



**Memorandum in Support**  
**COMMITTEE ON ANIMALS AND THE LAW**

Animals #22

February 29, 2024

S. 1960

By: Senator Addabbo

A. 270

By: M. of A. L. Rosenthal

Senate Committee: Racing, Gaming and Wagering

Assembly Committee: Racing and Wagering

Effective Date: Immediately and shall apply to all horseraces occurring on or after such effective date

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

**LAW & SECTION REFERRED TO:** New Section 902-a of the Racing, Pari-Mutuel Wagering and Breeding Law.

**THE COMMITTEE ON ANIMALS AND THE LAW**

**SUPPORTS THIS LEGISLATION**

This bill adds a new Section 902-a, entitled “Prohibitions on Use of Performance-Enhancing Drugs” to the Racing, Pari-Mutuel Wagering and Breeding Law. Importantly, the bill contains a legislative intent in the introductory Section 1, which, indeed tells a compelling story: “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 ensure that the use of performance-enhancing drugs in horseraces is prohibited in the State of New York.”<sup>1</sup>

The bill provides for civil penalties for a person that provides a horse with a performance-enhancing drug or races a horse in violation of the prohibition against performance-enhancing drugs: for a first violation, a fine not less than \$5,000 and suspension for not less than 180 days; for a second violation, a fine not less than \$20,000 and suspension for not less than one year; and for a third or subsequent violation, a fine not less than \$50,000 and permanent banishment from all activities related to any horserace in New York. The bill also provides that the

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<sup>1</sup> New York Senate Bill 1960 and Assembly Bill 270 of 2023, Section 1, lines 1-10.

horse, for a first violation, is suspended from racing in any horserace in the state of New York for not less than 180 days; for the second violation, is suspended for not less than one year, and for a third or subsequent violation, suspension of not less than two years. The bill provides for the Gaming Commission to have authority over enforcement and rulemaking necessary to carry out the bill's provisions. The bill also provides for a private right of action to seek enjoinder of a prohibited practice; to enforce compliance, to enforce penalties, and to obtain damages and/or restitution including recovery of costs, attorney and witness fees.

New York has long been a leader in enacting legislation that benefits animals and provides for their welfare, including laws prohibiting the slaughter of, not only its treasured racehorses, but all horses and Equidae of every shape and color. As its legislative intent states, this proposed legislation also protects the wagering public and the integrity of a sport in which total 2022 betting at NYS tracks from all sources reached \$714,652,285.<sup>2</sup> And the proposed legislation protects the health and welfare of the jockeys who ride these magnificent creatures at speeds in excess of 40 mph, where an October 20, 2022 study in the Journal of the American Veterinary Medical Association showed that “Horses recorded as being medicated with furosemide on race day were **at 62% increased odds** of sudden death compared to horses that were not racing on furosemide.”<sup>3</sup> For a jockey perched atop a speeding racehorse surrounded by a pack of thundering racehorses who may have also been administered this drug because a trainer valued a purse over the lives of horse and jockey, a 62% increased risk of the sudden death of the horse is a sobering thought.

Furosemide, brand name “Lasix” (*ie.* “lasts six hours”) is a diuretic that was approved for use in humans in 1964 and commonly prescribed to treat edemas triggered by heart, liver, or kidney disease. The controversy over the use of Lasix in horses began in the 1970's, when trainers began to administer it to Thoroughbred and Standardbred racehorses on race-day to enhance performance, since its diuretic properties can cause a horse to lose 20-30 pounds of water-weight while also concealing the bleeding nostrils that are a symptom of Exercise Induced Pulmonary Hemorrhage (“EIPH”) disease.

Although some will argue that EIPH bleeding is merely stress-related, the American College of Veterinary Internal Medicine's 2015 Consensus Statement, states: “The presence of lesions in lungs of horses with EIPH substantiates our strong recommendation that EIPH be considered a disease and not a variably manifested normal result of strenuous activity in horses.”<sup>4</sup> Notably, on September 1, 1995, New York became the last state to permit the use of race-day Lasix at its racetracks.<sup>5</sup> Now New York can take the lead and be the first state to ban it.

This legislation was first introduced in 2012,<sup>6</sup> long before there was any federal regulation of horseracing and the use of drugs in racing. Congress took that action in 2020, with the passage of the federal Horseracing Integrity and Safety Act (HISA), providing for the establishment of national, uniform rules related to Thoroughbred racing

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<sup>2</sup> See New York State Gaming Commission 2022 Annual Report. [https://www.gaming.ny.gov/pdf/annualReport\\_2022v3.pdf](https://www.gaming.ny.gov/pdf/annualReport_2022v3.pdf) (last accessed January 9, 2024).

<sup>3</sup> See “Fifteen risk factors associated with sudden death in Thoroughbred racehorses in North America (2009–2021),” by Euan D. Bennet PhD, MSci and Tim D. H. Parkin PhD, BVSc, Journal of the American Veterinary Medical Association, October 20, 2022. <https://doi.org/10.2460/javma.22.08.0358>.

<sup>4</sup> See “Exercise Induced Pulmonary Hemorrhage in Horses: American College of Veterinary Internal Medicine Consensus Statement,” K.W. Hinchcliff et al. Volume 29, Issue 3, First published: 21 May 2015, <https://doi.org/10.1111/jvim.12593> *J Vet Intern Med.* 2015 May-Jun; 29(3): 743–758 (last accessed January 9, 2024).

<sup>5</sup> See Commentary: New York Buckles And Allows Lasix Use, by Andrew Beyer, L.A. Times, May 28, 1995, <https://www.latimes.com/archives/la-xpm-1995-05-28-sp-6875-story.html> (last accessed January 9, 2024).

<sup>6</sup> S.5887 of 2012, introduced by Senator Thomas Duane.

in the U.S., including anti-doping rules, medication control and racetrack safety.<sup>7</sup> When fully implemented, the federal statute will preempt states from enacting legislation on matters that are covered by HISA.<sup>8</sup> However, HISA and the imposition of federal rules in horseracing has not been universally welcomed, and the constitutionality of HISA has been challenged in several court actions, some of which have not yet been resolved; it appears likely that HISA will be determined to be constitutional as several actions have decided. While the provisions of this bill that apply to Thoroughbreds may be preempted by HISA, that determination requires the court challenge to be decided.

Specific action has been taken by the HISA Authority on Lasix, one of the covered medications in the HISA Act; on June 21, 2023, HISA convened an Advisory Committee to oversee a three-year study on the use of Lasix on horses during the 48-hour period before the start of a race, which will include the effect on equine health and the integrity of competition; the Advisory Committee will relay their findings and recommendations to the HISA Board of Directors.<sup>9</sup> Any rule proposed by HISA must be approved by the Federal Trade Commission, the federal agency that oversees the operations of HISA.<sup>10</sup> At the earliest, no action on permitted or prohibited use of Lasix before a race will be considered until 2026.

When the federal government has not acted, states have filled the void and taken state legislative action to prevent harm. New York can, and should enact the restrictions on performance-enhancing drugs in S.1960 / A.270 to provide needed protections for New York horses and jockeys. If HISA is determined to preempt state action on medication use in Thoroughbred racehorses, it has no provision, and no protections, for Standardbred horses. This legislation will protect not just Thoroughbred horses racing in New York but also Standardbred horses, providing broader protection of racehorses than HISA can currently provide.

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

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<sup>7</sup> H.R. 1754, 116<sup>th</sup> Congress (2019-2020); enacting 15 USC Chapter 57A – Horseracing Integrity and Safety.

<sup>8</sup> 15 USC §3054 (b) Preemption. The rules of the Authority promulgated in accordance with this chapter shall preempt any provision of State law or regulation with respect to matters within the jurisdiction of the Authority under this chapter, as limited by subsection (j) [civil actions].

<sup>9</sup> Thoroughbred Daily News, June 21, 2023, <https://www.thoroughbreddailynews.com/hisas-lasix-advisory-committee-set/> (last accessed January 29, 2024); see also <https://www.thoroughbreddailynews.com/hisa-to-fund-three-scientific-studies-on-the-use-of-furosemide/> (last accessed February 6, 2024).

<sup>10</sup> See <https://hisaus.org/resources/anti-doping-and-medication-control-rules-subject-to-ftc-approval#resources> (last accessed January 30, 2024).

Opinions expressed are those of the Section/Committee preparing this memorandum and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.