STATE OF NEW YORK

6142

2019-2020 Regular Sessions

IN SENATE

May 17, 2019

Introduced by Sen. ADDABBO -- 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 equine drug testing standards

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The racing, pari-mutuel wagering and breeding law is amended by adding a new article 11-A to read as follows:

ARTICLE XI-A

INTERSTATE COMPACT ON ANTI-DOPING AND DRUG TESTING STANDARDS

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§ 1113. Purposes. The purposes of the compact are:

a. To enable member states to act jointly and cooperatively to create more uniform, effective, and efficient breed specific rules and regulations relating to the permitted and prohibited use of drugs and medications for the health and welfare of the horse and the integrity of

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

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racing, and testing for such substances, in or affecting a member state; and

b. To authorize the New York state gaming commission to participate in the compact.

§ 1114. Definitions. For the purposes of this article, the following terms shall have the following meanings:

a. "Compact commission" means the organization of delegates from the member states that is authorized and empowered by the compact to carry out the purposes of the compact;

b. "Compact rule" means a rule or regulation adopted by a member state regulating the permitted and prohibited use of drugs and medications for the health and welfare of the horse and the integrity of racing, and testing for such substances, in live pari-mutuel horse racing that occurs in or affects such states;

c. "Delegate" means the chairperson of the member state racing commission or similar regulatory body in a state, or such person's designee, who represents the member state, as a voting member of the compact commission and anyone who is serving as such person's alternate;

d. "Equine drug rule" means a rule or regulation that relates to the administration of drugs, medications, or other substances to a horse that may participate in live horse racing with pari-mutuel wagering including, but not limited to, the regulation of the permissible use of such substances to ensure the integrity of racing and the health, safety and welfare of race horses, appropriate sanctions for rule violations, and quality laboratory testing programs to detect such substances in the bodily system of a race horse;

e. "Live racing" means live horse racing with pari-mutuel wagering;

f. "Member state" means each state that has enacted the compact;

g. "National industry stakeholder" means a non-governmental organization that from a national perspective significantly represents one or more categories of participants in live racing and pari-mutuel wagering;

h. "Participants in live racing" means all persons who participate in, operate, provide industry services for, or are involved with live racing with pari-mutuel wagering;

i. "State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory or possession of the United States; and

j. "State racing commission" means the state racing commission, or its equivalent, in each member state. Where a member state has more than one, it shall mean all such racing commissions, or their equivalents.

§ 1115. Composition and meetings of compact commission. The member states shall create and participate in a compact commission as follows:

a. The compact shall come into force when enacted by any two eligible states, and shall thereafter become effective as to any other member state that enacts the compact. Any state that has adopted or authorized pari-mutuel wagering or live horse racing shall be eligible to become a party to the compact. A compact rule shall not become effective in a new member state based merely upon it entering the compact.

b. The member states hereby create the interstate anti-doping and drug testing standards compact commission, a body corporate and an interstate governmental entity of the member states, to coordinate the rule making actions of each member state racing commission through a compact commission.

c. The compact commission shall consist of one delegate, the chairperson of the state racing commission or such person's designee, from each member state. When a delegate is not present to perform any duty in

the compact commission, a designated alternate may serve. The person who represents a member state in the compact commission shall serve and perform such duties without compensation or remuneration; provided, that subject to the availability of budgeted funds, each may be reimbursed for ordinary and necessary costs and expenses. The designation of a delegate, including the alternate, shall be effective when written notice has been provided to the compact commission. The delegate, including the alternate, must be a member or employee of the state racing commission.

d. The compact delegate from each state shall participate as an agent of the state racing commission. Each delegate shall have the assistance of the state racing commission in regard to all decision making and actions of the state in and through the compact commission.

e. Each member state, by its delegate, shall be entitled to one vote in the compact commission. A majority vote of the total number of delegates shall be required to propose a compact rule, receive and distribute any funds, and to adopt, amend, or rescind the by-laws. A compact rule shall take effect in and for each member state when adopted by a super majority vote of eighty percent of the total number of member states. Other compact actions shall require a majority vote of the delegates who are meeting.

f. Meetings and votes of the compact commission may be conducted in person or by telephone or other electronic communication. Meetings may be called by the chairperson of the compact commission or by any two delegates. Reasonable notice of each meeting shall be provided to all delegates serving in the compact commission.

g. No action may be taken at a compact commission meeting unless there is a quorum, which is either a majority of the delegates in the compact commission, or where applicable, all the delegates from any member states who propose or are voting affirmatively to adopt a compact rule.

h. Once effective, the compact shall continue in force and remain binding according to its terms upon each member state; provided that, a member state may withdraw from the compact by repealing the statute that enacted the compact into law. The racing commission of a withdrawing state shall give written notice of such withdrawal to the compact chairperson, who shall notify the member state racing commissions. A withdrawing state shall remain responsible for any unfulfilled obligations and liabilities. The effective date of withdrawal from the compact shall be the effective date of the repeal.

§ 1116. Operation of compact commission. The compact commission is hereby granted, so that it may be an effective means to pursue and achieve the purposes of each member state in the compact, the power and duty:

a. to adopt, amend, and rescind by-laws to govern its conduct, as may be necessary or appropriate to carry out the purposes of the compact; to publish them in a convenient form; and to file a copy of them with the state racing commission of each member state;

b. to elect annually from among the delegates, including alternates, a chairperson, vice-chairperson, and treasurer with such authority and duties as may be specified in the by-laws;

c. to establish and appoint committees which it deems necessary for the carrying out of its functions, including advisory committees which shall be comprised of national industry stakeholders and organizations and such other persons as may be designated in accordance with the by-laws, to obtain their timely and meaningful input into the compact rule making processes;

d. to establish an executive committee, with membership established in the by-laws, which shall oversee the day-to-day activities of compact administration and management by the executive director and staff; hire and fire as may be necessary after consultation with the compact commission; administer and enforce compliance with the provisions, by-laws, and rules of the compact; and perform such other duties as the by-laws may establish;

e. to create, appoint, and abolish all those offices, employments, and positions, including an executive director, useful to fulfill its purposes;

f. to delegate day-to-day management and administration of its duties, as needed, to an executive director and support staff; and

g. to adopt an annual budget sufficient to provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities; provided, that the budget shall be funded by only voluntary contributions.

§ 1117. General powers and duties. To allow each member state, as and when it chooses, to achieve the purpose of the compact through joint and cooperative action, the member states are hereby granted the power and duty, by and through the compact commission:

a. to act jointly and cooperatively to create a more equitable and uniform pari-mutuel racing and wagering interstate regulatory framework by the adoption of standardized rules for the permitted and prohibited use of drugs and medications for the health, and welfare of the horse and the integrity of racing, including rules governing the use of drugs and medications and drug testing;

b. to collaborate with national industry stakeholders and industry organizations, including the Association of Racing Commissioners International, Inc. and the Racing Medication and Testing Consortium, in the design and implementation of compact rules in a manner that serves the best interests of racing; and

c. to propose and adopt breed specific compact equine drugs and medications rules for the health, and welfare of the horse, including rules governing the permitted and prohibited use of drugs and medications and drug testing, which shall have the force and effect of state rules or regulations in the member states, to govern live pari-mutuel horse racing.

§ 1118. Other powers and duties. The compact commission may exercise such incidental powers and duties as may be necessary and proper for it to function in a useful manner, including but not limited to the power and duty:

a. to enter into contracts and agreements with governmental agencies and other persons, including officers and employees of a member state, to provide personal services for its activities and such other services as may be necessary;

b. to borrow, accept, and contract for the services of personnel from any state, federal, or other governmental agency, or from any other person or entity;

c. to receive information from and to provide information to each member state racing commission, including its officers and staff, on such terms and conditions as may be established in the by-laws;

d. to acquire, hold, and dispose of any real or personal property by gift, grant, purchase, lease, license, and similar means and to receive additional funds through gifts, grants, and appropriations;

e. when authorized by a compact rule, to conduct hearings and render reports and advisory decisions and orders; and

f. to establish in the by-laws the requirements that shall describe and govern its duties to conduct open or public meetings and to provide public access to compact records and information.

§ 1119. Compact rule making. In the exercise of its rule making authority, the compact commission shall:

a. engage in formal rule making pursuant to a process that substantially conforms to the Model State Administrative Procedure Act of 1981 as amended, as may be appropriate to the actions and operations of the compact commission;

b. gather information and engage in discussions with advisory committees, national industry stakeholders, and others, including an opportunity for industry organizations to submit input to member state racing commissions on the state level, to foster, promote and conduct a collaborative approach in the design and advancement of compact rules in a manner that serves the best interests of racing and as established in the by-laws;

c. direct the publication in each member state of each equine drug rule proposed by the compact commission, conduct a review of public comments received by each member state racing commission and the compact commission in response to the publication of its rule making proposals, consult with national industry stakeholders and participants in live racing with regard to such process and any revisions to the compact rule proposal, and meet upon the completion of the public comment period to conduct a vote on the adoption of the proposed compact rule as a state rule in the member states; and

d. have a standing committee that reviews at least quarterly the participation in and value of compact rules and, when it determines that a revision is appropriate or when requested to by any member state, submits a revising proposed compact rule. To the extent a revision would only add or remove a member state or states from where a compact rule has been adopted, the vote required by this section shall be required of only such state or states. The standing committee shall gather information and engage in discussions with national industry stakeholders, who may also directly recommend a compact rule proposal or revision to the compact committee.

§ 1120. Status and relationship to member states. a. The compact commission, as an interstate governmental entity, shall be exempt from all taxation in and by the member states.

b. The compact commission shall not pledge the credit of any member state except by and with the appropriate legal authority of that state.

c. Each member state shall reimburse or otherwise pay the expenses of its delegate, including any alternate, in the compact commission.

d. No member state, except as provided in section eleven hundred twenty-three of this article, shall be held liable for the debts or other financial obligations incurred by the compact commission.

e. No member state shall have, while it participates in the compact commission, any claim to or ownership of any property held by or vested in the compact commission or to any compact commission funds held pursuant to the compact except for state license or other fees or moneys collected by the compact commission as its agent.

f. The compact dissolves upon the date of the withdrawal of the member state that reduces membership in the compact to one state. Upon dissolution, the compact becomes null and void and shall be of no further force or effect, although equine drug rules adopted through the compact shall remain state rules in each member state that had adopted them, and the business and affairs of the compact shall be concluded and any

surplus funds shall be distributed to the former member states in accordance with the by-laws.

§ 1121. Rights and responsibilities of member states. a. Each member state in the compact shall accept the decisions, duly applicable to it, of the compact commission in regard to compact rules and rule making.

b. The compact shall not be construed to diminish or limit the powers and responsibilities of the member state racing commission or similar regulatory body, or to invalidate any action it has previously taken, except to the extent it has, by its compact delegate, expressed its consent to a specific rule or other action of the compact commission. The compact delegate from each state shall serve as the agent of the state racing commission and shall possess substantial knowledge and experience as a regulator or participant in the horse racing industry.

§ 1122. Enforcement of compact. a. The compact commission shall have standing to intervene in any legal action that pertains to the subject matter of the compact and might affect its powers, duties, or actions.

b. The courts and executive in each member state shall enforce the compact and take all actions necessary and appropriate to effectuate its purposes and intent. Compact provisions, by-laws, and rules shall be received by all judges, departments, agencies, bodies, and officers of each member state and its political subdivisions as evidence of them.

§ 1123. Legal actions against compact. a. Any person may commence a claim, action, or proceeding against the compact commission in state court for damages. The compact commission shall have the benefit of the same limits of liability, defenses, rights to indemnity and defense by the state, and other legal rights and defenses for non-compact matters of the state racing commission in the state. All legal rights and defenses that arise from the compact shall also be available to the compact commission.

b. A compact delegate, alternate, or other member or employee of a state racing commission who undertakes compact activities or duties does so in the course of business of their state racing commission, and shall have the benefit of the same limits of liability, defenses, rights to indemnity and defense by the state, and other legal rights and defenses for non-compact matters of state employees in their state. The executive director and other employees of the compact commission shall have the benefit of these same legal rights and defenses of state employees in the member state in which they are primarily employed. All legal rights and defenses that arise from the compact shall also be available to them.

c. Each member state shall be liable for and pay judgments filed against the compact commission to the extent related to its participation in the compact. Where liability arises from action undertaken jointly with other member states, the liability shall be divided equally among the states for whom the applicable action or omission of the executive director or other employees of the compact commission was undertaken; and no member state shall contribute to or pay, or be jointly or severally or otherwise liable for, any part of any judgment beyond its share as determined in accordance with this section.

§ 1124. Restrictions on authority. a. New York substantive state laws applicable to pari-mutuel horse racing and wagering shall remain in full force and effect.

b. Compact rules shall not preclude subsequent rulemaking in New York state on the same or related matter. The most recently adopted rule shall thereby become the governing law.

c. New York state shall not participate in or apply this interstate compact to any aspect of standardbred racing.

§ 1125. Construction, savings and severability. a. The compact shall be liberally construed so as to effectuate its purposes. The provisions of the compact shall be severable and if any phrase, clause, sentence, or provision of the compact is declared to be contrary to the constitution of the United States or of any member state, or the applicability of the compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of the compact and its applicability to any government, agency, person, or circumstance shall not be affected. If all or some portion of the compact is held to be contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the state affected as to all severable matters.

b. In the event of any allegation, finding, or ruling against the compact or its procedures or actions, provided that a member state has followed the compact's stated procedures, any rule it purported to adopt using the procedures of this statute shall constitute a duly adopted and valid state rule.

§ 2. This act shall take effect immediately.