

Calendar No. 562

113TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 113-254

PREVENT ALL SORING TACTICS ACT OF
2013

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1406



SEPTEMBER 15, 2014.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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Mr. ROCKEFELLER, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 1406]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1406) to amend the Horse Protection Act to designate additional unlawful acts under the Act, strengthen penalties for violations of the Act, improve Department of Agriculture enforcement of the Act, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 1406, the Prevent All Soring Tactics Act of 2013, is to amend the Horse Protection Act (HPA) to protect Tennessee Walking Horses and other gaited horses from a practice known as “soring.” Soring is a process whereby blistering agents, burns, lacerations, sharp objects, or other substances and devices are applied to a horse’s legs or hooves to intentionally make each step painful, thus forcing the horse to perform an exaggerated high-stepped gait that is valued in show rings. The HPA prohibits horses that have been subjected to soring from participating in shows, sales, exhibitions, or auctions.

BACKGROUND AND NEEDS

In 1970, Congress passed the HPA (15 U.S.C. 1821 et seq.) to protect Tennessee Walking Horses and other gaited show horse breeds from the act of soring. As originally enacted, it was to be enforced by the Animal and Plant Health Inspection Service (APHIS), a branch of the U.S. Department of Agriculture (USDA).

However, a lack of staff and funding resulted in little enforcement, which led to a 1976 amendment to the HPA that established a means for the industry to self-police. The amendment created the Designated Qualified Person (DQP) program, which allowed non-USDA employees from within the equine community to engage in training and certification programs run by Horse Industry Organizations (HIOs) and supervised by the USDA. HIOs are required to hire enough DQPs to examine every horse shown for signs of soring and to issue violations to exhibitors. The USDA spot checks the work of DQP participants by making random inspections at a small number of shows.¹

This current horse inspection regime under the HPA is inadequate because it creates a conflict of interest when inspections should properly be conducted with arms-length impartiality. HIOs, as well as many of the DQPs, are industry participants with a conflict of interest that could impede robust enforcement. HIOs, which sponsor and sanction shows, sales, and other events, are responsible for hiring, training, and licensing DQPs who are responsible for enforcing the HPA by inspecting horses.

In 2008-2009, the USDA's Office of the Inspector General (OIG) conducted an audit of the HPA program and issued a report of its findings.² According to the report, violations of the HPA are rampant. Exhibitors (the owners and trainers) of gaited show horses often go to great lengths to evade detection rather than comply with Federal law and train horses using humane methods. The report's findings include:

- DQPs are often likely to be show exhibitors themselves and, thus, have clear conflicts of interest. If they were to inspect other exhibitors' horses rigorously, they might find their own horses subject to much more stringent inspections at other shows.
- Some DQPs regularly give exhibitors warnings instead of issuing tickets for violations, as is required by law. In the limited instances when the DQPs do issue tickets, the tickets are issued not to the exhibitor but to more junior employees, such as stable hands who work for the exhibitor.
- When USDA inspectors are present at horse shows, the number of citations for violations increases significantly.³

S. 1406 would amend the HPA to eliminate the practice of industry self-policing, prohibit the use of devices implicated in soring, and provide for greater penalties for violations of the HPA.

SUMMARY OF PROVISIONS

S. 1406 would amend the HPA to protect Tennessee Walking Horses and other gaited horses from a practice known as "soring." Soring is a process whereby blistering agents, burns, lacerations, sharp objects, or other substances and devices are inflicted upon a horse's legs or hooves to intentionally make each step painful, thus

¹ In 2007, USDA inspectors were able to attend approximately 30 of the 463 sanctioned shows, or 6 percent. See U.S. Department of Agriculture, Office of Inspector General, Animal and Plant Health Inspection Service, *Administration of the Horse Protection Program and the Slaughter Horse Transport Program*, Audit Report 33601-2-KC, September 2010, at <http://www.usda.gov/oig/webdocs/33601-02-KC.pdf>.

² Ibid.

³ From 2005-2008, USDA inspectors were present at only 6 percent of all shows, yet DQPs issued 49 percent of all violations at these shows.

forcing the horse to perform an exaggerated high-stepped gait that is valued in show rings. The HPA already prohibits horses that have been subjected to soring from participating in shows, sales, exhibitions, or auctions, S. 1406 would prohibit the act of soring itself.

S. 1406 would abolish the current DQP system and instead require the USDA to license, train, and oversee the persons who are hired to detect and diagnose sore horses at horse shows, exhibitions, sales, and auctions. These USDA-licensed inspectors at horse shows, exhibitions, sales, and auctions would be paid by event organizers. And their hiring would be voluntary, but it would protect management from liability if soring were found at their shows. The bill would prohibit the use of “action devices” including chains that rub up and down an already sore leg to intensify the horse’s pain when it moves. S. 1406 would ensure that this prohibition does not apply to protective devices. Finally, the bill would increase the civil and criminal penalties for soring and would allow permanent disqualification from participation in horse shows, exhibitions, sales, or auctions for repeat offenders.

LEGISLATIVE HISTORY

Senators Ayotte and Warner introduced S. 1406 on July 31, 2013. It is cosponsored by Senators Thune, Begich, Blumenthal, Booker, Boxer, Cantwell, Klobuchar, Markey, Rubio, Schatz, and Walsh of the Committee, as well as 58 other Senators. The House companion to this bill, H.R. 1518, was introduced by Representative Whitfield; it has 304 cosponsors.

The bill has the support of the American Association of Equine Practitioners, the American Horse Council, the Equestrian Federation, the American Quarter Horse Association, the National Sheriffs’ Association, the American Veterinary Medical Association, the Humane Society of the United States, veterinary medical associations for every State, most major breed associations, many Walking Horse groups, and the American Society for the Prevention of Cruelty to Animals.

On April 9, 2014, in an open Executive Session, the Committee considered the bill and reported S. 1406, as amended, favorably by voice vote. The Committee adopted a substitute amendment from Senator Ayotte that made a change to the bill to make it mirror its companion bill in the House, H.R. 1518. The amendment capitalizes the word “Racking” in the term “Racking Horse” to denote a particular breed of horse.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 1406—Prevent All Soring Tactics Act of 2014

S. 1406 would amend the Horse Protection Act of 1970 (HPA) to strengthen and expand enforcement of current prohibitions on soring horses. Soring refers to the practice of applying a substance or device to a horse’s limb to cause the horse pain when moving.

Although prohibited, the practice helps to achieve the high stepping gait desired for Tennessee Walking Horses and other similar breeds. Under current law, inspectors from the U.S. Department of Agriculture (USDA) are sent to some large horse shows, but the private managers of each event where such horses compete usually hire their own inspectors to detect soring and other violations of the HPA.

S. 1406 would require USDA to license, train, assign, and oversee private inspectors qualified to independently detect and diagnose a horse that has been subjected to soring and to inspect horses at horse shows, exhibitions, sales, or auctions, for purposes of enforcing HPA regulations. Those independent inspectors would not be USDA employees and would continue to be paid by the private managers of each event. The bill also would prohibit the use of any device placed on a horse's limb to artificially alter its gait (known as an action device). In addition, S. 1406 would increase maximum fines and prison terms for each violation of HPA. Upon any third or subsequent violation, the Secretary of Agriculture could permanently disqualify a person from having any part in future horse shows, exhibitions, sales, or auctions. Finally, the bill would impose a fine on event managers who refuse to pay the USDA licensed horse inspectors.

Based on information from the Animal and Plant Health Inspection Service (APHIS), CBO estimates that implementing S. 1406 would cost about \$1 million per year over the 2015–2019 period, assuming appropriation of the necessary amounts, for licensing, training, assigning, and monitoring independent inspectors. In 2014, APHIS spent about \$700,000 for HPA enforcement.

Enacting S. 1406 would not affect direct spending. The bill could increase revenues from penalties; therefore, pay-as-you-go procedures apply. However, CBO estimates that any additional revenues from those penalties would probably be negligible.

S. 1406 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

The bill would impose a private-sector mandate, as defined in UMRA, on some owners of horses by expanding the prohibition on soring horses. The cost of the mandate would be the net income forgone because of that expansion. Based on information from USDA reports and industry sources, CBO estimates that the cost of the mandate would fall below the annual threshold established in UMRA (\$152 million in 2014, adjusted annually for inflation).

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The legislation would change the inspection and oversight regime for shows, sales, exhibitions, and auctions that involve Tennessee Walking Horses and other gaited horses.

ECONOMIC IMPACT

This legislation is not expected to have an adverse economic impact on the Nation. The bill would direct the Secretary of Agriculture (Secretary) to promulgate regulations to license, train, assign, and oversee persons qualified to inspect horses for soring and to assign such persons if the show's management indicated their intent to hire inspectors. It would increase penalties for soring and prohibit the use of certain practices and devices on the horse breeds that have been subject to soring.

PRIVACY

S. 1406 would not have a negative impact on the personal privacy of individuals.

PAPERWORK

The legislation would not increase paperwork requirements for private individuals or businesses. The bill would require the USDA to issue implementing regulations, including rules under which the USDA licenses, trains, assigns, and oversees HPA inspectors.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

Section 1 would establish the title of the bill as the "Prevent All Soring Tactics Act of 2014."

Section 2. Increased enforcement under Horse Protection Act.

Section 2(a) of the bill would amend section 2 of the HPA (15 U.S.C. 1821) to add a definition of "action device" as any boot, collar, chain, roller, or other device that encircles or is placed upon a horse's lower leg in a way that rotates around or slides up and down to cause friction or strikes the horse's hoof, coronet band, fetlock joint, or pastern, but not including soft rubber or soft leather bell boots or quarter boots used as protective devices. This section would also add a definition of what it means to "participate" in horse shows, exhibitions, sales, or auctions, as that term is used in section 6 of the HPA (15 U.S.C. 1825), as amended, regarding penalties and disqualification of offenders.

Section 2(b) of the bill would amend section 3 of the HPA (15 U.S.C. 1822) to include ways that the practice of soring adversely affects and burdens interstate and foreign commerce, including by creating unfair competition, deceiving the spectating public and horse buyers, and negatively impacting horse sales. It also references the USDA OIG's determination that the existing program for inspecting horses is inadequate to prevent soring. It identifies the three breeds that have historically been subjected to soring—Tennessee Walking Horses, Racking Horses, and Spotted Saddle

Horses—and finds that, despite existing regulations, violations of the HPA continue to be prevalent in those three breeds.

Section 2(c) of the bill would amend section 4 of the HPA (15 U.S.C. 1823) by directing the Secretary to prescribe regulations to license, train, assign, and oversee persons qualified to inspect horses for soring. It would grant the Secretary authority to revoke an inspector's license if the inspector's performance is found to be unsatisfactory, following notice and an opportunity for a hearing. This section would also establish that the management of a horse show, exhibition, sale, or auction may opt to have voluntary inspection by one or more inspectors licensed and assigned by the Secretary. It would mandate that the Secretary publish and update on the APHIS website information on violations of the HPA so that management can determine if an individual is in violation. This section also would require disqualifying a horse from competition for a minimum of 180 days for a first determination of soring, a minimum of one year for a second determination, and a minimum of three years for a third determination.

Section 2(d) of the bill would amend section 5 of the HPA (15 U.S.C. 1824), which describes unlawful acts, to add a prohibition against soring a horse or directing another person to sore a horse for the purpose of showing, exhibiting, selling, auctioning, or offering for sale the horse. It would also prohibit the use of an action device on any limb of a Tennessee Walking Horse, Racking Horse, or Spotted Saddle Horse, and it would prohibit the use of a weighted shoe, pad, wedge, hoof band, or other device or material at a horse show, exhibition, sale, or auction placed on, inserted in, or attached to any limb of any such horse, unless the device is strictly protective or therapeutic.

Section 2(e) of the bill would amend section 6 of the HPA (15 U.S.C. 1825) to increase the criminal penalty for unlawful acts from a misdemeanor to a felony on the first offense, and it would increase the maximum fine from \$3,000 to \$5,000 for each violation. It also would create a felony penalty and maximum \$5,000 fine for violators who disobey orders of disqualification, and it would increase the civil penalty for each violation from \$3,000 to \$5,000. It would expand the range of activities from which an offender can be disqualified, and it would allow for the permanent disqualification of offenders on a third or subsequent violation.

Section 2(f) of the bill would direct the Secretary to issue implementing regulations within 180 days of the bill's enactment, including rules under which the USDA would license, train, assign, and oversee HPA inspectors.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in *italic*, existing law in which no change is proposed is shown in roman):

HORSE PROTECTION ACT

SEC. 2. DEFINITIONS.

[15 U.S.C. 1821]

As used in this Act unless the context otherwise requires:

(1)(A) *The term “action device” means any boot, collar, chain, roller, or other device that encircles or is placed upon the lower extremity of the leg of a horse in such a manner that it can—*

(i) rotate around the leg or slide up and down the leg, so as to cause friction; or

(ii) strike the hoof, coronet band, fetlock joint, or pastern of the horse.

(B) *Such term does not include soft rubber or soft leather bell boots or quarter boots that are used as protective devices.*

[(1)] (2) The term “management” means any person who organizes, exercises control over, or administers or who is responsible for organizing, directing, or administering.

[(2)] (3) The term “Secretary” means the Secretary of Agriculture.

[(3)] (4) The term “sore” when used to describe a horse means that—

(A) an irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse,

(B) any burn, cut, or laceration has been inflicted by a person on any limb of a horse,

(C) any tack, nail, screw, or chemical agent has been injected by a person into or used by a person on any limb of a horse, or

(D) any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse,

and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of a horse by or under the supervision of a person licensed to practice veterinary medicine in the State in which such treatment was given.

[(4)] (5) The term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(6)(A) *The term “participate” means engaging in any activity with respect to a horse show, horse exhibition, or horse sale or auction, including—*

(i) transporting or arranging for the transportation of a horse to or from a horse show, horse exhibition, or horse sale or auction;

(ii) personally giving instructions to an exhibitor; or

(iii) being knowingly present in a warm-up area, inspection area, or other area at a horse show, horse exhibition, or horse sale or auction that spectators are not permitted to enter.

(B) *Such term does not include spectating.*

SEC. 3. CONGRESSIONAL STATEMENT OF FINDINGS.

[15 U.S.C. 1822]

The Congress finds and declares that—

- (1) the soring of horses is cruel and inhumane;
- (2) horses shown or exhibited which are sore, where such soreness improves the performance of such horse, compete unfairly with horses which are not sore;
- (3) the movement, showing, exhibition, or sale of sore horses in intrastate commerce *and soring horses for such purposes* adversely affects and burdens interstate and foreign commerce *in many ways, including by creating unfair competition, by deceiving the spectating public and horse buyers, and by negatively impacting horse sales*;
- (4) all horses which are subject to regulation under this Act are either in interstate or foreign commerce or substantially affect such commerce; **[and]**
- (5) regulation under this Act by the Secretary is appropriate to prevent and eliminate burdens upon commerce and to effectively regulate commerce**[.];**
- (6) *the Inspector General of the Department of Agriculture has determined that the program through which the Secretary inspects horses is inadequate for preventing soring*;
- (7) *historically, Tennessee Walking Horses, Racking Horses, and Spotted Saddle Horses have been subjected to soring*; and
- (8) *despite regulations in effect related to inspection for purposes of ensuring that horses are not sore, violations of this Act continue to be prevalent in the Tennessee Walking Horse, Racking Horse, and Spotted Saddle Horse breeds.*

SEC. 4. HORSE SHOWS AND EXHIBITIONS.

[15 U.S.C. 1823]

(a) **DISQUALIFICATION OF HORSES.**—The management of any horse show or horse exhibition shall disqualify any horse from being shown or exhibited (1) which is sore or (2) if the management has been notified by a person **[appointed]** *licensed* in accordance with regulations under subsection (c) or by the Secretary that the horse is sore. *In the first instance in which the Secretary determines that a horse is sore, the Secretary shall disqualify the horse from being shown or exhibited for a period of not less than 180 days. In the second instance in which the Secretary determines that such horse is sore, the Secretary shall disqualify the horse for a period of not less than one year. In the third instance in which the Secretary determines that such horse is sore, the Secretary shall disqualify the horse for a period of not less than three years.*

(b) **PROHIBITED ACTIVITIES.**—The management of any horse sale or auction shall prohibit the sale or auction or exhibition for the purpose of sale of any horse (1) which is sore or (2) if the management has been notified by a person **[appointed]** *licensed* in accordance with regulations under subsection (c) or by the Secretary that the horse is sore.

[(c) APPOINTMENT OF INSPECTORS; MANNER OF INSPECTIONS.]—The Secretary shall prescribe by regulation requirements for the appointment by the management of any horse show, horse exhibition, or horse sale or auction of persons qualified to detect and

diagnose a horse which is sore or to otherwise inspect horses for the purposes of enforcing this Act. Such requirements shall prohibit the appointment of persons who, after notice and opportunity for a hearing, have been disqualified by the Secretary to make such detection, diagnosis, or inspection. Appointment of a person in accordance with the requirements prescribed under this subsection shall not be construed as authorizing such person to conduct inspections in a manner other than that prescribed for inspections by the Secretary (or the Secretary's representative) under subsection (e).】

(c)(1)(A) The Secretary shall prescribe by regulation requirements for the Department of Agriculture to license, train, assign, and oversee persons qualified to detect and diagnose a horse which is sore or to otherwise inspect horses at horse shows, horse exhibitions, or horse sales or auctions, for hire by the management of such events, for the purposes of enforcing this Act.

(B) No person shall be issued a license under this subsection unless such person is free from conflicts of interest, as defined by the Secretary in the regulations issued under subparagraph (A).

(C) If the Secretary determines that the performance of a person licensed in accordance with subparagraph (A) is unsatisfactory, the Secretary may, after notice and an opportunity for a hearing, revoke the license issued to such person.

(D) In issuing licenses under this subsection, the Secretary shall give a preference to persons who are licensed or accredited veterinarians.

(E) Licensure of a person in accordance with the requirements prescribed under this subsection shall not be construed as authorizing such person to conduct inspections in a manner other than that prescribed for inspections by the Secretary (or the Secretary's representative) under subsection (e).

(2)(A) Not later than 30 days before the date on which a horse show, horse exhibition, or horse sale or auction begins, the management of such show, exhibition, or sale or auction may notify the Secretary of the intent of the management to hire a person or persons licensed under this subsection and assigned by the Secretary to conduct inspections at such show, exhibition, or sale or auction.

(B) After such notification, the Secretary shall assign a person or persons licensed under this subsection to conduct inspections at the horse show, horse exhibition, or horse sale or auction.

(3) A person licensed by the Secretary to conduct inspections under this subsection shall issue a citation with respect to any violation of this Act recorded during an inspection and notify the Secretary of each such violation not later than five days after the date on which a citation was issued with respect to such violation.

(d) RECORDKEEPING AND REPORTING REQUIREMENTS; AVAILABILITY OF RECORDS.—The management of a horse show, horse exhibition, or horse sale or auction shall establish and maintain such records, make such reports, and provide such information as the Secretary may by regulation reasonably require for the purposes of implementing this Act or to determine compliance with this Act. Upon request of an officer or employee duly designated by the Secretary, such management shall permit entry at all reasonable times for the inspection and copying (on or off the premises) of records required to be maintained under this subsection.

(e) INSPECTION BY SECRETARY OR DULY APPOINTED REPRESENTATIVE.—For purposes of enforcement of this Act (including any regulation promulgated under this Act) the Secretary, or any representative of the Secretary duly designated by the Secretary, may inspect any horse show, horse exhibition, or horse sale or auction or any horse at any such show, exhibition, sale, or auction. Such an inspection may only be made upon presenting appropriate credentials. Each such inspection shall be commenced and completed with reasonable promptness and shall be conducted within reasonable limits and in a reasonable manner. An inspection under this subsection shall extend to all things (including records) bearing on whether the requirements of this Act have been complied with.

(f) *The Secretary shall publish on the public website of the Animal and Plant Health Inspection Service of the Department of Agriculture, and update as frequently as the Secretary determines is necessary, information on violations of this Act for the purposes of allowing the management of a horse show, horse exhibition, or horse sale or auction to determine if an individual is in violation of this Act.*

SEC. 5. UNLAWFUL ACTS.

[15 U.S.C. 1824]

The following conduct is prohibited:

(1) The shipping, transporting, moving, delivering, or receiving of any horse which is sore with reason to believe that such horse while it is sore may be shown, exhibited, entered for the purpose of being shown or exhibited, sold, auctioned, or offered for sale, in any horse show, horse exhibition, or horse sale or auction; except that this paragraph does not apply to the shipping, transporting, moving, delivering, or receiving of any horse by a common or contract carrier or an employee thereof in the usual course of the carrier's business or employee's employment unless the carrier or employee has reason to believe that such horse is sore.

(2) The (A) showing or exhibiting, in any horse show or horse exhibition, of any horse which is sore, (B) entering for the purpose of showing or exhibiting in any horse show or horse exhibition, any horse which is sore, (C) selling, auctioning, or offering for sale, in any horse sale or auction, any horse which is sore, [and (D)] *(D) causing a horse to become sore or directing another person to cause a horse to become sore for the purpose of showing, exhibiting, selling, auctioning, or offering for sale the horse in any horse show, horse exhibition, or horse sale or auction, and (E) allowing any activity described in clause (A), (B), [or (C) respecting] (C), or (D) respecting a horse which is sore by the owner of such horse.*

(3) The failure by the management of any horse show or horse exhibition, which does not [appoint] *hire* and retain a person in accordance with section 4(c) of this Act, to disqualify from being shown or exhibited any horse which is sore.

(4) The failure by the management of any horse sale or auction, which does not [appoint] *hire* and retain a [qualified] person in accordance with section 4(c) of this Act, to prohibit the sale, offering for sale, or auction of any horse which is sore.

(5) The failure by the management of any horse show or horse exhibition, which has [appointed] *hired* and retained a

person in accordance with section 4(c) of this Act, to disqualify from being shown or exhibited any horse (A) which is sore, and (B) after having been notified by such person or the Secretary that the horse is sore or after otherwise having knowledge that the horse is sore.

(6) The failure by the management of any horse sale or auction which has **[appointed]** *hired* and retained a person in accordance with section 4(c) of this Act, to prohibit the sale, offering for sale, or auction of any horse (A) which is sore, and (B) after having been notified by such person or the Secretary *that the horse is sore* or after otherwise having knowledge that the horse is sore.

(7) The showing or exhibiting at a horse show or horse exhibition; the selling or auctioning at a horse sale or auction; the allowing to be shown, exhibited, or sold at a horse show, horse exhibition, or horse sale or auction; the entering for the purpose of showing or exhibiting in any horse show or horse exhibition; or offering for sale at a horse sale or auction, any horse which is wearing or bearing any equipment, device, paraphernalia, or substance which the Secretary by regulation under section 9 prohibits to prevent the soring of horses.

(8) The failing to establish, maintain, or submit records, notices, reports, or other information required under section 4.

(9) The failure or refusal to permit access to or copying of records, or the failure or refusal to permit entry or inspection, as required by section 4.

(10) The removal of any marking required by the Secretary to identify a horse as being detained.

(11) The failure or refusal to provide the Secretary with adequate space or facilities, as the Secretary may by regulation under section 9 prescribe, in which to conduct inspections or any other activity authorized to be performed by the Secretary under this Act.

(12) *The use of an action device on any limb of a Tennessee Walking Horse, a Racking Horse, or a Spotted Saddle Horse at a horse show, horse exhibition, or horse sale or auction.*

(13) *The use of a weighted shoe, pad, wedge, hoof band, or other device or material at a horse show, horse exhibition, or horse sale or auction that—*

(A) is placed on, inserted in, or attached to any limb of a Tennessee Walking Horse, a Racking Horse, or a Spotted Saddle Horse;

(B) is constructed to artificially alter the gait of such a horse; and

(C) is not strictly protective or therapeutic in nature.

SEC. 6. VIOLATIONS AND PENALTIES.

[15 U.S.C. 1825]

(a) CRIMINAL ACTS AND PENALTIES.—

(1) **[Except as provided in paragraph (2) of this subsection, any person who knowingly violates section 5]** *Any person who knowingly violates section 5 or the regulations issued under such section, including any violation recorded during an inspection conducted in accordance with section 4(c) or 4(e) shall, upon conviction thereof, be fined not [more than \$3,000, or imprisoned for not more than one year, or both.] more than*

\$5,000, or imprisoned for not more than three years, or both, for each such violation.

[(2)(A) If any person knowingly violates section 5, after one or more prior convictions of such person for such a violation have become final, such person shall, upon conviction thereof, be fined not more than \$5,000, or imprisoned for not more than two years, or both.]

[(B)] (2) Any person who knowingly makes, or causes to be made, a false entry or statement in any report required under this Act; who knowingly makes, or causes to be made, any false entry in any account, record, or memorandum required to be established and maintained by any person or in any notification or other information required to be submitted to the Secretary under section 4 of this Act; who knowingly neglects or fails to make or cause to be made, full, true, and correct entries in such accounts, records, memoranda, notification, or other materials; who knowingly removes any such documentary evidence out of the jurisdiction of the United States; who knowingly mutilates, alters, or by any other means falsifies any such documentary evidence; or who knowingly refuses to submit any such documentary evidence to the Secretary for inspection and copying shall be guilty of an offense against the United States, and upon conviction thereof shall be fined not more than \$5,000, or imprisoned for not more than three years, or both.

[(C)] (3) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this Act shall be fined not more than \$5,000, or imprisoned not more than three years, or both. Whoever, in the commission of such acts, uses a deadly or dangerous weapon shall be fined not more than \$10,000, or imprisoned not more than ten years, or both. Whoever kills any person while engaged in or on account of the performance of his official duties under this Act shall be punishable as provided under sections 1111 and 1112 of title 18, United States Code.

(4) Any person who knowingly fails to obey an order of disqualification shall, upon conviction thereof, be fined not more than \$5,000 for each failure to obey such an order, imprisoned for not more than three years, or both.

(b) CIVIL PENALTIES; REVIEW AND ENFORCEMENT.—

(1) Any person who violates [section 5 of this Act] *section 5 or the regulations issued under such section* shall be liable to the United States for a civil penalty of not more than **[\$2,000]** *\$4,000* for each violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing before the Secretary with respect to such violation. The amount of such civil penalty shall be assessed by the Secretary by written order. In determining the amount of such penalty, the Secretary shall take into account all factors relevant to such determination, including the nature, circumstances, extent, and gravity of the prohibited conduct and, with respect to the person found to have engaged in such conduct, the degree of culpability, any history of prior offenses, ability to pay, effect on

ability to continue to do business, and such other matters as justice may require.

(2) Any person against whom a violation is found and a civil penalty assessed under paragraph (1) of this subsection may obtain review in the court of appeals of the United States for the circuit in which such person resides or has his place of business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found and such penalty assessed, as provided in section 2112 of title 28, United States Code. The findings of the Secretary shall be set aside if found to be unsupported by substantial evidence.

(3) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(4) The Secretary may, in his discretion, compromise, modify, or remit, with or without conditions, any civil penalty assessed under this subsection.

(5) *Any person who fails to pay a licensed inspector hired under section 4(c) shall, upon conviction thereof, be fined not more than \$4,000 for each such violation.*

(c) DISQUALIFICATION OF OFFENDERS; ORDERS; CIVIL PENALTIES APPLICABLE; ENFORCEMENT PROCEDURES.—In addition to any fine, imprisonment, or civil penalty authorized under this section, any person who was convicted under subsection (a) or who paid a civil penalty assessed under subsection (b) or is subject to a final order under such subsection assessing a civil penalty for any violation of any provision of this Act or any regulation issued under this Act may be disqualified by order of the Secretary, after notice and an opportunity for a hearing before the Secretary, from showing or exhibiting any horse, judging or managing any horse show, horse exhibition, or horse sale or auction, *or otherwise participating in any horse show, horse exhibition, or horse sale or auction* for a period of not less than one year for the first violation and not less than five years for **any subsequent** *the second* violation. *For the third or any subsequent violation, a person may be permanently disqualified by order of the Secretary, after notice and an opportunity for a hearing before the Secretary, from showing or exhibiting any horse, judging or managing any horse show, horse exhibition, or horse sale or auction, or otherwise participating in, including financing the participation of other individuals in, any horse show, horse exhibition, or horse sale or auction (regardless of whether walking horses are shown, exhibited, sold, auctioned, or offered for sale at the horse show, horse exhibition, or horse sale or auction).* Any person who knowingly fails to obey an order of disqualification shall be subject to a civil penalty of not more than **[\$3,000]** *\$5,000*

for each violation. Any horse show, horse exhibition, or horse sale or auction, or the management thereof, collectively and severally, which knowingly allows any person who is under an order of disqualification to show or exhibit any horse, to enter for the purpose of showing or exhibiting any horse, to take part in managing or judging, or otherwise to participate in any horse show, horse exhibition, or horse sale or auction in violation of an order shall be subject to a civil penalty of not more than ~~【\$3,000】~~ \$5,000 for each violation. The provisions of subsection (b) respecting the assessment, review, collection, and compromise, modification, and remission of a civil penalty apply with respect to civil penalties under this subsection.

(d) PRODUCTION OF WITNESSES AND BOOKS, PAPERS, AND DOCUMENTS; DEPOSITIONS; FEES; PRESUMPTIONS; JURISDICTION.—

(1) The Secretary may require by subpoena the attendance and testimony of witnesses and the production of books, papers, and documents relating to any matter under investigation or the subject of a proceeding. Witnesses summoned before the Secretary shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(2) The attendance of witnesses, and the production of books, papers, and documents, may be required at any designated place from any place in the United States. In case of disobedience to a subpoena the Secretary, or any party to a proceeding before the Secretary, may invoke the aid of any appropriate district court of the United States in requiring attendance and testimony of witnesses and the production of such books, papers, and documents under the provisions of this Act.

(3) The Secretary may order testimony to be taken by deposition under oath in any proceeding or investigation pending before him, at any stage of the proceeding or investigation. Depositions may be taken before any person designated by the Secretary who has power to administer oaths. The Secretary may also require the production of books, papers, and documents at the taking of depositions.

(4) Witnesses whose depositions are taken and the persons taking them shall be entitled to the same fees as paid for like services in the courts of the United States or in other jurisdictions in which they may appear.

(5) In any civil or criminal action to enforce this Act or any regulation under this Act a horse shall be presumed to be a horse which is sore if it manifests abnormal sensitivity or inflammation in both of its forelimbs or both of its hindlimbs.

(6) The United States district courts, the District Court of Guam, the District Court of the Virgin Islands, the highest court of American Samoa, and the United States courts of the other territories, are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of this Act, and shall have jurisdiction in all other kinds of cases arising under this Act, except as provided in subsection (b) of this section.

(e) DETENTION OF HORSES; SEIZURE AND CONDEMNATION OF EQUIPMENT.—

(1) The Secretary may detain (for a period not to exceed twenty-four hours) for examination, testing, or the taking of evidence, any horse at any horse show, horse exhibition, or

horse sale or auction which is sore or which the Secretary has probable cause to believe is sore. The Secretary may require the temporary marking of any horse during the period of its detention for the purpose of identifying the horse as detained. A horse which is detained subject to this paragraph shall not be moved by any person from the place it is so detained except as authorized by the Secretary or until the expiration of the detention period applicable to the horse.

(2) Any equipment, device, paraphernalia, or substance which was used in violation of any provision of this Act or any regulation issued under this Act or which contributed to the soring of any horse at or prior to any horse show, horse exhibition, or horse sale or auction, shall be liable to be proceeded against, by process of libel for the seizure and condemnation of such equipment, device, paraphernalia, or substance, in any United States district court within the jurisdiction of which such equipment, device, paraphernalia, or substance is found. Such proceedings shall conform as nearly as possible to proceedings in rem in admiralty.

