

HOUSE BILL NO. 5239

November 13, 2019, Introduced by Reps. Vaupel, Leutheuser, Brann and Howell and referred to the Committee on Agriculture.

A bill to create the Michigan equine commission; to impose certain assessments and provide for the collection of those assessments; to provide for certain remedies and penalties; and to prescribe the powers and duties of the commission and certain state agencies and officials.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1. This act shall be known and may be cited as the
- 2 "Michigan equine promotion act".
- 3 Sec. 2. As used in this act:
- 4 (a) "Coggins test" means a test for equine infectious anemia



1 administered by a veterinarian licensed to practice in this state.

2 (b) "Commission" means the Michigan equine commission created
3 under section 3.

4 (c) "Department" means the department of agriculture and rural
5 development.

6 (d) "Director" means the director of the department, or the
7 director's designee.

8 (e) "Equine" means a horse or any member of the family
9 equidae.

10 (f) "Financial institution" means a state or nationally
11 chartered bank, savings and loan association, savings bank, or
12 credit union, whose deposits are insured by an agency of the United
13 States government and that maintains a principal or branch office
14 located in this state under the laws of this state or the United
15 States.

16 (g) "Horse feed" means feed specifically formulated for horses
17 that is manufactured by a licensed feed manufacturer and offered
18 for sale in this state.

19 (h) "Licensed feed manufacturer" means a horse feed
20 manufacturer that is licensed under the feed law, 1975 PA 120, MCL
21 287.521 to 287.539.

22 (i) "Michigan equine organization" means an incorporated,
23 licensed, or officially recognized equine organization in this
24 state that is organized for the purpose of promoting and
25 representing breeds, disciplines, events, or activities of equine.

26 Sec. 3. (1) The Michigan equine commission is created within
27 the department. The commission shall consist of 11 members
28 appointed by the governor from nominees submitted by Michigan
29 equine organizations. A member shall serve for a term of 3 years



1 and may be appointed for a second term. Each member shall have a
2 vote equal to the other members of the commission. The director may
3 serve as an ex officio member on the commission with no vote.

4 (2) The commission shall include the following members:

5 (a) One member from each of the following segments of the
6 equine industry:

7 (i) Horse show and competition.

8 (ii) Horse racing.

9 (iii) Trail riding.

10 (iv) Equine education.

11 (b) One member who is an equine veterinarian licensed in this
12 state.

13 (c) One member representing the horse feed industry or another
14 equine-related business that is not included in the industry
15 segments listed in subdivision (a).

16 (d) Five members from the equine community at large
17 representing different breeds and segments of the equine industry.

18 (3) If the commission is unable to seat a member from a
19 category listed in subsection (2) due to a lack of availability,
20 the commission may seat a member from another category listed in
21 that subsection.

22 Sec. 4. The director shall do all of the following:

23 (a) Ensure that the commission is self-supporting.

24 (b) Supervise commission activities to ensure commission
25 operations are in accordance with the rules established under
26 section 14.

27 (c) Coordinate the administrative activities of the commission
28 and the department.

29 (d) Confer and cooperate with the legally constituted



1 authorities of other states and the United States to effectuate the
2 provisions and intent of this act.

3 Sec. 5. (1) The commission shall do all of the following:

4 (a) Annually elect a chairperson, secretary, and treasurer
5 from the members of the commission.

6 (b) Meet not less than twice each calendar year and at other
7 times if determined necessary by the commission chairperson or at
8 the request of 4 or more commission members.

9 (c) Receive and distribute funds and make arrangements for the
10 financial affairs of the commission, including banking, accounting,
11 and other services as needed.

12 (d) Establish a process for applying for, receiving, or
13 accepting grants or contributions of money, property, labor, or
14 other things of value from individuals, the federal government or
15 any of its agencies, this state, a municipality, or other public or
16 private agencies to be used for the purposes of this act.

17 (e) Develop an equine promotion program in accordance with the
18 requirements of this act.

19 (f) Develop and maintain a list of equine owners in this state
20 that are directly affected by the activities of the commission, as
21 determined by the commission.

22 (g) Prepare an annual report that provides a full description
23 of the commission's activities including, but not limited to, a
24 detailed and audited financial statement. The commission shall
25 provide the report to the governor and the director and make the
26 report available to any person directly affected by this act as
27 determined by the commission.

28 (2) The commission shall reimburse a commission member for
29 actual expenses and provide a per diem payment, as determined by



1 the commission and not to exceed \$70.00, while attending meetings
2 of the commission or while engaged in the performance of official
3 responsibilities delegated by the commission.

4 (3) The commission may adopt procedures and promulgate rules
5 necessary for the exercise of its powers and the performance of its
6 duties under this act in accordance with the administrative
7 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

8 (4) In compliance with the open meetings act, 1976 PA 267, MCL
9 15.261 to 15.275, the commission shall conduct its business at a
10 public meeting and provide public notice of the time, date, and
11 place of the meeting.

12 (5) Except as otherwise provided in this subsection, the
13 commission shall make available to the public, in compliance with
14 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246,
15 a writing prepared, owned, used, in the possession of, or retained
16 by the commission in the performance of an official function. All
17 of the following apply to the disclosure of information under this
18 subsection:

19 (a) Information relating to specific assessments imposed upon
20 a specific person under this act, as well as names and addresses of
21 equine owners, are exempt from disclosure.

22 (b) Information regarding the aggregate amounts of penalties
23 levied under this act is not exempt from disclosure.

24 (c) The director or the department may obtain information
25 necessary to confirm compliance with this act.

26 (d) The director or the department may disclose statistical
27 information so long as that disclosure does not reveal a specific
28 assessment imposed upon a specific person under this act.

29 Sec. 6. The purpose and objectives of the commission's



1 activities may include, but are not limited to, the following:

2 (a) Promoting the equine industry in this state.

3 (b) Disseminating educational programs and materials regarding
4 the equine industry and its positive impact on the citizens of this
5 state.

6 (c) Aiding in the development of practices within the equine
7 industry that lead to enhanced opportunities for the equine
8 industry of this state.

9 (d) Promoting research related to the purposes of this act.

10 Sec. 7. (1) The commission shall impose an assessment of \$5.00
11 for each ton of horse feed sold in this state by a licensed feed
12 manufacturer. A licensed feed manufacturer that sells horse feed in
13 this state shall collect the assessment imposed by the commission
14 under this subsection and remit the assessment to the commission at
15 least quarterly as determined by the commission.

16 (2) The commission shall impose an assessment of \$3.00 for
17 each Coggins test administered in this state. A licensed
18 veterinarian who administers a Coggins test in this state shall
19 collect the assessment imposed by the commission under this
20 subsection and remit the assessment to the commission at least
21 quarterly, as determined by the commission.

22 (3) A person that is required to collect and remit assessments
23 under this act shall do all of the following:

24 (a) Maintain an accurate record of the details concerning each
25 assessment collected and make the record available to the
26 department upon request.

27 (b) File a report annually with the commission indicating the
28 amount of assessments collected and the amount and type of feed
29 sold or the number of Coggins tests administered.



1 (4) A person that is required to collect an assessment under
2 this act may offset the costs associated with collection and
3 remittance activities by withholding 1.5% of the assessments
4 collected. A person may withhold the amount described in this
5 subsection beginning on the date the person first remits to the
6 commission the assessments due under this act and ending 2 years
7 after that date.

8 (5) The commission shall specify the date that assessments
9 collected under this act are due for remittance to the commission
10 and provide reasonable notice of that date. If a person does not
11 remit the collected assessments to the commission by the date
12 specified, the person is subject to an interest charge of 1% of the
13 total amount due for each month that the remittance remains
14 outstanding.

15 (6) A person that has paid an assessment under this act may
16 request a refund of that assessment from the commission. The
17 commission shall provide the refund to the person requesting it if
18 that person provides to the commission a receipt for the purchase
19 of horse feed or the administration of a Coggins test for which the
20 assessment was paid.

21 (7) The commission shall adopt procedures and promulgate rules
22 governing the receipt or refunding of money described in this
23 section in accordance with the administrative procedures act of
24 1969, 1969 PA 306, MCL 24.201 to 24.328.

25 Sec. 8. If a licensed feed manufacturer or licensed
26 veterinarian fails to collect or remit an assessment that is due
27 under this act, the commission may file a written complaint with
28 the director. All of the following apply to a complaint filed under
29 this section:



1 (a) Upon receipt of the complaint, the director shall conduct
2 an investigation of the allegations raised in the complaint.

3 (b) If the director finds upon investigation that a licensed
4 feed manufacturer or licensed veterinarian failed to collect or
5 remit an assessment that is due under this act, the director shall
6 provide by certified mail to the licensed feed manufacturer or
7 licensed veterinarian a notice of the finding, including a
8 statement of the amount that should have been collected or
9 remitted. The director shall provide this notice not more than 10
10 days after the date of the finding. The notice shall require the
11 licensed feed manufacturer or licensed veterinarian to remit the
12 stated amount not more than 30 days after the date of the notice.

13 (c) If the finding in subdivision (b) concerns a failure to
14 collect an assessment, the director shall compute the amount that
15 reasonably should have been collected and impose on the licensed
16 feed manufacturer or licensed veterinarian an assessment in that
17 amount. The notice provided under subdivision (b) shall inform the
18 licensed feed manufacturer or licensed veterinarian of the
19 assessment described in this subdivision and provide a statement
20 describing its calculation.

21 (d) If the amount due under subdivision (b) is not remitted
22 within 30 days, or the licensed feed manufacturer or licensed
23 veterinarian is not in compliance with a written agreement for a
24 full payment of the amount due, the director may file an action in
25 a court of competent jurisdiction to collect the amount due. Venue
26 in the action is the place where the licensed feed manufacturer or
27 licensed veterinarian has its primary place of business.

28 (e) In an action filed under subdivision (d), if the director
29 prevails, the court shall award the director all costs and expenses



1 in bringing the action, including, but not limited to, reasonable
2 and actual attorney fees, court costs, and audit expenses. If the
3 director does not prevail, the director shall charge the commission
4 for reasonable and actual attorney fees, court costs, and expenses
5 incurred in bringing the action.

6 Sec. 9. (1) Money, assets, or other items of value collected
7 or received under this act, whether collected from assessments,
8 received as grants or gifts, earned from royalties or license fees,
9 or derived from any activities performed by the commission, are not
10 state money and shall be deposited in a financial institution in
11 this state.

12 (2) The commission shall disburse or expend money in the
13 commission's account only for the necessary expenses incurred by
14 the commission in carrying out the purposes of this act. The
15 commission may use not more than 33% of the assessments received
16 under this act for administrative expenses.

17 (3) A certified public accountant shall audit all expenditures
18 of the commission at least annually. Not more than 30 days after
19 completion of the audit, the certified public accountant shall give
20 copies of the audit to the members of the commission and the
21 director. The commission or director shall publish annually an
22 activity and financial report and make it available to interested
23 parties.

24 Sec. 10. (1) After the first 5 full calendar years of
25 operation, the commission shall conduct a referendum to determine
26 if the commission shall be renewed. If more than 50% of the equine
27 owners directly affected by the activities of the commission, as
28 determined by the commission, that pay more than 50% of the
29 assessments vote in favor of the commission's termination, the



1 commission shall be terminated.

2 (2) Upon the submission of a written petition to terminate the
3 commission signed by 2,500 of the equine owners directly affected
4 by the activities of the commission, as determined by the
5 commission, during the previous calendar year, the director, not
6 more than 100 days after the date on which the petition is
7 submitted shall conduct a referendum to determine if the commission
8 shall be terminated. If more than 50% of the equine owners directly
9 affected by the activities of the commission, as determined by the
10 commission, that pay more than 50% of the assessments due under
11 this act vote in favor of the commission's termination, the
12 commission shall be terminated.

13 (3) Upon its termination, the commission shall distribute any
14 unexpended money remaining in the commission's account to an
15 appropriate equine entity or entities as determined by the
16 commission.

17 Sec. 11. The director may institute an action necessary to
18 enforce compliance with this act, a rule promulgated under this
19 act, or a program or marketing plan adopted under this act. In
20 addition to any other remedy provided by law, the director may
21 apply to a court of competent jurisdiction for relief by injunction
22 to protect the public interest without alleging or proving that an
23 adequate remedy at law does not exist.

24 Sec. 12. (1) Except as provided in subsections (2) and (3), an
25 individual who violates this act is guilty of a misdemeanor
26 punishable by a fine of up to \$1,000.00 per day that the individual
27 is in violation of this act.

28 (2) A member of the commission who intentionally violates
29 section 5(4) is subject to the penalties prescribed in the open



1 meetings act, 1976 PA 267, MCL 15.261 to 15.275.

2 (3) If the commission arbitrarily and capriciously violates
3 section 5(5), the commission is subject to the penalties prescribed
4 in the freedom of information act, 1976 PA 442, MCL 15.231 to
5 15.246.

6 Sec. 13. (1) Except as provided in subsections (2) and (3),
7 prosecution for violation of this act may be instituted in any
8 county in which any of the defendants reside, in which the
9 violation was committed, or in which any of the defendants have a
10 principal place of business. State and county law enforcement
11 officers shall enforce this act.

12 (2) A prosecution for a violation of section 5(4) shall be
13 instituted in the manner provided for in the open meetings act,
14 1976 PA 267, MCL 15.261 to 15.275.

15 (3) A prosecution for a violation of section 5(5) shall be
16 instituted in the manner provided for in the freedom of information
17 act, 1976 PA 442, MCL 15.231 to 15.246.

18 Sec. 14. The director shall promulgate rules for the
19 implementation of this act in accordance with the administrative
20 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

21 Enacting section 1. This act takes effect 90 days after the
22 date it is enacted into law.

