

112TH CONGRESS  
1ST SESSION

# S. 886

To amend the Interstate Horseracing Act of 1978 to prohibit the use of performance-enhancing drugs in horseracing, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 4, 2011

Mr. UDALL of New Mexico introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend the Interstate Horseracing Act of 1978 to prohibit the use of performance-enhancing drugs in horseracing, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Interstate Horseracing  
5       Improvement Act of 2011”.

6       **SEC. 2. FINDINGS.**

7       Congress finds the following:

8               (1) Congress enacted the Interstate Horse-  
9       racing Act of 1978 (15 U.S.C. 3001 et seq.) to regu-  
10      late interstate commerce with respect to parimutuel

1       wagering on horseracing in order to protect and fur-  
2       ther the horseracing industry of the United States.

3           (2) The horseracing industry represents ap-  
4       proximately \$40,000,000,000 to the United States  
5       economy annually and generates nearly 400,000 do-  
6       mestic jobs.

7           (3) The use of performance-enhancing drugs in  
8       horseracing adversely affects interstate commerce,  
9       creates unfair competition, deceives horse buyers  
10      and the wagering public, weakens the breed of the  
11      American Thoroughbred, is detrimental to inter-  
12      national sales of the American Thoroughbred, and  
13      threatens the safety and welfare of horses and jock-  
14      eys.

15          (4) The use of performance-enhancing drugs in  
16      horseracing is widespread in the United States,  
17      where no uniform regulations exist with respect to  
18      the use of, and testing for, performance-enhancing  
19      drugs in interstate horseracing.

20          (5) The use of performance-enhancing drugs in  
21      horseracing is not permitted in most jurisdictions  
22      outside the United States. In the internationally  
23      competitive sport of horseracing, the United States  
24      stands alone in its permissive use of performance-en-  
25      hancing drugs.

1           (6) The use of performance-enhancing drugs is  
2 illegal in the United States in every sport other than  
3 horseracing.

4           (7) To protect and further the horseracing in-  
5 dustry of the United States, it is necessary to pro-  
6 hibit the use of performance-enhancing drugs in  
7 interstate horseracing.

8 **SEC. 3. PROHIBITIONS ON USE OF PERFORMANCE-ENHANC-**  
9 **ING DRUGS.**

10          (a) IN GENERAL.—The Interstate Horseracing Act  
11 of 1978 (15 U.S.C. 3001 et seq.) is amended—

12           (1) by redesignating section 9 as section 11;  
13 and

14           (2) by inserting after section 8 the following:

15 **“SEC. 9. PROHIBITIONS ON USE OF PERFORMANCE-EN-**  
16 **HANCING DRUGS.**

17          “(a) DEFINITIONS.—In this section:

18           “(1) ACCREDITED THIRD PARTY CONFORMITY  
19 ASSESSMENT BODY.—The term ‘accredited third  
20 party conformity assessment body’ means a testing  
21 laboratory that has an accreditation—

22           “(A) meeting International Organization  
23 for Standardization/International Electro-  
24 technical Commission standard 17025:2005 en-  
25 titled ‘General Requirements for the Com-

1           petence of Testing and Calibration Labora-  
2           tories' (or any successor standard);

3           “(B) from an accreditation body that is a  
4           signatory to the International Laboratory Ac-  
5           creditation Cooperation Mutual Recognition Ar-  
6           rangement; and

7           “(C) that includes testing for performance-  
8           enhancing drugs within the scope of the accred-  
9           itation.

10          “(2) PERFORMANCE-ENHANCING DRUG.—The  
11          term ‘performance-enhancing drug’—

12                 “(A) means any substance capable of af-  
13                 fecting the performance of a horse at any time  
14                 by acting on the nervous system, cardiovascular  
15                 system, respiratory system, digestive system,  
16                 urinary system, reproductive system, musculo-  
17                 skeletal system, blood system, immune system  
18                 (other than licensed vaccines against infectious  
19                 agents), or endocrine system of the horse; and

20                 “(B) includes the substances listed in the  
21                 Alphabetized Listing of Drugs in the January  
22                 2010 revision of the Association of Racing  
23                 Commissioners International, Inc., publication  
24                 entitled ‘Uniform Classification Guidelines for  
25                 Foreign Substances’.

1       “(b) PROHIBITION ON ENTERING HORSES UNDER  
 2 THE INFLUENCE OF PERFORMANCE-ENHANCING DRUGS  
 3 IN RACES SUBJECT TO INTERSTATE OFF-TRACK WAGER-  
 4 ING.—A person may not—

5           “(1) enter a horse in a race that is subject to  
 6 an interstate off-track wager if the person knows the  
 7 horse is under the influence of a performance-en-  
 8 hancing drug; or

9           “(2) knowingly provide a horse with a perform-  
 10 ance-enhancing drug if the horse, while under the in-  
 11 fluence of the drug, will participate in a race that  
 12 is subject to an interstate off-track wager.

13       “(c) REGULATIONS OF THE HOST RACING ASSOCIA-  
 14 TION BANNING PERFORMANCE-ENHANCING DRUGS.—A  
 15 host racing association may not conduct a horserace that  
 16 is the subject of an interstate off-track wager unless the  
 17 host racing association has a policy in place that—

18           “(1) bans any person from providing a horse  
 19 with a performance-enhancing drug if the horse will  
 20 participate in such a horserace while under the influ-  
 21 ence of the drug;

22           “(2) bans the racing of a horse that is under  
 23 the influence of a performance-enhancing drug;

24           “(3) requires, for each horserace that is the  
 25 subject of an interstate off-track wager, that an ac-

1 credited third party conformity assessment body test  
2 for any performance-enhancing drug—

3 “(A) the first-place horse in the race; and

4 “(B) one additional horse, to be randomly  
5 selected from the other horses participating in  
6 the race; and

7 “(4) requires the accredited third party con-  
8 formity assessment body performing tests described  
9 in paragraph (3) to report any test results dem-  
10 onstrating that a horse may participate, or may have  
11 participated, in a horserace that is the subject of an  
12 interstate off-track wager while under the influence  
13 of a performance-enhancing drug—

14 “(A) to the Federal Trade Commission;

15 and

16 “(B) if the host racing commission has en-  
17 tered into an agreement under subsection (e),  
18 to the host racing commission.

19 “(d) PENALTIES.—

20 “(1) CIVIL PENALTIES.—

21 “(A) IN GENERAL.—A person that pro-  
22 vides a horse with a performance-enhancing  
23 drug or races a horse in violation of subsection  
24 (b) shall be—

25 “(i) for the first such violation—

1           “(I) subject to a civil penalty of  
2           not less than \$5,000; and

3           “(II) suspended for a period of  
4           not less than 180 days from all activi-  
5           ties relating to any horserace that is  
6           the subject of an interstate off-track  
7           wager;

8           “(ii) for the second such violation—

9           “(I) subject to a civil penalty of  
10          not less than \$20,000; and

11          “(II) suspended for a period of  
12          not less than 1 year from all activities  
13          relating to any horserace that is the  
14          subject of an interstate off-track  
15          wager; and

16          “(iii) for the third or subsequent such  
17          violation—

18          “(I) subject to a civil penalty of  
19          not less than \$50,000; and

20          “(II) permanently banned from  
21          all activities relating to any horserace  
22          that is the subject of an interstate off-  
23          track wager.

24                 “(B) HORSERACING ACTIVITIES.—For pur-  
25                 poses of subparagraph (A), activities relating to

1 a horserace that is the subject of an interstate  
2 off-track wager include being physically present  
3 at any race track at which any such horserace  
4 takes place, placing a wager on any such horse-  
5 race, and entering a horse in any such horse-  
6 race.

7 “(C) PAYMENT OF CIVIL PENALTIES.—A  
8 civil penalty imposed under this paragraph shall  
9 be paid to the United States without regard to  
10 whether the imposition of the penalty results  
11 from the initiation of a civil action pursuant to  
12 section 10.

13 “(2) SUSPENSION OF HORSES.—A horse that is  
14 provided with a performance-enhancing drug or is  
15 raced in violation of subsection (b) shall—

16 “(A) for the first such violation, be sus-  
17 pended for a period of not less than 180 days  
18 from racing in any horserace that is the subject  
19 of an interstate off-track wager;

20 “(B) for the second such violation, be sus-  
21 pended for a period of not less than 1 year  
22 from racing in any horserace that is the subject  
23 of an interstate off-track wager; and

24 “(C) for the third or subsequent such vio-  
25 lation, be suspended for a period of not less



1           than 2 years from racing in any horserace that  
2           is the subject of an interstate off-track wager.

3           “(3) VIOLATIONS IN MULTIPLE STATES.—A  
4           person shall be subject to a penalty described in  
5           clause (ii) or (iii) of paragraph (1)(A), and a horse  
6           shall be subject to suspension under subparagraph  
7           (B) or (C) of paragraph (2), for a second or subse-  
8           quent violation of subsection (b) without regard to  
9           whether the prior violation and the second or subse-  
10          quent violation occurred in the same State.

11          “(e) AGREEMENTS FOR ENFORCEMENT BY HOST  
12 RACING COMMISSIONS.—

13           “(1) IN GENERAL.—The Federal Trade Com-  
14          mission may enter into an agreement with a host  
15          racing commission under which the host racing com-  
16          mission agrees to enforce the provisions of this sec-  
17          tion with respect to horseraces that are the subject  
18          of interstate off-track wagers in the host State.

19           “(2) CONDITIONAL AVAILABILITY OF CIVIL  
20          PENALTIES TO HOST RACING COMMISSIONS.—If a  
21          host racing commission agrees to enforce the provi-  
22          sions of this section pursuant to an agreement under  
23          paragraph (1), any amounts received by the United  
24          States as a result of a civil penalty imposed under  
25          subsection (d)(1) with respect to a horserace that

1 occurred in the State in which the host racing com-  
2 mission operates shall be available to the host racing  
3 commission, without further appropriation and until  
4 expended, to cover the costs incurred by the host  
5 racing commission in enforcing the provisions of this  
6 section.

7 “(f) ENFORCEMENT BY THE FEDERAL TRADE COM-  
8 MISSION.—

9 “(1) IN GENERAL.—The Federal Trade Com-  
10 mission shall enforce the provisions of this section—

11 “(A) with respect to horseraces that are  
12 the subject of interstate off-track wagers that  
13 occur—

14 “(i) in any State in which the host  
15 racing commission does not enter into an  
16 agreement under subsection (e); and

17 “(ii) in any State in which the host  
18 racing commission has entered into an  
19 agreement under subsection (e) if the Fed-  
20 eral Trade Commission determines the  
21 host racing commission is not adequately  
22 enforcing the provisions of this section;  
23 and

1           “(B) with respect to violations of sub-  
2           section (b) by a person, or with respect to a  
3           horse, in multiple States.

4           “(2) UNFAIR OR DECEPTIVE ACT OR PRACTICE;  
5           ACTIONS BY FEDERAL TRADE COMMISSION.—In  
6           cases in which the Federal Trade Commission en-  
7           forces the provisions of this section pursuant to  
8           paragraph (1)—

9           “(A) a violation of a prohibition described  
10          in subsection (b) or (c) shall be treated as a  
11          violation of a rule defining an unfair or decep-  
12          tive act or practice described under section  
13          18(a)(1)(B) of the Federal Trade Commission  
14          Act (15 U.S.C. 57a(a)(1)(B)); and

15          “(B) except as provided in paragraph (3),  
16          the Federal Trade Commission shall enforce the  
17          provisions of this section in the same manner,  
18          by the same means, and with the same jurisdic-  
19          tion, powers, and duties as though all applicable  
20          terms and provisions of the Federal Trade  
21          Commission Act (15 U.S.C. 41 et seq.) were in-  
22          corporated into and made part of this section.

23          “(3) ENFORCEMENT WITH RESPECT TO NON-  
24          PROFIT ORGANIZATIONS.—Notwithstanding any pro-  
25          vision of the Federal Trade Commission Act (15

1 U.S.C. 41 et seq.), the Federal Trade Commission  
2 shall have the authority to enforce the provisions of  
3 this section pursuant to paragraph (1) with respect  
4 to organizations that are described in section  
5 501(c)(3) of the Internal Revenue Code of 1986 and  
6 that are exempt from taxation under section 501(a)  
7 of such Code.

8 “(g) RULEMAKING.—The Federal Trade Commission  
9 shall prescribe such rules as may be necessary to carry  
10 out the provisions of this section in accordance with the  
11 provisions of section 553 of title 5, United States Code.

12 “(h) EFFECT ON STATE LAWS.—Nothing in this sec-  
13 tion preempts a State from adopting or enforcing a law,  
14 policy, or regulation prohibiting the use of performance-  
15 enhancing drugs in horseracing to the extent that the law,  
16 policy, or regulation imposes additional requirements or  
17 higher penalties than are provided for under this section.

18 **“SEC. 10. PRIVATE RIGHT OF ACTION FOR CERTAIN VIOLA-**  
19 **TIONS.**

20 “Notwithstanding sections 6 and 7, in any case in  
21 which a person has reason to believe that an interest of  
22 that person is threatened or adversely affected by the en-  
23 gagement of another person in a practice that violates a  
24 provision of section 9 or a rule prescribed under section  
25 9, the person may bring a civil action in an appropriate

1 district court of the United States or other court of com-  
2 petent jurisdiction—

3           “(1) to enjoin the practice;

4           “(2) to enforce compliance with the provision or  
5 rule;

6           “(3) to enforce the penalties provided for under  
7 section 9(d);

8           “(4) to obtain damages or restitution, including  
9 court costs and reasonable attorney and expert wit-  
10 ness fees; and

11           “(5) to obtain such other relief as the court  
12 considers appropriate.”.

13       (b) EFFECTIVE DATE.—The amendments made by  
14 subsection (a) shall take effect on the date of the enact-  
15 ment of this Act and apply with respect to horseraces oc-  
16 ccurring on or after that date.

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