated from the moneys wagered on the live racing program on that racing day. From the moneys wagered on the simulcast races, each permit holder may retain as a commission the percentage of the amount wagered as specified in sections 3769.08 and 3769.087 of the Revised Code, as applicable, and shall pay, in the manner prescribed under section 3769.103 of the Revised Code, as a tax, the tax specified in sections 3769.08 and 3769.087 of the Revised Code, as applicable. From the tax collected, the tax commissioner shall make the distributions to the respective funds, and in the proper amounts, as required by sections 3769.08 and 3769.087 of the Revised Code, as applicable. Except as provided in division (E)(2) of this section, from the amount remaining after the payment of state taxes on the moneys wagered on live racing programs and on the moneys wagered on simulcast racing programs, a permit holder shall retain an amount equal to two and three-eighths per cent of the amount wagered on live racing programs and on intrastate and interstate simulcast racing programs simulcast at its track and on the amount wagered on the live racing programs and simulcast racing programs at a satellite facility allocated to it under section 3769.26 of the Revised Code, as a fee to pay for those costs associated with the reception and transmission of simulcasts and the administrative cost of the conduct of live racing programs and simulcast racing programs. From the remaining balance, one-half shall be retained by the permit holder for purses. On a day when a permit holder conducts a live racing program, all purse money generated from wagering on live racing programs and on simulcast racing programs at its track shall be used for that permit holder's purse account. On a day when a permit holder operates as a simulcast host with no live racing program, or operates as a simulcast guest, all purse money generated from wagering on intrastate and interstate simulcast racing programs shall be paid to the state racing commission for deposit into the Ohio combined simulcast horse racing purse fund created under this section. In addition, on a day when a permit holder serves as a simulcast host for a satellite facility, all purse money generated from amounts wagered at the satellite facility allocated to the permit holder under section 3769.26 of the Revised Code shall be paid to the commission for deposit into the Ohio simulcast horse racing purse fund.

(2) If there are not four satellite facilities in operation in this state within one year after September 19, 1996, or if there are not seven satellite facilities in operation in this state within two years after September 19, 1996, or if there are not ten satellite facilities in operation in this state within three years after September 19, 1996, then in any such event the amount to be retained as a fee by the permit holder under division (E)(1) of this section shall be one and seven-eighths per cent until such time as the number of satellite facilities specified in division (E)(2) of this section are in operation. For good cause shown, the thoroughbred horsemen's association and Ohio harness horsemen's association may waive the requirements of division (E)(2) of this section or extend the date for compliance as to any year by filing a written notification with the state racing commission.

(3) If a simulcast racing program simulcast by a simulcast host at its track or enclosure and to other simulcast hosts, simulcast guests, and satellite facilities in this state is a special racing event, the permit holder offering the special racing event and other simulcast hosts, simulcast guests, and satellite facilities receiving the special racing event shall not retain the fee provided under division (E)(1) or (2) of this section but shall retain from the moneys wagered on the special racing event an amount equal to the fee charged by the track, racing association, or state regulatory agency simulcasting the special racing event to the simulcast host. From the remaining balance, one-half shall be retained by the permit holder for purses in the manner provided in division (E)(1) of this section.

A permit holder proposing to simulcast a special racing event as a simulcast host shall advise its horsemen's organization of the proposed schedule of the special racing event and obtain its consent to this schedule. The consent of the horsemen's organization shall not be unreasonably withheld and shall be consistent with the interest of preserving live racing in this state. If the horsemen's organization withholds its consent, the permit holder may file an objection with the state racing commission, which shall promptly consider the objection and determine whether the organization's action in withholding consent is without substantial merit and, if the commission so determines, shall authorize the permit holder to simulcast the special racing event. The determination of the commission is final.

(F) There is hereby created in the state treasury the Ohio combined simulcast horse racing purse fund, to consist of moneys paid into it by permit holders pursuant to division (E) of this section and by satellite facilities

pursuant to division (F) of section 3769.26 of the Revised Code. Moneys to the credit of the fund, including interest earned thereon, may be used by the commission for the costs of administering this division and the balance shall be distributed among permit holders no less frequently than monthly to each permit holder's purse account on order of the commission.

For each calendar year, permit holders at each track shall receive a share of each distribution of the Ohio combined simulcast horse racing purse fund in the same percentage, rounded to the nearest one-hundredth of the amount of each distribution, as the average total amount wagered at the track on racing days at which live racing programs were conducted, including the amount allocated to the track under section 3769.26 of the Revised Code for live races, during the five calendar years immediately preceding the year for which the distribution is made bears to the average annual total amount wagered at all tracks in the state operating under permits issued by the state racing commission under section 3769.07, 3769.071, or 3769.072 of the Revised Code on all racing days at which live racing programs were conducted, including the amount allocated to the tracks under section 3769.26 of the Revised Code for live races, during the five calendar years immediately preceding the year for which the distribution is made. By the thirty-first day of January of each year the commission shall calculate the share of the permit holders at each track for that year, shall enter the share percentages in its official records, and shall notify all permit holders of the share percentages of all tracks for that calendar year.

The permit holders at each track, with the approval of the commission, shall allocate their share of the fund as distributed to the purse account of each permit holder for each race meeting.

The commission shall cause to be kept accurate records of its administration of the fund, including all administrative expenses incurred by it and charged to the fund, and of distributions to permit holders. These records are public records available for inspection at any time during the regular business hours of the commission by any permit holder or horsemen's organization, by an authorized agent of the permit holder or horsemen's organization, or by any other person.

(G) Upon the approval of the commission, a permit holder conducting live racing programs may transmit electronically televised simulcasts of horse races conducted at the permit holder's track to racing associations, tracks, and facilities located outside this state for the conduct of pari-mutuel wagering thereon, at the times, on the terms, and for the fee agreed upon by the permit holder and the receiving racing association, track, or facility. From the fees paid to the permit holder for such simulcasts, a permit holder shall retain for the costs of administration a fee in an amount equal to one per cent of the amount wagered on the races simulcast by the permit holder. From the remaining balance of the fee, one-half shall be retained by the permit holder for purses, except that notwithstanding the fee arrangement between the permit holder and the receiving racing association, track, or facility, the permit holder shall deposit into its purse account not less than an amount equal to three-fourths of one per cent of the amount wagered at racing associations, tracks, and facilities located outside the state on the races simulcast by the permit holder.

All televised simulcasts of horse races conducted in this state to racing associations, tracks, and facilities located outside this state shall comply with the "Interstate Horse Racing Act of 1978," 92 Stat. 1811, 15 U.S.C.A. 3001 to 3007. The consent of the horsemen's organization at the track of the permit holder applying to the commission to simulcast horse races conducted at the permit holder's track to racing associations, tracks, and facilities located outside this state shall be consistent with the interest of preserving live racing.

(H)(1) The state racing commission may authorize any permit holder that is authorized to conduct live horse racing on racing days and that conducts pari-mutuel wagering on simulcasts of horse races under this section that are conducted at race tracks either inside or outside this state to conduct, supervise, and participate in interstate and intrastate common pari-mutuel wagering pools on those races in the manner provided in division (H) of this section. Except as otherwise expressly provided in division (H) of this section or in the rules of the state racing commission, the provisions of this chapter that govern pari-mutuel wagering apply to interstate or intrastate common pari-mutuel wagering pools.

(2) Subject to the approval of the state racing commission, the types of wagering, calculation of the commission retained by the permit holder, tax rates, distribution of winnings, and rules of racing in effect for pari-mutuel wagering pools at the host track may govern wagers placed at a receiving track in this state and merged into an interstate or intrastate common pari-mutuel wagering pool. Breakage from interstate or intrastate common pari-mutuel wagering pools shall be calculated in accordance with the rules that govern the host track and shall be distributed among the tracks participating in the interstate or intrastate common wagering pool in a manner agreed to by the participating tracks and the host track. An interstate common pari-mutuel wagering pool formed under division (H)(3) of this section is subject to that division rather than to division (H)(2) of this section.

(3) Subject to the approval of the state racing commission, an interstate common pari-mutuel wagering pool may be formed between a permit holder and one or more receiving tracks located in states other than the state in which the host track is located. The commission may approve types of wagering, calculation of the commission retained by the permit holder, tax rates, distribution of winnings, rules of racing, and calculation of breakage for

such an interstate common pari-mutuel wagering pool that differ from those that would otherwise be applied in this state under this chapter but that are consistent for all tracks participating in the interstate common pari-mutuel wagering pool formed under division (H)(3) of this section.

(4) As used in division (H) of this section:

(a) "Host track" means a track where live horse races are conducted and offered for simulcasting to receiving tracks.

(b) "Receiving track" means a track where simulcasts of races from a host track are displayed and wagered on.

(I) Each permit holder is responsible for paying all costs associated with the up-link for, and reception of, simulcasts, and the conduct and operation of simulcast racing programs, for all fees and costs associated with serving as a simulcast host or simulcast guest, and for any required fees payable to the tracks, racing associations, or state regulatory agencies where simulcast racing is conducted at tracks located outside this state.

(J) No license, fee, or excise tax, other than as specified in division (E) of this section, shall be assessed upon or collected from a permit holder or the owners of a permit holder in connection with, or pertaining to, the operation and conduct of simulcast racing programs in this state, by any county, township, municipal corporation, district, or other body having the authority to assess or collect a tax or fee.

(K)(1) Permit holders operating tracks within the same county or adjacent counties that are conducting simulcast racing programs under this section may enter into agreements regarding the conduct of simulcast racing programs at their respective tracks and the sharing of the retained commissions therefrom, for such periods of time, upon such terms and conditions, and subject to such rights and obligations, as the contracting permit holders consider appropriate under the circumstances. Permit holders shall notify the state racing commission of their entry into an agreement pursuant to this division, the names of the permit holders that are parties to the agreement, and the length of time the agreement shall be in effect.

(2) Permit holders and the thoroughbred horsemen's association and Ohio harness horsemen's association may agree to do any of the following:

(a) Increase or reduce the fees and amounts to be retained by the permit holders under this section;

(b) Increase or reduce the fees and amounts to be allocated to the purse accounts or of permit holders under this section;

(c) Increase or reduce the fees to be paid between and among simulcast hosts and simulcast guests under this section and under division (C) of section 3769.0810 of the Revised Code;

(d) Modify, suspend, or waive the requirements set forth in division (B) of this section as to any permit holder or as to all permit holders.

All permit holders and both horsemen's organizations shall approve such agreement. Any agreement entered into under division (K)(2) of this section shall set forth the effective date of any such increase or reduction, and the terms and provisions of the agreement, and a copy of the agreement shall be filed with the state racing commission. *(2013, H 59, effective 6-30-13; 2012, H 386; 1995 H 561)*