

No. 1988-127

## AN ACT

SB 769

Amending the act of December 17, 1981 (P.L.435, No.135), entitled "An act providing for the regulation of pari-mutuel thoroughbred horse racing and harness horse racing activities; imposing certain taxes and providing for the disposition of funds from pari-mutuel tickets," further providing for licenses for commissioners, employees and participants at horse races; providing for distributions from the Fair Fund; providing for nonprimary location wagering; and making a repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 102 of the act of December 17, 1981 (P.L.435, No.135), known as the Race Horse Industry Reform Act, is amended by adding definitions to read:

Section 102. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

\* \* \*

*"Nonprimary location."* Any facility in which pari-mutuel wagering is conducted pursuant to this act other than the primary racetrack location.

*"Nonprimary location statement."* The written statement pursuant to this act submitted to the appropriate commission by a licensed corporation planning to establish a nonprimary location.

\* \* \*

*"Racetrack enclosure."* For purposes of this act, the term "racetrack enclosure," with respect to each licensed corporation, shall be deemed to include at least one primary racetrack location at which horse race meetings authorized to be held by the licensed corporation are conducted, and all primary, nonprimary, contiguous and noncontiguous locations of the licensed corporation which are specifically approved by the appropriate commission for conducting the pari-mutuel system of wagering on the results of horse races held at such meetings or race meetings conducted by another licensed corporation or televised to such locations by simulcasting.

\* \* \*

Section 2. Sections 213 and 218 of the act are amended by adding subsections to read:

Section 213. Licenses for commissioners, employees and participants at horse race meetings.

\* \* \*

*(d.1) The commissions shall refuse to issue a license under this section if they shall find that the applicant has been convicted of an offense relating to fixing races. This subsection shall not apply if the conviction is overturned on appeal under the laws of the jurisdiction of the original finding.*

\* \* \*

*(f.1) The commissions shall suspend, refuse to renew or revoke a license issued under this section if it shall determine that the applicant or licensee has been convicted of an offense related to fixing races unless the conviction has been overturned on appeal under the laws of the jurisdiction of the original finding.*

\* \* \*

Section 218. Place and manner of conducting pari-mutuel wagering.

\* \* \*

*(f) The secondary market area of a racetrack, for purposes of this act, is defined as that land area included in a circle drawn with the racetrack as the center and a radius of 50 air miles, but not including the primary market area of the racetrack.*

*(g) Notwithstanding any other provisions of this act to the contrary, upon approval by the appropriate commission, a licensed corporation may establish one or more nonprimary locations at which it shall conduct pari-mutuel wagering on all horse races conducted by such licensed corporation and may conduct pari-mutuel wagering on horse races conducted by another licensed corporation, which horse races may be televised to the locations, or on horse races simulcast to the locations pursuant to section 216, provided that:*

*(1) No licensed corporation may establish nonprimary locations within the primary market area, as set forth in subsection (e), of any racetrack other than a racetrack at which the licensed corporation conducts race meetings. Establishment of a nonprimary location by a licensed corporation within the primary market area of a racetrack at which the licensed corporation conducts race meetings shall require approval of the commission regulating the activities of such licensed corporation.*

*(2) Any licensed corporation may establish a nonprimary location within the secondary market area of a racetrack as set forth in subsection (f), provided that the nonprimary location is approved by both the State Harness Racing Commission and the State Horse Racing Commission.*

*(3) Any licensed corporation may establish a nonprimary location in areas outside the primary and secondary market areas of any racetrack, provided that the location is approved by the commission which regulates the activities of the licensed corporation establishing the location.*

*(4) Where a site is approved by the commission as a nonprimary location established by more than one licensed corporation, by agreement between the licensed corporations and with the approval of the appropriate commission, one licensed corporation may operate the pari-mutuel equipment for one or more of the licensed corporations at that location, but the location may still be considered a part of the racetrack enclosure of each of the licensed corporations approved to conduct pari-mutuel wagering at that location.*

*(5) (i) Any licensed corporation, planning to establish a nonprimary location, shall submit to the appropriate commission a nonprimary location statement in a form prescribed by the appropriate commission which specifies, but is not limited to, the following:*

(A) *The number of permanent and part-time jobs to be created at the proposed facility.*

(B) *The population of the town or municipality, and surrounding area, where the proposed facility is to be located.*

(C) *The proximity of the proposed facility to any other nonprimary location or licensed racetrack.*

(D) *The type of seating to be provided, including areas in the proposed facility where patrons can handicap races.*

(E) *The total seating capacity of the proposed facility.*

(F) *The size and number of toilet facilities.*

(G) *The availability of food and beverages, including the number of tables, chairs, kitchen facilities and concession stands.*

(H) *The number of available parking spaces.*

(I) *A description of the general demeanor of the facility, including lighting, decor and plans for the exterior of the facility.*

(J) *The number of betting windows and stand-alone terminals to be provided.*

(K) *A description of the heating and air conditioning units, the smoke removal equipment and other climate control devices.*

(L) *The total square feet of the proposed facility.*

(ii) *The General Assembly recognizes the economic importance of the horse racing industry in this Commonwealth; and further recognizes that the Pennsylvania horse racing industry is in a state of decline. Therefore, it is the intent of the General Assembly through this amendatory act to revitalize and secure the economic future of the horse racing industry and to encourage Statewide economic development by assisting in the development of nonprimary locations. It is the further intent of the General Assembly through this amendatory act that in no case shall the appropriate commission approve a nonprimary location statement when the sole purpose of that statement is to provide wagering opportunities pursuant to this act; rather, the appropriate commission shall only approve a nonprimary location statement that plans for a public facility offering not only wagering opportunities, but other amenities, such as high class restaurants and quality handicapping facilities, so that all or part of the nonprimary facility will resemble the clubhouse facilities of a racetrack. It is the further intent of the General Assembly through this amendatory act to offer the potential for the creation of jobs, not only in the racing and wagering industry, but more particularly in other service jobs, such as parking attendants, waiters and waitresses, security guards, custodial workers and food service personnel.*

(iii) *In determining whether the nonprimary location statement meets the legislative intent of this amendatory act, the appropriate commission shall consider factors which include, but are not limited to, the following:*

(A) *The purposes and provisions of this amendatory act.*

(B) *The public interest.*

- (C) *The integrity of live racing.*
- (D) *The impact on the local community.*
- (E) *The potential for job creation.*
- (F) *The quality of the physical facilities and all services to be provided therein.*

(iv) *In considering whether the appropriate commission will grant, suspend or revoke approval of nonprimary locations, the provisions of section 209(f)(2) shall apply. In connection therewith, the commission shall annually conduct inspections of the primary facility.*

(v) *The rights, duties and obligations of the appropriate commission, as set forth in this amendatory act, shall apply to nonprimary locations and any employees or vendors of the licensed corporation establishing the nonprimary location.*

(6) (i) *In addition to the requirements of paragraph (10), any licensed corporation which is authorized to conduct racing at any primary racetrack location at which there has not been, in the previous calendar year, a minimum of 142 days of live racing shall not be eligible to establish nonprimary locations outside its primary market area and shall only be eligible to establish nonprimary locations within its primary market area according to the following schedule.*

<i>Year</i>	<i>Number of live racing days conducted</i>	<i>Number of days in subsequent year permitted to operate nonprimary locations within primary market area</i>	<i>Number of live racing days conducted</i>	<i>Number of days in subsequent year permitted to operate nonprimary locations within primary market area</i>
1988	50	365		
1989	69	365	Under 69	307
1990	88	365	Under 88	259
1991	107	365	Under 107	191
1992	126	365	Under 126	133
1993	142	365	Under 142	75

(ii) *Notwithstanding the chart contained in subparagraph (i), if any such licensed corporation schedules 69 or more racing days in calendar year 1989, it may, upon approval of the appropriate commission, establish nonprimary locations within its primary market area for that calendar year.*

(7) (i) *The licensed corporation authorized to hold race meetings at a primary racetrack location at which more than one license is so authorized may be granted up to two nonprimary locations by the appropriate commission, up to a maximum of four per primary racetrack location. The licensed corporation authorized to hold race meetings at a primary racetrack location at which there is only one such licensed corporation so authorized may be granted up to three nonprimary locations.*

(ii) *In addition to the nonprimary locations authorized by subparagraph (i), during each of the calendar years 1989 and 1990, the appropriate commission may approve no more than one additional nonprimary location per primary racetrack location, for one licensed corporation authorized to conduct racing at the primary racetrack location.*

(iii) *The General Assembly may, at any time, stop the further approval of any nonprimary locations. The State Harness Racing Commission and the State Horse Racing Commission shall not have the authority to approve any greater number of nonprimary locations after December 31, 1990, unless further authorized by the General Assembly.*

(iv) *It shall be the duty of both the State Harness Racing Commission and the State Horse Racing Commission to annually report to the General Assembly on the effect of nonprimary locations on such factors as the local economy, the public interest and the integrity of live racing, and make suggestions and recommendations.*

(8) (i) *Moneys wagered at all primary and nonprimary locations pursuant to this act shall be included in common pari-mutuel pools. All money wagered by patrons on these races shall be computed in the amount of money wagered each racing day for purposes of taxation under section 222. The licensed corporation conducting the race meeting and maintaining the pari-mutuel pools shall maintain accurate records of the amount wagered in each pool from every primary and nonprimary location.*

(ii) *The retained moneys as provided for in section 222(e) shall be calculated for each location where pari-mutuel wagering is being conducted. If wagering has taken place at a nonprimary location where the wagering is conducted by a licensed corporation other than the licensed corporation conducting the race meeting, the licensed corporation conducting the race meeting shall retain any moneys to which it is entitled by agreement between such licensed corporations and shall pay over the balance of the retained moneys to the licensed corporation conducting the wagering at the nonprimary location.*

(9) (i) *A licensed corporation conducting a race meeting on which pari-mutuel wagering is conducted at one or more nonprimary locations shall distribute to the horsemen's organization representing a majority of owners and trainers at its racetrack, or in accordance with the practice of the parties, to be used for payment of purses at that racetrack, an amount equal to not less than 6% of the daily gross wagering handle on such races at a nonprimary location: Provided, however, That when the gross wagering handle on such races at any such nonprimary location on a given day is less than \$30,000, the above-referenced percentage shall be not less than 3%, and when the gross wagering handle on such races at any such nonprimary location on a given day is between \$30,000 and \$75,000 inclusive, the above-referenced percentage shall be not less than 4.75%: And provided further, That whenever a nonprimary location is within the primary market area of a licensed corporation other than the licensed corporation conducting such races, the applicable percentage*

*shall be distributed one-half to the horsemen's organization representing a majority of owners and trainers at the racetrack; or in accordance with the practice of the parties, where the race meeting is being conducted to be used for the payment of purses at that racetrack and one-half to such horsemen's organization, or in accordance with the practice of the parties, at the racetrack within the primary market area to be used for the payment of purses at that racetrack. Nothing in this subparagraph shall prevent a licensed corporation from agreeing to distribute amounts greater than the percentages set forth in this subparagraph. However, if no alternative agreement has been reached, the total percentage paid for purses under this subparagraph shall be in accordance with the minimum percentages set forth in this subparagraph.*

*(ii) Notwithstanding subparagraph (i), or any other provision in this act to the contrary, a nonprimary location may be established within the primary market area of a racetrack by agreement between the licensed corporation and the horsemen's organization representing a majority of the owners and trainers at that racetrack specifying the total percentage of handle wagered at such nonprimary location to be distributed to that horsemen's organization, or in accordance with the practice of the parties, to be used for the payment of purses at that racetrack. If no such agreement is reached covering such locations, the total percentage to be paid for purses pursuant to this subparagraph shall be the same as that applied to on-track wagering at the racetrack located within the primary market area.*

*(10) The provisions of section 234 relating to the required number of racing days apply to this subsection. However, a horsemen's organization representing a majority of owners and trainers at a racetrack may consent to waiving or modifying the provisions as pertaining to the required number of racing days scheduled by a licensed corporation at that racetrack.*

Section 3. The act is amended by adding a section to read:

**Section 225.1. Fair Fund proceeds.**

*The Secretary of Agriculture shall distribute certain moneys in the Fair Fund annually, on or before March 1, for reimbursement for each county agricultural society and each independent agricultural society conducting harness horse racing during its annual fair other than races for two- and three-year old colts and fillies, an amount of money equal to that used during their annual fair as purse money for harness horse racing, track and stable maintenance, starting gate rental and the cost of all harness horse racing officials required during their annual fair, but not more than \$13,000, a minimum of \$4,000 of which must be used for purse money and the balance of said allotment per fair, not used for purse money over the minimum \$4,000 allotment, shall be used for said specific purposes herein before referenced, or otherwise said allotment shall be retained in the fund. The State Harness Racing Commission shall cause to be carried out as its responsibility a yearly inspection of each track facility and shall advise each operating fair of necessary track maintenance which is necessary to insure adequate racing*

*surface during the course of scheduled fairs and racing events. If it is the opinion of the commission that the fair society or event sponsor is not adequately financing track maintenance through its permissible reimbursement under this paragraph, the commission shall so surcharge the Fair Fund account of said fair society or event sponsor to effectuate said remediation.*

Section 4. Section 234 of the act, amended May 16, 1986 (P.L.205, No.63), is amended to read:

Section 234. Simulcasting.

[The State Horse Racing Commission and the State Harness Racing Commission may permit intrastate simulcasting between two licensed corporations when each schedules 95% of the racing days it initially scheduled in 1986 and the average number of live races per race day must be equal to 90% of the average number of live races conducted per day in 1985, subject to any actions or activities beyond the control of the licensee; and, as to each corporation or any corporation conducting racing at the same location as the sending or receiving racetrack, such intrastate simulcasting shall not be permitted unless each or any corporation schedules 95% of the racing days initially scheduled in 1986 and the average number of live races per race day must be equal to 90% of the average number of live races conducted per day at that location in 1985, subject to any actions or activities beyond the control of the licensee at these locations. For licensed corporations that did not schedule racing days in 1986 or thereafter, the respective commissions may permit intrastate simulcasting when the licensed corporation schedules a minimum of 80 racing days in a calendar year.]

*The State Horse Racing Commission and the State Harness Racing Commission shall only permit intrastate simulcasting of live racing between two licensed corporations when each continues to schedule 95% of the total number of horse or harness racing days scheduled in 1986 at the facility where each said licensed corporation conducts its horse or harness racing dates, and when the average number of live horse or harness races per race day equals 90% of the average number of live horse or harness races conducted per day in 1985 at the facility where each said licensed corporation conducts its horse or harness racing dates, subject to any actions or activities beyond the control of the licensee: Provided, however, That for any licensed corporation that was granted a permanent license for horse racing and operating at a facility where the average daily handle at the facility at which the licensed corporation conducts racing dates is less than \$150,000 in any calendar year after 1985, the State Horse Racing Commission may permit intrastate simulcasting when the licensed corporation first schedules a minimum of 50 racing days in the calendar year in which it wishes to simulcast. A newly licensed corporation racing at the facility may be permitted to intrastate simulcast by the State Horse Racing Commission when it first schedules at least 50 racing dates in the year in which it wishes to simulcast. If a newly licensed corporation is awarded harness or horse racing dates after 1987 and races those dates at a horse or harness racing facility existing in 1987, other than a facility whose average daily handle is less than \$150,000, the respective commissions shall not permit intrastate simulcasting unless the same number of*

*horse or harness dates scheduled at that facility in 1987 are scheduled at that facility in the year that the corporation wishes to simulcast subject to any actions or activities beyond the control of the licensees (i.e. act of God, strike). For a licensed corporation awarded racing dates at a facility which did not conduct horse or harness racing prior to 1987, the respective commissions may permit intrastate simulcasting if the licensed corporation is the only corporation operating that facility when that corporation first schedules a minimum of 125 days of racing dates in the calendar year in which it wishes to simulcast or when more than one such corporation is awarded dates for racing at the same facility when those corporations first schedule a minimum of 200 days of racing in the calendar year in which they wish to simulcast.*

For purposes of this section a racing day shall consist of a minimum of eight live races, except at thoroughbred tracks on Breeders' Cup Event Day. For any licensed racing corporation engaged in simulcasting, regardless of location or distance from another licensed racing corporation, there shall exist a written agreement with the horsemen's organization representing a majority of the owners and trainers at both the sending and receiving racetracks. If no agreement can be reached, then the licensed corporation may petition the court of common pleas in the county in which the licensed corporation racetrack is located, which may, upon good cause shown by the licensed corporation that failure to consent would be detrimental to the Pennsylvania racing industry, direct the organization representing the horsemen to approve the simulcast agreement. The respective commission may then authorize the simulcasting, if, in the opinion of the appropriate commission, such simulcasting will have significant value to the Pennsylvania racing industry. The simulcast signal shall be encoded, and the racetrack receiving the simulcast signal shall not send this signal anywhere other than public locations authorized under section 218 or 218-A. All forms of pari-mutuel wagering described in section 221 shall be allowed on races to be televised by simulcasting under this section. The State Horse Racing Commission and the State Harness Racing Commission may promulgate regulations on wagering and the operation of these races. All money wagered by patrons on these races shall be computed in the amount of money wagered each racing day for purposes of taxation under section 222. **[Any corporation that does not schedule the required number of racing days, as set forth in this section, shall not be permitted to simulcast the following year.]** In the event the simulcast is between a thoroughbred racetrack and a harness racetrack, both commissions shall have jurisdiction, and any approval required hereunder must be received from both commissions: Provided, however, That if no agreement can be reached between the horsemen's organization aforementioned, then the licensed corporation may petition the court of common pleas in the county in which the licensed corporation racetrack is located, which may, upon good cause shown by the licensed corporation that failure to consent would be detrimental to the Pennsylvania racing industry, direct the organization representing the horsemen to approve the simulcast agreement. The respective commissions may then authorize the simulcasting if, in the opinions of the respective commission, such simulcasting will have a significant



value to the Pennsylvania racing industry. *The provisions of this section with regard to the required number of racing days may be waived or modified by the applicable commission if the waiver or modification has been consented to by the horsemen's organization representing a majority of the owners and trainers at the racetrack where the racing days are to be scheduled or raced.*

Section 5. The act of July 8, 1986 (P.L.437, No.92), known as the Pennsylvania Agricultural Fair Act, is repealed insofar as it is inconsistent with this act.

Section 6. This act shall take effect in 60 days.

We certify that this bill, Senate Bill No.769, Printer's No.2295, having passed both Houses, vetoed by the Governor, official notification of which was returned to the Senate where the Senate reconsidered and passed the bill by a two-thirds majority of the members elected to the Senate on Tuesday, November 29, 1988, the objections of the Governor to the contrary notwithstanding. Upon notification by the Senate as to their action, the House of Representatives reconsidered and passed the bill on Wednesday, November 30, 1988, by a two-thirds majority of the members elected to the House of Representatives, the objections of the Governor to the contrary notwithstanding.

Given under our hand and seal this thirtieth day of November, one thousand nine hundred and eighty-eight.

MARK S. SINGEL  
President, Senate

K. LEROY IRVIS  
Speaker, House of Representatives

MARK R. CORRIGAN  
Secretary, Senate

JOHN J. ZUBECK  
Chief Clerk, House of Representatives

*Note.* The date of final enactment of Act No. 1988-127 is November 30, 1988.