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AB-3252 Animal health. (2017-2018)

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Assembly Bill No. 3252

CHAPTER 289

An act to amend Sections 9268, 9272, 9574, 24000, 24001, 24004, 24007, 24009, 24010, 24011, and 24011.6 of, and to repeal Sections 9141, 9142, and 9162 of, the Food and Agricultural Code, relating to animal health, and making an appropriation therefor.

[Approved by Governor September 06, 2018. Filed with Secretary of State September 06, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3252, Committee on Agriculture. Animal health.

(1) Existing law requires any person that has the care or control of any animal that dies from any contagious disease to immediately cremate or bury the animal. Existing law prohibits the transport of any animal that has died from any contagious disease, except as specified. Existing law makes it unlawful for any person to knowingly sell, use, expose, or fail to immediately kill any horse, mule, or other animal that has the diseases dourine, glanders, or farcy after the person is notified of the disease by a licensed veterinarian or the Department of Food and Agriculture.

This bill would repeal those provisions.

(2) Existing law defines biologics, requires the Secretary of Food and Agriculture to license biologic establishments that meet specified requirements, prescribes requirements relating to the application for a biologic license, and requires a certain biologic license application fee and license renewal fee. Existing law prescribes certain procedures for the enforcement of those provisions. Existing law exempts from certain of these requirements, private veterinarians who maintain their own, in-office blood donor animals for use in their own practice.

This bill would eliminate that exemption for private veterinarians.

(3) Existing law exempts certain facilities engaged in the collection, preparation, testing, processing, storage, or distribution of human blood or blood products and clinical laboratories whose only biologics are autogenous bacterins prepared at the request of licensed veterinarians from all the law relating to the regulation and licensing of commercial blood banks for animals and biologics.

This bill would additionally exempt licensed private veterinarians who collect blood or blood products solely for use in their own practice from the law regulating and licensing commercial blood banks for animals and biologics.

(4) Existing law makes any person who negligently or intentionally violates any state or federal law or regulation, including any quarantine regulation, by importing any pest-infested or disease-infected animal or other article and causing further infestation or infection, or causing an infestation to spread beyond any quarantine boundaries, civilly liable in a sum not to exceed \$25,000.

This bill would revise this provision to instead impose civil liability for moving a pest-infested or disease-infected animal.

(5) Existing law provides for the regulation of public equine events and public horse sales, as defined, by the Secretary of Food and Agriculture. Existing law prohibits, as specified, the showing of a horse at these events and sales if the horse has been administered a prohibited substance. Existing law authorizes the therapeutic administration, as defined, of nonsteroidal anti-inflammatory drugs (NSAIDs) before and during all events and sales, except public auctions, provided that the dosage does not exceed limits established by regulation. Existing law requires the Department of Food and Agriculture, on or before July 1, 2014, to establish, by regulation, the approved therapeutic medications list and maximum detectable plasma levels. Under existing law, each violation of these provisions is punishable by, among other things, a civil penalty of not less than \$100 and not more than \$10,000. Existing law requires penalties collected pursuant to these provisions, including the civil penalty described in (4) above, and any interest, to be deposited in the Department of Food and Agriculture Fund. Under existing law, these moneys are continuously appropriated to the department for the purpose of carrying out these provisions.

This bill would revise the references to NSAIDs in these provisions, and related provisions, to instead refer to permissible substances, as defined. The bill would delete the requirement for the department to establish an approved therapeutic medications list on or before July 1, 2014. By expanding a category of substances for which a penalty may be imposed and expanding the application of the civil penalty provision described in (4) above, and thus increasing the revenue received from those penalties that is deposited in a continuously appropriated fund, the bill would make an appropriation.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 9141 of the Food and Agricultural Code is repealed.

SEC. 2. Section 9142 of the Food and Agricultural Code is repealed.

SEC. 3. Section 9162 of the Food and Agricultural Code is repealed.

SEC. 4. Section 9268 of the Food and Agricultural Code is amended to read:

9268. The requirements set forth in subdivision (c) of Section 9212, subdivision (e) of Section 9221, subdivision (c) of Section 9231, and Sections 9266 and 9267:

(a) Shall not apply to those facilities required to be inspected by the United States Department of Agriculture in accordance with the Animal Welfare Act (Chapter 54 (commencing with Section 2131) of Title 7 of the United States Code).

(b) Shall apply to those facilities housing blood donor animals under contract with commercial blood banks for animals licensed by the department.

SEC. 5. Section 9272 of the Food and Agricultural Code is amended to read:

9272. This chapter shall not apply (1) to licensed facilities primarily engaged in the collection, preparation, testing, processing, storage, or distribution of human blood or blood products, and any biologic as defined in Section 9203 produced by that facility is sold or distributed only to an establishment licensed by this chapter; (2) to clinical laboratories licensed pursuant to Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code whose only biologics are autogenous bacterins prepared at the request of licensed veterinarians; or (3) to licensed private veterinarians who collect blood or blood products solely for use in their own practice.

SEC. 6. Section 9574 of the Food and Agricultural Code is amended to read:

9574. (a) Any person who negligently or intentionally violates any state or federal law or regulation, including any quarantine regulation, by moving any animal or other article, which by virtue of being pest infested or disease infected, causes an infestation or infection of a pest, animal, or disease, or causes an existing infestation to spread beyond any quarantine boundaries is liable civilly in a sum not to exceed twenty-five thousand dollars (\$25,000) for each act that constitutes a violation of the law or regulation.

(b) The Attorney General, upon request of the State Veterinarian, shall petition the superior court to impose, assess, and recover the sum imposed pursuant to subdivision (a). In determining the amount to be imposed, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation and the nature and persistence of the violation.

(c) The remedy under this section is in addition to, and does not supersede or limit, any and all other remedies, civil or criminal, that are otherwise available to the state.

(d) Any funds recovered pursuant to this section shall be deposited in the Department of Food and Agriculture Fund for emergency pest or disease exclusion, detection, eradication, and research of agricultural plant or animal pests or diseases. These funds may be allocated to cover costs related to the enforcement of this division. These funds are in addition to any funds appropriated for those purposes pursuant to Section 224.

SEC. 7. Section 24000 of the Food and Agricultural Code is amended to read:

24000. The Legislature finds and declares the following:

(a) That the public has a valuable interest in public equine events and public horse sales.

(b) That it is the intent of this chapter to ensure the integrity of public equine events and public horse sales through the control of performance- and disposition-enhancing substances while limiting permitted therapeutic usage at horse shows and competitions.

SEC. 8. Section 24001 of the Food and Agricultural Code is amended to read:

24001. For purposes of this chapter:

(a) "Event" means a public equine event or public horse sale that is held in the state, including a cutting horse competition, an endurance riding competition, a competitive trail competition, or any other competition as determined by the department by regulation.

(b) An equine event that is subject to this chapter shall meet all of the following criteria:

(1) Money, goods, or services are exchanged for the right to compete.

(2) Individuals compete for a single set of placings, points, or awards at the equine event.

(3) For one-day events, the entry fee to enter a single class exceeds four dollars and ninety-nine cents (\$4.99), and either no other fees are charged or other fees charged exceed nineteen dollars and ninety-nine cents (\$19.99). Fees charged may include ground fees, stall fees, or any other fees composed of money, goods, or services assessed to permit competitors to enter into the event.

(c) Sales that are subject to this chapter are public sales that permit a horse to be consigned for public sale.

(d) The following events are excluded from this chapter:

(1) Competitions subject to the jurisdiction of the California Horse Racing Board.

(2) Sales consisting solely of racing stock.

(3) Parade horse competitions.

(4) A timed rodeo-related performance competition when held apart from a horse show, including, but not limited to, rodeo, roping club, cattle team penning, barrel racing, and gymkhana.

(e) "Event manager" means the person in charge of an event, including the entity or individual financially responsible for the event that is responsible for registering the event with the department, and who is responsible for the assessment, collection, and remittance of fees. "Event manager" includes horse show secretaries and managers, competitive event managers, and horse sale managers and sale owners.

(f) "Horse" means all horses, mules, and asses.

(g) "Licensed veterinarian" means a person licensed as a veterinarian by the State of California.

(h) "Prohibited substance" means a stimulant, depressant, tranquilizer, anesthetic, including any local anesthetic, sedative analgesic, corticosteroid, anabolic steroid, or agent that would sore a horse, that could affect the performance, soundness, or disposition of a horse, or any drug, regardless of how harmless or innocuous it might otherwise be, that could interfere with the detection of any prohibited substance, including any metabolite or derivative of any prohibited substance.

(i) "Permissible substance" means a substance for which the department has established a limitation on dosage or a maximum permissible detectable level for the purposes provided in Section 24000.

(j) "Therapeutic administration" means the administration of a drug, medicine, or other substance that is necessary for the treatment of an illness or injury diagnosed by a licensed veterinarian. The administration of a prescription drug, medicine, or other

substance shall only be as given or prescribed by the licensed veterinarian. The administration of a nonprescription drug, medicine, or other substance shall be in accordance with the directions on the manufacturer's label.

(k) "Exempt medication" means an oral or topical medication containing prohibited substances determined by the department to be exempt from this chapter when administered therapeutically.

(l) "Public equine event" means a horse show or competition that permits a person to enter a horse for show or competition in exchange for money, goods, or services. Any club or group that permits people to join or enter into competition in exchange for money, goods, or services, is "public" for purposes of this chapter.

(m) "Public horse sale" is a sale that consigns a horse in exchange for money, goods, or services, excluding sales consisting solely of racing stock.

(n) "Stimulant or depressant" means a medication that stimulates or depresses the circulatory, respiratory, or central or peripheral nervous system.

(o) To "sore" means to apply an irritating or blistering agent internally or externally for the purpose of affecting the performance, soundness, or disposition of a horse.

(p) "Trainer" means a person who has the responsibility for the care, training, custody, or performance of a horse, including, but not limited to, a person who signs any entry blank of a public equine event or public horse sale, whether that person is an owner, rider, agent, coach, adult, or minor.

SEC. 9. Section 24004 of the Food and Agricultural Code is amended to read:

24004. A horse shall not be shown in any class at an event if it has been administered in any manner a prohibited substance or permissible substance in violation of this chapter.

SEC. 10. Section 24007 of the Food and Agricultural Code is amended to read:

24007. (a) In addition to any other penalty or fine prescribed by law, a trainer or owner, or both the trainer and owner, of a horse found to have received a prohibited substance or permissible substance in violation of this chapter, or determined to be in violation of Section 24009 shall be subject to a civil penalty of not less than one hundred dollars (\$100) or more than ten thousand dollars (\$10,000) for each violation, to be recovered by the secretary in any court of competent jurisdiction.

(b) In addition to the penalty specified in subdivision (a) or any other penalty or fine prescribed by law, the secretary may suspend any trainer or owner, or both the trainer and owner, from all competitions at any public horse show or competition for a period of not less than 90 days or more than one year for each violation. It is unlawful for any person suspended from competition by the secretary to compete in any public horse show or competition during the period of suspension. Any person suspended from competition by the secretary who competes in any public horse show or competition during the period of suspension is subject to the civil penalty prescribed by subdivision (a) for each entry during the period of suspension.

(c) The owner or owners of a horse found to have received a prohibited substance or permissible substance in violation of this chapter or determined to be in violation of Section 24009 shall forfeit all prize money or sweepstakes and any trophies, ribbons, and points won at any public horse show or competition by the horse and the same shall be redistributed by the horse show or competition in accordance with its rules or bylaws. The owner shall pay a fee of fifty dollars (\$50) to the public horse show or competition. The horse may be suspended for any period of time specified by the secretary. If the violation occurs at a horse sale, the contract of sale is voidable at the buyer's discretion.

(d) In lieu of civil prosecution by the secretary, the secretary may levy a civil penalty against a person violating any provision of this chapter.

(e) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to be heard, including the right to review the secretary's evidence and a right to present evidence on his or her own behalf.

(f) Review of the decision of the secretary may be sought by the person against whom the penalty was levied within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(g) After the exhaustion of the review procedure provided in this section, the secretary or his or her representative, may file a certified copy of a final decision of the secretary that directs the payment of a civil penalty and, if applicable, any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

SEC. 11. Section 24009 of the Food and Agricultural Code is amended to read:

24009. Whether a horse is in competition or not, refusal to submit a horse in an event for examination, or refusal to cooperate with the licensed veterinarian, or his or her technicians and agents, shall constitute a violation of, and subject the responsible person to, the same penalties that are applicable to prohibited substances or permissible substances under Section 24007. A suitable sample shall be collected from a horse selected for testing by a drug testing agent of the department unless the agent releases the horse from testing.

SEC. 12. Section 24010 of the Food and Agricultural Code is amended to read:

24010. If the chemical analysis of blood, urine, saliva, or other samples taken from a horse indicate the presence of a prohibited substance or permissible substance or any metabolite or derivative thereof, it shall be prima facie evidence that the prohibited substance or permissible substance has been administered to the horse. A hearing shall be held when a positive report is received from a chemist identifying a prohibited substance or permissible substance in violation of this chapter, or any metabolite or derivative thereof, unless the requirements of Section 24011 have been met or the prohibited substance or permissible substance consists solely of an exempt medication. The trainer or owner, or both the trainer and owner, responsible for the condition of the horse shall not be subject to the penalty prescribed under this chapter or suspended, and no horse shall be barred from competition until after the conclusion of the hearing and a written ruling thereon has been made by the secretary.

SEC. 13. Section 24011 of the Food and Agricultural Code is amended to read:

24011. (a) A horse that has received a prohibited substance shall not be eligible for show, competition, or sale, unless the following requirements have been met and the facts requested are submitted to the department in writing:

(1) Medication shall be therapeutic and necessary for treatment of an illness or injury.

(2) A horse shall be withdrawn from a show or competition for a period of not less than 24 hours after a prohibited substance is administered, unless the department determines a different withdrawal period for a specific prohibited substance or class of substances. A horse shall be withdrawn from a public sale for a period of not less than 72 hours after a prohibited substance or permissible substance is administered. The withdrawal period for anabolic steroids is 90 days after administration and the withdrawal period for fluphenazine or reserpine is 45 days after administration.

(3) The medication shall be administered by a licensed veterinarian, the trainer, or the owner.

(4) Medication shall be identified as to the amount, strength, and mode of administration.

(5) The statement shall include the date and time of administration of the medication.

(6) The horse shall be identified by its name, age, sex, color, and entry number.

(7) The statement shall contain the diagnosis of the attending veterinarian and reason for administering the medication.

(8) The statement shall be signed by the person administering the medication.

(9) The statement shall be filed with the event manager of the public equine event or general manager of the public horse sale within one hour after administration or one hour after the event manager of the event returns to duty, if administration is at a time other than during show or sale hours.

(10) The statement shall be signed by the event manager or his or her designated representative and time of receipt recorded on the statement by the event manager or his or her designated representative.

(b) If the chemical analysis of the sample taken from a horse treated indicates the presence of a prohibited substance and all the requirements of this section have been fully complied with, the information contained in the medication report and any other relevant evidence shall be considered at any hearing provided under this chapter in determining whether any provision of this chapter has been violated.

SEC. 14. Section 24011.6 of the Food and Agricultural Code is amended to read:

24011.6. The therapeutic administration of a permissible substance is permitted before and during all events except public auctions, provided that the dosage does not exceed any limits, or result in levels that exceed maximum permissible detectable levels, established by the department by regulation for the purposes provided in Section 24000.