

**REPORT ON LEGISLATION BY THE  
ANIMAL LAW COMMITTEE**

**S.835**

**Sen. Espaillat**

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

**THIS LEGISLATION IS APPROVED**

**SUMMARY OF THE PROPOSED LAW**

S.835 would add a new section 902-a to the Racing, Pari-Mutuel Wagering and Breeding Law to prohibit the use of performance-enhancing drugs in New York State horseracing. Specifically, the proposed law prohibits a person from knowingly providing performance-enhancing drugs to racehorses, as well as entering a horse in a race if the person knows the horse is under the influence of a performance-enhancing drug. In addition, a horse-racing association must have a policy banning the use of performance-enhancing drugs, mandating third-party drug-testing of racehorses by an accredited third party, and requiring that positive test results be reported to the New York State Racing and Wagering Board.

A person violating the proposed law would be subject to a rising scale of suspensions and monetary penalties by the New York State Racing and Wagering Board: for the first violation, a civil penalty of at least five thousand dollars and a minimum 180-day suspension from horseracing; for the second violation, a minimum twenty thousand dollar penalty and minimum one-year suspension; for the third violation, a minimum fifty thousand dollar penalty and a permanent ban from all activities relating to horseracing.<sup>1</sup> Additionally, a horse provided with performance-enhancing drugs would be suspended from racing according to a similar scale, though the horse would be subject to a minimum two-year, rather than permanent, ban for third and subsequent violations. Any monetary penalties are paid to New York State.

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<sup>1</sup> Current law provides the New York State Racing and Wagering Board with the power to suspend or revoke a racing license or impose monetary penalties where the licensee fails to conduct racing activities in accordance with the applicable rules and regulations of New York Racing, Pari-Mutuel Wagering and Breeding Law. New York Racing, Pari-Mutuel Wagering and Breeding Law §§ 244, 250. The implementing regulations require notice and hearing prior to the suspension, revocation or imposition of a monetary penalty by the Board and that “[t]he action of the board in refusing, suspending or in revoking a license shall be reviewable in the Supreme Court in the manner provided by and subject to the provisions of article 78 of the Civil Practice Law and Rules.” See NYCRR Title 9, Sections 4002.10; 4022.14; 4022.23.

The proposed law grants the New York State Racing and Wagering Board the authority to enforce the law and promulgate rules. It also provides a private right of action to enforce its provisions. The law would take effect on enactment.

## JUSTIFICATION

### Performance-Enhancing Drugs Plague Horseracing

Performance-enhancing drugs have been at the center of several recent scandals in professional sports, from baseball to cycling. In horseracing, however, the use of performance-enhancing drugs has been less a scandal than a fixture. As early as the 1800s, racehorses were given purified cocaine and morphine as stimulant “medication” for races.<sup>2</sup> Today’s racehorses are routinely treated with a range of drugs to increase speed and to suppress or mask their natural reactions to the severe strain of racing.<sup>3</sup> For instance, a Pennsylvania study found that more than 60% of racehorses in the State had been treated with at least one steroid. One horseracing journalist notes that “[c]ompared to European racing, where all drugs are prohibited, finding an American racehorse trained on the traditional hay, oats and water probably would be impossible.”<sup>4</sup>

Various types of drugs are given to racehorses—by some estimates a thousand different kinds.<sup>5</sup> The New York State Racing and Wagering Board limits the administration of some of these drugs and requires drug-testing for certain substances, imposing penalties—including disqualification, fines, and license revocation—for violating the regulations.<sup>6</sup> New York’s animal cruelty law also prohibits a person from “unjustifiably administer[ing] any poisonous or

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<sup>2</sup> Luke P. Breslin, *Reclaiming the Glory in the “Sport of Kings”—Uniformity Is the Answer*, 20 SETON HALL J. SPORTS & ENT. L. 297, 305 (2010).

<sup>3</sup> Bradley S. Friedman, *Oats, Water, Hay, and Everything Else: The Regulation of Anabolic Steroids in Thoroughbred Horse Racing*, 16 ANIMAL LAW 123, 126 (2009). See also Christopher A. Barbarisi, *Illinois State Racing Board Rule Which Provides for Warrantless Searches of Racing Licensee Is Constitutional as Applied to the Search of a Jockey’s Automobile – LeRoy v. Illinois Racing Board*, 6 SETON HALL J. SPORT L. 223, 226-27 (1996) (listing four categories of commonly used drugs).

<sup>4</sup> *Id.*

<sup>5</sup> John Scheinman, *A Daily Double: Horses, Drugs; No Uniform Policy Hurts Racing Industry*, WASHINGTON POST, April 27, 2003.

<sup>6</sup> See N.Y. COMP. CODES R. & REGS. tit. 9, §§ 4043.1-4043.15. Some of these laws, however, are emergency rules that will soon expire. See, e.g., N.Y. COMP. CODES R. & REGS. tit. 9, § 4043.2.

noxious drug or substance to a horse.”<sup>7</sup> And since 2008 New York has banned most anabolic steroids from horseracing.<sup>8</sup>

Still, other performance-enhancing drugs remain in widespread use. These drugs include corticosteroids, nonsteroidal anti-inflammatory drugs (NSAIDs), bronchodilators (substances that enlarge the horse’s respiratory tract to increase airflow to the lungs),<sup>9</sup> diuretics, and anti-bleeding medications.<sup>10</sup> Although scientific studies cast doubt on whether these drugs actually enhance racing performance,<sup>11</sup> trainers still administer these drugs in the hopes of increasing their horses’ speed on race day.<sup>12</sup>

### Performance-Enhancing Drugs Hurt Horses

The widespread use of these drugs means widespread harm to racehorses—including serious injury and death. For instance, by increasing muscle mass, steroids may put excessive pressure on a horse’s skeletal frame, causing leg breaks or fractures.<sup>13</sup> As exemplified by the case of Eight Belles at the 2008 Kentucky Derby—a filly who broke both her front ankles and was euthanized on the racetrack<sup>14</sup>—a bone break can spell death for a racehorse. Steroids also strain a horse’s heart, causing the heart to process 65% more volume than normal when resting.<sup>15</sup> On average, an estimated 24 thoroughbreds die each week on racetracks in the United States.<sup>16</sup>

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<sup>7</sup> N.Y. AGRIC. & MKTS. LAW § 360 (McKinney 2013).

<sup>8</sup> N.Y. COMP. CODES R. & REGS. tit. 9, § 4043.15. See also The Jockey Club, Thoroughbred Safety Committee, Recommendation on Anabolic Steroids, June 17, 2008, available at [http://jockeyclub.com/resources/3\\_steroids.pdf](http://jockeyclub.com/resources/3_steroids.pdf) (calling for all North American racing authorities to “eliminate[] the use of all anabolic steroids in the race training and racing of Thoroughbreds”)(last visited May 10, 2013).

<sup>9</sup> Jim Squires, *Drugs in Racing: Déjà Vu All Over Again*, THE RAIL, N.Y. TIMES, May 7, 2011, available at <http://therail.blogs.nytimes.com/2011/05/07/drugs-in-racing-deja-vu-all-over-again/> (last visited May 6, 2013).

<sup>10</sup> Amy L. (Williams) Kluesner, *And They’re Off: Eliminating Drug Use in Thoroughbred Racing*, HARVARD JOURNAL OF SPORTS & ENTERTAINMENT LAW, Vol. 3, 2012, at 301, available at <http://harvardjse.com/wp-content/uploads/2012/07/Kluesner.pdf> (last visited May 10, 2013).

<sup>11</sup> Friedman *supra* note 3, at 138-39.

<sup>12</sup> *Id.* at 138.

<sup>13</sup> *Id.* at 139-40.

<sup>14</sup> See, e.g., Joe Drape, *Filly’s Death Casts Shadow Over Big Brown’s Derby Victory*, N.Y. TIMES, May 4, 2008.

<sup>15</sup> Friedman, *supra* note 3, at 139 (citing Leigh Nicole, *Anabolic Steroids in Horse Racing*, Indiana Horsemen’s Coalition 2-3).

<sup>16</sup> Walt Bogdanich, Joe Drape, Dara L. Miles, and Griffin Palmer, *Mangled Horses, Maimed Jockeys*, N.Y. TIMES, March 24, 2012, available at <http://www.nytimes.com/2012/03/25/us/death-and-disarray-at-americas-racetracks.html> (last visited May 6, 2013).

But because their deaths often go unexamined, it is difficult to determine the role of drugs in these deaths.<sup>17</sup>

Two commonly-used drugs are particularly dangerous. Lasix, a diuretic given to reduce the risk of exercise-induced lung hemorrhaging,<sup>18</sup> is given to an estimated 95% of thoroughbreds in the United States hours before racing.<sup>19</sup> Banned from all human competition, Lasix hurts horses' vital organs, including the heart and kidneys.<sup>20</sup> Studies have found that it interferes with bone remodeling by “disturbing the calcium phosphorus balance by releasing calcium stored in the bone”<sup>21</sup> and causes horses to lose about 2% of their body weight in water.<sup>22</sup> In addition, by increasing urine production and thus “flushing out” a horse's system, Lasix can also mask other illegal drugs.<sup>23</sup> While New York currently regulates Lasix to some extent,<sup>24</sup> the proposed bill specifically targets the drug, noting in the justification memorandum that Lasix is a “widely overused” performance-enhancing drug.<sup>25</sup>

Another commonly-abused drug, phenylbutazone (or “bute”) is a “painkiller so strong that it's often used as an analgesic for horses undergoing some kinds of surgery.”<sup>26</sup> Bute can lead to ulcers, loss of weight, and gastrointestinal bleeding.<sup>27</sup> In fact, when the HBO horseracing

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<sup>17</sup> *See id.*

<sup>18</sup> Jim Squires, *Long History of Drug Use in the Derby*, THE RAIL, N.Y. TIMES, May 5, 2012, available at <http://therail.blogs.nytimes.com/2012/05/05/long-history-of-drug-use-in-the-derby/> (last visited May 6, 2013).

<sup>19</sup> Paul Moran, *Drug War of the Clueless*, ESPN.com, May 1, 2011, available at [http://sports.espn.go.com/sports/horse/triplecrown2011/columns/story?columnist=moran\\_paul&id=6461850](http://sports.espn.go.com/sports/horse/triplecrown2011/columns/story?columnist=moran_paul&id=6461850) (last visited May 6, 2013).

<sup>20</sup> *Supra* note 9.

<sup>21</sup> *Id.*

<sup>22</sup> Jeff Mackey, *Victory! KY Bans Race-Day Drug for Horses*, The PETA Files, June 20, 2012, available at <http://www.peta.org/b/thepetafiles/archive/2012/06/20/victory-ky-bans-race-day-drug-for-horse.aspx> (last visited May 6, 2013).

<sup>23</sup> *Id.*

<sup>24</sup> *See* N.Y. COMP. CODES R. & REGS. tit. 9, §§ 4012.3, 4120.2, 4236.2 (these regulations refer to “furosemide,” another name for Lasix).

<sup>25</sup> S.835, 236<sup>th</sup> Session (N.Y. 2013).

<sup>26</sup> Lisa de Moraes, *HBO cancels 'Luck' After Third Horse Death*, The TV Column, WASHINGTON POST, March 14, 2012, available at [http://www.washingtonpost.com/blogs/tv-column/post/hbos-luck-shuts-down-production-on-horse-scenes-after-third-horse-dies/2012/03/14/gIQAAx3eCS\\_blog.html](http://www.washingtonpost.com/blogs/tv-column/post/hbos-luck-shuts-down-production-on-horse-scenes-after-third-horse-dies/2012/03/14/gIQAAx3eCS_blog.html) (last visited May 6, 2013).

<sup>27</sup> Kimberli Gasparon, *The Dark Horse of Drug Abuse: Legal Issues of Administering Performance-Enhancing Drugs to Racehorses*, 16 VILL. SPORTS & ENT. L.J. 199, 207 (2009).

show *Luck* was cancelled in 2012 after several horses died on set, an autopsy of one the horses found multiple painkillers and anti-inflammatory drugs, including bute.<sup>28</sup>

Apart from these physical harms, performance-enhancing drugs can also cause dangerous behavior in horses, including aggressiveness and “stallion-like” activity.<sup>29</sup> In addition, repeated use can cause racehorses to become addicted to these drugs.<sup>30</sup>

### Animal Welfare Groups and Horseracing Associations Have Spoken Out Against Performance-Enhancing Drugs in Horseracing

Various animal welfare organizations, as well as horseracing associations, have spoken out against the use of performance-enhancing drugs. For instance, the Int’l Fund for Horses has cited the link between performance-enhancing drugs and rising “[i]njuries and catastrophic breakdowns” among racehorses.<sup>31</sup> The Humane Society of the United States has supported a ban on the use of performance-enhancing drugs, noting that the use of performance-enhancing drugs “endanger[s] both the horses and jockeys.”<sup>32</sup> Likewise, the Association of Racing Commissioners International—an international group of governmental horse-racing regulators—recently called for the phasing out of all race-day medications within the next five years.<sup>33</sup> The Association noted that “American racing medication policies are not only out of step with an increasing number of the world’s racing nations, but out of step with other major league sports in our own backyard.”<sup>34</sup> Additionally, the Jockey Club—the breed registry for thoroughbred horses in the United States and Canada—has acknowledged that a performance-enhancing drug such as Lasix harms horseracing’s reputation and “is no longer tolerated by the racing public.”<sup>35</sup> And at

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<sup>28</sup> *Supra* note 26.

<sup>29</sup> Friedman, *supra* note 3, at 139.

<sup>30</sup> People for the Ethical Treatment of Animals, *The Horseracing Industry: Drugs, Deception and Death*, at <http://www.peta.org/issues/Animals-in-Entertainment/the-horseracing-industry-drugs-deception-and-death.aspx> (last visited May 6, 2013).

<sup>31</sup> Jane Allin, *The Chemical Horse: Drugs in Horse Racing*, Int’l Fund for Horses, at <http://www.horsefund.org/the-chemical-horse-part-1.php> (last visited May 6, 2013).

<sup>32</sup> “The Humane Society of the United States Releases Statement on Trainer Doug O’Neill’s Horse Drugging Record,” May 18, 2012, available at [http://www.humanesociety.org/news/press\\_releases/2012/05/statement\\_doug\\_oneill\\_horse\\_drugging\\_051812.html](http://www.humanesociety.org/news/press_releases/2012/05/statement_doug_oneill_horse_drugging_051812.html) (last visited May 6, 2013).

<sup>33</sup> Tom LaMarra, *RCI: Phase Out Use of Drugs in Five Years*, Bloodhorse.com, March 20, 2011, available at <http://www.bloodhorse.com/horse-racing/articles/62162/rci-phase-out-use-of-drugs-in-five-years> (last visited May 6, 2013). See also Association of Racing Commissioners International, at <http://arcicom.businesscatalyst.com/about-rci.html> (last visited May 6, 2013).

<sup>34</sup> Joe Drape, *Congress to Propose Stiffer Rules on Drugs*, N.Y. TIMES, April 29, 2011.

<sup>35</sup> *Supra* note 10, at 316 (quoting Matt Hegarty, *Jockey Club Outlines Support for Banning Raceday Furosemide*, Daily Race Form, April 28, 2011).

the international level, the International Federation of Horseracing Authorities—horse-racing’s international governing body—is considering recommending a total ban on administering steroids to horses.<sup>36</sup>

By Passing the Proposed Legislation Banning Performance-Enhancing Drugs, New York Would Join Other Jurisdictions in Recognizing the Harmful Effects of These Drugs on Horses

Currently, federal law does not prohibit the use of performance-enhancing drugs like Lasix and bute for horseracing.<sup>37</sup> Some states, however, have passed laws banning these drugs. Neighboring New Jersey, for instance, prohibits horses from racing if the horse “carr[ies] in its body any drug and/or substance foreign to the natural horse,” including chemical substances, stimulants, depressants, anesthetics, tranquilizers, painkillers, among other drugs.<sup>38</sup> New Jersey’s law also subjects horses to drug-testing.<sup>39</sup> California similarly restricts administering drugs to racehorses and provides for drug testing,<sup>40</sup> and Louisiana also limits drug use in horseracing.<sup>41</sup>

By passing the proposed legislation banning performance-enhancing drugs, New York would join these other jurisdictions in recognizing the harmful effects of these drugs on horses.

## CONCLUSION

For the reasons stated above, the Committee supports the proposed legislation.

May 2013

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<sup>36</sup> Rory Jones, Horse-Racing Body to Review Steroids Policy, WALL ST. J., April 30, 2013.

<sup>37</sup> *See id.* at 315.

<sup>38</sup> N.J. ADMIN. CODE § 13:70-14A.1 (2013).

<sup>39</sup> N.J. ADMIN. CODE § 13:70-14A.2 (2013).

<sup>40</sup> *See* CAL. BUS. & PROF. CODE §§ 19580-19583 (West 2013).

<sup>41</sup> LA. REV. STAT. ANN. § 4:175 (2013).