

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 444

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO HORSE RACING; INCREASING CIVIL PENALTIES FOR VIOLATIONS OF THE HORSE RACING ACT; PROVIDING FOR THE REPORT OF VIOLATIONS TO THE DISTRICT ATTORNEY; ADDING A CONDITION TO THE QUALIFICATIONS FOR A LICENSE; PROVIDING A NATIONALLY RECOGNIZED CLASSIFICATION OF PROHIBITED SUBSTANCES; PROVIDING AN INDEPENDENT STANDARD FOR DRUG TESTING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 60-1A-5 NMSA 1978 (being Laws 2007, Chapter 39, Section 5) is amended to read:

"60-1A-5. COMMISSION RULES--ALL LICENSES--SUSPENSION, REVOCATION OR DENIAL OF LICENSES--PENALTIES.--

A. The commission shall adopt rules to implement the Horse Racing Act and to ensure that horse racing in New Mexico is conducted with fairness and that the participants and

.193965.2

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1 patrons are protected against illegal practices [~~on the racing~~
2 ~~grounds~~].

3 B. Every license issued by the commission shall
4 require the licensee to comply with the rules adopted by the
5 commission. A racetrack licensee shall post printed copies of
6 the rules in conspicuous places on the racing grounds and shall
7 maintain them during the period when live horse races are being
8 conducted.

9 C. The commission may suspend, revoke or deny
10 renewal of a license of a person who violates the provisions of
11 the Horse Racing Act or rules adopted pursuant to that act.
12 The commission shall provide a licensee facing suspension,
13 revocation or denial of renewal of a license reasonable notice
14 and an opportunity for a hearing. The suspension, revocation
15 or denial of renewal of a license shall not relieve the
16 licensee from prosecution for the violations or from the
17 payment of fines and penalties assessed the licensee by the
18 commission.

19 D. The commission may impose civil [~~penalties~~]
20 penalty fines upon a licensee for a violation of the provisions
21 of the Horse Racing Act or rules adopted by the commission.
22 The fines shall not exceed [~~ten thousand dollars (\$10,000)~~] one
23 hundred thousand dollars (\$100,000) or one hundred percent of a
24 purse related to the violation, whichever is greater, for each
25 violation [~~and~~].

1 E. Fines shall be paid into the current school
2 fund.

3 F. When a penalty is imposed pursuant to this
4 section for administering a performance-altering substance as
5 provided in Subsection A of Section 60-1A-28 NMSA 1978, the
6 commission shall direct its executive director to report the
7 violation to the district attorney for the county in which the
8 violation occurred and to the horse racing licensing authority
9 in any other jurisdiction in which the licensee being penalized
10 is also licensed."

11 SECTION 2. Section 60-1A-11 NMSA 1978 (being Laws 2007,
12 Chapter 39, Section 11) is amended to read:

13 "60-1A-11. GRANTING A LICENSE--STANDARDS.--

14 A. A license shall not be issued or renewed unless
15 the applicant has satisfied the commission that the applicant:

16 (1) is of good moral character, honesty and
17 integrity;

18 (2) has not been denied a license, had a
19 license revoked or does not currently have a license suspended
20 by a horse racing licensing authority in another jurisdiction;

21 [~~(2)~~] (3) does not have prior activities,
22 criminal record, reputation, habits or associations that:

23 (a) pose a threat to the public
24 interest;

25 (b) pose a threat to the effective

.193965.2

1 regulation and control of horse racing; or

2 (c) create or enhance the dangers of
3 unsuitable, unfair or illegal practices, methods and activities
4 in the conduct of horse racing, the business of operating a
5 horse racetrack licensed pursuant to the Horse Racing Act or
6 the financial activities incidental to operating a horse
7 racetrack;

8 [~~3~~] (4) is qualified to be licensed
9 consistent with the Horse Racing Act;

10 [~~4~~] (5) has sufficient business probity,
11 competence and experience in horse racing as determined by the
12 commission;

13 [~~5~~] (6) has proposed financing that is
14 sufficient for the nature of the license and from a suitable
15 source that meets the criteria set forth in this subsection;
16 and

17 [~~6~~] (7) is sufficiently capitalized pursuant
18 to standards set by the commission to conduct the business
19 covered by the license.

20 B. The commission shall establish by rule
21 additional qualifications for a licensee as it deems in the
22 public interest.

23 C. A person issued or applying for an occupational
24 license who has positive test results for a controlled
25 substance or who has been convicted of a violation of a federal

1 or state controlled substance law shall be denied a license or
2 shall be subject to revocation of an existing license unless
3 sufficient evidence of rehabilitation is presented to the
4 commission.

5 D. If the commission finds that an applicant for an
6 occupational license or an occupational licensee has been
7 convicted of any of the provisions of Subsection E of this
8 section, the applicant shall be denied the occupational license
9 or the occupational licensee shall have the occupational
10 license revoked. An occupational license shall not be issued
11 by the commission to an applicant or occupational licensee for
12 a period of five years from the date of denial or revocation
13 pursuant to this subsection.

14 E. An occupational license [~~shall~~] may be denied or
15 revoked if the applicant or occupational licensee, for the
16 purpose of stimulating or depressing a racehorse or affecting
17 its speed or stamina during a race or workout, is found to
18 have:

19 (1) administered, attempted to administer or
20 conspired to administer to a racehorse, internally, externally
21 or by injection, a drug, chemical, stimulant or depressant, or
22 other [~~foreign substances not naturally occurring in a~~
23 racehorse] performance-altering substance as defined by the
24 association of racing commissioners international,
25 incorporated, or a successor organization or, if none, by

.193965.2

1 another nationally recognized organization that has published
2 substantially similar guidelines that are generally accepted in
3 the horse racing industry as determined by the commission,
4 unless the applicant or occupational licensee has been
5 specifically permitted to do so by the commission or a steward;
6 or

7 (2) attempted to use, used or conspired with
8 others to use an electrical or mechanical device, implement or
9 instrument, except [~~an ordinary whip~~] a commission-approved
10 riding crop, unless the applicant or occupational licensee has
11 been specifically permitted by the commission or a steward to
12 use the device, implement or instrument.

13 F. The burden of proving the qualifications of an
14 applicant or licensee to be issued or have a license renewed
15 shall be on the applicant or licensee.

16 [~~G. A determination by the commission of a matter~~
17 ~~pursuant to this section shall be final and conclusive and not~~
18 ~~subject to appeal.]"~~

19 SECTION 3. Section 60-1A-14 NMSA 1978 (being Laws 2007,
20 Chapter 39, Section 14) is amended to read:

21 "60-1A-14. TESTING SPECIMENS.--

22 A. The commission shall adopt rules applying to the
23 handling and testing of [~~urine and other specimens~~] blood serum
24 plasma, urine or other appropriate test samples identified by
25 the commission to be taken from racehorses.

1 B. Each specimen taken from a racehorse shall be
2 divided into two or more equal samples, and:

3 (1) one sample shall be tested by the
4 commission or its designated laboratory in order to detect the
5 presence of unauthorized drugs, chemicals, stimulants,
6 depressants or other [~~foreign substances not naturally~~
7 ~~occurring in a horse~~] performance-altering substance as defined
8 by the association of racing commissioners international,
9 incorporated, or a successor organization or, if none, by
10 another nationally recognized organization that has published
11 substantially similar guidelines that are generally accepted in
12 the horse racing industry as determined by the commission; and

13 (2) the second sample shall be forwarded by
14 the commission to the scientific laboratory division of the
15 department of health.

16 C. After [~~an inconclusive or~~] a positive test
17 result on the sample tested by the commission or its designated
18 laboratory and upon a written request from the president,
19 executive director or manager of the New Mexico horsemen's
20 association on forms designated by the commission, the
21 scientific laboratory division shall transmit the corresponding
22 second sample to the New Mexico horsemen's association.

23 D. The scientific laboratory division shall keep
24 all samples in a controlled environment for a period of at
25 least three months.

.193965.2

1 E. The commission shall contract with an
2 independent laboratory to maintain a quality assurance program.
3 The laboratory shall meet or exceed the current national
4 laboratory standards for the testing of drugs or other foreign
5 substances in a horse, as established by the association of
6 racing commissioners international, incorporated, or of a
7 successor organization or, if none, of another nationally
8 recognized organization that has published substantially
9 similar guidelines that are generally accepted in the horse
10 racing industry."

11 SECTION 4. Section 60-1A-28 NMSA 1978 (being Laws 2007,
12 Chapter 39, Section 28) is amended to read:

13 "60-1A-28. AFFECTING SPEED OR STAMINA OF A RACE HORSE--
14 PENALTIES.--

15 A. A person administering, attempting to administer
16 or conspiring with others to administer to a racehorse a drug,
17 chemical, stimulant or depressant or other [~~foreign substances~~
18 ~~not naturally occurring in a racehorse~~] performance-altering
19 substance defined as a class 1 or class 2 penalty class A drug
20 by the association of racing commissioners international,
21 incorporated, or a successor organization or, if none, by
22 another nationally recognized organization that has published
23 substantially similar guidelines that are generally accepted in
24 the horse racing industry as determined by the commission
25 whether internally, externally or by injection for the purpose

.193965.2

1 of stimulating or depressing the racehorse or affecting the
2 speed or stamina of the racehorse during a horse race or
3 workout is guilty of a fourth degree felony and upon conviction
4 shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

5 B. A person who uses, attempts to use or conspires
6 with others to use during a horse race or workout an
7 electrically or mechanically prohibited device, implement or
8 instrument, other than [~~an ordinary whip~~] a commission-approved
9 riding crop, is guilty of a fourth degree felony and upon
10 conviction shall be sentenced pursuant to Section 31-18-15 NMSA
11 1978.

12 C. A person who sponges the nostrils or trachea of
13 a racehorse or who uses anything to injure a racehorse for the
14 purpose of stimulating or depressing the racehorse or affecting
15 the speed or stamina of the racehorse during a horse race or
16 workout is guilty of a fourth degree felony and upon conviction
17 shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

18 D. It is prima facie evidence of intent to commit
19 any of the crimes set forth:

20 (1) in Subsection A of this section for a
21 person to be found within the racing grounds of a racetrack
22 licensee, including the stands, stables, sheds or other areas
23 where racehorses are kept, who possesses with the intent to
24 use, sell, give away or otherwise transfer to another person a
25 drug, chemical, stimulant or depressant or other [~~foreign~~

.193965.2

1 ~~substance not naturally occurring in a racehorse]~~ performance-
2 altering substance defined as a class 1 or class 2 penalty
3 class A drug by the association of racing commissioners
4 international, incorporated, or a successor organization or, if
5 none, by another nationally recognized organization that has
6 published substantially similar guidelines that are generally
7 accepted in the horse racing industry as determined by the
8 commission, to stimulate or depress a racehorse or to affect
9 the speed or stamina of a racehorse;

10 (2) in Subsection B of this section for a
11 person to be found within the racing grounds of a racetrack
12 licensee, including the stands, stables, sheds or other areas
13 where racehorses are kept, who possesses with the intent to
14 use, sell, give away or otherwise transfer to another person an
15 electrically or mechanically prohibited device, implement or
16 instrument, other than ~~[an ordinary whip]~~ a commission-approved
17 riding crop; and

18 (3) in Subsection C of this section for a
19 person to be found within the racing grounds of a racetrack
20 licensee, including the stands, stables, sheds or other areas
21 where racehorses are kept, who possesses with the intent to
22 use, sell, give away or otherwise transfer to another person
23 paraphernalia or substances used to sponge the nostrils or
24 trachea of a racehorse or that may be used to injure a
25 racehorse for the purpose of stimulating or depressing the

1 racehorse or affecting its speed or stamina during a horse race
2 or workout."

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