

1 SENATE BILL 366

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Michael S. Sanchez

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10 AN ACT

11 RELATING TO HORSE RACING; PROHIBITING THE USE IN A RACEHORSE OF
12 ANY DRUG, CHEMICAL, STIMULANT, DEPRESSANT OR OTHER FOREIGN
13 SUBSTANCE OR ABNORMAL LEVELS OF NATURAL SUBSTANCES; RECONCILING
14 CONFLICTING AMENDMENTS TO THE SAME SECTION OF LAW BY REPEALING
15 LAWS 2013, CHAPTER 102, SECTION 2.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. A new section of the Horse Racing Act is
19 enacted to read:

20 "[NEW MATERIAL] PROHIBITED SUBSTANCES.--

21 A. It is a violation of the Horse Racing Act for a
22 racehorse present at a facility under the jurisdiction of the
23 commission to have in its system any level of a drug, chemical,
24 stimulant, depressant or other substance not naturally
25 occurring in a horse or to have in its system an abnormal level

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1 of a substance naturally occurring in a horse.

2 B. A racehorse identified in Subsection A of this
3 section shall be disqualified from racing until the commission
4 takes action against the appropriate licensee pursuant to its
5 adjudicatory authority."

6 SECTION 2. Section 60-1A-5 NMSA 1978 (being Laws 2007,
7 Chapter 39, Section 5, as amended) is amended to read:

8 "60-1A-5. COMMISSION RULES--ALL LICENSES--SUSPENSION,
9 REVOCATION OR DENIAL OF LICENSES--PENALTIES.--

10 A. The commission shall adopt rules to implement
11 the Horse Racing Act and to ensure that horse racing in New
12 Mexico is conducted with fairness and that the participants and
13 patrons are protected against illegal practices.

14 B. Every license issued by the commission shall
15 require the licensee to comply with the rules adopted by the
16 commission. A racetrack licensee shall post printed copies of
17 the rules in conspicuous places on the racing grounds and shall
18 maintain them during the period when live horse races are being
19 conducted.

20 C. The commission may suspend, revoke or deny
21 renewal of a license of a person who violates the provisions of
22 the Horse Racing Act or rules adopted pursuant to that act.
23 The commission shall provide a licensee facing suspension,
24 revocation or denial of renewal of a license reasonable notice
25 and an opportunity for a hearing. The suspension, revocation

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1 or denial of renewal of a license shall not relieve the
2 licensee from prosecution for the violations or from the
3 payment of fines and penalties assessed the licensee by the
4 commission.

5 D. The commission may impose civil penalty fines
6 upon a licensee for a violation of the provisions of the Horse
7 Racing Act or rules adopted by the commission. The fines shall
8 not exceed one hundred thousand dollars (\$100,000) or one
9 hundred percent of a purse related to the violation, whichever
10 is greater, for each violation.

11 E. Fines shall be paid into the current school
12 fund.

13 F. When a penalty is imposed pursuant to this
14 section for administering [~~a performance-altering substance~~] to
15 a racehorse a drug, chemical, stimulant, depressant or other
16 substance not naturally occurring in a horse, or an abnormal
17 level of a substance naturally occurring in a horse, as
18 provided in Subsection A of Section 60-1A-28 NMSA 1978, the
19 commission shall direct its executive director to report the
20 violation to the district attorney for the county in which the
21 violation occurred and to the horse racing licensing authority
22 in any other jurisdiction in which the licensee being penalized
23 is also licensed."

24 SECTION 3. Section 60-1A-11 NMSA 1978 (being Laws 2007,
25 Chapter 39, Section 11, as amended) is amended to read:

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1 "60-1A-11. GRANTING A LICENSE--STANDARDS.--

2 A. A license shall not be issued or renewed unless
3 the applicant has satisfied the commission that the applicant:

4 (1) is of good moral character, honesty and
5 integrity;

6 (2) does not currently have a license
7 suspended by a horse racing licensing authority in another
8 jurisdiction;

9 (3) does not have prior activities, criminal
10 record, reputation, habits or associations that:

11 (a) pose a threat to the public
12 interest;

13 (b) pose a threat to the effective
14 regulation and control of horse racing; or

15 (c) create or enhance the dangers of
16 unsuitable, unfair or illegal practices, methods and activities
17 in the conduct of horse racing, the business of operating a
18 horse racetrack licensed pursuant to the Horse Racing Act or
19 the financial activities incidental to operating a horse
20 racetrack;

21 (4) is qualified to be licensed consistent
22 with the Horse Racing Act;

23 (5) has sufficient business probity,
24 competence and experience in horse racing as determined by the
25 commission;

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1 (6) has proposed financing that is sufficient
2 for the nature of the license and from a suitable source that
3 meets the criteria set forth in this subsection; and

4 (7) is sufficiently capitalized pursuant to
5 standards set by the commission to conduct the business covered
6 by the license.

7 B. The commission shall establish by rule
8 additional qualifications for a licensee as it deems in the
9 public interest.

10 C. A person issued or applying for an occupational
11 license who has positive test results for a controlled
12 substance or who has been convicted of a violation of a federal
13 or state controlled substance law shall be denied a license or
14 shall be subject to revocation of an existing license unless
15 sufficient evidence of rehabilitation is presented to the
16 commission.

17 D. If the commission finds that an applicant for an
18 occupational license or an occupational licensee has been
19 convicted of any of the provisions of Subsection E of this
20 section, the applicant shall be denied the occupational license
21 or the occupational licensee shall have the occupational
22 license revoked. An occupational license shall not be issued
23 by the commission to an applicant or occupational licensee for
24 a period of five years from the date of denial or revocation
25 pursuant to this subsection.

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1 E. An occupational license may be denied or revoked
2 if the applicant or occupational licensee [~~for the purpose of~~
3 ~~stimulating or depressing a racehorse or affecting its speed or~~
4 ~~stamina during a race or workout~~] is found to have:

5 (1) administered, attempted to administer or
6 conspired to administer to a racehorse, internally, externally
7 or by injection, a drug, chemical, stimulant or depressant or
8 other [~~performance-altering substance~~] substance not naturally
9 occurring in a horse or an abnormal level of a substance
10 naturally occurring in a horse as defined by the association of
11 racing commissioners international, incorporated, or a
12 successor organization or, if none, by another nationally
13 recognized organization that has published substantially
14 similar guidelines that are generally accepted in the horse
15 racing industry as determined by the commission [~~unless the~~
16 ~~applicant or occupational licensee has been specifically~~
17 ~~permitted to do so by the commission or a steward~~]; or

18 (2) attempted to use, used or conspired with
19 others to use an electrical or mechanical device, implement or
20 instrument, except a commission-approved riding crop, unless
21 the applicant or occupational licensee has been specifically
22 permitted by the commission or a steward to use the device,
23 implement or instrument.

24 F. The burden of proving the qualifications of an
25 applicant or licensee to be issued or have a license renewed

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1 shall be on the applicant or licensee."

2 SECTION 4. Section 60-1A-13 NMSA 1978 (being Laws 2007,
3 Chapter 39, Section 13) is amended to read:

4 "60-1A-13. OFFICIAL CHEMIST--QUALIFICATIONS--DUTIES.--The
5 commission shall designate at least one official chemist. An
6 official chemist shall hold a doctorate degree in chemistry or
7 a related field and shall be knowledgeable and experienced in
8 the techniques used for testing the blood, urine and saliva of
9 horses for drugs, chemicals, stimulants, depressants or other
10 foreign substances not naturally occurring in a horse or for
11 abnormal levels of substances naturally occurring in a horse.

12 The official chemist may be an employee of a private laboratory
13 located in New Mexico or an employee of an agency of New
14 Mexico. The official chemist shall exercise the duties
15 prescribed by rules of the commission."

16 SECTION 5. Section 60-1A-14 NMSA 1978 (being Laws 2007,
17 Chapter 39, Section 14, as amended by Laws 2013, Chapter 102,
18 Section 2 and by Laws 2013, Chapter 103, Section 3) is amended
19 to read:

20 "60-1A-14. TESTING SPECIMENS.--

21 A. The commission shall adopt rules applying to the
22 pre-race, post-race, out-of-competition and necropsy handling
23 and testing of blood serum plasma, urine [ø] and other
24 appropriate test samples identified by the commission to be
25 taken from racehorses.

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1 B. Each specimen taken from a racehorse shall be
2 divided into two or more equal samples, and:

3 (1) one sample shall be tested by the
4 commission or its designated laboratory in order to detect the
5 presence of [~~unauthorized~~] drugs, chemicals, stimulants,
6 depressants or other [~~performance-altering substance~~]
7 substances not naturally occurring in a horse or abnormal
8 levels of substances naturally occurring in a horse as defined
9 by the association of racing commissioners international,
10 incorporated, or a successor organization or, if none, by
11 another nationally recognized organization that has published
12 substantially similar guidelines that are generally accepted in
13 the horse racing industry as determined by the commission; and

14 (2) the second sample shall be forwarded by
15 the commission to the scientific laboratory division of the
16 department of health.

17 C. After a positive test result on the sample
18 tested by the commission or its designated laboratory and upon
19 a written request from the president, executive director or
20 manager of the New Mexico horsemen's association on forms
21 designated by the commission, the scientific laboratory
22 division shall transmit the corresponding second sample to the
23 New Mexico horsemen's association.

24 D. The scientific laboratory division shall keep
25 all samples in a controlled environment for a period of at

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1 least three months.

2 E. The commission shall contract with an
3 independent laboratory to maintain a quality assurance program.
4 The laboratory shall meet or exceed the current national
5 laboratory standards for the testing of drugs, ~~[or other~~
6 ~~foreign substances in a horse]~~ chemicals, stimulants,
7 depressants or other substances not naturally occurring in a
8 horse or abnormal levels of substances naturally occurring in a
9 horse as established by the association of racing commissioners
10 international, incorporated, or of a successor organization or,
11 if none, of another nationally recognized organization that has
12 published substantially similar guidelines that are generally
13 accepted in the horse racing industry."

14 SECTION 6. Section 60-1A-14.1 NMSA 1978 (being Laws 2013,
15 Chapter 102, Section 1) is amended to read:

16 "60-1A-14.1. RACEHORSE TESTING FUND--CREATED--PURPOSE.--
17 The "racehorse testing fund" is created in the state treasury.
18 The purpose of the fund is to ensure the testing of
19 ~~[racehorses]~~ racehorse specimen samples at a laboratory that
20 meets or exceeds the current national laboratory testing
21 standards for ~~[the testing of]~~ drugs, chemicals, stimulants,
22 depressants or other ~~[foreign]~~ substances not naturally
23 occurring in a horse or an abnormal level of substances
24 naturally occurring in a horse as established by the
25 association of racing commissioners international,

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1 incorporated. The fund consists of one-half of the daily
2 capital outlay tax appropriated and transferred pursuant to
3 Paragraph (4) of Subsection A of Section 60-1A-20 NMSA 1978 and
4 appropriations, gifts, grants and donations made to the fund.
5 Income from investment of the fund shall be credited to the
6 fund. The commission shall administer the racehorse testing
7 fund, and money in the fund is appropriated to the commission
8 for the handling and testing of blood serum plasma, urine or
9 other appropriate test samples taken from racehorses pursuant
10 to Section 60-1A-14 NMSA 1978. Any unexpended or unencumbered
11 balance remaining in the racehorse testing fund at the end of a
12 fiscal year in excess of six hundred thousand dollars
13 (\$600,000) shall revert to the general fund. Expenditures from
14 the fund shall be made on warrant of the secretary of finance
15 and administration pursuant to vouchers signed by the executive
16 director of the commission."

17 SECTION 7. Section 60-1A-28 NMSA 1978 (being Laws 2007,
18 Chapter 39, Section 28, as amended) is amended to read:

19 "60-1A-28. ~~[AFFECTING SPEED OR STAMINA OF]~~ ADMINISTERING
20 ANY SUBSTANCE TO A RACEHORSE--PENALTIES.--

21 A. A person administering, attempting to administer
22 or conspiring with others to administer to a racehorse a drug,
23 chemical, stimulant or depressant or other ~~[performance-~~
24 ~~altering substance defined as a class 1 or class 2 penalty~~
25 ~~class A drug]~~ substance not naturally occurring in a horse or

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1 an abnormal level of a substance naturally occurring in a horse
2 as defined by the association of racing commissioners
3 international, incorporated, or a successor organization or, if
4 none, by another nationally recognized organization that has
5 published substantially similar guidelines that are generally
6 accepted in the horse racing industry as determined by the
7 commission whether internally, externally or by injection for
8 [the] any purpose [~~of stimulating or depressing the racehorse~~
9 ~~or affecting the speed or stamina of the racehorse during a~~
10 ~~horse race or workout~~] is guilty of a fourth degree felony and
11 upon conviction shall be sentenced pursuant to Section 31-18-15
12 NMSA 1978.

13 B. A person who uses, attempts to use or conspires
14 with others to use during a horse race or workout an
15 electrically or mechanically prohibited device, implement or
16 instrument, other than a commission-approved riding crop, is
17 guilty of a fourth degree felony and upon conviction shall be
18 sentenced pursuant to Section 31-18-15 NMSA 1978.

19 C. A person who sponges the nostrils or trachea of
20 a racehorse or who uses anything to injure a racehorse for
21 [the] any purpose [~~of stimulating or depressing the racehorse~~
22 ~~or affecting the speed or stamina of the racehorse during a~~
23 ~~horse race or workout~~] is guilty of a fourth degree felony and
24 upon conviction shall be sentenced pursuant to Section 31-18-15
25 NMSA 1978.

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1 D. It is prima facie evidence of intent to commit
2 any of the crimes set forth:

3 (1) in Subsection A of this section for a
4 person to be found within the racing grounds of a racetrack
5 licensee, including the stands, stables, sheds or other areas
6 where racehorses are kept, who possesses with the intent to
7 use, sell, give away or otherwise transfer to another person a
8 drug, chemical, stimulant or depressant or other [~~performance-~~
9 ~~altering substance defined as a class 1 or class 2 penalty~~
10 ~~class A drug~~] foreign substance not naturally occurring in a
11 horse or an abnormal level of a substance naturally occurring
12 in a horse as defined by the association of racing
13 commissioners international, incorporated, or a successor
14 organization or, if none, by another nationally recognized
15 organization that has published substantially similar
16 guidelines that are generally accepted in the horse racing
17 industry as determined by the commission, to stimulate or
18 depress a racehorse or to affect the speed or stamina of a
19 racehorse;

20 (2) in Subsection B of this section for a
21 person to be found within the racing grounds of a racetrack
22 licensee, including the stands, stables, sheds or other areas
23 where racehorses are kept, who possesses with the intent to
24 use, sell, give away or otherwise transfer to another person an
25 electrically or mechanically prohibited device, implement or

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1 instrument, other than a commission-approved riding crop; and

2 (3) in Subsection C of this section for a
3 person to be found within the racing grounds of a racetrack
4 licensee, including the stands, stables, sheds or other areas
5 where racehorses are kept, who possesses with the intent to
6 use, sell, give away or otherwise transfer to another person
7 paraphernalia or substances used to sponge the nostrils or
8 trachea of a racehorse or that may be used to injure a
9 racehorse for [the] any purpose [~~of stimulating or depressing~~
10 ~~the racehorse or affecting its speed or stamina during a horse~~
11 ~~race or workout~~]."

12 SECTION 8. Section 60-1A-28.1 NMSA 1978 (being Laws 2014,
13 Chapter 6, Section 1) is amended to read:

14 "60-1A-28.1. RACETRACK LICENSEES--POWER TO EJECT OR
15 EXCLUDE.--

16 A. A racetrack licensee may eject or exclude from
17 the association grounds any person whose occupational license
18 has been suspended or revoked by the commission [~~for~~
19 ~~administering a performance-altering substance as provided in]~~
20 pursuant to Subsection A of Section 60-1A-28 NMSA 1978.

21 B. Nothing in this section shall be construed to
22 limit a racetrack licensee's power to eject or exclude a person
23 from the association grounds for any other lawful reason.

24 C. For the purposes of this section, "association
25 grounds" means all real property used during a race meeting by

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1 a person holding a license from the commission to conduct
2 racing with pari-mutuel wagering, including the racetrack,
3 grandstand, casino, concession stands, offices, barns, stable
4 area, employee housing facilities and parking lots."

5 SECTION 9. REPEAL.--Laws 2013, Chapter 102, Section 2 is
6 repealed.