

# STATE OF NEW YORK

8106--A

2019-2020 Regular Sessions

## IN ASSEMBLY

June 3, 2019

Introduced by M. of A. WOERNER -- read once and referred to the Committee on Racing and Wagering -- 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 thoroughbred 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

##### Section 1113. Purposes.

##### 1114. Definitions.

##### 1115. Composition and meetings of compact commission.

##### 1116. Operation of compact commission.

##### 1117. General powers and duties.

##### 1118. Other powers and duties.

##### 1119. Compact rule making.

##### 1120. Status and relationship to member states.

##### 1121. Rights and responsibilities of member states.

##### 1122. Enforcement of compact.

##### 1123. Legal actions against compact.

##### 1124. Restrictions on authority.

##### 1125. Construction, savings and severability.

##### § 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.

LBD11768-02-9

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

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

5 § 1114. Definitions. For the purposes of this article, the following  
6 terms shall have the following meanings:

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

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

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

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

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

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

31 g. "National industry stakeholder" means a non-governmental organiza-  
32 tion that from a national perspective significantly represents one or  
33 more categories of participants in live thoroughbred racing and pari-mu-  
34 tuel wagering;

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

38 i. "State" means each of the several states of the United States, the  
39 District of Columbia, the Commonwealth of Puerto Rico, and each territo-  
40 ry or possession of the United States; and

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

44 § 1115. Composition and meetings of compact commission. The member  
45 states shall create and participate in a compact commission as follows:

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

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

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

1 and such other persons as may be designated in accordance with the  
2 by-laws, to obtain their timely and meaningful input into the compact  
3 rule making processes;

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

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

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

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

20 § 1117. General powers and duties. To allow each member state, as and  
21 when it chooses, to achieve the purpose of the compact through joint and  
22 cooperative action, the member states are hereby granted the power and  
23 duty, by and through the compact commission:

24 a. to act jointly and cooperatively to create a more equitable and  
25 uniform pari-mutuel thoroughbred racing and wagering interstate regula-  
26 tory framework by the adoption of standardized rules for the permitted  
27 and prohibited use of drugs and medications for the health, and welfare  
28 of the thoroughbred horse and the integrity of thoroughbred racing,  
29 including rules governing the use of drugs and medications and drug  
30 testing; and

31 b. to propose and adopt breed specific compact equine drugs and medi-  
32 cations rules for the health, and welfare of the thoroughbred horse,  
33 including rules governing the permitted and prohibited use of drugs and  
34 medications and drug testing, which shall have the force and effect of  
35 state rules or regulations in the member states, to govern live pari-mu-  
36 tuel thoroughbred horse racing.

37 § 1118. Other powers and duties. The compact commission may exercise  
38 such incidental powers and duties as may be necessary and proper for it  
39 to function in a useful manner, including but not limited to the power  
40 and duty:

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

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

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

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

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

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

4 § 1119. Compact rule making. In the exercise of its rule making  
5 authority, the compact commission shall:

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

10 b. gather information and engage in discussions with advisory commit-  
11 tees, national industry stakeholders, and others, including an opportu-  
12 nity for industry organizations to submit input to member state racing  
13 commissions on the state level, to foster, promote and conduct a colla-  
14 borative approach in the design and advancement of compact rules in a  
15 manner that serves the best interests of thoroughbred racing and as  
16 established in the by-laws;

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

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

36 § 1120. Status and relationship to member states. a. The compact  
37 commission, as an interstate governmental entity, shall be exempt from  
38 all taxation in and by the member states.

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

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

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

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

51 f. The compact dissolves upon the date of the withdrawal of the member  
52 state that reduces membership in the compact to one state. Upon dissol-  
53 ution, the compact becomes null and void and shall be of no further  
54 force or effect, although thoroughbred equine drug rules adopted through  
55 the compact shall remain state rules in each member state that had  
56 adopted them, and the business and affairs of the compact shall be



1 concluded and any surplus funds shall be distributed to the former  
2 member states in accordance with the by-laws.

3 § 1121. Rights and responsibilities of member states. a. Each member  
4 state in the compact shall accept the decisions, duly applicable to it,  
5 of the compact commission in regard to compact rules and rule making.

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

15 § 1122. Enforcement of compact. a. The compact commission shall have  
16 standing to intervene in any legal action that pertains to the subject  
17 matter of the compact and might affect its powers, duties, or actions.

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

23 § 1123. Legal actions against compact. a. Any person may commence a  
24 claim, action, or proceeding against the compact commission in state  
25 court for damages. The compact commission shall have the benefit of the  
26 same limits of liability, defenses, rights to indemnity and defense by  
27 the state, and other legal rights and defenses for non-compact matters  
28 of the state racing commission in the state. All legal rights and  
29 defenses that arise from the compact shall also be available to the  
30 compact commission.

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

42 c. Each member state shall be liable for and pay judgments filed  
43 against the compact commission to the extent related to its partic-  
44 ipation in the compact. Where liability arises from action undertaken  
45 jointly with other member states, the liability shall be divided equally  
46 among the states for whom the applicable action or omission of the exec-  
47 utive director or other employees of the compact commission was under-  
48 taken; and no member state shall contribute to or pay, or be jointly or  
49 severally or otherwise liable for, any part of any judgment beyond its  
50 share as determined in accordance with this section.

51 § 1124. Restrictions on authority. a. New York substantive state laws  
52 applicable to pari-mutuel thoroughbred horse racing and wagering shall  
53 remain in full force and effect.

54 b. Compact rules shall not preclude subsequent rulemaking in New York  
55 state on the same or related matter as set forth in section nine hundred

1 two of this chapter. The most recently adopted rule shall thereby become  
2 the governing law.

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

5 § 1125. Construction, savings and severability. a. The compact shall  
6 be liberally construed so as to effectuate its purposes. The provisions  
7 of the compact shall be severable and if any phrase, clause, sentence,  
8 or provision of the compact is declared to be contrary to the constitu-  
9 tion of the United States or of any member state, or the applicability  
10 of the compact to any government, agency, person, or circumstance is  
11 held invalid, the validity of the remainder of the compact and its  
12 applicability to any government, agency, person, or circumstance shall  
13 not be affected. If all or some portion of the compact is held to be  
14 contrary to the constitution of any member state, the compact shall  
15 remain in full force and effect as to the remaining member states and in  
16 full force and effect as to the state affected as to all severable  
17 matters.

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

23 § 2. This act shall take effect immediately.