*** § 1013. Binding arbitration.** 1. Whenever under this article a written agreement is required to be obtained from a sending regional track or tracks located within simulcast district one or two for the purpose of simulcasting, and it is claimed by the applicant for such license for simulcasting that such written agreement has been unreasonably refused, declined or denied, or offered for consideration that is unreasonable within parameters established by market conditions, geographical location or historical experience, the terms and conditions and consideration to be paid for such proposed simulcasting shall be determined by binding arbitration in accordance with the procedures set forth herein and by regulations promulgated by the commission. Failure to agree to such binding arbitration by the sending track to simulcast within the simulcast district shall be deemed as authorization for such licensee or proposed licensee to enter into an agreement to receive such simulcast signal from another track or tracks within this state, notwithstanding the provisions of section five hundred twenty-three of this chapter.

(a) The applicant seeking to obtain an agreement to receive such simulcast signal shall submit a single written request setting forth the terms, conditions and circumstances required under this article for the rights to receive such simulcasting, which shall be delivered to the sending track by certified mail, return receipt requested.

(b) Within thirty days after receipt thereof, the track from whom such simulcasting is requested may either decline or refuse such terms in writing or submit a written proposal setting forth its terms, conditions and consideration upon which it would sell or otherwise make available such simulcast signal. The failure to respond to the proposal of the applicant within the time limit shall be deemed to constitute a denial or refusal to enter into any agreement. Any such response shall be delivered to the applicant by certified mail, return receipt requested.

(c) Where the applicant for simulcasting thereafter maintains that the agreement sought has been unreasonably refused or denied or that the proposal of the party or parties from whom the agreement is required is unreasonable or not economically feasible so as to permit the conduct of simulcasting, the applicant shall notify the commission, which, within fifteen days thereafter, shall notify the track that binding arbitration procedures will be initiated. Such notification shall be delivered to

the track by certified mail, return receipt requested. (i) The commission shall arbitrate all disputes arbitrable pursuant to this section unless either party objects, in such event the commission shall provide and designate to the parties a list of three or more independent arbitrators from a panel of such arbitrators maintained by it, having experience in dispute resolution and the economics of the pari-mutuel racing industry. In order to sustain the continuity of the simulcast programs during the period of such arbitration, the terms and conditions of any current or pre-existing agreement shall remain in full force and effect during the period of such arbitration. (ii) Within thirty days of such notification, the track may refuse to enter into any such arbitration procedures by notifying the commission. Upon such notification, the commission shall authorize the applicant to enter into an agreement to receive a simulcast signal from another track within the state, notwithstanding any other provision of law to the contrary.

(d) The provisions for binding arbitration contained in this section shall be applicable to any proposed agreement with such other regional track. In the event a simulcast agreement has been refused by such other regional track, notwithstanding the provisions of section five hundred twenty-three of this chapter, the commission shall authorize the applicant to enter into an agreement to receive a simulcast signal for purposes of pari-mutuel wagering from any other track within this state conducting the same type of racing that was refused by the regional tracks.

(e) Unless such regional track has refused such arbitration, each party shall alternately strike from the list described in paragraph (c) of this subdivision one of the designated names, with the order of striking determined by lot until the remaining one person shall be designated as arbitrator.

(f) Within forty-five days thereafter each party shall submit to the arbitrator a final and last proposal setting forth all of the terms, conditions and consideration to be paid, if any, for the granting of such consent or a final last written proposal or statement supporting any contention that such consent should not be granted, along with any records, data, statistics in support of its position.

(g) The arbitrator shall hold hearings on all matters related to the dispute. The parties may be heard either in person, by counsel, or by

other representatives, as they may respectively designate. The parties may present, either orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and argument of their respective positions with respect to the issues. The arbitrator shall have authority to require the production of such additional evidence, either oral or written as it may desire from the parties and shall provide at the request of any party that a full and complete record be kept of any such hearings, the cost of such record to be shared equally by the parties.

(h) The arbitrator shall also specify the basis for the determination made and in arriving at such determination take into consideration, in addition to any other relevant factors, the following:

(1) the interest and welfare of the public;

(2) economic factors and conditions of the respective parties;

(3) economic factors and conditions of the pari-mutuel racing and wagering industry of the state;

(4) the economic impact of the determination on the parties, the pari-mutuel, racing and wagering industry of the state and pari-mutuel tax revenues of the state;

(5) the impact of the determination on racing and employment opportunities;

(6) the impact of such determination on track profitability;

(7) the impact of such determination on purse levels of the sending or receiving track, as the case may be;

(8) the impact of the determination on current operations or markets of race tracks and regional off-track betting corporations;

(9) the reasonableness of the compensation to be paid for such consent or whether compensation should be made;

(10) the overall feasibility and reasonableness of each last offer proposal made by the parties.

(i) The arbitrator shall, within sixty days after such hearing, unless the time is extended by consent, adopt in its entirety one of the final and last written proposals made which shall be rendered in the form of an award.

(j) The arbitrator, if not the commission, shall notify the commission of its final award which shall be enforced by the commission pursuant to this chapter.

(k) The award shall be final and binding on all the parties for the period prescribed by the arbitrator. If not contained in the proposal adopted, such period shall not exceed one year from the date of service thereof by the arbitrator.

2. No arbitrator shall have the authority to direct the placement of a simulcast facility within ten miles of a track located in district one or thirty miles of a track located in districts two through five.

3. Except as expressly provided herein to the contrary, the provisions of article seventy-five of the civil practice law and rules shall govern such arbitration.

4. Nothing herein shall be construed to dispense with any approval required for the licensing of simulcasting by the commission under this article as any other provision of law.

5. Nothing herein shall preclude all the parties to any such dispute from entering into a written agreement providing for the submission and resolution of any such dispute by any other form of final and binding arbitration, under any agreed upon procedure, to any arbitration panel, forum or arbitrator within thirty days after notice of the designation of the list of arbitrators herein by the commission.

6. Nothing herein shall preclude all of the parties to such binding arbitration provided for herein from entering into an agreement modifying any award after the rendition thereof.

7. The arbitrator appointed pursuant to subdivision one of this section shall be entitled to receive a fee for his or her services to be paid equally by the parties. In no event shall the commission charge a fee to arbitrate disputes.

* NB Repealed July 1, 2027