

835

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. ESPAILLAT -- read twice and ordered printed, and when printed to be committed to the Committee on Racing, Gaming and Wagering

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:

1 Section 1. Legislative intent. The use of performance-enhancing drugs
2 in horseracing threatens the safety and welfare of horses and jockeys,
3 creates unfair competition, deceives horse buyers and the wagering
4 public. The use of performance-enhancing drugs in horseracing is not
5 permitted in most jurisdictions outside the United States. The United
6 States stands alone in its permissive use of performance-enhancing drugs
7 and New York is no exception. In New York State the use of performance-
8 enhancing drugs is illegal in every sport other than horseracing. The
9 purpose of this legislation is to insure that the use of performance-en-
10 hancing drugs in horseraces is prohibited in the State of New York.
11 S 2. The racing, pari-mutuel wagering and breeding law is amended by
12 adding a new section 902-a to read as follows:
13 S 902-A. PROHIBITIONS ON USE OF PERFORMANCE-ENHANCING DRUGS. 1. DEFINI-
14 TIONS. AS USED IN THIS SECTION:
15 (A) "ACCREDITED THIRD PARTY CONFORMITY ASSESSMENT BODY" MEANS A TEST-
16 ING LABORATORY THAT HAS AN ACCREDITATION:
17 (1) MEETING INTERNATIONAL ORGANIZATION FOR STANDARDIZATION/
18 INTERNATIONAL ELECTROTECHNICAL COMMISSION STANDARD 17025:2005 ENTITLED
19 'GENERAL REQUIREMENTS FOR THE COMPETENCE OF TESTING AND CALIBRATION
20 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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1 (2) FROM AN ACCREDITATION BODY THAT IS A SIGNATORY TO THE
2 INTERNATIONAL LABORATORY ACCREDITATION COOPERATION MUTUAL RECOGNITION
3 ARRANGEMENT; AND

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

6 (B) "PERFORMANCE-ENHANCING DRUG" MEANS ANY SUBSTANCE CAPABLE OF
7 AFFECTING THE PERFORMANCE OF A HORSE AT ANY TIME BY ACTING ON THE NERV-
8 OUS SYSTEM, CARDIOVASCULAR SYSTEM, RESPIRATORY SYSTEM, DIGESTIVE SYSTEM,
9 URINARY SYSTEM, REPRODUCTIVE SYSTEM, MUSCULOSKELETAL SYSTEM, BLOOD
10 SYSTEM, IMMUNE SYSTEM (OTHER THAN LICENSED VACCINES AGAINST INFECTIOUS
11 AGENTS), OR ENDOCRINE SYSTEM OF THE HORSE, INCLUDING THE SUBSTANCES
12 LISTED IN THE ALPHABETIZED LISTING OF DRUGS IN THE JANUARY 2010 REVISION
13 OF THE ASSOCIATION OF RACING COMMISSIONERS INTERNATIONAL, INC., PUBLICA-
14 TION ENTITLED "UNIFORM CLASSIFICATION GUIDELINES FOR FOREIGN
15 SUBSTANCES".

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

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

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

24 3. REGULATIONS OF THE HOST RACING ASSOCIATION BANNING PERFORMANCE-EN-
25 HANCING DRUGS. A HOST RACING ASSOCIATION MAY NOT CONDUCT A HORSERACE IN
26 THE STATE OF NEW YORK UNLESS THE HOST RACING ASSOCIATION HAS A POLICY IN
27 PLACE THAT:

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

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

33 (C) REQUIRES, FOR EACH HORSERACE IN THE STATE OF NEW YORK, THAT AN
34 ACCREDITED THIRD PARTY CONFORMITY ASSESSMENT BODY TEST FOR ANY PERFOR-
35 MANCE-ENHANCING DRUG THE FIRST-PLACE HORSE IN THE RACE AND ONE ADDI-
36 TIONAL HORSE, TO BE RANDOMLY SELECTED FROM THE OTHER HORSES PARTICIPAT-
37 ING IN THE RACE;

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (A) TO ENJOIN THE PRACTICE;

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

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

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

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

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