HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 239 Medication and Testing of Racing Animals
SPONSOR(S): Business & Professions Subcommittee; Fitzenhagen; Stone
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 226

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 0 N, As CS	Anstead	Luczynski
2) Regulatory Affairs Committee	16 Y, 0 N	Anstead	Hamon

SUMMARY ANALYSIS

The Division of Pari-mutuel Wagering (division) within the Department of Business and Professional Regulation (Department) regulates the business of pari-mutuel wagering.

The bill modifies the current regulation of prohibited medications, drugs and naturally occurring substances in racing animals - both horses and greyhounds.

The bill makes it a violation for a racing animal to merely test positive for a prohibited substance and allows the prosecution of licensees without requiring evidence that such licensee administered the prohibited substance.

The bill allows an owner or trainer to request analysis by an independent laboratory after a positive test result from the division. No further administrative action may be taken if the test results are not confirmed by the independent laboratory. If there is an insufficient quantity of the sample from a racing greyhound to confirm the results by an independent laboratory, the owner or trainer may still be prosecuted. If a racehorse's results cannot be confirmed by an independent laboratory because there is insufficient quantity to confirm, the owner or trainer may not be prosecuted, and any suspended licensee must be reinstated.

The bill changes the maximum fine for violations from $5,000 to $10,000 or the amount of the purse, whichever is greater. Administrative prosecutions must be started within 90 days of the violation, which was reduced from the current 2 year standard.

The bill requires the division to adopt the Association of Racing Commissioners International (ARCI) rules regarding the medications, drugs, and naturally occurring substances given to racing animals, including a classification system for drugs that incorporates ARCI's Penalty Guidelines for drug violations, and updates current methodologies used in testing procedures. The bill requires that conditions and limitations be set for the use of furosemide, a diuretic used to treat exercise-induced pulmonary hemorrhage.

The bill requires an outside quality assurance program for the annual assessment of the ability of all laboratories approved by the division to analyze samples for the presence of medications, drugs, and prohibited substances. The findings must be reported to the division and the Department of Agriculture and Consumer Services.

The bill does not have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

I. Present Situation:

The majority of the current law related to the medication and testing of racing animals was adopted in the 1990's and has not been specifically revised to address current technology or current medical standards. Florida is the only equine state in the nation that has not adopted current national uniform racing rules developed by the Association of Racing Commissioners International (ARCI). Kentucky, New York, Maryland, California, and Pennsylvania have adopted all or some of such policies.[1] With more than 3,300 thoroughbred and quarter horse races a year, and as host to four Kentucky Derby qualifying races, Florida has a robust and prestigious equine industry. Florida's adoption of nationally recognized standards is supported by the Jockey Club, the Racing Testing and Medication Consortium (RMTC),[2] the Florida Thoroughbred Breeder's and Owners' Association, Florida Quarter Horse Racing Association, and Florida Horsemen's Benevolent & Protective Association.

Current law, s. 550.2415, F.S., prohibits the racing of an animal that has been impermissibly medicated and identifies certain medications or substances that are either prohibited or permitted under certain conditions. The division is authorized to adopt rules specifying acceptable levels of naturally occurring substances. Other drugs and substances are permitted under limited conditions, such as furosemide to treat exercise-induced bleeding, and vitamins and minerals that do not exceed acceptable levels are also permitted.

Currently, to determine whether certain substances are prohibited depends upon whether the substance was administered during a specific time frame prior to a race, whether the racing animal is approved or qualified to receive the substance, what level of the substance is detected as set by administrative rule and what method of administration was used.

The trainer of record for each animal is responsible for the condition of the animals he or she enters into a race, and for securing all prescribed medications, over-the-counter medicines, and natural or synthetic medicinal compounds.

Samples of bodily fluids may be collected from a racing animal immediately before and immediately after it has raced. If racing officials find that impermissible substances have been administered, or that permissible substances have been administered during prohibited periods before a race, such substances may be confiscated and the racing animal may be prohibited from racing.

The winner of every race is examined by an authorized representative of the division and samples are taken. Any other animals that participated in the race may be designated for examination and testing by the stewards, judges, racetrack veterinarian, or a division representative.

All samples are collected by staff of the Office of Operations of the division and sent to the University of Florida College of Medicine Racing Laboratory for analysis.[3] Blood specimens must be collected from racing animals by veterinarians employed by the division or any licensed veterinarian hired or retained by the division, and the collection must be witnessed by the animal's trainer, owner, or designee.

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[1] *See Blood-Horse, Foreman: Pace of Drug Reform 'Unprecedented'*, http://www.bloodhorse.com/horse-racing/articles/84070/foreman-pace-of-drug-reform-unprecedented *(last visited Feb.26, 2015).*

[2] *Id*.

[3] See The Department of Business and Professional Regulation, Division of Pari-mutuel Wagering, *83rd Annual Report, Fiscal Year 2013-2014*, p. 3, http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2013-2014--83rd--20150114.pdf (last visited Feb. 26, 2015).

The 83rd Annual Report of the division reflects that during Fiscal Year 2013-2014, the laboratory received and processed 79,600 samples and performed 344,289 analyses, as follows:[4]

Sample Type	Horse Urine/Blood	Greyhound Urine	Investigative
Samples Received	15,816	63,757	27
Samples Analyzed	16,066	43,631	27
Number of Analyses	76,316	267,885	88
Positive Results	208	42	n/a

Some greyhound urine samples (20,044 or 31.4% of the total) were insufficient to allow for valid testing of those samples. Of the 79,573 non-investigative samples that were collected at racetracks, 59,697 samples were analyzed, but there were only 250 positive results for impermissible substances.

If a prohibited substance is found in a specimen, it is evidence that the substance was administered to and in the racing animal while racing. Test results are confidential and exempt from public records requirements for at least 10 days after the testing is completed. If the results are positive, they must be reported to the director of the division. If the test is positive, the results remain confidential and exempt until an action against the person licensed by the division has been commenced by the service of an administrative complaint, which is currently required to be commenced within two years after the violation.

Once the division notifies the owners or trainer of the results, the owner may request that each sample be split into a primary sample and a secondary (split) sample and that the secondary sample be sent to an independent laboratory. The splitting procedure must occur in the division's laboratory using procedures approved by the division by rule.

If a positive result found by the laboratory is not confirmed by the analysis made by the independent laboratory, no further administrative or disciplinary action may be pursued by the division.[5] If the positive result is confirmed, or if the volume of the secondary sample is insufficient to do so, then administrative action may proceed.

According to the division, there were 19 license suspensions, and $80,950 in fines assessed for violations of all pari-mutuel statutes and rules in Fiscal Year 2013-2014.[6]

II. Effect of Proposed Changes:

The bill modifies s. 550.2415, F.S., related to the prohibition of racing animals under certain conditions. The bill makes it a violation for a racing animal to test positive for a prohibited substance based on the testing of a sample of the racing animals bodily fluids collected before or after a race. Licensees responsible for a racing animal are held in violation if illegal substances are found, whether or not the actual perpetrator is known.

If a racing animal tests positive for a prohibited substance, the licensee's license can be suspended or revoked or the licensee may be fined. The bill increases the maximum fine for violations to $10,000 or the amount of the purse, whichever is greater.

In order to facilitate the quick removal of violators from the industry and ensure the health and safety of racing animals, the bill shortens the existing deadline for the initiation of administrative prosecutions from 2 years to 90 days from the date of the violation. The original bill set the deadline for filing an administrative action at 60 days. However, in order to ensure the timely prosecution of violators and based on input from the Department of Business and Professional Regulation, a 90 day deadline was determined to be appropriate.

[4] *See* 83rd Annual Report, *supra* note 3, at page 37.
[5] Section 550.2415(5)(b), F.S.
[6] *See* 83rd Annual Report, *supra* note 3, at page 3.

The bill provides that the division may solicit input from the Department of Agriculture and Consumer Services when adopting rules that specify normal concentrations of naturally occurring substances and acceptable levels of other environmental contaminants and substances.

The bill does not change existing law as to the testing of samples from racing greyhounds. Samples from racing animals collected at racetracks are analyzed by the division's laboratory. The University of Florida College of Veterinary Medicine Equine Racing Laboratory is currently under annual contract for these services.[7]

The bill provides that the division must notify not only the owner or trainer of the outcome of all drug tests, but all the stewards (the racetrack officials responsible for enforcement of racing regulations) and the appropriate horsemen's association (which represents the majority of the racehorse owners and trainers at a track). The bill does not address the timing of such notification to the stewards and horsemen's association.

If the division's laboratory finds that the sample contains impermissible medications, prohibited substances, or a level of a naturally occurring substance exceeding normal concentrations, the owner or trainer has the right to request another analysis be made on the retained portion by an independent laboratory. If the independent laboratory's analysis confirms the finding made by the division laboratory, administrative proceedings may be pursued.

If the quantity of the split sample provided to the independent laboratory from a racing greyhound is insufficient to confirm the positive drug test result made by the division's laboratory, prosecution may still be pursued against the owner or trainer on the basis of the initial test result.[8] In 2013-2014, the volume of urine collected from greyhounds was insufficient for testing by the independent laboratory 31.4% of the time.[9]

As to the testing of samples from racehorses, the bill provides that if the quantity of the split sample provided to the independent laboratory is insufficient to confirm the positive drug test result, no prosecution may be pursued against the owner or trainer, and any suspended license must be immediately reinstated.

The division's laboratory and all laboratories approved by the division to analyze samples collected from racing animals must annually participate in an outside quality assurance program to assess their ability to detect and quantify medications, drugs, and naturally occurring substances that may be administered to racing animals. The quality assurance program administrator must report its findings to the division and the Department of Agriculture and Consumer Services.

The bill mandates the adoption by the division of rules that establish the use and allowed levels of medications, drugs, and naturally occurring substances that are in the Controlled Therapeutic Medication Schedule (schedule), Version 2.1, revised April 17, 2014,[10] by the Association of Racing Commissioners International, Inc. (ARCI),[11] which is a not-for-profit trade association with no regulatory authority. However, its members individually possess regulatory authority within their jurisdictions, and many have the authority to determine whether to adopt ARCI recommendations on policies and rules.[12]

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[7] *See* Veterinary Diagnostic Laboratories, UF Large Animal Hospital, College of Veterinary Medicine, http://largeanimal.vethospitals.ufl.edu/services/veterinary-diagnostic-laboratories/ (last visited Feb. 26, 2015).

[8] Due to difficulties in collecting a sufficient amount of sample from a greyhound for the independent laboratory analysis, a greyhound trainer may still be prosecuted based on the original positive test result from the division's laboratory even if the results cannot be confirmed by an independent laboratory. However, because horses offer greater sample quantity, this same rule does not apply to racehorses.

[9] *See* 83rd Annual Report, *supra* note 5, at p. 37.

[10] *See* ARCI Controlled Therapeutic Medication Schedule - Version 2.1, Revised April 17, 2014, http://arcicom.businesscatalyst.com/assets/arci-controlled-therapeutic-medication-schedule---version-2.1.pdf (last visited Feb. 26, 2015).

[11] *See* Racing Commissioners International, http://arcicom.businesscatalyst.com/about-rci.html (last visited Feb. 26, 2015).

[12] *Id.*

The Association of Racing Commissioners International, Inc. has adopted Model Rules for Racing[13] for the use of the pari-mutuel industry.

The schedule includes maximum allowed concentrations and doses for 23 medications and three non-steroidal anti-inflammatory drugs, with guidelines for the termination of use of the medication or substance prior to racing, to avoid a positive drug test. The adoption of uniform medication rules using the schedule is an attempt to provide owners and trainers with uniformity of regulations across jurisdictions.[14]

The bill also requires the division to adopt rules designating the appropriate biological specimens to monitor the administration of certain substances, setting the testing methods for screening specimens to confirm the presence of certain substances, and establishing a classification system for drugs and substances, with a penalty schedule for violations.

The bill requires that the penalty schedule for violations must incorporate the Uniform Classification Guidelines for Foreign Substances, Version 8.0, revised December 2014, by ARCI.[15] These guidelines are "intended to assist stewards, hearing officers and racing commissioners in evaluating the seriousness of alleged violations of medication and prohibited substance rules . . . ." [16]

The bill requires the division to adopt rules specifying the conditions for the use of furosemide, a diuretic used to treat exercise-induced pulmonary hemorrhage and nose bleeds. The bill specifies that furosemide is the only medication that may be administered within the 24 hours before the "officially scheduled post time of a race," but not within the four hour period prior to that post time.

The bill deletes the specific requirement that the division adopt rules of the use and administration of prednisolone sodium succinate, phenylbutazone, and synthetic corticosteroids. Instead the bill provides for the reliance on ARCI's schedule and guidelines. The bill also deletes the division's authority to adopt rules for the use of furosemide, phenylbutazone, or prednisolone sodium succinate; those substances are addressed in ARCI's schedule and rules.

The bill deletes the requirement that the division use only thin layer chromatography (TLC) for the testing of urine and blood samples from race horses.

The bill deletes the use of 1995 standards, specifically to ARCI's uniform classification system for class IV and V medications adopted on February 14, 1995, and deletes the specific requirement that the testing for phenylbutazone be six full 15 milliliter blood tubes for each horse tested.

The bill retains existing law respecting the division's authority to adopt medication levels for racing greyhounds as may be recommended by the University of Florida College of Veterinary Medicine.

The division notes that since the Controlled Therapeutic Medication Schedule adopted by the Association of Racing Commissioners International, Inc. appears to be limited to horses, the deletion of existing s. 550.2415(15), F.S., as to the medication of racehorses, removes its authority to adopt rules on medication levels that have not yet been addressed by ARCI.

The bill provides for an effective date of July 1, 2015.

B. SECTION DIRECTORY:

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[13] *See* University of Arizona, Race Track Industry Program, https://ua-rtip.org/industry_service/download_model_rules (last visited Feb. 26, 2015).

[14] See Gary West, *Churchill Could Spark Change, ESPN.com, (Dec. 17, 2014),* http://espn.go.com/espn/print?id=12043495&type=story; *See also* Racing Medication and Testing Consortium, *RMTC Executive Committee Responds to Proposal, Stresses Importance of Independence (Dec.18, 2014),* http://www.rmtcnet.com/content_pressreleases.asp?id=&s=&article=1942 .

[15] *See* Association of Racing Commissioners International, Inc., *Drug Testing Standards and Practices Program, Model Rules Guidelines (Dec. 2014),* http://arcicom.businesscatalyst.com/assets/uniformclassificationguidelines.pdf .

[16] *Id.* at p. ii.

Section 1 amends s. 550.2415, F.S.:

- setting standards for medication and testing of racing animals;
- making it a violation for a racing animal to test positive for a prohibited substance and for a person to impermissibly medicate a racing animal;
- allowing the division to solicit input from the Department of Agriculture and Consumer Services;
- increasing the fine amounts for violations;
- decreasing the time for commencing an administrative action;
- requiring notification of certain persons; and
- requiring the adoption of rules related to the use of certain national testing standards.

Section 2 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Collection of higher fine amounts could lead to increased revenue to the state.

2. Expenditures:

   None. Note: The negative fiscal impacts estimated by the division have been addressed and are no longer present in the proposed committee substitute.[17]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The changes in sampling of specimens from racing animals and the annual assessment of independent testing laboratories will have an indeterminate impact on horse and greyhound tracks, and the owners and trainers of racing animals.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

[17] *See* Department of Business and Professional Regulation, *Legislative Bill Analysis of 2015 Senate Bill 226,* p. 6 (Feb. 4, 2015).

The division is given the authority to make rules in accordance with national standards for medications and testing procedures used in the animal racing industry and as set out by the Controlled Therapeutic Medication Schedule adopted by the Association of Racing Commissioners International, Inc.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2015, the Business & Professions Subcommittee considered a proposed committee substitute and reported the proposed committee substitute favorably with a committee substitute.

The committee substitute made the following changes to the filed version of the bill:

- Changes the deadline in the original bill for initiating administrative action from 60 days to 90 days, which shortens the current two year deadline;
- Removes the requirement in the original bill to split the sample at the racetrack – returning to current law; and
- Specifies exact versions of the current Uniform Classification Guidelines for Foreign Substances and Controlled Therapeutic Medication Schedule that must be incorporated in rulemaking.

The staff analysis is drafted to reflect the committee substitute.