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**REPORT ON LEGISLATION BY THE
ANIMAL LAW COMMITTEE**

S.1121

Sen. Ayotte

AN ACT, entitled the Prevent All Soring Tactics Act, to amend the Horse Protection Act (15 U.S.C. Sections 1821 et seq.), to strengthen enforcement provisions and penalties against the practice of soring of horses.

PAST Act

THIS LEGISLATION IS APPROVED WITH RECOMMENDATIONS

SUMMARY OF THE PROPOSED LEGISLATION

This proposed legislation would amend the Horse Protection Act (“HPA” or the “Act”) (15 U.S.C. Sections 1821 et seq.) to prohibit soring, strengthen enforcement of the Act and increase penalties for violations of the Act.

Specifically, the proposed legislation would expressly ban the practice of horse soring, which involves the intentional infliction of pain to a horse’s legs or hooves in order to force the horse to perform an artificial, exaggerated gait that is valued in certain show horse competitions and exhibitions.¹ Additionally, the proposed legislation would prohibit the use of the following devices with respect to Tennessee Walking Horse, Racking Horse, or Spotted Saddle Horse at horse shows, exhibitions, sales or auctions: the use of (1) an “action device”² or (2) “a weighted shoe, pad, wedge, hoof band, or other device or material” that is artificially constructed to alter a horse’s gait and is not strictly protective or therapeutic.

Next, the proposed legislation would require that the management of any horse show, exhibition, sale or auction hire a licensed soring inspector to conduct inspections at such show, exhibition, sale or auction and would require the United States Department of Agriculture

¹ See HPA, 15 U.S.C. § 1821(3).

² Under the proposed legislation, “action device” is defined to mean “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.”

(“USDA”) to promulgate regulations regarding the licensing, training assignment and oversight of soring inspectors and conflicts of interest.³ In issuing licenses, preference would be given to licensed or accredited veterinarians. Persons with conflicts of interest, to be defined by the USDA regulations, will be barred from obtaining an inspector’s license. The proposed legislation would require such inspectors to issue citations for violations of the HPA and notify the Secretary of the same not later than five days after each citation. Information on violations would be required to be published, and updated as frequently as the Secretary deems necessary, on the Animal and Plant Health Inspection Service (“APHIS”) website of the USDA.

The proposed legislation would also increase civil and criminal penalties for violations of existing provisions of the HPA in addition to the new provisions concerning soring. The maximum civil fine, for each violation, would be increased from \$2,000 to \$4,000, and failure to pay a licensed inspector would result in a fine of not more than \$4,000. The maximum criminal fine, for each violation, would be increased from \$3,000 to \$5,000, and the maximum prison sentence would be increased from one year to three years. Additionally the proposed legislation would provide for the permanent disqualification from participating in any horse show, exhibition, sale or auction of any person convicted of three or more violations of the HPA following notice and an opportunity for a hearing. Failure to obey an order of disqualification could also lead to a maximum criminal fine of \$5,000 and/or a maximum prison sentence of three years.

The proposed legislation would also add time periods under which horses found to have been sored shall be disqualified⁴ from being shown or exhibited as follows: The disqualification period for a first violation would be a period of not less than 180 days, and the disqualification period for a second or third violation would be not less than one year and not less than three years respectively.

JUSTIFICATION

Soring is a practice that involves the intentional infliction of pain to a horse’s legs or hooves in order to force the horse to perform an artificial, exaggerated gait. Soring may involve the application of caustic solutions, such as diesel oil, kerosene, mustard oil, and other industrial chemicals to the lower front legs of horses; the grinding down of a horse’s hooves to expose sensitive tissues; placing weighted chains around a horse’s legs to exacerbate the soreness of the chemically treated legs; and placing sharp objects (*e.g.*, nails, tacks, and screws) in the sole of the hoof.⁵ These methods cause extreme pain to the sored horse and cause the horse to lift his or

³ The proposed legislation would create a new subsection (c)(1)(A) in 15 U.S.C. 1823 to provide that “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.” Related subsection (c)(1)(B) would require the promulgation of regulations defining a “conflict of interest” and mandating that “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).”

⁴ Existing law simply provides that such horses may be disqualified from being shown, exhibited or sold at horse sales or auctions, but does not specify a time period for the disqualification. *See* 15 U.S.C. § 1823(a)-(b).

⁵ Soring is defined by the HPA to mean the use of “an irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse, any burn, cut, or laceration has been inflicted by a person on any limb

her forelimbs off the ground as high as possible, thus achieving the high-stepping gait that is valued in certain show horse competitions and exhibitions.⁶ As noted by Congress, “the soring of horses is cruel and inhumane.”⁷ Soring is condemned by a number of veterinary organizations⁸ and animal protection organizations.⁹

In 1970 the HPA was enacted to prohibit the showing, sale, or transportation of horses that have been sored. However, the Act fails to prohibit the activity of soring itself. As a result many horses continue to be subjected to the painful practice of soring.¹⁰ Additionally violations of the Act continue to be prevalent.¹¹ The proposed legislation is necessary to prohibit the act of soring itself and strengthen enforcement of the HPA.

of a horse, 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 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.” 15 U.S.C. § 1821(3).

⁶ American Veterinary Medical Association (AVMA) and American Association of Equine Practitioners (AAEP), *Horse Soring and the Past Act*, and HR1518 & S1406, Executive Summary, page 4, <https://www.avma.org/KB/Resources/Reference/AnimalWelfare/Documents/Soring%20Bookiet%20March%2020214.pdf> (all citations herein last visited May 5, 2015); Theresa LaVoie, *The Horse Protection Act: The Dark Side of the Tennessee Walking Horse Show World*, Ellis Law Group LLP, <http://www.ellislawgrp.com/article11horseprotection.html>; USDA Program Aid No. 1827: The Horse Protection Act, http://www.aphis.usda.gov/publications/animal_welfare/content/printable_version/HPA_08.pdf (last visited May 18, 2015).

⁷ 15 U.S.C. § 1822.

⁸ The American Veterinary Medical Association (AVMA) and American Association of Equine Practitioners (AAEP) oppose the practice of soring. *Horse Soring and the Past Act and HR 1518 & S1406, Executive Summary*, <https://www.avma.org/KB/Resources/Reference/AnimalWelfare/Documents/Soring%20Bookiet%20March%2020214.pdf> (last visited May 18, 2015).

⁹ See, e.g., *What is Soring? Important facts about this cruel abuse*, The Humane Society of the United States, http://www.humanesociety.org/issues/tenn_walking_horses/facts/what_is_soring.html; Undercover Video: The Barbaric World of Horse Soring, the American Society for the Prevention of Cruelty to Animals, <http://www.aspc.org/blog/undercover-video-barbaric-world-horse-soring> (last visited May 18, 2015).

¹⁰ *Horse Soring and the Past Act and HR 1518 & S1406, Executive Summary*, at p. 4 (“Despite enactment of the HPA, soring has continued in the South and is widely practiced by trainers, owners and farriers. It is used on horses entered in local ‘fun’ shows, as well as in large competitions.”).

¹¹ E.g., Press Release, U.S. Department of Justice, Three More Sentenced for Horse Soring Violations (Feb. 27, 2012), (U.S. Attorney William Killian, Eastern District of Tennessee, stated in a press release about three persons convicted for soring-related crimes that “the crimes committed by these individuals are examples of wide-spread problems in the equine industry that give unfair and illegal advantage to some competitors over others, in addition to causing extreme pain to the animals.”), <http://www.justice.gov/archive/usao/tne/news/2012/February/022712%20Davis,%20et.%20al.%20Sentencing%20Horse%20Soring.html> (last visited May 18, 2015).

In particular, one of the most significant deficiencies of the current law is the lack of regulations regarding the licensing, training and oversight of soring inspectors. As noted in the proposed legislation, “the program through which the Secretary inspects horses is inadequate for preventing soring.” Due in part to inadequate funding¹² the USDA’s APHIS veterinarians attend only a small percentage of horse shows to identify horses that had been sored.¹³ USDA regulations currently permit horse industry organizations to train and license their own inspectors (known as “designated qualified persons” or “DQPs”) to enforce the law.¹⁴ In lieu of APHIS inspectors, the majority of horse shows, exhibitions, sales and auction are overseen by DQPs. Such a self-policing scheme presents a significant conflict of interest that fails to ensure that inspections are conducted in an unbiased and effective way.¹⁵ USDA audits have shown that “DQPs do not always inspect horses to effectively enforce the law and regulations, and in some cases where they do find violations, they deliberately issue tickets to friends or family members of responsible individuals so that the responsible person could avoid receiving a penalty for violating the Horse Protection Act.”¹⁶

The APHIS enforcement process for the HPA have been structured¹⁷ such that horse industry organizations and DQPs — not APHIS — are exclusively responsible for issuing penalties to individuals for violating the HPA.¹⁸ As a result, APHIS inspectors do not have authority to issue citations to individuals or DQPs for violations of the HPA and must instead

¹² We note that a funding authorization of \$500,000 was provided in the HPA when enacted in 1970, but this funding has never been increased. *See* 15 U.S.C. § 1831.

¹³ The USDA Inspector General reviewed the inspection records of 1,607 exhibitions held between 2005 and 2008. The records showed that APHIS attended only 6 per cent of the events, where 49 per cent of all violation citations were issued. *See* USDA Inspector General’s Audit Report 33601-2-KC, *Animal and Plant Health Inspection Service Administration of the Horse Protection Program and the Slaughter Horse Transport Program*, September 2010 (hereafter cited as the “OIG Audit Report”), p. 11, <http://www.usda.gov/oig/webdocs/33601-02-KC.pdf> (last visited May 18, 2015).

¹⁴ Horse Protection Regulations Section 11.7(a)(1)(iii). *See also* OIG Audit Report p. 1.

¹⁵ “Because the DQPs are primarily hired from show industry participants, they have an inherent conflict of interest; they are reluctant to issue violations since excluding horses from the show inconveniences their employers, and makes it less likely the DQP will be hired for other shows. They are also subject to a conflict of interest because, while they are acting as a DQP at one show, they may be an exhibitor at another show, and the exhibitor of the horse they are examining might later act as the DQP.” OIG Audit Report, p. 10.

¹⁶ OIG Audit Report, p. 1.

¹⁷ As a general practice, APHIS contracts with horse industry organizations in annual operating plans providing the terms under which the enforcement of the HPA will be handled, including the penalties for violations and resolution of conflicts. The operating plan may give primary or exclusive authority for HPA enforcement to the DQPs, thereby relinquishing the USDA’s enforcement authority. *See* OIG Audit Report, FN. 31; *see also* Horse Protection Act and its Administration, USDA (Oct. 17, 2014), http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/animalwelfare/sa_hpa/ct_hpa_history_and_administration/!ut/p/a0/04_Sj9CPykssy0xPLMnMz0vMAfGjzOK9_D2MDJ0MjDzd3V2dDDz93HwCzL29jAyCzfQLsh0VAbjgL_A! (“In 1999, APHIS entered into a voluntary agreement known as the Horse Protection Operating Plan for the 1999 Horse Show Season (OP99) with the eight HIOs that operated certified DQP programs The plan formally outlined the process of delegating initial enforcement responsibility of the HPA to the HIOs though the DQP program. . . . Since then, APHIS has continued the practice of using operating plans in the administration of the HPA.”) (emphasis added) (last visited May 18, 2015).

¹⁸ OIG Audit Report, p. 15.

rely on DQPs to issue citations for violations.¹⁹ Moreover, as recently recognized by the Fifth Circuit Court of Appeals, under existing law the USDA does not have the authority to require DQPs to impose minimum penalties for HPA violations²⁰ and APHIS inspectors are similarly precluded from issuing citations to DQPs who fail to perform inspections in accordance with USDA standards.²¹ Given the many serious problems with the current DQP system, the USDA Office of the Inspector General has “recommend[ed] that APHIS abolish the DQP program, and instead provide independent, accredited veterinarians to perform inspections at sanctioned shows.”²²

The proposed legislation is necessary to ban the inhumane practice of soring itself and to ensure that the provisions of the HPA are properly enforced by requiring inspections and the issuance of citations for HPA violations by trained and unbiased professionals.

RECOMMENDATIONS

In order to avoid the historical problem of the USDA completely delegating its HPA enforcement authority to third parties,²³ we recommend that the proposed legislation be amended to clarify that, notwithstanding the HPA enforcement authority of licensed inspectors, the USDA shall at all times maintain concurrent HPA enforcement authority.

Next, we note that as drafted, the proposed legislation only addresses the presence of a conflict of interest at the time an inspection license is issued and does not address conflicts of interest that may arise at a later time.²⁴ Therefore, we further recommend that the proposed legislation be amended to provide for the revocation of an inspection license, following notice and hearing, where it is determined that a licensee has a conflict of interest as defined in the regulations to be promulgated under the proposed legislation.²⁵

We further recommend that the HPA be amended to increase the funding authorization. The HPA, when originally enacted in 1970, authorized a funding maximum of \$500,000. This funding has not been increased in nearly four decades, and, as noted by the USDA Inspector

¹⁹ “Due to this arrangement, at accredited shows (where there is an operating agreement in effect), APHIS employees must sometimes persuade DQPs to issue violations. If an APHIS employee is at a show and identifies a sore horse, the agency employee does not have the authority to write a ticket for the violation directly. Instead, the agency employee must convince the DQP that a violation occurred so that the DQP will then write a ticket.” *Id.*

²⁰ *Contender Farms, L.L.P. v. United States Department of Agriculture*, No. 13-11052 (5th Cir., Feb. 19, 2015) (“The HPA authorizes the USDA to develop a private *inspection* system carried out by DQPs who are certified by HIOs, but it does not imply that the USDA may then establish a mandatory private *enforcement* system administered by those HIOs.”) (emphasis in original).

²¹ In such circumstances, an APHIS employee’s only recourse is to request a letter of warning to be sent to the offending DQP from the horse industry organization. *See* OIG Audit Report, p. 15.

²² OIG Audit Report, p. 3.

²³ *See* FN 16 *supra*.

²⁴ The proposed legislation would create a new subsection (c)(1)(B) in 15 U.S.C. 1823 to provide that “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).”

²⁵ *See* FN 3 *supra*.

General, “APHIS is operating this program with extremely limited resources.... APHIS will need to reallocate or obtain the resources it needs to accomplish its mission.”²⁶ Increased funding is necessary to account for the increased administrative costs associated with the increased USDA responsibilities.

Lastly, while we support the vigorous HPA enforcement scheme set out in the proposed legislation, including the increase in monetary penalties for violations of the HPA, out of a general concern for the over-reliance on incarceration as a punitive measure in the United States, we recommend that the term of imprisonment for HPA violations should not be increased.

CONCLUSION

For the foregoing reasons, the Animal Law Committee supports the proposed legislation and offers the aforementioned recommendations to strengthen this legislation.

May 2015

²⁶ OIG Audit Report p. 32.