

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Agriculture

BILL: SB 674

INTRODUCER: Senator Young

SUBJECT: Steroid Use in Racing Greyhounds

DATE: January 31, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	Favorable
2.	<u>Akhavein</u>	<u>Becker</u>	<u>AG</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 674 amends s. 550.2415, F.S., to provide that a positive test result for anabolic steroids¹ in a racing greyhound based on samples taken from the greyhound before or after a race is a violation of s. 550.2415, F.S. That statute prohibits racing of an animal that has been impermissibly medicated or determined to have a prohibited substance present in urine or other samples taken from the animal before or immediately after a race. Under current law and the current rules of the Division of Pari-Mutuel Wagering (division) of the Department of Business and Professional Regulation (DBPR), testosterone, an anabolic steroid, is permitted to be used for the control of the reproductive cycle in female greyhounds.

SB 674 has an indeterminate fiscal impact on state government. *See* Section V. Fiscal Impact Statement.

The bill provides an effective date of July 1, 2018.

II. Present Situation:

The racing of an animal (horse or greyhound) that has been impermissibly medicated or determined to have a prohibited substance present, is a violation of s. 550.2415, F.S. However, the Division of Pari-mutuel Wagering (division) of the Department of Business and Professional Regulation (DBPR), may adopt rules specifying acceptable levels of naturally occurring

¹ Steroids include drugs used to relieve swelling and inflammation, such as prednisone and cortisone; vitamin D; and some sex hormones, such as testosterone and estradiol. *See* <http://www.medicinenet.com/script/main/art.asp?articlekey=5556> (last visited Jan. 31, 2018).

substances in untreated animals, acceptable levels of environmental contaminants, and trace levels of substances in test samples.²

Classification of a substance in a sample as permissible or impermissible may be dependent upon whether:

- The substance is administered within or outside the allowed time frame before a race is scheduled to begin;
- The racing animal is approved for administration of the substance, or is qualified by gender to receive it;
- The level of the substance exceeds acceptable levels set by administrative rule; and
- The method of administration of the substance is prohibited.³

Certain medications may be administered to racing greyhounds in certain dosages under limited conditions, including the administration of:

- Testosterone or testosterone-like substances, when used for the control of estrus in female racing greyhounds, subject to certain conditions;⁴ and

² See s. 550.2415(1)(b), F.S., and Fla. Admin. Code R. 61D-6.007 (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.007> (last visited Jan. 31, 2018). An administrative proceeding challenging Rule 61D-6.007 as an invalid exercise of delegated legislative authority and on the basis that the rule arbitrarily fails to address environmental contamination of urine samples is pending before the Florida Division of Administrative Hearings. See *McClellan and Nemeth v. Dep't of Bus. and Prof. Reg.*, Case No. 17-005238RU at <https://www.doah.state.fl.us/ALJ/searchDOAH/detail.asp> (last visited Jan. 31, 2018) (*McClellan*). In a Partial Summary Final Order issued December 22, 2017, Administrative Law Judge Lawrence Stevenson, found the **method** of collecting, handling, and testing urine samples from racing greyhounds trained by the petitioners was invalid, because the DBPR, in violation of Florida law, continued to rely on a portion of a 2010 procedural training manual relating to urine sampling “even after being ordered to cease all reliance on [the training manual’s sampling procedure]” in a prior administrative proceeding. *Id.* at page 9, citing *Dawson v. Dep't of Bus. and Prof. Reg.*, Case No. 14-5276RU (Fla. DOAH Jan. 29, 2015) (*Dawson*). In the *Dawson* case, the portion of the training manual relating to urine sampling was found to be an unadopted rule, and the DBPR was ordered to immediately discontinue all reliance on it, or any substantially similar statement. See *Dawson* at page 32. The DBPR has appealed the *McClellan* ruling to the First District Court of Appeal. See *Dep't of Bus. and Prof. Reg., Div. of Pari-Mutuel Wagering v. McClellan*, Case No. 18-0128 (Fla. 1st DCA) at http://jweb.flcourts.org/pls/ds/ds_docket (last visited Jan. 31, 2018).

³ See Fla. Admin. Code R. 61D-6.007 (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.007> (last visited Jan. 31, 2018).

⁴ Pursuant to Fla. Admin. Code R. 61D-6.007(1)(d) (2017), track veterinarians may administer injectable testosterone to female racing greyhounds to control their reproductive cycle (estrus control) (limited to administration that occurs on the ground of the pari-mutuel permit holder). Kennel owners may use their regular Florida licensed veterinarian or may enter into a collective agreement for the services of a Florida licensed veterinarian to administer injectable testosterone as permitted. The administration of oral testosterone is permitted if it is validly prescribed and properly labeled. Veterinarians that administer injectable or oral testosterone are responsible for maintaining security, inventory, and a retrievable records/log in accordance with the Drug Enforcement Agency (DEA) regulations.

Until December 2017, the ARCI Model Rules of Racing (Model Rules) completely prohibited the use of anabolic steroids in racing greyhounds at any stage of their training and racing careers; the Model Rules were amended in December 2017 to provide an exception that allows the use of the anabolic steroid, testosterone, so long as it is prescribed by a licensed veterinarian for the control of estrus in female racing greyhounds. See ARCI-018-020 (16) *Medications and Drugs*, Model Rules at pp. 345-347 (pp. 342-344 of the printed document), and the footnote therein relating to “added ‘estrus control language’” at http://arci.blob.core.windows.net/webdocs/2017%2012%20Model_Rules_V8.2.pdf (last visited Jan. 31, 2018).

- Sulfa drugs (antibiotics)⁵ under certain conditions.⁶

Certain medications at certain urinary concentrations are not reportable by the state laboratory as violations.⁷

All prescription medication, regardless of method of administration, must be safeguarded under lock and key when not being actively administered.⁸

Each racetrack permit holder must maintain a detention enclosure for securing urine, blood, or other samples from racing animals.⁹ The trainer of record for each animal is responsible for the condition of the animals he or she enters to race,¹⁰ and for securing all prescribed medications, over-the-counter medicines, and natural or synthetic medicinal compounds.¹¹

Samples of blood, urine, saliva, or any other bodily fluid may be collected from a race animal immediately before and immediately after it has raced.¹² If racing officials find, through reasonably reliable evidence, that substances other than permissible substances have been administered, or that otherwise permissible substances have been administered during prohibited periods before the time of a race, evidence of illegal or impermissible substances may be confiscated and the racing animal may be prohibited from racing in the race (scratched).¹³

The winner of every race is sent to the detention enclosure for examination by an authorized representative of the division and the taking of samples to monitor and detect both permissible and impermissible substances.¹⁴ Any other animals that participated in the race may be

⁵ A “sulfa drug” is an antibiotic used to treat bacterial and some fungal infections. *See* <http://www.medicinenet.com/script/main/art.asp?articlekey=14498> (last visited Jan. 31, 2018).

⁶ Under Fla. Admin. Code R. 61D-6.007(2) (2017), the racing greyhound must be under the care of a Florida licensed veterinarian who also holds an occupational license pursuant to s. 550.105(2)(a), F.S. The sulfa drug must be prescribed by a Florida licensed veterinarian who also holds an occupational license pursuant to s. 550.105(2)(a), F.S., and the sulfa drug may not be administered within 24 hours prior to the officially scheduled post time of the race.

⁷ *See* Fla. Admin. Code R. 61D-6.007(3) (2017). These include the detection of: (i) caffeine at a urinary concentration less than or equal to 200 nanograms per milliliter; (ii) theophylline and theobromine at a urinary concentration less than or equal to 400 nanograms per milliliter; (iii) procaine at a urinary concentration less than or equal to 2 micrograms per milliliter; and (iv) flunixin at a urinary concentration less than or equal to 250 nanograms per milliliter. A nanogram is one billionth of a gram and a microgram is one millionth of a gram; a milliliter is one thousandth of a liter, or .03381 fluid ounces. *See* <https://www.thefreedictionary.com/nanogram>, <https://www.thefreedictionary.com/microgram>, <https://www.thefreedictionary.com/milliliter>, and <http://www.metric-conversions.org/volume/milliliters-to-ounces.htm> (last visited Jan. 31, 2018).

⁸ *See* Fla. Admin. Code R. 61D-6.007(4) (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.007> (last visited Jan. 31, 2018).

⁹ *See* Fla. Admin. Code R. 61D-6.002(2) (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.002> (last visited Jan. 31, 2018).

¹⁰ *See* Fla. Admin. Code R. 61D-6.002(1) (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.002> (last visited Jan. 31, 2018).

¹¹ *See* Fla. Admin. Code R. 61D-6.003 (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.003> (last visited Jan. 31, 2018). Prescription drugs must be prescribed by a licensed veterinarian who has a current veterinarian-patient relationship, and all substances must have a proper label.

¹² Section 550.2415(1)(a), F.S.

¹³ *See* s. 550.2415(7) and (8), F.S., and Fla. Admin. Code R. 61D-6.005 (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.005> (last visited Jan. 31, 2018).

¹⁴ *See* Fla. Admin. Code R. 61D-6.005(1) (2017).

designated for examination and testing by the stewards, judges, racetrack veterinarian, or a division representative.¹⁵

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 (state laboratory) for analysis.¹⁶

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.¹⁷

The division, in its 85th Annual Report, noted that during Fiscal Year 2015-2016, the state laboratory processed 76,219 samples and performed 313,600 analyses:¹⁸

Sample Type	Horse Urine/Blood	Greyhound Urine	Investigative
Samples Received	16,945	58,274	2
Samples Analyzed	17,001	39,031	2
Number of Analyses	77,268	236,332	2
Positive Results	343	18	n/a

If a prohibited substance is found in a race-day specimen, it is evidence that the substance was administered to, and was in the racing animal while racing.¹⁹ Test results are confidential and exempt from public records for 10 days after the testing of all samples collected on a particular day have been completed and any positive results have been reported to the director of the division.²⁰ A prosecution by the division against a licensee for a violation must begin within ninety days after the violation.²¹

The division must notify the owner or trainer, the stewards, and the appropriate horsemen's association of all drug test results.²² At the request of either the affected owner or trainer, the division must send the sample to an independent laboratory for analysis.

If the positive result found by the state laboratory is not confirmed by the analysis made by the independent laboratory, no further administrative or disciplinary action may be pursued by the division.²³ If the positive result is confirmed, or if the volume of the secondary sample is insufficient to do so, then administrative action may proceed.²⁴ There must be a good faith

¹⁵ *Id.*

¹⁶ See 85th Annual Report, Fiscal Year 2015-2016, (85th Annual Report) at page 31, at <http://www.myfloridalicense.com/dbpr/pmwd/documents/AnnualReports/AnnualReport-2015-2016--85th--20170125.pdf> (last visited Jan. 31, 2018). The division annually contracts with the state laboratory for these services. The DBPR has not yet issued its 86th Annual Report for Fiscal Year 2016-2017.

¹⁷ See Fla. Admin. Code R. 61D-6.005 (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.005> (last visited Jan. 31, 2018).

¹⁸ See 85th Annual Report, *supra* note 16, at page 31.

¹⁹ Section 550.2415(1)(c), F.S.

²⁰ See ss. 550.2415(1)(a), F.S.

²¹ See s. 550.2415(4), F.S.

²² Section 550.2415(5)(a), F.S.

²³ Section 550.2415(5)(b), F.S.

²⁴ Section 550.2415(5)(c), F.S.

attempt by the division to obtain a sufficient quantity of fluid specimens to allow both a primary test to be made by the state laboratory and a secondary test to be made by an independent laboratory.²⁵

The mere presence of a prohibited substance in a racing animal is evidence of the violation.²⁶ The fine for violations may be up to \$10,000 or the race winnings (purse or sweepstakes amount), whichever is greater.²⁷ Prosecutions must be started within ninety days of the race date.²⁸

The penalty schedule for violations incorporates the Uniform Classification Guidelines for Foreign Substances, Version 8.0, revised December 2014 (Uniform Classification Guidelines), by ARCI.²⁹ Pursuant to Florida Administrative Code Rule 61D-6.012, relating to penalty guidelines for drug violations in greyhounds, penalties are imposed when the division finds certain substances have been identified by the state laboratory in a urine sample or blood sample collected from a greyhound participating in a pari-mutuel event, which substances include any drug or medication (unapproved drugs or medications) that:

- Is not approved for veterinary use in the United States by the Food and Drug Administration;
- Cannot be detected by the state laboratory in a urine or blood sample unless the medication was administered within 24 hours of the race; or
- Is detected in urine or blood concentrations that indicate a dosage level that would constitute a threat to the health and safety of the greyhound.³⁰

A first violation may result in a fine between \$1,000 and \$2,500, and a license suspension up to one year or a license revocation. Any subsequent violation may result in a fine between \$2,500 and \$5,000 and a license revocation.³¹

Penalties for the presence of other medications or drugs, other than unapproved drugs or medications described above, are based upon the classification of the medication or drug found in the Uniform Classification Guidelines.³²

²⁵ *Id.*

²⁶ *See* s. 550.2415(1)(c), F.S.

²⁷ *See* s. 550.2415(3)(a), F.S.

²⁸ *See* s. 550.2415(4), F.S.

²⁹ *See* s. 550.2415(7)(c), F.S.

³⁰ *See* Fla. Admin. Code R. 61D-6.012(1)(a) (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.012> (last visited Jan. 31, 2018). An administrative proceeding challenging Rule 61D-6.012 as an invalid exercise of delegated legislative authority and on the basis that the rule arbitrarily fails to address environmental contamination of urine samples is pending before the Florida Division of Administrative Hearings. *See McClellan and Nemeth v. Dep't of Bus. and Prof. Reg.*, Case No. 17-005238RU at <https://www.doah.state.fl.us/ALJ/searchDOAH/detail.asp> (last visited Jan. 31, 2018) and the summary of the proceeding at footnote 2 *infra*.

³¹ *Id.*

³² *See* Fla. Admin. Code R. 61D-6.012(2) (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.012> (last visited Jan. 31, 2018).

III. Effect of Proposed Changes:

Section 1 amends s. 550.2415, F.S., to provide that a positive test result for anabolic steroids³³ in a racing greyhound before or after a race is a violation of s. 550.2415, F.S. That statute prohibits racing of an animal that has been impermissibly medicated or determined to have a prohibited substance present in urine or other samples taken from the animal before or immediately after a race. Anabolic steroids (testosterone) are drugs whose uses include the control of the reproductive cycle in female greyhounds.³⁴

The administration of testosterone or testosterone-like substances for the control of estrus in female racing greyhounds, is permitted by rule of the division, subject to certain conditions.³⁵ Under the bill, no such use of those substances will be permissible.

The bill does not modify the existing procedures for determining violations. Any affected licensee would have the same due process rights, including the opportunity for a hearing, which law currently affords for alleged violations under s. 550.2415, F.S.

Section 2 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 674 will have an indeterminate impact on greyhound tracks, and the owners and trainers of greyhounds. The impact will depend on the frequency that anabolic steroids

³³ Steroids include drugs used to relieve swelling and inflammation, such as prednisone and cortisone; vitamin D; and some sex hormones, such as testosterone and estradiol. See <http://www.medicinenet.com/script/main/art.asp?articlekey=5556> (last visited Jan. 31, 2018).

³⁴ See Fla. Admin. Code R. 61D-6.007 (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.007> (last visited Jan. 31, 2018).

³⁵ *Id.*

are found to be present in greyhounds engaged in racing in Florida as a result of testing of samples taken from greyhounds before or immediately after a race.

C. Government Sector Impact:

The DBPR estimates the fiscal impact to state government to be minimal but indeterminate. The fiscal impact will depend upon the extent that violations and associated fines occur as a result of a greyhounds testing positive for the presence of anabolic steroids.³⁶

The DBPR reports that additional expenditures may be needed for the necessary testing for anabolic steroids. At present, the division contracts with the University of Florida, College of Medicine Racing Laboratory (state laboratory) to provide testing services. The current appropriation for that testing is \$2,266,000.³⁷ The state laboratory has indicated to the division that its testing procedures must be amended to include detection of anabolic steroids, and it must purchase a liquid chromatography-mass spectrometer to test approximately 37,000 greyhound racing samples annually (a cost of approximately \$400,000).³⁸

Further, the state laboratory may require building upgrades (a cost of approximately \$50,000) including electrical services, a nitrogen supply system, installation of a new venting system to accommodate additional fumes, and the purchase of a supporting bench to accommodate the additional equipment, to perform the additional testing the bill would require.³⁹ Additional state laboratory personnel will be required to process samples, review data, develop methodology, and maintain equipment (a cost of approximately \$100,000), and the state laboratory may need to amend the existing contract with the division to cover the additional costs (totaling approximately \$550,000).⁴⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 674 provides that s. 550.2415, F.S., is violated if a sample from a greyhound reflects the presence of anabolic steroids, resulting in a positive test. The term “greyhound” used in the bill is more expansive than the term “racing greyhounds,” defined in s. 550.002(29), F.S., to mean greyhounds used, or bred, raised, or trained to be used, in racing at a pari-mutuel facility and registered with the National Greyhound Association.

³⁶ See 2018 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SB 674, dated Nov. 27, 2017 (on file with Senate Committee on Agriculture) at page 4.

³⁷ *Id.*

³⁸ *Id.* At page 5.

³⁹ *Id.*

⁴⁰ *Id.* at pages 4-5.

According to the DBPR, the testing of samples from male greyhounds may also result in positive tests if levels of naturally occurring anabolic steroids (e.g., testosterone) are not considered and addressed.⁴¹

VIII. Statutes Affected:

This bill substantially amends section 550.2415 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁴¹ *Id.* at page 5.