S T A T E  O F  N E W  Y O R K

5887--A

2011-2012 Regular Sessions

I N  S E N A T E

September 14, 2011

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the racing, pari-mutuel wagering and breeding law, in relation to prohibiting the use of performance-enhancing drugs in horseracing

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative intent. The use of performance-enhancing drugs in horseracing threatens the safety and welfare of horses and jockeys, creates unfair competition, deceives horse buyers and the wagering public. The use of performance-enhancing drugs in horseracing is not permitted in most jurisdictions outside the United States. The United States stands alone in its permissive use of performance-enhancing drugs and New York is no exception. In New York State the use of performance-enhancing drugs is illegal in every sport other than horseracing. The purpose of this legislation is to insure that the use of performance-enhancing drugs in horseraces is prohibited in the State of New York.

S 2. The racing, pari-mutuel wagering and breeding law is amended by adding a new section 902-a to read as follows:

S 902-A. PROHIBITIONS ON USE OF PERFORMANCE-ENHANCING DRUGS. 1. DEFINITIONS. AS USED IN THIS SECTION:

(A) "ACCREDITED THIRD PARTY CONFORMITY ASSESSMENT BODY" MEANS A TESTING LABORATORY THAT HAS AN ACCREDITATION:

(1) MEETING INTERNATIONAL ORGANIZATION FOR STANDARDIZATION/INTERNATIONAL ELECTROTECHNICAL COMMISSION STANDARD 17025:2005 ENTITLED 'GENERAL REQUIREMENTS FOR THE COMPETENCE OF TESTING AND CALIBRATION LABORATORIES' (OR ANY SUCCESSOR STANDARD);

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(2) FROM AN ACCREDITATION BODY THAT IS A SIGNATORY TO THE INTERNATIONAL LABORATORY ACCREDITATION COOPERATION MUTUAL RECOGNITION ARRANGEMENT; AND

(3) THAT INCLUDES TESTING FOR PERFORMANCE-ENHANCING DRUGS WITHIN THE SCOPE OF THE ACCREDITATION.

(B) "PERFORMANCE-ENHANCING DRUG" MEANS ANY SUBSTANCE CAPABLE OF AFFECTING THE PERFORMANCE OF A HORSE AT ANY TIME BY ACTING ON THE NERVOUS SYSTEM, CARDIOVASCULAR SYSTEM, RESPIRATORY SYSTEM, DIGESTIVE SYSTEM, URINARY SYSTEM, REPRODUCTIVE SYSTEM, MUSCULOSKELETAL SYSTEM, BLOOD SYSTEM, IMMUNE SYSTEM (OTHER THAN LICENSED VACCINES AGAINST INFECTIOUS AGENTS), OR ENDOCRINE SYSTEM OF THE HORSE, INCLUDING THE SUBSTANCES LISTED IN THE ALPHABETIZED LISTING OF DRUGS IN THE JANUARY 2010 REVISION OF THE ASSOCIATION OF RACING COMMISSIONERS INTERNATIONAL, INC., PUBLICATION ENTITLED "UNIFORM CLASSIFICATION GUIDELINES FOR FOREIGN SUBSTANCES".

2. PROHIBITION ON ENTERING HORSES UNDER THE INFLUENCE OF PERFORMANCE-ENHANCING DRUGS IN NEW YORK STATE RACES. A PERSON SHALL NOT:

(A) ENTER A HORSE IN A RACE IN THE STATE OF NEW YORK IF THE PERSON KNOWS THE HORSE IS UNDER THE INFLUENCE OF A PERFORMANCE-ENHANCING DRUG; OR

(B) KNOWINGLY PROVIDE A HORSE WITH A PERFORMANCE-ENHANCING DRUG IF THE HORSE, WHILE UNDER THE INFLUENCE OF THE DRUG, WILL PARTICIPATE IN A RACE IN THE STATE OF NEW YORK.

3. REGULATIONS OF THE HOST RACING ASSOCIATION BANNING PERFORMANCE-ENHANCING DRUGS. A HOST RACING ASSOCIATION MAY NOT CONDUCT A HORSERACE IN THE STATE OF NEW YORK UNLESS THE HOST RACING ASSOCIATION HAS A POLICY IN PLACE THAT:

(A) BANS ANY PERSON FROM PROVIDING A HORSE WITH A PERFORMANCE-ENHANCING DRUG IF THE HORSE WILL PARTICIPATE IN SUCH A HORSERACE IN THE STATE OF NEW YORK WHILE UNDER THE INFLUENCE OF THE DRUG;

(B) BANS THE RACING OF A HORSE IN THE STATE OF NEW YORK THAT IS UNDER THE INFLUENCE OF A PERFORMANCE-ENHANCING DRUG;

(C) REQUIRES, FOR EACH HORSERACE IN THE STATE OF NEW YORK, THAT AN ACCREDITED THIRD PARTY CONFORMITY ASSESSMENT BODY TEST FOR ANY PERFORMANCE-ENHANCING DRUG THE FIRST-PLACE HORSE IN THE RACE AND ONE ADDITIONAL HORSE, TO BE RANDOMLY SELECTED FROM THE OTHER HORSES PARTICIPATING IN THE RACE;

(D) REQUIRES THE ACCREDITED THIRD PARTY CONFORMITY ASSESSMENT BODY PERFORMING TESTS DESCRIBED IN PARAGRAPH (C) OF THIS SUBDIVISION TO REPORT ANY TEST RESULTS DEMONSTRATING THAT A HORSE MAY PARTICIPATE, OR MAY HAVE PARTICIPATED, IN A HORSERACE IN THE STATE OF NEW YORK WHILE UNDER THE INFLUENCE OF A PERFORMANCE-ENHANCING DRUG TO THE NEW YORK STATE RACING AND WAGERING BOARD.

4. CIVIL PENALTIES. A PERSON THAT PROVIDES A HORSE WITH A PERFORMANCE-ENHANCING DRUG OR RACES A HORSE IN THE STATE OF NEW YORK IN VIOLATION SHALL BE SUBJECT TO THE FOLLOWING CIVIL PENALTIES:

(A) FOR THE FIRST SUCH VIOLATION: A CIVIL PENALTY OF NOT LESS THAN FIVE THOUSAND DOLLARS AND SUSPENSION FOR A PERIOD OF NOT LESS THAN ONE HUNDRED EIGHTY DAYS FROM ALL ACTIVITIES RELATING TO ANY HORSERACE IN THE STATE OF NEW YORK;

(B) FOR THE SECOND SUCH VIOLATION: A CIVIL PENALTY OF NOT LESS THAN TWENTY THOUSAND DOLLARS AND SUSPENSION FOR A PERIOD OF NOT LESS THAN ONE YEAR FROM ALL ACTIVITIES RELATING TO ANY HORSERACE IN THE STATE OF NEW YORK; AND

(C) FOR THE THIRD OR SUBSEQUENT SUCH VIOLATION: A CIVIL PENALTY OF NOT LESS THAN FIFTY THOUSAND DOLLARS AND PERMANENT BANISHMENT FROM ALL ACTIVITIES RELATING TO ANY HORSERACE IN THE STATE OF NEW YORK.

5. PAYMENT OF CIVIL PENALTIES. A CIVIL PENALTY IMPOSED UNDER THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION SHALL BE PAID TO THE STATE OF NEW YORK WITHOUT REGARD TO WHETHER THE IMPOSITION OF THE PENALTY RESULTS FROM THE INITIATION OF A CIVIL ACTION PURSUANT TO THE PROVISIONS OF SUBDIVISION NINE OF THIS SECTION.

6. SUSPENSION OF HORSES. A HORSE THAT IS PROVIDED WITH A PERFORMANCE-ENHANCING DRUG OR IS RACED IN VIOLATION SHALL:

(A) FOR THE FIRST SUCH VIOLATION, BE SUSPENDED FOR A PERIOD OF NOT LESS THAN ONE HUNDRED EIGHTY DAYS FROM RACING IN ANY HORSERACE IN THE STATE OF NEW YORK;

(B) FOR THE SECOND SUCH VIOLATION, BE SUSPENDED FOR A PERIOD OF NOT LESS THAN ONE YEAR FROM RACING IN ANY HORSERACE IN THE STATE OF NEW YORK; AND

(C) FOR THE THIRD OR SUBSEQUENT SUCH VIOLATION, BE SUSPENDED FOR A PERIOD OF NOT LESS THAN TWO YEARS FROM RACING IN ANY HORSERACE IN THE STATE OF NEW YORK.

7. ENFORCEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE NEW YORK STATE RACING AND WAGERING BOARD SHALL HAVE THE AUTHORITY TO ENFORCE THE PROVISIONS OF THIS SECTION.

8. RULEMAKING. THE NEW YORK STATE RACING AND WAGERING BOARD SHALL PRESCRIBE SUCH RULES AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION.

9. PRIVATE RIGHT OF ACTION FOR CERTAIN VIOLATIONS. NOTWITHSTANDING ANY OTHER SECTION, IN ANY CASE IN WHICH A PERSON HAS REASON TO BELIEVE THAT AN INTEREST OF THAT PERSON IS THREATENED OR ADVERSELY AFFECTED BY THE ENGAGEMENT OF ANOTHER PERSON IN A PRACTICE THAT VIOLATES A PROVISION OF THIS SECTION OR A RULE PRESCRIBED UNDER THIS SECTION THE PERSON MAY BRING A CIVIL ACTION IN AN APPROPRIATE COURT OF COMPETENT JURISDICTION:

(A) TO ENJOIN THE PRACTICE;

(B) TO ENFORCE COMPLIANCE WITH THE PROVISION OR RULE;

(C) TO ENFORCE THE PENALTIES PROVIDED FOR IN THIS SUBDIVISION;

(D) TO OBTAIN DAMAGES OR RESTITUTION, INCLUDING COURT COSTS AND REASONABLE ATTORNEY AND EXPERT WITNESS FEES; AND

(E) TO OBTAIN SUCH OTHER RELIEF AS THE COURT CONSIDERS APPROPRIATE.

S 3. This act shall take effect immediately and shall apply to all horseraces occurring on or after such effective date.