
SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

Senator Bill Dodd

Chair

2019 - 2020 Regular

Bill No:	SB 800	Hearing Date:	5/12/2020
Author:	Dodd, et al.		
Version:	3/9/2020 Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Brian Duke		

Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than one committee as a typical timeline would allow. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the Senate Business, Professions, and Economic Development Committee.

SUBJECT: Horse racing: veterinary medical records: race horse fatalities: equine medication

DIGEST: This bill authorizes veterinarians to make available the entire medical records of racehorses to specified parties involved in horse racing; requires the California Horse Racing Board (CHRB) to publish on a weekly basis all horse fatalities that occur within a licensed facility, as specified; and requires the CHRB to post results of nonconfidential official racehorse drug test samples within five business days of the confirmed negative split sample test result, as specified.

ANALYSIS:

Existing law:

- 1) Article IV, Section 19(b) of the Constitution of the State of California provides that the Legislature may provide for the regulation of horse races and horse race meetings, and wagering on the results.
- 2) The Horse Racing Law provides that the CHRB has all powers necessary and proper to enable it to carry out fully and effectually the purposes of the Horse Racing Law.
- 3) Prohibits a veterinarian licensed in this state from disclosing any information concerning an animal receiving veterinary services except under any one of

specified circumstances and subjects a veterinarian to specified criminal penalties for violating these provisions.

- 4) Requires any blood or urine test sample that the CHRB requires to be taken from a horse that is entered in any race be divided or taken in duplicate – the initial test sample is referred to as the official test sample and the secondary sample is referred to as the split sample.
- 5) Requires that the CHRB be notified of a finding of a prohibited drug substance in an official test sample within 24 hours of the confirmation of that prohibited drug substance in the split sample, as specified.
- 6) Requires, except as specified, that the results of the tests be confidential until or unless the CHRB files an official complaint.

This bill:

- 1) Exempts from the existing prohibition on veterinarians disclosing any information concerning an animal receiving veterinarian services if the care or service was for a horse that has participated in or is intended to participate in a licensed horse race.
- 2) In situations where a horse has participated in or is intended to participate in a licensed horse race, the entire medical record for the horse shall be made available upon request to anyone responsible for the direct care of the horse, including the owner, trainer, or veterinarian, the CHRB or any other state or local governmental entity, and the racing association or fair conducting the licensed horse race.
- 3) Requires the CHRB to publish on a weekly basis, on its internet website, all horse fatalities that occur within a licensed enclosure.
- 4) Requires that the results of a horse drug test be kept confidential until or unless the independent laboratory confirms the finding of the prohibited substance in the split sample or waiver of the split sample testing is given by the owner or trainer.
- 5) Requires the CHRB to post on its internet website the results of all nonconfidential official test samples collected after July 1, 2020, within five business days of the confirmation of the split sample or waiver of the split sample testing by the owner or trainer.

Background

Purpose of the bill. According to the author's office, "we must do everything we can to put safety first and stop unacceptable horse deaths. We must ensure track conditions are right and horses are fit before they hit the starting gate so we aren't jeopardizing them and their jockeys. After an increase in equine fatalities last year, I authored urgency legislation to authorize the CHRB to immediately stop racing at a licenses facility when that step is necessary to protect the health and safety of race horses and jockeys, however more can be done. The CHRB has recommended a number of statutory and regulatory changes. SB 800 includes three of the CHRB's recommendations – increased transparency of veterinary records, publishing online of equine fatalities, and publishing online negative drug test results. Together, with pending CHRB regulatory changes, this bill will help to ensure that California is the safest racing jurisdiction in the nation, and an example for other states to follow."

Horse racing in California. Horse racing has been taking place in California since the 1800s, but horse racing as we now know it – under the pari-mutuel wagering system – was not made possible until the electorate passed a constitutional amendment in 1933. To regulate and carry out the stated objectives in Horse Racing Law, the constitutional amendment established the CHRB. The stated mission of the CHRB is to ensure the integrity, viability, and safety of the California horse racing industry by, among other things, fostering safe racing through the development and enforcement of track safety standards and regulations for the health and welfare of all participants. There are over 17,000 licensed jobs tied to the horse racing industry in California, and according to the CHRB's *Annual Report 2018-2019*, the pari-mutuel handle totaled over \$2.9 billion.

An unusual increase in equine fatalities in the winter and spring 2018-2019 season at Santa Anita Park increased focus on animal protection in California and made national headlines. A number of critics blamed the racing surfaces at Santa Anita which had endured heavier than normal rainfall which created maintenance problems. Experts were brought in to study and do work on the main track to ensure that it was as safe as possible for racing and training. This required a series of closures that temporarily halted racing and training. Management also introduced new safety measures. Those efforts resulted in a reduction but not the total elimination of horse deaths.

Additionally, SB 469 (Dodd, Chapter 22, Statutes of 2019) was signed into law by Governor Newsom and took immediate effect in June 2019. The bill authorized the CHRB to immediately suspend a license to conduct a horse racing meeting when necessary to protect the health and safety of horses and riders and the board

adopted emergency regulations to implement the measure. The CHRB has yet to exercise this new authority. At the same time, Governor Newsom directed the CHRB to create a panel of CHRB veterinarians and stewards to review the medical, training, and racing histories of each horse entered in a race, empowered to recommend to the stewards that they reject horses deemed unfit to run.

Despite these and other safety measures, equine deaths continued, though at a reduced rate. At the request of Governor Newsom in November 2019, the CHRB submitted a more extensive list of recommendations, some of which require legislation. This bill implements three of those recommendations; transparency of veterinarian records, requiring the CHRB to publish on a weekly basis all equine fatalities that occur within a licensed enclosure, and requiring the CHRB to post all confirmed failed equine drug tests.

Veterinarian records of equines. Under current law, licensed veterinarians are prohibited from disclosing any information concerning an animal receiving veterinary services, the client responsible for the animal receiving veterinary services, or the veterinary care provided to an animal, except under limited circumstances including written or oral authorization by informed consent of the client responsible for the animal, in response to a valid court subpoena, or as may be required to ensure compliance with any federal, state, county, or city law or regulation.

This bill adds an exemption to the general prohibition of sharing horse veterinary records if the care or service was for a horse that has participated in or is intended to participate in a licensed horse race. In these situations, the entire medical record for the horse shall be made available upon request to anyone responsible for the direct care of the horse, including the owner, trainer, or veterinarian, the CHRB or any other state or local government entity, and the racing association or fair conducting the licensed horse race.

Online publishing of equine fatalities. The State of California monitors all horse fatalities within CHRB racing and authorized training facilities. This is accomplished through official veterinarians, safety stewards, the equine medical director, and the CHRB/University of California, Davis (UC Davis) post-mortem program. CHRB Rule 1846.5, Postmortem Examination, requires a necropsy for all horses dying within a CHRB facility. Research findings are published in veterinary medical journals and presented at racing industry, veterinary medical, and other professional meetings available to the public. Additionally, in January 2020, the CHRB began publishing weekly updates on equine fatalities including the horse's name, breed, the activity the horse was performing, the trainer of the

horse, the track surface, the weather at the time of the injury, and the last time the horse had ran in a race, among other things.

This bill requires the CHRB, by statute, to publish on a weekly basis, on its internet website, all equine fatalities that occur within a CHRB licensed facility.

Equine drug testing. In order to protect horse and jockey welfare and the integrity of racing, the CHRB requires analysis of blood and urine samples from horses in competition. The Kenneth L. Maddy Equine Analytical Chemistry Laboratory (Maddy Lab) at UC Davis, is the authorized drug-testing laboratory for California horse racing. The Maddy Lab analyzed 52,333 samples during the 2018-2019 race season. Urine and blood samples are obtained post-race from the winner of every race, horses finishing second and third in certain stakes races, and from any other horses selected at random from each program, as well as other horses designated by the stewards. Post-race testing includes in-depth testing for anabolic steroids and over 1,800 other prohibited drugs, from regularly used therapeutic medications to potent stimulants such as ethylphenidate. Additionally, the Maddy Lab tests out-of-competition (OOC) blood samples. The OOC program monitors compliance with anabolic steroid reporting procedures and for surveillance of other drugs of interest.

Existing law requires any blood or urine test sample required by the CHRB to be taken from a horse to be divided or taken in duplicate. The initial test sample is referred to as the official test sample and the secondary sample is referred to the split sample. All samples immediately become and remain the property of the CHRB. If the official test sample is found to contain a prohibited drug substance, the executive director of the CHRB, after consulting with and agreeing with the equine medical director that the official test sample contains a prohibited substance, shall confidentially inform the owner and trainer of those results. The owner or trainer of the horse may then request that the split sample be tested by an independent laboratory, to be paid by the owner or trainer. Within 24 hours of the confirmation of a prohibited substance in the split sample, the executive director is required to report the results to the CHRB. Under existing law, the results of the test are required to be confidential until or unless the CHRB files an official complaint.

In order to increase transparency of testing, this bill requires the CHRB to post on its internet website the results of all nonconfidential official test samples collected within five business days of the confirmation of the split sample or waiver of the split sample testing by the owner or trainer.

CHRB and Los Angeles District Attorney's Office investigations. In addition to statutory and regulatory changes implemented by the Legislature and the CHRB, two separate reports were produced following the clustering of racehorse fatalities at Santa Anita Park. The CHRB initiated an investigation into each of the 23 fatalities that occurred during the unusually rainy weather between December 30, 2018, and March 31, 2019. The Los Angeles District Attorney's (LADA) office formed the Santa Anita Task Force (Task Force) to investigate and review the racing and training fatalities at Santa Anita Park for evidence of animal cruelty and criminal activity on 56 equine fatalities from July 8, 2018, to November 2, 2019.

The CHRB investigation into the initial 23 fatalities at Santa Anita looks back at the circumstances and causes of each fatality, and looks forward using its findings to make recommendations. Key findings of the CHRB investigation include: no illegal medications or procedures were uncovered; 21 horses had evidence of pre-existing pathology at the site of their fatal injury; a high majority (14 of 22) of the catastrophic musculoskeletal injuries (CMI) cases exhibited a high intensity exercise profile followed by a decline in activity in the month prior to CMI; and the data suggests that 39% of fatalities occurred on surfaces affected by wet weather.

The LADA Task Force concentrated its review on CHRB fatality reports and documents as well as statements from witnesses, industry stakeholders, and experts. The Task Force reviewed hundreds of documents including necropsies, veterinarian records, training records, and medication records related to the deaths and conducted numerous in-person interviews of current and former track maintenance experts, Santa Anita executives and employees, Jockey Guild and California Thoroughbred Trainers Association representatives, CHRB officials, jockeys, owners, trainers, and veterinarians.

According to the Task Force's report, "[a]fter an exhaustive evidentiary investigation, the District Attorney Task Force determined there was insufficient evidence to prove criminal animal cruelty or other unlawful conduct under California law." While the Task Force did not uncover sufficient evidence of animal cruelty on the part of Santa Anita Park or any individual trainer, owner, or jockey, the Task Force did identify several areas of concern and possible factors that may have contributed to deaths. The Task Force probed the following areas: medication, track conditions, running injured horses, and pressure to race. The report identified a number of recommended best practices derived from and supported by experts and stakeholders, to improve safety and reduce fatalities in horseracing. Included in these best practices is the recommendation to implement policies to create transparency of racehorse veterinary records, similar to what this bill is seeking to accomplish.

Prior/Related Legislation

AB 1974 (Gray, 2020) would, among other things, add as a CHRB responsibility, the adoption of rules and regulations that protect and advance the health, safety, welfare, and aftercare of racehorses; prohibit a trainer from administering any medication to a thoroughbred horse unless the medication is prescribed for that specific horse and administered strictly in accordance with board regulations, as specified; and creates the Horse and Jockey Safety and Welfare Account in the Fair and Exposition Fund, as specified. (Pending in the Assembly Governmental Organization Committee)

AB 2177 (Kalra, 2020) would, among other things, require the CHRB to adopt rules and regulations for the welfare and safety of racehorses, as specified; require specified licensed track operators to provide computerized tomography scanning equipment to detect potential horse injuries that shall be available onsite; establish an onsite central pharmacy; prohibit training or races at least seven days after any sealing or reinforcement of the track, as specified; authorize the CHRB to require racetracks to transition to high-quality synthetic surfaces, as specified; and require the executive director of the CHRB to make drug test results publicly available. (Pending in the Assembly Governmental Organization Committee)

AB 2615 (Chau, 2020) would codify existing regulations requiring that, if a horse suffers a fatal injury on a racetrack in training or in competition, or dies or is euthanized within an area under the jurisdiction of the CHRB, the horse undergo a postmortem examination at a diagnostic laboratory that is under contract with the CHRB, as specified. (Pending in the Assembly Governmental Organization Committee)

SB 469 (Dodd, Chapter 22, Statutes of 2019) authorized the CHRB to immediately suspend a license to conduct a horse racing meeting when necessary to protect the health and safety of horses and riders, as specified.

AB 128 (Gloria, Chapter 765, Statutes of 2019) would make it unlawful for any person to possess, sell, buy, give away, hold, or accept any horse if that person knows or should know that the animal will be killed for any commercial purpose.

AB 482 (Quirk, 2019) would authorize the CHRB to allow for races previously scheduled for daytime hours to be run in the evening when the proposed start time temperatures present a serious risk to horses, jockeys, or other backstretch employees, as specified. (Never heard in the Assembly Governmental Organization Committee)

AB 771 (Rubio, 2019) would make it a felony for any person to directly or indirectly hold or conduct any for-profit horse racing meeting without the proper licenses or approval from the CHRB. (Never heard in the Assembly Governmental Organization Committee)

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT:

None received

OPPOSITION:

None received