

§96. Use of prohibited substance; animals entered in events

1. Prohibition on administration of prohibited substance. A person may not feed, inject, insert or otherwise administer or attempt to administer or instruct, aid or conspire with another person to administer or employ anyone who administers or attempts to administer a prohibited substance to an animal.

[PL 2005, c. 563, §3 (NEW).]

2. Prohibited use or exhibition of drugged animal. A person may not enter or use in an event an animal that has been administered a prohibited substance. The commissioner may require that an animal be tested for the presence of a prohibited substance before, during or after an event.

[PL 2005, c. 563, §3 (NEW).]

3. Animals subject to examination; scope; request for test. An animal entered in an event is subject to examination under the direction of a licensed veterinarian or an agent of the licensed veterinarian. The licensed veterinarian, with the approval of the commissioner, may appoint technicians and agents to perform duties under this section that are not prohibited by other provisions of law. The examination may include physical, saliva, urine or blood tests or other tests or procedures that the licensed veterinarian considers necessary to carry out the purposes of this section. The licensed veterinarian may examine an animal entered in an event if that animal is on the grounds of the event. The licensed veterinarian also may examine an animal withdrawn by the owner of the animal within 24 hours prior to an event for which the animal had been entered. The pull superintendent appointed under section 99, subsection 1 may undertake a visual examination of any animal entered in an event and may request a licensed veterinarian or an agent of the licensed veterinarian to undertake an examination under this subsection.

[PL 2017, c. 207, §3 (AMD).]

4. Refusal to submit animal for examination. The owner or driver may not refuse to secure or restrain an animal for examination under this section by a licensed veterinarian or a technician or agent of the licensed veterinarian and may not interfere with the restraining or securing of an animal for that examination.

[PL 2017, c. 207, §3 (AMD).]

5. Presence of prohibited substance; prima facie evidence. If the chemical analysis of a test performed under subsection 3 indicates the presence of a prohibited substance, it is prima facie evidence that the substance has been administered to the animal. For purposes of this section, each administration of a prohibited substance to an animal and each occasion on which a prohibited substance was administered in violation of subsection 1 constitutes a separate violation.

[PL 2005, c. 563, §3 (NEW).]

6. Authority of commissioner to make rules. The commissioner may adopt rules relating to the administration of tests, the care and custody of test samples and all other matters necessary to carry out the purposes of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2005, c. 563, §3 (NEW).]

7. Responsibility of owner and driver for condition of animal. In the absence of substantial evidence to the contrary, the owner and driver of an animal are responsible for the condition of the animal, including the presence of a prohibited substance, and are charged with knowledge of all the provisions contained in this section and the rules adopted pursuant to this section. If the owner is prevented from performing the owner's duties for an animal under this subsection, by illness or other cause, or is absent from the event where an animal under the owner's care is entered and stabled, the owner shall immediately notify the secretary or general manager of the event.

[PL 2017, c. 207, §3 (AMD).]

8. Administrative hearing; suspension. In lieu of a civil action under subsection 9, the commissioner may institute an administrative proceeding on any alleged violation of this section. If the commissioner institutes an administrative proceeding, the commissioner shall give notice and an opportunity for hearing under Title 5, chapter 375, subchapter 4. Upon giving notice to a person who is alleged to be in violation of this section, the commissioner shall immediately prohibit that person from competing in an event within the State. This prohibition remains in effect for 30 days or until the commissioner's decision following the hearing is received, whichever occurs first, except that the prohibition period is extended by any delays of the hearing requested by the person against whom the violation is alleged.

If the person against whom the violation is alleged does not request a hearing or if, after a hearing, the commissioner finds the person has committed the violation, the commissioner shall prohibit that person from competing in any event within the State for a period of 2 years for the first offense, 3 years for the 2nd offense and 5 years for the 3rd and subsequent offenses and shall also exclude the animal from competing in any event within the State for a period of one year. The commissioner may also, in an adjudicatory proceeding, in lieu of a civil action under subsection 9, impose an administrative penalty not to exceed \$1,000 for a violation of this section.

The commissioner may establish, by rule, a schedule of administrative penalties for violations of this section that includes fines and prohibitions on competing. The schedule must be based on the severity of the violation. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2017, c. 207, §4 (AMD).]

9. Civil violations. A person who violates subsection 1, 2 or 4 commits a civil violation for which the following may be adjudged:

- A. For the first violation, a fine of not less than \$100 nor more than \$500; or [PL 2005, c. 563, §3 (NEW).]
- B. For a 2nd or subsequent violation, a fine of not less than \$500 nor more than \$1,000. [PL 2005, c. 563, §3 (NEW).]

Fines adjudged under this subsection must be deposited in the General Fund.

[PL 2005, c. 563, §3 (NEW).]

10. Suspension. When a violation is adjudicated under subsection 9, the commissioner shall immediately suspend the person adjudicated to have committed the violation from participating in events for a period of 2 years for the first offense, 3 years for the 2nd offense and 5 years for the 3rd and subsequent offenses and shall also exclude the animal involved from competing in any event for a period of one year. An action by the commissioner based upon an adjudication under this section is automatic, and there is no right to a hearing before the commissioner on the suspension. A person who participated in an event during any period of suspension or prohibition ordered by the commissioner under this subsection or subsection 8 and the owner of any animal that competes during a period of suspension or prohibition commit an additional violation of this section.

[PL 2017, c. 207, §5 (AMD).]

11. Forfeiture. The owner of an animal found to have been administered a prohibited substance in violation of this section forfeits all prize money and any trophies, ribbons and points won at an event by the affected animal. The prize money and trophies, ribbons and points must be redistributed by the secretary or general manager of the event in accordance with its rules or bylaws.

[PL 2005, c. 563, §3 (NEW).]

12. Exception; therapeutic use of drugs. This section does not prohibit the administration to an animal of a drug the use of which is required for treatment of an illness or condition unrelated to the performance of the animal in an event. An animal in an event that receives a medication that contains

a prohibited substance is not eligible for the event, unless the following requirements have been met and the information requested is submitted as a statement in writing to the secretary or general manager of the event.

- A. The medication must be therapeutic and necessary for treatment of an illness or injury. [PL 2005, c. 563, §3 (NEW).]
- B. The animal must be withdrawn from the event for a period of at least 24 hours after medication has been administered. [PL 2005, c. 563, §3 (NEW).]
- C. Only a licensed veterinarian or an owner acting under the direction of a licensed veterinarian may administer medication. The owner may administer medication under the direction of a licensed veterinarian if the licensed veterinarian has assumed responsibility for making medical judgments regarding the health of the animal, has sufficient knowledge of the animal to make a general or preliminary diagnosis of the animal and is readily available to care for the animal in the event of an adverse reaction to medication or the failure of the owner to adhere to a therapy regimen. [PL 2017, c. 207, §6 (AMD).]
- D. The amount, strength and mode of administration of medication must be identified. [PL 2005, c. 563, §3 (NEW).]
- E. The statement must include the date and time of the administration of medication. [PL 2005, c. 563, §3 (NEW).]
- F. The animal must be identified by name, age, sex, color and entry number. [PL 2005, c. 563, §3 (NEW).]
- G. The statement must contain the diagnosis and reason for administering the medication. [PL 2005, c. 563, §3 (NEW).]
- H. The statement must be signed by the person administering the medication. [PL 2005, c. 563, §3 (NEW).]
- I. The statement must be filed with the secretary or general manager of the event within one hour after the administration of medication or one hour after the secretary or general manager of the event returns to duty, if the administration is at a time other than during event hours. [PL 2005, c. 563, §3 (NEW).]
- J. The statement must be signed by the secretary or general manager of the event and the time of receipt of the statement must be recorded on the statement by the secretary or general manager. [PL 2005, c. 563, §3 (NEW).]

If the chemical analysis of a sample taken pursuant to subsection 3 from the animal treated under this subsection indicates the presence of a prohibited substance and all the requirements of this subsection have been met, the information contained in the statement and any other relevant evidence must be considered at a hearing provided under subsection 8 in determining whether there has been a violation of any provision of this section.

[PL 2017, c. 207, §6 (AMD).]

13. Inapplicability to horse racing. This section does not affect laws governing horse racing or affect horse sales or horse auction sales when those sales are solely for the sale of racehorses or breeding stock that are used in the production of racehorses and when those sales are held or conducted on the premises of a racing association under the jurisdiction of, and with the authorization and approval of, the State Harness Racing Commission.

As used in this subsection, "racehorse" means a live horse, including a stallion, mare, gelding, ridgeling, colt or filly, that is eligible to participate in a horse racing contest in this State where pari-mutuel racing is permitted under the rules adopted by the State Harness Racing Commission. This subsection does not exempt racehorses participating in an event covered by this chapter.

[PL 2005, c. 563, §3 (NEW).]

SECTION HISTORY

PL 2005, c. 563, §3 (NEW). PL 2011, c. 73, §1 (AMD). PL 2017, c. 207, §§3-6 (AMD).

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