

## 2012 STATE LEGISLATIVE REVIEW

By  
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## I. INTRODUCTION

As political gridlock intensifies at the federal level,<sup>1</sup> state legislation is becoming an increasingly important tool for animal-welfare advocates in the United States. *Animal Law* presented an inaugural legislative review—a federal legislative summary that did not address state-level legislation—in 1998.<sup>2</sup> The journal published a summary of state ballot initiatives the following year,<sup>3</sup> and expanded the legislative review to include both state and federal actions in 2000.<sup>4</sup> Each subsequent volume of *Animal Law* has included a legislative review that continues to change in form and scope, reflecting movements and trends in the field. Given the growing significance of state-level legislation in the animal-law field, this year's iteration presents state legislative action in a stand-alone article. The following Article highlights a selection of animal-law developments that occurred in the states in 2012.

## II. BILLS REGULATING EXOTIC SPECIES

Dangerous incidents involving captive exotic or wild animals abound in the United States (U.S.). Born Free USA, an animal-advocacy organization, has documented over 1,400 such episodes within the last ten years.<sup>5</sup> Born Free's database documents hundreds of incidents of humans injuring or killing exotic animals,<sup>6</sup> of exotic animals injuring or killing humans,<sup>7</sup> and of exotic animals escaping and suffering injury or abandonment.<sup>8</sup> Events in 2012 provide a disturbing sample

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<sup>1</sup> See Stephan Dinan, Wash. Times, *Capitol Hill Least Productive Congress Ever: 112th Fought 'About Everything'*, <http://www.washingtontimes.com/news/2013/jan/9/capitol-hill-least-productive-congress-ever-112th/> (Jan. 9, 2013) (accessed Apr. 13, 2013) (stating that the United States House and Senate "enacted the fewest laws, considered the fewest bills and held the lowest number of formal negotiations between them" during the 112th Congress).

<sup>2</sup> Nancy Perry, *The Fruits of Our Labor: Results from the First Session of the 105th Congress—1997 Federal Legislative Summary*, 4 *Animal L.* 137 (1998).

<sup>3</sup> Aaron Lake, Student Author, *1998 Legislative Review*, 5 *Animal L.* 89 (1999).

<sup>4</sup> Aaron Lake, Student Author, *1999 State and Federal Legislative and Administrative Actions*, 6 *Animal L.* 151 (2000).

<sup>5</sup> Born Free USA, *Exotic Animal Incidents*, [http://www.bornfreeusa.org/database/exo\\_incidents.php](http://www.bornfreeusa.org/database/exo_incidents.php); scroll down to Year(s), choose from dropdown 2002, choose from dropdown 2012, select Search (accessed May 12, 2013) (listing 1,423 incidents between January 1, 2002, and December 31, 2012).

<sup>6</sup> Born Free documents 221 human-caused exotic animal deaths. *Id.*; scroll down to Category, select Animal death by human, select Search. The organization additionally documents fifty-two exotic animal injuries caused by humans. *Id.*; scroll down to Category, select Injury to animal by human, select Search.

<sup>7</sup> Born Free documents 555 incidents involving exotic animals resulting in human injury. *Id.*; scroll down to Category, select Attack resulting in human injury, select Search. The organization documents eighty incidents resulting in human death. *Id.*; scroll down to Category, select Attack resulting in human death, select Search.

<sup>8</sup> Born Free documents 932 incidents involving exotic animal escape. *Id.*; Scroll down to Category, select Escape of animal, select Search. The organization documents seventy-five incidents resulting in an injury to an animal. Born Free USA, *supra* n. 5;

of the wide spectrum of exotic animal incidents occurring annually within the U.S.: a monkey “hired” as birthday party entertainment bit the guest of honor;<sup>9</sup> a boy traded his dune buggy and dirt bike for a Siberian lynx (which was found in deplorable condition and later euthanized);<sup>10</sup> and a three-foot-long alligator, housed in a plastic bin, was discovered in an Applebee’s parking lot.<sup>11</sup>

The care of captive exotic species garnered national attention when, in late 2011, fifty-six exotic animals, including lions, bears, wolves, and monkeys, were released in Muskingum County, Ohio.<sup>12</sup> Not coincidentally, several states introduced legislation regulating the possession of exotic wild animals during the 2012 legislative session. Such legislation is critical to address the prevalence of private exotic pet ownership in the U.S.<sup>13</sup>

### A. Ohio

#### 1. Exotic Animal Disaster in Zanesville

Zanesville, Ohio residents remember October 18, 2011, as a “night that will go down in the history books.”<sup>14</sup> Muskingum County Animal Farm owner Terry Thompson committed suicide after releasing fifty-six exotic animals from his private exotic-animal farm.<sup>15</sup> Fifty of the

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*scroll down to Category, select Injury to animal, select Search.* Born Free also documents seventy-eight incidents in which an exotic animal was abandoned. *Id.*; *scroll down to Category, select Abandoned animal, select Search.*

<sup>9</sup> Born Free USA, *Exotic Animal Incident Report*, [http://www.bornfreeusa.org/database/exo\\_incident.php?id=1882](http://www.bornfreeusa.org/database/exo_incident.php?id=1882) (Nov. 29, 2012) (accessed Apr. 14, 2013).

<sup>10</sup> Born Free USA, *Exotic Animal Incident Report*, [http://www.bornfreeusa.org/database/exo\\_incident.php?id=1885](http://www.bornfreeusa.org/database/exo_incident.php?id=1885) (Dec. 30, 2012) (accessed Apr. 14, 2013).

<sup>11</sup> Born Free USA, *Exotic Animal Incident Report*, [http://www.bornfreeusa.org/database/exo\\_incident.php?id=1853](http://www.bornfreeusa.org/database/exo_incident.php?id=1853) (Oct. 7, 2012) (accessed Apr. 14, 2013). Interestingly, an alligator was also found on a golf course in Long Island two days earlier, marking the fourth alligator to be found roaming freely in Long Island in a five-day period. Born Free USA, *Exotic Animal Incident Report*, [http://www.bornfreeusa.org/database/exo\\_incident.php?id=1851](http://www.bornfreeusa.org/database/exo_incident.php?id=1851) (Oct. 5, 2012) (accessed Apr. 14, 2013).

<sup>12</sup> Denise Yost, NBC 4 News, *Zanesville Exotic Animals Released: One Year Later*, <http://www.nbc4i.com/story/20749455/zanesville-exotic-animals-released-one-year-later> (Oct. 18, 2012) (accessed Apr. 14, 2013).

<sup>13</sup> For example, there are 15,000 exotic cats documented in American homes. Susan Donaldson James, ABC News, *‘Elephant in Living Room’ Warns About Exotic Pets*, <http://abcnews.go.com/Health/elephant-living-room-exotic-animals-pets-pose-increasing/story?id=13215680> (Mar. 25, 2011) (accessed Apr. 14, 2013) (discussing the documentary which notes the prevalence and problems of exotic pet ownership, and additionally “note[s] that an estimated 3,400 tigers are living with ordinary families in Texas—more than double the 1,400 that live in the wild in India”).

<sup>14</sup> Yost, *supra* n. 12.

<sup>15</sup> Chris Crook, CBS News, *Exotic Animal Farm Owner Had History of Trouble*, [http://www.cbsnews.com/2100-201\\_162-20122619.html](http://www.cbsnews.com/2100-201_162-20122619.html) (Oct. 19, 2011) (accessed Apr. 14, 2013). Thompson was released from federal prison only one month prior to the disaster after serving a one-year term for weapons violations. James Eng, NBC News, *Ohio Escape Renews Call for Exotic-Animal Crackdown*, [http://www.nbcnews.com/id/44961202/ns/us\\_news-life/t/ohio-escape-renews-call-exotic-animal-crackdown](http://www.nbcnews.com/id/44961202/ns/us_news-life/t/ohio-escape-renews-call-exotic-animal-crackdown) (updated Oct. 20, 2011) (accessed Apr. 14, 2013).

animals died brutal deaths: police shot forty-eight animals<sup>16</sup> (including eighteen rare Bengal tigers);<sup>17</sup> a vehicle struck a wolf; and a tiger consumed a monkey.<sup>18</sup> Six animals were captured alive and taken to the Columbus Zoo.<sup>19</sup>

When Thompson released his menagerie on Ohio, the state only minimally regulated the keeping of dangerous wild or exotic animals.<sup>20</sup> In fact, Ohio law did not specifically regulate or limit private ownership of exotic species, except to require reporting in the event of escape.<sup>21</sup>

Six months earlier, in April 2011, Governor John Kasich had allowed to expire an emergency executive order issued by his predecessor, Governor Ted Strickland, that provided some regulation.<sup>22</sup> The

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<sup>16</sup> See Wayne Drash, CNN, *Ohio Animal Owner Supplied Cub for Heidi Klum*, <http://www.cnn.com/2011/10/19/us/exotic-animal-owner/index.html> (Oct. 20, 2011) (accessed Apr. 14, 2013) (quoting Muskingum County Sheriff Matt Lutz and reporting that animals were shot with sidearms at close range). Immediately following the escape, a controversy arose regarding whether the exotic animals should have been shot. See Ker Than, Natl. Geographic, *Should the Ohio Exotic Animals Have Been Shot?*, <http://news.nationalgeographic.com/news/2011/10/111020-ohio-exotic-animals-shootings-thompson-farm-nation/> (Oct. 20, 2011) (accessed Apr. 14, 2013) (discussing the Ohio controversy).

<sup>17</sup> Bengal tigers are an endangered species with an estimate of fewer than 2,500 remaining in the wild. Intl. Union for the Conserv. of Nature (IUCN), *IUCN Red List: Panthera tigris Ssp. tigris*, <http://www.iucnredlist.org/details/136899/0> (2011) (accessed Apr. 14, 2013).

<sup>18</sup> Yost, *supra* n. 12 (reflecting that the animals killed included one wolf, six black bears, two grizzly bears, nine male lions, eight lionesses, one baboon, three mountain lions, and eighteen tigers).

<sup>19</sup> *Id.* (listing the animals transported to the zoo as one grizzly bear, three leopards, and two monkeys).

<sup>20</sup> See Nadia Bashir, NBC 4 News, *Kasich Announces New Animal Law; Public Anxious to See If It Will Work*, <http://www.nbc4i.com/story/20752397/kasich-announces-new-animal-law-public-anxious-to-see-if-it-will-work> (Oct. 21, 2011) (accessed Apr. 14, 2013) (quoting Ohio Governor Kasich stating that “our laws have been too lax and basically unattended for several hundred years”); Ben Forer, ABC News, *Exotic Animal Laws Vary from State to State*, <http://abcnews.go.com/US/ohio-regulations-exotic-animals/story?id=14769017> (Oct. 19, 2011) (accessed Apr. 14, 2013) (characterizing Ohio as a “bad actor” with very limited exotic animal regulations); Than, *supra* n. 16 (reflecting that Ohio is one of at least eight states that do not regulate ownership of exotic animals, and also noting that the state does not require exotic animal owners to be federally licensed by the U.S. Department of Agriculture (USDA)).

<sup>21</sup> See Ohio Rev. Code Ann. § 1531.01(X) (West 2012) (enacted 2003) (amended 2012) (definition of “wild animals” includes “all other wild mammals”); *id.* at § 1533.71 (enacted 2003) (amended 2012) (regulating the holding captive or raising and selling of certain game birds and quadrupeds, reptiles, amphibians, and fur-bearing animals with permits issued upon a “good faith application” and payment of a fee); *id.* at § 2927.21 (repealed 2012) (regulating reporting the escape of exotic or dangerous animals); Ohio Exec. Or. 2011-24K (Oct. 21, 2011) (available at <http://www.governor.ohio.gov/Portals/0/pdf/executiveOrders/EO%202011-24K.pdf> (accessed Apr. 14, 2013)) (stating that Ohio law is unclear about state authority to regulate dangerous non-native wild animals).

<sup>22</sup> Eng, *supra* n. 15; Press Release, Ohio Dept. of Nat. Resources Div. of Wildlife, *Dangerous Wild Animals Emergency Rule Will Be Allowed to Expire* (Apr. 4, 2011) (available at <http://www.dnr.state.oh.us/Home/News/NewsReleaseArchives/tabid/19075/EntryId/2201/Dangerous-Wild-Animals-Emergency-Rule-Will-Be-Allowed-to-Ex>

order, issued following a bear mauling at another Ohio exotic-animal farm, banned new and circumscribed existing private ownership of dangerous wild animals.<sup>23</sup> The order and an accompanying emergency administrative rule prohibited persons with prior animal abuse or neglect convictions from possessing restricted species.<sup>24</sup> Under this provision, Thompson's prior animal-cruelty conviction would likely have prohibited him from possessing many of the animals at the Muskingum County Animal Farm.<sup>25</sup>

## 2. Legislative Reaction

Lawmakers reacted swiftly to fill the legislative vacuum brought to light by the Zanesville disaster. Governor Kasich immediately issued his own executive order, instructing state agencies to innovatively and aggressively enforce existing state animal welfare and public health and safety laws to address dangerous, non-native wild animals.<sup>26</sup> The executive order additionally sought to significantly limit exotic animal auctions by imposing a temporary moratorium on the sale of dangerous wild animals and shutting down any unauthorized auctions.<sup>27</sup> The order also directed the existing Ohio Department

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pire.aspx (accessed Apr. 14, 2013)). Governor Kasich cited problems with the emergency rule, including lack of funding, legal authority, and enforcement. *Id.*

<sup>23</sup> Ohio Admin. Code Ann. 1501:31-19-05 (2011) (available at [http://www.rexano.org/StatePages/OH\\_exotic\\_rule2011.pdf](http://www.rexano.org/StatePages/OH_exotic_rule2011.pdf) (accessed Apr. 14, 2013)); Ohio Exec. Or. 2010-17S (Jan. 6, 2011) (available at <http://www.rexano.org/StatePages/execorder10-17s.pdf> (accessed Apr. 14, 2013)); Joe Guillen, Plain Dealer Columbus, *Outgoing Gov. Ted Strickland Bans Ownership of Exotic Animals, Cites Recent Bear Attack*, [http://www.cleveland.com/open/index.ssf/2011/01/strickland\\_bans\\_ownership\\_of\\_e.html](http://www.cleveland.com/open/index.ssf/2011/01/strickland_bans_ownership_of_e.html) (updated Jan. 7, 2011) (accessed Apr. 14, 2013) (discussing the August 2010 killing of twenty-four-year-old Brent Kandra, an employee at a Columbia Township exotic-animal farm, who was fatally mauled by a black bear).

<sup>24</sup> Ohio Admin. Code Ann. 1501:31-19-05 (prohibiting possession of restricted species by persons convicted of animal abuse or neglect); Ohio Exec. Or. 2010-17S.

<sup>25</sup> Drash, *supra* n. 16 (detailing Terry Thompson's animal-cruelty conviction and run-ins with local law enforcement); see Alan Johnson, Columbus Dispatch, *Order That Kasich Rejected Would Have Barred Man From Having Exotic Animals*, <http://www.dispatch.com/content/stories/local/2011/10/19/humane-society-head-wants-ohio-exotic-animal-ban.html> (Oct. 19, 2011) (accessed Apr. 14, 2013) (reporting that the executive order Governor Kasich allowed to lapse would have prevented Terry Thompson from owning exotic animals).

<sup>26</sup> Ohio Exec. Or. 2011-24K at 1; Fact Sheet, Ohio Gov. John R. Kasich, *Executive Order on Dangerous Wild Animals* (Oct. 21, 2011) (available at <http://governor.ohio.gov/Portals/0/pdf/news/DWA%20Fact%20Sheet.pdf> (accessed Apr. 14, 2013)).

<sup>27</sup> Ohio Exec. Or. 2011-24K at 3 (directing the Ohio Department of Agriculture (ODA) to identify improperly licensed auctioneers and to take lawful enforcement actions, as well as directing the ODA to enter agreements with auctioneers to impose a temporary moratorium on exotic animals in the state).

of Natural Resources' Regulating Dangerous, Wild Animals Workgroup<sup>28</sup> to provide legislative recommendations.<sup>29</sup>

In March 2012, the Ohio General Assembly introduced Sen. 310, the Ohio Dangerous Wild Animal Act (the Wild Animal Act),<sup>30</sup> which largely adopted the workgroup's recommendations.<sup>31</sup> The measure passed the senate in April, passed the house in May, and was signed into law by Governor Kasich in June 2012.<sup>32</sup>

The Wild Animal Act regulates the possession of dangerous wild animals, which include, inter alia, large and some small exotic cats, bears, certain nonhuman primates, and certain reptiles.<sup>33</sup> It requires that any person possessing a dangerous wild animal must microchip and register each animal with the Ohio Department of Agriculture (ODA) by November 5, 2012.<sup>34</sup>

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<sup>28</sup> Workgroup members included: the American Zoological Association, the Ohio Association of Animal Owners, the Ohio Farm Bureau Federation, the U.S. Sportsmen's Alliance, the Humane Society of the U.S., the Ohio Prosecuting Attorneys Association, the USDA, and the Ohio Veterinary Medical Association. Memo from James Zehringer, Dir., Ohio Dept. of Nat. Resources, to Wayne Struble, Dir. of Policy, Off. of the Gov., *Recommended Regulations of Dangerous and Wild Animals* (Nov. 30, 2011) (available at <http://ohiodnr.com/downloads/FINALREPORT-113011.pdf> (accessed Apr. 14, 2013)) [hereinafter *ODNR Recommended Regulations Memo*].

<sup>29</sup> Ohio Exec. Or. 2011-24K at 3. The order also required determination of properties containing dangerous wild animals, restricted the sale of dangerous wild animals, and established a hotline and website for complaints. *Id.* at 2-3.

<sup>30</sup> Ohio Sen. 310, 129th Gen. Assembly, 2011-2012 Reg. Sess. (May 30, 2012) (available at [http://www.legislature.state.oh.us/bills.cfm?ID=129\\_SB\\_310](http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_310) (accessed Apr. 14, 2013)) (as enrolled); Ohio Legis. Serv. Commn., *Status Report of Legislation: SB 310*, <http://lsc.state.oh.us/coderev/sen129.nsf/Senate+Bill+Number/0310> (accessed Apr. 14, 2013); Ohio Dept. of Agric., *Senate Bill 310: Ohio Dangerous Wild Animal Act* (available at [http://www.agri.ohio.gov/public\\_docs/news/2012/06.04.12,%20DWA%20Fact%20Sheet.pdf](http://www.agri.ohio.gov/public_docs/news/2012/06.04.12,%20DWA%20Fact%20Sheet.pdf) (accessed Apr. 14, 2013)). The legislature also introduced H. 483, which died in the House Agriculture and Natural Resources Committee. Ohio H. 483, 129th Gen. Assembly, 2011-2012 Reg. Sess. (Mar. 14, 2012) (available at [http://www.legislature.state.oh.us/BillText129/129\\_HB\\_483\\_I\\_Y.pdf](http://www.legislature.state.oh.us/BillText129/129_HB_483_I_Y.pdf) (accessed Apr. 14, 2013)) (as introduced); Ohio Legis. Serv. Commn., *Status Report of Legislation: HB 483*, <http://lsc.state.oh.us/coderev/hou129.nsf/House+Bill+Number/0483> (accessed Apr. 14, 2013).

<sup>31</sup> Compare *ODNR Recommended Regulations Memo.*, *supra* n. 28, at 2-4 with Ohio Rev. Code Ann. §§ 935.01-935.99 (adopted provisions include: a ban on casual ownership of dangerous wild animals; registration of dangerous wild animals prior to the ban; immediate adoption of standards of care for dangerous wild animals; exemption from the ban for certain entities (such as zoos, circuses, and research facilities); ODA designated lead regulatory agency; enforcement authority for both ODA and local government entities; law enforcement notification in case of escape; criminal and civil penalties; and authorization for ODA to promulgate housing and care standards. Notably, the legislature did not adopt the workgroup's recommendation that any dangerous wild animal (with limited exceptions) be subject to immediate confiscation and forfeiture after the effective date of the ban).

<sup>32</sup> Ohio Legis. Serv. Commn., *Status Report of Legislation: SB 310*.

<sup>33</sup> Ohio Rev. Code Ann. § 935.01(C)(1)-(20). Livestock is specifically excluded from this list. *Id.*

<sup>34</sup> Ohio Rev. Code Ann. § 935.04(A), (D) (imposing the microchip and registration deadline sixty days after law's effective date of September 5, 2012); see also Kim Palmer, Chicago Tribune, *Few Ohio Exotic Animals Registered a Year After Farm*

The new law additionally establishes a prohibition, beginning January 1, 2014, on the possession, acquisition, purchase, sale, trade, or transfer of dangerous wild animals.<sup>35</sup> The prohibition is not absolute; it exempts certain organizations and creates a “grandfather” provision whereby those owning exotic animals before January 2014 may retain them upon approval for one of five annual permits.<sup>36</sup> Permit requirements are practical and significant. Permits will only be issued on a showing of liability insurance or surety bond; experience with the species; a plan of action in case of escape; sterilization of male animals (for certain permits); a criminal background check; compliance with housing, care, and safety requirements; and payment of an annual permit fee ranging from \$150 to \$3,000 or more.<sup>37</sup>

The Wild Animal Act garnered praise from animal protection groups such as the American Society for the Prevention of Cruelty to Animals (ASPCA), Born Free USA, the International Fund for Animal Welfare, and the Humane Society of the U.S. (HSUS).<sup>38</sup> However,

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*Panic*, [http://articles.chicagotribune.com/2012-10-20/business/sns-rt-usa-animal-sohiol1e8lidc7-20121020\\_1\\_marian-thompson-exotic-animals-dangerous-animals](http://articles.chicagotribune.com/2012-10-20/business/sns-rt-usa-animal-sohiol1e8lidc7-20121020_1_marian-thompson-exotic-animals-dangerous-animals) (Oct. 20, 2012) (accessed Apr. 14, 2013) (reporting a November 5th deadline to register “dangerous” animals).

<sup>35</sup> Ohio Rev. Code Ann. § 935.02(A)–(B)(1).

<sup>36</sup> Ohio Rev. Code Ann. § 935.03 (banning possession of dangerous wild animals and excepting, inter alia, members of the Zoological Association of America (ZAA), research facilities, circuses, wildlife rehabilitation facilities and sanctuaries, and certain educational institutions with mascots); *id.* at §§ 935.05–935.11 (permit provisions include wildlife shelter possession or propagation permits, snake possession or propagation permits, or rescue facility permits).

<sup>37</sup> Ohio Rev. Code Ann. §§ 935.05–935.11. The Wild Animal Act as signed into law largely represents Sen. 310 as introduced. However, some changes were made as the bill moved through the Ohio General Assembly. *Status Report of Legislation: SB 310*, *supra* n. 30; *compare* Ohio Sen. 310, 129th Gen. Assembly, 2011–2012 Reg. Sess. § 935.05(D) (Mar. 8, 2012) (available at [http://www.legislature.state.oh.us/BillText129/129\\_SB\\_310\\_I\\_Y.pdf](http://www.legislature.state.oh.us/BillText129/129_SB_310_I_Y.pdf) (accessed Apr. 14, 2013)) (as introduced) *with* Ohio Sen. 310, 129th Gen. Assembly, 2011–2012 Reg. Sess. § 935.05(D)(1)(b) (Apr. 25, 2012) (available at [http://www.legislature.state.oh.us/BillText129/129\\_SB\\_310\\_PS\\_Y.pdf](http://www.legislature.state.oh.us/BillText129/129_SB_310_PS_Y.pdf) (accessed Apr. 14, 2013)) (as passed by the senate) (added surety bonds as a means for owners to prove financial responsibility); *compare* Ohio Sen. 310, 129th Gen. Assembly, 2011–2012 Reg. Sess. at §§ 935.01(K), 935.03 (as introduced) *with* Ohio Sen. 310, 129th Gen. Assembly, 2011–2012 Reg. Sess. at §§ 935.01(L)(1), 935.03(B)(12)–(14) (as passed by the senate) (exempted snakes shorter than twelve feet and certain service monkeys from the legislation); *compare* Ohio Sen. 310, 129th Gen. Assembly, 2011–2012 Reg. Sess. at § 935.03 (as introduced) *with* Ohio Sen. 310, 129th Gen. Assembly, 2011–2012 Reg. Sess. at § 935.03(A)(1)(a)–(d) (as passed by the senate) (allowed owners seeking accreditation from the ZAA, inter alia, to possess dangerous wild animals). House changes were more far-reaching: legislators required individuals and institutions generally exempted under the bill to register exotic animals in their possession, significantly reduced permit fees, established a Dangerous Wild Animal State Emergency Response Commission, and authorized municipalities to adopt ordinances more stringent than state law. *See* Jeff Grim, Ohio Legis. Serv. Commn., *Synopsis of House Committee Amendments: Sub S.B. 310*, <http://www.lsc.state.oh.us/synopsis129/s0310-129.pdf> (May 22, 2012) (accessed Apr. 14, 2013) (summarizing house amendments).

<sup>38</sup> Press Release, Am. Socy. for the Prevention of Cruelty to Animals, *Animal Welfare Organizations Praise Ohio Governor Kasich for Signing Dangerous Wild Animal*

some Ohio exotic animal owners were unhappy with the new law and filed a complaint against the ODA.<sup>39</sup> The plaintiffs sought to enjoin enforcement of the Wild Animal Act on constitutional grounds, asserting violations of their First Amendment right of association, Fourteenth Amendment procedural due process rights, and under the Fifth Amendment Takings Clause.<sup>40</sup> The court upheld the law, finding that plaintiffs failed to demonstrate “any constitutional infirmity as it relates to the [A]ct.”<sup>41</sup> The court characterized the Wild Animal Act as a

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*Act into Law* (June 5, 2012) (available at <http://www.asPCA.org/Pressroom/press-releases/060512> (accessed Apr. 14, 2013)); Kelly Donithan, Intl. Fund for Animal Welfare, *Ohio Takes One Step Forward, Two Steps Back in Protecting Big Cats*, <http://www.ifaw.org/united-states/news/ohio-takes-one-step-forward-two-steps-back-protecting-big-cats> (Oct. 12, 2012) (accessed Apr. 14, 2013) (discussing the International Fund for Animals’ (IFAW’s) praise of Ohio’s fast action in passing the law, and the organization’s criticism of Governor Kasich’s proposal to create a \$3.5 million holding facility to provide temporary housing to any surrendered exotic animal regulated by the law because the facility would provide neither long-term care nor outdoor access for the animals. IFAW instead suggested that the funds be used to support transportation and increased capacity at certified wildlife sanctuaries.)

<sup>39</sup> *Wilkins v. Daniels*, 2012 WL 6644465 \*1, \*5 (S.D. Ohio 2012). Plaintiffs represented a broad array of exotic animal owners. One plaintiff, Cyndi Huntsman, owned an “exotic animal education center” licensed by the USDA and dedicated to “educating the public about rare and endangered animal species in captivity and in the wild.” *Id.* at \*1. Ms. Huntsman reported housing forty-nine animals, including white tigers, lemurs, leopards, lions, bears, monkeys, chimpanzees, and baboons. *Id.* Plaintiff Terry Wilkins owned a retail store that sold reptiles and amphibians, and possessed twenty-nine reticulated pythons, fifteen alligators, ten Burmese pythons, eight green anacondas, and three African rock pythons. *Id.* at \*2. Another plaintiff, Mike Stapleton, owned an animal sanctuary that provided tiger and bear rescue from closing zoos, overcrowded or closing sanctuaries, or private owners. *Id.* at \*3. Mr. Stapleton reported caring for six black bears and five tigers. *Id.* Plaintiff Sean Trimbach owned a USDA-licensed “alternative livestock farm” that bred, raised, and sold exotic animals including a Syrian brown bear, two ring-tailed lemurs, an African serval, and 113 venomous and constrictor snakes. *Id.* Plaintiff Robert Sawmiller, a wildlife exhibitor, had bears, cougars, wolves, and a lynx, and used these animals to travel around the U.S. doing “fairs, festivals, and corporate events.” *Id.* at \*4.

<sup>40</sup> *Wilkins v. Daniels*, 2012 WL 6644465 at \*\*12–13. The court found no Fourteenth Amendment violation, concluding that plaintiffs had only a limited property interest in their exotic animals, that defendants demonstrated a rational basis between the Wild Animal Act and the legitimate state interest in protecting public health and safety, and plaintiffs will be afforded sufficient process under the new law. *Id.* at \*\*16–20. In response to plaintiffs’ Fifth Amendment takings claim—plaintiffs argued that the forced implantation of microchips constituted a physical taking of their property, and that the Act deprived them of all economic beneficial use of their wild animals—the court relied on a limited property-interest rationale, coupled with the inherently dangerous nature of animals covered by the Wild Animal Act, to find that neither claim constituted a taking pursuant to the Fifth Amendment. *Id.* at \*\*21–24. The court also rejected plaintiffs’ First Amendment freedom of association claim. Plaintiffs argued that the Wild Animal Act essentially required plaintiffs to associate with and fund the speech and activities of the Association of Zoos & Aquariums and the ZAA. The court found the Wild Animal Act’s requirements raised neither a true “compelled speech” nor a “compelled subsidy” case—the two categories of compelled speech recognized by the U.S. Supreme Court. *Id.* at \*\*13–14.

<sup>41</sup> *Id.* at \*24.



“far cry” from compelled speech or compulsory association, and found it to be rationally related to a legitimate government interest in protecting public health and safety.<sup>42</sup>

As of November 5, 2012, the statutory deadline for registering and microchipping exotic animals, 130 applicants registered 438 exotic animals with the ODA.<sup>43</sup> Among them was Marian Thompson, Terry Thompson’s widow. She registered seven animals, five of which were seized the day of the release and later returned to Mrs. Thompson by the state in mid-2012.<sup>44</sup>

### B. Michigan

Four Michigan bills focused on exotic animals. Each of the bills failed to pass and were largely opposed by animal advocates, who expressed concern that the bills would weaken existing state regulations.<sup>45</sup> Sen. 210 would have exempted organizations accredited by the Zoological Association of America (ZAA) from Michigan’s Large Carnivore Act (LCA), which prohibits the possession of large carnivores without a permit.<sup>46</sup> The bill passed the senate but died in the house.<sup>47</sup> The Detroit Zoo and HSUS opposed the bill, citing concerns that the ZAA supports private ownership of exotics pets and the commercialization of wildlife—in contravention of the purpose of the LCA.<sup>48</sup> The ZAA also sought exemption from Michigan’s Wolf-Dog Cross Act,

<sup>42</sup> *Id.* at \*\*14–15, 20.

<sup>43</sup> Alan Johnson, Columbus Dispatch, *438 Exotic Animals Now Registered with the State*, <http://www.dispatch.com/content/stories/local/2012/11/05/Exotic-animal-owners-file-suit-against-state.html> (Nov. 5, 2012) (accessed Apr. 14, 2013).

<sup>44</sup> *Id.*

<sup>45</sup> Eric Sharp, Detroit Free Press, *Could Exotic Animal Tragedy Happen Here?*, <http://www.freep.com/article/20111023/SPORTS10/110230570/Eric-Sharp-Could-exotic-animal-tragedy-happen-here-> (Oct. 23, 2011) (accessed Apr. 14, 2013) (discussing animal advocates’ concerns about the Michigan bills).

<sup>46</sup> Mich. Sen. 210, 96th Legis., 2012 Reg. Sess. (Mar. 2, 2011) (as introduced) (available at <http://www.legislature.mi.gov/documents/2011-2012/billintroduced/Senate/pdf/2011-SIB-0210.pdf> (accessed Apr. 14, 2013)); Sen. Fiscal Agency, *S.B. 210: Committee Summary*, 1 (June 27, 2011) (available at <http://www.legislature.mi.gov/documents/2011-2012/billanalysis/Senate/pdf/2011-SFA-0210-S.pdf> (accessed Apr. 14, 2013)) (outlining basic provisions of the LCA). The ZAA is distinct from the AZA, the zoological voluntary accreditation organization, which is already exempted from the LCA.

<sup>47</sup> Mich. H. J., 96th Reg. Sess. 2348 (2012) (available at [http://www.legislature.mi.gov/\(S\(wljnxv2atb42ml34m4jx1hyw\)\)/documents/2011-2012/Journal/House/pdf/2012-HJ-11-28-075.pdf](http://www.legislature.mi.gov/(S(wljnxv2atb42ml34m4jx1hyw))/documents/2011-2012/Journal/House/pdf/2012-HJ-11-28-075.pdf) (accessed Apr. 14, 2013)); see Mich. Legis., *Senate Bill 0210 (2012), History*, <http://www.legislature.mi.gov/%28S%28mew4dh55kobdwrykebqau0ya%29%29/mileg.aspx?page=getObject&objectName=2011-SB-0210> (accessed Apr. 14, 2013) (noting that Sen. 210 was referred to the house but failed to receive a second reading).

<sup>48</sup> Sharp, *supra* n. 45 (Detroit Zoo director opposes ZAA exemption from the LCA because of lower standards and training requirements); Sen. Fiscal Agency, *S.B. 210 (S-1): Analysis as Reported from Committee 2* (Aug. 17, 2011) (available at <http://www.legislature.mi.gov/documents/2011-2012/billanalysis/Senate/pdf/2011-SFA-0210-A.pdf> (accessed Apr. 14, 2013)) (reflecting HSUS testimony opposing the bill because it would “severely weaken” state regulations).

which bans acquisition and possession of wolf-dog hybrids.<sup>49</sup> This measure died in committee.<sup>50</sup>

Two other bills, Sen. 1236 and an attached bill, Sen. 703, also failed to pass.<sup>51</sup> Sen. 1236 would have allowed public contact with bears under thirty-six weeks of age, and exempted facilities accredited by the Association of Zoos & Aquariums (AZA) or the ZAA from the LCA's general breeding prohibition.<sup>52</sup> Sen. 703 would have required permitting and microchipping for large carnivores imported into the state.<sup>53</sup> Michigan's Governor vetoed the bills<sup>54</sup> based on impacts of Sen. 1236 on the LCA's breeding prohibition; Governor Snyder concluded that Sen. 1236 "could lead to gaps in public health protection and animal welfare."<sup>55</sup> Because the bills were attached, a veto of Sen. 1236 required a veto of Sen. 703.<sup>56</sup> However, the Governor voiced his

<sup>49</sup> Mich. Sen. 209, 96th Legis., 2012 Reg. Sess. (Mar. 2, 2011) (as introduced) (available at <http://www.legislature.mi.gov/documents/2011-2012/billintroduced/Senate/pdf/2011-SIB-0209.pdf> (accessed Apr. 14, 2013)).

<sup>50</sup> Mich. H. J., 96th Reg. Sess. 242 (2011) (available at [http://www.legislature.mi.gov/\(S\(nvmyv555231gjf55sakjti2b\)\)/documents/2011-2012/Journal/Senate/pdf/2011-SJ-03-02-019.pdf](http://www.legislature.mi.gov/(S(nvmyv555231gjf55sakjti2b))/documents/2011-2012/Journal/Senate/pdf/2011-SJ-03-02-019.pdf) (accessed Apr. 14, 2013)); see Mich. Legis., *Senate Bill 0209 (2011), History*, <http://www.legislature.mi.gov/%28S%28nvmyv555231gjf55sakjti2b%29%29/mileg.aspx?page=getObject&objectName=2011-SB-0209> (accessed Apr. 14, 2013) (reflecting that the measure was referred to the Committee on Agriculture with no further action).

<sup>51</sup> Mich. Sen. J., 96th Reg. Sess. 2804 (2012) (available at <http://www.legislature.mi.gov/documents/2011-2012/Journal/senate/archive/2012-SJ-12-31-083.pdf> (accessed Apr. 14, 2013)); see Mich. Legis., *Senate Bill 1236 (2012), History*, <http://www.legislature.mi.gov/%28S%28bhtjjs4555ojgrv4y0wxm0rv%29%29/mileg.aspx?page=getobject&objectname=2012-SB-1236&query=on> (accessed Apr. 14, 2013) (showing the Governor's veto of Sen. 1236 on December 28, 2012); Mich. Legis., *Senate Bill 0703 (2011), History*, <http://www.legislature.mi.gov/%28S%281tz0mfqj5q2qjn55pgfg0u55%29%29/mileg.aspx?page=getobject&objectname=2011-SB-0703&query=on> (accessed Apr. 14, 2013) (showing the Governor's veto of Sen. 703 on December 31, 2012).

<sup>52</sup> H. Fiscal Agency, *Legislative Analysis, Bear Cubs under Large Carnivore Act, Senate Bill 1236 (Substitute H-2 w/ floor amendments)*, 1 (Dec. 12, 2012) (available at <http://www.legislature.mi.gov/documents/2011-2012/billanalysis/House/pdf/2011-HLA-1236-04BA62CA.pdf> (accessed Apr. 14, 2013)).

<sup>53</sup> H. Fiscal Agency, *Legislative Analysis, Importation of Large Carnivores, Senate Bill 703 (with House committee amendment)*, 1 (Dec. 12, 2012) (available at <http://www.legislature.mi.gov/documents/2011-2012/billanalysis/House/pdf/2011-HLA-0703-E482604B.pdf> (accessed Apr. 14, 2013)).

<sup>54</sup> See *supra* n. 51 (showing veto of bills).

<sup>55</sup> See *id.* (showing veto of bills); Paul Egan, USA Today, *Michigan Bear Cub Legislation Could Be Back for Debate*, <http://www.usatoday.com/story/news/nation/2012/12/31/michigan-bear-cub-legislation/1801643/> (Dec. 31 2012) (accessed Apr. 14, 2013).

<sup>56</sup> Sen. 703 was tie-barred to Sen. 1236. See Mich. Sen. 703, 96th Legis. Reg. Sess. 2012 (Aug. 15, 2012) (as enrolled) (available at <http://www.legislature.mi.gov/documents/2011-2012/billenrolled/Senate/pdf/2011-SNB-0703.pdf> (accessed Apr. 14, 2013)) (indicating that Sen. 703 does not take effect unless Sen. 1236 is enacted). Tie-barring is a device allowed by the Michigan Legislature that "conditions the effectiveness of legislation on the enactment or passage of other specified legislation." Mich. Legis., *Glossary of Legislative Terms, Tie-bar*, <http://www.legislature.mi.gov/%28S%28dricgq45q3idltbxpyj1qqiy%29%29/mileg.aspx?page=glossary#T> (accessed Apr. 14, 2013). It is of note that Sen. 210 and Sen. 703 were tie-barred early in the legislative session. See Mich. Sen. 703, 96th Legis. Reg. Sess. 2012 (Oct. 11, 2011) (as passed by the senate) (available at

support for Sen. 703, suggesting that it be re-filed as a stand-alone provision.<sup>57</sup>

### C. *Hawaii*

In 2012, Hawaii passed H. 2296, which adds bears to the definition of “exotic animal” and prohibits trade in bear bile.<sup>58</sup> While Hawaii lacks a native bear population, Born Free USA helped draft the legislation with the goal of preemptively closing the state as a conduit for the bear-bile trade.<sup>59</sup> The law makes it illegal to “buy, sell, transport, deliver, offer for sale or transportation, or receive for transportation in commerce, any bear gallbladders or bile, or any product, item, or substance containing, labeled, or advertised as containing bear gallbladders or bile.”<sup>60</sup> Possession of bear gallbladders, bile, or any substance containing it serves as prima facie evidence of violation of the law.<sup>61</sup>

### D. *Other States Considering Legislation Regulating Exotic and Wild Animals*

Pennsylvania legislators filed several bills amending the state’s exotic-wildlife laws, but none passed.<sup>62</sup> The bills would have updated

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<http://www.legislature.mi.gov/documents/2011-2012/billengrossed/Senate/pdf/2011-SEBS-0703.pdf> (accessed Apr. 14, 2013)) (indicating that Sen. 703 does not take effect unless Sen. 210 is enacted); Mich. Sen. 210, 96th Legis., 2012 Reg. Sess. (Mar. 2, 2011) (as passed by the senate) (indicating that Sen. 210 does not take effect unless Sen. 703 is enacted). However, on November 28, 2011—the same day Sen. 210 died on the house floor—the House Committee on Agriculture passed Sen. 703 with an amendment tie-barring Sen. 703 to Sen. 1236. See Mich. H. J. 96th, Reg. Sess. 2348 (2012) (available at [http://www.legislature.mi.gov/\(S\(w1jnxv2atb42ml34m4jx1hyw\)\)/documents/2011-2012/Journal/House/pdf/2012-HJ-11-28-075.pdf](http://www.legislature.mi.gov/(S(w1jnxv2atb42ml34m4jx1hyw))/documents/2011-2012/Journal/House/pdf/2012-HJ-11-28-075.pdf) (accessed Apr. 14, 2013)) (reflecting the Committee on Agriculture’s recommendation that Sen. 703 do pass with an amendment tie-barring the bill to Sen. 1236); Mich. Legis., *Senate Bill 0210 (2012), History*, <http://www.legislature.mi.gov/%28S%28mew4dh55kobdwrykebqau0ya%29%29/mileg.aspx?page=getObject&objectName=2011-SB-0210> (accessed Apr. 14, 2013) (noting that Sen. 210 was referred to, but failed to receive a second reading in, the house on November 28, 2011).

<sup>57</sup> Egan, *supra* n. 55.

<sup>58</sup> 2012 Haw. Sess. Laws 126 (available at [http://www.capitol.hawaii.gov/session2012/bills/GM1228\\_.pdf](http://www.capitol.hawaii.gov/session2012/bills/GM1228_.pdf) (accessed Apr. 14, 2013)).

<sup>59</sup> Press Release, Born Free USA, *Born Free USA Leads Initiative in Hawaii to Protect Bears from Global Trade* (Jan. 20, 2012) (available at <http://www.bornfreeusa.org/press.php?p=3118&more=1> (accessed Apr. 14, 2013)).

<sup>60</sup> 2012 Haw. Sess. Laws 126 (available at [http://www.capitol.hawaii.gov/session2012/bills/GM1228\\_.pdf](http://www.capitol.hawaii.gov/session2012/bills/GM1228_.pdf) (accessed Apr. 14, 2013)).

<sup>61</sup> *Id.*

<sup>62</sup> Pa. Gen. Assembly, *House Bill 1051 (2011), History*, [http://www.legis.state.pa.us/cfdocs/billInfo/bill\\_history.cfm?year=2011&sind=0&body=H&type=B&bn=1051](http://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?year=2011&sind=0&body=H&type=B&bn=1051) (accessed Apr. 14, 2013) (showing bill referral to House Game and Fisheries Committee with no further action); Pa. Gen. Assembly, *House Bill 1398 (2011), History*, [http://www.legis.state.pa.us/cfdocs/billInfo/bill\\_history.cfm?year=2011&sind=0&body=H&type=B&bn=1398](http://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?year=2011&sind=0&body=H&type=B&bn=1398) (accessed Apr. 14, 2013) (showing that bill passed the senate but died in the house); Pa. Gen. Assembly, *House Bill 2233 (2012), History*, [http://www.legis.state.pa.us/cfdocs/billInfo/bill\\_history.cfm?year=2011&sind=0&body=H&type=B&bn=2233](http://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?year=2011&sind=0&body=H&type=B&bn=2233)

exotic wildlife definitions, provided for certain exotic wildlife possession permits, and prohibited hunting exotic wildlife for remuneration.<sup>63</sup>

New Jersey legislators filed four pieces of legislation addressing exotic animals in 2012. Sen. Con. Res. 127 and its companion, Assembly Con. Res. 163, would establish a state “Task Force on the Illegal Trade and Inhumane Treatment of Endangered and Exotic Animals” to make recommendations to curtail illegal trade and inhumane treatment of endangered species and exotic animals.<sup>64</sup> Both Sen. 2233 and Assembly 3338 would require those possessing live and potentially dangerous exotic animals to carry liability insurance.<sup>65</sup> The measures are still being considered in New Jersey’s ongoing 2012–2013 legislative session.

The New York Assembly considered two bills regulating exotic animals. Legislators passed Assembly 10041, which prohibits the intentional release of any wild or exotic animal that has been authorized as

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(accessed Apr. 14, 2013) (showing bill referral to House Game and Fisheries Committee with no further action); Pa. Gen. Assembly, *Senate Bill 230 (2011), History*, [http://www.legis.state.pa.us/cfdocs/billInfo/bill\\_history.cfm?syear=2011&sind=0&body=S&type=B&bn=230](http://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?syear=2011&sind=0&body=S&type=B&bn=230) (accessed Apr. 14, 2013) (showing bill referral to Senate Game and Fisheries Committee with no further action); Pa. Gen. Assembly, *Senate Bill 421 (2011), History*, [http://www.legis.state.pa.us/cfdocs/billInfo/bill\\_history.cfm?syear=2011&sind=0&body=S&type=B&bn=421](http://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?syear=2011&sind=0&body=S&type=B&bn=421) (accessed Apr. 14, 2013) (showing bill referral to Senate Game and Fisheries Committee with no further action).

<sup>63</sup> Pa. H. 1051, Reg. Sess. 2011–2012 (Mar. 14, 2011) (available at <http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2011&sessInd=0&billBody=H&billTyp=B&billNbr=1051&pn=1137> (accessed Apr. 14, 2013)) (defining exotic wildlife, creating wildlife classifications, and creating a permit system based upon those classifications); Pa. H. 1398, Reg. Sess. 2011–2012 (Apr. 27, 2011) (available at <http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2011&sessInd=0&billBody=H&billTyp=B&billNbr=1398&pn=3296> (accessed Apr. 14, 2013)) (further defining exotic wildlife, updating permit provisions, and updating penalty provisions); Pa. H. 2233, Reg. Sess. 2011–2012 (Feb. 29, 2012) (available at <http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2011&sessInd=0&billBody=H&billTyp=B&billNbr=2233&pn=3155> (accessed Apr. 14, 2013)) (creating non-indigenous and exotic reptile and amphibian possession permits); Pa. Sen. 230, Reg. Sess. 2011–2012 (Jan. 24, 2011) (available at <http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2011&sessInd=0&billBody=S&billTyp=B&billNbr=0230&pn=0199> (accessed Apr. 14, 2013)) (excluding USDA Class C Exhibitor permit holders from exotic wildlife permitting provisions); Pa. Sen. 421, Reg. Sess. 2011–2012 (Feb. 7, 2011) (available at <http://legiscan.com/PA/text/SB421/id/140233> (accessed Apr. 14, 2013)) (prohibiting take of exotic wildlife for a fee or other remuneration).

<sup>64</sup> N.J. Sen. Con. Res. 127, 215th Legis., 2012–2013 Sess. (Sept. 20, 2012) (as introduced) (available at [http://www.njleg.state.nj.us/2012/Bills/SCR/127\\_I1.pdf](http://www.njleg.state.nj.us/2012/Bills/SCR/127_I1.pdf) (accessed Apr. 14, 2013)); N.J. Assembly Con. Res. 163, 215th Legis., 2012–2013 Sess. (Oct. 11, 2012) (as introduced) (available at [http://www.njleg.state.nj.us/2012/Bills/ACR/163\\_I1.pdf](http://www.njleg.state.nj.us/2012/Bills/ACR/163_I1.pdf) (accessed Apr. 14, 2013)).

<sup>65</sup> N.J. Sen. 2233, 127, 215th Legis., 2012–2013 Sess. (Oct. 4, 2012) (as introduced) (available at [http://www.njleg.state.nj.us/2012/Bills/S2500/2233\\_I1.pdf](http://www.njleg.state.nj.us/2012/Bills/S2500/2233_I1.pdf) (accessed Apr. 14, 2013)); N.J. Assembly 3338, 127, 215th Legis., 2012–2013 Sess. (Oct. 11, 2012) (as introduced) (available at [http://www.njleg.state.nj.us/2012/Bills/A3500/3338\\_I1.pdf](http://www.njleg.state.nj.us/2012/Bills/A3500/3338_I1.pdf) (accessed Apr. 14, 2013)).

a pet, and further requires reporting of any release.<sup>66</sup> Those violating the law are responsible for any costs associated with the seizure, transfer, recapture, or euthanasia of the animal.<sup>67</sup> Legislators failed to pass Sen. 2958, which would have banned canned hunting<sup>68</sup> of captive exotic, wild, and domestic animals.<sup>69</sup>

Finally, the Missouri General Assembly considered, but did not pass, a Nonhuman Primate Act that would have prohibited any individual from owning, keeping, or possessing a baboon or great ape without a permit.<sup>70</sup> The act would also have updated provisions in Missouri's existing LCA.<sup>71</sup>

### III. "AG-GAG" LAWS: PROHIBITING DOCUMENTATION OF ABUSE AT ANIMAL FACILITIES<sup>72</sup>

In 2012, ten states considered legislation prohibiting the docu-

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<sup>66</sup> N.Y. Envtl. Conserv. Law § 11-0512 (2012); N.Y. Assembly 10041, 234th Legis. Sess., 2011–2012 Reg. Sess. (May 2, 2012) (as enacted) (available at <http://assembly.state.ny.us/leg/?sh=printbill&bn=A10041&term=2011> (accessed Apr. 14, 2013)).

<sup>67</sup> *Id.*

<sup>68</sup> Canned hunting generally describes an organized hunt of exotic animals in an enclosed area. The animals are usually unable to escape and hunters often pay high prices to participate in the hunts. *See generally* Laura J. Ireland, *Canning Canned Hunts: Using State and Federal Legislation to Eliminate the Unethical Practice of Canned "Hunting,"* 8 Animal L. 223, 225–27 (2002) (describing canned-hunting operations). As of 2012, approximately two dozen states allow canned hunting. Humane Socy. of the U.S., *Captive Hunts Fact Sheet*, [http://www.humanesociety.org/issues/captive\\_hunts/facts/captive\\_hunt\\_fact\\_sheet.html](http://www.humanesociety.org/issues/captive_hunts/facts/captive_hunt_fact_sheet.html) (Aug. 17, 2012) (accessed Apr. 14, 2013).

<sup>69</sup> N.Y. Sen. 2958, 234th Legis. Sess., 2011–2012 Reg. Sess. (Feb. 3, 2011) (as introduced) (available at [http://assembly.state.ny.us/leg/?default\\_fld=&bn=S02958&term=2011&Summary=Y&Actions=Y&Memo=Y&Text=Y#jump\\_to\\_Text](http://assembly.state.ny.us/leg/?default_fld=&bn=S02958&term=2011&Summary=Y&Actions=Y&Memo=Y&Text=Y#jump_to_Text) (accessed Apr. 14, 2013)). New York has at least a dozen canned-hunt facilities. Nicole Arciello Berhaupt, *Canned Hunting Exposed on Animal Planet*, Times Union: Animal Rights Blog, <http://blog.timesunion.com/animalrights/canned-hunting-exposed-on-animal-planet/3542/> (June 22, 2011) (accessed Apr. 14, 2013) (discussing HSUS undercover investigations of two New York canned-hunting facilities); Humane Socy. of the U.S., YouTube, *HSUS Investigation: Cruel Hunting Practices Exposed* (posted June 21, 2011) (available at <http://youtu.be/XSHEeM4icLc> (accessed Apr. 14, 2013)).

<sup>70</sup> Mo. Sen. 666, 96th Gen. Assembly, 2d Reg. Sess. 16 (Jan. 17, 2012) (available at <http://www.senate.mo.gov/12info/pdf-bill/comm/SB666.pdf> (accessed Apr. 14, 2013)).

<sup>71</sup> *Id.*

<sup>72</sup> For a general overview of animal-protection organizations' use of undercover filmmaking to expose the inhumane conditions of animal facilities and background information, including the role of the American Legislative Exchange Council's (ALEC's) model legislation and the Animal Enterprise Terrorism Act (AETA) in state legislation, see Patrick Graves, et al., Student Authors, *2011 Legislative and Administrative Review*, 18 Animal L. 361, 393–95 (2012). For a summary of ALEC's influence on state ag-gag bills, see Will Potter, Green is the New Red Blog, "Ag Gag" Bills and Supporters Have Close Ties to ALEC, <http://www.greenisthenewred.com/blog/ag-gag-american-legislative-exchange-council/5947/> (Apr. 26, 2012) (accessed Apr. 14, 2013) (detailing the similarities between various state laws and ALEC's model legislation, and describing the role of ALEC generally); *see also* Katherine Paul & Ronnie Cummins, *Shocking: Reporting Factory Farm Abuses to be Considered "Act of Terrorism" If New Law Pass*, AlterNet, <http://www.alternet.org/environment/shocking->

mentation of abuse at animal facilities,<sup>73</sup> better known as “ag-gag” or “anti-whistleblower” laws.<sup>74</sup> This represented more than double the number of ag-gag bills proposed during the 2011 legislative session—when four states considered, but did not pass, such measures.<sup>75</sup>

Ag-gag laws are intended to prevent animal-protection advocates from engaging in whistle-blowing activities in agricultural facilities—such as factory farms.<sup>76</sup> Such whistle-blowing activities aim to expose mistreatment of animals, illegal conditions, or even standard, legal agricultural practices that many would consider inhumane. To this end, policymakers have enacted or considered a variety of restrictions, including: criminalizing whistle-blowers’ employment at agricultural facilities (when an employee’s intent is to document agricultural practices), prohibiting audio or visual recordings at agricultural facilities, and imposing stringent reporting requirements.<sup>77</sup>

Proponents of anti-whistleblower bills claim that undercover investigations violate property rights,<sup>78</sup> invade personal privacy,<sup>79</sup> and rely on the mischaracterization of standard and legal agricultural practices.<sup>80</sup> Opponents argue that prohibition of undercover investiga-

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reporting-factory-farm-abuses-be-considered-act-terrorism-if-new-laws-pass?paging=off (updated Mar. 5, 2013) (accessed Apr. 14, 2013) (describing ALEC’s influence).

<sup>73</sup> *Infra* pt. III(A)–(B) and nn. 82–90.

<sup>74</sup> Humane Socy. of the U.S., *Anti-Whistleblower Bills Hide Factory-farming Abuses from the Public*, [http://www.humanesociety.org/issues/campaigns/factory\\_farming/factsheets/ag\\_gag.html](http://www.humanesociety.org/issues/campaigns/factory_farming/factsheets/ag_gag.html) (June 18, 2012) (accessed Apr. 14, 2013) (summarizing “ag-gag” bills in numerous states aimed at making whistle-blowing on factory farms essentially impossible).

<sup>75</sup> See Graves, et al., *supra* n. 72, at 395–97 (detailing 2011 legislation proposed in Iowa, Minnesota, New York, and Florida that would have prohibited documentation of abuse at animal facilities).

<sup>76</sup> Notably, a 2012 ASPCA poll found that 71% of Americans support undercover investigations by animal-welfare activists that expose animal abuse on factory farms, including 54% of Americans who strongly support such efforts. Press Release, Am. Socy. for the Prevention of Cruelty to Animals, *Research Shows Americans Overwhelmingly Support Investigations to Expose Animal Abuse on Industrial Farms* (Feb. 17, 2012) (available at <http://www.asPCA.org/Pressroom/press-releases/021712> (accessed Apr. 14, 2013)).

<sup>77</sup> See *infra* pt. III(B) (discussing provisions of 2012 ag-gag legislation).

<sup>78</sup> Ken Anderson, Brownfield Ag News for America, *‘Ag Facility Fraud’ Is Now Illegal in Iowa*, <http://brownfieldagnews.com/2012/03/06/ag-facility-fraud-is-now-illegal-in-iowa/> (Mar. 6, 2012) (accessed Apr. 14, 2013) (reporting that Iowa Governor Terry Branstad cites fraudulent access to private property and the importance of agriculture to Iowa’s economy as justifications for his support of the law).

<sup>79</sup> Utah H., *House Floor Video, Day 32*, 2012 Gen. Sess. 1:09:02 (Feb. 24, 2012) (available at [http://utahlegislature.granicus.com/MediaPlayer.php?clip\\_id=1145&meta\\_id=44538](http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=1145&meta_id=44538) (accessed Apr. 14, 2013)) (Senator John Mathis equating the behavior of “national propaganda groups” making undercover recordings with that of a neighborhood watchdog group that would hide recording devices in private homes with the hope of documenting child abuse).

<sup>80</sup> Kathleen Masterson, Natl. Pub. Radio, *Ag-Gag Law Blows Animal Activists’ Cover*, <http://www.npr.org/2012/03/10/148363509/ag-gag-law-blows-animal-activists-cover> (Mar. 10, 2012) (accessed Apr. 14, 2013) (quoting an Iowa hog farmer arguing that those making undercover videos “look[] for things that might be out of the ordinary”

tions will mask food safety, environmental, and labor violations; will prohibit the exposure and prevention of animal cruelty; and will silence free speech.<sup>81</sup>

In 2012, ag-gag legislation passed in Iowa and Utah, making them the fourth and fifth states, respectively, to criminalize undercover recording of agricultural operations.<sup>82</sup> Missouri legislators passed a watered-down version of an ag-gag bill that was introduced, but failed to pass, earlier in the session.<sup>83</sup> Ag-gag legislation failed in seven states: Nebraska,<sup>84</sup> Illinois,<sup>85</sup> Indiana,<sup>86</sup> Tennessee,<sup>87</sup> Florida,<sup>88</sup>

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and highlight legal, standard practices such as castration and tail docking); Utah H., *House Floor Video, Day 32*, 2012 Gen. Sess. 1:34:35 (Feb. 24, 2012) (available at [http://utahlegislature.granicus.com/MediaPlayer.php?clip\\_id=1145&meta\\_id=44538](http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=1145&meta_id=44538) (accessed Apr. 14, 2013)) (Representative Mike Noel speaking in favor of Utah H. 187 and discussing undercover groups' attempts to document standard practices (such as the use of electric shock to force a cow to move from its position on the ground) with the goal of putting animal and crop agriculture facilities out of business).

<sup>81</sup> Ed Sayres, Huffington Post, *Ag-Gag Bills Threaten Our Children, Our Freedom and Our Animals*, [http://www.huffingtonpost.com/ed-sayres/aggag-bills-threaten-our-\\_b\\_1370091.html](http://www.huffingtonpost.com/ed-sayres/aggag-bills-threaten-our-_b_1370091.html) (Mar. 22, 2012) (accessed Apr. 14, 2013) (Ed Sayres, ASPCA president, discussing myriad problems with ag-gag legislation including food safety, environmental issues, worker safety, and animal cruelty); Humane Socy. of the U.S., *supra* n. 74 (stating that whistleblowers have exposed abuse, unsafe working conditions, and environmental problems on industrial factory farms, and that ag-gag laws prevent consumers from learning of the abuses); Brent Hunsaker, ABC4 Salt Lake City, *Gagging over Utah's Ag-gag Bill*, [http://www.abc4.com/content/about\\_4/blogs/story/Brent-Hunsaker-Gagging-over-Utahs-ag-gag-bill/Y3u4IXReGU2Hp3nDIRxB1Q.csp](http://www.abc4.com/content/about_4/blogs/story/Brent-Hunsaker-Gagging-over-Utahs-ag-gag-bill/Y3u4IXReGU2Hp3nDIRxB1Q.csp) (Mar. 7, 2012) (accessed Apr. 14, 2013) (quoting Nathan Runkle, executive director of Mercy for Animals, arguing that ag-gag bills perpetuate animal abuse, endanger workers' rights and consumer health and safety, and impede individuals' freedom to "share information about something as fundamental as our food supply"); Caitlin Zittkowski, *"Ag-Gag" Laws Could Broaden Exemptions for Farms from Environmental Regulation*, Mich. J. Envtl. & Admin. L. (Apr. 11, 2012) (available at <http://students.law.umich.edu/mjeal/2012/04/ag-gag-laws-could-broaden-exemptions-for-farms-from-environmental-regulation/> (accessed Apr. 14, 2013)) (discussing the potential impact of "ag-gag" laws on efforts to enforce environmental regulations by hindering the collection of evidence and by dissuading people with information from coming forward).

<sup>82</sup> Kansas, Montana, and North Dakota were the first three states to pass ag-gag-type laws in 1990 and 1991. *See* Kan. Stat. Ann. § 47-1827 (2012) (enacted 2001); Mont. Code Ann. § 81-30-103 (2011) (enacted 1991); N.D. Cent. Code § 12.1-21.1-02 (2012) (enacted 1991).

<sup>83</sup> *See infra* pt. (III)(B)(2) (discussing Missouri's 2012 legislation prohibiting recording at animal facilities).

<sup>84</sup> Neb. Legis. 915, 102d Legis. 1st and 2d Sess. 1-7 (Jan. 10, 2012) (available at <http://nebraskalegislature.gov/FloorDocs/102/PDF/Intro/LB915.pdf> (accessed Apr. 14, 2013)) (creating a new criminal offense based upon obtaining employment at an animal facility with intent to disrupt normal operations of the facility).

<sup>85</sup> Ill. H. 5143, 97th Gen. Assembly, 2011-2012 Sess. 1-9 (Feb. 8, 2012) (available at <http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=84&GA=97&DocTypeId=HB&DocNum=5143&GAID=11&LegID=65244&SpecSess=&Session=> (accessed Apr. 14, 2013)) (creating the crime of animal facility interference for creating or possessing recording made at the animal facility, and the crime of animal facility fraud for obtaining access to facility or employment under false pretenses).

Minnesota,<sup>89</sup> and New York.<sup>90</sup>

### A. Successful 2012 Legislation

Iowa and Utah both criminalized interference with agricultural operations in 2012. Iowa's law, passed as H. 589, creates a new crime: agricultural production facility fraud.<sup>91</sup> Those making fraudulent statements to gain access to, or employment at, agricultural-production facilities or crop operations can be found guilty of a serious or aggravated misdemeanor.<sup>92</sup> Once taken up, Iowa's measure moved quickly through the legislature. In the span of one day, the senate adopted amendments, passed the bill, and sent it to the house.<sup>93</sup> On the same day, the house concurred in the amendments, also passed the bill, and sent it to the Governor's desk.<sup>94</sup>

Iowa's law is a modified version of a 2011 bill that failed to pass due to concerns about potential constitutional challenges to the bill's

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<sup>86</sup> Ind. Sen. 0184, 2012 Sess. 1–2 (Jan. 4, 2012) (available at <http://www.in.gov/legislative/bills/2012/PDF/IN/IN0184.1.pdf> (accessed Apr. 14, 2013)) (making unlawful the recording of agricultural operations).

<sup>87</sup> Tenn. H. 3620 and Sen. 3460, 107th Gen. Assembly, 2011–2012 Sess. 1 (Jan. 26, 2012) (available at <http://www.capitol.tn.gov/Bills/107/Bill/HB3620.pdf> (accessed Apr. 14, 2013)) (making it an offense for a person to apply for employment intending to cause economic damage to the employer by creating unauthorized recordings and releasing them to third parties).

<sup>88</sup> Fla. Sen. 1184, 2012 Sess. 7–9 (Dec. 7, 2011) (available at <http://www.flsenate.gov/Session/Bill/2012/1184/BillText/Filed/PDF> (accessed Apr. 14, 2013)) (prohibiting any person from entering a nonpublic area of farm to record images or sounds).

<sup>89</sup> Minn. Sen. 1118, 87th Legis., 2011–2012 Sess. (Apr. 5, 2011) (available at <https://www.revisor.mn.gov/bin/bldbill.php?bill=S1118.0.html&session=ls87> (accessed Apr. 14, 2013)) (creating new crimes: animal facility tampering, interference, and fraud; and crop operation tampering, interference, and fraud). The bill was introduced in 2011 but died when the legislature failed to act before its May 2012 adjournment. *Id.*

<sup>90</sup> N.Y. Sen. 05172, 234th Legis. Sess., 2011–2012 Reg. Sess. 1–2 (May 3, 2011) (available at <http://assembly.state.ny.us/leg/?sh=printbill&bn=S05172&term=2011> (accessed Apr. 14, 2013)) (prohibiting “unlawful tampering” with a farm or farm animal, which includes unauthorized feeding or release of an animal, or recording agricultural operations). Carried over from last session, the bill was referred to the Agriculture Committee in January 2012, where no further action was taken. *Id.*

<sup>91</sup> Iowa Code Ann. § 717a.1–717a.3a (2012); 2012 Iowa Acts Chapter 1005 (available at <http://coolice.legis.iowa.gov/linc/84/external/govbills/HF589.pdf> (accessed Apr. 14, 2013)).

<sup>92</sup> *Id.*

<sup>93</sup> Iowa Sen. J., 84th Gen. Assembly, 2011–2012 Legis. Sess. 387, 389–90 (2012) (available at <http://www.legis.iowa.gov/docs/pubs/sjweb/pdf/February%2028,%202012.pdf#page=17> (accessed Apr. 14, 2013)) (reflecting that the senate adopted amendments, passed the measure, and ordered messaged to the house); Iowa H. J., 84th Gen. Assembly, 2011–2012 Legis. Sess. 362–63 (2012) (available at <http://www.legis.iowa.gov/docs/pubs/hjweb/pdf/February%2028,%202012.pdf#page=23> (accessed Apr. 14, 2013)) (reflecting that the house concurred in amendments and passed the measure); *Id.* at 398 (available at <http://www.legis.iowa.gov/docs/pubs/hjweb/pdf/February%2029,%202012.pdf#page=22> (accessed Apr. 14, 2013)) (reflecting that the measure was sent from the house to the Iowa Governor).

<sup>94</sup> *Id.*



restrictions on photo or video documentation of agricultural-facility practices.<sup>95</sup> Legislators eliminated those provisions in an effort to address such concerns.<sup>96</sup> While the new law does not explicitly criminalize documentation, it essentially achieves the same result: employees, fearing accusations of fraudulent employment application and criminal prosecution, may be effectively silenced and may not report abuse or publish documentation of illegal or inhumane practices.<sup>97</sup> Propponents in the house contended that the law would not suppress the reporting of abuse,<sup>98</sup> but senate critics characterized the bill as a mistake, saying that it would “put a big red question mark stamped on every pork chop, every[ ] chicken wing, every steak, and every egg produced in this state because it will raise the question of what do you got [sic] to hide.”<sup>99</sup>

Utah’s Agricultural Operation Interference law, passed as H. 187, goes beyond Iowa’s standard.<sup>100</sup> Like Iowa’s law, the Utah statute creates a criminal misdemeanor penalty for persons gaining access to or applying for employment at agricultural operations under false pretenses.<sup>101</sup> Notably, H. 187, as introduced and as passed by Utah’s House of Representatives, did not regulate employment obtained under false pretenses.<sup>102</sup> These provisions resulted from a senate amendment introduced specifically to align the measure with Iowa’s new law.<sup>103</sup>

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<sup>95</sup> Iowa H. Republican Staff Analysis, *Agricultural Production Facility Fraud / False Pretenses* 1 (Feb. 28, 2012) (available at <http://www.iowahouserepublicans.com/wp-content/uploads/HF-589-Staff-Analysis-Agricultural-Facility-Fraud-5-22-2012-.pdf> (accessed Apr. 14, 2013)).

<sup>96</sup> *Id.*

<sup>97</sup> Masterson, *supra* n. 80 (professor of constitutional law discussing potential silencing impacts of H. 589).

<sup>98</sup> *Id.* (H. 187 sponsor, Senator Seng: “If you see abuse occurring, you have the right to videotape or to record and report that.”).

<sup>99</sup> Jason Clayworth, Des Moines Register, ‘Ag Gag’ Bill Passes Legislature, Headed to Governor; Opponents Predict Dire Consequences, <http://blogs.desmoinesregister.com/dmr/index.php/2012/02/28/iowa-senate-approves-ag-gag-bill-opponents-predict-dire-consequences> (Feb. 28, 2012) (accessed Apr. 14, 2013) (quoting Iowa Senator Herman Quirnbach).

<sup>100</sup> Utah Code Ann. § 76-6-112 (2012); Utah H. 187, 2012 Gen. Sess. 2 (Feb. 8, 2012) (as enrolled) (available at <http://le.utah.gov/~2012/bills/hbillenr/HB0187.pdf> (accessed Apr. 14, 2013)).

<sup>101</sup> Compare Utah Code Ann. § 76-6-112 (imposing either a class A or class B misdemeanor penalty) with Iowa Code Ann. § 717a.2 (establishing criminal penalties for animal facilities fraud). Penalty provisions for Utah’s bill were reduced as the bill moved through the legislature; H. 187, as introduced, imposed a third degree felony penalty for subsequent offenses. Compare Utah H. 187, 2012 Gen. Sess. 2 (Feb. 8, 2012) (available at <http://le.utah.gov/~2012/bills/hbillint/HB0187.pdf> (accessed Apr. 14, 2013)) with Utah Code Ann. § 76-6-112 (imposing either a class A or class B misdemeanor penalty).

<sup>102</sup> Utah H. 187, 2012 Gen. Sess. at 1–2.

<sup>103</sup> Utah Sen., *HB0187S03 Compared With HB0187S02*, 2012 Gen. Sess. 2 (available at [http://le.utah.gov/~2012/bills/hbillint/HB0187S02\\_ComparedWith\\_HB0187.pdf](http://le.utah.gov/~2012/bills/hbillint/HB0187S02_ComparedWith_HB0187.pdf) (accessed Apr. 14, 2013)); Utah Sen., *Senate Floor Video, Day 43*, 2012 Gen. Sess. 1:56:01 (Mar. 6, 2012) (available at [http://utahlegislature.granicus.com/MediaPlayer.php?clip\\_](http://utahlegislature.granicus.com/MediaPlayer.php?clip_)

Unlike Iowa's law, Utah's statute explicitly criminalizes, under certain circumstances, recording images of or sounds from the agricultural operation.<sup>104</sup> In floor debates, neither of Utah's legislative chambers discussed whether this provision would implicate questions of constitutionality and suppression of free speech—issues that stalled passage of Iowa's 2011 bill.<sup>105</sup>

### B. Missouri's Compromise

Missouri lawmakers introduced, but did not pass, a law prohibiting undercover documentation in agricultural facilities.<sup>106</sup> Instead, legislators passed a measure requiring that recordings of agricultural operations be provided immediately to law enforcement.<sup>107</sup>

As introduced, H. 1860, Missouri's unsuccessful ag-gag bill, closely paralleled Iowa's law.<sup>108</sup> H. 1860 passed the house with an amendment creating two new criminal violations: agricultural production facility fraud and interference. The amendment would have criminalized capturing undercover recordings and using false pretense to obtain

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id=1298&meta\_id=51656 (accessed Apr. 14, 2013)) (showing amendment sponsor, Senator Hinkins, specifically denoting Iowa when characterizing the amendment as making Utah's bill "in line" with other states).

<sup>104</sup> Compare Utah Code Ann. § 76-6-112 (certain circumstances include: leaving a recording device on the property, being employed under false pretenses, or criminally trespassing) with Iowa Code Ann. § 717a.1–717a.3a (lacking any of these provisions).

<sup>105</sup> See Iowa H. Republican Staff Analysis, *Agricultural Production Facility Fraud/False Pretenses* at 1 (indicating that the house version of the bill had raised some First Amendment questions and the senate bill addressed some of these concerns); Utah H., *House Floor Video, Day 32*, 2012 Gen. Sess. 1:09:02 (Feb. 24, 2012) (available at [http://utahlegislature.granicus.com/MediaPlayer.php?clip\\_id=1145&meta\\_id=44538](http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=1145&meta_id=44538) (accessed Apr. 14, 2013)) (showing that legislators raised no free speech or First Amendment concerns); Utah Sen., *Senate Floor Video, Day 43*, 2012 Gen. Sess. 1:56:01 (Mar. 6, 2012) (available at [http://utahlegislature.granicus.com/MediaPlayer.php?clip\\_id=1298&meta\\_id=51656](http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=1298&meta_id=51656) (accessed Apr. 14, 2013)) (same); Utah Sen., *Senate Floor Video, Day 44*, 2012 Gen. Sess. 57:12 (Mar. 7, 2012) (available at [http://utahlegislature.granicus.com/MediaPlayer.php?clip\\_id=1307&meta\\_id=51768](http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=1307&meta_id=51768) (accessed Apr. 14, 2013)) (same); Utah H., *House Floor Video, Day 44*, 2012 Gen. Sess. 21:07 (Mar. 7, 2012) (available at [http://utahlegislature.granicus.com/MediaPlayer.php?clip\\_id=1316&meta\\_id=51921](http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=1316&meta_id=51921) (accessed Apr. 14, 2013)) (same).

<sup>106</sup> Mo. H. 1860, 96th Gen. Assembly, 2d Reg. Sess. (Feb. 29, 2012) (available at <http://www.house.mo.gov/billtracking/bills121/billpdf/intro/HB1860I.pdf> (accessed Apr. 14, 2013)).

<sup>107</sup> Mo. Rev. Stat. § 578.013 (2012) (available at <http://www.moga.mo.gov/statutes/C500-599/578000013.htm> (accessed Apr. 14, 2013)).

<sup>108</sup> Compare Mo. H. 1860, 96th Gen. Assembly, 2d Reg. Sess. (Feb. 29, 2012) (available at <http://www.house.mo.gov/billtracking/bills121/billpdf/intro/HB1860I.pdf> (accessed Apr. 14, 2013)) with Iowa Code Ann. § 717a.3a (available at <http://search.legis.state.ia.us/nxt/gateway.dll?f=templates&fn=default.htm,select Iowa Code,select 2013 Iowa Code,select 2013 Iowa Code,select Title XVI Criminal Law and Procedure,select Subtitle 1 Crime Control and Criminal Acts,select Chapter 717A Offenses Relating to Agricultural Production,select 717A.3A Agricultural Production Facility Fraud> (accessed Apr. 14, 2013)) (both using the same definition for the crime of agricultural production facility fraud).

employment in agricultural facilities.<sup>109</sup> The amendment also included a sweeping provision, which would have additionally penalized any person aiding, abetting, or otherwise participating in the commission of agricultural facility fraud.<sup>110</sup> H. 1860 died in the Senate Ways and Means and Fiscal Oversight Committee after being voted out of the Agriculture Committee.<sup>111</sup>

Missouri lawmakers instead passed—in an omnibus agriculture bill—a provision requiring “farm animal professionals” to share with law enforcement any recording depicting animal abuse or neglect.<sup>112</sup> The recording must be unedited and must be submitted within twenty-four hours.<sup>113</sup> Farm animal professionals knowingly violating the law may be charged with a class A misdemeanor, which carries a penalty of up to one year in prison.<sup>114</sup> Missouri’s new law essentially requires undercover animal-protection advocates to reveal themselves immediately after obtaining any recording of abuse. They risk exposure to criminal charges if they fail to submit footage, and the footage is later used as part of a legal action or publicity campaign. Groups representing both food-safety and farming interests characterized the bill as falling short of ag-gag legislation, but still providing protections for agricultural interests.<sup>115</sup>

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<sup>109</sup> Mo. H. 1860, 96th Gen. Assembly, 2d Reg. Sess. (2012) (available at <http://www.house.mo.gov/billtracking/bills121/billpdf/perf/HB1860P.pdf> (accessed Apr. 14, 2013)); Mo. Sen. Comm. HCS HB 1860, 96th Gen. Assembly, 2d Reg. Sess. (Mar. 22, 2012) (available at <http://www.house.mo.gov/billtracking/bills121/sumpdf/HB1860P.pdf> (accessed Apr. 14, 2013)).

<sup>110</sup> Mo. H. 1860, 96th Gen. Assembly, 2d Reg. Sess. (2012) (available at <http://www.house.mo.gov/billtracking/bills121/billpdf/perf/HB1860P.pdf> (accessed Apr. 14, 2013)); Mo. Sen. Comm. HCS HB 1860, 96th Gen. Assembly, 2d Reg. Sess. (Mar. 22, 2012) (available at <http://www.house.mo.gov/billtracking/bills121/sumpdf/HB1860P.pdf> (accessed Apr. 14, 2013)).

<sup>111</sup> Mo. Sen. J., 96th Gen. Assembly, 2d Reg. Sess. 1432 (May 14, 2012) (available at <http://www.senate.mo.gov/12info/Journals/RDay7005141423-1446.pdf>) (accessed May 11, 2013) (H. 1860 referral to Senate Ways and Means and Fiscal Oversight Committee); see Mo. House of Representatives, *Activity History for HB 1860*, <http://www.house.mo.gov/BillActions.aspx?bill=HB1860&year=2012&code=R> (accessed May 11, 2013) (showing H. 1860 was referred to, but not reported out from, the Senate Ways and Means and Fiscal Oversight Committee).

<sup>112</sup> Mo. Rev. Stat. § 578.013 (2012) (available at <http://www.moga.mo.gov/statutes/C500-599/5780000013.htm> (accessed Apr. 14, 2013)); Mo. Sen. 631, 96th Gen. Assembly, 2d Reg. Sess. 16 (Jan. 9, 2012) (available at <http://www.senate.mo.gov/12info/pdf-bill/tat/SB631.pdf> (accessed Apr. 14, 2013)).

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*; Mo. Rev. Stat. § 558.011 (2012) (available at <http://www.moga.mo.gov/statutes/C500-599/5580000011.htm> (accessed Apr. 14, 2013)).

<sup>115</sup> Dan Flynn, Food Safety News, ‘*Show Me*’ State Compromises on Ag-Gag, <http://www.foodsafetynews.com/2012/05/show-me-state-compromises-on-ag-gag/> (May 18, 2012) (accessed Apr. 14, 2013) (characterizing the bill as an ag-gag compromise and highlighting provisions in the law that will protect agricultural interests); Angie Bowan, Dairy Herd Network, *Mo. Sen. Passes Diluted “Ag-Gag” Bill*, <http://www.dairyherd.com/dairy-news/Mo-Senate-passes-diluted-ag-gag-bill-152057425.html> (updated May 18, 2012) (accessed Apr. 14, 2013) (characterizing the bill as protecting

#### IV. PROTECTIONS FOR FARM ANIMALS AND PROHIBITIONS ON SLAUGHTER

In 2012, six states considered bills that would provide protections for farm animals: Rhode Island,<sup>116</sup> Massachusetts,<sup>117</sup> New York,<sup>118</sup> New Jersey,<sup>119</sup> Vermont,<sup>120</sup> and Illinois.<sup>121</sup> New York<sup>122</sup> and New Jersey<sup>123</sup> additionally considered and passed measures prohibiting certain types of animal slaughter.

##### A. Legislation to Protect Farm Animals

Rhode Island lawmakers passed Sen. 2191 and its companion, H. 7180, which prohibit the confinement of veal calves and gestating pigs.<sup>124</sup> Under the new law, confinement includes tethering or confining animals in a manner that prevents them from turning around freely, lying down, standing up, or fully extending their limbs.<sup>125</sup> Rhode Island lawmakers additionally passed a measure prohibiting bovine tail-docking,<sup>126</sup> the partial amputation—typically without

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“many aspects of the state’s agricultural industry, including a time limit for reporting photos and video of animal abuse”).

<sup>116</sup> R.I. Sen. 2191, 2012 Sess. 1–2 (Jan. 24, 2012) (as enacted) (available at <http://status.rilin.state.ri.us/>; *select 2012, search bills 2191* (accessed Apr. 14, 2013)); R.I. H. 7180, 2012 Sess. 1–2 (Jan. 18, 2012) (as enacted) (available at <http://status.rilin.state.ri.us/>; *select 2012, search bills 7180* (accessed Apr. 14, 2013)).

<sup>117</sup> Mass. H. 458, 187th Gen. Ct., 2011–2012 Sess. (Jan. 24, 2011) (as introduced) (available at <http://www.malegislature.gov/Bills/PDF?billId=7918&generalCourtId=1> (accessed Apr. 14, 2013)); Mass. Sen. 786, 187th Gen. Ct., 2011–2012 Sess. (Jan. 24, 2011) (as introduced) (available at <http://www.malegislature.gov/Bills/PDF?billId=11173&generalCourtId=1> (accessed Apr. 14, 2013)).

<sup>118</sup> N.Y. Assembly 1928, 234th Legis. Sess., 2011–2012 Reg. Sess. (Jan. 12, 2011) (as introduced) (available at <http://assembly.state.ny.us/leg/?sh=printbill&bn=A01928&term=2011> (accessed Apr. 14, 2013)).

<sup>119</sup> N.J. Assembly 3250, 215th Legis., 2012–2013 Sess. (Sept. 24, 2012) (as introduced) (available at [http://www.njleg.state.nj.us/2012/Bills/A3500/3250\\_I1.pdf](http://www.njleg.state.nj.us/2012/Bills/A3500/3250_I1.pdf) (accessed Apr. 14, 2013)); N.J. Sen. 1921, 215th Legis., 2012–2013 Sess. (May 3, 2012) (as introduced) (available at [http://www.njleg.state.nj.us/2012/Bills/S2000/1921\\_I1.pdf](http://www.njleg.state.nj.us/2012/Bills/S2000/1921_I1.pdf) (accessed Apr. 14, 2013)).

<sup>120</sup> Vt. Sen. 107, 2011–2012 Legis. Sess. (Apr. 12, 2011) (as introduced) (available at <http://www.leg.state.vt.us/docs/2012/bills/Intro/S-107.pdf> (accessed Apr. 14, 2013)).

<sup>121</sup> Ill. H. 1697, 97th Gen. Assembly 2011 and 2012 Sess. (Feb. 22, 2012) (as amended) (available at <http://www.ilga.gov/legislation/97/HB/PDF/09700HB1697ham003.pdf> (accessed Apr. 14, 2013)).

<sup>122</sup> N.Y. Assembly 9158, 234th Legis. Sess., 2011–2012 Reg. Sess. (Jan. 31, 2012) (as enacted) (available at <http://assembly.state.ny.us/leg/?sh=printbill&bn=A09158&term=2011> (accessed Apr. 14, 2013)) (codified at N.Y. Agric. & Mkts. Law § 96-b (2012)).

<sup>123</sup> N.J. St. Legis., *S1921 Establishes Animal Cruelty Offense of Cruel Confinement of a Gestating Pig*, <http://www.njleg.state.nj.us/bills/BillView.asp?BillNumber=S1921> (accessed Apr. 14, 2013) (showing bill history of Sen. 1921).

<sup>124</sup> R.I. Gen. Laws §§ 4-1.1-1 to 4-1.1-6 (2012). For source bills, see *supra* n. 116.

<sup>125</sup> *Id.*

<sup>126</sup> R.I. Gen. Laws § 4-1-6.1 (2012); R.I. Sen. 2192, 2012 Sess. 1–2 (Jan. 24, 2012) (as enacted) (available at <http://status.rilin.state.ri.us/>; *select 2012, search bills 2192* (accessed Apr. 14, 2013)).

analgesics or anesthetics—of up to two-thirds of a cow’s tail.<sup>127</sup> Each measure passed with broad support in the legislature,<sup>128</sup> making Rhode Island the ninth state to prohibit gestation crates,<sup>129</sup> the seventh to ban veal crates for calves,<sup>130</sup> and the third to ban bovine tail-docking.<sup>131</sup>

Similar legislation failed to pass in Illinois, Vermont, New York, and Massachusetts, and is still being considered in New Jersey. Illi-

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<sup>127</sup> Am. Veterinary Med. Assn., *Welfare Implications of Tail Docking of Cattle* 1 (Mar. 21, 2012) (available at [https://www.avma.org/KB/Resources/Backgrounders/Documents/tail\\_docking\\_cattle\\_bgnd.pdf](https://www.avma.org/KB/Resources/Backgrounders/Documents/tail_docking_cattle_bgnd.pdf) (accessed Apr. 14, 2013)); Humane Socy. of the U.S., *An HSUS Report: Welfare Issues with Tail Docking of Cows in the Dairy Indus.* 1–2 (Oct. 2012) (available at <http://www.humanesociety.org/assets/pdfs/farm/HSUS-Report-on-Tail-Docking-of-Dairy-Cows.pdf> (accessed Apr. 14, 2013)) (describing tail docking as a standard practice in the dairy industry). For example, a 2006 study conducted by professors at Colorado State University found that 82% of farms surveyed in the Midwest and New York engaged in routine tail docking. W.K. Fulwider et al., *Survey of Dairy Management Practices on One Hundred Thirteen N. C. and N.E. U.S. Dairies*, 91 *J. Dairy Sci.* 1686, 1690–91 (2008) (available at <http://www.grandin.com/references/survey.dairy.mgmt.practices.html> (accessed Apr. 14, 2013)).

<sup>128</sup> R.I. Sen. J., 2012 Sess. 110 (June 12, 2012) (available at <http://webserver.rilin.state.ri.us/journals12/senatejournals12/sjournal6%2D12.pdf> (accessed Apr. 14, 2013)) (Sen. 2192 passing senate by a vote of 35–0); R.I. H. J., 2012 Sess. 57–58 (June 11, 2012) (available at <http://webserver.rilin.state.ri.us/journals12/housejournals12/hjournal6%2D11.pdf> (accessed Apr. 14, 2013)) (Sen. 2192 passing house by a vote of 61–0); R.I. H. J., 2012 Sess. 5–6 (June 11, 2012) (available at <http://webserver.rilin.state.ri.us/journals12/housejournals12/hjournal6%2D11.pdf> (accessed Apr. 14, 2013)) (H. 7180 passing house by a vote of 66–5); R.I. Sen. J., 2012 Sess. 21 (June 7, 2012) (available at <http://webserver.rilin.state.ri.us/journals12/senatejournals12/sjournal6%2D07.pdf> (accessed Apr. 14, 2013)) (H. 7180 passing senate by a vote of 37–0); R.I. H. J., 2012 Sess. 33 (June 6, 2012) (available at <http://webserver.rilin.state.ri.us/journals12/housejournals12/hjournal6%2D06.pdf> (accessed Apr. 14, 2013)) (Sen. 2191 passing house by a vote of 59–9); R.I. Sen. J., 2012 Sess. 9–10 (May 29, 2012) (available at <http://webserver.rilin.state.ri.us/journals12/senatejournals12/sjournal5%2D29.pdf> (accessed Apr. 14, 2013)) (Sen. 2191 passing senate by a vote of 37–0).

<sup>129</sup> Arizona, California, Colorado, Florida, Maine, Michigan, Ohio, and Oregon each passed laws to phase out gestation crates. Press Release, Humane Socy. of the U.S., *R.I. Enacts Legis. to Prohibit Extreme Confinement Crates for Pigs and Calves and the Routine Docking of Cows’ Tails* (June 21, 2012) (available at [http://www.humanesociety.org/news/press\\_releases/2012/06/rhode\\_island\\_gestation\\_crates\\_ban\\_062112.html](http://www.humanesociety.org/news/press_releases/2012/06/rhode_island_gestation_crates_ban_062112.html) (accessed Apr. 14, 2013)). In February 2012, “McDonald’s, Burger King, Wendy’s, Cracker Barrel, Denny’s and Sonic announced that they will eliminate gestation crates from their supply chains, as have Kroger and Safeway, the nation’s top two supermarket chains, and Compass Group, the world’s largest foodservice company.” *Id.*

<sup>130</sup> Arizona, California, Colorado, Maine, Michigan, Ohio, and Rhode Island each passed laws banning veal crates. Humane Socy. of the U.S., *Veal Crates*, [http://www.humanesociety.org/issues/confinement\\_farm/facts/veal.html](http://www.humanesociety.org/issues/confinement_farm/facts/veal.html) (updated Feb. 22, 2013) (accessed Apr. 14, 2013).

<sup>131</sup> *Id.* California was the first state to ban tail docking in 2009, followed by a ban in Ohio. Wayne Pacelle, A Humane Nation: Wayne Pacelle’s Blog, *Time to End Painful Tail Docking for Dairy Cows*, <http://hsus.typepad.com/wayne/2012/08/cow-tail-docking.html> (Aug. 10, 2012) (accessed Apr. 14, 2013) (discussing HSUS efforts to end the practice of tail docking and also noting that, in July 2012, the National Milk Producers Federation—a major industry trade association—voted to officially oppose the practice of tail docking).

nois's H. 1697 and Vermont's Sen. 107 would have prevented bovine tail docking.<sup>132</sup> As introduced, the Illinois measure also would have protected horses, sheep, goats, and swine, but those provisions were removed by a house committee amendment.<sup>133</sup>

New York's bill, Assembly 1928, and Massachusetts's bills, Sen. 786 and companion H. 458, would have prohibited extreme confinement of veal calves, gestating sows, and egg-laying hens.<sup>134</sup> New Jersey's Sen. 1921 and companion Assembly 3250 would provide the same protection solely to gestating sows.<sup>135</sup> Sen. 1921 passed both chambers, with an amendment.<sup>136</sup> The amendment exempts farrowing crates from the bill's provisions and delays the bill's effective date from one year after enactment to December 2018.<sup>137</sup> The bill awaits the Governor's signature in New Jersey's ongoing 2012–2013 legislative session.<sup>138</sup>

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<sup>132</sup> Ill. H. 1697, 97th Gen. Assembly, 2011–2012 Sess. (Feb. 22, 2012) (as amended) (available at <http://www.ilga.gov/legislation/97/HB/PDF/09700HB1697ham003.pdf> (accessed Apr. 14, 2013)); Vt. Sen. 107, 2011–2012 Legis. Sess. (Apr. 12, 2011) (as introduced) (available at <http://www.leg.state.vt.us/docs/2012/bills/Intro/S-107.pdf> (accessed Apr. 14, 2013)) (Sen. 107 would have additionally prohibited horse tail docking; the bill, introduced and referred to committee in 2011, had no further action and died in 2012 on termination of the legislature's biennium).

<sup>133</sup> Ill. H. 1697, 97th Gen. Assembly 2011–2012 Sess. (Feb. 16, 2011) (as introduced) (available at <http://www.ilga.gov/legislation/97/HB/PDF/09700HB1697.pdf> (accessed Apr. 14, 2013)).

<sup>134</sup> N.Y. Assembly 1928, 234th Legis. Sess., 2011–2012 Reg. Sess. 3 (Jan. 12, 2011) (as introduced) (available at <http://assembly.state.ny.us/leg/?sh=printbill&bn=A01928&term=2011> (accessed Apr. 14, 2013)); Mass. H. 458, 187th Gen. Ct., 2011–2012 Sess. (Jan. 7, 2011) (as introduced) (available at <http://www.malegislature.gov/Bills/BillHtml/7918?generalCourtId=1> (accessed Apr. 14, 2013)); Mass. Sen. 786, 187th Gen. Ct., 2011–2012 Sess. (Jan. 19, 2011) (as introduced) (available at <http://www.malegislature.gov/Bills/BillHtml/11173?generalCourtId=1> (accessed Apr. 14, 2013)).

<sup>135</sup> N.J. Sen. 1921, 215th Legis., 2012–2013 Sess. (May 3, 2012) (as introduced) (available at [http://www.njleg.state.nj.us/2012/Bills/S2000/1921\\_I1.pdf](http://www.njleg.state.nj.us/2012/Bills/S2000/1921_I1.pdf) (accessed Apr. 14, 2013)); N.J. Assembly 3250, 215th Legis., 2012–2013 Sess. (Sept. 24, 2012) (as introduced) (available at [http://www.njleg.state.nj.us/2012/Bills/A3500/3250\\_I1.pdf](http://www.njleg.state.nj.us/2012/Bills/A3500/3250_I1.pdf) (accessed Apr. 14, 2013)).

<sup>136</sup> N.J. St. Legis., *S1921 Establishes Animal Cruelty Offense of Cruel Confinement of a Gestating Pig*, <http://www.njleg.state.nj.us/bills/BillView.asp?BillNumber=S1921> (accessed Apr. 14, 2013) (bill history of Sen. 1921).

<sup>137</sup> N.J. Sen. 1921, 215th Legis., 2012–2013 Sess. (May 3, 2012) (as reported by the Assembly Agriculture and Natural Resources Committee with amendments) (available at [http://www.njleg.state.nj.us/2012/Bills/S2000/1921\\_R1.pdf](http://www.njleg.state.nj.us/2012/Bills/S2000/1921_R1.pdf) (accessed Apr. 14, 2013)) (the amendments also increased the time animals may be confined for husbandry purposes from six to eight hours, and increased the time a gestating sow may be confined prior to giving birth from seven to ten days).

<sup>138</sup> N.J. Legis., *How a Bill Becomes a Law in New Jersey*, <http://www.njleg.state.nj.us/legislativepub/legprocess.asp> (accessed Apr. 14, 2013) (after final passage, the bill is sent to the Governor, who may sign the bill or may veto either the entire bill or single line items).

*B. New Jersey's and New York's Successful Prohibitions on Slaughter*

While New York and New Jersey failed to regulate the confinement of farm animals, each state successfully passed laws regulating animal slaughter. New York lawmakers addressed New York City's live-slaughter markets by extending the four-year moratorium on licensing of any new live-animal slaughter markets within 1,500 feet of a residential building.<sup>139</sup> Live-slaughter markets—storefront markets housing live animals—allow customers to choose an animal to be slaughtered, on site, for the customer's consumption.<sup>140</sup> While live-slaughter markets exist in a number of U.S. communities, New York likely boasts the highest concentration, with approximately ninety live-poultry markets in the metropolitan area.<sup>141</sup> Many markets, situated in New York City's densely populated urban neighborhoods, have become a problem for neighborhood residents, who cite quality of life and public health issues.<sup>142</sup> The law prevents new storefront slaughter facilities from opening, and addresses accompanying concerns around animal welfare, public health, and economics.<sup>143</sup>

New Jersey's Governor signed into law a bill that prohibits the transportation of horses to slaughter, the in-state slaughter of horses, and the sale of horse meat for human consumption.<sup>144</sup> The bill maintained broad bipartisan support, passing in the assembly by a vote of 72–3 and in the senate by a vote of 35–4.<sup>145</sup> New Jersey horse owners and advocates joined the American Society for the Prevention of Cru-

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<sup>139</sup> See N.Y. Assembly 9158, 234th Legis. Sess. (Jan. 31, 2012) (amending 2008 N.Y. Laws ch. 395 and extending that law's sunset provision); N.Y. Agric. & Mkts. Law § 96-b (2012) (as codified).

<sup>140</sup> Anne Barnard, N.Y. Times, *Meeting, Then Eating, the Goat*, <http://www.nytimes.com/2009/05/25/nyregion/25slaughter.html> (May 24, 2009) (accessed Apr. 14, 2013)) (a version of this article appeared in the New York print edition on May 25, 2009, at A13).

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> N.Y. Assembly Memo. 9158, 234th Legis. Sess., 2011–2012 Reg. Sess. (available at [http://assembly.state.ny.us/leg/?default\\_fld=&bn=9158&term=2011&Summary=Y&Actions=Y&Memo=Y&Text=Y#jump\\_to\\_Memo](http://assembly.state.ny.us/leg/?default_fld=&bn=9158&term=2011&Summary=Y&Actions=Y&Memo=Y&Text=Y#jump_to_Memo) (accessed Apr. 14, 2013)) (describing the purpose of the bill as to “maintain a sanitary, healthy, and comfortable living environment” for New York City residents, and pointing to the location of live-poultry markets in dense, urban areas as the cause of property value loss and of resident relocation).

<sup>144</sup> N.J. Assembly 2023, 215th Legis., 2012–2013 Sess. (Jan. 10, 2012) (as enacted) (codified at N.J. Stat. Ann. §§ 4:22-25.5, 4:22-26 (West 2012)) (available at [http://www.njleg.state.nj.us/2012/Bills/PL12/52\\_.pdf](http://www.njleg.state.nj.us/2012/Bills/PL12/52_.pdf) (accessed Apr. 14, 2013)).

<sup>145</sup> Don E. Woods, S. Jersey Times, *Gov. Christie Signs Bill Banning Horse Slaughter for Human Consumption*, [http://www.nj.com/cumberland/index.ssf/2012/09/gov\\_christie\\_signs\\_bill.html](http://www.nj.com/cumberland/index.ssf/2012/09/gov_christie_signs_bill.html) (Sept. 21, 2012) (accessed Apr. 14, 2013); N.J. St. Legis., *A2023 Prohibits Slaughter of Horses and Sale of Horse Flesh for Human Consumption* (available at <http://www.njleg.state.nj.us/bills/BillView.asp?BillNumber=A2023> (accessed Apr. 14, 2013)) (reflecting that Assembly 2023 passed both chambers by June 25, 2012, with a vote of 75–3–1 in the assembly and 35–4 in the senate, and was not approved until September 19, 2012).

elty to Animals (ASPCA) in promoting this law and in urging Governor Chris Christie to sign the bill.<sup>146</sup>

Animal advocates praised the new law, saying that “it will remove New Jersey from the horse slaughter trade by preventing the transport of horses to slaughter for human consumption elsewhere.”<sup>147</sup> Noting the state’s geographical significance, Governor Christie proclaimed that the law “ensures that our highways will not be used to transport horses to slaughter in other states which have not enacted a similar ban on the practice.”<sup>148</sup> New Jersey joins other states—California, Texas,<sup>149</sup> Illinois, and Mississippi—that have passed laws effectively prohibiting the slaughter of horses for human consumption.<sup>150</sup>

## V. WOLF-MANAGEMENT PLANS AND WOLF HUNTS

### A. *Legislating Management of the Western Great Lake Distinct Population Segment*

In December 2011, the U.S. Fish and Wildlife Service (FWS) issued a final rule identifying—and concurrently removing from the Endangered Species Act (ESA) list of Endangered and Threatened Wildlife—the Western Great Lakes (WGL) Distinct Population Segment (DPS) of the gray wolf.<sup>151</sup> In doing so, FWS turned over management of the WGL DPS to those states in which the DPS occurs—Minnesota, Wisconsin, and Michigan.<sup>152</sup> Each state, in turn, passed legislation establishing a wolf-hunt season.

#### 1. *State Legislation Regulating the Take of the Western Great Lakes Gray Wolves*

Minnesota’s law, introduced as H. 2171, creates an open wolf-hunting-and-trapping season and allows those holding a wolf-hunting

<sup>146</sup> Press Release, Am. Socy. for the Prevention of Cruelty to Animals, *Prominent N.J. Horse Owners Urge Gov. Christie to Sign Bill Prohibiting Horse Slaughter* (Sept. 12, 2012) (available at <http://www.aspca.org/Pressroom/press-releases/091212> (accessed Apr. 14, 2013)).

<sup>147</sup> *Id.*

<sup>148</sup> Press Release, St. of N.J., Gov. Chris Christie, *Governor Chris Christie Signs Ban on Slaughter and Sale of Horsemeat for Human Consumption in New Jersey* (Sept. 21, 2012) (available at <http://www.nj.gov/governor/news/news/552012/approved/20120921c.html> (accessed Apr. 14, 2013)).

<sup>149</sup> During 2012, the Texas Legislature considered a repeal of the state’s longstanding horse-slaughter ban. However, with the exception of hearing testimony on both sides of the issue, no further action was taken. Laura Allen, Animal Law Coalition, *TX Legislative Committee Considers Repeal of Horse Slaughter Ban*, <http://www.animallawcoalition.com/horse-slaughter/article/2036> (July 16, 2012) (accessed Apr. 14, 2013).

<sup>150</sup> Laura Allen, Animal Law Coalition, *NJ Gov Signs Horse Slaughter Ban!*, <http://animallawcoalition.com/-nj-gov-signs-horse-slaughter-ban/> (Sept. 21, 2012) (accessed Apr. 14, 2013).

<sup>151</sup> 76 Fed. Reg. 81666 (Dec. 28, 2011). For an excellent overview of the delisting of the Western Great Lakes Population, see Graves et al., *supra* n. 72, at 411–13.

<sup>152</sup> *Id.*



or-trapping license to take by firearm, bow and arrow, or trap.<sup>153</sup> The law gives the Minnesota Department of Natural Resources (MDNR or Minnesota DNR) commissioner the power to place limits on the number of persons granted wolf-hunting or wolf-trapping licenses, and to establish seasonal quotas, open areas, and possession limits.<sup>154</sup> During the floor debate on H. 2171, the senate considered, but failed to pass, an amendment to postpone the season for five years.<sup>155</sup> This is unsurprising, as H. 2171 passed on the heels of a 2011 special-session measure that eliminated a statutory five-year moratorium on wolf hunting after delisting.<sup>156</sup>

Wisconsin's law, introduced as Sen. 411, requires the Wisconsin Department of Natural Resources (WDNR or Wisconsin DNR) to establish an open wolf-hunting-and-trapping season, divide the state into wolf-harvesting zones, and implement a wolf-management plan.<sup>157</sup> The law gives WDNR the power to determine the number of available licenses and to close a harvesting zone as necessary to effectively manage the wolf population.<sup>158</sup> The law permits a variety of hunting-and-trapping activities, including take by firearm, bow and arrow, crossbow, or trap; use, for part of the season, of up to six dogs to trail or track wolves; use of bait (that does not involve animal parts or byproducts, other than liquid scents); and night hunts for part of the season.<sup>159</sup>

Michigan's law, introduced as Sen. 1350, was the last wolf-hunt measure to pass.<sup>160</sup> Unlike the Minnesota and Wisconsin laws, Michigan's law authorizes, but does not require, the Michigan Natural Resources Commission (MNRC or Michigan NRC) to establish an open wolf-hunting season.<sup>161</sup> The law requires a wolf-hunting license, but

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<sup>153</sup> Minn. Stat. § 97B.647 (2012); *but see* Minn. Dept. of Nat. Resources, *2012–2013 Wolf Seasons Regulations Handbook 3* (available at [http://files.dnr.state.mn.us/recreation/hunting/wolf/wolf\\_regs.pdf](http://files.dnr.state.mn.us/recreation/hunting/wolf/wolf_regs.pdf) (accessed Apr. 14, 2013)) (Minnesota Department of Natural Resources wolf season regulations allow firearm and bow hunting with an appropriate permit through the entire season, but allow trapping only during the late season with a late season permit.).

<sup>154</sup> Minn. Stat. § 97B.647 (2012).

<sup>155</sup> Minn. J. Sen., 87th Legis., 2011–2012 Sess. 6085–86 (2012) (available at <http://www.senate.leg.state.mn.us/journals/gotopage.php?session=ls87&number=6067a> (accessed Apr. 14, 2013)).

<sup>156</sup> Minn. Sen. 943, 87th Legis., 2011–2012 Sess.23 (Mar. 23, 2011) (available at <https://www.revisor.mn.gov/bin/bldbill.php?bill=S0943.5.html&session=ls87> (accessed Apr. 14, 2013)).

<sup>157</sup> Wis. Sen. 411, 2011–2012 Sess. 1–12 (Jan. 31, 2012) (as enacted) (available at <https://docs.legis.wisconsin.gov/document/proposaltext/2011/REG/SB411.pdf> (accessed Apr. 14, 2013)) (codified at Wis. Stat. § 29.185(1m), 29.185(5) (2012)).

<sup>158</sup> Wis. Stat. at § 29.185(3), 29.185(5).

<sup>159</sup> *Id.* at § 29.185(6).

<sup>160</sup> Mich. Sen. 1350, 96th Legis., 2012 Reg. Sess. (Dec. 28, 2012) (as enrolled) (amending Mich. Comp. Laws §§ 324.40103, 324.40118, 324.43503, 324.43507 and adding §§ 324.40110b, 324.43528b, 324.43540e) (available at <http://www.legislature.mi.gov/documents/2011-2012/publicact/pdf/2012-PA-0520.pdf> (accessed Apr. 14, 2013)); 2012 Mich. Acts 287.

<sup>161</sup> *Id.*

establishes neither allowable means of take nor a timeline for NRC action.<sup>162</sup>

## 2. *Wolf Hunts Begin in the Western Great Lakes*

The Minnesota and Wisconsin wolf-hunting seasons opened in November and October 2012, respectively,<sup>163</sup> and the Michigan NRC approved a limited “public harvest” scheduled to run from November 15 through December 31, 2013.<sup>164</sup> Minnesota’s DNR established a “harvest target” of 400 wolves for the season,<sup>165</sup> close to 14% of the state’s wolf population.<sup>166</sup> While Wisconsin’s quota of 201 wolves was smaller in number, its “harvest rate” represented a more significant fraction of the state’s population: nearly 25% of Wisconsin’s gray wolves.<sup>167</sup> Over 20,000 people, representing close to thirty-five states, applied in *each* state to receive one of 6,000 permits in Minnesota and one of 1,160 permits in Wisconsin.<sup>168</sup> Both states issued permits by lottery and instituted a bag limit, which limits each licensed hunter or trapper to one wolf take per hunting season.<sup>169</sup>

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<sup>162</sup> *Id.* at 4.

<sup>163</sup> Minn. Dept. of Nat. Resources, *2012–13 Wolf Seasons Regulations Handbook* at 1 (available at [http://files.dnr.state.mn.us/recreation/hunting/wolf/wolf\\_regs.pdf](http://files.dnr.state.mn.us/recreation/hunting/wolf/wolf_regs.pdf) (accessed Apr. 14, 2013)) (early season hunting from November 3–18, 2012, and late-season hunting and trapping from November 24, 2012, through January 31, 2013); Wis. Dept. of Nat. Resources, *FAQs for the Wolf Hunting and Trapping Season 2* (available at <http://dnr.wi.gov/topic/hunt/documents/wolffaq.pdf> (accessed Apr. 14, 2013)) (hunting and trapping season from October 15, 2012, through February 28, 2013).

<sup>164</sup> Press Release, Mich. Dept. of Nat. Resources, *Natural Resources Commission Authorizes Limited Public Wolf Harvest Aimed at Managing the State’s Wolf Population* (May 9, 2013) (available at [http://www.michigan.gov/dnr/0,4570,7-153-10371\\_10402-302625—00.html](http://www.michigan.gov/dnr/0,4570,7-153-10371_10402-302625—00.html) (accessed May 27, 2013)).

<sup>165</sup> Minn. R. 6234.2105 subpt. 8 (2012). Generally, state fish and game agencies prescribe target numbers based upon the current population, immediate post-hunt population target, and long-term population targets determined by the agencies and approved by the FWS as part of the state’s wolf-management plan.

<sup>166</sup> Calculated as: 400 (harvest target) divided by 2,921 (2008 wolf population estimate) equals 13.7%. Minn. Dept. of Nat. Resources, *Canis lupus: Conservation Efforts in Minnesota*, <http://www.dnr.state.mn.us/mammals/graywolf.html> (accessed Apr. 14, 2013) (listing the 2008 wolf population estimate at 2,921).

<sup>167</sup> Calculated as: 201 (harvest rate) divided by 815 and 850 (wolf population estimate) equals 24.7% and 23.6%, respectively. Wis. Dept. of Nat. Resources, *supra* n. 163, at 1 (2012 hunting and trapping season quota set at 201 wolves); Wis. Dept. Nat. Resources, *Wisconsin’s Gray Wolf Population Grew in 2012*, [http://dnr.wi.gov/news/weekly/article\\_lookup.asp?id=2193](http://dnr.wi.gov/news/weekly/article_lookup.asp?id=2193) (June 19, 2012) (accessed Apr. 14, 2013) (WDNR estimating wolf population at 815 to 880). WDNR set the quota as a means to achieve their stated objective of reducing the state’s wolf population. Wis. Dept. of Nat. Resources, *supra* n. 163, at 1.

<sup>168</sup> Doug Smith, *23,000 Apply to Hunt Wolves in Minnesota*, StarTribune (Sept. 8, 2012) (available at <http://www.startribune.com/local/168995506.html> (accessed Apr. 14, 2013)); Wis. Dept. of Nat. Resources, *More Than 20,000 Apply for Wisconsin Wolf Hunting License*, [http://dnr.wi.gov/news/Weekly/Article\\_Lookup.asp?id=2298](http://dnr.wi.gov/news/Weekly/Article_Lookup.asp?id=2298) (Sept. 11, 2012) (accessed Apr. 14, 2013).

<sup>169</sup> Minn. Dept. of Nat. Resources, *supra* n. 163, at 2–3; Wis. Dept. of Nat. Resources, *supra* n. 163, at 2.

Seasons closed early in both Minnesota and Wisconsin because hunters reached the established harvest limits.<sup>170</sup> All told, 522 of the formerly endangered WGL wolves were taken in the 2012 seasons: 405 in Minnesota and 117 in Wisconsin,<sup>171</sup> where eighty-five unused permits, allocated by harvest treaty to Native American tribes, mitigated the toll.<sup>172</sup> Native American tribes abstained from hunts in both states.<sup>173</sup>

### 3. *Advocates Respond*

Several legal actions—legislative and judicial—were initiated in response to the new laws and hunting seasons. In October 2012, the Humane Society of the U.S. (HSUS) and the Fund for Animals served FWS with a sixty-day notice of intent to sue for violations of the ESA in its designation and delisting of the gray wolf WGL DPS.<sup>174</sup> The

<sup>170</sup> Rupa Shenoy, Minn. Pub. Radio News, *Wolf Hunt Ends Today; Management Assessment Begins*, <http://minnesota.publicradio.org/display/web/2013/01/03/environment/wolf-hunt-ends-management-assessment-begins> (Jan. 3, 2013) (accessed Apr. 14, 2013) (wolf-hunting-and-trapping season closed January 3, 2013, prior to the season's termination date of January 31, 2013); Wis. Dept. of Nat. Resources, *Wisconsin Wolf Hunting and Trapping Season to Close Dec. 23*, [http://dnr.wi.gov/news/BreakingNews\\_Lookup.asp?id=2604](http://dnr.wi.gov/news/BreakingNews_Lookup.asp?id=2604) (Dec. 22, 2012) (accessed Apr. 14, 2013) (wolf-hunting-and-trapping season closed December 23, 2012); Wis. Dept. of Nat. Resources, *supra* n. 163, at 2 (season's original closing date was February 28, 2013).

<sup>171</sup> Doug Smith, StarTribune: Sports Blog, *Wolf Season Closes with More Than 400 Wolves Killed*, <http://www.startribune.com/sports/blogs/185560681.html> (Jan. 3, 2013) (accessed Apr. 14, 2013) (405 wolves registered by hunters at the end of the wolf-hunting-and-trapping season); Wis. Dept. of Nat. Resources, *Wolf Hunting and Trapping*, <http://dnr.wi.gov/topic/hunt/wolf.html> (accessed Apr. 14, 2013) (117 wolves harvested).

<sup>172</sup> Dan Kraker, Minn. Pub. Radio News, *Ojibwe Bands Ban Wolf Hunting—But Only on Indian-Controlled Lands*, <http://minnesota.publicradio.org/display/web/2012/10/31/environment/ojibwe-ban-wolf-hunting> (Oct. 31, 2012) (accessed Apr. 14, 2013) (Wisconsin reserved eighty-five wolf-hunting licenses for the Ojibwe bands in Wisconsin, but the tribes indicated they do not intend to use them).

<sup>173</sup> Wolf hunting is illegal on all Minnesota reservations, and eighty-five treaty harvest permits went unused in Wisconsin, where tribes abstained from the hunt. Edward Moody, CBS Minnesota, *MN Tribes Outlaw Wolf Hunt; Protesters Vow to End It*, <http://minnesota.cbslocal.com/2012/11/02/mn-tribes-outlaw-wolf-hunt-protesters-vow-to-end-it/> (Nov. 2, 2012) (accessed Apr. 14, 2013) (wolf hunting illegal on all Minnesota reservations because of the wolf's sacred cultural status); Steven Yaccino, N.Y. Times, *As Wolves' Numbers Rise, So Does Friction Between Guardians and Hunters*, <https://www.nytimes.com/2012/11/02/us/friction-between-wolf-hunters-and-protectors-rises.html> (Nov. 1, 2012) (accessed Apr. 14, 2013) (a version of this article appeared in the New York print edition on November 2, 2012, at A16 with the headline *As Wolves' Numbers Rise, So Does Friction Between Guardians and Hunters*) (Chippewa tribes in Minnesota banned wolf hunting and trapping on reservations).

<sup>174</sup> Ltr. from Kristen Monsell, Atty., Humane Socy. of the U.S. and Fund for Animals, to Ken Salazar, Sec. of Int., and Dan Ashe, Dir., U.S. Fish & Wildlife Serv., *Sixty-Day Notice of Intent to Sue 1* (Oct. 15, 2012) (available at [http://files.dnr.state.mn.us/fish\\_wildlife/wildlife/wolves/delisting/hsus\\_60-day\\_notice.pdf](http://files.dnr.state.mn.us/fish_wildlife/wildlife/wolves/delisting/hsus_60-day_notice.pdf) (accessed Apr. 14, 2013)). The groups seek to restore federal protection for the wolves as state wildlife agencies' "overzealous and extreme plans . . . demonstrate that [FWS] confidence in them was unwarranted." Press Release, Humane Socy. of the U.S., *The Humane Society of the United States Files Notice of Suit to Restore Federal Protection for Great Lakes Wolves*

Center for Biological Diversity (CBD) and Howling for Wolves, a Minnesota organization, sought declaratory and injunctive relief in Minnesota state court. The groups requested that the court declare invalid and enjoin enforcement of MDNR's rules establishing a wolf-hunt season.<sup>175</sup> After the Minnesota Court of Appeals denied relief, plaintiffs appealed to the Minnesota Supreme Court, where their motion was again denied.<sup>176</sup>

Wisconsin advocates also took action, filing suit challenging the new state law allowing the use of dogs in wolf hunts.<sup>177</sup> The advocates sought to temporarily block the WDNR from issuing wolf-hunt permits, arguing that the lack of restrictions on hunting dogs would result in wolf-dog clashes that violate Wisconsin's anti-cruelty laws.<sup>178</sup> The circuit court judge issued, but subsequently rescinded, the injunction, ruling that while dogs may be used in hunts, they could not be trained to hunt wolves.<sup>179</sup>

Finally, in January 2013, Michigan conservation and animal advocates received approval from the Board of Canvassers to begin collecting signatures on a referendum petition that would challenge

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(Oct. 15, 2012) (available at [http://www.humanesociety.org/news/press\\_releases/2012/10/great-lakes-wolves-suit-101512.html](http://www.humanesociety.org/news/press_releases/2012/10/great-lakes-wolves-suit-101512.html) (accessed Apr. 14, 2013)).

<sup>175</sup> Motion for Prelim. Inj., *Ctr. for Biological Diversity v. Minn. Dept. of Nat. Resources*, 2012 WL 4293692 at \*3 (Minn. Sept. 8, 2012) (No. 01-12-1680).

<sup>176</sup> Or. Denying Pl. Mot. for Prelim. Inj., *Ctr. for Biological Diversity v. Minn. Dept. of Nat. Resources* (Minn. App. Oct. 9, 2012) (available at [http://files.dnr.state.mn.us/fish\\_wildlife/wildlife/wolves/lawsuit/injunction\\_order.pdf](http://files.dnr.state.mn.us/fish_wildlife/wildlife/wolves/lawsuit/injunction_order.pdf) (accessed Apr. 14, 2013)); Or. Denying Pl. App. for Prelim. Inj., *Ctr. for Biological Diversity v. Minn. Dept. of Nat. Resources* (Minn. Oct. 26, 2012) (available at [http://files.dnr.state.mn.us/fish\\_wildlife/wildlife/wolves/lawsuit/sc\\_order\\_to\\_deny.pdf](http://files.dnr.state.mn.us/fish_wildlife/wildlife/wolves/lawsuit/sc_order_to_deny.pdf) (accessed Apr. 14, 2013)).

<sup>177</sup> See Todd Richmond, Pioneer Press, *Wisconsin Wolf Hunters Shouldn't Use Dogs, Humane Societies Argue in Court*, [http://www.twincities.com/wisconsin/ci\\_21429550/wisconsin-wolf-hunters-shouldnt-use-dogs-humane-societies](http://www.twincities.com/wisconsin/ci_21429550/wisconsin-wolf-hunters-shouldnt-use-dogs-humane-societies) (Aug. 29, 2012) (accessed Apr. 14, 2013) (reporting that the law was challenged by a coalition of humane societies). The *Wisconsin State Journal* paraphrased Bob Welch, executive director of the Wisconsin Hunters Rights Coalition, and described wolf hunting with dogs as follows: "The dogs . . . are used when there is snow that permits tracking. When the hunters find a wolf track, the dogs are released. They are outfitted with GPS collars that allow the hunters, on all-terrain vehicles or in trucks, to keep track of the location of their dogs. The hunters split into groups. One group moves out ahead of the dogs . . . and waits for the dogs to drive the wolf to them. They then shoot the wolf when it comes into sight." Ron Seely, Wis. St. J., *Advocates Say Dogs Essential to Wolf Hunts Success*, [http://host.madison.com/news/local/environment/advocates-say-dogs-essential-to-wolf-hunt-success/article\\_ba41fede-f9e4-11e1-9d8c-0019bb2963f4.html](http://host.madison.com/news/local/environment/advocates-say-dogs-essential-to-wolf-hunt-success/article_ba41fede-f9e4-11e1-9d8c-0019bb2963f4.html) (Sept. 9, 2012) (accessed Apr. 14, 2013).

<sup>178</sup> Richmond, *supra* n. 177.

<sup>179</sup> Paul Smith, Milwaukee-Wis. J. Sentinel, On the Trail Blog, *Judge Issues Injunction on Use of Dogs to Hunt Wolves*, <http://www.jsonline.com/blogs/sports/168197016.html> (Aug. 31, 2012) (accessed Apr. 14, 2013) (judge ruling against the use of dogs during Wisconsin's wolf hunt); Wis. Dept. of Nat. Resources, *Statement from DNR Secretary Cathy Stepp on Judge Peter Anderson's Ruling on the Use of Dogs for Wolf Hunting*, [http://dnr.wi.gov/news/BreakingNews\\_Lookup.asp?id=2609](http://dnr.wi.gov/news/BreakingNews_Lookup.asp?id=2609) (Jan. 4, 2013) (accessed Apr. 14, 2013) (WDNR announcing removal of injunction and expressing disappointment with judge's decision to prohibit training of dogs to hunt wolves).

Michigan's new law.<sup>180</sup> Advocates contend that trophy hunting is cruel and unnecessary because Michigan law permits the state's farmers, ranchers, and other landowners to kill wolves to protect livestock.<sup>181</sup>

To successfully place a referendum on the ballot, advocates were required to collect and submit a minimum of 161,305 valid signatures.<sup>182</sup> Following the submission of over 255,000 signatures, the Board of State Canvassers approved the Keep Michigan Wolves Protected referendum for the November 2014 ballot.<sup>183</sup>

However, the efficacy of a referendum vote was placed in question when Michigan Governor Rick Snyder signed Sen. 288 into law in May 2013.<sup>184</sup> The new law authorizes the Michigan NRC to unilaterally designate any species a game animal, including wolves, in the absence

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<sup>180</sup> Mich. Dept. of St., *State of Michigan Full Text of Statewide Ballot Proposals: November 4, 2014 General Election* 1 (May 22, 2013) (available at [http://www.michigan.gov/documents/sos/Petition\\_Language\\_2013\\_410796\\_7.pdf](http://www.michigan.gov/documents/sos/Petition_Language_2013_410796_7.pdf) (accessed May 27, 2013)).

<sup>181</sup> Press Release, Humane Socy. of the U.S., *The HSUS Disappointed by Michigan Wolf Hunting Bill Signing* (Dec. 28, 2012) (available at [http://www.humanesociety.org/news/press\\_releases/2012/12/Michigan\\_wolf\\_hunting\\_122812.html](http://www.humanesociety.org/news/press_releases/2012/12/Michigan_wolf_hunting_122812.html) (accessed Apr. 14, 2013)). Existing Michigan law grants persons the legal right to kill wolves "in the act of preying upon" the owner's livestock or dogs. Mich. Dept. of Nat. Resources, *Guidelines for Lethal Control of Wolves by Livestock and Dog Owners in Michigan*, [http://www.michigan.gov/dnr/0,4570,7-153-10370\\_12145\\_12205\\_33543-270056--,00.html](http://www.michigan.gov/dnr/0,4570,7-153-10370_12145_12205_33543-270056--,00.html) (accessed Apr. 14, 2013). There is also a state program that provides compensation for any livestock loss caused by wolves. *Id.* Compensation programs are similarly available in Minnesota, where in fiscal year 2012 a record of \$154,136 was paid for 111 verified claims. Steve Karnowski, Minn. Pub. Radio News, *Wolfs Recovery Seen in Livestock Loss Payouts*, <http://minnesota.publicradio.org/display/web/2012/09/05/environment/wolf-recovery-payouts> (Sept. 15, 2012) (accessed Apr. 14, 2013).

<sup>182</sup> Chad Livengood, Detroit News, *Hunting of Gray Wolves in Michigan's U.P. Put on Hold*, <http://www.detroitnews.com/article/20130522/POLITICS02/305220409> (May 22, 2013) (accessed May 27, 2013). The number of signatures required for a referendum petition is dictated by the Michigan Constitution, and is calculated based upon the number of votes cast for the Governor in the preceding general election. *See* Mich. Const. art. II, § 9 (for a referendum petition, requiring signatures from 5% of the total voters participating in the preceding election for Governor); *see also* Mich. Dept. of St., *Initiative and Referendum Petitions* 2 (Jan. 2011) (available at [http://www.michigan.gov/documents/sos/Ini\\_Ref\\_Pet\\_Website\\_339487\\_7.pdf](http://www.michigan.gov/documents/sos/Ini_Ref_Pet_Website_339487_7.pdf) (accessed Apr. 14, 2013)) (requiring 161,305 signatures for a referendum petition). However, the Secretary of State encourages that "[t]he number of signatures gathered on an initiative or referendum petition should be significantly greater than the number required as invalid signatures are eliminated through a verification process which involves a random sample of the submitted signatures." *Id.* at 2.

<sup>183</sup> Press Release, Keep Michigan Wolves Protected, *Board of State Canvassers Certifies Petition Signatures to Place Wolf Hunt Referendum on 2014 Ballot* (available at <http://www.keepwolvesprotected.com/media/board-state-canvassers-certifies-petition-signatures-place-wolf-hunt-referendum-2014-ballot> (accessed May 27, 2013)).

<sup>184</sup> *See* Mich. Pub. Act No. 21 (May 8, 2013) (available at <http://www.legislature.mi.gov/documents/2013-2014/publicact/pdf/2013-PA-0021.pdf> (accessed May 29, 2013)) (providing the MNRC with authority to designate species as game and authorize the establishment of the first hunting season for the species) (to be codified at Mich. Comp. Laws Ann. §§ 324.40103, 324.40110(1) (2013)); Mich. Sen. J., 97th Reg. Sess. 621 (2013) (available at <http://www.legislature.mi.gov/%28S%28vwbzfcyl21ahgs45omgox455%29%29/documents/2013-2014/Journal/Senate/pdf/2013-SJ-05-14-044.pdf> (accessed May 29, 2013)) (showing Governor's approval and signature of Sen. 288).

of legislative action.<sup>185</sup> In doing so, the law effectively places these types of MNRC administrative actions (including establishment of a wolf-hunting season) outside the reach of the referendum process, which addresses legislative—and not administrative—matters.<sup>186</sup>

*B. Legislating Management of the Northern Rocky Mountain Distinct Population Segment*

Northern Rocky Mountain (NRM) gray wolves were delisted in 2011 by congressional reinstatement of a 2009 FWS delisting rule that had been overturned by a federal district judge.<sup>187</sup> As a result of this congressional action, NRM DPS were delisted in Idaho, Montana, the eastern third of Washington and Oregon, and a small corner of north-central Utah.<sup>188</sup> Wyoming's wolf population was delisted by a separate FWS final rule in September 2012.<sup>189</sup> In the 2012 session, each NRM state considered legislative or administrative actions intended to regulate the hunting of wolves.<sup>190</sup> It is estimated that at least 1,000 wolves have been killed for sport since the 2011 delisting.<sup>191</sup>

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<sup>185</sup> Mich. Pub. Act No. 21, §§ 40103(1)(kk), 40110(1); *see also* Press Release, Keep Michigan Wolves Protected, *Wolf Coalition is Deeply Disappointed in Gov. Snyder Who Signs Bill That Threatens Fragile Wolf Population* (May 8, 2013) (available at <http://www.keepwolvesprotected.com/media/wolf-coalition-deeply-disappointed-gov-snyder-who-signs-bill-threatens-fragile-wolf-population> (accessed May 29, 2013)) (criticizing Governor Snyder for signing Sen. 288, and authorizing the administrative creation of a wolf-hunting-and-trapping season before the issue can be considered by Michigan voters).

<sup>186</sup> Sen. Fiscal Agency, *S.B. 288 (S-5) & 289 & S.J.R. S: Analysis as Passed by the Senate 2* (May 7, 2013) (available at <http://www.legislature.mi.gov/documents/2013-2014/billanalysis/Senate/pdf/2013-SFA-SB02-B.pdf> (accessed May 29, 2013)) (detailing that wolf-hunting opponents' efforts to compel a statewide referendum on the wolf-hunt season "raised concerns about the extent to which electors should be directly involved in natural resource decisions; the appropriate use of the referendum; and the potential influence of money and out-of-State interests in Michigan's affairs," and the resulting suggestion that authority to designate game species should be extended to the MNRC because their orders are not subject to the Michigan Constitution's referendum provisions); *see also Initiative and Referendum Petitions*, *supra* n. 182, at 3 (referendum process available to challenge implementation of a law).

<sup>187</sup> For a discussion of the 2009 delisting of the NRM DPS, and the resulting legal challenges, *see* Graves et al., *supra* n. 72, at 407–09.

<sup>188</sup> 76 Fed. Reg. 25590, 25591 (May 5, 2011); *see also* 74 Fed. Reg. 15123, 15184 (Apr. 2, 2009) (for the text of the original rule).

<sup>189</sup> 77 Fed. Reg. 55530, 55604 (Sept. 10, 2012) (final rule delisting the Wyoming NRM DPS issued September 10, 2012, and effective September 30, 2012). For an extensive discussion of Wyoming's proposed plan to manage its NRM DPS population, the state's agreement with FWS, and the eventual delisting of the Wyoming population, *see* Graves et al., *supra* n. 72, at 407–09.

<sup>190</sup> *Infra* nn. 192–224 and accompanying text.

<sup>191</sup> *See* Press Release, Or. Wild, *One Thousand Wolves Killed in Western United States* (Feb. 1, 2012) (available at <http://www.oregonwild.org/about/press-room/press-releases/one-thousand-wolves-killed-in-western-united-states> (accessed Apr. 14, 2013)) (estimating that, at the time of the delisting decision, the wolf population in the region was between 1,700 and 2,000 animals).

Idaho,<sup>192</sup> Montana,<sup>193</sup> and Utah<sup>194</sup> each implemented state wolf-management plans prior to 2012. However, in 2012, Idaho and Montana both moved to liberalize wolf-hunting restrictions. Idaho lawmakers introduced, but did not pass, legislation that would allow ranchers to use “control” mechanisms, including powered parachutes, helicopters, and live-bait traps to kill wolves engaged in livestock or domestic-animal depredation.<sup>195</sup> While there was no 2012 legislative action on wolves in Montana, the state Fish, Wildlife and Parks Commission adopted new policies allowing wolf trapping<sup>196</sup> and extending

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<sup>192</sup> Idaho Legis. Wolf Oversight Comm., *Idaho Wolf Conservation & Management Plan* 7 (Mar. 2002) (available at <http://idahodocs.cdmhost.com/cdm/singleitem/collection/p15100coll7/id/241354/rec/16> (accessed Apr. 14, 2013)) (“This plan will enable the transition of the management of the gray wolf back to the [Idaho Department of Fish & Game] . . .”). The plan was amended and approved by the 56th Idaho Legislature. Idaho Sen. Con. Res. 134, 56th Legis., 2d Reg. Sess. 1 (2002) (available at <http://legislature.idaho.gov/legislation/2002/SCR134.html> (accessed Apr. 14, 2013)) (providing for approval of the Idaho Wolf Conservation/Management Plan, conditioned upon amendment).

<sup>193</sup> Mont. Fish, Wildlife & Parks, *Montana Wolf Conservation & Management Planning Document, Prepared in Response to the Wolf Management Advisory Council Recommendations 1–2* (Jan. 2002) (available at [fwp.mt.gov/fwpDoc.html?id=31237](http://fwp.mt.gov/fwpDoc.html?id=31237) (accessed Apr. 14, 2013)) (“The purpose of this document is to describe the regulatory framework for wolf conservation and management in Montana, under the direction of [Montana Fish, Wildlife, and Parks]. This plan also describes the programmatic direction and a spectrum of management activities that maintain viable wildlife populations, resolve wolf–human and wolf–livestock conflicts, and gain the support of people with diverse interests.”).

<sup>194</sup> Utah Div. of Wildlife Resources & Utah Wolf Working Group, *Utah Wolf Management Plan 2* (2005) (available at [http://wildlife.utah.gov/wolf/wolf\\_management\\_plan.pdf](http://wildlife.utah.gov/wolf/wolf_management_plan.pdf) (accessed Apr. 14, 2013)) (“The goal of the plan is to manage, study, and conserve wolves moving into Utah while avoiding conflicts with the wildlife management objectives of the Ute Indian Tribe; preventing livestock depredation; and protecting the investment made in wildlife in Utah.”). The plan was drafted in responsive to a directive from the Utah Legislature. *Id.* at 1; Utah H. Joint. Res. 12, 2003 Gen. Sess. 2–3 (Jan. 24, 2003) (available at <http://le.utah.gov/~2003/bills/hbillenr/hjr012.pdf> (accessed Apr. 14, 2013)).

<sup>195</sup> Idaho Sen. 1305, 61st Legis., 2d. Reg. Sess. 3 (Feb. 9, 2012) (available at <http://legislature.idaho.gov/legislation/2012/S1305.pdf> (accessed Apr. 14, 2013)); *see also* Idaho Legis., *Senate Bill 1305*, <http://legislature.idaho.gov/legislation/2012/S1305.htm> (accessed Apr. 14, 2013) (reflecting that the bill received a third reading but did not pass the Idaho Senate).

<sup>196</sup> *See* Press Release, Mont. Fish, Wildlife & Parks Commn., *FWP Commission Approved 2012–13 Wolf Hunt and Trap Seasons* (July 18, 2012) (available at [http://fwp.mt.gov/news/newsReleases/headlines/nr\\_4029.html](http://fwp.mt.gov/news/newsReleases/headlines/nr_4029.html) (accessed Apr. 14, 2013)) (reporting that the state’s first wolf-trapping season will run from December 15, 2012, through February 28, 2013) [hereinafter MFWP Press Release]. Prospective trappers were required to participate in a certification class. *See* Ltr. to Mont. Certified Wolf Trapper from Mont. Fish, Wildlife & Parks Commn. (Nov. 13, 2012) (on file with *Animal Law*) (reflecting that the Montana Fish, Wildlife and Parks Commission (MFWP) adopted regulations for the wolf-trapping season at their July 2012 meeting, and noting a wolf-trapping education course as among the requirements); *see also* Erin Madison, Missoulian, *Montana’s First-Ever Wolf Trapping Season Opens Saturday*, [http://missoulian.com/news/state-and-regional/montana-s-first-ever-wolf-trapping-season-opens-saturday/article\\_797e1586-4566-11e2-b864-0019bb2963f4.html](http://missoulian.com/news/state-and-regional/montana-s-first-ever-wolf-trapping-season-opens-saturday/article_797e1586-4566-11e2-b864-0019bb2963f4.html) (Dec. 14, 2012) (accessed

the length of the hunting season;<sup>197</sup> the commission also declined to adopt statewide limits on the number of wolves that may be killed each year.<sup>198</sup>

In Utah, where wolves were delisted in only a very small north-central corner of the state, legislators put forth a “housekeeping” measure that anticipated an eventual, comprehensive delisting of wolves.<sup>199</sup> The measure, which did not pass, would have created a wolf-hunting permit.<sup>200</sup>

Throughout Oregon and Washington, gray wolves are still protected under the states’ respective endangered species acts,<sup>201</sup> and by the federal ESA in the western parts of the states.<sup>202</sup> Oregon

Apr. 14, 2013) (noting that the MFWP certified over 2,400 trappers through these courses).

<sup>197</sup> See Matthew Brown, Missoulia, *Montana FWP Seeks Expanded Wolf Hunting, Trapping*, [http://missoulia.com/news/state-and-regional/montana-legislature/montana-fwp-seeks-expanded-wolf-hunting-trapping/article\\_b998988a-5b69-11e2-9ceb-0019bb2963f4.html](http://missoulia.com/news/state-and-regional/montana-legislature/montana-fwp-seeks-expanded-wolf-hunting-trapping/article_b998988a-5b69-11e2-9ceb-0019bb2963f4.html) (Jan. 10, 2013) (accessed Apr. 14, 2013) (noting that FWS officials responded to pressure from ranchers and hunters by expanding the length of the 2012 season); see also Mont. Fish, Wildlife & Parks Commn., *Wolf: Montana Hunting & Trapping Regulations 2012 2* (available at <http://fwp.mt.gov/fwpDoc.html?id=56685> (accessed Apr. 14, 2013)) (noting that the wolf season was “extended” to February 28, 2013).

<sup>198</sup> See MFWP Press Release, *supra* n. 196 (“While commissioners did not adopt a statewide wolf harvest quota, as they did in 2009 and 2011, they did set a quota of two wolves in Wolf Management Unit 110 and three wolves in WMU 316. Those WMUs are located near Glacier and Yellowstone national parks respectively. All harvested wolves are still required to be reported.”).

<sup>199</sup> Utah Sen. 22, 2012 Gen. Sess. (Feb. 8, 2012) (available at <http://www.le.utah.gov/~2012/bills/sbillint/SB0022.pdf> (accessed Apr. 14, 2013)); see Amy Joi O’Donoghue, *Legislative Proposal Would Make Utah Wolves a Game Animal*, <http://www.ksl.com/?nid=960&sid=18615274> (Dec. 25, 2011) (accessed Apr. 14, 2013) (quoting Kevin Bunnell, wildlife section chief with the Division of Wildlife Resources, describing the bill as a “housekeeping” measure that anticipates delisting); see also Utah Sen., *S.B. 22: Definition of Wolf in Wildlife Resources Code of Utah*, <http://le.utah.gov/~2012/bills/static/SB0022.html> (accessed Apr. 14, 2013) (reflecting that the bill was defeated on March 8, 2012).

<sup>200</sup> Utah Sen. 22 at § 2(1)(b).

<sup>201</sup> See Or. Admin. R. § 635-100-0125 (2012) (providing that the state list of threatened and endangered species is available from the Oregon Department of Fish & Wildlife); Or. Dept. of Fish & Wildlife, *Federally Listed, Proposed, Candidate, Delisted Species and Species of Concern under the Jurisdiction of the Fish & Wildlife Service Which May Occur Within Oregon* 9 (Mar. 2, 2013) (available at <http://www.fws.gov/oregonfwo/Species/Lists/Documents/County/LANE%20COUNTY.pdf> (accessed Apr. 14, 2013)) (“Gray wolves in Oregon are State-listed as endangered, regardless of location.”); see also Wash. Admin. Code § 232-12-014 (2012) (including the gray wolf or *Canis lupus* as an endangered species); Wash. Dept. of Fish & Wildlife, *Gray Wolf Conservation and Management*, [http://wdfw.wa.gov/conservation/gray\\_wolf/](http://wdfw.wa.gov/conservation/gray_wolf/) (updated Feb. 2013) (accessed Apr. 14, 2013) (“The gray wolf is an endangered species throughout Washington under state law.”).

<sup>202</sup> 74 Fed. Reg. 15123 at 15184; 76 Fed. Reg. 25590 at 25591 (delisting only wolves in the eastern third of Oregon and Washington); U.S. Fish and Wildlife Serv., Or. Fish & Wildlife Off., Pac. Region, *Species Fact Sheet: Gray Wolf, Canis lupus*, <http://www.fws.gov/oregonfwo/Species/Data/GrayWolf/> (updated May 23, 2011) (accessed Apr. 14, 2013) (observing that the NRM DPS delisting created a unique situation in which wolves are



lawmakers introduced, but did not pass, a bill that—withstanding the state endangered species act—would allow the Fish and Wildlife Commission to authorize wolf take to address livestock depredation.<sup>203</sup> Washington lawmakers also introduced, but did not pass, two bills that would have allowed a property owner to kill, without a permit, a gray wolf attacking livestock.<sup>204</sup> The provision would have applied notwithstanding the state’s classification of the species as endangered.<sup>205</sup> Washington lawmakers ultimately passed a measure including wolves in the definition of “large wild carnivore,”<sup>206</sup> and prohibiting any person from negligently feeding or attracting large wild carnivores to a building.<sup>207</sup>

Finally, Wyoming’s gray wolves were the last NRM species delisted from the ESA—they remained listed until September 2012 due to FWS concerns about Wyoming’s “overly aggressive management regime.”<sup>208</sup> In anticipation of delisting, the Wyoming Legislature passed, almost unanimously, a wolf-management law in early 2012.<sup>209</sup>

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no longer endangered in the delisted region, but federal ESA protections persist in surrounding areas that do not have wolves); Wash. Dept. of Fish and Wildlife, *Gray Wolf Conservation and Management*, [http://wdfw.wa.gov/conservation/gray\\_wolf/legal\\_status.html](http://wdfw.wa.gov/conservation/gray_wolf/legal_status.html) (updated May 2011) (accessed Apr. 14, 2013) (describing the gray wolf as endangered under the federal ESA in the western two-thirds of Washington).

<sup>203</sup> Or. H. 4158-A, 2012 Reg. Sess. 1 (Feb. 1, 2012) (as engrossed) (available at <http://www.leg.state.or.us/12reg/measpdf/hb4100.dir/hb4158.a.pdf> (accessed Apr. 14, 2013)); Or. St. Legis., *House Bill 4158 A, Measure History for HB 4158*, <http://apps.leg.state.or.us/MeasureInfo/Measure/AtGlance?session=36&MeasureNumber=HB4158> (accessed Apr. 14, 2013) (showing bill passed the house, but died in a senate committee).

<sup>204</sup> Wash. H. 2365, 62nd Legis., 2012 Reg. Sess. 16 (Jan. 12, 2012) (available at <http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/House%20Bills/2365-S2.E.pdf> (accessed Apr. 14, 2013)); Wash. St. Legis., *HB 2365—2011–12 Regarding Large Wild Carnivore Conflict Management*, <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=2365&year=2011> (accessed Apr. 14, 2013) (showing bill passed the house, but died in a senate committee); Wash. Sen. 6137, 62nd Legis., 2012 Reg. Sess. 2 (Jan. 12, 2012) (available at <http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/Senate%20Bills/6137-S.pdf> (accessed Apr. 14, 2013)); Wash. St. Legis., *SB 6137—2011–12, Providing an Affirmative Defense to the Unlawful Taking of Endangered Fish or Wildlife When the Incident Involves a Gray Wolf*, <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=6137&year=2011> (accessed Apr. 14, 2013) (showing bill as dying in senate committee).

<sup>205</sup> See Wash. H. 2365 § 12(3) (“The commission’s rules must allow for an owner, the owner’s immediate family member, or the owner’s documented employee to kill a gray wolf, regardless of state classification, without a permit when there is physical evidence that the wolf is in the act of attacking the owner’s livestock.”); Wash. Sen. 6137 § 2(3) (same).

<sup>206</sup> Wash. Sen. 6135, 62nd Legis., 2012 Reg. Sess. 22 (Mar. 29, 2012) (as signed by the Governor) (available at <http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/Senate%20Passed%20Legislature/6135-S.PL.pdf> (accessed Apr. 14, 2013)); Wash. Rev. Code Ann. 77.08.010(35) (West 2012).

<sup>207</sup> Wash. Sen. 6135, 62nd Legis. at 55; Wash. Rev. Code Ann. § 77.15.790.

<sup>208</sup> 77 Fed. Reg. 55530, 55604; *id.* at 55552 (noting that “Wyoming’s management framework has corrected what we had concluded was an overly aggressive management regime”).

<sup>209</sup> 2012 Wyo. Laws. ch. 25 (available at <http://legisweb.state.wy.us/2012/Session%20Laws/pdf> (accessed Apr. 14, 2013)); Wyo. Sen. File 41, 61st Legis., 2012 Budget Sess. (Mar. 7, 2012) (as signed by the Governor) (available at

The law closely follows the agreement forged between the state and FWS.<sup>210</sup> First, it establishes two geographically based wolf classifications: “predatory animals” and “trophy game animals.” Wolves classified as predatory animals—meaning that they can be killed at virtually any time, without a license, and with minimal restrictions<sup>211</sup>—are located within state jurisdiction, but outside of the trophy game area.<sup>212</sup> Wolves may also be classified as trophy game animals in designated areas,<sup>213</sup> and thus may only be taken with a license during a hunting season.<sup>214</sup> Wyoming’s new law then geographically defines trophy game animals and removes provisions that allowed the Wyoming Game and Fish Commission (WGFC) to diminish the size of a trophy game area.<sup>215</sup> The law also provides for a seasonal expansion of the trophy game area from mid-October through late-February in the following year.<sup>216</sup>

Next, the law mandates season and bag limits that will ensure at least ten breeding pairs—and at least 100 individual gray wolves<sup>217</sup>—remain in the state, but outside of Yellowstone National Park<sup>218</sup> and

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[web.state.wy.us/2012/Engross/SF0041.pdf](http://web.state.wy.us/2012/Engross/SF0041.pdf) (accessed Apr. 14, 2013)); Wyo. Sen. Digest, S.F. No. 0041 Wolf Management, 61st Legis., 2012 Budget Sess. (available at <http://legisweb.state.wy.us/2012/Digest/SF0041.htm> (accessed Apr. 14, 2013)) (detailing senate and house votes on the measure).

<sup>210</sup> Reflecting on the 2009 final rule excepting Wyoming wolves from the NRM DPS delisting, FWS noted that it expressed concern over specific provisions of Wyoming’s statutes, management plan, and regulations, including the following: “(1) The size and permanency of Wyoming’s Wolf Trophy Game Management Area (WTGMA); (2) conflicting language within the State statutes concerning whether Wyoming would manage for at least 15 breeding pairs and at least 150 wolves, exactly 15 breeding pairs and 150 wolves, or only 7 breeding pairs and 70 wolves; and (3) liberal depredation control authorizations and legislative mandates to aggressively manage the population down to minimum levels.” 76 Fed. Reg. at 61785. In its 2012 final rule delisting the NRM DPS, FWS expressed its support for Wyoming’s legislation by indicating that Wyoming incorporated in its regulatory framework the changes delineated in the FWS agreement with the state. 76 Fed. Reg. at 55533.

<sup>211</sup> See Wyo. Stat. Ann. §§ 11-6-101 to 11-6-105 (West 2011) (commission directed to create zones where “predatory animals” may be taken without a license).

<sup>212</sup> 2012 Wyo. Laws. ch. 25, § 1 (amending Wyo. Stat. Ann. § 11-6-302(a)(ix)).

<sup>213</sup> *Id.* (amending Wyo. Stat. Ann. § 11-6-302(a)(x)).

<sup>214</sup> See Wyo. Stat. Ann. § 23-1-302(a)(ix), 23-1-101(a)(ii), (a)(xxix) (West 2011); Wyo. Fish & Game Dept., *Wolves in Wyoming*, <http://wgfd.wyo.gov/web2011/wildlife-1000380.aspx> (accessed Apr. 14, 2013).

<sup>215</sup> 2012 Wyo. Laws. ch. 25, § 1 (amending Wyo. Stat. Ann. § 23-1-101(a)(xii)); 77 Fed. Reg. at 55533–55535.

<sup>216</sup> 2012 Wyo. Laws. ch. 25, § 1 (amending Wyo. Stat. Ann. § 23-1-101(a)(xii)); 77 Fed. Reg. at 55534.

<sup>217</sup> 2012 Wyo. Laws. ch. 25, § 1 (amending Wyo. Stat. Ann. § 23-1-304). To place these numbers in context: as of December 2011, the Wyoming Game and Fish Department reported 224 wolves, 36 packs, and 19 breeding pairs outside of Yellowstone National Park. *Wolves in Wyoming*, <http://wgfd.wyo.gov/web2011/wildlife-1000380.aspx> (accessed Apr. 14, 2013).

<sup>218</sup> Yellowstone National Park reports seven to ten wolves, or about 8–10% of the Yellowstone wolf population, taken in 2012 as a result of legal wolf hunts in surrounding states. Yellowstone Natl. Park, *Information on the 2012–2013 Wolf Hunt Near Yel-*

most areas under the Wind River Indian Reservation jurisdiction.<sup>219</sup> This mandate, coupled with the WGFC commitment to maintain a buffer above minimum population objectives,<sup>220</sup> ameliorated FWS concerns regarding Wyoming's earlier aggressive management strategies.<sup>221</sup>

Wyoming's wolf-hunting season began October 1, 2012, the day after delisting became effective.<sup>222</sup> Forty-two wolves (out of a quota of fifty-two) were taken as part of Wyoming's first open-season hunt in the trophy game area; twenty-six were additionally taken in those areas where wolves are considered predatory.<sup>223</sup> The 2012 hunting season in the Northern Rockies sparked national controversy due to the high numbers of Yellowstone National Park wolves (which were tracked with GPS collars) that were killed outside of park boundaries.<sup>224</sup> This included Wolf 832F, Yellowstone's "best-known" and "beloved" wolf.<sup>225</sup>

## VI. BILLS REGULATING ANIMAL CONTROL AND REQUIRING TRAINING FOR ANIMAL CONTROL OFFICERS

Two New England states, Massachusetts and Connecticut, passed

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*lowstone National Park*, <http://www.nps.gov/yell/naturescience/wolfhunt.htm> (updated Mar. 28, 2012) (accessed Apr. 14, 2013).

<sup>219</sup> 2012 Wyo. Laws. ch. 25, § 1 (amending Wyo. Stat. Ann. § 23-1-304); 77 Fed. Reg. at 55533.

<sup>220</sup> Wyo. Game & Fish Commn., *Addendum, Wyoming Gray Wolf Management Plan, Clarification of the Wyoming Game and Fish Commission's Commitment to Manage for a Recovered and Sustainable Wolf Population in Wyoming* 3-5 (Mar. 22, 2012) (available at <http://www.regulations.gov/contentStreamer?objectId=0900006480ff1628&disposition=attachment&contentType=pdf> (accessed Apr. 14, 2013)).

<sup>221</sup> See e.g. 77 Fed. Reg. at 55535 (citing to Wyoming's commitment to maintain ten breeding pairs, and citing its commitment in the *Addendum*, see *supra* n. 220, to maintain an adequate buffer above minimum population objectives as demonstrating that Wyoming does not intend to reduce populations to minimum levels). *Id.* at 55552 (noting that "Wyoming's management framework has corrected what we had concluded was an overly aggressive management regime").

<sup>222</sup> Christine Peterson, Casper Star-Trib., *Feds Delist Wyoming Wolves; Hunting Season Begins Oct. 1; Groups Promise Lawsuit*, [http://trib.com/news/state-and-regional/feds-delist-wyoming-wolves-hunting-season-begins-oct-groups-promise/article\\_3cc78470-a44f-5109-80ef-5ad4188f52c7.html](http://trib.com/news/state-and-regional/feds-delist-wyoming-wolves-hunting-season-begins-oct-groups-promise/article_3cc78470-a44f-5109-80ef-5ad4188f52c7.html) (Sept. 1, 2012) (accessed Apr. 14, 2013).

<sup>223</sup> See Wyo. Game & Fish Dept., *Gray Wolf Management Monthly Update for December 2012* 2 (Dec. 2012) (available at [http://wgfd.wyo.gov/web2011/Departments/Wildlife/pdfs/WYGRAYWOLF\\_MONTHLY\\_DEC20120003594.pdf](http://wgfd.wyo.gov/web2011/Departments/Wildlife/pdfs/WYGRAYWOLF_MONTHLY_DEC20120003594.pdf) (accessed Apr. 14, 2013)) (noting that forty-one of the wolves were lawfully killed, while one was killed illegally).

<sup>224</sup> Nate Schweber, N.Y. Times, *'Famous' Wolf Is Killed Outside Yellowstone*, <http://www.nytimes.com/2012/12/09/science/earth/famous-wolf-is-killed-outside-yellowstone.html> (Dec. 8, 2012) (accessed Apr. 14, 2013)) (a version of this article appeared in the New York print edition on December 9, 2012, at A34 with the headline *'Famous' Wolf Is Killed Outside Yellowstone*) (reporting that eight Yellowstone wolves tracked with GPS collars have been killed just outside of Yellowstone's borders in Idaho, Montana, and Wyoming).

<sup>225</sup> *Id.*

measures this session requiring training for animal control officers (ACOs)—front-line responders with “great responsibility and obligations”<sup>226</sup> to protect the safety of animals and the public.

#### A. Broad Reform in Massachusetts

In August 2012, the Massachusetts General Court passed an expansive measure that greatly enhanced animal-protection laws in Massachusetts.<sup>227</sup> “An Act Relative to Animal Control,” passed as Sen. 2192,<sup>228</sup> was first introduced in 2007.<sup>229</sup> Senator Patricia Jehlen, the bill’s sponsor and legislative champion for over half a decade, described the bill’s provisions:

After many years of hard work, *An [A]ct [R]elative to [A]nimal [C]ontrol* finally passed in 2012 with critical changes essential to strengthening outdated animal control laws . . . . The legislation aims to protect animals and prevent acts of animal cruelty through improved animal control officer training, stricter euthanasia regulations, breed-neutrality in regards to ‘dangerous dogs’ and standardized holding time for stray animals, which will save municipalities money and allow for these animals to find new and loving homes more quickly[.]<sup>230</sup>

The law additionally creates a statewide spay and neuter program,<sup>231</sup> allows pets to be included in domestic-violence protection orders,<sup>232</sup> and adds enforcement provisions to sterilization laws applying to animal shelters and rescues.<sup>233</sup>

The law’s animal-control training provisions serve as its “foundation,” according to Kara Holmquist, director of advocacy at the Massa-

<sup>226</sup> Josh Kovner, Hartford Courant, *New Law Requires Animal Control Officers to Get Yearly Training*, [http://articles.courant.com/2012-06-15/news/hc-animal-control-of-ficers-0615-20120615\\_1\\_animal-control-officers-abuse-and-animal-abuse-cruelty](http://articles.courant.com/2012-06-15/news/hc-animal-control-of-ficers-0615-20120615_1_animal-control-officers-abuse-and-animal-abuse-cruelty) (June 15, 2012) (accessed Apr. 14, 2013) (quoting Debora Bresch, ASPCA Senior Director of Government Relations for the Eastern Region).

<sup>227</sup> The 188th Gen. Ct. Cmmw. of Mass., *S.2192, An Act Further Regulating Animal Control*, <http://www.malegislature.gov/Bills/187/Senate/S2192/History> (accessed Apr. 14, 2013) (Sen. 2192 signed by the Governor on Aug. 2, 2012).

<sup>228</sup> The Act was introduced as Sen. 1033. See The 188th Gen. Ct. Cmmw. of Mass., *S.1033, An Act Further Regulating Municipal Animal Control*, <http://www.malegislature.gov/Bills/187/Senate/S1033/History> (accessed Apr. 14, 2013) (Sen. 1033 introduced and referred to committee on January 24, 2011, and a new draft of the bill, Sen. 2184, was then substituted in place of Sen. 1033 on March 22, 2012). Sen. 2184 was replaced by Sen. 2194, a new and final iteration of the bill, on March 22, 2012; Sen. 2192 was signed by the Governor on August 2, 2012. The 188th Gen. Ct. Cmmw. of Mass., *S.2192, An Act Further Regulating Animal Control*, <http://www.malegislature.gov/Bills/187/Senate/S2192/History> (accessed Apr. 14, 2013).

<sup>229</sup> Mass. Sen. 512, 185th Legis. Sess. (2007) (available at <http://www.mass.gov/legis/bills/senate/185/st00pdf/st00512.pdf> (accessed Apr. 14, 2013)).

<sup>230</sup> Email from Sara Doherty, Commun. Dir., Off. of Sen. Patricia Jehlen, to Laura Hagen, Author, *Animal Law Journal and Animal Control Bill* (Feb. 5, 2013) (quoting Senator Jehlen) (on file with *Animal Law*) (emphasis added).

<sup>231</sup> 2012 Mass. Acts ch. 193 § 1 (codified at Mass. Gen. Laws ch. 10, § 35WW (2012)).

<sup>232</sup> *Id.* at § 50 (codified at Mass. Gen. Laws ch. 209A, § 11 (2012)).

<sup>233</sup> *Id.* at § 13 (codified at Mass. Gen. Laws ch. 140, § 139A (2012)).

chusetts Society for the Prevention of Cruelty to Animals (MSPCA), and one of the bill's lead advocates.<sup>234</sup> The new law includes a requirement that ACOs receive formal training.<sup>235</sup> ACOs are first-responders to situations involving domestic animals, wildlife and, sometimes, exotic animals. ACOs address dangerous dogs, animal cruelty, and other threats to public health and safety. As such, it is critical that they understand and enforce state laws protecting people and animals. The problem, as characterized by Ms. Holmquist, is that animal-protection laws—despite their strength—can be ineffectual without on-the-ground enforcement.<sup>236</sup> Emanuel Maciel, president of the Animal Control Officers' Association of Massachusetts, characterized lack of training as “a real problem” and a “liability” for communities.<sup>237</sup>

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<sup>234</sup> Telephone Interview with Kara Holmquist, Dir. of Advoc., Mass. Socy. for the Prevention of Cruelty to Animals (Feb. 6, 2013) (transcript on file with *Animal Law*) [hereinafter Kara Holmquist Interview].

<sup>235</sup> 2012 Mass. Acts ch. 193 §§ 21, 51 (§ 21 codified at Mass. Gen. Laws ch. 140, § 151C (2012)). Ashland, Massachusetts ACO Cheryl Rudolph characterized the required training provisions as “one of the more important aspects of this bill.” Joe O’Connell, *Metrowest Daily News*, *Patrick Signs Animal Control Reform Bill in Ashland*, <http://www.metrowestdailynews.com/news/x1602167167/Patrick-signs-animal-control-reform-bill-in-Ashland> (Aug. 3, 2012) (accessed Apr. 14, 2013). Notably, Massachusetts’s law requires that the Commissioner of Agricultural Resources provide training and requires that ACOs complete such training, but the requirement is contingent upon availability of funds in the Homeless Animal Prevention and Care Fund. 2012 Mass. Acts ch. 193 §§ 21, 51. As introduced, the bill required ACO training within one year of hire, without exception. Mass. Sen. 1033, 187th Legis. Sess. § 45 (Jan. 21, 2011). ACO training, in addition to a statewide spay and neuter program, was to be funded by a three-dollar surcharge on all dog license fees. *Id.* at §§ 8, 47. However, these provisions were amended in the Senate Committee on Ways and Means: the committee eliminated the surcharge and non-conditional training provisions, and replaced them with those discussed above. *See* The 188th Gen. Ct. Cmmw. of Mass., *H. 2184, An Act Further Regulating Animal Control*, <http://www.malegislature.gov/Bills/187/Senate/S2184/History> (accessed Apr. 14, 2013) (showing on March 19, 2012, the bill reporting out of the Senate committee on Ways and Means with Sen. 2184 as a “recommended new draft for S1033”); *compare* Mass. Sen. 1033, 187th Legis. Sess. at §§ 8, 45, 47 *with* Mass. Sen. 2184, 187th Legis. Sess. §§ 11, 21 (Mar. 19, 2012). These changes were adopted to provide a funding mechanism for ACO training while simultaneously addressing concerns raised by the Massachusetts Town Clerks Association about the surcharge in prior legislative sessions—concerns that effectively blocked the law’s passage in 2008. *See* Email from Mass. Socy. for the Prevention of Cruelty to Animals Animal Action Team to Laura Hagen, Author, *Animal Fighting Bill Signed by Governor! Other Matters Still Need Your Help!* (Jan. 6, 2009) (on file with *Animal Law*) (detailing, under “Issue 3,” town clerks’ opposition to the bill, and indicating that their opposition blocked the bill at the end of the 2007–2008 legislative session); Kara Holmquist Interview, *supra* n. 234 (discussing the reasons behind the amendments). The committee then made ACO training contingent upon funding to avoid an unfunded mandate (which might have negatively impacted the law’s passage); while the Homeless Animal Prevention and Care Fund provided a funding mechanism for the training, revenue into the fund would not be guaranteed. *Id.*

<sup>236</sup> Kara Holmquist Interview, *supra* n. 234.

<sup>237</sup> WCVB.com, *Outdated Animal Control Laws Hurt Man’s Best Friend*, <http://www.wcvb.com/Outdated-Animal-Control-Laws-Hurt-Man-s-Best-Friend/-/9849586/15046334/-/item/0/-/torsguz/-/index.html> (Apr. 29, 2011) (accessed Apr. 14, 2013).

Importantly, the law establishes a statutory mechanism for funding the training via a voluntary donation option on state tax returns.<sup>238</sup>

The law includes other equally significant animal-control provisions. It establishes a prohibition on euthanasia by carbon monoxide or dioxide gas,<sup>239</sup> and also creates an enforcement mechanism for the state's law requiring a deposit for, and sterilization of, animals that are not sterilized upon adoption from shelters and animal-control facilities.<sup>240</sup> The law requires that cities and towns regulate dangerous dogs in a breed-neutral manner,<sup>241</sup> and creates—for the first time—some state supervision of animal control.<sup>242</sup>

The bill, as introduced, was a stand-alone measure solely focused on improvements to Massachusetts's animal-control laws.<sup>243</sup> As passed, the law contains three additional provisions, each offering significant protection to animals in its own right. Senator Katherine Clark amended the bill to incorporate Sen. 682, allowing pets to be included in domestic-violence protection orders.<sup>244</sup> Senator Mark Mon-

<sup>238</sup> 2012 Mass. Acts ch. 193 § 1 (codified at Mass. Gen. Laws ch. 10, § 35WW (2012)).

<sup>239</sup> *Id.* at § 21 (codified at Mass. Gen. Laws ch. 140, § 151A (2012)) (permitting euthanasia only “by barbiturates in a manner deemed acceptable by the American Veterinary Medical Association Guidelines on Euthanasia, or by gunshot in case of emergency”).

<sup>240</sup> *Id.* at § 13 (codified at Mass. Gen. Laws ch. 140, § 139A (2012)) (commissioner may set fines for violations and may establish regulations to ensure compliance).

<sup>241</sup> *Id.* at § 32 (codified at Mass. Gen. Laws ch. 140, § 157(a), (c)(vii) (2012)) (explicitly prohibiting breed-specific regulation). This provision had the effect of nullifying Boston's pitbull-specific dangerous-dog ordinance, which was passed in 2004. 90.9 WBUR: Boston's NPR News Station, *Boston's Pit Bull Ordinance Overridden By State*, <http://radioboston.wbur.org/2012/08/24/pit-bull-law> (Aug. 24, 2012) (accessed Apr. 14, 2013) (discussing the effect of the law on Boston's Ordinance Regarding Pit Bull Ownership, and noting Boston City Councilor Rob Consalvo as stating: “The state house wiped us out.”). The City of Boston has since included on its 2013–2014 state legislative agenda a measure that “provides an opt-out provision so that cities and towns may pass breed-specific legislation when municipal attack data shows that a particular breed is dangerous.” Mayor Thomas M. Menino, *City of Boston State Legislative Agenda 2013–2014 Session 5* (available at [http://www.cityofboston.gov/news/uploads/22795\\_46\\_15\\_3.pdf](http://www.cityofboston.gov/news/uploads/22795_46_15_3.pdf) (accessed Apr. 14, 2013)).

<sup>242</sup> 2012 Mass. Acts ch. 193, § 21 (codified at Mass. Gen. Laws ch. 140, § 151(a) (2012)) (giving the commissioner power to appoint an ACO if none is appointed); *Id.* at § 21 (codified at Mass. Gen. Laws ch. 140, § 151C (2012)) (only ACO training courses approved by the commissioner are eligible for reimbursement); *compare id.* (codified at Mass. Gen. Laws ch. 140, § 151A (2012)) (requiring the commissioner to inspect animal-control facilities) *with* Mass. Gen. Laws ch. 140, § 151A (2011) (enacted 1934) (superse- ded 2012) (containing no such provision).

<sup>243</sup> Mass. Sen. 1033, 187th Legis. Sess. (Jan. 21, 2011).

<sup>244</sup> *See* The 188th Cmmw. of Mass., *S.2184 An Act Further Regulating Animal Control*, <http://www.malegislature.gov/Bills/187/Senate/S2184/History> (accessed Apr. 14, 2013) (amendment three offered by Senator Clark); *compare* The 188th Cmmw. of Mass., *S.2184 An Act Further Regulating Animal Control*, <http://www.malegislature.gov/Bills/187/Senate/S2184/Amendments> (accessed Apr. 14, 2013) (text of amendment three, *Domestic Violence and Pets*) *with* Mass. Sen. 2192, 187th Jt. Legis. Sess. § 49 (Mar. 22, 2011) (codified at Mass Gen. Laws ch. 209A, §11 (2011)) (incorporating *Domestic Violence and Pets* provisions into Section 49 of the bill); *also compare* The 188th Cmmw. of Mass., *S.2184 An Act Further Regulating Animal Control*, <http://www.malegislature.gov/Bills/187/Senate/S2184/Amendments> (accessed Apr. 14, 2013) (text

tigny amended the bill to incorporate provisions of his stand-alone measure, Sen. 1041. Senator Montigny's amendment established the advisory committee for the "Homeless Animal Prevention and Care Fund," which holds revenues obtained from a donation line on state income tax returns and funds the statewide spay and neuter program and animal-control training program.<sup>245</sup> Finally, Representative Cheryl Coakley-Rivera amended the bill in the house,<sup>246</sup> incorporating aspects of H. 2809, which regulated dog tethering<sup>247</sup> and outdoor confinement.<sup>248</sup>

Passing a measure that provides such expansive protections for animals was far from easy. First, stakeholders made a long-term commitment to the bill's success: a diversity of groups identified a need for comprehensive reform, drafted legislation that would protect animals and attain broad public and legislative support, and then worked together for eight years to ensure its passage.<sup>249</sup> Further, the law would not have passed without dedicated members of the general court who

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of amendment three, *Domestic Violence and Pets*) with Mass. Sen. 682, 187th Jt. Legis. Sess. (Jan. 1, 2011) (available at <http://www.malegislature.gov/Document/Bill/187/Senate/S682.pdf> (accessed Apr. 14, 2013)) (containing identical language).

<sup>245</sup> Portions of this original bill had already been incorporated in the Committee on Senate Ways and Means. Compare Mass. Sen. 1041, 187th Legis. Sess. (Jan. 20, 2011) with 2012 Mass. Acts ch. 193, §§ 1–2 (codified at Mass. Gen. Laws ch. 10, § 35WW (2012) and Mass. Gen. Laws ch. 62, § 6M (2012), respectively) (2012 Mass. Acts ch. 10, § 35WW incorporating the language of Sen. 1041 (notice that Senator Montigny's original bill, Sen. 1041, only funded spay and neuter surgeries and vaccinations, but the provisions were amended to additionally fund ACO training)).

<sup>246</sup> See The 188th Gen. Ct. Cmmw. of Mass., *H. 4266, An Act Further Regulating Animal Control*, <http://www.malegislature.gov/Bills/187/House/H4266/Amendments> (accessed Apr. 14, 2013) (Amendment six, offered by Representative Coakley-Rivera, did not pass. It would have incorporated the language of H. 2809, establishing a twelve, rather than twenty-four-hour, limit on tethering dogs. Amendment seven, offered by Representative Denise Andrews, did pass and established a twenty-four-hour limit on tethering dogs); compare Mass. H. 2809, 187th Legis. Sess. (Jan. 21, 2011) (available at <http://www.malegislature.gov/Bills/187/House/H02809> (accessed Apr. 14, 2013)) with 2012 Mass. Acts ch. 193, § 48 (codified at Mass. Gen. Laws ch. 140, § 174E (2012)) (2012 Mass. Acts ch. 193, § 48 incorporating the language of H. 2809).

<sup>247</sup> Tethering is "the practice of fastening a dog to a stationary object or stake, usually in the owner's backyard, as a means of keeping the animal under control." Humane Socy. of the U.S., *The Facts About Chaining and Tethering*, [http://www.humanesociety.org/issues/chaining\\_tethering/facts/chaining\\_tethering\\_facts.html](http://www.humanesociety.org/issues/chaining_tethering/facts/chaining_tethering_facts.html) (Oct. 21, 2009) (accessed Apr. 14, 2013).

<sup>248</sup> Mass. H. 2809, 187th Legis. Sess.

<sup>249</sup> Stakeholders included the Animal Control Officers' Association of Massachusetts, the MSPCA, the Animal Rescue League of Boston, the Massachusetts Department of Agricultural Resources, and the Massachusetts Veterinary Medical Association. Mass. Socy. for the Prevention of Cruelty to Animals, *Animal Control Bill: An Act Further Regulating Animal Control S. 2192*, <http://www.mspca.org/programs/animal-protection-legislation/government-affairs/current-legislation/animal-control/animal-control-bill-2011.html> (accessed Apr. 14, 2013) (listing organizations that worked together to draft changes, beginning in 2005). In addition, other entities, such as dog owners, city and town officials, and public health agents were consulted. Mass. Socy. for the Prevention of Cruelty to Animals, *S.2192, An Act Further Regulating Animal Control 2* (July 31, 2012) (available at

repeatedly introduced and championed their bills over multiple biennial sessions.<sup>250</sup> According to Ms. Holmquist, while there is “no template” for this type of broad reform, it is vitally important to “be persistent, build relationships, involve stakeholders from the beginning, and incorporate provisions that most legislators can agree on.”<sup>251</sup>

The law quickly began making a difference for animals. In November 2012, a dog in Marshfield, Massachusetts was the first to be included in a Massachusetts’s domestic-violence restraining order.<sup>252</sup> In addition, during the 2013 tax season, Massachusetts’s taxpayers contributed almost \$250,000 to the Homeless Animal Prevention and Care Fund through donations made via the annual state income tax form.<sup>253</sup>

### B. Training for Animal Control Officers in Connecticut

Connecticut legislators passed H. 5446, which creates new requirements for ACO training, and strengthens the state spay and neuter deposit law.<sup>254</sup> The bill, which provides two important tools for protecting animals, passed unanimously in both the senate and the house.<sup>255</sup>

As in Massachusetts, concerns stemming from untrained ACOs provided the impetus for this bill.<sup>256</sup> A lack of training can render ACOs unable to adequately perform complex aspects of their job, endangering both human and animal welfare.<sup>257</sup> The new law addresses

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ernment-affairs/current-legislation/animal-control/s-2192-summary-july-31-2012.pdf (accessed Apr. 14, 2013)).

<sup>250</sup> Senators Jehlen, Clark, and Montigny had each championed versions of their bills in prior legislative sessions. See Sandy Bodner, *MSPCA Updates on Legislation Being Proposed for Animal Health and Welfare*, <http://www.examiner.com/article/mspca-updates-on-legislation-being-proposed-for-animal-health-welfare> (July 11, 2009) (accessed Apr. 14, 2013) (listing animal-protection bills filed in 2009, including “An Act to Update the Animal Control Laws,” sponsored by Senator Jehlen; “An Act to Protect Animals in Domestic Violence Cases,” sponsored by Senator Clark; “An Act Establishing a Massachusetts Spay/Neuter Fund,” sponsored by Senator Montigny).

<sup>251</sup> Kara Holmquist Interview, *supra* n. 234.

<sup>252</sup> Lara Salahi, Boston Globe, *New Domestic-Violence Law Shields Marshfield Dog*, <http://b.globe.com/YcQCef> (Nov. 30, 2012) (accessed Apr. 14, 2013).

<sup>253</sup> Mass. Socy. for the Prevention of Cruelty to Animals, *Homeless Animal Prevention and Care Fund*, <http://www.mspca.org/programs/animal-protection-legislation/government-affairs/current-legislation/animal-control/homeless-animal-prevention.html> (accessed May 21, 2013).

<sup>254</sup> Conn. H. 5446, Gen. Assembly, 2005 Feb. Sess. (Mar. 7, 2012) (available at <http://www.cga.ct.gov/2012/TOB/H/2012HB-05446-R00-HB.htm> (accessed Apr. 14, 2013)).

<sup>255</sup> Conn. Gen. Assembly, *Substitute for Raised H.B. 5446, Session Year 2012*, <http://www.cga.ct.gov/2012/VOTE/S/2012SV-00358-R00HB05446-SV.htm> (accessed Apr. 14, 2013) (April 18, 2012 roll call vote documenting thirty-five voting yea and zero voting nay); Conn. Gen. Assembly, *Substitute for Raised H.B. 5446, Session Year 2012*, <http://www.cga.ct.gov/2012/VOTE/H/2012HV-00090-R00HB05446-HV.htm> (accessed Apr. 14, 2013) (May 9, 2012 roll call vote documenting 144 voting yea and zero voting nay).

<sup>256</sup> Kovner, *supra* n. 226.

<sup>257</sup> *Id.* (noting that untrained ACOs may be unable or unwilling to take a witness statement, and highlighting that ACOs play a role in new laws allowing Connecticut’s



a disparity in ACO training across Connecticut—some ACOs are sworn police officers or work under the police department, while others may possess limited or no qualifications to undertake basic duties.<sup>258</sup> Unlike the Massachusetts law, the new Connecticut law creates an absolute prohibition on beginning service as an ACO without required training.<sup>259</sup> The training curriculum—dictated largely by statute—must include, *inter alia*, information on state laws governing animal protection, control, and cruelty; standards for the care and control of animals in animal shelters; humane care and treatment of animals; animal health and disease recognition; first aid for injured animals; and documentation of animal-cruelty evidence and courtroom procedures.<sup>260</sup> The law also requires that current ACOs receive six hours of continuing education annually.<sup>261</sup>

In addition to its animal-control provisions, H. 5446 strengthened existing statutes requiring a deposit for unsterilized dogs or cats adopted from a “pound.” New provisions allow *pounds* to use the deposit, in the form of a veterinary voucher, to have animals sterilized before their release to their new owners.<sup>262</sup> Prior to the new law, deposits and veterinary vouchers could only be issued to *adopters* as a means to encourage them to have their new pet sterilized.<sup>263</sup> This important change enables pounds to use deposits to ensure animals are sterilized prior to adoption.

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Department of Children and Families to cross-check files of active child-abuse cases with ACO cases involving the seizure of abused animals).

<sup>258</sup> *Id.*

<sup>259</sup> Compare Conn. Gen. Stat. § 22-328(c) (2012) (available at <http://search.cga.state.ct.us/dlsurs/surk/htm/22—00—0328—K.htm> (accessed Apr. 14, 2013)) with 2012 Mass. Acts ch. 193 §§ 21, 51 (Connecticut requires training prior to serving in the position, while Massachusetts provides for training within twelve months of hire and subject to the availability of funds); see *supra* n. 235 (describing the legislative compromise resulting in Massachusetts’ ACO training provisions as passed).

<sup>260</sup> Conn. Gen. Stat. § 22-328(d).

<sup>261</sup> *Id.* at § 22-328(f).

<sup>262</sup> *Id.* at § 22-328(a).

<sup>263</sup> Conn. Gen. Stat. Ann. § 22-328(a) (West 2010) (enacted 1949) (superseded 2012).