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SENATE BILL 444

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

INTRODUCED BY

Mary Kay Papen

AN ACT

RELATING TO HORSE RACING; ADDING AND INCREASING CIVIL PENALTIES FOR VIOLATIONS OF THE HORSE RACING ACT; 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 patrons are protected against illegal practices [~~on the racing~~

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1 grounds].

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

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

18 D. The commission may impose civil penalties upon a
19 licensee for a violation of the provisions of the Horse Racing
20 Act or rules adopted by the commission [~~The fines shall not~~
21 ~~exceed ten thousand dollars (\$10,000) for each violation and]~~
22 as follows:

23 (1) for an occupational licensee who is a
24 horse trainer:

25 (a) for a first offense: 1) a minimum

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1 one-year suspension absent mitigating circumstances. The
2 presence of aggravating factors may be used to impose a maximum
3 of a three-year suspension; 2) a minimum fine of ten thousand
4 dollars (\$10,000) or ten percent of a total purse, whichever is
5 greater absent mitigating circumstances. The presence of
6 aggravating factors may be used to impose a maximum fine of
7 twenty-five thousand dollars (\$25,000) or twenty-five percent
8 of a total purse, whichever is greater; and 3) the licensee may
9 be referred to the commission for any further action deemed
10 necessary by the commission;

11 (b) for a second offense in the lifetime
12 of the licensee: 1) a minimum three-year suspension absent
13 mitigating circumstances. The presence of aggravating factors
14 may be used to impose a maximum of license revocation with no
15 right to reapply for a three-year period; 2) a minimum fine of
16 twenty-five thousand dollars (\$25,000) or twenty-five percent
17 of a total purse, whichever is greater absent mitigating
18 circumstances. The presence of aggravating factors may be used
19 to impose a maximum fine of fifty thousand dollars (\$50,000) or
20 fifty percent of a purse, whichever is greater; and 3) the
21 licensee may be referred to the commission for any further
22 action deemed necessary by the commission; and

23 (c) for a third or subsequent offense in
24 the lifetime of the licensee: 1) a minimum five-year
25 suspension absent mitigating circumstances. The presence of

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1 aggravating factors may be used to impose a maximum of license
2 revocation with no right to reapply for a five-year period; 2)
3 a minimum fine of fifty thousand dollars (\$50,000) or fifty
4 percent of a total purse, whichever is greater absent
5 mitigating circumstances. The presence of aggravating factors
6 may be used to impose a maximum fine of one hundred thousand
7 dollars (\$100,000) or one hundred percent of a purse, whichever
8 is greater; and 3) the licensee may be referred to the
9 commission for any further action deemed necessary by the
10 commission; and

11 (2) for an occupational licensee who is a
12 horse owner:

13 (a) for a first offense: 1)
14 disqualification and loss of a purse; and 2) the horse shall be
15 placed on the veterinarian's list for ninety days and must pass
16 a commission-approved examination before becoming eligible to
17 race again;

18 (b) for a second offense: 1)
19 disqualification and loss of a purse; and 2) the horse shall be
20 placed on the veterinarian's list for one hundred twenty days
21 and must pass a commission-approved examination before becoming
22 eligible to race again; and

23 (c) for a third or subsequent offense:
24 1) disqualification and loss of a purse; 2) the horse shall be
25 placed on the veterinarian's list for one hundred eighty days

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1 and must pass a commission-approved examination before becoming
2 eligible to race again; and 3) referral to the commission for
3 consideration of a minimum ninety-day suspension.

4 E. Fines shall be paid into the current school
5 fund.

6 F. When a penalty is imposed pursuant to this
7 section, the commission shall direct its executive director to
8 report the violation to the district attorney for the county in
9 which the violation occurred and to the horse racing licensing
10 authority in any other jurisdiction in which the licensee being
11 penalized is also licensed."

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

14 "60-1A-11. GRANTING A LICENSE--STANDARDS.--

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

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

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

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

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

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1 (b) pose a threat to the effective
2 regulation and control of horse racing; or

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

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

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

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

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

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

24 C. A person issued or applying for an occupational
25 license who has positive test results for a controlled

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

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

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

20 (1) administered, attempted to administer or
21 conspired to administer to a racehorse, internally, externally
22 or by injection, a drug, chemical, stimulant or depressant, or
23 other ~~[foreign substances not naturally occurring in a~~
24 ~~racehorse]~~ performance-altering substance defined as a class 1
25 or class 2 penalty class A drug by the association of racing

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1 commissioners international, incorporated, or a successor
2 organization or, if none, by another nationally recognized
3 organization that has published substantially similar
4 guidelines that are generally accepted in the horse racing
5 industry as determined by the commission, unless the applicant
6 or occupational licensee has been specifically permitted to do
7 so by the commission or a steward; or

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

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

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

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

22 "60-1A-14. TESTING SPECIMENS.--

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

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1 the commission to be taken from racehorses. The rules shall be
2 in accordance with the drug testing and quality assurance
3 program external chain of custody guidelines of the association
4 of racing commissioners international, incorporated, or of a
5 successor organization or, if none, of another nationally
6 recognized organization that has published substantially
7 similar guidelines that are generally accepted in the horse
8 racing industry.

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

11 (1) one sample shall be tested by the
12 commission or its designated laboratory in order to detect the
13 presence of unauthorized drugs, chemicals, stimulants,
14 depressants or other [~~foreign substances not naturally~~
15 ~~occurring in a horse~~] performance-altering substance defined as
16 a class 1 or class 2 penalty class A drug by the association of
17 racing commissioners international, incorporated, or a
18 successor organization or, if none, by another nationally
19 recognized organization that has published substantially
20 similar guidelines that are generally accepted in the horse
21 racing industry as determined by the commission; and

22 (2) the second sample shall be forwarded by
23 the commission to the scientific laboratory division of the
24 department of health.

25 C. After [~~an inconclusive or~~] a positive test

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1 result on the sample tested by the commission or its designated
2 laboratory and upon a written request from the president,
3 executive director or manager of the New Mexico horsemen's
4 association on forms designated by the commission, the
5 scientific laboratory division shall transmit the corresponding
6 second sample to the New Mexico horsemen's association.

7 D. The scientific laboratory division shall keep
8 all samples in a controlled environment for a period of at
9 least three months.

10 E. The commission shall contract with an
11 independent laboratory to maintain a quality assurance program.
12 The laboratory shall meet or exceed the current national
13 laboratory standards for the testing of drugs or other foreign
14 substances in a horse, as established by the association of
15 racing commissioners international, incorporated, or of a
16 successor organization or, if none, of another nationally
17 recognized organization that has published substantially
18 similar guidelines that are generally accepted in the horse
19 racing industry."

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

22 "60-1A-28. AFFECTING SPEED OR STAMINA OF A RACE HORSE--
23 PENALTIES.--

24 A. A person administering, attempting to administer
25 or conspiring with others to administer to a racehorse a drug,

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1 chemical, stimulant or depressant or other [~~foreign substances~~
2 ~~not naturally occurring in a racehorse~~] performance-altering
3 substance defined as a class 1 or class 2 penalty class A drug
4 by the association of racing commissioners international,
5 incorporated, or a successor organization or, if none, by
6 another nationally recognized organization that has published
7 substantially similar guidelines that are generally accepted in
8 the horse racing industry as determined by the commission
9 whether internally, externally or by injection for the purpose
10 of stimulating or depressing the racehorse or affecting the
11 speed or stamina of the racehorse during a horse race [~~or~~
12 ~~workout~~] is guilty of a fourth degree felony and upon
13 conviction shall be sentenced pursuant to Section 31-18-15 NMSA
14 1978.

15 B. A person who uses, attempts to use or conspires
16 with others to use during a horse race or workout an
17 electrically or mechanically prohibited device, implement or
18 instrument, other than [~~an ordinary whip~~] a commission-approved
19 riding crop, is guilty of a fourth degree felony and upon
20 conviction shall be sentenced pursuant to Section 31-18-15 NMSA
21 1978.

22 C. A person who sponges the nostrils or trachea of
23 a racehorse or who uses anything to injure a racehorse for the
24 purpose of stimulating or depressing the racehorse or affecting
25 the speed or stamina of the racehorse during a horse race or

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1 workout is guilty of a fourth degree felony and upon conviction
2 shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

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

5 (1) in Subsection A of this section for a
6 person to be found within the racing grounds of a racetrack
7 licensee, including the stands, stables, sheds or other areas
8 where racehorses are kept, who possesses with the intent to
9 use, sell, give away or otherwise transfer to another person a
10 drug, chemical, stimulant or depressant or other [~~foreign~~
11 ~~substance not naturally occurring in a racehorse~~] performance-
12 altering substance defined as a class 1 or class 2 penalty
13 class A drug by the association of racing commissioners
14 international, incorporated, or a successor organization or, if
15 none, by another nationally recognized organization that has
16 published substantially similar guidelines that are generally
17 accepted in the horse racing industry as determined by the
18 commission, to stimulate or depress a racehorse or to affect
19 the speed or stamina of a racehorse;

20 (2) in Subsection B 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 an
25 electrically or mechanically prohibited device, implement or

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1 instrument, other than ~~[an ordinary whip]~~ a commission-approved
2 riding crop; and

3 (3) in Subsection C of this section for a
4 person to be found within the racing grounds of a racetrack
5 licensee, including the stands, stables, sheds or other areas
6 where racehorses are kept, who possesses with the intent to
7 use, sell, give away or otherwise transfer to another person
8 paraphernalia or substances used to sponge the nostrils or
9 trachea of a racehorse or that may be used to injure a
10 racehorse for the purpose of stimulating or depressing the
11 racehorse or affecting its speed or stamina during a horse race
12 or workout."