

Memorandum in Support

COMMITTEE ON ANIMALS AND THE LAW

Animals #20

March 19, 2020

S. 7509-A – Part W

By: Budget Bill

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Senate Committee: Finance

Assembly Committee: Ways and Means

Effective Date: Immediately

AN ACT to amend the Racing, Pari-Mutuel Wagering and Breeding Law, in relation to enacting the interstate compact on anti-doping and drug testing standards (Part W).

LAW & SECTION REFERRED TO: Racing, Pari-Mutuel Wagering and Breeding Law Article XI-A, The Interstate Compact on Anti-Doping and Drug Testing Standards.

THE COMMITTEE ON ANIMALS AND THE LAW **SUPPORTS THIS LEGISLATION**

This section (Part W) of the Revenue Bill submitted as part of the governor's 2020-21 budget would amend the Racing, Pari-Mutuel Wagering and Breeding Law by adding new Article XI-A, The Interstate Compact on Anti-Doping and Drug Testing Standards, §§ 1113 to 1125 of the Racing, Pari-Mutuel Wagering and Breeding Law.

New §1113 of the Racing, Pari-Mutuel Wagering and Breeding Law sets out the purpose of compact, which provides for uniform rules regulating the use of drugs in racehorses, and authorizes New York State to participate in the compact. The rules intended to be established by the compact for the use of drugs in racing will be adopted by a compact commission, authorized by this bill in New York and similar bills in the other compact states. The remaining sections of the bill set forth the representation from each participating state on the compact commission, and establish the operating rules for the compact commission to ensure that each participating state has a vote in the internal operations and final rules adopted through the compact.

The proposed §1117 provides a clear statement of the purpose of the compact commission, and provides for the compact commission to adopt standardized rules for permitted and prohibited use of drugs and medications for the health and welfare of the horse and the integrity of racing, and further provides for rules governing the use of drugs, medications, and drug testing. These rules, which will be effective in all the compact states, are intended to be designed and implemented in collaboration with national industry stakeholders and industry organizations in order to serve the best interests of racing. The collaborative nature of compact determinations is further emphasized in new §1119, which requires the compact commission to gather information

and engage in discussions with advisory committees, national industry stakeholders, and others, and provide an opportunity for industry organizations to submit input to the racing commissions of the states that participate in the compact; racing commissions in participating states are given an opportunity to provide information to the compact commission, and §1118 of the legislation explicitly authorizes the adoption of commission bylaws that will provide for an exchange of information between the compact commission and the individual racing commissions of the participating states.

The Mid-Atlantic Interstate Equine Drug Testing Compact, the focus of this Part W, was created in order to provide a structure for the adoption and implementation of uniform laboratory drug testing rules, regulations and procedures on a regional basis, instead of having each state in the Mid-Atlantic region adopt their own standards and regulations. Under the Mid-Atlantic Compact that would be authorized for New York by this legislation, the seven states in the Mid-Atlantic region (New Jersey, Pennsylvania, Delaware, Maryland, Virginia and West Virginia, in addition to New York) will participate together in the compact commission, to consider and adopt uniform rules and regulations relating to permitted thoroughbred equine medication practices, prohibited practices, and standardized drug testing rules. This Mid-Atlantic region has the highest concentration of racetracks in the country, located within a 200-mile radius, and is uniquely positioned to move the industry toward uniformity in rules.

Much of the impetus for multi-state rules for medication use and testing came from the issuance of the 2012 report from the New York Task Force on Racehorse Health and Safety. The task force was created to investigate racehorse deaths at Aqueduct Race Track from November 30, 2011 – March 18, 2012; the deaths in that period of time were about double the number recorded in the previous two years and exceeded the North American average for racing facilities. Equine drug use was identified at the beginning of the task force deliberations as one of the factors that the task force should examine, and their final report included a number of recommendations related to use or prohibited use of certain drugs, or prohibitions on use of certain drugs within specified time periods before a horse will race. An intermediate step was taken when eight states in the Mid-Atlantic and New England regions agreed to adopt uniform medication rules for racehorses; the compact is a more formal agreement among the seven participating states in the Mid-Atlantic region (Massachusetts, part of the original group, is not included) to hold deliberations together and adopt rules and regulations on equine medications and testing procedures that will apply in all the states.

There is no disagreement that uniformity of the medication rules in the Mid-Atlantic region is a positive step for horses and jockeys; horse owners, groomers, trainers and veterinarians; and the racing public; uniformity is the stated goal of the compact. The compact commission is intended to adopt uniform rules and regulations on drug use and drug testing for all the states through a process that allows each participating state in the compact to have one vote in such determinations, and requires an 80% affirmative vote of all the participating states before any such rules are adopted by the compact commission – a provision added to the compact at the request of New York. However, individual states have been concerned with the loss of their ability to enact their own rules through their own state racing commissions, and the legislation seeks to address that concern by allowing individual states to enact their own rules, or to exempt a state from a rule adopted by the compact commission. These “exception” provisions may hinder the uniformity that the compact seeks to put in place for all participating states.

The sponsors of similar stand-alone legislation promote their bills with the assertion that: “[S]ince the issuance of the New York Task Force Report on Racehorse Health and Safety in 2012, New York's Thoroughbred industry has taken a leading role in drug, medication and drug testing reforms.” However, the March 9, 2020 federal felony indictments in Manhattan of more than two dozen racehorse trainers, veterinarians and drug distributors in connection with a broad scheme in which the defendants are alleged to have used prohibited equine medications to enhance horses’ performance, avoid detection in drug tests, and which resulted in unnecessary equine deaths, shows that we have a long way to go to adequately protect racehorses, in New York State and elsewhere.

The Mid-Atlantic compact requires the adoption of its provisions, and agreement to participate, from each of the states named as participants. Legislation has been enacted in Maryland and Delaware, and Virginia has authorized participation in the compact; legislation is currently introduced in New Jersey and Pennsylvania, and will be introduced in West Virginia during the 2020 legislative session. Legislation pending in Congress, the Horseracing Integrity Act, would set national standards for drug use and drug testing in racehorses; the federal bill, if passed, would pre-empt the Mid-Atlantic compact and any other similar regional agreement. However, until there is a national standard, New York should vote to join the Mid-Atlantic Compact, thereby continuing to take a leadership role in advancing the uniform standards for equine drug use and drug testing that will provide more protections for horses racing on tracks in this state and the other states that are part of the compact.

For the foregoing reasons, the Committee on Animals and the Law **SUPPORTS** the passage and enactment of this legislation.