



NEW YORK
CITY BAR

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

A.5734

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AN ACT to amend the state finance law, in relation to the creation of the responsible retirement of racehorses fund; to amend the racing, pari-mutuel wagering and breeding law, in relation to a horse registration fee; and to amend the agriculture and markets law, in relation to the responsible retirement of horses.

THIS LEGISLATION IS APPROVED

I. SUMMARY OF THE PROPOSED LEGISLATION

The proposed legislation would establish a retirement fund (the “Retirement Fund”) for racehorses through which approved retirement and rescue programs would be eligible to receive funding for the care of retired Thoroughbred and Standardbred racehorses (the “Act”).¹ This legislation would provide funds for the humane aftercare of retired racehorses. Financing for the fund would be generated from a percentage of purses from racetracks and video lottery gaming revenue, a percentage of the New York State Thoroughbred Breeding and Development Fund annual revenue, a percentage of fees generated by the Agriculture and New York State Horse Breeding and Development Fund, and through a new horse registration fee.

II. ARGUMENT SUMMARY

Racehorses are excessively bred in New York State without adequate retirement provisions. New York State incentivizes the breeding of racehorses and earns enormous revenues from race-horsing but provides no support for the aftercare of retired racehorses. As a result, thousands of racehorses are slaughtered annually in Canada or Mexico. Horse slaughter is a brutal and inhumane practice and entirely distinct from humane euthanasia. When not slaughtered, many other horses face neglect by owners and nonprofits with inadequate resources to care for retired racehorses. In lieu of slaughter retired racehorses can be retrained for second careers that benefit humans and horses alike; in addition to equestrian sports, retired racehorses show great promise in

¹ For purposes of the Act, the term “racehorse” is broadly construed to include both a horse whose racing career has concluded as well as a horse that was bred to race but that never competed in a race.

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therapeutic, medical, rehabilitative, and correctional settings. This bill provides funding for such training.

Further, horse slaughter for human consumption poses severe risks to human health since racehorses are routinely administered drugs that are toxic to humans. And finally, the proposed racehorse retirement fund will not have financial implications for taxpayers or the New York state budget as it will be supported through the racing industry.

III. JUSTIFICATION

A. New York State Actively Encourages The Breeding Of Racehorses But Provides No Support For The Aftercare Of Retired Racehorses

Horse breeding is strongly incentivized in New York State through massive purses and year-end awards and millions of dollars invested into horse breeding farms.² New York supports the breeding of Standardbred and Thoroughbred racehorses through two public corporations, both of which are financed through pari-mutuel wagering in New York and created through legislation establishing funding.³ The public corporations receive money from income at licensed racetracks within the state and use these funds for monetary incentives for Thoroughbred breeding as well as purses and payouts to New York bred winning horses.⁴ Together the funds pay out millions of dollars per year to racehorse breeders and owners. In 2019 the Agriculture and New York State Horse Breeding and Development Fund paid out \$1 million in awards to breeders,⁵ and the New York State Thoroughbred Breeding and Development Fund paid out \$15.5 million in awards to breeders and owners.⁶

There are ample horse-racing revenues to draw from for funding the responsible retirement of racehorses in New York. Horse-racing generates huge profits in the New York, one of the largest horse-racing hubs in the United States.⁷ A 2018 economic study found that the economic impact

² See N.Y.S. Assembly, Comm. on Racing & Wagering, 2015 Annual Report 8 (Dec. 15, 2015), <http://nyassembly.gov/comm/Racing/2015Annual/index.pdf>; New York Thoroughbred Breeders, Thoroughbred Incentives, (2021), <https://www.nytbreeders.org/breeding/incentives.cfm>. (All websites last visited June 9, 2021.)

³ Agriculture and New York State Horse Breeding and Development Fund, Fund Overview, <http://nysirestakes.com/about-us/>; N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 330(3); Laws of New York, Chapter 567 of the Laws of 1965; New York Racing, Pari-Mutuel Wagering and Breeding Law § 252, *et seq.*

⁴ In 1965 the New York legislature created the Agriculture and New York State Horse Breeding and Development Fund. In 1973 the New York legislature created the New York State Thoroughbred Breeding and Development Fund. See Agriculture and New York State Horse Breeding and Development Fund, Fund Overview, <http://nysirestakes.com/about-us/>.

⁵ Agricultural & New York State Horse Breeding & Development Fund, 2019 Annual Report 10 (2019), https://nysirestakes.com/backend/News/news_upload/NYSS_2019_Annual_Report_Final_1222.pdf.

⁶ N.Y.S. Thoroughbred Breeding & Development Fund, 2019 Annual Report 6 (2019), <https://www.nybreeds.com/wp-content/uploads/2019-Fund-Annual-Report.pdf>.

⁷ New York Thoroughbred Breeders, Equine Industry Thriving in New York: Grows by \$1.1 Billion, NYBreeders.org (April 25, 2018), <https://www.nytbreeders.org/news/2018/04/25/2017-economic-impact-release/>.

generated by the New York horse industry reached \$5.3 billion in 2016.⁸ Further, the economic impact specifically generated by the New York horse-racing industry reached over \$3 billion in 2016.⁹ Despite enormous funding and profits there is no state-sponsored fund for the responsible retirement of racehorses.

As a result of these economic incentives, the population of racehorses and racehorse breeders in New York has markedly risen.¹⁰ Breeding operations produce thousands of so-called surplus Thoroughbreds.¹¹ The New York State Legislature’s Task Force on Retired Racehorses has estimated that there are approximately 50,200 racehorses in New York with an estimated annual attrition rate of 39%.¹² These statistics do not even account for racehorses that are bred but not raced or retired before their first race.¹³ Further, a significant percent of horses are minimally competitive on the track and retired early. Even those horses who are successful in horse-racing will only be able to race for less than half of their lifetime.¹⁴ It is estimated that at least 3,000 racehorses are retired each year — most before the age of seven.¹⁵ Yet a well-cared-for horse has

⁸ American Horse Council Foundation, *Economic Impact of the Horse Industry in New York 3* (2018), https://gallery.mailchimp.com/ba2287c0ccea8583f37283499/files/6eb792ad-bbe7-4522-9fb1-877cec64df37/AHC_Economic_Study_New_York_v3.pdf; American Horse Council, *A Deeper Dive into the AHCF’s 2017 Economic Impact Study* (Mar. 6, 2018), <http://www.horsecouncil.org/press-release/deeper-dive-ahcfs-2017-economic-impact-study>.

⁹ New York Thoroughbred Breeders, *supra* note 7, above; American Horse Council Foundation, *Economic Impact of the Horse Industry in New York 5* (2018), https://gallery.mailchimp.com/ba2287c0ccea8583f37283499/files/6eb792ad-bbe7-4522-9fb1-877cec64df37/AHC_Economic_Study_New_York_v3.pdf; American Horse Council, *A Deeper Dive into the AHCF’s 2017 Economic Impact Study* (Mar. 6, 2018), <http://www.horsecouncil.org/press-release/deeper-dive-ahcfs-2017-economic-impact-study>.

¹⁰ N.Y.S. Thoroughbred Breeding and Development Fund Corporation, *2018 Performance Measures Report 1*, <https://www.nybreeds.com/wp-content/uploads/2018-Performance-Measures-Report.pdf> (in 2018 33% higher New York foal crop compared to 2011); H.D., *Equine Endings*, *The Economist* (Mar. 13, 2012), <https://www.economist.com/game-theory/2012/03/13/equine-endings> (discussing overbreeding in horse-racing); Robert Mcg. Thomas Jr., *Sports World Specials: Breeding Success*, *N.Y. Times* (May 25, 1987), <http://www.nytimes.com/1987/05/25/sports/sports-world-specials-breeding-success.html>.

¹¹ William C. Rhoden, *Ignoble Endings Far from Winner’s Circle*, *N.Y. Times* (Apr. 30, 2009), <https://www.nytimes.com/2009/05/01/sports/othersports/01rhoden.html>.

¹² N.Y.S. Task Force on Retired Racehorses, *Recommendations of the New York State Task Force on Retired Racehorses 9* (Dec. 23, 2011), https://www.gaming.ny.gov/pdf/TFRR_ReportAndAppendicesFinal.pdf. The term “racehorse” includes both Thoroughbred (used in Thoroughbred racing) and Standardbred (used in harness racing) horses.

¹³ N.Y.S. Task Force on Retired Racehorses, *supra* note 12, at 9.

¹⁴ See N.Y.S. Assembly, *Comm. on Racing & Wagering*, *supra* note 2, at 8.

¹⁵ Laura Ann Mullane, *Beasts of Burden: What Happens to Thoroughbred Racehorses After Retirement*, *Washington Post* (May 30, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/05/21/AR2010052103337.html> (“At least 3000 such racehorses are retired each year, usually by age 6 if not younger, the Thoroughbred Retirement Foundation estimates.”); Joe Drape, *Around the Final Turn, and Heading for a Home*, *N.Y. Times* (Aug. 23, 2009), <http://www.nytimes.com/2009/08/24/sports/24tour.html> (“At least 3000 racehorses come off the track annually in need of homes...”); Emily Feldman, *Life After Racing: From Stud to Slaughter*, *NBC 4 New York* (May 14, 2013) <http://www.nbcnewyork.com/news/sports/NATL-Where-Horses-Go-When-the-Racing-is-Over-206630691.html> (“[R]acehorses tend to retire by the time they are 6 or 7.”).

an average lifespan of 30 years.¹⁶ Therefore, a racehorse is likely to spend at least two-thirds of its life off the track, with no prospect of earning income as a racehorse for its owner.

Based upon the above factors the New York State Legislature's Task Force on Retired Racehorses recommended procuring funding for retired racehorses and other measures to promote the responsible retirement of racehorses.¹⁷ Although the Task Force issued recommendations in 2011, only one of the Task Force's recommendations — that racehorse owners and trainers watch a video on the responsible retirement of racehorses — has since been enacted into law.¹⁸

B. Animal Welfare

i. Neglect

Retired racehorses in New York State are currently subject to significant neglect at the hands of nonprofit rescue operations and private owners that have inadequate resources to care for them.¹⁹ The Task Force estimated that the cost of maintaining a retired racehorse is \$7.75 per day (approximately \$2,800 per year) and \$12.75 per day for a six-month retraining and rehabilitation period after a racehorse is retired from racing (approximately \$4,700 per year).²⁰ Despite these relatively modest expenses, rescue and retirement facilities are often so strapped for cash that the costs become prohibitive and horses entrusted to their care suffer. An investigation by the *New York Times* of the Thoroughbred Retirement Foundation revealed that a large proportion of former racehorses had been neglected due to slow and delinquent payments to boarding farms.²¹ Many of the horses were found to be malnourished, emaciated and in need of urgent care while others died

¹⁶ N.Y.S. Task Force on Retired Racehorses, *supra* note 12, at 11.

¹⁷ N.Y.S. Task Force on Retired Racehorses, *supra* note 12, at 3.

¹⁸ See Press Release, New York State Gaming Commission, NYS Gaming Commission Requiring Horse Racing Owners & Trainers to View Responsible Aftercare Video Starting February 1 (Jan. 24, 2017), <https://www.gaming.ny.gov/pdf/01.24.17.RetiredRacehorse.pdf> (The New York State Gaming Commission requires racehorse owners and trainers to watch a video on responsible horse aftercare and the options for post-racing careers available in New York State.)

¹⁹ See Rick Neale, *Neglected Racehorses Win Second Chance*, USA Today (Sept. 17, 2013), <https://www.usatoday.com/story/news/nation/2013/09/17/retired-racehorse-rescue/2826731/>; Rick Karlin, *New York Breeding Fund Has No Money for Retired Thoroughbred Horses*, Times Union (Jan. 19, 2016), <http://www.timesunion.com/tuplus-local/article/New-York-breeding-fund-has-no-money-for-retired-6770081.php>; Andrew Cohen, *Thoroughbred Racing's Off-Track Scandal: Somebody, Please Save the Horses*, The Atlantic (Mar. 21, 2011), <https://www.theatlantic.com/entertainment/archive/2011/03/thoroughbred-racings-off-track-scandal-somebody-please-save-the-horses/72723/>; H.D., *supra* note 10, above; Caroline L. Mayberger, *Responsibility in the "Sport of Kings": Imposing an Affirmative Duty of Care on the Primary Financial Beneficiaries of the Thoroughbred Horseracing Industry*, 4 Stanford J. of Animal Law & Policy 64, 81 (2011).

²⁰ N.Y.S. Task Force on Retired Racehorses, *supra* note 12, at 11; *see also* Mullane, *supra* note 15, at 5.

²¹ Joe Drape, *Ex-Horses Starve as Charity Fails in Mission to Care for Them*, N.Y. Times (Mar. 17, 2011), A1, <http://www.nytimes.com/2011/03/18/sports/18horses.html>; Joe Drape, *Veterinarian Urges Foundation's Overhaul*, N.Y. Times (Apr. 7, 2011), B16, <http://www.nytimes.com/2011/04/08/sports/08horse.html>; Joe Drape, *Rescuing Horses as Industry Bides Its Time*, N.Y. Times (Nov. 1, 2012), <https://www.nytimes.com/2012/11/02/sports/rescuing-racehorses-from-slaughter-as-industry-bides-its-time.html>.

of starvation or had to be euthanized.²² The *Times* investigation led to a lawsuit by Eric Schneiderman, the Attorney General of New York, against the Thoroughbred Retirement Foundation and its board of directors for mismanagement of the foundation.²³ The lawsuit was eventually settled.²⁴ Other thoroughbred retirement non-profit organizations nationwide have been subject to similar neglect charges and resulted in revocation of non-profit status.²⁵

The number of retired racehorses that are neglected are likely underestimated since there is no system in place to register and track retired horses and very little is known about what happens to them once they leave the racetrack.²⁶ For example, the New York Gaming Commission initiated a survey to attempt to account for horses that last raced in New York from 2010-2012.²⁷ The Commission was able to identify approximately 3,800 horses that fit that description; however, as of January 2017, it was able to locate only approximately 1,082 of those horses (28%) and the status more than 2,800 horses⁷ (73%) remained unknown.²⁸

ii. Slaughter

A staggering number of American horses are slaughtered annually in Mexico and Canada. Many racehorses end up at slaughter auctions within a week of their last race.²⁹ In 2019 the United States Department of Agriculture (USDA) estimated that over 52,221 horses were exported from the United States to Mexico for slaughter,³⁰ while significant numbers were likely exported to Canada.³¹ Approximately 100,000 American horses are slaughtered annually in Mexico and Canada.³² 92% of the American horses sent to slaughter are in good health and condition and able

²² Joe Drape, *Ex-Horses Starve*, *supra* note 21.

²³ *People v. Moore*, Index No. 401004/2012, Verified Complaint (Sup.Ct. New York County, May 3, 2012).

²⁴ *People v. Moore*, Index No. 401004/2012, Settlement Agreement and Order (Sup.Ct. New York County, Nov. 19, 2013).

²⁵ See, e.g., USA Racing, *Distressing Cases of Neglect Found at Prominent CA Sanctuary* (2021), <https://www.usracing.com/news/analysis/distressing-cases-neglect-found-prominent-ca-sanctuary>.

²⁶ E.g., Tom LaMarra, *Aftercare: The Challenges of Tracking Horses in New York*, BloodHorse (Aug. 31, 2016), <https://www.bloodhorse.com/horse-racing/articles/214636/aftercare-the-challenges-of-tracking-horses>.

²⁷ See Press Release, New York State Gaming Commission, *supra* note 18, at 2; LaMarra, *supra* note 26, at 1-2.

²⁸ See Press Release, New York State Gaming Commission, *supra* note 18, at 2. Notably, the proposed bill would establish a Commission on Retired Racehorses, which would be responsible for the oversight if retired racehorses including the tracking of such racehorses.

²⁹ Feldman, *supra* note 15.

³⁰ United States Department of Agriculture, US to Mexico Weekly Livestock Export Summary (Dec. 19, 2019), https://downloads.usda.library.cornell.edu/usda-esmis/files/7d278t04p/pn89dn60h/v405sr66f/AL_LS635.TXT.

³¹ According to Canada's national statistics office, in 2019 over 17,000 live horses were imported from the United States to Canada. Statistics Canada, Canadian International Merchandise Trade Database, Table 990-0001, Imports - Live animals, "Top 10 countries for January 2019 to which we imported commodity '10129 Horses, live, other than pure-bred breeding' from Canada customs basis, 6-digit commodity level," <https://tinyurl.com/us5wh77>. See also Noelle Maxwell, Horse Nation, *Equine Slaughter Fact Check* (2020), <https://www.horsenation.com/2020/02/13/equine-slaughter-fact-check/>.

³² Stephen Ruiz, *About 100,000 Horses are Exported for Slaughter Annually* (Mar. 12, 2019), <https://www.orlandosentinel.com/news/breaking-news/os-ne-exporting-horses-for-slaughter-0312-story.html> ; Press

to live a productive life.³³ A significant proportion of horses exported for slaughter are racehorses. It is estimated that approximately 33,000 racehorses are slaughtered annually in Mexico and Canada.³⁴ A study by the Wild for Life Foundation found that on average 70% of the annual Thoroughbred foal crop died at slaughterhouses.³⁵ Even prizewinning horses are not exempt from this fate.³⁶ PETA estimates that 10,000 Thoroughbreds are slaughtered annually, meaning that half of the 20,000 new foals born each year will be slaughtered.³⁷ These horses are regularly sourced from New York State or are transported via the New York State thruway to slaughter.³⁸

Instances of young, healthy, and good-tempered racehorses being sold to slaughterhouses without a clear paper trail are well-documented. For example, a rescuer bid for a healthy and even-tempered Thoroughbred stallion named Morning Herald at a livestock auction in Unadillo, New York.³⁹ There is no trail of how Morning Herald, who last raced less than a year before, ended up at the Unadillo auction, and his former owner could not remember to whom he had given the horse.⁴⁰

The horse slaughter transport process is arduous and cruel. Horses are shipped for more than 24 hours to Canada or Mexico without food, water or rest in crowded trucks that are designed

Release, ASPCA, ASPCA Commends US Senate for Introducing Bill to Ban Horse Slaughter (Aug. 2 2017), <https://www.aspc.org/about-us/press-releases/aspc-commends-us-senate-introducing-bill-ban-horse-slaughter-america>; The Humane Society of the United States, The Facts About Horse Slaughter (2021), <https://www.humanesociety.org/resources/facts-about-horse-slaughter>; Rhoden, *supra* note 1.

³³ The Humane Society of the United States, The Facts About Horse Slaughter, *supra* note 32.

³⁴ Equine Voices, *Horse Slaughter* (2021), <https://equinevoices.org/issues/slaughter/> (A third of the 100,000 slaughter bound horses are bred for racing.); Rhoden, *supra* note 11.

³⁵ Katia Louise & Jo Anne Normile, Wild for Life Foundation, *U.S. Thoroughbreds Slaughtered 2002-2010, Compared to Annual Thoroughbred Foal Crop 2* (Feb. 14, 2012), http://www.savingamericashorses.org/Case_Study_U.S._Thoroughbreds_Slaughtered_2002-2010-WFLF.pdf.

³⁶ Susan Salk, Big Winner Nearly Dies on the Way to Slaughter, Off Track Thoroughbreds Blog (Sept. 20, 2013), <http://offtrackthoroughbreds.com/2013/09/20/big-winner-nearly-dies-on-the-way-to-slaughter/>; Josh Peter, *Horses Go from Racetracks to Slaughterhouses*, USA Today (Oct. 31, 2019), <https://www.usatoday.com/story/sports/horseracing/2019/10/31/breeders-cup-horses-go-racetracks-slaughterhouses/2485345001/>; Mayberger, *supra* note 19, at 75.

³⁷ People for the Ethical Treatment of Animals, Overbreeding and Slaughter, <http://www.peta.org/issues/animals-in-entertainment/horse-racing-2/horse-racing-industry-cruelty/overbreeding-and-slaughter/>.

³⁸ Stewart M. Powell, Pet or Livestock, *Upstate New York Plays Role in Issue of Horse Slaughter*, Times Union (Apr. 15, 2014), <https://www.timesunion.com/news/article/Pet-or-livestock-upstate-New-York-plays-role-in-5405530.php>. (noting investigations of eight facilities in New York state, including auction operations in Watertown, Unadilla, Coventryville and Canandaigua, NY); *see also* New York State Humane Association, *Facts About Horse Slaughter and Support of NYS A3905/S4615*, https://www.nyshumane.org/wp-content/uploads/2014/12/NYSHA_HorseSlaughterFactSheet.pdf (noting that New York State's Interstate 87 is "a direct pipeline for horses being trucked to Canada for the cruel act of slaughter").

³⁹ Liz O'Connell, *Racehorse Retirement Final Frontier*, The Dodo (Sept. 23, 2015), <https://www.thedodo.com/racehorse-retirement-1364477924.html>.

⁴⁰ O'Connell, *supra* note 39. In many cases owners unwittingly sell their retired racehorses to purchasers who send to slaughter. *See for example, Feld v. Conway*, 16 F. Supp. 3d 1, 2 (D. Mass. 2014).

for cattle.⁴¹ A significant percent of horses are transported on journeys that exceed journey regulatory duration limits in the United States and Canada.⁴² During these long trips, horses often become agitated, exhausted, dehydrated.⁴³ Many horses are seriously injured or killed in transit.⁴⁴ The USDA has documented the injuries that the horses sustain during travel to slaughter plants, which include “gouged-out eyes and gruesome head injuries, open fractures, broken legs and severed hooves, trampling and bleeding to death.”⁴⁵ Further, due to inadequate USDA completion of owner/shipper certificates these transport injuries are underreported.⁴⁶

Horse slaughter is a brutal and inhumane practice and entirely distinct from humane euthanasia. Once across the border in Mexico or Canada, federal and state laws for regulating transport⁴⁷ and slaughter, such as the Humane Methods of Slaughter Act,⁴⁸ cease to apply. Those horses still alive to be slaughtered may be killed without anesthesia.⁴⁹ Horses often endure repeated

⁴¹ Under federal law, horses may be transported for up to 28 consecutive hours before being allowed a 6-hour respite. 9 C.F.R. § 88.4(b); 49 U.S.C. 80502; The Humane Society of the United States, *Transport to Slaughter: The Brutal Truth Behind Horse Auctions and the Journey to Slaughter* (Mar. 18, 2013), https://web.archive.org/web/20150331233225/http://www.humanesociety.org/issues/horse_slaughter/facts/transport_to_slaughter_092909.html; See also New York City Bar Association Animal Law Committee, Report on A.1102/S.1497 3-4 (Jun. 27, 2019), https://s3.amazonaws.com/documents.nycbar.org/files/20072932-HorseSlaughterBan_Animal_Report_FINAL_12.1.16.pdf.

⁴² R. Cyril Roy & Michael S. Cockram, *Patterns and Durations of Journeys by Horses Transported from the USA to Canada for Slaughter*, 56 *Canadian Veterinary J.* 581, 585 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4431154/>.

⁴³ Vickery Eckhoff, *Racing Industry Silent About Slaughtered Thoroughbreds*, *Forbes.com* (Nov. 29, 2011), <https://www.forbes.com/sites/vickeryeckhoff/2011/11/29/racing-industry-silent-about-slaughtered-thoroughbreds/2/#3da847cd34bd>.

⁴⁴ Eckhoff, *supra* note 43; Animals’ Angels, *Savage Passage: Down the Horse Slaughter Gauntlet*, *Animals’ Angels Horse Slaughter Investigations 2007-2015 Short Paper* at 9-11, <http://www.animalsangels.org/files/images/stories/pdf/Animals%27%20Angels%20horse%20slaughter%20compilation%20report%20-%20short%20paper-edited.pdf>; Sasha von Oldershausen, *The Business of Burying Horses*, *Texas Observer* (May 9, 2016), <https://www.texasobserver.org/business-burying-horses-presidio>.

⁴⁵ Eckhoff, *supra* note 43; See also USDA, Office of the Inspector General, Audit Report 33601-2-KC, Animal and Plant Health Inspection Service Administration of the Horse Protection Program and the Slaughter Horse Transport Program 8 (Sept. 2010), <https://www.usda.gov/oig/audit-reports/animal-and-plant-health-inspection-service-administration-horse-protection>; Animal Welfare Institute, *Horse Slaughter*, <https://awionline.org/content/horse-slaughter>.

⁴⁶ Roy & Cockram, *supra* note 42, at 2.

⁴⁷ See Commercial Transportation of Equines for Slaughter Act, 7 U.S.C. § 1901 (1996), available at <https://www.govinfo.gov/content/pkg/USCODE-2011-title7/pdf/USCODE-2011-title7-chap48.pdf>; N.Y. Agric. & Mkts. L. § 359-a, available at <https://law.justia.com/codes/new-york/2013/agm/article-26/359-a/> (addressing transportation of horses within New York State).

⁴⁸ Humane Methods of Slaughter Act, 7 U.S.C. §§ 1901-1907 (2009).

⁴⁹ Mexican Horse Meat Banned by EU, *J. of the Amer. Veterinary Med. Assoc.* (Feb. 15, 2015), <https://www.avma.org/News/JAVMANews/Pages/150215r.aspx> (“[I]nsufficient control measures were in place [at Mexican horse slaughterhouses] to ensure that stunning was done in an effective manner.”); European Commission Health and Consumers Directorate-General, *Final Report of an Audit Carried Out in Mexico from 24 June to 04 July 2014*, at 22 (2014), http://ec.europa.eu/food/fvo/act_getPDF.cfm?PDF_ID=11431.

blows and remain conscious during dismemberment.⁵⁰ Multiple investigations have found that the typical method of stunning horses regularly fails to render horses unconscious before they are butchered.⁵¹ Some Mexican slaughterhouses stun horses with hammers or small knives called *puntillas* which often leave horses conscious and sensate as they bleed to death.⁵²

C. Racehorses Can Be Re-trained For Second Careers That Benefit Humans

Racehorses can readily be re-trained for second careers that benefit horses and humans alike in therapeutic, medical, rehabilitative, and correctional settings. The training that a typical racehorse receives makes the horse an excellent candidate for a second career. As the Task Force noted, racehorses are accustomed to being around groups of people and noise, traveling in vans and trailers, and working in unfamiliar surroundings.⁵³ They are also adapted to handling, stabling, grooming, and bathing.⁵⁴ Accordingly, the Task Force asserts that investment in racehorse transition and retraining will likely result in successful adaptation to a new career.⁵⁵ The Retirement Fund would provide money for retraining racehorses for such second careers.

In the medical therapy realm, therapeutic riding programs for individuals with disabilities exhibit tremendous potential. In fact, a recent study demonstrated that horseback riding improves symptoms among adults and children with motor function, balance, and gait disorders.⁵⁶ New York based therapeutic riding programs such as the Saratoga Therapeutic Equestrian Program (STEP) provide restorative horseback riding exercise to individuals with neuromuscular disabilities by stimulating unused, contracted or spastic muscles.⁵⁷ Children and adults with cerebral palsy, autism, spina bifida, traumatic brain injury, blindness, and other impairments receive treatment at STEP.⁵⁸ In addition, hippotherapy is an effective treatment modality using horses to provide physical, occupational and speech therapy (distinct from therapeutic horseback riding) for patients

⁵⁰ The Humane Society of the United States, *The Facts About Horse Slaughter*, *supra* note 32; ASPCA, *Horse Slaughter* (2021), <https://www.asPCA.org/animal-cruelty/horse-slaughter>; Frank Deford, *Cruel Retirement for Racehorses*, NPR (Nov. 9, 2005), <https://www.npr.org/templates/story/story.php?storyId=5005333>.

⁵¹ Daniel Ross, *Failed Prosecution in US Underscores Uphill Battle to End Horse Slaughter*, *The Guardian* (Mar. 30, 2016), <https://www.theguardian.com/us-news/2016/mar/30/horse-slaughter-case-california-law-proposition-6>.

⁵² Megan Wilde, *Horses to the Slaughter*, *Salon* (Jun. 30, 2009), https://www.salon.com/2009/06/30/horse_slaughter/.

⁵³ N.Y.S. Task Force on Retired Racehorses, *supra* note 12 note, at 13.

⁵⁴ N.Y.S. Task Force on Retired Racehorses, *supra* note 12 note, at 13.

⁵⁵ N.Y.S. Task Force on Retired Racehorses, *supra* note 12 note, at 13.

⁵⁶ Alexandra Stergiou et al., *Therapeutic Effects of Horseback Riding Interventions*, 96 *Amer. J. of Phys. Medicine & Rehabilitation* 717, 725 (2017), https://journals.lww.com/ajpmr/Abstract/2017/10000/Therapeutic_Effects_of_Horseback_Riding.5.aspx.

⁵⁷ N.Y.S. Task Force on Retired Racehorses, *supra* note 12 note, at 23; Saratoga Therapeutic Equestrian Program, <https://www.stepup-nfec.org/programs>.

⁵⁸ N.Y.S. Task Force on Retired Racehorses, *supra* note 12 note, at 23.

with neurological disabilities as well as autism, head injury, stroke, spinal cord injury, among others.⁵⁹

Retired racehorses have also been successfully used as therapy animals for veterans with PTSD. PTSD is an epidemic among veterans that requires alternative and complimentary treatment modalities.⁶⁰ Horses are particularly well suited to assist veterans with PTSD based upon their social nature and natural sensitivity to human emotion and behavior.⁶¹ Veterans and horses share commonalities; like veterans with PTSD, horses are hyper-vigilant and attuned to their environments and have a “mission-mentality.”⁶² Several recent studies have established the effectiveness of equine-assisted therapy for veterans with PTSD.⁶³ Nonprofits using equine-assisted therapy for veterans are on the rise. EAGALA Military Services utilizes horses to help veterans process trauma and relies on “clinical evidence and generations of human experience.”⁶⁴ Examples of New York based projects providing equestrian therapy to veterans with PTSD include the Man-O-War Project, Saratoga WarHorse Foundation, and Warrior Ranch Foundation.⁶⁵

Retired racehorses also offer benefits for prison inmates. By training retired racehorses for second careers, prisoners receive vocational skill training, rehabilitation, and therapeutic

⁵⁹ Tuba Tulay Koca & Hilmi Ataseven, *What is Hippotherapy? The Indications and Effectiveness of Hippotherapy*, 2 Northern Clinics of Istanbul Journal 247, 252 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5175116/>.

⁶⁰ Kerri E. Rodriguez et al., *Defining the PTSD Service Dog Intervention: Perceived Importance, Usage, and Symptom Specificity of Psychiatric Service Dogs for Military Veterans*, Front. Psychol. 2, 13 (July 21, 2020), <https://www.frontiersin.org/articles/10.3389/fpsyg.2020.01638/full>; see also New York City Bar Association Animal Law Committee, Report on H.R. 4305 PAWS For Veteran Therapy Act 2-5 (Nov. 4, 2020), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/paws-for-veterans-therapy-act>.

⁶¹ Columbia University Irving Medical Center, *New PTSD Treatment for Veterans Deploys Horses as “Therapists”* (Nov. 10, 2016), <https://www.cuimc.columbia.edu/news/new-ptsd-treatment-veterans-deploys-horses-therapists>; T.D. Thornton, *War Vets Pair with Thoroughbreds to Heal Both Humans and Horses*, Thoroughbred Daily News (Oct. 13, 2015), <http://www.thoroughbreddailynews.com/war-vets-pair-with-thoroughbreds-to-heal-both-humans-and-horses/>.

⁶² Columbia University Irving Medical Center, *supra* note 61; Tara Bahrapour, *For Some Traumatized Veterans, the Best Therapy Can Be Stroking a Velvety Nose*, Wash. Post (Jun. 16, 2017), <https://www.washingtonpost.com/news/inspired-life/wp/2017/06/15/for-some-traumatized-veterans-the-best-therapy-can-be-stroking-a-velvety-nose/>.

⁶³ Xi Zhu et al., *Neural Changes Following Equine-Assisted Therapy for Posttraumatic Stress Disorder: A Longitudinal Multimodal Imaging Study*, 42 Human Brain Mapping J. 1930, 1937 (2021) <https://onlinelibrary.wiley.com/doi/10.1002/hbm.25360>; Adam R. Kinney et al., *Equine-Assisted Interventions for Veterans with Service-related Health Conditions: A Systematic Mapping Review* 6 Military Medical Research 28, <https://mmrjournal.biomedcentral.com/articles/10.1186/s40779-019-0217-6#citeas>; Madeline Romaniuk, *Evaluation of an Equine-Assisted Therapy Program for Veterans who Identify as ‘Wounded, Injured or Ill’ and Their Partners* 13 PLOS One 15 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6160012/>; T.D. Thornton and Sue Finley, Thoroughbred Daily News, *Man O’ War Study Finds Equine Therapy Helpful for PTSD* (Feb. 11, 2021), <https://www.thoroughbreddailynews.com/man-o-war-study-finds-equine-therapy-helpful-for-ptsd/>.

⁶⁴ EAGALA Military Services, <https://www.eagala.org/military>.

⁶⁵ New York Presbyterian, *Equine Therapy Helps to Heal PTSD* (2020), <https://www.nyp.org/newsletters/prof-adv/psych/equine-therapy-helps-ptsd>; Saratoga WarHorse Foundation, *Veteran PTSD Program* (2021), <https://www.saratogawarhorse.org>; Warrior Ranch Foundation, *Veteran and First Responder Program* (2021), <https://www.warriorranchfoundation.org/About/Our-Program.aspx>.

benefits.⁶⁶ The current lack of rehabilitation and vocational job skills training in prisons creates significant obstacles for formerly incarcerated individuals to secure employment and thrive in society.⁶⁷ Further, equine-based prison programs appear to reduce recidivism.⁶⁸ Retired racehorses are used as vocational therapy at New York’s Wallkill Correctional Facility, where inmates are taught to retrain racehorses for second careers or adoption by private individuals.⁶⁹ The program regularly has a transformative effect on participating prisoners.⁷⁰ Creation of the Retirement Fund will provide funding to expand programming and enable the participation of many more retired racehorses in these valuable programs.

D. Public Health Benefit

Horse slaughter for human consumption poses severe risks to human health. Unlike pigs and cattle, horses in the United States are not bred for human consumption.⁷¹ Horses are routinely administered drugs that are banned in animals raised for food and unregulated in food production.⁷² The most commonly used equine anti-inflammatory drug, phenylbutazone or “bute,” is banned in animals intended for human consumption based on its severe and lethal adverse effects in humans, including bone marrow toxicity and aplastic anemia.⁷³ The number of horses receiving

⁶⁶ Christiane Deaton, *Humanizing Prisons with Animals: A Closer Look at “Cell Dogs” and Horse Programs in Correctional Institutions*, 56 J. of Correctional Educ. 46, 57-58 (2005), https://www.jstor.org/stable/23282783?seq=1#metadata_info_tab_contents; Ralph Gardner, Jr., *There Is Such a Thing as a Second Chance*, Wall Street Journal (June 24, 2014), <https://www.wsj.com/articles/inmates-give-second-chances-to-retired-racehorses-1403663339>; Erin Shea, *How Ex- Racehorses are Playing a Major Role in the Rehabilitation of Offenders*, Thoroughbredracing.com (Oct. 4, 2016), <https://www.thoroughbredracing.com/articles/how-ex-racehorses-are-playing-major-role-rehabilitation-offenders/>.

⁶⁷ Melanie Reid, *The Culture of Mass Incarceration: Why “Locking Them Up and Throwing Away the Key” Isn’t a Humane or Workable Solution for Society*, 15 U. Md. L.J. Race, Religion, Gender & Class 251, 255 (2015); Paul J. Larkin, Jr., *Death Row Dogs, Hard Time Prisoners, and Creative Rehabilitation Strategies: Prisoner-Dog Training Programs*, 66 Cath. U. L. Rev. 543, 547 (2017); Claire Ashley Saba, *A Roadmap for Comprehensive Criminal Justice Reform to Employ Ex-Offenders: Beyond Title VII and Ban the Box*, 56 Am. Crim. L. Rev. 547, 548 (2019).

⁶⁸ Karen Bachi, *An Equine-Facilitated Prison Based Program: Effects On Recidivism*, The Society for Social Work and Research Annual Conference (2014), https://www.researchgate.net/publication/268135493_An_Equine-Facilitated_Prison_Based_Program_Effects_On_Recidivism.

⁶⁹ N.Y.S. Task Force on Retired Racehorses, *supra* note 12, at 24; Thoroughbred Retirement Foundation, Wallkill Correctional Facility, <https://www.trfinc.org/farms-and-facilities/wallkill-correctional-facility/>.

⁷⁰ Jerry Gretzinger, WNYT, *Program Pairs Retired Racehorses with Prison Inmates* (Oct. 17, 2019), <https://wnyt.com/news/second-chances-program-pairs-retired-race-horses-with-prison-inmates/5527611/>.

⁷¹ Jessica Rose Sutcliffe, *Do Not Use in Horses Intended for Human Consumption: Horse Meat and Its Public Health Danger*, Law School Student Scholarship, Seton Hall University 17-19 (2014), https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1588&context=student_scholarship; H.R. 961 (116th Congress), <https://www.congress.gov/116/bills/hr961/BILLS-116hr961ih.pdf>.

⁷² The Humane Society of the US, *Banned and Dangerous Substances Commonly Given to Horses Sent to Slaughter* (2020), https://www.humanesociety.org/sites/default/files/archive/assets/pdfs/horse/drugs_given_horses.pdf; Sutcliffe, *supra* note 71, at 17-19.

⁷³ Nicholas Dodman et al., *Association of Phenylbutazone Usage with Horses Bought for Slaughter: A Public Health Risk*, 48 Food and Chemical Toxicology Journal 1270 (2010), <https://pubmed.ncbi.nlm.nih.gov/20176071/>; Vickery Eckhoff, *How Safe Is That Horsemeat*, Forbes.com (Jun. 18, 2012), <https://www.forbes.com/sites/vickeryeckhoff/2012/06/18/how-safe-is-that-horse-meat/>; see also USDA Drugs

phenylbutazone shortly before slaughter is projected to be high based upon records of racehorses given bute on race day and then sent for slaughter.⁷⁴ Phenylbutazone is one of many drugs routinely administered to horses which the USDA cautions should not be used in horses intended for human consumption.⁷⁵ Nitrofurazone, a commonly used equine ointment, is also highly toxic to humans.⁷⁶ And drugs such as steroids, deworming agents, tranquilizing substances, sedatives, and performance-enhancing drugs regularly administered to racehorses pose health hazards for humans.⁷⁷ Racehorses are also given illegal drugs such as “chemicals that bulk up pigs and cattle before slaughter, cobra venom, Viagra, blood doping agents, stimulants and cancer drugs.”⁷⁸

In an audit of the Mexican horsemeat industry, the European Commission found that the United States, where 87% of horses exported from Mexico to the European Union originated, lacked adequate records on drugs used in its horses, and without such records there was no way to assure consumers that such exports were safe to consume.⁷⁹

E. No Cost To NY Taxpayers

The proposed law would be self-funded by the racing industry and would not require tax revenue from New York citizens or allocation from the New York State budget. As the Task Force has indicated, the racing industry has responsibility to take ownership of the post-racing fate of horses that allow the industry to thrive and contribute financially to this process.⁸⁰ To that end, the proposed law is crafted to ensure that funds for supporting the aftercare of retired racehorses originate from the racehorse industry itself, which has considerable profits to draw upon (as discussed above).

In particular, under the proposed law, the Retirement Fund would receive income from five different sources:

Prohibited for Extra Label Use in Food Producing Animals, 21 C.F.R. § 530.41 (2021), <https://www.ecfr.gov/cgi-bin/text-idx?SID=054808d261de27898e02fb175b7c9ff9&node=21:6.0.1.1.16&rgn=div5#se21.6.530.13>.

⁷⁴ Dodman et al., *supra* note 73.

⁷⁵ 21 C.F.R. § 522.1720 (phenylbutazone); *see also* 21 C.F.R. § 522.23 (acepromazine); 21 C.F.R. § 522.204 (boldenone undecylenate); 21 C.F.R. § 520.1615 (omeprazole); 21 C.F.R. § 522.1225 (ketoprofen); 21 C.F.R. § 522.2662 (xylazine); 21 C.F.R. § 522.1145 (hyaluronate); 21 C.F.R. § 524.1580a (nitrofurazone); 21 C.F.R. § 522.1850 (polysulfated glycosaminoglycan); 21 C.F.R. § 520.452 (clenbuterol); 21 C.F.R. § 522.2474 (tolazoline); 21 C.F.R. § 520.1855 (ponazuril).

⁷⁶ Humane Society of the US, *supra* note 72, at 21.

⁷⁷ Humane Society of the US, *supra* note 72; The Humane Society of the US, Toxicity of Horsemeat (2020), <https://www.humanesociety.org/sites/default/files/docs/toxicity-of-horse-meat.pdf>; Bradley S. Friedman, *Oats, Water, Hay, and Everything Else: The Regulation of Anabolic Steroids in Thoroughbred Horse Racing*, 16 Animal Law Journal 123, 126, 139-140 (2009), https://www.animallaw.info/sites/default/files/lralvol16_p123.PDF; Rebecca Quinn Dolan, *The Evolution of Consumption Horse Slaughter in the United States: An Analysis of the Safeguard American Food Exports Act*, 12 Journal Animal & Natural Resource Law 81, 88 (2016).

⁷⁸ Walt Bogdanich et al., *Mangled Horses, Maimed Jockeys*, N.Y. Times (Mar. 25, 2012), <https://www.nytimes.com/2012/03/25/us/death-and-disarray-at-americas-racetracks.html>.

⁷⁹ European Commission Health and Consumers Directorate-General, *supra* note 49, at 12.

⁸⁰ N.Y.S. Task Force on Retired Racehorses, *supra* note 12, at 15; *see also* Bamberger, *supra* note 19, 94.

- (i) One-half of one percent of the commissions from video lottery gaming revenue from New York racetracks and the Resorts World Casino New York City and any future video lottery;
- (ii) One-half of one percent of all purses at New York racetracks;
- (iii) Five percent of the New York State Thoroughbred Breeding and Development Fund annual revenue;
- (iv) Ten percent of fees generated by the Agriculture and New York State Horse Breeding Development Fund; and
- (v) The proceeds from a horse registration fee, which will be instituted by the Retirement Fund.⁸¹

Although the funding sources proposed in the Act are slightly different from those proposed by the Task Force, the total revenue received by the Retirement Fund under the Act should meet or exceed the \$5 million target proposed by the Task Force. For example, the New York State Gaming Commission's 2018 Annual Report shows that it received \$947 million in video gaming commissions, which would equal approximately \$4.7 million for the Retirement Fund.⁸² The 2018 Annual Report also reported \$286 million in gross purses paid at New York racetracks, which would equal another \$1.4 million for the Retirement Fund.⁸³

IV. CONCLUSION

For the reasons above, the New York City Bar Association's Animal Law Committee supports the proposed legislation.

Animal Law Committee
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⁸¹ Text of Assembly Bill No. A.05734: https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A05734&term=&Summary=Y&Memo=Y&Text=Y.

⁸² See N.Y.S. Gaming Commission, Annual Reports, Fiscal Year 2019-20 Traditional & Video Lottery Sales & Net Win (2020), <https://gaming.ny.gov/about/index.php?ID=3>.

⁸³ N.Y.S. Gaming Commission, Annual Reports, 2019 Track Total Betting, Distribution, Imports, Additional Info (2020), <https://gaming.ny.gov/about/index.php?ID=3>.