

PREVENT ALL SORING TACTICS ACT OF 2021

NOVEMBER 14, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PALLONE, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 5441]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 5441) 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 without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

H.R. 5441, the “Prevent All Soring Tactics Act of 2022,” requires the Secretary of Agriculture (Secretary) to prescribe regulations for

the licensing, training, assignment, and oversight of persons qualified to detect and diagnose a sore horse. The bill explicitly prohibits the use of action devices and pads (which can intensify a horse's pain) on horse breeds that have a history of being victims of soring and increases penalties.

II. BACKGROUND AND NEED FOR LEGISLATION

Soring is a process of applying an irritating or blistering agent to a limb of a horse to accentuate the horse's gait, which may cause a horse to move with exaggerated high steps.¹ In the 1950s and 1960s, some exhibitors used soring to improve show horses' performances at shows and events.² Congress passed the Horse Protection Act of 1970, which was amended in 1976, to establish that soring at horse shows, horse sales, and other horse exhibitions is prohibited and outlines penalties if inspectors find a horse to have been sored.³ Despite the prohibition, the U.S. Department of Agriculture (USDA) Inspector General found that the USDA's program for inspecting horses for soring does not adequately prevent abuse.⁴

III. COMMITTEE HEARINGS

For the purposes of section 3(c) of rule XIII of the Rules of the House of Representatives, the following hearing was used to develop or consider H.R. 5441:

The Subcommittee on Consumer Protection and Commerce held a legislative hearing on May 26, 2022. The hearing was entitled, "Legislative Hearing to Protect Consumers and Strengthen the Economy." The Subcommittee received testimony from the following witnesses:

- Katlin Kraska, Director of Federal Legislation, Government Relations, American Society for the Prevention of Cruelty to Animals;
- Julie Menin, Former Commissioner, New York City Department of Consumer Affairs;
- Hadley Heath Manning, Vice President for Policy, Independent Women's Forum; Partner, Wiley Rein LLP;
- Michael O'Neal, Vice President—Corporate Underwriting, First American Title Insurance Company;
- Trista Hamsmith, Founder and Reese's Mom, Reese's Purpose;
- Eric D. Hagopian, CEO and President, Pilot Precision Products; and
- Tori Barnes, Executive Vice President, Public Affairs and Policy, U.S. Travel Association.

IV. COMMITTEE CONSIDERATION

H.R. 5441, the "Prevent All Soring Tactics Act of 2022," was introduced on September 30, 2021, by Reps. Cohen (D-TN) and 212 original cosponsors and was referred to the Committee on Energy

¹Department of Agriculture Office of Inspector General, *Animal and Plant Health Inspection Service Administration of the Horse Protection Program and the Slaughter Horse Transport Program* (Sept. 2010).

²*Id.*

³*Id.*

⁴*Id.*

and Commerce. Subsequently, the bill was referred to the Subcommittee on Consumer Protection and Commerce on October 1, 2021.

On June 23, 2022, the Subcommittee on Consumer Protection and Commerce met in open markup session, pursuant to notice, to consider H.R. 5441 and seven other bills. During consideration of the bill, an amendment in the nature of substitute (AINS) offered by Rep. Schakowsky (D-IL) was agreed to by a voice vote. Upon conclusion of consideration of the bill, the Subcommittee agreed to report the bill favorably to the full Committee, amended, by a roll call vote of 22 yeas to zero nays.

On September 21, 2022, the full Committee met in open markup session, pursuant to notice, to consider H.R. 5441 and 23 other bills. No amendments were offered during consideration of the bill. Upon conclusion of consideration of the bill, the full Committee agreed to a motion on final passage offered by Representative Pallone, Chairman of the Committee, to order H.R. 5441 reported favorably to the House, as amended by the Subcommittee, by a roll call vote of 46 yeas to 9 nays.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. The Committee advises that there were two record votes taken on H.R. 5441, including a motion by Mr. Pallone ordering H.R. 5441 favorably reported to the House, as amended by the Subcommittee on Consumer Protection and Commerce. The motion on final passage of the bill was approved by a record vote of 46 yeas to 9 nays. The following are the record votes taken during Committee consideration, including the names of those members voting for and against:

Committee on Energy and Commerce
117th Congress

Subcommittee on Consumer Protection and Commerce
(ratio: 14-10)

ROLL CALL VOTE #9

Bill: **H.R. 5441**, the “Preventing All Soring Tactics Act of 2021”

Motion: A motion by Ms. Schakowsky of Illinois to order **H.R. 5441** transmitted favorably to the full Committee, amended.

Disposition: **AGREED TO** by a roll call vote of 22 yeas to 0 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Ms. Schakowsky	X			Mr. Bilirakis	X		
Mr. Rush	X			Mr. Upton	X		
Ms. Castor	X			Mr. Latta	X		
Ms. Trahan	X			Mr. Guthrie	X		
Mr. McNerney	X			Mr. Bucshon	X		
Ms. Clarke	X			Mr. Dunn	X		
Mr. Cárdenas	X			Ms. Lesko	X		
Mrs. Dingell	X			Mr. Pence			
Ms. Kelly	X			Mr. Armstrong	X		
Mr. Soto	X			Mrs. Rodgers	X		
Ms. Rice	X						
Ms. Craig	X						
Ms. Fletcher							
Mr. Pallone	X						

Committee on Energy and Commerce
117th Congress

Full Committee

(ratio: 32-26)

ROLL CALL VOTE #143

Bill: **H.R. 5441**, the “Prevent All Soring Tactics Act of 2021” or the “PAST Act of 2021”

Vote: Final Passage

Disposition: **AGREED TO** by a roll call vote of 46 yeas to 9 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Pallone	X			Mrs. Rodgers	X		
Mr. Rush	X			Mr. Upton	X		
Ms. Eshoo	X			Mr. Burgess		X	
Ms. DeGette	X			Mr. Scalise			
Mr. Doyle	X			Mr. Latta	X		
Ms. Schakowsky	X			Mr. Guthrie		X	
Mr. Butterfield	X			Mr. McKinley	X		
Ms. Matsui	X			Mr. Kinzinger			
Ms. Castor	X			Mr. Griffith	X		
Mr. Sarbanes	X			Mr. Bilirakis	X		
Mr. McNerney	X			Mr. Johnson	X		
Mr. Welch	X			Mr. Long	X		
Mr. Tonko	X			Mr. Bucshon	X		
Ms. Clarke	X			Mr. Mullin		X	
Mr. Schrader	X			Mr. Hudson	X		
Mr. Cárdenas	X			Mr. Walberg			
Mr. Ruiz	X			Mr. Carter	X		
Mr. Peters	X			Mr. Duncan	X		
Mrs. Dingell	X			Mr. Palmer		X	
Mr. Veasey	X			Mr. Dunn		X	
Ms. Kuster	X			Mr. Curtis	X		
Ms. Kelly	X			Ms. Lesko		X	
Ms. Barragán	X			Mr. Pence		X	
Mr. McEachin	X			Mr. Crenshaw		X	
Ms. Blunt Rochester	X			Mr. Joyce	X		
Mr. Soto	X			Mr. Armstrong		X	
Mr. O'Halleran	X						
Ms. Rice	X						
Ms. Craig	X						
Ms. Schrier	X						
Ms. Trahan	X						
Ms. Fletcher	X						

09/21/22

VI. OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portion of the report.

VII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

VIII. FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

IX. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to require the Secretary to prescribe regulations for the licensing, training, assignment, and oversight of persons qualified to detect and diagnose a sore horse, designate additional unlawful acts under the Horse Protection Act, increase penalties for violations of the Act, improve Department of Agriculture enforcement of the Act, and for other purposes.

X. DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 5441 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

XI. COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

XII. EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 5441 contains no earmarks, limited tax benefits, or limited tariff benefits.

XIII. ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

XIV. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XV. SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates that the short title may be cited as the “Prevent All Soring Tactics Act of 2022” or the “PAST Act of 2022.”

Sec. 2. Increased enforcement under Horse Protection Act

Subsection (a) establishes the definitions for the section.

Subsection (b) modifies the findings under the Horse Protection Act to specify that Congress finds that the soring of horses for the purpose of moving, showing, exhibiting, or selling sore horses adversely affects and burdens interstate and foreign commerce; soring creates unfair competition and negatively impacts horse sales; the Inspector General of the Department of Agriculture has determined that the program through which the Secretary inspects horses is inadequate; historically, Tennessee Walking Horses, Racking Horses, and Spotted Saddle Horses have been subject to soring; and violations of the Horse Protection Act continue to be prevalent.

Subsection (c) requires the Secretary to disqualify a horse from being shown or exhibited if the Secretary determines that the horse is sore. The Secretary is directed to license, train, assign, and oversee persons qualified to detect and diagnose a horse that is sore. The Secretary may not issue a person a license if that person has a conflict of interest, must give preference to veterinarians in issuing licenses, and may revoke a license if the performance of such person is unsatisfactory. Management of horse shows, exhibitions, sales, or auctions are permitted to notify the Secretary of their intent to hire a licensed person, upon which the Secretary is required to assign a licensed person. Licensed persons are required to issue a citation and notify the Secretary of any violation of the Horse Protection Act. The Secretary is required to publicly publish information on any violation.

Subsection (d) prohibits the act of causing 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, exhibition, sale, or auction. This subsection also bans the use of action devices on any limb of a Tennessee Walking Horse, a Racking Horse, or Spotted Saddle Horse at a horse show, exhibition, sale, or auction. The subsection also makes it a prohibited act to use devices or materials at a horse show, exhibition, sale, or auction that are placed on, inserted in, or attached to any limb of a Tennessee Walking Horse, a Racking Horse, or a Spotted Saddle Horse; is constructed to artificially alter the gait of such a horse; and is not strictly protective or therapeutic in nature.

Subsection (e) authorizes the Secretary to seek criminal penalties of not more than \$5,000, imprisonment for not more than three years, or both for each violation for a person who knowingly violates Sec. 1824 or regulations issued under Sec. 1824 of the Horse Protection Act. The Secretary is authorized to seek criminal penalties against any person who knowingly fails to obey an order of disqualification of not more than \$5,000 for each failure to obey, imprisonment for not more than three years, or both. The Secretary is permitted to seek civil penalties of not more than \$4,000 for each violation against persons who violates Sec. 1824 or regulations issued under Sec. 1824 of the Horse Protection Act. The Secretary may seek civil penalties of not more than \$4,000 for each violation against any person who fails to pay a licensed inspector. This subsection specifies that any person convicted of a violation, who has paid a civil penalty, or is subject to a final order under the Horse Protection Act may be disqualified by the Secretary. For a third or any subsequent violation, a person may be permanently disqualified by the Secretary. The Secretary is permitted to seek civil penalties of \$5,000 for a person who knowingly fails to obey and order of disqualification.

Subsection (f) requires that the Secretary, not later than 180 days after the date of enactment, issue regulations to carry out the amendments made by this section.

Subsection (g) states that if any provision or application of the provision is held to be unconstitutional, the remainder of this Act shall not be affected by the holding.

XVI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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 matter is printed in italics, and existing law in which no change is proposed is shown in roman):

HORSE PROTECTION ACT

* * * * *

SEC. 2. 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. 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. (a) 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) 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) 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 author-

izing 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) 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) 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. 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 em-

ployment 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)** *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 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. (a)(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)(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) 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 Sec-

retary, 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)(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)(1) The Secretary may detain (for a period not to exceed examination, 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.

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