Overview of Horseracing Integrity Act of 2019

Narrow Purpose

The bill provides for the regulation of all drug testing and enforcement efforts in pari-mutuel horse racing for all breeds of horses in all U.S. racing jurisdictions.

Structure

The bill establishes a new national regulatory authority (the "Authority") with exclusive jurisdiction to develop and administer a comprehensive program of drug testing rules, laboratory testing standards, investigations, disciplinary proceedings, research, and educational programs.

The Authority will be a non-governmental, private, non-profit, self-regulatory organization under the oversight of the Federal Trade Commission (FTC) and will be subject to periodic assessment of efficiency and effectiveness by the Comptroller General of the United States. The assessments will include testimony from relevant industry associations and individuals representing breeders, owners, trainers, veterinarians, bettors, jockeys, and others dedicated to the welfare and safety of the racehorse.

The Authority will be similar, in organization and operation, to the Financial Industry Regulatory Authority, or FINRA, a private, non-governmental, industry-regulating organization under the oversight of the Securities and Exchange Commission. FINRA is tasked with comprehensively regulating the securities industry to ensure all markets operate fairly and honestly. [See http://www.finra.org/about for more information about how FINRA was authorized by Congress as a private, non-governmental, regulatory authority responsible for the securities industry.]

Power

The Act grants the Authority exclusive, nationwide jurisdiction over all testing, enforcement, and related matters. Under the Supremacy Clause of the U.S. Constitution, all state-based anti-doping statutes and regulations are preempted. As with all congressionally authorized regulatory organizations, the Authority will have the power to bring actions in federal court to enforce the supremacy of its rules and enforcement actions.

The bill does not modify or supplement the Interstate Horseracing Act of 1978.

Composition

The Authority will have a board composed of 13 individuals. To avoid conflicts of interest, none of them will be allowed to have financial interests, industry governance, policymaking, consulting, vendor, or employment relationships within the pari-mutuel horse racing industry. (This requirement is not original as several state racing commissions, including New York, New Jersey, Massachusetts, and Indiana, already have similar conflict-free requirements.)

The United States Anti-Doping Authority (USADA) will appoint the board, which will include the chief executive officer of USADA; six (6) members selected from the board of USADA, and six (6) members selected from lists of candidates supplied from relevant horse racing industry organizations.

The six industry board members will collectively have expertise in equine drug testing regulation and enforcement, owning or breeding racehorses, executive management of a pari-mutuel racetrack, equine veterinary medical practice, training racehorses, and riding race horses in pari-mutuel horse races.

Board member terms will be three years and staggered so that no more than five terms expire in any given year. Members will serve no more than two consecutive terms. After five years of administrating the program, USADA will have the option to discontinue its association with the Authority and, if so, the remaining board members will select its board members according to the requirements of the preceding paragraph.

Binding Authority

All owners, trainers, and veterinarians, including their agents and employees who are engaged in the care, training, or racing of horses for pari-mutuel horse racing, are bound by the rules and provisions of the Authority. The Authority will have no jurisdiction over investigations, prosecutions, adjudications, penalties, or appeals arising from conduct occurring prior to the effective date of the bill.

Initial Rules

During the Authority's first year of operation it will create a drug testing and enforcement program. To build upon the substantial progress made by the industry toward national uniformity, this program will include initial lists of permitted and prohibited substances (the latter of which incorporates all substances listed in the Uniform Classification Guidelines for Foreign Substances of the Association of Racing Commissioners International, and the Prohibited List, International Standard, of the World Anti-Doping Code with the exception of those substances featured on the Association of Racing Commissioners International Therapeutic Medication Schedule for Horses). The Act specifies that the Authority will have the freedom to update its prohibited list as it sees fit from time to time, with notice to the FTC and an opportunity for public comment. It also requires that the Authority's lists prohibit the use of any permitted or prohibited substances within 24 hours of a race, such rule taking effect no later than January 1, 2019.

Rule-Making

To foster transparency and encourage stakeholder participation in the regulatory process, the Authority will create technical advisory committees composed of active individuals with subject matter expertise from the relevant industry constituencies and organizations of trainers, owners, breeders, breed registries, veterinarians, regulatory officials, racetracks, laboratories, bettors, and jockeys. When developing the rules, the Authority will take into account the unique characteristics of each separate breed of horse.

Rules approved by the Authority must be filed with the FTC and published for public comment. Final approved rules will become binding on all racing jurisdictions no later than 45 days after publication.

Testing and Research

All testing laboratories must meet the Authority's standard of achieving and maintaining accreditation. State racing regulatory authorities may determine the particular laboratory for testing provided it meets these standards. Testing laboratories previously accredited by the Racing Medication and Testing Consortium (RMTC) may be provisionally accredited by the Authority.

Sample storage and testing protocols may include the freezing of samples for retrospective analysis to detect previously unrecognizable performance-enhancing substances.

The Authority will use the expertise of the testing laboratories and other scientific bodies to conduct novel research into the possible performance-enhancing effects of substances and procedures identified through intelligence gathering.

Adjudications; Reviews

To ensure adequate due process and efficient adjudication, all appeals involving alleged violations will be heard on a de novo basis by impartial administrative law judges appointed by the FTC whose decisions are, in turn, subject to further review by the FTC upon timely appeal.

Bisphosphonates

In the case of a sale of a covered horse that has been administered a bisphosphonate (or other substance that HADA determines has a long term degrading effect on the soundness of a horse), it will be unfair or deceptive act or practice under the Federal Trade Commission Act if the seller fails to disclosure that information to the buyer. Currently, this section only appears in the Senate version of the bill.

State Compact

In order to ensure the continuity of the program provided for in the Act in the event that the Authority and/or the FTC cannot meet their obligations under the Act, a fallback provision allows for the formation of an interstate regulatory compact that includes among its members states that collectively represent 75 percent of the states where races occur and those states which together host a minimum of 80 percent of all starts to either:

(i) Contract directly with the Authority for its anti-doping services or

(ii) Create a new, private, independent and conflict-of-interest-free testing and enforcement entity to run a drug testing and enforcement program in compliance with the requirements of the bill and no less restrictive than the Authority's program.

Continued Racing Commission Involvement

The Authority may enter into agreements to delegate certain regulatory activities to state racing commissions capable of complying with the standards and requirements established by the Authority. Examples of activities that may be delegated include the core regulatory functions of sample collections, maintenance of chains of custody, collection of out-of-competition whereabouts information, and investigations. State racing commissions may also play an integral role by providing educational programs regarding the specifics of the drug testing and enforcement program.

Funding

No federal appropriation or federal guarantee of debts will be used to fund the Authority. In order to secure the funding necessary to conduct initial start-up activities, the Authority will be permitted to secure funding through loans and grants. As a private, non-profit organization, the specific policies and restrictions (including conflict-of-interest prohibitions) regarding debt will be contained in its bylaws as approved by the board.

The Authority will create a budget for its first year of operations that requires two-thirds approval by the board. Subsequent budgets require simple majority approval by the board unless the projected budget exceeds the previous budget by 5 percent or greater, which will then require two-thirds approval by the board.

Each state in which pari-mutuel horse racing is conducted will be assessed a fee each fall toward covering the costs of administrating the drug testing and enforcement program during the subsequent year. This will be payable to the Authority in monthly installments. Should a state choose not to collect the assessed fees, the Authority is empowered to collect the fees instead.