

LAW AND PUBLIC SAFETY

NEW JERSEY RACING COMMISSION

Harness Racing

Penalties

Adopted Rule: N.J.A.C. 13:71-2.3

Proposed: September 15, 2004 at 35 N.J.R. 4183(a)

Adopted: February 18, 2004 by the New Jersey Racing Commission,

Frank Zanzuccki, Executive Director

Filed: _____ As R. 2004 _____, without change

Authority: N.J.S.A. 5:5-30

Effective Date: April 19, 2004

Expiration Date: December 22, 2004

Summary of Public Comments and Agency Responses:

COMMENT:

Barbara Sachau of New Jersey is in agreement with raising fines and suggested that the fine level should be \$150,000 with the revenues being placed in a fund to establish a retirement home for old racing horses so the horses are not sent to slaughterhouses.

RESPONSE:

Not accepted. While the Racing Commission recognizes Ms. Sachau's comments in support of the increased penalties, a maximum fine of \$150,000 is considered excessive and the fine revenue has been legislatively determined to accrue to the benefit of the Backstretch Benevolence Program.

COMMENT:

Dennis Drazin, Esq., on behalf of the New Jersey Thoroughbred Horsemen's Association, contends that a substantial increase in penalties would unreasonably be utilized by the Racing Commission against persons it has a private agenda or personal problems with. Mr. Drazin further adds that any higher penalties will be used in a punitive fashion based upon the Executive Director's personal feelings for the individual.

Mr. Drazin also comments that the size of the proposed penalties will create a substantial negative impact on the racing industry because if excessive and prohibitive penalties were handed out, the Commission would effectively have the power to put people out of business. In addition, Mr. Drazin commented that the size of the proposed penalties arguably denies equal protection and hence would be constitutionally flawed. Specifically, only some could pay such fines, therefore, the ability to pay would be disproportionate and the proposals are thus discriminatory based upon classification of wealth.

RESPONSE:

Not accepted. The Racing Commission believes that the purpose and intent of the rule is stated clearly in the rule advertisement and counsel for the Commission has reviewed the rule and the Commission is satisfied with that review and concludes that the rule is not legally flawed. In addition, the Commission acknowledges that it will exercise its fiduciary responsibility to the State and the stakeholders in the racing industry and appropriately, within the bounds of the law, will apply this rule without regard to any individual, only the actions of that individual.

Federal Standards Statement

A Federal standards analysis is not required because the rules of racing are dictated by State statute, N.J.S.A. 5:5-22, et seq., and the adopted amendment is not subject to any Federal requirements or standards.

The full text of the adopted rule can be found in the New Jersey Register at 35 N.J.R. 4182 (a).